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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 111<sup>th</sup> CONGRESS, FIRST SESSION

## SENATE—Wednesday, December 9, 2009

The Senate met at 9:30 a.m. and was called to order by the Honorable PAUL G. KIRK, Jr., a Senator from the Commonwealth of Massachusetts.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of justice, bring wholeness to our world. Keep fear, ignorance, and pride from limiting Your work in our Nation.

Give the Members of this body the insight to understand the actions they should take during these challenging times. Quicken their hearts and purify their minds. Broaden their concerns and strengthen their commitments. Lord, lead them through this season of challenge to a deeper experience with You, enabling them to feel You in their midst, as they grapple with the problems of our time.

We pray in Your Holy Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable PAUL G. KIRK, Jr., led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 9, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PAUL G. KIRK, Jr., a Senator from the Commonwealth of Massachusetts, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. KIRK thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of the health care reform legislation. Following remarks by the chairman and ranking member of the Finance Committee or their designees, the next 2 hours will be equally divided and controlled between the two leaders or their designees, with Senators permitted to speak for up to 10 minutes each. The Republicans will control the first 30 minutes and the majority will control the second 30 minutes. The remaining time will be equally divided and used in alternating fashion. No amendments are in order during the controlled time. Rollcall votes could occur this afternoon, but at this stage we have no knowledge that we have worked anything out and don't know if we will. We will do our best to give Members as much notice as possible.

### HEALTH CARE REFORM

Mr. REID. Mr. President, much of this momentous health care debate revolves around numbers, as it should. We read them in reports, see them in charts, and hear about them in speeches. The state of health care in this country is in such a severe crisis that these numbers are often quite overwhelming. Today, I want to talk about 1 number—31. It has a special significance, especially today, along the course of this long, historic pursuit to make it possible for every American to have health insurance and good health.

First, let's discuss the future.

The number 31 is a powerful reminder of both the great opportunity before us and the great cost of inaction, a tangible illustration of what we stand to gain and what we stand to lose. When we pass this bill, 31 million Americans who today have no health insurance

will have health insurance at long last. That means they no longer will have to put off the surgery they need and will be able to finally use prescriptions as prescribed—not half a pill every day, a whole pill every day. It means 31 million Americans will have a decent shot at a healthy life.

If we don't act, if we let misinformation confuse us or let distractions divert us or refuse to answer the American people's call to action, many more will suffer. In Nevada, like every other State, health insurance costs continue to climb. If we don't act, in just 6 years, the typical Nevada family will spend more than 31 percent of their income on health care premiums. Almost a third of every Nevadan's paycheck will go right to his or her insurance company. That number is even higher on average throughout the country but only if we do nothing.

Second, let's talk for just a little bit about today, the present.

Right now, every 31 minutes insurance companies terminate insurance for 300 Americans. Sometimes it is because you lost your job, because you lost your health care when you lost your job. Sometimes it is because you change your job but your health care company doesn't come along with your job change. And sometimes, at the very time you need it the most, the insurance company says: Sorry. We are not going to continue the insurance we have given you before. Because they want to make more money, a greedy health insurance company looks at your medical history and says: I am sorry, but we are going to take it away from you. You have no recourse. Maybe you have had high cholesterol your whole life or maybe acne as a child or you had a C-section as an adult. Health insurance companies have used all these reasons to drop someone's coverage. Maybe you had minor surgery 10 years ago or your mother had breast cancer or your father had heart disease. That is all it takes. We all know that, much like our Republican colleagues, insurance companies will use any excuse in the book to say no.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

But that statistic, that every 31 minutes in America more than 300 people lose their health insurance coverage, what does that really mean? Imagine if the Senate gallery—600 people can be seated in our galleries—imagine if every single one of these seats was filled by a good American citizen who wanted to look over the Senate and they all had health care when they came in here. Imagine that each of them came this morning to watch their government work, to observe the proceedings here on the floor for an hour or so. Then each of them went on their way when that hour came to a close, but on their way out the door they were told that no longer would they have health care. That is what is happening right now in America, the wealthiest and greatest country in the world. Every 31 minutes, 300 more people lose their health coverage.

Third and finally, let's talk about the past. Let's put the historical moment upon us in the context of history.

It was 31 years ago this day that Senator Ted Kennedy gave one of the most profound and stirring speeches both of his remarkable life and in the history of the Senate and certainly in the history of our Nation's long health care debate. In that talk, he made an observation that rings just as true today as it did more than three decades ago. He said:

One of the most shameful things about modern America is that in our unbelievably rich land, the quality of the health care available to many of our people is unbelievably poor and the cost is unbelievably high.

Senator Kennedy observed how out of control costs were back in 1978 and warned how quickly they would rise if we did not act.

Well, we didn't act. In the past 31 years, health care costs have skyrocketed, and that is a gross understatement. The number of uninsured Americans has done the same. We have 50 million now uninsured and more bankruptcies than ever. Three out of five are because of medical expenses. Other countries have no bankruptcies because of medical expenses. Germany, France, Great Britain, Japan—they don't have bankruptcies because of health expenses. The cost of prescription drugs has doubled in just the past decade, and far fewer small businesses can afford to cover their workers. One more thing has happened: The resistance of the health insurance industry and congressional Republicans to change the American people's demand has only become more tone deaf and more intense.

If we don't act at this time, those terrible trends will only continue. I can hear Senator Kennedy now. I wasn't here 31 years ago, but I can hear him because I listened to him very closely for more than 31 years. Costs will continue to go up without end. More Americans who have health insurance

today will lose it. More patients will die of diseases we know how to treat. As the crisis spirals, insurance company executives will laugh all the way to the bank. One company made \$1 billion last year; the chief executive took home \$100 million. How is that?

Much of the health care debate revolves around numbers, but at its heart, it is really about people. On December 9, 1978, 31 years ago, Senator Ted Kennedy asked us to recognize that health care is "a basic right for all, not just an expensive luxury for the few." A generation later, good health is still a luxury in this country. We are working day and night to see if we can help the generation that is here now and generations to come. If we don't, they will have the same memories 31 years from now as Senator Kennedy prophesied 31 years ago.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

#### HEALTH CARE: IMPACT ON SMALL BUSINESS

Mr. McCONNELL. Mr. President, the American people have now seen what Democrats in Congress plan to do with seniors' health care. They have looked on in total disbelief as the majority voted again and again to slash Medicare by nearly \$½ trillion.

Incredibly, these cuts represent just part of the pain caused by this bill. In addition to punishing seniors, it would punish businesses. At a time when 1 out of 10 working Americans is looking for a job, this bill would hit employers with job-killing new taxes and mandates, and it wouldn't do anything to lower long-term health care costs. This is the very last thing business owners expected from this bill. It is the last thing America needs in the midst of a recession. And it is just one of the reasons more and more business groups are stepping forward and speaking out against this job-killing bill.

Yesterday, I mentioned a letter signed by 10 major trade groups pleading with us not to approve this bill because of the effect it would have on business. Later in the day, the National Federation of Independent Business, one of the leaders in the small business community, released a letter explaining why they opposed the bill. They said any health care reform faces two tests for small businesses: Does it lower insurance costs, and will it increase the overall cost of doing business. According to them, the Senate bill fails both of these tests and therefore fails small business. They have seen the CBO conclude that this bill would lead to higher premiums. They have seen the billions of new taxes that

would fall unfairly on small businesses. And they have seen the mandates and the fines that would kill jobs. They have concluded that this bill would actually be worse for small business than the current situation.

It is abundantly clear that the more Americans learn about this bill, the more they oppose it. Now we know the same goes for business. Businesses that can't insure workers face stiff fines resulting in lost wages and jobs, according to the independent Congressional Budget Office.

What is more, studies suggest that this so-called employer mandate would have a disproportionate impact on low-income, entry-level workers. At a time of 10 percent unemployment, we should be doing everything we can to create jobs. This bill would only lead to more lost jobs.

Medicare cuts are bad enough, but this bill doesn't just hurt seniors, it hurts the economy as well. That is why Americans overwhelmingly oppose it.

Speaking of how people feel about this bill, we see signs of opposition everywhere. Public opinion is overwhelming. In all the polls across the country, the American people are saying: Don't pass this bill.

Last month's gubernatorial elections in New Jersey and Virginia were a stinging rebuke to the Democratic approach of more spending, more debt, higher taxes, and endless bureaucracy.

There is a new development. Just yesterday—just yesterday in my home State—there was a special election for the State senate. Why would that be worthy of commentary on the Senate floor? Let me describe the situation. It is a 3-to-1 Democratic district. Because of State issues, the Democratic State administration was intensely interested in winning that seat. They spent \$1 million cumulatively—the candidate, the Democratic State party, and an outside interest group—in support of the Democrat—\$1 million on one side of a State senate race in a rural area of my State.

On the other side was a Republican candidate, who was outspent 5 to 1—outspent 5 to 1 in a 3-to-1 Democratic district. The Republican candidate for the State senate won by 12 points. How did that happen? He had one message—one message: oppose the Reid bill, oppose what PELOSI is doing, oppose what the Democrats in Washington are doing.

In other words, the candidate who was outspent 5 to 1 in a district where he was outregistered 3 to 1 made the sole issue in the State senate race what is happening here in Washington on this bill that is on this floor.

That ought to tell you on the heels of the Virginia and New Jersey elections what is happening in this country. People have seen enough and heard enough, and they want it to stop.

The message is simple. This health care bill is a losing formula all around.

That is the message Americans are sending loudly and clearly. The signs are everywhere. We saw it yesterday in my home State. It is time to stop this bill and start over.

Mr. President, I yield the floor.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time home buyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Dorgan modified amendment No. 2793 (to amendment No. 2786), to provide for the importation of prescription drugs.

Crapo motion to commit the bill to the Committee on Finance, with instructions.

The ACTING PRESIDENT pro tempore. Under the previous order, following any remarks of the chairman and ranking member of the Finance Committee or their designees, for up to 10 minutes each, the next 2 hours will be for debate only, with the time equally divided and controlled between the two leaders or their designees, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes, and the majority controlling the second 30 minutes, and with the remaining time equally divided and used in an alternating fashion.

The Senator from Montana.

Mr. BAUCUS. Mr. President, for the benefit of all Senators, let me lay out today's program.

It has been nearly 3 weeks since the majority leader moved to proceed to the health care reform bill. This is the 10th day of debate on the bill. The Senate has considered 18 amendments or motions. We have conducted 14 rollcall votes.

Today the Senate will debate the amendment by the Senator from North Dakota, Mr. DORGAN, on prescription drug reimportation. At the same time, we will debate the motion by the Senator from Idaho, Mr. CRAPO, on taxes.

Under the previous order, the time until 12:30 p.m. today will be for debate only, with the time equally divided and controlled between the two leaders or their designees. Following the remarks of the ranking member of the Finance Committee or his designee, the Repub-

licans will control the first 30 minutes and the majority will control the second 30 minutes, with the remaining time equally divided and used in an alternating manner.

We are hopeful the Senate will be able to conduct votes on or in relation to a second-degree amendment to the Dorgan amendment, the Dorgan amendment itself, a side by side to the Crapo motion, and the Crapo motion itself. Thereafter, we expect to turn to another Democratic first-degree amendment and another Republican first-degree amendment. We are working on lining those up.

Over the course of the debate, there has been too much misinformation about what health care reform is and what it will do. I wish to set the record straight.

The goal of health care reform is to lower costs and provide quality, affordable coverage to American families, businesses, and workers. According to the nonpartisan Congressional Budget Office, our bill, the Patient Protection and Affordable Care Act, is a success.

According to the CBO, this bill provides health insurance coverage to 31 million more Americans. That is a big success. It lowers health insurance premiums. Despite what some have said, what some have claimed about premiums rising, that is not true. CBO says this legislation lowers health insurance premiums but for 7 percent, and that 7 percent gets much higher quality health care insurance than otherwise they would get. CBO also says this legislation reduces the Federal deficit by \$130 billion over the first 10 years—it reduces the Federal deficit by \$130 billion over the first 10 years.

In addition, as the President promised, this bill does not raise taxes on the middle class. In fact, this bill is a net tax cut. Over the next 10 years, this bill will provide a total of \$441 billion in tax credits to help American families buy quality, affordable health care coverage they can count on. That is a tax cut, a total of \$441 billion in tax cuts. The chart behind me indicates that. Over the next 10 years, this bill will provide a total of, as I said, \$441 billion in tax cuts.

The bill provides a net tax cut of \$40 billion in the year 2017. You can see that basically on the chart: \$40 billion of tax cuts in 2017. That is \$440 for every taxpayer affected. These are individual tax cuts. Let me make that clear. American individuals will get tax cuts under this legislation in these amounts.

That same year—2017—low- and middle-income taxpayers who earn between \$20,000 and \$30,000 a year will see an average Federal tax decrease of nearly 37 percent. That is CBO. Do not take my word for it. That is CBO and the Joint Committee on Taxation—an independent organization. The average taxpayer making less than \$75,000 a

year will receive a tax credit of more than \$1,300, and that tax credit grows to more than \$1,500 in 2019. Those are tax cuts. It is very important we all remember this bill is a net tax cut of this amount for American taxpayers. That is individual tax cuts.

I have heard arguments that the responsibility to have health insurance amounts to a tax on the middle class. This is simply not true. In fact, this policy works to repeal the hidden tax of more than \$1,000 in extra insurance premiums that American families with health insurance pay each year in order to cover the cost of caring for those without health insurance. It is a tax for uncompensated care. That is \$1,000 per American family, on average, that they have to pay under the current system. This bill would virtually eliminate that.

Additionally, this bill provides Americans with the tools they need to meet that responsibility by ensuring that all Americans have access to quality, affordable health insurance.

The bill eliminates barriers that prevent Americans from getting insurance coverage, such as discrimination based on preexisting conditions. This bill eliminates that. We—all of us—either directly or through a family member or through a friend, have heard these horror stories of insurance companies denying coverage because of a preexisting condition. This legislation stops this. And this legislation makes quality insurance affordable to every American through tax cuts and help with copays and other out-of-pocket costs.

If for some reason an individual still cannot afford to buy the health insurance coverage available to them, they are exempt from paying the penalty. Clearly, this penalty is not a tax. So if you cannot afford it, you do not have to pay—no penalty.

I have also heard arguments that the excise tax on private insurance companies offering costly and excessive insurance plans will raise taxes on individuals. This claim is equally untrue. The Congressional Budget Office reaches the conclusion that is not true. In fact, the Congressional Budget Office reaches the conclusion it will lower premiums. I think the amount is 7 to 12 percent, if I remember correctly—the amount stated in their letter to us in the Congress.

This policy, therefore, is not a tax on individuals. Rather, it is a tax on private insurance companies, and not passed on in the nature of higher premiums, according to CBO—in fact, lower premiums according to CBO.

This legislation is designed to encourage private insurance companies to offer, and employers to choose, health insurance plans with lower premiums that are below the taxable threshold. The Congressional Budget Office noted how effective this policy is in a report when it said:

... most people would avoid the cost of the excise tax by enrolling in plans that had lower premiums.

As a result, CBO says premiums will decrease and wages will increase as employers offer more money in workers' pockets instead of inflated health benefits. In fact, the bulk of the revenue raised by this provision—more than 83 percent—comes not from the tax itself but from increased wages, increased wages on account of this provision. MIT economist Jonathan Gruber estimates this provision will cause workers' wages to rise by \$55 in 2019. That is \$700 in additional income for every household with health insurance.

The truth is, this bill is fully paid for—fully paid for; CBO says so—and it is paid for in a fiscally responsible way. It reduces the Federal deficit. It lowers the growth of health care costs. It provides quality, affordable health insurance to millions more Americans. And it is a net tax cut—net tax cut—for American families, businesses, and workers, which in these tough economic times means more than ever.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I stand confused from the statement of the chairman of the Finance Committee because we have all the reports that the bill he is talking about is not the bill we are going to be voting on because we are totally changing what we are doing. What is out there now is that we are going to expand Medicare to those down to 55 years of age, and we are going to expand Medicaid up to those of 150 percent of poverty. We are going to add billions of dollars of mandates, even at 90 percent copaid by the Federal Government, to the States over the next 10 years. We have a Medicare Program that you have taken \$465 billion out of, and you are going to add 34 million new people to under the new plan—the new plan we are talking about. You are talking about the plan we used to have.

It is interesting, though, as you make those points, when you say it is net tax cut. Three-quarters of the net tax cut goes to people in this country who pay no taxes in the first place. The chairman cannot deny that. The fact is, according to the Joint Tax Committee—the chairman conveniently does not look at the other body that gives us information on taxes. According to the Joint Tax Committee, \$288 billion of the \$394 billion will be refundable. That is a refundable tax credit to people who are paying no taxes now.

Mr. BAUCUS. Mr. President, might I ask the Senator, it is a tax cut, whether or not it is refundable. And even if it is refundable, it is extra dollars in people's pockets.

Mr. COBURN. The fact is, it is taxes to the average American family—40 million of them. According to the Joint

Tax Committee, taxes will rise on those who are making under \$200,000 a year. The Joint Tax Committee said that.

The point is, what you are talking about does not have any application because we do not have "the bill," again, because we have a new "the bill" on the floor, which is going to take a bankrupt program that our children today are responsible for—if you are born today, based on the unfunded liabilities of Medicare, you are responsible for \$350,000, if you are a new child born today, for what we have not paid for in Medicare. And now we have the new plan that is going to come out. We have cut \$465 billion out of Medicare, or moved it out of Medicare, to create a new program. And we are going to add 34 million new Americans to it, in a plan that has already mortgaged the future of our children.

The other thing the chairman said is that costs in health care will go down and that premiums will go down. Well, there are 11 out of 12 people who have studied "the plan" who say premiums will rise. What CBO says is, if you are in the individual market, your premiums are going to go up anywhere from 10 to 13 percent. In fact, they are not sure whether premiums will decline. They say on the other groups it is from a 1-percent increase to a 2-percent decrease over what they would have already increased.

So our problem with health care is costs. That is the thing that stops access to health care in this country. And the plan—whether it is the new plan, which nobody has gotten to see the details of, or the plan we have seen the details of, the 2,074 pages we have seen the details of—raises the cost of health care in this country.

But none of that is important because the most important thing is, it puts government in control of your health care through the task force on preventive health services, through the Medicare Advisory Commission, and through the cost comparative effectiveness panel. So with a wink and a nod we are going to put government in control of your health care; we are going to put 70 new bureaucracies between you and your doctor; we are going to put 20,000 new Federal employees between you and your doctor; and we are not going to lower the costs. The average American is not going to get a tax cut; they are going to see an increase out of this bill. The average middle-income American is going to see a tax increase out of this bill.

So, consequently, what we have heard sounds good on the surface. But the most important thing to remember is you are no longer going to be in control of your health care because once the government puts its nose under the tent, just as it did on breast cancer screening—and we have the gall to say we are going to recognize every time

the agency does something that is harmful to a patient in their relationship with their doctor, that we are going to come to the Senate floor and correct it. The fact is, that isn't going to happen.

So, ultimately, your health care is going to cost more and your premiums are going to rise. Eleven out of the twelve studies say premiums are going to rise under the bill that is before us, and the people who get the tax cuts are the people who aren't paying any taxes now. To pay for those tax cuts, taxes are going to rise on 40 million American families who earn under \$200,000 a year.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAPO. Mr. President, I ask unanimous consent to speak, as well as engage in a colloquy with several of my colleagues.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BAUCUS. Reserving the right to object, under the order of the day, what is the amount of time allocated to each side?

The ACTING PRESIDENT pro tempore. The Republicans control the next 30 minutes. Then the majority controls the next 30 minutes after that.

Mr. BAUCUS. I thank the Chair.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. CRAPO. Thank you very much, Mr. President. I appreciate the opportunity to discuss the issue of taxes and jobs today as we focus on the critical legislation in front of us.

I have proposed an amendment, actually a motion, to commit this bill back to the Finance Committee to help us honor the President's pledge on taxes. As we have discussed now for more than a week, notwithstanding all of the claims that are being made about this legislation, one of the irrefutable facts is that it grows the government dramatically. If you take the first full 10 years of spending, not counting the first 4 years that are not included in the spending—in other words, they are delayed in order to make the numbers look better—if you count the first full 10 years of implementation of this bill, it will result in \$2.5 trillion of new Federal spending. It will grow the Federal Government by that much.

Repeatedly, President Obama has told the American people he will not allow them to be taxed—those whom he describes as the middle class—in order to pay for this huge new increase in Federal spending.

To use President Obama's own words:

I can make a firm pledge . . . no family making less than \$250,000 will see their taxes increase . . . not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes . . . you will not see any of your taxes increase one single dime.



Yet what does this bill do? It includes \$493 billion of new taxes in just the first 10 years. If you use that full 10-year timeframe—that timeframe that starts after the 4 years of spending that have been suppressed in order to change the numbers and the calculations on the bill—the total number in that 10-year window is \$1.2 trillion of new taxes.

The question is, Do these taxes fall only on the wealthy or do they fall squarely on those in the middle class? The answer is the large majority of them fall on the middle class. In fact, the Joint Tax Committee has indicated that by 2019, individuals earning between \$50,000 and \$200,000 would, on average, see a tax increase of \$595,000. Families earning between \$75,000 and \$200,000 would, on average, see a tax increase of \$670,000.

My colleague from Montana, the chairman of the Finance Committee, has argued that there is actually a net tax cut in the bill. How do we get to those numbers? Based on a Joint Committee on Taxation report, of the \$394 billion that the government will spend on what are called tax credits—that is the tax cut that my colleague is talking about—\$288 billion of those \$394 billion in credits will go to people who pay no taxes today.

If you think about it, how can it be a tax cut if the money is spent from the Federal Treasury and sent to—or to somebody on behalf of—a person who is not paying taxes in the first place? You can call it a subsidy. You can call it a credit if you would like. I know the words used in the bill are a “refundable tax credit,” but the reality is it is nothing other than pure Federal spending. In fact, the Congressional Budget Office classifies this kind of benefit as government spending.

Mr. BAUCUS. Will the Senator yield for a question?

Mr. CRAPO. I will yield on the Senator's time.

Mr. BAUCUS. That is fine.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. The Senator says those are people who don't pay taxes. Don't most of those people pay a lot of taxes? Don't they pay payroll taxes, most of them, who work?

Mr. CRAPO. There is a payroll tax. There is.

Mr. BAUCUS. Are there not other taxes that people pay? It could be sales tax. There are all kinds of taxes that people pay. Particularly working people, there are a lot of taxes they pay.

Mr. CRAPO. Reclaiming my time, although people do pay a lot of sales taxes—not Federal sales taxes, by the way—and although people do pay a lot of other types of taxes, they will pay penalties and fees—in fact, under this bill they will be paying a lot more taxes. The reality is I don't think that

is what President Obama was talking about. When he made his pledge, I think his words were: “You will not see any of your taxes go up.” The bottom line is you can't say, well, if you offset this tax and you don't count the sales tax or if you add in the sales tax to counteract it—that is not what the President was talking about.

Once again, as Joint Tax has said, by 2019 individuals making between \$50,000 and \$200,000 on average would see a tax increase of \$590,000, and families making between \$75,000 and \$200,000 would see a net increase on average of \$670,000.

Let's go to the next chart.

I note my colleague from Tennessee is here. If he would like to step in at any time, please feel free. I just have two other charts to show, and then I will toss the floor to the Senator. I see he has, I think, a question brewing.

In the analysis that was done by the Joint Tax Committee, by 2019, these people whose taxes I have just described who are squarely in the middle class, there will be at least 73 million American households—that is not individuals, that is households—73 million American households earning below the \$200,000 that will face a tax increase. Sometimes the proponents of this bill say, well, that doesn't net out the subsidies we are providing to some of them. If you net out the subsidies—and I don't think that is necessarily an argument, but if you do net out the subsidies—it is still at least 42 million American households that will see their taxes increase under this legislation.

How can that comply with the President's promise? All the motion I have brought does is say to commit this bill to the Finance Committee and make the bill fit the President's pledge. The President pledged that people in the middle class, which he defined as families making less than \$250,000 or individuals making less than \$200,000, would not see their taxes go up.

With that, again, I see my colleague from Tennessee is ready to join in with me, and I would ask if he has any comments or questions to raise.

Mr. ALEXANDER. I thank the Senator from Idaho. The point you are making is, if you are going to add  $\frac{3}{2}$  trillion—this bill as proposed is paid for by about half through Medicare cuts and about half through tax increases, and it is paid for some by sending huge new bills to State governments. But I guess the point the Senator is making basically is that we are going to add  $\frac{3}{2}$  trillion in taxes over 10 years or much more than that when the bill is fully implemented. Who is going to end up paying those taxes? It is not going to be insurance companies. It is not going to be medical device companies. It is going to be the people who—it is going to be us. Isn't that true? Don't you expect that most of the

companies upon which the new taxes are imposed will pass those taxes along to the American people?

Mr. CRAPO. Yes. As a matter of fact, in my own mind, I distinguish between taxes on the American people and fees that will be charged to companies and businesses in the private sector that are also being passed on to the American people. All of those will occur.

One interesting clarification or explanation with regard to this refundable tax credit that is talked about so often: it isn't actually refunded to the taxpayer, as I understand it, or to the individual who doesn't pay taxes but is receiving the credit. It is paid directly to the insurance company, as I understand it. So even though some people could be claimed to be paying less taxes by this argument, because some of those who receive the subsidy will get a greater subsidy than they will a tax increase, the fact is even they still get a tax increase and even they still pay their taxes at the higher level. It is just that some of them will get a subsidy that will help to offset that.

Mr. ALEXANDER. I wonder if I may take a minute to talk about another form of taxes, which would be State taxes. Now, people might be thinking: Well, you are talking about a Federal health care bill. How do you get State taxes in there? Well, let me try to explain that just a little bit.

I remember as Governor of Tennessee some years ago, nothing used to make me madder than Washington politicians who would come up with a big idea, take credit for it, hold a press conference and announce it; call it, for example, historic, and then send the bill to me, the Governor, to pay it. Then usually those same politicians would come back to Tennessee and they would make a big speech about local control at the Jefferson Day dinner or the Jackson Day dinner. In fact, sometimes Republicans were just as bad as Democrats in doing it.

I also remember that in 1994 there was a political revolution in the country. This body switched dramatically to the Republican side, and one of the main arguments was no more unfunded mandates. In other words, don't be coming up with big ideas in Washington and sending the bill to the Governor or to the State legislature or to the mayor or to the county commission and expect them to raise property taxes or cut services or raise college tuitions to make it up.

So what I wish to say today is this: This legislation already includes a huge new bill for the State governments. As it is now written, Medicaid for low-income Americans is expanded, and there is a big bill to the States. Our Governor, who is a Democrat, by the way, has been very effective in pointing this out; that Senator REID's bill will add \$700 million over 5 years to our State. There is no way our State

can pay this bill without a tax increase of significant size or seriously damaging higher education or seeing college tuition begin to go through the roof, just as we saw it do in California the other day when it went up 32 percent. Why did it go up? Because the State has had to spend so much of its money on health care bills, many of which are required by the Federal regulations of Medicaid.

There is a rumor going around that there was a big deal cut last night that would pave the way for passage of this bill that says that instead of a new government-run program, we will simply expand two of the government-run programs we already have—Medicare for seniors and Medicaid for low-income Americans.

I would ask these questions: First, with Medicare, how in the world can we take \$1 trillion out of Medicare when the program is fully implemented and give 34 million or 35 million more Americans a chance to opt in it at a time when the trustees of Medicare have said it is going broke in 5 years. Insofar as Medicaid goes, if it is true that the idea is to expand Medicaid to 150 percent of the poverty level—and, of course, we are not invited to any of the meetings; they were all written in the back room so we don't know the details—but if it is true we are going to expand Medicaid even more, our Governor has said in our State that doubles the cost of this legislation to our State.

So down the road, in a few years, what we are going to see in Tennessee is a new State income tax, seriously damaging higher education, and I think it is—

Mr. BAUCUS. Will the Senator yield on that point?

Mr. ALEXANDER. On your time, yes.

Mr. BAUCUS. I will quote from a letter basically to refute the allegations that this is a big obligation on the States. That is totally not true. The question is, Is it not true that on page 7 of the letter from the CBO, dated November 18, to Senator REID, CBO says:

The CBO estimates that State spending on Medicaid would increase \$25 billion over 10 years as a result of this legislation.

That is \$2.5 billion a year, on average, for all States.

Another figure I know is that the State increase will not be huge but about a 1 percent increase over the State obligation. Why? Because, as the Senator also noted, an expansion of the population in Medicaid—the Feds are paying virtually all of it. But on a net basis, it is a 1-percent only increase in State obligation over 10 years. Does the Senator know that to be true?

Mr. ALEXANDER. My understanding of the proposal by the Finance Committee bill and by the Reid bill is that the Federal Government expands Medicaid and pays for 100 percent of it for a few years, but after that, the State

has a significant portion of the bill. Am I not correct in that?

Mr. BAUCUS. We will have to divide this time. The division is correct. We are only talking—

Mr. ALEXANDER. I am not going to divide the time.

Mr. BAUCUS. Does the Senator ask a rhetorical question or an actual question?

Mr. ALEXANDER. Mr. President, I will retain the floor, and then the Senator can make his statement later.

The fact is, after 3, the Federal Government sends a big bill to the States. The fact is, the Governor of Tennessee, who is a Democrat and who has worked with other Governors and is actually leading the National Governors Association's effort to see the impact of this kind of legislation, says it will cost our State \$700 billion over 5 years and \$1.4 billion if we expand Medicaid up to 150 percent of federal poverty level. The State pays part of that bill. That means a big State tax increase. It means big higher education increases.

As a former Governor, I guarantee that if this happens, a few years from now when the federal government shifts costs onto the states, there will be a revolt in the States and people will be asking who did this. I would seriously say that any Senator who votes to expand Medicaid and sends a significant part of the bill to the States ought to be sentenced to go home and be Governor and try to govern the State under those conditions.

I think this kind of legislation, and especially the rumor I have heard regarding a dramatic increase in the expansion of Medicaid, will be a damaging blow to the American public's higher education from which it will never recover, tuition will go to a level where only the rich can afford to go to school, and the idea of public higher education will be left aside, all because Washington politicians ran up the bill, took the credit, made an announcement, and sent a huge bill to State governments that are struggling with their worst fiscal condition since the Great Depression.

Mr. CRAPO. I thank my colleague. We will see State taxes as well as Federal taxes going up.

Senator JOHANNIS has joined us as well. Before I ask him to join in with questions and comments, I want to make one other clarification.

Again, we have the President's pledge up here on the chart. The motion I have offered simply says: Make the bill comply with the President's pledge. If there are no new taxes, the bill doesn't have to be changed if we pass this motion. If there are, it does.

Remember, I don't think that when the President made this pledge, he was saying he will not increase taxes on a net basis. In other words, I didn't hear the President say: I won't raise your taxes higher than I would cut them in

some other areas. He specifically didn't say he would count subsidies being paid out to those who do not pay income taxes as an offset to any tax increases he wanted to raise somewhere else. The President didn't get into all these nuances. He said he was not going to raise taxes on the middle class. The fact is, the middle class will see huge tax increases under this bill.

Before I toss the floor to my colleague, I will say this: CBO estimates that only 7 percent of all Americans will receive any of these subsidies. Yet, specifically, out of the 282 million Americans with some type of health insurance, only 19 million of them will be eligible for the tax credit for their health insurance. The rest of the millions of Americans are going to be the ones paying those taxes. That is how it ends up. At minimum—and we are still going through the bill, and this number is growing—at least 42 million people who make less than \$200,000—and, frankly, far less—are going to be paying a lot more taxes. That is the reason for the motion.

I yield to my colleague, Senator JOHANNIS.

Mr. JOHANNIS. Mr. President, Senator ALEXANDER really has this right. I had the honor of being the Governor of Nebraska for 6 years. The whole idea of balancing a budget is not theoretical to a Governor. You have to do it.

Let me tell you, if I might, about our State. Many years ago—decades and decades ago—when our founders wrote our State constitution, they were worried about the State getting itself embroiled in too much debt. So they said the politicians will be allowed to borrow some money. The limit they put in the State constitution was \$50,000.

So you see, in Nebraska, when you are faced with an unfunded mandate, like what is happening in this health care bill, I say you get three choices: You can cut programs like K-12 education, higher education, and much-needed services. No. 2, you can raise taxes, sales and income taxes. That is about what you are down to because that is really where the revenue comes from for States. The third choice is you get to do both. I guarantee you that none of those approaches is very popular.

Just within the last few weeks, our Governor, dealing with the recession, like every Governor in the country, stepped in front of the unicameral, as I did as Governor, and he said: My friends, we have to cut the spending. It was just as clear as can be. He said: We have to cut the spending. People are hurting. They are laid off. If they are hurting, they are not spending as much; therefore, our revenues are down. We have to cut spending.

They worked over a couple-week period of time, and they came up with a plan—I think it was unanimously approved—to cut the spending.

Well, here we are in Washington, and when you pull the gimmicks out of this bill and score it realistically over 10 years, this is a multimillion-dollar hit to every State, including the State of Nebraska. So what are we handing off to the State? Guess what. We are saying: You get a chance to raise taxes—not because of any vote you took on the floor of the unicameral in Nebraska but because of what happened with Washington unfunded Federal mandates. That is what this bill is all about when you look at the expansion of Medicaid. I read the reports about the possibility this might go to 150 percent. Keep doing the math, keep loading the unfunded mandates on our State Governors.

Do you know why we are doing this? We are doing it to try to convince the American people that this is a cheaper bill than it is. When they figure out that the Governor of their State has this problem to deal with and they come to figure out they are going to pay higher taxes or get fewer services and less education, it will become very real to them. I have said many times on this floor that with this bill, reality will set in. Here is another piece of reality.

Then you look at the overall bill. About \$½ trillion—in addition to this Medicaid mess we are going to push onto the States, there will be about \$½ trillion in new taxes.

Senator CRAPO put up the promise the President has made. Well, gee, when he is done with that board, we can ceremoniously tear it up because, you know what, that promise isn't anywhere near being kept. When he said those things, quite honestly, there was no way he could deliver with this health care bill. Uninsured Americans get taxed. Insured Americans get taxed. Families with high-value plans get taxed. High-health-cost families get taxed. Flexible spending gets reduced. Small businesses get taxed. We can go on and on and on, to the tune of \$½ trillion. That is not even counting the unfunded mandate hammer we are sending to every Governor in this Nation.

Mr. CRAPO. Mr. President, I will add some statistics that I was reading while my colleagues were commenting. If you take out that CBO report, which is what actually analyzes this on a nonpartisan basis, the impact of these Medicaid expenditures, not including the proposed increase we heard about overnight, it clearly says:

CBO estimates that State spending on Medicaid would increase by about \$25 billion over the 2010–2019 period as a result of the provisions affecting coverage in table 3. That estimate reflects States' flexibility to make programmatic and other budgetary changes to Medicaid and CHIP.

That is the statistic my colleague from Tennessee was looking for.

Mr. ALEXANDER. I thank the Senator. It is true that in the legislation

the estimate is that the Federal Government would pay 100 percent of the increased expansion of Medicaid for 3 years and that it will cover about 90 percent of the cost after that, which sounds like a lot. But we throw so much money around up here, we have completely lost any appreciation of what that amount of money costs at the State level. In our State, our Governor has said that the 133-percent increase is about \$700 million over 5 years, and that is a big, new tax or a big increase in college tuition.

If I may, I ask unanimous consent to have printed in the RECORD an article from the Wall Street Journal of December 4 from the dean and CEO of Johns Hopkins Medicine.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Wall Street Journal, Dec. 4, 2009]  
HEALTH REFORM COULD HARM MEDICAID PATIENTS: A VAST EXPANSION OF THE PROGRAM WILL IMPOSE UNSUSTAINABLE COSTS ON TREATMENT CENTERS

(By Edward Miller)

BALTIMORE, MD.—Both the House and Senate health-care reform bills call for a large increase in Medicaid—about 18 million more people will begin enrolling in Medicaid under the House bill starting in 2013, Centers for Medicare and Medicaid Services (CMS) Actuary Richard Foster estimates.

We at Johns Hopkins Medicine (JHM) endorse efforts to improve the quality and reduce the cost of health care. But we also understand all too well the impact a dramatic expansion of Medicaid will have on us and our state—and likely the country as a whole.

A flood of new patients will be seeking health services, many of whom have never seen a doctor on more than a sporadic basis. Some will also have multiple and costly chronic conditions. And almost all of them will come from poor or disadvantaged backgrounds.

We know this because we've been caring for Medicaid patients in a managed-care setting for 14 years, as well as providing world-class care to people from all over the country and the world. Our experience provides a glimpse of the acute cost bubble that the health-care system will suffer with the reforms now being proposed.

Like Intermountain Healthcare in Utah, Geisinger Medical Center in Pennsylvania, and the Mayo Clinic, where, as President Barack Obama notes, "people fly from all over the world to Rochester, Minnesota in order to get outstanding care," people also fly from all over the world to obtain care from JHM. But unlike those other institutions, we also serve large numbers of people who can't afford cab fare to the nearest hospital: poor, disadvantaged individuals, 150,000 of whom are in our Medicaid managed-care program, Priority Partners.

Priority Partners operates under a capitated system—that is, it receives a set payment per individual per month from the state. Over time, we've developed the ability to manage the care of these individuals in a way that is both cost effective and that provides them with quality care. We've done it by tapping into our extensive delivery sys-

tem, which includes four hospitals, a nursing home, the largest community-based primary care group in Maryland, and much more.

We've hit above-national benchmarks on all clinical quality measures for our dialysis patients, reduced monthly costs for patients with substance abuse and highly complex medical needs, and 70% of our patients tell us they're satisfied with our care. But the learning curve has been costly and steep, and provides a cautionary tale for what will happen under the health-care reforms currently in Congress.

Mr. ALEXANDER. The dean, who writes a very sympathetic column which I will not read but a sentence or two of, is describing the current health care bill. He says:

Even if only half those individuals seek Medicaid coverage, such a large expansion would likely have an excruciating impact on the State's budget. And Maryland is not alone. According to a Kaiser Foundation survey conducted earlier this year, three-quarters of the States have expressed concern that expanding Medicaid could add to their fiscal woes. Already, as Kaiser notes, 33 States cut or froze payment rates to those who deliver health care to Medicaid patients.

The proposal—and the Reid bill is maybe exacerbated by this deal we have been hearing about—is to shift millions more low-income Americans into a program called Medicaid, when only 50 percent of doctors will see new patients in that program, and then send a huge bill to the States, which will damage higher education.

I remember, after I was Governor, I heard on the radio that the State of Tennessee had done a wonderful thing. It would double the number of children covered by Medicaid at the same amount of cost. It went through my mind that it would never happen. That program became the TennCare Program, which has nearly bankrupted our State.

Mr. CRAPO. Mr. President, I thank my colleagues for their comments.

How much time remains on our side?

The ACTING PRESIDENT pro tempore. Six minutes.

Mr. CRAPO. I will make a couple of other comments, and I will allow my colleagues to wrap up with their final comments. I want to raise an additional issue.

On this chart, we show what is going to happen with the IRS. Right now, the CBO estimate indicates that because the IRS is in charge of the implementation of so many of the mandates and other requirements in this bill and because of the new taxes that will be forced onto the American people, there will need to be an expansion of the IRS. The CBO says that could mean as high as an additional \$10 billion at the IRS.

If there are no new taxes in this bill or no new mandates in the bill, if there is no increased role of the Federal Government in the management of the health care economy in this bill, why do we need to have the size of the IRS, which is a \$12 billion institution

today—why does it need to grow to almost double, up to \$22 billion?

The point is, the motion I have made is very simple and straightforward. We can argue back and forth about what the President said or whether this bill has tax cuts or tax increases in it or whether, in the net result, it does one thing or another.

The bottom line is, with regard to about 157 million Americans who get their health insurance through their employer, by 2019, they are not going to be eligible for these tax credits people are talking about. They are going to be paying increased taxes.

All this motion does is protect those 42 million people we were talking about who are going to see their taxes go up; 42 million households will see their taxes go up.

If the other side is right and what we are talking about does not exist in the bill, then this motion should be harmless because all the motion says is commit the bill to the Finance Committee and tell the Finance Committee to take out the taxes that impact the middle class.

I ask if either of my colleagues from Nebraska or Tennessee would like to make any concluding remarks.

Mr. JOHANNIS. Mr. President, let me offer a thought or two. Senator CRAPO has hit the nail on the head. If this is not happening, if, in fact, the argument of the other side is accurate and this is not happening and this is some made-up sort of argument, then the Senator from Idaho is absolutely right, this motion will have no effect. So why would you not support the motion? Why wouldn't you want the health care bill to reflect the promise of the President of the United States? Why would you not stand and say: Look, it is a hard time out there. Unemployment is 10 percent. People are hurting. Unemployment and underemployment are 17.5 percent. This has been as tough a recession as we have seen in a long time, and it has hurt real people. Why wouldn't you want to stand for them and say: Man, we understand. We have heard you at our townhall meetings. We have heard you back home. We have heard you, and we are going to make sure we are not going to add to your burden.

I appreciate Senator ALEXANDER putting in that article. I thought that was a tremendous article. Medicaid is chewing up State budgets. I managed one of those budgets. Keep in mind, this is an entitlement program—no deductibles, no copays, no premiums. If you qualify, you get it. So there is no way you can manage this budget. It is exponentially growing. Forty percent of the docs do not take Medicaid patients. Why? Because they go broke on the reimbursement rate. Hospitals tell me all across the State of Nebraska: We cannot keep our doors open on the Medicaid reimbursement rate.

So what are we doing? We are adding millions of people to that problem. They will have an access problem. State budgets will have a problem. They will be in crisis. Our hospitals are going to face the same crisis. It is the wrong policy. It is the wrong course of action. Let's start listening to the American people.

Mr. ALEXANDER. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 1½ minutes remaining.

Mr. ALEXANDER. Mr. President, day in and day out Republicans have come to the floor and said: Instead of a comprehensive, 2,000-page approach to try to fix this massive health care system all at once in a way that raises taxes and premiums and makes Medicare cuts, why don't we, instead, identify the goal of reducing the cost of health care to individuals and to the government and take commonsense steps toward that goal.

We have suggested small business health care plans which have been offered, scored by the CBO to save money and expand coverage. We have offered proposals to limit the number of junk lawsuits against doctors. There may be an argument about how much that saves, but there is no argument that would not drive down the costs. We have suggested allowing purchasing of health insurance across State lines to increase competition, and creating health insurance exchanges. There are efforts in wellness and prevention that we have made specific proposals concerning. In terms of corralling waste, fraud and abuse in Medicare and then spending the savings on Medicare, instead of a new program, that is the Republican agenda.

Pick a goal: reducing health care costs and move step by step toward that goal in a way that reearns the trust of the American people, instead of a comprehensive, 2,000-page bill filled with taxes, mandates, surprises, and a Washington takeover of health care.

There is a real choice. We regret the fact that we seem to be continuing to move on this track without the track we are offering. We want to defeat what is proposed, not in the debate. Change the debate toward reducing costs step by step.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from Oklahoma and others on the other side of the aisle make the charge this bill increases government. That is not so. It does not increase government. This bill does not increase government. They made that allegation. It is a pure allegation. Anybody can allege anything, but let me get the facts. It is one thing to make an allegation; it is something else to get the facts.

The best fact I have come up with is a quote from the Congressional Budget

Office letter to Senator REID on that point. The Congressional Budget Office says—and I quote from page 16 of the letter. I do not have the date of the letter. There are several letters to several of us in the Senate. I will quote the letter. It says:

CBO expects that, during the decade following the 10-year budget window, the increases and decreases in the federal budgetary commitment to health care stemming from this legislation would roughly balance out, so that there would be no significant change in that commitment.

"Roughly balance out." "No significant change in that commitment." That does not sound like an explosive growth in government to me. In fact, it sounds the opposite, listening to the Congressional Budget Office.

Also, add to that this bill, in the first 10 years, decreases the deficit by \$130 billion. But CBO says: No, no, no significant change. Things will roughly balance out, according to the Congressional Budget Office.

Mr. CRAPO. Mr. President, will the Senator yield for a question?

Mr. BAUCUS. This controls the government's role in health care. It does not increase it.

I do not have any time, I say to the Senator from Idaho. We are an hour later—if we have another time agreement, we will take it out of the Senator's time. I will be willing to yield if the Senator from Idaho has a question.

Mr. CRAPO. No, I will ask a question later, then.

Mr. BAUCUS. Fine. Some of my colleagues on the other side of the aisle try to paint health care reform as bad for the economy. Nothing could be further from the truth. Health care reform will be good for the economy. Health care reform is a net tax cut for working Americans—a net tax cut. Health care reform is essential for long-term growth.

Some say it is a tax increase. It is not. The Congressional Budget Office—I have a chart right in front of me—a net tax cut. If you take all the provisions of this bill that affect individuals, the Joint Committee on Tax concludes that the average tax break for affected filers with income under \$75,000 is a cut every year. I will take one year, 2019: a \$1,500 cut for those people in that category. Net tax break for affected overall is a \$441 decrease. It is a long chart. I will not take the time to read it all.

In summarizing the chart, affected taxpayers, as a percent of all taxpayers—it is over a majority—will see a net tax cut.

Some say for some it will be a tax increase. Let me indicate why that is somewhat true. They are getting more wages. Of course, their taxes go up if they get more wages. Why are they getting more wages? Because these tend to be people affected by so-called Cadillac plans. The Joint Committee

on Tax and the Congressional Budget Office say in that category, premiums go down and wages go up. Obviously, taxes are going to go up when wages go up. It is not fair to say that taxes are going up for those folks in that category unless you also say it is largely because their income is going up. I think that should be pointed out as well.

Our bill will provide a substantial tax cut. It will cut taxes by \$40 billion in 2017 alone and cut taxes by \$40 billion in 2019 alone and by substantial net tax cuts year after year. The average affected taxpayer with an income under \$75,000 a year would get a tax cut of more than \$1,500 in 2019. The bill would affect more than 92 million taxpayers a year by 2019. That is reductions. Our bill would affect most taxpayers by 2017, and the bill would give average taxpayers affected hundreds of dollars of tax relief.

Not only would health care reform cut taxes for working Americans, it would also address the single largest challenge to our long-term fiscal future.

Reforming health care is the single most important thing we can do to address long-term budget deficits. The Congressional Budget Office says we will succeed in doing that. CBO says our bill would reduce the Federal budget deficit by \$130 billion in the first 10 years. CBO says our bill would reduce the budget deficit by roughly \$650 billion in the second 10 years. That is roughly \$780 billion in net deficit reduction. That is \$800 billion in net deficit reduction over 20 years. I think that is progress. That is pretty good.

Some of my colleagues say: Gee, Medicaid is pretty expensive, so be careful, Congress, with what you do with respect to imposing obligations on States. I remind my colleagues there currently is a formula each State must subscribe to with respect to Medicaid. The Federal Government pays a certain portion and States pay the other. On average—I could be off—the Federal Government pays 50 to 60 percent and the States pay the rest.

Under this legislation, we are talking about the so-called transitional group, those where the poverty level is raised, in that category—I have forgotten the exact figure. But it is not the old formula, it is the new formula. Under the new formula, the Federal Government is paying virtually all of it—not quite all but virtually all of it. So the States will get a little bit of an increase in obligations. It is small. It is infinitesimal.

The underlying point is, we have to reform health care. Why do Medicaid costs go up? Because health care costs are going up around the country—health care costs for seniors, low-income people, health care costs for everybody.

There are so many parts of this bill which address that problem, which ad-

dress health care costs, to get health care costs down. I would think all State Governors would want this bill to pass. Why? Because we are going to begin to go down the road of lowering health care costs. Then those Medicaid budgets will be more under control.

We have to lower health care costs, and this legislation does that. Health care reform would very much help the economy, not just in the near term but with substantial net tax cuts but also help the economy long term with substantial deficit reduction—but also all the provisions we are putting in to lower health care costs overall.

It is, clearly, the right thing to do. I, therefore, believe this legislation should definitely pass. To remind my colleagues who say: Gee, for folks making more than \$250,000 a year, they will pay more taxes, let me make clear: Those folks are not seeing tax rate increases. Those folks are going to pay more taxes because they are going to get pay raises. That is why they are going to pay more taxes because, in effect, their incomes are going to go up. They are going to get pay increases.

I have more to say, but I see my colleague from Vermont on the floor. How much time is remaining on in this block?

The ACTING PRESIDENT pro tempore. There is 19½ minutes remaining.

Mr. BAUCUS. I yield 15 minutes to my friend from Vermont.

Mr. SANDERS. Mr. President, I thank the chairman for yielding. Before I get into the subject I wish to talk about, which is prescription drug reimportation and the absolute necessity of lowering the cost of prescription drugs in this country, I wish to say a word in general.

I find it interesting that my Republican friends are spending a whole lot of time down here on the floor attacking the health care legislation. I suppose it is at least a positive thing that they are beginning to talk about health care. They ran the government from 2000 to 2006. They had the President, they had the House and the Senate. At that time, health care premiums soared. Millions of Americans lost their health insurance. Where were they? Where were they in the beginning to come up with ideas to control health care costs and provide health care to more Americans? They weren't there.

Now, having said that, let me also say I have problems with the bill that is currently on the Senate floor. Clearly, it does a lot of things that are good, but there are weaknesses in this bill in terms of cost containment that we have to address.

When some of my friends talk about expanding Medicaid and the problems associated with that, they make a good point. We need to significantly expand our primary health care capabilities, which means more community health

centers, which means more primary health care physicians. If we are not able to do that while we add 15 million more people to Medicaid, frankly, I am not sure how we are going to deal with the medical needs of those people.

So I think one of the imperatives that has to happen as we proceed on this bill is we have to support the language in the House, which substantially increases funding for community health centers and for the National Health Service Corps, so that we give a primary health care infrastructure—clinics and doctors—to begin to serve the millions more Americans who are going to be coming into the health care system.

That is one issue. The other issue I wanted to focus on today—and I am here because Senator DORGAN, who is the sponsor of this legislation, is unable to be on the floor of the Senate at this time—deals with prescription drug reimportation. This is an issue I have worked on for many years. When I was Vermont's Representative in the U.S. House, I believe I was the first Member of Congress to take American citizens over the Canadian border—in this case to Montreal—in order to purchase affordable prescription drugs.

I will never forget—never forget—the bus trip we took over from St. Albans, VT, to Montreal, Canada. On that bus there were a number of lower income women who were struggling with breast cancer. Many of them were using the widely used breast cancer drug called Tamoxifen. We got off the bus in Montreal, and we walked into the drugstore—and that had all been prearranged—and in there they purchased Tamoxifen. At that point in time—and I am thinking it was about 10 years ago, a while back—they paid, in American dollars, one-tenth of the price for Tamoxifen in Montreal, Canada, that they were paying in the United States of America—one-tenth of the price for lower income women who were struggling for their lives.

So when you talk about morality, I want some of my friends to explain why it is that the American people are forced to pay by far the highest prices in the world for prescription drugs? Talk to physicians in Vermont. There is a doctor I know in northern Vermont, and when she writes a prescription, one-third of her patients cannot afford to fill the prescription. So what is the sense of an examination, a diagnosis, and writing a script when your patient can't even fill that script?

The high cost of prescription drugs in this country is one of the major health care crises we face. It is an issue we have to deal with, and we simply have to ask ourselves why it is that the same exact medicine in this country costs substantially more than it does in Canada, in Australia, or all over Europe.

There has been a lot of concern in this country about the lack of bipartisanship. Well, I have to say that on this issue there is bipartisanship. That was true when I was in the House, and that is true in the Senate.

Let me just read to you the cosponsors of this legislation—Democrats, Republicans, Independents. The bill is introduced by Senator DORGAN, and the cosponsors are Senator BEGICH, Senator BOXER, Senator CASEY, Senator CONRAD, Senator FEINGOLD, Senator INOUE, Senator KLOBUCHAR, Senator LEAHY, Senator LINCOLN, Senator MCCASKILL, Senator SANDERS, Senator SNOWE, Senator STABENOW, Senator THUNE, Senator BINGAMAN, Senator BROWN, Senator COLLINS, Senator DURBIN, Senator GRASSLEY, Senator JOHNSON, Senator KERRY, Senator KOHL, Senator LEVIN, Senator MCCAIN, Senator NELSON, Senator SHAHEEN, Senator SPECTER, Senator TESTER.

So there is widespread bipartisan support for legislation which says: Let's end the absurdity of the American people having to pay substantially more for the same exact medicine that is sold in other countries around the world.

Let's take a look at some of these charts. To begin with, we all understand when you deal with the drug companies and the pharmaceutical industry you are dealing with some of the most powerful lobbyists and forces right here in Washington, DC. These people spend huge amounts of money on campaign contributions, huge amounts of money in lobbying. Just recently, in order to make sure they got in under the wire, in case there was some real reform passed in Washington, they substantially raised their prices for particular drugs just in the year 2009, and here is the chart reflecting that: Enbrel, a 12-percent increase; Singulair, 12 percent; Plavix, 8 percent; Nexium, 7 percent; Lipitor, 5 percent; Boniva, 18 percent.

One of the reasons health care costs are soaring in America—and one of the reasons many seniors are having such a difficult time with health care costs—is precisely the rapid rise of prescription drugs.

What I want to talk about now, through this chart, is something that is inexplicable to the average American. This is Lipitor, which is a widely used drug, and here is the cost of Lipitor. The same amount in Canada costs \$33; in France, \$53; Germany, \$48; the Netherlands, \$63; in Spain, \$32; the United Kingdom, \$40; and in the USA, \$125, or four times as much as it costs in Canada.

Now, you explain that to me. The same exact medicine made in the same exact factory, the same exact bottle. That is why, by the way, in the State of Vermont, and all across the northern tier, every day people are going over the Canadian border or using the

Internet to buy those drugs. So what we are saying in this legislation is let's end this absurdity.

We are living in a global economy. I have a lot of problems with the global economy in many ways, but if, when we go Christmas shopping, the only products we can find are made in China—because we don't do too much manufacturing in America—and if when we eat lunch we get lettuce and tomatoes from all over the world, what people are asking is, why is it we can't bring into this country FDA-safety-approved medicine? We can bring lettuce in from the backwoods of Mexico, and that is OK. But somehow, when we have a handful of major pharmaceutical companies, presumably it is just too difficult to be able to bring them safely into the United States. Nobody believes that for one moment.

Let's take a look at another chart. Plavix, same story: Canada, \$85; France, \$77; Germany, \$85; the Netherlands, \$77; Spain, \$58; the U.K. \$59; and in the USA, \$133. Somebody explain this to me. I really would appreciate it.

Nexium: Canada, \$65; Germany, \$37; Spain, \$36; the UK, \$41; and the United States of America, \$424. That is six times more than in the United Kingdom. People wonder why Americans are running over the Canadian border or they are on the Internet trying to get this medicine.

Why is it that the drug companies charge \$424 here and \$41 in the UK? Well, the reason they are charging more here is because they can charge more. If you walk into your drugstore tomorrow, you can find the prices that you will pay are double, triple because we are the only country in the world that does not have, in one way or another, some kind of regulation on prices. All these other countries have national health care programs. That is another reason their drug prices are lower. We don't, of course.

But at the very least, what reimportation is all about is, we are saying, in a global economy, when all kinds of products are brought in from all over the world and we let the consumer buy them every day, why not let the pharmacist, let the prescription drug distributor be able to take advantage of the global economy?

I am not, I must confess, a great supporter of unfettered free trade. I think that has, in many ways, been a disaster for American workers. But to the degree that it is here, to the degree businesspeople can run to China and pay workers there 50 cents an hour or so, that is the global economy. Well, here is the global economy: Canada, \$65; the UK, \$41; and the USA, \$424. Why can't prescription drug distributors purchase their products in the UK, bring them back into America, so we can substantially lower the cost of health care and prescription drugs for all Americans?

Some of my friends in the pharmaceutical industry say: It is impossible to bring medicine in from abroad. It can't be done safely. Well, the Washington Post says:

40 percent of active ingredients in U.S. prescription drugs currently come from India and China.

I guess that is OK for the pharmaceutical industry, when it adds to their profits, but we can't do that to lower the cost to the consumer.

The Wall Street Journal, February 21, 2008, says:

More than half the world's Heparin, the main ingredient in the widely used anti-clotting medicine, gets its start in China's poorly regulated supply chain.

Well, I guess that is OK too.

So here is where we are. One of the many health care crises we face in this country is the high cost of prescription drugs. I think there is a lot that we have to do. Whether the Congress is capable of standing up to the drug companies and all their money and all of their lobbyists remains to be seen. But this is, quite frankly, a no-brainer.

For all my colleagues here who believe in unfettered free trade, please do not be total hypocrites. If you believe in unfettered free trade—which I happen not to—if you believe it is OK for American companies to shut down and run to China, if you think it is OK for people to buy any product anywhere in the world, tell me why we can do that for everything except for prescription drugs? There is no rational explanation.

This is legislation which has been around for years. The drug companies have fought it successfully for years. We now have widespread tripartisan support in the Senate and a lot of support, I know, in the House. Let's finally stand up for the average American. Let's substantially lower the cost of prescription drugs. Let's pass prescription drug reimportation.

With that, Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCAIN. Is there a previous agreement on time?

The ACTING PRESIDENT pro tempore. The next hour is equally divided, with 10-minute limits.

AMENDMENT NO. 2793

Mr. MCCAIN. Mr. President, I rise on behalf of the amendment which, according to the Congressional Budget Office, would provide an estimated \$100 billion or more in consumer savings over 10 years. That is unique to this



bill. It is unique to this legislation. It actually saves the taxpayers money.

I think it is important for us to go back and see how we got here—again, with the administration and the President reversing his previous position in favor of drug reimportation, the President's Chief of Staff, Mr. Rahm Emanuel, reversing his position on drug reimportation.

Again, a lot of it has to do with the deals that have been made. I refer, to start with, to the August 6, 2009, New York Times article.

Pressed by industry lobbyists, White House officials on Wednesday assured drug makers that the administration stood by a behind-the-scenes deal to block any Congressional effort to extract cost savings from them beyond an agreed-upon \$80 billion.

Then it goes on to say:

"We were assured: We need somebody to come in first. If you come in first, you will have a rock-solid deal," Billy Tauzin, the former Republican House member from Louisiana who now leads the pharmaceutical trade group, said Wednesday. "Who is ever going to go into a deal with the White House again if they don't keep their word? You are just going to duke it out instead."

The pressure from Mr. Tauzin to affirm the deal offers a window on the secretive and potentially risky game the Obama administration has played as it tries to line up support from industry groups typically hostile to government health care initiatives, even as their lobbyists pushed to influence the health measure for their benefit.

Here is the important part of the article—and I ask unanimous consent the entire article from the New York Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 6, 2009]

WHITE HOUSE AFFIRMS DEAL ON DRUG COST  
(By David D. Kirkpatrick)

WASHINGTON.—Pressed by industry lobbyists, White House officials on Wednesday assured drug makers that the administration stood by a behind-the-scenes deal to block any Congressional effort to extract cost savings from them beyond an agreed-upon \$80 billion.

Drug industry lobbyists reacted with alarm this week to a House health care overhaul measure that would allow the government to negotiate drug prices and demand additional rebates from drug manufacturers.

In response, the industry successfully demanded that the White House explicitly acknowledge for the first time that it had committed to protect drug makers from bearing further costs in the overhaul. The Obama administration had never spelled out the details of the agreement.

"We were assured: 'We need somebody to come in first. If you come in first, you will have a rock-solid deal,'" Billy Tauzin, the former Republican House member from Louisiana who now leads the pharmaceutical trade group, said Wednesday. "Who is ever going to go into a deal with the White House again if they don't keep their word? You are just going to duke it out instead."

A deputy White House chief of staff, Jim Messina, confirmed Mr. Tauzin's account of the deal in an e-mail message on Wednesday night.

"The president encouraged this approach," Mr. Messina wrote. "He wanted to bring all the parties to the table to discuss health insurance reform."

The new attention to the agreement could prove embarrassing to the White House, which has sought to keep lobbyists at a distance, including by refusing to hire them to work in the administration.

The White House commitment to the deal with the drug industry may also irk some of the administration's Congressional allies who have an eye on drug companies' profits as they search for ways to pay for the \$1 trillion cost of the health legislation.

But failing to publicly confirm Mr. Tauzin's descriptions of the deal risked alienating a powerful industry ally currently helping to bankroll millions in television commercials in favor of Mr. Obama's reforms.

The pressure from Mr. Tauzin to affirm the deal offers a window on the secretive and potentially risky game the Obama administration has played as it tries to line up support from industry groups typically hostile to government health care initiatives, even as their lobbyists pushed to influence the health measure for their benefit.

In an interview on Wednesday, Representative Raul M. Grijalva, the Arizona Democrat who is co-chairman of the House progressive caucus, called Mr. Tauzin's comments "disturbing."

"We have all been focused on the debate in Congress, but perhaps the deal has already been cut," Mr. Grijalva said. "That would put us in the untenable position of trying to scuttle it."

He added: "It is a pivotal issue not just about health care. Are industry groups going to be the ones at the table who get the first big piece of the pie and we just fight over the crust?"

The Obama administration has hailed its agreements with health care groups as evidence of broad support for the overhaul among industry "stakeholders," including doctors, hospitals and insurers as well as drug companies.

But as the debate has heated up over the last two weeks, Mr. Obama and Congressional Democrats have signaled that they value some of its industry enemies-turned-friends more than others. Drug makers have been elevated to a seat of honor at the negotiating table, while insurers have been pushed away.

"To their credit, the pharmaceutical companies have already agreed to put up \$80 billion" in pledged cost reductions, Mr. Obama reminded his listeners at a recent town-hall-style meeting in Bristol, Va. But the health insurance companies "need to be held accountable," he said.

"We have a system that works well for the insurance industry, but it doesn't always work for its customers," he added, repeating a new refrain.

Administration officials and Democratic lawmakers say the growing divergence in tone toward the two groups reflects a combination of policy priorities and political calculus.

With polls showing that public doubts about the overhaul are mounting, Democrats are pointedly reminding voters what they may not like about their existing health coverage to help convince skeptics that they have something to gain.

"You don't need a poll to tell you that people are paying more and more out of pocket and, if they have some serious illness, more than they can afford," said David Axelrod, Mr. Obama's senior adviser.

The insurers, however, have also stopped short of the drug makers in their willingness to cut a firm deal. The health insurers shook hands with Mr. Obama at the White House in March over their own package of concessions, including ending the exclusion of coverage for pre-existing ailments.

But unlike the drug companies, the insurers have not pledged specific cost cuts. And insurers have also steadfastly vowed to block Mr. Obama's proposed government-sponsored insurance plan—the biggest sticking point in the Congressional negotiations.

The drug industry trade group, the Pharmaceutical Research and Manufacturers of America, also opposes a public insurance plan. But its lobbyists acknowledge privately that they have no intention of fighting it, in part because their agreement with the White House provides them other safeguards.

Mr. Tauzin said the administration had approached him to negotiate. "They wanted a big player to come in and set the bar for everybody else," he said. He said the White House had directed him to negotiate with Senator Max Baucus, the business-friendly Montana Democrat who leads the Senate Finance Committee.

Mr. Tauzin said the White House had tracked the negotiations throughout, assenting to decisions to move away from ideas like the government negotiation of prices or the importation of cheaper drugs from Canada. The \$80 billion in savings would be over a 10-year period. "80 billion is the max, no more or less," he said. "Adding other stuff changes the deal."

After reaching an agreement with Mr. Baucus, Mr. Tauzin said, he met twice at the White House with Rahm Emanuel, the White House chief of staff; Mr. Messina, his deputy; and Nancy-Ann DeParle, the aide overseeing the health care overhaul, to confirm the administration's support for the terms.

"They blessed the deal," Mr. Tauzin said. Speaker Nancy Pelosi said the House was not bound by any industry deals with the Senate or the White House.

But, Mr. Tauzin said, "as far as we are concerned, that is a done deal." He said, "It's up to the White House and Senator Baucus to follow through."

As for the administration's recent break with the insurance industry, Mr. Tauzin said, "The insurers never made any deal."

Mr. MCCAIN. The important quote is:

Mr. Tauzin said the administration had approached him to negotiate. "They wanted a big player to come in and set the bar for everybody else," he said. He said the White House had directed him to negotiate with Senator Max Baucus, the business-friendly Montana Democrat who leads the Senate Finance Committee.

Mr. Tauzin said the White House had tracked the negotiations throughout, assenting to decisions to move away from ideas like the government negotiation of prices or the importation of cheaper drugs from Canada.

My goodness.

"They blessed the deal," Mr. Tauzin said.

That is how we got here, with the administration coming over with a letter last night basically saying they would oppose or certainly impede the ability of Americans to import drugs from Canada. What have we seen happen in the interim? Here again is a New York Times article entitled "Drug Makers Raise Prices in Face of Health Care Reform."



Here is a graphic demonstration of it. This little line right here, I would say to my colleagues, is inflation in this country. If you look at it for the year 2009, inflation is actually minus 1.3 percent.

Now look at the wholesale drug prices. The annual change is 8.7 percent. While inflation has gone down 1.3 percent, actual costs of drugs have gone up 8.7 percent.

The article from the New York Times says:

Even as drug makers promise to support Washington's health care overhaul by shaving \$8 billion a year off the nation's drug costs after the legislation takes effect, the industry has been raising its prices at the fastest rate in years. In the last year, the industry has raised the wholesale prices of brand-name prescription drugs by about 9 percent, according to industry analysts. That will add more than \$10 billion to the nation's drug bill. . . .

Let's get the math right. The drug companies have offered to save the American consumer \$8 billion a year, and guess what. They have increased their prices, where it will add more than \$10 billion to the drug bill of America's citizens, including our seniors.

The math is, they agreed to an \$8 billion reduction. They actually already this year have seen an increase of more than \$10 billion. So they are on track to make a \$2 billion profit off their deal. No wonder they made a deal.

That will add more than \$10 billion to the nation's drug bill, which is on track to exceed \$300 billion this year. By at least one analysis, it is the highest annual rate of inflation for drug prices since 1992. . . .

This is the consumer price index right here, which has fallen by 1.3 percent.

Drug makers say they have valid business reasons for the price increases. Critics say the industry is trying to establish a higher price base before Congress passes legislation that tries to curb drug spending incoming years.

That is what this is all about. They increase the prices so it reaches a certain level, and that is what they will negotiate on. They already are in line to experience \$2 billion more in profits than the \$8 billion they say they intend to cut. What a Ponzi scheme this is.

"When we have major legislation anticipated, we see a run-up in price increases," says Stephen W. Schondelmeyer, a professor of pharmaceutical economics at the University of Minnesota. He has analyzed drug pricing for AARP, the advocacy group for seniors that supports the House health care legislation that the drug industry opposes.

A Harvard health economist, Joseph P. Newhouse, said he found a similar pattern of unusual price increases after Congress added drug benefits to Medicare a few years ago, giving tens of millions of older Americans federally subsidized drug insurance. Just as the program was taking effect in 2006, the drug industry raised prices by the widest margin in a half-dozen years.

We have seen this scam before. What is the administration going to do? The

administration sends a letter, I believe last night—not to the sponsor of this legislation, Senator DORGAN, but to another Member basically saying they would have to examine the health and safety.

Since when is a prescription drug imported from Canada a threat to Americans' health, since they obviously have the same standards that we do? The letter is to Senator CARPER. It is signed by Margaret Hamburg, Commissioner of Food and Drugs. It is—I am not making this up. I am not making this up. "The Dorgan importation amendment seeks to address these risks." It talks about our amendment.

We commend the sponsors for their efforts to include numerous protective measures in the bill that address the inherent risks of importing foreign products and other safety concerns relating to the distribution system for drugs within the U.S. However, as currently written, the resulting structure would be logistically challenging to implement and resource intensive.

Let's get this straight. According to the CBO, if we pass this, we would save consumers \$10 billion—excuse me—\$100 billion. According to CBO, we would provide an estimated \$100 billion in consumer savings over 10 years. That is what the CBO says.

But what this obviously heavily overburdened Margaret Hamburg, the Commissioner of Food and Drug, says is:

However, as currently written, the resulting structure would be logistically challenging to implement and resource intensive.

Oh my God. I am going to have to include, for the RECORD, the number of employees over at the Food and Drug Administration. I am sure they are full up with their responsibilities at present.

In addition, there are significant safety concerns related to allowing the importation of non-bioequivalent products, and safety issues relating to confusion in distribution and labeling of foreign products—

When we see something come in from foreign countries, it is so confusing when you look at the labeling of it. It is remarkably challenging for the American consumer—

relating to the distribution and labeling of foreign products and the domestic product that remain to be fully addressed in the amendment.

"But"—she goes on to say, to Senator CARPER, who is a fine and great Member of this body but not the sponsor of the amendment—

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. MCCAIN. I ask for an additional 30 seconds to finish.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCAIN. "We appreciate your fine leadership on this important issue and would look forward to working with you as we continue to explore policy options to develop an avenue for

the importation of safe and effective prescription drugs from other countries."

Translated: The fix is in. We will be back on the floor on this. I strongly urge the adoption of the amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I am back on the floor on this, as I have been over the course of the last decade, because we have been like a yo-yo in my State of Florida on the importation of drugs, since we have quite a few senior citizens in our State. They have been accustomed to either going to Canada and bringing back prescriptions at half the price or phoning Canada to pharmacies and having those drugs shipped in the Postal Service or e-mailing to Canadian pharmacies. What happened over the course of the last 8 or 9 years is that the previous administration cracked down on the reimportation of these drugs. Of course, that was at a great expense to our senior citizens who can buy these drugs at roughly ½ of what they pay by going into the pharmacies in the United States.

Then an interesting thing happened along about 2006. This Senator started getting multiples of calls—I think up to something like 100 complaints in that 1 year from senior citizens who had purchased the drugs, either by e-mail, telephone, or by going personally there and having them shipped. And lo and behold, under the previous administration, they gave the order to the Postal Service to confiscate these drugs. This happened, for example, to a couple from Mt. Dora, FL, Mr. and Mrs. Lee Eads. They had their drugs confiscated. We went after the Postal Service. We went after the Customs Bureau. We found, in fact, that a lot of these complaints we had received, those drugs had been confiscated when, in fact, the policy was supposed to be if it was pharmaceuticals for personal use—and they defined that as less than a 90-day supply—the government, the U.S. Government, was going to let these senior citizens take advantage of getting that cost break of a 50-percent reduction.

It took us till late 2006—getting into this with Mr. and Mrs. Eads as the poster couple who had been getting their prescription drugs and then, all of a sudden, they were confiscated—to get the Postal Service and Customs to reverse. This has supposedly been the policy, but we can't get it etched into law because people keep bringing up this Trojan horse that it is not safe. The very manufacturers we are buying our prescriptions from here in American pharmacies are the same manufacturers in identical locations with identical labeling of the drugs that are going to Canadian pharmacies. Why

can't we give our senior citizens a break?

Of course, what this Senator would like to do is to give them a bigger break. This Senator has an amendment, which is continuously being stated that I may not get to offer, that would cause the pharmaceutical industry to give discounts on the drugs sold under Medicare that are being sold to 6 million people who are eligible because of their low income for Medicaid but get their drugs through Medicare. Those 6 million people, Medicaid, poor people who are eligible to get government assistance, used to have a discount, a substantial discount. Therefore, the U.S. Government was paying less for the drugs it bought for those people. But 6 years ago, when the prescription drug benefit was passed, those 6 million people were suddenly made ineligible to get the drug discount because they were now getting their drugs under Medicare. That is absolutely ridiculous, that the U.S. Government is going to pay full price for the drugs now that they used to pay only a fraction.

How much is that worth? According to CBO and the amendment I offered in the Finance Committee that was defeated 10 to 13, that is worth \$106 billion over 10 years that would be savings to the American taxpayer that we would be paying for those dual eligibles, Medicaid recipients who get their drugs in Medicare, \$106 billion of savings that the U.S. Government would not have to pay for those drugs, if we followed the same policy we did back there before this prescription drug benefit for Medicare.

That kind of makes common sense, doesn't it, that we would want to save the American taxpayer \$106 billion? But we were defeated by a vote of 13 opposed to the amendment and 10 in favor in the Finance Committee.

I know it is a tall order to bring this amendment out here on the floor and have to meet a 60-vote threshold, because 41 Senators can deny the American taxpayer from getting \$106 billion of savings. One of the good things about our bill that has come to the floor is, we are going to reduce the deficit by \$130 billion. That is over a 10-year period. That is a good thing. But if we would accept my amendment, we could reduce the deficit by \$236 billion or we could use part of it—say, half—to fill the rest of the doughnut hole that the AARP would like and so would this Senator. The AARP strongly supports my amendment. They have made it clear to the leadership of this Senate that they want to see that doughnut hole closed. But there is nothing coming out here on the floor that is going to do that.

The amendment Senator DORGAN has offered, which in and of itself is good policy, reimporting drugs at half the cost from Canada, is a step in the right

direction, but that doesn't close the doughnut hole.

So here we are at a decision point. Who are we going to serve? Let me say at the outset I understand the political dynamics. I want to give credit where credit is due. The pharmaceutical industry is, in fact, supporting the leadership in trying to pass this bill. That is a good thing. We appreciate that very much. We need their support because we have all these other interest groups that are flaking off. At the end of the day, we have to get 60 votes in order to pass health care reform. That includes health insurance reform. We have the insurance industry totally, flat out trying to kill this legislation. I am grateful to the pharmaceutical industry for trying to help us. Therefore, my plea is, there has to be a balance. There has to be a compromise in the works. There has to be a way of the pharmaceutical industry stepping to the plate to help us totally fill the doughnut hole, that gaping \$3,000 hole seniors have to pay for all of the drugs they need when they reach that level. There has to be a sweet spot, a compromise.

I certainly support the Dorgan amendment. I hope the Senate will favorably consider my amendment later on.

I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Texas.

Mrs. HUTCHISON. How much time remains on our side?

The PRESIDING OFFICER. There is 19 minutes on the Republican side and Senators are limited to 10 minutes each.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, we have been talking about the Crapo motion and the new taxes that are in this bill. There are so many new taxes that it is going to increase the cost of health care to every individual who has health insurance. It will also tax the people who don't have health insurance. It will tax the people who have too much health insurance. The taxes in this bill are almost mind-boggling.

Yesterday we talked about the cuts in Medicare. But we are also talking now about the \$½ trillion in tax increases, \$500 billion of tax increases. What Senator CRAPO's motion will do is to say that we want to go back to the promise made by the President that no one who makes under \$200,000 or a couple who makes under \$250,000 would have any tax increases. It re-commits the bill and takes out everything that would tax individuals at that level because the promise was made to the American people.

Senator CRAPO's motion would certainly benefit those who have high-benefit plans which are going to have a 40-percent excise tax in this bill. If your plan is considered high benefit and you make under \$200,000 a year or you are a

couple making under \$250,000 a year, you should not have to pay, because your benefits are better than the government has said they should be.

We would help the union member, for instance, because the unions do have high-benefit plans. We would help those union members who are making under \$200,000 a year, if they are single, to make sure that they are not going to pay a tax for having too much coverage. Then there are the individuals who have no coverage or too little coverage who are going to have to pay an individual tax in this bill of \$750. Surely if someone can't afford to have health insurance, we should not be taxing them. The Crapo motion will assure that when this goes back to the committee, someone would not be subject to the individual mandated tax, if they make under \$200,000 a year, which they surely probably do, or if they have a high-benefit plan and they make under that amount. It is trying to say that promise that the President made would be kept.

I also wish to talk about another issue in this bill. One would think that the bill takes effect in 2014, so the taxes would take effect in 2014 as well, that everything will come together and start in 2014. That is what one would think, but they would be wrong. That is not the case. In fact, the biggest part of the taxes in this bill will take effect next month, less than 1 month from now. The taxes that are going to increase the cost of health care premiums, prescription drugs, equipment that you would use for medical care—the taxes start next month. The bill imposes taxes for 4 years before any person would be able to sign up for any of the plans that are going to be available, presumably, under this bill.

Let's walk through this: \$22 billion in taxes on prescription drug manufacturers would start next month; \$19 billion in taxes on medical device manufacturers, next month; \$60 billion in taxes on insurance companies across the board, next month. What is going to happen? Of course, the cost of all of those items will go up. Americans will start next month paying more in insurance premiums. Americans will pay more for their prescription drugs and more for their medical devices because those taxes start next month for supposed programs that are going to start in 2014. Well, maybe you would think the benefits would start coming in 2011, 2012, 2013. Not at all. Nothing starts in benefits or programs until 2014.

But there are more taxes that come before 2014. In 2013, taxes on high-benefit plans take effect: \$149 billion. This will affect union members, surely people making under \$200,000. They will be affected starting in 2013, but any benefits from this bill would take effect a whole year later.

The limit on itemized deductions for medical expenses is also changed.

Under this bill, you would have to spend 10 percent of your income on medical expenses before you could take a deduction. This is for people who have a terrible accident or a debilitating high-cost disease, such as a cancer treatment, maybe a clinical trial. So present law is 7.5 percent of your income, and you can start deducting these expenses. But with the new bill, starting in 2013, you have to go to the 10-percent threshold before you can have those deductions. So that would be another \$15 billion in taxes to individuals.

Finally, in 2014, after 4 years of taxes and increases in premiums and medical devices and prescription drugs, then you would start seeing the rest of the bill take effect. In 2014, you still have more taxes. Mr. President, \$28 billion in employer taxes will start in 2014. These are for employers who cannot afford to meet the threshold of what they will have to cover for their employees. Or individuals who cannot afford health care will have \$8 billion in taxes. That starts in 2014.

I am working with Senator THUNE. There will be a Hutchison-Thune motion to commit this bill that will say the taxes start when the implementation of the bill starts. I think that is a matter of fairness. We want to commit the bill and say: Everything should start at once. How can we tax people for 4 years, raise their prices on insurance premiums, raise their prices on drugs, raise their prices on medical devices when they get none of the opportunities that would be in this bill until 2014?

I am going to be working with Senator THUNE, Senator GRASSLEY, and Senator HATCH to try to make the corrections in this bill that will present transparency and fairness to the public about what these taxes are and when they start, then, when the implementation of the program starts.

It is so important we have the ability to say to the American people, if this bill passes: You are not going to be taxed, your prices are not going to go up, your premiums are not going to go up—any more than they already have, caused by the increased taxes in this bill—at least until the bill is implemented. We are going to try to do that in the bill for the American people very soon. I am very much looking forward to talking about this issue.

I talked to someone last night who heard us starting to talk about the taxes in this bill, and they were astounded.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. HUTCHISON. They were astounded.

We are going to try to give relief to the American people and have a bill that will truly not have the taxes and mandates that are there now that start 4 years before the bill is implemented.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I thank the Presiding Officer and the chairman of the committee.

Mr. President, I rise today to speak concerning an amendment on which I am proud to join the Senator from North Dakota, Mr. BYRON DORGAN, and other colleagues in an effort to lower the cost of prescription drugs. But I do want to make one comment on Medicare before I do that.

We know our plan, overall, is about saving lives, saving money, and saving Medicare. That is what this is about overall. That is what we are doing in our health care reform proposal for American families. But I do want to mention and stress again this is about saving Medicare. It is about strengthening Medicare and our commitment.

I do have to say, we have been hearing from colleagues, and the distinguished Republican leader has said over and over again that, in fact, cutting Medicare is not what Americans want. Then last night he said here on the floor that expanding Medicare was a plan for financial ruin. So they do not want to cut, they do not want to expand. I am not sure where our colleagues on the other side are in terms of Medicare. But I know where we are. I know we are the party that created Medicare, with President Johnson at the time. We are the party that has continued to promote and to expand and to strengthen Medicare. We are the party that intends to make sure we save Medicare for the future, expanding prescription drug coverage, to be able to close the doughnut hole, to be able to expand the ability of seniors to have preventive care, and to extend the life of the Medicare trust fund, which is critically important.

And to that, I want to speak now to the other two provisions we have as our priorities: saving lives and saving money. The Dorgan-and-others amendment, which I am proud to join Senator DORGAN on, does exactly that. It will save lives and save money. As a Senator from Michigan, I know that very well. We can look across the Detroit River into Windsor and know that the people of Michigan, by going across the bridge, would be able to drop their costs 30, 40, 50 percent.

There is something wrong with the system where Americans are paying so much more than those in other countries for the same drug. The safety provisions are the same. The difference is there have been protections put up at the American border to stop Americans from getting the benefit of having our hospitals, our pharmacies, our schools

of medicine, and others who use prescription drugs to be able to bring that back, to do business across the border.

Everybody is always talking about open borders, open trade. Well, this is a trade issue about bringing back FDA-approved prescription drugs across the border to the American side, so Americans have access to lower priced medicines.

It has been about 10 years now since I did my first bus trip to Canada with seniors. I have been doing that for a long time. I have been focused on this issue both in my days in the House of Representatives, where I took the lead on this issue, as well as now working with colleagues in the Senate. It is time to get this right in the context of health care reform because this is about saving lives and saving money.

I want to share one story. I have heard so many over the years from people in Michigan. But here is one recent story of someone who has written to me.

Joe is a 40-year-old father with heart disease. His family says despite his heart condition, he is doing well. He loves to work. His medicines cost over \$4,800 a month. Can you imagine that? But his insurance has a family cap of \$10,000 a year. In other words, after basically 2 months, he hits the cap, and he has to pay for everything out of pocket.

By going over the bridge to Canada—and we have three bridges: up in the Upper Peninsula, we have a bridge; in Port Huron we have a bridge; and in Detroit we have a bridge, the largest cross-border bridge in terms of volume of goods and services on the northern border—but by simply going across the bridge, Joe would be able to save \$2,000 a month.

We should be able to do better for Joe and his family. He could save \$2,000—almost half of his cost—by simply buying the same drug, FDA approved, from one side of the bridge instead of the other.

We also know that the cholesterol-lowering drug Lipitor is about 40 percent less, also the ulcer medication Prevacid is about 50 percent less, according to a search on Pharmacy Checker. I have to say that again. This is a trade issue and whether we are going to continue to have trade barriers. Because, for instance, Lipitor is made in Ireland and Pfizer is able to bring that back to America, they can bring it back. But if someone wants to go to Windsor, Canada, right across the bridge, and purchase a lower priced version of the very same drug, Lipitor, and bring it back as an individual or a business or a pharmacy or a hospital, it is illegal. It is illegal. That makes absolutely no sense.

This amendment is about opening the border, allowing our pharmacies, allowing our wholesalers, allowing hospitals—I have gotten calls from medical schools at universities wanting to

do business, to lower their cost, with wholesalers in other countries where it is FDA approved, safe to do that. That is what this bill is about.

Right now, we are in a situation where if we do not pass the Pharmaceutical Market Access and Drug Safety Act, which we have introduced on a bipartisan basis, we are going to continue to have a situation where people such as Joe, a 40-year-old father with heart disease, is going to be paying \$4,800 a month out of his own pocket, when we could cut that down. It still would be tremendous, but we could cut that by \$2,000 for him, by passing this legislation.

The drug importation bill is supported conceptually. We have been working over time with many different groups such as AARP, the Alliance for Retired Americans, Families USA, and Cato Institute—very different groups philosophically, but they all agree we need more competition, we need to open the border to safe—and I emphasize and underline “safe”—FDA-approved prescription drugs so we are focused not on what is best for the pharmaceutical industry, the brand-name companies, but what is best for American citizens who are struggling, who see their prices go up 8 percent, 9 percent, 10 percent, 15 percent every year. Families cannot sustain that.

How many of us have stood on this floor and talked about the fact that people are choosing between food and medicine? That is not just rhetoric. It is not rhetoric. It is real. It is real for people right now today. It is getting cold. It is getting very cold. People are deciding: Am I going to keep the heat on or am I going to be able to get my medicine? Am I going to be able to get my food? Am I able to get my medicine? Am I able to pay the rent, the mortgage, or get the medicine I need for my life or for my child's life or for my husband's or wife's ability to continue to live a healthy, successful life? That is what this is about. We have an easy, straightforward way to increase competition, to bring down prices, with safe, strong safety standards. This is something that makes sense. It will help seniors. It will help people with disabilities who are in the doughnut hole before we get that all closed under Medicare. It will help every family and every individual right now who needs medicine and is paying more and more, higher and higher prices every single year.

I hope we will have a very strong bipartisan vote. This is a very important addition to what we are doing here. This truly will save lives and save money; and that is what we are all about: creating competition to bring prices down so the American people have access to the medicine and to the health care they need and deserve.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I want to speak briefly about keeping President Obama's promise to the American people when it comes to tax increases in this health care bill.

You will recall on September 12, 2008, he said:

I can make a firm pledge: Under my plan, no family making less than \$250,000 will see their taxes increase . . . not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes.

The problem we see, though, is this bill, as proposed, increases taxes for 25 percent of taxpayers earning less than \$200,000 a year. That is 42 million individuals and families who will be taxed in a way that violates President Obama's pledge.

According to the Congressional Budget Office, the Internal Revenue Service will need many more agents and workers in order to enforce the Reid bill. It will essentially need to double in size the Internal Revenue Service just to be able to raise those taxes called for in this big job-killing bill.

The possibility of higher taxes is one reason job creators are currently standing on the sidelines. The President had a job summit. Yesterday he spoke at Brookings Institute and talked about initiatives he was going to undertake in order to help create jobs in this country. But the fact is, government doesn't create jobs except to the extent we grow the size of government. What we need to do in this country is to get out of the way, reduce the burden, and limit the uncertainty for the private sector—small business that is the primary job-creating engine in this country.

But the fact is, job creators are nervous—I would strike that; they are not nervous, they are scared—about one job-killing proposal after another coming out of Washington. Not just the spending, not just the debt, but they see things such as this big health care bill and the increase in taxes that go along with it. Then they see the President going to Copenhagen and perhaps trying to obligate our country to some additional financial burdens that are going to make it harder for these job-creators, not easier.

The debt, for example, is one looming disaster. The total public debt now stands at \$12 trillion. Before the end of the month, the majority leader is going to come to the Senate floor, presumably on a Defense appropriations bill or some other vehicle, and ask us to lift the debt limit because Congress has maxed out the American people's credit card, and we can't keep running the government unless we increase the debt limit.

Well, a number of us are not going to vote for that increase in debt limit until we receive firm assurances that the administration and the majority are going to get real about this increasing debt and unfunded Federal li-

abilities in Medicare, in Medicaid, and other entitlement programs.

We are accumulating debt even faster during this fiscal year. For example, in just 2 months—2 months of this year—the Congressional Budget Office says an additional \$292 billion in deficits were accumulated. Our deficits will average nearly \$1 trillion for every year during the next decade, according to the Obama administration itself. Of course, I mentioned the other unfunded liabilities out there—things such as Medicare.

I understand the majority has somehow cut a tentative deal to try to grow Medicare. Well, if you grow Medicare and grow Medicaid, what does that do to the already \$38 trillion in unfunded liabilities? This \$38 trillion is three times our national debt. It means, in essence, a debt burden of \$32,000 for every U.S. family. Yet my colleagues don't seem desirous of fixing this problem. They seem determined to make it worse.

Yesterday the Washington Post reported on our Nation's deteriorating fiscal situation. They said:

The problem is that, if investors think the United States isn't fiscally responsible—

I wonder why they would conclude that? But they go on to say—

they could start demanding much higher interest rates when they bid on Treasury securities.

That is, when they start buying our debt, as a result of all of this spending and the money we have to borrow from China and other countries that buy our debt, those countries could begin to demand higher interest rates.

The Washington Post goes on to say:

The feedback loop could get ugly. The Nation could have to borrow hundreds of billions of dollars just to pay interest on what it owes. This has been touted as a classic path to irreversible national decline.

The Post cited Leonard Burman, an economist at Syracuse University, who said:

Right now, this year, we have \$1.6 trillion in debt coming due—

And that is before we pass this ill-conceived health care bill.

He said:

That's roughly twice individual income tax revenue. Our only plausible strategy for paying that back is to borrow more money.

The Post also cited David M. Walker, a former Comptroller of the United States, who recently testified:

Our total Federal financial hole is about \$10 trillion more than the current estimated net worth of all Americans and the gap has been growing.

Then, adding insult to injury, yesterday Moody's Investors Service said its debt ratings on U.S. Treasury securities “may test the Triple-A boundaries” because the government's fiscal status is worsening.

Well, the fact is, this Reid health care bill makes this much worse. My colleagues say the CBO—the Congressional Budget Office—has scored the

bill as deficit-neutral. Well, any bill can be called deficit-neutral if you are willing to raise taxes enough and cut programs such as Medicare, both of which this bill does.

The Congressional Budget Office said in their score of the Reid bill:

The long-term budgetary impact could be quite different if key provisions of the bill were ultimately changed or not fully implemented.

Well, what could they mean by that? What they mean is some of the assumptions about the cuts and other things that range over a 10-year budget window, if they don't come true, then all bets are off.

We know the Reid bill relies on budget gimmicks to hide the true cost of this Washington takeover. One gimmick is, for example, not including the Medicare provider fix, the so-called doc fix, which costs \$210 billion over 10 years. In other words, this bill leaves that out entirely. I know—I am confident because Congress has only failed to act to reverse those cuts on one occasion—that if we let this cut in provider payments to physicians be fully implemented—a 23-percent cut come January—then many Medicare beneficiaries, including the vastly expanded rolls that would be included under this deal we have read about in the paper, patients will not be able to find a doctor to see them because doctors will not be able to continue seeing patients with a 23-percent cut in the payments they are entitled to under Medicare.

The other issue is the time shift. This is really sort of the classic shell game. The Reid bill starts the tax increases and the Medicare cuts in 2010, but as we know, the expanded coverage doesn't start until 2014. Someone said that is like buying a house, closing on the sale of a house, and being told: Well, you can't move in for 4 years. You have to start paying the bill today, but you don't get the benefits for 4 years.

The Congressional Budget Office score focuses on the budgetary impact to the government, not on the total cost to the American people. The CBO said the Reid bill increases the Federal budgetary commitments to health care. In other words, rather than trying to bend the cost curve as we have heard should be the goal, this makes it worse. We end up bending the cost curve in the wrong direction. The Reid bill will increase premiums for American families purchasing insurance in the individual market. The Congressional Budget Office hasn't yet been given time to estimate the total cost on the economy as a whole.

David Broder, one of the deans of the Washington Press Corps, did a nice roundup of nonpartisan experts last week. He cited Robert Bixby of the Concord Coalition, Maya MacGuineas of the Committee for a Responsible Federal Budget, and he concluded this:

Every expert I have talked to says that these bills as they stand are budget-busters.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CORNYN. So I hope my colleagues will pass the Crapo motion to commit this bill to the Finance Committee so the President can keep his commitment not to raise taxes on the American people.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I wish to speak in support of the Dorgan-Snowe importation amendment No. 2793, which provides some much-needed relief to Americans who are being crushed by ever-higher prescription drug costs. I wish to first note I am eagerly awaiting the details of some of the proposals that were put out there last night. I appreciate the work of my colleagues, but I do want to hear the response from the Congressional Budget Office. As I have said on this floor many times, I am concerned about expanding Medicare unless we do something about the geographic disparities that are already present in our system. When we look at some of the numbers, the average patient got \$6,600 in Minnesota in 2006, and Texas is something like \$9,300. What we want to try to do with this bill, and what I like about this bill, is all of the cost reform measures that are going to push us toward rewarding States that are participating in systems that provide more efficient care. If we don't do something about these geographic disparities, we are going to further exacerbate this by expanding Medicare.

So I have some concerns about this, and I look forward to hearing from my colleagues as well as, of course, the solvency of the Medicare Program, which is scheduled to go in the red by 2017 under existing circumstances.

Back to the Dorgan-Snowe amendment. This amendment not only would allow American pharmacies and drug wholesalers to import FDA-approved medications from Canada and several other countries and pass the savings on to consumers, it would also import some much-needed competition into the American pharmaceutical market. It is estimated that the amendment, which enjoys both Democratic and Republican sponsors, would result in Federal savings of \$19.4 billion over 10 years, just at a time when we are looking for these kinds of savings.

Millions of Americans depend on prescription drugs to help them manage chronic disease or other illnesses, but drug prices continue to skyrocket with annual increases well above the general inflation rate. From 1997 to 2007, retail drug prices increased an average of 6.9 percent per year, more than 2½ times the general rate of inflation, which was 2.6 percent per year over the same period.

Look at that difference: 6.9 percent per year compared to 2.6 percent per

year. As a result of these rising prices, many patients are forced to split pills, skip doses, or not fill their prescriptions at all. Yet right across the northern border of Minnesota and Canada, many of these same brand-name prescription drugs are available at a much lower cost.

For example, according to one recent comparison, a 90-day supply of Lipitor costs \$256 in the United States. In Canada, it is available for \$188. In other words, Canadians pay 26 percent less than Americans for the very same drug.

Here is another example: A 90-day supply of Nitroderm patches cost \$303 in the United States but \$125 in Canada. The Canadian price is 59 percent cheaper. We can go right down the line of major brand-name drugs and see these dramatic price disparities. In fact, every year, Canada's pharmaceutical pricing board compares Canadian prices for patented drug products with prices in a number of other countries. Consistently, prices in the United States are higher by double-digit percentages. In 2008 U.S. prices were, on the average, 63 percent higher than Canadian prices.

Now, current Federal law says no one except the manufacturer can import a drug into the United States. Wholesale and retail pharmacies aren't allowed to. State and local governments aren't allowed to. Individual Americans aren't allowed to, even for personal use. But, of course, they do, and they have been doing it for a number of years.

My State, as I noted, happens to be on the border of Canada. Every day Canadians cross over to Minnesota to work and make purchases and fish and do all kinds of things. Likewise, Minnesotans cross over to Canada every day to work and make purchases and fish. It is no big deal. We are not afraid of Canadians. Minnesotans know that Canadians pay less—much less—for many of their prescription drugs.

Beginning in the 1990s, the Minnesota Senior Federation started organizing bus trips for seniors to go up and cross the border into Canada so they could get affordable prices for the drugs they depend on.

The Senior Federation also introduced a prescription drug importation program and used its buying power to negotiate directly with Canadian mail order pharmacies to provide lower cost prescription drugs to Minnesota seniors. But drug prices in the United States just continue to go higher and higher and higher so the pressure to find some relief kept growing.

Finally, some State governments decided to take their own initiative to help their residents purchase lower cost drugs from Canada. Minnesota was one of the very first. There was broad bipartisan support for this with a Republican Governor and Democrats and Republicans in the legislature.

In February 2004, the State of Minnesota established RX-Connect, the first State-run Web site to provide citizens with information on how to safely purchase drugs from Canada. The Web site lists prices for hundreds of brand-name and generic medications as well as voicemail and e-mail contact information.

The American pharmaceutical industry likes to use scare tactics to keep people from buying their medications in Canada. Look at what is happening. You don't see a lot of problems there with their drugs.

The Dorgan-Snowe amendment takes on renewed importance and urgency because the American pharmaceutical industry has been imposing suspicious drug price increases this year. Last month, the New York Times reported that drugmakers have been busy raising prices for the most common prescribed medicines in anticipation of possible health care reform. The newspaper quoted industry analysts as saying that in the 12 months ending September 30, drugmakers have raised the wholesale prices of brand-name prescription drugs by about 9 percent. Overall, that means an additional \$10 billion in health care spending. That is the largest increase since 1992, and it happened even as the consumer price index declined during the same 12-month period. Some analysts suggest that these prices are being inflated artificially in expectation of new reform that could otherwise reduce prescription drug prices. A similar trend was observed just before Medicare Part D took effect.

Just last week, an economist at the University of Minnesota said:

Curiously, prescription drug prices appear to rise more rapidly in periods just prior to major policy changes. Brand-name and specialty drug prices accelerated before the Medicare Part D program was enacted and implemented.

That is what we are talking about here.

This amendment would allow U.S. licensed pharmacies and drug wholesalers to import FDA-approved medications from Canada, Europe, Australia, New Zealand, and Japan and then pass on the savings to consumers.

Real health care reform requires real changes from business as usual. This amendment would start to bring some real changes—opening up new choices to American consumers and injecting new competition into the pharmaceutical marketplace.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I rise in strong support of the Dorgan reimportation amendment of which I am a cosponsor. I am very glad to support this important amendment. It is a bipartisan effort.

Unfortunately, most of this debate and effort about the underlying bill is

anything but bipartisan. This is a welcome contrast to that, a bipartisan effort around a very important reform proposal—reimportation of prescription drugs.

We face an interesting situation. The United States is, by far, the biggest market for prescription drugs in the world. Yet with all that buying power and all that activity, we pay, by far, the highest prices in the world.

It is for a simple reason: We don't have a true worldwide free market in prescription drugs. We need to do that, in part, through reimportation.

Americans need lower prices. They need the sorts of prices being offered elsewhere. We need to break down this system by which the big drug companies can and do offer the same drugs at very different prices in different countries, and, of course, they offer them at the highest prices in the world in the United States. Americans should not have to choose between their lifesaving medicines and other basic needs, such as food and utility bills.

By voting for the Dorgan amendment and enacting comprehensive reimportation, we can directly address access to health care and truly lower health care costs, which I believe should be our top goal in this entire debate. That is what this amendment does. It gives Americans immediate relief from outrageously high prescription drug prices.

Our amendment allows individuals the freedom to buy their prescription drugs at affordable prices, while providing oversight to ensure that only FDA-approved and safe drugs are permitted.

Our amendment closes loopholes that big pharma has been using to fight reimportation, such as shutting down drugs to wholesalers who participate in reimportation.

Our amendment would close the poison-pill loophole requiring HHS certification, which has left it up to administrations to deny reimportation by making that comprehensive reimportation discretionary. It would shut down that poison-pill loophole.

We would make it mandatory that Americans have affordable choices for prescription drugs.

Many of us, Democrats and Republicans, and certainly including and starting with Senators DORGAN and SNOWE, have long fought for this comprehensive solution. We have made important steps forward. The Senate has adopted amendments to allow personal reimportation. Just last year, we voted overwhelmingly, 73 to 23, that we need to enact this sort of comprehensive reimportation reform, and we have taken concrete steps, such as the personal reimportation provisions, some of which I have authored and passed through the Senate. But we need to go further, and we need this comprehensive approach.

Obviously, the big stumbling block in the way is the powerful pharmaceutical

lobby, big pharma, which has spent millions in lobbying to stop this comprehensive approach. Just this past summer, Senator MCCAIN read an e-mail on the Senate floor from a big pharma lobbyist outlining their strategy to derail those efforts in the Senate. More recently, there are reports that they may have struck a deal with the White House to derail these sorts of efforts and offered to spend tens of millions in support of so-called health care reform, perhaps with a deal to derail these efforts.

That is why I am so glad Democrats and Republicans are coming together around this amendment to say that enough is enough. We need to fight all of these backroom deals. We need to fight this pervasive influence by pharma and finally stand with average Americans and pass real, comprehensive reimportation reform that will bring down prices, bring down health care costs, which should be the top priority of all of us.

We all say we want to lower health care costs. That has been a big issue in this overall debate. Well, this amendment will absolutely do that. The Congressional Budget Office says that and independent analyses say that. Let's take an important step and do what we all say should be a top priority—actually lowering, in real terms, health care costs.

Again, I urge all of my colleagues, Democrats and Republicans, to come together in a bipartisan way. I wish more of this debate and this effort was designed from the beginning to be truly bipartisan. But this amendment and this effort is. This amendment and this effort have been discussed for years. Let's finally get it done with a bipartisan vote to pass comprehensive reimportation.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I ask unanimous consent that we extend the period for debate only until 2 p.m., with the time equally divided, with Senators permitted to speak therein for up to 10 minutes each, with no amendments in order during that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, the Senator from Texas and others talked about premiums. I wish to discuss the effect on premiums of health care reform.



Affordability is at the crux of this debate. In fact, reducing costs and making health care premiums more affordable and predictable, while improving quality, is the impetus for this bill. This bill cuts cost and improves quality.

Two analyses have been released that show Americans will pay less and have more choices under this bill. The first is by the CBO. It found that the legislation will lower premiums for millions of Americans. According to the CBO—and there are a lot of claims around here to the contrary, but they are just claims, and it is not documented—according to the CBO, in the individual market health insurance premiums under the Senate plan would fall by 14 to 20 percent compared with the same plan under current law. If you compare apples with apples, premiums under the Senate plan will fall in the individual market by 14 to 20 percent. These savings come from lower administrative costs, from increased competition, and better pooling of risk to include healthier people. Again, in the individual market, premiums will fall 14 to 20 percent.

Let me be clear. CBO does say that those buying health care in the individual market will pay 14 to 20 percent less under this bill than they would for the same plan under current law. If you currently have coverage you like, you can keep it. You will pay 14 to 20 percent less for that coverage than you would pay under current law. If, on the other hand, people in the individual market are unhappy with their coverage, what can they do? They can choose to purchase the more comprehensive coverage available in the exchange. You can keep what you have, but if you don't like it, you can choose to buy something else in the exchange.

Unlike most of the coverage available in the individual market today, the coverage in the exchange will ensure access to preventive benefits. This is a very important point. Unlike most of the insurance available today in the individual market, that is, people buying just for themselves, the quality of insurance they will get, because of very dramatic insurance market reforms, will be much greater than what they have today. The quality will be much better.

What are some of those quality improvements? First of all, the bill will ensure that insurance companies cannot deny coverage based on preexisting conditions. Moreover, people will have access to preventive benefits. The plan—the bill we are debating—will guarantee that every policy has an out-of-pocket limit. That is not true today. Most plans don't have limits on that. This legislation says you have a limit on out-of-pocket coverage. Insurance companies have to provide the insurance. They cannot provide a policy that says: We can only pay so much.

The legislation will eliminate discrimination by insurance companies against those who have been sick in the past or have a preexisting condition. They cannot deny coverage based on health status. They cannot do that anymore. They do that today.

This health legislation will preclude insurance companies from rescinding your policy if you get sick.

How many times have we heard that happen under current law, insurance companies rescinding a policy when you get sick because they find a little something that has nothing to do with your illness that you perhaps did not report, a preexisting condition someplace else.

For small businesses, the Congressional Budget Office estimates that premiums in the small group market could be 2 percent lower than under current law. For workers in small firms that are eligible for the small business tax credits, premiums would be 8 to 11 percent lower than under current law. Those savings alone make this legislation worthwhile for small business.

Another enormous benefit for small businesses under this bill is predictable premiums. Under current law, if you are a small employer and one of your employees gets sick, your premiums could double, triple next year. I have experienced that many times. I am sure most Senators have. They talk to small businessmen at home and a businessman says: My gosh, my insurance premiums have doubled, tripled, quadrupled over the past year. Why? Because one of my employees has a preexisting condition, and I am placed in this terrible dilemma. This is a key employee. I cannot fire that person to get lower premiums. I cannot pay the increase in premiums. What do I do?

There is one contractor at home in Montana I talked to about this. He felt so bad, he could not let somebody go, one of his best employees. He kept that employee. He kept shopping around, shopping around, and found a carrier that did increase his premiums because this employee had a preexisting condition but not as much as his regular carrier. It was a 20-percent increase rather than a 30-percent increase. That happens today, and it is wrong, wrong, wrong, wrong.

So if you are a small businessperson, under this bill, you are going to find your premiums are going to be much more stable, and there is going to be a greater pool of people so your premiums, the Congressional Budget Office said, will be less—not by a lot but a little less. You don't have to worry about the insurance company coming to you next year and saying: We are going to charge you much more.

Under this legislation, insurance companies can no longer discriminate against small employers that have an employee who gets sick. I mention all

the time I hear from small businesses that say they want to buy health insurance for their employees, but it is too expensive and the cost is too unpredictable. They cannot do it. They want to. They cannot afford it. This legislation helps solve that problem. This bill creates a requirement that allows small businesses to provide health coverage to their workers. There is a little reduction in premiums, according to CBO, and also much more predictability and higher quality of insurance all at the same time.

In the large group market—that is companies with more than 50 employees—what does CBO say about their premiums? I have heard all these allegations about people who work for larger companies are going to find their premiums will increase. That is the assertion. That is flatly not true, at least not true according to the Congressional Budget Office. The Congressional Budget Office estimates that premiums could be up to 3 percent lower than under current law. Again, that is not a big reduction, but it is a reduction, nonetheless. CBO says employees who work for larger companies will find their premiums will go down by a little bit. The assertion is, premiums will go up. CBO says they will go down, to be honest, not by a huge amount but down a little bit. That is better, lower premiums. That 3 percent could make the difference whether an employer decides to keep employees. A 3-percent reduction in premiums will keep that employee, or a bunch of employees, working for him.

According to the Congressional Budget Office, five out of six Americans get their coverage through employers of this size. Five out of six Americans work for larger companies. This means 83 percent of Americans will see no change or perhaps a slight decrease in their premiums. That is the Congressional Budget Office. That is what they say. It is in black-and-white print. It is right there. The remaining individuals—that is 17 percent—purchase their coverage on their own in the individual market.

Of those, many will choose to retain the coverage they have and will see a reduction of 14 to 20 percent in their premiums. Those who choose to purchase more comprehensive coverage in the individual market, the vast majority—nearly 60 percent—will see a reduction in premiums. Guess what. That is a big reduction in premiums. They will see a decrease of 56 to 59 percent due to the tax credits provided in this bill.

Let me restate that point. For the majority of those who choose to buy insurance in the exchange, in the individual market, a majority will see a reduction in premiums, according to the Congressional Budget Office, a whopping reduction of between 56 and 59 percent due to the tax credits provided in



this bill. That is pretty important. The remaining few individuals may see an increase of up to 13 percent. But those who experience an increase in premiums, let's remember, will do so because they have much better insurance. The increased quality of the insurance they are going to get, in my judgment, is going to outweigh the increase in premiums they have to pay because they are going to get a lot more for the buck, a lot better insurance than they otherwise would get today.

If you buy a new car rather than a used car, most people think maybe they will pay more for a new car as opposed to a used car because it is newer and better. That is what is happening today. You might pay more, but you are getting a lot better insurance.

The Congressional Budget Office analysis, therefore, is good news for health care reform. The analysis does not take into account some of the Senate bill's other policies, such as a catastrophic option available to young adults, otherwise known as "young invincibles." They think: I am not going to get sick, so I will get a catastrophic plan and pay very low premiums. That is available in this legislation.

The Congressional Budget Office analysis does not incorporate the potential effect of the proposal on the level or growth rate of spending for health care. In other words, CBO's analysis does not fully capture the effects of the excise tax on high-cost plans, which will also help.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. I have more to say, too much more to ask for an additional minute. I will continue at a later time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I rise to speak about Senator CRAPO's motion to commit the bill to the Committee on Finance in order that this bill does not increase taxes for individuals with incomes of less than \$200,000 or families with incomes of less than \$250,000.

Let's start by looking at three basic promises President Obama campaigned on to get elected—promises that almost no one on the other side of the aisle talks about anymore. Here are those promises. These are his quotes.

He says:

But let me [be] perfectly clear . . . if your family earns less than \$250,000 a year, you will not see your taxes increased a single dime. I repeat: not a single dime.

Promise No. 2:

. . . nothing in this plan will require you or your employer to change the coverage or the doctor you have. Let me repeat this: nothing in our plan requires you to change what you have.

His third promise:

Under the plan, if you like your current health insurance, nothing changes, except

your costs will go down by as much as \$2,500 per year.

I think these are three promises that should be the test when we are judging this health care bill. I certainly agree with President Obama on all three of these points. The nonpartisan Joint Committee on Taxation has recently confirmed that this bill, in no uncertain terms, is a middle-class tax nightmare. Even after you account for taxpayers who receive the tax credit, 24 percent of tax filers—so that is a quarter of all tax filers—who make under \$200,000 will, on average, see their taxes go up. Only 8 percent of all taxpayers receive the premium tax credit, which, by the way, is a new entitlement program, not a tax cut, as Democrats claim.

This news should not be a surprise to anyone. We have known for a long time that the largest tax in the bill, the so-called Cadillac insurance plan tax, falls heavily on the middle class. Eighty-four percent—let me repeat this—84 percent of the people who pay the tax have incomes of less than \$200,000 per year.

What is wrong with this bill? This bill contains nine—that is right, nine—new taxes that will affect every American. I wish to walk you through those brandnew taxes.

First, we have the 40-percent insurance plan tax. This is the biggest tax, and it is designed to make insurance companies and employers drop their premium insurance plans and leave people to buy cheaper plans. As a result, this tax violates promise No. 2 and promise No. 3 that the President made that I showed in my first chart. It also violates the first promise because 84 percent of the people paying this tax are in the middle class, according to the nonpartisan Joint Committee on Taxation.

The insurance tax, tax No. 2, is another tax that will raise the cost of everyone's insurance plans. According to the analysis from the nonpartisan Congressional Budget Office, which I will quote, these taxes "would increase costs for the affected firms, which would be passed on to purchasers"—in other words, the employees—"and would ultimately raise insurance premiums by a corresponding amount."

In addition to violating the first promise not to raise taxes on middle-class Americans, it also raises insurance premiums and violates the third promise. This is not a good start for the American people.

Tax No. 3, the employer tax. For businesses that are struggling to stay afloat and to not lay off employees, especially during these tough economic times, this tax will make it much harder and may result in further layoffs in our weakened economy.

I thought our goal was to create jobs and to strengthen our economy.

The drug tax—this is tax No. 4. This tax will increase pharmaceutical

prices. In fact, my colleagues should not be surprised that drug companies are already increasing their prices ahead of this bill because they know they are going to be taxed.

Tax No. 5, the lab tax. If you need clinical laboratory tests, then here is another way the government is going to pick your pocket.

Tax No. 6, the medical device tax. If you need surgery, there is a new tax on medical devices, such as pacemakers and other lifesaving devices.

Tax No. 7, failure to buy insurance tax. If you do not buy insurance, as this bill mandates, then you must pay a penalty tax. Do not be fooled by the new bill as it changes the name from "tax" to "penalty." It is still money out of your pocket. By the way, 75 percent of that tax is on people who make less than \$200,000 a year—once again violating President Obama's first promise.

I also wish to note that unlike the protection we included in the committee's bill to waive interest on criminal and civil penalties on people who do not pay this tax, the current bill on the floor only stops criminal penalties and certain enforcement mechanisms. This bill still allows the IRS to go after people who do not buy insurance.

What is the maximum penalty allowed? For a civil penalty in this bill, \$25,000 for not paying this tax. That is what Americans can be penalized if they just fundamentally do not agree with this tax. Some people, such as myself, do not believe it is constitutional that the Federal Government can require us to buy health insurance. If you believe strongly in the Constitution and you do not believe this is a constitutional provision, the IRS can come after you and require up to a \$25,000 fine.

The next tax to talk about is the cosmetic surgery tax. Ironically, Democrats want to tax the most market-oriented aspect of medicine that has resulted in lower prices, safer procedures, and more consumer satisfaction by taxing cosmetic surgery procedures.

Tax No. 9, increased employee Medicare tax. Lastly, for the first time, some Americans will pay higher Medicare taxes and that money will finance an entirely new entitlement program.

According to the nonpartisan Joint Committee on Taxation, as I mentioned before, 84 percent of the people who pay the so-called Cadillac insurance plan tax are in the middle class.

Let's consider the whole taxpaying population of the United States. According, once again, to the nonpartisan Joint Committee on Taxation, 8 percent of the population, or slightly more than 13 million, will get benefits that the Democrats tout under this bill. That is about 8 percent of our population.

The other side is wrong to say that this bill delivers a broad tax cut to all

Americans. It does this for only 8 percent, and only after shifting \$½ billion worth of new taxes around to the rest of Americans. And what about the rest of Americans? They are either clear losers under this bill or come out roughly even by getting a tax credit to balance their tax hike. Even after you account for taxpayers who receive the tax credit, about one-quarter of all tax filers under \$200,000 will, on average, see their taxes go up, not down.

About 157 million Americans who get health insurance from their employers will not be eligible for the tax credit. This does not take into account the higher premiums, medical devices, drugs, lab tests that the nonpartisan Joint Committee on Taxation says will be shifted to consumers. They did not break those tax impacts down by income level, so we can't tell you exactly where they fall. But since most Americans make less than \$200,000 a year, common sense tells you that most of those taxes will be borne by Americans making under \$200,000 a year.

Most of the nine brand new taxes in this legislation violate the President's promise that middle-class families will not have to pay more taxes. The purpose of the Crapo amendment is to inject honesty into the health care debate and to hold Congress to the promises that were made to the American people.

Before we vote on this, I want to remind my colleagues of a very similar vote we had last year. I had an amendment to the Budget Act that was passed 98 to 0 by this body. My amendment last year said: It shall not be in order in the Senate to consider any bill, resolution, amendment between Houses, motion—

The PRESIDING OFFICER (Mrs. HAGAN). The Senator has used his 10 minutes.

Mr. ENSIGN. Madam President, I ask unanimous consent for an additional 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENSIGN. It shall not be in order in the Senate to consider any bill, resolution, amendment between Houses, motion or conference report that includes a Federal tax increase which would have widespread applicability on middle-income taxpayers. That passed 98 to zero. That provision was adopted. Unfortunately, it was stripped later when the budget resolution went to conference.

Let me say in conclusion, despite the actions my colleagues on the other side of the aisle made toward following that policy of not raising taxes on middle-income families, we continue to see legislative proposals—and the bill before us is exactly one of those legislative proposals—that do just that. So I support Senator CRAPO's motion to commit this bill in order to remove these onerous tax burdens on the American people.

My argument is simple: Let's do what we said we would do and protect middle-income families from these taxes.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Madam President, I rise this morning—or this afternoon, I guess it is—to speak about health care, but in a very particular context—an area of our health care debate which we, unfortunately, haven't spent enough time on.

The purpose of my remarks today will focus on an amendment that I will be filing today that is entitled "Support for Pregnant and Parenting Teens and Women." It is a challenge within our health care system which I think has gone largely unaddressed, or at least for a segment or a category of pregnant women in our society. We know many teens and women who face an unplanned pregnancy do so with little or no support. This amendment—the Pregnant and Parenting Teens and Women amendment—offers teens and young women the support they need to finish their education and provide for their children. This is especially important to those teenagers or women who are victims of domestic violence or other kinds of violence, and also women on college campuses.

Just a quick overview of the amendment, and then I will walk through some of the main reasons why I think it is important we make this a priority.

First of all, the amendment will provide assistance and support for pregnant and parenting college students. Secondly, the amendment will provide assistance and support for pregnant and parenting teens. Third, it will improve services for pregnant women who are, as I mentioned before, victims of domestic violence, sexual violence, and stalking. Fourth and finally, it will increase public awareness of the resources available to pregnant and parenting teens and women.

I will go through some of the background in the time I have, but the way I look at this—and I think the way a lot of families look at this challenge in America—is that often after a woman becomes pregnant, she has a decision to make. Under our law, she can carry the child to term or not. We want to make sure if she decides to carry that child to term she has all of the help she needs. And not just a little help—not just a program or two here and there—but the full range of help that we can provide, in addition to what so many people and so many organizations do so well.

There are many individuals and organizations in the nonprofit sector, and there are great programs out there right now that help women with their pregnancies, but I look upon this challenge as one that is faced by pregnant

women of all incomes, of all backgrounds, and of all circumstances. Even a woman who has the resources and the means often feels that she has to walk that path alone. Sometimes her family abandons her or doesn't provide her the help she needs. But it is especially urgent and especially difficult when a woman is both pregnant and without means or is pregnant and poor, pregnant and vulnerable to all of the challenges she will face.

If a woman makes the decision to bring a child to term and to raise the child, she often does that all alone. What I believe we have to do here—not just as Democrats and Republicans, because that doesn't matter, candidly, on this—we have to do as Americans, if we mean what we all say, that we want to help people who are vulnerable, and we want to help people with their health care, and many of us say that over and over—people in both parties say that—then we have to help women during what can be a very difficult time in their lives.

I realize for some people this is not an issue. Pregnancy is a time of joy and a time when they have no challenges and they bring a child into the world with a lot of support and all the help they need. But there are plenty of women out there who have to walk this road all alone—all alone. And so if we mean what we say about helping, as Americans—forget parties here—we should do everything possible to walk that road with her, if she wants the help and if she can benefit from the services we are talking about.

Why should a woman on a college campus who makes a decision to have a baby be left alone? Why shouldn't we be giving her help? We don't do it now. I know some do it, and I will hear from others that this group does this and this group does that, but unfortunately it is not nearly enough, especially for someone who happens to be a teenager, a woman who is pregnant, or a young woman who is pregnant as a teenager or before the age of 18. Are we doing enough to help that woman who happens to be pregnant get through the challenge of a pregnancy?

Finally, and most horrifically, if a woman is both pregnant and the victim of domestic violence, sexual violence, or stalking, what are we doing to help her? Unfortunately, the answer to that is very little—very little. I think this is a criticism I am making of both political parties. We could have a debate about who is doing more, and that might be instructive, but neither party is doing enough for at least those three categories of pregnant women—teens, women on college campuses, and women who are victims of violence.

I believe we are going to have an awful lot of support for this amendment. I think it is an essential part of this health care debate, and I believe it is an opportunity to bring people together to agree on something around

here when we have a lot of disagreement. But also I think it is vitally important to our society in general. It is not just a good thing to do, it is not just the right thing to do or the compassionate thing to do, it is, I believe, a very important part of how we deliver health care and how we help people through what is often a crisis.

Think of the kind of life that mother will have during her pregnancy and after her pregnancy. Think of the life that child will have, while the child is in the womb and then after the child is born. If the pregnancy goes well, the child will learn more. If the pregnancy goes well, the child will grow and develop appropriately so that he or she can be healthy. If a pregnancy goes well, the child will contribute a lot more to society. The real challenge, the urgent question for us is: What are we doing to help pregnant women, especially in these particular categories?

I have been so fortunate, and I am grateful to have worked with Senator KLOBUCHAR on this amendment. We will be talking about it more, but I wanted to provide a summary of it now.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. JOHANNIS. Madam President, over the weeks and months we have been here, we have talked a lot about the economy and the challenges we face in the economy. We have spent time trying to figure out the best approach when it comes to job creation. We went through a debate earlier this year regarding a stimulus package that, when you add on interest, was eye popping—\$1 trillion. We were promised by the President that if you pass this gargantuan stimulus package, the unemployment rate won't go over 8 percent. Well, we stand here today with unemployment at 10 percent.

We look at that and we recognize that the 10-percent number doesn't tell the true story of the suffering that is going on out there. When you read much farther in the analysis, you begin to realize it is not 10 percent. When you add in those who have flat given up, those who are underemployed, and those who may be piecing one or two or three jobs together to try to pay the bills, we are closer to the 17.5 percent range. And in spite of that, over the last days, we have been talking about a piece of legislation that, because of mandates and tax increases and burdens placed upon the middle class and our job creators—our small businesses—we can see very clearly we are going to end up with adding to the misery of the American people.

Let me, if I might, start out by focusing on a specific piece of this to get started; that is, the employer mandate.

The bill here and the bill in the House have a common element—certainly different mandates, certainly

different amounts of the mandate, but the common element is that under both pieces of legislation there is a "Washington way or the highway" sort of approach. It basically says to employers: Thou shalt do it our way or there is the highway. It basically says to our job creators out there that our medium-size, even some of our small job creators are going to be pulled into this. It says: Look, you either do it the Washington way or we are going to penalize you. We are going to use the Internal Revenue Code, the full force and effect of this mammoth government bureaucracy called the Internal Revenue Service, to get you, to get that money out of your business because you have not complied with the Washington way of this legislation. We are going to put a tax on job creators, a penalty on job creators who are already facing the dilemma of how do they keep their employment steady at a time when unemployment is 10 percent and real unemployment is actually in the vicinity of 17.5 percent. The result is obvious. You don't have to study this very long to figure out that if this bill is passed, you are hammering the very people who are supposed to be creating the jobs.

According to our Congressional Research Service:

Economic theory suggests the penalty [and by that they mean the employer mandate] should ultimately be passed through to lower wages . . . if firms cannot pass on the costs in lower wages, the higher cost of workers may lead firms to reduce output and the number of workers.

Let me kind of pierce through that fancy language, if I might. It kind of sounds like Washington-speak to me. What the Congressional Research Service is saying is this: If you are a worker out there in the United States, you are literally going to be faced with lower wages. If that doesn't work, then it may be your job that is at stake.

Like every Senator in this body, I get across my State. I try to listen to people. I have townhall meetings. We try to keep an open-door policy so if somebody wants to talk to me, they can. The human misery of losing a job is just unbelievable. It does something to a person. It makes them look at themselves very differently. It makes them wonder, is there hope out there?

This administration ran on this notion of hope and promise. According to our Congressional Research Service, when you pierce through that Washington-speak language, what it really says is that this bill by this administration is going to create more human misery because it will impact jobs. Nonpartisan analysis says employer mandates will either decrease wages or lead to layoffs.

This is my first year in the Senate. What a legacy for your first year, that you get to go home at some point and you say: You know, I voted for a bill

that, according to the Congressional Research Service, will either cause more layoffs in my State or reduce wages.

Employers will look at their balance sheet—they have to. They don't have the ridiculous opportunity we have here of just spending crazily and running up the Federal deficit. They have to make it work or they go out of business. For them, it has to be a cost-benefit analysis. How many have looked at this bill and said: I think I have figured something out here. I don't like the mandate, they tell me. But then they say: But we have studied this, and if there has to be that result, it is cheaper for us to try to figure out a way to drop our health coverage and pay the penalty. The average employer that provides a health care plan pays about \$4,000 per employee for health coverage. If the mandate were something like \$750—do the math—a cost-benefit analysis is going to lead to one conclusion: Drop the health plan. We know employers are already considering it. My office recently met with a human resources manager from one of Nebraska's largest cities. She noted how much cheaper it would be if they could just do that. Many employees will lose their coverage. If that happens, then all of a sudden the doctor-patient relationship is impacted.

Remember all those promises: Your taxes are not going to go up; you get to keep the doctor you like; if you like your plan, you are not going to lose it. We have ripped those promises up with this legislation. You would think at some point somebody in the administration would stand up and say: Hold everything here, we are making shambles out of what we thought we could do.

True health care reform should lower costs for businesses so they have more capital to work with, so they can hire workers, not dismiss them. I suggest this bill just completely misses the mark.

I also suggest that this is a step in the wrong direction in terms of health care. Making matters worse, the people this bill supposedly helps will be disproportionately impacted. A professor studying employer mandates recently said this:

Workers who would lose their jobs are disproportionately likely to be high school dropouts, minorities and females. Among the uninsured, those with the least education face the highest risk of losing their jobs under employer mandates.

Is it a surprise that business groups are opposing this legislation? The U.S. Chamber, Wholesale Distributors, General Contractors, Independent Electrical Contractors—all sent a letter recently, and they said this:

Perhaps no sector has been more passionate, more active than the small business community in working to advance reforms that lower health coverage costs.

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. JOHANNIS. May I have an additional minute, by unanimous consent?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHANNIS. The Senate health care bill “. . . will lead to higher costs and increased burdens on small businesses. The bill will cause greater damage to our economy and health care system.”

We all agree on some basic premises. One is that about 60 to 70 percent of our jobs in this country are dependent upon small businesses. Isn't this a time for us to take a step back and ask what are we doing to our economy here, what are we doing to these job creators, and work together to get a truly bipartisan bill that builds our economy and protects our jobs?

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. It is alleged here on the floor that the underlying bill raises taxes. The legislation does not increase taxes—essentially. There was a slight modification to that, but I will explain that later. In fact, the bill represents a tax cut. The bill does two things: It provides tax credits to low- and middle-income individuals and families to help purchase health insurance and it results in increased wages for those receiving employer-sponsored insurance.

Let me first speak about how the bill provides a tax cut. The chart behind me basically shows that for a family of four with an income of \$66,000, the light blue indicates that the cost of that health insurance is going to be about \$14,100. That is basically what health insurance costs today for a family of four. That is what people pay today. After this legislation, look at the bar there on the right. Again, a family of four, income \$66,000. Those persons will receive an \$8,000 tax cut, in terms of credits that family will get, with a net result of a health insurance policy that costs \$6,100. Health insurance is going to cost less for a family of four with an income of \$66,000. That is fairly representative, a family of four with \$66,000.

Just to repeat, on the left, the health insurance policy for a family of four with that income level is about \$14,000. After the tax credit kicks in, once this legislation kicks in, the same family, same four people, will find they are paying only \$6,100 net for their health insurance. Why? Because they get a tax cut of \$8,000.

I might add—look at the next chart, “Who Gets A Tax Cut? An individual with an income of \$32,000.” Earlier, it was a family of four with \$66,000. This is an individual with an income of \$32,400. Currently, today, before health care reform is passed, that individual will pay roughly \$5,000 in health insurance. But after this bill is passed, that same individual with an income of \$32,400 will find that health insurance

will not cost \$5,000 but much less—\$3,000. Why? Because that person gets a tax cut in terms of a credit of \$2,200. I think that is a very important point to make.

While we are at it, we might as well get the next chart.

There are some who are saying this legislation will result in increased taxes for higher income people; that is, people whose income is, say, around \$200,000. There is something to that argument, but that is not the whole story. Let's look at the whole story.

This legislation as portrayed by this chart shows:

High-cost insurance excise tax leads to increased wages.

Why increased wages? Because the Congressional Budget Office or maybe it is the Joint Committee on Taxation—the Joint Committee on Taxation concludes that because of that provision of the bill; that is, the excise tax on companies that provide more expensive policies, in effect those policies will be modified or changed, and in effect the premiums for those policies, the so-called Cadillac plans, will actually go down, according to the Congressional Budget Office, between 7 and 12 percent. But that is premiums. The discussion right now is on taxes. Those folks will be paying a little more taxes. That is true under this legislation. But, again, what is the whole story? Why are they going to be paying more taxes? They are going to be paying more taxes because they will get more income. Their wages and salaries will increase tremendously.

Look at the bar on the left. In the year 2013, the percent of the total tax revenue due to increased wages will be about 90 percent, but that person will also pay a 10-percent increase in taxes. The wage increase, salary increase is far greater than the tax increase. That is true for every year—2013, 2014, 2015, all the way up to 2019. It is proportionately basically the same—roughly around an 80-percent increase in wages and roughly maybe about less than a 20-percent increase in taxes. So on a net basis, those persons are going to be doing pretty well.

Consider the example of Joe who works for ACME Company. He is married and has two children. Together, he and his spouse earn \$100,000 a year in taxable wages.

In 2012, ACME Company provides family health coverage to Joe at a cost of \$25,000. Because of the high cost insurance excise tax, ACME Company finds different coverage that costs only \$21,000 in 2013. Thus, ACME Company can afford to pay Joe an extra \$4,000 each year.

Now, even though Joe has to pay income and payroll taxes, he will still have an extra \$2,076 in his pocket. That is \$4,000 – \$1,000 in Federal tax – \$612 FICA tax – \$312 in State tax.

I don't believe Joe would refuse a pay increase just because he has to pay taxes on that raise.

Or consider Sally, a single mother of two working for XYZ Company. She makes \$50,000 in 2013 and receives family health insurance coverage costing \$27,000.

When XYZ Company restructures their plan to \$22,000 as a result of the high-cost insurance tax, Sally will get an extra \$5,000 in wages. That is \$3,095 in take-home pay after taxes. That is \$5,000 – \$750 in Federal income tax – \$765 FICA tax – \$390 State tax.

I have no doubt that Sally will be able to put that extra money to good use.

Also, I would like to remind everyone about this legislation on premiums. Earlier, I discussed what the Congressional Budget Office said about premiums under our bill. Let me repeat, this is what the Congressional Budget Office says: In summary, the Congressional Budget Office concludes that 93 percent of Americans receive decreases in premiums. About 93 percent of Americans net will see a decrease in premiums.

That is not from these charts; that is from the CBO letter. Of that 93 percent, 10 percent will see decreases of 56 percent to 59 percent because of new tax credits. We are talking about on the individual market. About 60 percent of those who are getting insurance in the individual market on the exchange will get tax credits which will result in roughly a 60-percent reduction in premiums. It is between 56 and 59, which is pretty close to 60 percent. The remaining 7 percent will pay slightly higher—100 less 93. Seven percent will pay slightly higher, but they also get much better insurance for that same dollar. When you have a choice between buying a used car or a new car, you probably expect to pay a little bit more when you buy the new car. Hopefully, it is a little better, higher quality, drives faster, safer, all those things. You expect to pay a little more for a new car, but you get more. The same thing here. You are going to pay a little more. But only 7 percent will see their premiums go up according to the CBO. Those 7 percent are people who do not get tax credits because their incomes are a little higher, but they will get much better insurance, higher quality insurance. CBO says that, much higher quality insurance.

So, in effect, they will probably get at least the same, maybe no increase at all, maybe a reduction in premium, if we calculate in the higher quality insurance they will have.

In addition to CBO, MIT's Jon Gruber has also done a study on premiums. And what does he conclude? He concludes, using Congressional Budget Office data, the Senate bill could mean people purchasing individual insurance would save every year \$200 for single

coverage and \$500 for family coverage in 2009 dollars. Most people think he is one of the best outside experts. He has big computer models. He takes the CBO data and, in some respects, he has helped CBO by giving some information to CBO that it otherwise does not have.

Mr. Gruber also points out that people with low incomes would receive premium tax credits that will reduce the price they pay for health insurance by as much as \$2,500 to \$7,500.

We have also seen several studies funded by the insurance industry. I don't want to be disparaging but to some degree you have to consider the source. I have been citing CBO. I think most people think they are a highly professional outfit, no axe to grind. Sometimes they upset those against health insurance reform. Sometimes they upset those for health insurance reform. They are a very professional group of people. But I have also seen studies paid for by the private sector, by the insurance industry. Those studies find that premiums will increase under the bill before us for all Americans. These studies are flawed and, frankly, some of them, the authors of these studies admitted they are flawed. They were just looking at selective parts of the legislation, not all parts, and they were pushed by the industry to issue a report quickly. They have admitted that. Each of them failed to take into account all aspects of the proposal. They selectively chose the provisions that will increase premiums, and they ignored those provisions that will lower premiums.

Why do they do that? Basically, the insurance industry wants to kill this bill. I can understand it. If I were the insurance industry, I wouldn't want my apple cart upset either. They do just fine under the status quo, thank you very much. They don't want to see any changes. Some insurance companies want to continue their current practices of denying coverage if you have a preexisting condition. That is how they made their money in the past. They made most of their money by denying coverage, by underwriting insurance rather than making money on conventional insurance. Anyway these companies want to continue their current practice of denying you coverage if you have a preexisting condition. Some want to continue charging unaffordable premiums if you have been sick in the past, and some want to be able to rescind your coverage once you get sick. That is their MO, and they have done pretty well under the status quo.

The Congressional Budget Office and Professor Gruber are both credible and unbiased sources that are not bought and sold by the insurance industry. The Congressional Budget Office and MIT's Gruber have confirmed what many of us have known: that the bill before us will lower premiums and pro-

vide a great many options for more comprehensive coverage. That is very important. With the exchange set up and with other provisions that will be in this bill, there are many more options for individuals to buy insurance with. It creates a lot of competition. With health insurance market reform, insurance companies will be competing more on price than they are on quality of coverage.

This legislation provides much needed assistance as well to lower middle-income Americans struggling to pay their health insurance premiums.

The Senator from Nevada, Mr. ENSIGN, a few moments ago said people would pay more because of industry fees in this bill. Let's address that point. The reductions in premiums determined by the CBO that I described earlier took into account any impact of the industry fees. The Congressional Budget Office took that into account. I note for the record, there is no lab fee. I know that was an honest mistake on his part, but I want to indicate there is no lab fees in this bill. He was talking about lab fees.

The bottom line is that for the overwhelming majority of Americans, this bill means lower premiums. I don't have it with me, but also a section in one of the CBO letters basically says these fees will have a very negligible impact on consumers. Frankly, I was a bit surprised. I was concerned that some of these studies might, as determined by the CBO or other outside analysts, conclude that there would be a significant impact on consumers and on premiums, basically, what these companies would otherwise charge. But the CBO says no; the fees on hospitals, the pharmaceutical industry, even the insurance industry will have a very negligible effect on increased costs for consumers. It is negligible according to the CBO. I thought, frankly, that would not be the case.

Here is the letter. It is on page 15. I don't have the date of this letter, but it is from the Congressional Budget Office. It is under the section "New Fees Would Increase Premiums Slightly." The operable sentence is:

Because that fee would not impose an additional cost for drugs sold on the private market, CBO and [Joint Tax] estimate that it would not result in measurably higher premiums for private coverage.

To be fair, I don't know if they also address the effect of hospital fees or other provider fees. But I think it is noteworthy in that context for us to remember, it wasn't too long ago when the health insurance industry got together at the White House with the President and promised the President they could reduce their costs by \$2 trillion over 10 years. If they believed they could reduce their reimbursement by \$2 trillion over 10 years, you would think they would kind of know what they are talking about. After all, they have to

report to stockholders. They have certain obligations.

They said they could reduce their reimbursement by \$2 trillion. This bill cuts down their reimbursement increases not by \$2 trillion but by one-quarter of that. That is roughly 4,500 billion over that same 10-year period. They have agreed to that. I can understand why they would agree to that because that is about one-quarter of what they promised earlier.

If they have agreed to it, they are probably going to do OK under this legislation. It is not going to result in reduced quality of care to people because they have agreed to it essentially. As I pointed out, CBO says, at least with respect to the pharmaceutical industry, very little of that will be passed on to consumers. Why is that? The basic reason is, there is waste in our current health care system. These companies know where the waste is. They can find it. They know it is out there.

But, second, with increased coverage, many more Americans will have health insurance. Currently, 84 percent have health insurance. Under this legislation, 94, 95 percent of Americans will have health insurance. If many more Americans have health insurance, there are more patients for the hospitals, more patients for home health care, more medical equipment sold, more drugs provided by the pharmaceutical industry. That is the second main reason they know that with provisions in this bill, the reduction in reimbursement to them is numbers they can live with.

I know the next two speakers, Senator GRASSLEY and Senator DORGAN, both intend to speak for more than 10 minutes. I ask unanimous consent they be allowed to speak longer under the time under the control of the respective sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Iowa.

Mr. GRASSLEY. Madam President, I thank the Senator from Montana for arranging that for me. I hope this afternoon to speak on the issue of importation of drugs because I support the Dorgan amendment. Right now I wish to address the issue of the Crapo motion to commit.

This generally deals with all of the tax provisions in this 2,074-page bill. If Senator CRAPO prevails—and he should—the unrelated House bill, along with the Reid amendment, would be sent to the Senate Finance Committee. The Finance Committee, under the motion, would be empowered to return the bill to the full Senate with an amendment that eliminates the heavy taxes that are in this bill. Senator CRAPO has discussed the impact of the Reid amendment on middle-class families. I will lay out all the taxes that are in this bill.

In farm country, many of us who work the land often observe big freight

trains rumbling across the terrain. Sometimes they scare cattle, hogs, and other animals. Those freight trains are impressive in their power, in their speed, and now the length of the trains. It is very common to see a 100-car train, 150-car trains. The partisan force with which the majority is powering this bill through the Congress is equally as impressive as that of a freight train. The speed that is being displayed for such complex legislation is something to behold. Most importantly, the sheer number and breadth of the new taxes in this bill reminds me of a very long train.

Almost  $\frac{1}{2}$  trillion in taxes, fees, and penalties, and I think they all have the same economic impact, whether it is a tax, a fee, or a penalty—a negative impact on the economy. These taxes, fees, and penalties are so imposing, I am calling this 2,074-page bill the tax increase express.

The locomotive driving this train is health care reform, driven by the Democratic leadership. So we have the locomotive that drives this tax increase. I don't think the American public knows the bill would impose that much,  $\frac{1}{2}$  trillion worth of new taxes, new fees, and new penalties on the American people.

The American public, who supported President Obama with a majority of votes 13 months ago, heard the President loudly and clearly, and that is why they gave him such an overwhelming majority.

They understood our President pledged he would not raise taxes on people making less than \$250,000 a year. Unfortunately, the Democrats' leadership bill would violate that clear pledge.

What are the tax increases and the fees and penalties in Senator REID's amendment? Let me take a moment to highlight them because every locomotive needs power to run. The first power source, the first car of the tax increase express, is the so-called fees on health insurance companies, medical device manufacturers, and drug manufacturers.

That might not sound like something the grassroots of America would worry about—taxes on insurance companies, medical device manufacturers, drug manufacturers—because maybe they think businesses pay taxes. But businesses and corporations do not pay taxes, only people pay taxes. So when people find out they are going to be paying these, it puts a whole new light on what is a fee and what is a tax.

There have been numerous studies that have shown that these fees on, for example, health insurers will increase health insurance premiums. Some say premiums would increase by \$488 for a family, other studies say \$500. Most Members on the other side of the aisle take issue with these studies. They argue these studies were performed at

the request of insurance companies or conducted by independent experts with ties to that same industry.

Let me ask my Democratic friends this: Do you question the work of the Congressional Budget Office and the Joint Committee on Taxation? Well, you should not because they are like a god around here. When the CBO says something is going to cost something, that stands, unless there are 60 votes to override it in the Senate. So most everything the CBO says stands. They have respect because of the intellectual honesty of their research and the non-partisanship they have. So these agencies—the Congressional Budget Office and the Joint Committee on Taxation—have testified that these fees will actually be passed on to health care consumers. Check the record. No one can dispute it.

The Congressional Budget Office and the Joint Committee on Taxation have also testified that the fees will increase health insurance premiums. Check the record. No one can dispute it.

My friends in the Democratic leadership may say, once their health reforms are in place, premiums will go down, net of the fees. They will hail a recent CBO report highlighting the winners but somehow ignoring the losers. They will say these fees will not affect premiums for the vast majority of Americans. But here is the flaw in that assertion. The Congressional Budget Office analyzed premium costs, what they are projected to be in 2016 under this legislation.

What about premium costs right now in the years before these programs take effect—2010 and 2013? Why is this question important? The answer is, these fees go into effect in the year 2010, not when most of the expenditures go into effect in 2014.

The majority of the Democratic reforms which are intended to lower costs do not go into effect until 2014—4 years from now. I ought to say that 10 times because that is very important to how this bill came out to be revenue neutral.

So we ought to look at what happens in the years 2010, 2011, 2012, and 2013. Premiums will go up. Why? Because, for one, the Democrats are adding costs to the health insurance you buy by imposing these fees on health insurers, and they are giving you no government assistance to help with these added costs.

I would ask my friends in the media, dig a little bit deeper on this point, and you ought to be reporting on it. Why? Because the American public does not understand that in the short term premiums will go up. Instead, the public is simply hearing some media reports on a portion of the premiums, in 2016 and beyond. Of course, that is a very long time from now. The American public does not want to wait for their premiums to go down, if they go down at

all. It appears my friends in the Democratic leadership want the tax increase express to barrel through Congress before the public realizes what health care reform actually means; that is, higher premiums as early as 2010.

Let me turn to the second car of the tax increase express. This car is the proposal to restrict the eligibility criteria for claiming the itemized deductions for medical expenses. This proposal says you can no longer deduct expenses that exceed 7.5 percent of your adjusted gross income. Instead, you can only deduct expenses that exceed 10 percent of your adjusted gross income.

In plain English, this proposal limits tax deductions you can take for medical expenses. In other words, you will lose a portion of your tax deductions. Even the New York Times calls proposals that would take away a portion of your tax deduction a tax increase.

Mr. President, I ask unanimous consent that article from the New York Times, dated February 26, 2009, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Feb. 26, 2009]  
TO PAY FOR HEALTH CARE, OBAMA LOOKS TO  
TAXES ON AFFLUENT

(By Jackie Calmes and Robert Pear)

WASHINGTON.—President Obama will propose further tax increases on the affluent to help pay for his promise to make health care more accessible and affordable, calling for stricter limits on the benefits of itemized deductions taken by the wealthiest households, administration officials said Wednesday.

The tax proposal, coming after recent years in which wealth has become more concentrated at the top of the income scale, introduces a politically volatile edge to the Congressional debate over Mr. Obama's domestic priorities.

The president will also propose, in the 10-year budget he is to release Thursday, to use revenues from the centerpiece of his environmental policy—a plan under which companies must buy permits to exceed pollution emission caps—to pay for an extension of a two-year tax credit that benefits low-wage and middle-income people.

The combined effect of the two revenue-raising proposals, on top of Mr. Obama's existing plan to roll back the Bush-era income tax reductions on households with income exceeding \$250,000 a year, would be a pronounced move to redistribute wealth by reimposing a larger share of the tax burden on corporations and the most affluent taxpayers.

Administration officials said Mr. Obama would propose to reduce the value of itemized tax deductions for everyone in the top income tax bracket, 35 percent, and many of those in the 33 percent bracket—roughly speaking, starting at \$250,000 in annual income for a married couple.

Under existing law, the tax benefit of itemizing deductions rises with a taxpayer's marginal tax bracket (the bracket that applies to the last dollar of income). For example, \$10,000 in itemized deductions reduces tax liability by \$3,500 for someone in the 35 percent bracket.

Mr. Obama would allow a saving of only \$2,800—as if the person were in the 28 percent bracket.



The White House says it is unfair for high-income people to get a bigger tax break than middle-income people for claiming the same deductions or making the same charitable contributions.

The officials said the resulting increase in revenues, estimated at \$318 billion over 10 years, would account for about half of a \$634 billion "reserve fund" that Mr. Obama will set aside in his budget to address changes in the health care system. The other half would come from proposed cost savings in Medicare, Medicaid and other health programs.

In a document summarizing its proposals, the White House said it would finance coverage for the uninsured in part by "rebalancing the tax code so that the wealthiest pay more."

Mr. Obama's blueprint, which will project spending and revenues for the next decade, will flesh out the president's thinking on his energy plans both to cap the emissions of gases, particularly carbon dioxide, that are blamed for climate change and to spur development of nonpolluting energy alternatives.

The budget will show the government beginning by 2012 to collect billions of dollars in revenues from selling permits to businesses that emit the polluting gases, assuming the president's energy initiative becomes law as soon as this year, officials said.

Because utilities and other businesses would presumably pass on their costs to customers, Mr. Obama will propose to use most of the government's revenues from the permits to finance an extension of the new "Making Work Pay" tax credit beyond the two years covered in the \$787 billion economic recovery plan that was just enacted.

That tax relief, the administration will argue, will offset households' higher costs for utilities and other products and services from businesses' passing on their permit expenses.

That tax credit annually will provide \$400 to low-wage and middle-income workers or \$800 to couples; Mr. Obama would like to increase those figures to \$500 and \$1,000. The credit phases out for those with incomes above \$75,000 a year and for couples with incomes of more than \$150,000; no benefit would go to individuals with more than \$100,000 income and couples with \$200,000.

The tax credit will begin showing up in the form of lower withholding for eligible workers beginning April 1.

The remainder of the projected revenues from the permits will finance Mr. Obama's campaign promise for \$15 billion a year over 10 years to subsidize research and development of alternative energy sources, officials said. The stimulus package included a multi-billion-dollar down payment to develop a national electricity grid to harness and distribute energy from such sources, including wind farms.

Behind the numbers in Mr. Obama's first budget is one of the most far-reaching domestic agendas in years, and at a time when the president and Congress are already grappling with an economic crisis worse than any in decades. The environmental permits would not take effect until 2012, at which point the administration expects the economy to have recovered. Similarly, some of the tax increases would not take effect until 2011.

Democratic Congressional leaders promised to push the agenda, which parallels their own. "By the end of this year, I want to do something significant dealing with health care," the Senate majority leader, Harry Reid of Nevada, told reporters.

The tax proposals, however, could galvanize Republican opposition and give conserv-

atives a concrete target for taking on Mr. Obama, who despite his political strength could find some members of his own party reluctant to embrace tax increases.

Senator Max Baucus, Democrat of Montana and chairman of the Senate Finance Committee, who has been drafting a health plan, predicted in an interview that the Senate could pass legislation by its August recess.

Mr. Baucus acknowledged that "there has to be revenue" to offset the costs of expanded coverage initially, but he did not endorse the proposal for limiting wealthy taxpayers' deductions.

"There will be lots of options to pay it, not necessarily that one," Mr. Baucus said.

He would not say what revenue options he would support. But he said tax increases of some kind would not prevent some Senate Republicans from aligning with Democrats to pass a health plan.

In the House, the Republican leader, Representative John A. Boehner of Ohio, telegraphed his side's opposition to any tax increases.

"Everyone agrees that all Americans deserve access to affordable health care," Mr. Boehner said in a statement, "but is increasing taxes during an economic recession, especially on small businesses, the right way to accomplish that goal?"

Mr. Boehner likewise criticized Mr. Obama's cap-and-trade emissions permits proposal, saying, "Cap-and-trade is code for increasing taxes and killing American jobs, and that's the last thing we need to do during these troubled economic times."

To finance health care reform, administration officials suggested to senior aides in Congress on Wednesday that revenues could be raised by ending the policy of excluding the value of employer-provided health insurance from income taxes.

But the officials emphasized that the administration was not advocating that option, which not only is anathema to some in organized labor and business but also conflicts with Mr. Obama's position in last fall's presidential campaign.

The administration is proposing a number of other politically contentious ways of offsetting the costs of the health care initiative. Mr. Obama wants to require drug companies to give bigger discounts, or rebates, to Medicaid, the health program for low-income people.

Drug makers now must provide Medicaid with a discount equal to at least 15.1 percent of the average manufacturer price for a brand-name product. Mr. Obama wants to require discounts of at least 22.1 percent. Pharmaceutical companies have strenuously resisted such proposals in recent years.

Mr. Obama will also propose cutting Medicare payments to health insurance companies that provide comprehensive care to more than 10 million of the 44 million Medicare beneficiaries. He says he can save \$175 billion over 10 years with a new competitive bidding system, under which payments to private Medicare Advantage plans would be based on an average of the bids they submit to Medicare.

Mr. GRASSLEY. In the top line, the article says: "President Obama will propose further tax increases on the affluent to help pay for . . . health care reform."

I am highlighting this article because the President is also proposing to take away a portion of a person's tax deduction. The President wants to limit the

itemized deductions people making more than \$250,000 a year can take. The only difference between the two proposals is the medical expense deduction limitation affects people who make less than \$250,000 a year—the same class of people the President promised in the election he was not going to increase taxes on.

So, again, do not take my word for it. Data from the Joint Committee on Taxation tells us that in the year 2013, the largest concentration of taxpayers claiming the medical expense deduction will earn between \$50,000 and \$75,000—people who never thought they were going to have their taxes increased based upon what the President said during the campaign.

The analysis shows, a good number of taxpayers earning between \$75,000 and \$200,000 also claim the medical expense deduction.

My friends on the other side of the aisle will argue that their government-subsidized tax credit for health insurance will wipe clean any new taxes for those people below 400 percent of poverty. They will also argue that people purchasing insurance through the new exchange will be protected from catastrophic expenses as a result of annual out-of-pocket limits. For this reason, my friends on the other side argue those middle-class taxpayers will not need to rely on medical expense deductions.

I hate to break it to my colleagues, but the Congressional Budget Office—again, that god of Capitol Hill—estimates that in 2014 only 4 percent of Americans will be purchasing exchange insurance and only 3 percent of Americans will be receiving a tax credit. By 2019, when the Reid bill is in full effect, only 7 percent of Americans with exchange insurance will be receiving the tax credit. That leaves a heck of a lot of people below 400 percent of poverty with higher taxes.

What about those individuals and families above 400 percent of poverty? These people earn income below the President's magic \$250,000 level, and somehow they do not qualify for this tax credit. What they do qualify for, though, is a tax increase. After all, there is reason why this proposal raises \$15 billion over 10 years, and that is a heck of a lot of money.

Let me now turn to the third car of the tax increase express. This car is the high-cost plan tax. The Congressional Budget Office has consistently cited the two most powerful ways to bend the cost curve downward, meaning the cost curve of health care inflation: No. 1 is to cap the tax preference for employer-provided health coverage or the so-called exclusion; and, secondly, Medicare delivery system reforms.

A recent letter sent to the White House by respected economists also contends that placing a limit on high-cost employer plans would slow health care spending and reduce costs.



Well, some of my colleagues have come out squarely in support of a cap on the exclusion. That was an intellectually honest position. My friends, the chairman of the Budget Committee and the chairman of the Finance Committee, took the intellectually honest position. The Democratic leadership, however, has squarely opposed a cap on the exclusion. They argue that a cap on the exclusion would hurt middle-class workers.

But in a sleight of hand, this bill—this 2,074-page bill—and its authors, the Democratic leadership, came up with a proposal that would tax insurance companies for offering high-cost plans. It is a more complicated way of taxing the same workers. It is a sleight of hand because the Democratic leadership knows the tax will be passed through to the worker.

My friends simply did not want to say they were taxing the workers directly. So they have decided to tax those same workers very indirectly. In the end, the worker would be paying the tax, and these workers would be middle-income workers.

Again, do not take my word for it. The Joint Committee on Taxation testified before our very Senate Finance Committee that the high-cost plan tax would be passed on to whom—the workers.

Joint Committee on Taxation data also indicates that in 2019, 84 percent of the revenue generated from the high-cost plan tax comes from—guess who—individuals and families earning less than \$200,000 a year, contrary to the President's promise in the last campaign that these folks would not pay any additional tax.

So whether you agree or disagree with the policy of limiting the tax benefit for employer-provided coverage, middle-class workers would see a tax increase.

Let's go to the fourth car of the tax increase express. This car is going to carry two new tax increases. The first tax increase is on workers who contribute to a flexible spending account, better known as an FSA.

Under the current tax laws, a worker may contribute to an FSA on a pretax basis and use those FSA contributions to pay for copays and deductibles tax free. Currently, there is no limit on how much a worker may contribute to an FSA. This 2,074-page bill, put together by Senator REID, would limit the contribution amounts to \$2,500. Statistics show, the average FSA contribution is \$1,800 a year. So this \$2,500 limit does not sound that bad, right? Well, I say wrong. A great number of workers who have serious illnesses contribute significantly more than \$1,800 and, let me say, more than \$2,500.

On average—on average—these workers whom I am talking about with serious health problems earn about \$55,000 a year. If I were to connect the dots, I

would see a tax increase on workers with serious illnesses who earn \$55,000 a year. Well, here is how. These workers would now have to pay taxes on their FSA contributions in excess of \$2,500. The Democratic leadership is taxing health benefits for the first time ever—at least this benefit for the first time ever.

The second tax increase in this fourth car is the elimination of the taxfree reimbursement for over-the-counter medicine. Under the current tax rules, payments for over-the-counter medicine may be reimbursed taxfree if a worker is covered under a flexible savings account or under a health savings account. This 2,074-page bill takes away that tax benefit.

The fifth car of the tax increase express is the new Medicare payroll taxes. Since the New Deal, the United States has put into place several social insurance programs. They are part of the social fabric of America. Included in those programs are Social Security, unemployment insurance, and Medicare. They are all founded on the social insurance concepts. As Senator Moynihan, when he represented New York, used to remind us, to ensure their constitutionality, these programs were designed to be financed with payroll taxes instead of insurance premiums. But to maintain the closest appearance possible to social insurance, the payroll tax looks a lot like a premium for insurance.

This analogy is very intentional. It is not accidental. It is bedrock to the sustainability and universality of social insurance programs that we all support: Social Security on the one hand, Medicare on the other.

The Reid amendment breaks that precedent, muddies the premium analogy, and could start us on a tax-hike-only journey to dealing with our unsustainable entitlement programs.

Let me explain that. The way the payroll tax works now is that every worker pays in based on his or her salary, wages, or small business income. That is a single, simple, and consistent tax base. Also, one tax rate applies to that payroll tax base. Now, for the first time—for the very first time—an additional second tax rate will apply to the payroll tax base. Also, for the first time in the almost 45-year history of this great social insurance program, we have before us a proposal that creates a marriage penalty in the payroll tax. Now think of the negative comments you get from a marriage penalty from grassroots America. So here we have a proposal that creates such a marriage penalty in the payroll tax. In other words, some married couples will be paying higher payroll taxes due solely to the fact that they are married. A tax on marriage? This is a direct result of this addition to the second tax rate.

Here is another matter that boggles the mind. The second tax rate kicks in

if your wages exceed \$200,000 if you are single and \$250,000 if you are married. These dollar thresholds are not indexed. They are not indexed, so what happens then when you have inflation?

Another tax where the tax base is not indexed is the AMT. That ought to bring back all the horror stories about not indexing something timely when you first pass it. I think every Member of Congress knows that is an annual problem for us. In the late 1990s, commentators called the AMT the tax system's "ticking timebomb." Fortunately, my friend, the chairman, and I started to diffuse this bomb in the 2001 tax legislation. It appears that my friends on the other side of the aisle have created another tax system ticking timebomb problem.

Finally, we have a caboose of this tax increase express. The caboose is the individual mandate penalty tax. It is a tax. It can be called a penalty, but it is a tax. All you have to do is have the IRS collecting it, as it does, and you know it is a tax. President Obama does not want to acknowledge that the penalty for failing to maintain a government-approved health insurance program is a tax, but it is right here in black and white. The Reid bill amends the Tax Code by adding a new excise tax. It is payable by those Americans who do not purchase government-approved health insurance.

I ask unanimous consent to place section 1501 of the Reid amendment in the RECORD, which adds this new excise tax to our tax laws.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

**Subtitle F—Shared Responsibility for Health Care**

**PART I—INDIVIDUAL RESPONSIBILITY**  
**SEC. 1501. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.**

(a) FINDINGS.—Congress makes the following findings:

(1) IN GENERAL.—The individual responsibility requirement provided for in this section (in this subsection referred to as the "requirement") is commercial and economic in nature, and substantially affects interstate commerce, as a result of the effects described in paragraph (2).

(2) EFFECTS ON THE NATIONAL ECONOMY AND INTERSTATE COMMERCE.—The effects described in this paragraph are the following:

(A) The requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased.

(B) Health insurance and health care services are a significant part of the national economy. National health spending is projected to increase from \$2,500,000,000,000, or 17.6 percent of the economy, in 2009 to \$4,700,000,000,000 in 2019. Private health insurance spending is projected to be \$854,000,000,000 in 2009, and pays for medical supplies, drugs, and equipment that are shipped in interstate commerce. Since most health insurance is sold by national or regional health insurance companies, health insurance is sold in interstate commerce and

claims payments flow through interstate commerce.

(C) The requirement, together with the other provisions of this Act, will add millions of new consumers to the health insurance market, increasing the supply of, and demand for, health care services. According to the Congressional Budget Office, the requirement will increase the number and share of Americans who are insured.

(D) The requirement achieves near-universal coverage by building upon and strengthening the private employer-based health insurance system, which covers 176,000,000 Americans nationwide. In Massachusetts, a similar requirement has strengthened private employer-based coverage; despite the economic downturn, the number of workers offered employer-based coverage has actually increased.

(E) Half of all personal bankruptcies are caused in part by medical expenses. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will improve financial security for families.

(F) Under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), the Public Health Service Act (42 U.S.C. 201 et seq.), and this Act, the Federal Government has a significant role in regulating health insurance which is in interstate commerce.

(G) Under sections 2704 and 2705 of the Public Health Service Act (as added by section 1201 of this Act), if there were no requirement, many individuals would wait to purchase health insurance until they needed care. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will minimize this adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums. The requirement is essential to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold.

(H) Administrative costs for private health insurance, which were \$90,000,000,000 in 2006, are 26 to 30 percent of premiums in the current individual and small group markets. By significantly increasing health insurance coverage and the size of purchasing pools, which will increase economies of scale, the requirement, together with the other provisions of this Act, will significantly reduce administrative costs and lower health insurance premiums. The requirement is essential to creating effective health insurance markets that do not require underwriting and eliminate its associated administrative costs.

(3) SUPREME COURT RULING.—In *United States v. South-Eastern Underwriters Association* (322 U.S. 533 (1944)), the Supreme Court of the United States ruled that insurance is interstate commerce subject to Federal regulation.

(b) IN GENERAL.—Subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:

**“CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE**

“Sec. 5000A. Requirement to maintain minimum essential coverage.

**“SEC. 5000A. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.**

“(a) REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.—An applicable individual shall for each month beginning after 2013 ensure that the individual, and any de-

pendent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.

“(b) SHARED RESPONSIBILITY PAYMENT.—

“(1) IN GENERAL.—If an applicable individual fails to meet the requirement of subsection (a) for 1 or more months during any calendar year beginning after 2013, then, except as provided in subsection (d), there is hereby imposed a penalty with respect to the individual in the amount determined under subsection (c).

“(2) INCLUSION WITH RETURN.—Any penalty imposed by this section with respect to any month shall be included with a taxpayer's return under chapter 1 for the taxable year which includes such month.

“(3) PAYMENT OF PENALTY.—If an individual with respect to whom a penalty is imposed by this section for any month—

“(A) is a dependent (as defined in section 152) of another taxpayer for the other taxpayer's taxable year including such month, such other taxpayer shall be liable for such penalty, or

“(B) files a joint return for the taxable year including such month, such individual and the spouse of such individual shall be jointly liable for such penalty.

“(c) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—The penalty determined under this subsection for any month with respect to any individual is an amount equal to  $\frac{1}{12}$  of the applicable dollar amount for the calendar year.

“(2) DOLLAR LIMITATION.—The amount of the penalty imposed by this section on any taxpayer for any taxable year with respect to all individuals for whom the taxpayer is liable under subsection (b)(3) shall not exceed an amount equal to 300 percent the applicable dollar amount (determined without regard to paragraph (3)(C)) for the calendar year with or within which the taxable year ends.

“(3) APPLICABLE DOLLAR AMOUNT.—For purposes of paragraph (1)—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the applicable dollar amount is \$750.

“(B) PHASE IN.—The applicable dollar amount is \$95 for 2014 and \$350 for 2015.

“(C) SPECIAL RULE FOR INDIVIDUALS UNDER AGE 18.—If an applicable individual has not attained the age of 18 as of the beginning of a month, the applicable dollar amount with respect to such individual for the month shall be equal to one-half of the applicable dollar amount for the calendar year in which the month occurs.

“(D) INDEXING OF AMOUNT.—In the case of any calendar year beginning after 2016, the applicable dollar amount shall be equal to \$750, increased by an amount equal to—

“(i) \$750, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2015’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

“(4) TERMS RELATING TO INCOME AND FAMILIES.—For purposes of this section—

“(A) FAMILY SIZE.—The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

“(B) HOUSEHOLD INCOME.—The term ‘household income’ means, with respect to any tax-

payer for any taxable year, an amount equal to the sum of—

“(i) the modified gross income of the taxpayer, plus

“(ii) the aggregate modified gross incomes of all other individuals who—

“(I) were taken into account in determining the taxpayer's family size under paragraph (1), and

“(II) were required to file a return of tax imposed by section 1 for the taxable year.

“(C) MODIFIED GROSS INCOME.—The term ‘modified gross income’ means gross income—

“(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

“(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

“(iii) determined without regard to sections 911, 931, and 933.

“(D) POVERTY LINE.—

“(i) IN GENERAL.—The term ‘poverty line’ has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

“(ii) POVERTY LINE USED.—In the case of any taxable year ending with or within a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of such calendar year.

“(d) APPLICABLE INDIVIDUAL.—For purposes of this section—

“(1) IN GENERAL.—The term ‘applicable individual’ means, with respect to any month, an individual other than an individual described in paragraph (2), (3), or (4).

“(2) RELIGIOUS EXEMPTIONS.—

“(A) RELIGIOUS CONSCIENCE EXEMPTION.—Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act which certifies that such individual is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section.

“(B) HEALTH CARE SHARING MINISTRY.—

“(i) IN GENERAL.—Such term shall not include any individual for any month if such individual is a member of a health care sharing ministry for the month.

“(ii) HEALTH CARE SHARING MINISTRY.—The term ‘health care sharing ministry’ means an organization—

“(I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),

“(II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,

“(III) members of which retain membership even after they develop a medical condition,

“(IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and

“(V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

“(3) INDIVIDUALS NOT LAWFULLY PRESENT.—Such term shall not include an individual for

any month if for the month the individual is not a citizen or national of the United States or an alien lawfully present in the United States.

“(4) INCARCERATED INDIVIDUALS.—Such term shall not include an individual for any month if for the month the individual is incarcerated, other than incarceration pending the disposition of charges.

“(e) EXEMPTIONS.—No penalty shall be imposed under subsection (a) with respect to—

“(1) INDIVIDUALS WHO CANNOT AFFORD COVERAGE.—

“(A) IN GENERAL.—Any applicable individual for any month if the applicable individual's required contribution (determined on an annual basis) for coverage for the month exceeds 8 percent of such individual's household income for the taxable year described in section 1412(b)(1)(B) of the Patient Protection and Affordable Care Act. For purposes of applying this subparagraph, the taxpayer's household income shall be increased by any exclusion from gross income for any portion of the required contribution made through a salary reduction arrangement.

“(B) REQUIRED CONTRIBUTION.—For purposes of this paragraph, the term ‘required contribution’ means—

“(i) in the case of an individual eligible to purchase minimum essential coverage consisting of coverage through an eligible-employer-sponsored plan, the portion of the annual premium which would be paid by the individual (without regard to whether paid through salary reduction or otherwise) for self-only coverage, or

“(ii) in the case of an individual eligible only to purchase minimum essential coverage described in subsection (f)(1)(C), the annual premium for the lowest cost bronze plan available in the individual market through the Exchange in the State in the rating area in which the individual resides (without regard to whether the individual purchased a qualified health plan through the Exchange), reduced by the amount of the credit allowable under section 36B for the taxable year (determined as if the individual was covered by a qualified health plan offered through the Exchange for the entire taxable year).

“(C) SPECIAL RULES FOR INDIVIDUALS RELATED TO EMPLOYEES.—For purposes of subparagraph (B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination shall be made by reference to the affordability of the coverage to the employee.

“(D) INDEXING.—In the case of plan years beginning in any calendar year after 2014, subparagraph (A) shall be applied by substituting for ‘8 percent’ the percentage the Secretary of Health and Human Services determines reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.

“(2) TAXPAYERS WITH INCOME UNDER 100 PERCENT OF POVERTY LINE.—Any applicable individual for any month during a calendar year if the individual's household income for the taxable year described in section 1412(b)(1)(B) of the Patient Protection and Affordable Care Act is less than 100 percent of the poverty line for the size of the family involved (determined in the same manner as under subsection (b)(4)).

“(3) MEMBERS OF INDIAN TRIBES.—Any applicable individual for any month during which the individual is a member of an Indian tribe (as defined in section 45A(c)(6)).

“(4) MONTHS DURING SHORT COVERAGE GAPS.—

“(A) IN GENERAL.—Any month the last day of which occurred during a period in which the applicable individual was not covered by minimum essential coverage for a continuous period of less than 3 months.

“(B) SPECIAL RULES.—For purposes of applying this paragraph—

“(i) the length of a continuous period shall be determined without regard to the calendar years in which months in such period occur,

“(ii) if a continuous period is greater than the period allowed under subparagraph (A), no exception shall be provided under this paragraph for any month in the period, and

“(iii) if there is more than 1 continuous period described in subparagraph (A) covering months in a calendar year, the exception provided by this paragraph shall only apply to months in the first of such periods.

The Secretary shall prescribe rules for the collection of the penalty imposed by this section in cases where continuous periods include months in more than 1 taxable year.

“(5) HARDSHIPS.—Any applicable individual who for any month is determined by the Secretary of Health and Human Services under section 1311(d)(4)(H) to have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.

“(f) MINIMUM ESSENTIAL COVERAGE.—For purposes of this section—

“(1) IN GENERAL.—The term ‘minimum essential coverage’ means any of the following:

“(A) GOVERNMENT SPONSORED PROGRAMS.—Coverage under—

“(i) the Medicare program under part A of title XVIII of the Social Security Act,

“(ii) the Medicaid program under title XIX of the Social Security Act,

“(iii) the CHIP program under title XXI of the Social Security Act,

“(iv) the TRICARE for Life program,

“(v) the veteran's health care program under chapter 17 of title 38, United States Code, or

“(vi) a health plan under section 2504(e) of title 22, United States Code (relating to Peace Corps volunteers).

“(B) EMPLOYER-SPONSORED PLAN.—Coverage under an eligible employer-sponsored plan.

“(C) PLANS IN THE INDIVIDUAL MARKET.—Coverage under a health plan offered in the individual market within a State.

“(D) GRANDFATHERED HEALTH PLAN.—Coverage under a grandfathered health plan.

“(E) OTHER COVERAGE.—Such other health benefits coverage, such as a State health benefits risk pool, as the Secretary of Health and Human Services, in coordination with the Secretary, recognizes for purposes of this subsection.

“(2) ELIGIBLE EMPLOYER-SPONSORED PLAN.—The term ‘eligible employer-sponsored plan’ means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is—

“(A) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act), or

“(B) any other plan or coverage offered in the small or large group market within a State.

Such term shall include a grandfathered health plan described in paragraph (1)(D) offered in a group market.

“(3) EXCEPTED BENEFITS NOT TREATED AS MINIMUM ESSENTIAL COVERAGE.—The term ‘minimum essential coverage’ shall not include health insurance coverage which consists of coverage of excepted benefits—

“(A) described in paragraph (1) of subsection (c) of section 2791 of the Public Health Service Act; or

“(B) described in paragraph (2), (3), or (4) of such subsection if the benefits are provided under a separate policy, certificate, or contract of insurance.

“(4) INDIVIDUALS RESIDING OUTSIDE UNITED STATES OR RESIDENTS OF TERRITORIES.—Any applicable individual shall be treated as having minimum essential coverage for any month—

“(A) if such month occurs during any period described in subparagraph (A) or (B) of section 911(d)(1) which is applicable to the individual, or

“(B) if such individual is a bona fide resident of any possession of the United States (as determined under section 937(a)) for such month.

“(5) INSURANCE-RELATED TERMS.—Any term used in this section which is also used in title I of the Patient Protection and Affordable Care Act shall have the same meaning as when used in such title.

“(g) ADMINISTRATION AND PROCEDURE.—

“(1) IN GENERAL.—The penalty provided by this section shall be paid upon notice and demand by the Secretary, and except as provided in paragraph (2), shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

“(2) SPECIAL RULES.—Notwithstanding any other provision of law—

“(A) WAIVER OF CRIMINAL PENALTIES.—In the case of any failure by a taxpayer to timely pay any penalty imposed by this section, such taxpayer shall not be subject to any criminal prosecution or penalty with respect to such failure.

“(B) LIMITATIONS ON LIENS AND LEVIES.—The Secretary shall not—

“(i) file notice of lien with respect to any property of a taxpayer by reason of any failure to pay the penalty imposed by this section, or

“(ii) levy on any such property with respect to such failure.”.

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle D of the Internal Revenue Code of 1986 is amended by inserting after the item relating to chapter 47 the following new item:

“CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2013.

Mr. GRASSLEY. The kicker here is that CBO has told Congress that roughly one-half of those Americans who will pay this tax are individuals between 100 and 300 percent of poverty. These folks earn less than \$250,000 a year. I see the light at the end of the tunnel that this tax increase express is going through. Unfortunately, that light at the end of the tunnel is the tax increase express.

We can derail the tax increase express if we want to.

That is why today I am supporting Senator CRAPO's motion to commit the Reid amendment to the Senate Finance Committee. Senator CRAPO's motion would require the Finance Committee report a bill back to the Senate that does not include tax increases, fees, and penalties included in the Reid bill.

Why should my Democratic friends vote in favor of the motion? Because

they shouldn't want to bear the fallout of legislation that was rushed through Congress as the economic stimulus package was back in February. They shouldn't want to tell their constituents they voted in favor of a bill that increased their premiums. They shouldn't want to vote for a bill that raises taxes on many, only to provide benefit for a few. They shouldn't want to break President Obama's pledge not to tax people making less than \$250,000 a year.

What my friends should want is real health care reform, the kind of reform that has broad bipartisan support. I have consistently said that if Congress wants to restructure one-sixth of the economy, it ought to be done on a bipartisan basis, and that is not one or two Republicans voting with Democrats. That is not happening around here on a bipartisan basis. We are debating this 2,074-page bill, a partisan product, a bill that was cobbled together by the Democratic leadership, a bill that has not received approval of the Senate Finance Committee.

I ask my Democratic friends to stop this process foul right now. Vote in favor of Senator CRAPO's motion so we can do health care reform in the right way: on a bipartisan basis, in a transparent and open way, so that the American public can understand what we are doing; so the American public can be a part of the process; so that we can find a way to reform our health care system without burdening our constituents with these higher taxes, fees, and penalties.

Let's reduce the out-of-control spending in the Reid amendment and find savings within the health care system. Let's derail the tax increase express before it steamrolls over hard-working Americans and discourages employment, particularly employment in small business, where 70 percent of the new jobs are created. The taxes, fees, and penalties don't need to be the fuel of this locomotive fire.

I ask all of my colleagues to support Senator CRAPO's motion to commit the Reid bill to the Finance Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, the amendment we are now considering is an amendment I have offered that deals with drug importation; that is, the importation of prescription drugs from other countries. One might ask the question: Well, why would we want to import drugs from other countries? FDA-approved drugs are made all over the world and they are shipped all over the world; again, FDA-approved drugs, approved by our Food and Drug Administration, produced in plants that are inspected by our Food and Drug Administration. The difference is—the only difference is—when they are shipped around the world, the Amer-

ican consumer is charged the highest prices in the world by far.

Here is an example of the drug Lipitor. There are plenty of examples and I will go through a number of them today, but this is an example of Lipitor. For an equivalent amount of Lipitor, 20 milligram tablets, the U.S. consumer pays \$125, the British pay \$40, the Spanish pay \$32, the Canadians pay \$33, the Germans pay \$48. We are charged the highest prices in the world for Lipitor. Lipitor, by the way, is the most popular cholesterol-lowering drug. I have a couple of empty bottles in the desk drawer here that demonstrates this drug was produced in Ireland. It was sent all around the world. The same pill put in the same bottle made by the same company, approved by our Food and Drug Administration, this was sent to Canada, this was sent to the United States. The difference? Well, the American consumer was allowed to pay three times as much as the Canadian consumer. I shouldn't say "allowed," I should say forced. But it is not just United States versus Canada. As we can see, it is United States versus every other country.

The question is, Should that be the case? Should the American consumer be charged the highest prices in the world? My answer to that is no. Why is it the case that we are charged the highest prices in the world? Because we are the only country in which there is a special little law that prevents our citizens from accessing that FDA-approved drug from wherever it is sold at the most advantageous price. We have a provision in law that says the American people don't have the freedom to import a prescription drug, an FDA-approved drug that they find for half the price or 20 percent of the price in some other country. I say, give the American people the freedom. I hear so much discussion on the floor of the Senate about freedom. This is the ultimate freedom: the freedom of the American people to access those prescription drugs that are sold virtually everywhere else, brand-name prescription drugs at the fraction of the price.

I have examples of other prescription drugs as well to show you. It is not just Lipitor, although Lipitor is the most popular cholesterol-lowering drug.

This is Plavix. Plavix is an anti-coagulant. You will see that we pay higher than all of these countries by far; more than double what the British pay, more than double what the Spanish pay.

This is Nexium. If you are someone who has ulcers and you are taking Nexium, for an equivalent amount of the same drug, Nexium, you are charged \$424 if you are an American citizen, \$40 for the British, \$36 for the Spanish, \$37 for the Germans, \$67 for the French. The American consumer, trying to control their condition of ul-

cers, pays \$424—10 times the amount of money that others are paying for the identical drug—10 times.

This kind of what I believe is gouging—that is, a pricing strategy that gouges the American consumer—can largely be resolved by the amendment I have offered. It removes that little sweetheart impediment in law and says to the American people: You may import prescription drugs that are FDA-approved from registered enterprises in other countries. We specifically delineate which countries those are—there are a handful of them—that have a nearly identical drug approval process that we have in our country. Identical. We also put in this amendment unbelievable safety provisions dealing with pedigree and batch lots and tracers that don't exist now in our domestic drug supply, let alone importation.

So if we were allowing the American people to do this, the Congressional Budget Office says my amendment will save \$19 billion—\$19 billion—for the Federal Government over the next 10 years, but about somewhere around \$80 billion for American consumers above that. That is a pretty big savings.

Here is another chart that shows what has happened in addition to the fact that we are charged the highest drug prices in the world. What has happened in recent months, in 2009, is that brand-name prescription drugs have increased in price over 9 percent, at a time when there is virtually no inflation. For Enbrel, for arthritis, you get to pay 12 percent more; for Singulair, 12 percent more; and for Boniva, for osteoporosis, by the way, you are paying 18 percent more just this year. That is what is happening. There is nothing in any of the health care plans considered by the Senate or the House that addresses the escalating price of prescription drugs.

There are a whole lot of folks in this country who are not senior citizens and are taking drugs to manage their disease. They may take cholesterol-lowering medicine or medicine to lower their blood pressure. They manage their health issues, and they don't have to go to a hospital because they are doing the right things. They are doing it with pharmaceuticals. The problem is, pharmaceutical prices are going up, up, up, way up above what other people in the world are paying for the identical drugs. I am saying it is just not fair. The issue is not that the pharmaceutical industry is a bad one or that they are infested with bad companies. I just think they have bad pricing policies. They are able to, and therefore they do, charge the American people, by far, the highest prices in the world.

I wish to talk about a couple of important issues with respect to this issue of giving the American people the freedom to access or purchase that

FDA-approved drug in selected countries in which the drug safety regulatory system is identical to ours, which is in our bill. And our bill includes, as I said, the establishment of pedigrees for batch lots and tracers that don't exist today for our drug supply.

Some say and allege that you cannot do this safely, that it causes all kinds of problems with counterfeiting and so on. The fact is, the Europeans have been doing it safely for 20 years. For over two decades, in Europe, under what is called parallel trading, if you are a German and want to buy a prescription drug in Spain, you can do it through the parallel trading system. If you are in Italy and you want to buy a prescription drug from France, there is no problem, you can do it. They have done that safely for a long time. To suggest that we don't have the skill and capability to do what the Europeans have been doing routinely for 20 years is, in my judgment, short-changing our country and certainly our consumers. I think we will, however, have people allege again that this is risky, it is just risky.

I would like to make a point about risk because I want to demonstrate something that I think most people don't know. Forty percent of the active ingredients of our existing prescription drugs come from China and India. Again, 40 percent of those active ingredients come from China and India and in most instances from areas that have never been inspected. My amendment doesn't allow drugs to be imported into this country from China or India. I am talking about the ingredients the pharmaceutical industry acquires with which to make their drugs. We don't allow drugs to be imported from China or India as a matter of this amendment; only FDA-approved drugs from FDA-inspected plants in Canada, the European countries, Japan, New Zealand, or Australia. That is all. Why? Because they have similar drug safety standards. That is the basis on which we determine how importation could work safely.

I wish to describe a recent scandal that illustrates the double standard some want to apply to this question. The scandal was about a drug called Heparin, a blood thinner that is commonly used by dialysis patients, which was linked to more than 62 deaths last year. Heparin was ultimately pulled from the market. According to Baxter, which markets Heparin in the United States, the allergic reactions to Heparin that caused the deaths appear to be caused by a contaminant added in place of the active ingredient in Heparin somewhere during the manufacturing process, most likely in China.

The Wall Street Journal did a very important story on the Heparin contamination. They reported that more than half of the world's Heparin gets

its start in China's poorly regulated supply chain. This is what the Wall Street Journal, after its investigation, concluded:

More than half of the world's Heparin, the main ingredient in this widely used anti-clotting medicine, gets its start in China's totally unregulated supply chain.

The Wall Street Journal published a series of pictures that I want to show—photographs of the intestine encasing factory which processes pig intestines used to make Heparin. I want to show some photographs that came from the Wall Street Journal. This is a photograph of a facility, and that is the outside. Here is a photograph of someone in the facility who is stirring a rusty vat full of Heparin ingredients with a tree branch. So this is the processing of Heparin from pig intestines in a facility in China, in which a worker is stirring this rusty vat with a tree branch. Are the ingredients that are used to make medicine with respect to blood clotting an issue?

When the industry and others say we can't have drug importation safely from Canada or Ireland, the point is that they are getting a lot of their ingredients from China and India. All you have to do is simply look at this and ask yourself whether the domestic drug supply with respect to that ingredient and those inputs has sufficient safety.

While the record keeping at these Chinese facilities makes it almost impossible to trace the contaminant from this particular factory, these pictures by the Wall Street Journal show the unsanitary conditions in which pig intestines are processed for that particular medicine. Again, by contrast, the amendment we offer would allow the importation of FDA-approved medicines only, with a chain of custody to ensure the drugs are handled properly. It gives the FDA the authority to inspect all facilities in the chain of custody.

The amendment mandates the use of anticounterfeiting technology to track and trace imported and domestic drugs to ensure product integrity. That doesn't exist today, but that is required in the amendment. The amendment also requires pharmacies and drug wholesalers to register with the FDA and to be subject to strict requirements to ensure the safety of imported medications, including frequent random inspections.

The amendment I am offering would ensure safety and, in fact, provide a much greater margin of safety than now exists with all of our drug supply. We need to have these improvements, in my judgment, because our own prescription drug distribution system is not as good as we think it is.

Here is an excellent example of something that took place in the United States. This is a picture of Mr. Tim Fagan, a young 16-year-old boy from

Long Island, NY. He received a liver transplant. He was prescribed a drug called Epogen to boost his red blood cells and fight the anemia after the operation. He received daily inspections, but his red blood cell count wasn't improving and the doctors could not figure out why, what was happening. After 2 months, his mom went to the local CVS pharmacy, where she was told: By the way, the Epogen your son has been taking may have been counterfeit.

Here is an example of counterfeiting in the existing domestic drug supply—counterfeiting in which this container held the counterfeit medicine and this one held the real medicine. There were subtle differences but not many. It turned out that the vial Tim was injecting was one-twentieth the strength of what he was supposed to be taking and what was disclosed on the label.

How did that happen? The weaker drug sells for \$22 a bottle, and the high-strength version goes for \$445 a bottle. Investigators found that 110,000 of the bogus bottles of that medicine reached the market in this country, and it is estimated that the criminals involved with that counterfeiting in that particular case made \$46 million.

The manufacturer of that drug, a company called Amgen, had distributed some of the product through a complicated network of secondary distributors. Although nobody knew it at the time, some of the Epogen that was eventually resold had most likely run through a cooler in the back of this strip club, a seedy Miami strip club called Playpen South.

Here is a chart that shows the distribution system this particular counterfeit drug went through. Again, this is not an import; this is a domestic drug. You can see this unbelievable and complicated distribution system. At the end of that, it traveled through strip clubs, through homes, and through trunks of cars without proper cooling.

This story was told in great detail by some outstanding investigation by Katherine Eban in a book called "Dangerous Doses."

The PRESIDING OFFICER. The majority's time has expired.

Mr. DORGAN. I ask unanimous consent to extend the period of debate until 3 p.m., with the time to be equally divided, with Senators permitted to speak therein for up to 10 minutes each, with no amendments in order during this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. I ask unanimous consent to speak for as much time as I may consume.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, again talking about the issue I just described:

They traveled through strip clubs. They traveled through homes. They traveled through trunks of cars, without proper cooling.

I am talking about a domestic counterfeit drug supply.

The amendment we are offering would fix this supply chain problem. It will require a pedigree for all drugs, not just those imported. It should have been done long ago. Some of us have been trying for a long time. It will allow us to track every single drug from where it is made to the pharmacy in which it is sold.

My amendment will require a set of anti-counterfeiting measures that are not in place now. If you think of it, I have a twenty-dollar bill here, and most people who have looked at them understand there is sophisticated and substantial anti-counterfeiting technology in new twenty-dollar bills. That doesn't exist today, by the way. That sophistication, that relentless search for the ability to detect counterfeiting does not exist today, regrettably, in our drug supply. The pedigree that we require, the tracing capability, the batch lots will make that a requirement on our entire drug supply.

This amendment will make our entire drug supply safer. It will allow Americans to benefit from lower prices—the prices at which these identical drugs are sold in other countries. In many cases they are half the price and in some cases much lower—10 percent of the price at which they are sold in this country.

I wish to talk for a moment about the issue of drug price inflation because the drug price—what is happening to us in this country is drug price inflation, the relentless increases year after year, which is the red line here on the chart. It is 9.3 percent this year. This yellow line is the rate of inflation. If we don't do anything to deal with the price of prescription drugs, we will have missed the opportunity to do something to help the American people.

Let me describe a few stories about the need for the amendment.

In my home State, in Aneta, ND, Maryanne wrote to me:

My husband has Parkinson's Disease, so he takes a drug called Mirapex. We have Medicare Part D, but in September, he ends up in the so-called donut hole. In 2008, when this happened, we paid \$106 for his medication. It increased to \$187 in October and November, \$198 in December. Now, in September 2009, the price was \$286—a \$180 increase in one year.

Mr. MCCAIN. Will the Senator yield for a question?

Mr. DORGAN. Yes.

Mr. MCCAIN. The Senator, I know, is aware and has talked about this. How does the Senator account for the fact that there is a nearly 9-percent increase in the cost of pharmaceutical drugs, while the consumer price index this year has gone down 1.3 percent?

I understand this is the highest increase in the history, or in most recent years, in the cost of prescription drugs. What is the explanation between the divergence of those two lines?

Mr. DORGAN. The explanation, I suppose, is probably better addressed to the pharmaceutical industry of how and why do they increase these prices this way. My guess is they do it because they can.

The fact is, the cost-of-living index—the inflation rate is the yellow line. The price of prescription drugs is the red line.

Mr. MCCAIN. Would that have anything to do with the anticipation of incoming reductions or reductions in the increase of costs of pharmaceuticals?

Mr. DORGAN. I say to the Senator from Arizona, my expectation is the pharmaceutical industry has said this is the time to increase these prices. The most important element is there is no restraint. No one has any capability of restraining them. The only way you would provide restraint on this is if you said to the American consumer: You know what. You don't have to buy it from these people at these prices because it is sold in virtually every other country at half the price. If we say to the American people, we will give them the freedom to access that drug elsewhere, I think quickly the pharmaceutical industry would not be able to impose those price increases because then you would have competition. Freedom equals competition, in my judgment, on this issue.

Mr. MCCAIN. May I ask the Senator another question. We understand you can buy lettuce from overseas. You can buy many other products from overseas. You can buy dairy products. You can buy almost any item except perhaps prescription drugs. Yet the Canadians, in particular, as well as the countries that are included in the Senator's amendment, all adhere to the same standards or higher standards than the United States of America does.

Now I understand one of the Senators—not the Senator from North Dakota—has received a letter saying this is still a problem.

I don't get it. Maybe the Senator from North Dakota can explain it a little better.

Mr. DORGAN. I say to the Senator from Arizona, there is not a safety issue here. To the extent there is any safety issue, it is that we intend to increase the safety of both domestic supply of prescription drugs and the imported prescription drugs because the fact is, there is nothing at this point dealing with batch lots and pedigrees and tracing capability. That does not exist at this point. We will insist on it in this amendment.

For anybody to suggest that somehow we are going to end up with prescription drug products that are less

safe, that is just not the fact. As I indicated before the Senator came to the floor, Europe has been doing this for 20 years in something called parallel trading. For 20 years, they have done it. If you are in Germany and want to buy a prescription drug that is approved, you can. If you are in Italy and want to buy it from France, you can. They do it successfully.

I do not believe anybody should tell us we are not capable of doing what the Europeans have done for 20 years, and that is giving people the freedom to access prescription drugs where they are sold at a better price.

Mr. MCCAIN. May I ask the Senator another question. Isn't it true a letter was written to one of our colleagues from the Administrator of the FDA, the organization that would basically make sure any product that goes to American consumers along these lines, that go through that bureaucracy, said it would require a significant amount of assets and resources?

I have since been told there are 11,000 employees of that bureaucracy. I wonder what he thinks about that argument; and, again, was the Senator from North Dakota informed about this position, which, by the way, is the same position as the previous administration?

Mr. DORGAN. Madam President, the Senator from Arizona is correct. There was a letter from the Food and Drug Administration. The fact is, we have seen this over the years. They say: We don't have the resources or it will pose more risk.

The fact is, this amendment provides the resources for them because those who are going to register to ship FDA-approved drugs into this country at a better price are going to have to pay a fee. The people who are selling will pay a fee, and those pharmacies and others in our country that will be receiving them will also pay a fee.

Mr. MCCAIN. So it would require no additional funding from the taxpayers.

Mr. DORGAN. No additional funding from the taxpayers at all. Those who decide they are going to offer these lower price prescription drugs would be paying a fee for the purpose of being able to do that. This is not a taxpayer-funded issue at all. It will provide the additional resources and pay for those resources without asking the taxpayers to come up with the money.

Mr. MCCAIN. Do these countries that are included in the Senator's amendment—do we have absolute assurance, can we look at the American people and say: Those countries and the agreements we would have with them, you can have products that are safe, you can safely buy, and it would not pose any hazard to anyone's health?

Mr. DORGAN. The countries that are involved in this amendment—and they are limited—are countries that have nearly identical drug safety standards



to our country. These are countries that are accessing the same drugs.

I just mentioned—let me do it again—two bottles of medicine. They are empty, obviously. Both of these bottles contain Lipitor. Most of my colleagues know what Lipitor is. This was made by an American company in Ireland and then shipped all over the world. This little bottle was shipped to the United States. This little bottle was shipped to Canada. Same bottle. One was blue, one has red in the label. Same bottle, same company, inspected by the FDA. What is the difference? The price.

The American consumer is told: Guess what you get to do. You get to pay almost triple. Why? And it is not just the American consumer, if I can hold up a chart that shows two drugs—one is Nexium. This is advertised substantially. Nexium is an example. I also have one on Lipitor. Here is the price for Nexium.

Do you think the pharmaceutical industry is selling Nexium at \$37 for the equivalent quantity in Germany and losing money? I don't think they are losing money at that. Instead of \$37, they charge the American consumer \$424.

My point is my beef with the industry is their pricing policy.

Mr. MCCAIN. Wouldn't the pharmaceutical companies say it costs \$424 because we have to absorb the cost of all the research that went into developing Nexium?

Mr. DORGAN. I would say that is also always raised. They say: If you don't allow us to charge the American consumers the highest prices in the world, we don't get to do the research and development that produces the next new miracle drug.

Most of the recent studies have shown that the pharmaceutical industry spends more money on promotion, marketing, and advertising than they do on research. I want them to do research. But there is one other piece. The Congress gave, without my support, a proposal that said those American companies that have money overseas should bring it back and we will let them pay a lower tax rate. Guess which industry was one of the largest industries with repatriated profits from abroad? The pharmaceutical industry. If they are making big profits abroad and charging lower prices to those consumers abroad, why can't the American people have access to those prices?

It is not because they are going to lose money because they made a lot of money abroad. That is why they repatriated at a lower rate.

Mr. MCCAIN. Do the seniors from his State and other citizens from his State travel to Canada and buy these prescription drugs because they know and are confident that they are getting, at a much lower price, the same product?

Unfortunately, citizens in my State have to go south, and it is unfortunate when they have to do that because we do have a much larger problem there, I am sorry to say.

Mr. DORGAN. Madam President, the citizens from North Dakota often have to go to Canada to buy a prescription drug. I have told the story about the old codger who was sitting on a hay bale in a farmyard when I had a town meeting. He was nibbling on a piece of straw. He said to me: My wife—he was about 80 years old—my wife has been fighting breast cancer for 3 years. He said: The only way we could pay for our prescription drugs was to drive to Canada once every 3 months because when you buy tamoxifen in Canada, you pay like one-tenth the price or one-fifth of the price you pay in the United States. He said: We did that every 3 months so my wife could keep fighting breast cancer.

Of course they do that. What is happening is consumers are allowed to bring back as an informal strategy about 90 days' worth of supply of prescription drugs for personal use only. Most American consumers cannot do that. They do not live anywhere close to a border.

The question is, Can the rest of the American people have access to the same prescription drugs sold at a fraction of the price?

Mr. MCCAIN. May I ask the Senator, isn't it true the Congressional Budget Office has determined that this measure of the Senator from North Dakota, this modest measure of only countries that are of the highest level of quality of inspection, of all the standards that we have, would save the American consumer \$100 billion; is that true?

Mr. DORGAN. Madam President, the Congressional Budget office says it will save the Federal Government about \$19 billion, and then about another \$80 billion will be saved by the consumers. That is about \$100 billion, nearly \$100 billion in savings in total, \$19 billion of which will be saved by the Federal Government for its purchases, and the rest by the American consumers.

Mr. MCCAIN. Finally, I wish to ask the Senator, what is the basis of the argument against the Senator's amendment? What possible reason, frankly, except for the influence of a special interest in this, our Nation's Capitol?

Mr. DORGAN. I am not a very good advocate for the other side. If one were to ask what is the best argument opposed to my amendment, I would say there are not any arguments that are the best. There is a range of poor arguments or arguments that do not hold much water.

I started by saying I do not have a beef against the pharmaceutical industry. I want them to do well. I want them to be successful. I want them to keep finding and searching for miracle drugs. By the way, much of the work

they do comes from the National Institutes of Health and the massive investments we make in health. I want them all to be successful.

My beef with them is a pricing strategy that says to the American people: Here is what you pay, and you can do nothing about it because we decided that is what you pay, and we are going to offer everything around the world at lower prices. That is my beef. This is a pricing issue. They are wrong about it.

The way to correct it is to give the American people a little bit of freedom. We will save money for the government and save money for the American people.

I want to raise one additional point while the Senator is here. If the Senator from Arizona is like me, when I am brushing my teeth in the morning, I have a television blaring and I hear all these ads: Go ask the doctor if the purple pill is right for you. I haven't the foggiest idea what a purple pill will do for me. The ads are so compelling you almost feel: I have to get out of here. I have to stop brushing my teeth, go get a phone, and call my doctor to see if my life might be improved by taking a purple pill.

I read a whole series of advertisements:

Does your restless mind keep you from sleeping? Do you lie awake exhausted? Maybe it's time to ask if Lunesta is right for you. Ask your doctor how to get 7 nights of Lunesta free . . .

I read a bunch of these. I will not now. Bladder problems, Flomax, Ambien—you name it and they advertise it all day and every morning. I say knock off a little of that. Give us some better prices. God bless you for doing all you do, I would say to the industry, but give us fair prices. Give fair prices to the American consumer and knock off a little of the advertising. The advertising is only for a product that only a doctor can prescribe. You cannot get this product unless a doctor thinks you need it. Stop asking me if the purple pill is right for me, asking me to ask a doctor if the purple pill is right for Senator MCCAIN. Knock it off.

Mr. MCCAIN. Mr. President, I ask unanimous consent to make an additional comment.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

Mr. MCCAIN. I thank the Senator from North Dakota who has been pursuing this issue for a number of years. I believe we are on the verge of success.

I appreciate his eloquence, I appreciate his passion, but most of all, on behalf of the citizens of my State who can't get up to Canada, who now are experiencing unprecedented economic difficulties, and who need these life-saving prescription drugs—many of them senior citizens—I just wish to say thank you for your advocacy.

I think you have made an eloquent case, and I hope my colleagues have



paid attention and will vote in the affirmative for the Senator's amendment today.

Mr. DORGAN. Mr. President, let me say that Senator McCain has been a part of this effort for a long time. It is interesting, with all the action on floor of the Senate in recent weeks, this is one of the few examples of a significant policy that is bipartisan. We have Republicans and Democrats—over 30 cosponsors—who have worked with us to make certain we can do this, do it safely, and give the American people the opportunity they deserve. This is very bipartisan. I appreciate that a lot.

I wish to say, the National Federation of Independent Businesses supports this; the AARP supports this. We have a long list of organizations that are strong supporters of this amendment, and so I hope, today, perhaps at last—at long last, after 8 or 10 years—we might finally achieve a breakthrough and get this through the Senate.

I have said previously that the pharmaceutical industry is a formidable opponent. I understand that. We have had difficulty getting this in a piece of legislation to get it signed and give the American people freedom and give them fair pricing. When we do this—Senator McCain, myself, and others—it is suggested that somehow we have no regard for this industry. That is not the case at all. It just is not. We have no regard for a pricing policy, however, that we believe is unfair to the American people. It has been that way for too long—a long time too long. Perhaps today—with the vote on this amendment, which I expect later this afternoon—will be the first step in getting that changed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I believe if I am to speak for more than 10 minutes I need to ask unanimous consent. If that is correct, I ask unanimous consent to speak for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I wish to speak to the Crapo motion—an amendment that, hopefully, we will be voting on a little later today—and I urge my colleagues to support the motion of the Senator from Idaho.

This is about jobs and it is about taxes. I think one thing Americans don't expect out of this legislation is that they are going to have a pay a lot of taxes and that jobs are going to be killed rather than created. The President is talking about creating more jobs. Everyone in America is focused on putting people back to work, ending this recession, and bringing unemployment down so we can get jobs and go back to work. One of the problems with this bill is it kills jobs. It kills job creation. One of the ways it does that is

through the many new taxes and mandates it imposes.

Naturally, we want to be sure that whatever we do, we don't harm our economy or job creation, but this \$2.5 trillion legislation is filled with new taxes and mandates that will ultimately be borne by small businesses and the American workers. I will talk about just three.

First, a new employer mandate that says that employers have to provide insurance to their employees or face a penalty. This would hurt low-income workers especially, according to a Harvard economist, and I will be talking about that.

Second, there is a new Medicare payroll tax. Incidentally, the revenue raised doesn't go back to Medicare. It would be nice if we could help with the Medicare solvency, but this too threatens the creation of jobs, particularly in small businesses, because it is a direct tax on hiring more people.

Finally, new taxes on the health care industry could undermine its ongoing job creation gains. By the way, it is the only industry to have gained jobs since the start of the recession and this legislation will actually cause job losses.

I will describe all three of these. First, the employer mandate. The bill imposes a requirement—a costly new mandate—on employers that will have the perverse impact of actually hurting employees, especially low-cost employees. How so? Any employer with more than 50 employees who does not offer health care coverage would be required to pay an assessment for each employee who receives a tax credit for purchasing coverage through a newly created exchange. Those are folks in the lower income brackets who qualify for tax credits. So this becomes a direct tax on hiring people.

According to the Center on Budget and Policy Priorities,

... the particular employee provision in the Finance Committee bill would pose significant problems by imposing a tax on employers for hiring people from low- and moderate-income families who would qualify for subsidies in the new health insurance exchanges, it would discourage firms from hiring such individuals, and would favor the hiring—for the same jobs—of people who don't qualify for the subsidies (primarily people from families at higher income levels.)

To conclude:

It would [also] provide an incentive for employers to convert full-time workers (i.e., workers employed at least 30 hours per week) to part-time workers.

So here you have it—a mandate in the bill that would directly impact the hiring of low-income workers—precisely the opposite of what we want to be doing these days.

Harvard economist Kate Baicker examined the effect of an employer mandate similar to the one in the Reid bill. She estimated the cost of hiring a low-wage worker would rise by 33 percent—

or \$2 per hour on a worker earning \$6 per hour. Think about that. She concluded that 224,000 workers would lose their jobs as a result of a mandate with these costs.

In addition to all the other problems we have with growing unemployment, here is another one-quarter million people who would lose their jobs because of this bill. It makes no sense.

There was a recent letter sent to the two Senate leaders from the National Federation of Independent Businesses which states:

Mandates destroy job creation opportunities for employees. The job loss, whether through lost hiring or greater reliance on part-time employees, harms low-wage or entry-level workers the most.

That is exactly what the other study said. By the way, the NFIB is a non-profit, non-partisan organization, defining itself as the voice of small business. We are all familiar with the good work it does. I think it would know what is best for American business and workers.

The second way this bill imposes taxes and hurts workers is it actually creates a payroll tax; in other words, a tax on hiring people or keeping them on your payroll. It raises the Medicare payroll tax by 0.5 percent on small businesses with taxable receipts of \$200,000 a year or \$250,000 or more, if the small business employer filer is married.

Because many small businesses pay taxes at the individual level, imposing higher individual income taxes hurts these engines of job creation. The Joint Committee on Taxation recently estimated that one-third of the income that would be taxed under a similar House proposal comes from small businesses. Let us remember, as President Obama reminded us earlier this week, small businesses generated 65 percent of the job growth between 1993 and 2008 and represent about half the private sector employment of the United States.

So this huge potential engine for job creation is going to get whacked by the imposition of a new tax, which is a direct tax on the hiring or retaining of employees. The Joint Committee estimates that this increase in the Medicare tax would raise \$54 billion over the next 10 years. That is \$54 billion of resources that could have better been used in the private economy, in these small businesses, to expand job creation.

Each new tax dollar paid by these small businesses is one less dollar that could go toward the hiring of new employees or, for that matter, preventing layoffs or even giving raises to their existing employees.

A group of organizations recently told us in a letter—by the way, these are all organizations that represent small businesses in their communities—they oppose this bill because of

what it would do to these small businesses. I wish to read the names of the groups that represent these folks: the Associated Builders and Contractors, the Associated General Contractors, the International Food Service Distributors Association, the National Association of Manufacturers, the National Association of Wholesaler-Distributors, the National Retail Federation, the Small Business and Entrepreneurship Council, and the U.S. Chamber of Commerce.

Here is a telling quotation from their letter:

In order to finance part of its \$2.5 trillion price tag, H.R. 3590 imposes new taxes, fees, and penalties totaling nearly half a trillion dollars. This financial burden falls disproportionately on the backs of small business. Small firms are in desperate need of this precious capital for job creation, investment, and business.

That is exactly what President Obama said yesterday. We have to get more capital into the hands of these small businesses so they can either continue their businesses with their employees or, potentially at least, soon begin hiring more. Yet as this letter points out, this bill imposes taxes with a burden that falls disproportionately on the very firms we are trying to help.

In a November 19 statement, the National Federation of Independent Businesses said of the bill's impact on small businesses:

We oppose [the Reid bill] due to the amount of new taxes, the creation of new mandates, and the establishment of new entitlement programs. There is no doubt all these burdens will be paid for on the backs of small business. It is clear to us that, at the end of the day, the costs to small business more than outweigh the benefits they may have realized.

They go on:

The impact from these new taxes, a rich benefit package that is more costly than what they can afford today, a new government entitlement program, and a hard employer mandate equals disaster for small business.

They know what they are talking about. These are the folks whom we are depending upon to create jobs and we are punching them right in the stomach, right where it hurts, with respect to their ability to create these new jobs with the new taxes and mandates imposed in this bill.

Let me share a brief letter from one of my constituents. He is a small business owner in Tempe, AZ. His name is Justin Page. He would like to be able to grow his business, but the burdensome new taxes in this bill would force him to lay off workers and cut hours from his payroll. Here is what he says:

Dear Senator Kyl, As a long time Tempe and Arizona resident, who has been operating a small business for the past 19 years, I urge you to not vote for the healthcare bill as it is currently proposed and as recently passed by the House of Representatives. My business has taken a severe financial hit in the past 18 months with several employee

layoffs, reduced hours for current employees, heavier workloads, et cetera. My answer to increased health care costs and additional small business taxes is to lay more people off . . . not good for [my employees], and not good for me! But survival is my primary goal right now! Reform is necessary, but please do it in a bipartisan manner and within a timetable that allows for constructive debate. This is too important.

So small businesses have some very real concerns about this legislation and good reason to worry that they will be victims of its destructive policies. Obviously, it is not the kind of legislation small business owners or the American worker wants and, of course, not particularly in times of double-digit unemployment. We need to listen to the people out there who are actually creating jobs, who have to meet a payroll, balance a budget, and know what is necessary to run a successful small business. They are not happy with this legislation.

The third and final point is the new taxes on the health care industry, which of course get passed through to the people who ultimately have to buy insurance. Let me just discuss one—the medical device tax. This medical device tax is a tax on things that are used to treat us, to give us health care every day. The \$110 billion in new taxes on industries such as this—the pharmaceutical, the insurance, and medical device industries—is a direct pass-through in terms of what we will end up having to pay in insurance premiums.

For example, this medical device tax will be assessed against thousands of products, such as contact lenses, stethoscopes, hospital beds, artificial heart valves, and advanced diagnostic equipment. Why would you impose a tax on these things that help us? I could maybe see a tax against liquor or a tax against tobacco but a tax on things such as this—these advanced technologies that help us? Why do we want to make them more expensive? These have been invented so we can have an extension of our lives; so our families can have better health care.

We all know when you tax something, you get less of it. In fact, a UBS Investment Research paper recently confirmed:

If the plan passes as proposed and our estimates are correct, the initial years would be a financial challenge for medical device manufacturers, as the full industry fee becomes due before newly covered patients impact volumes.

What they are saying here is, first, before they can even begin to pass these costs on, it could kill this particular industry.

These taxes will hit smaller firms particularly hard since some of the smaller companies don't start out with a lot of profits. They rely almost entirely for domestic sales on their revenues.

I note my colleagues on the other side of the aisle, Senators KLOBUCHAR,

BAYH, FRANKEN, and in addition Senator LUGAR from this side of the aisle, recently sent a letter in which they said:

Independent estimates indicate that this tax could translate into an annual income tax surcharge of between 10 and 30 percent on medical device manufacturers.

Think about that, a 10- to 30-percent tax on folks who are inventing these kinds of things to help us.

These Senators go on in their letter:

This provision would harm economic development and health care innovation nationwide.

This was a letter to the chairman of the Finance Committee.

I know there some who argue that lost jobs in the private health care sector will be made up with new jobs in the government with health care bureaucrats here in Washington. Wonderful, I say.

That is not a good thing. We need jobs in the private sector. That should be our primary goal and that certainly is what President Obama was talking about yesterday when he talked about creating more jobs in the private sector.

In conclusion, I have described three ways in which this legislation through its mandates and its new taxes will cripple our ability to come back out of this recession. It will make it very difficult for us to retain, let alone hire, new employees.

All of us here in the Senate I know want to do what we can to bring down the current very high unemployment. It is obvious that this health care bill makes things worse, not better. At every turn its new taxes and mandates put us on the wrong course. I think it is very hard to justify support for this legislation that threatens job creation, especially job creation for low-income workers.

I urge my colleagues, when we vote on the Crapo motion here pretty soon, to consider its impact. It will enable at least people in the lower income levels to avoid the kind of taxes that are imposed here, one of which, for example, is the tax that IRS will enforce if you do not buy the insurance policy that the government, under this bill, will mandate that you buy. If you cannot afford the insurance the Government has, you have to buy it anyway. If you do not, we will impose a new tax on you, enforced by the IRS. The Crapo motion would say no, not so fast, IRS, we are going to protect folks from that new tax. That is why it is important to support the Crapo motion.

I urge my colleagues, even though I know we have had a lot of votes here where very few Democrats have supported Republican amendments, this is one which I hope all of us could support.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I rise in strong support of the amendment offered by Senator DORGAN. Frankly, this

amendment should be a no-brainer—it saves taxpayers and consumers money by bringing down prices for prescription drugs. I don't think American consumers should have to pay the highest prices in the world for prescription drugs, particularly when those prices keep going up.

The Congressional Budget Office has stated that brand-name drugs cost, on average, 35 to 55 percent less in other industrialized nations than they do in the United States. And the AARP released a study recently that found that the price of drugs most commonly used by seniors has risen faster than the general inflation rate every year since 2004. In 2007, the price spiked by 8.7 percent—three times the general inflation rate of 2.9 percent.

It is no wonder that Americans turn to Canada to buy more affordable, and entirely safe, prescription drugs. Americans are now importing more than \$1 billion in prescription drugs from Canada alone. Consumers would not go to such lengths to buy their medicines this way if they were not saving money.

Now, the drug industry has said that drug importation can't be done safely. I give PhRMA credit. They have gone to great lengths to scare the public. The reality is drug importation has occurred within European Union countries—called parallel trade—for the last 25 years. The pharmaceutical industry should know drug importation is safe. The industry has imported drugs and sold them in the U.S. for decades. One-quarter of the drugs consumed by Americans today are made in foreign manufacturing plants.

The Dorgan amendment includes a number of protections to ensure that imported drugs are safe—and certainly safer than the completely unregulated system we have today.

I don't need to remind my colleagues about the deficit hole we are in. Federal spending is one of the top concerns I hear about from my constituents—they want to know what we are doing to get our deficit under control. That is why I introduced legislation, the Control Spending Now Act, to propose concrete ways to bring down runaway government spending. And one of the proposals I included was Senator DORGAN's drug importation legislation, because it is such a commonsense and effective way to save the government tens of billions of dollars. I am pleased that the health care reform bill we are debating already includes three other proposals in my control spending bill, championed by Senator BINGAMAN and others, that would slash Federal spending on prescription drugs by billions of dollars.

With passage of the Dorgan amendment we can make it four.

We do a lot of things in Congress that leave our constituents scratching their heads. Now we have a chance to show

them we are listening to them, that we understand their concerns, and that we want to bring down Federal spending while ensuring the prescription drugs they need are more affordable. Again, that sounds like a no-brainer to me.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I ask unanimous consent that we extend the period for debate until 4 p.m. with the time equally divided, with Senators permitted to speak up to 10 minutes each, with no amendments in order during this period of time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, Americans across this country are facing the reality of an economy that is in trouble. The unemployment rate is now 10 percent. According to the Department of Labor's broadest measure, some 17.5 percent of Americans are without a job entirely or are underemployed.

We have shed 3½ million jobs since January of this year and the average work week is now down to 33 hours for the American worker. Americans are struggling to find good jobs and, because of that, they are having trouble making their mortgage payments. Fourteen percent of all mortgage loans, meaning 7.4 million households, were delinquent or in foreclosure in the last quarter. That is the highest number since the mortgage bankers industry began this survey in 1972.

Many economic indicators point toward a slow, unsteady and jobless recovery, and the American people know it. In a recent survey, 82 percent of Americans said our Nation's economic conditions are poor. In recent weeks, President Obama has convened a summit at the White House to discuss jobs and economic issues. He has given speeches to discuss proposals for job creation and economic recovery. There has even been discussion about spending additional billions of dollars on another economic stimulus bill.

Unfortunately, the President has not advocated for the single quickest and simplest way to promote economic growth. If the President wants to save jobs and grow the economy, all he needs to do is tell the majority leader and the Senate Democrats to scrap this \$2.5 trillion Reid health care reform bill and work it over, step by step, to get it right and to save costs.

Senator REID's prescription for our economic troubles is a \$2.5 trillion bill full of tax increases, higher health care costs, and \$500 billion in Medicare cuts. The Reid bill contains \$500 billion in new taxes. Primarily that is how it is being paid for—steal money from Medicare and tax people additionally. There

are new taxes on individuals, new taxes on small businesses, and new taxes on health care providers.

These new taxes will raise health care costs. They will be passed on to the individuals in the form of higher premiums. According to the Congressional Budget Office, the Reid bill will drive premiums up by 10 percent to 13 percent.

I know the other side likes to relate to those pieces of the bill that talk about—one section that brings it down by 7 percent and another one that brings it down by 7 percent, but they fail to notice that the bill actually raises it to 27 percent to begin with. When you subtract that out, it still winds up with a 10-percent to 13-percent increase.

Who gets taxed under the Reid bill? If you don't have a government-approved health insurance, you get taxed. Incidentally, we are going to tell you—Washington is going to tell you what the minimum requirement is. That will be higher than most people have for insurance at the present time. The government will tell you what you need and they will fine you if you do not agree.

The total amount of new taxes on uninsured Americans is \$8 billion. According to the Congressional Budget Office, half of the new taxes on the uninsured will be paid by families earning less than \$68,000 a year.

If you do not have insurance, you will get taxed. If you have insurance, you can get hit twice by new taxes in the Reid bill. First, new taxes on health care providers will be passed on to consumers in the form of higher premiums. Second, if the government bureaucrats decide your employer-sponsored insurance is too generous, you will get taxed for that too.

The Reid bill contains \$150 billion in new taxes on employer-sponsored health benefits. These new taxes on benefits fall disproportionately on middle-income Americans. According to the Joint Committee on Taxation, 73 percent of those hit with new taxes on benefits earn less than \$200,000—73 percent. That is a whole bunch of people down there in that category.

The Reid bill also contains new taxes on businesses that cannot afford to provide health insurance. Most employers do provide health insurance to their employees, but there are some who simply cannot afford to and stay in business. Senator REID's health care plan will mean they will have to pay \$28 billion in new taxes. These are the same businesses that are barely making it. These are the same businesses that are having to lay off workers to keep the company afloat, the same businesses that are cutting shifts to prevent further layoffs, and they are cutting wages to keep their employees on the payroll.

With our Nation's unemployment in double digits and millions more Americans worried about keeping their jobs and paying their bills, it is unthinkable to me that any Member of this body would support new taxes on businesses that are already struggling. These are the small businesses that absorb the extra employees that get laid off from the big businesses—and hopefully it is the small businesses that become the future big businesses.

In addition to the job-killing taxes, the Reid bill raises Medicare payroll taxes by \$50 billion. These will fall disproportionately on small businesses. Approximately one-third of America's small businesses will be hit with this tax increase. These are the same small businesses that employ 30 million Americans.

I have to say, when you talk about taxing the rich, we are also talking about taxing the owners of small business corporations, because the money flows right through to them, even though they have to put most of it back into the business in order to keep the business going.

Not only will small businesses see their taxes go up under the Reid bill, they will see their health insurance premiums go up as a result of new taxes on health care providers. Beginning in 2010—that is 3½ years before many of the health reforms go into effect—new fees will be imposed on health insurance companies. That is right now, 3½ years before the reforms go into effect. The Congressional Budget Office and the Joint Committee on Taxation have characterized these as excise taxes. They have also testified that these fees will be passed through to consumers in the form of higher premiums.

If you need prescription drugs, you get taxed. Beginning in 2010, new fees will be imposed on prescription drug manufacturers. Similar to the health insurer fee, CBO and Joint Tax say it will be more expensive to buy prescription drugs.

If you need a medical device, you get taxed. Medical device manufacturers will be subject to a 2½-percent excise tax on sales. Again, the Congressional Budget Office and Joint Tax have testified that this tax will increase the cost of medical devices. Just like prescription drug costs and health insurance, this new tax on devices will drive premiums up. If you have high out-of-pocket drug expenses, you will get taxed. A family will no longer be able to deduct medical expenses that exceed 7½ percent of their gross income as they can now. Instead, they can only deduct expenses that exceed 10 percent. In plain English, this proposal limits the tax deductions a family can take for medical expenses. For example, a family of four earning \$57,000 in 2013 would lose a tax deduction of \$1,425. A family of four earning \$92,000 in 2013 would lose a tax deduction of \$2,300.

Instead of working toward a bipartisan solution to our economic problems, Senator REID has brought a bill before us that spends \$2.5 trillion over 10 years, raises taxes on middle-class families and small businesses. I support health care reform, and I will continue to work to enact real reforms that lower the cost of health care. I cannot, however, support higher taxes that further jeopardize our economic recovery by punishing small businesses and raising health care costs for working families.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. How much time do I have allotted? I thought there was an agreement that I had a certain amount of time.

The PRESIDING OFFICER. The minority side has 46 minutes 59 seconds, with the 10-minute time limit therein.

Mr. BROWNBACK. I yield myself 10 minutes to speak on the Dorgan amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, the Senator from North Dakota is a strong, good, talented legislator. He has a good amendment, one I have looked at. It has been around for a long time. I have to rise in opposition to it.

I am ranking member on the Appropriations Subcommittee on Agriculture, Rural Development, and the Food and Drug Administration. The FDA is in the purview of our subcommittee, so I work on the issues of the FDA. If I may brag, the University of Kansas is one of the best pharmaceutical schools in the world and is often rated No. 1 as a pharmacy school. For anybody interested in that field of study or work, it is a good place to go. They are very concerned about what is in the Dorgan amendment.

The United States currently has one of the safest drug supply systems in the world that allows the Federal Food and Drug Administration to monitor and regulate the manufacture and distribution of approved medicines. The legal authority to import drugs already exists in this country. However, no HHS Secretary, Democrat or Republican, has been able to certify that the importation of prescription drugs from foreign nations is safe or will lead to cost savings. None have been able to.

The Dorgan amendment will allow for the importation of drugs from outside our current regulatory system, established and enforced by the FDA without certification from the Secretary of HHS or the Food and Drug Administration. Allowing drug importation from foreign nations could threaten public health and result in unsafe, unapproved, and counterfeit drugs being placed on pharmacy shelves in the United States.

I want to develop that thought. The FDA has been tasked with the respon-

sibility of safeguarding this country's prescription drug supply and has executed that responsibility quite well. But as this country and the Food and Drug Administration struggle to prevent the growing threat posed by imported, foreign-produced goods, as evidenced by recent failures to detect polluted products such as infant formula, pet food, and toothpaste, permitting the importation of drugs from foreign nations without the complete assurance from the FDA that it will not jeopardize public safety is irresponsible and threatens this Nation's safety and proven drug supply.

Toward that end, I ask unanimous consent that a letter that Senator CARPER received from the Health and Human Services agency, the FDA Director, be printed in the RECORD at the conclusion of my comments.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BROWNBACK. This letter states in particular:

We commend the sponsors for their efforts to include numerous protective measures in the bill that address the inherent risks of importing foreign products and other safety products relating to the distribution system of drugs within the U.S. However, as currently written, the resulting structure would be logistically challenging to implement and resource intensive. In addition, there are significant safety concerns related to allowing the importation of non-bioequivalent products, and safety issues related to confusion in distribution and labeling of foreign products and the domestic product that remain to be fully addressed in the amendment.

In other words, they don't think we can do this—importation, reimportation of drugs—without significant safety problems.

There has been an explosion of illegal drug counterfeiting occurring around the world. Emergence of a multibillion-dollar international black market has proven to this Senate, current and past HHS Secretaries, and the FDA that weakening our prescription drug regulatory framework would only increase the risk of life-threatening counterfeit, contaminated, or diluted prescription drugs entering our prescription drug supply that millions of Americans rely on and trust. Prescription drug counterfeiting has become a highly profitable criminal enterprise that has been taken up by international organized crime syndicates, rogue nations such as North Korea, Syria and Iran, and developing nations such as China and Pakistan that seek to exploit ineffective or weak counterfeit enforcement frameworks around the globe.

Criminals have realized that the production of counterfeit drugs is twice as profitable as the trafficking of illegal narcotics and comes with significantly less criminal penalties compared to those handed out for illegal drugs.

Due to these limited and minimal criminal penalties, global counterfeiting has grown into an epidemic that

reaches every country around the world. The World Health Organization estimates that tens of thousands of people are dying due to counterfeit HIV, diabetes, and tropical disease medicines. Unfortunately, in most counterfeit cases, it is not what is included in these fake drugs, it is what has been excluded that proves to be most harmful and deadly to patients. By taking counterfeit, diluted, or completely ineffective drugs, many patients fail to receive the important lifesaving medicines they need. It is just as dangerous for a person with high cholesterol to use a counterfeit drug that lacks the prescribed medicine as it is for a person to ingest a contaminated or even a poisonous pill. Due to this global counterfeit epidemic, two Secretaries of HHS, under both the Clinton and Bush administrations, have been unable to certify that the importation of prescription drugs will not pose a substantial risk to the health and safety of citizens within the United States.

Current Secretary Kathleen Sebelius, from Kansas, has committed to preventing a drug importation system in the United States until it can be proven that the safety standards of the imported drugs are "at or above American standards." The FDA doesn't believe they can get that done at this time.

Many have argued that parallel trade in Europe has proven drug importation across nations' borders has resulted in prescription cost savings and has not increased risks to consumers or general public health. However, these cost and safety assertions do not correctly reflect the European experience with drug importation through what is called parallel trading.

A study by the London School of Economics on drug importation costs concluded that savings from parallel imports benefit middlemen and third-party vendors who buy and resell the imported drugs and do not get passed on to the patients in the form of lower prices. They say this:

Although the overall number of parallel imports has continued to increase, healthcare stakeholders are realizing few of the expected savings . . . profits from parallel imports accrue mostly to the benefit of the third-party companies that buy and resell these medicines.

Furthermore, a report by the University of London School of Pharmacy on the safety of the parallel prescription drug trade stated this:

The United Kingdom is the most vulnerable in Europe to counterfeiting owing to the high level of "parallel importing."

Due to parallel trade, the Medicines and Health Care Regulatory Agency in the UK has issued 10 different recalls of counterfeit drugs in the past 5 years. Drugs recalled include prescriptions to treat schizophrenia, blood pressure, and prostate cancer. The most dis-

turbing fact of this counterfeit infiltration was that these drugs entered the United Kingdom through legitimate supply chains through parallel distribution trade, according to the MHRA, the regulator agency in the UK.

In other studies, the European Commission found that the prescription drug supply chain in Europe, which includes the former Eastern bloc countries such as Latvia, Slovakia, and Bulgaria, is increasingly targeted by international criminal counterfeiters.

The European Commission's Vice President, Gunter Verheugen, stated European parallel trade "[B]rings a considerable risk for the safety of the patients" and that the increase in counterfeit medicines "is a very serious threat to public health and can cost lives."

We don't want that happening to the United States, particularly with what we have seen in recent products coming in from China, not regulated under our system: things such as toothpaste, pet food, and then the problems we have here. Do we want that to happen in the drug system? No, we don't. We can't certify that we can keep these products safe.

As you can see, safety concerns and the lack of savings that may result from exposing this country to the potential risk created by the importation of drugs from outside our current safety system are real threats.

It is kind of interesting. In October 2004, then-Governor Rod Blagojevich of Illinois launched the I-SaveRx Program to allow residents in Illinois, and later Missouri, Vermont, Wisconsin, and Kansas, to purchase low-cost drugs from Canada. However, by 2006, the Illinois State auditor found that the program cost nearly \$1 million and was used by only about 3,700 people in Illinois and 267 residents of my State of Kansas.

Health and Human Services has concerns regarding the safety of importation. The Food and Drug Administration has concerns regarding the safety of importation. Given the opportunity to purchase Canadian prescription drugs, only 267 Kansans took that chance. We should not throw out the safety of our drug supply chain without safety assurances from this country's regulatory bodies.

I yield the floor.

#### EXHIBIT 1

DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION,

*Silver Spring, MD December 8, 2009.*

Hon. TOM CARPER,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR CARPER: Thank you for your letter requesting our views on the amendment filed by Senator Dorgan to allow for the importation of prescription drugs. The Administration supports a program to allow Americans to buy safe and effective drugs from other countries and included \$5

million in our FY 2010 budget request for the Food and Drug Administration (FDA or the Agency) to begin working with various stakeholders to develop policy options related to drug importation.

Importing non-FDA approved prescription drugs presents four potential risks to patients that must be addressed: (1) the drug may not be safe and effective because it was not subject to a rigorous regulatory review prior to approval; (2) the drug may not be a consistently made, high quality product because it was not manufactured in a facility that complies with appropriate good manufacturing practices; (3) the drug may not be substitutable with the FDA-approved product because of differences in composition or manufacturing; and (4) the drug may not be what it purports to be, because it has been contaminated or is a counterfeit due to inadequate safeguards in the supply chain.

In establishing an infrastructure for the importation of prescription drugs, there are two critical challenges in addressing these risks. First, FDA does not have clear authority over foreign supply chains. One reason the U.S. drug supply is one of the safest in the world is because it is a closed system under which all the participants are subject to FDA oversight and to strong penalties for failure to comply with U.S. law. Second, FDA review of both the drugs and the facilities would be very costly. FDA would have to review data to determine whether or not the non-FDA approved drug is safe, effective, and substitutable with the FDA-approved version. In addition, the FDA would need to review drug facilities to determine whether or not they manufacture high quality products consistently.

The Dorgan importation amendment seeks to address these risks. It would establish an infrastructure governing the importation of qualifying drugs that are different from U.S. label drugs, by registered importers and by individuals for their personal use. The amendment also sets out registration conditions for importers and exporters as well as inspection requirements and other regulatory compliance activities, among other provisions.

We commend the sponsors for their efforts to include numerous protective measures in the bill that address the inherent risks of importing foreign products and other safety concerns relating to the distribution system for drugs within the U.S. However, as currently written, the resulting structure would be logistically challenging to implement and resource intensive. In addition, there are significant safety concerns related to allowing the importation of non-bioequivalent products, and safety issues related to confusion in distribution and labeling of foreign products and the domestic product that remain to be fully addressed in the amendment.

We appreciate your strong leadership on this important issue and would look forward to working with you as we continue to explore policy options to develop an avenue for the importation of safe and effective prescription drugs from other countries.

Sincerely,

MARGARET A. HAMBURG,  
Commissioner of Food and Drugs.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, this is the 10th day in the debate on health care reform. I believe it is one of the most important issues we have ever debated, certainly in my time on the floor of the Senate. There have been a

variety of amendments offered, and there has been a lot of work going on off the Senate floor. Before we could reach this point and start this debate, committees held hearings that went on for weeks and months. They started with the base bill and entertained hundreds of amendments. The HELP Committee, as well as the Finance Committee, devoted so much time to this.

The first time I can recall the chairman of the Senate Finance Committee MAX BAUCUS coming to see me personally on this was over a year ago. So over a year has gone into this effort to come to this moment. I might add, the negotiations and efforts to improve the bill have not stopped. As late as last night, a large group of members of the Democratic caucus in the Senate were meeting to work out pretty contentious issues relating to competition for private health insurance companies. They worked late into the night, night after night, and finally came up with a consensus where differing points of view had to make concessions and come up with the best way to move forward. That is what has gone into the base bill that is before us.

This is it, 2,074 pages put together through all of the work I have just described. I understand the responsibility of the minority party in the Senate is to disagree. But we hope they will do it in a constructive fashion. In this situation, we have invited them in from the beginning. In fact, in each of the committees, Republican Senators have been active participants offering amendments, many of which were adopted.

Beyond that, there were meetings off the Senate floor. The Senator from Wyoming was a party to meetings that went on for, I am told, more than 60 days in an effort to find a bipartisan middle ground. But the fact is, we come here today in the Senate debating this bill, and there are several realities. The first reality is, after the House of Representatives went through a similar exercise, only one Republican Representative, a Congressman from New Orleans, LA, voted for health care reform, only one. In the Senate to date, only one Republican Senator, Senator SNOWE of Maine, has voted for health care reform in the Finance Committee. Not one single Republican Senator other than Senator SNOWE has voted to move forward on health care reform.

There is a second reality. There is no Republican health care reform bill. None. They have a variety of different ideas, but each one is discrete and specific. They are not comprehensive. They don't really address the issues this bill addresses. They have not presented a bill which makes health insurance premiums in America more affordable. This bill does.

Don't take a politician's word for it. The CBO looked at this bill and said it will bring down premiums for the vast

majority of Americans paying for health insurance today, something we definitely need because we are dealing with a situation where individuals, families, and businesses can no longer afford health insurance. There has not been a bill produced on the other side of the aisle which guarantees that 94 percent of Americans will have health insurance. This bill does. They haven't produced that bill. When this bill is enacted into law, we will have a larger percentage of our American citizens covered with health insurance than ever in our history.

They have not produced a bill which changes the way health insurance is managed and its relationship with its customers across America. This bill does. There is a bill of rights in here that says: American consumer, you have a right to have health insurance, even if you have a preexisting condition. You have a right to stand up to the health insurance companies when they deny you coverage, saying: We only cover you when you are well, not when you are sick. You have a right for your children to be covered under your family health insurance policy until they reach the age of 27. These are rights which we guarantee in the bill and have not been brought to the floor by the Republican side because they do not have a health care reform bill.

Before us at this moment is a motion to commit by a friend of mine, Senator CRAPO, who raises a question about will there be taxes. Will people have to pay for what we are doing here? Well, I can tell you, we think we have struck a good balance in terms of shared responsibility. First and foremost, understand this: If we dropped this debate, as most Republicans would have us do at this moment, and walked away and said: We are not going to do anything, each and every American will continue to pay over \$1,000 a year in added premium costs to cover the cost of uncompensated care.

In my hometown of Springfield, IL, we have some wonderful hospitals. When poor people with no insurance show up, they are treated, they are cared for. That hospital, then—whether it is St. John's or Memorial—has to pass along the cost of that health care to the other people who are paying for their care, which means each of us is paying \$1,000 more a year for our families in health insurance premiums to cover those uninsured. So that \$1,000 tax is already there.

Let me tell you what this bill does. This bill says, if you are making less than \$80,000 a year, we will help you pay your health insurance premiums, give you tax breaks to pay those premiums. That means a lot of people who today cannot afford to pay for health insurance premiums will be able to. They will go to this exchange. They will be able to choose from health insurance options, and they will get a helping hand to pay for health insurance.

We also have special provisions in here to take care of the smaller businesses. If you have fewer than 25 employees and have a small business—and that represents a lot of businesses, mom-and-pop businesses, for example—we are going to give you a helping hand so you can pay for the health insurance coverage for yourself, the owner of the business, and the people who work for you.

What about those that are larger companies? Well, let's be honest about it. We expect them to step up and accept this shared responsibility. Most of these companies do not question whether they have to pay into unemployment insurance or workers' compensation. That is part of the cost of doing business. We are saying that in this era of health care reform, with shared responsibility, businesses should offer good health insurance for their employees. In most instances, they do, and they deserve our commendation for doing it.

But we also understand there are some that may not cover their employees, may have waiting periods that are unreasonable. We start moving our policy against that so people do have the peace of mind of knowing, when they go to work, they have good health insurance that is going to be there when they need it. It is a new look at it.

But we started with a real challenge. America is the only developed, industrialized country in the world where a person can die for lack of health insurance. We are the only one. There is not another country where that happens.

We are also the only developed country in the world where a person can be driven into bankruptcy because of medical bills. We kind of accept it. Well, so and so had an accident, went to the hospital, was there for a month, and has a huge medical bill. They did not have any savings or insurance, and it wiped them out. It wiped them out.

It does not happen in other countries. In developed countries, it does not happen because they take care of people, and they understand whether they are using private health insurance or public health insurance, there is a social obligation to make sure we all have the peace of mind of knowing that is not going to happen.

So we address this, and we help people pay for their premiums as well. There is \$441 billion in tax relief in this bill for families over the next 10 years to pay their health insurance premiums. That is a tax break that will lead to more insurance coverage and more peace of mind. That is a reality. For the smaller businesses, with 25 and fewer employees, there is a helping hand for them to cover their employees as well.

We also provide some competition that in many places does not exist today. We provide that there is going to be health insurance options for people. Too many small employers whom I



have run into say: It is a take it or leave it deal with our health insurance company. We will renew last year's policy at a higher cost with less coverage, and you better take it because there is no place else to go. That is going to change here. That is part of the change.

For all my Republican friends and colleagues who have come to the floor over the last 10 days critical of this health care reform bill, I understand, that is part of Senate debate, that is part of what we are here for. But make no mistake, these same Senate Republicans do not have a health care reform bill. Most of the amendments that have been offered have been to protect health insurance companies, companies that are wildly profitable, companies that, frankly, dictate in this system how much people are going to pay and whether they are going to have coverage.

Dutifully, now, the Republican Senators have stepped up saying: We have to protect these health insurance companies and their profits. I do not think that is my responsibility. My responsibility is to almost 13 million people in my State of Illinois and to the rest of the Nation, to make sure they have the same peace of mind we all want—to know they have quality, affordable health care, to extend the reach of health care and the peace of mind that comes with it to the largest percentage of Americans in history.

The last point I wish to make is one about the deficit. We hear a lot about the deficit. This health care reform bill will cut more money from the deficit—\$130 billion over the next 10 years—than any single bill ever considered on the floor of the Senate. Again, that is not my conclusion but the conclusion of the Congressional Budget Office, which analyzes these bills for Democrats and Republicans—a \$130 billion reduction in the deficit over 10 years and, in the next 10 years, an additional \$650 billion. Because as we start to bend the curve to bring down the increase in health care costs, it means we pay less for Medicare services, less for Medicaid services, less for many services that are offered through government programs.

This bill is fiscally responsible. President Obama challenged us to make it such, and we did it. There has not been a bill offered by the Senate Republicans which reduces the deficit—not anywhere near this amount. No one has ever done it. It took a lot of hard work to reach this point.

I would say the net result of the motion to commit by Senator CRAPO is, unfortunately, to delay this debate even further, to stop the momentum toward health care reform. I do not think that is what America wants or needs. This is a once-in-a-political-life-time opportunity to address an issue on the mind of every American and to do it in a fair and comprehensive way.

Certainly, this bill is not perfect. As hard as we tried, it never will be. But to just continue to argue there are elements they want to question, without offering a comprehensive health care reform alternative, I do not believe is a fair debate. We have put the time into this. I stand by it. I will be proud to support it. There are things in it I do not agree with; most things I do. But the fact is, it is the right thing for us to do at this moment in history. We cannot miss this opportunity. I encourage my colleagues to oppose the CRAPO motion to commit.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. SANDERS). Twenty-four minutes 40 seconds for the Democrats.

Mr. DURBIN. Mr. President, how long have I spoken?

The PRESIDING OFFICER. The Senator has spoken for 8 minutes.

Mr. DURBIN. Mr. President, I stand in support of the amendment that is being offered by the Senator from North Dakota, Mr. DORGAN. Senator DORGAN has talked about drug reimportation, and he has raised an issue which troubles me. Why is it that pharmaceutical companies in America charge Americans more for their product than they charge customers in other countries buying exactly the same product? Senator DORGAN had a hearing once, and the response was obvious. The pharmaceutical companies say: We charge Americans more because we can.

In all those other countries, such as Canada, when they try to sell drugs to Canadians, the Canadian Government steps in and says: You are entitled to a profit, but don't go overboard. We will allow you to increase your profits only so much each year.

In the United States, there is no such mechanism and no such effort. So we continue as a nation to pay premium prices for drugs that are exactly the same drugs that are sold at a fraction of the cost around the world.

The AARP, which is the largest organization of seniors in America, did a study of drug prices published in April. It showed that the price of the most commonly used drugs has risen faster than general inflation every year since 2004. This year, drug prices are going to go up another 9 percent, for example.

So a lot of Americans are saying: If I can buy the same drug in Mexico or Canada at a lower price, why wouldn't I be allowed to do that? Why would you stop me under the law? Well, I do not think we should. I think we ought to give people that opportunity.

What Senator DORGAN has done is to build in his amendment safety features so we know we are not dealing with counterfeit drugs and we know there is accountability as to the source and the purity and the effectiveness of the drugs that are bought.

This amendment creates a role for the Federal Government in providing oversight, with the goal of ensuring that Americans have access to lower prices and the peace of mind of knowing their drugs are safe.

The bill allows pharmacies and drug wholesalers licensed in the United States to import FDA-approved medications from Canada, Europe, Australia, New Zealand and Japan and pass along the savings to their American customers. What does it mean? A 35- to 55-percent lower cost for some of the most widely used drugs in America.

This approach will reduce costs when people need it, particularly sick people who are dependent on drugs to stay healthy or to avoid even further illness.

The CBO estimates that the new policy will result in Federal savings of \$19.4 billion over 10 years. I will tell you why I think this is critically important. There are a lot of drugs and drug companies that are doing very well. They are very profitable, and they are based in the United States. I think it is unfair they are charging the people of their own country higher prices than they are charging people in other countries around the world.

This reimportation is an effort to try to help bring down some of these drug prices. These companies, incidentally, say: Well, we need the money because we need to do research for new drugs. Well, certainly they need to do research for new drugs. But maybe they can stop and explain to me or to someone why they spend more money on advertising than they do on research. You have seen the ads on television, heard them on the radio, and seen them in magazines. They spend a fortune advertising, trying to lure people into using the highest priced drugs in America.

These pharmaceutical companies are doing very well. Their profits are sky-high, sometimes the highest in America. I think it is fair in this bill, as we try to bring down the cost of health care, that we also bring down the cost of these drugs by allowing the importation, with strict safety standards, of these drugs into the United States.

I support the Dorgan amendment and look forward to making more affordable prescription drugs available across the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I ask unanimous consent to speak for up to 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. Thank you, Mr. President.

Before I begin my remarks, I would like to yield a couple minutes to my friend and colleague from Oklahoma who would like to respond to the question that has been raised as to whether

the Republicans are presenting reliable, meaningful, and comprehensive alternatives.

Mr. COBURN. I thank my colleague from Idaho.

Mr. President, the majority whip realizes there is an alternative bill. As a matter of fact, there are four alternative bills out there. They were not given a hearing. They did not have the resources. They did not have the CBO that would score them.

We have a bill that guarantees if you like what you have now, you can keep it; has absolutely zero tax increases on American families; no increases in taxes on American business; lowers the cost of everybody's health insurance premiums; covers preexisting conditions, period; protects seniors' high-quality care and choices; increases personal control over your own health care; no Medicaid expansion, but, in fact, puts Medicaid patients into true coverage without discrimination and allows all the doctors in this country to see them. It protects the physician-patient relationship and empowers patients, families, and physicians and providers. It does not empower the government. The majority whip knows that. Yet we have just heard on the floor we have not offered anything.

We have offered a bill that outside evaluators say saves the States at least \$1 trillion in the first 10 years, saves the Federal Government \$70 billion, treats everybody the same, creates access to health care, and, more importantly, it incentivizes prevention and the management of chronic disease and, finally, it attacks some of the \$100 billion a year in fraud in Medicare and Medicaid, where this bill attacks less than \$400 million a year in Medicare and Medicaid.

I yield back to the Senator.

Mr. CRAPO. I thank my friend from Oklahoma because it is frustrating sometimes to have it continuously said that there are no alternatives being put forward when we have for years promoted major and comprehensive alternatives to the kinds of issues Americans are asking us to address today.

What is it that Americans are asking? I have said this many times on the floor. Americans are asking us to find a pathway to lower health care premiums and costs and to increase access to better quality health care. Yet what is it that we are being faced with in this legislation? This bill drives up the cost of health care, not down, contrary to claims that have been made on the floor repeatedly; raises taxes by hundreds of billions of dollars; cuts Medicare by hundreds of billions of dollars; grows the government by \$2.5 trillion; forces the needy uninsured—it doesn't give them a pathway toward subsidized insurance or any access to insurance but instead forces them into a failing Medicaid Program; imposes damaging unfunded mandates on the struggling

States; leaves millions of Americans still uninsured; and establishes massive government controls over our health care economy. And we wonder why we cannot get engaged in a meaningful bipartisan solution here with this kind of heavy-handed approach being insisted upon.

When I talk about the fact that it raises the costs or the size of government, often the response is: No, this bill doesn't raise the size of government, it doesn't increase the size of government, it is balanced. Actually, CBO has issued a report that says it reduces the deficit. Well, the fact is it grows the size of government over a true 10-year period by \$2.5 trillion. It does provide some increased taxes—a lot—and it does cut Medicare. By doing so, it does reach an equilibrium, according to CBO, with regard to its impact on the deficit. But let's not mistake this deficit with the size of the government. This bill will grow the size of the government and the reach of the government by \$2.5 trillion.

With regard to the question as to whether it truly impacts the deficit, I think most Americans have already heard that there are some budget gimmicks here. You could not ever claim this bill doesn't increase the deficit unless you had all the taxes I am going to talk about in a minute and unless you had all of the Medicare cuts we have been talking about for the last week, and unless you had the budget gimmicks that are in the bill. The budget gimmicks are clearly depicted right here.

Look at the first 4 years of this bill on the spending side: very little, if any, spending. The actual implementation of the spending part of the bill doesn't happen until 2014, but all the taxes start in the first year, and all the Medicare cuts come into place in the first year, and we start seeing the offset side of the bill run for a full 10 years. It is going to be easy to say you have balanced out spending and taxing if you don't count the spending for the first 4 years. But if you look at that first true 10-year period of time, it is a growth of the government by \$2.5 trillion.

What I am here today to talk about is my motion that is on the floor to do one very simple thing: to commit this bill back to the Finance Committee and have the Finance Committee make the bill comply with the President's pledge to the American people about taxes. And what was his pledge, repeated many times across this country? In the President's own words:

I can make a firm pledge . . . no family making less than \$250,000 will see their taxes increase . . . not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes . . . you will not see any of your taxes increase one single dime.

That was the rhetoric. That was the pledge. What is the reality of the bill?

In its first 10 years, the bill raises taxes by \$495 billion. If you take that 10-year window that starts in 2014 where you are comparing spending and taxing at the same time, the total of taxes in that 10-year window is \$1.2 trillion of new taxes, a huge proportion of which falls squarely on the backs of the middle class whom President Obama has defined here to be those earning less than \$250,000, and that is per family. He said under \$200,000 per individual.

What are some of these taxes we are talking about? First, there is the excise tax on high-cost premium plans. One might say, wait a minute, that is a tax on companies, employers who provide very high quality insurance to their employees. It is an ingenious way—it is technically written that way—but it is an ingenious way to actually increase the cost, the tax base, of the workers and not the employer. Let's see the first chart. The way this works is the government will now say to an employer: You cannot provide health insurance to your employees that is worth more than a certain amount. Most employees who get health insurance—and that is most employees in the country who get health insurance from their employer—get wages and health care as a part of their total employment package.

I picked an example of a woman who receives \$50,000 in wages and let's assume a \$10,000 employer-provided health care benefit. The government is now going to say wait a minute, to her employer; we are going to tax you if you provide that health care benefit on such a robust level. CBO and Joint Tax have told us that the reaction of the vast majority of all employers is going to be to reduce the health care benefit down below the level that gets taxed. They are not going to reduce the employee's overall benefit, however, their overall employment package. So let's pick a number. Let's say they reduce this \$10,000 down to \$7,000. They will increase the wages by \$3,000 and the employee's total compensation package stays the same: \$60,000, with one difference. Now that extra \$3,000 is wages instead of health care, and it gets taxed. And that way the individuals in this country see their health care values go down. Their total compensation package stays the same, but then gets also reduced as it is taxed, and our Joint Tax Committee and CBO have told us that 84 percent of this \$149 billion new tax is going to be borne by those with incomes under \$200,000.

That is one way this bill ingeniously gets at the pocketbook of those making less money than the \$200,000 or \$250,000 as a family that the President talks about.

What is the next way? Medical deductions. I think everybody in America who itemizes deductions knows about the first line that says you can itemize

your medical expenses, and to the extent they exceed 7.5 percent, you can deduct those medical expenses. So people who have a large proportion of their income represented by medical costs get a break in the Tax Code for that deduction. Well, that break is now going to be smaller under this bill because the level of where you are able to get it is no longer going to be 7.5 percent, it will be 10 percent. And as I indicated, that 84 percent of the excise tax is going to fall on people making less than \$200,000 a year. Ninety-nine percent of the medical deduction restriction will fall on people making less than \$200,000 a year; as a matter of fact, making a lot less than \$200,000 per year.

Then what about the next one? The next major tax in the bill is the Medicare payroll tax. This one has been presented to the American public as a tax on rich people. It starts out primarily impacting people at the higher levels, but at the outset, it will already hit 345,000 Americans, and it is not adjusted—I think most people understand how the alternative minimum tax works today. It is not adjusted for inflation properly. So over time, the payroll tax itself is going to increasingly hit more and more people in that income category under \$200,000.

There has been some analysis on these three provisions in the bill. Joint Tax has indicated that by the year 2019, at least—and I say at least because we are only talking about three provisions in this bill right now, and there are more—73 million American households—not individuals, households—73 million American households earning below \$200,000 that are going to face a tax increase.

Some have responded to this by saying, Wait a minute. Our bill actually cuts taxes and you are not characterizing this fairly. The tax cuts they are talking about are primarily a \$394 billion government subsidy for purchase of health insurance, a subsidy that will be administered through the Tax Code. What they don't tell you is that \$288,000 of this so-called tax cut is nothing other than a direct government payment to those who don't pay any taxes today anyway. It is not reducing their tax liability; they have no tax liability. It is a direct government subsidy, and CBO says so. It is scored by CBO not as tax relief; it is scored by CBO as direct government spending. To characterize that as tax relief I believe is inaccurate.

Moreover, even if it were true tax relief, is that what the President was saying, that I won't raise your taxes more than I will lower someone else's or was he saying to the American people that he would not raise taxes on people who are making less than \$200,000 a year, or \$250,000 as a family? I believe it is inherently obvious what the President was saying. And to say

now that we are cutting somebody else's taxes so we can raise yours does not comply with the President's pledge.

To give another couple of perspectives on this in terms of numbers, when all is said and done, 7 percent of Americans will get this so-called tax relief that is, in reality, direct Federal spending, and the rest of Americans—specifically, those who don't fall in that category—will get the tax increases. Out of 282 million Americans with some kind of health insurance today, only 19 million of them will be helped by this subsidy. The rest are going to fall into that category of those who get to share in the burden by seeing their taxes increase.

But let's say we give credit for all of these arguments and say, All right, we will let you claim that all of this spending is tax relief. What is the true story then? Even if you give that argument, which is not valid, by 2019, there will still be at least 42 million American households earning below \$200,000 that will face a tax increase. This is information from the Joint Committee on Taxation.

In fact, the data there is rather interesting. Joint Tax data indicates that by 2019, individuals earning between \$50,000 and \$200,000 on average will see an increase in their taxes of \$593. Families earning between \$75,000 and \$200,000 will see on average a net tax increase of \$670.

So what does my amendment do? My amendment says very simply that the bill will be committed back to the Finance Committee and that the provisions in the bill that violate the President's pledge should be removed. Simply make the bill comply with the President's pledge. The President, frankly, shouldn't sign this bill unless this amendment is passed and implemented, because that is the direction we need to go.

Once again, the President's pledge is that no family making less than \$250,000 is going to see their taxes increased.

There is further information available about this, though. I recently sent a letter to the Joint Tax Committee. I recently sent a letter to the Joint Tax Committee asking them about whether there were other provisions in the bill other than these three—the reason I talked about these three taxes is because those three taxes have been analyzed by Joint Tax and it is Joint Tax that is telling us what they are going to do.

In response to my letter saying are there more taxes in the bill than those you have analyzed, the answer has come back, yes, and below, they say, is a list of the provisions that they have not previously distributed and that have statutory incidence on individuals with those who fall below the income threshold which has been defined al-

ready. What are these taxes? There is a confirmed definition of medical expenses for health savings accounts. In other words, the reduction of benefits in health savings accounts will have an impact, and I believe that impact is about \$1.5 billion.

The increased penalty for non-qualified health savings account distributions and limitations on flexible spending arrangements will raise almost \$15 billion. Most of this—although we don't have the data yet from Joint Tax—most of this comes from families below the income tax threshold, as well as the 5 percent excise tax on cosmetic surgery and similar procedures and the individual mandate in the bill that will force all Americans to purchase insurance or the IRS will come and collect a fee from them.

I don't have the chart here that shows what will happen with the IRS, but think for a minute. The current size of the IRS is about \$12 billion in terms of the appropriations we give them to perform their functions. CBO says that if this bill passes, there will be so much additional business for the IRS in monitoring health care and the new plans and programs in the bill, there will have to be at least another \$5 billion and maybe a \$10 billion increase in the size of the IRS just so it can implement its enforcement responsibilities under this bill.

The bottom line is that the President of the United States, Barack Obama, has made a pledge. It was that pledge, among a number of others—such as “if you like what you have, you can keep it”—that caused us to see a strong low-confidence level by the American people, and maybe it is time for Congress to truly dig in and build a strong health care reform package. That pledge is being squarely broken by this bill.

Again, all we are asking in this amendment is to send the bill back to the Finance Committee and have the Finance Committee make the bill conform to the President's pledge. What that will mean to the American people is that in the first 10 years of the bill, just under \$500 billion of new taxes will not be imposed, and over the true first 10-year period, when the spending starts kicking in, \$1.2 trillion worth of taxes will not be imposed.

There are many other issues with this bill that we have seen discussed. There is the question of whether it truly increases the cost of premiums in health care. Virtually 10 out of 11 studies say that it does. The CBO report says that, clearly, for 30 percent of Americans, it does it in major ways, and for the other 60 percent, the impact is marginal, or the status quo.

As we move forward, some of these big problems with the bill need to be fixed. My motion focuses on taxes. We have debated Medicare for some time now. We need to talk about the unfunded mandates on the States. We

need to talk about the impact on premiums in health care because we don't want to be passing legislation that drives up the cost of health care at a time when that is the primary purpose for people calling for health care reform.

I urge my colleagues to let us step down for a moment from the intensity of the debate, commit this bill to the Finance Committee, and let's, on a bipartisan basis, work out some of the solutions to these problems and do so in a way that does not result in such a massive growth of our Federal Government, such a massive increase in taxes, such a massive unfunded deficit on the States, and all for no control of cost or health care premiums.

With that, I yield back the remainder of the time I requested.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, here we go again. We keep hearing it, and the other side keeps using scare tactics. All those Democrats say is tax, tax, tax. Scare tactics. They think they can scare people into believing something that is not true. The fact is, not only does this bill not raise taxes on the middle class, this bill is a tax cut for Americans.

Look at the chart behind me, which shows that. This is individual taxes. We are talking about taxes on individuals in America. This chart shows that in the year 2015, there will be a net tax cut for Americans of \$26.8 billion—a tax cut. The other side says some of those folks are not paying taxes. That is true. It is a refundable tax credit of about \$27 billion. In 2017, it is a net tax cut of \$40 billion. In 2019, it is a net tax cut of almost \$41 billion.

Nobody can read the small print on the chart, so I will read it:

Combined effects of the high-premium excise tax, health care affordability tax credits, increase in HI tax, increase in HI floor for medical expense deductions.

It is the basic provisions.

It is very important to point out that this is a net tax cut for most Americans. For some, there is a tax increase. But guess what. According to CBO, that is because those folks will make more money. Their wages and salaries will go up.

I don't see a chart-meister behind me to change the charts, but the chart shows almost for every year about a 10-percent increase in taxes for upper income areas and about an 80-percent increase in wages or income. That is basically because, according to the CBO, the high-premium excise tax will result. People will be paying lower premiums, 7 to 12 percent lower premiums as a consequence of the Cadillac tax provision. CBO says that; it is not my prediction. That will be passed on in the form of higher wages and higher income to people. People will be paying higher taxes, but they will be making more money.

Let's make it clear. This bill lowers taxes. At least that is what CBO says. It is one thing to make an allegation that it increases taxes, but CBO says there is a net tax cut, which I mentioned.

Turning to another subject—small business—one of the goals of health care reform, clearly, is to ensure employees and small businesses have access to quality, affordable health care options. Small businesses have a tough time providing health insurance, that is true. Last year, only 62 percent of small businesses offered health insurance to their employees. Compare that with about 99 percent of companies with 200 or more employees. Big businesses offer health insurance, but small businesses just can't do it. They have a hard time. Among the very small businesses, fewer than half offered their employees health insurance.

Small businesses say the main reason they cannot provide health insurance is because premiums are so high. That is probably true; it is expensive. I have talked to many small businesspeople, and I am quite certain the Senator from Vermont, who is in the chair, has run across the same comments from businesses. It is just too expensive.

In the past 10 years, premiums have risen 82 percent for single workers and 93 percent for families employed by small businesses. As health care costs rise, small businesses are forced to make workers pay a greater portion of these expensive premiums. Last year, employees in small businesses that provided health insurance paid more than twice what they paid in 1999. So in a period of 8 years, the amount employees paid more than doubled.

The low rate offering and higher cost-sharing responsibilities for employees and small businesses often limit the ability of small businesses to attract and retain good employees.

That is why the health care bill before us today includes provisions to make quality coverage more affordable for small businesses and their employees. The bill includes \$24 billion in tax credits to help small businesses and charitable organizations purchase health insurance for their employees—\$24 billion.

Starting in a couple of years, eligible small businesses would receive tax credits worth up to 35 percent of the employer's contribution to employee health insurance plans. Then in 2014, eligible small businesses will receive tax credits worth up to 50 percent of the employer's contribution to employee health insurance plans purchased in health insurance exchanges. That is half of the cost to the employer. An employer could take half of that cost as a tax credit against that company's income.

To qualify for the tax credits, businesses would have to cover at least half of their employee premium costs. The

value of the tax credit is based on the size of the business and the average wage of its employees.

The small business tax credit will help make health insurance more affordable for many small businesses. That is clear. In 2011, 4.2 million Americans will be covered by quality, affordable health insurance because of this credit. On average, small businesses across the country will receive a new tax credit of around \$5,000 to help them purchase insurance. The CBO has estimated that the small business credit will help lower insurance costs by 8 to 11 percent for employees at small businesses who receive that credit. CBO says, again, that small business credit will help lower insurance costs by 8 to 11 percent for employees of small businesses who receive the credit.

One of the reasons many small businesses are currently unable to afford health insurance is because they lack the buying power larger companies have to negotiate group rates. Our bill creates small business insurance exchanges, known as shop exchanges, where small businesses can join together and pool their risks. That will enhance their choice and buying power. These State-based exchanges will be a critical tool to help small businesses with fewer than 100 employees shop for health insurance plans and determine their eligibility for tax credits to buy health insurance. Small businesses that prosper and grow beyond 100 employees will be allowed to continue shopping in the exchanges.

The insurance plans sold in these exchanges will be subject to the same transparency requirements and consumer protections, so small businesses can feel confident they are purchasing high-quality plans that will provide quality, affordable coverage for their workers.

One more point. We all talk to small businesspeople. Time and time again, they say they like to provide health insurance. But what happens? The insurance company comes along and says: Next year, we are going to raise your premiums 20, 30, 40 percent. Why? The answer is that we found out one of your employees has a preexisting condition, so we are going to raise your premiums by that much. It puts small businessmen in a terrible dilemma: they either have to fire that employee to get the lower increase in premiums or eat that big increase and keep that employee.

I remember a businessman in Billings, a small contractor, whose heart sank when he got that notice from the insurance company. He decided to keep the valuable employee, who had worked for him for a good period of time. He will not fire that employee. He shopped around and finally found another insurance company, and the increase was not 30 percent, it was more in the nature of 20 percent.

Small businesspeople face this great variety of premiums. They go up this

much and that much. It is because of the terrible situation we have where companies can deny coverage based on preexisting conditions, health care status, and so forth. Different States have different rating rules and so on. This will help small businesses get more stability and quality.

The insurance plans sold will be subject to the same transparency requirements and consumer protection that other individuals will also find available.

The health care reform bill before us also institutes reforms of the insurance market that will protect individuals and small businesses purchasing plans. I already mentioned that. These reforms will stop insurance companies from denying coverage based on preexisting conditions.

Passing health care reform is critical to small businesses. Without reform, many small businesses will be forced to drop their health care insurance coverage because they will no longer be able to afford the increasing premiums. That would leave employees to fend for themselves in the individual market.

The CBO tells us these reforms will make coverage more affordable for millions of small business employees. The small business tax credit will help reduce health care costs for small businesses and their employees. As a result of the larger health reform proposals in this bill, there will be an increase in the percentage of small firms that offer health insurance coverage.

I ask unanimous consent to extend the period for debate only until 4:30, with the time equally divided, with Senators permitted to speak therein for up to 10 minutes each, with no amendments in order during that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I ask unanimous consent to speak for up to 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. SNOWE. Mr. President, today the Senate is addressing the future of health care in our Nation—both Americans' access to care and its cost. As we confront projections of escalating health spending—exceeding \$33 trillion in the coming decade—the imperative is clear that we must address rising costs, or affordable access to coverage simply cannot be achieved and sustained.

That is why I am joining Senator DORGAN, who has been a relentless champion on the issue of drug reimportation, in proposing the amendment to this legislation, so that Americans can safely and affordably access the medications which they rely upon to improve their health and which the industry has reminded us time and again are critical to reducing severe

illness and hospitalization and, of course, extending life.

Senator DORGAN has long been the Senate's tireless leader. In fact, it has been more than a decade, as I recall, that he began to pursue this endeavor and this journey in seeking to end the inequity which resulted when Americans were barred from importing less expensive medications. He has reminded us regularly of the trade inequity which has been imposed on consumers. He also has reminded his colleagues that drug importation, conducted with proper safety measures, provides a route to improving access to lifesaving medications.

I am pleased to have joined him in this effort, once again, along with Senator MCCAIN, who has been a stalwart on this issue from the very outset and a tremendous advocate and a driving force. Of course, the Presiding Officer, the Senator from Vermont, Mr. SANDERS, throughout his career has been pursuing and advocating this inequity to be remedied once and for all.

We introduced this legislation back in 2003 for the very first time. We worked on a comprehensive approach required to address the safe, economical importation of medications. I well recall the efforts—the yeoman efforts—of the late Senator Kennedy who worked relentlessly to remedy this flaw in our policy, along with Senator GRASSLEY, Senator STABENOW, and Senator VITTER, whose bipartisanship on this vital question has also been instrumental as we advanced this cause for the better part of a decade. It has been a greater undertaking than I think many would have surmised or anticipated, frankly.

There can be little doubt that the effort to reduce health costs poses one of the greatest challenges in health care reform. That is why the Senate Finance Committee, under the leadership of Chairman BAUCUS, has worked mightily to incorporate provisions in the pending legislation to “bend the cost curve.” Let there be no mistake, the resistance to reforming spending has been immense. That is in part because, as so often has been said: “One man's waste is another man's profit.” So while other nations pay 35 to 55 percent less for their prescription drugs than the United States, we have continued to pay the world's highest prices for brand drugs for the past decade, despite nearly 10 years of effort to provide for the safe importation of prescription drugs.

Fortunately, that has not deterred a broad bipartisan call to arms on this issue, despite the industry's actions that have blocked attempt after attempt to provide Americans both access and assurances that imported drugs would be safe. Indeed, this issue of both safety and affordability has drawn a bipartisan coalition which has been a model for how we can work to-

gether to address this health care problem.

We created legislation which the Congressional Budget Office previously estimated would save our Nation approximately \$50 billion over 10 years. The CBO has not yet estimated the total savings to consumers but has projected a savings to the Federal Government alone of \$19.4 billion. Since Federal savings was about 20 percent of total savings in the past, one can hypothesize dramatically increased consumer savings likely approaching \$80 billion. These are exactly, precisely the kinds of savings we must advance today.

One can easily see that the failure to act on this legislation since its introduction in April 2004 has needlessly carried a high cost for the American people, made all the more egregious and unacceptable given these difficult economic times, as more Americans are reducing or skipping doses or foregoing medication altogether. And this problem is not going to get better. It is regrettably only going to get worse.

The trend is undeniable and unabated. We are all painfully aware of the price increases in brand-name prescription drugs this year that bear absolutely no relationship whatsoever to our overall economy. Manufacturers have increased prices of brand drugs by an average of 9 percent, just as inflation measured by the CPI actually fell by nearly 1 percent.

We can look at this chart and demonstrate the contrast in increases. Brand drugs increasing 9 percent, and here are generics and here is the CPI. It truly is emblematic and reflective on this chart how actually prices have been decreased by the same amount that brand drug prices have escalated.

In other words, just as we are working to expand coverage to tens of millions of more Americans, we have the industry establishing a new pricing baseline that is entirely off kilter with the rest of the economy, in comparison between the CPI and the cost of brand-name drugs. It is widely unaffordable for the American people and clearly unsustainable for the future. How can we possibly not act on this amendment?

This is an industry that has offered \$80 billion in concessions toward health care reform—approximately \$8 billion over the next 10 years. When one considers that our annual spending, while this single price increase of 9 percent imposed over \$290 billion in drug spending, with over two-thirds of that amount representing brand drugs, it is clear that this single price increase alone at this 9 percent will yield at least twice as much as the industry has pledged to reform in the pending health care reform legislation.

Frankly, that is cost shifting of the worst kind because it occurs on the back of the American taxpayer, most

especially on those in greatest need who are also the least able to afford these exorbitant prices. There should be no mistake, these most recent increases are following the patterns we have witnessed year after year.

How do we know? Following passage of the Medicare Modernization Act, Senator WYDEN and I requested that the GAO track drug price trends, including looking back to before the bill was enacted.

What did we find? First, that the price of brand drugs has escalated two to three times the rate of inflation. That means \$100 in drug costs in 2004 has grown to more than \$140 today.

Tell me whose income has increased by that amount in the last 5 years alone. These unabated, escalating costs for drugs are only widening the already yawning gulf of unaffordability for the American people.

But that is not all. When Senator WYDEN and I examined the GAO data, we also discovered that as we neared the achievement of a prescription drug benefit under Medicare, the rate of price increases actually rose faster. History also appears to be repeating itself once again to the everlasting detriment of all those whose health security depends on medications.

One year ago, the Associated Press reported a startling find that for the first time in a decade, prescription drug use was down. Given the rising costs imposed on struggling American families, that should come as no surprise.

It also should serve as a wake-up call, an alarm bell. We are long past the point where we should heed Einstein's timeless truism that one should not keep doing the same thing over and over and expect a new result. The fact is, we simply cannot assume pledges of savings in the form of the industry's monetary concessions to health reform actually amount to real, fundamental reforms or that drug assistance programs are a substitute for a market which brings consumers better value. They are not.

It is clear that the time for enactment of this legislation is long overdue and, frankly, more urgent than ever, as illustrated by this second chart of unfilled prescription drugs. Just looking at it, you can see how the unmet need for medications has actually increased since 2003. Among working age adults, only those with Medicare coverage experienced any improvement in their ability to fill their prescriptions. All others saw a rise in their inability to obtain the necessary medications.

Among the uninsured, more than one in three individuals went without a required prescription. And in those with chronic diseases, that number doubles. This is a travesty. Indisputably, despite manufacturer assistance programs, despite the increased use of generics, the high and escalating cost

of brand-name drugs is directly and negatively affecting the health of millions.

That is why our voices today echo those of an overwhelming 7 out of 10 Americans who have called for lifting the ban on prescription drug importation. Let there be no doubt, this is a mandate for action. The President has added his voice to ours, calling for safe drug importation as one means to address health care costs which threaten the health of Americans in perilous economic times.

The bottom line is, when nations institute safe, regulated trade in pharmaceuticals, they achieve results, as Sweden did when it entered the European system of trade and saw a reduction of 12 to 19 percent in the price of traded drugs.

Opponents claim importation will cause American consumers harm. For those who did express concern about safety, no one shares that sentiment more than I do. So let me be unequivocal in stating that safety is the foundation of this legislation.

Our constituents have taken action repeatedly to purchase drugs which they could afford mostly in Canada. That is certainly true in my State of Maine. It is true in the State of Vermont, the Presiding Officer's State. It has been demonstrated time and again that importation is safe. We can ensure Americans safe access to imports. In Europe, over 30 years of parallel trading of pharmaceuticals has demonstrated indisputable safety. In fact, a former Pfizer executive, Dr. Peter Rost, has stated from his firsthand experience in Europe:

I think it is outright derogatory to claim that Americans would not be able to handle reimportation of drugs, when the rest of the world can do this.

Yet some will point to a recent FDA letter cautioning that drugs must be demonstrated to be safe and effective, that they must be manufactured under the highest standards, that an imported drug must be demonstrated equivalent to existing products used domestically, and that we must guard against contaminated and counterfeit drugs. This amendment does each of these things and much more to ensure that Americans can safely have access to safe imports.

Under this legislation, we see with this next chart, we would import drugs from 31 countries which meet high regulatory standards. Those are shown in blue on this chart. There are nations which meet our high standards. In most cases, individuals will purchase an imported prescription drug from their local pharmacists. Pharmacies will receive these drugs from U.S. wholesalers which import them. These wholesalers will be registered, inspected, monitored by the FDA. This higher level of safety is a first step in establishing a higher standard in the

handling of prescription drugs in the United States.

Our legislation also allows individuals to directly order medications from outside the United States when using an FDA-registered and approved Canadian pharmacy. Again, just as with wholesalers handling prescription drugs, the FDA will examine, register, and inspect these facilities on a frequent basis. FDA will assure the highest standard for such essential functions as recording medical history, verifying prescriptions, and tracking shipments. Regardless of whether the purchase is from the local pharmacist or a Canadian pharmacy, we assure that a legitimate prescription and a qualified pharmacist are required to help assure safety.

For those who say that consumers could unwittingly purchase an unapproved or suspect drug, our legislation assures that drugs received will always be FDA approved. If any difference exists in a foreign drug—even the most trivial of distinctions—our legislation assures FDA will evaluate the product and determine its acceptability.

For those who say counterfeiting is a threat, our legislation requires the use of anticounterfeiting technologies to protect drugs. Today we can thwart counterfeiting by employing technologies like the one now used on \$20 bills. Our bill not only requires the use of such counterfeit-resistant technologies but also a standardized numerical identifier unique to each package of a drug. Moreover, this bill supports the development of future anticounterfeiting and track-and-trace technologies which we hope will be used to protect all drugs.

For those who say the consumers won't know who has handled an imported prescription drug, our bill requires a chain of custody—otherwise known as a pedigree—be maintained and inspected to help ensure the integrity of imported drugs. A pedigree for medications was mandated by law in 1988 and has still not been implemented. This bill will change that.

For the first time, in fact, this legislation will include resources to inspect all facilities handling medications. So we are not just making imported drugs safer but also domestic drugs.

Some attempt to alarm Americans about the countries from which we would import drugs, citing nations such as Latvia, Estonia, Slovakia. The last time I checked, these are members of the European Union. The same is true for Ireland, for example, where Lipitor is made.

So let me get this straight: It is fine for those countries to manufacture drugs in their plants for domestic U.S. companies and ship those drugs here where we then have the privilege of paying higher prices than anywhere else in the world, but we somehow cannot safely import drugs made in those



same countries. Exactly what kind of sense does that make?

In fact, going back to this chart where the European Union and other countries from which we would import appear in blue. So all those countries that are in blue are areas in which this amendment would allow the importation of drugs, which we see infrequent FDA inspections are in these red countries. All of these countries that are designated in red are the ones in which we have manufacturers importing ingredients for the final product. Yet there are infrequent FDA inspections. There are plants right now—today—shown on the chart in red that are making drugs that are sold and consumed in the United States, plants where there are few FDA inspections. In fact, it has been estimated that approximately 40 percent of the active ingredients in prescription drugs consumed in the United States are actually made in India and China, and we know oversight there is lacking. In fact, such plants may be inspected as infrequently as every 12 years.

Currently, there are more than 3,200 foreign manufacturing plants that make medications for the United States market according to GAO. The GAO also found that FDA, in the words of an Associated Press article on the matter, “isn’t even sure how many foreign facilities are producing for the American market. One government database suggests it’s 6,760. Another says about 3,000.”

With the explosion of drugs coming in from nations such as India and China, as reported in the Washington Post, the FDA’s “budget for foreign inspections has not kept pace,” and as a result, as of 2007, “foreign drug and drug ingredient makers are inspected on average once every eight to 12 years, while American-based manufacturers must be inspected at least once every two years.”

The article also reported that China itself has more than 700 plants, but the FDA only has the resources to conduct about 20 inspections a year there.

So let me just indicate, on this chart again, that we, under this amendment that is pending before the Senate, would allow drugs to be imported from those countries designated in blue. The countries that are designated and reflected in red are those countries where we currently manufacture the ingredients of the final product. We are not suggesting that drugs be imported from these nations. Yet our legislation will make it safer because of the resources that we have incorporated in this legislation before the Senate and all of the standards that will be required for FDA to inspect these facilities that are currently not inspected.

We have seen the dangers in ignoring these problems, and that is why this legislation would fund enhanced FDA foreign inspections to fundamentally

improve the safety of drugs consumed in the United States. But that is not all. While opponents will cite current law on drug importation, the fact is, in the Medicare Modernization Act—the current drug importation statute which has never been implemented—there are just six safety provisions over as many pages—as detailed in this chart—versus the 31 major provisions in our amendment.

So when we passed the Medicare Modernization Act back in 2003, we included safety features because we heard from many of our colleagues who simply did not want to have drug importation. They claimed we had to have a safety certification process, which we have had numerous times for the last decade, to which nothing has advanced with respect to importation. Obviously, a safety certification hasn’t been made because we haven’t given any resources. We haven’t implemented that certification in good faith.

Under the pending amendment, we incorporate 31 major provisions in our legislation to address each and every issue. We systematically analyze and identify every issue that has been raised by the opponents to the drug importation legislation—every safety-related issue, every standard-related issue, every failure that has occurred with respect to the FDA inspection system on where they are importing drugs currently and where they have not inspected those facilities. We have 31 different provisions in order to address every facet of safety-related issues.

So for those who say importation isn’t safe, we show that it shall be. This legislation will set a model and a mandate for improving safety in the handling of not only imported prescription drugs but of all medications—even domestic ones.

But if that is not enough, let me also suggest to the opponents of this legislation that they are failing to observe the greatest safety threat to Americans—that the inability to take a drug as it is prescribed undoubtedly exacts a toll on thousands of American lives every year.

So beyond question, our measure addresses the crucial issue of safety. I think it is certainly indicative and reflective in this chart today, all the provisions that have been incorporated in the pending amendment before the Senate. This clearly will deliver the real savings as well as safety for consumers.

Organizations across the board are supporting this legislation. They represent more than 50 million Americans who realize that extending this coverage is fundamentally critically important to the well-being of all Americans.

The PRESIDING OFFICER (Ms. STABENOW). The Senator’s time has expired.

Ms. SNOWE. I thank the Chair.

The PRESIDING OFFICER. The distinguished Senator from Montana.

Mr. BAUCUS. Madam President, I believe we have to amend the previous order which restricted speakers to 10 minutes. So I ask unanimous consent that the previous order be changed so that Senators may speak for longer than 10 minutes, and I yield 15 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey is recognized.

Mr. MENENDEZ. I thank the distinguished chairman of the Senate Finance Committee for yielding me the time.

Madam President, I rise in strong opposition to the Dorgan amendment to allow the importation of drugs from 32 different countries in the world into the medicine cabinets of American families. I believe that is, at its core, a regressive amendment.

This amendment, however well-intentioned, reminds me of a time when the lack of sufficient regulation allowed people to sell snake oil and magic elixirs. Let’s not relive that history. Let’s learn from it.

I am sure many in this Chamber remember a time when the doctor would give us a prescription, we would take that to the local pharmacy, and the one thing we never did was question what was in the bottle. Now, with this amendment, we would not be so certain. We would not be sure that what is in the bottle is what we think it is. We would not be so certain from where it came. It could be directly from countries all over the world—Lithuania, Estonia, Latvia, the Czech Republic, or any 1 of 28 other countries, and I will speak to that. Yes, I have heard they are part of the European Union, but I will talk about what the European Union just said about their challenges with counterfeit drugs. Or maybe they will come indirectly from any number of countries that have proven to make tainted medicine; those who are not part of the European Union but who are counterfeiting their drugs into the European Union, getting into their supply chain and ultimately getting to us, if we were to allow it to happen. We would not be absolutely sure of the conditions under which they were manufactured, whether they are safe to use, or where their ingredients originated.

Health care reform and lowering costs does not mean we should roll the dice with the health and safety of the American people.

I appreciate my colleagues’ interest in bringing lower cost drugs to the market. In fact, I agree with them. But we cannot risk the health and safety of the American people in order to do it, and I am afraid this amendment would do just that.

We have heard a lot about the FDA—the Food and Drug Administration. Yes, they are the ones who safeguard Americans from having the wrong type of drugs get into our marketplace or making sure the right type of drugs are approved and the wrong ones stay out. I have heard the stories of Americans searching for affordable prescription drugs and either going online to get them or traveling sometimes. But we have to ensure the drugs they buy are not counterfeit, not tainted, not substandard, and that they are what the doctor ordered and will work.

This amendment would undo current safety protections that ensure that patients are getting prescription medications that are the same in substance, quality, and quantity their doctor has prescribed. So let's see what the FDA said.

In a letter from the Food and Drug Administration issued the other day to one of our colleagues in the Senate, Commissioner Hamburg said there are four potential risks to patients, in her opinion, that have to be addressed.

First, she is concerned that some imported drugs may not be safe and effective because they were not subject to a rigorous regulatory review prior to approval. Second, she says the drugs “may not be a consistently made, high quality product because they were not manufactured in a facility that complied with appropriate good manufacturing procedures.”

Third, the drugs “may not be substitutable with the FDA approved products because of differences in composition or manufacturing.”

And, fourth, the drugs simply “may not be what they purport to be” because inadequate safeguards in the supply chain may have allowed contamination or—worse—counterfeiting.

In addition, the FDA's letter went on to cite significant “safety concerns related to allowing the importation of nonbioequivalent products . . . and confusion in distribution and labeling between foreign products and the domestic product.”

The FDA is also concerned it does not have clear authority over foreign supply chains. In other words, there is a very real risk that imported drugs either would not make us better or, yes, could very well make us worse.

One reason we never question what is in the bottle when we go to the pharmacy to fill our prescription is because the U.S. drug supply system is a closed system. That is why it is one of the safest in the world. Everyone in the system is subject to the FDA's oversight—to these very standards—and to strong penalties for failure to comply with the law.

The FDA would have to review data to determine whether the non-FDA-approved drug is safe, effective, and substitutable with the FDA-approved version. In addition, the FDA would

need to review drug facilities all over the world to determine whether they manufacture high-quality products consistently.

It is clear that keeping our drug supply safe—in a global economy in which we cannot affect the motives and willingness of others to game the system for greed and profit—is a monumental task. It is not simply allowing for the importation of lower cost medications, as the proponents of this amendment would have us believe. It will require a global reach, extraordinary vigilance, and a serious investment to enforce the highest standards in parts of the world that have minimal standards now, so we don't have to ask which drug is real and which is counterfeit; so we don't have to wonder, if the packaging looks the same: Is it approved Tamiflu or is it counterfeit Tamiflu? The packaging looks the same, but is the content the same? One is approved; one is counterfeit.

When the swine flu was coming through and everybody started trying to get hold of Tamiflu, what did they do? They went online and got counterfeit Tamiflu which didn't do the job. In this photo, the answer is no. One is real, one is counterfeit. You can't tell the difference. Is this helping people save money, if they just paid for a counterfeit product? No. Is this an effective treatment for a contagious H1N1 flu, if you have just been fooled by a counterfeit bottle of Tamiflu because you thought it was cheaper? No. How is this in the best interest of the American people?

Here is another example—Lipitor. Can you tell which is counterfeit or approved Lipitor? They look the same. Americans who purchase them are told they are the same, but how do you tell the difference? Most people can't. So they will go about their normal routine each morning taking the so-called Lipitor, thinking they are treating their high blood pressure, but really they are walking around with the same silent killer and not taking the appropriate medication for it.

Another example, Aricept, a drug to slow the progression of Alzheimer's disease—something my mother was taking when she was alive. Can you tell the difference between the pills in this photo? No. And that is the problem.

The global economy opens global possibilities to counterfeiting these drugs. It opens the potential for these drugs—or the ingredients used in these drugs—to find their way from nation to nation, from Southeast Asia where the problem is epidemic to one of the 32 nations listed in the amendment that supposedly are safer, and then ultimately into American homes. That is a gamble we cannot afford to take. We should not have to wonder what is in the bottle.

Americans suffering from Alzheimer's should not have to wonder if

the drug they are taking is real or counterfeit. By the time they figure that out, buying a drug either online or abroad that is counterfeit or not of the same substance or of a different dosage, it could be too late to help reverse the damage, as was promised.

One final example, Celebrex, used to treat arthritis and chronic pain. Can you tell the difference between these pills? No, and neither would those who continue to suffer if they are scammed into buying the counterfeit version. One is approved, one is counterfeit.

I fully appreciate my colleagues' desire to keep the cost of prescription drugs down, but our first task is to protect the safety of Americans and to prevent counterfeit drugs from infecting the American market.

The real problem is bringing down the cost of prescription drugs as part of overall health care reform, and the real solution is expanding access to affordable drugs in the United States.

I have heard several of my colleagues refer to 9 percent increases. What they fail to mention is the deep discounts the industry provides, particularly to the government and other entities, against that increase. They do not do that because, of course, it doesn't serve their purpose.

In this fight to create affordable drugs in the United States, I take a back seat to no one. But at the same time, I strongly believe we cannot roll the dice with the health and safety of the American people. This amendment is that roll of the dice. We should never put Americans in the position of having to worry about whether their medicine will make them better or worse. We should never put Americans in a position of wondering is that a real pill or is that a poison pill?

To see what happens if we allow importation we only need to look to the European Union. One of my colleagues earlier today used it as an example as to why we should pass this amendment. But I listened to the words of the European Union, and I hear quite the opposite.

Earlier this week, the European Union Commissioner in charge of this issue said:

The number of counterfeit medicines arriving in Europe . . . is constantly growing. The European Commission is extremely worried.

To quote another section of the statement:

In just 2 months, the European Union seized 34 million fake tablets at custom points in all member countries. This exceeded our worst fears.

It went on to say:

Every fake drug is a potential massacre. Even when a medicine only contains an ineffective substance, this can lead to people dying because they think they are fighting their illness with a real drug.

I expect the EU will agree in 2010 that a drug's journey from manufacture to sale should be scrutinized carefully.

He goes on to talk about other safeguards.

So, in fact, the very essence of what some claim is the very reason we should allow importation, the European Union is saying, quite to the contrary, that they think this is a huge problem for them and, in fact, what seems to be an action that would not hurt someone can actually mean the difference between life and death.

I don't want American families to see those fears come to life. Yes, counterfeit drugs may happen, but if we pass the amendment, we just open the floodgates. The European Union's experience only proves my concerns, not alleviates them like some others suggest. A \$75 counterfeit cancer drug that only contains half of the dosage that a person has been prescribed and needs does not save Americans money and certainly is not worth the price in terms of dollars or risk to life. Let's not now open national borders to insufficiently regulated drugs from around the world.

Finally, in a different dimension, I think safety is utmost, but at a time of joblessness in this country, I don't want to offshore those jobs abroad to allow contaminated and counterfeit prescription drugs to come into this country. We are attacking the one last major research and manufacturing entity in the United States, one that has been at the forefront of the health care reform effort and put \$80 billion of its own money in for reform. I want to see more partners like that in this process.

Let's reject this amendment. Let's keep our drug supply one of the safest in the world.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I ask unanimous consent we extend the period for debate only until 5 o'clock, with the time equally divided with Senators permitted to speak up to 10 minutes each; with no amendment in order during this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. I suggest the absence of a quorum and ask the time be equally charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DORGAN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Madam President, I have listened this afternoon to some of the opposition to the legislation, the amendment we have offered trying to deal with the increasing price of prescription drugs. Those who are opposed apparently are oblivious to the question of the dramatic runup in prices for prescription drugs. They talk about counterfeiting and their worry about

that. I wish to talk about that. Because if you are worried about counterfeiting—and, by the way, there is a counterfeiting issue with respect to prescription drugs in this country and several of my colleagues have described that issue—if you are worried about that, then you have to support the amendment I and Senator MCCAIN and others have offered that provides the only basis for getting to things such as pedigrees on prescription drugs, batch lots, and tracers. The only mechanism to do that is in this amendment, which will make the domestic drug supply safer, allow us to track back drugs to their origin, and will certainly allow us to import FDA-approved drugs when they are sold in other countries for a fraction of the price.

Let me describe what brings us to the floor of the Senate. To those who are opposed to this amendment, if one wants to be oblivious, I guess, fine, but the consumers will certainly notice. You want to buy some Nexium, guess what. Nexium is going to cost you \$424 in this country. But if you buy it in Great Britain, it is \$41 dollars; Spain, \$36; Canada, \$65; Germany \$37. Once again, the American consumer gets to pay \$424 for an equivalent amount, 10 times the cost of what it costs in Great Britain. Is that fair? To me, it is not. It is not fair to me that the American consumer is charged the highest prices in the world.

Plavix, you can see what is happening here, \$133; \$59 in Britain; \$58 in Spain. The American consumer gets to pay \$133 for the equivalent amount. Lipitor, the popular cholesterol-lowering drug, for an equivalent amount of Lipitor, the American consumer pays \$125. In Great Britain, they pay \$40. In Spain, they pay \$32. In Germany, they pay \$48. Again, the American consumer is told: You get to pay \$125. I have described, over and over again, the two bottles of Lipitor, empty bottles made in Ireland by an American corporation and distributed all across the world, the most popular cholesterol-lowering drug. Same pill put in the same bottle made by the same company, FDA approved. Only difference is this one has a blue label and this one has a red one. This one went to Canada and this one to the United States. The U.S. consumer got to pay nearly triple the price. Is that fair? Not where I come from.

By the way, my colleague from Maine, who spoke moments ago, talked about a nearly 10-percent increase in the price for brand-name prescription drugs just this year. This chart shows what is happening. You take the arthritis drug Enbrel; you got a 12-percent increase this year. Singular, for asthma, this year you got a 12-percent increase. Boniva, for osteoporosis, an 18-percent increase this year in drug cost. The list goes on. Plavix, 8 percent up this year. In fact, I have a chart

that shows what has happened year after year after year. The price of brand-name prescription drugs in the United States is way above the rate of inflation in every single year. In fact, during this year, the rate of inflation has dropped down here and the price of prescription drugs has gone up 9.3 percent.

Several of my colleagues, at least a couple of my colleagues have talked about the issue of counterfeit drugs. I am concerned about counterfeit drugs as well. In fact, there were proposals in the Congress that would have done what we should have done long ago with respect to ensuring a safe drug supply: attaching pedigrees to drugs, batch lots so you can trace them all the way back to their origin and trace them all the way through the chain of custody. That has never been done, and it should be done. It is in our amendment. That is the only way we will have a totally safe drug supply.

A couple of my colleagues have talked about circumstances where there have been counterfeit drugs in this country. That is true. Those were domestic drugs, drugs inside the country. By the way, how does some of that happen when you have not only counterfeit drugs but contaminated drugs? Forty percent of the active ingredients in prescription drugs for the United States comes from India and China. Think of that: 40 percent of the active ingredients of all the prescription drugs consumed in our country comes from India or China. I described earlier today the Wall Street Journal investigative report which shows the circumstances with the active ingredient for Heparin, the production of Heparin in a building in China. This shows the development of pig intestines for the production of Heparin. You will see this in the Wall Street Journal articles and the expose. Here is a man in this building in China who is producing Heparin, stirring a rusty old pot with what appears to be a twig from a tree, clearly unsanitary conditions. That becomes ingredients for America's prescription drug supply; 40 percent of our active ingredients comes from circumstances in which there is virtually no inspection or very few inspections of those kind of places where those prescription drugs are developed.

By the way, there was a drug called Epogen produced by a pharmaceutical company, a very reputable one. There is a wonderful book written called dangerous doses by Katherine Eban. She traced this drug to a 16-year-old boy named Timothy Fagan, whose health was dramatically affected by what has happened here. This drug found its way all the way through these places, including a strip joint in Miami, a cooler in the back of a strip joint in Miami, in the trunks of automobiles, distributed through all sorts of strange and unusual places, and gets to a 16-year-old

boy with devastating results because this drug had one-twentieth the strength that was supposed to have been given to this young boy for his disease. Does anybody have the capability to understand where all this happened, how it got tracked? A journalist did the investigative work to find this out. Fortunately for us, we now have a track on this one drug that affected this young boy in a devastating way.

That was not importation. That was the domestic drug supply. How can this happen? Because we don't have batch lots and pedigrees and tracers and the capability to find out where a drug is produced and where it goes from that production to the final user in every single circumstance. We have that in our amendment. It is the only way it will happen if we pass this amendment.

It is interesting to me. There was a man named Dr. Peter Rost. He was the former vice president of marketing for Pfizer Corporation. By the way, Dr. Rost also worked in Europe in the parallel trade area for 20-some years. They do this in Europe routinely. They actually have parallel trading where you can purchase drugs, one country to another, no problem. Here is what he says:

The biggest argument against reimportation is safety. What everyone has conveniently forgotten to tell you is that in Europe reimportation has been in place for 20 years.

They say this is going to be unsafe, you can't do it. Europe has been doing it for 20 years. Don't tell me we don't have the capability if Europe can do it. Why would we do it? Because it is unfair to the American people to be paying double, triple or quadruple or 10 times the cost of prescription drugs that are being paid for by people in the rest of the world. That is unfair. It doesn't make any sense to me.

We offer an amendment. It is one of the few amendments in the Senate, in recent days and weeks, that is bipartisan. Most of the things offered are not bipartisan. This is an amendment, Dorgan-Snowe. We offer it with broad support. The late Ted Kennedy, bless his soul, sat right over there. He was a cosponsor of our amendment. JOHN MCCAIN is a cosponsor of our amendment. Senator GRASSLEY and Senator STABENOW are cosponsors.

The PRESIDING OFFICER. The Senator has spoken for 10 minutes.

Mr. DORGAN. I ask unanimous consent for 5 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. This is broadly bipartisan. It is one of the few bipartisan amendments. My expectation is, we will have a vote on the Crapo motion. He offered his last evening and I offered mine last evening. My expectation is we will have a vote on the Crapo motion and then a vote on this amendment and move on. I would hope we will have the votes on this. It is the

only thing in any health care proposal in the House or the Senate that starts to put the breaks on the escalating prices of prescription drugs. It is the only thing. Without this, we will pass health care reform, if, in fact, it passes and if someone says to you: What have you done to try to put the brakes on the fact that prescription drugs are increasing at 9 and 10 percent? What have you done about that? The answer is going to be, we didn't do anything. We just couldn't do that.

The fact is, a whole lot of people in this country use prescription drugs regularly to control their cholesterol, their blood pressure, and otherwise manage diseases. It keeps them out of the hospital. The fact is, many of these prescription drugs are very important in the lives of people. The question for us is, if we are allowing these drugs to be priced out of the reach of people, what does that say about the value of the drugs? We need to have fair pricing for the American people. We must insist on fair pricing for prescription drugs for the American people. It is that simple. This notion of there being any kind of a safety issue is a total canard by those who ignore the very provisions of the bill that establish the most rigorous regime of safety ever established for the domestic drug supply and for the reimportation of prescription drugs. That is just a fact.

My hope is, in very short order, we will have an opportunity to have the Members of the Senate cast their votes on this and, at long last, Senator SNOWE and I, having been at this, I think, now for 8 or 10 years, will have at the right time—and that is health care, when you are considering health care, when is a more important or more appropriate time to consider the questioning of prescription drugs—and in the right place, the ability to pass the legislation. We offer a bill as an amendment. Thirty Senators having cosponsored it, Republican and Democrats, conservatives and liberals and moderates having cosponsored it. It is my expectation, we will have this vote and at long last be successful in doing something for the American people.

The question is, does the pharmaceutical industry have a lot of clout? The answer is, they sure do. As I said many times, I have no beef against that industry. I want them to succeed and earn profits. I think their pricing strategy is unfair to the American consumer. Do they have a lot of clout. Yes, they do. But it is my hope that when it comes time for a vote, the American people and the interests of the American consumers will have as much clout in this Chamber, based on the facts, facts that suggest the American people ought to be treated fairly.

This amendment is all about freedom, giving the American people the freedom to do what everybody else can do and that is participate in the global

marketplace. When the medicine they need that is FDA-approved is available somewhere else for half price or for an 80-percent reduction, why on Earth should they not be able to acquire that lower priced drug that is FDA-approved? The answer is, they should have the freedom to do that. The only way that freedom will exist is if we pass this amendment. That is just a fact.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I yield the time remaining on our side to the Senator from Maryland.

Might I ask, how much time is that?

The PRESIDING OFFICER. There is 4 minutes 40 seconds.

Mr. BAUCUS. Madam President, notwithstanding the prior agreement, I ask unanimous consent that the Senator from Maryland be allowed to speak for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BAUCUS. Madam President, I might amend that by asking unanimous consent that the Senator from Kansas also be recognized for 15 minutes following the Senator from Maryland.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maryland is recognized.

Mr. CARDIN. Madam President, I ask unanimous consent that I be able to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. CARDIN are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Madam President, I understand I am recognized for 15 minutes; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. ROBERTS. Madam President, I understand the distinguished Senator from Michigan wishes to attend the very important Democratic conference on a brand new health care bill. I understand that, and I shall try to expedite my remarks, only with the suggestion to the Presiding Officer that when you are late in the Senate, you are early, and they are not going to say anything important without you.

I wish to yield at this time to the distinguished Senator from Georgia, who I understand has a statement to make.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I thank my friend from Kansas.

I rise to discuss the tax implications that this health care bill will have on Americans.

Last year, President Obama made a promise to the American people. He assured us over and over that he would

not raise “a single dime” of taxes on Americans earning less than \$250,000 per year.

But the health care bill presently before this body—the very bill that the President has demanded—will not only raise taxes, it will create new ones.

And as of yet, we have no idea what the Congressional Budget Office will say about how much the deal my colleagues apparently struck last night will cost taxpayers.

But we know that this \$2.5 trillion proposal is going to hit three groups with new or higher taxes: families, businesses, and the health care industry itself. And we know that under the current bill taxes overall are estimated to go up by \$367 billion.

Tax hikes are detrimental at any time. But they are doubly hurtful in the bad economy we are in.

Under the terms of this bill, in 2019, more than 42 million individuals and families—this is 25 percent of all tax returns under \$200,000—will see their taxes increase.

In addition, if we pass this bill, the Congressional Budget Office estimates that \$36 billion in new taxes and fines will be forced upon individuals and businesses.

Families without insurance would be fined up to \$2,250. And according to the Joint Committee on Taxation, some of those are expected to have incomes below \$200,000.

Also, businesses with more than 50 workers that do not offer coverage will be forced to pay a penalty of \$750 for every full-time worker if any of those workers get subsidized coverage through insurance exchanges.

Many of these businesses will not be able to afford the cost of providing health insurance or the fine. According to the CBO, 5 million Americans will lose employer coverage. Others may find their pay reduced so employers can cover the cost of these new taxes and fines.

This bill has been sold as an attempt to “help businesses be more competitive in the marketplace.”

But the National Federation of Independent Business—which actually represents small businesses—disagrees.

In a letter to the majority leader, the NFIB was very clear—and this is a quote: “The current bill does not do enough to reduce costs for small business owners and their employees.” It also called this bill “the wrong bill at the wrong time.”

Also hit hard would be the health care industry and medical-device manufacturers.

Now, it may not be popular to worry about fees imposed on health insurers and the like, but the fact is, the \$100 billion in taxes and fees this bill will impose on them will be passed on to Americans in the form of higher premiums. That is also according to the CBO.

Our health care system needs to be reformed. We absolutely need to cover those with preexisting conditions, and Americans in the medical fight of their lives should not be kicked off their insurance.

But swapping out a system that needs fixing with just another broken system that also raises taxes on Americans who need every dime of their paychecks to get through the month is not the way to go.

We need to move in the right direction. We need to emphasize wellness and prevention.

We need to reduce frivolous medical malpractice lawsuits that add so much to the cost of practicing medicine. Senator GRAHAM and I have introduced a “loser pays” bill that would do just that.

We also need to allow health insurance purchases across state lines, and allow small businesses to pool resources to buy insurance for their employees.

But do we need an insurance tax, an employer tax, a drug tax, a lab tax, a medical device tax, a failure-to-buy-insurance tax, a cosmetic surgery tax, and an increased employee Medicare tax?

We don't need to impose eight new taxes on the American people.

The absolute last thing we should be doing during the worst economy we have had in decades—with 10 percent, 26-year-high unemployment—is hiking taxes on the middle class and on small businesses, both of which are the backbone of America.

The NFIB is right—this is the wrong bill at the wrong time.

Madam President, I thank the Senator from Kansas.

Mr. ROBERTS. Madam President, President Obama has repeatedly made two pledges to the American people—and we have heard it and heard it before, and we will probably hear it again—about health care reform. The first is, if you like the health care you have, you can keep it.

We know the bill before us breaks this pledge because all but two in the majority voted to preserve the nearly \$500 billion in cuts to Medicare, which includes \$120 billion in cuts to Medicare Advantage.

The nonpartisan Congressional Budget Office, or CBO, has confirmed that these cuts to Medicare Advantage mean that “approximately half” of the Medicare Advantage benefits will be cut for the nearly 11 million seniors who are enrolled in this program.

This vote confirms whether Americans will be able to preserve and keep the health care benefits they have and like. That answer, unfortunately, is no.

So now let's look at the President's second pledge: that he will not raise taxes on families earning under \$250,000 or individuals earning under \$200,000.

A number of my colleagues have pointed to comments made last year in

Dover, NH, by then-Candidate Obama, who said:

I can make a firm pledge—

And we have heard this before—

... no family making less than \$250,000 will see their taxes increase—not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes.

I think he said “by one dime” at the end of that.

Yet time and again in this bill, that pledge is also broken. This bill calls for nearly \$500 billion in new taxes, penalties, and fees that hit virtually every American, including middle-class families making less than \$250,000 and individuals earning less than \$200,000.

Even though the majority has tried to disguise these taxes as various “fees” and presents them as being paid for by targeted health care industries, the reality is that this bill taxes the average American coming and going.

It taxes you if you have health insurance. It taxes you if you do not have health insurance. It taxes you if you use medical devices, such as a hearing aid or a pacemaker. It taxes you if you save on your own to pay for your health care expenses. And it effectively increases taxes for individuals and families with catastrophic medical expenses.

Americans should understand that the higher taxes called for in this bill will come straight out of their pockets, with the middle class bearing much of this tax burden.

Let me give you a few examples of the new taxes proposed and who will pay for them.

The bill imposes a 40-percent excise tax on health insurance providers that offer high-cost health insurance plans. This provision is the largest tax hike in the bill and raises almost \$150 billion and will be paid for primarily by individuals—not the health insurance provider, but by individuals—through increased income and payroll taxes.

By the time this bill is fully implemented, 84 percent of this tax on “high-cost plans” will be paid by Americans who earn less than \$200,000—taxpayers the President promised would not pay additional taxes.

Second, the bill imposes new taxes on health insurance providers and medical device manufacturers. Both the nonpartisan Congressional Budget Office and Joint Committee on Taxation have said these taxes will be passed on to consumers in the form of higher insurance premiums. The new \$60 billion tax on health insurance providers alone could raise premiums by as much as 2 percent according to some analyses, and that increase could come as early as next year.

Not only that, the \$19.3 billion in new taxes on medical devices could increase costs for up to 80,000 medical products, such as heart stents, blood pressure monitors, eyeglasses, pacemakers, hearing aids, and advanced diagnostic

equipment. Such a tax would stifle and will stifle innovation and reduce the ability for manufacturers to develop new lifesaving devices and technologies.

So make no mistake, the cost of this tax will be passed on to and paid for by anyone who uses a medical device, including those middle-class taxpayers the President has pledged will not experience any tax increase.

If you need a pacemaker or a stent, you will pay more for it because of these new taxes. If you need a diagnostic procedure, you will pay more for it because of this new tax.

Furthermore, under this bill, the floor for deducting medical expenses from income tax is raised from 7.5 percent to 10 percent of adjusted gross income. Those who will take this deduction are most often seniors and those with serious or catastrophic medical issues.

For a family of four, earning \$57,000 in 2013, limiting the deduction means they would lose a tax deduction of \$1,425. A family of four earning \$92,000 would lose a tax deduction of \$2,300.

It goes without saying, I think, that losing a portion of your tax deduction means you pay more in taxes. These are real dollars to hard-working Americans. This provision alone raises \$15 billion in new taxes on Americans who deduct medical expenses.

Finally, this bill raises taxes for the more than 35 million Americans who participate in flexible spending accounts, or FSAs. For the first time, this benefit to middle-income workers is taxed to pay for new government spending and an expansion of entitlement programs.

FSAs are a key benefit for many families for whom health insurance does not cover or does not cover sufficiently some of their highest cost health care expenses such as dental, vision, as well as prescription drug costs. They are also important for individuals who manage chronic diseases such as diabetes, heart disease, or cancer.

Flexible savings accounts allow the participants to set aside money out of their own pocket to pay for these necessary expenses. However, under this bill, the government caps how much can be set aside in an FSA account at \$2,500, effectively raising the tax burden on certain FSA participants and increasing their health care costs.

The typical worker who contributes more than \$2,500 to their FSA has a serious medical condition. This means that under this bill, workers with serious illnesses and earning an average of \$55,000 will be paying more in taxes.

I have highlighted a few of the many tax hikes in this bill and the fact that the middle-class taxpayers will bear the brunt of these higher taxes, but if there are any doubts remaining about what this bill means for Americans' pocketbooks, let's consider this. An

analysis by the nonpartisan Joint Committee on Taxation looked at four tax provisions in the bill and how, when taken together, they will affect Americans. They looked at the tax credit for health insurance, the additional Medicare payroll tax, and several I have already mentioned, including the high-cost plan tax and the medical expense deduction limit. Their analysis shows that when this bill is in full effect, on average individuals making over \$50,000 and families making over \$75,000 would see their taxes go up under this bill. Even after taking into account the premium tax credit, the subsidy that the government will provide to help people offset the cost of health insurance, when this bill is fully in effect, more than 42 million individuals and families or 25 percent—one-quarter of all tax returns under \$200,000—will see on average their taxes go up as a result of this bill.

In addition, based on the same information, the Joint Committee on Taxation identified two groups of taxpayers. The first are those individuals and families who are not eligible to receive the premium tax credit to purchase health care, and second are those individuals and families whose taxes will increase first before they then see some type of tax reduction as a result of their premium tax credit. Taking these two groups together, the number is even more disturbing: 73 million individuals and families or 43 percent of all tax returns under \$200,000 will on average see their taxes increase under this bill, says the Joint Committee on Taxation.

To put it another way, under this bill, for every one individual or family that benefits from the tax credit to purchase insurance, this bill raises taxes on three middle-income individuals and families. These tax increases are on top of those I discussed earlier, such as the new taxes on FSAs, so the estimates I have already mentioned understate the tax impact, again, on middle-income taxpayers. The JCT the Joint Committee on Taxation—has confirmed that these additional taxes, such as the FSA tax, will likely further raise the taxes of middle-income Americans.

All Americans, and middle-class taxpayers especially, need to take notice of what these higher taxes will mean for them and their families. They need to know these taxes will be used in part to pay for a vast expansion of the role of government in health care and more government intrusion into families' health care choices.

Paying for health care on the backs of the middle-class and working Americans is the wrong solution for health care, violates the President's pledge to these taxpayers, and is terribly counterproductive in regard to the No. 1 issue facing this country, and that is jobs and the economy.

I urge my colleagues—I plead with my colleagues—to support the Crapo motion to prevent the enormous tax hike this bill inflicts on middle-class Americans.

Mr. President, I appreciate your indulgence. I know you are ready to go to your conference.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Florida.) The majority leader is recognized.

## RECESS

Mr. REID. Mr. President, I ask unanimous consent the Senate stand in recess until 6:15 p.m. today; that upon reconvening at 6:15, the Senate continue in debate-only posture for an additional hour under the same conditions and limitations specified under previous orders.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I would also tell everyone here there will be no more votes tonight. I don't think we can arrange any.

Thereupon, the Senate, at 5:06 p.m., recessed until 6:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BROWN.)

## SERVICEMEMBERS HOME OWNERSHIP TAX ACT OF 2009—Continued

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I assume it is our turn to talk a bit.

Mr. BAUCUS. Mr. President, I remind all Senators that we have an hour, equally divided, with each Senator able to speak up to 10 minutes each.

Mr. GRAHAM. I appreciate that. I appreciate the effort to try to solve a hard problem. It is easy to criticize in this business, and it is hard to bring folks together. Maybe one day we can solve a hard problem where we get 70 or 80 votes. I don't think this is that day.

One thing I will point out about the process is that somehow between the time this started until now, something went wrong. This is what happened. This is what was said by Candidate Obama in January 2008:

That's what I will do in bringing all parties together. Not negotiating behind closed doors, but bringing all parties together and broadcasting these negotiations on C-SPAN so that the American people can see what the choices are.

In November 2007, he talked about, in his Presidency:

We are going to have a big table and everybody is going to be invited—labor, employers, doctors, nurses, hospital administrators, patients, and advocate groups. The drug and insurance companies, they will also get a seat at the table, and we will work on this process publicly. It will be on C-SPAN. It will be streaming over the Net.

March 2008:



But here's the difference: I'm going to do it all on C-SPAN so the American people will know what's going on.

August 2008:

When we come together around this health care system, I am going to do it all in the open. I am going to do it on C-SPAN.

August 2008:

I am going to have all the negotiations around the big table. We will have the negotiations televised on C-SPAN.

The truth is, Mr. President, I am not so sure negotiating on C-SPAN is the way to find a solution to hard problems. But being at the table with all parties represented is probably a very good idea. And the process, as I understand it now, is that our Democratic colleagues are trying to negotiate among themselves to get to 60 votes. There was an announcement made last night by the majority leader that we have had a breakthrough. He said, "I can't tell you what it is, but it is good."

Mr. President, that is not the way we want to change one-sixth of the economy. I argue that is not the best process by which to make major decisions that affect the quality of Americans' lives.

The idea of Medicare being changed so dramatically by one party is probably not a good idea. What have we done on the Medicare front? The actual bill that has been proposed increases spending by \$800-something billion. To pay for that, there are cuts in Medicare of close to \$400 billion to \$500 billion. The money that would be taken out of the Medicare system is not plowed back into Medicare but used to fund other aspects of this bill. This is at a time when Medicare—the trust fund—is \$36 trillion underfunded and will begin to be exhausted in 2017.

I argue that both parties should be trying to find a way to save Medicare from the pending bankruptcy and do something about entitlements in general, Social Security and Medicare, to make them solvent so that, one, they don't run out of money and we don't have to raise taxes in the future or cut benefits for young people because those are the choices we will pass on to the next generation if we do nothing.

Instead of coming together to save Medicare from bankruptcy, we are actually reducing the amount of money going to an already-strapped system and using it for something else. There is another idea floating around that one of the solutions that may come out of this deal, which we don't know the details of yet, is we are going to allow more people to buy into Medicare under the age of 65, and we will be expanding the number of people going into a system that is already about to go bankrupt. If we add new people to the system, approaching insolvency, something has to give. Who will be coming into the system from 55 to 64? I argue those people are going to be in

as a result of the process of adverse selection, people who have health care problems. It is going to put more pressure on a system that can't stand one more drop of pressure. That doesn't make a whole lot of sense to me.

We know this Medicare system is very much under siege, that the baby boomers are about to come into the system by the millions. There are three workers for every retiree today, and in 20 years there are going to be two. So what do we do? We take money out of the Medicare system and use it for other things, and we are adding more people into the system that are going to drive up the cost overall to those already on Medicare.

So if you are over 65, your ability to receive treatment is going to be compromised because now we have to accommodate more people. If you don't believe me, ask the hospitals and doctors who are very worried. The Medicare reimbursement system now makes it very difficult for doctors and hospitals to pay the bills. So the hospital association, the Mayo Clinic, and others have warned Congress: Please don't expand Medicare because we can't survive on the reimbursement rates we have today.

If we add more people, we create more stress on a system that is hanging by a thread. I argue that is not change we can believe in or accommodate. If you had run for President on the idea that you are going to put more people on Medicare and expand that system, not reform it, take money out of it and use it for another purpose, you would have never had a chance of getting elected. No one during the campaign for President ever suggested any of these ideas.

I just hope we will, as a Congress, stop and think about what we are doing and realize if we do this—if we cut Medicare and expand the number of people who will be in the system—we make it impossible to save it down the road and make it difficult for people coming behind us to have the same quality of life we have enjoyed. Between Medicare and Social Security and other entitlement programs, we are about \$50 trillion short of the money we are going to need in the next 75 years to pay the bills.

In trying to reform health care, we have taken a weak system and almost made it impossible to reform. We have expanded taxes at a time when the economy can't bear any more tax burdens because part of the bill raises taxes by about \$500 billion. You will never convince me or anybody else that if you raise \$500 billion in taxes to pay for this new health care bill, it would not affect the economy in general. There has to be a better way.

I am on the Wyden-Bennett bill. I am a Republican who agrees with mandated coverage for everybody. Senators WYDEN and BENNETT have a com-

prehensive proposal that is revenue neutral. We would take the tax deductions given to business over a period of time and give them to individuals so that all of us would have tax deductions to go out and purchase health care in the private sector. We would have exchanges where we can go shop for health care that is best for us.

If you are single and 22, you would want a plan that is different than if you were 45 and had 3 kids. The trade-off is that the Republicans, on the Wyden-Bennett bill, would agree to mandate coverage. The Democrats would allow people to purchase health care in the private sector. We would all use the Tax Code to fund those purchases. If you didn't make enough money to have the tax deductions, you would get a subsidy. That makes perfect sense to me.

I want to solve the problem. I want to make sure everybody is covered because a lot of us are paying health care bills for those who are not covered that could afford to pay—about 7 million or 8 million people make over \$75,000 a year, and they don't pay anything for health care of their own. So the rest of us have to pay it when they get sick. That is not right.

There is a better way, in my view. I just hope we will understand that what we are doing with one-sixth of the economy is going to have a lasting effect on the quality of American life, and now is not the time to cut Medicare or add more people to it. Now is the time to come together in a bipartisan fashion to save Medicare from impending bankruptcy. Now is not the time to raise taxes.

I hope our colleagues will understand that there is a better way.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Ohio be recognized following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I had a conversation earlier today with the distinguished Republican leader. It appears now that we are going to get the appropriations bill from the House of Representatives. The bill is bipartisan, and everybody has worked hard. There are some conference reports we have completed. Yet we didn't find them to work on the floor, for reasons everyone understands. That bill will come over from the House tomorrow. We can move to that with a simple majority vote, and then if I have to file cloture on it tomorrow, we would have a Saturday cloture vote. Thirty hours after that—sometime Sunday morning—we would have a vote on the conference report.

I have indicated to the Republican leader that it would probably be to everyone's advantage if we allow people

to go home for the weekend, rather than going through all these procedural gyrations.

We have worked hard. I had a Senator come to me and say she hadn't been home in 2 or 3 weeks, and it was not a good situation. That Senator said if we have to be here this weekend, she will be here. We need to not be doing things just to delay. I understand the Republican leader doesn't want to do health care. I appreciate that, and we have different positions on that issue.

I see no reason to punish everybody this weekend. I hope the minority will give strong consideration to the proposal I have made. We are waiting for a score to come back from CBO anyway. Anybody who has had experience with CBO knows that will take a matter of days. So I hope the minority will allow a little bit of time to go by so that we can have our respite from the tedious work we have been doing on the Senate floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Ohio is recognized.

Mr. BROWN. Madam President, I have come to the floor most days reading letters from people in Ohio—from Springfield to Mansfield to Marion—who thought they had good insurance a year or two ago, if you asked them, but found out their insurance was not so good when they had a preexisting condition or when they got very sick and the costs were high and the insurance companies cut them off. In some cases, as the Presiding Officer knows, in my State and across the country, women so often are paying higher premiums than men.

Our bill will fix a lot of those things. One of the things the bill still needs to fix—and we have gotten letters on this—is what happened with the price of prescription drugs. There are many things I like about the bill and a few I don't. Here is one.

I rise to support the Dorgan amendment No. 2793. I will start with a story.

About a decade ago, maybe a little more than that—I live in northern Ohio—and I used to take a bus load of senior citizens every couple of months—maybe a dozen times—from Elyria to Sandusky into Toledo and into Detroit and into Ontario—across the river into Windsor, Ontario. I did that so seniors could buy less expensive prescription drugs. I would go into a drugstore in Windsor—same drug, same packaging and dosage, but the price would be one-half, sometimes one-third of what seniors paid in the United States. In many ways, it broke my heart that, as a Federal official, I was going to another country to buy something that was more often than not made in the United States, when the drug companies charge twice or three times that to the United States as in Canada. But I thought it made sense for seniors in my State—congressional

district in those days—to go to Canada and be able to get those prescriptions.

They then would be able to get a refill every 3 or 6 months at least a couple times with that doctor's signature they got in Canada to buy those drugs.

I appreciate Senator DORGAN and Senator SNOWE offering this amendment. I hope it is signed into law as part of health care reform. If the drug companies were struggling and not making any money, it would be a different situation. Drug companies earn higher profits than almost any other industry in America. In fact, they have been one of the three most profitable industries in our Nation for decades.

Just last year, the pharmaceutical industry was the third most profitable industry in America, ranking right up there with the oil conglomerates.

Let's face it, to call these corporations American is a stretch. Most of them are multinational, and most reap huge profits from around the globe.

It is true they earn higher profits in our country than in any other, but that hardly qualifies them as patriotic.

As drugmakers earn billions, U.S. drug spending is fueling double-digit increases in health insurance premiums. There is a reason health insurance premiums go up. Certainly, the insurance industry is one of the reasons. We know about insurance industry profits. We know about insurance industry executive salaries. In the 10 largest health insurance companies in this country, CEO's average around \$11 million in income. That is part of the reason.

Another reason is drug prices continue to fuel the high cost of health insurance. Drug prices continue to drain tax dollars out of the Federal Treasury, and drug spending is undermining the financial security of millions of seniors and other Americans, of course, but especially seniors who can ill afford to be the piggy bank for big PhRMA's—that is a drug company trade association—global operations.

Because we do not allow importation—a decision our government has reached in all too close consultation with the drug lobby—Americans are forced to pay more for the same drugs than everyone else in the world.

It is not about safety. We know that. The equivalent of the Food and Drug Administration in Canada or in France or in Germany or in Israel or in Japan knows how to make sure drugs are safe in their country. It is not a question of safety. It is a question of industry profits.

Prohibiting importation has cost American consumers and taxpayers dearly. It has driven up the cost of insurance premiums and it has driven up the cost of Medicare, paid by taxpayers, Medicaid, paid by taxpayers, TRICARE, paid by taxpayers, and all Federal health care programs, again paid by taxpayers.

It has reduced—and this is equally important—not just the cost, but it reduces access to lifesaving medicines. Some people simply cannot afford the cost of these drugs. It has reduced seniors' budgets to the point where they buy groceries or heat their homes or purchase prescription drugs but not both. Too often seniors cut their pills in half, take their prescriptions in smaller doses, and that, obviously, is jeopardizing health also.

This amendment is a step in the right direction for increasing access to those drugs.

In 2008, the pharmaceutical industry had more than a 19-percent profit margin and had sales of \$300 billion. I am way more interested in protecting U.S. consumers, U.S. taxpayers, and U.S. small businesses that are burdened by these high drug costs than I am U.S. drugmakers and their inflated drug prices.

The CBO estimates this amendment will save the government \$20 billion over the next 10 years—\$20 billion. I wish to encourage more competition. I do not want this body, again, to come down on the side of preserving monopolies.

As it stands now, the U.S. Government permits the drug industry to hold American consumers hostage. Meanwhile, the largest drug companies—Pfizer, Merck, and others—continue to outsource operations abroad to cut costs and increase profit margins.

Here is what happens: It is OK for big PhRMA to look abroad to cut costs and boost profits while American consumers and businesses are stuck paying the bill. The drug industry is trying to convince us—the Senate, the House and, more importantly, trying to convince the American people—that importation is unsafe. Wait a second. They go to China—I had hearings about this in the Health, Education, Labor, and Pensions Committee. We have had hearings, which Senator Kennedy, a couple years ago, asked me to chair, involving American drug companies outsourcing their production to China. They could not tell us about the entire supply chain that supplied the ingredients to these drug operations in China that later made their way back to the United States. We know about Heparin, a drug that killed several people in Toledo, OH, because it was contaminated with who knows what ingredients that came from China.

So these drug companies are arguing these products are unsafe, these drugs you can buy in Windsor, Ontario, or pharmaceuticals you can buy in Bristol, England, or pharmaceuticals you can buy in Marseilles, France, or pharmaceuticals you can buy in Dusseldorf. They are saying those are unsafe, but they are unwilling to import drugs themselves.

Lipitor, one of the best-selling drugs in the United States, for years, was

made in Dublin. They can import their drugs from abroad. They can import ingredients from China, which has nothing like the Food and Drug Administration, and they are going to hire all their lobbyists and they are going to go around desk to desk, Member to Member, office to office—435 House Members, 100 Senate Members—and they are going to tell us these drugs are unsafe? We know better than that.

This amendment would simply make imported medicines available to consumers. It is a free-market mechanism. Open it so people can compete, giving customers more purchasing power so they can pay lower prices. The drug industry should not be protected from the same competition that every other industry faces in a global marketplace.

I urge my colleagues to support the bipartisan amendment of Senator DORGAN from North Dakota, Senator SNOWE, Senator GRASSLEY, and Senator MCCAIN—all three Republicans from Maine, Iowa, and Arizona. This amendment makes sense for taxpayers. It makes sense for consumers. It makes sense for businesses. It makes sense for our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Madam President, I wish to speak to a couple issues this evening. The first one has to do with what we understand to be the evolving so-called deal that is being worked out by the other side on the public option/government plan and the attempt to try and reach 60 votes on the other side, in what appears to be a process that continues to unravel and break down because every single day there is a new story about some new gimmick thrown out there to attract the requisite number of Senators to get to that threshold of 60.

The most recent one—and, of course, as I said, I cannot verify all of this because we have not been privy or included in any of the discussions that have occurred behind closed doors. In fact, one of those meetings just occurred earlier this evening.

We read from press reports that one of the proposals contemplated by the majority to get that requisite number of votes is the expansion of the Medicare Program. What is interesting about that is that has engaged organizations that prior to this time had essentially been at the table and negotiated their own kind of agreement. But that has gotten the interest level up of the American Hospital Association, the Federation of American Hospitals, the AMA, the physician group, and I even have something here from the Mayo Clinic.

It is interesting that would be considered now as an alternative to what previously had been discussed in terms of a public option. Here is why. Medicare, as we all know, is destined to be

bankrupt in the year 2017. It is a very large program that benefits a lot of seniors across the country. We all support reforming it, making it more sustainable, putting it on a pathway to where it will be solvent well beyond that date and extending its lifespan.

What this would appear to do is allow people younger than 65 or 62, down to 55, to buy into Medicare. Essentially, you would allow more people to participate in a program that, as I said before, is destined to be bankrupt in the year 2017. So what you are doing with this proposal—because we all know the underlying bill cuts Medicare reimbursements to hospitals, nursing homes, hospices, home health agencies, and to Medicare Advantage beneficiaries by about \$1 trillion over 10 years, when it is fully implemented—you are going to take \$1 trillion of revenue out of Medicare—remember, this is a program that is already destined to be bankrupt in 2017—you are going to take \$1 trillion of revenue out of it over the 10-year period, when it is fully implemented, and expand and add the number of people who are going to be on it. It is equivalent to putting more people on a sinking ship. In fact, that is what has gotten the attention of provider groups around the country.

Hospitals, as we know, cannot recover their costs with the reimbursements they are currently receiving under Medicare. In most States, it varies a little bit—80 to 90 cents on the dollar. So hospitals, every time they serve a Medicare patient, shift that cost over to the private payers and increase costs for everybody who is receiving insurance in the private market.

Essentially, what you will be doing is expanding the government-run Medicare Program which underreimburses hospitals, physicians and other health care providers and forcing even more of a cost shift. You are exacerbating the cost shift already occurring, making it worse and getting all the provider hospital groups—the American Hospital Association, the American Medical Association—engaged in this debate because they see what a train wreck it would be for them.

Frankly, what that means is you would have a lot of providers that would not be able to make ends meet. They would have to shut their doors and go out of business because many of them are very dependent on Medicare patients.

In my State of South Dakota, most of our hospitals, especially in rural areas, are heavily dependent—70 percent or thereabouts—between Medicare and Medicaid. If they are not a critical access hospital and still getting reimbursed under the traditional Medicare Program, they are going to have a very hard time making ends meet because right now what they do is what all hospitals do. They shift costs over to the private payers.

Here is what AMA said about the proposal:

AMA has a longstanding policy of opposing expansion of Medicare given the projections for the future.

That is what the doctors group said.

The American Hospital Association urged all Senators to reject expansion of Medicare and Medicaid as part of the public option, saying Medicare pays hospitals just 91 cents of each dollar of care provided. This again would expand the number of people they would have to cover and shrink the private-payer market and lump more and more of the costs on those so everybody else's premiums would go up.

The Federation of American Hospitals, which is the private hospitals across the country, said any Medicare buy-in would invariably lead to crowding out of the private health insurance market, placing more people into Medicare. Such a policy will further negatively impact hospitals after we have already agreed to contribute a maximum level to sustainable reductions in the deal they struck earlier. It seems to me these deals have fallen off the table.

This latest proposal—if, in fact, what we are reading is true—I think they recognize would be a disaster. Here is what the Mayo Clinic in their letter said:

Any plan to expand Medicare, which is the government's largest public plan, beyond its current scope does not solve the nation's health care crisis, but compounds it.

They go on to say:

Expanding the system to persons 55 to 64 years old would ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across the country. A majority of Medicare providers currently suffer great financial loss under the program. Mayo Clinic alone lost \$840 million last year under Medicare. As a result of these types of losses, a growing number of providers have begun to limit the number of Medicare patients in their practices.

That is what we are talking about. If you expand this program and you have a reimbursement system that currently does not cover the cost of hospitals, they are going to cease covering Medicare patients in the same way they currently are not covering Medicaid patients.

They say about 50 percent of physicians today have chosen not to accept Medicaid patients. So you compound the access problem that many people in rural areas already experience.

There are big problems with this proposal. I have to come back to what Congressman Anthony Weiner said about this issue:

Extending this successful program to those between 55 and 64, a plan I proposed in July, would be the largest expansion of Medicare in 44 years and would perhaps get us on the path to a single payer model.

Therein, I think, lies the ultimate goal, and that is to expand Medicare to where we have a whole government-run

health care system in this country on the way to single-payer status. That is precisely what many of our colleagues on the other side want to see happen.

Ironically, there are some who have expressed concern about this. Our colleague from North Dakota, the chairman of the Senate Budget Committee, Senator CONRAD, said when asked about this proposal:

It's got many of the same problems I have with previous versions of the public option. That then ties you to Medicare levels of reimbursements for a whole new population.

He contended that the hospitals in his State would go bankrupt. His State of North Dakota is not unlike my State of South Dakota. Hospitals are not going to be able to make it if these reimbursement levels that are currently afforded them under Medicare are extended to a whole new population.

I hope this is a bad idea that is just being thrown out as one of these things that is being thrown at a wall and hoping it sticks in a desperate effort to get to 60 on the other side because this is a bad idea and the provider groups are weighing in heavily against it.

It is pretty clear it would be a disaster for health care delivery in rural areas of the country and, for that matter, Mayo Clinic and many of the providers that weighed in on this. It would literally make it more difficult for people to have access to health care and exacerbating the cost-shifting issue that already exists with regard to the private-payer market and make their costs and everybody else's costs go up more.

I want to shift gears for a moment because tomorrow Senator HUTCHISON and I will be offering a motion to commit. Basically, what it deals with is the whole tax component of this health care reform bill. In very simple terms—and I will demonstrate exactly why this is a relevant issue—if you look at the cost of this health care proposal, the Reid proposal before us, you can see what the costs are in the early years and then you can see how the costs explode in the outyears. There is a reason for that. The revenues kick in right away. The tax increases start coming in right away, but the spending proposals and many of the benefits that will go out under this bill don't occur until much later.

So what we have is a 10-year budgetary picture and cost for this program that completely understates what the true cost of the program is. If you look at this particular chart, look at the years 2010 to 2019, you can see how, particularly in the early years, it doesn't look like there is that much spending. In fact, the number in the first 10 years is \$1.2 trillion in spending. However, if you look at the cost of this when it is fully implemented—take the year 2014 and extend it through the year 2023—you can see how the costs explode, and

the total fully implemented cost over a 10-year period is \$2.5 trillion.

There is a reason for that, as I said. A lot of budgetary gimmicks were used to understate the cost, particularly in the first 10 years, so people could say it costs only \$1 trillion. In fact, as you can see, when it is fully implemented, it is \$2.5 trillion. One of the major reasons for that is because the tax increases in the bill take effect 23 days from now—January 1 of the year 2010. That is when many of the tax increases in this legislation go into effect. But the spending and the benefits that are going to be distributed—the exchanges and the premiums, the premium subsidies, and that sort of thing, the tax credits—don't begin to kick in until the year 2014 or 1,484 days later. So for those 1,484 days—well, back out the 23 days from that—so for those 1,461 days, taxes are going to be assessed and levied against people in this country—on small businesses, families, and individuals—but you will not see any benefits for over 1,000 days, almost 1,500 days.

What the Hutchison-Thune motion to commit does is it aligns the tax increases, the fees—the taxes included in this proposal—with the benefits in terms of timeline so that the tax increases and the benefits occur at the same time. In other words, we would delay the tax increases in this bill until such time as the benefits package and structure would kick in so that they are in sync.

Right now, there is essentially 4 years—at least 4 years—of tax revenues coming in, tax increases being borne by people all across this country, including businesses. Incidentally, there is a lot of discussion now about job creation and the need to grow the economy. The worst thing you can do to small businesses, when you are trying to create jobs, is to levy new taxes on them. But that is what this bill does. And, by the way, in that first 4 years, almost \$72 billion of taxes will be collected. I say the first 4 years, I think that is through the year 2014. But you have all these taxes that kick in on January 1 of 2010—less than 23 days from now—and then actually you have this amount of time—as I said, almost 1,500 days—before the benefits begin to pay out.

So all we are saying in our motion to commit is let's align the tax increases and the benefits structure so you don't have this period of 4 years where people are paying taxes and receiving literally no benefits under this health care reform bill.

The advantage that has is that it accurately reflects the cost of this program in the first 10 years, rather than understating it because of the revenues that kick in immediately and the benefits that don't kick in until much later. It is very straightforward, very simple, very understandable. Tax increases that are designed to kick in on

January 1 of this next year would not kick in until such time as the benefits kick in. So the fees, the taxes, and the tax increases in this bill are all aligned and sync'd up, so to speak, with when the spending under the bill begins.

Of course, what that does is give us a more accurate reflection of the overall cost of the bill. And many of these tax increases which will kick in 3 weeks from now, or a little over 3 weeks from now, on January 1 of next year, are going to be distributed across a wide range of businesses, but most will be passed on to consumers across this country. In fact, the CBO, in a letter to Senator EVAN BAYH on November 30 of this year, said essentially that all these fees and taxes in the bill—and there are fees on medical devices, there are fees on prescription drugs, there are fees on health care plans—all these fees would tend to raise insurance premiums. In testimony in front of the Finance Committee, the CBO, when this question was posed during the deliberations at the Finance Committee level as to what all these fees would do to insurance premiums, they said, roughly, it would increase premiums dollar for dollar.

So we have the taxes and fees that will kick in immediately, and that will have an upward impact on premiums so that people across the country will begin to see those premium increases take effect. The tax increases, of course, are taking effect on medical device manufacturers and on prescription drugs, and there is a whole other range of taxes in here—there is the tax on high-cost insurance plans, there is a health insurer fee, there is a Botox tax, which starts January 1 of 2010, and you can kind of go down the list. There are limits on FSAs, flexible spending accounts, which is something people use to put aside money so they can buy a high-deductible plan and have dollars available to deal with the incidental health care costs they have. So the taxes are going to go up on those. You can go through this whole list of taxes, all of which, as I said, are going to go into effect in the near term, but none of the benefits kick in until many years later.

Unfortunately for the American public, they are going to see the premium increases that will come as these taxes are imposed on all these various sectors of the health care economy and which will all be passed on to consumers in the form of higher premiums. So the American consumer—the American public, the taxpayers of this country—are going to see the costs immediately and won't see the benefits for 5 years. That is not fair. It is not the right way to set policy here in Washington, DC. It is much more transparent if we have these dates of the tax increases and the fees and the taxes in this bill sync'd up—synchronized, aligned—with the benefits

when they begin so that everything starts at the same time.

So the motion to commit is, again, simply a motion to commit this back to the Finance Committee, and to create a level playing field where the revenues that are raised under the bill don't begin to kick in until the benefits start to kick in and the spending starts to kick in. That will give us the true picture, the actual picture of the cost which, as I said before, is \$2.5 trillion over 10 years when it is fully implemented, and not the \$1 trillion, or under \$1 trillion that is being used by the other side. You have to look at the full picture over a 10-year period, when it is fully implemented. Obviously, that gives you a very different perspective about the overall true cost of this particular proposal.

The basic contours of this bill we have in front of us have not changed, nor do we expect them to change. They will tweak around with this government plan. There was already a vote on the issue of abortion, which I happen to believe taxpayer funds should not be used to finance. We have had that vote. There will be some other votes on individual aspects. But some of those things are not going to affect the fundamental core elements of this plan, which have stayed the same throughout the entire process. And those core elements are a massive expansion of Federal spending—\$2.5 trillion over 10 years when it is fully implemented—massive cuts to Medicare—about \$1 trillion over 10 years, when fully implemented, affecting hospitals, nursing homes, home health agencies, hospices, and beneficiaries of Medicare Advantage, of which there are about 11 million across the country—and it is also financed with increases in taxes, which I have mentioned. Those are the basic components of this bill. Seventy new government programs are called for. All the new spending, all the new bureaucracy, all the new taxes, and all the Medicare cuts, those things have not changed since this bill first started being debated several months ago.

That is where we are today. That is why I believe this is such a bad proposal for the future of this country. Because even after all that, if you look at the impact it has on premiums, according to the Congressional Budget Office, 90 percent of Americans end up the same or worse off. When I say the same, I mean year over year increases in their insurance premiums that are double the rate of inflation. So if you are buying in the small-group market today, or the large-group market, according to the Congressional Budget Office, you are going to see your insurance premiums continue to go up over time. If you buy in the individual market, you are going to see them continue to go up, but way more—a 10- to 13-percent increase in premiums for people who buy in the individual mar-

ketplace, above and beyond the rate of inflation that will impact people in the large- and small-group markets.

So the bottom line is, if you are looking for reform, if you are the average American citizen out there, the person I represent in South Dakota, who is hearing about health care reform, to them it means a couple of things. It means affordable access to health insurance for people across this country; and something that most of us—at least here on our side—think ought to be a part of this, and that is measures or proposals that actually bend the cost curve down rather than up. But what we have seen consistently throughout the course of this debate, with all the spending and all the tax increases and all the Medicare cuts, is no positive impact on premiums. The best that 90 percent of Americans can hope for is to maintain the status quo—stay where you are—which is double your increases year over year, double the rate of inflation in your health insurance premiums or, worse yet, increases of 10 to 13 percent above and beyond that. That is what 90 percent of Americans are looking at as a result of the health care reform proposal that is currently before the Senate.

There is a better way, and we believe the way to get this right is to start over and to actually focus on solutions that will drive down the cost of health insurance, that will bend that cost curve down, such as interstate competition, allowing pooling for small businesses, medical malpractice reform. We have a whole series of things that we think represent the consensus view of the people in this country. There is common ground we can all stand on. But regrettably, we have not been included in any of the discussions, nor have any of our ideas been a part of those discussions. Rather, they have chosen to pursue this course of a big spending program, with the higher taxes, and the Medicare cuts and the higher premiums.

I truly hope there will be support, as this process moves forward and we get onto the critical votes ahead of us, for a more rational step-by-step approach, doing this right, getting away from this huge massive expansion of the Federal Government here in Washington, DC, and seriously focusing on solutions that actually do bend the cost curve down, that don't rely on these huge cuts to Medicare, that don't rely on these huge tax increases, but that actually find savings. And they can be achieved in the market by putting policies in place that will constrain costs and put downward pressure on the prices most people pay for health insurance in this country. It can be done. But it is going to require some boldness on the part of some of our colleagues on the other side.

I think our side is pretty well united. This is a bad policy, a bad prescription,

if you will, for America's future. But we are going to need some help from a courageous Democrat or two to make sure this massive expansion of the Federal Government is defeated and that we can go back, start over, do this in a step-by-step way—the right way—and in a way that actually does lower costs for people in this country. I certainly think that is what my constituents in South Dakota expect, and I think that is what most Americans expect. They deserve to have health care reform that gives them that outcome—lower cost and access to affordable health care.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BEGICH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I ask for 10 minutes to be allotted to me under the minority time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, in the past few months this body has been forced to stand aside as Senator REID and a few others crafted a 2,000-page bill behind closed doors, the one we are on right now. Unfortunately, the product that was resolved at the closed-door meetings—at least the one we have now, I don't know about a future one—still raises taxes by  $\frac{1}{2}$  trillion. Probably under any new bill that comes out you are going to have taxes going up  $\frac{1}{2}$  trillion, cut Medicare by  $\frac{1}{2}$  trillion, raise premiums on American families, fail to bend the cost curve down, and expand government's encroachment further and further into people's health care decisions.

What I want to go through is a series of charts about how inflation is going to end up being the tax collector's best friend in this overall plan and how the tax of inflation is going to be one of the key features of how the overall bill is paid for.

I hope most people remember when we had inflation. A lot of people maybe don't remember when we had significant inflation. It is a cruel tax. It is a very cruel tax on people on fixed income, a very cruel tax on people in low-income status because constantly the dollars you have stay pretty stable, and everything you are buying goes up. So inflation kills you. It kills you in the pocketbook and is one of the things we have to be concerned about, particularly with the amount of money that is out in the money supply today and the likelihood of this moving forward and how it is built in to pay for this huge expansion that we can't afford in this bill.

I am joining my colleagues today in speaking against the \$500 billion in new

taxes that are in the Democrats' proposal to levy on the American people and the job-creating small businesses this is going to be put on, in an attempt to pay for this big 2,000-page bill.

This monstrous bill is flawed economic policy. I will develop that point for you as well. It fails to lower health care premiums, fails to bend the cost curve down, and will further cripple the struggling economy with massive and burdensome tax increases.

This careless legislation reminds me of a cautionary tale that is still being played out in another part of the world. That is what happened in the early 1990s in Japan. Japan, a surging economic giant at the time, suffered a severe economic recession in the early 1990s, of which the effects are still lingering even today in Japan.

During Japan's "lost decade," from 1991 to 2003, their gross national product grew a paltry 1.4 percent annually, creating a decade of stagflation—that is where you have a stagnant overall growth but inflation in the economy—and limited economic growth. Most economists believe that Japan's economic recession would not have lasted nearly as long as it did had it not been for one fatal error that the Japanese government made. In the late 1990s, as their economy was recovering and appearing to be pulling out of its economic slump—so the economy is just getting going, starting to pull out of the economic slump—the Japanese government made a catastrophic decision to raise taxes. The result was that this one decision aborted the strong recovery the Japanese economy was starting to experience and plunged it back further into an economic downturn that lasted for many more years, the hangover from which is still on them today.

What are we doing here today, discussing a \$2.5 trillion government entitlement expansion that raises taxes  $\frac{1}{2}$  trillion, plays budget gimmicks with our \$12 trillion deficit and raises health premiums and costs for all Americans in the middle of the country's economic recession? What are we even talking about, why are we doing it? That is what I get from the people back home. They say why are you talking about this while are we in this recession? Why are you talking about this with the health care situation the way it is, to raise the cost, raise the insurance premiums, cutting Medicare when Medicare needs more, not money taken out of it? Now is not the time, this is not the bill, and this is not the way the American people want to see their health care reformed. What the American people want is for this body to lower health care costs and induce an economic recovery that creates jobs, not kills them, and grows the American economy, not thwarts it.

The way to do that is not to raise taxes, as is evidenced by what hap-

pened in Japan. Increased mandates, increased regulations, and increased taxes are a recipe for disaster. It is a recipe that kills jobs. In fact, President Obama's chief economic advisor, Dr. Christina Romer, stated earlier this year that as many as 5.5 million jobs could be lost due to the Democrats' new tax proposal in this 2000-page government takeover of health care. Nothing can be worse at a time when the Nation is already experiencing a 10-percent unemployment, a 26-year high. This bill will impose \$28 billion in new taxes on employers that will ultimately be paid by American workers in the form of reduced wages and lost jobs.

Under this burdensome legislation employees will face stunted wages and the loss of their benefits as their employers attempt to find ways to fund these newly imposed mandates. As small businesses struggle to keep their doors open, tough decisions will have to be made on whether to raise prices, cut wages, or let go workers in order to find the funds necessary to comply with the Federal mandates imposed in this bill.

Furthermore, this bill will kill jobs by penalizing small businesses who are looking to grow—and small businesses are the growth engine for the country. In this bill, firms with more than 50 workers that did not offer coverage would have to pay a penalty or a tax to the Federal Government for each full-time worker if any of their workers obtain subsidized coverage through the government-run exchange.

What businessman would decide to hire that 50th employee, knowing full well if he did that the government would penalize his business and slam him with a new costly tax? So now people try to stay under this limit rather than constantly looking to grow the business.

Furthermore, under certain circumstances, firms with relatively few employees and relatively low average wages would be eligible for tax credits to cover portions of their health insurance premiums. That is relatively few would be eligible.

I ask, what employer would decide to increase the number of employees or increase the amount of their wages if they stand to lose government handouts, supports, subsidies, or face an increased tax burden? They simply will not be willing to do it.

One of the most disturbing aspects of this legislation is the use of inflation to fund it—the use of inflation, a hidden tax increase on working families, to fund it.

I am the ranking member on the Joint Economic Committee and we look at these aspects a great deal. The use of inflation is built into the base of this to fund it. We know the consumer, the individual taxpayer, pays all taxes. No matter how the government claims

to assess those taxes, they are paid by individuals.

I have a couple of examples I want to show. First, I want to talk about: High-cost Plans Tax Hits the Middle Class. Let me talk about that. This is the tax on the so-called Cadillac health insurance plans.

We know that insurance policies and benefit plans will be altered to avoid that tax. In other words, if you get an insurance plan that is up above a certain level you get taxed on that higher end, that so-called Cadillac plan. So in all probability most groups will not provide this high-quality health care because they say you are going to get taxed on it.

Benefits that taxpayers with insurance currently receive on a pretax basis—right now they get it so the company is paying for it, is pretax to the individual—will gradually shift to after-tax benefits resulting in higher payroll and income taxes. So now that you have cut this Cadillac plan to get underneath it being taxed, and then the company says OK, we will pay you in wages or we will do this somewhat differently. Then you have to go around and supplement or have a lower quality of health insurance. You are going to have to pay for it with after-tax dollars. That will result in more taxes, but you don't get more benefits from this. This is a big tax hit on the middle class of people who are going to have to pay this as their higher income or their higher based insurance plans are taxed.

Here is what the Joint Committee on Taxation said about the distribution impact of the high-cost tax plans: Despite the President's promises the majority claims—91 percent of taxpayers will be affected by this tax earning under \$200,000. The tax will hit married filers more severely than singles; 62 percent of the high-cost plans tax impact will fall on married filers compared to 25 percent on single filers. Why are we building the marriage penalty back into the insurance? We worked a long time in this body to get rid of key portions of the marriage penalty, saying we should not tax marriage, we should support this institution. It is being built back into this plan.

This bill also imposes an additional Medicare tax on wage and salary—or certain types of business incomes of single taxpayers with incomes above \$200,000 and married taxpayers with incomes of more than \$250,000. Right off the bat there is a new marriage penalty. People living together but unmarried making \$150,000 each won't pay the tax. Two married people paying the same amount will. What is right about that?

Making matters worse, the thresholds are not indexed for inflation—no indexing for inflation. Inflation is a



cruel tax and unfortunately in this situation it is not only going to be inflation, but you are going to be taxed, then, as you get inflated into these categories. From 2013 to 2019, the number of returns of people earning under \$200,000 in today's dollars will rise from 75,000 to 345,000 under the current trajectory on inflation. We are making the tax man's best friend inflation. That is wrong. So you are going to move 75,000 to 345,000 for new tax revenue. Married couples will be hit hard, as I mentioned earlier. Then you are looking at inflation: 2013, 2015, 2017, 2019—the number of people growing into this taxable category affected by this Medicare tax that will increase in 2009 dollars from \$75,000 to \$345,000.

If you want to think about this, think about when the alternative minimum tax was first put in place. The alternative minimum tax was supposed to be on very wealthy individuals. That was all it was going to be on. But it was not indexed for inflation. Now you get whole swatches of people hit by it and this body regularly tries to change that or deal with it on a 1-year basis because it was not indexed for inflation. What you build into the base of this bill is, if you want to pay for the bill, you want inflation. So you get inflation and it hurts people on fixed incomes and you get more people taxed than you started off with. You didn't tell them about it at the outset.

This plan clearly should be indexed for inflation. We know that should take place. Yet this is where a major part of the money for the bill comes from—inflation. Is that something the Federal Government should be banking on, that we will get inflation to pay for this health care bill? I don't think the American public wants to see that taking place.

To put this in context, let's not just look at returns under \$200,000, let's look at all returns and how this tax will spread. According to the Census Bureau estimates, between 2013 and 2019, the working-age population of the country will grow by 1.6 percent. Joint Tax estimates that the number of returns that will be affected by this tax will grow by 52.6 percent and revenue collected as a result of the tax will grow by more than 54 percent. Over time, the Reid bill Medicare tax isn't just for the wealthy. Comparing the increase in taxes with growth in the working-age population, this is how many more people will be impacted. Inflation becomes the tax man's key friend.

During Japan's lost decade, from 1991 to 2003, their gross national product grew a paltry 1.4 percent annually, creating a decade of stagflation and limited economic growth. It was because of policies such as this where you have inflation, where you have tax increases put in place. These are the things that caused that to take place. It should not be done.

I will just add as a final note, when I am talking with people back home, all the time they raise this health care bill. They talk about it constantly. If they are small businesspeople, they are talking about not doing anything until the political environment is more stable in their estimation, about how much taxes we are talking about, about how much regulation we will be talking about.

You have what is going on with a climate change debate and regulations in Copenhagen. That tells a lot of people in my area who are energy users and producers, don't do anything until this stabilizes. When you talk about tax increases or inflation being a part of this proposal, you have a bunch of people saying: Don't do anything. Just stay on the sideline. That is a prescription for no job growth. That is a prescription for killing jobs. You want people out there investing and creating jobs and opportunities. You want them to see a stable political environment where they are not worried about increasing taxes, not worried about increasing regulation but, rather, saying: This is a stable environment in which we can invest and grow. That is not what they are doing today. That is repeating the lesson the Japanese learned of raising taxes when you are coming out of a recession. It is harmful. It is the wrong economic strategy. It should not be a part of this bill.

I yield the floor.

Mr. ENZI. Mr. President, I voted to support Senator MCCAIN's motion to commit the bill back to the Finance Committee to protect all seniors from the Medicare cuts in this bill.

Section 3201(g) of the Reid bill shields Florida from the sweeping payment reductions to Medicare Advantage plans. Democratic Senators from Florida, New York, Oregon and Pennsylvania have also reportedly sought carve outs to protect seniors in their States from these cuts.

It is unfair to protect only seniors in Florida from these cuts. President Obama said if you like what you have, you can keep it. I believe that principle should apply to all Medicare beneficiaries.

At least some of my Democratic colleagues are honest about what they are doing. The New York Times yesterday quoted the Senator from Florida as saying, "It would be intolerable to ask senior citizens to give up substantial health benefits they are enjoying under Medicare . . . I am offering an amendment to shield seniors from those benefit cuts."

Bloomberg News also quoted that same Senator as saying, "We're trying to grandfather in seniors so that they don't lose the benefits they have."

Now, I disagree with these sweetheart deals. But I understand the motivation behind them. We should not be taking benefits away from Medicare beneficiaries.

What I don't understand is how other Democrats can deny that the Reid bill cuts Medicare benefits. I have heard my Democratic colleagues repeatedly argue that there no cuts of any "guaranteed benefits" in the Reid bill.

I was not familiar with the term "guaranteed benefits," so I asked my staff to review the Medicare statute. They searched through the entire Social Security Act, which governs Medicare, and could not find that term anywhere. That is because the term doesn't exist. The other side just made it up.

Medicare Advantage plans provide extra benefits to beneficiaries who enroll in these plans. These are the benefits that will be cut under the Reid bill. Clearly the Senator from Florida understands the value of these benefits. That is why he and other Democrats are fighting tooth and nail to undo the cuts in their States.

At the same time, other Democratic Senators continue to argue that Medicare Advantage is neither Medicare nor an advantage.

That is false. Medicare Advantage is Part C of Medicare. If you go to the Web site of the Department of Health and Human Services, it says Medicare Advantage is part of Medicare.

As to the "advantage" part, Medicare Advantage does provide extra benefits, and seniors place great value on them. It's that simple. That is why the Senator from Florida and others are trying to get carve outs for seniors in their States.

Under the Reid bill, seniors will lose vision benefits. Apparently, the other side does not think vision care is an advantage.

The Reid bill will cut dental benefits for seniors. These are also apparently not an advantage for seniors.

The Reid bill will cut hearing benefits for seniors. These are apparently not an advantage for seniors.

The Reid bill will cut home care for seniors with chronic illnesses. The other side thinks these benefits are not an advantage.

The Reid bill will cut disease management programs for seniors. These benefits are also apparently not an advantage.

The Reid bill will cut nurse help hotlines for seniors. The majority apparently does not believe this is an advantage.

The Reid bill will end reduced cost sharing for primary care physician visits. This is apparently not an advantage for seniors.

The Reid bill will eliminate reduced premiums for Part B. This is apparently not an advantage for seniors.

The Reid bill will eliminate reduced cost sharing for breast cancer screening. This is apparently not an advantage for seniors.

The Reid bill will eliminate reduced cost sharing for prostate cancer screening. This is apparently not an advantage for seniors.

Most disturbing of all, the Reid bill will cut seniors' protections against catastrophic costs under Medicare Advantage. The other side says they want to keep medical bills from driving folks into bankruptcy. At the same time, they are eliminating Medicare Advantage benefits that actually protect Medicare beneficiaries from catastrophic medical costs.

How is catastrophic coverage not an advantage to seniors? It seems to me few things could be more advantageous than not losing your life savings because of medical bills.

It is obvious to anyone who listened to the list I just read that these are real benefits. Furthermore, it should be equally clear that the Reid bill will take these benefits away from millions of Medicare beneficiaries.

Anyone who doubts what affect the Reid bill will have on Medicare beneficiaries should look at the last time that Congress made cuts like this. The impact was severe.

Congress enacted the Balanced Budget Act of 1997, which included similar types of cuts. Once it took effect, nearly one out of every four of the plans, then known as Medicare+Choice, pulled out of the program.

According to an article in the Fort Lauderdale Sun Sentinel, when the Prudential Medicare+Choice plan withdrew from Florida, nearly 12,000 seniors in Broward, Palm Beach and Miami-Dade lost their coverage of prescription drugs, eyeglasses, hearing aids or other benefits.

You can bet seniors in Broward, Palm Beach and Broward counties haven't forgotten these cuts, losing their plans, sometimes their doctors, and certainly those benefits.

According to the Baton Rouge Advocate, over 50,000 Louisiana seniors lost the extra benefits that had been provided by Medicare+Choice plans. The cuts were so disruptive and confusing that State Insurance Commissioner Jim Brown had to air public service announcements. You can bet Louisiana seniors remember those cuts.

After these cuts went into effect, the Chicago Daily Herald reported that the Senior Health Insurance Program run by the Illinois Department of Insurance was "deluged with phone calls from senior citizens affected by the move of some health maintenance organizations to drop Medicare."

By that time, United Healthcare had decided to no longer offer Medicare+Choice plans in DuPage, Kane, Lake and Will counties. This affected 12,000 seniors in these Chicago suburbs.

By 2000, the Daily Herald reported that Aetna and Humana were also pulling out, dropping coverage for 2,794 beneficiaries in Lake County and 6,180 Aetna enrollees in Cook, Lake, Kane and DuPage counties. All of these beneficiaries lost the extra benefits they

had previously received from their plans.

Brian Carey, director of Senior Services for Schaumburg Township, was quoted as saying, "It's just thrown so many people into, in some cases, a complete state of panic."

By 2002, the Chicago Tribune quoted CMS administrator Tom Scully as saying there were no—that's zero—Medicare plans serving Chicago and its suburbs.

If the Reid bill is passed, we will again see millions of Medicare beneficiaries lose the benefits they currently receive from Medicare Advantage.

Medicare beneficiaries understand this program provides real advantages to those who enroll in the program. They do not want to lose these benefits.

I hope that all of my colleagues support the McCain amendment and ensure that these seniors continue to receive these benefits.

Mr. JOHNSON. Mr. President, today I rise to recognize the overwhelming need for health care reform. Earlier this year I asked South Dakotans to share their personal health care stories with me, the good and the bad, so that I could share these with my colleagues and ensure that the people of South Dakota have a voice in this national debate. Thousands have responded to my request and through their stories I have gained immeasurable insight into the challenges my constituents face in our current health care system. The experiences of these hard working families, business leaders, patient advocates, and health care providers poignantly demonstrate the urgent need for health care reform.

David, a farmer in Madison, SD, was forced to sell his land when a heart attack left him with \$60,000 in medical bills. His wife Patty wrote to me to tell me his story. As a farmer, David couldn't afford to buy private health insurance in the individual market but didn't qualify for public programs. Insurance companies refused him coverage after his heart attack because he now had a serious preexisting condition. Last year he suffered a second heart attack and accrued another \$100,000 in medical bills. Struggling to pay this debt, Patty and David exhausted all their resources. David feels he has no hope of finding insurance coverage for his heart health, the very condition that requires treatment the most. Patty and David live in fear of a serious illness knowing that, like many families, adequate health insurance is beyond their reach.

The situation Patty and David find themselves in is not unique. A recent study by the Access Project found that 44 percent of ranchers and farmers in South Dakota get their health insurance on the nongroup market, where they pay on average \$10,395 for cov-

erage. For the past few decades, premium rates have been rapidly outpacing increases in incomes. According to the study, almost half of those surveyed spent over 10 percent of their income on health care. Like Patty and David, one in four of the farmers and ranchers surveyed had to dip into savings, retirement funds, or take loans against their farms or ranches to cover health care costs.

Managing heart disease requires regular checkups and treatments to manage the disease, improve overall health and prevent future complications. Without access to these services, Patty fears what will happen to their family and their farm in the event David suffers another heart attack.

There are several provisions in the Patient Protection and Affordable Care Act to benefit Americans like Patty and David. It will extend access to affordable and meaningful health insurance for all Americans. The bill stands up on behalf of the American people and puts an end to insurance industry abuses that have denied coverage to hardworking Americans when they need it most. According to the non-partisan Congressional Budget Office, the Senate reform proposal will extend coverage to 31 million more Americans when fully enacted.

Immediately after enactment, a new program will be created to provide affordable coverage to Americans with preexisting conditions who have been denied the coverage they need. People like David will be guaranteed health insurance coverage after years of struggling without this basic security.

In addition, this legislation will create health insurance exchanges in every State through which those limited to the individual market will have access to affordable and meaningful coverage. The exchange will provide easy-to-understand information on various health insurance plans, help people find the right coverage to meet their needs, and provide tax credits to significantly reduce the cost of purchasing that coverage. No matter what plan you have, every American will have the added security of knowing that your insurance company will no longer be able to deny coverage for preexisting conditions and won't be able to drop your coverage if you get sick. Patty, David, and all Americans deserve this basic security.

The PRESIDING OFFICER. The Senator from Montana.

#### MORNING BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CLIMATE CHANGE

Mr. CARDIN. Mr. President, we live in a world that is being poisoned by greenhouse gases of our own making. If we do not act, we face irreversible, catastrophic climate change. My grandchildren face a world where there will be not enough food, water, or fuel, a world that is less diverse, less beautiful, less secure. As I speak today, we are witnessing a critical moment in our fight against global warming both at home and abroad.

This past Monday, the Environmental Protection Agency acted by releasing its final determination that "greenhouse gases threaten the public health and welfare of the American people." This was an action required by law and ordered by the Supreme Court. This finding will require EPA regulate greenhouse gas emissions under the Clean Air Act.

Monday's endangerment finding is a critical step in our country's efforts to stop global warming, which not only poses a threat to public health and welfare but to our national security. I am proud of the strong science-based actions taken by this administration to live up to its Clean Air Act obligations to protect our health. But I strongly believe that the best way for our country to solve the problem of greenhouse gas emissions is through comprehensive legislation enacted in the Congress of the United States. Legislation that invests in clean energy and new, high-tech infrastructure will bring us to long-sought goals: energy independence, good jobs for our citizens, and a healthy planet for our children and grandchildren.

We are now closer to that kind of legislation than we have ever been. The House has passed a bill that puts a limit on the pollution in our air. It dedicates funding to develop new domestic sources of clean energy. It invests in a new infrastructure that is less dependent on foreign fuels and creates American jobs. And we need those jobs. Here in the Senate, we have improved on our colleagues' work. Senate legislation makes additional investments in clean transportation. It provides additional oversight and accountability and support for developing countries. It ensures we do not add one penny to our national deficit. This legislation is consistent with the budget of our country to try to help reduce the deficit and yet make us energy independent, create jobs, and be sensitive to our environment.

But because climate change is a global problem, we need a global solution. This past Monday was also an important day in the international effort. The international community began a 2-week meeting in Copenhagen, Denmark, to work on an international agreement to address climate change.

The international community has set the right objectives to make the meet-

ing a success: a political agreement that promises both immediate action and contains the structure for a future formal treaty.

The agreement reached in Copenhagen should include the following points: specific near-term greenhouse gas emission reduction targets—a critical part—the support the developed countries will provide to the developing world to adapt to a changing industrial economy and a changing climate—we have a responsibility to help the developing world—the core elements that will make up the final treaty; and a timeline for reaching that agreement within the next year. We cannot put this off. It is critical we act timely.

The administration has taken several very important actions over the past few weeks to help us secure a global agreement in Copenhagen. EPA's endangerment finding sends an important signal to the world about the United States commitment to take decisive action.

Similarly, the President's announcement that the United States will commit to an emissions reduction in the range of 17 percent below 2005 levels by 2020 and his pledge to contribute the fair share of the United States of \$10 billion a year in financial support for the developing world by 2012 demonstrate that we are prepared to be serious partners in the fight against climate change.

That is the type of action we want to see, not only in the United States but in other countries that are major emitters.

Many of my colleagues, however, have legitimate concerns that if the United States enacts strong carbon standards, carbon-intensive imports will have an unfair advantage in our market. We need to make sure we accomplish our goals internationally and also have a level playing field.

To address this fear, I believe it is critical that our international negotiators include in Copenhagen strong verification and compliance procedures that will make it clear that every state has a responsibility to take action to reduce greenhouse gases.

I have seen too many international agreements that include the highest ambitions for labor, environmental, and human rights protections that fail to achieve those goals in the absence of any consequences for violations of those principles.

The groundwork for achieving a final international agreement in Copenhagen must ensure that major emitting Nations take on clearly defined emissions reductions targets, adopt standardized systems to measure, report, and verify actions and commitments, and it must provide for consequences if countries fail to meet those commitments. Inclusion of these principles in the Copenhagen agreement allows us to

pursue these critical components in any final agreement, and sends an important signal that all party countries are committed to real emissions reductions.

I am proud that the Senate Foreign Relations Committee climate change bill introduced by Senator KERRY last week includes language I authored that makes clear our expectations that any international agreement should include strong verification and compliance mechanisms, along with emission reduction targets, and a strong commitment to provide assistance to the developing world.

I will be watching the negotiations and hope it will produce the kind of agreement I have discussed here today. But regardless of what Copenhagen brings, I will continue to advocate for domestic legislation that invests in clean, domestic energy, and frees us from energy policies that undermine our national security and our economy by being dependent upon imported oil.

I will advocate for legislation that invests in the industries of tomorrow to stem the loss of clean energy jobs—jobs that stem from American inventions and ideas—to countries overseas. I will advocate for legislation that provides significant investment in clean fuels and public transit, so we seize an opportunity to build the infrastructure of tomorrow and change the way we move people and goods around this country. Right now, the transportation sector represents 30 percent of our greenhouse gas emissions and 70 percent of our oil use. If we could only double the number of transit riders every day, we could reduce our dependence on foreign oil by 40 percent. That is equivalent to the amount of oil we import every year from Saudi Arabia.

That kind of legislation is good for our country and good for Maryland. But we must remember that even after Copenhagen, any deals we reach, any papers we sign, are still but the foundation. The work must continue with earnest followthrough, dedicated to truly changing the way we work and live and move around this Earth.

## OSCE MINISTERIAL MEETING

Mr. CARDIN. Mr. President, last week the Organization for Security and Cooperation in Europe, OSCE, held its annual Ministerial Meeting in Athens. As always, the OSCE Parliamentary Assembly was strongly represented there. Today, in my capacity as Chairman of the Commission on Security and Cooperation in Europe, I would like to offer a few reflections on the outcome of the meeting, and what this might mean for the future of European security, in which the U.S. has a vital stake.

Each year, a different country serves as the OSCE's "Chairman in Office." This year, Greece was the Chairman-in-

Office and this year's Ministerial Council meeting subsequently took place in Athens. In recent years discord and paralysis have increasingly begun to overwhelm the cooperation and consensus that once characterized the OSCE. The Greeks thus began their chairmanship facing a difficult challenge.

At last year's meeting in Helsinki under Finland's able chairmanship, the Ministers decided that the OSCE should look for ways to overcome this gridlock and to give the organization a new impetus. Greece took this task to heart and launched the "Corfu Process" to do just that. This effort has already borne fruit. In Athens, the ministers resolved to continue to try to reaffirm, review, and reinvigorate security in the OSCE region by continuing this process.

The Ministers also agreed on decisions that addressed such fundamental and persistent problems as hate crimes, tolerance and nondiscrimination, non-proliferation, terrorism, and the "protracted conflict" in Nagorno-Karabakh. One of these decisions, on countering transnational threats, was sponsored by the U.S. and Russia, the first such joint effort in several years. I hope this is a positive portent for the future.

The Ministers were not able to agree on how to tackle some other equally important and pressing problems. These included the protracted conflicts in Georgia and Moldova, OSCE assistance to Afghanistan, and the Conventional Forces in Europe Treaty. Clearly, much work remains to be done in putting the OSCE fully back on track.

I would be remiss if I concluded my remarks without commending the Greek chairmanship for its untiring and ultimately successful efforts during the course of this year. The chairmanship rekindled the trust and confidence among the participating states that had steadily eroded over the past decade. Greece has clearly set the stage for a brighter and more productive future for the organization, and my colleagues on the Helsinki Commission, and I would like to congratulate the Greek chairmanship on this significant accomplishment.

We would also like to wish Kazakhstan, the first Central Asian nation to hold this office, every success in its historic chairmanship in 2010 and to offer them our full support. Indeed, in our view the Kazakh chairmanship is already off to a promising start, for in Athens, at the initiative of the Kazakhs, the Ministers decided to hold a high-level conference on tolerance next year. This proved to be a timely decision, coming as it did just as Switzerland voted to ban the construction of Muslim minarets, and the president of the Swiss Christian Peoples Party called for a ban on Muslim and Jewish cemeteries. These actions reminded us

that not even countries that have played a leading role in establishing international human rights standards are immune from the tendencies to discriminate against immigrants and minorities and to place limits on the free expression of religious beliefs.

It is very important for the OSCE to combat these troublesome trends. It is also important that all the organization's participating states reaffirm, and commit themselves to upholding, the rights of all religious communities to create places of worship and to rest in line with their own traditions. I very much hope the OSCE's conference on tolerance next year will advance this effort.

Finally, let me say that we look forward with great interest to the forthcoming discussions of Kazakhstan's proposal to hold a meeting of heads of state and government during its chairmanship. Should it happen, this would be the first such "summit" under OSCE auspices, something that was previously a regular occurrence. In Athens, in acceding to this proposal, the United States expressed the view that it is open to considering such a meeting if, but only if, such a summit can produce results of substance. I think this is the correct approach, and it is one I fully support.

#### EDUCATION TAX INCENTIVES

Mr. GRASSLEY. Mr. President, yesterday I offered legislation to make permanent a number of education-related tax relief measures. My legislation, S. 2851, also improves and makes permanent helpful provisions for 529 plans and the American opportunity tax credit for education.

At the first hearing I held when I became chairman of the Finance Committee in 2001, I made clear that education tax policy was a priority of mine. As chairman, I was able to remove the 60-payment limit for deducting student loan interest and I was able to increase the income limits for that deduction. This was not the only time I fought hard to allow students to deduct their student loan interest. In 1997 I was able to reinstate the student loan interest deduction that Congress had eliminated from our tax laws. However, the 60-payment limit on the deductibility of student loan interest remained. I ensured that the 2001 tax relief bill took care of that problem. Other incentives for education that I was able to enact into law in 2001 included raising the amount that can be contributed to an education saving account from \$500 to \$2,000; making distributions from prepaid college savings plans and tuition plans tax-free; and making permanent the tax-free treatment of employer-provided educational assistance. These tax policies and many others, including those for school renovations, repairs and construction,

have proven their value to Iowa students in dollars and cents, year after year. The tax relief has delivered measureable educational assistance to Iowans and students and families nationwide, making education more affordable and accessible.

One drawback of enacting these provisions in the 2001 tax relief bill, however, is that there was a sunset provision attached to that entire piece of legislation. All of the tax relief needs to be made permanent. Especially the education-related tax provisions. And that is what my bill today does. My bill makes these provisions permanent.

It is no coincidence that I introduced my education tax bill on the day the President of the United States talked about jobs. Our economy demands well-educated workers. The popularity of education tax incentives is good news for workers who find themselves unemployed or who want to go back to school to advance, or even change, their careers. Congress is willing to consider permanent tax relief for companies to buy machinery. Why isn't Congress willing to make an investment in people? That's what tax relief for education is. An investment in our future. It is just as important as job-creating tax incentives for businesses. Some will say we can't afford this, but we really can't afford to lose billions of dollars of help for Americans working hard to educate their kids.

Education has made this country great. We should not let this opportunity pass us by. We should not let these education-related tax provisions expire. We should also continue to help make education affordable for families and students. This makes education accessible for all. I look forward to working with my colleagues on passing this bill.

#### PENDING NOMINATIONS

Mr. LEAHY. Mr. President, last week, I challenged Senate Republicans to do as well as Senate Democrats did in December 2001 when we proceeded to confirm 10 of President Bush's Federal judicial nominees. Regrettably my plea has been ignored. Since the confirmation of Judge Jacqueline Nguyen last Tuesday to fill a vacancy on the Federal bench for the Central District of California; Republican objections and delay have prevented progress on any of the nine judicial nominees pending on the Senate Executive Calendar. Judge Nguyen was herself delayed almost 6 weeks, from October 15 until she was at last confirmed on December 1. When Republicans finally agreed to allow a vote, she was confirmed unanimously, 97 to zero. Why the 6-week delay? Why the stalling? That question was not answered. In fact, during the time reserved for debate on this nomination no Republican spoke a word about it.

I know how hard pressed the Federal judges in Los Angeles are, and only wish we followed the action on Judge Nguyen's nomination by proceeding, as well, to the confirmation of another nominee for a vacancy on that court. Dolly Gee's nomination to the Central District of California remains pending before the Senate. She was reported by voice vote and without dissent from the Senate Judiciary Committee on October 15, as well. Once confirmed, she will be able to go to work helping to eliminate the backlog and delays in that court.

I was glad we were finally allowed to proceed with Judge Nguyen's nomination, but urged at that time that Senate Republicans allow votes on the other nominations as well. That has not happened. I noted that we had shown what we can do when we want to make progress. The Senate confirmed Judge Christina Reiss of Vermont and Judge Abdul Kallon of Alabama before the Thanksgiving recess, and 17 days after their hearing. That prompt action by the Senate demonstrates what we can do working together in good faith. It should not take weeks for the Judiciary Committee to report nominations, and additional weeks and months before Senate Republicans allow nominations to be considered by the Senate.

There remain nine judicial nominations that have been given hearings and favorable consideration by the Senate Judiciary Committee but that remain stalled before the Senate. They are: Beverly Martin of Georgia, nominated to the Eleventh Circuit; Joseph Greenaway of New Jersey, nominated to the Third Circuit; Edward Chen, nominated to the Northern District of California; Dolly Gee, nominated to the Central District of California; Richard Seeborg, nominated to the Northern District of California; Barbara Keenan of Virginia, nominated to the Fourth Circuit; Jane Stranch of Tennessee, nominated to the Sixth Circuit; Thomas Vanaskie of Pennsylvania, nominated to the Third Circuit; and Louis Butler, nominated to Western District of Wisconsin. These nine nominees all await final action by the Senate. Some have been waiting since being reported by the Senate Judiciary Committee as long as 12 weeks ago.

Acting on these nominations, we can confirm 10 nominees this month. That is what we did in December 2001 when a Democratic Senate majority proceeded to confirm 10 of President Bush's nominees, and ended that year having confirmed 28 new judges nominated by a President of the other party. We achieved those results with a controversial and confrontational Republican President after a mid-year change to a Democratic majority in the Senate. We did so in spite of the attacks of September 11; despite the anthrax-laced letters sent to the Senate

that closed our offices; and while working virtually around the clock on the PATRIOT Act for 6 weeks.

It is now December 9 and the Republican minority has consented to allow votes on only nine of President Obama's nominations to fill district and circuit court vacancies. We confirmed a tenth, Judge David Hamilton, after invoking cloture to overcome a Republican leadership-led filibuster. In comparison, by this date in 2001, we had confirmed 21 of President Bush's nominations, including six to fill circuit court vacancies. We will certainly fall well short of the total of 28 judicial confirmations our Democratic Senate majority worked to confirm in President Bush's first year in office.

This year we have witnessed unprecedented delays in the consideration of qualified and noncontroversial nominations. We have had to waste weeks seeking time agreements in order to consider nominations that were then confirmed unanimously. Judge Nguyen is the most recent example. We have seen nominees strongly supported by their home state Senators, both Republican and Democratic, delayed for months and unsuccessfully filibustered. I have been concerned that these actions by the Republican leadership signal a return to their practices in the 1990s, which resulted in more than doubling circuit court vacancies and led to the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created eventually led even to public criticism of their actions by Chief Justice Rehnquist during those years.

I hope that instead of withholding consent and threatening filibusters of President Obama's judicial nominees, Senate Republicans will treat the nominees of President Obama fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. In the 17 months that I served as chairman of the Senate Judiciary Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominations.

I want to continue that progress, but we need Republican cooperation to do so. I urge them to turn away from their partisanship and begin to work with the President and the Senate majority leader.

Unlike his predecessor, President Obama has reached out, reached across the aisle to work with Republican Senators in making judicial nominations. The nomination of Judge Hamilton, which the Republican leadership filibustered, was supported by the most senior Republican in the U.S. Senate, my respected friend from Indiana, Senator LUGAR. Other examples are the recently confirmed nominees to vacancies in Alabama supported by Senators SESSIONS and SHELBY, in South Dakota supported by Senator THUNE, and in

Florida, supported by Senators MARTINEZ and LAMIEUX. Still others are the President's nomination to the 11th Circuit from Georgia, supported by Senators ISAKSON and CHAMBLISS, his nomination to the 6th Circuit from Tennessee, supported by Senator ALEXANDER, and his recent nominations to the 4th Circuit from North Carolina, supported by Senator BURR. President Obama has reached out and consulted with home State Senators from both sides of the aisle regarding his judicial nominees.

Instead of praising the President for consulting with Republican Senators, the Republican leadership has doubled back on what they demanded when a Republican was in the White House. No more do they talk about each nominee being entitled to an up-or-down vote. That position is abandoned and forgotten. Instead, they now seek to filibuster and delay judicial nominations. They have also walked back from their position at the start of this Congress, when they threatened to filibuster nominees on which home state Senators were not consulted. We saw with Judge Hamilton that they filibustered a nominee supported by Senator LUGAR.

When President Bush worked with Senators across the aisle, I praised him and expedited consideration of his nominees. When President Obama reaches across the aisle, the Senate Republican leadership delays and obstructs his qualified nominees. I fear that Senate Republican delaying tactics will yield the lowest judicial confirmation total in modern history. If Senate Republicans continue their delaying tactics, the total could be as low as that during the 1996 session, during President Clinton's first term, when a Republican Senate majority would only allow 17 judicial confirmations, none for circuit courts.

Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better. As I have noted, there are nine more qualified judicial nominations awaiting Senate action on the Senate Executive Calendar. In addition there are another four pending before the Senate Judiciary Committee that have been given hearings and could be reported to the Senate before Christmas. They will be available to be considered by the Senate once approved by the Judiciary Committee. The Senate should do better, and could if Senate Republicans would remove their holds and stop the delaying tactics.

During President Bush's last year in office, we reduced judicial vacancies to as low as 34, even though it was a Presidential election year. Judicial vacancies have now spiked. There are currently 97 vacancies on our Federal circuit and district courts, and 23 more

have already been announced. This is approaching record levels. I know we can do better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

#### REMEMBERING ABE POLLIN

Ms. MIKULSKI. Mr. President, I rise to pay tribute to the life and legacy of my friend Abe Pollin. He was a businessman, community leader, philanthropist, familyman. He was someone who simply made our community and our Nation a better place.

Abe was a great man who did great things. But he did it without a lot of fanfare. He was a team owner who thought first about the community that supported his teams. He was an employer who didn't treat his athletes or his employees as commodities—but as members of his team.

Abe Pollin was also a developer. But he didn't just invest in buildings, he invested in communities. He built one of the first big apartment buildings in Bethesda, named after his beloved wife Irene, long before Bethesda became the vibrant downtown that it is today. He never lost faith in Washington—building the MCI Center, now the Verizon Center, in the mid 1990s—which led to the revival of downtown Washington.

Here in the DC Metro area, there are few community organizations that did not benefit from his advice, his philanthropy or his leadership. Abe made our region a better place, and will be greatly missed.

My thoughts and prayers are with the Pollin family—his wife Irene, who is a founding mother of the effort to empower women to fight heart disease, and his children and grandchildren. I will be forever grateful for the Pollin family's early support of a young city council woman from Baltimore who wanted to run for Congress. Abe Pollin was one of my earliest supporters, and his faith in me meant a great deal.

Last night, thousands of people gathered at the Verizon Center to celebrate Abe Pollin's life. His legacy is a community that is stronger, more vibrant—and simply a better place to live.

#### SOMALIA

Mr. BROWNBACK. Mr. President, I rise to speak about the recent suicide bombing in Somalia and the broader security situation in that region. While our attention is necessarily focused on the wars in Afghanistan and Iraq, this latest bombing is a stark reminder that we cannot take our eye off of the Horn of Africa.

Last week, Somalis had a reason to celebrate. The graduation of several medical students from a university in Mogadishu was a welcome glimmer of hope for the future. Unfortunately, a

suicide bomber intruded, blew himself up, and killed more than 20 others, including three Ministers from the fledgling Somali transitional government. There is, seemingly, no end to the violence which has plagued Somalia for a generation.

Somalia continues to lack a truly functional government, and for several years, we have watched the slow but steady development of extremism there. Though we support the development of a moderate government for Somalia, success is far from assured. The transitional government lacks control of significant parts of the country and struggles to provide the most basic services to the Somali people.

The most significant challenge to the transitional government comes from extremist groups such as al-Shabab, a group of Islamist terrorists with deep roots in Somalia that came to prominence after the defeat of the Islamic Courts Union 3 years ago. As we have seen throughout the world, if there is a power vacuum, violent extremists will seek to fill it, and that is what is taking place in Somalia. Somalia cannot succeed while groups such as al-Shabab grow and thrive.

Al-Shabab's future depends in no small part on support from outside the country. Al-Shabab gets new recruits from all over the world, it is strengthening ties to al-Qaida and the global jihadist network, it receives support from regional actors such as Eritrea, who use al-Shabab as a proxy for its own interests. Al-Shabab will not be defeated while this outside support continues.

For this reason, I hope that our administration will work hard to support and pass a draft resolution now circulating at the United Nations Security Council. Uganda, one of the Council's current rotating members, has drafted a resolution that addresses Eritrean support for Somali extremist groups, including al-Shabab. The resolution, which follows strong warnings to Eritrea from the U.S. and the African Union not to support al-Shabab, would ban weapon sales to Asmara, prohibit technical, financial and other assistance related to military activities, and freeze the assets of Eritrean political and military leaders as well as restrict their travel.

Al-Shabab seeks to undermine any attempt to stabilize Somalia. A volatile Somalia jeopardizes the stability of the Horn of Africa region, which is itself important to security in Africa, the greater Middle East, and the rest of the world. Support for extremist groups such as al-Shabab is unacceptable, and as long as Eritrea provides arms to al-Shabab, there will be no chance for peace in Somalia. I hope that the Security Council can take up and pass this resolution soon, and I hope the United States will be a strong supporter of this effort. Somalia ought

not be a safe haven for extremists or a playground for outside powers pursuing their own agendas. Though Somalia's future is far from clear, the Security Council should have no difficulty in agreeing on the need to take steps to cut al-Shabab's lifelines of outside support.

#### TRIBUTE TO VIDA CHAN LIN

Mr. ENSIGN. Mr. President, today I commemorate the beginning of an exciting chapter for the Las Vegas Asian Chamber of Commerce. For more than 20 years, this group of entrepreneurial southern Nevadans has worked together to provide resources and promote economic growth in the Asian community. Today, they will install the first woman to be president of their esteemed organization. Vida Chan Lin steps into this role—respected by her peers and energized by her passion for furthering the goals of the Las Vegas Asian Chamber of Commerce.

While this leadership role is a new opportunity for Ms. Lin, her lifetime of experience has prepared her to take on this role. As a child, she was exposed to running a business as she saw firsthand the daily challenges and joys in the restaurants her family owned. She then found great satisfaction in the insurance industry where she continued to exceed expectations and eventually start her own company.

Ms. Lin has always balanced her business drive and success with her commitment to community service. She has been an instrumental force behind the Las Vegas Asian Chamber of Commerce for many years. Her ability to bring people together, develop innovative programming, and mentor young leaders has helped ensure the long-term success of the Asian Chamber well beyond just her tenure.

She has been recognized by countless organizations for her business acumen and her heartfelt commitment to public service. I am proud to congratulate Vida Lin on this special day, and I wish her great success in the coming term of her presidency.

#### ADDITIONAL STATEMENTS

##### RECOGNIZING WHITNEY WREATH

• Ms. SNOWE. Mr. President, one of the great symbols of the winter holiday season we are just beginning is the wreath. Between the beautiful green needles and the fragrant smell, wreaths are reminders of a simpler time. And nowhere is the wreath more emblematic than my home State of Maine. Indeed, Maine is the largest producer of balsam fir wreaths in America, owed in large part to the tree's prevalence in our State's landscape. Furthermore, sales of these stunning wreaths contribute millions of dollars to the Maine



economy. In recognition of these critical facts, I rise to honor the Whitney Wreath company, a renowned small business headquartered in Washington County.

Whitney Wreath is in its 21st season of producing fragrant and vivid green wreaths for display during the winter holidays. The company was started in 1988 when David Whitney, the company's founder, sold handmade wreaths from the back of a pickup truck during his teenage years. Two decades later, Whitney Wreath is now America's largest mail-order wreath company, selling its products through its own Web site, as well as several other catalogues and outlets including QVC. Incredibly, its wreath sales are now in the hundreds of thousands each year. The company has nine facilities throughout the State, and is in the process of building a tenth to improve productivity. And this year, despite the turbulence in our Nation's economy and an uncertain employment picture, Whitney Wreath was able to hire 250 additional employees over last season because of a substantial new contract.

Decorated with a range of colorful and timely ornaments, such as pine cones, Maine blueberries, sleigh bells, and of course bright red bows, Whitney's wreaths are nothing short of spectacular. Made using fresh Maine balsam fir, the smell of a Whitney wreath is unmistakable, and an outstanding symbol of the season it represents. The company also manufactures a range of Christmas centerpieces and the unique Maine Kissing Ball, consisting of "snow" covered pine cones combined with brilliant red berries.

Whitney Wreath has been celebrated over the years for its commitment to quality wreaths. In 2007, the Small Business Administration honored the company with its Jeffrey H. Butland Family-Owned Business of the Year award because of the company's efforts to be involved in the community and provide critical employment opportunities to the citizens of Downeast Maine. The award also paid homage to David Whitney's other small businesses, Whitney's Blueberries and Whitney's Tool Shed.

Finally, in the spirit of the holiday season, it is fitting to acknowledge the magnanimous work Whitney Wreath is doing to support our Nation's breast cancer survivors. Last year, the company asked Facebook users to join the fight against breast cancer and for every 20 people who joined, Mr. Whitney pledged to bring special wreaths with pink ribbons to survivors of the disease. On December 22, 2008, after almost 500 people took his message to heart, David Whitney arrived at Cancer Care of Maine in Brewer with 30 special wreaths.

This year, Mr. Whitney has promised to donate 25 percent of every breast

cancer awareness wreath purchased to the Susan G. Komen Breast Cancer Foundation. The company has also announced that it will donate 20 percent of the proceeds from the sales of its Original Christmas Wreaths to the National Autism Association. As we work to combat these terrible illnesses, I am proud to have caring and thoughtful individuals like David Whitney doing their own part to encourage and support those afflicted.

A downeast staple for nearly a quarter of a century, Whitney Wreath has become a leader in its field by combining attention to detail and concern for the community. I thank David Whitney and everyone at Whitney Wreath for all they do to lift our spirits during the holiday season, and wish them many more years of success.●

#### TRIBUTE TO KENNETH CHRISTOPHER SATTERLEE

● Mr. THUNE. Mr. President, today I recognize Kenneth Christopher Satterlee, an intern in my Washington DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several months.

Kenny is a graduate of La Jolla High School in San Diego, CA. Currently he is attending the American University, where he is majoring in history. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I would like to extend my sincere thanks and appreciation to Kenny for all of the fine work he has done and wish him continued success in the years to come.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGE FROM THE HOUSE

At 11:15 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1319. An act to prevent the inadvertent disclosure of information on a com-

puter through certain "peer-to-peer" file sharing programs without first providing notice and obtaining consent from an owner or authorized user of the computer.

H.R. 1854. An act to amend the Water Resources Development Act of 1992 to modify an environmental infrastructure project for Big Bear Lake, California.

H.R. 2134. An act to establish the Western Hemisphere Drug Policy Commission.

H.R. 2221. An act to protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach.

H.R. 2278. An act to direct the President to transmit to Congress a report on anti-American incitement to violence in the Middle East, and for other purposes.

H.R. 2711. An act to amend title 5, United States Code, to provide for the transportation of the dependents, remains, and effects of certain Federal employees who die while performing official duties or as a result of the performance of official duties.

H.R. 3224. An act to authorize the Board of Regents of the Smithsonian Institution to plan, design, and construct a vehicle maintenance building at the vehicle maintenance branch of the Smithsonian Institution located in Suitland, Maryland, and for other purposes.

H.R. 4165. An act to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 199. Concurrent resolution recognizing the 10th Anniversary of the redesignation of Company E, 100th Battalion, 442d Infantry Regiment of the United States Army and the sacrifice of the soldiers of Company E and their families in support of the United States.

H. Con. Res. 206. Concurrent resolution commending the soldiers and civilian personnel stationed at Fort Gordon and their families for their service and dedication to the United States and recognizing the contributions of Fort Gordon to Operation Iraqi Freedom and Operation Enduring Freedom and its role as a pivotal communications training installation.

H. Con. Res. 213. Concurrent resolution expressing the sense of Congress for and solidarity with the people of El Salvador as they persevere through the aftermath of torrential rains which caused devastating flooding and deadly mudslides.

H. Con. Res. 218. Concurrent resolution expressing sympathy for the 57 civilians who were killed in the southern Philippines on November 23, 2009.

#### ENROLLED BILL SIGNED

The President pro tempore (Mr. BYRD) reported that he had signed the following enrolled bill, which was previously signed by the Speaker of the House:

S. 1422. An act to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

## MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1319. To prevent the inadvertent disclosure of information on a computer through the use of certain "peer-to-peer" file sharing programs without first providing notice and obtaining consent from an owner or authorized user of the computer; to the Committee on Commerce, Science, and Transportation.

H.R. 1854. An act to amend the Water Resources Development Act of 1992 to modify an environmental infrastructure project for Big Bear Lake, California; to the Committee on Energy and Natural Resources.

H.R. 2134. An act to establish the Western Hemisphere Drug Policy Commission; to the Committee on Foreign Relations.

H.R. 2221. An act to protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach; to the Committee on Commerce, Science, and Transportation.

H.R. 2278. An act to direct the President to transmit to Congress a report on anti-American incitement to violence in the Middle East, and for other purposes; to the Committee on Foreign Relations.

H.R. 2711. An act to amend title 5, United States Code, to provide for the transportation of the dependents, remains, and effects of certain Federal employees who die while performing official duties or as a result of the performance of official duties; to the Committee on Homeland Security and Governmental Affairs.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 196. Concurrent resolution making corrections in the enrollment of the bill H.R. 2647; to the Committee on Armed Services.

H. Con. Res. 199. Concurrent resolution recognizing the 10th Anniversary of the redesignation of Company E, 100th Battalion, 442d Infantry Regiment of the United States Army and the sacrifice of the soldiers of Company E and their families in support of the United States; to the Committee on Armed Services.

H. Con. Res. 206. Concurrent resolution commending the soldiers and civilian personnel stationed at Fort Gordon and their families for their service and dedication to the United States and recognizing the contributions of Fort Gordon to Operation Iraqi Freedom and Operation Enduring Freedom and its role as a pivotal communications training installation; to the Committee on Armed Services.

H. Con. Res. 213. Concurrent resolution expressing the sense of Congress for and solidarity with the people of El Salvador as they persevere through the aftermath of torrential rains which caused devastating flooding and deadly mudslides; to the Committee on Foreign Relations.

H. Con. Res. 218. Concurrent resolution expressing sympathy for the 57 civilians who were killed in the southern Philippines on November 23, 2009; to the Committee on Foreign Relations.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, December 9, 2009, she had presented to the President of the

United States the following enrolled bill:

S. 1422. An act to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment:

S. 574. A bill to enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes (Rept. No. 111-102).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment in the nature of a substitute:

S. 1288. A bill to authorize appropriations for grants to the States participating in the Emergency Management Assistance Compact, and for other purposes (Rept. No. 111-103).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs:

Report to accompany S. 1261, a bill to repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes (Rept. No. 111-104).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BEGICH (for himself and Ms. SNOWE):

S. 2852. A bill to establish, within the National Oceanic and Atmospheric Administration, an integrated and comprehensive ocean, coastal, Great Lakes, and atmospheric research, prediction, and environmental information program to support renewable energy; to the Committee on Commerce, Science, and Transportation.

By Mr. CONRAD (for himself, Mr. GREGG, Mr. LIEBERMAN, Mr. CHAMBLISS, Mr. NELSON of Florida, Mr. ISAKSON, Mr. BAYH, Mr. VOINOVICH, Mrs. MCCASKILL, Mr. LEMIEUX, Mr. UDALL of Colorado, Mr. ALEXANDER, Mr. BENNETT, Mr. CRAPO, Mr. NELSON of Nebraska, Mr. BROWNBACK, Ms. KLOBUCHAR, Mr. CORKER, Mr. WARNER, Mrs. HUTCHISON, Mrs. SHAHEEN, Mr. ENZI, Mr. DORGAN, Mr. BOND, Mr. BENNETT, Mr. ENSIGN, Mr. JOHANNES, Mrs. FEINSTEIN, Mr. MCCAIN, and Mr. CORNYN):

S. 2853. A bill to establish a Bipartisan Task Force for Responsible Fiscal Action, to assure the long-term fiscal stability and economic security of the Federal Government of the United States, and to expand future prosperity growth for all Americans; to the Committee on the Budget.

By Mr. KOHL (for himself and Mr. HATCH):

S. 2854. A bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for new qualified hybrid motor vehicles, and for other purposes; to the Committee on Finance.

By Mr. MENENDEZ:

S. 2855. A bill to reallocate a portion of the Troubled Asset Relief Program to increase lending to main street; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. SNOWE (for herself and Mr. KIRK):

S. 2856. A bill to allow the United States-Canada Transboundary Resource Sharing Understanding to be considered an international agreement for the purposes of section 304(e)(4) of the Magnuson-Stevens Fishery Conservation and Management Act; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself, Mr. HATCH, Ms. STABENOW, and Mr. LUGAR):

S. 2857. A bill to amend the Internal Revenue Code of 1986 to expand the qualifying advanced energy project credit; to the Committee on Finance.

By Mrs. BOXER (for herself, Mr. DURBIN, Mr. KERRY, and Mr. CASEY):

S. 2858. A bill to amend the Public Health Service Act to establish an Office of Mitochondrial Disease at the National Institutes of Health, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUE (for himself, Mr. ROCKEFELLER, Ms. SNOWE, Mr. NELSON of Florida, and Mr. KERRY):

S. 2859. A bill to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DODD:

S. 2860. A bill to protect students from inappropriate seclusion and physical restraint, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE (for herself and Ms. LANDRIEU):

S. 2861. A bill to amend the Trade Act of 1974 to establish an Assistant United States Trade Representative for Small Business, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself and Ms. LANDRIEU):

S. 2862. A bill to amend the Small Business Act to improve the Office of International Trade, and for other purposes; to the Committee on Small Business and Entrepreneurship.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CRAPO (for himself and Mr. LIEBERMAN):

S. Res. 373. A resolution designating the month of February 2010 as "National Teen Dating Violence Awareness and Prevention Month"; to the Committee on the Judiciary.

## ADDITIONAL COSPONSORS

S. 455

At the request of Mr. ROBERTS, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 455, a bill to require the Secretary of the Treasury to mint coins in

recognition of 5 United States Army Five-Star Generals, George Marshall, Douglas MacArthur, Dwight Eisenhower, Henry "Hap" Arnold, and Omar Bradley, alumni of the United States Army Command and General Staff College, Fort Leavenworth, Kansas, to coincide with the celebration of the 132nd Anniversary of the founding of the United States Army Command and General Staff College.

S. 534

At the request of Mr. NELSON of Florida, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 534, a bill to amend title XVIII of the Social Security Act to reduce cost-sharing under part D of such title for certain non-institutionalized full-benefit dual eligible individuals.

S. 796

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 796, a bill to modify the requirements applicable to locatable minerals on public domain land, and for other purposes.

S. 841

At the request of Mr. KERRY, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 841, a bill to direct the Secretary of Transportation to study and establish a motor vehicle safety standard that provides for a means of alerting blind and other pedestrians of motor vehicle operation.

S. 1147

At the request of Mr. KOHL, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of S. 1147, a bill to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

S. 1156

At the request of Mr. HARKIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1156, a bill to amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users to reauthorize and improve the safe routes to school program.

S. 1382

At the request of Mr. DODD, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1382, a bill to improve and expand the Peace Corps for the 21st century, and for other purposes.

S. 1400

At the request of Ms. STABENOW, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 1400, a bill to amend the Internal Revenue Code of 1986 to make permanent the depreciation classification of motorsports entertainment complexes.

S. 1524

At the request of Mr. KERRY, the name of the Senator from Missouri

(Mr. BOND) was added as a cosponsor of S. 1524, a bill to strengthen the capacity, transparency, and accountability of United States foreign assistance programs to effectively adapt and respond to new challenges of the 21st century, and for other purposes.

S. 1932

At the request of Mr. MCCAIN, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Texas (Mrs. HUTCHISON) were added as cosponsors of S. 1932, a bill to amend the Elementary and Secondary Education Act of 1965 to allow members of the Armed Forces who served on active duty on or after September 11, 2001, to be eligible to participate in the Troops-to-Teachers Program, and for other purposes.

S. 2725

At the request of Mrs. FEINSTEIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2725, a bill to provide for fairness for the Federal judiciary.

S. 2794

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 2794, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives for the donation of wild game meat.

S. 2843

At the request of Ms. STABENOW, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2843, a bill to provide for a program of research, development, demonstration, and commercial application in vehicle technologies at the Department of Energy.

S. RES. 339

At the request of Mr. SPECTER, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. Res. 339, a resolution to express the sense of the Senate in support of permitting the televising of Supreme Court proceedings.

S. RES. 362

At the request of Mr. SHELBY, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of S. Res. 362, a resolution expressing the sense of the Senate that the Secretary of the Treasury should direct the United States Executive Directors to the International Monetary Fund and the World Bank to use the voice and vote of the United States to oppose making any loans to the Government of Antigua and Barbuda until that Government cooperates with the United States and compensates the victims of the Stanford Financial Group fraud.

AMENDMENT NO. 2795

At the request of Mr. LEAHY, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of amendment No. 2795 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to mod-

ify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2798

At the request of Mr. INOUE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of amendment No. 2798 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2807

At the request of Mr. CORNYN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of amendment No. 2807 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2869

At the request of Mr. NELSON of Florida, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of amendment No. 2869 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2903

At the request of Ms. SNOWE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 2903 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the names of the Senator from Massachusetts (Mr. KIRK), the Senator from Illinois (Mr. DURBIN) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2924

At the request of Mr. CASEY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of amendment No. 2924 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other

Federal employees, and for other purposes.

## AMENDMENT NO. 2938

At the request of Mrs. GILLIBRAND, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of amendment No. 2938 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2978

At the request of Mr. BEGICH, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from New Mexico (Mr. UDALL) were added as cosponsors of amendment No. 2978 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2991

At the request of Mr. MENENDEZ, the names of the Senator from Illinois (Mr. BURRIS) and the Senator from Hawaii (Mr. AKAKA) were added as cosponsors of amendment No. 2991 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2993

At the request of Mr. SCHUMER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of amendment No. 2993 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3004

At the request of Mrs. HAGAN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of amendment No. 3004 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3010

At the request of Ms. LANDRIEU, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 3010 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3013

At the request of Ms. LANDRIEU, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 3013 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3014

At the request of Ms. LANDRIEU, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 3014 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3069

At the request of Mr. KOHL, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of amendment No. 3069 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BEGICH (for himself and Ms. SNOWE):

S. 2852. A bill to establish, within the National Oceanic and Atmospheric Administration, an integrated and comprehensive ocean, coastal, Great Lakes, and atmospheric research, prediction, and environmental information program to support renewable energy; to the Committee on Commerce, Science, and Transportation.

Mr. BEGICH. Mr. President, today, I, along with my colleague Senator SNOWE, are introducing legislation to establish a comprehensive ocean, coastal, Great Lakes, and atmospheric research program to support renewable energy. Renewable energy is the most rapidly growing U.S. energy sector. Increasing the use of renewable energy is dependent on baseline atmospheric and oceanic data. Improving NOAA's ability to provide the observations, forecasts, and climate information tailored to the needs of the renewable energy industry will promote growth of this energy sector. This bill would require NOAA to establish a comprehensive research, prediction, and environmental information program to support renewable energy. Specifically, the legislation would require NOAA to develop observation systems and models and collect baseline environmental data to support renewable energy development

on land and in the marine environment; and provide best management practices to avoid adverse effects in the marine and coastal environment. The legislation would authorize \$100 million annually for fiscal year 2010 through 2014 and allows for up to 50 percent of funds to be available to educational institutions or states to carry out activities in support of the program. As we work as a Nation to decrease our dependency on foreign oil, to encourage scientific advancement, technological innovation and job creation, the Renewable Energy Environmental Research Act of 2009 will be an important component in advancing progress in those areas. I urge my colleagues to support this legislation to support critical research in support of advancing renewable energy development.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2852

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Renewable Energy Environmental Research Act of 2009".

## SEC. 2. PURPOSE.

The purpose of this Act is to establish an integrated and comprehensive ocean, coastal, Great Lakes, and atmospheric research, prediction, and environmental information program to support renewable energy.

## SEC. 3. RENEWABLE ENERGY RESEARCH PLAN.

(a) IN GENERAL.—The Administrator shall develop a plan—

(1) to define requirements for a comprehensive and integrated ocean, coastal, Great Lakes, and atmosphere science program to support renewable energy development in the United States based on the public hearings, public comments, and a review of scientific and industry information;

(2) to identify and describe current climate, weather, and water data programs, products, services, and authorities within NOAA relevant to renewable energy development;

(3) to provide targeted research, data, monitoring, observation, and other information, products, and services concerning climate, weather, and water in support of renewable energy and "smart grid" technology, including research to accurately quantify the downstream micro-climate impacts of wind-power turbines;

(4) to provide research, data, monitoring, and other information, products, and services to inform renewable energy decisions concerning coastal and marine habitats, living marine resources and the ecosystems on which they depend and coastal and marine planning; and

(5) to reduce duplication and leverage the resources of existing NOAA programs through coordination with—

(A) other offices and programs within NOAA, including the atmospheric, ocean, and coastal observation systems;

(B) Federal, State, tribal, and local observation systems; and

(C) other entities, including the private sector organizations and institutions of higher education; and

(6) to facilitate public-private cooperation, including identification and assessment of current private sector capabilities.

(b) **PUBLIC HEARINGS.**—In developing the plan, the Administrator shall provide public notice and opportunity for 1 or more public hearings and shall seek comments from Federal and State agencies, tribes, local governments, representatives of the private sector, and other parties interested in renewable energy observations, data, and use in order to improve NOAA climate, weather, and water observation data products and services to more effectively support renewable energy development.

#### **SEC. 4. ESTABLISHMENT OF RESEARCH, PRE- DICTION, AND ENVIRONMENTAL IN- FORMATION PROGRAM.**

(a) **IN GENERAL.**—Within 18 months after the date of enactment of this Act, the Administrator shall establish a program to develop and implement an integrated and comprehensive ocean, coastal, Great Lakes and atmosphere research and operations program, based on the plan required by section 3, to support renewable energy development in the United States.

(b) **PROGRAM COMPONENTS.**—At a minimum, the program shall include—

(1) improvements in coordinated climate, weather, and water research, monitoring, and observations to support—

(A) renewable energy development; and

(B) the understanding and mitigation of the impact of renewable energy development on living marine resources, including protected species and the marine and coastal environment;

(2) coordinated weather, water, and climate prediction capability focused on renewable energy and “smart grid” technology to provide information and decision services in support of renewable energy development;

(3) support for the transition to, and reliable delivery of, sustained operational weather, water, and climate products from research, observation, and prediction outputs;

(4) means of identifying biological and ecological effects of marine renewable energy development on living marine resources, the marine and coastal environment, marine-dependent industries, and coastal communities;

(5) baseline ecological characterization, including research, data collection, and mapping, of the coastal and marine environment and living marine resources for marine renewable energy development;

(6) avoidance, minimization, and mitigation strategies to address the potential impacts of marine renewable energy on the marine, coastal, and Great Lakes environment, including developing effective monitoring protocols, use of adaptive management, informed engineering design and operating parameters, and the establishment of protocols for minimizing the environmental impacts of testing, developing, and deploying marine renewable energy devices;

(7) support for the development of marine special area management plan by states as defined by the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) that would support renewable energy development consistent with natural resource protection and other coastal-dependent economic growth;

(8) comprehensive digital mapping, modeling, and other geospatial information and services to support planning for renewable energy and stewardship of ecosystem and liv-

ing marine ecosystems, including protected species, in ocean and coastal areas;

(9) a coordinated approach for examining and quantifying the micro-climate impacts of wind-power farms on soil transpiration and drying; and

(10) provision for outreach to the public and private sector about program research, information, and products, including making non-proprietary information and best management practices developed under this program available to the public.

(c) **USE IN AGENCY DECISIONS.**—The program established under subsection (b) shall be designed to collect, synthesize, and distribute data in a manner that can be used by marine resource managers responsible for making decisions about marine renewable energy projects. The Army Corps of Engineers, Department of Commerce, Minerals Management Service, Federal Energy Regulatory Commission, and Department of Energy shall consider this information when making planning, siting, and permitting decisions for marine renewable energy.

(d) **SUPPORT FOR PUBLIC-PRIVATE COOPERATION.**—To the extent practicable, in implementing the program established under this section, the Administrator shall seek appropriate opportunities to facilitate and expand cooperation with private sector entities to develop and expand information services that serve the renewable energy industry.

#### **SEC. 5. BIENNIAL REPORTS.**

Not later than 2 years after the date of the enactment of this Act and every 2 years thereafter, the Administrator shall prepare and transmit a report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Natural Resources, and the House of Representatives Committee on Science and Technology on progress made in implementing this Act, including—

(1) a description of activities carried out under this Act;

(2) recommendations for priority activities under this Act for fiscal years beginning after the date on which the report is submitted; and

(3) funding levels for activities under this Act in those fiscal years

#### **SEC. 6. LIBRARY.**

Within 1 year after the date of the enactment of this Act, the Administrator, in consultation with relevant Federal agencies, shall establish a renewable energy information library and data portal. The library shall include, at a minimum—

(1) links to data and information products for use in renewable energy development;

(2) links to planning and decision support tools for use in renewable energy development;

(3) data about the baseline condition of ocean and coastal resources; and

(4) links to digital mapping and geospatial information, products, and services described in section 4(b).

#### **SEC. 7. FEDERAL COORDINATION.**

In carrying out activities under this Act, the Administrator shall coordinate with the Secretary of the Interior, the Secretary of Energy, the Secretary of Transportation, the Secretary of Defense, the Federal Energy Regulatory Commission, the Department in which the Coast Guard is operating, and the heads of other relevant Federal agencies.

#### **SEC. 8. AGREEMENTS.**

The Administrator may enter into and perform such contracts, leases, grants, cooperative agreements, or other agreements and transactions with any agency or instrumen-

tal of the United States, or with any State, local, tribal, territorial or foreign government, or with any person, corporation, firm, partnership, educational institution, nonprofit organization, or international organization as may be necessary to carry out the purposes of this Act.

#### **SEC. 9. AUTHORITY TO RECEIVE FUNDS.**

The Administrator may accept, retain, and use funds received from any party pursuant to an agreement entered into under section 8 for activities furthering the purposes of this Act.

#### **SEC. 10. USE OF OCEAN OBSERVING OFFSHORE INFRASTRUCTURE.**

(a) **IN GENERAL.**—Any offshore exploration and production facility, at the discretion of the Administrator, may execute a memorandum of understanding authorizing the use of offshore platforms and infrastructure for the placement of meteorological and oceanographic observation sensors of a type to be designated by the Administrator in support of the Integrated Ocean Observing System.

(b) **AVAILABILITY OF INFORMATION.**—All information collected by such sensors will be managed by NOAA and be readily available for use in spill response as well as available to the National Weather Service, other NOAA programs, and the general public.

#### **SEC. 11. DEFINITIONS.**

In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Under Secretary of Commerce for Oceans and Atmosphere in the Under Secretary’s capacity as Administrator of NOAA.

(2) **MARINE RENEWABLE ENERGY.**—The term “marine renewable energy” means any form of renewable energy derived from the sea including wave energy, tidal energy, ocean current energy, offshore wind energy, salinity gradient energy, ocean thermal gradient energy, and ocean thermal energy conversion.

(3) **NOAA.**—The term “NOAA” means the National Oceanic and Atmospheric Administration.

#### **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IMPLEMENTATION AND EXECUTION.**—There are authorized to be appropriated to the Administrator \$100,000,000 for each of fiscal years 2010 through 2014 to carry out this Act.

(b) **GRANTS TO EDUCATIONAL INSTITUTIONS AND COASTAL STATES.**—Of the amounts appropriated pursuant to subsection (b), the Administrator shall make up to 50 percent available to educational institutions, and to States with coastal zone management programs approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), to carry out activities that support the program established under section 4.

#### **SEC. 13. SAVINGS PROVISION.**

Nothing in this Act shall be construed to supersede or modify the jurisdiction, responsibilities, or authority of any Federal or State agency under any provision of law in effect on the date of enactment of this Act.

By Mr. KOHL (for himself and Mr. HATCH):

S 2854. A bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for new qualified hybrid motor vehicles, and for other purposes; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today to introduce a bill with Senator HATCH that would provide tax credits for purchasers of hybrid and plug-in hybrid heavy duty trucks. Specifically,

this bill would extend the existing heavy duty hybrid tax credit and create a tax credit for heavy-duty plug-in hybrid trucks. The plug-in tax credit was included in the Senate passed stimulus bill, but was dropped in conference. Both tax credits would begin at \$15,000 for those vehicles weighing up to 14,000 lbs and max out at \$100,000 for vehicles weighing more than 33,000 lbs. The tax credits would expire in 2014.

The challenge for hybrid and plug-in hybrid technologies is cost. Advanced batteries and components are new and expensive technologies. In the medium and heavy duty sector, these costs are even higher and vehicle turnover is lower. The incremental cost of a heavy duty plug-in hybrid over 23,000 lbs can be as much as \$85,000. We are introducing this bill to provide the needed incentives for manufacturers to develop and install hybrid and plug-in hybrid technology on heavy duty trucks.

This bill also includes a tax credit of up to \$3,500 for trucks stops to install electrification units so that truckers could plug in their vehicles to operate necessary systems without idling the engine. Because the Department of Transportation mandates that truckers rest for 10 hours after driving for 11 hours, truckers idle at truck stops for several hours. With this tax credit, truckers would be able to operate the heater, air conditioner, television, and other appliances without running the engine, which saves fuel, reduces air pollution, and reduces engine wear. The tax credit would end in 2014.

In addition to reducing oil use in their drive cycles, electrification is an important technology for reducing idle costs and emissions. U.S. trucks idle an average of 1830 hours per year. The idling of commercial vehicles is estimated to consume more than 2 billion gallons of fuel annually, while producing unwanted emissions. By promoting onboard electricity options for powering vehicle functions while idling and by expanding off board options, through truck stop electrification, this legislation will reduce oil use and emissions from this sector even further.

This bill, which has the support of the Electric Drive Transportation Association, will help manufacturers reach the economies of scale by bringing down the costs of hybrid and plug-in hybrid technologies. The tax credits will promote the purchases of clean, efficient electric drive trucks and the installation of anti-idling equipment that will improve our environment and reduce our dependence on foreign oil.

By Mr. BINGAMAN (for himself  
Mr. HATCH, Ms. STABENOW, and  
Mr. LUGAR):

S. 2857. A bill to amend the Internal Revenue Code of 1986 to expand the qualifying advanced energy project credit; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, a recent report by the New America Foundation finds that “the United States ran an overall green trade deficit of –\$8.9 billion in 2008, including a deficit of –\$6.4 billion in the critical category of renewable energy. . . .” To halt this trend and promote American leadership in clean technology manufacturing, I was pleased to see the Advanced Energy Manufacturing Tax Credit, codified as Section 48C of the Internal Revenue Code, established under the American Recovery and Reinvestment Act. Under Section 48C, qualifying projects receive a 30 percent tax credit for capital expenditures related to new, expanded, or re-equipped advanced energy manufacturing projects. But Section 48C was enacted subject to a \$2.3 billion limitation in allocation authority—and we expect the full \$2.3 billion soon to be exhausted. Because we cannot allow this credit to lapse, I rise today to introduce the American Clean Technology Manufacturing Leadership Act, which would add \$2.5 billion in allocation authority to the Section 48C Advanced Energy Manufacturing Tax Credit program. I am pleased to be joined by Senator HATCH, Senator STABENOW, and Senator LUGAR in introducing this bill.

By establishing the Section 48C credit, Congress took a significant step—but we cannot slow down now. In the near- to mid-term, we can anticipate rapid growth in demand for renewable energy technologies, due to the long-term extension of the production tax credit and the commercial and residential investment tax credits; declining product costs; the anticipated enactment this Congress of a national renewable portfolio standard; and the anticipated implementation of a carbon control system. But without robust incentives, foreign-based manufacturers are poised to seize a large share of this domestic growth in the clean power market with products exported to the United States. As New America explains: “If current trends continue, the green trade deficit can be expected to widen further as the administration’s agenda increases domestic demand but without sufficient measures to increase domestic production. If the deficit continues to grow, the United States will forego the creation of millions of high-wage, high-skill green manufacturing jobs and lose its potential to be a global producer as well as a consumer of green technologies.”

The reality is that we need a level playing field to bring manufacturing jobs to the United States. For years, Germany, China, India, Malaysia, and the Philippines have offered incentives that have placed the United States at a competitive disadvantage. For instance, for solar photovoltaic manufacturers, Malaysia and the Philippines offer income tax holidays, 15 years in the case of Malaysia, and Germany of-

fers up to 30 percent of investment costs for large enterprises and 40-50 percent for smaller enterprises.

The Section 48C Advanced Energy Manufacturing Tax Credit made an important stride in leveling that playing field. ARRA instructed Treasury and DOE to establish a selection procedure for allocating credits, thus ensuring that only the most promising projects receive a Federal investment. But the program is oversubscribed and we anticipate that by January 15, the full \$2.3 billion authorized under ARRA will be allocated.

We cannot afford to have this credit lapse. There are additional qualified applications ready to be evaluated, and an existing selection infrastructure to make these awards quickly. To keep us on track, our bill would add an additional \$2.5 billion in allocation authority—enough to leverage an additional \$8.3 billion in investment in domestic manufacturing facilities.

Yesterday President Obama himself called for an expansion of this credit. Speaking at the Brookings Institution, the President said that the Treasury program has received a substantial response and warrants an expansion: “It’s a positive sign that many of these programs drew so many applicants for funding that a lot of strong proposals—proposals that will leverage private capital and create jobs quickly—did not make the cut.” President Obama said. “With additional resources, in areas like advanced manufacturing of wind turbines and solar panels, for instance, we can help turn good ideas into good private-sector jobs.”

We should move immediately to meet the President’s call, by adding \$2.5 billion in allocation authority. Allowing this credit to lapse would only cede high-paying jobs to other countries at a time when our unemployment rate hovers above 10 percent.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2857

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “American Clean Technology Manufacturing Leadership Act”.

#### SEC. 2. EXPANSION OF QUALIFYING ADVANCED ENERGY PROJECT CREDIT.

(a) IN GENERAL.—Section 48C(d)(1)(B) of the Internal Revenue Code of 1986 is amended by striking “\$2,300,000,000” and inserting “\$4,800,000,000”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to allocations for applications submitted after December 31, 2009.

By Mrs. BOXER (for himself, Mr. DURBIN, Mr. KERRY, and Mr. CASEY):



S. 2858. A bill to amend the Public Health Service Act to establish an Office of Mitochondrial Disease at the National Institutes of Health, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, as we work to reform our health care system, it is crucial that we encourage the development of new treatments and cures for diseases by investing in health research and innovation. Today, I am proud to introduce the Brittany Wilkinson Mitochondrial Disease Research and Treatment Enhancement Act of 2009, which, for the first time, would coordinate the federal investment in researching the cause of, and treatments and cures for, mitochondrial disease.

Known as the cell's "powerhouse," mitochondria are specialized compartments within cells that help sustain life by producing 90 percent of the energy our cells and bodies need. Mitochondrial disease causes defects that reduce the ability of mitochondria to produce energy, which leads to cell dysfunction or death. When cells in our bodies begin to fail or die, then whole organ systems can fail.

Due to the essential nature of the function of mitochondria, mitochondrial dysfunction is suspected to be associated with a large number of diseases including, Parkinson's, autism, diabetes, cancer and many other afflictions. However, we cannot learn more about how these diseases are related until we invest enough resources in mitochondrial disease research.

First recognized in the 1960s, mitochondrial disease is relatively newly diagnosed, yet every 30 minutes a child is born who will develop a mitochondrial disease by age 10, and one recent study showed that one in every 200 people has a genetic mutation that may lead to mitochondrial disease.

Despite its prevalence, mitochondrial disease has no known treatment or cure, those afflicted with this disorder—many of them children—go untreated.

This legislation would create an Office of Mitochondrial Disease, within the National Institutes of Health, to develop a Mitochondrial Disease Research Plan, to promote and coordinate efforts to educate researchers and health providers about mitochondrial diseases and to award grants to increase research of mitochondrial disease.

In addition, this legislation would establish Mitochondrial Disease Centers of Excellence to promote basic and clinical research, facilitate training programs in mitochondrial disease, and develop and disseminate programs to provide continuing education in mitochondrial disease. This legislation also instructs the Director of the CDC

to establish a national registry and a biorepository to help collect and share information about patients with mitochondrial disease.

The United Mitochondrial Disease Foundation, UMDF—the voice for the thousands of children, adults and their families who face this disease almost alone—greatly supports this bill because they know it is critical to research, understanding and future treatments for mitochondrial diseases.

Brittany Wilkinson, for whom this act is named, was herself a mitochondrial disease patient. Earlier this year I met this young woman when she visited my office as a UMDF Youth Ambassador; I was greatly impressed by her poise and dedication to her cause. Although Brittany had experienced medical problems since birth, she was not diagnosed with mitochondrial disease until the age of seven.

Though Brittany was in constant pain, spent months in the hospital and sometimes stopped breathing at night, she devoted her life to raising awareness about the disease she shared with so many others. As the first ever Youth Ambassador for the UMDF, Brittany helped fundraise, made phone calls and dictated letters—sometimes from her hospital bed.

In addition to her work as a Youth Ambassador, Brittany was also active in her local government, where she worked to pass "Mitochondrial Disease Awareness Week" resolutions in Clovis City and Fresno, California. On the state level, this year she was able to get a permanent resolution through the California Assembly to make the third full week in September every year "Mitochondrial Disease Awareness Week". I was devastated to hear that this September Brittany passed due to the effects of her debilitating illness.

Brittany Wilkinson worked tirelessly to advance public awareness of this devastating disease, now I urge my colleagues to join me in taking the next step by supporting this investment in mitochondrial disease research, for the thousands of families across our nation coping with mitochondrial disease.

By Mr. INOUE (for himself, Mr. ROCKEFELLER, Ms. SNOWE, Mr. NELSON of Florida, and Mr. KERRY):

S. 2859. A bill to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INOUE. Mr. President, I am pleased to sponsor the Coral Reef Conservation Amendments Act of 2009. This bill reauthorizes and strengthens the Coral Reef Conservation Act of 2000, a program that I originally sponsored in the 106th Congress establishing the Coral Reef Conservation

Program at the National Oceanic and Atmospheric Administration, NOAA.

Coral reefs are among the oldest and most economically and biologically important ecosystems in the world. They provide habitat for more than one million diverse aquatic species, a natural barrier for protection from coastal storms and erosion, and are a potential source of treatment for many of the world's diseases. In addition, reef-supported tourism is a \$30 billion industry worldwide, and the commercial value of U.S. fisheries from coral reefs is more than \$100 million. However, our coral reef ecosystems face many threats including pollution, climate change and coral bleaching, and overfishing to name a few. Coral reefs cover only one-tenth of one percent of the ocean floor, yet provide habitat for more than 25 percent of all marine species.

The original Coral Reef Conservation Act of 2000 recognized the need to preserve, sustain and restore the condition of these valuable coral reef ecosystems. It directed NOAA to develop a National Coral Reef Action Strategy, established a NOAA Coral Reef Conservation Program, and created a Coral Reef Conservation Fund to support public-private partnership projects. The Coral Reef Conservation Act of 2000 also authorized NOAA to provide emergency grants to address unforeseen and disaster-related impacts to coral reefs.

The Coral Reef Conservation Amendments Act of 2009 would strengthen NOAA's ability to comprehensively address threats to coral reefs and empower the agency with tools to ensure that damage to our coral reef ecosystems is prevented or effectively mitigated. It also establishes consistent practices for maintaining data, products, and information, and promotes the widespread availability and dissemination of that environmental information.

The bill allows the Secretary to further develop partnerships with foreign governments and international organizations as well as with Federal agencies, State and local governments, tribal organizations, educational institutions, nonprofit organizations, commercial organizations, and other public and private entities. These partnerships are critical not only to the understanding of our coral reef ecosystems, but also to their protection and restoration. Finally, the bill allows for any amount received by the United States as a result of illegal activity resulting in the destruction, take, loss, or injury of coral reefs to be used toward restoration efforts.

I would urge my colleagues to support this important legislation and I hope that we may pass this bill quickly to continue supporting NOAA's leadership role in coral reef conservation.

By Mr. DODD:

S. 2860. A bill to protect students from inappropriate seclusion and physical restraint, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, in 1998, the Hartford Courant ran an award-winning series of stories about the use of restraint and seclusion in hospitals, residential facilities, and group homes for individuals with psychiatric and developmental disabilities.

The Courant uncovered a hidden epidemic, confirming 142 deaths occurring during or after the use of restraint or seclusion.

One of those 142 was an 11-year-old boy from my home State of Connecticut. He was restrained face-down in a position that restricted his air flow. He died as a result.

In response, I led the charge to establish Federal standards to prevent the misuse of these practices. I helped pass The Children's Health Act of 2000, which included the Compassionate Care Act that I originally drafted to put these standards in place in certain hospitals and residential facilities. We wanted to include schools in this legislation, but were unable to do so. Sadly, the need could not have been greater.

Over the past year, reports from the National Disability Rights Network, NDRN, the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion, APRAIS, the Council of Parent Attorneys and Advocates, Inc., COPAA, and the Government Accountability Office, GAO, have painted a picture disturbingly similar to the one the Hartford Courant discovered more than a decade ago.

The statistics are chilling—hundreds of incidents of physical injury, psychological trauma, even death—but the stories are devastating.

Here are some of the examples the GAO found in their report released on May 19, 2009.

A 14-year-old boy was restrained face-down by a teacher because he would not stay seated in class. The 230 lb. teacher sat on the 129 lb. boy, restricting his airflow and resulting in the boy's death.

A 4-year-old girl with cerebral palsy and autism was restrained in a wooden chair with leather straps for being "uncooperative."

In one school district, children with disabilities as young as 6 years old were allegedly placed in strangleholds, restrained for extended periods of time, confined to dark rooms, tethered to ropes, and prevented from using the restroom until they urinated on themselves.

To be clear, school personnel mean no harm, and my concern signifies no disrespect for the difficult job they do or the dangers they sometimes face.

But these tragic stories reflect inadequate training, and a lack of resources on the local level to implement effective

interventions, such as school-wide positive behavioral supports.

Just as students have a right to learn in a safe environment, educators have a right to work in a safe environment. They should be provided with training and support to prevent injury to themselves and others.

In some States, like Connecticut, parents have successfully advocated for laws that provide these resources, as well as guidelines to ensure that they are used effectively.

But the patchwork of State laws and regulations is confusing.

According to the GAO study, 19 States have no law or regulations concerning restraint and seclusion in schools.

Some laws apply to only certain schools or situations.

Some apply to restraint but not seclusion.

Only 19 States require parental notification.

Only 17 States require staff training.

Only 8 specifically prohibit restraints that restrict air flow.

Furthermore, this patchwork is obviously inadequate; according to a report by COPPA, over 71 percent of the 185 incidents they identified occurred in schools with no positive behavioral interventions or supports.

Therefore, I rise today to introduce the Preventing Harmful Restraint and Seclusion in Schools Act, a bill that will address this void.

It will establish clear minimum standards for the use of restraint and seclusion in schools, closely based on the Children's Health Act of 2000. It will also provide resources to assist with policy implementation and provide school personnel with necessary tools, training, and support.

Finally, it will improve data collection, analysis, and identification of effective practices to prevent and reduce restraint and seclusion in schools, so we may better understand the scope of the problem and the effectiveness of our solutions.

Specifically, the legislation will prohibit the use of restraint and seclusion in schools unless the student's behavior imposes an immediate danger of physical injury and less restrictive interventions would be ineffective.

It will prohibit the use of mechanical, chemical, and physical restraints that restrict air flow to the lungs.

It will require adequate training and state certification of school personnel imposing restraint or seclusion, immediate parental notification when such an incident occurs, and debriefing to prevent future incidents.

As a condition of receiving federal education funding, states will be required to submit annual plans to the Secretary of Education which describe their restraint and seclusion policies, and certify that minimum standards are being met.

States will also be required to report annually the total number of incidents of restraint and seclusion, disaggregated by demographic and other categories.

In order to assist States, local educational agencies, and schools with implementing policies and procedures to meet the minimum standards, competitive grants will be provided. Grants will also assist with the implementation of school-wide positive behavioral supports to further prevent incidents of restraint and seclusion.

Finally, the Department of Education will conduct, and provide to Congress, a national assessment which analyzes data on restraint and seclusion and effective practices in preventing and reducing incidents. This will provide us with a more accurate picture of the extent of restraint and seclusion in schools and help direct additional future efforts to ensure that our children and those who educate them are safe.

I want to thank the many organizations representing individuals with disabilities, students, teachers, and schools that all came to the table with recommendations. I am also grateful to Secretary Duncan for his leadership on this issue. Finally, I want to thank my colleague and good friend Chairman GEORGE MILLER in the House of Representatives. Today, he's introducing companion legislation, and I look forward to working with him to make it law.

Every child has a right to be safe in the place where they go to learn and grow. Every educator deserves the training and support they need to do their jobs safely and effectively. This legislation will help to prevent tragedies in our schools. I am proud to introduce it today, and I urge my colleagues to join me.

By Ms. SNOWE (for herself and Ms. LANDRIEU):

S. 2861. A bill to amend the Trade Act of 1974 to establish an Assistant United States Trade Representative for Small Business, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today with my colleague, Senate Small Business Committee Chair LANDRIEU, to introduce the Small Business Trade Representation Act of 2009. This bipartisan measure would once and for all establish an Assistant United States Trade Representative for Small Business, to ensure that small businesses are represented in trade negotiations and in U.S. trade policy.

I first introduced legislation in 2001, in the 107th Congress, to establish a United States Trade Representative for Small Business, in order to ensure that small business interests are reflected in U.S. trade policy and trade agreement negotiations. Since that time, we've heard excuse after excuse, from

Administrations of both parties, about why we don't need an Assistant USTR for Small Business. Currently, less than one percent of all small businesses are exporting their goods and services to foreign customers. Until we see significant gains in small business participation in international trade, we must make it a priority across the Federal government—and especially in our trade policy—to help small businesses compete in the global marketplace.

As Ranking Member of the Senate Committee on Small Business and Entrepreneurship, and as a senior member of both the Senate Finance and Commerce Committees, one of my top priorities is to ensure that small businesses get the promised benefits of our international trade relationships and are able to compete in the world economy.

While globalization has created opportunities for U.S. small businesses to sell their goods and services in new markets, not enough small businesses are taking advantage of these international prospects. In fact, according to the U.S. Department of Commerce, less than one percent of the approximately 27 million U.S. small businesses currently sell their products to foreign buyers. Small businesses are a vital source of economic growth and job creation, generating nearly ⅓ of net new jobs each year. Small businesses are essential to our economic recovery, and we must help them take advantage of all potential opportunities, including those in foreign markets.

Small businesses can survive, diversify, and compete effectively in the international marketplace by developing an export business. But, as I mentioned, too few small businesses are expanding into international markets. This legislation will help ensure that small businesses are a priority in the U.S. government's trade policy and in future trade agreements.

We cannot overlook the impact of trade on small businesses. An investment in small business exporting assistance is an investment in our economy. I ask all of my Senate colleagues to support this vital legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2861

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Trade Representation Act of 2009".

#### SEC. 2. ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR SMALL BUSINESS.

(a) ESTABLISHMENT OF POSITION.—Section 141(c) of the Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by adding at the end the following new paragraph:

"(6)(A) There is established within the Office the position of Assistant United States Trade Representative for Small Business, who shall be appointed by the United States Trade Representative.

"(B) The Assistant United States Trade Representative for Small Business shall—

"(i) promote the trade interests of small-business concerns (as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662));

"(ii) advocate for the reduction of foreign trade barriers with respect to the trade issues of small-business concerns that are exporters;

"(iii) collaborate with the Administrator of the Small Business Administration with respect to the trade issues of small-business concerns;

"(iv) assist the United States Trade Representative in developing trade policies that increase opportunities for small-business concerns in foreign and domestic markets, including policies that reduce trade barriers for small-business concerns; and

"(v) perform such other duties as the United States Trade Representative may direct.

"(C) The Assistant United States Trade Representative for Small Business shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code."

(b) CONFORMING REPEAL.—Section 2112 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3812) is repealed.

(c) TECHNICAL CORRECTIONS.—Section 141 of the Trade Act of 1974 (19 U.S.C. 2171), as amended by subsection (a), is further amended—

(1) in subsection (c), by moving paragraph (5) 2 ems to the left; and

(2) in subsection (e)—

(A) in paragraph (1), by striking "5314" and inserting "5315"; and

(B) in paragraph (2), by striking "the maximum rate of pay for grade GS-18 as provided in section 5332" and inserting "the maximum rate of pay for level IV of the Executive Schedule in section 5315".

Ms. SNOWE (for herself and Ms. LANDRIEU):

S. 2862. A bill to amend the Small Business Act to improve the Office of International Trade, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, I rise today with my colleague, Senate Small Business Committee Chair LANDRIEU, to introduce the Small Business Export Enhancement and International Trade Act of 2009. This bipartisan measure would provide improved and expanded support for small businesses, through critical programs and reforms, to ensure that, as we emerge from this protracted recession, American small businesses are primed for success in the global marketplace and are able to create and sustain high-paying jobs.

I would like to thank Chair LANDRIEU for her efforts on this critical issue and for working with me and my staff to merge our respective bills into one bipartisan measure that will help small businesses stay competitive, help them grow, and speed the recovery of our economy as a whole.

As Ranking Member of the Senate Committee on Small Business and En-

trepreneurship, and as a senior member of both the Senate Finance and Commerce Committees, one of my top priorities is to ensure that small businesses get the promised benefits of our international trade relationships and are able to compete in the world economy.

While globalization has created opportunities for U.S. small businesses to sell their goods and services in new markets, not enough small businesses are taking advantage of these international prospects. In fact, according to the U.S. Department of Commerce, less than one percent of the approximately 27 million U.S. small businesses currently sell their products to foreign buyers. Small businesses are a vital source of economic growth and job creation, generating nearly ⅓ of net new jobs each year. Small businesses are essential to our economic recovery, and we must help them take advantage of all potential opportunities, including those in foreign markets.

Small businesses face particular challenges in exporting. It can be difficult for small exporting firms to secure the working capital needed to fulfill foreign purchase orders, for instance, because many lenders won't lend against export orders or export receivables. Small business owners may not know how to connect with foreign buyers, or may not have the time or resources necessary to understand other countries' rules and regulations.

Currently, Federal programs are grossly inadequate at helping small businesses overcome the challenges of exporting. The Small Business Export Enhancement and International Trade Act, which we are introducing today, gives small businesses the critical resources and assistance needed to explore potential export opportunities, or to expand their current export business.

Our bipartisan legislation includes provisions from bills I have introduced in past Congresses, since the 109th, to elevate the head of the Small Business Administration, SBA, office responsible for trade and export programs to the Associate Administrator-level, reporting directly to the administrator.

Further, it includes all of the key provisions from the small business trade bill that I introduced earlier this year, S. 1208, the Small Business Export Opportunity Development Act of 2009. These critical provisions would bolster the SBA's technical assistance programs and improve export financing programs to ensure that small businesses have access to the capital needed to support export sales. The legislation also increases the coordination among other federal agencies—the Department of Commerce, the Office of the U.S. Trade Representative, and the Export-Import Bank—to ensure that small businesses benefit from all the export assistance the Federal Government offers.

This legislation also includes a program I proposed earlier this year in S. 1208 to provide grants to help small businesses start or expand export activity, such as participation in foreign trade missions, foreign market sales trips, training workshops and payment of website translation fees. It also improves the SBA's network of international trade counselors and enhances the export assistance provided to small business clients through the Small Business Development Center network, which has over 1,000 locations nationwide.

Our bill increases the maximum size of SBA-guaranteed export working capital and international trade loans from a current level of \$2 million to a new level of \$5 million, consistent with the levels established in my bill, S. 1615, the Next Steps for a Main Street Recovery Act, which I introduced in August and the President called for last month. This bill also establishes a permanent Export Express program, a streamlined, expedited loan program to get capital to exporters quickly and efficiently, so they can focus on the terms of the sale and preparing their product for shipment. It also establishes a program to provide support for small businesses related to trade disputes and unfair international trade practices, which is critical for our entrepreneurs who have suffered from illegal activities by our trading partners.

Small businesses can survive, diversify, and compete effectively in the international marketplace by developing an export business. But, as I mentioned, too few small businesses are expanding into international markets. This legislation will help small business owners take the crucial steps of finding international buyers for their goods and services and will enable small business owners to secure the financing needed to fill orders from foreign buyers.

This investment could yield tremendous returns for our economy. The United States spends just one-sixth of the international average on export promotion and assistance among developed countries in promoting small businesses exports. Every additional dollar spent on export promotion results in a 40-fold increase in exports, according to a World Bank study.

We cannot overlook the impact of trade on small businesses. An investment in small business exporting assistance is an investment in our economy. I ask all of my Senate colleagues to support this vital legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2862

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Export Enhancement and International Trade Act of 2009".

# SEC. 2. DEFINITIONS.

(a) DEFINITIONS.—In this Act—

(1) the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator thereof, respectively;

(2) the term "Associate Administrator" means the Associate Administrator for International Trade appointed under section 22(a)(2) of the Small Business Act, as amended by this Act;

(3) the term "Export Assistance Center" means a one-stop shop referred to in section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8));

(4) the term "rural small business concern" means a small business concern located in a rural area, as that term is defined in section 1393(a)(2) of the Internal Revenue Code of 1986; and

(5) the term "small business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

"(t) SMALL BUSINESS DEVELOPMENT CENTER.—In this Act, the term 'small business development center' means a small business development center described in section 21.

"(u) REGION OF THE ADMINISTRATION.—In this Act, the term 'region of the Administration' means the geographic area served by a regional office of the Administration established under section 4(a)."

(2) CONFORMING AMENDMENT.—Section 4(b)(3)(B)(x) of the Small Business Act (15 U.S.C. 633(b)(3)(B)(x)) is amended by striking "Administration district and region" and inserting "district and region of the Administration".

# SEC. 3. OFFICE OF INTERNATIONAL TRADE.

(a) ESTABLISHMENT.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking "SEC. 22. (a) There" and inserting the following:

# "SEC. 22. OFFICE OF INTERNATIONAL TRADE.

"(a) ESTABLISHMENT.—

"(1) OFFICE.—There"; and

(2) in subsection (a)—

(A) in paragraph (1), as so designated, by striking the period and inserting "for the primary purposes of increasing—

"(A) the number of small business concerns that export; and

"(B) the volume of exports by small business concerns.""; and

(B) by adding at the end the following:

"(2) ASSOCIATE ADMINISTRATOR.—The head of the Office shall be the Associate Administrator for International Trade, who shall be responsible to the Administrator."

(b) AUTHORITY FOR ADDITIONAL ASSOCIATE ADMINISTRATOR.—Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended—

(1) in the fifth sentence, by striking "five Associate Administrators" and inserting "Associate Administrators"; and

(2) by adding at the end the following: "One such Associate Administrator shall be the Associate Administrator for Inter-

national Trade, who shall be the head of the Office of International Trade established under section 22."

(c) DISCHARGE OF INTERNATIONAL TRADE RESPONSIBILITIES OF ADMINISTRATION.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended by adding at the end the following:

"(h) DISCHARGE OF INTERNATIONAL TRADE RESPONSIBILITIES OF ADMINISTRATION.—The Administrator shall ensure that—

"(1) the responsibilities of the Administration regarding international trade are carried out by the Associate Administrator;

"(2) the Associate Administrator has sufficient resources to carry out such responsibilities; and

"(3) the Associate Administrator has direct supervision and control over—

"(A) the staff of the Office; and

"(B) any employee of the Administration whose principal duty station is an Export Assistance Center, or any successor entity."

(d) ROLE OF ASSOCIATE ADMINISTRATOR IN CARRYING OUT INTERNATIONAL TRADE POLICY.—Section 2(b)(1) of the Small Business Act (15 U.S.C. 631(b)(1)) is amended in the matter preceding subparagraph (A)—

(1) by inserting "the Administrator of" before "the Small Business Administration"; and

(2) by inserting "through the Associate Administrator for International Trade, and" before "in cooperation with".

(e) IMPLEMENTATION DATE.—Not later than 90 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall appoint an Associate Administrator for International Trade under section 22(a) of the Small Business Act (15 U.S.C. 649(a)), as added by this section.

# SEC. 4. DUTIES OF THE OFFICE OF INTERNATIONAL TRADE.

(a) AMENDMENTS TO SECTION 22.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) TRADE DISTRIBUTION NETWORK.—The Associate Administrator, working in close cooperation with the Secretary of Commerce, the United States Trade Representative, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, and other relevant Federal agencies, small business development centers engaged in export promotion efforts, Export Assistance Centers, regional and district offices of the Administration, the small business community, and relevant State and local export promotion programs, shall—

"(1) maintain a distribution network, using regional and district offices of the Administration, the small business development center network, networks of women's business centers, the Service Corps of Retired Executives authorized by section 8(b)(1), and Export Assistance Centers, for programs relating to—

"(A) trade promotion;

"(B) trade finance;

"(C) trade adjustment assistance;

"(D) trade remedy assistance; and

"(E) trade data collection;

"(2) aggressively market the programs described in paragraph (1) and disseminate information, including computerized marketing data, to small business concerns on exporting trends, market-specific growth, industry trends, and international prospects for exports;

"(3) promote export assistance programs through the district and regional offices of

the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives, State and local export promotion programs, and partners in the private sector; and

“(4) give preference in hiring or approving the transfer of any employee into the Office or to a position described in subsection (c)(9) to otherwise qualified applicants who are fluent in a language in addition to English, to—

“(A) accompany small business concerns on foreign trade missions; and

“(B) translate documents, interpret conversations, and facilitate multilingual transactions, including by providing referral lists for translation services, if required.”;

(2) in subsection (c)—

(A) by striking “(c) The Office” and inserting the following:

“(C) PROMOTION OF SALES OPPORTUNITIES.—The Associate Administrator”;

(B) by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively;

(C) by inserting before paragraph (2), as so redesignated, the following:

“(1) establish annual goals for the Office relating to—

“(A) enhancing the exporting capability of small business concerns and small manufacturers;

“(B) facilitating technology transfers;

“(C) enhancing programs and services to assist small business concerns and small manufacturers to compete effectively and efficiently against foreign entities;

“(D) increasing the ability of small business concerns to access capital;

“(E) disseminating information concerning Federal, State, and private programs and initiatives; and

“(F) ensuring that the interests of small business concerns are adequately represented in trade negotiations.”;

(D) in paragraph (2), as so redesignated, by striking “mechanism for” and all that follows through “(D) assisting” and inserting the following: “mechanism for—

“(A) identifying subsectors of the small business community with strong export potential;

“(B) identifying areas of demand in foreign markets;

“(C) prescreening foreign buyers for commercial and credit purposes; and

“(D) assisting”;

(E) in paragraph (3), as so redesignated, by striking “assist small businesses in the formation and utilization of” and inserting “assist small business concerns in forming and using”;

(F) in paragraph (4), as so redesignated—

(i) by striking “local” and inserting “district”;

(ii) by striking “existing”;

(iii) by striking “Small Business Development Center network” and inserting “small business development center network”; and

(iv) by striking “Small Business Development Center Program” and inserting “small business development center program”;

(G) in paragraph (5), as so redesignated—

(i) in subparagraph (A), by striking “Gross State Produce” and inserting “Gross State Product”;

(ii) in subparagraph (B), by striking “SIC” each place it appears and inserting “North American Industry Classification System”; and

(iii) in subparagraph (C), by striking “small businesses” and inserting “small business concerns”;

(H) in paragraph (6), as so redesignated, by striking the period at the end and inserting a semicolon;

(I) in paragraph (7), as so redesignated—

(i) in the matter preceding subparagraph (A)—

(I) by inserting “concerns” after “small business”; and

(II) by striking “current” and inserting “up to date”;

(ii) in subparagraph (A), by striking “Administration’s regional offices” and inserting “regional and district offices of the Administration”;

(iii) in subparagraph (B) by striking “current”;

(iv) in subparagraph (C), by striking “current”; and

(v) by striking “small businesses” each place that term appears and inserting “small business concerns”;

(J) in paragraph (8), as so redesignated, by striking and at the end;

(K) in paragraph (9), as so redesignated—

(i) in the matter preceding subparagraph (A)—

(I) by striking “full-time export development specialists to each Administration regional office and assigning”; and

(II) by striking “person in each district office. Such specialists” and inserting “individual in each district office and providing each Administration regional office with a full-time export development specialist, who”;

(ii) in subparagraph (B)—

(I) by striking “current”; and

(II) by striking “with” and inserting “in”; (iii) in subparagraph (D)—

(I) by striking “Administration personnel involved in granting” and inserting “personnel of the Administration involved in making”; and

(II) by striking “and” at the end;

(iv) in subparagraph (E)—

(I) by striking “small businesses’ needs” and inserting “the needs of small business concerns”; and

(II) by striking the period at the end and inserting a semicolon;

(v) by adding at the end the following:

“(F) participate, jointly with employees of the Office, in an annual training program that focuses on current small business needs for exporting; and

“(G) develop and conduct training programs for exporters and lenders, in cooperation with the Export Assistance Centers, the Department of Commerce, small business development centers, women's business centers, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, and other relevant Federal agencies”; and

(vi) by striking “small businesses” each place that term appears and inserting “small business concerns”; and

(L) by adding at the end the following:

“(10) make available on the website of the Administration the name and contact information of each individual described in paragraph (9);

“(11) carry out a nationwide marketing effort using technology, online resources, training, and other strategies to promote exporting as a business development opportunity for small business concerns;

“(12) disseminate information to the small business community through regional and district offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives author-

ized by section 8(b)(1), State and local export promotion programs, and partners in the private sector regarding exporting trends, market-specific growth, industry trends, and prospects for exporting; and

“(13) establish and carry out training programs for the staff of the regional and district offices of the Administration and resource partners of the Administration on export promotion and providing assistance relating to exports.”;

(3) in subsection (d)—

(A) by redesignating paragraphs (1) through (5) as clauses (i) through (v), respectively, and adjusting the margins accordingly;

(B) by striking “(d) The Office” and inserting the following:

“(d) EXPORT FINANCING PROGRAMS.—

“(1) IN GENERAL.—The Associate Administrator”; and

(C) by striking “To accomplish this goal, the Office shall work” and inserting the following:

“(2) TRADE FINANCE SPECIALIST.—To accomplish the goal established under paragraph (1), the Associate Administrator shall—

“(A) designate at least 1 individual within the Administration as a trade finance specialist to oversee international loan programs and assist Administration employees with trade finance issues; and

“(B) work”;

(4) in subsection (e), by striking “(e) The Office” and inserting the following:

“(e) TRADE REMEDIES.—The Associate Administrator”;

(5) by amending subsection (f) to read as follows:

“(f) REPORTING REQUIREMENT.—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

“(1) a description of the progress of the Office in implementing the requirements of this section;

“(2) a detailed account of the results of export growth activities of the Administration, including the activities of each district and regional office of the Administration, based on the performance measures described in subsection (i);

“(3) an estimate of the total number of jobs created or retained as a result of export assistance provided by the Administration and resource partners of the Administration;

“(4) for any travel by the staff of the Office, the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel; and

“(5) a description of the participation by the Office in trade negotiations.”;

(6) in subsection (g), by striking “(g) The Office” and inserting the following:

“(g) STUDIES.—The Associate Administrator”; and

(7) by adding after subsection (h), as added by section 3 of this Act, the following:

“(i) EXPORT AND TRADE COUNSELING.—

“(1) DEFINITION.—In this subsection—

“(A) the term ‘lead small business development center’ means a small business development center that has received a grant from the Administration; and

“(B) the term ‘lead women's business center’ means a women's business center that has received a grant from the Administration.

“(2) CERTIFICATION PROGRAM.—The Administrator shall establish an export and trade counseling certification program to certify

employees of lead small business development centers and lead women's business centers in providing export assistance to small business concerns.

“(3) NUMBER OF CERTIFIED EMPLOYEES.—The Administrator shall ensure that the number of employees of each lead small business development center who are certified in providing export assistance is not less than the lesser of—

“(A) 5; or

“(B) 10 percent of the total number of employees of the lead small business development center.

“(4) REIMBURSEMENT FOR CERTIFICATION.—

“(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall reimburse a lead small business development center or a lead women's business center for costs relating to the certification of an employee of the lead small business center or lead women's business center in providing export assistance under the program established under paragraph (2).

“(B) LIMITATION.—The total amount reimbursed by the Administrator under subparagraph (A) may not exceed \$350,000 in any fiscal year.

“(j) PERFORMANCE MEASURES.—

“(1) IN GENERAL.—The Associate Administrator shall develop performance measures for the Administration to support export growth goals for the activities of the Office under this section that include—

“(A) the number of small business concerns that—

“(i) receive assistance from the Administration;

“(ii) had not exported goods or services before receiving the assistance described in clause (i); and

“(iii) export goods or services;

“(B) the number of small business concerns receiving assistance from the Administration that export goods or services to a market outside the United States into which the small business concern did not export before receiving the assistance;

“(C) export revenues by small business concerns assisted by programs of the Administration;

“(D) the number of small business concerns referred to an Export Assistance Center or a small business development center by the staff of the Office;

“(E) the number of small business concerns referred to the Administration by an Export Assistance Center or a small business development center; and

“(F) the number of small business concerns referred to the Export-Import Bank of the United States or to the Overseas Private Investment Corporation by the staff of the Office, an Export Assistance Center, or a small business development center.

“(2) JOINT PERFORMANCE MEASURES.—The Associate Administrator shall develop joint performance measures for the district offices of the Administration and the Export Assistance Centers that include the number of export loans made under—

“(A) section 7(a)(16);

“(B) the Export Working Capital Program established under section 7(a)(14);

“(C) the Preferred Lenders Program, as defined in section 7(a)(2)(C)(ii); and

“(D) the export express program established under section 7(a)(34).

“(3) CONSISTENCY OF TRACKING.—The Associate Administrator, in coordination with the departments and agencies that are represented on the Trade Promotion Coordinating Committee established under section 2312 of the Export Enhancement Act of 1988

(15 U.S.C. 4727) and the small business development center network, shall develop a system to track exports by small business concerns, including information relating to the performance measures developed under paragraph (1), that is consistent with systems used by the departments and agencies and the network.”

(b) TRADE DISPUTES.—The Administrator shall carry out a comprehensive program to provide technical assistance, counseling, and reference materials to small business concerns relating to resources, procedures, and requirements for mechanisms to resolve international trade disputes or address unfair international trade practices under international trade agreements or Federal law, including—

(1) directing the district offices of the Administration to provide referrals, information, and other services to small business concerns relating to the mechanisms;

(2) entering agreements and partnerships with providers of legal services relating to the mechanisms, to ensure small business concerns may affordably use the mechanisms; and

(3) in consultation with the Director of the United States Patent and Trademark Office and the Register of Copyrights, designing counseling services and materials for small business concerns regarding intellectual property protection in other countries.

(c) REPORT.—Not later than 60 days after the date of enactment of this Act, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on any travel by the staff of the Office of International Trade of the Administration, during the period beginning on October 1, 2004, and ending on the date of enactment of the Act, including the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel.

#### SEC. 5. EXPORT ASSISTANCE CENTERS.

(a) EXPORT ASSISTANCE CENTERS.—Section 22 of the Small Business Act (15 U.S.C. 649), as amended by this Act, is amended by adding at the end the following:

“(k) EXPORT ASSISTANCE CENTERS.—

“(1) EXPORT FINANCE SPECIALISTS.—

“(A) MINIMUM NUMBER OF EXPORT FINANCE SPECIALISTS.—On and after January 1, 2010, the Administrator, in coordination with the Secretary of Commerce, shall ensure that the number of export finance specialists is not less than the number of such employees so assigned on January 1, 2003.

“(B) EXPORT FINANCE SPECIALISTS ASSIGNED TO EACH REGION OF THE ADMINISTRATION.—On and after the date that is 2 years after the date of enactment of this subsection, the Administrator, in coordination with the Secretary of Commerce, shall ensure that there are not fewer than 3 export finance specialists in each region of the Administration.

“(2) PLACEMENT OF EXPORT FINANCE SPECIALISTS.—

“(A) PRIORITY.—The Administrator shall give priority, to the maximum extent practicable, to placing employees of the Administration at any Export Assistance Center that—

“(i) had an Administration employee assigned to the Export Assistance Center before January 2003; and

“(ii) has not had an Administration employee assigned to the Export Assistance Center during the period beginning January 2003, and ending on the date of enactment of this subsection, either through retirement or reassignment.

“(B) NEEDS OF EXPORTERS.—The Administrator shall, to the maximum extent practicable, strategically assign Administration employees to Export Assistance Centers, based on the needs of exporters.

“(C) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to require the Administrator to reassign or remove an export finance specialist who is assigned to an Export Assistance Center on the date of enactment of this subsection.

“(3) GOALS.—The Associate Administrator shall work with the Department of Commerce, the Export-Import Bank of the United States, and the Overseas Private Investment Corporation to establish shared annual goals for the Export Assistance Centers.

“(4) OVERSIGHT.—The Associate Administrator shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Assistance Centers.

“(1) DEFINITIONS.—In this section—

“(1) the term ‘Associate Administrator’ means the Associate Administrator for International Trade described in subsection (a)(2);

“(2) the term ‘Export Assistance Center’ means a one-stop shop for United States exporters established by the United States and Foreign Commercial Service of the Department of Commerce pursuant to section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8));

“(3) the term ‘export finance specialist’ means a full-time equivalent employee of the Office assigned to an Export Assistance Center to carry out the duties described in subsection (e); and

“(4) the term ‘Office’ means the Office of International Trade established under subsection (a)(1).”

(b) STUDY AND REPORT ON FILLING GAPS IN HIGH-AND-LOW-EXPORT VOLUME AREAS.—

(1) STUDY AND REPORT.—Not later than 6 months after the date of enactment of this Act, and every 2 years thereafter, the Administrator shall—

(A) conduct a study of—

(i) the volume of exports for each State;

(ii) the availability of export finance specialists in each State;

(iii) the number of exporters in each State that are small business concerns;

(iv) the percentage of exporters in each State that are small business concerns;

(v) the change, if any, in the number of exporters that are small business concerns in each State—

(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act; and

(II) for each subsequent study, during the 10-year period ending on the date the study is commenced;

(vi) the total value of the exports in each State by small business concerns;

(vii) the percentage of the total volume of exports in each State that is attributable to small business concerns; and

(viii) the change, if any, in the percentage of the total volume of exports in each State that is attributable to small business concerns—

(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act; and

(II) for each subsequent study, during the 10-year period ending on the date the study is commenced; and

(B) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—



(i) the results of the study under subparagraph (A);

(ii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the greatest volume of exports, based upon the most recent data available from the Department of Commerce;

(iii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the lowest volume of exports, based upon the most recent data available from the Department of Commerce; and

(iv) such additional information as the Administrator determines is appropriate.

(2) **DEFINITION.**—In this subsection, the term “export finance specialist” has the meaning given that term in section 22(1) of the Small Business Act, as added by this Act.

#### SEC. 6. INTERNATIONAL TRADE FINANCE PROGRAMS.

##### (a) LOAN LIMITS.—

(1) **TOTAL AMOUNT OUTSTANDING.**—Section 7(a)(3)(B) of the Small Business Act (15 U.S.C. 636(a)(3)(B)) is amended by striking “\$1,750,000, of which not more than \$1,250,000” and inserting “\$4,500,000 (or if the gross loan amount would exceed \$5,000,000, of which not more than \$4,000,000)”.

(2) **PARTICIPATION.**—Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended—

(A) in subparagraph (A), in the matter preceding clause (i), by striking “subparagraph (B)” and inserting “subparagraphs (B), (D), and (E)”;

(B) in subparagraph (D), by striking “Notwithstanding subparagraph (A), in” and inserting “In”; and

(C) by adding at the end the following:

“(E) **PARTICIPATION IN INTERNATIONAL TRADE LOAN.**—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.”.

(b) **WORKING CAPITAL.**—Section 7(a)(16)(A) of the Small Business Act (15 U.S.C. 636(a)(16)(A)) is amended—

(1) in the matter preceding clause (i), by striking “in—” and inserting “—”;

(2) in clause (i)—

(A) by inserting “in” after “(i)”;

(B) by striking “or” at the end;

(3) in clause (ii)—

(A) by inserting “in” after “(ii)”;

(B) by striking the period at the end and inserting “, including any debt that qualifies for refinancing under any other provision of this subsection; or”;

(4) by adding at the end the following:

“(iii) by providing working capital.”.

(c) **COLLATERAL.**—Section 7(a)(16)(B) of the Small Business Act (15 U.S.C. 636(a)(16)(B)) is amended—

(1) by striking “Each loan” and inserting the following:

“(i) **IN GENERAL.**—Except as provided in clause (ii), each loan”; and

(2) by adding at the end the following:

“(ii) **EXCEPTION.**—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.”.

(d) **EXPORT WORKING CAPITAL PROGRAM.**—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)(D), by striking “not exceed” and inserting “be”; and

(2) in paragraph (14)—

(A) by striking “(A) The Administration” and inserting the following: “EXPORT WORKING CAPITAL PROGRAM.—

“(A) **IN GENERAL.**—The Administrator”;

(B) by striking “(B) When considering” and inserting the following:

“(C) **CONSIDERATIONS.**—When considering”;

(C) by striking “(C) The Administration” and inserting the following:

“(D) **MARKETING.**—The Administrator”; and

(D) by inserting after subparagraph (A) the following:

“(B) **TERMS.**—

“(i) **LOAN AMOUNT.**—The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

“(ii) **FEES.**—

“(I) **IN GENERAL.**—For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

“(II) **UNTAPPED CREDIT.**—The Administrator may not assess a fee on capital that is not accessed by the small business concern.”.

(e) **PARTICIPATION IN PREFERRED LENDERS PROGRAM.**—Section 7(a)(2)(C) of the Small Business Act (15 U.S.C. 636(a)(2)(C)) is amended—

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following:

“(ii) **EXPORT-IMPORT BANK LENDERS.**—Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.”.

(f) **EXPORT EXPRESS PROGRAM.**—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) by striking “(32) INCREASED VETERAN” and inserting “(33) INCREASED VETERAN”; and

(2) by adding at the end the following:

“(34) **EXPORT EXPRESS PROGRAM.**—

“(A) **DEFINITIONS.**—In this paragraph—

“(i) the term ‘export development activity’ includes—

“(I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

“(II) participation in a trade show that takes place outside the United States;

“(III) translation of product brochures or catalogues for use in markets outside the United States;

“(IV) obtaining a general line of credit for export purposes;

“(V) performing a service contract from buyers located outside the United States;

“(VI) obtaining transaction-specific financing associated with completing export orders;

“(VII) purchasing real estate or equipment to be used in the production of goods or services for export;

“(VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

“(IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

“(ii) the term ‘express loan’ means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to

provide expedited processing of the loan application.

“(B) **AUTHORITY.**—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

“(C) **LEVEL OF PARTICIPATION.**—

“(i) **MAXIMUM AMOUNT.**—The maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

“(ii) **PERCENTAGE.**—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

“(I) 90 percent of a loan that is not more than \$350,000; and

“(II) 75 percent of a loan that is more than \$350,000 and not more than \$500,000.”.

(g) **ANNUAL LISTING OF EXPORT FINANCE LENDERS.**—Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) is amended by adding at the end the following:

“(F) **LIST OF EXPORT FINANCE LENDERS.**—

“(i) **PUBLICATION OF LIST REQUIRED.**—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

“(I) this paragraph;

“(II) paragraph (14); or

“(III) paragraph (34).

“(ii) **AVAILABILITY OF LIST.**—The Administrator shall—

“(I) post the list published under clause (i) on the website of the Administration; and

“(II) make the list published under clause (i) available, upon request, at each district office of the Administration.”.

(h) **APPLICABILITY.**—The amendments made by subsections (a) through (f) shall apply with respect to any loan made after the date of enactment of this Act.

#### SEC. 7. STATE TRADE AND EXPORT PROMOTION GRANT PROGRAM.

(a) **DEFINITIONS.**—In this section—

(1) the term “eligible small business concern” means a small business concern that—

(A) has been in business for not less than the 1-year period ending on the date on which assistance is provided using a grant under this section;

(B) is operating profitably, based on operations in the United States;

(C) has demonstrated understanding of the costs associated with exporting and doing business with foreign purchasers, including the costs of freight forwarding, customs brokers, packing and shipping, as determined by the Associate Administrator;

(D) has in effect a strategic plan for exporting; and

(E) agrees to provide to the Associate Administrator such information and documentation as is necessary for the Associate Administrator to determine that the small business concern is in compliance with the internal revenue laws of the United States;

(2) the term “program” means the State Trade and Export Promotion Grant Program established under subsection (b);

(3) the term “small business concern owned and controlled by women” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632);

(4) the term “socially and economically disadvantaged small business concern” has the meaning given that term in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 6537(a)(4)(A)); and

(5) the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(b) **ESTABLISHMENT OF PROGRAM.**—The Associate Administrator shall establish a 3-year trade and export promotion pilot program to be known as the State Trade and Export Promotion Grant Program, to make grants to States to carry out export programs that assist eligible small business concerns in—

- (1) participation in a foreign trade mission;
- (2) a foreign market sales trip;
- (3) a subscription to services provided by the Department of Commerce;
- (4) the payment of website translation fees;
- (5) the design of international marketing media;
- (6) a trade show exhibition;
- (7) participation in training workshops; or
- (8) any other export initiative determined appropriate by the Associate Administrator.

(c) **GRANTS.**—

(1) **JOINT REVIEW.**—In carrying out the program, the Associate Administrator may make a grant to a State to increase the number of eligible small business concerns in the State that export or to increase the value of the exports by eligible small business concerns in the State.

(2) **CONSIDERATIONS.**—In making grants under this section, the Associate Administrator may give priority to an application by a State that proposes a program that—

(A) focuses on eligible small business concerns as part of an export promotion program;

(B) demonstrates success in promoting exports by—

- (i) socially and economically disadvantaged small business concerns;
- (ii) small business concerns owned or controlled by women; and
- (iii) rural small business concerns;

(C) promotes exports from a State that is not 1 of the 10 States with the highest percentage of exporters that are small business concerns, based upon the latest data available from the Department of Commerce; and

(D) promotes new-to-market export opportunities to the People's Republic of China for eligible small business concerns in the United States.

(3) **LIMITATIONS.**—

(A) **SINGLE APPLICATION.**—A State may not submit more than 1 application for a grant under the program in any 1 fiscal year.

(B) **PROPORTION OF AMOUNTS.**—The total value of grants under the program made during a fiscal year to the 10 States with the highest percentage of exporters that are small business concerns, based upon the latest data available from the Department of Commerce, shall be not more than 50 percent of the amounts appropriated for the program for that fiscal year.

(4) **APPLICATION.**—A State desiring a grant under the program shall submit an application at such time, in such manner, and accompanied by such information as the Associate Administrator may establish.

(d) **COMPETITIVE BASIS.**—The Associate Administrator shall award grants under the program on a competitive basis.

(e) **FEDERAL SHARE.**—The Federal share of the cost of an export program carried out using a grant under the program shall be—

(1) for a State that has a high export volume, as determined by the Associate Administrator, not more than 65 percent; and

(2) for a State that does not have a high export volume, as determined by the Associate Administrator, not more than 75 percent.

(f) **REPORTS.**—

(1) **INITIAL REPORT.**—Not later than 120 days after the date of enactment of this Act, the Associate Administrator shall submit to

the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report, which shall include—

(A) a description of the structure of and procedures for the program;

(B) a management plan for the program; and

(C) a description of the merit-based review process to be used in the program.

(2) **ANNUAL REPORTS.**—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the program, which shall include—

(A) the number and amount of grants made under the program during the preceding year;

(B) a list of the States receiving a grant under the program during the preceding year, including the activities being performed with grant; and

(C) the effect of each grant on exports by eligible small business concerns in the State receiving the grant.

(g) **REVIEWS BY INSPECTOR GENERAL.**—

(1) **IN GENERAL.**—The Inspector General of the Administration shall conduct a review of—

(A) the extent to which recipients of grants under the program are measuring the performance of the activities being conducted and the results of the measurements; and

(B) the overall management and effectiveness of the program.

(2) **REPORT.**—Not later than September 30, 2012, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the review conducted under paragraph (1).

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out the program \$15,000,000 for each of fiscal years 2010, 2011, and 2012.

(i) **TERMINATION.**—The authority to carry out the program shall terminate 3 years after the date on which the Associate Administrator establishes the program.

**SEC. 8. RURAL EXPORT PROMOTION.**

Not later than 6 months after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Commerce, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that contains—

(1) a description of each program of the Administration that promotes exports by rural small business concerns, including—

(A) the number of rural small business concerns served by the program;

(B) the change, if any, in the number of rural small business concerns as a result of participation in the program during the 10-year period ending on the date of enactment of this Act;

(C) the volume of exports by rural small business concerns that participate in the program; and

(D) the change, if any, in the volume of exports by rural small businesses that participate in the program during the 10-year period ending on the date of enactment of this Act;

(2) a description of the coordination between programs of the Administration and

other Federal programs that promote exports by rural small business concerns;

(3) recommendations, if any, for improving the coordination described in paragraph (2);

(4) a description of any plan by the Administration to market the international trade financing programs of the Administration through lenders that—

(A) serve rural small business concerns; and

(B) are associated with financing programs of the Department of Agriculture;

(5) recommendations, if any, for improving coordination between the counseling programs and export financing programs of the Administration, in order to increase the volume of exports by rural small business concerns; and

(6) any additional information the Administrator determines is necessary.

**SEC. 9. INTERNATIONAL TRADE COOPERATION BY SMALL BUSINESS DEVELOPMENT CENTERS.**

Section 21(a) of the Small Business Act (15 U.S.C. 648(a)) is amended—

(1) by striking “(2) The Small Business Development Centers” and inserting the following:

“(2) **COOPERATION TO PROVIDE INTERNATIONAL TRADE SERVICES.**—

“(A) **INFORMATION AND SERVICES.**—The small business development centers”; and

(2) in paragraph (2)—

(A) in subparagraph (A), as so designated, by inserting “(including State trade agencies),” after “local agencies”; and

(B) by adding at the end the following:

“(B) **COOPERATION WITH STATE TRADE AGENCIES AND EXPORT ASSISTANCE CENTERS.**—A small business development center that counsels a small business concern on issues relating to international trade shall—

“(i) consult with State trade agencies and Export Assistance Centers to provide appropriate services to the small business concern; and

“(ii) as necessary, refer the small business concern to a State trade agency or an Export Assistance Center for further counseling or assistance.

“(C) **DEFINITION.**—In this paragraph, the term ‘Export Assistance Center’ has the same meaning as in section 22.”.

**SEC. 10. SMALL BUSINESS TRADE POLICY.**

(a) **NOTIFICATION BY USTR.**—Not later than 90 days before the United States Trade Representative begins a negotiation with regard to any trade agreement, the United States Trade Representative shall notify the Administrator of the date the negotiation will begin.

(b) **RECOMMENDATIONS.**—Not later than 30 days before the United States Trade Representative begins a negotiation with regard to any trade agreement, the Administrator shall present to the United States Trade Representative recommendations relating to the needs and concerns of small business concerns that are exporters.

Ms. LANDRIEU. Mr. President, as chair of the Committee on Small Business and Entrepreneurship, I am pleased to join the committee's ranking member, OLYMPIA SNOWE of Maine, in introducing the Small Business Export Enhancement and International Trade Act of 2009. Building upon legislation that I have introduced in the last three Congresses, including, S. 1196 the Small Business International Trade Enhancements Act of 2009 that I introduced in June of this year, this bipartisan legislation will ensure that small

businesses seeking to export their goods and services will have access to the resources they need to successfully expand into foreign markets. With health premiums increasing more each year and cash registers at home not ringing like they used to, exporting has become a practical solution for small firms. Expanding opportunities for small business trade is not only vital to the financial security of our entrepreneurs, it is vital to the recovery of our economy.

Last year, \$70 billion in exports maintained or created 600,000 high-paying American jobs. By creating jobs, as well as lessening the trade deficit, an increase in small business exporting will lead us out of this recession and make our nation better able to compete in the global marketplace. Furthermore, any investments we make in export programs will essentially pay for themselves. Every dollar invested in export programs increases exports by 40 percent, a World Bank study found.

In my home State of Louisiana, we have experienced firsthand the benefit of expanding and investing in export opportunities. With over 40 ports and an extensive rail system, Louisiana has long been a top destination for companies seeking to export their goods and services, particularly exporters. Despite the devastation caused by Hurricanes Katrina and Rita, Louisiana has experienced a tremendous growth in trade activity during the last five years, largely due to increased exports. For example, in 2008 alone, Louisiana exported nearly \$41.9 billion dollars worth of goods and services, representing a 38-percent increase from 2007, more than triple the national export growth rate for that year.

However, while most of our Nation's exporters—about 97 percent—are small businesses, most of our small businesses are not exporting. In fact, small businesses make up just more than a quarter of the country's export volume—trade remains dominated by larger businesses. This is also true in Louisiana where, despite tremendous growth in exports in recent years, small businesses represent 85 percent of exporting companies, but account for only 30 percent of the export volume. What is holding our entrepreneurs back?

As chair of the Committee on Small Business and Entrepreneurship, I have heard from small exporters across the country. I held a roundtable on June 11—"Entrepreneurial Development: Investing in Small Businesses to Strengthen our Economy"—to hear from small business and exporting leaders. I also held a field hearing in New Orleans on June 30—"Keeping America Competitive: Federal Programs that Promote Small Business Exporting"—at which United States Trade Representative, Ambassador Ron

Kirk, U.S. Small Business Administration, SBA, Administrator Karen Mills, U.S. Export-Import Bank Chairman and President Fred Hochberg and several small exporters testified. At these events, small exporters told me that the programs and services at the Small Business Administration, SBA, and other Federal agencies are helpful—but they are not doing everything they could and should do. Better coordination and improvements to the programs are needed.

Like many small businesses, one of the biggest hurdles faced by small exporters is access to capital. The current economic conditions exacerbate this problem for small firms. The SBA offers several loan programs to help small exporters, but years of neglect under the previous administration have sometimes rendered these valuable tools both unattractive and impractical for borrowers and lenders alike.

One of these programs is the International Trade Loan, ITL, program. This program allows exporters to borrow up to \$2 million with \$1.75 million guaranteed by the SBA. Exporters can then use this money to help develop and expand overseas markets, upgrade equipment and facilities or provide an infusion of capital if they are being hurt by import competition.

While the original goal of this program is on target with the needs of larger exporters, it has not evolved to meet the financing needs of small exporters in an ever-changing global economy. The volume of loans made through this program has dropped by more than 90 percent since 2003. The SBA's other signature trade financing product—the Export Working Capital Program—has also seen a significant drop in its loan volume, declining by more than 31 percent over the same period.

With a few small but significant changes to these programs, the SBA will once again be able to provide a user friendly and attractive financing option that makes sense for both borrowers and lenders. For example, one of the biggest problems with the ITL program is a discrepancy between the loan cap and the guarantee, forcing borrowers to take out a second loan to take full advantage of the guarantee. Additionally, ITL's can only be used to acquire fixed assets, rather than working capital, a common need for exporters. ITL's also do not have the same collateral or refinancing terms as SBA 7(a) loans.

The provisions in this legislation, and previous versions of the legislation that I have introduced in the last three Congresses, address these concerns. The bill raises the loan guarantee to \$4.5 million and the loan cap to \$5 million, makes working capital an eligible use of proceeds, and extends the 7(a) program's terms for collateral and refinancing. The end result is a more rel-

evant and more practical tool for small exporters.

By making these simple changes and requiring the agency to publish an annual list of all participating banks and lending institutions, the SBA's export finance programs will once again provide small exporters with the practical and modern financing options small businesses need and deserve. These programs, however, are only useful if a small business owner can identify which loan products are right for them. Local lenders that specialize in export financing can help get these products into the hands of the small exporters that need them the most, but they are not always the most effective ones to do so.

The SBA has 18 finance specialists posted at one-stop assistance centers throughout the country operated by the Department of Commerce. These specialists, at a minimal cost, have facilitated more than \$10 billion in exports in the last 10 years, helping to create 140,000 new and higher paying jobs. Unfortunately, this program suffered staff cuts under the previous administration. Legislation that I introduced earlier this year, S. 1196, as well as other version of this legislation that I have introduced in previous Congresses, would restore the staffing levels to what they were in 2002, establishing a floor of 22 export finance specialists with priority staffing going to those centers who have been without a finance specialist since 2003. I am pleased that Ranking Member SNOWE has included language from my legislation establishing a minimum staffing level for the program and I applaud her efforts to expand the program at a realistic rate by requiring that no fewer than three export finance specialists are assigned to each SBA region within two years of enactment. I am also pleased that the bill includes language that I proposed, requiring the SBA to conduct a reoccurring, biannual study on the availability of export finance specialists in high and low export volume areas. This will ensure that future assignment of SBA personnel and resources are allocated to the areas with the greatest need.

With more than 20 federal agencies involved in export and trade promotion, small exporters often don't know where to turn for help, or even that help—like the local finance specialists—even exist. This legislation would help bring small business trade to the forefront in two ways:

First, it gives the SBA's Office of International Trade, OIT, more resources and a higher profile within the Agency, making it directly accountable to the Administrator instead of part of the Office of Capital Access, OCA, where it is currently housed. It also requires that OIT make numerous internal improvements by requiring

the office to: maintain a trade information distribution network in partnership with other Federal agencies and SBA resource partners; properly staff and clarify the role of existing OIT positions in both regional and district offices; provide more coordinated training between employees of the office and lenders, small exporters and other resource partners; develop a comprehensive trade dispute technical assistance program; and finally, to develop targeted annual goals and performance metrics. OIT is doing an adequate job now, but with these proposed changes, the office would have the potential to become a more robust partner and visible advocate for small exporters seeking assistance from the SBA. I have long advocated for these simple yet important changes and I am pleased they made it into the final legislation.

In addition to improving the coordination and advocacy among Federal agencies and making needed changes to existing SBA resources, this bill seeks to increase the number of small businesses involved in exporting by using State resources more effectively. It does this by creating the State Trade and Export Promotion, STEP, program, a 3-year pilot grant program modeled after the SBA's successful SBIR-FAST program. Unlike existing Federal programs which tend to focus their resources in States that already possess a high percentage of small exporters or a large export volume, STEP seeks to reach small businesses in States with minimal export assistance resources to target businesses that typically do not export their goods and services. I have worked closely with the small business community in Louisiana and I believe that this program will have a tremendous impact not only in my State, but also nationally.

Finally, this legislation requires the SBA to report back to the committee on their efforts to promote exports to small businesses located in rural areas. With the technology that we possess today, there is no reason why a small business located in a rural or traditionally nonexporting area shouldn't have access to the same opportunities available to those located in urban, or high-export areas. Creating access to exporting opportunities for rural small businesses could lead to the creation of new jobs and increased development in these communities, especially in Louisiana. I am pleased this language was included in this bill.

The Small Business Export Enhancement and International Trade Act of 2009 is an important first step toward ensuring that small firms will have more opportunities to grow. By increasing exporting opportunities for small businesses, we will help them expand into international markets, create new and higher-paying jobs and strengthen the economy. I have heard

from some of the members of my committee and I know how important this issue is to many of them, especially Ranking Member SNOWE whom I have worked closely with these past months to develop this comprehensive, bipartisan bill. I thank Senator SNOWE for her attention to this issue and strong willingness to make the changes our small exporters so desperately need.

The 111th Congress will be the third consecutive Congress that I have introduced or cosponsored legislation to help our small exporters. I introduced a version of this legislation in the 109th Congress as S.3663, in the 110th Congress as S. 738 and earlier this year as S. 1196. In these previous Congresses we have had some success in moving the provisions through committee, but as with other SBA reauthorization legislation, it stalled in the full Senate. As the new chair of the Committee on Small Business and Entrepreneurship this Congress, I have made increasing small business export opportunities one of the committee's top priorities and will continue to do so in the future. I am pleased to join Ranking Member SNOWE in introducing this legislation and will continue to work closely with her and other members of the committee in the coming months to bring this legislation to the President's desk.

#### SUBMITTED RESOLUTIONS

##### SENATE RESOLUTION 373—DESIGNATING THE MONTH OF FEBRUARY 2010 AS “NATIONAL TEEN DATING VIOLENCE AWARENESS AND PREVENTION MONTH”

Mr. CRAPO (for himself and Mr. LIEBERMAN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 373

Whereas dating, domestic, and sexual violence affect women regardless of their age, and teens and young women are especially vulnerable;

Whereas, approximately 1 in 3 adolescent girls in the United States is a victim of physical, emotional, or verbal abuse from a dating partner, a figure that far exceeds victimization rates for other types of violence affecting youth;

Whereas nationwide, 1 in 10 high school students (9.9 percent) has been hit, slapped, or physically hurt on purpose by a boyfriend or girlfriend;

Whereas more than 1 in 4 teenagers have been in a relationship where a partner is verbally abusive;

Whereas 20 percent of teen girls exposed to physical dating violence did not attend school because the teen girls felt unsafe either at school, or on the way to or from school, on 1 or more occasions in a 30-day period;

Whereas violent relationships in adolescence can have serious ramifications for victims by putting the victims at higher risk for substance abuse, eating disorders, risky sexual behavior, suicide, and adult revictimization;

Whereas being physically and sexually abused leaves teen girls up to 6 times more likely to become pregnant and more than 2 times as likely to report a sexually transmitted disease;

Whereas nearly 3 in 4 children ages 11 to 14 (referred to in this preamble as “tweens”), say that dating relationships usually begin at age 14 or younger and about 72 percent of eighth and ninth graders report “dating”;

Whereas 1 in 5 tweens say their friends are victims of dating violence and nearly ½ of tweens who are in relationships know friends who are verbally abused;

Whereas more than 3 times as many tweens (20 percent) as parents of tweens (6 percent) admit that parents know little or nothing about the dating relationships of tweens;

Whereas teen dating abuse most often takes place in the home of 1 of the partners;

Whereas a majority of parents surveyed believe they have had a conversation with their teen about what it means to be in a healthy relationship, but the majority of teens surveyed said that they have not had a conversation about dating abuse with a parent in the past year;

Whereas digital abuse and “sexting” is becoming a new frontier for teen dating abuse;

Whereas 1 in 4 teens in a relationship say they have been called names, harassed, or put down by their partner through cellphones and texting;

Whereas 3 in 10 young people have sent or received nude pictures of other young people on their cell or online, and 61 percent who have “sexted” report being pressured to do so at least once;

Whereas targets of digital abuse are almost 3 times as likely to contemplate suicide as those who have not encountered such abuse (8 percent vs. 3 percent), and targets of digital abuse are nearly 3 times more likely to have considered dropping out of school;

Whereas the severity of violence among intimate partners has been shown to be greater in cases where the pattern of violence has been established in adolescence;

Whereas primary prevention programs are a key part of addressing teen dating violence and many successful community examples include education, community outreach, and social marketing campaigns that also understand the cultural appropriateness of programs;

Whereas skilled assessment and intervention programs are also necessary for youth victims and abusers; and

Whereas the establishment of National Teen Dating Violence Awareness and Prevention Month will benefit schools, communities, and families regardless of socioeconomic status, race, or sex: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates the month of February 2010, as “National Teen Dating Violence Awareness and Prevention Month”;

(2) supports communities to empower teens to develop healthier relationships; and

(3) calls upon the people of the United States, including youth and parents, schools, law enforcement, State and local officials, and interested groups to observe National Teen Dating Violence Awareness and Prevention Month with appropriate programs and activities that promote awareness and prevention of the crime of teen dating violence in their communities.



**SA 3080.** Mr. ENSIGN (for himself and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 152, after line 24, add the following:

(1) PUBLIC REPORTING OF PATIENT WAIT TIMES.—

(1) IN GENERAL.—A qualified health plan offered through the Exchange, including the community health insurance option under section 1323 and any other health insurance option established under this Act, shall collect and make available on an Internet website a description of—

(A) the average waiting times (between diagnosis and treatment), listed by individual hospital and health care provider, for specific health care items or services covered under the plan or option, including—

- (i) general surgery;
- (ii) cancer surgery;
- (iii) cardiac procedures;
- (iv) ophthalmic surgery;
- (v) orthopedic surgery; and
- (vi) diagnostic scans; and

(B) the average waiting times that patients are in an emergency room being diagnosed, receiving treatment, or waiting for admission to a hospital bed under the plan or option.

(2) ANNUAL UPDATES.—A qualified health plan offered through the Exchange, including the community health insurance option under section 1323 and any other health insurance option established under this Act, shall annually update the information made available under paragraph (1).

**SA 3081.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 271, between lines 15 and 16, insert the following:

For purposes of this section, the term “social security number” means a social security number issued to an individual by the Social Security Administration. Such term shall not include a taxpayer identification number or TIN issued by the Internal Revenue Service.

**SA 3082.** Mr. BURR (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal em-

ployees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 1999, strike lines 1 through 20 and insert the following:

**SEC. 9005. LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.**

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating subsections (i) and (j) as subsections (k) and (l), respectively, and

(2) by inserting after subsection (h) the following new subsection:

“(i) LIMITATION ON HEALTH FLEXIBLE SPENDING ARRANGEMENTS.—

“(1) IN GENERAL.—For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of \$5,000 made to such arrangement.

“(2) ADJUSTMENT FOR MEDICAL INFLATION.—In the case of any taxable year beginning after December 31, 2010, the dollar amount in paragraph (1) shall be increased by the medical care cost adjustment of such amount (within the meaning of section 213(d)(10)(B)(ii)) for the calendar year in which such taxable year begins. If any increase determined under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.”

(b) MODIFICATION OF REIMBURSEMENT RULES.—Section 106 of the Internal Revenue Code of 1986, as amended by section 9003, is amended by striking subsection (f).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2009.

(2) REIMBURSEMENT.—The amendment made by subsection (b) shall apply in the same manner as the amendment made by section 9003(c).

**SEC. 9006. LIMITATION ON DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS UNDER CAFETERIA PLANS.**

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986, as amended by section 9005, is amended by inserting after subsection (i) the following new subsection:

“(j) INDEXING OF LIMITATION ON DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS.—For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a dependent care flexible spending arrangement in a taxable year beginning after calendar year 2010, the dollar amount of the limitation under section 129(2)(A) which applies to such flexible spending arrangement shall be increased by an amount equal to—

“(1) such dollar amount, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**SA 3083.** Mr. BURR submitted an amendment intended to be proposed to

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title V, insert the following:

**SEC. . . . DEFINITION OF ECONOMIC HARDSHIP.**

(a) IN GENERAL.—Section 435(o) of the Higher Education Act of 1965 (20 U.S.C. 1085(o)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)(ii), by striking “or” after the semicolon;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

“(B) such borrower is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of such borrower’s adjusted gross income, and the difference between such borrower’s adjusted gross income minus such burden is less than 220 percent of the greater of—

“(i) the annual earnings of an individual earning the minimum wage under section 6 of the Fair Labor Standards Act of 1938; or

“(ii) 150 percent of the poverty line, as defined under section 673(2) of the Community Services Block Grant Act, applicable to such borrower’s family size; or”; and

(2) in paragraph (2), by striking “(1)(B)” and inserting “(1)(C)”.

(b) FUNDING.—The Secretary of Health and Human Services shall transfer to the Secretary of Education, from amounts appropriated to the Prevention and Public Health Fund under section 4002, amounts necessary to carry out the amendments made by this section.

**SA 3084.** Mr. AKAKA (for himself, Mr. INOUE, Mrs. LINCOLN, and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 436, between lines 14 and 15, insert the following:

**SEC. 2008. MEDICAID ELIGIBILITY FOR CITIZENS OF FREELY ASSOCIATED STATES.**

(a) IN GENERAL.—Section 402(b)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(b)(2)) is amended by adding at the end the following:

“(G) MEDICAID EXCEPTION FOR CITIZENS OF FREELY ASSOCIATED STATES.—With respect to eligibility for benefits for the program defined in paragraph (3)(C) (relating to medicaid), paragraph (1) shall not apply to any individual who lawfully resides in the United States (including territories and possessions of the United States) in accordance with—

“(i) section 141 of the Compact of Free Association between the Government of the United States and the Government of the



Federated States of Micronesia, approved by Congress in the Compact of Free Association Amendments Act of 2003;

“(ii) section 141 of the Compact of Free Association between the Government of the United States and the Government of the Republic of the Marshall Islands, approved by Congress in the Compact of Free Association Amendments Act of 2003; or

“(iii) section 141 of the Compact of Free Association between the Government of the United States and the Government of Palau, approved by Congress in Public Law 99-658 (100 Stat. 3672).”

(b) **QUALIFIED ALIEN.**—Section 431(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(b)) is amended—

(1) in paragraph (6), by striking “or” at the end;

(2) in paragraph (7), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(8) an individual who lawfully resides in the United States (including territories and possessions of the United States) in accordance with a Compact of Free Association referred to in section 402(b)(2)(G).”

(c) **CONFORMING AMENDMENTS.**—Section 1108 of the Social Security Act (42 U.S.C. 1308) is amended—

(1) in subsection (f), in the matter preceding paragraph (1), by striking “subsection (g)” and inserting “subsections (g) and (h)”; and

(2) by adding at the end the following:

“(h) The limitations of subsections (f) and (g) shall not apply with respect to medical assistance provided to an individual described in section 431(b)(8) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.”

(d) **EFFECTIVE DATE.**—The amendments made by this section take effect on the date of enactment of this Act and apply to benefits and assistance provided on or after that date.

**SA 3085.** Mrs. LINCOLN (for herself, Mr. DURBIN, Mr. KERRY, Ms. LANDRIEU, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

**SEC. 9024. INCREASE IN SMALL BUSINESS TAX CREDIT AVERAGE ANNUAL WAGE THRESHOLD.**

(a) **IN GENERAL.**—Subparagraph (B) of section 45R(d)(3)(B) of the Internal Revenue Code of 1986, as added by section 1421(a), is amended by striking “\$20,000” both places it appears and inserting “\$25,000”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the enactment of section 1421.

**SA 3086.** Ms. CANTWELL (for herself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R.

3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 492, between lines 15 and 16, insert the following:

**SEC. 2407. INCENTIVES FOR STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES AS A LONG-TERM CARE ALTERNATIVE TO NURSING HOMES.**

(a) **STATE BALANCING INCENTIVE PAYMENTS PROGRAM.**—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), in the case of a balancing incentive payment State, as defined in subsection (b), that meets the conditions described in subsection (c), during the balancing incentive period, the Federal medical assistance percentage determined for the State under section 1905(b) of such Act and increased under section 1902(gg)(5) shall be increased by the applicable percentage points determined under subsection (d) with respect to eligible medical assistance expenditures described in subsection (e).

(b) **BALANCING INCENTIVE PAYMENT STATE.**—A balancing incentive payment State is a State—

(1) in which less than 50 percent of the total expenditures for medical assistance under the State Medicaid program for a fiscal year for long-term services and supports (as defined by the Secretary under subsection (f)(1)) are for non-institutionally-based long-term services and supports described in subsection (f)(1)(B);

(2) that submits an application and meets the conditions described in subsection (c); and

(3) that is selected by the Secretary to participate in the State balancing incentive payment program established under this section.

(c) **CONDITIONS.**—The conditions described in this subsection are the following:

(1) **APPLICATION.**—The State submits an application to the Secretary that includes, in addition to such other information as the Secretary shall require—

(A) a proposed budget that details the State’s plan to expand and diversify medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program during the balancing incentive period and achieve the target spending percentage applicable to the State under paragraph (2), including through structural changes to how the State furnishes such assistance, such as through the establishment of a “no wrong door - single entry point system”, optional presumptive eligibility, case management services, and the use of core standardized assessment instruments, and that includes a description of the new or expanded offerings of such services that the State will provide and the projected costs of such services; and

(B) in the case of a State that proposes to expand the provision of home and community-based services under its State Medicaid program through a State plan amendment under section 1915(i) of the Social Security Act, at the option of the State, an election to increase the income eligibility for such services from 150 percent of the poverty line to such higher percentage as the State may establish for such purpose, not to exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1)

of the Social Security Act (42 U.S.C. 1382(b)(1)).

(2) **TARGET SPENDING PERCENTAGES.**—

(A) In the case of a balancing incentive payment State in which less than 25 percent of the total expenditures for home and community-based services under the State Medicaid program for fiscal year 2009 are for such services, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 25 percent of the total expenditures for home and community-based services under the State Medicaid program are for such services.

(B) In the case of any other balancing incentive payment State, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 50 percent of the total expenditures for home and community-based services under the State Medicaid program are for such services.

(3) **MAINTENANCE OF ELIGIBILITY REQUIREMENTS.**—The State does not apply eligibility standards, methodologies, or procedures for determining eligibility for medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program that are more restrictive than the eligibility standards, methodologies, or procedures in effect for such purposes on December 31, 2010.

(4) **USE OF ADDITIONAL FUNDS.**—The State agrees to use the additional Federal funds paid to the State as a result of this section only for purposes of providing new or expanded offerings of non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program.

(5) **STRUCTURAL CHANGES.**—The State agrees to make, not later than the end of the 6-month period that begins on the date the State submits an application under this section, the following changes:

(A) **“NO WRONG DOOR”—SINGLE ENTRY POINT SYSTEM.**—Development of a statewide system to enable consumers to access all long-term services and supports through an agency, organization, coordinated network, or portal, in accordance with such standards as the State shall establish and that shall provide information regarding the availability of such services, how to apply for such services, and referral services for services and supports otherwise available in the community; and determinations of financial and functional eligibility for such services and supports, or assistance with assessment processes for financial and functional eligibility.

(B) **CONFLICT-FREE CASE MANAGEMENT SERVICES.**—Conflict-free case management services to develop a service plan, arrange for services and supports, support the beneficiary (and, if appropriate, the beneficiary’s caregivers) in directing the provision of services and supports, for the beneficiary, and conduct ongoing monitoring to assure that services and supports are delivered to meet the beneficiary’s needs and achieve intended outcomes.

(C) **CORE STANDARDIZED ASSESSMENT INSTRUMENTS.**—Development of core standardized assessment instruments for determining eligibility for non-institutionally-based long-term services and supports described in subsection (f)(1)(B), which shall be used in a uniform manner throughout the State, to determine a beneficiary’s needs for training, support services, medical care, transportation, and other services, and develop an individual service plan to address such needs.

(6) **DATA COLLECTION.**—The State agrees to collect from providers of services and through such other means as the State determines appropriate the following data:

(A) **SERVICES DATA.**—Services data from providers of non-institutionally-based long-term services and supports described in subsection (f)(1)(B) on a per-beneficiary basis and in accordance with such standardized coding procedures as the State shall establish in consultation with the Secretary.

(B) **QUALITY DATA.**—Quality data on a selected set of core quality measures agreed upon by the Secretary and the State that are linked to population-specific outcomes measures and accessible to providers.

(C) **OUTCOMES MEASURES.**—Outcomes measures data on a selected set of core population-specific outcomes measures agreed upon by the Secretary and the State that are accessible to providers and include—

(i) measures of beneficiary and family caregiver experience with providers;

(ii) measures of beneficiary and family caregiver satisfaction with services; and

(iii) measures for achieving desired outcomes appropriate to a specific beneficiary, including employment, participation in community life, health stability, and prevention of loss in function.

(d) **APPLICABLE PERCENTAGE POINTS INCREASE IN FMAP.**—The applicable percentage points increase is—

(1) in the case of a balancing incentive payment State subject to the target spending percentage described in subsection (c)(2)(A), 5 percentage points; and

(2) in the case of any other balancing incentive payment State, 2 percentage points.

(e) **ELIGIBLE MEDICAL ASSISTANCE EXPENDITURES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), medical assistance described in this subsection is medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) that is provided by a balancing incentive payment State under its State Medicaid program during the balancing incentive payment period.

(2) **LIMITATION ON PAYMENTS.**—In no case may the aggregate amount of payments made by the Secretary to balancing incentive payment States under this section during the balancing incentive period exceed \$3,000,000,000.

(f) **DEFINITIONS.**—In this section:

(1) **LONG-TERM SERVICES AND SUPPORTS DEFINED.**—The term “long-term services and supports” has the meaning given that term by Secretary and may include any of the following (as defined with for purposes of State Medicaid programs under title XIX of the Social Security Act):

(A) **INSTITUTIONALLY-BASED LONG-TERM SERVICES AND SUPPORTS.**—Services provided in an institution, including the following:

(i) Nursing facility services.

(ii) Services in an intermediate care facility for the mentally retarded described in subsection (a)(15) of section 1905 of such Act.

(B) **NON-INSTITUTIONALLY-BASED LONG-TERM SERVICES AND SUPPORTS.**—Services not provided in an institution, including the following:

(i) Home and community-based services provided under subsection (c), (d), or (i), of section 1915 of such Act or under a waiver under section 1115 of such Act.

(ii) Home health care services.

(iii) Personal care services.

(iv) Services described in subsection (a)(26) of section 1905 of such Act (relating to PACE program services).

(v) Self-directed personal assistance services described in section 1915(j) of such Act.

(2) **BALANCING INCENTIVE PERIOD.**—The term “balancing incentive period” means the period that begins on October 1, 2011, and ends on September 30, 2015.

(3) **POVERTY LINE.**—The term “poverty line” has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397j(c)(5)).

(4) **STATE MEDICAID PROGRAM.**—The term “State Medicaid program” means the State program for medical assistance provided under a State plan under title XIX of the Social Security Act and under any waiver approved with respect to such State plan.

**SA 3087.** Mr. CORKER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . REQUIRING MEMBERS OF CONGRESS TO ACCEPT THE SAME CHOICES FOR HEALTH INSURANCE COVERAGE AS THOSE GIVEN TO AMERICAN CITIZENS WITH INCOME AT OR BELOW 133 PERCENT OF THE POVERTY LINE.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) Congress has stated that health care reform legislation should ensure all Americans have choices of affordable, quality health insurance coverage.

(2) Americans have overwhelmingly voiced their desire to receive the same types of choices for health insurance coverage that Members of Congress receive.

(3) This Act and the amendments made by this Act are estimated to place nearly half of the newly insured in a government program without the choices of private coverage that individuals with income above 133 percent of the poverty line receive.

(4) This Act provides legal immigrants with income at or below 133 percent of the poverty line with a choice of private coverage while American citizens with income at or below 133 percent of the poverty line have no choice of private coverage.

(b) **MEMBERS OF CONGRESS REQUIRED TO HAVE COVERAGE UNDER MEDICAID.**—

(1) **IN GENERAL.**—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, ensure that, on and after January 1, 2014, notwithstanding chapter 89 of title 5, United States Code, title XIX of the Social Security Act, or any provision of this Act—

(A) each Member of Congress shall be eligible for medical assistance under the Medicaid plan of the State in which the Member resides; and

(B) any employer contribution under chapter 89 of title 5 of such Code on behalf of the Member may be paid only to the State agency responsible for administering the Medicaid plan in which the Member enrolls and not to the offeror of a plan offered through the Federal employees health benefit program under such chapter.

(2) **PAYMENTS BY FEDERAL GOVERNMENT.**—The Secretary of Health and Human Services, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which the employer contributions that would otherwise be made on behalf of a Member of Congress if the

Member were enrolled in a plan offered through the Federal employees health benefit program may be made directly to the State agencies described in paragraph (1)(B).

(3) **INELIGIBLE FOR FEHBP.**—Effective January 1, 2014, no Member of Congress shall be eligible to obtain health insurance coverage under the program chapter 89 of title 5, United States Code.

(4) **DEFINITION.**—In this section, the term “Member of Congress” means any member of the House of Representatives or the Senate.

**SA 3088.** Ms. COLLINS (for herself and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1265, between lines 8 and 9, insert the following:

**SEC. 4307. ASSESSMENT OF MEDICARE COST-INTENSIVE DISEASES AND CONDITIONS.**

(a) **INITIAL ASSESSMENT.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct an assessment of the diseases and conditions that are the most cost-intensive for the Medicare program under title XVIII of the Social Security Act and, to the extent possible, assess the diseases and conditions that could become cost-intensive for the Medicare program in the future.

(2) **REPORT.**—Not later than January 1, 2011, the Secretary shall transmit a report to the Committees on Energy and Commerce, Ways and Means, and Appropriations of the House of Representatives and the Committees on Health, Education, Labor and Pensions, Finance, and Appropriations of the Senate on the assessment conducted under paragraph (1). Such report shall—

(A) include the assessment of current and future trends of cost-intensive diseases and conditions described in such paragraph;

(B) address whether current research priorities are appropriately addressing current and future cost-intensive conditions so identified;

(C) include the input of relevant research agencies, including the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Food and Drug Administration; and

(D) include recommendations concerning research in the Department of Health and Human Services that should be funded to improve the prevention, treatment, or cure of such cost-intensive diseases and conditions.

(b) **UPDATES OF ASSESSMENT.**—Not later than January 1, 2013, and biennially thereafter, the Secretary shall—

(1) review and update the assessment and recommendations described in subsection (a)(1); and

(2) submit a report described in subsection (a)(2) to the Committees specified in subsection (a)(2) on such updated assessment and recommendations.

(c) **CMS MEDICARE COST-INTENSIVE RESEARCH FUND.**—

(1) **IN GENERAL.**—There is established in the Treasury of the United States a fund to be known as the “CMS Medicare Cost-Intensive

Research Fund", in this subsection referred to as the "Fund". The Administrator of the Centers for Medicare & Medicaid Services shall administer the Fund. The Fund shall consist of such amounts as may be appropriated or credited to such Fund for the purposes described in paragraph (2). The Administrator shall not transfer appropriations to or from other relevant research agencies, including the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Food and Drug Administration.

(2) **PURPOSES OF FUND.**—From amounts in the Fund, the Administrator of the Centers for Medicare & Medicaid Services shall make available, without further appropriation, grants, contracts, and other funding mechanisms, as recommended by the reports under this subsection, to facilitate research into the prevention, treatment, or cure of cost-intensive diseases and conditions under the Medicare program.

**SA 3089.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . PRESERVATION OF MEDICARE.**

Notwithstanding any other provision of this Act (or an amendment made by this Act), the amendments made by title III to expand Medicare eligibility under title XVIII of the Social Security Act shall not take effect until the Secretary certifies to Congress that premiums assessed for coverage under non-Federal health insurance coverage will not increase in any manner to compensate for lower premiums assessed under the Medicare program.

**SA 3090.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 102, strike line 19 and all that follows through line 6 on page 108, and insert the following:

(a) **NO DEFINITION BY SECRETARY OF ESSENTIAL HEALTH BENEFITS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this Act (or any amendment made by this Act), in no case shall the Secretary define the benefit categories required for essential health benefits or specify the covered treatments, items, and services within such categories through regulations or other guidance.

(2) **AUTHORITY BY STATES.**—Nothing in this section shall be construed to limit the ability of States to define benefit categories or specific covered treatments, items, and services within such categories.

(b) **RULE OF CONSTRUCTION.**—Nothing in this

**SA 3091.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 348, strike line 16 and all that follows through line 17 on page 357.

**SA 3092.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 1323, insert the following:

(i) **LIMITATION.**—Notwithstanding any other provision of this section, the Secretary shall ensure that no coverage is offered under this section until such time as the Secretary certifies that premiums assessed for qualified health plans will not increase in any manner to compensate for lower premiums assessed under the coverage described under this section.

**SA 3093.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . LIMITATION ON NEW ENTITLEMENT SPENDING.**

Notwithstanding any other provision of this Act (or an amendment made by this Act), no entitlement program established under this Act (or amendments) shall be implemented until the Secretary of the Treasury certifies to Congress that total Federal mandatory spending will not exceed total Federal outlays for the first 5 years of the implementation of this Act.

**SA 3094.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other

purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . LIMITATION ON NEW ENTITLEMENT SPENDING.**

Notwithstanding any other provision of this Act (or an amendment made by this Act), no entitlement program established under this Act (or amendments) shall be implemented until the Secretary of the Treasury certifies to Congress that total Federal revenues exceed total Federal outlays.

**SA 3095.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . LIMITATION ON ENTITLEMENT SPENDING.**

(a) **CERTIFICATION.**—Notwithstanding any other provision of this Act, this Act (and the amendments made by this Act) shall not take effect until the Secretary of the Treasury certifies to Congress that entitlement spending for the Medicare, Medicaid, and Social Security programs under titles XVIII, XIX, or II of the Social Security Act, and spending under other new entitlement programs provided for in this Act will not exceed 10 percent of the Gross Domestic Product (as estimated by the Secretary of Commerce) between fiscal years 2014 and 2019.

(b) **TERMINATION.**—If the Secretary of the Treasury at any time determines that the spending referred to in subsection (a) exceeds 10 percent of the Gross Domestic Program during any of fiscal years 2014 through 2019, new entitlement spending programs provided for under this Act shall not be implemented.

**SA 3096.** Mr. BENNETT submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . IMPLEMENTATION OF MANDATORY SPENDING PROGRAMS.**

(a) **IN GENERAL.**—If Federal mandatory spending (minus interest expense) exceeds 50 percent of Federal outlays in a fiscal year, it shall not be in order in the Senate or the House of Representatives to consider any legislation resulting in new mandatory spending for such fiscal year or any fiscal year thereafter until such spending is less than 50 percent of such outlays for a fiscal year.

(b) **WAIVER.**—This section may be waived or suspended in the Senate or House of Representatives only by an affirmative vote of 3/5 of the members, duly chosen and sworn.

(c) APPEAL.—An affirmative vote of 3/5 of the members of the Senate or House of Representatives, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

**SA 3097.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**TITLE —MEDICAL LIABILITY REFORM**  
**SEC. 1. SHORT TITLE.**

This title may be cited as the “Medical Liability Reform Act of 2009”.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) Medical liability laws create a significant portion of the overall costs of health care, and contribute to Americans’ lack of access to health care.

(2) A 2006 study by PriceWaterhouse Coopers found that medical liability laws and the practice of defensive medicine contribute to 10 percent of all health care costs.

(3) The non-partisan Congressional Budget Office estimated that the Federal Government could directly save about \$5,600,000,000 by enacting certain medical liability reforms, and that total health care spending could be reduced even further if these reforms reduced the practice of defensive medicine.

(4) According to economists Daniel P. Kessler and Mark B. McClellan, defensive medicine alone costs Americans more than \$100,000,000,000 every year.

(5) Medicaid and Medicare costs must be lowered to keep these crucial programs solvent.

(6) In part because of the costs of medical liability, 40 percent of physicians refuse to see new Medicaid patients.

(7) Reform of the medical liability laws has been proven to increase access to doctors and specialists while lowering health care costs.

(8) In 2003, Texas adopted medical liability reforms that placed a cap on non-economic damages in medical liability cases and combated junk science by raising the standards of qualification for expert witnesses.

(9) After Texas passed this reform, premiums for medical malpractice liability insurance fell by 27 percent on average, and in some cases, by more than 50 percent.

(10) Because the Texas reforms led to more affordable health insurance premiums, more than 400,000 additional Texans are covered by health insurance than if reform had not passed.

(11) Because of the Texas reforms, Texas saw an overall growth rate of 31 percent in the number of new physicians.

(12) The growth rate in the number of physicians in Texas was particularly pronounced in long-underserved geographic areas such as the rural and border regions, and in key specialties such as obstetrics, neurosurgery, and orthopedic surgery.

(13) Arizona adopted medical liability reforms that deterred frivolous litigation by requiring expert opinion testimony at the

threshold of medical liability suits and by raising the standards of qualification for expert witnesses.

(14) The health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(15) The health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

**SEC. 3. DEFINITIONS.**

In this title:

(1) **ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COMPENSATORY DAMAGES.**—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(4) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(5) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a

health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(6) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(7) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(8) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this title, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(11) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss

of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(12) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

#### **SEC. 4. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person.

Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

#### **SEC. 5. ENSURING RELIABLE EXPERT TESTIMONY.**

(a) **EXPERT WITNESS QUALIFICATIONS.**—

(1) **IN GENERAL.**—In any health care lawsuit, an individual shall not give expert testimony on the appropriate standard of practice or care involved unless the individual is licensed as a health professional in 1 or more States and the individual meets the following criteria:

(A) If the party against whom or on whose behalf the testimony is to be offered is or claims to be a specialist, the expert witness shall specialize at the time of the occurrence that is the basis for the lawsuit in the same specialty or claimed specialty as the party against whom or on whose behalf the testimony is to be offered. If the party against whom or on whose behalf the testimony is to be offered is or claims to be a specialist who is board certified, the expert witness shall be a specialist who is board certified in that specialty or claimed specialty.

(B) During the 1-year period immediately preceding the occurrence of the action that gave rise to the lawsuit, the expert witness shall have devoted a majority of the individual's professional time to one or more of the following:

(i) The active clinical practice of the same health profession as the defendant and, if the defendant is or claims to be a specialist, in the same specialty or claimed specialty.

(ii) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant and, if the defendant is or claims to be a specialist, in an accredited health professional school or accredited residency or clinical research program in the same specialty or claimed specialty.

(C) If the defendant is a general practitioner, the expert witness shall have devoted a majority of the witness's professional time in the 1-year period preceding the occurrence of the action giving rise to the lawsuit to one or more of the following:

(i) Active clinical practice as a general practitioner.

(ii) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant.

(2) **HEALTH CARE INSTITUTIONS.**—If the defendant in a health care lawsuit is a health care institution that employs a health professional against whom or on whose behalf the testimony is offered, the provisions of paragraph (1) apply as if the health professional were the party or defendant against whom or on whose behalf the testimony is offered.

(3) **POWER OF COURT.**—Nothing in this subsection shall limit the power of the trial court in a health care lawsuit to disqualify an expert witness on grounds other than the qualifications set forth under this subsection.

(4) **LIMITATION.**—An expert witness in a health care lawsuit shall not be permitted to testify if the fee of the witness is in any way contingent on the outcome of the lawsuit.

(b) **PRELIMINARY EXPERT OPINION TESTIMONY AGAINST HEALTH CARE PROFESSIONALS.**—

(1) **CERTIFICATION.**—In any health care lawsuit, the claimant (or its attorney) shall certify in a written statement that is filed and served with the claim whether or not expert opinion testimony is necessary to prove the health care professional's standard of care or liability for the claim.

(2) **PRELIMINARY EXPERT OPINION.**—

(A) **IN GENERAL.**—If the claimant in any health care lawsuit certifies that expert opinion testimony is necessary as required under paragraph (1), the claimant shall serve a preliminary expert opinion affidavit. The claimant may provide affidavits from as many experts as the claimant determines to be necessary.

(B) **REQUIREMENTS.**—A preliminary expert opinion affidavit under subparagraph (A) shall contain at least the following information:

(i) The expert's qualifications to express an opinion on the health care professional's standard of care or liability for the claim.

(ii) The factual basis for each claim against a health care professional.

(iii) The health care professional's acts, errors or omissions that the expert considers to be a violation of the applicable standard of care resulting in liability.

(iv) The manner in which the health care professional's acts, errors, or omissions caused or contributed to the damages or other relief sought by the claimant.

(3) **DISPUTES.**—If the claimant in any health care lawsuit or its attorney certifies that expert testimony is not required for the claim and the defendant disputes that certification in good faith, the defendant may apply by motion to the court for an order requiring the claimant to obtain and serve a preliminary expert opinion affidavit under this subsection, and such motion may be granted by the court.

(4) **DISMISSALS.**—The court in a health care lawsuit, on its own motion or the motion of the defendant, shall dismiss the claim against the defendant without prejudice if the claimant fails to file and serve a preliminary expert opinion affidavit after the claimant (or its attorney) has certified that an affidavit is necessary or the court has ordered the claimant to file and serve an affidavit.

#### **SEC. 6. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) **SMALLPOX VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a smallpox vaccine-

related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### SEC. 7. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter provides for a greater amount of damages than provided in this title.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section 4(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### SEC. 8. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act.

**SA 3098.** Mr. CASEY (for himself and Ms. KLOBUCHAR) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other

purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### TITLE —SUPPORT FOR PREGNANT AND PARENTING TEENS AND WOMEN

##### SEC. 001. DEFINITIONS.

In this title:

(1) ACCOMPANIMENT.—The term “accompaniment” means assisting, representing, and accompanying a woman in seeking judicial relief for child support, child custody, restraining orders, and restitution for harm to persons and property, and in filing criminal charges, and may include the payment of court costs and reasonable attorney and witness fees associated therewith.

(2) ELIGIBLE INSTITUTION OF HIGHER EDUCATION.—The term “eligible institution of higher education” means an institution of higher education (as such term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that has established and operates, or agrees to establish and operate upon the receipt of a grant under this title, a pregnant and parenting student services office.

(3) COMMUNITY SERVICE CENTER.—The term “community service center” means a non-profit organization that provides social services to residents of a specific geographical area via direct service or by contract with a local governmental agency.

(4) HIGH SCHOOL.—The term “high school” means any public or private school that operates grades 10 through 12, inclusive, grades 9 through 12, inclusive or grades 7 through 12, inclusive.

(5) INTERVENTION SERVICES.—The term “intervention services” means, with respect to domestic violence, sexual violence, sexual assault, or stalking, 24-hour telephone hotline services for police protection and referral to shelters.

(6) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(7) STATE.—The term “State” includes the District of Columbia, any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.

(8) SUPPORTIVE SOCIAL SERVICES.—The term “supportive social services” means transitional and permanent housing, vocational counseling, and individual and group counseling aimed at preventing domestic violence, sexual violence, sexual assault, or stalking.

(9) VIOLENCE.—The term “violence” means actual violence and the risk or threat of violence.

##### SEC. 002. ESTABLISHMENT OF PREGNANCY ASSISTANCE FUND.

(a) IN GENERAL.—The Secretary, in collaboration and coordination with the Secretary of Education (as appropriate), shall establish a Pregnancy Assistance Fund to be administered by the Secretary, for the purpose of awarding competitive grants to States to assist pregnant and parenting teens and women.

(b) USE OF FUND.—A State may apply for a grant under subsection (a) to carry out any activities provided for in section 003.

(c) APPLICATIONS.—To be eligible to receive a grant under subsection (a), a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the purposes for which the grant is being requested and the designation of a State agency for receipt and administration of funding received under this title.

##### SEC. 003. PERMISSIBLE USES OF FUND.

(a) IN GENERAL.—A State shall use amounts received under a grant under section 001 for the purposes described in this section to assist pregnant and parenting teens and women.

##### (b) INSTITUTIONS OF HIGHER EDUCATION.—

(1) IN GENERAL.—A State may use amounts received under a grant under section 001 to make funding available to eligible institutions of higher education to enable the eligible institutions to establish, maintain, or operate pregnant and parenting student services. Such funding shall be used to supplement, not supplant, existing funding for such services.

(2) APPLICATION.—An eligible institution of higher education that desires to receive funding under this subsection shall submit an application to the designated State agency at such time, in such manner, and containing such information as the State agency may require.

(3) MATCHING REQUIREMENT.—An eligible institution of higher education that receives funding under this subsection shall contribute to the conduct of the pregnant and parenting student services office supported by the funding an amount from non-Federal funds equal to 25 percent of the amount of the funding provided. The non-Federal share may be in cash or in-kind, fairly evaluated, including services, facilities, supplies, or equipment.

(4) USE OF FUNDS FOR ASSISTING PREGNANT AND PARENTING COLLEGE STUDENTS.—An eligible institution of higher education that receives funding under this subsection shall use such funds to establish, maintain or operate pregnant and parenting student services and may use such funding for the following programs and activities:

(A) Conduct a needs assessment on campus and within the local community—

(i) to assess pregnancy and parenting resources, located on the campus or within the local community, that are available to meet the needs described in subparagraph (B); and

(ii) to set goals for—

(I) improving such resources for pregnant, parenting, and prospective parenting students; and

(II) improving access to such resources.

(B) Annually assess the performance of the eligible institution in meeting the following needs of students enrolled in the eligible institution who are pregnant or are parents:

(i) The inclusion of maternity coverage and the availability of riders for additional family members in student health care.

(ii) Family housing.

(iii) Child care.

(iv) Flexible or alternative academic scheduling, such as telecommuting programs, to enable pregnant or parenting students to continue their education or stay in school.

(v) Education to improve parenting skills for mothers and fathers and to strengthen marriages.

(vi) Maternity and baby clothing, baby food (including formula), baby furniture, and similar items to assist parents and prospective parents in meeting the material needs of their children.

(vii) Post-partum counseling.

(C) Identify public and private service providers, located on the campus of the eligible institution or within the local community, that are qualified to meet the needs described in subparagraph (B), and establishes programs with qualified providers to meet such needs.



(D) Assist pregnant and parenting students, fathers or spouses in locating and obtaining services that meet the needs described in subparagraph (B).

(E) If appropriate, provide referrals for prenatal care and delivery, infant or foster care, or adoption, to a student who requests such information. An office shall make such referrals only to service providers that serve the following types of individuals:

- (i) Parents.
- (ii) Prospective parents awaiting adoption.
- (iii) Women who are pregnant and plan on parenting or placing the child for adoption.
- (iv) Parenting or prospective parenting couples.

(5) REPORTING.—

(A) ANNUAL REPORT BY INSTITUTIONS.—

(i) IN GENERAL.—For each fiscal year that an eligible institution of higher education receives funds under this subsection, the eligible institution shall prepare and submit to the State, by the date determined by the State, a report that—

(I) itemizes the pregnant and parenting student services office's expenditures for the fiscal year;

(II) contains a review and evaluation of the performance of the office in fulfilling the requirements of this section, using the specific performance criteria or standards established under subparagraph (B)(1); and

(III) describes the achievement of the office in meeting the needs listed in paragraph (4)(B) of the students served by the eligible institution, and the frequency of use of the office by such students.

(ii) PERFORMANCE CRITERIA.—Not later than 180 days before the date the annual report described in clause (i) is submitted, the State—

(I) shall identify the specific performance criteria or standards that shall be used to prepare the report; and

(II) may establish the form or format of the report.

(B) REPORT BY STATE.—The State shall annually prepare and submit a report on the findings under this subsection, including the number of eligible institutions of higher education that were awarded funds and the number of students served by each pregnant and parenting student services office receiving funds under this section, to the Secretary.

(C) SUPPORT FOR PREGNANT AND PARENTING TEENS.—A State may use amounts received under a grant under section 001 to make funding available to eligible high schools and community service centers to establish, maintain or operate pregnant and parenting services in the same general manner and in accordance with all conditions and requirements described in subsection (b), except that paragraph (3) of such subsection shall not apply for purposes of this subsection.

(d) IMPROVING SERVICES FOR PREGNANT WOMEN WHO ARE VICTIMS OF DOMESTIC VIOLENCE, SEXUAL VIOLENCE, SEXUAL ASSAULT, AND STALKING.—

(1) IN GENERAL.—A State may use amounts received under a grant under section 001 to make funding available to its State Attorney General to assist Statewide offices in providing—

(A) intervention services, accompaniment, and supportive social services for eligible pregnant women who are victims of domestic violence, sexual violence, sexual assault, or stalking.

(B) technical assistance and training (as described in subsection (c)) relating to violence against eligible pregnant women to be made available to the following:

(i) Federal, State, tribal, territorial, and local governments, law enforcement agencies, and courts.

(ii) Professionals working in legal, social service, and health care settings.

(iii) Nonprofit organizations.

(iv) Faith-based organizations.

(2) ELIGIBILITY.—To be eligible for a grant under paragraph (1), a State Attorney General shall submit an application to the designated State agency at such time, in such manner, and containing such information, as specified by the State.

(3) TECHNICAL ASSISTANCE AND TRAINING DESCRIBED.—For purposes of paragraph (1)(B), technical assistance and training is—

(A) the identification of eligible pregnant women experiencing domestic violence, sexual violence, sexual assault, or stalking;

(B) the assessment of the immediate and short-term safety of such a pregnant woman, the evaluation of the impact of the violence or stalking on the pregnant woman's health, and the assistance of the pregnant woman in developing a plan aimed at preventing further domestic violence, sexual violence, sexual assault, or stalking, as appropriate;

(C) the maintenance of complete medical or forensic records that include the documentation of any examination, treatment given, and referrals made, recording the location and nature of the pregnant woman's injuries, and the establishment of mechanisms to ensure the privacy and confidentiality of those medical records; and

(D) the identification and referral of the pregnant woman to appropriate public and private nonprofit entities that provide intervention services, accompaniment, and supportive social services.

(4) ELIGIBLE PREGNANT WOMAN.—In this subsection, the term "eligible pregnant woman" means any woman who is pregnant on the date on which such woman becomes a victim of domestic violence, sexual violence, sexual assault, or stalking or who was pregnant during the one-year period before such date.

(e) PUBLIC AWARENESS AND EDUCATION.—A State may use amounts received under a grant under section 001 to make funding available to increase public awareness and education concerning any services available to pregnant and parenting teens and women under this title, or any other resources available to pregnant and parenting women in keeping with the intent and purposes of this title. The State shall be responsible for setting guidelines or limits as to how much of funding may be utilized for public awareness and education in any funding award.

#### SEC. 004. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated, \$25,000,000 for each of fiscal years 2010 through 2019, to carry out this title.

**SA 3099.** Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title IX, insert the following:

#### Subtitle —Expansion of Adoption Credit and Adoption Assistance Programs

#### SEC. 01. EXPANSION OF ADOPTION CREDIT AND ADOPTION ASSISTANCE PROGRAMS.

(a) INCREASE IN DOLLAR LIMITATION.—

(1) ADOPTION CREDIT.—

(A) IN GENERAL.—Paragraph (1) of section 23(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking "\$10,000" and inserting "\$15,000".

(B) CHILD WITH SPECIAL NEEDS.—Paragraph (3) of section 23(a) of such Code (relating to \$10,000 credit for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking "\$10,000" and inserting "\$15,000", and

(ii) in the heading by striking "\$10,000" and inserting "\$15,000".

(C) CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.—Subsection (h) of section 23 of such Code (relating to adjustments for inflation) is amended to read as follows:

“(h) ADJUSTMENTS FOR INFLATION.—

“(1) DOLLAR LIMITATIONS.—In the case of a taxable year beginning after December 31, 2009, each of the dollar amounts in subsections (a)(3) and (b)(1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

“(2) INCOME LIMITATION.—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A)(i) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”.

(2) ADOPTION ASSISTANCE PROGRAMS.—

(A) IN GENERAL.—Paragraph (1) of section 137(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking "\$10,000" and inserting "\$15,000".

(B) CHILD WITH SPECIAL NEEDS.—Paragraph (2) of section 137(a) of such Code (relating to \$10,000 exclusion for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking "\$10,000" and inserting "\$15,000", and

(ii) in the heading by striking "\$10,000" and inserting "\$15,000".

(C) CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.—Subsection (f) of section 137 of such Code (relating to adjustments for inflation) is amended to read as follows:

“(f) ADJUSTMENTS FOR INFLATION.—

“(1) DOLLAR LIMITATIONS.—In the case of a taxable year beginning after December 31, 2009, each of the dollar amounts in subsections (a)(2) and (b)(1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar

year in which the taxable year begins, determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

"(2) INCOME LIMITATION.—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10."

(b) CREDIT MADE REFUNDABLE.—

(1) CREDIT MOVED TO SUBPART RELATING TO REFUNDABLE CREDITS.—The Internal Revenue Code of 1986 is amended—

(A) by redesignating section 23, as amended by subsection (a), as section 36B, and

(B) by moving section 36B (as so redesignated) from subpart A of part IV of subchapter A of chapter 1 to the location immediately before section 37 in subpart C of part IV of subchapter A of chapter 1.

(2) CONFORMING AMENDMENTS.—

(A) Section 24(b)(3)(B) of such Code is amended by striking "23,".

(B) Section 25(e)(1)(C) of such Code is amended by striking "23," both places it appears.

(C) Section 25A(i)(5)(B) of such Code is amended by striking "23, 25D," and inserting "25D".

(D) Section 25B(g)(2) of such Code is amended by striking "23,".

(E) Section 26(a)(1) of such Code is amended by striking "23,".

(F) Section 30(c)(2)(B)(ii) of such Code is amended by striking "23, 25D," and inserting "25D".

(G) Section 30B(g)(2)(B)(ii) of such Code is amended by striking "23,".

(H) Section 30D(c)(2)(B)(ii) of such Code is amended by striking "sections 23 and" and inserting "section".

(I) Section 36B of such Code, as so redesignated, is amended—

(i) by striking paragraph (4) of subsection (b), and

(ii) by striking subsection (c).

(J) Section 137 of such Code is amended—

(i) by striking "section 23(d)" in subsection (d) and inserting "section 36B(d)", and

(ii) by striking "section 23" in subsection (e) and inserting "section 36B".

(K) Section 904(i) of such Code is amended by striking "23,".

(L) Section 1016(a)(26) is amended by striking "23(g)" and inserting "36B(g)".

(M) Section 1400C(d) of such Code is amended by striking "23,".

(N) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code of 1986 is amended by striking the item relating to section 23.

(O) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting "36B," after "36A,".

(P) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by

inserting after the item relating to section 36A the following new item:

"Sec. 36B. Adoption expenses."

(c) EXTENSION OF CREDIT AND ADOPTION ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—Section 36B of the Internal Revenue Code of 1986, as redesignated by subsection (b), is amended by adding at the end the following new subsection:

"(i) TERMINATION.—This section shall not apply to expenses paid or incurred in taxable years beginning after December 31, 2019."

(2) IN GENERAL.—Section 137 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(g) TERMINATION.—This section shall not apply to expenses paid or incurred in taxable years beginning after December 31, 2019."

(3) SUNSET FOR MODIFICATIONS MADE BY EGTRRA TO ADOPTION CREDIT REMOVED.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the amendments made by section 202 of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SA 3100.** Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 128, between lines 6 and 7, insert the following:

(e) EDUCATED HEALTH CARE CONSUMERS.—The term "educated health care consumer" means an individual who is knowledgeable about the health care system, and has background or experience in making informed decisions regarding health, medical, and scientific matters.

On page 142, line 15, insert "educated" before "health care".

On page 192, line 23, insert "educated" before "health care".

**SA 3101.** Mr. FRANKEN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 692, between lines 14 and 15, insert the following:

#### **SEC. 3009. RULE OF CONSTRUCTION.**

Nothing in the provisions of, or amendments made by, this Act shall be construed as prohibiting the application of value-based purchasing reforms under the Medicare program under title XVIII of the Social Security Act under such provisions or amendments to items and services furnished to individuals eligible for benefits under the Medicare program as a result of any expansion of such eligibility under the provisions of, or amendments made by, this Act.

**SA 3102.** Mr. DURBIN (for himself and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 816, after line 20, insert the following:

#### **SEC. 3115. EXTENDED MONTHS OF COVERAGE OF IMMUNOSUPPRESSIVE DRUGS FOR KIDNEY TRANSPLANT PATIENTS AND OTHER RENAL DIALYSIS PROVIDERS.**

(a) PROVISION OF APPROPRIATE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PROGRAM FOR KIDNEY TRANSPLANT RECIPIENTS.—

(1) CONTINUED ENTITLEMENT TO IMMUNOSUPPRESSIVE DRUGS.—

(A) KIDNEY TRANSPLANT RECIPIENTS.—Section 226A(b)(2) of the Social Security Act (42 U.S.C. 426-1(b)(2)) is amended by inserting "(except for coverage of immunosuppressive drugs under section 1861(s)(2)(J))" before "with the thirty-sixth month".

(B) APPLICATION.—Section 1836 of such Act (42 U.S.C. 1395o) is amended—

(i) by striking "Every individual who" and inserting "(a) IN GENERAL.—Every individual who"; and

(ii) by adding at the end the following new subsection:

"(b) SPECIAL RULES APPLICABLE TO INDIVIDUALS ONLY ELIGIBLE FOR COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

"(1) IN GENERAL.—In the case of an individual whose eligibility for benefits under this title has ended on or after January 1, 2012, except for the coverage of immunosuppressive drugs by reason of section 226A(b)(2), the following rules shall apply:

"(A) The individual shall be deemed to be enrolled under this part for purposes of receiving coverage of such drugs.

"(B) The individual shall be responsible for providing for payment of the portion of the premium under section 1839 which is not covered under the Medicare savings program (as defined in section 1144(c)(7)) in order to receive such coverage.

"(C) The provision of such drugs shall be subject to the application of—

"(i) the deductible under section 1833(b); and

"(ii) the coinsurance amount applicable for such drugs (as determined under this part).

"(D) If the individual is an inpatient of a hospital or other entity, the individual is entitled to receive coverage of such drugs under this part.

"(2) ESTABLISHMENT OF PROCEDURES IN ORDER TO IMPLEMENT COVERAGE.—The Secretary shall establish procedures for—

"(A) identifying individuals that are entitled to coverage of immunosuppressive drugs by reason of section 226A(b)(2); and

"(B) distinguishing such individuals from individuals that are enrolled under this part for the complete package of benefits under this part."

(C) TECHNICAL AMENDMENT TO CORRECT DUPLICATE SUBSECTION DESIGNATION.—Subsection (c) of section 226A of such Act (42 U.S.C. 426-1), as added by section 201(a)(3)(D)(ii) of the Social Security Independence and Program Improvements Act of

1994 (Public Law 103-296; 108 Stat. 1497), is redesignated as subsection (d).

(2) **EXTENSION OF SECONDARY PAYER REQUIREMENTS FOR ESRD BENEFICIARIES.**—Section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is amended by adding at the end the following new sentence: “With regard to immunosuppressive drugs furnished on or after the date of the enactment of the Patient Protection and Affordable Care Act, this subparagraph shall be applied without regard to any time limitation.”.

(b) **MEDICARE COVERAGE FOR ESRD PATIENTS.**—Section 1881 of the Social Security Act is amended—

(1) in subsection (b)(14)(B)(iii), by inserting “, including oral drugs that are not the oral equivalent of an intravenous drug (such as oral phosphate binders and calcimimetics),” after “other drugs and biologicals”;

(2) in subsection (b)(14)(E)(ii)—

(A) in the first sentence—

(i) by striking “a one-time election to be excluded from the phase-in” and inserting “an election, with respect to 2011, 2012, or 2013, to be excluded from the phase-in (or the remainder of the phase-in)”;

(ii) by adding before the period at the end the following: “for such year and for each subsequent year during the phase-in described in clause (i)”;

(B) in the second sentence—

(i) by striking “January 1, 2011” and inserting “the first date of such year”;

(ii) by inserting “and at a time” after “form and manner”;

(3) in subsection (h)(4)(E), by striking “lesser” and inserting “greater”.

**SA 3103.** Mr. CARPER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1783, between lines 2 and 3, insert the following:

**SEC. 6412. MANDATORY REPORTING OF FRAUD BY MEDICARE ADVANTAGE PLANS, PRESCRIPTION DRUG PLANS, AND PROVIDERS OF SERVICES AND SUPPLIERS.**

(a) **MANDATORY REPORTING BY MEDICARE ADVANTAGE PLANS AND PRESCRIPTION DRUG PLANS.**—Section 1857(d) of the Social Security Act (42 U.S.C. 1395w-27(d)) is amended by adding at the end the following new paragraph:

“(7) **REPORTING OF PROBABLE FRAUD.**—

“(A) **IN GENERAL.**—Each Medicare Advantage organization and, in accordance with section 1860D-12(b)(3)(C), each PDP sponsor of a prescription drug plan shall, in accordance with regulations established by the Secretary under subparagraph (B)—

“(i) self-report to the Secretary and to the appropriate law enforcement or oversight agency any matter for which the organization or sponsor has liability and for which the organization or sponsor has identified, from any source, credible evidence of fraud related to the program under this part or part D; and

“(ii) report to the Secretary and to the appropriate law enforcement or oversight agency any matter for which the organization or

sponsor has identified, from any source, credible evidence of fraud by subcontractors or others related to the program under this part or part D.

“(B) **REGULATIONS.**—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish regulations to carry out this paragraph.”.

(b) **MANDATORY REPORTING BY PROVIDERS OF SERVICES AND SUPPLIERS.**—Section 1866(j)(7)(B) of the Social Security Act, as inserted by section 6401, is amended by adding at the end the following sentence: “Such core elements shall include, to the extent determined appropriate by the Secretary, internal monitoring and auditing of, and responding to, identified deficiencies. Such response shall include reporting to the Secretary and to the appropriate law enforcement or oversight agency credible evidence of fraud related to the program under this title, title XIX, or title XXI.”.

(c) **PROMPT AND APPROPRIATE ACTION BY THE SECRETARY.**—The Secretary shall take prompt and appropriate action to forward information on fraud reported under sections 1857(d)(7) and 1866(j)(7)(B) of the Social Security Act, as added by subsection (a) and amended by subsection (b), respectively, to the appropriate agencies.

(d) **ANNUAL REPORT TO CONGRESS.**—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall submit to Congress an annual report on actions taken by the Secretary to address fraud during the preceding year. The report shall include an analysis of trends and conditions giving rise to fraud and general actions taken to address such trends and conditions, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

**SA 3104.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 426, line 14, insert “, in cases where eligibility for medical assistance under this title is not established pursuant to otherwise applicable procedures under the Patient Protection and Affordable Care Act, including section 1413 of such Act,” after “shall not”.

**SA 3105.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1395, strike line 11 and all that follows through “**SEC. 778.**” on line 15 and insert the following:

**SEC. 5314. FELLOWSHIP TRAINING IN PUBLIC HEALTH.**

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 317G the following:

“**SEC. 317G-1.**

**SA 3106.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 301, after line 25, add the following:

**SEC. 1413A. ASSURANCE OF EFFECTIVE IMPLEMENTATION OF STREAMLINED ENROLLMENT PROCEDURES.**

(a) **AMENDMENTS TO SECTION 1413.**—Section 1413 of this Act is amended—

(1) in subsection (a), by striking the second sentence and inserting “Such system shall ensure that if an individual applying to an Exchange, to a State Medicaid program under title XIX of the Social Security Act, or to a State children’s health insurance program (CHIP) under title XXI of such Act, is found to be ineligible for the program to which the individual applied, the individual shall be screened for eligibility for all other potentially applicable such programs and shall be enrolled in the program for which the individual qualifies.”;

(2) in subsection (b)(1), by adding at the end the following:

“(D) **RELEVANCE.**—The forms described in subparagraphs (A) and (B) shall not require the applicant to answer any questions that are irrelevant to establishing eligibility for applicable State health subsidy programs. The Secretary shall establish procedures that avoid any need for such requirements, which shall include determining the amounts expended for medical assistance that are described in subsection (y)(1) of section 1905 of the Social Security Act (as added by section 2001(a)(3) of this Act) through the use of the post-enrollment procedures described in section 1903(u)(1)(C) of the Social Security Act.”;

(3) in subsection (c)(2)(B)(ii)(II), by striking “by requesting” and inserting “notwithstanding section 1411(b), by requesting”;

(4) in subsection (c)(2)(C), by inserting “is” before “consistent”;

(5) in subsection (e)(1), by striking “enrollment in qualified health plans offered through an Exchange, including the” and inserting “determination of eligibility for”.

(b) **AMENDMENT TO SOCIAL SECURITY ACT.**—Subparagraph (H) of section 1902(e)(14) of the Social Security Act (as added by section 2002 of this Act), is amended, in the matter preceding clause (i), by striking “shall not be construed” and inserting “shall not, in cases where eligibility for medical assistance under this title is not established pursuant to otherwise applicable procedures under the Patient Protection and Affordable Care Act, including section 1413 of such Act, be construed”.

**SA 3107.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain

other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1413 and insert the following:

**SEC. 1413. STREAMLINING OF PROCEDURES FOR ENROLLMENT THROUGH AN EXCHANGE AND STATE MEDICAID, CHIP, AND HEALTH SUBSIDY PROGRAMS.**

(a) **IN GENERAL.**—The Secretary shall establish a system meeting the requirements of this section under which residents of each State may apply for enrollment in, receive a determination of eligibility for participation in, and continue participation in, applicable State health subsidy programs. Such system shall ensure that if an individual applying to an Exchange, to a State Medicaid program under title XIX of the Social Security Act, or to a State children's health insurance program (CHIP) under title XXI of such Act, is found to be ineligible for the program to which the individual applied, the individual shall be screened for eligibility for all other potentially applicable such programs and shall be enrolled in the program for which the individual qualifies.

(b) **REQUIREMENTS RELATING TO FORMS AND NOTICE.**—

(1) **REQUIREMENTS RELATING TO FORMS.**—

(A) **IN GENERAL.**—The Secretary shall develop and provide to each State a single, streamlined form that—

(i) may be used to apply for all applicable State health subsidy programs within the State;

(ii) may be filed online, in person, by mail, or by telephone;

(iii) may be filed with an Exchange or with State officials operating one of the other applicable State health subsidy programs; and

(iv) is structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who qualify for applicable State health subsidy programs.

(B) **STATE AUTHORITY TO ESTABLISH FORM.**—A State may develop and use its own single, streamlined form as an alternative to the form developed under subparagraph (A) if the alternative form is consistent with standards promulgated by the Secretary under this section.

(C) **SUPPLEMENTAL ELIGIBILITY FORMS.**—The Secretary may allow a State to use a supplemental or alternative form in the case of individuals who apply for eligibility that is not determined on the basis of the household income (as defined in section 36B of the Internal Revenue Code of 1986).

(D) **RELEVANCE.**—The forms described in subparagraphs (A) and (B) shall not require the applicant to answer any questions that are irrelevant to establishing eligibility for applicable State health subsidy programs. The Secretary shall establish procedures that avoid any need for such requirements, which shall include determining the amounts expended for medical assistance that are described in subsection (y)(1) of section 1905 of the Social Security Act (as added by section 2001(a)(3) of this Act) through the use of the post-enrollment procedures described in section 1903(u)(1)(C) of the Social Security Act.

(2) **NOTICE.**—The Secretary shall provide that an applicant filing a form under paragraph (1) shall receive notice of eligibility for an applicable State health subsidy program without any need to provide additional information or paperwork unless such information or paperwork is specifically required by law when information provided on the form is inconsistent with data used for the

electronic verification under paragraph (3) or is otherwise insufficient to determine eligibility.

(c) **REQUIREMENTS RELATING TO ELIGIBILITY BASED ON DATA EXCHANGES.**—

(1) **DEVELOPMENT OF SECURE INTERFACES.**—Each State shall develop for all applicable State health subsidy programs a secure, electronic interface allowing an exchange of data (including information contained in the application forms described in subsection (b)) that allows a determination of eligibility for all such programs based on a single application. Such interface shall be compatible with the method established for data verification under section 1411(c)(4).

(2) **DATA MATCHING PROGRAM.**—Each applicable State health subsidy program shall participate in a data matching arrangement for determining eligibility for participation in the program under paragraph (3) that—

(A) provides access to data described in paragraph (3);

(B) applies only to individuals who—

(i) receive assistance from an applicable State health subsidy program; or

(ii) apply for such assistance—

(I) by filing a form described in subsection (b); or

(II) notwithstanding section 1411(b), by requesting a determination of eligibility and authorizing disclosure of the information described in paragraph (3) to applicable State health coverage subsidy programs for purposes of determining and establishing eligibility; and

(C) is consistent with standards promulgated by the Secretary, including the privacy and data security safeguards described in section 1942 of the Social Security Act or that are otherwise applicable to such programs.

(3) **DETERMINATION OF ELIGIBILITY.**—

(A) **IN GENERAL.**—Each applicable State health subsidy program shall, to the maximum extent practicable—

(i) establish, verify, and update eligibility for participation in the program using the data matching arrangement under paragraph (2); and

(ii) determine such eligibility on the basis of reliable, third party data, including information described in sections 1137, 453(i), and 1942(a) of the Social Security Act, obtained through such arrangement.

(B) **EXCEPTION.**—This paragraph shall not apply in circumstances with respect to which the Secretary determines that the administrative and other costs of use of the data matching arrangement under paragraph (2) outweigh its expected gains in accuracy, efficiency, and program participation.

(4) **SECRETARIAL STANDARDS.**—The Secretary shall, after consultation with persons in possession of the data to be matched and representatives of applicable State health subsidy programs, promulgate standards governing the timing, contents, and procedures for data matching described in this subsection. Such standards shall take into account administrative and other costs and the value of data matching to the establishment, verification, and updating of eligibility for applicable State health subsidy programs.

(d) **ADMINISTRATIVE AUTHORITY.**—

(1) **AGREEMENTS.**—Subject to section 1411 and section 6103(1)(21) of the Internal Revenue Code of 1986 and any other requirement providing safeguards of privacy and data integrity, the Secretary may establish model agreements, and enter into agreements, for the sharing of data under this section.

(2) **AUTHORITY OF EXCHANGE TO CONTRACT OUT.**—Nothing in this section shall be construed to—

(A) prohibit contractual arrangements through which a State medicaid agency determines eligibility for all applicable State health subsidy programs, but only if such agency complies with the Secretary's requirements ensuring reduced administrative costs, eligibility errors, and disruptions in coverage; or

(B) change any requirement under title XIX that eligibility for participation in a State's medicaid program must be determined by a public agency.

(e) **APPLICABLE STATE HEALTH SUBSIDY PROGRAM.**—In this section, the term "applicable State health subsidy program" means—

(1) the program under this title for the determination of eligibility for premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402;

(2) a State medicaid program under title XIX of the Social Security Act;

(3) a State children's health insurance program (CHIP) under title XXI of such Act; and

(4) a State program under section 1331 establishing qualified basic health plans.

**SA 3108.** Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 816, after line 20, insert the following:

**SEC. 3115. IMPROVING CARE PLANNING FOR MEDICARE HOME HEALTH SERVICES.**

(a) **IN GENERAL.**—Section 1814(a)(2) of the Social Security Act (42 U.S.C. 1395f(a)(2)), in the matter preceding subparagraph (A), is amended—

(1) by inserting "(as those terms are defined in section 1861(aa)(5))" after "clinical nurse specialist"; and

(2) by inserting ", or in the case of services described in subparagraph (C), a physician, or a nurse practitioner or clinical nurse specialist who is working in collaboration with a physician in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5)) under the supervision of a physician" after "collaboration with a physician".

(b) **CONFORMING AMENDMENTS.**—(1) Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)), as amended by section 3108(a)(2) and section 6407, is amended—

(A) in paragraph (2)(C), by inserting ", a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant (as the case may be)" after "physician" each place it appears;

(B) in the second sentence, by inserting "certified nurse-midwife," after "clinical nurse specialist";

(C) in the third sentence—

(i) by striking "physician certification" and inserting "certification";

(ii) by inserting "(or on January 1, 2008, in the case of regulations to implement the

amendments made by section 3115 of the Patient Protection and Affordable Care Act)" after "1981"; and

(iii) by striking "a physician who" and inserting "a physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant who"; and

(D) in the fourth sentence, by inserting "a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant" after "physician".

(2) Section 1835(a) of the Social Security Act (42 U.S.C. 1395n(a)), as amended by section 6405, is amended—

(A) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking "or an eligible professional under section 1848(k)(3)(B)" and inserting "an eligible professional under section 1848(k)(3)(B), or a nurse practitioner or clinical nurse specialist (as those terms are defined in 1861(aa)(5)) who is working in collaboration with a physician enrolled under section 1866(j) or such an eligible professional in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5)) under the supervision of a physician so enrolled or such an eligible professional"; and

(ii) in each of clauses (ii) and (iii) of subparagraph (A) by inserting "a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant (as the case may be)" after "physician";

(B) in the third sentence, by inserting "a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant (as the case may be)" after "physician";

(C) in the fourth sentence—

(i) by striking "physician certification" and inserting "certification";

(ii) by inserting "(or on January 1, 2008, in the case of regulations to implement the amendments made by section 3115 of the Patient Protection and Affordable Care Act)" after "1981"; and

(iii) by striking "a physician who" and inserting "a physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant who"; and

(D) in the fifth sentence, by inserting "a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant" after "physician".

(3) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(A) in subsection (m)—

(i) in the matter preceding paragraph (1)—

(I) by inserting "a nurse practitioner or a clinical nurse specialist (as those terms are defined in subsection (aa)(5)), a certified nurse-midwife (as defined in section 1861(gg)), or a physician assistant (as defined in subsection (aa)(5))" after "physician" the first place it appears; and

(II) by inserting "a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant" after "physician" the second place it appears; and

(ii) in paragraph (3), by inserting "a nurse practitioner, a clinical nurse specialist, a certified nurse-midwife, or a physician assistant" after "physician"; and

(B) in subsection (o)(2)—

(i) by inserting "a nurse practitioner or clinical nurse specialist (as those terms are defined in subsection (aa)(5)), certified nurse-midwives (as defined in section 1861(gg)), or physician assistants (as defined in subsection (aa)(5))" after "physicians"; and

(ii) by inserting "a nurse practitioner, clinical nurse specialist, certified nurse-midwife, physician assistant," after "physician".

(4) Section 1895 of the Social Security Act (42 U.S.C. 1395fff) is amended—

(A) in subsection (c)(1), by inserting "a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), the certified nurse-midwife (as defined in section 1861(gg)), or the physician assistant (as defined in section 1861(aa)(5))," after "physician"; and

(B) in subsection (e)—

(i) in paragraph (1)(A), by inserting "a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)), a certified nurse-midwife (as defined in section 1861(gg)), or a physician assistant (as defined in section 1861(aa)(5))" after "physician"; and

(ii) in paragraph (2)—

(I) in the heading, by striking "PHYSICIAN CERTIFICATION" and inserting "RULE OF CONSTRUCTION REGARDING REQUIREMENT FOR CERTIFICATION"; and

(II) by striking "physician".

(c) REQUIREMENT OF FACE-TO-FACE ENCOUNTER.—

(1) PART A.—Section 1814(a)(2)(C) of the Social Security Act, as amended by subsection (b) and section 6407(a), is further amended by striking "and, in the case of a certification made by a physician" and all that follows through "face-to-face encounter" and inserting "and, in the case of a certification made by a physician after January 1, 2010, or by a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant (as the case may be), prior to making such certification the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant must document that the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant himself or herself has had a face-to-face encounter".

(2) PART B.—Section 1835(a)(2)(A)(iv) of the Social Security Act, as added by section 6407(a), is amended by striking "after January 1, 2010" and all that follows through "face-to-face encounter" and inserting "made by a physician after January 1, 2010, or by a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant (as the case may be), prior to making such certification the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant must document that the physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant has had a face-to-face encounter".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2010.

**SA 3109.** Mr. AKAKA submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 974, between lines 9 and 10, insert the following:

**SEC. 3316. PHARMACY ACCESS FOR CHRONIC CARE TARGETED INDIVIDUALS.**

(a) PURPOSE.—The purpose of this section is to provide for the establishment of chronic

care pharmacy programs under the Medicare prescription drug program under part D of title XVIII of the Social Security Act that utilize available technologies and efficiencies to improve the safety, convenience, and affordability of prescription drug coverage under such part with respect to long-term maintenance medication refills for enrollees with a chronic disease or condition.

(b) ESTABLISHMENT AND IMPLEMENTATION OF PROGRAM.—Section 1860D-4 of the Social Security Act (42 U.S.C. 1395w-104) is amended by adding at the end the following new subsection:

"(m) PHARMACY ACCESS FOR TARGETED BENEFICIARIES.—

"(1) IN GENERAL.—

"(A) ESTABLISHMENT AND IMPLEMENTATION OF PROGRAM.—The PDP sponsor of a prescription drug plan shall—

"(i) identify (not less frequently than on a quarterly basis) targeted beneficiaries who are enrolled in the prescription drug plan; and

"(ii) establish and maintain a chronic care pharmacy program that meets the requirements of this subsection.

"(B) DEFINITIONS.—In this subsection:

"(i) CHRONIC CARE PHARMACY PROGRAM.—The term 'chronic care pharmacy program' means the program established and maintained by a PDP sponsor under subparagraph (A)(ii).

"(ii) TARGETED BENEFICIARY.—The term 'targeted beneficiary' means a part D eligible individual who is identified by the PDP sponsor as taking at least 1 long-term maintenance medication.

"(iii) LONG-TERM MAINTENANCE MEDICATION.—The term 'long-term maintenance medication' means a covered part D drug that—

"(I) has a common indication (obtained from product labeling) for the treatment of a chronic disease or condition; and

"(II) is used for the treatment of a chronic disease or condition when the duration of continuous therapy can reasonably be expected to exceed 1 year.

"(2) ENROLLMENT.—

"(A) AUTOMATIC ENROLLMENT.—The PDP sponsor shall automatically enroll targeted beneficiaries identified under paragraph (1)(A)(i) in a chronic care pharmacy program.

"(B) WRITTEN NOTICE AND PROCESS TO OPT OUT OF PROGRAM.—

"(i) WRITTEN NOTICE.—The PDP sponsor shall provide written notice to targeted beneficiaries automatically enrolled in the chronic care pharmacy program under subparagraph (A).

"(ii) PROCESS TO DECLINE ENROLLMENT AND OPT OUT OF PROGRAM.—The written notice provided under clause (i) shall include procedures under which the targeted beneficiary may decline such automatic enrollment and opt-out of the chronic care pharmacy program.

"(3) CHRONIC CARE PHARMACY PROGRAM REQUIREMENTS.—The PDP sponsor shall establish and maintain procedures to ensure that each of the following requirements is met by a chronic care pharmacy program:

"(A) A targeted beneficiary is (not less frequently than on an annual basis) provided a claims-based comprehensive written summary of the targeted beneficiary's drug therapy that includes an analysis of—

"(i) poly-pharmacy and other safety issues, including the identification of duplicative or excessive drug therapy in order to reduce harmful adverse drug reactions and unnecessary hospitalizations; and

“(ii) clinically appropriate alternative formulary treatment options and lower cost alternatives, if any, for consideration by the treating physician of the targeted beneficiary.

“(B) Any chronic care pharmacy under the program is accredited by a private accrediting organization as meeting standards appropriate for pharmacies that dispense long-term maintenance medications, including a process for quality and safety improvement.

“(C) The program makes available, 24 hours a day, 7 days a week, to a targeted beneficiary confidential pharmacist counseling, based on the targeted beneficiary’s drug therapy.

“(D) The program delivers to the address specified by the targeted beneficiary an extended supply (such as 90-days) of long-term maintenance medications where permitted by law and when indicated to be clinically appropriate.

“(E) The program provides, after filling a prescription for a targeted beneficiary for 2 consecutive months, only an extended supply of a long-term maintenance medication, except that a 1-time 30-day supply of such a medication may be provided to the targeted beneficiary at a retail pharmacy in order to transition a targeted beneficiary into the program.

“(4) ACCESS TO COVERED PART D DRUGS.—The requirements of subsection (b)(1) shall apply to a chronic care pharmacy program, except that the requirements of subparagraphs (A) and (D) of such subsection shall apply only in the case of an individual who opts out of the chronic care pharmacy program under paragraph (2)(A)(ii).

“(5) FACILITATING AFFORDABLE PAYMENT ARRANGEMENTS.—With respect to an extended supply of part D covered drugs for a targeted beneficiary under the chronic care pharmacy program, the PDP sponsor shall offer to the targeted beneficiary an option to arrange for the payment of any required cost-sharing by a targeted beneficiary on an alternative basis (including more affordable payments in installments) over the period of the extended supply.

“(6) CONTINUITY OF ELECTION.—In the case where a targeted beneficiary changes enrollment to a different prescription drug plan (including a prescription drug plan offered by a different sponsor)—

“(A) the PDP sponsor of the plan from which the targeted beneficiary disenrolls shall notify the Secretary (as part of the disenrollment process)—

“(i) that the individual is a targeted beneficiary to whom the requirements of this subsection apply; and

“(ii) whether the targeted beneficiary elected to opt out of the chronic care pharmacy program under paragraph (2)(A)(ii); and

“(B) the Secretary shall ensure that, in the case where the targeted beneficiary has not elected to opt out as described in subparagraph (A)(ii), the continuation of the enrollment of the targeted beneficiary in the chronic care pharmacy program of the PDP sponsor offering the prescription drug plan in which the targeted beneficiary has enrolled.

“(7) PROVIDING INFORMATION TO BENEFICIARIES.—The Secretary shall include information regarding chronic care pharmacy programs in the activities required under section 1860D-1(c) (relating to the provision of information to beneficiaries with respect to informed choice, and other information), including any consumer satisfaction surveys under subsection (d).

“(8) EXCEPTION FOR LONG-TERM CARE FACILITIES.—This subsection shall not apply to a long-term care facility or a pharmacy located in, or having a contract with, a long-term care facility.”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply for contract years beginning with 2011.

**SA 3110.** Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 974, between lines 9 and 10, insert the following:

**SEC. 3316. PERFORMANCE BASED PHARMACY REIMBURSEMENT PROGRAM.**

(a) IN GENERAL.—Section 1860D-4 of the Social Security Act (42 U.S.C. 1395w-104) is amended by adding at the end the following new subsection:

“(m) PERFORMANCE BASED PHARMACY REIMBURSEMENT PROGRAM.—

“(1) IN GENERAL.—The PDP sponsor shall have in place a program that identifies omission gaps and adherence gaps (as defined in paragraph (2)) for specified beneficiaries (as described in paragraph (3)) and makes payments to participating pharmacies (as described in paragraph (4)) that close such gaps through clinical counseling.

“(2) OMISSION AND ADHERENCE GAPS DEFINED.—In this subsection:

“(A) OMISSION GAPS.—The term ‘omission gaps’ refers to cases when the patient is not receiving a medication that evidenced-based protocols or clinical practice standards indicate is a best practice for treatment of their disease.

“(B) ADHERENCE GAPS.—The term ‘adherence gaps’ refers to cases when a patient is not taking their medication the way it was prescribed, including failure to fill, failure to renew, stopping or not starting medications, or not taking a medication the way it was intended.

“(3) SPECIFIED BENEFICIARIES DESCRIBED.—Beneficiaries described in this paragraph are part D eligible individuals taking medications for one of the following conditions:

“(A) Diabetes.

“(B) Cardiovascular disease.

“(C) Pulmonary disease.

“(4) PARTICIPATING PHARMACIES.—The PDP sponsor shall contract with any pharmacy that is willing to participate in such program and meet the standard terms and conditions of the PDP sponsor. To the extent practicable, the PDP sponsor shall use a specified beneficiary’s primary pharmacy to close gaps in care. If such pharmacy does not participate in such program or is unable to close a gap in care, the PDP sponsor may use other participating pharmacies. The primary pharmacy selected by the PDP sponsor shall advise the specified beneficiary of his or her right to select another participating pharmacy.

“(5) GAPS IN MEDICATION ADHERENCE.—The Secretary shall require PDP sponsors to follow uniform standards in identifying gaps in medication adherence. The Secretary shall develop such standards based on current treatment protocols for the conditions described in paragraph (2).

“(6) PAYMENTS TO PDP SPONSORS.—

“(A) IN GENERAL.—The Secretary shall pay each PDP sponsor a per member monthly amount to administer such program. Such payments shall be for operational and administrative activities only and shall not include the cost of any covered part D drug. The per member monthly payment to a PDP sponsor may not exceed an amount that equals \$0.85 in 2012, increased in subsequent years by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of the previous year.

“(B) SPECIAL RULE.—The Secretary shall ensure that PDP sponsors use greater than 50 percent of the aggregate amount paid to the PDP sponsor under subparagraph (A) to compensate pharmacies for counseling activities under such program.

“(C) NOT IN BIDS.—PDP sponsors shall not include the payments described in subparagraph (A) in the bids submitted by the PDP sponsor under section 1860D-11.

“(D) SOURCE.—The payment described in subparagraph (A) shall be made from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841, in such proportion as the Secretary determines appropriate.

“(7) PAYMENTS TO PARTICIPATING PHARMACIES FROM PDP SPONSORS.—Under such program, PDP sponsors shall negotiate payment structures with pharmacies, and pharmacists shall receive remuneration based on success in closings gaps in care. Payments under paragraph (6)(A) shall be made when it is determined that the adherence and omission gaps have been closed, or when billable activity by the pharmacy occurs, by contract.

“(8) BONUSES AND PENALTIES FOR PDP SPONSORS BASED ON ESTIMATED CHANGES IN MEDICAL COSTS.—

“(A) PROJECTED COSTS.—Beginning in 2012, the Secretary shall, on an annual basis, project the anticipated costs for individuals enrolled in the program under parts A and B for the current year and the succeeding 2 years, based on risk-adjusted historical costs under such parts.

“(B) COMPARISON.—

“(i) IN GENERAL.—At the end of each 3-year period described in subparagraph (A), for each PDP sponsor under the program, the Secretary shall compare the actual spending for such individuals to the costs projected under subparagraph (A).

“(ii) INCENTIVE PAYMENT.—For each year during the 3-year period described in clause (i), to the extent the actual costs are lower than the costs projected under subparagraph (A), the Secretary will pay to the PDP sponsor an incentive based on a graduated scale, under which the PDP sponsor receives an incremental 10 percent of the per member monthly amount paid to the PDP sponsor under paragraph (6) for every 10 percent of savings above the projection, not to exceed 50 percent of the aggregate amounts paid to the PDP sponsor under such paragraph for the initial year of the 3-year period.

“(iii) PENALTIES.—For each year during the 3-year period described in clause (i), to the extent the actual costs are higher than the costs projected under subparagraph (A), the PDP sponsor shall make a payment to the Secretary in an amount based on a graduated scale, under which the PDP sponsor pays to the Secretary 10 percent of the per member monthly amount paid to the PDP sponsor under paragraph (6) for every 10 percent of costs above the projection, not to exceed 50 percent of the aggregate amounts



paid to the PDP sponsor under such paragraph for the initial year of the 3-year period.

“(C) GUIDANCE ON METHODOLOGY USED.—The Secretary shall issue guidance on the methodology that the Secretary uses to project costs as described in subparagraph (A), measure actual costs for purposes of the comparison under subparagraph (B), and calculate incentive payment and penalties under clauses (ii) and (iii), respectively, of such subparagraph.

“(D) PHARMACIES NOT LIABLE FOR FEES.—A participating pharmacy shall not be required to pay any penalties under subparagraph (B)(iii).

“(E) RECONCILIATION.—Any financial reconciliation under the program under this subsection shall be incorporated into the annual reconciliation process under this part.

“(9) LIMITATION.—The requirements of this subsection shall not apply to an MA-PD plan.

“(10) CONSTRUCTION.—The provisions of this subsection shall not modify or relieve PDP sponsors of their responsibilities under subsection (c)(2).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2012.

**SA 3111.** Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 245, beginning with line 15, strike all through page 246, line 7.

On page 254, strike lines 11 through 20.

On page 260, strike lines 14 through 17.

On page 267, strike lines 17 through 25.

On page 268, between lines 13 and 14, insert the following:

(3) SUBSIDIES TREATED AS PUBLIC BENEFIT.—Notwithstanding any other provision of this Act or any other provision of law, for purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), the following shall be considered a Federal means-tested public benefit:

(A) The ability of an individual to purchase a qualified health plan offered through an Exchange.

(B) The premium tax credit established under section 1401 of this Act (and any advance payment thereof).

(C) The cost sharing reductions established under this section (and any advance payment thereof).

On page 269, strike lines 7 through 9, and insert the following:

(a) VERIFICATION PROCESS.—The Secretary shall ensure that eligibility determinations required by this Act are conducted in accordance with the following requirements, including requirements for determining:

On page 269, line 18, insert “eligible” before “alien”.

On page 270, line 16, strike “provide” and insert “appear in person to provide the Exchange with the following”.

On page 270, between lines 20 and 21, insert the following:

(B) A sworn statement, under penalty of perjury, specifically attesting to the fact

that each enrollee is either a citizen or national of the United States or an eligible lawful permanent resident meeting the requirements of section 1402(f)(3) of this Act and identifying the applicable eligibility status for each enrollee; and

On page 270, line 21, insert “and documentation” after “information”.

On page 271, strike lines 4 through 15, and insert the following:

(A) In the case of an enrollee whose eligibility is based on attestation of citizenship of the enrollee, the enrollee shall provide satisfactory evidence of citizenship or nationality (within the meaning of section 1903(x) of the Social Security Act (42 U.S.C. 1396b)).

(B) In the case of an individual whose eligibility is based on attestation of the enrollee’s immigration status—

(i) such information as is necessary for the individual to demonstrate they are in “satisfactory immigration status” as defined and in accordance with the Systematic Alien Verification for Entitlements (SAVE) program established by section 1137 of the Social Security Act (42 U.S.C. 1320b-7), and

(ii) any other additional identifying information as the Secretary, in consultation with the Secretary of Homeland Security, may require in order for the enrollee to demonstrate satisfactory immigration status.

On page 274, beginning with line 12, strike all through page 276, line 17, and insert the following:

(c) VERIFICATION OF ELIGIBILITY THROUGH DOCUMENTATION.—

(1) IN GENERAL.—Each Exchange shall conduct eligibility verification, using the information provided by an applicant under subsection (b), in accordance with this subsection.

(2) VERIFICATION OF CITIZENSHIP OR IMMIGRATION STATUS.—

(A) VERIFICATION OF ATTESTATION OF CITIZENSHIP.—Each Exchange shall verify the eligibility of each enrollee who attests that they are a citizen or national of the United States, as required by subsection (b)(1)(A) of this section, in accordance with the provisions of section 1903(x) of the Social Security Act.

(B) VERIFICATION OF ATTESTATION OF ELIGIBLE IMMIGRATION STATUS.—Each Exchange shall verify the eligibility of each enrollee who attests that they are eligible to participate in the exchange by virtue of having been a lawful permanent resident for not less than 5 years, as required by subsection (b)(1)(B) of this section, in accordance with the provisions of section 1137 of the Social Security Act.

On page 277, beginning with line 19, strike all through page 278, line 16.

On page 280, strike lines 8 and 9 and insert “in accordance with the secondary verification process established consistent with section 1137 of the Social Security Act (as is in effect as of January 1, 2009).”

**SA 3112.** Ms. CANTWELL (for herself, Ms. SNOWE, Ms. LANDRIEU, and Ms. STABENOW) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 354, between lines 18 and 19, insert the following:

(B) CERTAIN EMPLOYEES TREATED AS FULL-TIME.—Solely for purposes of applying subsections (a) and (c), an employee not otherwise treated as a full-time employee under subparagraph (A) shall be treated as a full-time employee if the employee is employed at least 390 hours of service per calendar quarter.

**SA 3113.** Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 869, between lines 14 and 15, insert the following:

**SEC. 3143. REVISION TO PAYMENT FOR CONSULTATION CODES.**

(a) TEMPORARY DELAY OF ELIMINATION OF PAYMENT FOR CONSULTATION CODES.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not, prior to January 1, 2011, implement a final rule relating payment policies under the physician fee schedule and part B of title XVIII of the Social Security Act that contains a provision that eliminates or discontinues payment for consultation codes.

(b) EVALUATION PERIOD.—During the period prior to January 1, 2011, the Secretary of Health and Human Services shall consult with the Current Procedural Terminology Editorial Panel of the American Medical Association for the purpose of developing proposals to—

(1) modify existing consultation codes or establish new consultation codes to more accurately reflect the value provided through such consultation services; and

(2) minimize coding errors.

**SA 3114.** Mr. GRASSLEY (for himself, Mr. COBURN, Mr. BROWNBACK, Mr. CHAMBLISS, Mr. ISAKSON, Ms. MURKOWSKI, Mr. BUNNING, Mr. BENNETT, Mr. LEMIEUX, Mr. BARRASSO, and Mr. ENZI) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 30, between lines 2 and 3, insert the following:

“(c) PROTECTION OF SECOND AMENDMENT RIGHTS.—

“(1) FINDING.—Congress finds that the second amendment to the Constitution of the United States protects a fundamental right for individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

“(2) WELLNESS AND PREVENTION PROGRAMS.—A wellness and health promotion activity implemented under subsection (a)(1)(D) may not require the disclosure or collection of any information relating to—

“(A) the presence or storage of a lawfully-possessed firearm or ammunition in the residence or on the property of an individual; or  
 “(B) the lawful use, possession, or storage of a firearm or ammunition by an individual.

“(3) LIMITATION ON DATA COLLECTION.—None of the authorities provided to the Secretary under the Patient Protection and Affordable Care Act or an amendment made by that Act shall be construed to authorize or may be used for the collection of any information relating to—

“(A) the lawful ownership or possession of a firearm or ammunition;

“(B) the lawful use of a firearm or ammunition; or

“(C) the lawful storage of a firearm or ammunition.

“(4) LIMITATION ON DATABASES OR DATA BANKS.—None of the authorities provided to the Secretary under the Patient Protection and Affordable Care Act or an amendment made by that Act shall be construed to authorize or may be used to maintain records of individual ownership or possession of a firearm or ammunition.

“(5) LIMITATION ON DETERMINATION OF PREMIUM RATES OR ELIGIBILITY FOR HEALTH INSURANCE.—A premium rate may not be increased, health insurance coverage may not be denied, and a discount, rebate, or reward offered for participation in a wellness program may not be reduced or withheld under any health benefit plan issued pursuant to or in accordance with the Patient Protection and Affordable Care Act or an amendment made by that Act on the basis of, or on reliance upon—

“(A) the lawful ownership or possession of a firearm or ammunition; or

“(B) the lawful use or storage of a firearm or ammunition.

“(6) LIMITATION ON DATA COLLECTION REQUIREMENTS FOR INDIVIDUALS.—No individual shall be required to disclose any information under any data collection activity authorized under the Patient Protection and Affordable Care Act or an amendment made by that Act relating to—

“(A) the lawful ownership or possession of a firearm or ammunition; or

“(B) the lawful use, possession, or storage of a firearm or ammunition.

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON FINANCE

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on December 9, 2009, at 2:30 p.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled “Exports’ Place on the Path of Economic Recovery.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON FOREIGN RELATIONS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 9, 2009, at 10 a.m., to hold a hearing entitled “The New Afghanistan Strategy: The View from the Ground.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON FOREIGN RELATIONS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 9, 2009, at 2:30 p.m., to hold a hearing entitled “Strengthening the Transatlantic Economy: Moving Beyond the Crisis.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on December 9, 2009, at 10 a.m., to conduct a hearing entitled “Five Years After the Intelligence Reform and Terrorism Prevention Act (IRTPA): Stopping Terrorist Travel.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON INDIAN AFFAIRS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on December 9, 2009, at 9:30 a.m., in room 628 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON THE JUDICIARY

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on December 9, 2009, at 10 a.m., in room SH-216 of the Hart Senate Office Building, to conduct a hearing entitled “Oversight of the Department of Homeland Security.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON THE JUDICIARY

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on December 9, 2009, at 2 p.m., in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled “Mortgage Fraud, Securities Fraud, and the Financial Meltdown: Prosecuting Those Responsible.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### COMMITTEE ON VETERANS’ AFFAIRS

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Veterans’ Affairs be authorized to meet during the session of the Senate on December 9, 2009. The Committee will meet in room 418 of the Russell Senate Office Building at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### SUBCOMMITTEE ON ECONOMIC POLICY

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and

Urban Affairs, Subcommittee on Economic Policy, be authorized to meet during the session of the Senate on December 9, 2009, at 2 p.m., to conduct a hearing entitled “Weathering the Storm: Creating Jobs in the Recession.”

The PRESIDING OFFICER. Without objection, it is so ordered.

##### SUBCOMMITTEE ON SCIENCE AND SPACE

Ms. STABENOW. Mr. President, I ask unanimous consent that the Subcommittee on Science and Space of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on December 9, 2009, at 2:30 p.m. in room 253 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Ms. STABENOW. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs’ Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on December 9, 2009, at 2:30 p.m. to conduct a hearing entitled, “The Diplomat’s Shield: Diplomatic Security in Today’s World.”

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDERS FOR THURSDAY, DECEMBER 10, 2009

Mr. BAUCUS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Thursday, December 10; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 3590, the health care reform legislation; that following leader remarks, the time until 1 p.m. be for debate only and equally divided, with the time until 11 a.m. controlled between the two leaders or their designees, with the remaining time until 1 p.m. controlled in alternating 30-minute blocks of time, with the majority controlling the first block and the Republicans controlling the next block.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BAUCUS. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:19 p.m., adjourned until Thursday, December 10, 2009, at 10 a.m.

## NOMINATIONS

Executive nominations received by the Senate:

## DEPARTMENT OF ENERGY

PATRICIA A. HOFFMAN, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (ELECTRICITY DELIVERY AND ENERGY RELIABILITY), VICE KEVIN M. KOLEVAR, RESIGNED.

OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

LARRY PERSILY, OF ALASKA, TO BE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS FOR THE TERM PRESCRIBED BY LAW, VICE DRUE PEARCE, RESIGNED.

## DEPARTMENT OF STATE

MARI CARMEN APONTE, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF EL SALVADOR.

DONALD E. BOOTH, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA.

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

*To be lieutenant*

KEITH E. TUCKER

*To be ensign*

BRETT E. FLOYD

BRANDY E. GEIGER  
ANTHONY J.M. IMBERI  
BRIAN R.C. KENNEDY  
ROBERT J. MITCHELL  
LINH K. NGUYEN  
ALISE N. PARRISH  
AMBER M. PAYNE  
ADAM C. PFUNDT  
TAMERA J. REUL  
KELLY M. SCHILL  
MICHAEL S. SILAGI  
TANNER A. SIMS  
DAVID O. VEJAR  
JASON P.R. WILSON

## IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT AS A PERMANENT COMMISSIONED OFFICER IN THE UNITED STATES COAST GUARD IN THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 211(A):

*To be lieutenant*

ROBERT A. MOOMAW

## IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be major general*

BRIG. GEN. CAROL A. LEE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be major general*

BRIGADIER GENERAL ERIC W. CRABTREE  
BRIGADIER GENERAL WALLACE W. FARRIS, JR.  
BRIGADIER GENERAL CRAIG N. GOURLEY  
BRIGADIER GENERAL DAVID S. POST  
BRIGADIER GENERAL DONALD C. RALPH  
BRIGADIER GENERAL JON R. SHASTEEN  
BRIGADIER GENERAL RICHARD A. SHOOK, JR.  
BRIGADIER GENERAL JAMES N. STEWART

BRIGADIER GENERAL LANCE D. UNDHJEM

## IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

*To be colonel*

JAMES R. AGAR II  
JANE E. BAGWELL  
RANDALL J. BAGWELL  
MICHAEL R. BLACK  
JOHN P. CARRELL  
DAVID K. DALITION  
THERESA A. GALLAGHER  
TYLER J. HARDER  
FRANCIS P. KING  
KARL W. KUHN  
MICHAEL O. LACEY  
MARK D. MAXWELL  
THOMAS C. MODESZTO  
FRANKLIN D. RAAB  
JAMES H. ROBINETTE II  
PAUL T. SALUSSOLIA  
RALPH J. TREMAGLIO III  
STEVEN B. WEIR  
KERRY M. WHEELAHAN

## WITHDRAWAL

Executive Message transmitted by the President to the Senate on December 9, 2009 withdrawing from further Senate consideration the following nomination:

COAST GUARD NOMINATION OF RICHARD A. MOOMAW, TO BE LIEUTENANT, WHICH WAS SENT TO THE SENATE ON NOVEMBER 16, 2009.

## HOUSE OF REPRESENTATIVES—Wednesday, December 9, 2009

The House met at 10 a.m. and was called to order by the Speaker.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord our God, throughout the ages of Holy Scripture, You have made promises to Your people; and Your divine promises were always fulfilled, in due time.

Be with Your people today. Realize in our day the hopes of compassion, peace, and justice You have placed within our hearts. Our deepest prayers are wrapped in such promises.

Look not upon our sins, Lord, unless it is to forgive and set us free. Fulfill in us Your word of salvation, both now and forever.

Amen.

### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

### PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Montana (Mr. REHBERG) come forward and lead the House in the Pledge of Allegiance.

Mr. REHBERG led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain up to 15 requests for 1-minutes on each side of the aisle.

### STAND UP FOR THE TROOPS

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. Today I will begin circulating two privileged resolutions which will trigger debate and votes on a timely withdrawal of our troops from Afghanistan and Pakistan. Article I, section 8 of the U.S. Constitution makes it Congress' responsibility to determine whether or not we go to war or stay at war. Consistent with article I, section 8, the privileged resolutions will invoke the War Powers Act of 1973. I ask for your support of these resolutions which will be introduced in the House in January.

Yesterday, with the Secretary of Defense at his side, the President of Afghanistan declared that his country's security forces will need financial and training assistance from the U.S. for the next 15 to 20 years. We cannot afford these wars. We cannot afford the loss of lives. We cannot afford the cost to taxpayers. We cannot afford to fail to exercise our constitutional right to end the wars.

Please sign on to the privileged resolutions to end the wars and bring our troops home. Stand up for the troops. Stand up for the truth. Stand up for the Constitution and Congress' responsibility.

### CALLING FOR A STIMULUS AUDIT

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, American taxpayers deserve an audit of stimulus funds. Taxpayers have faced weeks of fake jobs in fake districts posted on recovery.gov. We have heard the Government Accountability Office announcement that one in 10 jobs are fake. Action must be taken.

I have introduced the National Commission on American Recovery and Reinvestment Act to create a bipartisan commission to investigate how many jobs have actually been saved or created by the Recovery Act. The commission will look at the circumstances in which these jobs have been saved or created. The commission will make recommendations on what works to save or create more jobs and what steps can be made to prevent the improper spending of taxpayer dollars, such as The Hill's front page disclosure today of a Democrat pollster receiving \$6 million to preserve three jobs.

In conclusion, God bless our troops, and we will never forget September the 11th in the global war on terrorism.

### INSURANCE COVERAGE OF ABORTION

(Mrs. CAPPS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CAPPS. Mr. Speaker, one of the more divisive issues in our health reform debate has unfortunately been how to treat insurance coverage of abortion. Everyone agrees our goal is to preserve the status quo. Yesterday

our colleagues in the Senate did exactly that by tabling the Nelson amendment, modeled after the Stupak amendment, which would have severely restricted a woman's access to reproductive health care services.

The status quo means no Federal funding for abortion other than in cases of rape, incest or life endangerment of the woman. The status quo means entities that receive Federal funds may use their own private funds for activities that are being prohibited from being paid for with Federal money. An example of this are the churches which receive millions of dollars in taxpayer funds every year to provide social services, but must segregate those funds from other funds used to engage in religious activity.

Similarly, the amendment I passed in the Energy and Commerce Committee, along with the current Senate language, maintains the same principle without eroding a woman's legitimate access to a legal medical procedure.

I urge my colleagues to reject inclusion of the harmful Stupak language in any final version of the health reform legislation. Maintain the Senate's language and the status quo.

### SEALS TRIAL

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, President Obama is shifting our strategy to fight terrorists from a military model to a legal crime enforcement model. Case in point, this week, three Navy SEALs were arraigned on charges related to punching terrorist leader Ahmed Abed after he killed and mutilated four Americans in Iraq. A punch to the gut has led to the prosecution of three of our most highly dedicated and highly trained servicemen. Al Qaeda has many weapons and tactics to harm our troops, among them the weapon of our judicial system and the tactic of claiming abuse by our soldiers.

The SEALs risked their lives to capture Abed alive, when it may have been easier to kill him with a hellfire missile fired from a drone. They did not question the necessity of bringing Abed in alive so that he could be interrogated and so that valuable intelligence could be gathered.

Why would our soldiers undertake future operations when they too could be prosecuted based on the word of a terrorist? The Obama administration is

taking us down a slippery slope where our legal system impedes our ability to fight an enemy that shows no regard for innocent lives.

#### REPRODUCTIVE RIGHTS IN HEALTH CARE REFORM

(Ms. CHU asked and was given permission to address the House for 1 minute.)

Ms. CHU. Last night the Senate stood up for women. Last night the Senate rejected an amendment that would have hurt women all across this Nation. Though we won the battle, the fight is not over. We must oppose the Stupak language in the final health care bill. It was on this House floor that we passed the historic health care vote.

But there is one moment that night that I'll never forget. I'll never forget looking up at the vote board and seeing that our House voted for the biggest rollback of women's reproductive rights in decades. My heart sank. Thirty years ago I got into the women's movement to ensure that women would not die in a back-alley abortion with coat hangers.

Today, women finally have choice over their own bodies, but with the Stupak amendment that changes. It was not a compromise. Women will lose benefits. Plans will not offer abortion coverage. Women will be forced to buy an extra rider for abortion ahead of time. And what woman plans to have an abortion?

Let's not make women the sacrificial lamb of health care reform. Let's pass health care reform that benefits all Americans.

#### HEALTH CARE REFORM

(Mr. CARTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CARTER. Mr. Speaker, a constituent statement to Congress by Judy Brady of Texas District 31 on health care reform. I received this, and I wanted to read it to the rest of the Congress:

You tell us that the government needs to control health care because the government can administer programs more cheaply and fairly than the private system. Of course, recent studies show that nearly 10 percent of all Medicare payments are fraudulent. Why should we believe that government can do a better job with the entire Nation's health care system than it already does with Medicare?

We ask you to leave health care in the hands of doctors and patients and that you help drive down the costs of insurance so that more of us can be covered. Give us nationwide competition between private insurers, allow us tax deductions for insurance we pur-

chase, and promote tort reform. Don't force us into a government system that will cost us more and cover us less.

#### REFORMING WALL STREET TO PROTECT MAIN STREET

(Mrs. DAHLKEMPER asked and was given permission to address the House for 1 minute.)

Mrs. DAHLKEMPER. Mr. Speaker, last year we witnessed the near collapse of our financial system. According to one estimate, the United States lost an estimated \$8.3 trillion of wealth in 2008. Right now, more than 15 million Americans are unemployed and looking for work. Families and businesses continue to struggle as our economy slowly recovers. We must ensure that this never happens again.

Hardworking Americans on Main Street have been the victim of Wall Street's excess and greed and also of Washington's failure to hold investors accountable. Our constituents, the American people, deserve better. The Wall Street Reform and Consumer Protection Act of 2009 will rein in risky behavior on Wall Street and create powerful protections for middle class families.

I urge my colleagues to stand up for middle class families and protect their financial future by supporting H.R. 4173.

#### FISCAL RESPONSIBILITY

(Mr. REHBERG asked and was given permission to address the House for 1 minute.)

Mr. REHBERG. This year, for Christmas, my wife, Jan, and I took out three loans for our three children, \$40,000 each. Of course, since my youngest daughter isn't old enough to get a loan, we had to sign for it, but the bank assured us she'd have to pay it all the same. Then with the \$120,000 in new-found credit, Jan and I went on a spending spree, leaving our children to repay \$40,000 each. Great, huh?

Of course this story isn't literally true. No parent would dream of saddling their children with \$40,000 in debt. No parent would do that, but right now the estimated share of the national debt is \$40,000 per American man, woman, and child; and that debt is just as real.

That's why I've cosponsored a resolution to require any increase in the statutory debt limit be considered as a stand-alone bill and passed by a supermajority of Congress. If we're not going to cut up the government's credit card, then let's make it harder to get new cards when we max the old one out.

#### ONE PERSON CAN CHANGE THE COURSE OF HISTORY

(Mr. BRALEY of Iowa asked and was given permission to address the House

for 1 minute and to revise and extend his remarks.)

Mr. BRALEY of Iowa. Mr. Speaker, I rise today to congratulate my good friend, Dr. Jim Young, on his impact on the health care reform debate. Earlier this year, Jim gave me a copy of the book, "Overtreated," by Shannon Brownlee. This book, and Jim's encouragement, opened my eyes to the shortcomings of our country's reimbursement model, a fee-for-services model, and the need to go to a health care delivery system that rewards high-quality, low-cost patient outcomes.

After months of negotiations, I'm proud we were able to secure language in the House bill to finally achieve a quality-based reimbursement model. Jim has been practicing family medicine in Iowa since 1973, following his service in the United States Navy. He's a valuable adviser and friend, and his insights and inspiration helped improve the House Health Care Reform bill to better serve all America. His spirit and his example show what one person can do to change the course of history.

□ 1015

#### DISTINGUISHED FLYING CROSS AWARDED TO GEORGE OHLMAN

(Mr. COFFMAN of Colorado asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COFFMAN of Colorado. Mr. Speaker, on Saturday, November 28, in Franktown, Colorado, I was privileged to present George Ohlman with his Distinguished Flying Cross.

Mr. Ohlman, 88 years old, was a pilot and flight leader in the famed "Thunder Bums" fighter squadron during World War II flying combat missions over Europe in P-47 Thunderbolts. Ohlman flew over 100 combat missions in World War II. Mr. Ohlman was awarded the Distinguished Flying Cross for his—and I quote from the award record—"extraordinary leadership and superior flying ability."

On September 3, 1944, near Mons, Belgium, then-Lieutenant Ohlman led his wingman in a strafing run on enemy positions. His aircraft received several direct hits, but he nevertheless continued the attack until out of ammunition. Due to the chaos and confusion prevalent during war, he never actually received the medal. Rectifying that oversight last month was a great honor for me.

#### OPPOSITION TO THE STUPAK- PITTS AMENDMENT

(Ms. WOOLSEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I join my colleagues today to show opposition to the Stupak-Pitts amendment

and its new limitation on women's reproductive rights. The House bill already had language that reflects current law prohibiting funds from being used for abortion while allowing women to use their own money to buy the coverage that they need.

The Stupak-Pitts amendment goes beyond the Hyde amendment. It sets new precedent for restricting women's rights and eliminating coverage for an important and legal health service that millions of women currently have. That's why I will join with my colleagues to vote against any final health reform bill if it contains the Stupak-Pitts amendment.

#### LESSONS FROM AFGHANISTAN

(Mr. OLSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OLSON. Mr. Speaker, I just returned from a trip to Afghanistan to assess the conditions on the ground. I want to update my colleagues on what I saw.

First of all, our military leadership has expressed confidence in our ability to achieve victory, and they need the additional troops promised by President Obama. The bigger problem lies with Afghanistan itself.

President Karzai must do the following to ensure success in Afghanistan: end the corruption, provide credible Afghan security forces, eliminate the illicit drug production, and grow the Afghan economy. These conditions are paramount to achieving victory when the U.S. military departs the country. And finally, Pakistan has to step up and stop serving as a safe harbor for terrorist insurgents.

The morale of our troops are high, and our commanders on the ground are confident that we can win if Afghanistan and Pakistan achieve these goals. None of these goals are easy, but they are crucial to the success of the security of Afghanistan.

#### OPPOSITION TO THE STUPAK-PITTS AMENDMENT

(Ms. SCHAKOWSKY asked and was given permission to address the House for 1 minute.)

Ms. SCHAKOWSKY. Mr. Speaker, I rise on behalf of my constituents who called, faxed, emailed me in strong opposition to the Stupak-Pitts language and its inclusion in health care reform.

The grand myth in this debate is that the Stupak amendment is simply an extension of current law, which prohibits the use of Federal funds for abortions except in the case of rape or incest or to protect the life of a mother. It is not current law. It would be the largest restriction on abortion access since *Roe v. Wade*—preventing women from using private dollars to purchase coverage for a legal medical service.

A recent George Washington School of Public Health study warns that the Stupak language will reduce access to women who already have it by encouraging insurers to "drop coverage in all markets." That is not the status quo.

The Stupak-Pitts language is unfair, unnecessary, and unwise. The Senate rightly rejected it last night. It cannot be part of health care reform. Women will not be forced back to back alleys.

#### MEDICARE CUTS WOULD IMPACT OUR SENIORS

(Mr. BOUSTANY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOUSTANY. Mr. Speaker, this week debate continues in the Senate over a massive health care overhaul. What's at stake for seniors? Many seniors will probably see their benefits cut or higher premiums. The Senate bill cuts more than \$135 billion from hospitals serving seniors. It cuts \$40 billion from home health agencies, \$15 billion from nursing homes, and nearly \$8 billion from hospices—an all-important service our seniors depends on.

Seniors deserve to know how Washington Democrats are going to pay for their massive new government-run bureaucracy because cuts like these will affect their care.

As a heart surgeon, I know that we can do better. We need to work together to strengthen Medicare, putting it on sound footing to ensure that it will be there when seniors need help with their health care costs.

We need to lower health care costs for seniors and all Americans by increasing competition in the insurance marketplace, promoting wellness programs, and limiting frivolous lawsuits in medicine. We can accomplish these commonsense solutions if we work together.

Let's protect seniors. Let's protect Medicare.

#### AMERICAN JOBS ARE TRENDING IN THE RIGHT DIRECTION

(Mrs. MALONEY asked and was given permission to address the House for 1 minute.)

Mrs. MALONEY. Mr. Speaker, while one month with fewer job losses does not show success, it certainly shows that we are trending in the right direction.

This blue is since President Obama took office; the red is the time under former President Bush. You see back in January of 2008 we started losing jobs. Here is when the Presidential candidate for the Republicans claimed that the fundamentals of our economy were sound. And in the last month that President Bush was in office, this country lost over 740,000 jobs.

The blue shows the direction under the Obama administration where we

are trending in the right direction. It's not success, but it certainly shows we are trending in the right direction from over 70,000 jobs to 11,000 jobs. It's a tragedy for any family that has lost a job, but it does show that one election has truly made a difference in our economy.

#### JOBS AND THE ECONOMY

(Mr. SAM JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, you know the American people deserve some answers. Where are the jobs? Ten months after passing a \$787 billion stimulus package, unemployment has reached 10 percent and thousands of workers have stayed unemployed for 6 months or more. Unfortunately, the Democrats still think throwing money at the struggling economy will fix it.

Albert Einstein once said, "The definition of insanity is doing the same thing over and over again expecting different results." The first stimulus didn't work. The new stimulus would only increase the already massive deficit and provide a temporary fix.

Higher taxes and higher spending is not the formula for economic growth. What America really needs is to encourage entrepreneurial activity, help small businesses, and get the government out of our pockets.

#### OPPOSITION TO STUPAK-PITTS AMENDMENT

(Ms. SLAUGHTER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I've witnessed the horror of choice between back alley abortions and sometimes unforced marriages to try to avoid disgrace. Those were the realities that women faced prior to 1973. My fear is if this harmful Stupak-Pitts language is signed into law, we will revert back to those dark times.

Critical to this debate is a breakdown of the facts. The opposition says that it codifies current law. It is grossly incorrect. Stupak-Pitts goes far beyond current law, placing unprecedented restrictions on the individual's use of their own private dollars. The Hyde amendment does not apply to private funding nor does it apply to administrative costs. It has only placed limits on direct Federal appropriations being used to fund abortion benefits. That brings in everyone who has insurance from their employer, which is tax exempt, which means, of course, a Federal subsidy.

The Hyde amendment does not include similar, far-reaching language. Seventeen States currently provide



abortion coverage without separate funding.

We must not go back to the back alley.

#### UNITED STATES IN DANGER OF LOSING ITS CREDIT RATING

(Mrs. SCHMIDT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHMIDT. Mr. Speaker, I rise again this morning to remind this body that we must stop this runaway spending in Congress or we are in jeopardy of losing our AAA credit rating. This would greatly hurt the United States of America's credit.

Moody's Investment Services indicates the United States will lose its AAA rating in 2013 if Congress continues to put us on this fiscal train wreck of too much spending and record Federal deficits. The Federal deficit for 2009 was \$1.4 trillion, tripling our record. The President's own Office of Management and Budget estimated in August that the budget deficit would be more than \$9 trillion over the next 10 years. Add this to the \$12 trillion in U.S. debt, and we're on a track to nearly double our record.

Mr. Speaker, we must stop the spending and stop it now.

#### THE BIRTHERS AND DENIERS ARE WRONG

(Mr. INSLEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, the President is right to go to Copenhagen and lead the world against global warming. He is right to defeat the birthers who have tried to stop him from being President and the deniers who refuse to accept the fact of global warming. Both the birthers and the deniers refuse to accept clear, pure facts.

I just read that a former Governor of Alaska was arguing today in a newspaper that there is no such thing as global warming associated with human activity. She needs to read the National Academy of Sciences report which concludes it is a fact. She needs to read the report of NASA—the people who put the men on the Moon—that concludes this is a fact. She needs to read the NOAA reports about acidification of the ocean which shows it is a fact.

The birthers and the deniers are wrong. We should restore American leadership and make sure the jobs of the future clean energy economy are here, not just in China. The President is right; the deniers are wrong yet again.

#### WHERE ARE THE JOBS

(Ms. FOXX asked and was given permission to address the House for 1

minute and to revise and extend her remarks.)

Ms. FOXX. Mr. Speaker, in January, President Obama and congressional Democrats promised spending another trillion dollars would create jobs immediately and that unemployment would not rise above 8 percent. Almost 1 year later, millions of Americans are still plagued by unemployment and many are struggling to make ends meet. In October, 190,000 jobs were lost and more than 2.8 million jobs have been lost since the so-called stimulus was signed by President Obama.

The American people continue to ask, Where are the jobs? I can safely say the answer lies in the House Republican economic recovery plan. Our plan provides targeted tax relief for working families and small businesses. Just as American families must improve their economic situations through fiscal discipline, so, too, must this Congress.

House Republicans are passionately committed to creating jobs and getting the American people back to work.

□ 1030

#### WOMEN'S REPRODUCTIVE RIGHTS

(Ms. HIRONO asked and was given permission to address the House for 1 minute.)

Ms. HIRONO. Mr. Speaker, reproductive self-determination is one of the most fundamental civil and human rights a woman can have. And this right is under attack in the health care reform debate. Let's be clear that the real goal of the anti-choice opposition is not to maintain the status quo. Rather, they want to extend Federal prohibitions into private pocketbooks. They hope to make abortion coverage so unattractive that insurers eventually stop offering coverage for an otherwise legal medical procedure.

Women do not plan to have unintended pregnancies or pregnancies with complications. Unfortunately, these do happen. It is deeply insulting to tell women that if you want to guard against these unplanned situations, go buy additional coverage.

Essentially, health insurance companies today already treat being a woman as a preexisting condition, and they charge us more for it. The men of this country would rise up in protest if they faced this kind of unequal treatment based on conditions particular to their gender.

#### JOB RECOVERY

(Mr. SIRES asked and was given permission to address the House for 1 minute.)

Mr. SIRES. Mr. Speaker, today Congress is faced with one of the greatest economic challenges of our time: high unemployment rates. It is a challenge

that we must be determined to meet. While current unemployment numbers are still too high, the continued decline of job losses is a promising sign of economic recovery that we must build on.

We have already taken bold steps to lift our Nation out of recession. Since January, we have stabilized the financial system, revived lending to small businesses, prevented home foreclosures, cut taxes for the middle class, extended unemployment insurance, and created and saved more than 1 million jobs.

We must now build on this progress for continued job growth. Yesterday, the President outlined a frame of action to produce the greatest number of jobs while generating the greatest value for our economy. His top priorities include helping small businesses grow and hire new staff, additional investments in our roads, bridges, and infrastructure to create shovel-ready jobs, and increased investments in clean energy to spawn more green jobs.

In order to face our unemployment crisis head-on, Congress must follow the President's lead by passing a comprehensive jobs recovery package.

#### WALL STREET REFORM AND CONSUMER PROTECTION

(Mr. PASCRELL asked and was given permission to address the House for 1 minute.)

Mr. PASCRELL. Mr. Speaker, for 8 years, President Bush's administration looked the other way as Wall Street exploited our financial system and ignored mounting risks. This failure to regulate our markets led to Wall Street gambling with America's livelihood and compromised our families' futures and savings.

Here we go again, making the tough choices that are necessary to bring our economy back from the brink of disaster. This great Nation is suffering the consequences of a period in our history where living beyond our means plagued not only American consumers but also those on Wall Street whose greed compelled them to take indefensible risks. The market failed us. It certainly wasn't a free market. It's beyond a "minor adjustment."

Wall Street reform is a critical step as we turn the tide and change not only how we deal with our financial sector but also where we lay to rest 8 years that marked the most fiscally irresponsible period in our Nation's history.

As we rebuild our economy, we must put in place commonsense rules to ensure Wall Street cannot jeopardize our recovery again.

#### STUPAK AMENDMENT

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, I rise in objection to the Stupak-Pitts amendment that was added to our Affordable Health Care for America Act 1 month ago. It represents an overreach that denies women the right to buy abortion coverage with their own money. It will eventually deny all but the wealthiest women in America access to reproductive choice.

Were it up to me and many of my colleagues on both sides of this issue, abortion would never have intruded into our health care debate like this. But sadly, the Conference of Catholic Bishops had other ideas. They chose to hold comprehensive health care reform hostage to the abortion issue. They lobbied for this legislation in a manner that was unbecoming to our faith, and in doing so, they failed their obligation to help the poor and heal the sick.

Nonetheless, I'm heartened to see that, yesterday, our colleagues in the other body rejected a similarly overreaching amendment. I hope that we will get back to a common ground approach when it returns from conference. America's women need a health care bill that ends discrimination against them, not encodes it ever further into our system of law.

#### PROVIDING FOR CONSIDERATION OF H.R. 4213, TAX EXTENDERS ACT OF 2009

Mr. ARCURI. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 955 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

##### H. RES. 955

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4213) to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. The bill shall be considered as read. All points of order against provisions in the bill are waived. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means; and (2) one motion to recommit.

The SPEAKER pro tempore (Mr. PASITOR of Arizona). The gentleman from New York is recognized for 1 hour.

Mr. ARCURI. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. LINCOLN DIAZ-BALART). All time yielded during consideration of the rule is for debate only.

##### GENERAL LEAVE

Mr. ARCURI. I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and insert extraneous materials into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. ARCURI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule provides for consideration of H.R. 4213, the Tax Extenders Act of 2009. The rule waives all points of order against consideration of the bill except those arising under clause 9 and 10 of Rule XXI and against the bill itself. The rule provides that the previous question shall be considered as ordered without intervening motion except 1 hour of debate and one motion to recommit with or without instructions.

Mr. Speaker, I rise today in support of this rule to assist American families and small businesses with needed tax relief in a time when American citizens and American small businesses are beginning to turn the corner. This rule will allow us to bring legislation to the House floor later today that will not only strengthen our economy by directing tax relief to middle class families and creating jobs at small businesses, but will also do this in a deficit neutral, fiscally responsible way.

Since being elected to Congress, I have repeatedly voted, along with my colleagues, to cut taxes for middle class families and small businesses. In doing so, we have upheld our pledge to the American people, and I have kept a promise I made to my constituents to provide much-needed tax relief and incentives for economic growth.

I know that there are many families and businesses in my district that are struggling in the current economic crisis with rising costs of everyday items, including food, gas and health care. The legislation this rule provides for consideration of will extend a number of critical tax-relief measures that are relied upon by middle class families and small businesses to improve the quality of life and strengthen our economy.

I am aware that we face harsh realities in addressing the current economic crisis. While these are challenging times, we simply cannot endlessly borrow our way out of this situation. The legislation we will consider under the rule strikes the necessary balance between continuing the tax incentives that will help families and businesses continue to improve their position while offsetting the cost of extending these provisions by tightening tax compliance and making commonsense changes to the tax treatment of compensation paid to hedge fund managers. This change applies to investment fund managers the same rules that apply to real estate agents, waiters and CEO stock options.

In doing so, we will extend \$30 billion of expiring temporary tax provisions through 2010, including the existing deductions for tuition expenses, the re-

search and development tax credit, and the State and local property tax deduction, among others, and we will do so without increasing the deficit and without any additional borrowing.

The American people understand the idea of PAYGO, that Congress should have to balance its books just as they do. Mr. Speaker, the House of Representatives continues to show a strong commitment to the pay-as-you-go rule adopted in January of 2007. I applaud my Blue Dog colleagues for their outspoken leadership on PAYGO, and I am proud that the House has passed legislation that would create statutory PAYGO.

All of the incentives that are included in this package will expire at the end of the year unless Congress acts to extend them. It is vitally important that these tax incentives are extended in order to maintain the economic recovery that has slowly started to take hold in this country.

The legislation's extenders create important tax credits for individuals. It extends the deductions for tuition and education expenses, helping families send their children to college. It continues to allow teachers to claim a credit for up to \$250 in out-of-pocket purchase of classroom supplies to better educate our children, and it extends the increased standard deduction for State and local property taxes so that working families can keep more of their hard-earned dollars for other necessities during these tough economic times.

The legislation includes an extension of several provisions important to businesses, including the credit for a company's R&D expenditures. Extending the research and development credit is vital to ensuring that American companies remain competitive and on the cutting edge of innovation. This credit is of particular interest to the area of New York that I represent because its extension will further the expansion of the microchip fabrication and nanotechnology industries which are beginning to blossom in upstate New York.

In the past, the R&D tax credit has lapsed, and Congress has had to retroactively extend it. American companies rely on this credit and upon its continuity so they can adequately plan for their long-term research projects. I support this proactive extension to provide that continuity, and I will continue to work for a much-needed permanent extension that would eliminate concerns for further expirations or lapses.

The bill also extends expiring measures to address the drop in charitable giving that has been caused by the current state of our economy. It does so by extending deductions for charitable

contributions of real property, food inventories, books, and computer equipment. The bill allows tax-free charitable contributions from an IRA account of up to \$100,000 per taxpayer per year.

When I speak with constituents who work and volunteer their valuable time with not-for-profit organizations, they tell me this is more important than ever today in our struggling economy. These provisions help those organizations continue to provide the assistance to those in need, which is particularly important today.

Supporting this rule and the tax-relief legislation we will consider later today is simple and common sense. We can provide tax relief and incentives to middle class families, spur innovation, retain and create jobs, reduce our dependence on oil from hostile nations, and reduce greenhouse gases. And we can do it all in a fiscally responsible manner.

Mr. Speaker, I urge my colleagues on both sides of the aisle to support this rule and the underlying legislation.

I reserve the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I would like to thank my friend, the gentleman from New York (Mr. ARCURI), for the time, and I yield myself such time as I may consume.

The underlying legislation of H.R. 4213, the Tax Extenders Act of 2009, extends for 1 year a number of non-controversial, temporary tax-relief provisions that are set to expire at the end of this year. These provisions will benefit individual taxpayers, students, teachers, small businesses, and other companies that invest in research and development.

While I support these temporary tax-relief extensions, I believe that these tax provisions should be made permanent, or that at the very least they should be extended for more than 1 year. For example, the bill includes a 1-year extension of the sales tax deduction. This provision is very important in Florida, the State that I'm honored to represent, because without this deduction, Floridians would end up paying significantly more taxes to the Federal Government than the taxpayers with similar profiles in different States.

□ 1045

These year-to-year extensions, while better than no extension, fail to provide the predictability and the certainty that small businesses and families need to plan their budgets. Leaving these important tax-relief provisions to the last minute, also, I believe, is most unfortunate. It unnecessarily places an additional burden on families and small businesses that are already struggling in this economy.

I also oppose the inclusion in this legislation of a permanent tax to pay

for temporary tax relief. The bill would raise the tax rate on investment gains received from an investment services partnership interest, which is currently taxed at a rate of 15 percent, to a rate as high as 35 percent at the end of 2010, and then the tax will rise to 39 percent.

My colleagues on the other side of the aisle claim that this is a tax on Wall Street venture funds; but as our friend, Congressman KEVIN BRADY, explained last night when he testified before the Rules Committee, about half of that tax will be paid by real estate partnerships that build apartments, homes and shopping centers in our communities. Those real estate partnerships invest in new infrastructure in our communities and they help create jobs in the construction industry. Yet once this tax hits those partnerships, they may very well reconsider their investment decisions and abandon their partnerships for other investments, further hurting our communities and hampering possible economic recovery.

The construction industry has been hit very hard, Mr. Speaker, in the community that I am honored to represent, and too many jobs have been lost. What we need to be doing is providing incentives for job growth and investment in the construction industry. Unfortunately, we are doing the opposite with this legislation.

During his first inaugural address, President Reagan said, It is not my intention to do away with government. It is, rather, to make it work, work for us, not over us, stand by our side, not right on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it.

The legislation being brought to the floor today will not do what President Reagan said we need to do.

With unemployment at 10 percent and an economy struggling to recover, this is not the time to raise taxes, particularly a tax on capital investments that help create jobs. This new tax will discourage the entrepreneurial risk-taking that our economy desperately needs right now in order to create new jobs.

Mr. Speaker, for centuries the United States prospered because we have been the safest place in the world to invest. It was good for business to invest in the United States, to create new businesses, in other words, to create jobs in the United States. We are moving away from that philosophy that made this country the most prosperous Nation in the history of the world. Because of that, our economy will continue to suffer. We are moving away from that.

Just yesterday the President, for example, called for increased capital investments in small businesses. Yet here we are today, ironically, increasing taxes on capital investments that could help small businesses grow and

provide them the capital to hire new workers.

During yesterday's Rules Committee hearing, we heard testimony from my friend and distinguished colleague from Louisiana (Mr. CAO) regarding a proposed amendment that he wished to have the House debate today. His amendment would extend the time for making low-income housing credit allocations under the Gulf Opportunity Zone Act by 2 years. According to Mr. CAO, this extension is needed to preserve the availability of financing for affordable housing projects in the Gulf States. This amendment is just another example of Mr. CAO's thoughtful efforts continuously on behalf of his constituents.

Unfortunately, the majority on the Rules Committee decided that once again they would block all amendments from consideration, including Mr. CAO's, as well as amendments submitted for consideration by Mr. BRADY, Mr. REICHERT and Mr. GEOFF DAVIS of Kentucky. It's unfortunate the majority continuously closes down the process and blocks consideration of amendments.

Yet, Mr. Speaker, they campaigned on the promise of openness. They said they would open this process as it had never before been opened, that there would be a transparency that had never before been seen; and what we have seen is exactly the opposite.

They have closed the process like never before. The majority should have allowed consideration of all the amendments to the legislation that were submitted before the Rules Committee, Mr. Speaker.

I reserve the balance of my time.

Mr. ARCURI. Mr. Speaker, I yield 3 minutes to the gentleman from Texas, a member of the Committee on Ways and Means, Mr. DOGGETT.

Mr. DOGGETT. I thank the gentleman.

This rule provides for consideration of a \$31 billion spending bill, including some worthwhile provisions and some not-so-worthwhile provisions. Approval of this tax extenders package has become something of an annual ritual, regardless of whether Democrats or Republicans are in charge, and the term "temporary tax break" has become an oxymoron.

If today's proposal required the government to write more checks to Wall Street and other fortunate Americans, there would be howls of protest; but because this involves tax expenditures, not direct expenditures, there is no protest, and there is no scrutiny of the expenditures. A tax expenditure occurs when this Congress decides to award some interest group, usually those with the most powerful lobbyists, the right to avoid paying taxes on the same basis as the rest of us by writing in some preference, deferral, loophole, or tax break.

The principal alleged virtue of today's bill is that it changes nothing. There is nothing more, there is nothing less than the advantages that Congress has repeatedly extended in the past.

In a modest effort to address the glaring disparity between the sunlight of the appropriations process and the shadows of the Tax Code, today's legislation does include a new requirement that I authored requiring that the Joint Committee on Taxation and the Government Accountability Office thoroughly evaluate and report on a set of criteria, the cost-effectiveness of each of these tax expenditures.

The Center for Tax Justice has been an invaluable partner in securing this provision. A good example of the urgent need for review was provided only yesterday regarding one of the most popular provisions in this bill, the research tax credit, that I have long personally supported. Calling for its permanent extension has become synonymous with being tech friendly and being concerned with economic growth.

But the Government Accountability Office "identified significant disparities in the incentives provided." It determined that "a substantial portion of credit dollars is a windfall" for some, while much "potentially beneficial research" receives nothing. That is why we should be scrutinizing these tax expenditures, even the most popular, at least as closely as we do direct expenditures.

On the plus side, today's bill does effectively address international tax evasion by individuals. On the minus side, it does nothing to stop an even more egregious abuse by corporations shifting jobs and tax revenues overseas. In fact, while some try to draw a distinction between illegal tax evasion and tax avoidance, the only real difference between individuals illegally hiding their cash overseas and corporations manipulating the Tax Code is that the corporations have better lobbyists to obtain a veneer of legitimacy.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ARCURI. I yield the gentleman an additional minute.

Mr. DOGGETT. Similarly, the equitable taxation of carried interest in this proposal is belatedly a step forward, but it presents two problems. First, the bill fails to distinguish venture capital, which is so important in spurring new businesses in the most innovative sectors of our economy.

Second, the Senate is most unlikely to accept the financing that we propose here and instead is likely to grab something from our health insurance reform pay-fors and begin taxing employer-provided health insurance as a substitute, something that so many Members of this House have opposed.

Facing a soaring deficit, to me tax justice means before we ask working families to pay any more taxes, we

ought to ask why Congress has done so little to crack down on those getting special treatment and to prevent billions of dollars of tax avoidance. Next year, America deserves a little more tax justice and a more level playing field for small businesses that cannot take advantage of all the dodges available to their multinational competitors.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, it is my pleasure to yield 3 minutes to my good friend from Louisiana (Mr. BOUSTANY).

Mr. BOUSTANY. Mr. Speaker, I rise today to express my deep concern about gulf coast disaster relief left out of this bill.

Yesterday I offered an amendment at the Rules Committee to extend important tax provisions, tax relief provisions, to help gulf coast residents rebuild after the 2005 hurricanes. It's disappointing yet again that the majority is bringing this bill to the floor under another closed rule, prohibiting amendments to be debated.

The economic downturn complicated gulf coast recovery and jeopardized the effectiveness of Katrina and Rita aid. Residents need more time to fully utilize existing disaster assistance programs before they expire.

Congress should extend the GO Zone low-income housing tax credit for an additional year. At risk, currently at risk, are nearly 70 affordable rental housing projects encompassing over 6,000 units along the gulf coast. These projects take time, and this important extension will give investors and developers the confidence to move forward on these very important projects.

Congress should also make disaster-related low-income housing tax credits eligible for the new exchange grant program. This will provide immediate relief to disaster-impacted States as the market for housing tax credits rebounds. The bill also cuts short tax incentives for businesses to invest in the hardest-hit areas along the gulf coast through the special depreciation rules that promote economic development.

My amendment would extend the GO Zone 50 percent first-year bonus depreciation through 2010, bringing new capital to communities struggling to recover. They were hit twice, I mean, hit basically by hurricanes and now the economic downturn.

Look, gulf coast residents are resilient. They are working hard to rebuild, and Congress shouldn't pull the plug on existing disaster programs just as they are starting to make a difference.

What folks need is certainty. Businesses need certainty, and what they are seeing is nothing but uncertainty coming out of Washington. This is not the way to stimulate a recovery, whether it's from hurricanes or from this economic disaster we are facing. We need certainty.

Mr. ARCURI. Mr. Speaker, I reserve the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield 5 minutes to my friend from Louisiana, an extraordinarily thoughtful member of this House, Mr. CAO.

Mr. CAO. I want to thank the gentleman from Florida for yielding, and I just want to thank him personally for his continued commitment and compassion for the people of the gulf coast.

Mr. Speaker, yesterday I offered a bipartisan amendment to the Tax Extenders Act of 2009 for myself and my colleague, CHARLIE MELANCON. This amendment would have extended the place-in-service deadline for low-income housing tax credits under GO Zone for 2 years. If included, it would have freed up more than a billion dollars in delayed housing projects and supported thousands of jobs in the gulf coast and would have contributed greatly to the sustained redevelopment of the hurricane-impacted areas.

The amendment had bipartisan support in both Chambers of Congress. Representatives from HUD, the Obama administration, housing groups and private companies called and wrote letters in support of this amendment. Yet even with this level of support, the Rules Committee voted along party lines not to allow it in the bill.

I cannot say how disappointed I am that this happened. It is disappointing that the committee would choose to act in a partisan fashion rather than with the best interests of the people of the gulf coast in mind.

I have spoken before about how Congress is at its best and serves the people the best when we put partisanship aside and attend to the people's business. It is part of our job description as Representatives to represent their issues and concerns to the best of our abilities.

□ 1100

When we conform to party politics, we fail to make the right decisions for the American people. While it is not unusual to mix policy and politics in our line of work, there are some issues which ought not to be partisan. The development of affordable housing for hurricane victims is one of them. Among the projects placed in jeopardy by this deadline is the Lafitte Housing Project in New Orleans. It is one of the city's oldest and was once made up of 896 units. This site was slated for redevelopment with the same number of units to allow any resident who wished to return the opportunity to do so. Additionally, the site would have had parks, support centers, and homes for sale. Now it looks as though it will remain in limbo because of party politics.

I challenge my Democrat colleagues to look low-income families in the eyes and say that the decision that they made was best for hardworking families.

Low-income families along the gulf coast trying to survive the ravages of Hurricanes Katrina and Rita do not care about party politics. The only thing that they care about is: Will I have affordable housing to shelter my children from the cold? We have to get beyond party politics to address the needs of American families. And I hope that we can correct the language in the tax extenders bill in order to address those who are in need along the gulf coast.

Mr. ARCURI. Mr. Speaker, I continue to reserve the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, we believe, as the overwhelming majority of Americans do, that Members of Congress should have the ability to read bills before they vote on them. It shouldn't be an issue, frankly, because the majority and the distinguished Speaker during the campaign, the political campaign, said that they would have the most open Congress in history and that Members would have at least, should have at least, 24 hours to examine bills before those bills are considered on the floor.

But that hasn't been the case. I remember in the Rules Committee one early morning at 3 a.m. we were handed a 900-page amendment, called the manager's amendment, to energy legislation, the so-called cap-and-trade legislation that we considered a few hours later, just a few hours later here on the floor of the House. No one had any opportunity to vote on that legislation. And then we had similar situations with very significant and extensive pieces of legislation. So the American people were, I think, rightfully so, outraged when they saw those examples of very important and extensive pieces of legislation being brought to the floor without Members of Congress being able to even read them. And they should really be posted online so that not only Members of Congress but the American people in general could read them.

That's why legislation has been filed by a bipartisan group of 182 Members that have signed right there, right at that desk in front of you, Mr. Speaker, a discharge petition, it's called. They go up there and they sign. I signed. 182 Members have signed the discharge petition to bring to the floor legislation saying that Members should have 3 days, that there should be 72 hours, once it's filed, before legislation is brought to a vote on the floor.

So that's why I am asking for a "no" vote on the previous question, so that we can consider that legislation that 182 Members have gone to the desk there and signed, bipartisan legislation by Congressmen BAIRD and CULBERSON. It would not interrupt this legislation that is being brought to the floor at this time, the tax extenders legislation, because if the motion passes, the

motion I'm making, it provides for separate consideration of the Baird-Culberson bill within 3 days. So we could vote on the tax extender bill and then, once we have done that, consider that legislation requiring the 72-hour timeframe for Members to be able to study legislation and, quite frankly, for the American people to read legislation before it's voted on.

Mr. Speaker, I ask unanimous consent to insert the text of the amendment and extraneous materials immediately prior to the vote on the previous question.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. LINCOLN DIAZ-BALART of Florida. Thanking my friend Mr. ARCURI for his courtesy, I yield back the balance of my time.

Mr. ARCURI. Mr. Speaker, I would like to thank my colleague from the Rules Committee and friend from the State of Florida for his able management of this rule.

Mr. Speaker, in closing, I would like to point out that the underlying legislation will extend a number of expiring tax relief that individuals, businesses, and charitable organizations depend on to improve the quality of life and strengthen our community and our economy. These provisions are relied upon by families and individuals struggling with rising costs of everyday items, including food, gas, and health care. They encourage companies to hire more workers and invest in new technologies.

As our country is beginning to turn the corner, the naysayers continue to oppose any necessary substantial change. As if that is not enough, they continue to offer no meaningful alternatives, only more of the same policies of incurring more debt, passing it on to our children, and saying "no" to any responsible policy offered by the majority. It should not be the role of the loyal opposition to oppose every bill the majority offers. That is the reason partisan divide is so wide in this country today.

This bill, H.R. 4213, is a good bill. It is good for Democrats. It is good for Republicans. It is good for all Americans. To say we should not pay for it flies in the face of everything Democrats and Republicans have been saying for months, that we cannot endlessly borrow and increase the debt but must restore fiscal responsibility.

Just a short time ago, I heard a colleague of mine on the other side of the aisle giving a 1-minute speech, saying that we must stop the runaway spending and the record deficits. That's exactly what this bill does. It makes us accountable and pays for the tax extenders. H.R. 4213 strikes the necessary balance between continuing the tax incentives to help families and businesses without increasing the deficit.

I don't think the importance of this fiscal responsibility can be overstated. We all know that these are challenging times, but we cannot endlessly borrow our way out of the situation. And there are only two ways to do the tax extenders: either to borrow and pass it on to our children or to have responsible ways of paying for it. And that's exactly what this bill does, responsibly pays for these very important tax extenders.

For years, borrow-and-spend policies of the previous administration have saddled our children's future with \$9 trillion of foreign-owned national debt, all incurred during relative times of economic prosperity. The debt translates into daily interest payments of \$1 billion.

These tax extenders are paid for. I repeat, they are paid for. H.R. 4213 represents the dedication to commonsense PAYGO principles that we in Congress should have to balance our books even in these tough economic times just as our constituents do. This legislation does exactly that.

I urge my colleagues to vote "yes" on the previous question and the rule because the American people are counting on us to extend these vital tax provisions in order to continue to improve our economy.

The material previously referred to by Mr. LINCOLN DIAZ-BALART of Florida is as follows:

AMENDMENT TO H. RES. 955 OFFERED BY MR. DIAZ-BALART

At the end of the resolution, insert the following new section:

SEC. 2. On the third legislative day after the adoption of this resolution, immediately after the third daily order of business under clause 1 of rule XIV and without intervention of any point of order, the House shall proceed to the consideration of the resolution (H. Res. 554) amending the Rules of the house of Representatives to require that legislation and conference reports be available on the Internet for 72 hours before consideration by the House, and for other purposes. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution and any amendment thereto to final adoption without intervening motion or demand for division of the question except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Rules; (2) an amendment, if offered by the Minority Leader or his designee and if printed in that portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII at least one legislative day prior to its consideration, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read and shall be separately debatable for twenty minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit which shall not contain instructions. Clause 1(c) of rule XIX shall not apply to the consideration of House Resolution 554.

(The information contained herein was provided by Democratic Minority on multiple occasions throughout the 109th Congress.)

# THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Democratic majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives, (VI, 308-311) describes the vote on the previous question on the rule as "a motion to direct or control the consideration of the subject before the House being made by the Member in charge." To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that "the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition" in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: "The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition."

Because the vote today may look bad for the Democratic majority they will say "the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . [and] has no substantive legislative or policy implications whatsoever." But that is not what they have always said. Listen to the definition of the previous question used in the Floor Procedures Manual published by the Rules Committee in the 109th Congress, (page 56). Here's how the Rules Committee described the rule using information from Congressional Quarterly's "American Congressional Dictionary": "If the previous question is defeated, control of debate shifts to the leading opposition member (usually the minority Floor Manager) who then manages an hour of debate and may offer a germane amendment to the pending business."

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled "Amending Special Rules" states: "A refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate." (Chapter 21, section 21.2) Section 21.3 continues: "Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon."

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Democratic majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. ARCURI. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 11 o'clock and 10 minutes a.m.), the House stood in recess subject to the call of the Chair.

□ 1245

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Ms. McCOLLUM) at 12 o'clock and 45 minutes p.m.).

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings now will resume on questions previously postponed as follows:

ordering the previous question on House Resolution 955, by the yeas and nays;

adopting House Resolution 955, if ordered; and

suspending the rules and passing H.R. 3951, by the yeas and nays.

The first vote will be a 15-minute vote. Succeeding votes will be 5-minute votes.

## PROVIDING FOR CONSIDERATION OF H.R. 4213, TAX EXTENDERS ACT OF 2009

The SPEAKER pro tempore. The unfinished business is the vote on ordering the previous question on House Resolution 955, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The vote was taken by electronic device, and there were—yeas 239, nays 182, not voting 13, as follows:

[Roll No. 939]

YEAS—239

Abercrombie  
Ackerman  
Adler (NJ)  
Altmire  
Andrews  
Arcuri  
Baca

Baird  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Berry

Bishop (GA)  
Bishop (NY)  
Blumenauer  
Bocciari  
Boren  
Boswell  
Boucher

Boyd  
Brady (PA)  
Braley (IA)  
Brown, Corrine  
Butterfield  
Capps  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Castor (FL)  
Chandler  
Childers  
Chu  
Clarke  
Clay  
Clever  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crowley  
Cuellar  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dicks  
Doggett  
Doyle  
Driehaus  
Edwards (MD)  
Edwards (TX)  
Ellison  
Ellsworth  
Engel  
Eshoo  
Etheridge  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Garamendi  
Giffords  
Gonzalez  
Gordon (TN)  
Grayson  
Green, Al  
Green, Gene  
Griffith  
Grijalva  
Gutierrez  
Hall (NY)  
Halvorson  
Hare  
Harman  
Hastings (FL)  
Herseth Sandlin  
Higgins  
Himes  
Hinchey  
Hinojosa  
Hirono

Hodes  
Holden  
Holt  
Honda  
Hoyer  
Inslee  
Israel  
Jackson (IL)  
Jackson-Lee  
(TX)  
Johnson (GA)  
Johnson, E. B.  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)  
Kosmas  
Langevin  
Larsen (WA)  
Lee (CA)  
Levin  
Lipinski  
Loebach  
Lofgren, Zoe  
Lowey  
Lujan  
Lynch  
Maffei  
Maloney  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McIntyre  
McMahon  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Michaud  
Miller (NC)  
Miller, George  
Minnick  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Murtha  
Nadler (NY)  
Napolitano  
Neal (MA)  
Nye  
Oberstar  
Obey  
Oliver  
Ortiz  
Owens  
Pallone  
Pascrell

Pastor (AZ)  
Payne  
Perlmutter  
Peters  
Peterson  
Pingree (ME)  
Polis (CO)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Richardson  
Rodriguez  
Ross  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)  
Salazar  
Sánchez, Linda  
T.  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schradler  
Schwartz  
Scott (GA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Sires  
Skelton  
Slaughter  
Smith (WA)  
Snyder  
Space  
Speier  
Spratt  
Stark  
Stupak  
Sutton  
Tanner  
Taylor  
Teague  
Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Townes  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

NAYS—182

Aderholt  
Akin  
Alexander  
Austria  
Bachmann  
Bachus  
Bartlett  
Barton (TX)  
Biggart  
Billbray  
Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehner  
Bonner  
Bono Mack  
Boozman  
Boustany

Brady (TX)  
Bright  
Broun (GA)  
Brown (SC)  
Brown-Waite,  
Ginny  
Buchanan  
Burgess  
Burton (IN)  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Carter  
Cassidy  
Castle

Chaffetz  
Coble  
Coffman (CO)  
Cole  
Conaway  
Crenshaw  
Culberson  
Davis (KY)  
Deal (GA)  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Donnelly (IN)  
Dreier  
Duncan  
Ehlers  
Emerson  
Fallin  
Flake



Fleming	Lewis (CA)	Roe (TN)	Cooper	Kanjorski	Pingree (ME)	Inglis	McHenry	Ryan (WI)
Forbes	Linder	Rogers (AL)	Costa	Kaptur	Polis (CO)	Issa	McKeon	Scalise
Fortenberry	LoBlondo	Rogers (KY)	Costello	Kennedy	Pomeroy	Jenkins	McMorris	Schmidt
Fox	Lucas	Rogers (MI)	Courtney	Kildee	Price (NC)	Johnson (IL)	Rodgers	Schock
Franks (AZ)	Luetkemeyer	Rohrabacher	Crowley	Kilpatrick (MI)	Quigley	Johnson, Sam	Mica	Sensenbrenner
Frelinghuysen	Lummis	Rooney	Cuellar	Kilroy	Rahall	Jones	Miller (FL)	Sessions
Gallegly	Lungren, Daniel	Ros-Lehtinen	Cummings	Kind	Rangel	Jordan (OH)	Miller (MI)	Shadegg
Garrett (NJ)	E.	Roskam	Dahlkemper	Kirkpatrick (AZ)	Reyes	King (IA)	Miller, Gary	Shimkus
Gerlach	Mack	Royce	Davis (AL)	Kissell	Richardson	King (NY)	Mitchell	Shuler
Gingrey (GA)	Manzullo	Ryan (WI)	Davis (CA)	Kosmas	Rodriguez	Kingston	Moran (KS)	Shuster
Gohmert	Marchant	Scalise	Davis (IL)	Kucinich	Ross	Kirk	Murphy, Tim	Simpson
Goodlatte	McCarthy (CA)	Schmidt	Davis (TN)	Langevin	Rothman (NJ)	Klein (FL)	Myrick	Smith (NE)
Graves	McCaul	Schock	DeFazio	Larsen (WA)	Roybal-Allard	Kline (MN)	Neugebauer	Smith (NJ)
Guthrie	McClintock	Sensenbrenner	DeGette	Lee (CA)	Ruppersberger	Kratovil	Nunes	Smith (TX)
Hall (TX)	McCotter	Sessions	Delahunt	Levin	Ryan (OH)	Lamborn	Olson	Souder
Harper	McHenry	Shadegg	DeLauro	Lipinski	Salazar	Lance	Paulsen	Stearns
Hastings (WA)	McKeon	Shimkus	Dicks	Loeb	Sánchez, Linda	Latham	Pence	Sullivan
Heinrich	McMorris	Shuler	Doggett	Lofgren, Zoe	T.	LaTourette	Petri	Taylor
Heller	Rodgers	Shuster	Doyle	Lowey	Sarbanes	Latta	Pitts	Terry
Hensarling	Mica	Simpson	Driehaus	Lujan	Schakowsky	Lee (NY)	Platts	Thompson (PA)
Hergert	Miller (FL)	Smith (NE)	Edwards (MD)	Lynch	Schauer	Lewis (CA)	Poe (TX)	Thornberry
Hill	Miller (MI)	Smith (NJ)	Edwards (TX)	Maffei	Schiff	Linder	Posey	Tiahrt
Hoekstra	Miller, Gary	Smith (TX)	Ellison	Maloney	Schrader	LoBlondo	Price (GA)	Tiberi
Hunter	Mitchell	Souder	Ellsworth	Markey (CO)	Schwartz	Lucas	Putnam	Turner
Inglis	Moran (KS)	Stearns	Engel	Markey (MA)	Scott (GA)	Luetkemeyer	Rehberg	Upton
Issa	Murphy, Tim	Sullivan	Eshoo	Marshall	Serrano	Lummis	Reichert	Walden
Jenkins	Myrick	Terry	Etheridge	Massa	Sestak	Lungren, Daniel	Roe (TN)	Wamp
Johnson (IL)	Neugebauer	Thompson (PA)	Farr	Matheson	Shea-Porter	E.	Rogers (AL)	Westmoreland
Johnson, Sam	Nunes	Thornberry	Fattah	Matsui	Sherman	Mack	Rogers (KY)	Whitfield
Jones	Olson	Tiahrt	Filner	McCarthy (NY)	Sires	Manzullo	Rogers (MI)	Wilson (SC)
Jordan (OH)	Paul	Tiberi	Foster	McCollum	Skelton	Marchant	Rohrabacher	Wittman
King (IA)	Paulsen	Turner	Frank (MA)	McDermott	Slaughter	McCarthy (CA)	Rooney	Wolf
King (NY)	Pence	Upton	Garamendi	McGovern	Smith (WA)	McCaul	Ros-Lehtinen	Young (AK)
Kingston	Perriello	Walden	Giffords	McIntyre	Snyder	McClintock	Roskam	Young (FL)
Kirk	Petri	Wamp	Gonzalez	McMahon	Space	McCotter	Royce	
Kline (MN)	Pitts	Westmoreland	Gordon (TN)	McNerney	Speier			
Kratovil	Platts	Whitfield	Grayson	Meek (FL)	Spratt			
Lamborn	Poe (TX)	Wilson (SC)	Green, Al	Meeks (NY)	Stark			
Lance	Posey	Wittman	Green, Gene	Michaud	Stupak			
Latham	Price (GA)	Wolf	Griffith	Miller (NC)	Sutton			
LaTourette	Putnam	Young (AK)	Grijalva	Miller, George	Tanner			
Latta	Rehberg	Young (FL)	Gutierrez	Minnick	Teague			
Lee (NY)	Reichert		Hall (NY)	Mollohan	Thompson (CA)			

## NOT VOTING—13

Baldwin	Granger	Radanovich
Barrett (SC)	Kucinich	Sanchez, Loretta
Capuano	Larson (CT)	Scott (VA)
Dingell	Lewis (GA)	
Fudge	Moran (VA)	

## □ 1318

Messrs. LUETKEMEYER and KING of New York changed their vote from “yea” to “nay.”

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LINCOLN DIAZ-BALART of Florida. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 237, nays 182, not voting 15, as follows:

[Roll No. 940]

## YEAS—237

Abercrombie	Bishop (NY)	Carnahan
Ackerman	Blumenauer	Carney
Adler (NJ)	Boccieri	Carson (IN)
Andrews	Boren	Castor (FL)
Arcuri	Boswell	Chandler
Baca	Boucher	Childers
Baird	Boyd	Chu
Barrow	Brady (PA)	Clarke
Bean	Braley (IA)	Clay
Becerra	Bright	Cleaver
Berkley	Brown, Corrine	Clyburn
Berman	Butterfield	Cohen
Berry	Capps	Connolly (VA)
Bishop (GA)	Cardoza	Conyers

Aderholt	Burton (IN)	Emerson
Akin	Buyer	Fallin
Alexander	Calvert	Flake
Altmire	Camp	Fleming
Austria	Campbell	Forbes
Bachmann	Cantor	Fortenberry
Bachus	Cao	Fox
Bartlett	Capito	Franks (AZ)
Barton (TX)	Carter	Frelinghuysen
Biggart	Cassidy	Gallegly
Bilbray	Castle	Garrett (NJ)
Bilirakis	Chaffetz	Gerlach
Bishop (UT)	Coble	Gingrey (GA)
Blackburn	Coffman (CO)	Gohmert
Blunt	Cole	Goodlatte
Boehner	Conaway	Graves
Bonner	Crenshaw	Guthrie
Bono Mack	Culberson	Hall (TX)
Boozman	Davis (KY)	Harper
Boustany	Deal (GA)	Hastings (WA)
Brady (TX)	Dent	Heinrich
Brown (GA)	Diaz-Balart, L.	Heller
Brown (SC)	Diaz-Balart, M.	Hensarling
Brown-Waite,	Donnelly (IN)	Hergert
Ginny	Dreier	Hill
Buchanan	Duncan	Hoekstra
Burgess	Ehlers	Hunter

## NAYS—182

Burton (IN)	Emerson
Buyer	Fallin
Calvert	Flake
Camp	Fleming
Campbell	Forbes
Cantor	Fortenberry
Cao	Fox
Capito	Franks (AZ)
Carter	Frelinghuysen
Cassidy	Gallegly
Castle	Garrett (NJ)
Chaffetz	Gerlach
Coble	Gingrey (GA)
Coffman (CO)	Gohmert
Cole	Goodlatte
Conaway	Graves
Crenshaw	Guthrie
Culberson	Hall (TX)
Davis (KY)	Harper
Deal (GA)	Hastings (WA)
Dent	Heinrich
Diaz-Balart, L.	Heller
Diaz-Balart, M.	Hensarling
Donnelly (IN)	Hergert
Dreier	Hill
Duncan	Hoekstra
Ehlers	Hunter

## NOT VOTING—15

Baldwin	Granger	Paul
Barrett (SC)	Larson (CT)	Radanovich
Capuano	Lewis (GA)	Rush
Dingell	Melancon	Sanchez, Loretta
Fudge	Moran (VA)	Scott (VA)

## □ 1326

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## ROY RONDENO, SR. POST OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 3951, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and pass the bill, H.R. 3951.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 417, nays 1, not voting 16, as follows:

[Roll No. 941]

## YEAS—417

Abercrombie	Bean	Bono Mack
Ackerman	Becerra	Boozman
Aderholt	Berkley	Boren
Adler (NJ)	Berman	Boswell
Akin	Berry	Boucher
Alexander	Biggart	Boustany
Altmire	Bilbray	Brady (PA)
Andrews	Bilirakis	Brady (TX)
Arcuri	Bishop (GA)	Braley (IA)
Austria	Bishop (NY)	Bright
Baca	Bishop (UT)	Brown (GA)
Bachmann	Blackburn	Brown (SC)
Bachus	Blumenauer	Brown, Corrine
Baird	Blunt	Brown-Waite,
Barrow	Boccieri	Ginny
Bartlett	Boehner	Buchanan
Barton (TX)	Bonner	Burgess

Burton (IN)  
Butterfield  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Capps  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Carter  
Cassidy  
Castle  
Castor (FL)  
Chaffetz  
Childers  
Chu  
Clarke  
Clay  
Cleaver  
Clyburn  
Coble  
Cohen  
Cole  
Conaway  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crenshaw  
Crowley  
Cuellar  
Culberson  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (KY)  
Davis (TN)  
Deal (GA)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dicks  
Doggett  
Donnelly (IN)  
Doyle  
Dreier  
Driebeaus  
Duncan  
Edwards (MD)  
Edwards (TX)  
Ehlers  
Ellison  
Ellsworth  
Emerson  
Engel  
Eshoo  
Etheridge  
Fallin  
Farr  
Fattah  
Filner  
Flake  
Fleming  
Forbes  
Fortenberry  
Foster  
Foxy  
Frank (MA)  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garamendi  
Garrett (NJ)  
Gerlach  
Giffords  
Gingrey (GA)  
Gohmert  
Gonzalez  
Goodlatte  
Gordon (TN)  
Graves  
Grayson  
Green, Al

Green, Gene  
Griffith  
Grijalva  
Guthrie  
Gutierrez  
Hall (NY)  
Hall (TX)  
Halvorson  
Hare  
Harman  
Harper  
Hastings (FL)  
Hastings (WA)  
Heinrich  
Heller  
Hensarling  
Herger  
Herseth Sandlin  
Higgins  
Hill  
Himes  
Hinchev  
Hinojosa  
Hirono  
Hodes  
Hoekstra  
Holden  
Holt  
Honda  
Hoyer  
Hunter  
Inglis  
Inslee  
Israel  
Issa  
Jackson (IL)  
Jackson-Lee  
(TX)  
Jenkins  
Johnson (GA)  
Johnson (IL)  
Johnson, E. B.  
Johnson, Sam  
Jones  
Jordan (OH)  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)  
Kline (MN)  
Kosmas  
Kratovil  
Kucinich  
Lamborn  
Lance  
Langevin  
Larsen (WA)  
Latham  
LaTourette  
Latta  
Lee (CA)  
Lee (NY)  
Levin  
Lewis (CA)  
Lipinski  
LoBiondo  
Loebach  
Lofgren, Zoe  
Lowey  
Lucas  
Luetkemeyer  
Lujan  
Lummis  
Lungren, Daniel  
E.  
Lynch  
Mack  
Maffei  
Maloney  
Manzullo  
Marchant  
Markey (CO)  
Markey (MA)  
Marshall  
Massa

Matheson  
Matsui  
McCarthy (CA)  
McCarthy (NY)  
McCaul  
McClintock  
McCollum  
McCotter  
McDermott  
McGovern  
McHenry  
McIntyre  
McKeon  
McMahon  
McMorris  
Rodgers  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Mica  
Michaud  
Miller (FL)  
Miller (MI)  
Miller (NC)  
Miller, Gary  
Miller, George  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moore (WI)  
Moran (KS)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Murphy, Tim  
Murtha  
Myrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Neugebauer  
Nunes  
Nye  
Oberstar  
Obey  
Olson  
Olver  
Ortiz  
Owens  
Pallone  
Pascarell  
Pastor (AZ)  
Paul  
Paulsen  
Payne  
Pence  
Perlmutter  
Perriello  
Peters  
Peterson  
Petri  
Pingree (ME)  
Pitts  
Platts  
Poe (TX)  
Polis (CO)  
Pomeroy  
Posey  
Price (GA)  
Price (NC)  
Putnam  
Quigley  
Rahall  
Rangel  
Rehberg  
Reichert  
Reyes  
Richardson  
Rodriguez  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Ross  
Rothman (NJ)  
Roybal-Allard  
Royce  
Ruppersberger  
Rush  
Ryan (OH)

Ryan (WI)  
Salazar  
Sánchez, Linda  
T.  
Sarbanes  
Scalise  
Schakowsky  
Schauer  
Schiff  
Schmidt  
Schock  
Schwartz  
Scott (GA)  
Sensenbrenner  
Serrano  
Sessions  
Sestak  
Shadegg  
Shea-Porter  
Sherman  
Shimkus  
Shuler  
Shuster  
Simpson  
Sires  
Skelton  
Slaughter  
Smith (NE)

Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Space  
Speier  
Spratt  
Stark  
Stearns  
Stupak  
Sullivan  
Sutton  
Tanner  
Taylor  
Teague  
Terry  
Thompson (CA)  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Tierney  
Titus  
Tonko  
Towns  
Tsongas

Turner  
Upton  
Van Hollen  
Velázquez  
Visclosky  
Walden  
Walz  
Wamp  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Westmoreland  
Wexler  
Whitfield  
Wilson (OH)  
Wilson (SC)  
Wittman  
Wolf  
Woolsey  
Wu  
Yarmuth  
Young (AK)  
Young (FL)

#### NAYS—1

Schrader

#### NOT VOTING—16

Baldwin  
Barrett (SC)  
Boyd  
Capuano  
Chandler  
Coffman (CO)

Dingell  
Fudge  
Granger  
Larson (CT)  
Lewis (GA)  
Linder

Moran (VA)  
Radanovich  
Sanchez, Loretta  
Scott (VA)

□ 1333

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### PERSONAL EXPLANATION

Mr. LARSON of Connecticut. Madam Speaker, on December 9, 2009 I missed roll-call votes 939, 940 and 941. Had I been present, I would have voted "yea" on all.

#### TAX EXTENDERS ACT OF 2009

Mr. RANGEL. Mr. Speaker, pursuant to House Resolution 955, I call up the bill (H.R. 4213) to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. DRIEHAUS). Pursuant to House Resolution 955, the bill is considered read.

The text of the bill is as follows:

H.R. 4213

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Tax Extenders Act of 2009".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a

section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

#### TITLE I—GENERAL PROVISIONS

##### Subtitle A—Individual Tax Relief

Sec. 101. Deduction of State and local sales taxes.

Sec. 102. Additional standard deduction for State and local real property taxes.

Sec. 103. Above-the-line deduction for qualified tuition and related expenses.

Sec. 104. Deduction for certain expenses of elementary and secondary school teachers.

##### Subtitle B—Business Tax Relief

Sec. 111. Research credit.

Sec. 112. Exceptions for active financing income.

Sec. 113. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.

Sec. 114. 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.

Sec. 115. 7-year recovery period for motor-sports entertainment complexes.

Sec. 116. Railroad track maintenance credit.

Sec. 117. Special expensing rules for certain film and television productions.

Sec. 118. Expensing of environmental remediation costs.

Sec. 119. Mine rescue team training credit.

Sec. 120. Election to expense advanced mine safety equipment.

Sec. 121. Employer wage credit for employees who are active duty members of the uniformed services.

Sec. 122. 5-year depreciation for farming business machinery and equipment.

Sec. 123. Treatment of certain dividends and assets of regulated investment companies.

Sec. 124. Look-thru of certain regulated investment company stock in determining gross estate of non-residents.

Sec. 125. RIC qualified investment entity treatment under FIRPTA.

Sec. 126. Suspension of limitation on percentage depletion for oil and gas from marginal wells.

##### Subtitle C—Charitable Provisions

Sec. 131. Contributions of capital gain real property made for conservation purposes.

Sec. 132. Enhanced charitable deduction for contributions of food inventory.

Sec. 133. Enhanced charitable deduction for contributions of book inventories to public schools.

Sec. 134. Enhanced charitable deduction for corporate contributions of computer technology and equipment for educational purposes.

Sec. 135. Tax-free distributions from individual retirement plans for charitable purposes.

Sec. 136. Modification of tax treatment of certain payments to controlling exempt organizations.

Sec. 137. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business taxable income.

Sec. 138. Basis adjustment to stock of S corporations making charitable contributions of property.

Subtitle D—Miscellaneous Provisions

Sec. 141. Indian employment tax credit.

Sec. 142. Accelerated depreciation for business property on an Indian reservation.

Sec. 143. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.

Sec. 144. Temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.

Sec. 145. American Samoa economic development credit.

TITLE II—COMMUNITY ASSISTANCE PROVISIONS

Sec. 201. Empowerment zone tax incentives.

Sec. 202. Renewal community tax incentives.

Sec. 203. New markets tax credit.

Sec. 204. Tax incentives for investment in the District of Columbia.

Sec. 205. Tax incentives for New York Liberty Zone.

Sec. 206. Tax incentives for the Gulf Opportunity Zone.

Sec. 207. Election for refundable low-income housing credit for 2010.

TITLE III—DISASTER RELIEF PROVISIONS

Sec. 301. Deductibility of personal casualty losses attributable to federally declared disasters.

Sec. 302. Expensing of certain qualified disaster expenses.

Sec. 303. 5-year carryback of net operating losses attributable to Federally declared disasters.

Sec. 304. Waiver of certain mortgage revenue bond requirements for residences located in Federally declared disaster areas.

Sec. 305. Expensing and special depreciation allowance for qualified disaster assistance property.

TITLE IV—ENERGY PROVISIONS

Sec. 401. Incentives for biodiesel and renewable diesel.

Sec. 402. Alternative motor vehicle credit for heavy hybrids.

Sec. 403. Alternative fuel credit for natural gas and liquefied petroleum gas.

Sec. 404. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.

TITLE V—FOREIGN ACCOUNT TAX COMPLIANCE

Subtitle A—Increased Disclosure of Beneficial Owners

Sec. 501. Reporting on certain foreign accounts.

Sec. 502. Repeal of certain foreign exceptions to registered bond requirements.

Subtitle B—Under Reporting With Respect to Foreign Assets

Sec. 511. Disclosure of information with respect to foreign financial assets.

Sec. 512. Penalties for underpayments attributable to undisclosed foreign financial assets.

Sec. 513. Modification of statute of limitations for significant omission of income in connection with foreign assets.

Subtitle C—Other Disclosure Provisions

Sec. 521. Reporting of activities with respect to passive foreign investment companies.

Sec. 522. Secretary permitted to require financial institutions to file certain returns related to withholding on foreign transfers electronically.

Subtitle D—Provisions Related to Foreign Trusts

Sec. 531. Clarifications with respect to foreign trusts which are treated as having a United States beneficiary.

Sec. 532. Presumption that foreign trust has United States beneficiary.

Sec. 533. Uncompensated use of trust property.

Sec. 534. Reporting requirement of United States owners of foreign trusts.

Sec. 535. Minimum penalty with respect to failure to report on certain foreign trusts.

Subtitle E—Substitute Dividends and Dividend Equivalent Payments Received by Foreign Persons Treated as Dividends

Sec. 541. Substitute dividends and dividend equivalent payments received by foreign persons treated as dividends.

TITLE VI—OTHER REVENUE PROVISIONS

Subtitle A—Partnership Interests Held by Partners Providing Services

Sec. 601. Partnership interests transferred in connection with performance of services.

Sec. 602. Income of partners for performing investment management services treated as ordinary income received for performance of services.

Subtitle B—Time for Payment of Corporate Estimated Taxes

Sec. 611. Time for payment of corporate estimated taxes.

Subtitle C—Tax Expenditure Study

Sec. 621. Findings.

Sec. 622. Study of extended tax expenditures.

TITLE I—GENERAL PROVISIONS

Subtitle A—Individual Tax Relief

SEC. 101. DEDUCTION OF STATE AND LOCAL SALES TAXES.

(a) IN GENERAL.—Subparagraph (I) of section 164(b)(5) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 102. ADDITIONAL STANDARD DEDUCTION FOR STATE AND LOCAL REAL PROPERTY TAXES.

(a) IN GENERAL.—Subparagraph (C) of section 63(c)(1) is amended by striking “or 2009” and inserting “, 2009, or 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 103. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED TUITION AND RELATED EXPENSES.

(a) IN GENERAL.—Subsection (e) of section 222 is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 104. DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking “or 2009” and inserting “2009, or 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

Subtitle B—Business Tax Relief

SEC. 111. RESEARCH CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 41(h)(1) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) CONFORMING AMENDMENT.—Subparagraph (D) of section 45C(b)(1) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 2009.

SEC. 112. EXCEPTIONS FOR ACTIVE FINANCING INCOME.

(a) IN GENERAL.—Sections 953(e)(10) and 954(h)(9) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) CONFORMING AMENDMENT.—Section 953(e)(10) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

SEC. 113. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY RULES.

(a) IN GENERAL.—Subparagraph (C) of section 954(c)(6) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

SEC. 114. 15-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS, QUALIFIED RESTAURANT BUILDINGS AND IMPROVEMENTS, AND QUALIFIED RETAIL IMPROVEMENTS.

(a) IN GENERAL.—Clauses (iv), (v), and (ix) of section 168(e)(3)(E) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2009.

SEC. 115. 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS ENTERTAINMENT COMPLEXES.

(a) IN GENERAL.—Subparagraph (D) of section 168(i)(15) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

SEC. 116. RAILROAD TRACK MAINTENANCE CREDIT.

(a) IN GENERAL.—Subsection (f) of section 45G is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.

**SEC. 117. SPECIAL EXPENSING RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.**

(a) IN GENERAL.—Subsection (f) of section 181 is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to productions commencing after December 31, 2009.

**SEC. 118. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.**

(a) IN GENERAL.—Subsection (h) of section 198 is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures paid or incurred after December 31, 2009.

**SEC. 119. MINE RESCUE TEAM TRAINING CREDIT.**

(a) IN GENERAL.—Subsection (e) of section 45N is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 120. ELECTION TO EXPENSE ADVANCED MINE SAFETY EQUIPMENT.**

(a) IN GENERAL.—Subsection (g) of section 179E is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 121. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO ARE ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.**

(a) IN GENERAL.—Subsection (f) of section 45P is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2009.

**SEC. 122. 5-YEAR DEPRECIATION FOR FARMING BUSINESS MACHINERY AND EQUIPMENT.**

(a) IN GENERAL.—Clause (vii) of section 168(e)(3)(B) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 123. TREATMENT OF CERTAIN DIVIDENDS AND ASSETS OF REGULATED INVESTMENT COMPANIES.**

(a) IN GENERAL.—Paragraphs (1)(C) and (2)(C) of section 871(k) are each amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 124. LOOK-THRU OF CERTAIN REGULATED INVESTMENT COMPANY STOCK IN DETERMINING GROSS ESTATE OF NONRESIDENTS.**

(a) IN GENERAL.—Paragraph (3) of section 2105(d) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after December 31, 2009.

**SEC. 125. RIC QUALIFIED INVESTMENT ENTITY TREATMENT UNDER FIRPTA.**

(a) IN GENERAL.—Clause (ii) of section 897(h)(4)(A) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made after December 31, 2009.

**SEC. 126. SUSPENSION OF LIMITATION ON PERCENTAGE DEPLETION FOR OIL AND GAS FROM MARGINAL WELLS.**

(a) IN GENERAL.—Clause (ii) of section 613A(c)(6)(H) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**Subtitle C—Charitable Provisions****SEC. 131. CONTRIBUTIONS OF CAPITAL GAIN REAL PROPERTY MADE FOR CONSERVATION PURPOSES.**

(a) IN GENERAL.—Clause (vi) of section 170(b)(1)(E) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) CONTRIBUTIONS BY CERTAIN CORPORATE FARMERS AND RANCHERS.—Clause (iii) of section 170(b)(2)(B) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

**SEC. 132. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.**

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(C) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2009.

**SEC. 133. ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORIES TO PUBLIC SCHOOLS.**

(a) IN GENERAL.—Clause (iv) of section 170(e)(3)(D) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 2009.

**SEC. 134. ENHANCED CHARITABLE DEDUCTION FOR CORPORATE CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.**

(a) IN GENERAL.—Subparagraph (G) of section 170(e)(6) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

**SEC. 135. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.**

(a) IN GENERAL.—Subparagraph (F) of section 408(d)(8) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made in taxable years beginning after December 31, 2009.

**SEC. 136. MODIFICATION OF TAX TREATMENT OF CERTAIN PAYMENTS TO CONTROLLING EXEMPT ORGANIZATIONS.**

(a) IN GENERAL.—Clause (iv) of section 512(b)(13)(E) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments received or accrued after December 31, 2009.

**SEC. 137. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.**

(a) IN GENERAL.—Subparagraph (K) of section 512(b)(19) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property acquired after December 31, 2009.

**SEC. 138. BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.**

(a) IN GENERAL.—Paragraph (2) of section 1367(a) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2009.

**Subtitle D—Miscellaneous Provisions****SEC. 141. INDIAN EMPLOYMENT TAX CREDIT.**

(a) IN GENERAL.—Subsection (f) of section 45A is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 142. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON AN INDIAN RESERVATION.**

(a) IN GENERAL.—Paragraph (8) of section 168(j) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

**SEC. 143. DEDUCTION ALLOWABLE WITH RESPECT TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES IN PUERTO RICO.**

(a) IN GENERAL.—Subparagraph (C) of section 199(d)(8) is amended—

(1) by striking “first 4 taxable years” and inserting “first 5 taxable years”, and

(2) by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SEC. 144. TEMPORARY INCREASE IN LIMIT ON COVER OVER OF RUM EXCISE TAXES TO PUERTO RICO AND THE VIRGIN ISLANDS.**

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distilled spirits brought into the United States after December 31, 2009.

**SEC. 145. AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT.**

(a) IN GENERAL.—Subsection (d) of section 119 of division A of the Tax Relief and Health Care Act of 2006 is amended—

(1) by striking “first 4 taxable years” and inserting “first 5 taxable years”, and

(2) by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**TITLE II—COMMUNITY ASSISTANCE PROVISIONS****SEC. 201. EMPOWERMENT ZONE TAX INCENTIVES.**

(a) IN GENERAL.—Clause (i) of section 1391(d)(1)(A) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) INCREASED EXCLUSION OF GAIN ON STOCK OF EMPOWERMENT ZONE BUSINESSES.—Subparagraph (C) of section 1202(a)(2) is amended—

(1) by striking “December 31, 2014” and inserting “December 31, 2015”, and

(2) by striking “2014” in the heading and inserting “2015”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 2009.

**SEC. 202. RENEWAL COMMUNITY TAX INCENTIVES.**

(a) IN GENERAL.—Subsection (b) of section 1400E is amended—

(1) by striking “December 31, 2009” in paragraphs (1)(A) and (3) and inserting “December 31, 2010”, and

(2) by striking “January 1, 2010” in paragraph (3) and inserting “January 1, 2011”.

(b) ZERO-PERCENT CAPITAL GAINS RATE.—

(1) ACQUISITION DATES.—Paragraphs (2)(A)(i), (3)(A), (4)(A)(i), and (4)(B)(i) of section 1400F(b) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(2) LIMITATION ON PERIOD OF GAINS.—Paragraph (2) of section 1400F(c) is amended—

(A) by striking “December 31, 2014” and inserting “December 31, 2015”, and

(B) by striking “2014” in the heading and inserting “2015”.

(3) CLERICAL AMENDMENT.—Subsection (d) of section 1400F is amended by striking “and ‘December 31, 2014’ for ‘December 31, 2014’”.

(c) COMMERCIAL REVITALIZATION DEDUCTION.—Subsection (g) of section 1400I is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(d) INCREASED EXPENSING UNDER SECTION 179.—Subparagraph (A) of section 1400J(b)(1) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to periods after December 31, 2009.

(2) ACQUISITIONS.—The amendments made by subsection (b)(1) and (d) shall apply to acquisitions after December 31, 2009.

(3) COMMERCIAL REVITALIZATION DEDUCTION.—The amendment made by subsection (c) shall apply to building placed in service after December 31, 2009.

#### SEC. 203. NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Subparagraph (F) of section 45D(f)(1) is amended by inserting “and 2010” after “2009”.

(b) CARRYOVER OF UNUSED LIMITATION.—Paragraph (3) of section 45D(f) is amended by striking “2014” and inserting “2015”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2009.

#### SEC. 204. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) IN GENERAL.—Subsection (f) of section 1400 is amended by striking “December 31, 2009” each place it appears and inserting “December 31, 2010”.

(b) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—Subsection (b) of section 1400A is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) ZERO-PERCENT CAPITAL GAINS RATE.—

(1) ACQUISITION DATES.—Paragraphs (2)(A)(i), (3)(A), (4)(A)(i), and (4)(B)(i)(I) of section 1400B(b) are each amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(2) LIMITATION ON PERIOD OF ZERO-PERCENT CAPITAL GAINS.—

(A) IN GENERAL.—Paragraph (2) of section 1400B(e) is amended—

(i) by striking “December 31, 2014” and inserting “December 31, 2015”, and

(ii) by striking “2014” in the heading and inserting “2015”.

(B) INTERESTS IN PARTNERSHIP AND S CORPORATIONS.—Paragraph (2) of section 1400B(g) is amended by striking “December 31, 2014” and inserting “December 31, 2015”.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments

made by this section shall apply to periods after December 31, 2009.

(2) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—The amendment made by subsection (b) shall apply to bonds issued after December 31, 2009.

(3) ACQUISITION DATES FOR ZERO-PERCENT CAPITAL GAINS RATE.—The amendments made by subsection (c)(1) shall apply to property acquired or substantially improved after December 31, 2009.

(4) FIRST-TIME HOMEBUYER CREDIT.—The amendment made by subsection (d) shall apply to property purchased after December 31, 2009.

#### SEC. 205. TAX INCENTIVES FOR NEW YORK LIBERTY ZONE.

(a) BONUS DEPRECIATION FOR NONRESIDENTIAL REAL PROPERTY AND RESIDENTIAL RENTAL PROPERTY.—Subparagraph (A) of section 1400L(b)(2) is amended by striking “December 31, 2009” in the last sentence and inserting “December 31, 2010”.

(b) TAX-EXEMPT BOND FINANCING.—Subparagraph (D) of section 1400L(d)(2) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(c) EFFECTIVE DATES.—

(1) BONUS DEPRECIATION.—The amendment made by subsection (a) shall apply to property placed in service after December 31, 2009.

(2) TAX-EXEMPT BOND FINANCING.—The amendment made by subsection (b) shall apply to bonds issued after December 31, 2009.

#### SEC. 206. TAX INCENTIVES FOR THE GULF OPPORTUNITY ZONE.

(a) WORK OPPORTUNITY TAX CREDIT FOR CORE DISASTER AREA.—Paragraph (1) of section 201(b) of the Katrina Emergency Tax Relief Act of 2005 is amended by striking “4-year” and inserting “5-year”.

(b) INCREASE IN REHABILITATION CREDIT.—Subsection (h) of section 1400N is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATES.—

(1) WORK OPPORTUNITY TAX CREDIT.—The amendment made by subsection (a) shall apply to individuals hired on or after August 28, 2009.

(2) REHABILITATION CREDIT.—The amendment made by subsection (b) shall apply to amounts paid or incurred after December 31, 2009.

#### SEC. 207. ELECTION FOR REFUNDABLE LOW-INCOME HOUSING CREDIT FOR 2010.

(a) IN GENERAL.—Section 42 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) ELECTION FOR REFUNDABLE CREDITS.—

“(1) IN GENERAL.—The housing credit agency of each State shall be allowed a credit in an amount equal to such State’s 2010 low-income housing refundable credit election amount which shall be payable by the Secretary as provided in paragraph (5).

“(2) 2010 LOW-INCOME HOUSING REFUNDABLE CREDIT ELECTION AMOUNT.—For purposes of this subsection, the term ‘2010 low-income housing refundable credit election amount’ means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

“(A) the sum of—

“(i) 100 percent of the State housing credit ceiling for 2010 which is attributable to amounts described in clauses (i) and (iii) of subsection (h)(3)(C), and

“(ii) 40 percent of the State housing credit ceiling for 2010 which is attributable to amounts described in clauses (ii) and (iv) of such subsection, multiplied by

“(B) 10.

“(3) COORDINATION WITH NON-REFUNDABLE CREDIT.—For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2010 shall each be reduced by so much of such amount as is taken into account in determining the amount of the credit allowed with respect to such State under paragraph (1).

“(4) SPECIAL RULE FOR BASIS.—Basis of a qualified low-income building shall not be reduced by the amount of any payment made under this subsection.

“(5) PAYMENT OF CREDIT; USE TO FINANCE LOW-INCOME BUILDINGS.—The Secretary shall pay to the housing credit agency of each State an amount equal to the credit allowed under paragraph (1). Rules similar to the rules of subsections (c) and (d) of section 1602 of the American Recovery and Reinvestment Tax Act of 2009 shall apply with respect to any payment made under this paragraph, except that such subsection (d) shall be applied by substituting ‘January 1, 2012’ for ‘January 1, 2011’.”

(b) CONFORMING AMENDMENT.—Section 1324(b)(2) of title 31, United States Code, is amended by inserting “42(n),” after “36A.”

#### TITLE III—DISASTER RELIEF PROVISIONS

##### SEC. 301. DEDUCTIBILITY OF PERSONAL CASUALTY LOSSES ATTRIBUTABLE TO FEDERALLY DECLARED DISASTERS.

(a) IN GENERAL.—Subclause (I) of section 165(h)(3)(B)(i) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EXTENSION OF \$500 LIMITATION.—Paragraph (1) of section 165(h) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to losses attributable to disasters occurring after December 31, 2009.

(2) EXTENSION OF \$500 LIMITATION.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 2009.

##### SEC. 302. EXPENSING OF CERTAIN QUALIFIED DISASTER EXPENSES.

(a) IN GENERAL.—Subparagraph (A) of section 198A(b)(2) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenditures on account of disasters occurring after December 31, 2009.

##### SEC. 303. 5-YEAR CARRYBACK OF NET OPERATING LOSSES ATTRIBUTABLE TO FEDERALLY DECLARED DISASTERS.

(a) IN GENERAL.—Subclause (I) of section 172(j)(1)(A)(i) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to losses attributable to disasters occurring after December 31, 2009.

##### SEC. 304. WAIVER OF CERTAIN MORTGAGE REVENUE BOND REQUIREMENTS FOR RESIDENCES LOCATED IN FEDERALLY DECLARED DISASTER AREAS.

(a) IN GENERAL.—Paragraph (11) of section 143(k) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) SPECIAL RULE FOR RESIDENCES DESTROYED IN FEDERALLY DECLARED DISASTER AREAS.—Paragraph (13) of section 143(k), as redesignated under subsection (c), is amended by striking “January 1, 2010” in subparagraphs (A)(i) and (B)(i) and inserting “January 1, 2011”.

(c) TECHNICAL AMENDMENT.—Subsection (k) of section 143 is amended by redesignating

the second paragraph (12) (relating to special rules for residences destroyed in Federally declared disasters) as paragraph (13).

(d) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section shall apply to bonds issued after December 31, 2009.

(2) **RESIDENCES DESTROYED IN FEDERALLY DECLARED DISASTER AREAS.**—The amendments made by subsection (b) shall apply with respect to disasters occurring after December 31, 2009.

(3) **TECHNICAL AMENDMENT.**—The amendment made by subsection (c) shall take effect as if included in section 709 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008.

**SEC. 305. EXPENSING AND SPECIAL DEPRECIATION ALLOWANCE FOR QUALIFIED DISASTER ASSISTANCE PROPERTY.**

(a) **IN GENERAL.**—Subclause (I) of section 168(n)(2)(A)(ii) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to disasters occurring after December 31, 2009.

**TITLE IV—ENERGY PROVISIONS**

**SEC. 401. INCENTIVES FOR BIODIESEL AND RENEWABLE DIESEL.**

(a) **CREDITS FOR BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.**—Subsection (g) of section 40A is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EXCISE TAX CREDITS AND PAYMENTS FOR BIODIESEL AND RENEWABLE DIESEL FUEL MIXTURES.**—

(1) Paragraph (6) of section 6426(c) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(2) Subparagraph (B) of section 6427(e)(6) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to sales and uses after December 31, 2009.

**SEC. 402. ALTERNATIVE MOTOR VEHICLE CREDIT FOR HEAVY HYBRIDS.**

(a) **IN GENERAL.**—Paragraph (3) of section 30B(k) is amended by striking “December 31, 2009” and inserting “December 31, 2010”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property purchased after December 31, 2009.

**SEC. 403. ALTERNATIVE FUEL CREDIT FOR NATURAL GAS AND LIQUIFIED PETROLEUM GAS.**

(a) **IN GENERAL.**—Paragraph (5) of section 6426(d) is amended by striking “after December 31, 2009” and all that follows and inserting “after—

“(A) September 30, 2014, in the case of liquefied hydrogen,

“(B) December 31, 2010, in the case of—

“(i) compressed or liquefied natural gas, and

“(ii) liquefied petroleum gas (other than for use as fuel in a forklift), and

“(C) December 31, 2009, in any other case.”.

(b) **PAYMENT AUTHORITY.**—Paragraph (6) of section 6427(e) is amended by striking “and” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting a comma and by adding at the end the following new subparagraphs:

“(E) any alternative fuel (as so defined) involving compressed or liquefied natural gas sold or used after December 31, 2010, and

“(F) any alternative fuel (as so defined) involving liquefied petroleum gas (other than for use as fuel in a forklift) sold or used after December 31, 2010.”.

(c) **CONFORMING AMENDMENT.**—Subparagraph (C) of section 6427(e)(6) is amended by

inserting “(E), or (F)” after “subparagraph (D)”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fuel sold or used after December 31, 2009.

**SEC. 404. SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FERC OR STATE ELECTRIC RESTRUCTURING POLICY FOR QUALIFIED ELECTRIC UTILITIES.**

(a) **IN GENERAL.**—Paragraph (3) of section 451(i) is amended by striking “January 1, 2010” and inserting “January 1, 2011”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to dispositions after December 31, 2009.

**TITLE V—FOREIGN ACCOUNT TAX COMPLIANCE**

**Subtitle A—Increased Disclosure of Beneficial Owners**

**SEC. 501. REPORTING ON CERTAIN FOREIGN ACCOUNTS.**

(a) **IN GENERAL.**—The Internal Revenue Code of 1986 is amended by inserting after chapter 3 the following new chapter:

**“CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS**

“Sec. 1471. Withholdable payments to foreign financial institutions.

“Sec. 1472. Withholdable payments to other foreign entities.

“Sec. 1473. Definitions.

“Sec. 1474. Special rules.

**“SEC. 1471. WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS.**

“(a) **IN GENERAL.**—In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

“(b) **REPORTING REQUIREMENTS, ETC.**—

“(1) **IN GENERAL.**—The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between such institution and the Secretary under which such institution agrees—

“(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

“(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,

“(C) in the case of any United States account maintained by such institution, to report on an annual basis the information described in subsection (c) with respect to such account,

“(D) to deduct and withhold a tax equal to 30 percent of—

“(i) any passthru payment which is made by such institution to a recalcitrant account holder or another foreign financial institution which does not meet the requirements of this subsection, and

“(ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection,

“(E) to comply with requests by the Secretary for additional information with re-

spect to any United States account maintained by such institution, and

“(F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution—

“(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and

“(ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement.

“(2) **FINANCIAL INSTITUTIONS DEEMED TO MEET REQUIREMENTS IN CERTAIN CASES.**—A foreign financial institution may be treated by the Secretary as meeting the requirements of this subsection if—

“(A) such institution—

“(i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain United States accounts, and

“(ii) meets such other requirements as the Secretary may prescribe with respect to accounts of other foreign financial institutions maintained by such institution, or

“(B) such institution is a member of a class of institutions with respect to which the Secretary has determined that the application of this section is not necessary to carry out the purposes of this section.

“(3) **ELECTION TO BE WITHHELD UPON RATHER THAN WITHHOLD ON PAYMENTS TO RECALCITRANT ACCOUNT HOLDERS AND NONPARTICIPATING FOREIGN FINANCIAL INSTITUTIONS.**—In the case of a foreign financial institution which meets the requirements of this subsection and such other requirements as the Secretary may provide and which elects the application of this paragraph—

“(A) the requirements of paragraph (1)(D) shall not apply,

“(B) the withholding tax imposed under subsection (a) shall apply with respect to any withholdable payment to such institution to the extent such payment is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection, and

“(C) the agreement described in paragraph (1) shall—

“(i) require such institution to notify the withholding agent with respect to each such payment of the institution's election under this paragraph and such other information as may be necessary for the withholding agent to determine the appropriate amount to deduct and withhold from such payment, and

“(ii) include a waiver of any right under any treaty of the United States with respect to any amount deducted and withheld pursuant to an election under this paragraph.

To the extent provided by the Secretary, the election under this paragraph may be made with respect to certain classes or types of accounts of the foreign financial institution.

**“(C) INFORMATION REQUIRED TO BE REPORTED ON UNITED STATES ACCOUNTS.—**

“(1) **IN GENERAL.**—The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:



“(A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity.

“(B) The account number.

“(C) The account balance or value (determined at such time and in such manner as the Secretary may provide).

“(D) The gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

“(2) ELECTION TO BE SUBJECT TO SAME REPORTING AS UNITED STATES FINANCIAL INSTITUTIONS.—In the case of a foreign financial institution which elects the application of this paragraph—

“(A) subparagraphs (C) and (D) of paragraph (1) shall not apply, and

“(B) the agreement described in subsection (b) shall require such foreign financial institution to report such information with respect to each United States account maintained by such institution as such institution would be required to report under sections 6041, 6042, 6045, and 6049 if—

“(i) such institution were a United States person, and

“(ii) each holder of such account which is a specified United States person or United States owned foreign entity were a natural person and citizen of the United States.

An election under this paragraph shall be made at such time, in such manner, and subject to such conditions as the Secretary may provide.

“(3) SEPARATE REQUIREMENTS FOR QUALIFIED INTERMEDIARIES.—In the case of a foreign financial institution which is treated as a qualified intermediary by the Secretary for purposes of section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to any reporting or other requirements imposed by the Secretary for purposes of such treatment.

“(d) DEFINITIONS.—For purposes of this section—

“(1) UNITED STATES ACCOUNT.—

“(A) IN GENERAL.—The term ‘United States account’ means any financial account which is held by one or more specified United States persons or United States owned foreign entities.

“(B) EXCEPTION FOR CERTAIN ACCOUNTS HELD BY INDIVIDUALS.—Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if—

“(i) each holder of such account is a natural person, and

“(ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed \$50,000.

To the extent provided by the Secretary, financial institutions which are members of the same expanded affiliated group shall be treated for purposes of clause (ii) as a single financial institution.

“(C) ELIMINATION OF DUPLICATIVE REPORTING REQUIREMENTS.—Such term shall not include any financial account in a foreign financial institution if—

“(i) such account is held by another financial institution which meets the requirements of subsection (b), or

“(ii) the holder of such account is otherwise subject to information reporting re-

quirements which the Secretary determines would make the reporting required by this section with respect to United States accounts duplicative.

“(2) FINANCIAL ACCOUNT.—The term ‘financial account’ means, with respect to any financial institution—

“(A) any depository account maintained by such financial institution,

“(B) any custodial account maintained by such financial institution, and

“(C) except as otherwise provided by the Secretary, any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.

“(3) UNITED STATES OWNED FOREIGN ENTITY.—The term ‘United States owned foreign entity’ means any foreign entity which has one or more substantial United States owners.

“(4) FOREIGN FINANCIAL INSTITUTION.—The term ‘foreign financial institution’ means any financial institution which is a foreign entity. Except as otherwise provided by the Secretary, such term shall not include a financial institution which is organized under the laws of any possession of the United States.

“(5) FINANCIAL INSTITUTION.—Except as otherwise provided by the Secretary, the term ‘financial institution’ means any entity that—

“(A) accepts deposits in the ordinary course of a banking or similar business,

“(B) is engaged in the business of holding financial assets for the account of others, or

“(C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

“(6) RECALCITRANT ACCOUNT HOLDER.—The term ‘recalcitrant account holder’ means any account holder which—

“(A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or

“(B) fails to provide a waiver described in subsection (b)(1)(F) upon request.

“(7) PASSTHRU PAYMENT.—The term ‘passthru payment’ means any withholdable payment or other payment which is attributable to a withholdable payment.

“(e) AFFILIATED GROUPS.—

“(1) IN GENERAL.—The requirements of subsections (b) and (c)(1) shall apply—

“(A) with respect to United States accounts maintained by the foreign financial institution, and

“(B) except as otherwise provided by the Secretary, with respect to United States accounts maintained by each other foreign financial institution (other than any foreign financial institution which meets the requirements of subsection (b)) which is a member of the same expanded affiliated group as such foreign financial institution.

“(2) EXPANDED AFFILIATED GROUP.—For purposes of this section, the term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

“(A) by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears, and

“(B) without regard to paragraphs (2) and (3) of section 1504(b).

A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

“(f) EXCEPTION FOR CERTAIN PAYMENTS.—Subsection (a) shall not apply to any payment if the beneficial owner of such payment is—

“(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

“(2) any international organization or any wholly owned agency or instrumentality thereof,

“(3) any foreign central bank of issue, or

“(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

#### “SEC. 1472. WITHHOLDABLE PAYMENTS TO OTHER FOREIGN ENTITIES.

“(a) IN GENERAL.—In the case of any withholdable payment to a non-financial foreign entity, if—

“(1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and

“(2) the requirements of subsection (b) are not met with respect to such beneficial owner,

then the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

“(b) REQUIREMENTS FOR WAIVER OF WITHHOLDING.—The requirements of this subsection are met with respect to the beneficial owner of a payment if—

“(1) such beneficial owner or the payee provides the withholding agent with either—

“(A) a certification that such beneficial owner does not have any substantial United States owners, or

“(B) the name, address, and TIN of each substantial United States owner of such beneficial owner,

“(2) the withholding agent does not know, or have reason to know, that any information provided under paragraph (1) is incorrect, and

“(3) the withholding agent reports the information provided under paragraph (1)(B) to the Secretary in such manner as the Secretary may provide.

“(c) EXCEPTIONS.—Subsection (a) shall not apply to—

“(1) except as otherwise provided by the Secretary, any payment beneficially owned by—

“(A) any corporation the stock of which is regularly traded on an established securities market,

“(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),

“(C) any entity which is organized under the laws of a possession of the United States and which is wholly owned by one or more bona fide residents (as defined in section 937(a)) of such possession,

“(D) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

“(E) any international organization or any wholly owned agency or instrumentality thereof,

“(F) any foreign central bank of issue, or

“(G) any other class of persons identified by the Secretary for purposes of this subsection, and

“(2) any class of payments identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

“(d) NON-FINANCIAL FOREIGN ENTITY.—For purposes of this section, the term ‘non-financial foreign entity’ means any foreign entity which is not a financial institution (as defined in section 1471(d)(5)).

#### “SEC. 1473. DEFINITIONS.

“For purposes of this chapter—

“(1) WITHHOLDABLE PAYMENT.—Except as otherwise provided by the Secretary—

“(A) IN GENERAL.—The term ‘withholdable payment’ means—

“(i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States, and

“(ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

“(B) EXCEPTION FOR INCOME CONNECTED WITH UNITED STATES BUSINESS.—Such term shall not include any item of income which is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

“(C) SPECIAL RULE FOR SOURCING INTEREST PAID BY FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS.—Subparagraph (B) of section 861(a)(1) shall not apply.

“(2) SUBSTANTIAL UNITED STATES OWNER.—

“(A) IN GENERAL.—The term ‘substantial United States owner’ means—

“(i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),

“(ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and

“(iii) in the case of a trust—

“(I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and

“(II) to the extent provided by the Secretary in regulations or other guidance, any specified United States person which holds, directly or indirectly, more than 10 percent of the beneficial interests of such trust.

“(B) SPECIAL RULE FOR INVESTMENT VEHICLES.—In the case of any financial institution described in section 1471(d)(5)(C), clauses (i), (ii), and (iii) of subparagraph (A) shall be applied by substituting ‘0 percent’ for ‘10 percent’.

“(3) SPECIFIED UNITED STATES PERSON.—Except as otherwise provided by the Secretary, the term ‘specified United States person’ means any United States person other than—

“(A) any corporation the stock of which is regularly traded on an established securities market,

“(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,

“(C) any organization exempt from taxation under section 501(a) or an individual retirement plan,

“(D) the United States or any wholly owned agency or instrumentality thereof,

“(E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

“(F) any bank (as defined in section 581),

“(G) any real estate investment trust (as defined in section 856),

“(H) any regulated investment company (as defined in section 851),

“(I) any common trust fund (as defined in section 584(a)), and

“(J) any trust which—

“(i) is exempt from tax under section 664(c), or

“(ii) is described in section 4947(a)(1).

“(4) WITHHOLDING AGENT.—The term ‘withholding agent’ means all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

“(5) FOREIGN ENTITY.—The term ‘foreign entity’ means any entity which is not a United States person.

#### “SEC. 1474. SPECIAL RULES.

“(a) LIABILITY FOR WITHHELD TAX.—Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

“(b) CREDITS AND REFUNDS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment by the beneficial owner of the payment to which such tax is attributable shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

“(2) SPECIAL RULE WHERE FOREIGN FINANCIAL INSTITUTION IS BENEFICIAL OWNER OF PAYMENT.—

“(A) IN GENERAL.—In the case of any tax properly deducted and withheld under section 1471 from a specified financial institution payment—

“(i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States—

“(I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and

“(II) no interest shall be allowed or paid with respect to such credit or refund, and

“(ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

“(B) SPECIFIED FINANCIAL INSTITUTION PAYMENT.—The term ‘specified financial institution payment’ means any payment if the beneficial owner of such payment is a foreign financial institution.

“(3) REQUIREMENT TO IDENTIFY SUBSTANTIAL UNITED STATES OWNERS.—No credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under this chapter unless the beneficial owner of the payment provides the Secretary such information as the Secretary may require to determine whether such beneficial owner is a United States owned foreign entity (as defined in section 1471(d)(3)) and the identity of

any substantial United States owners of such entity.

“(c) CONFIDENTIALITY OF INFORMATION.—

“(1) IN GENERAL.—For purposes of this chapter, rules similar to the rules of section 3406(f) shall apply.

“(2) DISCLOSURE OF LIST OF PARTICIPATING FOREIGN FINANCIAL INSTITUTIONS PERMITTED.—The identity of a foreign financial institution which meets the requirements of section 1471(b) shall not be treated as return information for purposes of section 6103.

“(d) COORDINATION WITH OTHER WITHHOLDING PROVISIONS.—The Secretary shall provide for the coordination of this chapter with other withholding provisions under this title, including providing for the proper crediting of amounts deducted and withheld under this chapter against amounts required to be deducted and withheld under such other provisions.

“(e) TREATMENT OF WITHHOLDING UNDER AGREEMENTS.—Any tax deducted and withheld pursuant to an agreement described in section 1471(b) shall be treated for purposes of this title as a tax deducted and withheld by a withholding agent under section 1471(a).

“(f) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this chapter.”.

(b) SPECIAL RULE FOR INTEREST ON OVERPAYMENTS.—Subsection (e) of section 6611 is amended by adding at the end the following new paragraph:

“(4) CERTAIN WITHHOLDING TAXES.—In the case of any overpayment resulting from tax deducted and withheld under chapter 3 or 4, paragraphs (1), (2), and (3) shall be applied by substituting ‘180 days’ for ‘45 days’ each place it appears.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 6414 is amended by inserting “or 4” after “chapter 3”.

(2) Paragraph (1) of section 6501(b) is amended by inserting “4,” after “chapter 3,”.

(3) Paragraph (2) of section 6501(b) is amended—

(A) by inserting “4,” after “chapter 3,” in the text thereof, and

(B) by striking “TAXES AND TAX IMPOSED BY CHAPTER 3” in the heading thereof and inserting “AND WITHHOLDING TAXES”.

(4) Paragraph (3) of section 6513(b) is amended—

(A) by inserting “or 4” after “chapter 3”, and

(B) by inserting “or 1474(b)” after “section 1462”.

(5) Subsection (c) of section 6513 is amended by inserting “4,” after “chapter 3,”.

(6) Paragraph (1) of section 6724(d) is amended by inserting “under chapter 4 or” after “filed with the Secretary” in the last sentence thereof.

(7) Paragraph (2) of section 6724(d) is amended by inserting “or 4” after “chapter 3”.

(8) The table of chapters of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“CHAPTER 4. TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS.”.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to payments made after December 31, 2012.

(2) GRANDFATHERED TREATMENT OF OUTSTANDING OBLIGATIONS.—The amendments made by this section shall not require any amount to be deducted or withheld from any payment under any obligation outstanding

on the date which is 2 years after the date of the enactment of this Act.

(3) **INTEREST ON OVERPAYMENTS.**—The amendment made by subsection (b) shall apply—

(A) in the case of such amendment's application to paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986, to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act,

(B) in the case of such amendment's application to paragraph (2) of such section, to claims for credit or refund of any overpayment filed after the date of the enactment of this Act (regardless of the taxable period to which such refund relates), and

(C) in the case of such amendment's application to paragraph (3) of such section, to refunds paid after the date of the enactment of this Act (regardless of the taxable period to which such refund relates).

**SEC. 502. REPEAL OF CERTAIN FOREIGN EXCEPTIONS TO REGISTERED BOND REQUIREMENTS.**

(a) **REPEAL OF EXCEPTION TO DENIAL OF DEDUCTION FOR INTEREST ON NON-REGISTERED BONDS.**—

(1) **IN GENERAL.**—Paragraph (2) of section 163(f) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(2) **CONFORMING AMENDMENTS.**—

(A) Subparagraph (A) of section 163(f)(2) is amended by inserting “or” at the end of clause (ii), by striking “, or” at the end of clause (iii) and inserting a period, and by striking clause (iv).

(B) Subparagraph (B) of section 163(f)(2), as redesignated by paragraph (1), is amended—

(i) by striking “, and subparagraph (B),” in the matter preceding clause (i), and

(ii) by amending clause (i) to read as follows:

“(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and”.

(C) Sections 165(j)(2)(A) and 1287(b)(1) are each amended by striking “except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply”.

(b) **REPEAL OF TREATMENT AS PORTFOLIO DEBT.**—

(1) **IN GENERAL.**—Paragraph (2) of section 871(h) is amended to read as follows:

“(2) **PORTFOLIO INTEREST.**—For purposes of this subsection, the term ‘portfolio interest’ means any interest (including original issue discount) which—

“(A) would be subject to tax under subsection (a) but for this subsection, and

“(B) is paid on an obligation—

“(i) which is in registered form, and

“(ii) with respect to which—

“(I) the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person, or

“(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.”.

(2) **CONFORMING AMENDMENTS.**—

(A) Section 871(h)(3)(A) is amended by striking “subparagraph (A) or (B) of”.

(B) Paragraph (2) of section 881(c) is amended to read as follows:

“(2) **PORTFOLIO INTEREST.**—For purposes of this subsection, the term ‘portfolio interest’ means any interest (including original issue discount) which—

“(A) would be subject to tax under subsection (a) but for this subsection, and

“(B) is paid on an obligation—

“(i) which is in registered form, and

“(ii) with respect to which—

“(I) the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person, or

“(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.”.

(c) **DEMATERIALIZED BOOK ENTRY SYSTEMS TREATED AS REGISTERED FORM.**—Paragraph (3) of section 163(f) is amended by inserting “, except that a dematerialized book entry system shall be treated as a book entry system described in such section” before the period at the end.

(d) **REPEAL OF EXCEPTION TO REQUIREMENT THAT TREASURY OBLIGATIONS BE IN REGISTERED FORM.**—

(1) **IN GENERAL.**—Subsection (g) of section 3121 of title 31, United States Code, is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) **CONFORMING AMENDMENTS.**—Paragraph (1) of section 3121(g) of such title is amended—

(A) by adding “or” at the end of subparagraph (A),

(B) by striking “; or” at the end of subparagraph (B) and inserting a period, and

(C) by striking subparagraph (C).

(e) **PRESERVATION OF EXCEPTION FOR EXCISE TAX PURPOSES.**—Paragraph (1) of section 4701(b) is amended to read as follows:

“(1) **REGISTRATION-REQUIRED OBLIGATION.**—

“(A) **IN GENERAL.**—The term ‘registration-required obligation’ has the same meaning as when used in section 163(f), except that such term shall not include any obligation which—

“(i) is required to be registered under section 149(a), or

“(ii) is described in subparagraph (B).

“(B) **CERTAIN OBLIGATIONS NOT INCLUDED.**—An obligation is described in this subparagraph if—

“(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,

“(ii) interest on such obligation is payable only outside the United States and its possessions, and

“(iii) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.”.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall apply to obligations issued after the date which is 2 years after the date of the enactment of this Act.

**Subtitle B—Under Reporting With Respect to Foreign Assets**

**SEC. 511. DISCLOSURE OF INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.**

(a) **IN GENERAL.**—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6038C the following new section:

**“SEC. 6038D. INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.**

“(a) **IN GENERAL.**—Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall at-

tach to such person's return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds \$50,000 (or such higher dollar amount as the Secretary may prescribe).

“(b) **SPECIFIED FOREIGN FINANCIAL ASSETS.**—For purposes of this section, the term ‘specified foreign financial asset’ means—

“(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

“(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))—

“(A) any stock or security issued by a person other than a United States person,

“(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

“(C) any interest in a foreign entity (as defined in section 1473).

“(c) **REQUIRED INFORMATION.**—The information described in this subsection with respect to any asset is:

“(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

“(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

“(3) In the case of any other instrument, contract, or interest—

“(A) such information as is necessary to identify such instrument, contract, or interest, and

“(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

“(4) The maximum value of the asset during the taxable year.

“(d) **PENALTY FOR FAILURE TO DISCLOSE.**—

“(1) **IN GENERAL.**—If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of \$10,000.

“(2) **INCREASE IN PENALTY WHERE FAILURE CONTINUES AFTER NOTIFICATION.**—If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under this paragraph with respect to any failure shall not exceed \$50,000.

“(e) **PRESUMPTION THAT VALUE OF SPECIFIED FOREIGN FINANCIAL ASSETS EXCEEDS DOLLAR THRESHOLD.**—If—

“(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and

“(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets,

then the aggregate value of such assets shall be treated as being in excess of \$50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.

“(f) APPLICATION TO CERTAIN ENTITIES.—To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

“(g) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

“(h) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide appropriate exceptions from the application of this section in the case of—

“(1) classes of assets identified by the Secretary, including any assets with respect to which the Secretary determines that disclosure under this section would be duplicative of other disclosures,

“(2) nonresident aliens, and

“(3) bona fide residents of any possession of the United States.”.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038C the following new item:

“Sec. 6038D. Information with respect to foreign financial assets.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

#### SEC. 512. PENALTIES FOR UNDERPAYMENTS ATTRIBUTABLE TO UNDISCLOSED FOREIGN FINANCIAL ASSETS.

(a) IN GENERAL.—Section 6662 is amended—

(1) in subsection (b), by inserting after paragraph (5) the following new paragraph:

“(6) Any undisclosed foreign financial asset understatement.”, and

(2) by adding at the end the following new subsection:

“(i) UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENT.—

“(1) IN GENERAL.—For purposes of this section, the term ‘undisclosed foreign financial asset understatement’ means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.

“(2) UNDISCLOSED FOREIGN FINANCIAL ASSET.—For purposes of this subsection, the term ‘undisclosed foreign financial asset’ means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the taxpayer as required under the provisions of those sections.

“(3) INCREASE IN PENALTY FOR UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENTS.—In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

#### SEC. 513. MODIFICATION OF STATUTE OF LIMITATIONS FOR SIGNIFICANT OMISSION OF INCOME IN CONNECTION WITH FOREIGN ASSETS.

(a) EXTENSION OF STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 6501(e) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

“(A) GENERAL RULE.—If the taxpayer omits from gross income an amount properly includible therein and—

“(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or

“(ii) such amount—

“(I) is attributable to one or more assets with respect to which information is required to be reported under section 6038D (or would be so required if such section were applied without regard to the dollar threshold specified in subsection (a) thereof and without regard to any exceptions provided pursuant to subsection (h)(1) thereof), and

“(II) is in excess of \$5,000,

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.”.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 6501(e)(1), as redesignated by paragraph (1), is amended by striking all that precedes clause (i) and inserting the following:

“(B) DETERMINATION OF GROSS INCOME.—For purposes of subparagraph (A)—”.

(B) Paragraph (2) of section 6229(c) is amended by striking “which is in excess of 25 percent of the amount of gross income stated in its return” and inserting “and such amount is described in clause (i) or (ii) of section 6501(e)(1)(A)”.

(b) ADDITIONAL REPORTS SUBJECT TO EXTENDED PERIOD.—Paragraph (8) of section 6501(c) is amended—

(1) by inserting “pursuant to an election under section 1295(b) or” before “under section 6038”,

(2) by inserting “1298(f),” before “6038”, and

(3) by inserting “6038D,” after “6038B.”.

(c) CLARIFICATIONS RELATED TO FAILURE TO DISCLOSE FOREIGN TRANSFERS.—Paragraph (8) of section 6501(c) is amended by striking “event” and inserting “tax return, event.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) returns filed after the date of the enactment of this Act; and

(2) returns filed on or before such date if the period specified in section 6501 of the Internal Revenue Code of 1986 (determined without regard to such amendments) for assessment of such taxes has not expired as of such date.

#### Subtitle C—Other Disclosure Provisions

#### SEC. 521. REPORTING OF ACTIVITIES WITH RESPECT TO PASSIVE FOREIGN INVESTMENT COMPANIES.

(a) IN GENERAL.—Section 1298 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) REPORTING REQUIREMENT.—Except as otherwise provided by the Secretary, each United States person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.”.

(b) CONFORMING AMENDMENT.—Subsection (e) of section 1291 is amended by striking “, (d), and (f)” and inserting “and (d)”.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act.

#### SEC. 522. SECRETARY PERMITTED TO REQUIRE FINANCIAL INSTITUTIONS TO FILE CERTAIN RETURNS RELATED TO WITHHOLDING ON FOREIGN TRANSFERS ELECTRONICALLY.

(a) IN GENERAL.—Subsection (e) of section 6011 is amended by adding at the end the following new paragraph:

“(3) SPECIAL RULE FOR RETURNS FILED BY FINANCIAL INSTITUTIONS WITH RESPECT TO WITHHOLDING ON FOREIGN TRANSFERS.—Paragraph (2)(A) shall not apply to any return filed by a financial institution (as defined in section 1471(d)(5)) with respect to tax for which such institution is made liable under section 1461 or 1474(a).”.

(b) CONFORMING AMENDMENT.—Subsection (c) of section 6724 is amended by inserting “or with respect to a return described in section 6011(e)(3)”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

#### Subtitle D—Provisions Related to Foreign Trusts

#### SEC. 531. CLARIFICATIONS WITH RESPECT TO FOREIGN TRUSTS WHICH ARE TREATED AS HAVING A UNITED STATES BENEFICIARY.

(a) IN GENERAL.—Paragraph (1) of section 679(c) is amended by adding at the end the following:

“For purposes of subparagraph (A), an amount shall be treated as accumulated for the benefit of a United States person even if the United States person’s interest in the trust is contingent on a future event.”.

(b) CLARIFICATION REGARDING DISCRETION TO IDENTIFY BENEFICIARIES.—Subsection (c) of section 679 is amended by adding at the end the following new paragraph:

“(4) SPECIAL RULE IN CASE OF DISCRETION TO IDENTIFY BENEFICIARIES.—For purposes of paragraph (1)(A), if any person has the discretion (by authority given in the trust agreement, by power of appointment, or otherwise) of making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as having a beneficiary who is a United States person unless—

“(A) the terms of the trust specifically identify the class of persons to whom such distributions may be made, and

“(B) none of those persons are United States persons during the taxable year.”.

(c) CLARIFICATION THAT CERTAIN AGREEMENTS AND UNDERSTANDINGS ARE TERMS OF THE TRUST.—Subsection (c) of section 679, as amended by subsection (b), is amended by adding at the end the following new paragraph:

“(5) CERTAIN AGREEMENTS AND UNDERSTANDINGS TREATED AS TERMS OF THE TRUST.—For purposes of paragraph (1)(A), if any United States person who directly or indirectly transfers property to the trust is directly or indirectly involved in any agreement or understanding (whether written, oral, or otherwise) that may result in the income or corpus of the trust being paid or accumulated to or for the benefit of a United States person, such agreement or understanding shall be treated as a term of the trust.”.

#### SEC. 532. PRESUMPTION THAT FOREIGN TRUST HAS UNITED STATES BENEFICIARY.

(a) IN GENERAL.—Section 679 is amended by redesignating subsection (d) as subsection (e)

and inserting after subsection (c) the following new subsection:

“(d) **PRESUMPTION THAT FOREIGN TRUST HAS UNITED STATES BENEFICIARY.**—If a United States person directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)), the Secretary may treat such trust as having a United States beneficiary for purposes of applying this section to such transfer unless such person—

“(1) submits such information to the Secretary as the Secretary may require with respect to such transfer; and

“(2) demonstrates to the satisfaction of the Secretary that such trust satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1).”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transfers of property after the date of the enactment of this Act.

**SEC. 533. UNCOMPENSATED USE OF TRUST PROPERTY.**

(a) **IN GENERAL.**—Paragraph (1) of section 643(i) is amended—

(1) by striking “directly or indirectly to” and inserting “(or permits the use of any other trust property) directly or indirectly to or by”, and

(2) by inserting “(or the fair market value of the use of such property)” after “the amount of such loan”.

(b) **EXCEPTION FOR COMPENSATED USE.**—Paragraph (2) of section 643(i) is amended by adding at the end the following new subparagraph:

“(E) **EXCEPTION FOR COMPENSATED USE OF PROPERTY.**—In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.”.

(c) **APPLICATION TO GRANTOR TRUSTS.**—Subsection (c) of section 679, as amended by section 531, is amended by adding at the end the following new paragraph:

“(6) **UNCOMPENSATED USE OF TRUST PROPERTY TREATED AS A PAYMENT.**—For purposes of this subsection, a loan of cash or marketable securities (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.”.

(d) **CONFORMING AMENDMENTS.**—Paragraph (3) of section 643(i) is amended—

(1) by inserting “(or use of property)” after “If any loan”,

(2) by inserting “or the return of such property” before “shall be disregarded”, and

(3) by striking “REGARDING LOAN PRINCIPAL” in the heading thereof.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to loans made, and uses of property, after the date of the enactment of this Act.

**SEC. 534. REPORTING REQUIREMENT OF UNITED STATES OWNERS OF FOREIGN TRUSTS.**

(a) **IN GENERAL.**—Paragraph (1) of section 6048(b) is amended by inserting “shall submit such information as the Secretary may prescribe with respect to such trust for such year and” before “shall be responsible to ensure”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable

years beginning after the date of the enactment of this Act.

**SEC. 535. MINIMUM PENALTY WITH RESPECT TO FAILURE TO REPORT ON CERTAIN FOREIGN TRUSTS.**

(a) **IN GENERAL.**—Subsection (a) of section 6677 is amended—

(1) by inserting “the greater of \$10,000 or” before “35 percent”, and

(2) by striking the last sentence and inserting the following: “At such time as the gross reportable amount with respect to any failure can be determined by the Secretary, any subsequent penalty imposed under this subsection with respect to such failure shall be reduced as necessary to assure that the aggregate amount of such penalties do not exceed the gross reportable amount (and to the extent that such aggregate amount already exceeds the gross reportable amount the Secretary shall refund such excess to the taxpayer).”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to notices and returns required to be filed after December 31, 2009.

**Subtitle E—Substitute Dividends and Dividend Equivalent Payments Received by Foreign Persons Treated as Dividends**

**SEC. 541. SUBSTITUTE DIVIDENDS AND DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS.**

(a) **IN GENERAL.**—Section 871 is amended by redesignating subsection (1) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(1) **TREATMENT OF DIVIDEND EQUIVALENT PAYMENTS.**—

“(1) **IN GENERAL.**—For purposes of this section, sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

“(2) **DIVIDEND EQUIVALENT.**—For purposes of this subsection, the term ‘dividend equivalent’ means—

“(A) any substitute dividend,

“(B) any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

“(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

“(3) **SPECIFIED NOTIONAL PRINCIPAL CONTRACT.**—For purposes of this subsection, the term ‘specified notional principal contract’ means—

“(A) any notional principal contract if—

“(i) in connection with entering into such contract, any long party transfers the underlying security,

“(ii) in connection with the termination of such contract, any short party transfers the underlying security to any long party,

“(iii) the underlying security is not readily tradable on an established securities market,

“(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract, or

“(v) such contract is identified by the Secretary as a specified notional principal contract,

“(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

“(4) **DEFINITIONS.**—For purposes of paragraph (3)(A)—

“(A) **LONG PARTY.**—The term ‘long party’ means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

“(B) **SHORT PARTY.**—The term ‘short party’ means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

“(C) **UNDERLYING SECURITY.**—The term ‘underlying security’ means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

“(5) **PAYMENTS DETERMINED ON GROSS BASIS.**—For purposes of this subsection, the term ‘payment’ includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

“(6) **PREVENTION OF OVER-WITHHOLDING.**—In the case of any chain of dividend equivalents one or more of which is subject to tax under this section or section 881, the Secretary may reduce such tax, but only to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

“(7) **COORDINATION WITH CHAPTERS 3 AND 4.**—For purposes of chapters 3 and 4, each person that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments made on or after the date that is 90 days after the date of the enactment of this Act.

**TITLE VI—OTHER REVENUE PROVISIONS**

**Subtitle A—Partnership Interests Held by Partners Providing Services**

**SEC. 601. PARTNERSHIP INTERESTS TRANSFERRED IN CONNECTION WITH PERFORMANCE OF SERVICES.**

(a) **MODIFICATION TO ELECTION TO INCLUDE PARTNERSHIP INTEREST IN GROSS INCOME IN YEAR OF TRANSFER.**—Subsection (c) of section 83 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) **PARTNERSHIP INTERESTS.**—Except as provided by the Secretary, in the case of any transfer of an interest in a partnership in connection with the provision of services to (or for the benefit of) such partnership—

“(A) the fair market value of such interest shall be treated for purposes of this section as being equal to the amount of the distribution which the partner would receive if the partnership sold (at the time of the transfer) all of its assets at fair market value and distributed the proceeds of such sale (reduced by the liabilities of the partnership) to its partners in liquidation of the partnership, and

“(B) the person receiving such interest shall be treated as having made the election under subsection (b)(1) unless such person makes an election under this paragraph to have such subsection not apply.”.

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 83(b) is amended by inserting

“or subsection (c)(4)(B)” after “paragraph (1)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to interests in partnerships transferred after the date of the enactment of this Act.

**SEC. 602. INCOME OF PARTNERS FOR PERFORMING INVESTMENT MANAGEMENT SERVICES TREATED AS ORDINARY INCOME RECEIVED FOR PERFORMANCE OF SERVICES.**

(a) **IN GENERAL.**—Part I of subchapter K of chapter 1 is amended by adding at the end the following new section:

**“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIP.”**

“(a) **TREATMENT OF DISTRIBUTIVE SHARE OF PARTNERSHIP ITEMS.**—For purposes of this title, in the case of an investment services partnership interest—

“(1) **IN GENERAL.**—Notwithstanding section 702(b)—

“(A) any net income with respect to such interest for any partnership taxable year shall be treated as ordinary income, and

“(B) any net loss with respect to such interest for such year, to the extent not disallowed under paragraph (2) for such year, shall be treated as an ordinary loss.

All items of income, gain, deduction, and loss which are taken into account in computing net income or net loss shall be treated as ordinary income or ordinary loss (as the case may be).

“(2) **TREATMENT OF LOSSES.**—

“(A) **LIMITATION.**—Any net loss with respect to such interest shall be allowed for any partnership taxable year only to the extent that such loss does not exceed the excess (if any) of—

“(i) the aggregate net income with respect to such interest for all prior partnership taxable years, over

“(ii) the aggregate net loss with respect to such interest not disallowed under this subparagraph for all prior partnership taxable years.

“(B) **CARRYFORWARD.**—Any net loss for any partnership taxable year which is not allowed by reason of subparagraph (A) shall be treated as an item of loss with respect to such partnership interest for the succeeding partnership taxable year.

“(C) **BASIS ADJUSTMENT.**—No adjustment to the basis of a partnership interest shall be made on account of any net loss which is not allowed by reason of subparagraph (A).

“(D) **PRIOR PARTNERSHIP YEARS.**—Any reference in this paragraph to prior partnership taxable years shall only include prior partnership taxable years to which this section applies.

“(3) **NET INCOME AND LOSS.**—For purposes of this section—

“(A) **NET INCOME.**—The term ‘net income’ means, with respect to any investment services partnership interest for any partnership taxable year, the excess (if any) of—

“(i) all items of income and gain taken into account by the holder of such interest under section 702 with respect to such interest for such year, over

“(ii) all items of deduction and loss so taken into account.

“(B) **NET LOSS.**—The term ‘net loss’ means, with respect to such interest for such year, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

“(b) **DISPOSITIONS OF PARTNERSHIP INTERESTS.**—

“(1) **GAIN.**—Any gain on the disposition of an investment services partnership interest

shall be treated as ordinary income and shall be recognized notwithstanding any other provision of this subtitle.

“(2) **LOSS.**—Any loss on the disposition of an investment services partnership interest shall be treated as an ordinary loss to the extent of the excess (if any) of—

“(A) the aggregate net income with respect to such interest for all partnership taxable years, over

“(B) the aggregate net loss with respect to such interest allowed under subsection (a)(2) for all partnership taxable years.

“(3) **DISPOSITION OF PORTION OF INTEREST.**—In the case of any disposition of an investment services partnership interest, the amount of net loss which otherwise would have (but for subsection (a)(2)(C)) applied to reduce the basis of such interest shall be disregarded for purposes of this section for all succeeding partnership taxable years.

“(4) **DISTRIBUTIONS OF PARTNERSHIP PROPERTY.**—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner—

“(A) the excess (if any) of—

“(i) the fair market value of such property at the time of such distribution, over

“(ii) the adjusted basis of such property in the hands of the partnership,

shall be taken into account as an increase in such partner’s distributive share of the taxable income of the partnership (except to the extent such excess is otherwise taken into account in determining the taxable income of the partnership).

“(B) such property shall be treated for purposes of subpart B of part II as money distributed to such partner in an amount equal to such fair market value, and

“(C) the basis of such property in the hands of such partner shall be such fair market value.

Subsection (b) of section 734 shall be applied without regard to the preceding sentence.

“(5) **APPLICATION OF SECTION 751.**—In applying section 751(a), an investment services partnership interest shall be treated as an inventory item.

“(c) **INVESTMENT SERVICES PARTNERSHIP INTEREST.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘investment services partnership interest’ means any interest in a partnership which is held (directly or indirectly) by any person if it was reasonably expected (at the time that such person acquired such interest) that such person (or any person related to such person) would provide (directly or indirectly) a substantial quantity of any of the following services with respect to assets held (directly or indirectly) by the partnership:

“(A) Advising as to the advisability of investing in, purchasing, or selling any specified asset.

“(B) Managing, acquiring, or disposing of any specified asset.

“(C) Arranging financing with respect to acquiring specified assets.

“(D) Any activity in support of any service described in subparagraphs (A) through (C).

For purposes of this paragraph, the term ‘specified asset’ means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), real estate held for rental or investment, interests in partnerships, commodities (as defined in section 475(e)(2)), or options or derivative contracts with respect to any of the foregoing.

“(2) **EXCEPTION FOR CERTAIN CAPITAL INTERESTS.**—

“(A) **IN GENERAL.**—In the case of any portion of an investment services partnership

interest which is a qualified capital interest, all items of income, gain, loss, and deduction which are allocated to such qualified capital interest shall not be taken into account under subsection (a) if—

“(i) allocations of items are made by the partnership to such qualified capital interest in the same manner as such allocations are made to other qualified capital interests held by partners who do not provide any services described in paragraph (1) and who are not related to the partner holding the qualified capital interest, and

“(ii) the allocations made to such other interests are significant compared to the allocations made to such qualified capital interest.

“(B) **SPECIAL RULE FOR NO OR INSIGNIFICANT ALLOCATIONS TO NONSERVICE PROVIDERS.**—To the extent provided by the Secretary in regulations or other guidance, in any case in which the requirements of subparagraph (A)(ii) are not satisfied, items of income, gain, loss, and deduction shall not be taken into account under subsection (a) to the extent that such items are properly allocable under such regulations or other guidance to qualified capital interests.

“(C) **SPECIAL RULE FOR DISPOSITIONS.**—In the case of any investment services partnership interest any portion of which is a qualified capital interest, subsection (b) shall not apply to so much of any gain or loss as bears the same proportion to the entire amount of such gain or loss as—

“(i) the distributive share of gain or loss that would have been allocable to the qualified capital interest under subparagraph (A) if the partnership sold all of its assets immediately before the disposition, bears to

“(ii) the distributive share of gain or loss that would have been so allocable to the investment services partnership interest of which such qualified capital interest is a part.

“(D) **QUALIFIED CAPITAL INTEREST.**—For purposes of this paragraph, the term ‘qualified capital interest’ means so much of a partner’s interest in the capital of the partnership as is attributable to—

“(i) the fair market value of any money or other property contributed to the partnership in exchange for such interest (determined without regard to section 752(a)),

“(ii) any amounts which have been included in gross income under section 83 with respect to the transfer of such interest, and

“(iii) the excess (if any) of—

“(I) any items of income and gain taken into account under section 702 with respect to such interest for taxable years to which this section applies, over

“(II) any items of deduction and loss so taken into account.

The qualified capital interest shall be reduced by distributions from the partnership with respect to such interest for taxable years to which this section applies and by the excess (if any) of the amount described in clause (iii)(II) over the amount described in clause (iii)(I).

“(E) **TREATMENT OF CERTAIN LOANS.**—

“(i) **PROCEEDS OF PARTNERSHIP LOANS NOT TREATED AS QUALIFIED CAPITAL INTEREST OF SERVICE PROVIDING PARTNERS.**—For purposes of this paragraph, an investment services partnership interest shall not be treated as a qualified capital interest to the extent that such interest is acquired in connection with the proceeds of any loan or other advance made or guaranteed, directly or indirectly, by any other partner or the partnership (or any person related to any such other partner or the partnership).



“(ii) REDUCTION IN ALLOCATIONS TO QUALIFIED CAPITAL INTERESTS FOR LOANS FROM NON-SERVICE PROVIDING PARTNERS TO THE PARTNERSHIP.—For purposes of this paragraph, any loan or other advance to the partnership made or guaranteed, directly or indirectly, by a partner not providing services described in paragraph (1) to the partnership (or any person related to such partner) shall be taken into account in determining the qualified capital interests of the partners in the partnership.

“(3) RELATED PERSONS.—A person shall be treated as related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b).

“(d) OTHER INCOME AND GAIN IN CONNECTION WITH INVESTMENT MANAGEMENT SERVICES.—

“(1) IN GENERAL.—If—

“(A) a person performs (directly or indirectly) investment management services for any entity,

“(B) such person holds (directly or indirectly) a disqualified interest with respect to such entity, and

“(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

any income or gain with respect to such interest shall be treated as ordinary income. Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) DISQUALIFIED INTEREST.—

“(i) IN GENERAL.—The term ‘disqualified interest’ means, with respect to any entity—

“(I) any interest in such entity other than indebtedness,

“(II) convertible or contingent debt of such entity,

“(III) any option or other right to acquire property described in subclause (I) or (II), and

“(IV) any derivative instrument entered into (directly or indirectly) with such entity or any investor in such entity.

“(ii) EXCEPTIONS.—Such term shall not include—

“(I) a partnership interest,

“(II) except as provided by the Secretary, any interest in a taxable corporation, and

“(III) except as provided by the Secretary, stock in an S corporation.

“(B) TAXABLE CORPORATION.—The term ‘taxable corporation’ means—

“(i) a domestic C corporation, or

“(ii) a foreign corporation substantially all of the income of which is—

“(I) effectively connected with the conduct of a trade or business in the United States, or

“(II) subject to a comprehensive foreign income tax (as defined in section 457A(d)(2)).

“(C) INVESTMENT MANAGEMENT SERVICES.—The term ‘investment management services’ means a substantial quantity of any of the services described in subsection (c)(1).

“(e) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance to—

“(1) provide modifications to the application of this section (including treating related persons as not related to one another) to the extent such modification is consistent with the purposes of this section,

“(2) prevent the avoidance of the purposes of this section, and

“(3) coordinate this section with the other provisions of this title.

“(f) CROSS REFERENCE.—For 40 percent penalty on certain underpayments due to the avoidance of this section, see section 6662.”.

(b) INCOME FROM INVESTMENT SERVICES PARTNERSHIP INTERESTS NOT TREATED AS QUALIFYING INCOME OF PUBLICLY TRADED PARTNERSHIPS.—Subsection (d) of section 7704 is amended by adding at the end the following new paragraph:

“(6) INCOME FROM INVESTMENT SERVICES PARTNERSHIP INTERESTS NOT QUALIFIED.—

“(A) IN GENERAL.—Items of income and gain shall not be treated as qualifying income if such items are treated as ordinary income by reason of the application of section 710 (relating to special rules for partners providing investment management services to partnership).

“(B) SPECIAL RULES FOR CERTAIN PARTNERSHIPS.—

“(i) CERTAIN PARTNERSHIPS OWNED BY REAL ESTATE INVESTMENT TRUSTS.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Such partnership is treated as publicly traded under this section solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded.

“(II) 50 percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(c)).

“(III) Such partnership meets the requirements of paragraphs (2), (3), and (4) of section 856(c).

“(i) CERTAIN PARTNERSHIPS OWNING OTHER PUBLICLY TRADED PARTNERSHIPS.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Substantially all of the assets of such partnership consist of interests in one or more publicly traded partnerships (determined without regard to subsection (b)(2)).

“(II) Substantially all of the income of such partnership is ordinary income or section 1231 gain (as defined in section 1231(a)(3)).

“(C) TRANSITIONAL RULE.—In the case of a partnership which is a publicly traded partnership on the date of the enactment of this paragraph, subparagraph (A) shall not apply to any taxable year of the partnership beginning before the date which is 10 years after the date of the enactment of this paragraph.”.

(c) IMPOSITION OF PENALTY ON UNDERPAYMENTS.—

(1) IN GENERAL.—Subsection (b) of section 6662, as amended by section 512, is amended by inserting after paragraph (6) the following new paragraph:

“(7) The application of subsection (d) of section 710 or the regulations prescribed under section 710(e) to prevent the avoidance of the purposes of section 710.”.

(2) AMOUNT OF PENALTY.—

(A) IN GENERAL.—Section 6662, as amended by section 512, is amended by adding at the end the following new subsection:

“(j) INCREASE IN PENALTY IN CASE OF PROPERTY TRANSFERRED FOR INVESTMENT MANAGEMENT SERVICES.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(7), subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.

(B) CONFORMING AMENDMENTS.—Subparagraph (B) of section 6662A(e)(2) is amended—

(i) by striking “section 6662(h)” and inserting “subsection (h) or (i) of section 6662”, and

(ii) by striking “GROSS VALUATION MISSTATEMENT PENALTY” in the heading and inserting “CERTAIN INCREASED UNDERPAYMENT PENALTIES”.

(3) SPECIAL RULES FOR APPLICATION OF REASONABLE CAUSE EXCEPTION.—Subsection (c) of section 6664 is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively,

(B) by striking “paragraph (2)” in paragraph (4), as so redesignated, and inserting “paragraph (3)”, and

(C) by inserting after paragraph (1) the following new paragraph:

“(2) SPECIAL RULE FOR UNDERPAYMENTS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any portion of an underpayment to which this section applies by reason of subsection (b)(7) unless—

“(i) the relevant facts affecting the tax treatment of the item are adequately disclosed,

“(ii) there is or was substantial authority for such treatment, and

“(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

“(B) RULES RELATING TO REASONABLE BELIEF.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of subparagraph (A)(iii).”.

(d) INCOME AND LOSS FROM INVESTMENT SERVICES PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DETERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

(1) INTERNAL REVENUE CODE.—Section 1402(a) is amended by striking “and” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “; and”, and by inserting after paragraph (17) the following new paragraph:

“(18) notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(c)(1) with respect to any entity, any amount treated as ordinary income or ordinary loss of such individual under section 710 with respect to such entity shall be taken into account in determining the net earnings from self-employment of such individual.”.

(2) SOCIAL SECURITY ACT.—Section 211(a) of the Social Security Act is amended by inserting after paragraph (16) the following new paragraph:

“(17) Notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(c)(1) of the Internal Revenue Code of 1986 with respect to any entity, any amount treated as ordinary income or ordinary loss of such individual under section 710 of such Code with respect to such entity shall be taken into account in determining the net earnings from self-employment of such individual.”.

(e) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 731 is amended by inserting “section 710(b)(4) (relating to distributions of partnership property),” after “to the extent otherwise provided by”.

(2) Section 741 is amended by inserting “or section 710 (relating to special rules for partners providing investment management services to partnership)” before the period at the end.

(3) The table of sections for part I of subchapter K of chapter 1 is amended by adding at the end the following new item:

“Sec. 710. Special rules for partners providing investment management services to partnership.”.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 2009.

(2) PARTNERSHIP TAXABLE YEARS WHICH INCLUDE EFFECTIVE DATE.—In applying section 710(a) of the Internal Revenue Code of 1986 (as added by this section) in the case of any partnership taxable year which includes December 31, 2009, the amount of the net income referred to in such section shall be treated as being the lesser of the net income for the entire partnership taxable year or the net income determined by only taking into account items attributable to the portion of the partnership taxable year which is after such date.

(3) DISPOSITIONS OF PARTNERSHIP INTERESTS.—Section 710(b) of the Internal Revenue Code of 1986 (as added by this section) shall apply to dispositions and distributions after December 31, 2009.

(4) OTHER INCOME AND GAIN IN CONNECTION WITH INVESTMENT MANAGEMENT SERVICES.—Section 710(d) of such Code (as added by this section) shall take effect on January 1, 2010.

(5) PUBLICLY TRADED PARTNERSHIPS.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 2009.

#### Subtitle B—Time for Payment of Corporate Estimated Taxes

#### SEC. 611. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 in effect on the date of the enactment of this Act is increased by 26.5 percentage points.

#### Subtitle C—Tax Expenditure Study

#### SEC. 621. FINDINGS.

Congress finds the following:

(1) Currently, the aggregate cost of Federal tax expenditures rivals, or even exceeds, the amount of total Federal discretionary spending.

(2) Given the escalating public debt, a critical examination of this use of taxpayer dollars is essential.

(3) Additionally, tax expenditures can complicate the Internal Revenue Code of 1986 for taxpayers and complicate tax administration for the Internal Revenue Service.

(4) To facilitate a better understanding of tax expenditures in the future, it is constructive for legislation extending these provisions to include a study of such provisions.

#### SEC. 622. STUDY OF EXTENDED TAX EXPENDITURES.

(a) IN GENERAL.—Not later than November 30, 2010, the Chief of Staff of the Joint Committee on Taxation, in consultation with the Comptroller General of the United States, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each tax expenditure (as defined in section 3(3) of the Congressional Budget Impoundment Control Act of 1974 (2 U.S.C. 622(3)) extended by this Act.

(b) ROLLING SUBMISSION OF REPORTS.—The Chief of Staff of the Joint Committee on Taxation shall initially submit the reports for each such tax expenditure enacted in subtitle B of title I (relating to business tax relief)

and title IV (relating to energy provisions) in order of the tax expenditure incurring the least aggregate cost to the greatest aggregate cost (determined by reference to the cost estimate of this Act by the Joint Committee on Taxation). Thereafter, such reports may be submitted in such order as the Chief of Staff determines appropriate.

(c) CONTENTS OF REPORT.—Such reports shall contain the following:

(1) An explanation of the tax expenditure and any relevant economic, social, or other context under which it was first enacted.

(2) A description of the intended purpose of the tax expenditure.

(3) An analysis of the overall success of the tax expenditure in achieving such purpose, and evidence supporting such analysis.

(4) An analysis of the extent to which further extending the tax expenditure, or making it permanent, would contribute to achieving such purpose.

(5) A description of the direct and indirect beneficiaries of the tax expenditure, including identifying any unintended beneficiaries.

(6) An analysis of whether the tax expenditure is the most cost-effective method for achieving the purpose for which it was intended, and a description of any more cost-effective methods through which such purpose could be accomplished.

(7) A description of any unintended effects of the tax expenditure that are useful in understanding the tax expenditure's overall value.

(8) An analysis of how the tax expenditure could be modified to better achieve its original purpose.

(9) A brief description of any interactions (actual or potential) with other tax expenditures or direct spending programs in the same or related budget function worthy of further study.

(10) A description of any unavailable information the staff of the Joint Committee on Taxation may need to complete a more thorough examination and analysis of the tax expenditure, and what must be done to make such information available.

(d) MINIMUM ANALYSIS BY DEADLINE.—In the event the Chief of Staff of the Joint Committee on Taxation concludes it will not be feasible to complete all reports by the date specified in subsection (a), at a minimum, the reports for each tax expenditure enacted in subtitle B of title I (relating to business tax relief) and title IV (relating to energy provisions) shall be completed by such date.

The SPEAKER pro tempore. The gentleman from New York (Mr. RANGEL) and the gentleman from Michigan (Mr. CAMP) each will control 30 minutes.

The Chair recognizes the gentleman from New York.

#### GENERAL LEAVE

Mr. RANGEL. Mr. Speaker, I ask that all Members have 5 legislative days to revise and extend their remarks and insert extraneous material in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. RANGEL. Mr. Speaker, this package of extensions of legislation that are about to expire represents the real need for tax reform in this country. I have talked with the Ways and Means Committee ranking member to

see whether or not our leadership can agree that the taxpayer really deserves better than this and should be able to depend on some continuity in the law.

To that extent, we will be sending to the nonpartisan Joint Committee on Taxation all of these extenders that we hope will be supported overwhelmingly today to better advise us how we can get on with the tax reform to make certain that certain things like research and development and other great things that we have in this package would be made permanent, so that the taxpayers, corporate and private, would know what they can depend on, instead of just relying on the constant extensions which have passed this body before.

So along with Ways and Means Committee Ranking Member CAMP, we ask that this committee take this up. And also we want to make it clear that the contents of this bill and the understandings of legislative intent is available on the Joint Committee's Web site, [www.jct.gov](http://www.jct.gov). And it's listed under the document number JCX-60-09.

This list of bills, as I said, concerns very important legislation, and our committee has worked very hard on this legislation.

Mr. Speaker, I would like permission for the balance of my time to be turned over to RICHARD NEAL, who heads up a special subcommittee on our Ways and Means Committee, who spent a great deal of time evaluating what we should do, along with Congressman LEVIN and other members of the Ways and Means Committee, and with your permission and the permission of the House, I'd like to yield the balance of the time that I have to Congressman NEAL.

The SPEAKER pro tempore. Without objection, the gentleman from Massachusetts will control the balance of the time.

There was no objection.

Mr. YOUNG of Alaska. Will the gentleman yield?

Mr. RANGEL. Yes, I will.

Mr. YOUNG of Alaska. Mr. Chairman, may I indulge in a colloquy with you?

Mr. RANGEL. Yes, I yield to the gentleman.

Mr. YOUNG of Alaska. I would like to engage in a brief colloquy with you regarding a provision of great importance to the Alaska Native community. As you and I have previously discussed on numerous occasions, section 646 of the Internal Revenue Code allows Alaska Native Settlement Trusts to provide health, education, and welfare benefits to Alaska Natives, who are generally recognized as among the most economically disadvantaged populations in the United States.

It is my understanding that this provision was not included in the bill before us today because the bill only extends tax benefits that terminate in

2009, and this benefit does not terminate until December 31, 2010. Its omission is not a reflection of your views on the merits of the provision.

Mr. RANGEL. The gentleman from Alaska is correct. I look forward to working with him on this important legislation for the Alaska Native community; and when the committee considered this and other provisions that have a later termination, all the other provisions we plan to take up with priority. And I thank you for bringing this to my attention.

Mr. YOUNG of Alaska. Thank you, Mr. Chairman. I'd like to thank you for your commitment to work on this provision and for your support of the Alaska Native people.

Mr. CAMP. Mr. Speaker, I yield myself such time as I may consume.

It is the tradition of this House to annually extend certain tax relief items, everything from a research and development tax credit to incentives for the manufacture, purchase and use of alternative fuels, to credits that help offset out-of-pocket expenses for teachers that they incur buying materials for their classrooms.

I helped write many of these provisions, and if the bill before us were truly a tax extenders bill, I'd be voting for it, as I have in previous years. However, the Democrats seemingly have never met a tax cut they liked; and, thus, the Democrats have turned tax extenders into tax extenders and tax raisers.

I want each of my colleagues to think about that for a minute. The bill before us proposes permanent tax increases and just 1 year of tax relief. Unemployment is at 10 percent. Nearly 3 million Americans have lost their jobs since the start of the year. The economy is continuing to hemorrhage thousands of jobs every month. Small businesses continue to struggle as credit markets remain tight. And this proposes to raise taxes on economic investment.

Just yesterday the President called for a Stimulus II package to help small businesses and to help start job creation. Part of that was to cut capital gains taxes on investments in small businesses, showing he understands the importance of capital to growing business and creating jobs.

By contrast, this bill changes how carried interest has been treated for decades, and it is nothing short of a new tax on the very investments needed to start a new business and create economic growth in this country.

So while Democrats claim they want to stimulate growth, they are actually increasing taxes in a way that will discourage job creation. And they left more than two dozen expiring tax relief provisions out of the bill, including the biggest of them all, the AMT patch.

So in addition to the tax increases within this bill, there are, by omission,

close to 30 tax increases that Americans will face next year because of the bill's shortcomings, including higher taxes for small businesses and approximately \$2,600 in higher taxes for millions of middle class families.

While some of those admissions might be justified, I'm disappointed that, once again, the Ways and Means Committee held neither a hearing nor a mark-up to consider legislation within our jurisdiction. Given the disconnect between House Democrats' rhetoric on jobs and their votes for tax increases, it is no wonder employers are confused. New investments aren't being made, and unemployment remains high. I support tax extenders, and that's what we should pass today, not this tax-increasing, job-killing bill before us.

I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I guess Mr. CAMP, who is my friend, wasn't referring to me when he talked about the Democrats who didn't like tax relief. They forgot about the idea that I was the lead sponsor on the net operating loss bill, and have supported accelerated depreciation allowance, and believe that there are some tax cuts, in fact, that are better than others. And, at the same time, I think we could all find unity in the suggestion today that one thing we've discovered is that tax cuts really don't pay for themselves.

But I rise in support of this extenders legislation that we're considering today, and certainly Mr. RANGEL should be acknowledged for the hard work that he has offered on this legislation. There ought to be an opportunity here for us, Mr. Speaker, to find some common ground. There are many, many, many good parts of this legislation that I know our friends on the other side support.

There are provisions here in the bottom of the ninth inning, with two out, that are expiring; and we need to give some predictability to decisions that will be made by businesses and individuals over the course of the next year. And this is going to be the last chance that we're going to have to do it this year.

This bill contains extensions of many popular incentives. For my home State of Massachusetts, this bill means that 94,000 teachers will get a deduction for their out-of-pocket expenses for classroom supplies, no small matter.

□ 1345

It means that more than 1,000 businesses in Massachusetts will get some credits for the millions they spend on research here in the United States. A reminder, the research and development tax credit is in this bill, and it is critical to retaining American jobs. Without this bill, 125,000 families in Massachusetts cannot take the deduc-

tion for college tuition expenses. This legislation provides significant tax relief to millions of families nationwide both in red States, purple States, and blue States.

There are 12 million families nationwide who live in States with no income tax; however, this bill does provide a State sales tax deduction.

This bill also includes a number of popular tax incentives for alternative fuels. There are also packages of tax benefits to assist distressed communities and those hit by natural disasters. There are many well-crafted provisions in this bill. There's not really enough time to address all of them.

This bill does no harm to the Federal budget. The cost of these cuts is completely offset by two revenue raisers, one of which I have offered and authored, and I know there is broad support across America for that issue. This is the Foreign Bank Account Reporting bill, which will shut down abuses by wealthy taxpayers hiding money in overseas banks.

And for the life of me, I can't understand why everybody in this institution is not supportive of this measure. Transparency is important. 160,000 soldiers in Iraq, about to be 160,000 soldiers in Afghanistan, and we have taken our sweet time by not cracking down on these tax evaders who don't want to pay their fair share at the same time that we had these extensive commitments around the world. I'd like to poll that question in any congressional district in America. We have taken the comments of those who are impacted and we have made this reporting regime a workable enforcement tool in this legislation. Again, you should not be hiding money in foreign bank accounts for the sole purpose of avoiding American taxes.

The second offset is a carry interest proposal which seeks to ensure investment managers pay taxes on their earnings as income tax rates rather than capital gains.

Let me also suggest that Mr. RANGEL has crafted a balanced bill. Again, I will repeat, it does no harm to the Federal Treasury. He has included a directive to the nonpartisan and, I think, highly effective and professional Joint Committee on Taxation to review the effectiveness of all of these extenders so that we could begin in earnest our effort to reform the Tax Code.

I certainly am supportive of this measure. I hope it will find broad support across this institution.

With that, I reserve the balance of my time.

Mr. CAMP. At this time, I yield 2 minutes to the distinguished member of the Ways and Means Committee, the gentleman from California (Mr. HERGER).

Mr. HERGER. I thank my good friend from Michigan.

Mr. Speaker, there is a long tradition of bipartisan support for extending

these expiring tax relief provisions. I have personally been a strong supporter of the research and development tax credit, the 5-year depreciation schedule for farm equipment, and tax-free charitable contributions from individual retirement accounts. That is why I'm very disappointed that the majority party has chosen to bypass the Ways and Means Committee and bring a partisan extenders bill to the floor.

The bill before us raises taxes by nearly \$25 billion at a time of 10 percent unemployment. As our economy is struggling to recover, this tax increase directly targets hard-hit sectors like real estate. It simply does not make sense that at the same time we are talking about the need to create jobs, this House is voting for the second time in as many weeks to raise taxes for next year.

H.R. 4213 also fails to extend the renewable energy credit for open-loop biomass plants. That's very important to my northern California district. But the President and the Speaker heading overseas to talk about how we need more renewable energy, I can't imagine why we would pull the plug on successful biomass producers. Mr. Speaker, if we had moved this bill through the committee process, we could have fixed this oversight, and I hope we can address it in conference.

Mr. NEAL of Massachusetts. Just before I recognize my friend from Michigan, I want to remind my friend from California there are 320,000 teachers in his home State who will not get a tax benefit if this legislation does not pass, 571,000 families will not be able to deduct higher education costs, 1.2 million families will not be able to deduct home State sales taxes that they currently pay, and 4,000 businesses in a State that is so dependent upon high technology in California will not be able to get the credit for their crucial research and development costs.

With that, I yield to my friend from Michigan (Mr. LEVIN) for 3 minutes.

Mr. LEVIN. Let's be clear what's involved in the pay-fors: tax-haven legislation, also the issue of fairness.

Those who invest their own money will continue to receive capital gains tax treatment, period. Those who manage other people's money will have to pay ordinary income tax like everybody else who performs services. There is widespread support for this.

Gregory Mankiw, who was on President Bush's Council of Economic Advisors, said this: "Deferred compensation, even risky compensation, is still compensation, and it should be taxed as such . . . When I wrote my book, that was sweat equity . . . I oppose different levels of taxation on different types of compensation."

This from a former member of President Reagan's Council of Economic Advisors, William Niskanen: "The share

of investment profits are basically fees for managing other people's money."

Also, another person who was deputy undersecretary under George H.W. Bush, Professor Michael Graetz: "I think it's odd that people making that much money off of essentially labor income should be paying lower rates than, than the average . . . than their secretaries are, to put it baldly."

And then from the New York Times: "They're actively managing assets, and should be taxed accordingly as managers earning compensation . . . Congress will achieve a significant victory, for fairness and for fiscal responsibility, if it ends the breaks that are skewing the Tax Code in favor of the most advantaged Americans."

And likewise, the Washington Post: "But these fund managers, for the most part, are not risking their own money." And I insert to the extent they are, they get capital gains treatment. "Besides, plenty of risky industries don't enjoy comparable tax benefits. Income earned from managing an investment partnership fund should be treated just like the income earned for providing any other service."

And I could quote this from William Stanfill, who's a manager of venture capital. He says, "Many Americans invest sweat equity in their jobs and their businesses, take risks, contribute to the economy, and may have to wait a long time before their hard work pays off. But they still pay ordinary income tax rates on their compensation. To the extent we take risk, we take it with other people's money."

And that's why the statement of administration policy is very clear from the President. "The legislation would fulfill the administration's commitment to crack down on overseas tax havens and put a stop to billions of dollars' worth of tax abuse and would end the special preferential treatment for carried interest income."

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. NEAL of Massachusetts. I yield the gentleman an additional 30 seconds.

Mr. LEVIN. In terms of sparking economic growth, we need to have measures that target investment, not give a special break for those who perform services. For example, I have introduced a bill to eliminate capital gains on investments in certain small business stock for 2010. On investments. That's the issue here, that nobody blur it. Those who work with other people's money will pay ordinary income tax; those who invest their own money will continue to receive capital gains tax treatment.

Mr. CAMP. At this time, Mr. Speaker, I yield 2 minutes to the distinguished member of the Ways and Means Committee, the gentleman from Texas (Mr. BRADY), who has been a leader in the effort to restore the local sales tax deduction.

Mr. BRADY of Texas. Mr. Speaker, I rise and strongly oppose this bill.

Encouraging research jobs on the one hand while killing local real estate and construction jobs on the other makes no economic sense. In making one of our most vulnerable sectors, commercial real estate, which faces the next real crisis in America, making that situation worse is going to kill jobs in this country. That type of thing is the reason that this new Congress and this White House has failed to get the American economy going.

Let me explain. There are parts of this bill that all of us support, including cracking down on tax evaders but encouraging companies to keep research and development jobs; letting States, local taxpayers, write off the State and local sales taxes. And our State, I'm proud to say, we fought to restore this. It saves our taxpayers \$1.2 billion a year, creates 22,000 jobs. That's fairness. In helping teachers write off, for example, their supplies they pay out of their pocket to help educate their students, we all agree on that. That's not the question.

But what they do in this bill as well, they target some of our most basic companies at home. They say they're going after those Wall Street managers of your money, the ones who have their feet up on the desk who just shuffle money back and forth and make billions of dollars. That's what they say they're aiming at. What they're hitting is Main Street, our real estate partnerships. These are our local companies that build our office buildings, apartments, shopping centers, movie theaters, our industrial parks. There are no abuses in this. These are the people who create jobs at home.

This bill increases their tax, almost triples their taxes, and these are people who put in sweat equity for 15 years, 20 years. Only if they get it right do they make a dollar back on all of their hard work. This is who they nearly triple the taxes on.

These are the people, 1.2 million, traditional real estate partnerships, who will pay the price if this bill passes, because this makes no economic sense and damages jobs. That's why this bill is dead on arrival in the Senate, deader than a doornail, because with this economy, we ought to be creating jobs and not killing jobs.

Mr. NEAL of Massachusetts. Mr. Speaker, a reminder that there are 303,000 people in the State of Texas who will not be able to deduct their higher education tuition costs. That is for the State of Texas a \$690 million benefit.

With that, I would yield 30 seconds to the gentleman from Vermont (Mr. WELCH).

Mr. WELCH. Mr. Speaker, we spend more on tax expenditures authorized by Congress and the Committee on Ways and Means than we do on the entire appropriations budget. It really

matters. This is the third year I've served in Congress, the third year we've had tax extenders. And the question for many of us is the one that was raised by Chairman RANGEL: Is it time to take a look at this, kick the tires of each one of these to see not just how it affects the particular beneficiary—they always are in favor—but how it affects the overall economy for creating wealth in jobs and how it affects the burden of fairness that is our responsibility? So I applaud the chairman in his effort to do that.

Mr. CAMP. At this time, I yield 2 minutes to the distinguished gentleman from the Ways and Means Committee, the gentleman from Illinois (Mr. ROSKAM).

Mr. ROSKAM. I thank the gentleman for yielding.

I think it's a sad argument, ironically, that the majority is using, and that is to kind of procedurally hold hostage, a group of teachers who are counting on predictability and clarity and forthrightness and transparency from this Congress, and now it is 21 days before a tax provision upon which they are going to rely is now dangling before them.

And what this House is being told by the majority is either you vote for these teachers or you push them off, and these are your choices. Is that really as good as it gets? Is that really as robust a tax provision and a tax policy that we can come up with, to dangle a group of teachers out and sort of manipulate them on the House floor in terms of an argument and say, "You're either for teachers or you're not"?

□ 1400

Well, I think the American public sees through that argument, Mr. Speaker. I think that the American public has a hope and an expectation that we are not going to get to this false trade; that is, that we are going to permanently increase taxes on job creators while offering temporary tax relief. That's a bad deal. That's a real bad deal all the way around.

And it gets particularly difficult if you think about the extension of that logic: Are we going to have this same debate in the 2010 cycle when we're going to be dealing with tax rates, we're going to be talking about dividend rates, and we're going to be talking about individual rates? Are we going to be having this same permanent tax increase in exchange for temporary tax relief?

Mr. Speaker, that's a bad deal. We ought to walk away from this. We ought to vote "no" and send this back to the committee where it belongs.

Mr. NEAL of Massachusetts. Mr. Speaker, since the gentleman was concerned that I was picking on teachers, let me raise this point. There are 2,274 businesses in his home State of Illinois that will not be able to get a credit for

their crucial research and development costs, a \$23 million benefit.

And with that, I yield 2 minutes to the gentleman from North Carolina (Mr. ETHERIDGE).

Mr. ETHERIDGE. I thank the gentleman for yielding, and I thank Mr. RANGEL for his hard work on this legislation. I support the bill. The Tax Extenders Act of 2009 reduces taxes by more than \$30 billion for individuals and businesses to support small businesses and fuel job growth.

To help create high-tech jobs and support American competitiveness, H.R. 4213 extends the R&D tax credit. North Carolina's growth has been supported by technology and the health and energy industries. The R&D tax credit is vital to this sector of the economy, a sector that spurs innovation and creates new jobs all across America.

H.R. 4213 extends the accelerated cost recovery credit for restaurant and retail improvements, and incentivizes more businesses to grow, retool, modernize, and expand their facilities. To help struggling communities, the bill extends incentives like the new markets tax credits and tax incentives for businesses in designated Empowerment Zones. These provisions are more important than ever. As we help businesses grow, we help grow our workforce and strengthen our economy.

Education is the key to the future for both our young people and those who are retraining for new jobs. The bill protects tuition deductions to help make more students afford school. For individuals, it also extends the deductions for State and local taxes, and property taxes, while also preserving \$7 billion in deductions that encourage charitable giving.

I also am pleased to know that this bill extends tax credits for teachers. Even though they are often underpaid, many teachers use their own money. I happen to know. I was a State superintendent of schools in North Carolina for 8 years and worked with this tax credit. I thank the committee for putting it in and keeping it in. It's unfair to ask them to continue year after year to pay. I thank you for doing it. This is a tax credit that helps them contribute to the success of future generations.

I support this legislation and encourage its passage.

Mr. CAMP. I yield myself such time as I may consume, and I think the point that we're trying to make on the floor here is that this is a false choice: Either you're for teachers or you're for the research and development tax credit, or you're against it. And the false choice is: Do we really have to raise taxes on job creators in order to get the extension of the research and development tax credit temporarily? Do we have to have this permanent tax increase that, frankly, will make us one

of the highest-taxed countries in the world on this sort of investment tax? And I think that's a false choice being presented today.

And with that, I yield to the gentleman from Illinois (Mr. ROSKAM).

Mr. ROSKAM. I thank the gentleman. I want to thank the gentleman from Massachusetts for highlighting the research and development elements of my home State. And I guess my reply is that simply casting a wider net and grabbing more procedural hostages, I don't find it persuasive, because I think the false premise that is the basis of this bill is the permanence versus temporary argument; in other words, that the tax hikes that are being articulated are going to be permanent tax hikes. The tax relief that is being used, Mr. Speaker, to really sell the bill are going to be temporary tax relief.

I find it ironic that here we have had a jobs summit at the White House with the congressional leadership and obviously the President, and so much consternation that we all share about what? About the unpredictability of our economy.

This is an opportunity, I think, for us to come together on the research and development tax credit, for example, and cast a larger vision, and to say for R&D to make great strides in this country, there has to be a sense of predictability to it. We can't keep it on a short leash of 12 months. That's too short of a cycle. The accountants in these firms are going to be saying, Look, you can't rely on the Congress necessarily to come through.

So I think that is ultimately the argument that I'm making. I think we have a false choice, as Mr. CAMP said. I think we can do better, and I would hope that we did. But I appreciate the gentleman from Massachusetts highlighting the State of Illinois.

Mr. NEAL of Massachusetts. Just reminding him of those numbers. I yield myself as much time as I might consume.

In response to my friend's, Mr. ROSKAM's, argument here about these tax proposals being made permanent, I don't understand how the other side could have been witness to borrowing billions and billions of dollars for Iraq and not having had the courage to speak to the issue of transparency and allowing the American people to see what Iraq was going to cost.

In addition, remember, they talk about fiscal responsibility? They cut taxes six times while committing 160,000 soldiers to Iraq. On January 19 of 2001, they inherited an almost perfect economic picture: unparalleled economic growth, the deficits had been paid off, the debt was coming down. And do you know what? To show you my bipartisan position here, let's give Bush I some credit for that, having had the courage to do it, and Clinton twice.

It was the recklessness that the other side embraced that now we have to pay for.

And this bill today, as unpalatable as some of them might argue that it is, it's paid for. We square this issue with the American people. This legislation is paid for.

I reserve the balance of my time.

Mr. CAMP. At this time, I yield 2 minutes to the gentleman from Texas (Mr. BRADY).

Mr. BRADY of Texas. I would point out, Mr. Speaker, that when Republicans lost control of Congress, the deficit was \$160 billion, too high. Today, just 2½ years later, it is nearly nine times that high. It is greater than all the deficits in 1 year and all the deficits under President Bush. We are on an unsustainable path where our children and grandchildren will never be able to afford what is being spent today.

And I will remind, too, my friend from Massachusetts that when Democrats took that gavel, Speaker PELOSI pledged she would pay every dime of our wars in Iraq and Afghanistan. Nearly 3 years later, they haven't paid for a dime of those wars.

Let me make a point here. The reason I think Congress' approval ratings are lower than Bernie Madoff's is that we keep pitting Americans against other Americans. In this case, we keep pitting teachers and research workers and local taxpayers, you hear the numbers, against our local real estate workers and our local construction workers. This bill will seriously damage our ability to create jobs and raise property values at the local level. Our real estate partners, the real target of this bill, the real losers in this bill, these are average people who build our local facilities, who create construction jobs, who are the backbone of our economy. And in this case, they will have their taxes nearly tripled. It will result in lower property values and fewer jobs at home.

What it really does is it punishes people who put in sweat equity and work for decades to bring it about. And it forces them to go to the bank and take debt, to seek capital at a time when there is no bank and no lending available. So we have taken one of the toughest parts of our economy, commercial real estate, and punished them. It is a false choice, as the gentleman from Michigan has said. It's the wrong choice. This is a bad deal.

Mr. CAMP. Will the gentleman yield?

Mr. BRADY of Texas. I yield to the gentleman from Michigan.

Mr. CAMP. I just want to comment, too, on this perfect economic picture you said occurred in 2001. As we all know, the bubble burst in 2000. So that history is not quite accurate. I just want to correct that for the record.

Mr. NEAL of Massachusetts. Let me yield 2 minutes to the very important

member of the Ways and Means Committee, the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Speaker, I thank the gentleman, who is doing a remarkably good job, in spite of all the misinformation on the other side, of moving this bill along.

I rise in support of this legislation to extend expiring tax provisions. It is very important that Congress pass this bill this year.

Allowing these provisions to expire would amount to a tax increase at a most challenging economic time for our Nation's businesses and families. Waiting to enact an extension retroactively would add to the already uncertain business climate and make tax planning all the more difficult for companies and individuals that depend on these tax credits.

The bill extends necessary tax relief to parents and teachers, college students, homeowners, small businesses, and millions of other middle-income families. This legislation is needed in my State for so many critical things. It ensures that Nevada residents who do not pay a State income tax can continue to deduct their sales and State tax from their Federal income tax. For Nevada college students, most of whom come from middle-income families, deduction of their tuition makes the difference between going to college and not going to college.

The bill extends a few alternative and renewable energy tax credits, so critical at this particular time, such as the tax incentive for natural gas and propane used as a fuel in transportation vehicles. These important provisions will help increase clean energy production and consumption.

When it comes to the State of Nevada, and all politics is local, I would like to tell the other side how important this is to the people I represent. This is not a joke, and this is not using these people. This is providing tax relief for millions and millions of people across the country and hundreds of thousands of Nevadans.

Over 23,000 teachers in my home State will not get a tax benefit for purchasing school supplies out-of-pocket if we don't pass this.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. NEAL of Massachusetts. I yield the gentlewoman 30 additional seconds.

Ms. BERKLEY. Over 32,000 families in my State will not be able to deduct their higher education tuition costs, and 346,000 Nevada families in my State will not be able to deduct the State sales tax that they pay. This would be a loss of a \$574 million benefit for the State of Nevada. And 141 businesses in my State will not be able to get a credit for their crucial research and development costs.

I submit to you, Mr. Speaker, this is an important piece of legislation. It is timely. We need to pass it now.

Mr. CAMP. I yield myself such time as I may consume.

What we're being offered here is temporary tax relief for 1 year paid for with permanent tax increases. And I would just say that while the majority disingenuously portrays this provision as targeting only rich Wall Street financiers, it actually goes well beyond that, affecting investments and transactions along Main Street as well. This extremely broad provision applies not only to private equity firms and hedge funds, but also to real estate partnerships that invest in every congressional district and venture capital funds that help finance start-up, high-tech and biotechnology investments all across America.

This provision would have far-reaching consequences on the returns of the pension funds, university endowments, and philanthropic foundations that invest in these partnerships that are targeted by the majority.

Let me just, for the record, say that in CQ there is a quote from Chairman BAUCUS on the Senate side that said the House on Wednesday will take up a roughly \$31 billion bill extending dozens of provisions expiring December 31. The major offset for the package, raising \$24.6 billion through taxing investment on partners income for managerial services as regular income rather than capital gains, is unlikely to survive in the Senate.

□ 1415

Again, we are moving forward on a funding mechanism that is permanent for 1 year of tax relief, and it is something that the Senate will not take up. To go on further, he says the provision passed the House twice in the 110th Congress but went nowhere in the Senate where Democratic leaders deemed it too contentious. Earlier this year, Baucus said he did not want to spook shaky financial markets by using the measure as an offset.

I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, might I inquire as to how much time remains on both sides.

The SPEAKER pro tempore. The majority has 12¾ minutes and the minority has 16½ minutes.

Mr. NEAL of Massachusetts. Just before I recognize the gentleman from Illinois (Mr. DAVIS), I hope that my friend Mr. CAMP will have a chance—he spoke to one provision of the pay-for. Maybe he will speak to the issue of tax evasion as to whether or not he supports the \$8 billion that's being raised in this legislation to pay for this bill.

With that, I would like to recognize the gentleman from Illinois, my friend, Mr. DAVIS, for 2 minutes.

Mr. DAVIS of Illinois. Let me first of all thank the gentleman from Massachusetts for yielding.

I rise in strong support of H.R. 4213, the Tax Extenders Act of 2009. There



are multiple provisions within this bill that are needed by individuals, businesses as well as State and local governments. This bill is good for Chicago, it's good for the State of Illinois and, indeed, it is good for the Nation.

This bill helps individuals with the cost of education, both for teachers who pay out of pocket for supplies and for students who pay for tuition and books. It helps families cover the cost of property taxes and sales taxes. It helps business invest in research and development, equipment, maintenance and certain capital improvements.

It promotes charitable giving of food, equipment and inventory. This bill also supports critical community assistance programs. It encourages empowerment zones and renewal communities in economically depressed areas. It supports areas that experienced natural disasters, such as the gulf coast and the Midwest.

The Chicago Reporter, a newspaper that does an outstanding job, found that the west and south sides of Chicago have unemployment rates of over 20 percent. It is obvious to me that the city of Chicago, the State of Illinois, and, indeed, the Nation, need this bill. I am proud to support it.

Mr. CAMP. At this time I am prepared to close if the gentleman has no further speakers.

I reserve the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, we are trying to just assess how much time is here, if you will give me a second.

Mr. Speaker, I would like to recognize the gentleman from Michigan (Mr. LEVIN) for 3 minutes.

Mr. LEVIN. I think it's important that we look at the facts here. The gentleman from Texas and others have raised issues regarding real estate. These are the figures that have been compiled by our staff based on IRS data. That less than 10 percent of all of the income earned in real estate construction and development is earned by partnerships that might be involved here, that less than 5 percent of all wages earned by employees in real estate construction and real estate development are earned by employees of partnerships.

Ninety percent of the income earned in real estate construction and real estate development is earned by C corporations or S corporations. Let me just say, in terms of corporations that are involved in real estate, when they give stock options, when those are exercised, and these are the vast majority of cases, the people who exercised the stock option pay ordinary income tax.

Essentially, you have here an argument undercutting the basic proposition. That is that those who invest their own money get capital gains treatment and those who provide services, in whatever circumstances, they pay ordinary income tax.

Also let me just mention that the President has suggested some specific provisions that will encourage investment. There is a basic structure in question here, a basic structure. When people invest their own money, they should pay capital gains tax on the profits. When they perform services managing other people's money, like everybody else who performs services, should they not pay ordinary income tax as does the waitress, no money except a small amount of minimum wage, and not even that, perhaps, if there are no tips; and the author, if the books aren't sold, then they don't get anything.

What is being proposed here, as I said earlier, is what has been suggested by economists, whether they are conservative, moderate, liberal, whatever you want to call them, and by various other sources. That there is a basic issue here. This legislation is an effort to address that basic issue and to pay for the tax extenders. In previous years, in so many cases, you have passed legislation without paying for it and the debt goes up and up.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. NEAL of Massachusetts. I yield the gentleman an additional 15 seconds.

Mr. LEVIN. What we are suggesting here is fiscal responsibility. Don't dig the hole deeper and deeper. Step up and pay for it, and pay for it by making the Tax Code equitable for all of the citizens of the United States of America.

Mr. NEAL of Massachusetts. I would like to yield to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) for the purpose of a unanimous consent request.

Mrs. CHRISTENSEN. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of HR 4213, the Tax Extenders of 2009 Act which contains the crucial extension of the rum cover-over program to the American Caribbean territories. The annual extension, which raises at least \$20 million for the Virgin Islands for infrastructure development, is a vital component of our economic development strategies for continued growth and self sufficiency. In 1954, Congress extended the equalization cover-over provision to the Virgin Islands to foster greater fiscal autonomy and in 1983 and 2000, it enacted laws which vested the Legislature of the Virgin Islands with sole authority to determine how rum cover-over revenues should be utilized.

Recently, that authority has been challenged by legislation that would tie the hands of our local territorial governments in regards to determining how best to utilize those funds. The government and people of the Virgin Islands commend the early foresight of the Congress and reserve the right to determine what is in the best interest of our community.

Mr. Speaker, Congress designed the rum cover-over program to create economic stability for its territories in the Caribbean, to include the U.S. Virgin Islands and Puerto Rico.

Over the years, each has benefited from this program and hopes to continue to do so in the future. If one territory believes that they no longer need or require this benefit, I am here today to tell you, that the people of the Virgin Islands are grateful for the continued opportunity to have this funding and to determine how best it can be utilized for their ultimate benefit.

In the present global economic development environment, the U.S. Virgin Islands has moved to stabilize this industry on its shore, guaranteeing revenue and jobs for Americans, securing our retirement system and repairing schools while at the same time working to clean up environmental issues associated with the rum industry.

The Congress support of today's rum revenue extenders and indeed the entire rum cover program is crucial to the economic future of the territories and today, I, along with the people of the U.S. Virgin Islands thank Chairman RANGEL, the leadership of the House and my colleagues on both sides of the aisle for your continued support.

Mr. NEAL of Massachusetts. Mr. Speaker, I yield myself 2 minutes.

There is an opportunity here today to begin the discussion of fundamental tax reform. If we could move past the ideology that is so rigid, where we can only discuss cuts and never revenue or, on the other side, only revenue and never cuts, then we could move this debate and discussion forward.

Now, the other side today, they are suggesting to the American people, we like the R&D tax credit. We like teachers. We like tuition assistance, and what we are saying on this side is we like all of those institutions as well, but we think they should be paid for. Sometimes you have to eat the broccoli before you have your dessert.

Tax reform is an opportunity. I hope that the strategy that got us into this difficulty—remember the old argument here that tax cuts pay for themselves? You couldn't even get our friend who ran for President on the Republican ticket last year to have his top economic adviser say that was true. That's part of the problem here, being married to rigid ideology as opposed to common solutions that might make this work for the American people.

I reserve the balance of my time.

Mr. CAMP. At this time I yield 2 minutes to the distinguished member of the Ways and Means Committee, the gentleman from Texas (Mr. BRADY).

Mr. BRADY of Texas. Mr. Speaker, well, there is no question we all support extending the Republican State and local sales tax deduction put in place, restored by a Republican Congress.

I am pleased to extend the teachers' classroom supply deduction, again, something created and fostered under a Republican Congress, the same with the renewable energy credits, much of which expanded under a Republican Congress. But make no mistake, this isn't about paying for these issues.

This Congress, this White House is paying for nothing these days; \$700 billion, \$800 billion stimulus bill, not a dime paid for. All the new spending, TARP II, second part of the bailout, not a dime paid for.

Two weeks ago they pass out this bill, a quarter of a trillion dollars out of this House, to help doctors with their Medicare reimbursements. Guess how much is paid for? Not a dime, zero. This new fiscal responsibility, while we appreciate it, you shouldn't achieve it by raising taxes and punishing our local real estate and construction people.

I do take exception. We were told today, well, don't worry about it. It's only 10 percent of our local real estate and construction jobs, only 10 percent. Well, that's \$4.5 trillion of local and real estate investment along Main Street America.

Here, I guess they think we can just sacrifice one out of every 10 local construction jobs. We will just sacrifice one out of every 10 local real estate jobs. That's just collateral damage up here.

It's real damage back home. Picking winners and losers, rewarding those, our teachers, our research workers, those who are sending their kids to college, and taking away jobs from Main Street America in real estate, construction from those who build our communities is a false choice.

The gentleman from Michigan is correct: this is a false choice that damages our economy, that's dead on arrival in the Senate, as it should be. We ought to be working together finding a way to help people, not picking winners and damaging jobs in America today. No wonder we face 10 percent unemployment.

Mr. NEAL of Massachusetts. My friend from Texas conveniently left out TARP I, which was a Bush initiative; conveniently left out the cost of the Iraq war, which was borrowed money; and conveniently left out the Bush tax cuts, which cost \$2.3 trillion that only went to people at the very top of the economic strata of America.

I reserve the balance of my time.

Mr. CAMP. To close, Mr. Speaker, the American people don't need to be reminded of the dire economic situation we face today. The American people know unemployment at 10 percent remains far too high. They know it's tough to make ends meet without having to pay higher taxes. They know higher taxes on investment, on business investment, won't create jobs. In fact, it will hurt job creation.

The American people need not be reminded of those things, but apparently the majority does. Nearly 3 million Americans have lost their jobs since the Democrats enacted their so-called stimulus bill. Unemployment is 25 percent higher than the administration promised, and yet the bill before us

proposes to add a new \$24.6 billion tax on business investment.

Now, frankly, I wish we could end this year-end process we go through, and I know the chairman of the Ways and Means Committee gave an interview yesterday where he suggested a way out of this year-end extenders process we find ourselves in. I look forward to working with the chairman to try to find a solution to this problem.

The bottom line is the decision we are faced with today means we should be encouraging business investment, not discouraging it through higher taxes. I would just say to my friend that our motion to recommit would not repeal the international banking disclosure provisions.

In fact, Republicans share the majority's concern about the illegal use of offshore accounts to evade U.S. taxes. Tax evasion is a Federal crime and individuals who break the law by illegally hiding their income in offshore accounts and any financial institutions that facilitate that tax evasion should be aggressively pursued and punished to the fullest extent of the law.

If loopholes exist in law that allow tax cheats to illegally hide assets offshore, obviously Republicans stand ready to help close those loopholes in an appropriate way. As I said, our motion to recommit would retain the language in the majority's bill on that provision.

Again, these extensions of tax relief, which in many cases are policies Republicans passed and voted for when we were in the majority, they are helpful, and they are important to do, but they are temporary. They last 1 year. In order to get that done, the majority would increase taxes on economic investment.

Let's just be clear about this. It changes how business income has been taxed for decades, making it so that income that is currently taxed at a rate of 15 percent would be taxed at 35 percent, more than doubling that tax in an economic recession. It places one of the highest taxes on investment found anywhere in the world, and its reach and scope will increase taxes on everyone from the largest investors to the local real estate partnerships, again, permanent tax increases for 1 year of tax relief. With that, I would urge my colleagues to oppose this legislation.

I yield back the balance of my time.

Mr. NEAL of Massachusetts. Mr. Speaker, at this time I would like to yield the balance of my time to the chairman of the Ways and Means Committee, my friend, the gentleman from New York (Mr. RANGEL).

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Mr. RANGEL. Mr. Speaker, I thank Chairman NEAL for the fantastic job he has done, along with my good friend Mr. LEVIN, for presenting the position of the Ways and Means Committee,

which, Republican or Democrat, we are so proud to be a part of.

We have produced for this Congress \$30 billion of benefits to the American people. Some may be critical because it's only for 1 year, but I think we have made it abundantly clear that because we are on the brink of reform of the entire system, as Mr. LEVIN said, we've got to study this to evaluate how we can better serve our teachers, our State and local governments in order to make certain that the things that everybody here is in support of can be made permanent so that they can plan and understand exactly where this Congress is coming from for the people of the United States.

It's interesting to note that the opposition to this bill, nobody has criticized any of the benefits that are in this extender bill. Let me say this again. This is a very, very unique thing that would happen in the Halls of Congress. The bill that we are presenting and asking for an affirmative vote, H.R. 4213, there is no criticism of any provisions of the benefits that are in this legislation. I'm going to rest for a moment and let that sink in.

The opposition to this bill, it appears to me from listening to the responses from my Republican friends, is that their problem is that we don't want to increase the deficit. Their problem is they just don't like the way we are indeed closing the loopholes. When we say, We're closing loopholes, they say, You are raising taxes. You bet your life we are. We are getting the resources that America deserves by fairness and equities in the tax system. There's no way to clean up the tax system without making those who should be paying taxes to pay it.

So if indeed you have some criticism of the loopholes that we're closing, let's take a look at the loopholes. That sounds fair, because my friends have not been talking about the benefits in these bills. My friends on the other side are talking about taxes. If you want to make this a case of forgetting all of these good people that deserve and relied on the extension and make this a tax reform argument—which I really think should be at another time and another place. I really think that tax reform really deserves the study, the research, and the debate so at the end of the day we don't have a Democratic tax bill. This country deserves a bipartisan tax bill, because there's going to be pain in it; because every time we try to bring equity into it, if the other side is to say I don't have any tax reform, but you're raising taxes by cutting away a lot of benefits that we say people don't deserve, and you say that we're increasing taxes.

Well, let's talk about it. A part of this good bill is being funded so that we don't have a deficit by making certain that, during this time of war, American taxpayers don't avoid their

fair share of taxes and they get together in an unpatriotic way and pick foreign countries to determine how they can avoid American taxes and pick foreign countries to invest in and put foreign countries that really are not concerned with our need for jobs and equity but they're concerned with greed for their stockholders and corporations. Did one Republican get up and say this is a good thing? And I would yield to anyone on the other side who wants to say it is not a good thing to go after these people who are taking advantage of our law.

So we can't reform it all at one time, but we can knock out these things where people are taking unfair advantage of our Tax Code.

The other issue, which made me think in listening to the response to this extender bill where hardly anyone talked about the benefits, seemed to be centered around some tax provision that is commonly referred to as carried interest. It seems as though the minority is saying that there's a certain group of people that do work and they're entitled to get compensation for their work.

For those who think this is a complicated issue, it is not. It means that we really think as a body that those people who take outstanding risk, who are not employees but are adventurous, creative people, that they be given 15 percent, a lower tax rate than 35 percent. And we're saying that those people who put capital in, who work in order to develop jobs in whatever they want to develop, if their money is in, they should get a 15 percent tax cut because they took risks. Anybody who doesn't put money in here that becomes a partnership and acts like they're taking risk should not be able to enjoy this benefit.

So I do hope that you consider the weight of the debate and then vote accordingly.

Mr. HIMES. Mr. Speaker, I rise to express my serious concern regarding the revenue provisions of H.R. 4213, The Tax Extenders Act of 2009, specifically the provision affecting the treatment of "carried interest" in our tax code. I believe this provision, as currently worded, does not represent an optimal solution to the underlying challenge of fairly and appropriately taxing investment management professionals.

My concerns are tempered by my enthusiastic support for many of the provisions in the bill as a whole, which would provide individuals and businesses with approximately \$31 billion in tax relief in 2009. As families and businesses in my district struggle to make ends meet, these provisions will provide swift and cost-effective support to research and development, to alternative fuels, and to the ability of U.S. companies to serve customers in foreign markets.

My concerns with the legislation rest with the changes it would make to the tax treatment of "carried interest" on investment man-

agement. Current law treats carried interest the same as all other profits derived from a partnership and thus characterizes carried interest as being derived from an interest in the partnership's capital. In a broad-brush fashion, the legislation would transform these capital gains into ordinary income for tax purposes, a change that would increase taxes on carried interest income from the current 15 percent capital gains rate to as much as 35 percent beginning next year. It should be noted that this date is a good deal more aggressive than a similar provision in President Obama's budget, which in the interest of economic recovery would start taxing carried interest as regular income only in 2011.

While I respect the view that in some cases carried interest represents a form of compensation for services provided by the general partner, this distinction is far from clear in every case. Professionals in this industry should be taxed fairly and appropriately, but I disagree that the only way to achieve this goal is to apply one of two pre-existing categories to their services.

Industry analysts generally base their characterization of carried interest upon the degree to which a general partner's own assets are at risk and differences in the profit interest of the general and limited partners. Many observers, such as Professor Victor Fleischer of the University of Colorado School of Law, argue with sound legal justification that these professionals should be taxed somewhere between that of pure capital and pure ordinary income.

Given the widespread reliance of partnerships on these rules, I believe we in Congress must be more cautious in enacting such a significant change in the rules at this juncture. Such a reformulation at the least deserves a greater hearing of views in a full and deliberate committee process.

Our venture capitalists risk significant quantities of time, money, and effort to assist the most compelling business models to improve the way that Americans live and work. Before we enact changes to our tax system which could threaten existing incentives to innovation and investment, I believe such changes deserve the fullest possible consideration to arrive at the most practical and fair solution.

I am hopeful that the underlying legislation will undergo revisions to its revenue-raising provisions which enable me to support it. Given the concerns voiced above, however, I regret that I am unable to cast my vote in support of the bill as it stands.

Mr. GENE GREEN of Texas. Mr. Speaker, I rise today to show my support for H.R. 4213, the Tax Extenders Package that includes several critical extensions important to Texas.

The package will extend through 2010 the \$1 per gallon credit for producing biodiesel and the \$1 per gallon credit for producing diesel from biomass, which is especially important to my district as it is home to the struggling biodiesel industry.

Texas is the leading producer of biodiesel in the nation. The industry supported up to 8,600 jobs in the State and over 50,000 jobs in the U.S. in the past year. It is both fiscally and environmentally responsible to extend these tax credits and to promote the development of biodiesel here at home.

The biodiesel excise tax credit enables biodiesel to remain price competitive with con-

ventional diesel. Without the prompt extension of the tax credits before they expire on December 31, 2009, we risk reducing the domestic production of low carbon, renewable energy sources that help our nation to significantly reduce carbon emissions, as well as our dependence on foreign oil.

The biodiesel industry has already been forced to close several plants and is operating at about 20 percent capacity due in large part to the weak economy. A retroactive extension of the credit after December 31, 2009 could further exacerbate the industry's job losses, and place this important industry in a precarious position.

I appreciate the bipartisan support of the following Texas members who recently joined me in sending a letter to House Leadership supporting the biodiesel tax extension: AL GREEN, CHET EDWARDS, SILVESTRE REYES, SOLOMON ORTIZ, RUBEN HINOJOSA, HENRY CUELLAR, CIRO RODRIGUEZ, CHARLIE GONZALEZ, and JOE BARTON. This support exemplifies the importance of protecting the biodiesel industry for the nation and for Texans.

It is imperative that we move forward expeditiously to extend the biodiesel and renewable diesel excise tax credits to protect American jobs and to help our nation move towards a clean energy future.

Mr. SKELTON. Mr. Speaker, today the House of Representatives is considering H.R. 4213, the Tax Extenders Act of 2009. I wish to express my support for this legislation, which would continue a number of expiring provisions of the U.S. tax code that are important to the people and businesses I am privileged to represent in rural Missouri. Without Congressional action, these tax cuts will expire on December 31st.

For Missouri families, H.R. 4213 would provide important tax relief. The measure would extend deductions for state and local sales and property taxes and for college tuition. It would extend a special deduction for teachers and other school professionals who use personal funds to buy school supplies for their classrooms. And, the legislation would take steps to ensure activated military reservists do not suffer a pay reduction by providing a tax credit for small businesses that continue to pay National Guard and Reserve employees when they are called to active duty.

For Missouri farmers, H.R. 4213 would extend the five-year depreciation for farming machinery and equipment, would extend the charitable tax deduction for donated food, and would extend the tax deduction for donating conservation easements. H.R. 4213 would also extend critical tax incentives for biodiesel and renewable diesel fuel. The biodiesel tax credit is very important to the development and sustainability of America's renewable fuel industry and is particularly beneficial to biodiesel facilities, like Prairie Pride, located in Missouri's Fourth Congressional District.

For Missouri businesses, H.R. 4213 would extend the research and development (R&D) tax credit that encourages financial investment and job creation in America's high tech sector. The legislation would also strengthen the ability of American companies to serve customers overseas, would extend benefits for investments in economically distressed areas of our

country, and would extend the 15-year cost recovery for qualified improvements to restaurants and retail space. H.R. 4213 would also extend a low-income housing tax credit exchange program that has invested more than \$3.7 billion in the construction of over 49,000 low-income housing units.

H.R. 4213 would extend other valuable provisions of the U.S. tax code, including deductions for charitable contributions by individuals and businesses. And, to ensure the legislation does not add to the deficit, the \$31 billion cost of this legislation is offset by cracking down on tax evaders who hide their assets in offshore tax havens and ending special tax treatment for hedge fund and investment bank managers.

I urge my colleagues to support H.R. 4213 so that we can provide tax relief and economic certainty to families and businesses in 2010.

Mr. VAN HOLLEN. Mr. Speaker, I rise in strong support of the Tax Extenders Act of 2009. This legislation will provide businesses and individuals with \$31 billion in tax relief over the next year to continue creating jobs and strengthening our economy. It is on time, fully paid for and deserves this chamber's support.

The R&D Tax Credit extension in this bill will enhance the competitiveness of nearly 11,000 corporations driving innovation in the global marketplace. The above-the-line deductions for school supplies and qualified tuition expenses will continue to support our teachers and students' education. The IRA Charitable Rollover and Conservation Easement provisions maintain important incentives for critical work in our non-profit sector. And the clean energy credits move us towards the energy independence, reliability and efficiency we know we must embrace in the 21st century.

This is an important bill, strongly supported by the Obama Administration. For that reason, I urge our colleagues in the Senate to act expeditiously on H.R. 4213 so that the President can sign extenders legislation into law this year. I yield back the balance of my time.

Mr. KIND. Mr. Speaker, I rise today in strong support of H.R. 4213, the Tax Extenders Act of 2009. This bill extends several badly needed tax provisions that will continue to provide economic benefits to struggling families and businesses. While these temporary, last-minute patches are not the preferred means of action for anyone, this action is better than none, and I urge my colleagues to support it.

Passage of this bill will ensure that individuals already facing the worst economic situation in decades will retain the ability to deduct state and local taxes, preventing a \$3.3 billion tax increase. It also extends the deduction that students receive for tuition payments and the credit teachers receive for stocking their classrooms out of their own pocket. Both are essential for making a quality education accessible to all.

For businesses, this bill will extend the invaluable R&D tax credit so they can continue to invest in the innovation that will keep America competitive in the industries of today and tomorrow. I have long advocated making this credit permanent so companies can make it a permanent part of their business plans. I hope we will do that as part of overall tax reform starting next year.

Other provisions important to my district in Western Wisconsin include the Conservation Easement Credit, which gives individuals an incentive to protect environmentally important land in perpetuity, and the extension of a 5-year depreciation period for farm and agricultural equipment. This extended period has been highly successful in spurring capital improvements on the farm and improving farm output and efficiency.

Finally, I am particularly pleased that this bill extends a provision I authored last year that provides tax relief to families and businesses who are impacted by natural disasters. Following devastating floods in my district in 2007 and 2008, it became clear to me that more tools were needed to assist individuals and businesses to recover. The tax relief provided here offers a more systematic and fair method than the previous system of ad hoc assistance on a case-by-case basis. I thank Chairman RANGEL and the rest of the committee for including it in the extenders package today.

Mr. Speaker, I would like to note that all of these benefits are completely paid for, meaning this bill will not add one dime to the deficit. In fact, one of the ways we pay for this bill is by cracking down on foreign bank accounts, where millionaires have been hiding their fortunes from the IRS for years. This type of enforcement has been sorely lacking. It is unfortunate, however, that the bulk of revenue for this bill will come from higher taxation of venture capital funds that have been leaders in spurring job growth and innovation. I sincerely wish we had been able to find an alternative revenue source that would not raise taxes on these entrepreneurs at the exact time when we need them the most. Twice before the Senate has rejected this pay-for, and I hope they will do so again.

On balance, Mr. Speaker, this is a critically important piece of legislation before us that will prevent disastrous consequences in this fragile economic environment. I ask my colleagues to join me in supporting its passage today.

Mr. LANGEVIN. Mr. Speaker, I rise in support of H.R. 4213, the Tax Extenders Act of 2009. This bill provides \$31 billion in tax relief to individuals, families, businesses and charitable organizations by extending over forty tax provisions that are set to expire at the end of 2009. These tax breaks are an important component to rebuilding the financial and economic strength of Rhode Islanders struggling in the wake of the worst recession in decades.

H.R. 4213 contains more than \$5 billion in individual tax relief and more than \$17 billion in tax cuts for American businesses. To strengthen pocketbooks of families and inject demand into the economy, this measure extends property tax relief for up to 30 million homeowners. It helps 4.5 million families better afford college with tuition deductions and saves 3.4 million teachers money with a deduction for classroom expenses. This measure further extends the research and development tax credit for thousands of American corporations, encouraging businesses to increase investments in technology and create more high-tech jobs for the twenty-first century.

Also included in this package is more than \$7 billion in tax provisions that encourage charitable contributions, provide community

development incentives, and support alternative energy investments.

In tough economic times, it is important to enact tax policies that spur job creation and foster economic growth, innovation and opportunity. The annual extension of these tax cuts is an important step toward achieving that goal, and I look forward to working with my colleagues on more permanent solutions to simplify the Internal Revenue Code and ease the tax burden on millions of Americans.

Mr. LARSON of Connecticut. Mr. Speaker, I rise in support of H.R. 4213, the Tax Extenders Act of 2009, and applaud the leadership of Chairman RANGEL and the Ways and Means Committee in crafting this bill. I commend the Chairman for the inclusion of the alternative fuel tax credit, which incentivizes individuals and businesses to purchase energy for vehicles that run on clean energy sources. This continues Congress' commitment to reduce our dependence on foreign oil. As long as we are exporting our dollars overseas in exchange for oil, our economic and national security are at risk.

Natural gas is an abundant transition energy that is twice as clean as coal. While 69% of the oil consumed in America is for transportation (two-thirds of which we import from foreign nations), 98% of the natural gas we consume is produced in North America.

The more than 100 years of natural gas reserves in the U.S. will provide thousands of domestic jobs that cannot be outsourced and will help keep taxpayer dollars in the U.S. Approximately 1.3 million Americans are directly employed by natural gas companies, and the entire U.S. natural gas industry supports nearly three million U.S. jobs, with the potential to add many more.

Natural gas will play an increasing role in reducing U.S. carbon emissions, creating jobs, and enhancing U.S. security. I thank Chairman RANGEL for extending the alternative fuel tax credit and for recognizing the importance of natural gas.

Mr. HOLT. Mr. Speaker, I rise today in support of legislation that will extend tax relief to millions of Americans, the Tax Extenders Act of 2009. This bill will extend 40 tax cuts which are due to expire at the end of this year, many of which are important to businesses and families in Central New Jersey.

New Jersey has the highest property taxes in the country. While property taxes are assessed on a local basis to fund local services and schools, I have attempted at the federal level to provide some relief to homeowners. Earlier this year, I reintroduced the Universal Homeowner Tax Relief Act (H.R. 2725) which would extend the property tax deduction for American homeowners who don't itemize on their federal returns. I helped write this initiative to create an additional standard deduction of \$500 for single filers and \$1,000 for joint filers for local real property taxes paid. I am pleased that the bill before us today extends this deduction for the 2010 tax year and provides needed relief to the 30 million homeowners nationwide and an estimated 600,000 New Jerseyans who are due to lose this benefit this year.

H.R. 4213 also includes \$17 billion in tax cuts that would help American businesses create and preserve jobs during these difficult

economic times. It would extend the low-income housing tax credit exchange program which has invested more than \$3.7 billion in the construction of more than 49,000 low-income housing units nationwide. It will also invest \$3 billion to encourage economic development in economically distressed communities.

I especially support that H.R. 4213 would extend the research and development tax credit for an additional year. This tax credit is crucial in spurring private research and driving technological innovation and will support R&D at 11,000 American companies this year. This credit stimulates American made innovation and preserves and creates new high paying jobs in research and development. As important as the R&D tax credit has been, it has never been a permanent part of the tax code and has been allowed to expire several times, most notably in 2007. Congress should work to make this tax credit permanent in order to strengthen the incentive for businesses to invest in long-term research by giving corporate leaders certainty that their research investments will be rewarded year after year.

The Tax Extenders Act of 2009 also would extend the above-the-line deduction for qualified tuition and related expenses. This tax cut of up to \$4,000 helps parents offset the rising cost of higher education and keeps a college degree within reach of many middle class families. H.R. 4213 also would extend the teacher tax credit that allows teachers to deduct up to \$250 for purchasing classroom supplies for their students. More than 3.4 million teachers benefited from this tax credit this year.

The Tax Extenders Act ensures that these tax cuts do not increase the deficit by providing the U.S. Treasury Department with significant new tools to find and prosecute U.S. individuals that hide assets overseas from the Internal Revenue Service.

I am always looking to extend tax relief to New Jersey families. This bill does that in a fiscally responsible way.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 955, the previous question is ordered on the bill.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

#### MOTION TO RECOMMIT

Mr. CAMP. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CAMP. I am, in its present form. The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Camp moves to recommit the bill H.R. 4213 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendments:

In subtitle A of title I, add at the end the following:

#### SEC. 105. ALTERNATIVE MINIMUM TAX RELIEF.

(a) INCREASED EXEMPTION AMOUNT.—Paragraph (1) of section 55(d) is amended—

(1) by striking “(\$70,950 in the case of taxable years beginning in 2009)” in subparagraph (A) and inserting “(\$72,650 in the case of taxable years beginning in 2010)”, and

(2) by striking “(\$46,700 in the case of taxable years beginning in 2009)” in subparagraph (B) and inserting “(\$47,550 in the case of taxable years beginning in 2010)”.

(b) ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST ALTERNATIVE MINIMUM TAX.—Paragraph (2) of section 26(a) is amended—

(1) by striking “or 2009” and inserting “2009, or 2010”, and

(2) by striking “2009” in the heading thereof and inserting “2010”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

In subtitle B of title I, add at the end the following:

#### SEC. 127. INCREASED LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) IN GENERAL.—Paragraph (7) of section 179(b) is amended—

(1) by striking “or 2009” in the text thereof and inserting “2009, or 2010”, and

(2) by striking “AND 2009” in the heading thereof and inserting “2009, AND 2010”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

In title VI, strike subtitles A and B.

Mr. CAMP (during the reading). Mr. Speaker, I ask unanimous consent to dispense with the reading.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

#### POINT OF ORDER

Mr. NEAL of Massachusetts. Mr. Speaker, I make a point of order that the motion before us is in violation of clause 10 of rule XXI of the rules of the House.

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order?

Mr. CAMP. Mr. Speaker, I ask to be heard on the point of order.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Michigan.

Mr. CAMP. Mr. Speaker, this point of order illustrates the dangers raised by the majority's PAYGO rule and its decision at the start of this Congress to prohibit us from offering motions to recommit that are not PAYGO compliant, something that all minorities, Republican and Democrat, over the last many years have been permitted to do in prior sessions, including as recently as last year.

The majority has asserted the motion to recommit violates clause 10 of rule XXI, known as the PAYGO rule, which requires amendments, including those contained in a motion to recommit, to be budget neutral.

I submit, Mr. Speaker, that his point of order should be overturned because it precludes the House from considering the merits of a different approach to the underlying bill, one that would let the American people keep more of their hard-earned income.

By contrast, granting the PAYGO point of order would prevent the House from considering whether to extend this tax relief, as it has done many times before, without offsets. We should be encouraging business investment, not discouraging it through higher taxes.

Let's be clear. This carried interest tax of over \$25 billion changes how business income has been taxed for decades, making income currently taxed at 15 percent up to 30 percent, more than doubling it.

Mr. Speaker, granting this point of order would foreclose the House from even considering whether it might want to pass this bill with fewer offsets or further tax relief.

Accordingly, I ask that you overrule the point of order and allow the House to debate and vote on our alternative, which would provide additional tax relief for families and small businesses without some of the most objectionable offsets found in the underlying bill.

The SPEAKER pro tempore. The gentleman from Massachusetts makes a point of order that the amendment proposed in the instructions included in the motion to recommit offered by the gentleman from Michigan violates clause 10 of rule XXI by proposing a change in revenues that would increase the deficit.

Pursuant to clause 10 of rule XXI, the Chair is authoritatively guided by estimates from the Committee on the Budget that the net effect of the provisions in the amendment affecting revenues would increase the deficit for a relevant period.

Accordingly, the point of order is sustained and the motion is not in order.

Mr. CAMP. Mr. Speaker, I appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

#### MOTION TO TABLE

Mr. NEAL of Massachusetts. Mr. Speaker, I move to table the motion to appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is on the motion to table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CAMP. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to table will be followed by 5-minute votes on passage of the bill, if arising without further proceedings in recommitment, and suspending the rules with regard to H.R. 3603.

The vote was taken by electronic device, and there were—yeas 251, nays 172, not voting 11, as follows:

[Roll No. 942]

## YEAS—251

Abercrombie  
Ackerman  
Adler (NJ)  
Altmire  
Andrews  
Arcuri  
Baca  
Baird  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Berry  
Bishop (GA)  
Bishop (NY)  
Blumenauer  
Bocieri  
Boren  
Boswell  
Boucher  
Boyd  
Brady (PA)  
Braley (IA)  
Bright  
Brown, Corrine  
Butterfield  
Cao  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Castor (FL)  
Chandler  
Childers  
Chu  
Clarke  
Clay  
Cleave  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crowley  
Cuellar  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Driehaus  
Edwards (MD)  
Edwards (TX)  
Ellison  
Ellsworth  
Engel  
Eshoo  
Etheridge  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Garamendi  
Giffords  
Gonzalez  
Gordon (TN)  
Grayson  
Green, Al

Green, Gene  
Griffith  
Grijalva  
Gutierrez  
Hall (NY)  
Halvorson  
Hare  
Harman  
Hastings (FL)  
Heinrich  
Herseth Sandlin  
Higgins  
Hill  
Himes  
Hinchev  
Hinojosa  
Hirono  
Hodes  
Holden  
Holt  
Honda  
Hoyer  
Inlee  
Israel  
Jackson (IL)  
Jackson-Lee  
(TX)  
Johnson (GA)  
Johnson, E. B.  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)  
Kosmas  
Kratovil  
Kucinich  
Langevin  
Larsen (WA)  
Larson (CT)  
Lee (CA)  
Levin  
Lipinski  
Loeb sack  
Lofgren, Zoe  
Lowey  
Lujan  
Lynch  
Maffei  
Maloney  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McIntyre  
McMahon  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Michaud  
Miller (NC)  
Miller, George  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Nadler (NY)  
Napolitano

Neal (MA)  
Oberstar  
Obey  
Olver  
Ortiz  
Owens  
Pallone  
Pascrell  
Pastor (AZ)  
Payne  
Perlmutter  
Perriello  
Peters  
Peterson  
Pingree (ME)  
Polis (CO)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Richardson  
Rodriguez  
Ross  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)  
Salazar  
Sánchez, Linda  
T.  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schradler  
Schwartz  
Scott (GA)  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Shuler  
Sires  
Skelton  
Slaughter  
Smith (WA)  
Snyder  
Space  
Speier  
Spratt  
Stark  
Stupak  
Sutton  
Tanner  
Taylor  
Teague  
Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

## NAYS—172

Aderholt  
Akin  
Alexander  
Austria  
Bachmann

Bachus  
Bartlett  
Barton (TX)  
Biggert  
Bilbray

Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehner

Bonner  
Bono Mack  
Boozman  
Boustany  
Brady (TX)  
Broun (GA)  
Brown (SC)  
Brown-Waite,  
Ginny  
Buchanan  
Burgess  
Burton (IN)  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Capito  
Cassidy  
Castle  
Coble  
Coffman (CO)  
Cole  
Conaway  
Crenshaw  
Culberson  
Davis (KY)  
Lummis  
Deal (GA)  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dreier  
Duncan  
Ehlers  
Emerson  
Fallin  
Flake  
Fleming  
Forbes  
Fortenberry  
Foxy  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Gingrey (GA)  
Gohmert  
Goodlatte  
Graves  
Guthrie  
Hall (TX)  
Harper

Hastings (WA)  
Heller  
Hensarling  
Herger  
Hoekstra  
Hunter  
Inglis  
Issa  
Jenkins  
Johnson (IL)  
Johnson, Sam  
Jones  
Jordan (OH)  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kline (MN)  
Lamborn  
Lance  
Latham  
Latta  
Lee (NY)  
Lewis (CA)  
Linder  
LoBiondo  
Lucas  
Luetkemeyer  
Shimkus  
Lungren, Daniel  
E.  
Mack  
Manzullo  
Mancant  
McCarthy (CA)  
McCaul  
McClintock  
McCotter  
McHenry  
McKeon  
McMorris  
Rodgers  
Mica  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Moran (KS)  
Murphy, Tim  
Myrick  
Neugebauer  
Nunes  
Nye  
Olson  
Paul

Paulsen  
Pence  
Petri  
Pitts  
Platts  
Poe (TX)  
Posey  
Price (GA)  
Putnam  
Rehberg  
Reichert  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Royce  
Ryan (WI)  
Scalise  
Schmidt  
Schock  
Sensenbrenner  
Sessions  
Shadegg  
Shimkus  
Shuster  
Simpson  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Souder  
Stearns  
Sullivan  
Terry  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Turner  
Upton  
Walden  
Wamp  
Westmoreland  
Whitfield  
Wilson (SC)  
Wittman  
Wolf  
Young (AK)  
Young (FL)

## NOT VOTING—11

Baldwin  
Barrett (SC)  
Carter  
Fudge

Granger  
LaTourette  
Lewis (GA)  
Moran (VA)

Murtha  
Radanovich  
Sanchez, Loretta

## □ 1508

Messrs. DUNCAN, ROONEY and Mrs. MYRICK changed their vote from “yea” to “nay.”

Messrs. GORDON of Tennessee and FILNER changed their vote from “nay” to “yea.”

So the motion to table was agreed to. The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

Mr. RANGEL. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 241, noes 181, not voting 12, as follows:

[Roll No. 943]

## AYES—241

Abercrombie  
Ackerman  
Adler (NJ)  
Altmire  
Andrews  
Arcuri  
Baca  
Baird  
Barrow  
Becerra  
Berkley  
Berman  
Berry  
Bishop (GA)  
Bishop (NY)  
Blumenauer  
Bocieri  
Boren  
Boswell  
Boucher  
Boyd  
Brady (PA)  
Braley (IA)  
Bright  
Brown, Corrine  
Butterfield  
Cao  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Castor (FL)  
Chandler  
Childers  
Chu  
Clarke  
Clay  
Cleave  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crowley  
Cuellar  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Driehaus  
Edwards (MD)  
Edwards (TX)  
Ellison  
Ellsworth  
Engel  
Eshoo  
Etheridge  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Garamendi  
Giffords  
Gonzalez  
Gordon (TN)

Grayson  
Green, Al  
Green, Gene  
Griffith  
Grijalva  
Gutierrez  
Hall (NY)  
Halvorson  
Hare  
Harman  
Hastings (FL)  
Heinrich  
Herseth Sandlin  
Higgins  
Hill  
Hinojosa  
Hirono  
Hodes  
Holden  
Holt  
Honda  
Hoyer  
Inslee  
Israel  
Jackson (IL)  
Jackson-Lee  
(TX)  
Johnson (GA)  
Johnson, E. B.  
Jones  
Kagen  
Kanjorski  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
Kirkpatrick (AZ)  
Kissell  
Kosmas  
Kratovil  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Shuler  
Sires  
Skelton  
Slaughter  
Snyder  
Space  
Speier  
Lynch  
Maloney  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McIntyre  
McMahon  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Michaud  
Miller (NC)  
Miller, George  
Minnick  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Nadler (NY)  
Napolitano

Neal (MA)  
Nye  
Oberstar  
Obey  
Olver  
Ortiz  
Owens  
Pallone  
Pascrell  
Pastor (AZ)  
Payne  
Perlmutter  
Perriello  
Peters  
Peterson  
Pingree (ME)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Richardson  
Rodriguez  
Ross  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)  
Salazar  
Sánchez, Linda  
T.  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schwartz  
Scott (GA)  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Shuler  
Sires  
Skelton  
Slaughter  
Snyder  
Space  
Speier  
Lynch  
Maloney  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McIntyre  
McMahon  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Michaud  
Miller (NC)  
Miller, George  
Minnick  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Nadler (NY)  
Napolitano

Bean  
Biggert  
Bilbray  
Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehner

Bonner  
Bono Mack  
Boozman  
Boustany  
Brady (TX)  
Broun (GA)  
Brown (SC)

## NOES—181

Aderholt  
Akin  
Alexander  
Austria  
Bachmann  
Bachus  
Bartlett  
Barton (TX)

Bean  
Biggert  
Bilbray  
Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehner



Brown-Waite, Inglis  
Ginny Issa  
Buchanan Jenkins  
Burgess Johnson (IL)  
Burton (IN) Johnson, Sam  
Buyer Jordan (OH)  
Calvert King (IA)  
Camp King (NY)  
Campbell Kingston  
Cantor Kirk  
Capito Klein (FL)  
Cassidy Kline (MN)  
Castle Lamborn  
Chaffetz Lance  
Coble Latham  
Coffman (CO) LaTourette  
Cole Latta  
Conaway Lee (NY)  
Crenshaw Lewis (CA)  
Culberson Linder  
Davis (KY) LoBiondo  
Deal (GA) Lucas  
Dent Luetkemeyer  
Diaz-Balart, L. Lummis  
Diaz-Balart, M. Lungren, Daniel  
Dreier E.  
Duncan Mack  
Ehlers Maffei  
Emerson Manzullo  
Fallin Marchant  
Flake McCarthy (CA)  
Fleming McCaul  
Forbes McClintock  
Fortenberry McCotter  
Foxy McHenry  
Franks (AZ) McKeon  
Frelinghuysen McMorris  
Gallegly Rodgers  
Garrett (NJ) Mica  
Gerlach Miller (FL)  
Gingrey (GA) Miller (MI)  
Gohmert Miller, Gary  
Goodlatte Mitchell  
Graves Moran (KS)  
Guthrie Murphy, Tim  
Hall (TX) Myrick  
Harper Neugebauer  
Hastings (WA) Nunes  
Heller Olson  
Hensarling Paul  
Herger Paulsen  
Himes Pence  
Hoekstra Petri  
Hunter Pitts

## NOT VOTING—12

Baldwin Granger  
Barrett (SC) Murtha  
Carter Kaptur  
Fudge Lewis (GA) Sanchez, Loretta

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE  
The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1517

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## RENAMING THE OCMULGEE NATIONAL MONUMENT

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 3603, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Guam (Ms. BORDALLO) that the House suspend the rules and pass the bill, H.R. 3603, as amended.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 419, nays 0, not voting 15, as follows:

[Roll No. 944]

## YEAS—419

Abercrombie Crenshaw  
Ackerman Crowley  
Adlerholt Cuellar  
Adler (NJ) Culberson  
Akin Cummings  
Alexander Dahlkemper  
Altmire Davis (AL)  
Andrews Davis (CA)  
Austria Davis (IL)  
Baca Davis (KY)  
Bachmann Davis (TN)  
Bachus Deal (GA)  
Baird DeFazio  
Barrow DeGette  
Bartlett Delahunt  
Barton (TX) Dent  
Bean Diaz-Balart, L.  
Becerra Diaz-Balart, M.  
Berkley Dicks  
Berman Dingell  
Berry Doggett  
Biggert Donnelly (IN)  
Bilbray Dreier  
Bilirakis Driehaus  
Bishop (GA) Duncan  
Bishop (NY) Edwards (MD)  
Bishop (UT) Edwards (TX)  
Blackburn Ehlers  
Blumenauer Ellison  
Blunt Ellsworth  
Bocieri Emerson  
Boehner Engel  
Bonner Eshoo  
Bono Mack Etheridge  
Boozman Farr  
Boren Fattah  
Boswell Lammorn  
Boucher Filner  
Boustany Flake  
Boyd Fleming  
Brady (PA) Forbes  
Brady (TX) Fortenberry  
Braley (IA) Foster  
Bright Foxx  
Broun (GA) Frank (MA)  
Brown (SC) Franks (AZ)  
Brown, Corrine Frelinghuysen  
Brown-Waite, Gallegly  
Ginny Garamendi  
Buchanan Garrett (NJ)  
Burgess Gerlach  
Burton (IN) Giffords  
Butterfield Lofgren, Zoe  
Buyer Gingrey (GA)  
Calvert Gohmert  
Camp Gonzalez  
Campbell Goodlatte  
Cantor Gordon (TN)  
Cao Graves  
Capito Grayson  
Capps Green, Al  
Capuano Green, Gene  
Cardoza Griffith  
Carnahan Grijalva  
Carney Guthrie  
Carson (IN) Gutierrez  
Cassidy Hall (NY)  
Castle Hall (TX)  
Castor (FL) Halvorson  
Chaffetz Hare  
Chandler Harman  
Childers Harper  
Chu Hastings (FL)  
Clarke Hastings (WA)  
Clay Heinrich  
Cleaver Heller  
Clyburn Hensarling  
Coble Herger  
Coffman (CO) Herseth Sandlin  
Cohen Higgins  
Cole Hill  
Conaway Himes  
Connolly (VA) Hinchey  
Conyers Hinojosa  
Cooper Hirono  
Costa Hodes  
Costello Hoekstra  
Courtney Holden  
Holt

Mica Rangel  
Michaud Rehberg  
Miller (FL) Reichert  
Miller (MI) Reyes  
Miller (NC) Richardson  
Miller, Gary Rodriguez  
Miller, George Roe (TN)  
Minnick Rogers (AL)  
Mitchell Rogers (KY)  
Mollohan Rogers (MI)  
Moore (KS) Rohrabacher  
Moore (WI) Rooney  
Moran (KS) Ros-Lehtinen  
Murphy (CT) Roskam  
Murphy (NY) Ross  
Murphy, Patrick Rothman (NJ)  
Murphy, Tim Roybal-Allard  
Myrick Royce  
Nadler (NY) Ruppersberger  
Napolitano Rush  
Neal (MA) Ryan (OH)  
Neugebauer Ryan (WI)  
Nunes Salazar  
Nye Sanchez, Linda  
Oberstar T.  
Obey Sarbanes  
Olson Scalise  
Oliver Schakowsky  
Ortiz Schauer  
Owens Schiff  
Pallone Schmidt  
Pascrell Schock  
Pastor (AZ) Schrader  
Paul Schwartz  
Paulsen Scott (GA)  
Payne Scott (VA)  
Pence Sensenbrenner  
Perlmutter Serrano  
Perriello Sessions  
Peters Sestak  
Peterson Shadegg  
Petri Shea-Porter  
Pingree (ME) Sherman  
Pitts Shimkus  
Platts Shuler  
Poe (TX) Shuster  
Polis (CO) Simpson  
Pomeroy Sires  
Posey Skelton  
Price (GA) Slaughter  
Price (NC) Smith (NE)  
Putnam Smith (NJ)  
Quigley Smith (TX)  
Rahall Smith (WA)

## NOT VOTING—15

Arcuri Doyle  
Baldwin Fudge  
Barrett (SC) Granger  
Carter LaTourette  
DeLauro Lewis (GA)

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members have 1 minute to record their votes.

□ 1526

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 26 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1847

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. JACKSON of Illinois) at 6 o'clock and 47 minutes p.m.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 3288, CONSOLIDATED APPROPRIATIONS ACT, 2010

Mr. PERLMUTTER, from the Committee on Rules, submitted a privileged report (Rept. No. 111-368) on the resolution (H. Res. 961) providing for consideration of the conference report to accompany the bill (H.R. 3288) making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes, which was referred to the House Calendar and ordered to be printed.

COMMUNICATION FROM THE HONORABLE JOHN SARBANES, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN SARBANES, Member of Congress:

HOUSE OF REPRESENTATIVES,  
Washington, DC, December 9, 2009.

Hon. NANCY PELOSI,  
Speaker, House of Representatives,  
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a third-party subpoena for production of documents issued by the U.S. District Court for the District of Maryland, in connection with a civil matter now pending in that court.

After consultation with the Office of the General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

JOHN SARBANES,  
Member of Congress.

COMMUNICATION FROM THE  
REPUBLICAN LEADER

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN A. BOEHNER, Republican Leader:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, December 8, 2009.

Hon. NANCY PELOSI,  
Speaker, U.S. Capitol,  
Washington, DC.

DEAR SPEAKER PELOSI: Pursuant to Section 125(c)(1) of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), I am pleased to appoint Mr. J. Mark McWatters of Dallas, Texas to the Congressional Oversight Panel. Mr. McWatters' appointment fills the vacancy created by the Honorable Jeb Hen-

sarling, who has resigned the position, effective upon Mr. McWatters' appointment.

Mr. McWatters has expressed interest in serving in this capacity and I am pleased to fulfill his request.

Sincerely,

JOHN A. BOEHNER,  
Republican Leader.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, December 9, 2009.

Hon. JOHN A. BOEHNER,  
Republican Leader, The Capitol,  
Washington, DC.

DEAR LEADER BOEHNER: After one year of service on the Congressional Oversight Panel (Panel), I am writing today to inform you of my resignation from the Panel, effective upon the designation of my replacement.

As you are aware, with some notable exceptions, I have been disappointed with the Panel's work that too often focuses upon making policy recommendations to Congress in place of critical and badly needed oversight. As a Member of Congress, I already possess ample opportunities to advise my colleagues. Still, I respect the commitment and dedication of each of my fellow Panel members and the hard work of the Panel's staff.

Now that the Obama Administration has chosen to extend the Troubled Asset Relief Program into next year, I want to devote more of my time and energy as a Member of Congress to fighting its continued efforts to misuse the program and thus the taxpayers' money as a revolving bailout fund.

It has been an honor to serve on the Panel, and I want to thank you for providing me with the opportunity.

Yours respectfully,

JEB HENSARLING,  
Member of Congress.

PROVIDING FOR CONSIDERATION OF H.R. 4173, WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

Mr. PERLMUTTER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 956 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 956

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. The amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. General debate shall be confined to the bill, as amended, and shall not exceed three hours, with two hours equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services, 30 minutes equally divided and controlled by the chair

and ranking minority member of the Committee on Agriculture, and 30 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. After general debate, the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

SEC. 2. During consideration of H.R. 4173 pursuant to this resolution, the Chair of the Committee of the Whole may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. PERLMUTTER) is recognized for 1 hour.

Mr. PERLMUTTER. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California (Mr. DREIER).

GENERAL LEAVE

Mr. PERLMUTTER. Mr. Speaker, I ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 956.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. PERLMUTTER. Mr. Speaker, I yield myself such time as I may consume.

House Resolution 956 provides for general debate on the bill, H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. It provides 3 hours of general debate, which will be evenly divided between the chairmen and ranking members of the various committees of jurisdiction. It self-executes an amendment to resolve jurisdictional concerns among the committees of jurisdiction of this bill. The amendment also includes the text of H.R. 1728, regarding predatory lending, which the House passed earlier this year overwhelmingly. It also makes certain revisions to the bill to ensure it complies with pay-as-you-go rules.

Mr. Speaker, for more than a year, the Financial Services Committee, of which I am a member, has held hearings and conducted a thorough oversight into the causes of last year's financial meltdown which caused our current economic troubles. After exhaustive work, the House now has before it a comprehensive package of reforms to address the numerous failures that led to the near collapse of our financial system last year.

The banking system is our Nation's circulatory system for our economy; and last year that circulatory system had a heart attack. We cannot and will not let the banking system fail, which is why this House had to take bold action last year to stabilize it. However, now we must turn and look to the causes at the root of the meltdown and make targeted reforms and repairs to address the inefficiencies and failures we found in the system.

The legislation before us is the most significant reform to our financial system since the New Deal of the 1930s. The bill creates a Financial Stability Oversight Council to monitor systematically significant institutions, counterparties and potential threats to the financial system. This ensures that there is no place to hide by closing loopholes, improving consolidated supervision, and establishing robust regulatory oversight.

We provide for the orderly wind-down of failing firms that are systemically significant, ending the notion of “too big to fail.” By dissolving these firms, we end them. We kill them. We put them out of their misery, so we say “no” to any more taxpayer bailouts.

This legislation also makes robust consumer protection repair and reform. It puts the regulation of consumer protection on a level playing field with the regulation of safety and soundness of our financial institutions. It creates an independent agency focused solely on writing meaningful consumer protection standards and keeping watch over predatory practices that some lenders have shown a propensity to pursue.

Additionally, we increase transparency and accountability by establishing a regulatory system for the over-the-counter derivative market. Now most derivative trades will be done on exchanges or through clearinghouses. Again, we have made sure that there is no place to hide. Other important pieces of this legislation include the registration of hedge funds and the doubling of SEC funding to hire more experts and investigators. Investor protection is substantially strengthened. A Federal insurance office is created to gather information, mitigate systemic risk and provide for insurance expertise to the Federal Government.

In this legislation, we have also included two very important measures which passed the House earlier this year. First, is the say-on-pay, and the second is on mortgage reform aimed at curbing the abusive and predatory practices that led to the subprime lending problems. This legislation is critical to protect taxpayers and consumers by reining in the abuses of Wall Street, while enabling a balanced environment for the financial markets to grow and stabilize our economy.

These changes are essential to rebuilding Main Street and getting credit flowing to small businesses, creating jobs, and rebuilding our economy.

I'm proud to stand here with my colleagues today while we consider this important set of reforms. We cannot afford another collapse as we had last fall. It cost this Nation trillions of dollars and millions of jobs, and is no longer acceptable. We need to repair and restore the system so that confidence is restored by the American public and people around world. We make these necessary reforms that es-

tablish robust regulatory oversight. This bill is another step toward economic recovery, and I urge its adoption.

I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I have to say at the outset that I have a slightly different take than was just offered by my Rules Committee colleague, the gentleman from Golden, Colorado. As our economy, Mr. Speaker, and our jobs market continue to struggle and families face the coming year with deep worries for their own financial futures, I believe that our responsibility here in this institution as Members of Congress is very clear. We must reform our financial regulatory system to prevent the kind of catastrophic breakdown that occurred last year. We both can agree on that. We know that what happened last year, I mean, a year ago right now, many of us were sensing that our economy was in peril, and we could have seen a major meltdown.

We need to ensure that that doesn't happen again, the threat that we went through does not happen again. We must do so in a way that preserves access to credit for families and small businesses, promotes job creation, ends taxpayer-funded bailouts, and allows us to begin to pay down this horrendous national debt that we're all facing. Unfortunately, the proposal that is before us this evening fails on all counts.

At a time when we need to reform and streamline our regulatory regime, the Democratic majority proposes to make it more complicated and less accountable, more unworkable and less transparent. The majority wants to keep the taxpayers on the hook for a permanent system of bailouts. Now, my friend said we were going to ensure that we no longer had bailouts. Clearly, from our perspective, this will continue the pattern of bailouts; and they're attempting to use repaid TARP funds as what is little more than a slush fund that will create a wide range of additional Federal spending.

The net effect of the underlying bill that the Democratic majority has put forward will be to reduce consumers' access to credit, destroy jobs, and leave our deficit spiraling out of control. This is not the solution that the American people were hoping for from this institution. They understand while the circumstances leading up to our current economic crisis involved incredibly complex and arcane regulations, policies and institutions, the lack of accountability and transparency was the core problem.

They understood that a lack of accountability, a lack of transparency, that that really was the core problem that led up to the crisis. Financial institutions took on unsustainable levels of risk and used highly questionable practices that fed into a bubble that we all know inevitably burst.

□ 1900

Individuals took on an enormous amount of debt that they simply could not afford, and we all know that the Federal Government did the exact same thing. The result was frozen credit markets, declining growth, and hundreds of thousands of jobs lost. We're still trying to climb out of this hole, as we all know. The task at hand is not about increasing regulation or diminishing regulation. It is about making it smarter, more accountable, and more effective.

The Democratic majority's so-called reform bill takes us in the opposite direction. By adding multiple layers of new bureaucracy and making agencies like the Fed even less accountable than before, they threaten to compound the very problems that led to our current situation.

What's more, by further tangling this Byzantine mess of regulators and superregulators, they will further tie up credit that families and small businesses desperately need. This is credit that enables small companies to grow, expand, make payroll for current employees, and create positions for new employees. This is credit that enables responsible homeowners to make purchases and help get our housing market back on track. By exacerbating the credit crunch, today's underlying bill threatens further job destruction and stymied growth.

The bill also creates this \$150 billion fund paid for with new taxes to continue to bail out failing institutions. Now, if that \$150 billion turns out to not be enough, who's on the hook for more bailouts? Well, surprise, surprise. It's the U.S. taxpayer.

The Democratic majority was given the opportunity to remove these bailout provisions from the bill in committee, but they chose to keep them in place. And if that weren't bad enough, this bill will take the bailout dollars that are repaid to the taxpayers and put them into a slush fund for more government spending rather than paying down the national debt. The Democratic majority has apparently forgotten that they voted last fall to consider the taxpayer first as bailout dollars are repaid rather than putting it off into some other fund. The path charted by this legislation is utterly reckless at a time when prudence and accountability are more needed than ever.

But, Mr. Speaker, I'm happy to say that we, as Republicans, have an alternative. We have a very viable alternative. We put forth the proposal that reforms our financial regulatory system without threatening access to credit or job creation. We enhance rather than diminish accountability for agencies like the Fed. We tackle the issue of fraud and give shareholders greater rights when it comes to executive compensation. We put an end to

the bailouts once and for all, and we return repaid bailout dollars to the Federal Treasury where they belong. Our alternative accomplishes the goal of guarding against future crises without imperiling our recovery. This is what the American people are demanding of us.

Mr. Speaker, I urge my colleagues—while we're considering this as a general debate rule, I'm urging my colleagues to reject this because we can do better. Reject taxpayer-funded bailouts, reject the credit crunch for small businesses with families, reject greater job losses, and reject a new slush fund for even more wasteful spending.

With that, I reserve the balance of my time.

Mr. PERLMUTTER. I yield myself as much time as I may consume.

As much as I enjoy listening to my friend from California, I'm afraid that I would have to say, Mr. Speaker, he hasn't read much of this bill. And the reason I would say that is that under the proposal the Republicans presented to us in Financial Services, they were going to allow this thing to linger through a chapter 11. If there was a failed banking institution, it would linger, as opposed to the proposal by the Democrats which says, and which is the bill before us, a financial company that comes within the coverage of this title for resolution shall be placed in liquidation, period. It's over. It's done. Number one.

Number two, with respect to this comment or his comments and general comments about job creation and the debacle that occurred last fall, it came under the watch of President Bush, who has the worst track record for job creation of any President since the job creation records have been taken. Also, we've lost trillions of dollars because of the types of casino-like approaches that were taken in and on Wall Street and other places that cost millions of investors thousands and thousands of dollars each and cost so many jobs.

I would like to now yield 4½ minutes to my friend from Kansas (Mr. MOORE).

Mr. MOORE of Kansas. Mr. Speaker, I rise tonight in support of the rule and in support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, a comprehensive package that the House Financial Services Committee and other committees have worked this year to produce. I commend the leadership of Chairman FRANK. Without his hard work and many committee hearings, long committee markups and behind the scenes to listen and address concerns, we would not be on the floor tonight with the bill we have.

We spent over 50 hours debating the various pieces of this regulatory reform package, and our work was bipartisan. Over 50 Republican amendments were accepted along with over 20 bipartisan amendments. This package, Mr.

Speaker, contains ideas put forward by Democrats and Republicans, as it should, creating a better and more thoughtful bill that we are considering tonight.

We should never forget why we're here tonight with the most sweeping financial regulatory reform since the Great Depression. Last year, due to years of little oversight of our financial system, credit was overextended and financial firms were overleveraged to a point that was unsustainable.

Henry Paulson, Secretary of the Treasury in the Bush administration, said to a group of us, "We may not have a market on Monday" if Congress did not quickly approve the TARP legislation he requested. So more than a year later, it's well past time for Congress to take the next step and create strong, fair, and clear rules of the road for Wall Street.

I believe in free and open markets, but I don't believe in letting people game the system. This bill will make sure that that can't happen by, number one, ending "too big to fail" and putting an end to taxpayer bailouts; number two, strengthening investor protections to prevent Bernie Madoff Ponzi schemes; and number three, improving consumer protection so that innocent people are no longer taken advantage of by terms of agreement they don't understand and can't afford.

I worked with my colleagues in our committee offering amendments to strengthen and improve this regulatory reform package such as, number one, the Moore-Meeks amendment, which will require "too big to fail" firms and other large financial institutions to conduct stress tests to ensure, in good times or in bad, these firms are fully prepared for the worst; and second, my amendment to strike "qualified receivership," which is a form of conservatorship which would have allowed the government or revive a failing firm. The amendment ensures the next AIG or Lehman Brothers will be required to fail and be put out of its misery. And three, the Moore-Lynch amendment creates a council of inspectors general on financial oversight. This I.G. council will conduct strong oversight of the systemic risk council, ensuring they respond to legitimate concerns that are raised by independent inspectors general.

I urge my colleagues to support the Wall Street Reform and Consumer Protection Act to guarantee we have tough, new rules of the road for Wall Street to play by and to fully protect consumers, investors, and U.S. taxpayers.

Mr. DREIER. Mr. Speaker, at this time I'm happy to yield 2 minutes to your Illinois colleague, the gentlewoman from Hinsdale, a hardworking member of the Financial Services Committee, Mrs. BIGGERT.

Mrs. BIGGERT. I thank the gentleman for yielding.

Mr. Speaker, I rise today in opposition to this rule and the underlying bill. This massive financial overhaul would permanently entrench the Federal Government and taxpayers in the very position we have worked to avoid since the beginning of this economic crisis.

We must crack down on illegal, unfair, and deceptive activity, eliminate regulatory gaps, and strengthen the effectiveness of the enforcement agencies. We should create a culture of transparency and accountability on Wall Street that will discourage, not promote, risky behavior, and never ever allow taxpayers to be left holding the bag when those deemed "too big to fail" cannot make their obligations. Instead, this bill creates a vast new government agency, permanently codifies the practice of bailouts, and doubles down on government intrusion in the financial sector.

I have joined my colleagues in the Financial Services Committee at every step of the way to offer ideas for smarter, stronger financial regulations, and yet this proposal continues to weaken the economic competitiveness of our markets, limit consumer choice, and place taxpayers on the hook for Wall Street's mistakes.

Mr. Speaker, American taxpayers cannot afford any more bailouts, and our financial markets cannot weather another storm of mismanagement.

I ask my colleagues to vote "no" on the rule and the underlying bill.

Mr. PERLMUTTER. Mr. Speaker, I yield 4 minutes to my friend from Florida, a member of the Financial Services Committee, Mr. KLEIN.

Mr. KLEIN of Florida. I thank the gentleman from Colorado and thank him for his work both on the Financial Services Committee and on this rule, and certainly I support the rule and the underlying bill, H.R. 4173, Wall Street Reform and Consumer Protection Act.

And we think about the name, Wall Street Reform and Consumer Protection Act. This is self-descriptive, exactly what Americans have been looking for for the past year. Our current economic crisis is the worst in decades, and it certainly didn't happen overnight. It happened over the last number of years because of a failure of regulation and oversight.

The one thing I'll agree with Mr. DREIER from California is that it's not a question of more or less regulation. It's smart regulation. It's the right type of regulation. It's the right type of people in those agencies that know what they're doing, that have the proper training, they're probably paid, and they're not outsmarted by some people who are trying to scam the system. That's what Americans have been asking for. That's what Americans are looking for Congress to do.

And finally, after a tremendous amount of work—and again, a lot of it

has been through good work by Democrats and Republicans—I'm very sorry to see that this moment it's becoming a partisan issue. But the good news is this bill is good quality, is one of the most important things that has been done in our economy and our financial system in over 50 years, and it will be an answer to not only figure out what went wrong in the past and learn from those mistakes, but also anticipate what can go wrong in the future. There are a lot of very smart people out there that have learned how to scam the system, and we as Americans need to make sure that we are anticipating what those kinds of problems may be so we can avoid those problems from happening again.

Under the bill before us today, we've created a regulatory structure that will protect consumers and ensure that investors have the appropriate information to make knowledgeable investment decisions. There's no guarantee in investing, and every person has to take personal responsibility for themselves in making those decisions, but at the same time, you can't be fraudulently misled. You can't have a lack of information, a lack of context. And it's important to have an agency that will stand up for the consumers or abusive other financial institutions that are out there.

This legislation also restores responsibility and accountability through Wall Street. Regulatory loopholes and gaps in regulation have been closed to make sure that there is common sense, transparency, and adequate oversight. Financial institutions that were previously unregulated—and we've already heard the stories of who they are—will now be brought under government supervision. Derivatives and other complex financial products that we've never even heard of—credit default swaps and other things—will now be tightly regulated to eliminate unnecessary risk taking by financial institutions. And executive compensation at these institutions has also been modified to discourage risky speculation for short-term gains that have negative effects on our overall economy.

This bill also makes sure the American taxpayer, all of us, won't have to bail out Wall Street banks by putting in place resolution authority that will allow these firms to fail without damaging the financial system and the entire economy. No more “too big to fail” or we have to rescue them because, if they fail, the whole economy fails.

□ 1915

We cannot let it get to that point, and that's exactly what this bill does. It stops it before it gets to that point.

We've also learned that both quality and the quantity of staff at regulatory agencies, as I said before, are very important. We want to have qualified

technical staff, and we want to know that if someone blows the whistle and calls something out that the staff at these agencies will respond quickly and efficiently to make sure that that doesn't continue.

It's also important to hold individuals who committed misdeeds to account. Many financial players committed abusive and fraudulent acts, from Wall Street to local mortgage brokers, and we have to hold these people accountable. Americans, all they ask for is a sense of fairness. They want to know if they play by the rules, that people who sell them products are also playing by those same rules.

And unfortunately, there haven't been enough prosecutions for those who committed some of these very bad acts that brought us to our knees. That's unacceptable. People that commit these types of criminal fraudulent acts must be punished.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. PERLMUTTER. I yield the gentleman 1 additional minute.

Mr. KLEIN of Florida. Yet simply punishing these bad actors is not enough. We have to learn from the past and anticipate the future and make sure our financial structures are adapted accordingly. The reforms made by this legislation are essential to creating a functional, sustainable financial system that families and our businesses can count on.

We cannot and will not, as Americans, allow what happened last year to happen again. I look forward to working with my colleagues in the Congress, to the passage of this bill, to the President signing it, and to Americans knowing that they will have confidence in their financial system. I thank the gentleman.

Mr. DREIER. Mr. Speaker, at this time, I am very privileged to yield 2 minutes to the senior Republican Californian on the Committee on Financial Services, my friend from Fullerton, Mr. ROYCE.

Mr. ROYCE. Mr. Speaker, as our colleague has said, this crisis occurred over the last several years. I will remind the body that the Democrats have controlled this Congress over the last 3 years, and I agree here tonight with my Republican colleagues who oppose permanent bailout authority which is put in this bill, and the fact that this legislation institutionalizes the “too big to fail” model. I would like to focus on one other critical shortcoming in this legislation, and that's the failure of this bill to address one of the key causes of this financial collapse.

While others may claim it was a lack of government involvement in the market, I think history is going to show that government intervention in the market also had a major role. And let me show you how. It was government-

sponsored enterprises, Fannie Mae and Freddie Mac, that were at the heart of the housing market and largely responsible for the proliferation of subprime and Alt-A mortgages throughout the financial system. Over the years, they loaded up on over \$1 trillion of these junk loans, pushed by initiatives on the other side of the aisle, and they signaled to the market that these were safe loans when we know, in fact, they were not. There was \$1 trillion in losses out of this.

It was the Federal Reserve also, and the central banks around the world setting negative real interest rates, when measured against inflation, for 4 years running. And the effect of those negative interest rates was devastating, because instead of mitigating the ups and downs in the economy, the Fed's actions had the opposite effect. The negative real interest rates intensified the boom-and-bust cycle, and it encouraged excessive risk-taking throughout the economy, especially in the financial sector and in housing, something economists have been warning about for decades.

While there have been other blunders that contributed to the crisis, these two steps taken by the Federal Government were at the heart of the boom and subsequent bust in the housing market and the broader financial system. And until we address these market distortions, we are simply treating the symptoms rather than the disease.

Mr. PERLMUTTER. Mr. Speaker, I continue to reserve the balance of my time.

Mr. DREIER. Mr. Speaker, at this time, I'm very happy to yield 2 minutes to my good friend from Roswell, Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Mr. Speaker, I thank my colleague from California for his leadership on this issue and so many other things. Here we go again, Mr. Speaker. Here it is. We got the bill right here. Another late night, another thousand-plus-page bill that virtually nobody in this House has read, and another government takeover.

This ought to be called the “unending bailout authority, credit-restricting, and permanent job loss act,” Mr. Speaker. It not only doesn't solve the problem of government bailouts, it codifies them. It writes them into law. It makes them permanent, putting us into a permanent political economy, politicians picking winners and losers.

Mr. Speaker, this is a very dangerous time. The American people are concerned about jobs and the stagnant economy, and the majority party comes to this floor with this bill that will destroy hundreds of thousands of jobs and further harm the economy.

Why? Well, Mr. Speaker, as a physician, I'm here to tell you, I think they got the wrong diagnosis, just like in health care. Their prescription for health care was a government takeover, and now they want a government

takeover of our economy and our financial services area because their prescription is wrong.

If we conclude as a society that we are here because of a failure of free-market capitalism and a failure of deregulation, then our kids and our grandkids will lose, because all of the solutions will harm free-market capitalism, depress the economy, and increase regulation, which will destroy jobs and destroy our economy.

We're not here because of a failure of free-market capitalism, Mr. Speaker. We're here because of a failure of the government distorting the market, because of politicians getting involved. We're not here because of a failure of deregulation. We're here because of foolish and inflexible regulation and because of government edicts that made it so people couldn't do their jobs.

The Democrat prescription for this, then, is to take over and control the entire economy, thereby destroying jobs and destroying our economy. The shame of all of that, Mr. Speaker, is that there are wonderful solutions. We believe that there ought not be any more bailouts.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. DREIER. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. PRICE of Georgia. I thank the gentleman.

We believe there ought not be any more bailouts. No more bailouts. Like the American people, we know what the American people know, and that is if there is no risk, there can be no reward.

Mr. Speaker, we believe that government ought to get out of the business of picking winners and losers. This bill doesn't create jobs; it destroys them, absolutely destroys them. We know that markets must be allowed to function and to innovate in order to be profitable. And the economy cannot and will not recover without these things.

In so many ways, this bill kills jobs and harms the economy. The American people want to end the bailouts, the Wall Street bailouts that the majority party so desires to have that they wrote it into this law, and they want to make certain we get back to the business of freeing up the economy to increase jobs and allow free-market capitalism to work. That's what will restore the confidence of the American people.

I thank the gentleman from California for this time.

Mr. PERLMUTTER. Mr. Speaker, how much time does each side have?

The SPEAKER pro tempore. The gentleman from Colorado has 16 minutes remaining. The gentleman from California has 16½ minutes remaining.

Mr. PERLMUTTER. I yield myself so much time as I may consume.

I just want to respond to my two colleagues from the Financial Services Committee. After all the hearings we had, after all the witnesses that we heard from, it's almost as if they forgot everything they heard. The Wall Street mentality that permeated Wall Street permeated the investment community and the banking system and brought this country to its knees last fall. And as a consequence, trillions of dollars of wealth were lost, and millions of jobs have been lost, and it was based on a belief within the Bush administration and the Republican Congress that participated with it that you don't need regulation, these markets will take care of themselves. Well, what they ended up doing is, we had three of the biggest Ponzi schemes ever, Madoff, Petters and Stanford, under that regime, under that administration. And that's just wrong.

Our bill has nine sections to it, Mr. Speaker. The first is on consumer protection. The second is on investor protection. The third is on hedge funds. The fourth is on credit rating agencies, the fifth on derivatives, the sixth on life insurance companies, and the seventh on dealing with banks that are so big or financial institutions that have so many components to them that they are a threat to the system. And we force those institutions to either raise all their reserves and their capital or sell different parts of their company if they are a threat to the system, and if they finally fail, we put them out of their misery. We don't let them linger like the Republicans would have us do, and bail them out some more. We are done with those bailouts.

The last sections of the bill, one is "say on pay." Executive salary got completely out of control and was part of the gambling that was going on. And so now we allow the shareholders to have some opportunity to say what their executives should be paid. And the final piece deals with subprime mortgages where people were allowed to just get into mortgages that had teaser rates and were impossible to repay. And we now require that financial institutions have skin in the game.

These are nine sections of reasonable regulation to restore confidence in the system and stop the kind of failures that we saw in this last administration that cost this country trillions of dollars, trillions of dollars and millions of jobs. And we're not going to let that happen again.

With that, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, at this time, I am happy to yield 2 minutes to a very hardworking member of the Committee on Financial Services, my friend from Texas (Mr. HENSARLING).

Mr. HENSARLING. I thank the gentleman from California for yielding.

I've listened to my friend from Colorado say that under their plan, they

are done with the bailouts. Well, Mr. Speaker, it kind of begs the question: Why do they have a bailout fund? Why do you have a bailout fund if you're not going to bail people out? My wife and I started a college fund for our children, and the reason we are having a college fund is because we intend to send our children to college.

Why is it, Mr. Speaker, that the Democrats have a bailout fund, but now they expect us to suspend disbelief that they won't use it? If I can paraphrase a line from the famous Kevin Costner film, "Field of Dreams," "if you build it, they will come." If you create a bailout fund, people will come for bailouts. That's what this is. This is the TARP bill in perpetuity.

So, Mr. Speaker, if the American people like bailouts, our friends on the other side of the aisle certainly have the bill for them.

But as I talk to my constituents in the Fifth Congressional District of Texas, they are tired of the bailouts. The school teacher in Mesquite, the fireman in Malakoff, the farmer in Henderson County—they are tired of the bailouts. They are tired of paying for this. And yet they create a \$200 billion bailout fund.

Worse than that, Mr. Speaker, this is a job-killing bill. It is a bill that creates a huge Federal bureaucracy to ban and ration credit. I mean this is the group of people who have brought us double-digit unemployment, the worst unemployment in a generation. I would just ask my friends on the other side of the aisle, how many more jobs have to be lost under your plan? Small business needs credit. You're going to crush it. Reject the rule. Reject the bill.

Mr. PERLMUTTER. Mr. Speaker, I would yield 5 minutes to the chairman of the committee, Mr. FRANK.

Mr. FRANK of Massachusetts. Mr. Speaker, few people in this House apparently recognize, or in the country, the enormous significance of January 21, 2009. That is apparently the day in which a number of extraordinary things happened. It's the day on which bailouts began. According to my Republican colleagues, there weren't any before. Bailouts, you may think they started under George Bush, the bailout of General Motors, of AIG, of Chrysler, and the TARP bill. Some people may think they happened in 2008. No. Apparently, they started on January 21, 2009. That's also the day, of course, that the war in Afghanistan, which was going wonderfully, began to go bad. It's the day in which a surplus magically became an enormous deficit. It's also the day in which we had a recession.

My Republican colleagues talk about job loss. Job loss was, of course, I thought, begun with a recession that started in 2007 and got worse and worse during 2008 and is only now beginning to moderate.

And not only did all those bad things happen on January 21, 2009—the bailout



began, the TARP sprang full-blown, the deficits came, the war in Afghanistan turned south, but it was also the day in which we had one of the worst outbreaks of illness in American history, mass amnesia on the part of the Republican Party, who forgot everything that had happened before.

Every single bailout now going on in America started under the Bush administration. In some cases, some of us thought we had to cooperate because the lack of regulation, the ideologically driven opposition to any regulation of derivatives, of subprime mortgages, of excessive leverage by banks; all of those things were Republican policy. And now, Members have said, that's their answer.

□ 1930

Leave it to the market, because if you try to regulate, you will kill the economy.

Well, Members who are impressed by that don't have to wait and listen to my Republican colleagues say it. Go back and read the CONGRESSIONAL RECORD from 1900 when they were saying that about Theodore Roosevelt and the antitrust, actually 1902, 1903.

Read what they said when Franklin Roosevelt set up the SEC during the 1930s. Yes, we believe that there should be some regulation. We are told, leave it to the markets.

Leave it to AIG to sell as many credit default swaps as they want to without any ability to pay them back; leave it to people unregulated to sell subprime mortgages to people who shouldn't have them. Leave it to the rating agencies to then say to AIG, Hey, those are a great deals, buy them, or insure them, rather, through the people who bought them.

Do nothing about executive compensation. Do nothing about a salary structure that incentivizes excessive risk. Don't let the shareholders have a say. Now, one of my colleagues said, I guess the gentleman from Texas, that it is a bailout fund. No, there is not.

He talks about a bailout fund as if it were a reality. Here is the deal: we did have bailout starting with the TARP bill in September, which I voted for when the Bush administration, I think, said, look, as a result, not—they didn't say this—but as a result of lack of regulation, we were in a terrible crisis.

We, in this bill, end those. The authority that the Federal Reserve, George Bush's appointees to the Federal Reserve, they were all his, used to give money to AIG, that's abolished in our bill. Section 13.3 will no longer allow them to do what they did with Bear Stearns or do with AIG.

It will allow a facility to be set up, and here we agree—the Republicans said the same thing in their bill—to provide for some liquidity for solvent institutions, but there is no more of the Federal Reserve doing what they did with AIG and Bear Stearns.

We do take a fund, not from the taxpayers, as we were asked to do by the Bush administration, and as I went along with, along with the Republican leadership of the House and the Senate—because I didn't think we had an option at that time to avert disaster—but we now with some time will assess the financial institutions for that fund. The fund is not used to bail out any failing institution.

The bill specifically says the money only comes to put that institution to death. There is nothing in here that allows a failing institution to be continued with Federal money. There is a dissolution fund, not a bailout fund; and it does say that it may be that to dissolve this in an orderly way, as opposed to Lehman Brothers, where you just had a flat bankruptcy, that you need to put some money into it, maybe pay off some of the States that would otherwise be hurt because they got into investments they shouldn't have gotten into. That's the only fund, so there is no bailout. The institution has died.

Here is another difference, though. The Republican bill does zero, proudly, does zero to prevent those institutions from getting to that point. The bill that we are putting forward says the regulators, as a systemic risk council, will monitor institutions and will monitor activity. If we see an institution getting to that point, we step in and say, raise your capital, stop selling CDSs, stop selling mortgages, giving mortgages to people who shouldn't get them, divest yourself of this or that.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. PERLMUTTER. I yield the gentleman 1 more minute.

Mr. FRANK of Massachusetts. Mr. Speaker, I know that some of my conservative colleagues who have aligned themselves with people who came to be the new American patriots want to emulate the people who revolted against George III, but there is another monarch who comes to mind when I come to think of them. When in the 19th century the Bourbons were restored after the French Revolution, it was said of them that they had forgotten nothing because they learned nothing.

That's my Republican colleagues. They have learned absolutely nothing from the fact that a total absence of regulation caused this enormous financial crisis.

Do we care about jobs, yes. We don't want, as their bill would do, their substitute to allow an AIG to continue to do what it did to allow subprime mortgages to continue, to allow executive pay to have that perverse incentive. Yes, we are trying to prevent another job loss like the one President Obama inherited from President Bush.

Mr. DREIER. Mr. Speaker, at this time I am happy to yield 3 minutes to the very distinguished chairman of the

Republican Conference, the gentleman from Columbus, Indiana (Mr. PENCE).

Mr. PENCE. Mr. Speaker, I rise in opposition to the rule and the underlying bill, the so-called Wall Street Reform and Consumer Protection Act of 2009. Unfortunately, as has been said, there is not much taxpayer protection in the bill, and there is even less Wall Street reform.

Now, I see this bill as nothing more than a permanent bailout and a job killer. I must say I relish the opportunity to rise in the immediate aftermath of the formidable debating skills of the chairman of this committee, who I respect, both personally and as a colleague.

But I respectfully differ with him on this bailout, as I did on the bailout that he authored last year during the Bush administration.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. PENCE. I would be pleased to yield.

Mr. FRANK of Massachusetts. I didn't offer it. It was offered by President Bush. I did vote for it, but it was President Bush's offer. I give credit where credit is due.

Mr. PENCE. Reclaiming my time, I believe it was a bill that bore the gentleman's cosponsorship.

I opposed the Wall Street bailout last fall, and I oppose this Wall Street bailout today. The truth is the American people that are looking in tonight really have got to be astounded that Washington DC, in response to these extraordinary economic times, is now launching and making permanent the policies of bailouts that millions of Americans have rejected over the last year.

After more than a year of the Federal Government's heavy-handed intervention in our financial services industry, this bill continues to take the country in the wrong direction: more government, more bailouts. The legislation before us today makes permanent the failed policy of taxpayer-funded abortions that led to record deficits and undermined our economic freedom.

In this cause, House Republicans stand with the American people who have said virtually with one voice in the last year: no more bailouts. No more bailouts by Republican administrations; no more bailouts by Democrat administrations. We stand with them in their cause.

This Democrat plan for regulatory reform will vastly expand the power of the Federal Government and further empower Washington bureaucrats over the financial decisions of America's families and businesses. It creates a so-called credit czar that will have the authority to determine what financial products are available for consumers.

The President yesterday said at the Brookings Institution that we need to address "the continuing struggle of

small businesses to get loans." He is right about that. He said the same thing at a White House meeting I attended today, but apparently Democrats in Congress didn't get the message.

The bill before us today will severely restrict the flow of credit. At a time when families are struggling to make ends meet, small businesses are trying hard to keep the doors open.

I say with respect to my Democrat colleagues and to the President, American small business doesn't want a hand out; they want the Federal Government to get out of their way. Instead of providing taxpayers with an exit strategy for government involvement in Wall Street, this bill makes it permanent.

Now, House Republicans have a good alternative, regulatory reform that ensures that the era of taxpayer bailouts will come to an end. It's an interesting choice tonight, Mr. Speaker. Do we want to make bailouts permanent? Do we want to set our Nation on a path of ending the era of bailouts once and for all?

I urge support of the Republican alternative in opposition to this rule and this bill, which is really the Wall Street bailout and protection act, rightly understood.

Mr. PERLMUTTER. I just want to respond to my friend from Indiana, who continues to call this a bailout. All it does is put big institutions that fail out of their misery, just like we liquidate banks who have failed. Big financial institutions on Wall Street, whether they are insurance companies or credit companies or banks or stockbrokers, are placed into liquidation and finished.

With that, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, at this time I am happy to yield 2 minutes to our great new colleague from Eden Prairie, Minnesota, a hardworking member of the Financial Services Committee, Mr. PAULSEN.

Mr. PAULSEN. I thank the gentleman.

Mr. Speaker, I rise tonight in opposition to the rule for H.R. 4173 and the underlying legislation.

Mr. Speaker, the effects of this bill, as we have already heard, will further harm our economy, draining capital from our economy and reducing overall lending by over as much as \$55 billion, as studies have shown. The effects of this bill further harming our economy will hurt small business and consumers alike. They are going to considerably find it much more difficult to access the credit they need in a very challenging economy in addition to dealing with more government bureaucracy.

This bill, this legislation, will create a new credit czar with a mandate to limit consumer choice, to ration credit, and to increase the cost of financial

transactions. Congress should be focusing on measures that will lead to job creation and encourage American prosperity, not implementing policies that will increase the unemployment numbers. Again, studies have shown that this legislation will literally cost hundreds of thousands of jobs in our economy.

We should be putting an end to all Washington bailouts and the Washington bailout mentality. This legislation does not firmly put an end to taxpayer-funded bailouts. Rather, it could increase the likelihood of future bailouts. This legislation should also be ending the "too big to fail" mentality that has dominated Washington. Instead, this legislation will institutionalize it.

By creating institutions that are too big to fail, we are implying that certain financial companies will be sheltered by a Federal safety net. Mr. Speaker, I urge a "no" vote on the rule.

Mr. PERLMUTTER. I would like to ask again how much time each side has.

The SPEAKER pro tempore. The gentleman from Colorado has 7 minutes remaining, and the gentleman from California has 10 minutes remaining.

Mr. PERLMUTTER. I continue to reserve the balance of my time.

Mr. DREIER. At this time, Mr. Speaker, I am very happy to yield 1½ minutes to my friend from Mesa, Arizona (Mr. FLAKE).

Mr. FLAKE. I thank the gentleman for yielding.

I wish the gentleman from Massachusetts were here to hear this discussion. Earlier in the year we had a discussion about moral hazard. I think all of us recognize that moral hazard played a role in the mess that we got in last year and have been in for a couple of years. The implied guarantees that we had at Freddie and Fannie played a role, a rather large role, in the problems that we later had.

I had mentioned to the gentleman from Massachusetts that some legislation we were passing earlier this year would further foster that principle of moral hazard. He said to me that, yes, that would be a problem if what we were doing were permanent, but it wasn't. It was simply temporary.

But here what we are doing is very permanent. We are establishing a permanent, in a sense, a permanent bailout fund. We are told only to believe that we are establishing a bailout fund that will never bail out any companies but, rather, will be used to shut companies down, or something like that, to establish a fund.

Fifty billion seed money from the Treasury, 50 billion in taxes from other companies to establish a fund to shut companies down? I don't think so. I think what we are establishing here, it's rather clear, is a bailout fund, a permanent bailout fund.

If you want to talk about moral hazard, this is it. This is moral hazard institutionalized that will lead to the types of problems that we have seen. It's not a Republican issue or a Democrat issue. This is a principle, an economic principle that simply we cannot ignore.

Mr. PERLMUTTER. I continue to reserve the balance of my time.

Mr. DREIER. Mr. Speaker, may I inquire again how much time remains on each side.

The SPEAKER pro tempore. The gentleman from California has 8½ minutes remaining, and the gentleman from Colorado has 7 minutes remaining.

Mr. DREIER. Let me just say to my friend, if I might, Mr. Speaker, that we are winding down. If the gentleman has no further speakers, we are prepared to close.

Mr. PERLMUTTER. I have one.

Mr. DREIER. At this time I am happy to yield 2 minutes to my very good friend, the former Rules Committee member from Charleston, West Virginia (Mrs. CAPITO).

Mrs. CAPITO. I would like to thank the ranking member and my former Chair for yielding this time to me and thank him for his leadership on every important debate.

My colleagues, our friends on the other side of the aisle would have us believe that the Wall Street Reform and Consumer Protection Act derives its name from the assumption that the underlying text will prevent Americans from the impact of future economic disturbances like the one we experienced last fall. If only that were true.

Instead, this bill is nothing more than a continuation of the bailout mentality that has put trillions of taxpayer dollars on the hook for the mistakes of Wall Street. Are we finally putting an end to the bailout culture on this bill? No, we are not.

Rather than ending the bailouts, this legislation institutionalizes them. Instead of protecting taxpayers, this bill puts them at further risk. The Democrats' bill will grant authority to both the Treasury and the Federal Reserve to create a new \$200 billion fund to finance future bailouts of the big banks and financial institutions. Who will be paying for this fund? The consumers.

Furthermore, if there is another market-wide disturbance like the experience last fall, it will be the taxpayers who will be called upon to pick up the tab. Unfortunately, the chairman's bill also fails to put an end to "too big to fail." If certain institutions are too big to fail, then that means that the rest are too small to save.

□ 1945

This will no doubt continue the troubling practice of government's picking winners and losers in the marketplace. This bill will do nothing more than set up an unlevel playing field that penalizes consumers, puts taxpayers' dollars

at risk, and restricts the flow of credit at a time when our small businesses need it most.

Republicans on the House Financial Services Committee have put forth a better proposal. We believe it's time to truly put an end to the bailouts. Business decisions have consequences, and Wall Street needs to know that taxpayers will not be there to help them pick up the pieces of their risky business practices. Instead of permanent bailouts, we propose a new chapter of the bankruptcy code capable of ensuring the orderly unwinding of failed firms.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. DREIER. Mr. Speaker, I yield my friend an additional 30 seconds.

Mrs. CAPITO. We would give bankruptcy judges the authority to stay claims by creditors and counterparties to prevent runs on troubled institutions, alleviating potential panics if a large institution faces trouble. Under this proposal, all market participants, large and small, will know the rules of the game. If they take on too much risk, they'll face bankruptcy just like any other failed business.

We'll also protect consumers with increased investment fraud enforcement. We'll monitor systemic risk through improved coordination between regulators. Yet, most importantly, we'll provide market certainty by making it clear to Wall Street that no firm is "too big to fail."

I urge my colleagues to say "no" to bailouts and oppose the underlying bill.

Mr. PERLMUTTER. Mr. Speaker, I say to my good friend from West Virginia she continues to use the word "bailout," but as it's clear in the bill, this is not any taxpayer-funded money. The continued use by my Republican colleagues of the word "bailout" is simply wrong and misleading because what is stated in the bill is the creation of a fund based on assessments paid by the biggest financial institutions in the world, \$50 billion and bigger in terms of assets, so that those institutions, if they fail, will have a liquidation fund to put themselves out of their misery. That's what this is all about, to just be finished with it.

Now, one thing I would like to say about my Republican colleagues. They've forgotten. They've talked about two sections of the bill: consumer protection, which is absolutely essential in this bill, as well as dealing with huge financial institutions that are risky to our financial system and could create a domino effect like we had last fall.

The seven other sections of the bill—hedge funds, credit rating agencies, derivatives, life insurance, executive pay, and subprime—those were bipartisan sections of the bill. So this bill covers a lot of topics to rein in our financial system and restore it and strengthen it as we go forward.

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, at this juncture I am happy to yield 1 minute to the gentleman from Savannah, Georgia (Mr. KINGSTON).

Mr. KINGSTON. I thank the chairman for yielding.

I stand in opposition to the rule and in opposition to the bill. One reason is that in 1969, when Congress passed Truth in Lending, it was with great intent. Nobody would argue against the purism of the heart. But the reality is, in 1969 before the bill even went into effect, before the new law became effective on the books, there were 34 official interpretations of what the rule would mean, and 10 years later there were over 13,000 lawsuits about it just trying to figure out what does this thing mean.

Now here comes this bill and there are all kinds of terms in there like "excessive," "unreasonable," and "abusive," and they're not defined. Those are going to be defined in a court system by trial and error over a period of time.

We need to send this bill back to the committee and ask for definitions on this stuff so that we can, during these uncertain economic times, not put one more ambiguity on the private sector. I think that's the better way to do reform.

The SPEAKER pro tempore. The gentleman from California has 5 minutes remaining, and the gentleman from Colorado has 5½ minutes remaining.

Mr. PERLMUTTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. I thank the gentleman very much for yielding.

There's nothing like delay, delay, delay when we begin to talk about helping the American people. If my good friends on the other side of the aisle would look at what the intent of this bill is, I think we'd find common ground. So I rise to support the rule and the underlying bill because it does point to some of the major crises that we have been contending with.

I am glad that we are ending the bailout and preventing the rise of institutions that are "too big to fail." We're dismantling large, failing institutions, and we're getting money back for the taxpayer. I am very glad that we have a financial stability council that has been enhanced by the Congressional Black Caucus where we will have diverse membership so the oversight will be effective and consistent. Executive compensation gives shareholders a say on pay. Never before have we had that. This is long overdue. Investor protections and certainly to be able to respond to too big and too fat cats like Madoff, it's long overdue.

Then to emphasize the importance that I have heard from so many of my constituents on the whole question of

mortgage foreclosure modification, and that is they need to have real foreclosure modification, and only 6 percent of those that have been in trial modifications have now been moved to permanent foreclosure modifications. The process is too slow.

We are kicking this down the road by adding \$3 billion from the Federal Troubled Assets Relief Program toward mortgage relief for jobless Americans. The measure would designate another \$1 billion for a program that gives grants to State and local governments to purchase foreclosed properties and use them for many productive purposes, according to the members of the Financial Services Committee and the Congressional Black Caucus task force that have worked with Congresswoman MAXINE WATERS. We stand together united on the idea that the financial structure has not worked for the jobless, the poor, and working Americans. This legislation helps to generate that kind of pathway and that kind of roadway.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. PERLMUTTER. I yield the gentlewoman an additional 15 seconds.

Ms. JACKSON-LEE of Texas. I thank the distinguished gentleman.

I think it is extremely important that we protect and consider our credit unions. I have met with those today, and I want to ensure that if this bill has any language in it about the overdraft not being protected that, in essence, we work through that process. They are very much a part of this, and I want to make sure that this bill is supported.

I support the rule and the underlying bill.

Mr. DREIER. Mr. Speaker, at this time I am happy to yield 2 minutes to a hardworking member of the Financial Services Committee, the gentleman from Wantage, New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I thank the gentleman for yielding.

Delay, delay, delay? Ms. JACKSON-LEE just made the comment. It's absolutely delay. We've been waiting here for the last 4 hours for your side of the aisle to come to the floor to be able to debate this bill. So Ms. JACKSON-LEE, I would ask, through the Chair, who it is on your side that was delay, delay, delay, and I would be glad to bring that person to the floor to ask, Why are you delaying trying to reform the system in this country?

But I rushed to the floor because I was just doing a telephone town hall and people were watching what is going on on the floor right now, and they said, Congressman, you must go down to the floor to end the bailouts, end this piece of legislation that will cut jobs in this country, and end this piece of legislation that will expand the size of government.

Now, I understand the reason the gentleman from Colorado says that we are mistaken with regard to whether or not there are bailouts in the bill. This bill is larger than the health care bill. It's larger than the cap-and-trade bill. You remember the bill that no one read before they came here or the health care bill that no one read before they came here? Maybe the reason why the gentleman from Colorado is perhaps mistaken on this point is because, quite candidly, enough people on your side of the aisle haven't read the bill. And if you did, you would see that there are bailouts and that the taxpayer is ultimately on the hook to the tune of upwards of \$150 billion.

How does that work? Well, we set up this system where, in essence, we're going to say we're going to set up a slush fund that eventually will tax businesses that are causing cuts in jobs across this country, but until we get that up and running, where are we going to get that money? Well, we're going to get it by essentially allowing the U.S. Treasury to go to the American public and ask them once again, once again, to bail out the mistakes on Wall Street.

Well, we say enough to the bailouts. Enough of putting the taxpayer on the hook for the bailouts. Enough for all the mistakes, both by Wall Street and government. And enough to these bailouts passed in legislation that this administration has passed and that the chairman in this committee has ushered through in the past. Whether it's the past administration or this administration, that side of the aisle has been at the forefront of having the American taxpayer bailing out Wall Street and the government as well.

Mr. PERLMUTTER. Mr. Speaker, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, this has been a very interesting debate as we talk about where we are economically and the challenges with which we are trying to contend. It's a very serious time. The American people are hurting. People are losing their businesses, their homes, their jobs all across this country. They want us to get our economy back on track, and they want us to ensure that we do this in a very, very responsible way.

Well, Mr. Speaker, my colleague Mr. GARRETT has just put before us the 1,279-page bill that is to be considered under this measure, and I have to say that as we look at it, it is voluminous. And I will admit I haven't read every single page of that bill and I doubt that there are many of our colleagues who have.

The fact of the matter is we have a 170-page alternative. This one, by the way, is on both sides of the pages, and ours is on one side, Mr. Speaker. It's 170 pages, and it's a proposal that

clearly will ensure that we don't proceed down the road towards bailouts. It will make sure that we don't jeopardize our economic growth. It will make sure that we create greater transparency and accountability, and that is a key priority that I believe the American people want us to pursue.

□ 2000

We all hear David Letterman's regular Top 10 list. I was just handed a Top 10 list as to why we should support the 170-page bill that provides transparency and accountability and will work to get our economy back on track without increasing taxes or permanent bailouts, and to oppose this 1,279-page bill.

Number one: This one creates a permanent TARP-like bailout authority.

Number two: It imposes a massive tax during a credit crisis and weak economy.

Number three: It expands the powers of the Federal Reserve.

Number four: It creates a credit czar with the authority to restrict access to credit and impose taxes on consumers and small businesses.

Number five: It undermines the "safety and soundness" regulation of financial institutions.

Number six: It rewards trial lawyers at the expense of investors.

Number seven: It kills jobs by undermining the ability of Main Street companies to manage risk.

Number eight: It empowers regulators to impose wage controls on workers and enterprises.

Number nine: It continues "business as usual" at Fannie Mae and Freddie Mac.

And number 10: Our Republican substitute ends the bailouts, restores market discipline, and protects consumers, small businesses, and taxpayers.

Reject this rule. Reject this legislation. We can do better. We have it in our hands right here, Mr. Speaker.

With that, I yield back the balance of my time.

Mr. PERLMUTTER. Mr. Speaker, my friend from California wanted to compare the 170-page proposal that they have versus the 1,300 pages of the bill that we have. I would just say to him, in his proposal, he doesn't deal with hedge funds, he doesn't deal with credit rating agencies, he doesn't deal with excessive compensation to executives, he doesn't deal with life insurance. He doesn't deal with a whole range of things. He just deals with one thing: Let's put them in bankruptcy. Let's do a chapter 11. Let's let these things go on forever in a chapter 11.

Well, ladies and gentlemen, we can't afford this anymore. The status quo, which is more or less what the Republicans are proposing—they should call their bill "Let's Protect Wall Street" because that's all it does. It doesn't change anything.

When we lose trillions of dollars and people's livelihoods, and retirement funds, and pension plans, and jobs are lost, and they come in here and say, Oh, theirs is 1,300 pages, that's got to be bad because ours is 170 pages, when people's lives have changed, the debate on this floor and the debate about American futures is more than that. This is about restoring confidence in a financial system that was allowed to be the Wild West under George Bush and under the Republicans. This is no longer going to be the case. We are going to have reasonable regulation that people can rely on; certainty will be restored and confidence in the system regained.

There are nine sections: Consumer protection; investor protection; dealing with derivatives; dealing with credit rating agencies; dealing with executive compensation; dealing with hedge funds; and specifically, and most importantly, dealing with those financial institutions that have become so risky that they are going to cause a collapse of our entire banking system, which we cannot allow. So we require those institutions to post themselves \$150 billion so they can be liquidated without any cost to the taxpayer.

Their proposal is nothing but bailouts. Their proposal is nothing but protecting Wall Street. We've got to change that. This bill changes the future of our financial system in a way that we haven't seen since the New Deal. We need to restore confidence. That's what we do.

I urge a "yes" vote on the previous question and on the rule.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on adopting House Resolution 956 will be followed by a 5-minute vote on suspending the rules and passing H.R. 86.

The vote was taken by electronic device, and there were—yeas 235, nays 177, not voting 22, as follows:

[Roll No. 945]

YEAS—235

Abercrombie	Berkley	Braley (IA)
Ackerman	Berman	Brown, Corrine
Adler (NJ)	Bishop (GA)	Butterfield
Altmire	Bishop (NY)	Capps
Andrews	Blumenauer	Capuano
Arcuri	Bocieri	Cardoza
Baca	Boren	Carnahan
Baird	Boswell	Carney
Barrow	Boucher	Carson (IN)
Bean	Boyd	Castor (FL)
Becerra	Brady (PA)	Chandler

Childers Israel  
 Chu Jackson (IL)  
 Clarke Jackson-Lee  
 Clay (TX)  
 Cleaver Johnson (GA)  
 Clyburn Johnson, E. B.  
 Cohen Kagen  
 Connolly (VA) Kanjorski  
 Conyers Kennedy  
 Cooper Kildee  
 Costa Kilpatrick (MI)  
 Costello Kilroy  
 Courtney Kind  
 Crowley Kissell  
 Cuellar Klein (FL)  
 Cummings Kosmas  
 Dahlkemper Kratovil  
 Davis (AL) Kucinich  
 Davis (CA) Langevin  
 Davis (IL) Larsen (WA)  
 DeFazio Larson (CT)  
 Delahunt Lee (CA)  
 DeLauro Levin  
 Dicks Lipinski  
 Dingell Loeb sack  
 Doggett Lofgren, Zoe  
 Donnelly (IN) Lowey  
 Doyle Lujan  
 Driehaus Lynch  
 Edwards (MD) Maffei  
 Edwards (TX) Maloney  
 Ellison Markey (CO)  
 Ellsworth Markey (MA)  
 Engel Marshall  
 Eshoo Massa  
 Etheridge Matheson  
 Farr Matsui  
 Fattah McCarthy (NY)  
 Filner McCollum  
 Foster McDermott  
 Frank (MA) McGovern  
 Garamendi McIntyre  
 Giffords McMahon  
 Gonzalez McNerney  
 Gordon (TN) Meek (FL)  
 Grayson Meeks (NY)  
 Green, Al Melancon  
 Green, Gene Michaud  
 Grijalva Miller (NC)  
 Gutierrez Minnick  
 Hall (NY) Mollohan  
 Halvorson Moore (KS)  
 Hare Moore (WI)  
 Harman Murphy (CT)  
 Hastings (FL) Murphy (NY)  
 Heinrich Murphy, Patrick  
 Hereth Sandlin Nadler (NY)  
 Higgins Napolitano  
 Hill Neal (MA)  
 Himes Nye  
 Hinchey Oberstar  
 Hinojosa Obey  
 Hirono Oliver  
 Hodes Ortiz  
 Holden Owens  
 Holt Pallone  
 Honda Pascrell  
 Hoyer Perlmutter  
 Inslee Perriello

## NAYS—177

Aderholt Brown-Waite,  
 Akin Ginny  
 Alexander Buchanan  
 Austria Burgess  
 Bachmann Burton (IN)  
 Bachus Calvert  
 Bartlett Camp  
 Barton (TX) Campbell  
 Biggart Cantor  
 Bilbray Cao  
 Bilirakis Capito  
 Bishop (UT) Carter  
 Blackburn Cassidy  
 Blunt Castle  
 Boehner Chaffetz  
 Bonner Coble  
 Bono Mack Coffman (CO)  
 Boozman Cole  
 Boustany Conaway  
 Brady (TX) Crenshaw  
 Bright Culberson  
 Broun (GA) Davis (KY)  
 Brown (SC) Deal (GA)  
 Dent

Peters Peterson  
 Pingree (ME) Poliss (CO)  
 Pomeroy Pomeroy  
 Price (NC) Price  
 Quigley Quigley  
 Rahall Rahall  
 Rangel Rangel  
 Kildee Reyes  
 Richardson Richardson  
 Rodriguez Rodriguez  
 Ross Ross  
 Rothman (NJ) Rothman  
 Roybal-Allard Roybal-Allard  
 Ruppersberger Ruppersberger  
 Rush Rush  
 Ryan (OH) Ryan  
 Salazar Salazar  
 Sanchez, Linda T.  
 Sarbanes Sarbanes  
 Schakowsky Schakowsky  
 Schauer Schauer  
 Schiff Schiff  
 Schrader Schrader  
 Schwartz Schwartz  
 Scott (GA) Scott  
 Scott (VA) Scott  
 Serrano Serrano  
 Sestak Sestak  
 Shea-Porter Shea-Porter  
 Sherman Sherman  
 Sires Sires  
 Skelton Skelton  
 Slaughter Slaughter  
 Smith (WA) Smith  
 Snyder Snyder  
 Space Space  
 Speier Speier  
 Spratt Spratt  
 Stupak Stupak  
 Sutton Sutton  
 Tanner Tanner  
 Teague Teague  
 Thompson (CA) Thompson  
 Thompson (MS) Thompson  
 Tierney Tierney  
 Titus Titus  
 Tonko Tonko  
 Towns Towns  
 Tsongas Tsongas  
 Van Hollen Van Hollen  
 Velázquez Velázquez  
 Visclosky Visclosky  
 Walz Walz  
 Wasserman Wasserman  
 Schultz Schultz  
 Waters Waters  
 Watson Watson  
 Watt Watt  
 Waxman Waxman  
 Weiner Weiner  
 Welch Welch  
 Wilson (OH) Wilson  
 Wu Wu  
 Yarmuth Yarmuth

Harper Harper  
 Hastings (WA) Hastings  
 Heller Heller  
 Hensarling Hensarling  
 Herger Herger  
 Hoekstra Hoekstra  
 Inglis Inglis  
 Issa Issa  
 Jenkins Jenkins  
 Johnson (IL) Johnson  
 Johnson, Sam Johnson  
 Jones Jones  
 Jordan (OH) Jordan  
 Kaptur Kaptur  
 King (IA) King  
 King (NY) King  
 Kingston Kingston  
 Kirk Kirk  
 Kirkpatrick (AZ) Kirkpatrick  
 Kline (MN) Kline  
 Lamborn Lamborn  
 Lance Lance  
 Latham Latham  
 LaTourette LaTourette  
 Latta Latta  
 Lewis (CA) Lewis  
 Linder Linder  
 LeBiondo LeBiondo  
 Lucas Lucas  
 Luetkemeyer Luetkemeyer  
 Lummis Lummis  
 Lungren, Daniel Lungren  
 E. E.  
 Mack Mack  
 Manzullo Manzullo  
 Marchant Marchant  
 McCarthy (CA) McCarthy  
 Roskam Roskam

## NOT VOTING—22

Baldwin Baldwin  
 Barrett (SC) Barrett  
 Berry Berry  
 Buyer Buyer  
 Davis (TN) Davis  
 DeGette DeGette  
 Fudge Fudge  
 Granger Granger  
 Hunter Hunter  
 Lee (NY) Lee  
 Lewis (GA) Lewis  
 McHenry McHenry  
 Miller, George Miller  
 Moran (VA) Moran  
 Murtha Murtha  
 Pastor (AZ) Pastor

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 2029

Mr. TERRY and Ms. KAPTUR changed their vote from “yea” to “nay.”

Messrs. SPRATT and PERRIELLO changed their vote from “nay” to “yea.”

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## PRESERVING ORANGE COUNTY'S ROCKS AND SMALL ISLANDS

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 86, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Guam (Ms. BORDALLO) that the House suspend the rules and pass the bill, H.R. 86, as amended.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 397, nays 4, not voting 33, as follows:

[Roll No. 946]

## YEAS—397

Abercrombie Davis (IL) Kilpatrick (MI)  
 Ackerman Davis (KY) Kilroy  
 Aderholt Deal (GA) Kind  
 Adler King (IA)  
 Akin King (NY)  
 Alexander Kingston  
 Altmire Diaz-Balart, L.  
 Andrews Diaz-Balart, M.  
 Arcuri Dicks  
 Austria Dingell  
 Baca Donnelly (IN)  
 Bachmann Doyle  
 Barrow Dreier  
 Bartlett Driehaus  
 Barton (TX) Duncan  
 Bean Edwards (MD)  
 Becerra Edwards (TX)  
 Berkley Ehlers  
 Berman Ellison  
 Biggart Ellsworth  
 Bilbray Engel  
 Bishop (GA) Eshoo  
 Bishop (NY) Etheridge  
 Bishop (UT) Fallon  
 Blackburn Farr  
 Blumenauer Fattah  
 Blunt Filner  
 Boccieri Flake  
 Boehner Fleming  
 Bonner Forbes  
 Bono Mack Fortenberry  
 Boozman Foster  
 Boren Fox  
 Boswell Frank (MA)  
 Boucher Franks (AZ)  
 Boustany Frelinghuysen  
 Boyd Gallegly  
 Brady (PA) Garamendi  
 Brady (TX) Garrett (NJ)  
 Braley (IA) Gerlach  
 Bright Giffords  
 Broun (GA) Gingrey (GA)  
 Brown (SC) Gohmert  
 Brown, Corrine Gonzalez  
 Brown-Waite, Goodlatte  
 Ginny Gordon (TN)  
 Buchanan Graves  
 Burgess Grayson  
 Burton (IN) Green, Al  
 Butterfield Green, Gene  
 Calvert Griffith  
 Camp Guthrie  
 Campbell Gutierrez  
 Cantor Hall (NY)  
 Cao Hall (TX)  
 Capito Hare  
 Capps Harper  
 Capuano Hastings (FL)  
 Cardoza Hastings (WA)  
 Carnahan Heinrich  
 Carney Heller  
 Carson (IN) Hensarling  
 Carter Herger  
 Cassidy Hereth Sandlin  
 Castle Higgins  
 Castor (FL) Hill  
 Chaffetz Himes  
 Chandler Hinchey  
 Childers Hinojosa  
 Chu Hirono  
 Clarke Hodes  
 Clay Hoekstra  
 Cleaver Holt  
 Clyburn Honda  
 Coble Hoyer  
 Coffman (CO) Hunter  
 Cohen Inglis  
 Cole Inslee  
 Conaway Israel  
 Connolly (VA) Issa  
 Conyers Jackson (IL)  
 Cooper Jackson-Lee  
 Costa (TX)  
 Costello Jenkins  
 Courtney Johnson (GA)  
 Crenshaw Johnson (IL)  
 Crowley Johnson, E. B.  
 Cuellar Johnson, Sam  
 Culberson Jones  
 Cummings Jordan (OH)  
 Dahlkemper Kanjorski  
 Davis (AL) Kaptur  
 Davis (CA) Kildee

Owens	Rush	Tanner
Pallone	Ryan (OH)	Taylor
Pascarell	Ryan (WI)	Teague
Paul	Salazar	Terry
Paulsen	Sánchez, Linda	Thompson (CA)
Pence	T.	Thompson (MS)
Perlmutter	Sarbanes	Thompson (PA)
Perriello	Scalise	Thornberry
Peters	Schakowsky	Tiahrt
Peterson	Schauer	Tiberi
Petri	Schiff	Tierney
Pingree (ME)	Schmitt	Titus
Pitts	Schock	Tonko
Platts	Schrader	Towns
Poe (TX)	Schwartz	Tsongas
Polis (CO)	Scott (GA)	Turner
Pomeroy	Scott (VA)	Upton
Posey	Sensenbrenner	Van Hollen
Price (GA)	Serrano	Velázquez
Price (NC)	Sessions	Visclosky
Putnam	Sestak	Walden
Quigley	Shadegg	Walz
Rahall	Shea-Porter	Wamp
Rangel	Sherman	Wasserman
Rehberg	Shimkus	Schultz
Reichert	Shuster	Waters
Reyes	Simpson	Watson
Richardson	Sires	Watt
Rodriguez	Slaughter	Waxman
Roe (TN)	Smith (NE)	Weiner
Rogers (AL)	Smith (NJ)	Welch
Rogers (KY)	Smith (TX)	Westmoreland
Rogers (MI)	Smith (WA)	Whitfield
Rohrabacher	Snyder	Wilson (OH)
Rooney	Souder	Wilson (SC)
Ros-Lehtinen	Space	Wittman
Roskam	Speier	Wolf
Ross	Spratt	Wu
Rothman (NJ)	Stearns	Yarmuth
Roybal-Allard	Stupak	Young (FL)
Royce	Sullivan	
Ruppersberger	Sutton	

## NAYS—4

Emerson	Skelton
Kennedy	Young (AK)

## NOT VOTING—33

Bachus	Fudge	Moran (VA)
Baird	Granger	Murtha
Baldwin	Grijalva	Obey
Barrett (SC)	Halvorson	Pastor (AZ)
Berry	Harman	Payne
Bilirakis	Holden	Radanovich
Buyer	Kagen	Sanchez, Loretta
Davis (TN)	Lewis (GA)	Shuler
DeGette	McNerney	Stark
Delahunt	Melancon	Wexler
Doggett	Miller, George	Woolsey

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Two minutes remain in this vote.

□ 2036

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to eliminate an unused light-house reservation, provide management consistency by incorporating the rocks and small islands along the coast of Orange County, California, into the California Coastal National Monument managed by the Bureau of Land Management, and meet the original Congressional intent of preserving Orange County's rocks and small islands, and for other purposes."

A motion to reconsider was laid on the table.

# PERMISSION TO REALLOCATE TIME FOR GENERAL DEBATE DURING CONSIDERATION OF H.R. 4173

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that during consideration of H.R. 4173 pursuant to H. Res. 956, the Chair of the Committee on Financial Services be permitted to control 10 minutes of the time allocated to the Ranking Member of the Committee on Energy and Commerce.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BARTON of Texas. Mr. Speaker, I ask unanimous consent that during consideration of H.R. 4173 pursuant to H. Res. 956, the ranking member of the Committee on Financial Services be permitted to control 10 minutes of the time allocated to the ranking member of the Committee on Energy and Commerce.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

## GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 4173 and to insert extraneous material therein.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

# WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 956 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4173.

□ 2041

## IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, with Mr. TEAGUE in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time and the amendment printed in House Report 111-365 is adopted.

Pursuant to the rule and the earlier orders of the House, general debate shall not exceed 3 hours, with 2 hours

and 20 minutes equally divided and controlled by the Chair and ranking minority member of the Committee on Financial Services, 30 minutes equally divided and controlled by the Chair and ranking minority member of the Committee on Agriculture, and 10 minutes equally divided and controlled by the Chair and ranking minority member of the Committee on Energy and Commerce.

The gentleman from Massachusetts (Mr. FRANK) and the gentleman from Alabama (Mr. BACHUS) each will control 1 hour and 10 minutes. The gentleman from Minnesota (Mr. PETERSON) and the gentleman from Oklahoma (Mr. LUCAS) each will control 15 minutes. The gentleman from California (Mr. WAXMAN) and the gentleman from Texas (Mr. BARTON) each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I rise in strong support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. I have long advocated for comprehensive and effective financial regulatory reform. Last year, as the chairman of the Oversight Committee, we held many hearings examining the causes of the financial crisis. Those hearings showed government regulators were asleep at the switch while Wall Street banks drove our economy off a cliff. Change is necessary, and I believe this legislation will strengthen the Federal Government's ability to prevent and respond to future crises.

Consumer protection is a central element of the Energy and Commerce Committee's jurisdiction, and I support the reforms in the bill.

□ 2045

The legislation provides four essential improvements to the operations of the Federal Trade Commission. These improvements allow the FTC to seek civil penalties in enforcement actions against violations of the FTC Act, not just violations of rules and orders, as the FTC Act currently allows; enforce against those who provide substantial assistance to entities that commit fraud; promulgate rules using the Standard Administrative Procedures Act, processes used by virtually all other agencies; and litigate its own cases without delay when it seeks civil penalties against fraudulent actors.

Each of these four provisions will strengthen FTC's consumer protection abilities and enable it to be a powerful partner with the Consumer Financial Protection Agency in protecting consumers from financial fraud.

The Energy and Commerce Committee shares jurisdiction over the new Consumer Financial Protection Agency with the Financial Services Committee, and I am pleased Chairman FRANK and I were able to find a compromise in this area. Under the agreement we have reached, the agency will



start off with a single director who can take early leadership in establishing the agency and getting it off the ground. After a period of 2 years, the agency will continue operations with the leadership from a bipartisan commission.

I have also been concerned about the provisions of this legislation relating to the regulation of financial instruments associated with the energy sector. I'm pleased to report that the Agriculture Committee and the Energy and Commerce Committee reached an agreement to address potential regulatory conflicts where the jurisdiction of the Commodity Futures Trading Commission as enhanced by the proposed bill could overlap with the jurisdiction of the Federal Energy Regulatory Commission.

I want to thank Chairman FRANK and his staff for leading this important legislation through Congress. I also want to thank Commerce, Trade, and Consumer Protection Subcommittee Chairman BOBBY RUSH for taking an early lead in examining the CFPA proposal in his subcommittee, and Chairman Emeritus DINGELL for ensuring that we enhance FTC's role. Ranking Member BARTON worked closely with us on our proposal to create a commission to lead the CFPA. And I finally want to thank Chairman PETERSON for working with us to resolve the energy regulatory issues.

I urge all of my colleagues to support this legislation.

I yield back the balance of my time.

Mr. BARTON of Texas. Mr. Chairman, I would yield myself 4 minutes.

First, let me say I rise in strong opposition to this bill. I did support marking it up at the Energy and Commerce Committee to maintain jurisdiction over this agency and other agencies in our committee's jurisdictions, and I did work with Chairman WAXMAN to make some perfecting changes to the bill that is before us. But having said that, I think that it is a bad bill, it's an unnecessary bill, and it's a bill that will have unintended consequences of a negative fashion if enacted in its current form.

I'm glad that some of the Federal Trade Commission's jurisdiction that was originally stripped from the bill and given to the new agency has been retained and put back with the FTC. I also think, though, that a new agency cobbled together by Congress from existing regulatory structure will not eliminate one of the world's oldest sins. Hucksters and scam artists will not throw up their hands and turn honest because there is a new Federal regulator on the block. They will simply find new ways to cheat the government as it tries to get on its wobbly new feet. Bureaucracies, particularly new ones, don't move at the speed of businesses, especially shady, illegal businesses, and they certainly don't move at the speed of fraudsters.

I want to commend Chairman FRANK for his hard work on a tough issue. Having said that, the outcome of his hard work is an enormous bill and an enormous bureaucracy that, in my opinion, just won't do the job. Having said that, the Obama administration apparently wants this new behemoth, so we're going to get it—at least we're going to attempt to get it through the House on the floor this evening or tomorrow, whenever the vote may occur.

I wish that a superregulator could find and repair the underlying problems with the housing and mortgage markets, but I don't think it can. Empowering a new agency with nearly limitless power to deem almost any product or service of financial activity is questionable at best and tyrannical at worse. This legislation even fails to create a national standard for the superregulator to enforce. Instead, it adds another layer of Federal regulation on top of existing State laws.

Finally, the legislation gives broad, new authority to the FTC that really has nothing to do with the proposed agency and covers everything beyond consumer financial products.

Mr. Chairman, I rise in opposition to the bill, and I would hope that we would defeat it.

With that, I want to yield the balance of my time that I control to the distinguished ranking member of the Financial Services Committee, Congressman BACHUS of Alabama.

The CHAIR. The Chair cannot entertain that request in the Committee of the Whole.

Mr. BARTON of Texas. I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I begin by yielding 4 minutes to one of the Members of the House who has a very significant imprint in this bill, all to the protection of investors and the integrity of our markets, the chairman of the Capital Markets Subcommittee, the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Mr. Chairman, I want to thank the chairman of the full committee for recognizing me and to assert for the record in the full House that although today this huge bill of 1,300 pages or 1,200 pages will be difficult to describe and probably not well understood by either the people watching this proceeding nor all of the Members of the House, I want to say that I am proud to have worked under the tutelage of the chairman, Mr. FRANK, and I think that in years to come, history will look back at this moment and say, when there was need in this country for reformation, it was had in the major part of this bill.

Mr. Chairman, I have had the pleasure of participating in major portions of the bill—Title V, Title VI, and then part of Title I.

What we tried to do, in essence, so that the viewing public can under-

stand, is to recognize some of the problems, not all of the problems, but some of the problems that we were facing as a result of the actions of last year of the capital markets of the United States.

First and foremost, we had discovered that there were great irregularities in transparency and accountability in the rating agencies as they acted to evaluate various sets of securities in the world markets. And when we examined the rating agencies in great detail and through hearings and examination, we found that these entities were poorly—not really regulated at all but certainly poorly accounting for their own responsibilities in the system. We found they were enticing investors throughout the world to buy securities that were rated AAA when, in fact, some of those securities weren't even of B class quality. As a result, millions of people around the world and billions of dollars came in to the purchase of these securitized—or these securities, and as a result, when the market failed, they failed. And there was an impression around the world created that the American Government, the United States of America, stood behind these rating agencies when, in fact, we didn't, and that there was a great compromise.

Some of these rating agencies, because of the internal conflicts within the agencies, were taking great liberty in evaluating and analyzing the values of certain securities to the extent that, because they were paid by the individuals that were issuing the agency, there was an internal conflict. Whether that conflict caused, to a large extent, a scandal or caused failure in the system, one will probably never know, but certainly the aspects of the operations of the rating agencies have been called into question, were called into question at the time, and certainly have been since our examination.

So what have we done? We have developed a set of principles and rules to account for accountability and transparency in the rating agencies in the United States. Will that cure the problem? No. We're going to have to watch very closely, monitor very closely that these rating agencies do not stray from the straight path. If they do, we will have to come back and impose greater restrictions on them and take extraordinary actions in the future if necessary.

But we will have rating agencies now that can be sued when they could never be sued before. We will have rating agencies that will have the responsibility to provide disclosure, will have the responsibility of showing their methodologies and explanations to the buying public of the securities they rate and analyze. To that extent, we hope the public will be protected.

Next, we looked at who is accounted for in our system, and we found, as

we've all known, that some 10, 12 years ago, hedge funds were denied the examination of the Securities and Exchange Commission. We have now formed what is known as the Private-Funded Investment Advisors Registration Act, which is Title V of this act, part A, and that provides that all advisers that want to play in the capital markets must register and must disclose certain information so that knowledge of what capital is doing, where it is and in what amounts will be known by our regulators. That is the first time in the history of the United States that that will prevail. It should go a long way of having inside information in the role of the regulators of the United States as to what is at risk.

Then, finally, we created an Investors Protection Act. The Investors Protection Act has done so many things it's almost impossible to enumerate, but the SEC gave recommendations which were incorporated in the bill.

The CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield an additional 1 minute.

Mr. KANJORSKI. Authorities that they lacked, they were given. With that inclusion, I think we have one of the finest investment protection acts that ever existed.

Finally, we have something new we created. We created the Federal insurance office that will, for the first time, will encompass information encompassing the insurance industry in the United States.

Finally, I'm proud to say I had a major part in putting together an amendment to the act, the first provision of the act, part one, that allows "too big to fail" protection in the United States. For the first time, the regulators in the United States will have the opportunity to analyze the structure of corporations and the financial service industry that either may be too large, interconnected, or too large in scope or too inexperienced in management or some other condition that may, in the future, cause them to be of systemic risk to the economic system of the United States. And we've empowered the regulators to move in and require changes, controls, and regulations to prevent that occurrence so that never again, we hope, the "too large to fail," in fact, will be, in fact, too large not to fail.

So with that, I recommend to all of my colleagues on both the Democrat side and the Republican side, stop for a moment and think what we've done.

May I call the attention of the Republican side, three of the eight bills that we passed through our committee went through with significant bipartisan support.

Mr. Chair, over the next few days this body will have the opportunity to consider sweeping, meaningful reforms to protect American investors, safeguard consumers on Main Street,

and fundamentally change the way Wall Street and large financial institutions operate. For roughly two years, we have endured a severe crisis that exposed vulnerabilities in our system for overseeing the financial sector and demonstrated the perils of deregulation.

During this calamity, Americans have unfortunately lost trillions of dollars in personal wealth and retirement savings, millions of families have lost their homes, and far too many workers have lost their jobs. Last year, in order to save the financial system itself, we had to act courageously and pass the Troubled Asset Relief Program, despite considerable criticism. This law has worked to stabilize our system, but public faith in our financial markets has also nearly vanished. We therefore must now take bold steps to restore trust in the financial services industry by significantly modifying its regulation. H.R. 4173, the Wall Street Reform and Consumer Protection Act, will do just that.

While this broad, comprehensive legislation encompasses substantial reforms in many areas—from the regulation of complex financial derivatives to the creation of a Consumer Financial Protection Agency—I want to focus my comments on the proposals that I worked to develop and incorporate into this package. These reforms include investor protection improvements, the registration of hedge fund advisers, changes to credit rating agency oversight, and the creation of a Federal insurance office. I also want to discuss how this legislation will rein in "too-big-to-fail" financial institutions.

The failure to detect the massive \$65 billion Madoff Ponzi scheme, the problematic securities lending program of American International Group, the freezing up of the auction-rate securities market, and the "breaking of the buck" by Reserve Primary Fund each demonstrated the need for comprehensive investor protection reform. In response, the Investor Protection Act of 2009—a key part of H.R. 4173—contains more than six dozen provisions aimed at strengthening the oversight of U.S. securities markets and closing regulatory loopholes.

For the first time, every professional who offers investment advice about a securities product will have a fiduciary duty to their customer. For the first time, we will create a bounty program to encourage tipsters to come forward with information about securities fraud. For the first time, we will regulate municipal financial advisers. Moreover, by doubling the budget of the U.S. Securities and Exchange Commission and by requiring a comprehensive study to fundamentally reform the way the agency operates, this bill lays the foundation for us to put in place a superior securities regulatory system going forward.

We also need to regulate everyone who plays in our capital markets. By mandating the registration of hedge fund advisers and others who currently operate in the shadows of our markets and subjecting them to recordkeeping and disclosure requirements, for the first time regulators will have the information needed to better understand exactly how these entities operate and whether their actions pose a threat to the financial system as a whole.

Without question, the actions of Moody's, Standard and Poor's, and Fitch exacerbated

this financial crisis. In response, H.R. 4173 takes strong steps to reduce conflicts of interest, stem market reliance on credit rating agencies, and impose accountability on rating agencies by increasing liability. As gatekeepers to our markets, credit rating agencies must be held to higher standards. We need to incentivize them to do their jobs correctly and effectively, and there must be repercussions if they fall short.

Insurance also plays a vital role in the smooth and efficient functioning of our economy, but the credit crisis highlighted the lack of expertise within the Federal Government on the industry, especially during the collapse of American International Group and last year's turmoil in the bond insurance industry. I have long championed the need to establish a place within the Federal Government to collect information and build expertise on this sizable industry. The Federal Government needs a fundamental knowledge base on these matters, and for the first time we will have such a repository because of this bill.

Finally, I am pleased that H.R. 4173 includes my amendment addressing companies that have become too big to fail. This bill will empower Federal regulators to rein in and dismantle financial firms that are so large, interconnected, or risky that their collapse would put at risk the entire American economic system, even if those firms currently appear to be well-capitalized and healthy. By ensuring that financial companies cannot become so big that their failure would pose a threat to economic stability, we will protect American taxpayers from future bailouts. By outlining clear and objective standards for regulators to examine financial companies, we will also reduce the level of risk their activities pose to our financial stability and our economy.

In sum, I want to thank the Members of the Financial Services Committee for their hard work and their support of my efforts to better protect investors, advance credit rating agency accountability, register hedge fund advisers, establish a knowledge base on insurance, and curb too-big-to-fail companies. I especially want to congratulate the Chairman of our Committee, the gentleman from Massachusetts (Mr. FRANK), for his tireless efforts in pulling this comprehensive package together during the last year. I urge all of my colleagues to support this landmark bill.

Mr. BARTON of Texas. May I inquire how much time I still control, Mr. Chairman?

The CHAIR. The gentleman has 2 minutes remaining.

Mr. BARTON of Texas. I yield 2 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Thank you.

The gentleman from California referred to the Wild West earlier. No two institutions better fit that description than the government-sponsored enterprises Fannie Mae and Freddie Mac.

Over the years, some of us pleaded for additional regulation. You may recall, in 2005, we tried to pass strong legislation to fix this problem and bring reforms to the government-sponsored enterprises. I brought an amendment to this floor to give the regulator

the ability to rein in their mortgage portfolios that were spiraling out of control. The Federal Reserve came to us and said, These institutions at the heart of the U.S. mortgage market pose a systemic threat to our economy.

That is why I offered my amendment, which was defeated, as were others, that would have provided stronger regulation. That is why Senator Chuck Hagel offered similar legislation which passed the Senate Banking Committee on a party-line vote but was blocked by the Senate Democrats from coming to the floor.

We understood the risks posed by those government companies, especially when it came to the affordable housing goals the Democratic-controlled Congress mandated in 1992. Those affordable housing goals led the GSEs into the subprime Alt-A market, and they ultimately led to their collapse.

Former President Bill Clinton understands this epic blunder. Last September, the former President said in an interview, "I think the responsibility that the Democrats have may rest more in resisting any efforts by Republicans in the Congress, or by me when I was President, to put some standards and tighten up a little on Fannie Mae and Freddie Mac."

□ 2100

This is one of the main reasons why our economy is where it is today. And this is why we must reform the GSEs, which this bill does not do. Instead, this bill creates a perpetual bailout fund and ensures that the "too big to fail" doctrine is with us definitely.

For the first time in its history, Washington will officially become the center of our financial system.

The CHAIR. The time of the gentleman has expired.

Mr. BACHUS. Mr. Chairman, I yield the gentleman 1 additional minute.

Mr. ROYCE. Regulators will be able to rescue certain companies and liquidate others. They will be able to pay off some creditors and counterparties and not others, and keep failed or failing companies operating and competing in the market for years. They will even be able to dismantle a healthy institution that they believe may pose a risk.

If there is any doubt that this type of authority will be abused, look at how the administration handled the Chrysler bankruptcy earlier this year. It was their desire to do away with the clearly defined rules of the road found in the bankruptcy code in order to reward their political allies. Those rules of the road that were so easily dismissed by the administration have acted as the bedrock of our capital markets for decades. They differentiate us from much of the world and serve to attract capital from all corners of the globe. This bill throws that model out the window.

It replaces objectivity with subjectivity, market discipline with political pull.

What is the likely outcome of all of this? The larger, politically connected institutions will have the edge over their competitors.

Mr. PETERSON. Mr. Chairman, I yield myself such time as I may consume.

I rise today in support of H.R. 4173 and of the Peterson-Frank amendment to this legislation, which will be considered at a later time. I want to thank Chairman FRANK and his staff for working with us and our staff over the last few months on the amendment and on the provisions in the underlying bill that affect both of our committees. Mr. Chairman, passage of this bill is necessary to improve the financial regulatory structure in America.

The House Agriculture Committee has played a significant role in contributing to this legislation, and while I may not agree with every provision in this bill, I support the goals of increased oversight, more transparency, and an end to taxpayer bailouts of large financial institutions.

Mr. Chairman, our committee has spent over 2 years examining various elements of derivatives markets, and we have focused for the last year specifically on their contribution to this financial meltdown, most notably the prevalence of unregulated, heavily traded bilateral swaps used by large financial institutions that either collapsed or received taxpayer bailouts.

Now derivatives, in and of themselves, were not the cause of the financial meltdown in the second half of last year, but they did play a role. Had the provisions of the Peterson-Frank amendment that we will consider later been in place last year, financial institutions like AIG would have never gotten themselves into a position where they needed billions of taxpayer dollars just to keep them solvent.

The derivatives reforms in the Peterson-Frank amendment and the resolution authority provided for in the underlying bill will mean large financial institutions, and not the taxpayers, will be financially responsible for their own undoing.

I also want to thank Chairman FRANK for the work he did with our committee on ensuring that this legislation does not have unintended consequences for the Farm Credit System, a network of rural lenders that support local agricultural producers, utilities and businesses. So Mr. Chairman, Farm Credit had nothing to do with the financial crisis, and in fact, the strong underwriting, capital, security, appraisal, and repayment statutory standards that we put in place after farm country went through its own stressful credit period have resulted in a more stable financing network. The Treasury Department agreed with this

assessment when they said it was not their intention to bring Farm Credit into the regulatory reform discussion, and I thank Chairman FRANK for recognizing this.

With that said, Mr. Chairman, I still have some concerns with some parts of the underlying bill, particularly the establishment of a systemic risk regulator and the empowerment of the Federal Reserve to take a leading role.

I am concerned that the real power resides in the Federal Reserve instead of the Financial Services Oversight Council established by this bill, particularly the ability to impose whatever prudential standards it sees fit. And there does not seem to be any mechanism for the Council to check the power of the Federal Reserve if it believes the Fed is going too far.

While I think the systemic risk language needs much more refinement, I will not let these concerns deter my support for the underlying bill and the much-needed Peterson-Frank amendment that will finally shine light on the previously dark markets for over-the-counter derivatives and ensure that we will never again threaten the stability of our financial system.

Mr. Chairman, I urge my colleagues to support the bill.

I reserve the balance of my time.

Mr. LUCAS. Mr. Chairman, I yield myself what time I might consume.

Mr. Chairman, I must rise today in opposition to H.R. 4173. Regulatory reform of our financial system is indeed needed. However, rather than using this opportunity to enact meaningful reform that creates financial stability and encourages economic growth, the majority has constructed a massive piece of legislation that will restrict credit availability and does little to address the real problems in the financial industry.

In addition to dramatically expanding the power of the Federal Reserve and establishing what is, in effect, a "credit czar" who will have virtually unlimited authority to restrict consumer choices, this bill will create a permanent bailout, some would call slush fund, for so-called "too big to fail" companies funded by a \$150 billion tax on financial institutions. This tax will reduce available capital for lending and will most certainly be passed on to consumers in the form of higher fees.

As the ranking member of the Agriculture Committee, I also rise in opposition to title III, the OTC derivatives title, that is currently in H.R. 4173. This is the same title that was adopted by the Financial Services Committee. I opposed this title in the committee, where I'm also a member, because it makes it too costly for end-users to manage risk and unnecessarily ties up capital that could otherwise be used to create jobs and grow their businesses.

However, Chairman PETERSON and Chairman FRANK will bring an amendment to the floor that will strike and

replace this derivatives title. This Peterson-Frank amendment is the product of negotiations between our two committees. I prefer, I must admit, the version reported by the Agriculture Committee, but this compromise is significantly better than the current title in the bill, and I will support its inclusion. But, I support its inclusion only if the other secondary amendments that may be offered by my friends on the other side of the aisle are defeated, save one.

I would be remiss if I didn't thank Chairman PETERSON for working with Agriculture Committee Republicans in a process that started back in February when our committee reported out H.R. 977. Chairman PETERSON worked in good faith to address issues our members brought to the table, and we learned together the concerns of all of the participants in the over-the-counter derivatives markets. Although we were able to address some of these concerns, many still remain unresolved.

We were able to improve areas most important to end-users; the manufacturers, the energy companies and food processors that use swap agreements to manage price risk so they can provide consumers with the lowest-cost products. End-users should not be regulated as though they were major financial houses residing on Wall Street. They did not cause the financial collapse. They should not be regulated like they did.

I would have preferred language that would have made clear that only those entities that can have a significant adverse impact on the U.S. financial system be regulated as major swap participants. Similarly, I don't understand why market makers that only deal in cleared products need to have additional capital and margin requirements imposed upon them by the Federal Government.

Finally, we should not forget that new opportunities, innovative products and services, and ultimately economic growth are born from people willing and able to take risk and invest. We should not attempt to regulate risk out of existence. As it stands now, the Peterson-Frank amendment allows the appropriate financial regulator to closely monitor market trends and market participants who may generate too much risk for a healthy and robust financial system. This amendment also gives the regulator the appropriate tools to reduce risk before it can negatively affect our economy. The Peterson-Frank amendment isn't perfect, but it is a marked improvement over other legislative efforts either proposed or considered.

Mr. FRANK of Massachusetts. I yield myself such time as I may consume.

Mr. Chairman, my Republican colleagues are in the throes of regret that things that they would like to have de-

nounced are not in this bill. There will be a certain amount of fantasy tonight on the floor of the House as they lament the existence of things that are not here.

One of the major bailout instruments, section 13.3 of the Federal Reserve Act, was used during the Bush years to bail out not the institution, but the creditors of Bear Stearns, but then it was used by a unilateral decision by the Federal Reserve with no congressional input in September during the Bush year of 2008 to provide substantial amounts of money to AIG. The bill before us today wipes that power out. There will be no more use of section 13.3 to provide funds to any existing institution.

There will be, as the Republican bill also said, instead, the ability to fund an instrument to which companies can apply if they are solvent in the midst of a national liquidity crisis. But there will be nothing like AIG.

There is a fund in here for the FDIC to use if a financial institution has to be put out of existence because it had become too indebted and unable to meet its debts, and it was big enough so that its failure would cause the kind of systemic negative consequences that we saw from Lehman Brothers.

Last year, the problem was Lehman Brothers went under, and the Bush administration felt they couldn't pay anybody, and there was a crisis. So then AIG went under, and the Bush administration said, well, we better pay everybody because we don't have the legal authority to pick and choose. We now end that dilemma. We say, and this is absolutely crystal clear in the bill, it says if an institution gets to the point where it cannot pay its debts, and it is of such size that those debts threaten systemic negative consequences reverberating throughout the economy, it dies. There is no bailout. There is no continuation of that entity. It's a dissolution fund. It is put into receivership.

There is a fund raised, it is true, by assessments on the financial institutions, and my Republican colleagues are far more solicitous than I of those institutions. They don't want to restrain their compensation, and they don't want them to have to contribute to expenses that may be incurred by their own irresponsibility. That is clearly a difference between us.

We say that if the Federal agency that is putting this out of business and takes it over, and, yeah, there's a takeover of failing institutions who threaten, by the size and complexity of their indebtedness, to threaten the stability of the country, we take them over to put them out of business. The shareholders are wiped out, the boards of directors. These are all absolute conditions that have to be met.

And it may be that in winding them down, some money has to be spent. You

don't just walk in the next day and say, okay, the door is closed. That is irresponsible. We say it may take some money to wind them down. So we assess the business community that caused these problems in the whole for that. And we do say if there is a need and there's a shortfall before, if one of these things happens before the fund is built up, money will be borrowed from the Treasury with an absolute requirement of repayment in this fund. There are no taxpayer dollars that will be used. They will be lent, in some cases, as has been lent in other cases, but they must be repaid, and there must be a repayment schedule.

□ 2115

The assessments will continue until they are repaid.

Now, one of the odd things is, and I apologize to my colleagues, the bill is too big. I don't know whether that means it was too much to read or too heavy to carry, or some really short ones can't see over it when they are sitting down. I don't know what the problem was. This notion that the value of a piece of legislation is inversely related to its size is rather odd.

But let me tell you how they managed to slim down—which I would like to do, now that I am through with all of that, but I will have to start my diet next week. How do they slim it down? They don't do anything in their bill about executive compensation.

I agree, we spent some pages saying that the kind of bonuses and large payments to take risks and not be penalized if they fail, we have language in here to stop that. They don't. Save some pages.

We say, let's ban the kind of subprime loans that got this country into so much trouble. We have a lot of language in here to ban subprime loans. They don't. Save some more pages.

We do regulation in other ways that they don't do. They don't have registration of hedge funds. They don't have requirements on private advisers. They don't have anything about a whole lot of things. It is true if you avoid subjects, you shrink the size of the bill.

By the way, as to the size of the bill, this didn't come—one of the things, you know, sometimes it's what's not said that you open—you haven't heard any complaints today, and I appreciate that, about the process. We began marking up the elements of this bill before the summer recess. We have had a large number of hearings. We have spent over 50 hours in actual markup debate on this bill.

There have been hundreds of amendments offered, dozens of amendments accepted from both the Republican and Democratic sides in many days of markups. It has been very thoroughly vetted. It was made public and available.

I am sorry that they had to read a lot of pages about things they didn't want to read about. They don't like to be reminded of compensation abuses. They don't want to hear about subprime, but we do. We want to stop it.

There is no bailout fund. The bailouts of AIG and Bear Stearns, not possible, illegal under this bill. If a company fails, it will be put to death. Yes, we have death panels, but they got the death panels in the wrong bill. The death panels are in this bill. We will spend money to get rid of them in ways that will minimize damage, money that will come from the financial community.

Now, we heard that it's going to have a restriction on credit. Well, it's true, many of them were opposed to the credit card bill. Many voted for it. The National Federation of Independent Business supported the credit card bill. They say there is a credit czar. That one is too odd to put any meaning behind. I would like them to point to the sections that do it. Maybe, if it's too much to read all at once, they could divide it up. Like there are 177, if they each read 8 pages, I think they could get the whole bill done. Maybe they could then find a credit czar in there. I can't.

We do say that if you are identified by the systemic risk council as overleveraged, and you are big, we will step in and tell you, as the gentleman from Pennsylvania's amendment said, you are too big, raise your capital. Maybe that's a credit czar.

Maybe when someone would have told AIG a couple of years ago, stop selling those credit default swaps that you can't back up, because mortgages that you are ensuring against loss can lose money, maybe they think that's a credit czar if you tell AIG don't do it, because nothing in that bill, nothing, zero in that bill would have interfered with AIG's recklessness. There's not a word in here that would have done that in terms of the overleveraging of AIG, nor of the subprime loans that were there.

Yes, the lack of regulation over many years allowed big problems to grow up. It takes a fairly comprehensive bill to do it. We have been working on this bill for literally months. We have had days and days of hearings. We have voted on it; we have amended it. It's been available.

I would hope they would stop complaining about the size. I would hope they would deal with the substance. But the real substance of this bill, not a bailout that does not exist, I want someone to read me the sections that show there is taxpayer money that can go to keep a failing institution going. There absolutely is not. I would like them to tell me, do they think we should ever do anything about subprime loans, anything about executive compensation, anything about

subprime hedge funds, about any of these other things?

Yes, here is the situation. Years of an absence of regulation, both an absence of war and an absence of will to regulate—mostly under Republican rule but some with Democratic complicity—led to the largest crisis in recent memory since the Depression.

They talk about job loss. As I said before, what a terrible day January 21 was. Apparently, we had a wonderful economy up until January 20. Barack Obama took power and millions of jobs disappeared retroactively. A deficit sprung up that had not been there. Bailouts were retroactively pushed back to September.

The major factor in jobs loss was this terrible crisis. What we do for jobs is to say you will not be allowed, once again, the financial irresponsibility of some in that community to get us into trouble.

The Republican proposal is very clear. Do not interfere with the ability of an AIG, Lehman Brothers, Citicorp, Countrywide or any of those other financial entities. Do not prevent them from doing again what they did before. If and when they have done such a bad job that they are collapsing, then let them go bankrupt and don't do anything to deal with the consequences. Let's have another Lehman Brothers.

We say "no." Let's try to stop them from getting there. If they do get there, yes, we will put them out of business, but in a more orderly way.

I reserve the balance of my time.

Mr. BACHUS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a great country, and I think we are all proud of our country. It is no small tribute to our country that people all over the world dream about coming to America. Our forefathers, they were either born here or they dreamed of coming to America.

America is not just a country; it's an idea, and that idea is about the individual. That's the basis of our country. It's not about the government. It's about the individual, it's about the citizen, it's about freedom, it's about choice.

Mr. Chairman, the problem with this bill isn't the size of the bill. The problem with this bill is that it goes right to the heart and strikes a wound against the character of our country. It's the character and the culture of this legislation that is so wrong, and not the size.

Individuals in this country ought to have the right to choose. They ought to have the right to choose their health care provider, their doctor. They ought to be able to make choices, health care choices, treatment choices between themselves, their doctor, their family, not the government.

We see with health care that this idea of the individual, this idea of choice, this idea of freedom to make

those choices is under attack. We found that with energy that not the individual, the country, but the government determined that we weren't going to use coal, our most abundant source. We weren't going to use oil, that we were going to tax, that we were going to tax energy, we were going to discourage that. We are taxing health care in the health care bill.

In this bill we levy taxes. We have sanctions. People may still be able to make choices, but they will be discouraged or they will be taxed when they make those choices.

The decision about seeking the doctor of your choice or the decision about borrowing money or the choice about lending money or the choice about the terms of that loan, those ought to be choices between individuals; those should not be managed by the government.

Now, the chairman has brought this legislation before, and it is his legislation. I mean, his image and his imprint is clear on each and every page of this legislation.

I have not really seen such an individual drive legislation since perhaps the first lady, Hillary Clinton, brought her government-managed health care to the floor in the early 1990s. This is just simply another way of an attempt on the part of, really—and I think the chairman really has faith in the government and the government's ability to manage and the government's ability to make decisions, that he actually has a sincere faith.

In fact, members of this committee, members of this committee on TV this morning, and Democratic members, actually made references to Europe, the way they do things in Europe, the fact that the government is making these decisions in Europe. We are the greatest, as I said, the greatest country on the face of the Earth, and we didn't get there through government management. We didn't get there through government management of health care. We won't get there by government management of creditor or of lending or of other financial services. It won't happen.

We are the largest economy in the world. It's not the British economy, it's not the French economy, it's not the Chinese economy, it's not the Japanese economy. It's the American economy. How did we get to be the largest economy in the world, three times larger than the next largest economy, the Japanese economy, bigger than the Chinese economy, the Japanese economy, the British economy and the French economy put together? We got there with faith in the individual, not in the government.

That is what's wrong with this bill. You can clearly look, and nowhere is it more evident than in this bill that not only do we not have faith in the individual and in individual responsibility

and an individual's right, sometimes, to take risk, but we also give individuals the right in this country to succeed. But when you do that, unlike in other countries, you give them the right to fail.

This bill clearly establishes a bailout fund. It says when the largest companies in this country, when the largest companies in this country, when they fail, we are going to establish a \$150 billion fund, a permanent fund, a permanent TARP.

The Democratic gentleman from California, Mr. BRAD SHERMAN, said TARP on steroids, and where do you get this money from? Well, actually, it's 200 billion, 150 you get, not from the companies that are failing, but from their competitors who are succeeding. You transfer that money to those companies that have taken risk they shouldn't have taken. You take it from those companies that didn't take those risks. That's not competition; that's socialism.

Now, you can call it what you want to, but it's socialism. It's government managed. It's not what America is about.

This is not about a crisis that occurred last September. This is not about the continuing bailouts that started with the Federal Reserve, an independent body, but continued and have grown in intensity under the Obama administration. But there is enough fault to go around.

But can we not agree on one thing, that it is time that we allow people in this country to succeed, and we allow them to fail? Isn't it time in this country that we decide that there is no more "too big to fail," because if you make that determination, you make the determination, as we have over the past year, that there are thousands of small businesses and medium-sized businesses and companies that were too small to save.

That's not fair. That's not what America is about. It is not about taking from people who pay their mortgage.

No matter what the circumstances of those who failed to pay their mortgage, it's not about transferring money from one to the other. That's not about America. It might be about charity, it might be about neighbor helping neighbor, but that is not what this country was established about.

□ 2130

So let's not use the crisis that we have experienced this past year to create the calamity of a government-managed country where the individual, where freedom, where choice is a thing of the past.

Mr. Chairman, I reserve the balance of my time.

Mr. PETERSON. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Ohio (Mr. BOCCIERI), a member of our committee.

Mr. BOCCIERI. Mr. Chairman, in this season of yule tidings, gift giving, and silver and gold, just what are my colleagues on the Republican side attempting to give Americans with their opposition to this bill?

My colleagues who oppose this bill would rather give gold to the big executive corporate execs at Goldman Sachs rather than put a little silver and gold under the Christmas tree of ordinary Americans. Bah humbug.

My friends on the other side of the aisle would rather stand with corporate executives and their thousand dollar suits than stand with those who are in the unemployment line. Bah humbug.

They'd rather bail out the big banks on Wall Street than help Americans try to keep their homes on Main Street. Bah humbug.

My colleagues who oppose this bill would rather give bonuses to big corporate executives than protect the pensions of millions of middle class Americans. Bah humbug.

They'd rather stand with hedge fund managers, predatory lenders who are betting on the price of oil going up, betting on the price of food going up, and betting on Americans failing to pay their mortgages rather than helping those families who are now standing in the line at food banks this holiday season. Bah humbug.

This bill will end taxpayer bailouts so that Americans are never again on the hook for Wall Street's risky behavior and bad bets. It protects families and retirement funds and college savings and small businesses' financial futures from the unnecessary risks by Wall Street lenders and speculators and high-paid execs. It brings transparency and accountability to a financial system that has run amok. This bill is about instituting commonsense reforms, holding Wall Street and big banks accountable.

Now, Republican leaders would rather vote to rescue big banks on Wall Street than find it in their hearts to help struggling Americans on Main Street.

Don't be a Scrooge this Christmas and vote against this bill. Help our people, or surely you're going to be visited by the ghosts of Christmas past.

Mr. LUCAS. Mr. Chairman, I yield 2½ minutes to the gentleman from Kansas (Mr. MORAN).

Mr. MORAN of Kansas. Mr. Chairman, I rise this evening, as one might expect, in my opposition to H.R. 4173 certainly as written, as the gentleman from Massachusetts says, this massive financial regulation bill.

Once again we have 1,200-plus pages, a so-called "reform" bill before the House of Representatives that would dramatically increase government involvement in our economy. If this Congress is serious about economic recovery, then we should be reducing burdensome regulations, not increasing them.

I have heard from many Kansans about their inability to access credit from their local community-based lending institutions. Small businesses and farmers rely upon these loans to make payroll, expand, and to make their ends meet. Local lending institutions would love nothing more than to make these loans, but the overly broad regulations and the inconsistency with which different examiners enforce those regulations, together with higher FDIC insurance premiums and increased reserve requirements, has greatly restricted family and small business access to capital. This House should be more focused on the credit crunch and helping institutions cut through the bureaucracy and lend money, not creating more layers of regulation.

Among the provisions I oppose within this legislation is the creation of a permanent TARP-like bailout authority. This authority will continue to shield large financial firms from their mistakes and pass those costs of their miscalculations on to the American taxpayer. The legislation takes an overly broad approach, disrupting markets that have performed well and placing more regulatory burdens into places where they are not needed.

One example of these changes that this legislation would make is the commodities futures market known as designated contract markets. These are not the over-the-counter derivatives markets you will hear most Members discuss during this debate. In the wake of last fall's financial collapse, these regulated contract markets performed relatively well under the current core principle regulatory regime. This regime allowed both regulators and exchanges the ability to adapt their regulatory approach to changing market conditions.

Rather than recognize the success, this legislation replaces those core principle regimes with an antiquated rules-based structure that has failed at the SEC. This legislation also redefines the definition of a bona fide hedging transaction in the contract markets so narrowly that it will be difficult for many commercial market participants to properly hedge their risk. These changes will hurt, not help, our economic recovery and introduce more, not less, volatility into the marketplace.

For these and many other reasons, I urge the House to reject this legislation.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself 30 seconds to note that with all these assertions that this is going to hurt credit and small banks, the Independent Community Bankers Association, a great representative of small banks, supports this bill. Now, they'll be upset if we do bankruptcy. But as far as the bill is concerned and the provisions we have been

talking about now, the Independent Community Bankers Association supports this bill. They believe exactly the opposite about credit.

Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. The ranking member came to the floor and quoted me as describing this bill as "TARP on steroids." That's the phrase I used to describe the original bill submitted to us by the Secretary of the Treasury. This bill is very different.

I want to thank Chairman FRANK for all the changes we have been able to make and declare that this bill is now a step forward in limiting, on balance, the power of the executive branch to put taxpayer money at risk or to bail out private institutions.

The bill does include two provisions that those concerned with bailouts might object to, but these provisions are limited as to amount and purpose, and they are sunsetted in 2013. Finally, while taxpayer money may be put at risk initially, ultimately the cost falls on the industry.

But you cannot call this bill "TARP on steroids" and quote me to that effect without noting the major change this bill now makes in section 13(3) of the Federal Reserve Act. That is the most dangerous provision in the U.S. Code, and this bill is a major step toward limiting that section. Code section 13(3) now allows the Federal Reserve to lend, at times of systemic risk that they declare to be in existence, unlimited amounts to just about anyone on whatever terms the Fed thinks is adequately secured. Unlimited amounts. They've already done about \$3 trillion, and under current statute they could do \$30 trillion. And the Republican alternative does little to limit section 13(3). It leaves the giant free-way of bailouts open forever.

In contrast, this bill contains three important limitations. The first was drafted by the chairman, and it says that 13(3) can only be used to put money in the economy in general, not to bail out one or two firms. And I thank the chairman for accepting two of my amendments. One limits section 13(3) to \$4 trillion and does not adjust that amount for inflation so that the power of the Fed will decline with inflation over time, which is only fair since it's the Fed that's supposed to be in charge of limiting and eliminating inflation.

The second amendment that was accepted was the idea of requiring the highest possible security for amounts of credit extended under 13(3). This bill is a step toward limiting the power of the executive branch to put money, taxpayer money, at risk. It does contain section 1109 and 1604, both of which are, pursuant to an amendment accepted in committee which I authored, sunsetted in 2013.

Section 1109 replaces 1823 under current statute, so it doesn't expand bailout authority. In fact, it contrasts it, because it's limited to \$500 billion, while 1823, which is suspended by this bill, is an unlimited amount. Section 1109 as it will appear in the manager's amendment requires an advance fee so that taxpayers are compensated for any money put at risk and, finally, any losses to be collected from those companies which participate in the section 1109 loan guarantee program.

Section 1604 does provide funds to resolve insolvent institutions, but as the chairman points out, it's a death panel, not a bailout. It's only for institutions that are going to be liquidated.

The CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield the gentleman 1 additional minute.

Mr. SHERMAN. It's limited to \$150 billion collected in advance from the same large companies whose creditors could be eligible for relief. And section 1604 is sunsetted in the year 2013.

Taken as a whole, this is antibailout legislation and contrasts with the Republican alternative that does little to limit section 13(3), which has already been used chiefly under the Bush administration to put over \$3 trillion of taxpayer money at risk. It does provide for section 1109 and 1604, but under the bill these are limited in amount and they're temporary in time. And most importantly, it limits section 13(3) three ways: as to dollar amount, as to the purpose that money is put at risk, and, finally, as to the degree of risk which the Fed is able to take.

What I said about this bill when it was originally proposed may well have been true. The bill now is a step away from the TARP approach, a step away from bailouts.

Mr. BACHUS. Mr. Chairman, I yield 4 minutes to the ranking member of the Subcommittee on Oversight and Investigations, the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding me the time.

There's no question and no disagreement among Members from both sides of the aisle that we need financial reform, for consumers, for the health of our financial services industry, and for the economy. But this bill isn't the answer.

In fairness, you can find some good bipartisan provisions in this bill. For example, Mr. KANJORSKI and I worked out insurance language to bridge the gap in communication among regulators and address problems with multifaceted businesses like AIG. Mr. HINOJOSA and I worked on language to bolster housing counseling efforts at HUD. And the bill contains much-needed credit rating agency reform.

Unfortunately, the good does not outweigh the bad. Today credit is less available than ever, small businesses

are struggling to keep their doors open, and a record number of Americans are jobless. According to a report issued yesterday by the U.S. Conference of Mayors, the number of homeless and hungry families is still on the rise.

We need a bill to unfreeze the credit markets so that financing is available to allow U.S. businesses to grow and create jobs. We need a bill to improve regulation. We need a bill to help Americans get back to work so that they can provide for their families and put food on the table.

Instead, Mr. FRANK's bill sets us back. It imposes a new tax on financial institutions, diverts financing away from lending and job creation, and creates a permanent Federal bailout fund, TARP II. Successful businesses and taxpayers will pay in advance for the failings of those that are reckless. And guess what? Taxpayers are on the hook once again if there isn't enough money. Does that sound familiar? Of course, because it's more of the same.

This bill doubles down the government intrusion in the private sector, and it increases fees and Federal spending. Instead of strengthening consumer protections, it creates a giant new Federal bureaucracy. Five D.C. bureaucrats will tell groups across America, anyone involved in financial activities, including churches that provide payment plans for funerals, what products and services they can offer. Did churches cause the financial meltdown? No. Why not address the disconnect among dozens of existing Federal agencies before layering on a new one? Are we creating another agency or another problem?

Finally, we need straightforward, over-the-counter derivatives reform. What we don't need is regulation that charges regulators with creating a one-size-fits-all approach to regulatory compliance, enforces unjustified mandates, and kills jobs.

We must crack down on illegal, unfair, and deceptive activity, eliminate regulatory gaps, and strengthen the effectiveness of enforcement agencies. We should create a culture of transparency and accountability on Wall Street that will discourage, not promote, risky behavior, and never ever, ever again leave taxpayers holding the bag when those deemed "too big to fail" cannot meet their obligations.

□ 2145

That's what our Republican alternative aims to do.

My Republican colleagues on the Financial Services Committee and I have offered, at every step of the way, solutions for smarter, stronger financial regulations, and yet Mr. FRANK's bill steamrolls ahead, threatening to weaken the economic competitiveness of our markets, tie up capital, tie the hands of businesses, limit consumer choice, and place taxpayers on the hook for Wall Street's mistakes.



This bill is an overreach and an overreaction, and it should be thrown overboard. It will cause irreparable harm. We need bipartisan reform to get our financial system and our country back on track. Americans, consumers, taxpayers, job seekers, the homeless, the hungry, and Main Street businesses deserve financial reform. This bill is not it.

I urge my colleagues to oppose the bill and support the Republican alternative.

Mr. PETERSON. Mr. Chairman, I would like to engage Chairman FRANK in a short colloquy, and then give the rest of our time on our side to Mr. MURPHY, who is our last speaker. So if Mr. FRANK would be willing, I would yield myself as much time as I may consume and would like to enter into a colloquy with my good friend, the chairman of the Financial Services Committee.

Title I of this legislation creates a systemic risk oversight and regulatory structure that enables regulators to raise capital requirements and impose heightened prudential standards on large, interconnected firms that could pose a threat to financial stability. The legislation also empowers the Federal Reserve Board to impose a host of additional requirements on institutions and activities deemed systemically important.

It appears that this new structure is not intended to replace or duplicate regulation of securities or derivative exchanges that are already subject to regulations by the SEC or the CFTC. In looking at the statutory criteria for determining whether a financial company should be subjected to stricter prudential standards, it is hard to visualize the application of these criteria to derivatives and securities exchanges. Exchanges are not the players who perform the trading, but the administrators of the marketplace where such trading occurs.

Do you agree that while derivatives and security exchanges would certainly qualify for the definition of a financial company in Title I, the intent of the legislation is targeted more at the players in the marketplace as opposed to the administration of the marketplace?

Mr. FRANK of Massachusetts. If the gentleman would yield, the answer is yes, I agree completely, as they have operated, as they are almost certainly going to operate, as they are intended to function as marketplaces rather than themselves, it is inconceivable to me that they could be designated in that way.

Mr. PETERSON. I thank the chairman for the clarification of the intent.

I recognize the gentleman from New York (Mr. MURPHY) for the balance of our time, a new member of our committee who has actually got some real world experience in this area and has

been a great member in helping us put this together.

Mr. MURPHY of New York. Thank you, Chairman PETERSON, and also thank you to Ranking Member LUCAS.

The work we did on the Ag Committee I think is the kind of common-sense solution that Americans are looking for. We worked together to come up with regulatory reform in the Ag Committee with respect to the derivatives legislation. And we saw overwhelming support from not just Democrats, but Republicans, because people in that committee know what the American public knows: For the last 10 years, Washington has failed to regulate our financial markets. As a result, some of those on Wall Street and at the big financial firms have taken that opportunity to gamble with our money. They have put our future at risk, and they have put the very American dream that so many Americans spend their time hoping and praying for at risk. It is time for us to respond to that.

The failures in Washington and the failures on Wall Street precipitated the worst financial crisis since the Great Depression, and it is our job here and now to come up with solutions to that. Wall Street melted down, and Main Street paid the price. This cannot happen again.

So what do we need to do? We need to regulate what wasn't regulated. So many people now recognize that no one was looking at systemic risk, no one was looking at the AIGs of the world and seeing what they were up to. There were whole sections of the derivatives marketplace that no one was regulating; in fact, by a law that was passed here in Washington, no one was responsible for looking at it. That cannot continue.

There were whole parts of the consumer world that were not regulated—mortgage brokers, payday lenders. This cannot continue. We must regulate what was unregulated to bring everything into the system.

We need to protect our consumers. We talked about payday loans and mortgage brokers and the kind of liar loans that were put out there and passed. No one was responsible strictly for looking at protecting our consumers. This legislation will do that.

With the Consumer Financial Protection Agency, there will be a focus on protecting our consumers. That's something that is common sense. That's something that all Americans want us to do here in Washington.

The last thing that everybody in my district wants—and I think Americans all over this country want—is they want protection from taxpayers having to fund any future bailouts. Nobody thinks that Main Street should be bailing out Wall Street; it shouldn't have happened in the past, and it sure should not happen again in the future.

It is critically important that we fix that. The bill that we have in front of us does set up dissolution authority. It is funded by the large financial institutions to help shut down those that fail. That is what needed to happen in the past; that is what needs to happen in the future. That is the kind of common-sense reform that we all need to come behind.

We need to regulate what wasn't regulated, we need to protect our consumers, and we need to make sure that taxpayers never again have to fund a bailout. That's what we are working on here. That's what this legislation would do. And I think it's very important that we come together to pass this and protect America's taxpayers, protect our financial system, and get our economy moving again.

Mr. LUCAS. Mr. Chairman, I yield 2½ minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. I thank the gentleman from Oklahoma for yielding, and I appreciate the debate that we have here tonight.

I am going to stand with the gentleman from Oklahoma and thank the gentlemen from Minnesota for the work that they've done on the credit default swaps and the regulation that is there. I do think it is an improvement, and I am certainly going to support that amendment.

But I think it is important for us, as Members of this Congress, to bring a perspective to this. And the words of Mr. BACHUS from Alabama echo in my ears, Mr. Chairman, and that is, it isn't so much about this stack of the bill that Mr. FRANK says might be too heavy for us all to carry; it's about the culture of the bill that may be too heavy for the American people to carry. It's about the difference between believing the Federal Government can regulate more aspects of our society, more aspects of our economy, and the difference in believing whether people can become and entities can become too big to be allowed to fail, or whether small businesses might be too small to be allowed to succeed. And it's about the difference between a free enterprise economy and a managed and controlled economy. It's about the difference between liberty and the difference between a socialized economy.

I have watched as this economy has spiraled downward over the last 15 or more months. And we've been involved in this, we've been engaged in it intensively. And it comes down to two divergent philosophies; one of those philosophies is echoed in some advice we got from one of our top economic advisers—who will remain nameless—who said to us 2½ years ago at the beginning of the subprime mortgage discussion, what's going on is these large financial institutions are doing what everybody else does. They're doing that because the other people are making

money, and they're making money. And their psychology is, if things fall apart and melt down, there is likely to be a bailout; if they do what everybody else does, they will get bailed out like everybody else. That is at the root of this: Whether you can be allowed to fail so that we have a free enterprise system.

There is a stack of immigration cards produced by U.S. Citizenship Immigration Services, glossy flashcards. And you look through those flashcards and it asks, Who is the founder of our country? George Washington. Turn to another one, What is the basis of our economy in the United States? Flip the other side of it, free enterprise capitalism. It is a principal tenet of the American way of life that you must answer that question accurately if you want to become a citizen of the United States, and yet here we are debating whether we're going to have a managed economy or whether we're going to have freedom in free markets. Mr. Chairman, I am going to submit that we have got to be able to take a chance to succeed and fail.

The CHAIR. The time of the gentleman has expired.

Mr. LUCAS. I yield the gentleman an additional 30 seconds.

Mr. KING of Iowa. I thank the gentleman for yielding.

So I will point this out: We had a chance, and we should continue forward, to repeal the Community Reinvestment Act. We should regulate Fannie Mae and Freddie Mac. We ought to require them to meet the same standards of every other financial institution in the United States. We should let people fail, though, so that others can succeed. And AIG should be split up. This is the seventh Federal agency when we have already too many. We need to have free enterprise succeed.

Mr. FRANK of Massachusetts. First, I yield myself 15 seconds to invite Members to show me the part of the bill where there is a bailout that goes to failed institutions and keeps them going. I will read the parts that make it very clear that that's not the case, but maybe there is something I didn't read. So anybody who tells me there is a bailout that goes to continuing business institutions—

Mr. GARRETT of New Jersey. Will the gentleman yield?

The CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield myself 2 more minutes and yield to the gentleman.

Mr. GARRETT of New Jersey. I appreciate the gentleman yielding.

The language of the bill says that—

Mr. FRANK of Massachusetts. What page? Give me the page or we can't have a serious discussion, obviously.

Mr. GARRETT of New Jersey. The language of the bill gives the authority to set up a bailout—

Mr. FRANK of Massachusetts. I take back my time. If the gentleman will point to the page. I'm not interested in their misconceptions; I'm interested in actual language. The gentleman rose voluntarily, I would assume he would have the language.

Mr. GARRETT of New Jersey. Page 3 of the Judiciary Committee's self-executing amendment.

Mr. FRANK of Massachusetts. And it says what?

Mr. GARRETT of New Jersey. It says, on page 291, after line 4, Insert the following new subsections: Conversion to Bankruptcy (1) Conversion: The corporation may at any time, with the approval of the Secretary—meaning the Treasury Secretary—and after consulting with the council, convert the receivership of a covered financial company to a proceeding under chapter 7 or chapter 11 of title 11, United States Code, by filing a petition against the covered financial company under section 303(m) of such title. The corporation may serve as the trustee for the covered financial company.

Basically, what you have established here is a political decision by the Treasury Secretary to take an institution that they decide they are going to put into receivership—which you said before would be the end game—and allow them to convert back into 7 or 11 bankruptcy.

So your statement before—and this goes to my opening comment, which you responded to, why are we so concerned with such a large bill? The reason we are so concerned with such a large bill is because obviously the Chair and Members of your side of the aisle have not read the entire bill. The reason we presented a much smaller bill was because obviously you have not read our bill either. I know our opening comment—

Mr. FRANK of Massachusetts. I will take back my time.

Mr. GARRETT of New Jersey. You yielded it to me, so I am responding.

Mr. FRANK of Massachusetts. I yielded to you—and I want to respond to the response.

Mr. GARRETT of New Jersey. You yielded me 2 minutes, I believe.

The CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I took 2 minutes for myself, and then yielded to the gentleman.

Mr. GARRETT of New Jersey. I'm sorry, I thought you wanted a response.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself 30 seconds just to explain to the gentleman from New Jersey, who misunderstands the rules, I yielded myself 2 minutes so we could have a conversation. He then used up the 2 minutes. So it was not within my power to continue it.

Mr. GARRETT of New Jersey. Hopefully I answered the gentleman's question.

Mr. FRANK of Massachusetts. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. AL GREEN of Texas) having assumed the chair, Mr. TEAGUE, Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, had come to no resolution thereon.

#### REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. PERLMUTTER, from the Committee on Rules, submitted a privileged report (Rept. No. 111-369) on the resolution (H. Res. 962) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 956 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4173.

□ 2200

#### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, with Mr. TEAGUE in the chair.

The Clerk read the title of the bill.

The CHAIR. When the Committee of the Whole rose earlier today, 108¼ minutes remained in general debate.

The gentleman from Massachusetts (Mr. FRANK) has 46¾ minutes remaining, the gentleman from Alabama (Mr. BACHUS) has 56½ minutes remaining, and the gentleman from Oklahoma (Mr. LUCAS) has 5 minutes remaining.

Who yields time?

Mr. FRANK of Massachusetts. I will yield 4 minutes to the gentleman from Illinois (Mr. GUTIERREZ), the chairman of the Subcommittee on Financial Institutions, who's done a great deal to help small banks in this bill.

Mr. GUTIERREZ. Mr. Chairman, in spite of the words of the other side of the aisle, I rise in strong support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. This is legislation that is vital to making our financial institutions better capitalized, our consumers safe from predatory practices, and our economy stronger so that we can emerge from the recession that was caused by the very financial institutions that we are now fighting tooth and nail to defeat this legislation.

I was proud to work with the chairman to include my amendment. And I understand that my parents came to this country and they didn't speak English, and so the first 5 years before they sent me to school I spoke another language other than English. But I've had the bill thoroughly examined by those who do speak the English language and have only spoken the English language all of their lives, and they cannot find the bailout fund in the bill.

Now, I've worked with the chairman, I wrote the dissolution fund, I wrote the fund and I put it in the bill. It's my amendment. Now, the ex-ante fund means that firms that could ultimately be dissolved by this fund would have to pay at least.

But what my friends on the other side said, they said, and they finally used it, Mr. Chairman, in all of the committee hearings, they didn't call us socialists. They waited to get to the House floor before they used the dreaded word of socialism. And what did they say? They said, the socialists, that means us, the Democrats, created a bill in which, and this is Mr. BACHUS, and he can go and check his words, he said, they created a bill and they made all the institutions pay into it. And he said, that's socialism. And then when one of them fails and doesn't do something right, all of those people that paid into the funds have to pay for the wrongs of that person.

Well, I guess Geico is socialist. State Farm is socialist. Allstate is socialist. Indeed, any insurance fund is socialist, because when I drive my car and never have an accident, I pay into the insurance fund so that maybe when some Member on the other side of the aisle gets into an accident, I pay with my funds for his mistakes. That's insurance. Now, what they won't tell you is that, unlike everybody in this room who has to go out and take out an insurance policy to drive a car, they want Wall Street and Goldman Sachs to be able to drive our economy into the ground without paying a cent of insurance in case they act recklessly.

And all we're saying, as Democrats, is it's simple: if you want to do business in America, and you threaten the economic stability of our country, then you've got to pay into an insurance fund. But let me tell you, it's not the

kind of insurance fund that you get into an accident and you take your car and they fix and they give it kind of back to you new. No, no. In our insurance fund, you know what happens? We chop up your car into pieces and sell it, and then we pay back the fund with the pieces. That's our fund. Read the bill. It's a funeral fund.

You guys loved to talk about the death and death and death when it came to health care insurance. Why don't you talk about our death panels now? Oh, you don't want to talk about our death panels now, because you want to know why? Because yesterday they had 100 lobbyists out here in Washington, DC meeting with them. One hundred.

How many of those lobbyists do you think met with the other side of the aisle and said, we're here to make sure that our small farm is protected against Goldman Sachs? How many of those lobbyists do you think came here and said to my friends on the other side of the aisle, tomorrow can you make sure that that bill protects my 401(k)? How many of those lobbyists do you think they met with yesterday said, make sure it protects my home, make sure it protects my small business. I don't think any of those lobbyists came to ask my friends on the other side—

The CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield the gentleman another minute.

Mr. GUTIERREZ. So let's be clear. This side of the aisle wants to make sure there are no longer situations of "too big to fail." Now, if you believe that the men and women at Goldman Sachs tonight and tomorrow and into the future, when they make an economic decision, they say to themselves, well, this might harm homeowners and put them on the street, we shouldn't do that—I'm sure Goldman Sachs they're really worried about that. Let me see, these kids not be able to go to college if we make this economic decision. Oh, Goldman Sachs is really worried about whether our kids can go to college in America. Let me see. You mean, small businesses may suffer. Banks may go under if we make those decisions? I'm sure the men and women at Goldman Sachs, they think every day about the poor American public and the risk they put us to.

If you believe that, then you can follow my friends on the other side of the aisle and do nothing. But if you believe, as I do, and many of us, that we should protect the American worker each and every day, make sure the kids go to college, make sure there's a pension for him, make sure his home is there for him, then I say support this bill.

Mr. LUCAS. Mr. Chairman, I yield 3½ minutes to the distinguished gentleman from Indiana (Mr. BURTON).

Mr. BURTON of Indiana. I get such a big kick out of that hollering and yelling over there. Maybe I should get my voice up here real quick. You know, Shakespeare said, a rose by any other name would smell as sweet. And when we talk about socialism, I just suggest you go look in the dictionary and read what it says as far as the definition is concerned.

My Democrat colleagues have moved to take over the auto industry, the health industry, the energy industry, and now they're trying to do it through the bureaucracy, and now they're doing it with the banking industry and the financial institutions of this country. Now, when the government takes over the private sector, that's socialism. And if you don't believe it, look it up in the dictionary.

You know, this was tried back in the 1930s when Roosevelt was President. He passed what was called the National Recovery Act, and he tried to do it in one fell swoop. You guys are doing it incrementally, but you're doing the same thing they tried to do back then. There were two guys that came over from Europe who sold chickens, and they had these chickens in a crate. And they let people pick out the chickens they wanted to buy because the people could pick the fat ones or whatever ones they wanted. And the National Recovery Act officials came in and said, you can't do that; you have to take the first chicken you grab because you might leave some of the skinny ones for the people that come later. That case went all the way to the United States Supreme Court, and Justice Brandeis, who was not a conservative, he was a liberal judge, he wrote the opinion. And the vote was 9-0 saying that it was unconstitutional to have the National Recovery Act because it was socialism. And that's what you're doing right now to this economy.

And I think everybody in America that's paying attention really understands it. You're running us in the ground financially, and you're putting all the control you can under the government. And the future generations are going to suffer because of that.

And so I'd just like to say to my colleagues tonight on the other side of the aisle, we believe we should solve these problems—and there are problems. But we believe we should do it the way Ronald Reagan did, instead of taxing the people to death, putting more control in government and putting us in a debt that we'll never get out of, and saddle our kids and posterity with something that they'll curse us for down the road.

So what I say to my colleagues, and I hope my colleague who just spoke is still around here, he probably left, go to the dictionary, and if you need one, I'll get it for you, and look up "socialism," and you'll see what you're doing is socialism.

□ 2210

Mr. FRANK of Massachusetts. Mr. Chairman, I would yield myself 15 seconds to say I wish we had the Consumer Financial Protection Agency already in place, because then the gentleman could get a refund on his dictionary because someone sold him a bum dictionary.

I now yield 4 minutes to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Thank you very much, Mr. Chairman.

I rise in strong support of this legislation, very much needed. When you talk of socialism, these are the same arguments that were held when Franklin Delano Roosevelt and members on the same body on the Democratic side of the aisle came forward to respond to the crisis in that generation. And there is no difference here today.

Oftentimes, when we've had great debates and when people get heated up in the call of the debate, when there's nothing else to argue, when there is no other point, you can always rely on "it's socialism" or "it's communism." No. What this is is good ol' Americanism.

This is the most severe financial crisis since the Depression, and it requires this Congress to step forward with the intelligence and the sober mindedness to respond. This isn't socialism. This is good old-fashioned, good ol' free enterprise Americanism.

Let us talk for one second about one of the major issues that's been debated here, that this is not an end to bailout. This is an end of taxpayer bailouts to protect the American economy and American taxpayers from ever, ever again having to pay for a bailout. We don't know what the future holds in terms of ups and downs. This is not a socialist system. This is a free enterprise system. And that means we're going to be governed by the rigors of the markets, by supply and demand, by all of those things that are unforeseen.

But one thing we do know, that never again will the taxpayers have to foot the bill. That is what this does. It has worked well for us with FDIC.

There is nothing more we're doing with the system here for these large firms that are above \$50 billion in assets or hedge funds that are above \$10 billion then assessing them a simple insurance fee. If situations arise in which they become a systemic risk in which they have to be dismantled, then the taxpayers shouldn't have to pay for that. Let the financial services do it in that industry that is causing that problem. That is the American way.

Let us go to the issue of executive compensation. We know that one of the major reasons why we're in the situation we're in is because of incentives that require risk and encourage executives to take awesome risks as a feature for their bonuses or their compensation packages.

Are we saying the government now would determine these salaries and bonuses? No. We're incorporating the plan of resolution for this problem within the free private enterprise concepts, by telling the shareholders, allowing them to have a say in that pay. They own the company. Why shouldn't they be able to have a say-so in that pay so they will know what these risky behaviors are? And that is what we're doing in the executive pay and the compensation package.

And in the derivatives, we know what happened with Lehman Brothers. We know that was a derivative problem. That's a new, unregulated area, and so we move to govern and regulate over-the-counter derivatives by making them clear and standardized and putting them in exchanges for electronic platforms.

And finally, I want to add one other point. There has been a disproportionate impact on this crisis, and in this bill are some very important things for those people who have lost their jobs and are on the verge of losing their homes. And we put \$3 billion in here for that and to help with economic stabilization and to address their concern.

What a fantastic bill. I urge my colleagues to support it.

Mr. LUCAS. Can I inquire of the Chair how much time I have remaining, please?

The Acting CHAIR (Ms. TITUS). The gentleman has 3½ minutes remaining.

Mr. LUCAS. Madam Chairman, I yield myself as much time as I might consume.

In my concluding remarks, I'd like to observe to my colleagues you can pass a 1,200-page bill, you can set up the process to generate tens of thousands of pages of rules and regulations, you can hire an army of faceless bureaucrats to enforce all of that stuff, to make decisions for the economy, to make decisions for business, to make decisions for people, but you can't repeal the laws of supply and demand.

If you add enough fees and enough rules and regulations to the process of delivering credit, you will drive away the sources of credit, reduce the supply of credit. At the same time, we hope to reinvigorate this economy, to start it growing again. Demand for credit will go up. What happens when you lower the supply of credit and you raise the demand for credit? Through pieces of legislation like this, ultimately you drive up the cost of credit for everyone. The laws of supply and demand.

I know my friends believe they're sincerely doing the right thing, but the right thing in this scenario will drive down the availability of credit while at the same time demand goes up; and costs will go up, too, and that will affect every business, every person, every entity that needs credit.

I come from a capital-starved district in Oklahoma. Credit's important to

every farmer, rancher, businessperson, every person engaged in the industry of energy production, every individual with a family trying to send their kids to school. Let's not make everything they do cost more.

I would now yield the balance of my time to the gentleman from the Financial Services Committee, Mr. BACHUS of Alabama.

Mr. BACHUS. I thank the gentleman.

Mr. GUTIERREZ came to the floor, and he made a point that we want to avoid what happened in AIG, but, in fact, I think he reminded the body of a very important thing, and that is what did happen in AIG. Large counterparties and creditors were bailed out. And whether you call it a permanent bailout authority—as we do—of \$150 billion, or as the gentleman from Illinois says, a funeral fund of \$150 billion, and it is used to bail out creditors and counterparties, now, isn't that what happened in AIG? Isn't that what the gentleman from Illinois and the chairman of the committee say they want to avoid? Yet they create a fund to bail out large counterparties and creditors. And in AIG, they bailed out 12 large counterparties, 10 of them foreign banks, 2 of them Wall Street firms.

□ 2220

They didn't bail out any cities. They didn't bail out any counties. They didn't bail out any community banks. And over 1,000 were owed money. And they are creating another fund to do exactly that.

I see my time has expired.

Madam Chair, I yield 5 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Madam Chair, I thank the gentleman from Alabama, the ranking member of the Financial Services Committee, for yielding me time.

Madam Chair, Congress today faces a once-in-a-generation decision. To respond to the financial meltdown of 2008, Congress can enact reforms that respond to the true causes of the calamity. Or Congress can pass legislation that flies in the face of the facts.

The first course will protect America from the same fate we suffered last fall. The second will only pave the way for our next potentially worse crisis. That's what the Wall Street Reform and Consumer Protection Act does. Why? Because as we have investigated the causes of the financial crisis, one conclusion has become clear. What caused the financial crisis of 2008 was government intervention in the economy. That intervention swept from the Community Reinvestment Act to Fannie Mae and Freddie Mac, to the Bear Stearns and AIG bailouts and beyond. It destroyed financial incentives, promoted dangerous risk-taking, and ultimately provoked full-blown market panic.

Yet what does this legislation do? It provides super-sized tools for ever more

invasive government control of the economy. It further entrenches the Community Reinvestment Act. It fails to reform Fannie Mae and Freddie Mac. And it institutionalizes billion-dollar bailouts. For example, take the act's provisions that allow the Federal Government to take over and wind down the liabilities of financial institutions. This empowers the Federal Government to determine which of our biggest financial institutions live and die. It is backed by a \$200 billion bailout fund. It has never before existed. And it should not be created now.

For over 100 years, the bankruptcy code has been America's trusted means for dissolving or reorganizing failed or failing firms. The administration and this bill's sponsors send the Bankruptcy Code's remedies to the trash heap. They do so on the theory that Lehman Brothers' bankruptcy triggered the financial panic of September 2008. If bankruptcy triggered the panic, goes the argument, we have to look beyond the bankruptcy code to reform the financial system. The problem is that the so-called Lehman Brothers theory is a myth. The market took Lehman Brothers' bankruptcy more or less in stride.

What triggered systemic financial panic was subsequent action by the Treasury and the Federal Reserve. These agencies' actions signaled to investors that the government anticipated a market collapse, but did not have an adequate plan of action. In a self-fulfilling prophecy, it was only after the Treasury and the Fed ratcheted everyone up into a panic that the market itself collapsed and not after their earlier decision to let Lehman Brothers go into bankruptcy.

Other government actions also contributed to the panic. These included the government's inconsistent treatment of Bear Stearns and AIG, which it bailed out, and Lehman Brothers, which it did not.

Yet what does today's bill do? It expands and then cements into place the government's authority to engage in wave after wave of ad-hoc bailouts. It sews the Community Reinvestment Act into the very fabric of the new consumer financial protection agency. It fails to reform Fannie Mae and Freddie Mac, and it throws out the one tool that has worked to resolve a giant, failing financial company. That tool is the bankruptcy code, which was used successfully to wind down Lehman Brothers.

Madam Chair, we have no reason to avoid the bankruptcy code and other sound measures that can avert future financial distress. What America should renounce is the super-charged government control of our economy that the bill represents.

We do not need government control that lets Federal agencies and government employees distort who gets cred-

it, displace private enterprise, and determine behind closed doors what companies live and die. We have tried that before. It brought us the meltdown of 2008.

Mr. FRANK of Massachusetts. I believe there is an imbalance of time, so I will reserve.

Mr. GARRETT of New Jersey. I yield 3 minutes to the gentleman from New York (Mr. LEE).

Mr. LEE of New York. Madam Chairman, with unemployment currently in the double digits and a Federal deficit of over \$12 trillion, Congress should be focused on creating jobs and keeping taxes low. Instead, before us today is another staggering bill, 1,300 pages in all, which will add to the deficit and shift thousands of jobs overseas.

This bill creates yet another new government agency which will be headed up by yet another new czar, in this case a new credit czar, who will limit consumer choices, ration credit and increase the cost of doing business.

It's outrageous that we want to give this new credit czar virtually unchecked authority to restrict financial product choices for businesses and consumers at a time when this economy is in dire straits. Studies suggest that this agency will reduce new job creation by at least 4.3 percent and worsen the credit crunch that businesses of all sizes are currently facing.

This bill also establishes a permanent bailout fund for financial institutions. Washington should finally abandon this notion of "too big to fail." I can tell you my constituents are surely sick and tired of the bailouts of Wall Street firms.

One thing I know: There is no such thing as a free lunch. And unfortunately, the \$150 billion cost of this new permanent bailout fund will rest on the shoulders of consumers and investors in the form of higher interest rates and increased fees.

The financial crisis showed us that reforms are needed. But this bill will do far more harm than good. This bill is simply the wrong approach at absolutely the wrong time, and I urge all of my colleagues to oppose it.

Mr. FRANK of Massachusetts. I yield 4 minutes to the gentleman from Minnesota (Mr. ELLISON).

Mr. ELLISON. Madam Chair, let me thank the chairman and ranking member, but also let me remind our colleagues that we are not here by accident. We are here because over the course of several years, lax regulation and failure, and inadequacy of law landed us at a point where we have seen over 2 million homes in foreclosure in this year alone. By September 2008, the average housing price had declined by over 20 percent since 2006. That's real wealth from families. More than 60 percent of subprime loans went to people who could have qualified for lower cost. And nearly one in

four U.S. borrowers currently owes more on their mortgage than their home is worth.

This, in large measure, happened, Madam Chair, because mortgage brokers, unregulated, lured families with low teaser-rate interest rates that later skyrocketed to unaffordable levels, hidden fees, and charges in incomprehensible terms and conditions that brought on the housing crisis and undermined the financial system.

I want to rise in favor of the Wall Street Reform and Consumer Protection Act, which includes a strong consumer financial protection regulation. One of the most important causes of the financial crisis, as I mentioned, is the utter failure of consumer protection. The most abusive and predatory lenders were not federally regulated, were not regulated at all in some cases, while regulation was overly lax for banks and other institutions that were covered.

To address this problem, I believe we need a new agency dedicated to consumer financial protection, a consumer financial protection agency, one agency, not a bunch, one, one that takes the interests of the consumer and puts them first. Not, let's work in the consumer. Not let's see what we can do for the consumer when we get to it, but the interests of the consumer up front.

Such an agency, as contemplated in this legislation, would have the power to stop unfair, deceptive, and abusive financial products and services. It would also require financial institutions to provide concise, clear and easy-to-understand disclosures on the terms and conditions of consumer credit products.

Of course, there are some who would like to keep the same regulators on the job and thereby piece together shards of a broken system. But what we need is real reform to protect not only the individual consumer but our economy as a whole.

Right now, many people are fighting tooth-and-nail to weaken and eliminate the consumer financial protection proposal, spending millions of dollars on a scare campaign that spreads false claims about the agency. But how can they do this in light of the over 2 million foreclosures we have seen? Consumers all across America can't afford what these lobbyists are selling to certain Members of our body.

The sale of risky and irresponsible credit products has cost over 10 million jobs and 2 million homes. We can't afford to lose any more, and that is why we need a consumer financial protection agency that is the cornerstone of any real regulatory reform.

Now this bill, Madam Chair, is comprehensive. It talks about derivatives, credit rating agencies, and executive compensation, and it ends bailouts.

□ 2230

Make no mistake about it: it is protection of the consumer, the average

person purchasing a financial product that is the cornerstone of this financial legislation; and it is why I urge my colleagues to support it.

Mr. GARRETT of New Jersey. Madam Chair, can you advise the time remaining on both sides.

The Acting CHAIR. The gentleman from New Jersey has 50¼ minutes remaining, and the gentleman from Massachusetts has 33½ minutes remaining.

Mr. GARRETT of New Jersey. I now yield 2 minutes to a gentleman who is leading the fight against this bill, which perpetuates taxpayer-funded bailouts and the loss of millions of jobs, the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Madam Chair, I have great concerns about this bill, especially title IV of the so-called Consumer Financial Protection Agency. It creates yet another czar, and look at the groups that will be impacted by this bill:

Financial advisers, anybody providing financial advice, educational courses or instructional materials to customers, credit counselors, debt management services, anybody acting as a custodian of money, trust accounts, tax planning services, private pools of capital, municipalities who issue bills on utilities, water, sewer, electricity, waste collection, et cetera, courts dealing with fees, fines, taxes paid on an installment basis for counties and municipalities, schools, tuition installment, room and board, third-party agencies handling fee processing, banks, credits, unions, thrifts merchants, layaway plans, any installment plan, financing option, real estate activities, brokers, appraisers, title companies, title insurers, auctioneers, inspectors, surveyors of real estate settlement, cockroach inspectors for homes are covered under this bill.

What's financial about that unless you are counting cockroaches? Doctors, issuance of credit, rarely do people pay a bill at the "point of sale" in a doctor's office, lawyers, disbursing money through a trust account, the closing of a real estate transaction.

Madam Chair, this bill is so pervasive that the term "anybody involved in a financial action" literally covers somebody writing checks on behalf of his mother who is in a nursing home. That's why this bill is dangerous.

We can't proceed on a bill like this and have all these different groups that are impacted. Most of these groups will have no idea that they will be governed by the so-called financial czar. We don't need another czar. We need a lot more freedom in this country.

Mr. FRANK of Massachusetts. I reserve the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I now yield 3 minutes to another leader in the fight against this bill which perpetuates the idea of con-

tinued taxpayer-funded bailouts, the gentleman from Florida (Mr. POSEY).

Mr. POSEY. Madam Chair, unfortunately this well-intentioned legislation misses the mark when it comes to taking steps to prevent future financial sector meltdowns. The well-intentioned authors of this bill have failed to fully acknowledge the reasons behind the current meltdown. They point primarily to Wall Street as the cause of the meltdown and direct most of their efforts in this bill at further regulating the private marketplace.

Certainly, the actions taken by some on Wall Street were responsible, at least in large part, for the financial meltdown. Efforts to address some of these excesses are warranted and should be part of the reform. However, there are many factors that contributed to the meltdown; and by assigning a disproportionate share of the blame to any one party, they leave in place many of the practices that contributed to the meltdown.

If we base our actions upon the mistaken notion that the financial meltdown was principally caused by the private sector and that the regulators lacked the necessary tools to oversee the private sector, then we are bound to repeat the mistakes of the past.

The crafters of this legislation have failed to objectively assign blame. History will bear out that a major culprit of the financial meltdown was the government itself, and the government's policies, including many such policies that were advocated by Members of the Congress.

The government-sponsored enterprises, Fannie Mae and Freddie Mac, were key players in the mortgage marketplace, and they were largely responsible for proliferating subprime loans. Freddie and Fannie were heavily regulated by the Federal Government. They carried an implied government guarantee.

Yet, what did they do? They purchased over \$1.9 trillion in subprime loans between 2002 and 2007. That, according to a report by the Government Oversight and Reform Committee, represented 54 percent of all such mortgages purchased in those years. In purchasing these subprime loans, they were encouraging lenders to make more of them.

Had Fannie and Freddie not been such ready buyers of subprime loans, many of the loans likely would not have been made. That is not to say that some of the private sector would not have made such loans; but had they done it, it certainly would not have been of the grand magnitude, since Fannie and Freddie would not have been standing there ready to buy the loans from the lenders.

We must also consider the actions of the Federal Reserve. The Fed and other central banks around the world kept interest rates at very low levels be-

tween 2002 and 2006, making credit easy and cheap. Making access to money so easy and so cheap intensified and inflated the boom in the early to mid-2000s as well as the resulting burst in 2008.

Common sense would suggest that we would learn from these mistakes. Unfortunately, H.R. 4173 significantly expands the power of the Federal Reserve, the very entity that was responsible for, but failed to identify, systemic risk in what have become some of the recipients of taxpayer bailouts.

The Acting CHAIR. The time of the gentleman has expired.

Mr. GARRETT of New Jersey. I yield the gentleman 1 additional minute.

Mr. POSEY. Even worse is that H.R. 4173 creates a permanent TARP-like bailout authority. This is likely to promote systemic risk and undermine systemic financial stability.

Another blatant failure of the Federal regulators is the Securities and Exchange Commission's failure to pursue the investigation of Bernie Madoff's Ponzi scheme. In 1999 Charles Markopolos presented the SEC with an extensive report alleging fraud by Bernie Madoff. In 2001 Barrons ran an article outlining the alleged fraud.

While they had the necessary tools to investigate Madoff, the SEC's failure to use these tools at their disposal and launch a full investigation enabled Madoff to perpetuate his \$50 billion-plus Ponzi scheme. As further evidence it is wrong to further empower bureaucrats, note that today not one SEC employee has been terminated, disciplined, furloughed or even had their wrist slapped for their colossal failures with regard to the Madoff scandal.

We have also heard concerns of small businesses that this bill will further restrict their access to credit.

Not only is this particular development troubling, but when you consider the cumulative effects of legislation under consideration in the Congress that would adversely affect them, it is very disconcerting.

The taxes that would be imposed by the health care bill, the proposed national energy tax, the resulting carbon regulations coming forward from the Environmental Protection Agency, and the higher taxes that will be imposed by expiring tax reductions point to a perfect storm for killing America's economic engine—our small businesses.

There is plenty of blame to go around for the financial meltdown. The failure of the H.R. 4173 to acknowledge this, will only put us on the path to repeating such costly mistakes in the future.

I urge my colleagues to vote against H.R. 4173. Let's send this bill back to committee and get it right.

Mr. FRANK of Massachusetts. I yield to the gentlewoman from Ohio (Ms. KILROY), who I understand wants to engage in a colloquy.

Ms. KILROY. Thank you, Mr. Chairman. I would like to address the provisions of section 1103, which specifies

the criteria to be considered in determining whether a financial company might be subject to stricter standards. It is my understanding that nondepository captive finance companies do not pose the types of risks that warrant such treatment.

Nondepository captive finance companies typically provide financing on a nonrevolving basis only to customers and to dealers who sell and lease the products of their parent or affiliate. As such, they are involved in only a narrow scope of financial activity.

Equally important, their loans are made on a depreciating asset, a fact taken into account when the loans are entered into. If they are not a depository institution, they therefore have no access to the Federal deposit insurance safety net. It is my understanding that it is the intent of the committee that nondepository captive finance companies are not the types of finance companies that should be subjected to stricter standards under section 1103 of this legislation; is that correct?

Mr. FRANK of Massachusetts. The gentlewoman is correct. She has been very diligent in trying to protect this very important type of financing. Financing companies are not depository institutions. They provide financing for the sale of that particular product in that company.

It is again inconceivable to me that somehow they would rise to the level of risk that would justify the Systemic Risk Council stepping in.

Ms. KILROY. Thank you, Mr. Chairman.

□ 2240

Mr. GARRETT of New Jersey. Madam Chair, I yield 3 minutes to the gentlewoman from Minnesota (Mrs. BACHMANN).

Mrs. BACHMANN. Madam Chair, last July an economist from Arizona State University had determined that since the inception of "Bailout Nation" in September of 2008, the Federal Government has taken ownership or control of 18 percent of our economy, and if President Obama gets his way and takes over the health care industry, that's another 18 percent of our economy, or 48 percent. Then, if President Obama and former Vice President Al Gore have their way and cause electricity rates to necessarily skyrocket by taking over the energy industry and imposing a national energy tax, that would mean the government takeover of another 8 percent of the economy for a total of 54 percent.

As harmful to freedom as these bills are, they don't hold a candle to the government takeover and control of every financial transaction of the financial industry. And why? Because when government controls credit, when government rations credit and bails out its politically well-connected friends, that's gangster government at

its worst, and that throws a net of government control over every financial transaction entered into in this country. Some experts say that is government control of another 15 percent of the economy for a total of 69 percent. This is stunning, nothing less than stunning.

Could it be that not in our lifetime but in less than 18 months' time the Federal Government will take over or control nearly 70 percent of the American economy? And the majority has the audacity to berate this side of the aisle for suggesting the word "socialism"?

Heaven help the American taxpayer. Heaven help the American entrepreneur. Heaven help the maintenance of freedom for the sake not only of our people but for the sake of the continuance of the Constitution of these great United States.

Mr. GARRETT of New Jersey. Madam Chair, I yield 2 minutes to the gentleman from Minnesota (Mr. PAULSEN).

Mr. PAULSEN. I thank my colleague for yielding.

Madam Chair, unfortunately this bill only continues the culture of bailouts and encourages firms to engage in risky behavior. As far I'm concerned, all it will do is remove the element of surprise that we saw last fall with the first amount of selected bailouts we had, and this is not the right way to go.

Just look at what this bill would do to the availability of credit. The bill before us, this 1,300-page bill, has provisions that actually take away capital needed by firms to help expand businesses, increase investments, and ultimately create jobs. Estimates show that the size of the fund could be more than \$200 billion as a part of this fund. Now, this money has to come from somewhere, and this will place a significant burden not only on these firms but also on credit that will get dried up.

During these tough economic times with record unemployment, 10 percent unemployment, why do we make it more difficult for getting credit for small businesses and job creation? Why should a company who is not deemed to be systemically risky have to pay for those companies that have been engaging in excessively risky behavior?

Madam Chair, it's also worth mentioning the danger that's posed when we create institutions that are "too big to fail." That's been a problem with Washington, the "too big to fail" doctrine. In doing so, we will also define those businesses, unfortunately, that are too small to save, and we're not helping those too-small-to-save businesses.

It's unacceptable, unacceptable to have an economy, a two-tiered economy, economic system where the government is going to be picking winners

and losers and it's codified into law. This bill does nothing to shelter companies from being swayed by the political winds like we saw in the previous round of bailouts. We've heard in testimony in committee that this bill will harm consumers from access to credit. It's going to make services even harder to get. In a time when businesses can't access credit, why would we further stunt jobs and hurt economic growth? But as studies have shown, that's exactly what this bill will do.

The bottom line is, between the restrictions on capital, the jobs that would be lost, and the continued bailouts, this legislation is unacceptable.

Mr. FRANK of Massachusetts. Madam Chair, I yield 3 minutes to the gentlewoman from California (Ms. SPEIER).

Ms. SPEIER. Madam Chair, there are a couple of things I have asked Santa for Christmas. One of them is that our colleagues on the other side might tell the truth once in a while.

The words we have heard tonight, "overregulation," "government control," "job loss," "government takeover," "bailout funds," couldn't be further from the truth. Let's go back in history.

For over 60 years, the Glass-Steagall Act worked in this country. It worked because the banks, the investment banks, the commercial banks, the insurance companies had to be separate. And then the financial institutions came in 1999 and we offered them, on a silver platter, what is called the Gramm-Leach-Bliley Act which allowed them all to merge, which allowed them to become too big to fail.

So what this particular bill is going to do is reverse that in many respects. It is going to create accountability. That fund that we're talking about is not going to be paid for by the taxpayers; it's going to be paid for by the companies themselves. It means that we are not going to see the kind of job loss we've had over the last few years because that all came under a period of time where there was no regulation, where the SEC was allowed to reduce the number of enforcement actions by 80 percent and disgorgement actions were reduced by some 60 percent.

So, Madam Chair, there's only one other thing I ask Santa for Christmas, and I think we're going to get it, and that is that the Wall Street firms are going to find something new in their Christmas stockings, and it's called accountability.

Mr. GARRETT of New Jersey. Madam Chair, I yield 2 minutes to the gentleman from Florida (Mr. PUTNAM) who recognizes that Glass-Steagall had absolutely nothing to do with the bailout of Bear Stearns and Lehman and the S and L crisis, and the gentleman who also recognizes that the American public is tired of the bailout mentality which would be sustained by this bill.



Mr. PUTNAM. I thank my friend for yielding.

Tonight my Democratic colleagues have brought forth for taxpayers' consideration legislation that will not only cost America more jobs but will make recovery more illusive, particularly for small businesses.

The bill creates a permanent bailout fund totaling \$200 billion for Washington to prop up failing institutions, assuming, that is, that the \$150 billion tax proves insufficient. That tax will contract lending and cause the loss of hundreds of thousands of jobs. The legislation would create a new burden on end users of derivatives in every sector of our economy: commercial real estate, energy production, manufacturing, agriculture, utilities, even health care. These types of businesses depend on hedging to protect themselves from price volatility.

What's more, businesses that had nothing to do with the financial collapse will now be saddled by a complex new regime of regulations. This will force businesses all across America to use their working capital against a risk they never posed instead of creating new jobs, replacing equipment, or expanding their business.

The legislation also welcomes a new bureaucrat, the credit czar, to our Nation's Capital in the form of a Washington-knows-best agency. The credit czar's mission is to dictate which financial products can and cannot be made available to consumers. The credit czar is required to assess fees on entities so the new government bureaucracy can meet its expenses. Such attacks mean less money for small businesses to create jobs, more fees passed on to consumers, and less access to credit for small business. What this assessment does guarantee is a bigger Washington bureaucracy.

If you're serious about lowering the deficit and creating jobs, oppose this big government expansion and support the Republican substitute.

Mr. FRANK of Massachusetts. Madam Chair, I yield 3 minutes to the gentleman from Ohio (Mr. WILSON).

Mr. WILSON of Ohio. Madam Chair, I come to the floor tonight to support H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009.

I have often said it's hard to play a fair game without a referee, and I believe that this bill will help us put the appropriate referees in place in our financial markets. It's a big step forward for more oversight, transparency, and consumer protection.

Before coming to Congress, I served for many years on a small bank board back home in Ohio. I know that small banks like the one in our community were not the problem that we're having today and they were not a part of the problem that led our financial markets to the edge of collapse this last fall.

□ 2250

I am proud that this legislation acknowledges that by not putting unfair burdens on banking institutions that have shown themselves to be good corporate citizens.

While the bill is not perfect, I support commonsense regulation of our financial markets. We must put an end to the "too big to fail" phenomenon. We must finally give consumers the long-overdue protection that will be provided by consumer protection. And we have to continue making significant improvements on mortgage lending standards so that we never again suffer from predatory lending and practices that we have in the past.

I urge my colleagues to support this important legislation.

Mr. GARRETT of New Jersey. May I inquire of the Chair the amount of time remaining on both sides?

The Acting CHAIR. The gentleman from New Jersey has 38 minutes remaining; the gentleman from Massachusetts has 30¼ minutes remaining.

Mr. GARRETT of New Jersey. Madam Chairman, I yield 4 minutes to the gentleman from Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. I thank the gentleman.

Sometimes we think that government's role is to save the world. When I was in small business, there was a joke: People would say, I'm from the government, I'm here to help you. And you know, what I hear from small business men and women all across the country right now is, Please don't help us anymore. Why are they saying that? Because over the years, Congress has amassed a huge amount of regulations, and those regulations have been put on the backs of businesses all across our country.

Today, we are here to put another huge mountain on top of the financial markets, the capital markets, the very markets that our small businesses depend on for capital, in the name of trying to help them. And I will tell you tonight we're going to hurt them. We are going to cause people to lose their jobs because of this bill. In fact, a recent study at the University of Chicago and George Mason University estimated that passing this piece of legislation would reduce job growth by 4.3 percent. And you say, well, how can a consumer protection, how can a regulatory bill hurt small businesses, how can it cause job losses? Well, let's look at some of the predictions in here.

We are going to have this new regulator that is going to determine what kind of financial products banks and people that provide loans can hand out. So if I need a specialized loan that maybe has a little bit different terms than normal, my lender is concerned that the regulator is going to look at that loan and say, you know what, you shouldn't be making those kinds of loans.

At a time when the President of the United States is even trying to look and wait to find some jobs—and we are all looking for all of those jobs that supposedly the stimulus package created, but the truth of the matter is this will kill jobs. It will also hurt small businesses' ability to get capital.

Right now, we already hear that banks across the country are a little reluctant to loan money. Why are they reluctant to loan money? Because the regulators are clamping down on them. And now we're going to say to the regulators, you know what? You didn't clamp down hard enough, you didn't regulate enough, so we're going to give you some new marching orders and put this new massive legislation in place. And everybody thinks that that is going to free up credit for small businesses to create jobs in America? It's not going to do that.

The concern I have is that if we continue down this road of regulation in the financial markets, we are going to begin to limit the choices for these banks to provide financial products.

The other thing that this bill does is it picks winners and losers again. Now, the distinguished chairman of the committee, who I have great respect for, says the taxpayers' money isn't involved in here. Maybe it's not tax money, but the consumers are going to pay for these bailouts. If you have an assessment, and you assess an entity for bailing out its competitor—and how that makes sense, I don't know—who do you think is going to pay the additional cost that that company is going to have to pay the assessment? The consumer is.

So what is this going to do to small businesses? It's going to raise the cost of capital. In fact, there is an estimate out there that the U.S. Chamber of Commerce, and others, say this will raise borrowing costs almost 1.5 percent for people and small businesses and consumers. Now, how does that help the economy? It doesn't help the economy; in fact, it puts a weight on the economy and, again, is going to cause jobs to be lost in this country.

So the question is, why are we here tonight? Why are we debating this bill? It's got a fancy title that says it's going to protect consumers, and it's going to punish Wall Street. Well, really, the issue is it doesn't punish Wall Street, because if you're a big company, this bill says we've got a way to prop you up because we're going to get the Federal Reserve to imply that you are too big to fail, picking winners and losers. And then that gives an unfair competitive advantage to these banks and other entities that aren't on the "too big to fail" list.

So I encourage my colleagues to vote "no" on this piece of legislation.

Mr. FRANK of Massachusetts. I yield 4 minutes to the gentleman from Texas (Mr. AL GREEN).

Mr. AL GREEN of Texas. Madam Chair, it is said that a politician will always rise to the occasion; many have tonight, and many will. But it is also said that it takes a statesman to make the occasion. And I can say to you without reservation, hesitation, or equivocation, there is one great statesman among us tonight, and that is the honorable Chair of the Financial Services Committee who has made this occasion. And it should be intuitively obvious to the most casual observer that he has made this occasion because of a mandate from the American public, but also in spite of the efforts of many.

I would have us note that this newfound theory of "less is best," this newfound theory of 170 pages is better than 1,279 pages, that this newfound theory can be improved upon. Rather than have 170 pages, why not have just one page, one page with nothing on it, or because we are all educated, let's just have one page with *laissez faire*, because that's what got us here, *laissez faire*, invidious *laissez faire*. This is what produced 327s; mortgages with 3 years of a fixed rate and 27 years of a variable rate; 228s, 2 years of a fixed rate—many people are very much aware of what I speak because they have suffered from these insidious products—2 years of a fixed rate and 28 years of a variable rate.

And then we had these teaser rates that coincided with prepayment penalties, such that if you wanted to get out of the teaser rate before it's set to an adjusted rate you had to pay an enormous prepayment penalty that locked people into these teaser rates. And of course we had the naked shorts. People were actually betting that the market would go down without money to cover the bets. And of course we had what we called the credit default swaps, the whole notion that you can bet that something won't fail and not have the money to cover your bet. Even in Vegas you have to have the money to cover your bet. AIG was engaging in a gambling racket that at any other time and place could have been declared unlawful and people could have gone to jail.

And of course this *laissez faire*, hands-off attitude gave us the so-called "too big to fail"; too big to fail, which is just the right size to regulate, just the right size to separate into smaller pieces, and just the right size to eliminate, which is what this bill, H.R. 4173, does. It puts "too big to fail" in a position such that it will not only be regulated, but it will be eliminated. And it will be done in an orderly process, very much akin to the way we move in when banks are failing, and on one Friday it closes, and on Monday a new bank opens, perhaps not as fast, but the concept is the same.

□ 2300

"Too big to fail" will no longer exist.

So, Mr. Chairman, I want to commend you, and I want to thank you for allowing me to be a part of this process and a part of this legislation. I want to thank you because I want you to know that there would be no H.R. 4173 without your leadership. Your leadership has clearly made a difference in the lives of people in this country.

The Acting CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield the gentleman an additional minute.

Mr. AL GREEN of Texas. And it is my absolute belief that when historians look back through the vista of time, they will say that the chairperson of this committee left big tracks in the sands of time, and that he made a difference in our lives for all time.

Mr. GARRETT of New Jersey. Madam Chairman, I now yield 6 minutes to the gentleman from Texas (Mr. HENSARLING), who has been probably one of the most outspoken leaders in our committee to try to end the continuation of taxpayer-funded bailouts.

Mr. HENSARLING. Madam Chairman, I rise tonight to oppose the Permanent Wall Street Bailout and Increase Job Losses Through Credit Rationing Act of 2009. If Congress had to abide by the truth-in-advertising laws that they impose on the rest of the Nation, surely this would be the official title of, indeed, this 1,279-page piece of legislation.

Madam Chairman, it is section 1609(n), for those who may have written the legislation and forgotten it, that creates a permanent \$200 billion bailout fund. To paraphrase a line from the famous Kevin Costner movie "Field of Dreams," if you build it, they will come. The only reason to create a Wall Street bailout fund is to bail out Wall Street permanently.

Now, the Democrats claim, Madam Chairman, that the bailout fund will not be paid for by taxpayers; but, Madam Chairman, these are the very same people who told us that the GSEs, the government sponsored enterprises, would never, never receive a dime of taxpayer money. And I guess, in a sense, they were literally correct. Instead, it's \$1 trillion, \$1 trillion of taxpayer money now committed to the failed government-sponsored enterprises.

These are the very same people who told us that, hey, don't worry about the Social Security trust fund; it'll get paid back. Medicare is financially sound. The National Federal Flood Insurance Program will never need a taxpayer infusion.

Madam Chairman, they were wrong then and they are wrong now. Besides creating a permanent Wall Street bailout fund, Madam Chairman, this bill represents the fourth piece of the Democrats' failing economic agenda. First was the \$1 trillion stimulus, next

the \$600 billion national energy tax. After that, the \$1 trillion government takeover of our health care plan.

Now, we all remember the stimulus plan. The President told us if it was enacted that unemployment would never rise above 8 percent. Yet our unemployment rate is at double digits, the worst in a generation; and the legislation before us will cause even more job losses. In sections 4301, 4304, 4308, it will do this by empowering an unelected czar to unilaterally—give the power to unilaterally ban and ration consumer credit products, and then finance itself through hidden taxes on consumer credit and successful American companies.

You heard the study alluded to earlier: interest rates paid by consumers would rise 1½ percent; new jobs would be reduced by almost 5 percent in our economy. More jobs would be lost, Madam Chairman, under the bailout authority which assesses \$150 billion of taxes on large financial firms.

Now, maybe those on the other side of the aisle wish to engage in the myth that somehow that won't be passed on to consumers, that somehow this won't impact credit lines at small businesses; but they are wrong. Increased interest rates. Increased fees, fewer loans to small businesses. Madam Chairman, once again, more jobs will be lost under the Permanent Wall Street Bailout and Increase Job Losses Through Credit Rationing Act of 2009. The United States Chamber of Commerce has said that if this act is passed, it would have a significant adverse effect on small businesses by restricting their access to credit. Some would lose credit altogether.

Madam Chairman, I talk to a lot of good community bankers in my part of Texas. I have heard the chairman allude to the ICBA, and I certainly respect those who have Washington ZIP codes. Frankly, I respect those who have Texas ZIP codes a little bit more. I talked to a man who helps build Palestine, Texas, Kev Williams, East Texas National Bank. And he said, Congressman, if I have more compliance costs and the Federal Government in going to limit the types of customized credit products I can offer, we will lose jobs in Anderson County, Texas, that I have the privilege of representing in Congress.

I heard from a small businessman in my district, from Jacksonville, Texas, "As a small businessman the restriction on credit may very well mean the end of my company." Madam Chairman, why should we pass any legislation that will harm the ability of small businesses to access credit in the midst of a credit contraction? After 3.6 million of our fellow countrymen have lost their jobs since President Obama took office, I ask my Democratic colleagues, how many more jobs have to be lost? How many more?

And, Madam Chairman, next the government takeover. Again, after proposing the \$600 billion tax on our energy sector, a \$1 trillion takeover of our health care system, the Democrats now bring us the next chapter in the narrative, and that is the takeover of huge portions of our consumer credit and finance markets. They will create a huge new, complex government bureaucracy and grant it sweeping draconian powers.

Section 1104 will allow it to break up successful companies like Dell Computer or American Airlines. Section 204 and 4306 will allow it to dictate the pay structure, all the way down to a bank teller in east Texas making \$25,000 a year.

The Acting CHAIR. The time of the gentleman has expired.

Mr. GARRETT of New Jersey. I will yield the gentleman another 2 minutes.

Mr. HENSARLING. Madam Chairman, section 4301 will allow it to decide, again, which credit cards, which home mortgages, and which car loans we are allowed to receive, and the list goes on and on and on. Madam Chairman, what this really leads us to is a bailout and job loss bill where the big get bigger, the small get smaller, the taxpayer gets poorer and the economy gets more political.

Madam Chairman, what does a political economy look like? Well, we've seen it. We've seen it in the government-sponsored enterprises of Fannie Mae and Freddie Mac, where we give them these monopoly powers. They're allowed to grow these profits, but then they do a deal with Congress, oh, but you have to have an affordable housing mission. You have to have this political mission. And \$1 trillion of taxpayer liability exposure later, we know how that turned out. That's what a political economy is about.

How about GM and Chrysler? When they went bankrupt, all of a sudden, allies of the administration, the United Auto Workers, they end up with a sweetheart deal. And Chrysler, senior secured creditors received 29 cents on the dollars; but the United Auto Workers received 43 cents on the dollar, and they ended up owning the company. How convenient. That's what a political economy looks like.

And look at individual Members of Congress, including the distinguished chairman of this committee. From *The Wall Street Journal*, dated June 5, 2009, quote, "The latest self-appointed car czar is Massachusetts' own BARNEY FRANK, who intervened this week to save a GM distribution center in Norton, Massachusetts. The warehouse, which employs some 90 people, was slated for closure by the end of the year under GM's restructuring plan. But Mr. FRANK put in a call to GM's CEO, Fritz Henderson, and secured a new lease on life for the facility." Now, I respect our chairman. I'm not here to suggest—

The Acting CHAIR. The time of the gentleman has again expired.

Mr. GARRETT of New Jersey. I yield the gentleman an additional 1 minute.

Mr. FRANK of Massachusetts. I will give him a minute because they're listening in Norton.

Mr. HENSARLING. I know that the distinguished chairman relishes this. And, again, I'm not here to suggest that the activity is illegal, was immoral, was even fattening. I'm here to suggest it is what a political economy is all about. I would suggest anyone else besides the chairman of the Financial Services Committee making that telephone call, that facility wouldn't be open today. Under this bill, Madam Chairman, Americans' job security will depend less on how well you perform your job at home and more upon who you know in Washington.

□ 2310

That is what the political economy is all about.

This bill represents an assault on the fundamental economic liberties of the American citizen. You want a home mortgage, you now have to get the approval of the Federal Government. You want to offer a credit product? The Federal Government. If you build a successful business, it can be torn down unless you go to the Federal Government on bended knee.

Fewer jobs, more bailouts, more government control, less personal freedom. It is time to reject this bill.

Mr. FRANK of Massachusetts. I yield 4 minutes to the gentleman from Illinois (Mr. FOSTER).

Mr. FOSTER. I want to thank the chairman for yielding.

I rise in strong support of H.R. 4173, *The Wall Street Reform and Consumer Protection Act of 2009*. As a member of the House Financial Services Committee that drafted this landmark bill, I'm proud of our chairman's work, and I want to especially thank the chairman for his diligent efforts over the last many months in shepherding this complex piece of legislation to the floor this week.

This historic comprehensive legislation has dozens of moving parts designed to prevent future bailouts and restore financial stability to the marketplace. I make no apologies for its complexity. It is the simplistic view of financial markets that has brought us to this place.

I want, however, to take a moment to highlight a few of the possibly underappreciated aspects of this bill which may ultimately prove to be among the most beneficial.

First, this bill has language authorizing requirements for the inclusion of something called contingent capital into the capital structure of large financial holding companies. Contingent capital is a special form of debt which, when a company gets into trouble, will

immediately convert into equity on previously negotiated terms, thus causing the firm to be recapitalized without requiring a penny from the taxpayer. In this sense, a requirement for large firms to carry contingent capital amounts to a requirement that they carry privately funded bailout insurance. The elegance of this solution is that it is market based and privately funded.

For large financial firms that are poorly run, the market-imposed terms on which they could receive contingent capital could be more onerous than their better-run competitors. And while not eliminating the need for a systemic dissolution fund, I firmly believe that contingent capital will become the first best line of defense against financial contagion and will serve to mitigate the effects of future crises.

Secondly, this bill significantly reforms the credit rating agencies which played a central role in the crisis last fall by giving inflated ratings to mortgage-backed securities and other financial instruments. In the wake of the Enron accounting scandal, Congress established an independent Public Company Accounting Oversight Board, PCAOB. This board, dominated by users of accounting reports, was designed and effectively regulates the accounting industry. And this bill, in addition to mandating that the rating agencies establish internal controls to resolve conflicts of interest and institute better corporate governance, also has language which creates a prototype independent committee to oversee the SEC regulation and enforcement of the rating agencies. Like the PCAOB, this oversight committee will be dominated by end users of credit ratings and will serve as a template for future, stronger oversight if the SEC enforcement proves inadequate.

Finally, the last issue that I'd like to highlight is the greater investor protection this bill provides. In particular, this bill contains a provision that makes investment adviser fraud—like that perpetrated by Bernie Madoff—virtually impossible. Specifically, the bill contains language which requires those who advise and manage large amounts of money on behalf of others either to employ an independent custodian to hold those assets or to have an independent set of eyes verifying the accuracy of statements to investors. This simple requirement should give investors peace of mind that what is on their statements each month actually exists.

I have touched on only a few of the historic and beneficial changes in this bill designed to restore market confidence, ensure the end of taxpayer-funded bailouts, and modernize the rules governing our 21st century economy. I hope my colleagues can support this important bill.

Mr. HENSARLING. Madam Chair, at this time I would like to yield 5 minutes to the distinguished ranking member of the Capital Markets Subcommittee and one of the true champions of economic liberty in Congress, the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I thank the gentleman from Texas.

You know, the American public has spoken. They are opposed to more taxpayer-funded bailouts, they are opposed to more loss of jobs in this country, and they are opposed to bigger and larger and more expensive government. The American public has spoken. Obviously, the majority has failed to listen to them, because we've come to the floor tonight with a major 1,300-page piece of legislation which goes in the exact opposite direction that the American public has asked for.

The bill before us has in it taxpayer-funded bailouts. The bill before us has in it the loss of additional millions of jobs, and of course, with the 1,300 pages that we see here before us, the bill before us has in it an expansive growth of the Federal Government and cost that we have never seen the likes of which during our 200-plus history.

You know, at the beginning of this 2- or 3-hour debate that we've had here on the floor, the chairman of the committee began his remarks by saying that we will have—we will be hearing fantasy tonight, and then he proceeded to give us some of that fantasy, for much of what we've heard from the other side of the aisle is fantasy, whether it's describing their legislation that we're about to vote on later tomorrow or whether describing legislation that we have offered as an alternative to it.

You know, I've heard the chairman say there is nothing in this bill, in the Republican's alternative, dealing with 13(3) and the Federal Reserve powers. I guess the chairman has never taken a look at the Republican substitute.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. GARRETT of New Jersey. I will.

Mr. FRANK of Massachusetts. The gentleman stated the exact opposite of what I said. He's quoting another Member.

I said, in fact, that on 13(3) our bills are very similar. So the gentleman has just put words in my mouth that was the exact opposite of what I said. It was another Member who talked about 13(3). I talked about the similarity of our approach as you had offered it in committee and ours on 13(3).

Mr. GARRETT of New Jersey. I remember in committee that we had similarity, but I remember, because I wrote it down, that there was nothing in our bill with regard to this.

Mr. FRANK of Massachusetts. Another Member said that, yes.

Mr. GARRETT of New Jersey. I thought I heard it from you, just as I

thought I heard it from you saying that there was nothing in our bill with regard to executive compensation, and I know that we do have language in our bill which also was discussed in committee with regard to executive compensation. So at least in that area I know I heard this from the chairman, and it is in our bill. I thought I heard the chairman say that there's nothing in here with regard to Federal powers.

Regardless, if it's just one issue or two, I would just ask the chairman to refer back to my earlier comments, the reason we're concerned with the extensive nature of the largeness of the bill is because when it gets so large, 1,300 pages, your side of the aisle is not familiar with what's in your bill, and even our bill, which pales in comparison by size, you fail to know exactly what's in ours as well.

The American public has spoken out and says they're opposed to more taxpayer-funded bailouts. This was one point where we were in discussion just a moment ago, an hour ago, where I did have to point out to the chairman that in your bill, in the Judiciary Committee self-executing amendment, there is language in there which basically perpetuates what has occurred already in this year that the American people are opposed to is taxpayer-funded bailouts.

Let me explain it very quickly.

What happens is the Federal Government is able to set up a taxing mechanism on businesses in this country to the tune of \$150 or \$200 billion, and until we establish that, you can—the Treasury Secretary can draw on the taxpayer dollar to help fund this mechanism. And even after that is set up, under this provision on page 3, the corporation may, as I said before, convert what is called a receivership—which basically would be putting the business out of business, which is something that the chairman says would occur—but then would allow it to proceed to a chapter 7 or a chapter 11 bankruptcy, and, of course, that basically means that the business is reorganized.

So what's occurring here is we are allowing the Treasury Secretary, a political appointee, to make the decision, the life-and-death decisions of businesses of this country.

□ 2320

And they will say that this company is going to survive, and this company is not going to survive, and this company over here is going to survive on the backs of American taxpayers. This company is going to survive even though it made bad decisions, risky decisions, but for whatever political purposes or otherwise, the Treasury Secretary can sign off and say, take taxpayer dollars, funnel it into that company for a while under the corporations act, under the bridge loans and bridge proposals and what have you, and then

under section B on page 3 convert it back into a reorganization and allow it to flourish once again with the blessing of the Treasury Secretary and of this administration and of the American taxpayer as well.

The Acting CHAIR. The time of the gentleman has expired.

Mr. HENSARLING. I yield the gentleman an additional 2 minutes.

Mr. GARRETT of New Jersey. So the bill does have what the American taxpayer does not want to have, which is a continuation of bailouts at their expense.

What else does the bill have that the American public is asking not to have? And that is the loss of jobs. I remember being on this floor, and I do remember this conversation very well standing right over there when the majority leader was standing over here at the beginning of the year, and he was predicting, he was promising that if we only passed the \$700 billion or \$800 billion stimulus package, as the gentleman from Texas said earlier, that we would see the results immediately, not by the summer, not by the end of the year, not by next year, but we would see immediate job growth in this country. We would never see 8 or 8½ percent unemployment, and we would see the results immediately.

Well, that tune changed when unemployment went up to 8, then 8½ percent, then 9, then 9½, then 10, then 10.2 percent. Then, all of a sudden, their tune changed to say, well, you won't see it immediately. We will see it some time next year. And now, of course, we're coming to the floor with the majority leader saying that we will see job growth some time next year, but we just need another stimulus package. However many dollars from the American taxpayer pockets that's going to cost, I'm not sure.

Mr. HENSARLING. If the gentleman would just yield on that one point, I would say the results were seen immediately, and that is an additional 3.6 million of our countrymen lost their jobs under this program.

I yield back to the gentleman.

Mr. GARRETT of New Jersey. Thank you. Actually, you're right. We saw two things immediately. We saw the loss of 3½ million jobs during that period of time, and, of course, we saw more borrowing from the American taxpayer and also actually from overseas, China and elsewhere, to the tune of \$700 billion or \$800 billion. So those are the predictions, those are the promises there.

What do we see in this bill? What we see in the bill is the creation of a number of entities, a number of pieces in this bill that will result in losses of even greater numbers of jobs. Just like we saw the studies showing that if we ever passed cap-and-trade we will be seeing millions of jobs lost there, just as we saw the documentation coming

out with the health care bill saying we would lose millions of jobs because of that. Here too studies have looked at the CFPA and said that provision alone would raise the interest rates for businesses.

The Acting CHAIR. The time of the gentleman has again expired.

Mr. HENSARLING. I yield the gentleman 2 additional minutes.

Mr. GARRETT of New Jersey. That provision alone will raise interest rates between 1.4 or 1.6, but say 1.5 percentage points, that means that businesses and individuals trying to get loans will see their loans go from 6 percent up to 7½ percent. That will mean less jobs today and in the future. How many jobs? Well, one study points out roughly over 1 million jobs under that provision alone.

Where else will we be losing jobs? We will be losing jobs due to this whole bailout proposal in this bill. If you put a tax on anything, you're meaning that those businesses can't spend the money here when they have to send it over to the government to be stored over here for some other purposes. So if we are going to ask businesses to spend \$150 billion, \$200 billion on this new bailout tax, well, some studies have looked at that and said that will result in higher costs for those businesses naturally, less ability for them to invest. If they can't invest it in new plants, materials, and employees, they will be putting it over here. The numbers there we are seeing is around some 450,000 less jobs because of that provision.

You're talking between those two provisions alone in the over millions range of jobs not being created or lost because of this legislation.

So I will leave to later on my last point, which is that this bill obviously also creates bigger government, more expansive growth of government, more expansive takeover of the private sector and private individuals' lives as well, their decisionmaking lives, as Ranking Member BACHUS said at the very beginning comments, all things the American taxpayer has spoken out against.

The American taxpayer has spoken out against taxpayer-funded bailouts. They said we want less job destruction. We want less big government. This bill gives us taxpayer-funded bailouts. This bill gives us destruction of more jobs. And this bill gives us a bigger government. All things the American public is opposed to. And that's why I come to the floor tonight and oppose this piece of legislation.

Mr. FRANK of Massachusetts. I yield 5 minutes to the gentleman from North Carolina (Mr. WATT), a leading member of the committee who has done a great deal on this bill.

Mr. WATT. Madam Chair, I have endured the entire debate this evening, which is now approaching 3 hours, and I've been absolutely fascinated by it.

Before I came to the body, I practiced law for 22 years. I've now been in this body 17 years. When I was practicing law, quite often, I had cases in which the facts and the law were on my side, and I would go to court, and I would argue the facts and the law and deal with what was before us.

Sometimes I would have some cases where neither the facts nor the law were on my side. And I would show up in court, and I would argue everything other than what the case was about. Now, that's what my friends on the opposite side of the aisle have been doing tonight, because neither the facts nor the law is on their side this time.

So we've heard about health care. I've been making notes. I was here the whole time. We've heard about socialism. We've heard about supply and demand. We've heard about energy and electricity rates. We've heard that the government intervention caused the economic meltdown, that the Fed ratcheted up the panic and that other government agencies contributed to the panic, and that's how we got into this economic mess.

We've heard almost every speaker talk about the size of the bill. We've heard something about cockroaches. I have no idea what that has to do with this bill. We've heard a lot about czars. We've heard about the 2003 and 2007 Fannie and Freddie purchase of subprime loans, and made it sound like somehow that was our fault rather than your President who was out there pushing home ownership when we were trying to get him to push to provide decent housing for people.

We've heard about credit czars, and we've had our colleagues just pull figures out of the sky. I have no idea where they came from. This bill is going to increase interest rates by a point and a half. I don't know how anybody would ever be able to know that. It's going to decrease jobs by 5 percent. I don't know where that figure came from. It's going to break up Dell. My goodness. I didn't know Dell was a financial entity at all. It's in the computer business, it's not in the financial services business. And we've heard our friends say that they don't want taxpayer bailouts, but they also don't want us to set up a fund that's paid for by the industry to take care of the dissolution of these failing companies.

So what's the solution here? I don't know what their solution is, to be honest with you. The truth of the matter is the private market failed, and we had an economic meltdown. And I think we need some reasonable regulation, which is what this bill does.

We need somebody who is going to show up at work every single morning saying, my primary obligation is to at least think about what is in the interests of consumers. And that's what the consumer financial protection agency's charge and responsibility will be.

And that is what this bill does.

□ 2330

We need to do something about all these predatory loans that were made that are now being foreclosed and have gotten us into the financial mess that we are in, and that's what this bill does. We need to make the derivatives market more transparent and put them on a platform so that the whole world can see what's going on back there in the derivative room, and that's what this bill does.

Now, what do you all want to talk about? You can talk about health care or energy or electricity or cockroaches or whatever you want to talk about. We want to fix this economic system in our financial services industry. That's what this bill does. It is long, it is complex, it is a complex undertaking. Our Chair has done it admirably; he has led this.

What is your proposal? That we just do nothing and let the market take care of itself?

That is not an option, my friend. That is not an option, my friends. That time has passed for a while.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Members are reminded to direct their remarks to the Chair.

Mr. HENSARLING. Before yielding to the other gentleman from Texas, I will yield myself 1 minute.

I heard the gentleman from North Carolina in a spate of candor say he didn't know what the solution was. I do know what the solution is. It's the Republican substitute. I would commend the gentleman to read it. It ends bailouts. Your bill will increase bailouts. It reforms the Federal Reserve.

Your bill increases the powers of the Federal Reserve. This bill protects consumer rights. Your bill constricts consumer rights.

Your bill was stone-cold silent with respect to the government-sponsored enterprises, but now you protect them. Clearly the GSEs are too big to fail.

Our bill goes to the source of the problem. If the gentleman needs to know what the solution is, I would be happy to provide him with a copy of the Republican substitute.

It is now my privilege, Madam Chair, to yield 5 minutes to the gentleman from Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. I thank the gentleman.

I think I want to go back to what really is at stake here and that's choices for the people that borrow money in this country. Back in the fall of last year and in the spring of this year, we were working on legislation that the other side brought forward for credit cards, and everybody has got a credit card story that they have had a bad experience. We passed this big credit card bill.

When we were talking and debating that bill on this very floor, we told the

American people be careful here, because what they are saying is they don't trust you to make your own choices, and they are going to tinker with the credit card industry. We said, you know what's going to happen? Interest rates are going to go up. Credit limits are going to go down, payments are going to go up. And what happened?

Rates went up, credit limits went down, and payments went up. Who did that affect? Well, it affected families. More importantly, we said it's going to hurt small businesses because a number of small businesses across this country use credit cards to help with their cash-flow needs of their company.

Now we are here tonight talking about the rest of the credit market. What's going to happen here, one of the gentlemen, several gentlemen have brought up predatory lending.

Well, let me talk about a predatory loan. How about this young businessman that needs to buy another truck and some tools for his plumbing company, and he goes to his banker and he says, you know what, I need an interest-only loan for 12 months until I get my business up and going and I get my new employee generating the revenue, and then I want to convert over to another payment plan at the end of 12 months.

The banker says, well, I would love to do that; I have done that for you in the past. But you know what, we have got this new czar, or czarina, who is in charge of determining what kinds of financial products I can offer, so I can't do that.

So what happens? That plumber can't expand, can't buy another truck, can't hire another employee. Those are the consequences of this.

Where we are headed in this is that we are going to let the Federal Government tell you, because you are not smart enough, according to my colleagues on the other side, to determine what kind of mortgage is appropriate for your family; that you are not smart enough to determine what kind of car loan is appropriate; what kind of student loan is appropriate for you and your family as you are trying to send your daughter or your son to school; that the overdraft privileges that your bank has been extending to you in the past, but because of these new regulations and the interference of government, you may not be extended those, or those charges may go up.

How about that person that wants to experience the American Dream and wants to go start their own business and needs a specialized financing package to be able to get that business off the ground and so initially has a small amount of capital.

The banker is going to take a larger risk, and so he is going to have to price the cost of that loan higher, and he is reluctant to do that because he might

be making a predatory loan according to this new czar, this new agency that's going to determine what kind of financial products the American people get to have access to in the future.

You know what, Madam Chairman, I still have faith in the American people because this Nation wasn't built because of its government. This Nation was built because of its people, people that took risks and chances and worked hard and went out and did different things in different ways and made things happen, and they didn't conform to what was the standard.

You see, when we start standardizing everything, we begin to limit the potential for success, and we limit failure, and there is no reward for those who do the extra and do special. That's not what this Nation was built on.

I just recently over the weekend came back from Afghanistan, where our young men and women are doing remarkable things in the name of security, peace, and liberty for our country. You would have thought they would want to talk about, you know, thank you for the President's commitment to additional troops; but this sergeant came up to me as I was about to walk out and go get on a plane. He said, Congressman, you know what really scares me? It's not these Afghani Taliban people. What really scares me is what you all are doing to our country. Every time I turn around you are spending money we don't have. The government is getting into the car business. The government is buying banks. The government is limiting my choices.

You are leaving a legacy, and I am over here fighting for a country. Quite honestly, I look back home and I am not sure the Congress is not destroying our country by taking away the liberties and the freedoms that I am fighting for.

That's the reason tonight and tomorrow, whenever we vote on this, we need to defeat this so that we can preserve liberty and freedom for this country and trust the American people because the American people are smart enough to make their own decisions.

Mr. FRANK of Massachusetts. I have only one speaker left.

I reserve the balance of my time.

Mr. HENSARLING. Madam Chair, might I inquire how much time remains on both sides.

The Acting CHAIR. The gentleman from Texas has 10 minutes remaining, and the gentleman from Massachusetts has 14½ minutes remaining.

Mr. HENSARLING. At this time, Madam Chair, I would like to yield 5 minutes to the distinguished ranking member of the Capital Markets Subcommittee, the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I thank the Chair, and I thank the gentleman from Texas. Just to go back to a comment—the gentleman from North

Carolina made two comments—what is the solution?

Well, the gentleman from Texas said here is our solution, and I leave a copy here in case he has not had an opportunity to read it. It is by size a lot less than what you have before you.

The gentleman from North Carolina also asked about our studies; and where we say this will hurt jobs because you will be raising credit interest rates by 1.4 or 1.6, I average it out to about 1.5 percent. It translates into X number of jobs, millions of jobs lost. The questions are studies before we implement this.

My question to the gentleman is before we pass this legislation today and implement it and impose this burden onto the American business sector and the American public in general, can you tell me which study you are referring to that will not cause a loss of jobs?

Mr. WATT. The gentleman is yielding to me for the purpose of responding to that?

Mr. GARRETT of New Jersey. Yes.

Mr. WATT. I haven't referred to any study because I haven't said that it wasn't going to cost jobs or increase or decrease jobs.

Mr. GARRETT of New Jersey. Reclaiming my time, and there is the point. We have this 1,300-page bill that I would hazard the great guess that the vast majority of this body here tonight has not ever had the opportunity to, nor the inclination to, nor, in fact, did read.

□ 2340

And now we seem to hear that when it comes to what the impact, the vast impact that this will have on our economy, where is there information as to what they inquired that it would do? It is absent.

I spoke before about the point that this bill goes contrary to the American public's claim that they do not want any more bailouts, and I raised reference to one section of the bill which in perpetuity it allows for the creation of switching from receivership into bankruptcy and makes it basically a political decision. Another provision of the bill on page 408 basically says that the Treasury Secretary has unlimited authority to borrow an unlimited amount of money from the Federal Treasury, which means from the American taxpayer.

How do we see this? Page 408 of the bill, section 3, "Borrowing authority when fund assets are less than \$150 billion." Section (B), "The corporation may borrow, and the Secretary may lend, any amount of funds that, when added to the amount available in the fund on the date the corporation makes a request to borrow funds, would not exceed \$150 billion."

What does that mean? That means today, as we start this program out,

there are zero dollars in the fund. The Treasury Secretary can go to the Treasury, meaning the American taxpayer, and ask for \$150 billion from the American public, and they could bail out some company, maybe AIG again, as this past administration helped facilitate. And then after that, there's no money in the fund again, so they go back to Treasury and say, We need another \$150 billion, because, under the terms of the bill as written right now, there's no money in the fund and they can borrow up to \$150 billion. They ask for another \$150 billion. And then a company akin to Lehman or something goes under, or another company over here or the auto companies go under, and they pay it all out the next day. How much is in the fund then? Zero. At which point the Treasury Secretary can go back to the American taxpayer a third time and ask for an additional \$150 billion.

When does it end? This bill puts absolutely no limit on it whatsoever. It could be \$150 billion. It can be \$1 trillion. It could be \$10 trillion. It's all in the hands of the political appointee, Secretary Geithner, for him to decide where this money goes and how much it goes to, and it can be a political decision because, as we have seen before, he can prop up favorite companies and allow them then to go into receivership and then allow them to come back out of it after he has asked the American public to spend \$10 billion, \$100 billion, \$1 trillion in order to do so. Where is the limitation in this bill? There is absolutely none.

So when the other side of the aisle looks chagrined when we say the American taxpayer is on the hook for bailouts, they need only to look at their own bill, page 408 or page 3 over here in the Judiciary Committee, to see that is an unlimited drain on the American taxpayer, that this will allow perpetual bailouts that are never ending and will be made by political appointees for their favorite companies that they want to prop up to the end of the Earth. That, I think, is reason one why we should be opposed to this bill.

If there's nothing else in this bill besides those few pages, we should all be voting "no." If there's nothing else in this bill, every American listening to this floor debate tonight should be calling up their Member of Congress and saying, Why are you putting us on the hook to bail out bad businesses and bad business decisions? Why are you putting us on the hook to bail out your political favorite companies that you want to bail out, and why do you want to do so without limitation?

Mr. FRANK of Massachusetts. Madam Chair, I reserve the balance of my time.

Mr. HENSARLING. Madam Chair, I yield myself the balance of my time.

Madam Chair, again, what we have before us is the "Perpetual Wall Street

Bailout and Increased Job Losses Through Credit Rationing Act of 2009."

No matter how much our friends on the other side of the aisle wish to deny it, the only reason to create a bailout fund is to bail someone out. The American people are sick and tired of paying for the bailouts.

Now, my friends on the other side of the aisle say we're not really going to use this bailout fund, which kind of begs the question: Why are you creating it in the first place? Well, it's just going to be used for wind-down cost. Well, in bankruptcy, typically you use the assets of the bankrupt company to do that. So this \$150 billion plus the \$50 billion line of credit from the Treasury, what's the \$200 billion being used for? Well, ultimately it's going to be used to bail out other Wall Street parties, the creditors, the shareholders, the counterparties, just like what was done in AIG.

Now, again the distinguished chairman of the Financial Services Committee says, Well, our bailout fund is like a death penalty. Well, it may be a death penalty, but the death sentence has been commuted for up to 3 years. And, by the way, as it's commuted, just like in the AIG bailout, Societe Generale could walk away with \$16.5 billion, a French concern, like they did in AIG. Goldman Sachs could walk away with \$14 billion in the bailout like they did in AIG. Merrill Lynch could walk away with \$6.2 billion. Deutsche Bank, a German concern, could walk away with \$8.5 billion. UBS, a Swiss concern, could walk away with \$3.8 billion. These are the counterparties on credit default swaps to AIG, and their legislation would replicate it, Madam Chair.

There's nothing in their legislation that would prevent the entire AIG fiasco from repeating itself, and, if anything, they would triple it, up to 3 years, up to 3 years of bailout authority there.

So not only is the death sentence commuted in their so-called bailout fund, but not unlike the GM and Chrysler cases, we could have a Lazarus-like resurrection. Not unlike old GM and old Chrysler, well, you flip a switch and all of a sudden you take care of your political allies, the United Auto Workers, and you've got new GM and you've got new Chrysler, and all of a sudden they just keep on trucking along. So it's an interesting metaphor to call this a death penalty. What it is is it is a bailout.

Here we all are, Madam Chair, at a very tough time in our Nation's economy and 3.6 million of our fellow citizens have lost their jobs since the President told us if we passed his plan, his government stimulus plan, we'd only have 8 percent unemployment. Still, we know we have 10 percent unemployment. And yet here we have a piece of legislation that's ultimate im-

pact is to make credit more expensive, less available when small businesses are losing jobs by the tens of thousands and thousands. Why, in the middle of one of the great credit contractions in our Nation's economy, would you want to make credit more expensive and less available? It's beyond me, Madam Chair. It is beyond me.

Again, my fear is that under this type of legislation the big will get bigger. This is again Fannie Mae and Freddie Mac, politically favorite firms given a political mission and that blows up. Now, again maybe the Merrill Lynch and the UBSs are taken care of. The school teachers in Mesquite, Texas, they're not taken care of under this legislation. They end up paying for the bailout in this political economy. The big will get bigger and they will be given a political mission. Again, your job will depend not so much on what you do at home but who you know in Washington.

One of the great free market economists of our time, Nobel Laureate Milton Friedman said, "Sooner or later, and perhaps sooner than many of us expect, an ever bigger government would destroy prosperity that we owe to the free market and the human freedom proclaimed so eloquently in the Declaration of Independence."

□ 2350

That moment is here, and we must vote for freedom and against this bill.

Mr. FRANK of Massachusetts. May I inquire as to the time remaining?

The Acting CHAIR. The gentleman has 14½ minutes remaining.

Mr. FRANK of Massachusetts. I yield myself such time as I may consume.

First, I have to deal with some of the misstatements that we've heard. There is nothing in here that rations credit. There isn't even anything to refute because there is nothing here they could even misinterpret, Madam Chair, about the rationing of credit. Now, some are particularly upset because we establish a Consumer Protection Agency. In the first place, as far as the banks are concerned, that entity gets no new powers; it takes powers that are already there in the bank's regulators that haven't been used very well.

If my friends on the other side want to go to the American people and say, oh, great, here's one of the differences between the parties, we think you consumers have been very adequately protected, and you don't need to improve that manner of administration, then I will take that debate to the American public.

They tell us that this is bad for small business. The Independent Community Bankers Association supports this bill. They will be unhappy if bankruptcy is added, I understand that, but as far as the bill now stands, before we get to the bankruptcy clause of the Judiciary Committee amendment—which I'm



going to vote for, but insofar as the accusation that it restricts credit, the Independent Community Bankers don't think so, just as when we did the credit card bill and the Republicans said—some of them, some of them voted for it—this is bad for small business and the National Federation of Independent Business said no.

What we say here is—and this is a big difference—we do say that we want to prevent the granting of those kinds of mortgages that get people in trouble because it's not just the individual who gets in trouble; the whole economy suffers. And we do want to ban the kind of practices in the mortgage area—so it's true, it's an expansion of government power. I will say, by the way, that was a constant debate. For much of the past, oh, 15 years, until recently, many Democrats tried to get restrictions on irresponsible subprime mortgages. The Republicans resisted them.

From 1995 to 2007, my Republican friends controlled this House; not a piece of legislation passed to stop mortgages, not a piece of legislation passed to deal with Fannie Mae and Freddie Mac. We did, in 2007, pass such legislation, but the damage had been done.

So, yeah, there is a difference. We want to expand the regulatory power to stop the kind of mortgages from being granted that were a major problem in the crisis. One Member said, Well, we would do nothing to stop the AIG crisis. No, we do many things to stop the AIG crisis. First of all, we do not allow, under the legislation we are putting forward, an entity like AIG to get so overextended by issuing credit default swaps that they can't pay off. They would be restricted because derivatives would be better regulated. They would be restricted because they would not be allowed to be so leveraged because we would give regulators the power to hold them in.

The notion that it's socialism when you have bank regulation is quite odd. We heard Members say this is socialism. There is nothing in here about the ownership of the means of production. There is nothing in here about the government taking over any ongoing institution. Yes, we have bank regulation, and that's the deal. These are people who think that regulation is socialism. We are for regulation. We do believe that the absence of regulation over the last 20 years contributed greatly to this problem.

Now, I know there are people who say, when you start regulating the innovation aspects of the economy, you get into trouble. They said it about Franklin Roosevelt and the Securities Exchange Commission, they said it about Theodore Roosevelt and anti-trust. I urge people to go back and read the same old arguments.

Now, the gentleman from Texas (Mr. NEUGEBAUER) said the Federal Reserve

will decide that you are too big to fail and you will be advantaged; wrong, wrong, wrong. In the first place, the designation that an entity, a financial entity—by the way, we heard some comments about Dell and American Airlines, which are not covered under this bill. They are not financial holding companies and could not be made financial holding companies. So Dell and American Airlines are total red herrings.

What we have here is the ability of a group of the existing regulators—not the Federal Reserve—to decide that a particular institution is so big and so overleveraged that it's a danger. But they don't get designated and then carried around; coordinated with that is a restriction on what they do. They are not told you're too big to fail, go out and make more money. They are told, you are so big that if you fail because of problems, raise your capital, cut back on your activity, and if you're AIG, stop selling the credit default swaps.

There is this very real difference between the bills. Their bill is very small because it does nothing to retard the kind of activity that got us in trouble. It does not stop over-leveraging, it does not stop unregulated derivative trading, it does not stop credit default swaps without anything to back them up, it does not stop any subprime lending abuses. So yes, that's their view, and they're very clear: Leave it to the private market. We say the private market always does better with sensible regulation.

When Roosevelt and Wilson put anti-trust into place, I think they did a good thing. When Franklin Roosevelt did the SEC and the Investment Company Act, those were good things. So, yes, a lack of regulation we believe did cause this great problem.

Now, we get into the bailout issue because the Judiciary Committee, frankly, copied the Republican bill by saying you should use chapter 11. The Republican bill talks about chapter 14—the equivalent of chapter 11 here. Here's what, however, the Judiciary language is subject to. It is subject to—we are talking about now the fund. Yes, somebody could be put into chapter 11, but none of the money could be spent that's in the fund. It's raised not by taxpayers, but by an assessment.

On page 399, “The Fund shall be available to the corporation for use with respect to the dissolution of a covered financial company to cover the costs incurred by the corporation. The Fund shall not be used in any manner to benefit any officer or director of such company.”

It also then says, on page 397, here is the fund, this is the purpose of the fund, “to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the

financial markets or economy as determined under 1603(b).” The language about Judiciary does not alter that in any respect. It says that the Fund can only be used for dissolution.

Now, it is true, they said, well, what about AIG when they paid off all these people? This is precisely to prevent the repetition. That was done, by the way, as Members will know, under section 13(3). It can no longer be done. We have changed section 13(3), so that should not happen again.

What they did was to say—and this was in the Bush administration—they said, look, we don't have the discretion to pick and choose, so we are doing exactly the opposite of AIG. With AIG, it was the ruling of the Bush administration's top officials, concurred in by President Bush without any congressional input, that they had to pay off every creditor of AIG because they got the legal authority to pick and choose. They said, we can put them all into bankruptcy, we have Lehman Brothers, and the markets will end—Secretary Paulsen said—or we can pay everybody.

We give them the authority precisely to avoid that dilemma. And by the way, AIG was not being put out of business. It is not AIG. AIG was not put under dissolution; they are being kept going. That could not happen. What we say is, in the future, if you think an entity like AIG has gotten too big and owes too many people too much money, you take it over and you spend money only to wind it down and to dissolve it. If there was some notion that it could be kept going, then none of these monies could be used for it.

Let me read it again: “To facilitate and provide for the orderly and complete dissolution of any failed financial company.” That is a restriction on the use of the fund—it's not a taxpayer fund, but even of the other funds.

And then on page 288 it says, “The Corporation is authorized to take the stabilization actions”—including the bankruptcy—“only if the Secretary and the Corporation determine that it is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company.” And it then says, “The Corporation ensures that any funds from taxpayers shall be repaid as part of the resolution process before payments are made to creditors.” Funds will be repaid if there is a borrowing. Funds go to the taxpayer before a nickel goes to the creditors.

These are the inaccuracies that we have heard. There is no Dell or American Airlines in here. Oh, by the way, there is no permanent bailout fund either because that fund and the borrowing authority the gentleman from New Jersey talks about sunsets in 2013. The borrowing authority is sunsetted

at 2013. So permanent is true if you believe that the world is ending on January 1, 2014. Now, I know the Republicans believe the world began on January 21, 2009, and all the bad things that happened never happened under Bush—they didn't fail to vote for them. They all happened in 2009.

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Again, as my partner said to me, that was also the day of a terrible, terrible disease outbreak, mass Republican amnesia on January 21, 2009, when they forgot what all these—we've heard talk about job losses. Isn't it interesting that the gentleman from Texas cannot remember that a single job was lost before January 20. He talks about the job losses since the stimulus bill was passed. In fact, this recession, the worst since the Depression, began in 2007, in December; and there was enormous job loss under President Bush. Job loss has diminished recently.

So, yes, I will acknowledge that the Obama recovery from the Bush recession has been slower than we would have liked. But every sensible economist understands that the question is not whether there were any job losses at all, or whether you have affected the rate. And clearly the economic recovery plan has affected the rate. And further things will affect it further.

I yield to my friend from North Carolina.

Mr. WATT. I just wanted to inquire of the chairman whether he saw anything in the bill about cockroaches.

Mr. FRANK of Massachusetts. No, I did not, and I did read the whole bill. And by the way, I also would object, there was some reference to steamroll, or not having the opportunity to read it. We have had complaints from the minority about too many markups and too many hearings and people on the staffs of both sides, and there was a magnificent group of staffers on both sides who have given the American people the best bargain they've ever gotten with the amount of work both sides have done on this. So, yeah, this has been very thoroughly vetted and discussed and debated and all the deadlines have been met.

But here's the fundamental difference: we do not have a bailout fund. We have a fund that will come from the financial institutions that can only be used, as I said, for dissolution, that will sunset in terms of borrowing authority in 2013, in terms of borrowing authority. It is used so you don't just say, okay, you're out of business; we end you tomorrow. It is to avoid what Secretary Paulsen and Ben Bernanke and George Bush told us was the dilemma of a year and half ago, all or nothing. We've got to use these funds to wind it down in an orderly way.

But here's the bigger difference: the Republican bill doesn't even try to stop the situation from arising. That's the

difference. We analyzed the various things, too much leverage, unregulated derivatives, subprime loans, executive bonuses that encourage people to take too many risks. Their bill says, no, they're none of the government's business. It is true, every time you try to prevent a bad practice by regulation, you're expanding government power. That's true. An unregulated derivative market versus a regulated derivative market, that's more government power.

Restrictions on irresponsible subprime loans, that's government power. Telling an institution they can't be overleveraged, that's government power. In terms of breaking up companies, no one's breaking up Dell or American Airlines. That is fantasy. What we say is we first try to stop an institution from being so overleveraged and so big that it causes a problem. So, yes, we do say that the regulators should be able to step in if the Systemic Risk Council says so and restrain them from doing things. And, yes, the Federal Reserve is the agent, so the Federal Reserve gets more powers under the Systemic Risk Council.

We, by the way, take away more power in our bill with the Consumer Protection Agency from the Federal Reserve than any other agency. We limit section 13(3) of the Federal Reserve very severely. We do empower them as the agent of the Systemic Risk Council to do what the Republicans say you should never do: tell a company you've gotten too big and owe too much money and need to slow down. Break them up because their parts have begun to pull apart.

AIG should not have been allowed to be an insurance company and a credit default swap handler. And, yes, under the amendments we've adopted someone could have come in and said, okay guys, stay in the insurance business, but don't put us all at risk by doing all of these other things.

So that's the fundamental difference. The Republican position is, business knows best. Do not have any rules, do not prevent—and literally, nothing in their bill would retard any of the irresponsible, reckless, overleveraging that happened and led to the crisis.

And then they said, if there is a crisis, just let them go bankrupt. We say, first of all, let's try to prevent the crisis. Let's try to step in and slow it down.

And if that's socialism, I guess the antitrust laws are socialism by that definition, and the Republican equivalents of today's Republicans called Theodore Roosevelt a socialist. They turned against him. They called Franklin Roosevelt a socialist because he created the Securities and Exchange Commission. They call people socialists when they want to do regulation. The Independent Community Bankers don't think so. And the consumers of

America do not believe that being protected from abuses is socialism. I look forward to tomorrow when we debate the amendments.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
Washington, DC, December 2, 2009.

Hon. BARNEY FRANK,  
Chairman, Financial Services Committee, 2129  
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing regarding H.R. 2609, the "Federal Insurance Office Act of 2009." As you know, the Committee on Ways and Means had jurisdictional and other concerns with provisions of this bill. I note that in 2008, we exchanged letters on similar legislation (H.R. 5840) introduced in the 110th Congress.

Earlier today, the bill was amended during markup by your Committee to address the concerns my staff and I have raised. For example, the bill was amended: to preserve USTR's authorities, including over development and coordination of U.S. international trade policy and the administration of the U.S. trade agreements program; to modify the types of agreements that are covered by the bill and to provide for their joint negotiation by USTR and the U.S. Department of the Treasury; to require that annual reports by the Federal Insurance Office be provided to the Committee on Ways and Means; and to modify the standards and process for preempting State law. I appreciate your willingness, and the willingness of your staff, to work with me and my staff on this important legislation.

To expedite this legislation for Floor consideration, the Committee on Ways and Means will forgo action on this bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this bill or similar legislation in the future.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 2609, and would ask that a copy of our exchange of letters on this matter be included in the committee report on the bill and in the CONGRESSIONAL RECORD during House Floor consideration of this bill.

Once again, thank you for your work and cooperation on this legislation.

Sincerely,  
CHARLES B. RANGEL,  
Chairman.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FINANCIAL SERVICES,  
Washington, DC, December 3, 2009.

Hon. CHARLES B. RANGEL,  
Chairman, Committee on Ways and Means, 1102  
Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN RANGEL: Thank you for your letter regarding your committee's interest in H.R. 2609, the "Federal Insurance Office Act of 2009."

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this legislation as amended or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the committee report on the bill and in the Congressional Record during House floor consideration of this bill. Thank

you for your cooperation as we work towards enactment of this legislation.

BARNEY FRANK,  
*Chairman.*

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,

Washington, DC, December 3, 2009.

Hon. BARNEY FRANK,  
*Chairman, House Committee on Financial Services, 2129 Rayburn House Office Building, House of Representatives, Washington, DC.*

DEAR CHAIRMAN FRANK: I am writing to you concerning the jurisdictional interest of the Committee on Oversight and Government Reform in H.R. 4173, "The Wall Street Reform and Consumer Protection Act of 2009".

I appreciate your effort to work with the Oversight Committee regarding those provisions of H.R. 4173 that fall within the Committee's jurisdiction. This includes provisions relating to the audit authorities of the Comptroller General, federal personnel matters, the applicability of the Federal Advisory Committee Act and the Freedom of Information Act, amendments to the Inspectors General Act, and governmentwide reporting requirements for federal agencies.

As you know, the Oversight Committee was one of the committees receiving an additional referral of this bill. Because of the cooperation between our two committees, further consideration in the Oversight Committee is unnecessary. However, this letter should not be construed as a waiver of the Oversight Committee's legislative jurisdiction over subjects addressed in H.R. 4173 that fall within the jurisdiction of the Committee. I request your support for the appointment of conferees from the Oversight Committee should H.R. 4173 or a similar bill be considered in conference with the Senate.

Please include a copy of this letter and your response in the Congressional Record during consideration of this legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

EDOLPHUS TOWNS,  
*Chairman.*

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FINANCIAL SERVICES,

Washington, DC, December 3, 2009.

Hon. EDOLPHUS TOWNS,  
*Chairman, Committee on Oversight and Government Reform, 2157 Rayburn House Office Building, Washington, DC.*

DEAR CHAIRMAN TOWNS: I am writing in response to your letter regarding H.R. 4173, "The Wall Street Reform and Consumer Protection Act of 2009".

I wish to confirm our mutual understanding on this bill. I recognize that certain provisions of the bill fall within the jurisdiction of the Committee on Oversight and Government Reform. However, I appreciate your willingness to forego committee action on H.R. 4173 in order to allow the bill to come to the floor expeditiously. I agree that your decision to forego further action on this bill should not be construed as a waiver of the Oversight Committee's legislative jurisdiction. I would support your request for conferees on those provisions within your jurisdiction should this or a similar bill be the subject of a House-Senate conference.

I will include this exchange of letters in the Congressional Record when this bill is considered by the House. Thank you again for your assistance.

BARNEY FRANK,  
*Chairman.*

Mr. POMEROY. Madam Chair, I rise today in support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. I would like to thank Chairman PETERSON of the Agriculture Committee for his leadership and work to produce legislation that regulates the futures markets and brings transparency to the dark corners of the financial markets. I would also like to thank Chairman FRANK of the Financial Services Committee for his leadership and efforts in crafting the greater overall regulatory package.

Madam Chair, the unchecked greed and excesses of Wall Street have brought our economy to its knees, placed hardship on millions of American families and dimmed the prospect of leaving behind a better life for our children. The volatility in the oil prices and the crash of the financial markets were fueled by outrageous short term profits at the expense of our shared long term prosperity. These markets resemble the Wild West, and are void of transparency or effective regulation.

Today, Congress has before it a common-sense reform package that will assure the American people that what happened to create the financial meltdown will not happen again. H.R. 4173 would place limits on speculators, preventing them from dominating the markets, and also bring transparency to the markets. The bill will also give regulators the information they need to properly police the markets and the authority to identify and protect against systemic risk. H.R. 4173 protects the economy from irresponsible too-big-to-fail companies like AIG, by creating a responsible mechanism to dissolve them without putting the American tax payer on the hook. It is essential that consumers, farmers, and businesses have access to a reliable source of credit and financing that does not dry up because Wall Street tries to gamble away our future.

Madam Chair, the landmark Wall Street Reform and Consumer Protection Act of 2009 puts the interests of consumers, small business and the millions of Americans dependent on their 401Ks for retirement, first. I urge my colleagues to support H.R. 4173.

Ms. JACKSON-LEE of Texas. Madam Chair, today I rise in support of H.R. 4173—"The Wall Street Reform and Consumer Protection Act." I support this legislation because I believe that it is an important step in preventing the conditions that created last year's financial crisis from occurring again.

Last year's financial crisis put hundreds of thousands of Americans out of work and our economy into turmoil. The White House estimates that 5 trillion dollars worth of American household wealth disappeared in approximately three months. Credit markets froze as bank after bank after bank failed or require government assistance to stay afloat. This weak financial system and credit market impacted businesses large and small throughout the Nation. Furthermore, the weak credit market affected student loans, credit cards, and purchases of automobiles and homes.

In response, Congress, in collaboration with President Obama passed sweeping legislation to help hardworking Americans soften the blow from the worst economy in years.

Although I still believe that our response was necessary to help bring America out of

the recession, we must ensure that actors in the financial industry are never again able to behave recklessly as to threaten the economy of not only our Nation, but also the world. I do not believe that the financial industry acts with malice toward people or our economy; however, some firms in the financial industry are prone to taking risks in a manner that threatens our economic structure. As President Obama said in New York on September 15, "We will not go back to the days of reckless behavior and unchecked excess at the heart of the crisis, where too many were motivated only by the appetite for quick bills and bloated bonuses. Those on Wall Street cannot resume taking risks without regard for consequences, and expect that next time, American taxpayers will be there to break the fall."

This legislation is a response to the dangers and loopholes that persist, and it will serve to protect the American investors, students, home and auto buyers, and business owners. A new Consumer Financial Protection Agency will protect families and small businesses by ensuring that bank loans, mortgages, and credit cards are fair, affordable, understandable, and transparent.

We have tough rules that keep companies from selling us faulty toasters that burn down our houses, but there is currently no agency that has as its sole mission oversight of potentially harmful financial products sold to consumers. This critical enforcement is necessary to ensure that consumers get information that is clear and concise from banks, mortgage servicers, and credit card companies. It is critical to prevent the financial industry from offering predatory mortgage loans to people who can't afford repayment that marked the subprime lending era. Finally, it will put in place common sense regulations to stop abuses by the financial industry, such as payday lending and exorbitant overdraft fees.

Secondly, this legislation will put an end to "too big to fail" financial firms, providing the government with the tools—funded by big banks and financial firms and NOT taxpayers—it needs to manage financial crises so we are not forced to choose between bailouts and financial collapse.

This includes the ability to preemptively dismantle big banks whose risky and irresponsible behavior could bring down the entire economy, as well as an orderly process to wind down failing firms.

This legislation will end taxpayer-funded bailouts and Help ensure American taxpayers are never again on the hook for bailing them out by requiring big banks and other financial institutions (with \$50 billion in assets) to foot the bill for any bailouts in the future. These institutions would pay assessments based on a company's potential risk to the whole financial system if they were to fail.

These new consumer safeguards will require that all financial firms that pose risk to the financial system—not just banks—are subject to strong supervision and regulation, including stronger capital standards and leverage rules.

They will increase transparency at the Federal Reserve, which has played an enormous role in shoring up big banks and other financial institutions in this crisis, subjecting it to

scrutiny by Congress's Government Accountability Office with audits of the Fed's lending programs.

This legislation will also stop predatory and irresponsible mortgage loan practices including prepayment penalties, deceptive mortgage documentation, and making extra profits for steering borrowers to higher cost loans that played a major role in the current financial meltdown. Help ensure that the mortgage industry follows basic principles of sound lending and consumer protection.

The legislation also imposes tough new rules on the riskiest financial practices by strengthening enforcement by the Securities and Exchange Commission to better protect investors and prevent future Bernie Madoff Ponzi schemes.

It creates rules to curtail excess speculation in derivatives and growing use of unregulated credit default swaps that devastated AIG and Bear Stearns.

It provides more transparency and tougher regulation of hedge funds, private equity firms and credit rating agencies, whose seal of approval gave way to excessively risky practices that led to a financial collapse.

Finally, it requires investment advisors to act for the sole benefit of their client under the law, exercising the highest standard of care.

Finally, this legislation addresses egregious executive pay compensations by putting an end to compensation practices that encourage executives to take excessive risk at the expense of their companies, shareholders, employees, and ultimately the American taxpayer.

It also provides shareholders of public companies with an annual, non-binding vote on executive compensation and golden parachutes for the top five executives, requires independent directors on the compensation committees of public companies, and authorizes the SEC to restrict or prohibit "inappropriate or imprudently risky compensation practices" at large financial firms (with at least \$1 billion in assets).

In conclusion, this legislation will modernize America's financial regulations as we seek to prevent last year's financial conditions from ever happening again. America is on the road to recovery, and we need this legislation to ensure that the recovery is permanent.

Mr. MARKEY of Massachusetts. Madam Chair, one of the most critical elements of the legislation now before us is the establishment of tough new regulation of the over-the-counter derivatives market. This reform is long overdue and I strongly support the legislation now before us.

I am pleased to say that I can wholeheartedly support this bill because—thanks to language agreed upon by Chairman PETERSON, Chairman WAXMAN and myself—it ensures that the expansion of Commodity Futures Trading Commission's authority over derivatives will not in any way limit the Federal Energy Regulatory Commission's authority to regulate energy markets. FERC plays a critical role in ensuring that those markets deliver energy reliably and at just and reasonable rates.

The bill preserves FERC's role in three ways:

First, the bill amends the Commodity Exchange Act to fully preserve FERC's authority over agreements, contracts, and transactions

entered into pursuant to a FERC-approved tariff or rate schedule. An exception is made for instruments that are executed, traded, or cleared on a CFTC-registered entity. However, it is the drafters' understanding and intention that CFTC cannot construe this exception to limit FERC's underlying authority. For example, FERC-regulated entities, such as Regional Transmission Organizations and Independent System Operators, would not be required to register with CFTC based on their utilization of Financial Transmission Rights or other instruments to facilitate the physical operation of the electric grid. Nor will CFTC require instruments of that nature to be executed, traded, or cleared on some other CFTC-registered entity.

Second, in any area where FERC and CFTC have overlapping authority, the bill requires the two agencies to conclude a memorandum of understanding delineating their respective areas so as to avoid conflicting or duplicative regulation. Where FERC has regulatory authority, CFTC is permitted to step back and let FERC do its job. It is the drafters' understanding and expectation that CFTC will recognize FERC's primacy with regard to energy markets that it comprehensively regulates.

Finally, the bill states that it does not in any way limit or affect FERC's existing authority, under Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act, to protect against manipulation of the electricity and natural gas markets. As one of the principal authors of these anti-manipulation provisions, which were included in the Energy Policy Act of 2005, I see the preservation of this authority as critical to ensuring fair and transparent energy markets. These provisions were drafted broadly to allow FERC to protect against the use of any manipulative or deceptive device or contrivance "in connection with" FERC-regulated electricity and natural gas markets, regardless of where such manipulation occurs.

With these elements now included in the legislation, I strongly urge my colleagues to vote "yes" on this legislation.

Mr. BRALEY of Iowa. Madam Chair, I strongly support the Wall Street Reform and Consumer Protection Act and urge my Colleagues to vote for this bill.

I'm proud to chair the Populist Caucus. One of our founding principles is to fight for America's working families. For the past eight years, our economic policies have put the interests of Wall Street ahead of Main Street. Wall Street and big bank executives exploited loopholes and gambled with our money, which last year led us into the worst financial crisis since the Great Depression. And while some big banks continue to accept excessive compensation and bonus packages, America's middle class families are still struggling.

The firms that received more than \$350 billion in federal TARP funds increased executive compensation by an average of four percent last year. This is outrageous and unacceptable. This legislation will provide shareholders of public companies an annual vote on executive compensation and help reign in excessive executive compensation.

The Wall Street Reform and Consumer Protection Act will hold Wall Street and big banks accountable by ending the practice of "too-big-

to-fail," so that America's taxpayers and middle class families are never again forced to pay off Wall Street's gambling debts. It will manage financial crises by requiring banks and other financial institutions worth at least \$50 billion in assets to foot the bill for any bail-outs in the future.

As we rebuild our economy, we must implement common-sense rules so that big banks and Wall Street don't jeopardize this recovery at the expense of hard-working Iowa families. This bill protects consumers from predatory lending abuses and finally brings transparency and accountability to an out-of-control financial system. It is about time that we put Main Street ahead of Wall Street. Thank you for taking up this important legislation.

Mr. FATTAH. Madam Chair, I rise in strong support of H.R. 4173, the Wall Street and Consumer Protect Act of 2009. The bill proposes to address the financial crisis brought on by the financial industry by crafting a comprehensive set of measures that will modernize America's financial regulations and hold Wall Street accountable. A myriad of issues, from predatory lending to unregulated derivatives, are contained in the bill to prevent conditions that led to last year's financial meltdown.

The legislation being considered today outlaws many of the egregious industry practices that marked the subprime lending boom, and it would ensure that mortgage lenders make loans that benefit the consumer. H.R. 4173 establishes a simple standard for all home loans, mandating that institutions must ensure borrowers have the ability to the loans they are sold. In addition, the bill prohibits the financial incentives for subprime loans that encourage lenders to steer borrowers into more costly loans, including the bonuses known as "yield spread premiums," which lenders pay to brokers to inflate the cost of loans. Many homeowners in the current mortgage crisis received were steered into more expensive loans than they qualified for. The bill limits the prepayment penalties charged to borrowers who wish to get out of their loans and refinance on more affordable terms.

Implementing laws to correct the failures that led to the economic conditions that created the worst financial crisis since the Great Depression is important in ensuring the ensuing calamity that transpired after the collapse of the financial markets. Nevertheless, the Chairman's inclusion of a mortgage foreclosure assistance provision in the Chairman's Manager's Amendment brings to light one of the least discussed causalities of the financial disaster. Many homeowners now find they are unable to meet their financial obligations due to the severe recession caused by the unbridled greed and recklessness of many financial services institutions.

On numerous occasions, President Obama declared the road to recovery must begin with correcting the damaged housing market by providing people the tools necessary to keep their homes and prevent foreclosure. According to a recently released report by RealtyTrac, a realty company that maintains a comprehensive national database of pre-foreclosure and foreclosure properties, nearly 400,000 properties received foreclosure filing

in August 2009. Though number of filings decreased less than one percent from the previous month, the overall number of foreclosure filings is nearly 18 percent higher than the previous year. More strikingly, the report also indicates 1 in every 357 properties used for housing are under threat of foreclosure.

Although not all homes in the foreclosure process will end in a foreclosure completion, an increase in the number of loans in the foreclosure process is generally accompanied by an increase in the number of homes on which a foreclosure is completed. According to the Mortgage Bankers Association, about 1 percent of all home loans were in the foreclosure process in the second quarter of 2006. By the second quarter of 2009, the rate had quadrupled to over 4 percent.

Traditionally, housing is considered a relatively safe investment that allows for the possibility for a high rate of return. Rapidly rising home prices reinforced supported this view. During the rapid of expansion of housing in the early part of this decade, many people decided to buy homes or take out second mortgages in order to access their increasing home equity. Furthermore, rising home prices and low interest rates contributed to a sharp increase in people refinancing their mortgages. For example, between 2000 and 2003, the number of refinanced mortgage loans jumped from 2.5 million to over 15 million. In 2006 and 2007, the value of housing dropped precipitously, which triggered an unexpected increase in the number of homeowners that were delinquent on their mortgages payments and facing foreclosure.

Mortgage foreclosures are very costly to both the foreclosed homeowner and the mortgage lender. Lenders suffer revenue losses from uncollected interest on delinquent loans, as well as unrecoverable origination costs and fees. Though loans that are insured under the Federal Housing Act mitigates losses to lenders to a certain extent, foreclosures cost the lending industry approximately \$32,000 for every home that is in foreclosure proceedings since foreclosed properties are often sold below market value.

Losing a home to foreclosure can have a number of negative effects on a household. For many families, losing a home means losing the household's largest store of wealth. Furthermore, foreclosure can negatively impact a borrower's creditworthiness, making it more difficult for him or her to buy a home in the future. Finally, losing a home to foreclosure can also mean that a household loses many of the less tangible benefits of owning a home. Research has shown that these benefits include increased civic engagement that results from having a stake in the community, and better health, school, and behavioral outcomes for children.

In addition, many homeowners experience difficulty finding a place to live after losing their home to foreclosure. Many will become renters. Nevertheless, some landlords may be unwilling to rent to families whose credit has been damaged by a foreclosure, limiting the options open to these families. There can also be spillover effects from foreclosure on current renters. Renters living in units facing foreclosure may be required to move, even if they are current on their rent payments. As more

homeowners become renters and as more current renters are displaced when their landlords face foreclosure, pressure on local rental markets may increase, and more families may have difficulty finding affordable rental housing. Some observers have also raised the concern that a large increase in foreclosures could increase homelessness, either because families who lost their homes have trouble finding new places to live or because the increased demand for rental housing makes it more difficult for families to find adequate, affordable units.

A concentration of foreclosures will negatively impacts communities, not just homeowners facing foreclosure. Many foreclosures in a single neighborhood may depress surrounding home values. If foreclosed homes stand vacant for long periods of time, they can attract crime and blight, especially if they are not well-maintained. Concentrated foreclosures also place pressure on local governments, which can lose property tax revenue and may have to step in to maintain vacant foreclosed properties.

Unforeseen events can happen to all people, in all communities. Unexpected medical expenses, sudden unemployment, and divorce are only some of the myriad of unforeseen circumstances that can create financial instability for hardworking homeowners. Such hardships are frequently cited as significant contributing factors that hinder a homeowner's ability to maintain timely mortgage payments, ultimately resulting in dramatically higher rates of mortgage foreclosure. Homeowners in America face the added pressure of simultaneously handling the financial burdens of unforeseen events and their mortgage obligations.

Making Home Affordable, the new Obama plan which requires lenders to modify mortgages, is a good idea that is off to a slow start as lenders have yet to gear up for or aggressively seek modifications to those eligible. Foreclosures caused by unemployment are becoming a greater and greater portion of the foreclosure problem. Estimates are that 5.5 million homes will enter foreclosure in 2009 and 2010.

In Pennsylvania, a major state initiative to combat family-devastating foreclosures has been operating with success for more than a quarter-century, enacted in the wake of the severe recession of 1983. The Homeowners Emergency Mortgage Assistance Program (HEMAP) has provided loans to over 43,000 homeowners since 1984 at a cost to the Keystone State of \$236 million. Assisted homeowners have repaid \$246 million to date which works out to a \$10 million profit for the state after 25 years of helping families keep their homes.

The Pennsylvania model will work nationally, and that is why I introduced H.R. 3142, the Homeowners Emergency Mortgage Assistance (HEMA) Act, which is pending before the House Financial Services Committee. HEMA establishes an emergency mortgage assistance program for qualifying homeowners who are temporarily unable to meet their obligations due to financial hardship beyond their control. Under HEMA, homeowners would have the opportunity to regain financial stability without the immediate pressure of foreclosure. With the support of Chairman BARNEY

FRANK of the Committee on Financial Services and Subcommittee Chairwoman MAXINE WATERS, the HEMA proposal was incorporated into H.R. 3766, the Main Street TARP Act. The Main Street TARP Act proposes to use unspent TARP funds to provide relief for distressed homeowners who are unable to meet their mortgage obligations due to financial hardship, as well as providing assistance to renters seeking affordable housing.

A national HEMA program offers a workable complement to President Obama's new Making Home Affordable program. Making Home Affordable has allocated \$75 billion in TARP funds to provide financial incentives to encourage participation by mortgage servicers and homeowners. Although the Treasury Department is taking steps to increase the effectiveness of Making Home Affordable by pressing mortgage servicers to put additional resources and staff into providing loan modifications that make mortgages affordable for homeowners, the scale of the problem is huge and the ability and willingness of servicers to do the work necessary is in question. The loss of six million US jobs since the start of the recession complicates the crisis as many jobless won't even have enough income for a loan modification to be effective.

A HEMA-style loan program could use TARP funds already allocated for foreclosure prevention to directly cure mortgage defaults for the unemployed. As the economy recovers most jobless workers will get back to work and be able to resume their mortgage payments. Even a portion of the \$75 billion set aside for Making Home Affordable could pay a lot of mortgage payments to bring homeowners current and not have them at the mercy of a mortgage servicer who is poorly equipped to offer them help.

Such a program could be run much more efficiently than the time consuming loan modification program. A homeowner who indicated that he or she was unemployed would provide verification of unemployment compensation to the servicer and automatically be approved for a loan that would pay any mortgage above 31 percent of their income (the target amount in Making Home Affordable modifications). The Treasury could make payments for the homeowner who is then current on the mortgage. It would cut through the disorder of the loan modification program and slow the numbers of foreclosed properties on the market.

The success of HEMAP is evident in the program's results. Since its inception, 42,700 families were saved from foreclosure by providing over \$442 million in loans to at-risk homeowners. The average loan to a distressed homeowner is \$10,500, which is much less than the \$35,000 it costs to complete most foreclosure actions. Additionally, this estimated average foreclosure cost does not consider the impact of foreclosures on families, neighborhoods and communities.

We have tried everything else. The Treasury has already allocated far more than \$2 billion to prevent foreclosures. It seems likely that many of those dollars will not be spent in a timely manner by mortgage servicers modifying loans. It's time to get people's mortgages paid directly and to slow the pace of home losses that are destroying families and crippling our overall economy. It's time to think

outside the box about foreclosures—and way past time to keep Americans inside their homes.

Mr. KENNEDY. Madam Chair, last fall, after 8 years of the previous administration looking the other way while Wall Street and the big banks exploited loopholes, we faced a near collapse of our financial system. Deregulation and lax oversight allowed Wall Street and big banks to gamble with the hard-earned money of the American people, compromising our savings and risking our future. Over the last year, Congress has had to make difficult, and frankly unpopular, decisions that were necessary to rescue our economy from the brink of disaster.

The Wall Street Reform and Consumer Protection Act will put in place the rules to make sure that this doesn't happen again, to protect the middle-class Americans who play by the rules from the consequences of Wall Street greed. This legislation ends many of the unfair lending practices that created predatory mortgages and waves of foreclosure. By stopping "too big to fail" firms before they threaten to wreak havoc on our economy, H.R. 4173 will finally put an end to the era of taxpayer-funded bailouts.

While many aspects of this legislation are important, perhaps its most significant achievement is the establishment of an agency whose primary mission is to ensure the safety of financial products and look out for consumers. For too long, all of our fractured regulatory agencies have only looked out for the financial institutions they work for. The Consumer Financial Protection Agency will look out for unsafe financial products the same way the FDA monitors unsafe medicines or the Consumer Product Safety Commission examines our children's toys.

While we have taken extraordinary actions to correct our economic crisis, the Wall Street Reform and Consumer Protection act takes the necessary actions to hold accountable the people responsible for last year's crisis and to prevent another crisis in the future.

Mr. BUYER. Madam Chair, I rise in strong opposition to H.R. 4173 because it does not exempt the VA's very successful Loan Guaranty program from regulation under the provisions of this bill. The saying, "if it ain't broke, don't fix it," applies. The VA guaranteed loans are not experiencing the high rates of delinquency and foreclosure like those backed by FHA. VA, to its credit, recognized the risks inherent in easing underwriting standards and stayed out of the subprime market.

According to the September 30, 2009 National Delinquency Survey conducted by Mortgage Bankers Association, VA-backed home mortgages are experiencing significantly lower delinquency and foreclosure rates than any other government-backed programs. For example, as of September 30, the delinquency rate for all subprime mortgages was over 28 percent. FHA-backed loans show about a 14.4 percent delinquency rate while only about 8.1 percent of VA loans were delinquent. More ominously, 24.7 percent of subprime loans were in foreclosure (VA quite wisely does not guarantee subprime loans), and 3.3 percent of FHA loans had reached the foreclosure stage but only about 2.3 percent of VA loans were being foreclosed. These differences due to

VA's stewardship and the Veterans Affairs Committee's oversight amount to tens of millions of dollars in savings to the taxpayers.

Madam Chair, the provisions of H.R. 4173 would clearly apply to the VA's Loan Guaranty program. For example, in defining the scope and functions covered by the bill, section 4002 excludes only the "Secretary of the Treasury and any agency or bureau under the jurisdiction of the Secretary." That means VA loan guaranty programs are subject to the provisions of the bill. Further in the definitions of "Financial Activity", it includes extending credit. VA has a small direct loan program used to sell their foreclosed properties. The bill's definitions also cover collecting consumer data. VA does that. VA also sells mortgage-based securities on the secondary market. Such activities are covered in the definitions section. The definitions also cover VA's contracts for portfolio servicing, including sales and maintenance of its foreclosed properties. Finally, VA-guaranteed loans offered by lenders would be subject to the jurisdiction of the CPRA rules and regulations.

There are a couple of reasons why VA's loan guaranty program is outperforming the non-VA sector. First, the House Veterans Affairs Committee has oversight of the program and works hard to ensure the program is conducted in a manner that does not stray into products like subprime loans. Second, VA did not reduce its underwriting standards, and the combination of its higher standards along with servicing programs to assist veterans experiencing difficulty, has allowed VA to be a good steward of taxpayer dollars.

My understanding of this mammoth 1,300 page bill is that the new bureaucracies and czars and whatever else is hidden in the bill will have the ability to affect how the VA loan guaranty programs are offered. Additionally, the broad language in the bill which allows the CFPB the discretion to define its own powers is at best short-sighted and at worst Orwellian. I am reminded that absolute power corrupts absolutely. Moreover, by placing additional tax burdens on financial institutions, many of which invest in mortgage securities offered on the secondary market, mortgage rates will go up. That is exactly what the VA's Loan Guaranty program, or the housing market at large, does not need because the secondary market is a major source of new lending resources as well as a \$200 million dollar revenue stream to the Treasury.

Madam Chair, I didn't think it was possible to concoct a bill that was even more opaque and unintelligible than the majority's healthcare bill. Well, I was wrong. The majority has succeeded in grand fashion to foist yet another financial disaster in-the-making on the American public, one designed not to ensure stability in the markets, but to make financial markets subject to political intrusion and manipulation. We have seen what political pressure to expand access to credit to those whose incomes would not normally have qualified them for a mortgage did to the housing market. Let's not make this same mistake with veterans. In summary, the VA loan guaranty program has been well-managed and does not need the regulation and supervision under H.R. 4173 would allow.

I urge all of my colleagues to oppose H.R. 4173 and I yield back.

Mr. RYAN of Wisconsin. Madam Chair, H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009, presents a host of new financial rules and regulations and even establishes a new Federal agency, with an advertised goal of minimizing the risk of a future economic crisis like the one we've seen over the past 2 years. But Congress could go a long way toward preventing such damaging boom and bust cycles by changing its existing mandate for one of the most important stewards of our economy: the Federal Reserve. The Humphrey Hawkins Full Employment Act of 1978 directed the Fed to focus on two goals that are often at odds: maximizing employment over the short-run while guaranteeing price stability over the long-term. This dual mandate has put the Fed in an impossible situation with regard to managing the economy. Multiple goals that may sometimes be in conflict can increase the chance of an important miscalculation. Monetary policy, in fact, played a key role in this latest economic crisis. The Federal Reserve held interest rates too low for too long earlier this decade, sparking an expansion of credit that fueled a housing bubble that eventually burst and caused an all-out crisis. As we emerge from this recession, I fear that we may be on the cusp of yet another damaging cycle. If the Fed is too slow to act in withdrawing its substantial stimulus as the economy recovers, we will end up with a nasty bout of inflation in the coming years. And the Fed would then have to slam on the brakes and hike interest rates to wring inflation out of the system, costing growth and jobs in the process.

We need to stop this roller coaster ride. That is why I offered an amendment to this bill that would repeal the Humphrey Hawkins Act and make price stability the Fed's sole mandate. This change is meant to re-focus the Fed on its core mission and make sure that we get one of the key fundamentals of the economy right. Price stability, after all, is a necessary precondition for economic growth, job creation and sound money. A focused and clear mandate from Congress would also increase the Fed's transparency and accountability at a time when many are seeking more information about the actions of our central bank. Unfortunately, my amendment was not made in order by the Rules Committee.

In response to the recent crisis, the Fed has had to take a variety of unorthodox measures to stabilize our credit markets and resuscitate the economy. Many in Congress have felt unease as the Fed has taken emergency actions to rescue individual companies and launch a variety of new credit facilities for an increasing number of banks, financial institutions and even investors. I share this unease and I believe that Congress should have the ability to gather information about these actions and new facilities, with appropriate safeguards and time lags. But I also believe that we must preserve the existing restrictions on opening up monetary policy deliberations and actions to a government audit. Even the appearance of politicians gaining some measure of influence over monetary policy decisions could have disastrous consequences. Political independence is not simply a luxury for our central bank. It is a core principle of good economic policy that yields real benefits for the

American people. A number of empirical studies have shown that countries with independent central banks tend to have steadier economic growth and low and stable rates of inflation. This is not surprising. Just as politicians involved in fiscal policy have a bias toward greater spending, monetary policy influenced by politics would have a bias toward looser credit over the short term and therefore higher rates of inflation over the longer term. Financial markets would immediately recognize this and push up our borrowing rates and further weaken our currency.

As we move forward in this process of financial regulatory reform, Congress should strive for robust oversight of the Fed, but it must guard against political interference. In the end, an independent Federal Reserve with a clear and focused single mandate is the best way to achieve the desirable ends of sustainable economic growth, job creation, and low inflation.

Mr. MELANCON. Madam Chair, I rise today on behalf of thousands of families in Louisiana and across the nation who have been devastated by the fraud of Allen Stanford and his financial companies.

Earlier this year, men and women who had played by the rules and worked hard to prepare for retirement and their children's futures learned that they had been cheated out of a lifetime of savings.

While we continue in our efforts to make these families whole, we have a responsibility to ensure that this kind of fraud never again happens in the United States. The investor protections included in H.R. 4173, the Wall Street Reform and Consumer Protection Act are a monumental step toward this goal.

One thing we have learned through this tragedy is that the greed of criminals like Stanford is matched only by the danger of deregulation. The Securities and Exchange Commission, which was designed to prevent this very situation, is deeply flawed. The bill we are now considering reforms the agency and strengthens its authority to effectively and forcefully protect investors and our securities markets.

In addition, the bill creates incentives for whistleblowers to expose crooks like Stanford. Through a new whistleblower bounty program, we will reward individuals who provide tips that lead to the prosecution of fraud.

Finally, under this bill, every financial intermediary who provides advice to an investor will have a fiduciary duty toward them. This standard will force broker-dealers and investment advisers to put first, their customers' interests—not their own pocketbooks.

American citizens need the confidence that their government will act quickly and forcefully to protect their hard-earned savings. The investor protection measures in the Wall Street Reform and Consumer Protection Act will provide families the security they need to prepare for the future.

Ms. FUDGE. Madam Chair, the failure to regulate financial markets led to the worst financial crisis since the Great Depression. Reforming our financial system is one major part of restoring our economy's health. Today this Congress and President Obama are taking effective steps to bring our economy back from the brink of disaster.

The Act is crucial in curbing the predatory practices of the past. It will protect consumers

from predatory lending abuses and industry gimmicks.

This bill will guard a family's retirement funds, college savings, home, and business from unnecessary risk by executives, lenders, and speculators.

It will bring transparency and accountability into the financial system.

I commend Chairman FRANK for his tireless efforts to protect the American economy and taxpayers.

Mr. ETHERIDGE. Madam Chair, I rise in support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009.

The chaos that began last year on Wall Street has cost the country billions of dollars, rippled throughout the economy, and threatened to topple our entire financial system. Strong measures are required to address such a breakdown, and H.R. 4173 delivers a comprehensive set of financial regulations that increase accountability and oversight for Wall Street and much of America's financial sector.

Earlier this year we saw the widespread damage that can occur when institutions like AIG or Lehman Brothers fail. This bill makes sure the taxpayer is not responsible for bailing out such firms, by establishing a process for dismantling failing financial institutions. By creating a new Systemic Dissolution Fund, large Wall Street firms will be in charge of paying the cost for risks they create instead of taxpayers. In addition, a Financial Stability Council will be created to identify and regulate financial institutions that are so large or interconnected that they pose a system risk to the economy as a whole. We must avoid the problems posed by firms that are "too big to fail" in the future.

For years, I have argued that the wild west of speculation in derivatives markets must end. Unregulated speculation may be responsible for wide swings and increases in the price of energy for consumers and feed for farms. This bill would strengthen derivatives market oversight, and for the first time ever, regulate the over-the-counter derivatives market for transactions between dealers and major swap participants. This provision will help prevent entities from driving up the cost of commodities and products and manufacturing risk in the larger economy.

H.R. 4173 also takes a major step forward in consumer protection by creating the Consumer Financial Protection Agency (CFPA). This agency would be devoted to stopping unfair practices and preventing abusive financial products from entering the marketplace. The CFPA would cover a wide range of financial institutions, including non-bank financial institutions, and would impose effective consumer protections for subprime mortgages, overdraft fees, credit card practices, and other financial products.

This bill includes other critical provisions for oversight and streamlining of the financial system like creating a Federal Insurance Office, reforming the credit ratings agencies that assess the value of the many financial products in our economy, and cleans up abusive practices in the mortgage lending industry that contributed to the collapse of the housing market. This regulation is long overdue and will benefit all Americans and businesses that depend on our financial institutions.

I support this reform of our financial industry, and I urge my colleagues to join me in voting for its passage.

Ms. LEE of California. Madam Chair, I rise in support of H.R. 4173 and Chairman BARNEY FRANK's manager's amendment.

I want to thank the Chairman for his hard work and dedication to Comprehensive financial reform and strong protections for consumers. It is vital that we have a stand alone agency whose sole mission is to protect the rights of consumers.

For too long our financial regulatory framework put the protection and stability of financial institutions first and too often ignored the impact on American consumers and retail investors.

The Consumer Financial Protection Agency will help ensure that Wall Street will not be able to bring our economy to the brink of disaster ever again.

I also want to thank Chairman FRANK and the members of the Financial Services Committee for working with Congresswoman MAXINE WATERS and the Congressional Black Caucus to include several important provisions in the bill.

Specifically, thanks to their focused work, this bill will include \$3 billion in funds to provide relief for unemployed homeowners. It will extend credit for the recently unemployed that will help save homes from foreclosure.

This bill will stop the spread of foreclosure rescue scams and includes a vital \$1 billion increase in Neighborhood Stabilization Funds to protect our hardest hit communities.

Lower income communities and communities of color were targeted for these unaffordable and unethical products that are now driving millions of families into foreclosure.

Access to financial services and insurance products for historically underserved communities is strengthened.

The Office of Minority Inclusion, whose goal will be to make sure that all Americans have the equal protection of the work of the entire Federal financial regulatory framework is included in this bill.

Fairness of access and opportunity, transparency and strong enforcement of securities regulations are vital to bringing our economy back from recession and ensuring that the uncontrolled risk taking on Wall Street will never again have such a devastating impact on the entire economy.

Again, thank you Chairman FRANK, Congresswoman WATERS and the Financial Services Committee for such an important bill.

Mr. STARK. Madam Chair, I rise to support the Wall Street Reform and Consumer Protection Act because it is time that the Wild West of financial "innovation" had a sheriff.

Just over a year ago, I stood on this floor and twice voted against President Bush's taxpayer-funded bailout of Wall Street. I would cast the same votes again. I hope that this legislation will mean that taxpayers will never again be on the hook for the reckless behavior of financiers.

This legislation will help to end "too big to fail" by providing dissolution authority to regulators. Instead of being bailed out with tax dollars, a company like AIG would be dismantled in an orderly and fair process. Shareholders



would be wiped out and executives dismissed. This would be paid for, not with tax dollars, but by an assessment on financial firms. The ideal solution would be the reinstatement of the Glass-Steagall Act, preventing the merger of commercial and investment banks. However, I am glad that this bill at least enables swift intervention and provides a financing mechanism so that bailouts will be a thing of the past.

In addition to being forced to pay for the excesses of Wall Street, consumers have been preyed upon by financial services companies. These companies have profited from unfair and abusive lending practices, including steering families into subprime mortgages. Regulation has been lax or non-existent and there is no single entity charged with looking out for consumers. With the formation of a Consumer Financial Protection Agency an agency will, for the first time, be charged with ensuring that families are not exposed to toxic financial offerings.

Finally, I wholeheartedly support the so-called "cram down" amendment, to allow courts to reset the principal for home mortgages in bankruptcy proceedings. This judicial discretion is allowed for every other type of debt—a reminder of the double standard that has too frequently separated average families from Wall Street.

I urge all of my colleagues to put consumer interests over those of the Big Banks. Let's finally start policing Wall Street. Vote "yes."

Mr. BLUMENAUER. Madam Chair, like many pieces of major, ground-breaking legislation, today's product is a hybrid, combining some good with some questionable provisions. On balance, I think the product is positive and begins a step towards reorienting the protections in our financial system to deal with families, consumers, and the integrity of our institutions. The potential meltdown we faced last fall, the bursting of an unsustainable housing bubble, and radically flawed and abusive financial practices are among the many sources to blame. So, unfortunately, were a too lax financial regulatory system and Federal Reserve that in too many cases enabled reckless behavior.

There's plenty of blame for past administrations and Congresses that were too interested in the collection of special interests to appropriately protect the public interest. To be sure, some of this blame rests at the footsteps of American consumers, a few of whom actually abused the system themselves, too many of whom were simply uninformed or did not exercise their own due diligence. On balance, it was the system that failed and we are all paying the price and will for years to come.

This legislation, while the result of a number of compromises, is an important step towards rebalancing priorities and strengthening the protective institutions. I voted in favor of this as a symbol of support for a longer-term process of reform. This is the launch of an extensive process, and it represents a landmark.

Passing the most significant reform bill in decades is an accomplishment that I hope will lead to productive action from the Senate, legislation the President can sign, and, most important, a commitment to continue the process of protection and reform to strike the right balance—legislation and a regulatory process

that protects citizens with a touch as light as possible while still being able to do the job. Hopefully, this will inspire everybody—in Congress, in the administration, in the regulatory agencies, in the industry, and in American homes—to play the roles that only they can assume so that the horrific abuses of the financial system become a distant memory.

Mrs. MCCARTHY of New York. Madam Chair, I would like to thank Chairman FRANK and his staff for working with me on a clarification included in the Manager's Amendment. The provision addresses how the Financial Services Oversight Council and the Federal Reserve should interact and supervise financial holding companies that do not own banks, but which are subject to stricter standards because the Council has found them to be systemically risky.

The provision requires the Federal Reserve to be flexible when applying the standards to non-bank holding companies, rather than using a bank-centric approach that may not be appropriate for their structure. In addition, the Federal Reserve will have to consult with the Federal Insurance Office when determining how best to supervise insurance companies that are subject to stricter standards. For companies that are also foreign-based, the Federal Reserve and the Oversight Council must take into consideration if the company has comparable home-country supervision and decide how best to coordinate with that supervision. These minor clarifications help to ensure that institutions which are not banks will not be forced to comply with regulations that do not fit their business structure.

The beauty of the U.S. financial system is diversity, both in products and in structure. It is important to preserve that diversity for the purpose of domestic and international competition. I thank Chairman FRANK for his willingness to incorporate these changes into the manager's amendment.

Mr. TIAHRT. Madam Chair, on June 30, 2009, the Obama Administration released details of its proposal to establish a Consumer Financial Protection Agency as an independent agency in the executive branch to regulate the provision of financial products and services to consumers. Five months later, Congressman FRANK, Chairman of the House Financial Services Committee, has turned this proposal into a 1,300-page bill that further extends the federal government's hands into more aspects of our economy.

I oppose this legislation for several reasons. One, it will permanently extend the Troubled Assets Relief Program (TARP)—something that I've been actively trying to end. I recently introduced legislation that will effectively end TARP by eliminating the Treasury Secretary's authority to utilize this program. This bill also creates another czar—a Credit Czar. This unelected official is granted the authority to restrict access to credit and impose taxes on consumers and small businesses.

These reforms will continue to perpetuate the bailout mentality that has plagued our Nation and eliminate access to credit for many small businesses and families at a time when they need it most.

One of the most troubling aspects of this bill is the vague, subjective standards that non-financial companies must meet. One such ex-

ample of the bill's vagueness is found in the definition of businesses that engage in "financial activities" and those that pose a "systematic risk" to the stability of the financial market.

A business that engages in "financial activities," is now subject to increased regulations and fees. Exactly who comes under this definition, however, is not that clear. Maybe this will fall under the new "Credit Czar's" job description. Nonetheless, this bill will drastically affect businesses, specifically non-financial businesses that had no part in the irresponsible decisions that lead to the market collapse in 2008.

Vague definitions expose non-financial businesses that utilize the commodity and derivatives markets to manage risk and plan for the future. These markets, which date from the 1980s, involve hedgers. Hedgers, producers or commercial users of commodities, trade in futures to offset price risk. They use the markets to lock in today's price for transactions that will occur in the future, shielding their businesses from unfavorable price changes.

This bill restricts the use of these practical business tools. These practical tools encourage job creation and provide customized hedges to help businesses like farmers, grocery stores and energy companies to manage price volatility, so that retail prices can remain low and stable. Yet H.R. 4173 authorizes government regulators to arbitrarily impose capital and margin requirements for "over the counter" (OTC) derivatives, and impose new capital requirements for cleared swaps, which would lead to increased retail prices and make it less likely that corporations could engage in responsible risk management.

Companies that utilize these markets to shield themselves from future risk and uncertainty in the energy markets should not be penalized for planning ahead. Unless the definition of "financial activities" and others like it are changed, companies who have not contributed to the market collapse will be required to shell out large sums of money as security for increased regulations. This will no doubt drive up operational costs and increase the price of energy.

In the midst of continuing economic turmoil, this bill increases the size of government, expands its reach in the marketplace, jeopardizes the safety and soundness of many of America's financial companies and non-financial companies, and significantly increases the cost of credit for all consumers at a time when consumers can least afford it.

For the above reasons, I am opposed to this bill. I encourage my colleagues to vote no.

Mr. KUCINICH. Madam Chair, I rise today in opposition to H.R. 4173. Although I am supportive of the Consumer Financial Protection Agency as well as other provisions in the bill, ultimately I do not think H.R. 4173 adequately addresses the causes of the financial crisis, and I do not believe the reforms are sufficient to prevent another financial crisis from occurring.

In testimony before the Committee on Financial Services earlier in the year, Dr. Robert Johnson of the Roosevelt Institute stressed that reform of the derivatives markets is absolutely central to fixing the financial system. In fact, he went so far as to say that without strong and comprehensive derivatives reform,

any effort to address the problem of systemic risk would be rendered impotent.

H.R. 4173 makes some progress toward regulating derivatives by establishing regulations for clearing and regulating over-the-counter derivatives; however the bill—especially in light of the House's adoption of the Murphy amendment—contains a number of loopholes that sophisticated financial industry insiders will exploit with ease. For example, the Murphy amendment's expansion of the exemption of derivatives users, jeopardizes the integrity of the whole reform. As Dr. Johnson said in his testimony, the challenge is to "[pre-serve] as much scope for deriving value from derivative instruments for end users without making the definition of end user so broad that it allows large scale financial institutions to effectively continue their unregulated OTC practices and at the same time assures that end users do not themselves, through loopholes, contribute to a weakening of the integrity of the financial system." H.R. 4173 does not accomplish this.

Credit rating agencies were also at the heart of the financial crisis. It was their bogus ratings on opaque securitizations and other financial products that fueled the asset bubble, and it was the fundamental conflict of interest in their "issuer pays" business model that strengthened their position in the industry.

Unfortunately H.R. 4173, rather than address the fundamental conflict of interest in the "issuer pays" model, instead sidesteps the issue and gives the Securities and Exchange Commission more authority to mitigate conflicts of interest. The years leading up to the financial crisis, however, taught us some very important lessons regarding the enforcement authority of the SEC: when officials at the Agency operate with a philosophical disagreement with its mission, it does not matter what tools they have; they simply will not use them. In the interest of long-term, systemic reform, H.R. 4173 should have directly addressed this problem.

As everyone knows, another major cause of the crisis was gargantuan, systemically-inter-related institutions headed by shortsighted executives that scarcely had a notion of their complexity. H.R. 4173 attempts to address "too big to fail" by creating a resolution authority for unwinding and dissolving large institutions that have failed. Simply put, too big to fail is too big to exist. Real financial reform would include prohibiting financial institutions from metastasizing to the point where they threaten the whole system. Real reform would also include limits on interconnectedness and risk. In the words of Nobel laureate Joseph Stiglitz, "Such an approach won't prevent another crisis, but it would make one less likely—and less costly if it did occur."

Yet another cause of the financial crisis was the contagion that spread from the \$8 trillion housing bubble that burst. The housing bubble was fueled by predatory and subprime mortgages that were securitized on a massive scale. The manager's amendment included language from H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, and I applaud Chairman FRANK for acknowledging the importance of including this legislation. The manager's amendment also included \$1 billion for the Neighborhood Stabilization Pro-

gram to help communities address the problem of abandoned and foreclosed properties. My Domestic Policy Subcommittee did important work on how to target this federal assistance most effectively, I was glad to see its inclusion, and I supported the manager's amendment.

Curiously absent from H.R. 4173, however, is real reform of the process of securitization or any acknowledgement whatsoever that the federal government, through interventions at the Federal Reserve and the Treasury, is the securitization market right now. H.R. 4173 would only require that securitizers retain 5 percent of their assets, called "skin in the game." However, regulators would have the power to raise that amount, but only to 10 percent, and could also eliminate it altogether. This would hardly act as a deterrent to what has become an abused practice. Securitization, done wisely and thoughtfully, is vital to our economy; however by failing to address this issue H.R. 4173 simply allows the abuse of securitization to continue.

There is no reform of the government-sponsored enterprises (GSEs) that subjugated the "public good" aspect of their missions to the demands of their investors for higher profits.

Finally, H.R. 4173 does not fix the problem caused by the conflict of interest in the Federal Reserve's dual mandate. I applaud the efforts of my colleagues RON PAUL and ALAN GRAYSON to include in the bill the authority of the Government Accountability Office to conduct audits of the Federal Reserve, but the financial crisis—and the government's extraordinary response—taught us monetary policy and regulatory policy must be exclusive. Relying on one entity to conduct both activities so vital to a healthy financial system will inevitably give rise to conflicts of interest. This bill, however, further conflates these policies at the Fed by giving the Fed more regulatory authority.

H.R. 4173 cannot be the end of this process, but I fear passage of this bill will preclude further consideration of financial reform. If Congress rests on the laurels of H.R. 4173, we will be back here sooner rather than later to debate the same issues all over again. I look forward to continuing efforts to enact real, comprehensive reform of the financial services industry.

Mr. DEFAZIO. Madam Chair, I rise to express my concerns over the legislation before us. H.R. 4173, The Wall Street Reform and Consumer Protection Act, takes steps to address many of the problems that created our current financial crisis. However, I am alarmed at a number of provisions that weaken the bill.

The creation of a Consumer Financial Protection Agency is long overdue. Consumers need a strong advocate to protect them from the many questionable and confusing financial products offered. However, provisions put in by the banking industry to preempt meaningful state regulation threaten the strong consumer protections we are fighting for. Federal rules promulgated by this agency should set a floor of protection, not a ceiling.

Title III, pertaining to regulation of derivatives, could have been improved by amendments offered that banned certain abusive derivatives from being traded and offered better transparency to the swap market. Unfortu-

nately, those commonsense amendments were defeated. Other amendments that created more loopholes in the derivatives markets were unfortunately included.

I was also disappointed that several amendments I cosponsored were denied an up or down vote. The Inslee/DeFazio/Hinchey "Too Big to Fail" amendment set a cap on the size of bank liabilities for financial institutions. Instead of relying on regulators to protect us from financial firms laden with risky investments, this amendment simply breaks up companies with excessive liabilities. The Hinchey/Inslee/Conyers/DeFazio/Tierney amendment would restore key protections from the Glass Steagall Act including the separation of commercial and investment banking.

Furthermore, I opposed the Republican Motion to Recommit because it struck all financial reform from the bill, and would have ended the TARP program at the most inopportune time. I have long opposed the TARP program because it bailed out Wall Street for excessive risk taking at taxpayer expense. Now that Wall Street has been bailed out, the major problem facing Americans is rising unemployment. We should redirect the remaining TARP funds to real job creation on infrastructure because that will get people back to work quickly, rebuild critical infrastructure, and these jobs cannot be exported overseas. Wall Street got its bailout, now it's time to jumpstart American job creation.

I was a strong opponent of financial deregulation legislation in the 1990s. This undermined our financial regulators and gave Wall Street the opportunity to make the risky speculative bets that it lost big on. Reversing this trend is essential; therefore I plan to vote in favor of this legislation to move the process forward. I am eager to see what emerges from the Senate as they continue their debate on financial reform. I am hopeful that this legislation moves us back to responsible regulatory oversight. It is important that we rein in the cowboy capitalism that has too long prevailed in our financial markets.

Mr. CONYERS. Madam Chair, last fall we witnessed the greatest financial collapse in American history since the Great Depression. As Main Street recovers from Wall Street's excesses, we must reexamine the laws that govern banks and other financial institutions and hold them accountable for their actions. The collapse of our economy shows the need for tough new regulations. Today, the House will vote on H.R. 4173, Wall Street Reform and Consumer Protection Act of 2009, a bill authored by Chairman FRANK that aims to rein in the titans of finance's excesses and protect consumers from unfair and abusive practices.

The bill being considered today creates the Consumer Financial Protection Agency (CFPA) with the sole mission of protecting consumers from financial products and services. Banks, subprime mortgage companies, pay day lenders, and money transmitters will be under the supervision of the CFPA. The new agency will stop unfair, deceptive and abusive consumer financial products and services.

During the last bubble, executives at banks took on more risk because risk was profitable. No one paid much attention to what would happen when the speculation bubble burst.

Today's bill will amend this practice by allowing shareholders of public companies to have an annual, nonbinding "say on pay" vote on compensation packages for executives. Federal regulators will be authorized to ban any inappropriate or risky compensation practices that pose a threat to the financial system and to the broader economy.

I am concerned this legislation does not go far enough. Specifically, today's bill will focus on empowering our financial regulators to manage and mitigate some level of "acceptable risk" within the present system, instead of correcting the structural flaws that make a collapse likely to recur. As a result, I am an advocate of a modernized Glass-Steagall act which would mandate that America's banking sectors and investment houses need to remain separate to prevent banks from gambling on the stock market with our savings.

Moreover, I am worried that consumers will not be allowed to address their grievances with financial institutions and banks through the CFPA. Banks rarely directly violate specific federal rules, but the same cannot be said for some of the smaller nonbank lenders, brokers, and other individuals and entities who will be governed by CFPA rules. Violations by smaller actors are less likely to be worth the investment of resources for a federal agency enforcement action, or even one by a state AG, but they can have a devastating impact on individuals nonetheless. Individual remedies are essential to holding all violators accountable and providing incentives for everyone to comply. The Federal Trade Commission received 78,000 complaints against debt collectors last year and took only 3 enforcement actions. Consumers must be able to stand up and defend themselves and hold wrongdoers accountable if CFPA rules are violated. For over 200 years, it has been a fundamental tenet of American law, derived from our Anglo-Saxon heritage, that "for every right, there's a remedy." The concept is commonsense: wrongdoers who violate laws should be accountable to those they injure.

Madam Chair, even with all of the legislation's weak points, the Wall Street Reform and Consumer Protection Act makes great strides to shield Americans from the despotic behavior of Wall Street. I urge my colleagues to support today's bill.

Mr. OBERSTAR. Madam Chair, I rise in strong support of the Wall Street Reform and Consumer Protection Act. This legislation will protect consumers, end the concept that an institution is "too big to fail", and ensure that the American people never again have to be the lifeline for failing Wall Street firms.

The failure of President Bush and a Republican Congress to regulate financial markets and to reign in excessive greed has had devastating consequences for families in northeastern Minnesota and across this country. In short, we have lived through the worst financial crisis since the Great Depression. Irresponsible lending and bets by speculators against the housing market led to a mortgage meltdown that sent the Nation into a deep recession. By the fall of 2008, the failure of major Wall Street firms put in jeopardy our entire economy and threatened jobs in every community. Families watched as the value of their college and retirement investments were

decimated. Excessive greed threatened the very livelihood of most Americans.

As families in my district have been facing layoffs, stagnant wages, and reduced hours, the greed of Wall Street has shown no restraint. Last year, the Nation's nine largest banks ran up more than \$81 billion in losses, and they accepted tens of billions of dollars in emergency aid from taxpayers. The culture of Wall Street led these institutions to respond with more than \$33 billion in bonuses. Where else is such reckless performance so highly rewarded?

Today, the House takes a bold step towards changing the rules of Wall Street. In the e-mails and phone calls that I have received from across Minnesota, my constituents have sent a resounding message. They work hard to earn their pay, to pay their bills, and hopefully, to have a little left over at the end of the month. They play by the rules, and expect others to do the same. This legislation places Wall Street under some of the common-sense rules that people on Main Street live by every day. That means no institution is "too-big-to-fail", failure will not earn a taxpayer-funded bailout, speculators will no longer be able to hide behind an unregulated marketplace, shareholders will be given a say on executive compensation, and consumers will be protected from confusing and abusive financial products.

My constituents have asked me to focus on creating jobs. This legislation is part of that effort, and I am pleased to support this necessary reform.

Mr. GARAMENDI. Madam Chair, I rise today in strong support of this bill.

Listening to this debate, it amazes me how short the memories are of some of my colleagues on the other side of the aisle. Our financial sector collapsed and millions of Americans lost their jobs and their savings because Wall Street knew it could get away with just about anything under the previous administration.

Today, with this vote, I'm proud to say no more. No more to abusive lending practices, no more to loopholes that allow billions of dollars between large firms to go unregulated, no more to a system that prioritizes short term profit in one sector over the long term health of an entire economy.

Under this legislation, consumers will finally have a Federal regulator with teeth ready to battle predatory financial firms. We will stop financial conglomerates from becoming 'too big to fail' and provide legal and financial assistance to homeowners and renters trying to save their homes. For the first time in U.S. history, we will regulate the over-the-counter derivatives marketplace, where millions of contracts between large banks have gone unregulated for years. We are also requiring most private equity and hedge fund advisors to register with the Securities and Exchange Commission and expanding the SEC's staff and antifraud capabilities. We also require full disclosure of financial firms' compensation structures and give shareholders the opportunity to give an advisory vote on executive compensation practices. With millions of Americans unemployed, including tens of thousands in my district, we can't afford further delay on this important package.

For 8 years as California's Insurance Commissioner, I regulated the largest financial industry in America: the insurance companies. The insurance companies had one commandment: thou shalt pay as little as possible as late as possible. Many in finance have their own commandment: thou shalt build up thy house of cards as fast as possible as profitably as possible without consideration of the long term consequences. The games have to stop; it's time we created an economy that focuses on the needs of Main Street, not just Wall Street.

Mr. SHERMAN. Madam Chair, I would like to speak about a provision I authored that was included in the manager's amendment. The provision provides that a Nationally Recognized Statistical Rating Organization shall be liable if it is grossly negligent in determining a credit rating. My intention in drafting this provision was only to impose potential liability on ratings provided pursuant to a contract with the issuer of the debt. Nationally Recognized Statistical Rating Organizations that provide ratings solely for the purpose of journalism, without being paid by the issuer, do not face potential liability under this provision.

Mr. LANGEVIN. Madam Chair, I rise in strong support of H.R. 4173, the Wall Street Reform and Consumer Protection Act, which will rebuild our economy and crack down on Wall Street to prevent another economic collapse caused by institutions that are "too big to fail."

Over the past year, I, like many Rhode Islanders, have been angered by the greed exhibited by Wall Street and other companies that took advantage of their investors, preyed on our constituents, and rewarded executives with outrageous pay packages. With this bill, consumer protection will come first, and irresponsible companies will be held accountable for their actions.

H.R. 4173 establishes the Consumer Financial Protection Agency, which will protect families and small businesses by ensuring that bank loans, mortgages, credit cards and other financial products are fair, affordable and transparent. Merchants will be excluded from the oversight of the CFPA, and small banks and credit unions will not be subject to undue regulatory burdens. However, the CFPA will play a backup role if the primary regulators fail in their oversight responsibilities.

This measure also establishes an orderly process for dismantling large, failing financial institutions like AIG or Lehman Brothers, which will protect taxpayers and prevent collapse throughout the rest of the financial system. These large institutions will pay into a fund that will be tapped if a company faces dissolution. There will be no more taxpayer bailouts for these "too big to fail" institutions.

Additionally, H.R. 4173 responds to the failure to detect frauds like the Madoff scheme by ordering a study of the entire securities industry. This measure will also increase investor protections by strengthening the Securities and Exchange Commission and boosting its funding level. For the first time ever, the over-the-counter derivatives marketplace will be regulated under this bill and hedge funds will have to register with the SEC. It also takes steps to reduce market reliance on the credit rating agencies and impose a liability standard on the agencies.

I would like to thank the committees for their work on this bill, and especially want to thank Chairman FRANK for his leadership on this strong reform measure. I encourage all my colleagues to vote for this bill.

Mr. VAN HOLLEN. Madam Chair, I rise in support of the Wall Street Reform and Consumer Protection Act of 2009 and the comprehensive approach it takes to reining in systemic risk, curbing excessive speculation and restoring transparency, accountability and oversight to our financial system.

In the wake of the worst financial crisis since the Great Depression, the Democratic majority has launched a series of deliberate and wide-ranging initiatives to stem that crisis—and those initiatives are clearly working.

Our economy is no longer in free fall. Markets are sharply up. Foreclosures are starting to come down. The vicious spiral of job destruction we inherited from the past Administration is now slowing.

We know we are headed in the right direction—but we also know there is more work to do. We will not stop until our economy has fully recovered, there is a good-paying job for every American who wants one, and we have launched a new era of broadly shared American prosperity.

This legislation represents the next step on our nation's road back to recovery. To make sure we never have another AIG, this bill establishes a Financial Stability Council charged with the exclusive mission of identifying and regulating systemic risk. In the future, a Systemic Dissolution Fund will be able to safely wind down failing firms so that taxpayers aren't left holding the bag. To protect consumers, today's legislation creates a new Consumer Financial Protection Agency to police our markets for abusive financial products and services. We are bringing transparency and oversight to our derivatives markets. Investors will get a better shake, credit rating agencies will face reforms and shareholders will get a "say on pay."

I want to commend Chairman FRANK, Chairman PETERSON and their staffs for their hard work on this legislation. I urge my colleagues' support.

Mr. HOLT. Madam Chair, I rise in support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, and to commend Chairman FRANK, Chairman PETERSON, and the broad coalition of Members who have worked to craft this financial services reform legislation.

The American Recovery and Reinvestment Act was an important first step, but we are still in the throes of recovery from the worst financial crisis since the Great Depression, which was caused in large part by more than a decade of regulatory failures. Reckless, abusive and irresponsible practices on the part of some in the mortgage issuance and financial services industries combined to create a perfect storm, resulting in a catastrophic economic collapse. The country had fallen into recession by the end of 2007, which exploded into an economic crisis as the subprime mortgage crisis unwound, Lehman Brothers filed for bankruptcy and AIG collapsed.

The impact on the American people has been profound. Household net worth dropped by more than \$14 trillion from 2007 to mid-

2009, the value of retirement assets dropped by 22 percent between 2006 and in mid-2008, total home equity dropped from \$13 trillion in 2006 to \$8.8 trillion by mid-2008, and as of today, almost one in four homeowners owes more on their mortgage than their home is worth. In addition, Americans in every income strata have simply not been protected from even the most egregious behavior. The Securities and Exchange Commission utterly failed to discover and prevent the collapse of a \$65 billion Ponzi scheme, as well as several others which also resulted in billions in losses to investors. Meanwhile, millions of Americans who live paycheck to paycheck and rely on payday loans are being charged annual interest rates of 400 percent or more, totaling nearly \$5 billion per year.

The Wall Street Reform and Consumer Protection Act is an aggressive and comprehensive response to the broad spectrum of problems the recent economic crisis brought to light. It creates a new Consumer Financial Protection Agency to ensure that bank loans, mortgages, payday loans, overdraft fees and credit card policies are fair, affordable, understandable, and transparent. It establishes a new Financial Services Oversight Council to monitor and respond to systemic risk, to prevent the sort of tidal wave of catastrophic interconnected developments that brought down the economy in 2008. It puts measures in place to ensure that there will never again be a company deemed "too big to fail," and it establishes an industry-funded dissolution fund to ensure that taxpayers will not be asked to bail out any such company if it goes into collapse. The bill also includes legislation passed in the House earlier in the year, to regulate the type of incentive-based executive compensation that provoked some of the riskiest and most reckless behavior in the financial services markets, and to prohibit the sorts of fraudulent and abusive mortgage issuance practices that caused the subprime mortgage crisis.

I am also pleased that the bill includes several strengthening amendments I offered, and I thank Chairman FRANK again for his support of those amendments and for including them in the Manager's Amendment. My amendments would clarify that the newly-created Financial Services Oversight Council, rather than one dominant member thereof (the Federal Reserve Board), is the systemic risk regulator empowered under the Act. The amendments would also ensure that the Council is a broad-minded think tank staffed equitably by all of its Voting Members, rather than predominantly by one (the Department of the Treasury). The staff would remain on the payrolls of the detailing agency, pre-empting a budgetary problem for the Council.

In addition, the bill includes two good government amendments I offered, which clarify that financial companies cannot be compelled by the systemic risk regulator to waive any privilege (such as attorney-client privilege) when providing data at the request of the systemic risk regulator, and that the same protection against compelled waiver of privilege applies to private funds, investment advisors and others. In times of crisis and crisis response, we must exercise heightened diligence in protecting and preserving our foundational rights and principles.

The Committee has taken bold steps to confront the failures of our financial services regulatory system, and I urge my colleagues to support this bill.

Mr. KIND. Madam Chair, I rise today in support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009.

Over the past year, we became aware of many financial practices which were abusive and reckless. We're putting an end to those practices and making "too big to fail" a thing of the past. Americans will no longer be responsible for the bad business calculations and irresponsible behavior that almost brought down our entire economic system. This bill effectively ends the notion of a government guarantee by allowing large, systemically risky institutions to fail at their own expense and in a way that doesn't jeopardize the whole U.S. financial system.

The legislation holds Wall Street accountable through increased transparency and regulation of risky practices. A new systemic risk regulator will monitor financial activity across the whole sector to identify risks and irresponsible behavior and prevent them from becoming a problem for individual investors and the entire economy. The bill also establishes an orderly process for dismantling large, failing companies—at their own expense, and requires that stockholders and executives take a financial hit if risky deals fall through, ensuring an end to taxpayer funded bailouts.

This bill effectively reforms our financial system without unduly restricting appropriate risk-taking. This is pro-business, anti-bailout legislation that aims to address the flaws in the current system in a targeted manner to minimize the burden on those who did not cause the crisis, like Community Banks and Credit Unions—most of whom will be exempt from additional oversight by the Consumer Financial Protection Agency, CFPA.

We are addressing the fractured oversight that exists in our current system. In creating a Consumer Financial Protection Agency, we will establish a baseline for consumer financial protection and target the appropriate financial institutions. If we are willing to demand that products used by our children are reviewed for safety, we should demand appropriate oversight for the financial products we use to pay for their college. More broadly, the CFPA will ensure that all consumers have a watchdog to protect them against financial institutions engaging in abusive or deceptive practices.

This bill focuses on reforming the system so that we maximize the good and minimize the harm, and I am proud to support it.

Mr. STUPAK. Madam Chair, years of abuse on Wall Street, manipulation of our financial markets and expansion of regulatory loopholes have harmed American consumers and businesses, leading to the global financial disaster last fall. As the U.S. House of Representatives sought to craft aggressive financial regulatory reforms, I worked with the relevant Committee Chairmen and Democratic leadership to end the abuses that have allowed Wall Street to profit at the expense of American consumers for far too long.

Unfortunately, H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, falls short of ending the practice of Wall Street speculators, big banks and the nation's largest

financial houses (Goldman Sachs, J.P. Morgan, Morgan Stanley, Bank of America and Citigroup) operating outside the watchful eye of federal regulators. Because this bill does not put an end to many of these abuses, I must oppose H.R. 4173.

As chairman of the Energy and Commerce Subcommittee on Oversight and Investigations, I have led a three-year-long investigation into the role speculators play in driving up the cost of energy. What we have learned from our investigation can be applied across the energy, commodity, and financial markets: As long as loopholes exist, speculators will manipulate markets and consumers will pay the price.

I fought for and made part of the American Clean Energy and Security Act regulatory reform for the energy and carbon markets. The provisions found in the Prevent Unfair Manipulation of Prices, PUMP, Act of 2009 should have served as a starting point for further reform of the unregulated over-the-counter derivatives markets known as "dark markets." Unfortunately, this legislative precedent and my amendments were ignored in favor of big money interests on Wall Street. But those of us who have spent time working on this issue know true regulatory reform cannot occur without bringing transparency to all markets and subjecting all financial transactions to federal oversight.

Therefore, I offered two amendments to H.R. 4173 to close loopholes and bring strong reform to the unregulated "dark markets." The first amendment required all trades to occur on an open marketplace, effectively bringing an end to "dark markets" so regulators could see the transactions. This most fundamental reform would have brought sunshine to the largest unregulated financial sector of our economy. For example, trades on the regulated markets totaled \$80 trillion in 2008 while trades on the unregulated "dark markets" accounted for \$600 trillion, or 41 times the size of the entire U.S. economy. Regulators could not view the transactions, the contracts or the financial terms of these trades.

As Commodity Futures Trading Commission, CFTC, Chairman Gary Gensler noted in a letter supporting my amendment, "As a nation, we do not stand for this lack of transparency in other markets." Staunch opposition from Wall Street led to the amendment's defeat, despite Gensler's assertion that: "your (Stupak) amendment promotes the critical goal of promoting transparency without imposing any additional cost on business." Without providing our regulators the most basic tools they say they need to effectively monitor the markets, we cannot call H.R. 4173 a true reform bill.

My second amendment narrowed a loophole that banks and large financial houses use to avoid regulation, prohibited credit default swap contracts that threaten the stability of the financial markets, and prohibited illegal swap contracts from being considered valid in a court. A comprehensive financial regulatory reform bill has to close the loopholes that allow speculators to control the markets. In defeating my second amendment, speculators will be allowed to continue their abusive practices.

Defeating my second amendment was not Wall Street's only success in ensuring loop-

holes remain in place. Banks, large financial firms and speculators were able to push through an amendment authored by Congressman SCOTT MURPHY that widened the loophole banks can use to evade regulation.

Financial Services Committee Chairman BARNEY FRANK offered an amendment to ensure everyone trading in the markets has some "skin in the game" by requiring collateral be posted up front. The amendment was opposed by Wall Street and it ultimately failed.

Many parts of H.R. 4173 accomplish important financial reform, and I support efforts to protect consumers from predatory financial products and end taxpayer funded bailouts. The amendment process on the House floor offered the opportunity to strengthen the bill in a way that delivers true reform across all of our financial markets. Unfortunately, Wall Street succeeded in using this opportunity to weaken the bill and significantly dilute the impact the legislation would have on their practices.

If regulators cannot shine a light on "dark markets" and loopholes can be exploited by Wall Street, we are just a few years away from another economic crisis. Leaving "dark markets" unregulated, unchecked and unfazed allows speculators to dictate prices for goods ranging from gasoline to bread to life insurance, and leaves consumers vulnerable to these financial abuses.

Today "dark markets" operate like a casino, with a commercial business betting that the price of a product will move in one direction and a Wall Street bank betting against that price change. The only difference is that we actually regulate casinos. On Wall Street neither the company nor the bank are subject to regulation. Only the largest Wall Street banks know the price or volume of these trades, leaving federal regulators and consumers in the dark. H.R. 4173 does nothing to change this.

Leaving these markets to police themselves has resulted in the Federal Deposit Insurance Corporation, FDIC, taking over 133 banks so far this year, a record. When these markets implode, credit across the financial system freezes. Small businesses and farmers can't secure loans. Community banks, credit unions and businesses are threatened with insolvency, and ultimately employees and taxpayers are left out in the cold. H.R. 4173 attempts to bring regulation to these markets, but leaves loopholes and creates new ones that far outweigh any positive reforms in the bill.

I want to thank Congressman CHRIS VAN HOLLEN, Congresswoman ROSA DELAURO and Congressman JOHN LARSON for their strong support in working with me to try to strengthen this bill and bring true reform to Wall Street.

As H.R. 4173 moves through the legislative process, I will work with Senators MARIA CANTWELL, BERNIE SANDERS, BYRON DORGAN and others who have a shared interest in closing loopholes that remain a threat to our economy. It is imperative that the bill be strengthened in the U.S. Senate to rein in speculators and end the abusive practices of Wall Street's largest financial houses. I hope the Senate can accomplish these goals in the form of a final bill I can support.

I did not vote for the Wall Street bailout last year. Once again, I stood up to Wall Street's

reckless financial transactions. Now, we need more members of Congress to stand with me for effective regulatory reform. For I believe, in this one instance where doing too little is a far greater threat than doing too much.

Mr. CONYERS. Madam Chair, as the Chairman of the Judiciary Committee, I would like to highlight some of the contributions made by our Committee to this important legislation. The Committee considered over the course of several months a range of legal issues posed by this legislation, and held two days of hearings this fall on its bankruptcy and antitrust law ramifications—on October 22 in the Subcommittee on Commercial and Administrative Law, and on November 17 in the Subcommittee on Courts and Competition Policy. Below is a summary of some of the more significant provisions added to the legislation, or revised in it, at the request of the Committee.

#### BANKRUPTCY LAW

The bill's new emergency procedures for dealing with financial institutions posing imminent toxic danger to our Nation's financial system is an exemption from the bankruptcy laws in favor of a receivership managed by the Federal Deposit Insurance Corporation (FDIC). While appreciative of the need for the government to be able to act with dispatch when the stability of the entire financial system is in jeopardy, and while respectful of the considered judgment of the Treasury Department, the FDIC, and the Financial Services Committee to devise an approach outside the Bankruptcy Code for this purpose, the Judiciary Committee believes it is important to remain mindful of fundamental due process and equitable considerations that are embodied in bankruptcy procedure. The Committee has accordingly limited the availability and extent of this bankruptcy exemption.

First, because this departure from well-established bankruptcy procedures and protections is justified only in the exigencies of an extraordinary emergency threatening stability of the financial system, the Judiciary Committee added a new "purpose" section to the emergency dissolution title to mandate that there be a "strong presumption that resolution under the bankruptcy laws will remain the primary method of resolving financial companies, and the authorities contained in this subtitle will only be used in the most exigent circumstances." The Treasury Secretary is required to explain any determination that such an extraordinary emergency exists, to the House and Senate Judiciary Committees, along with other committees.

Our Committee also added provisions ensuring that bankruptcy remains available as the preferred option. There are new provisions authorizing the FDIC, at any time, with the approval of the Treasury Secretary and after consultation with the Financial Services Oversight Council, to convert an emergency receivership into a case under either chapter 7 or chapter 11 of the Bankruptcy Code, while clarifying that doing so will not affect any of the FDIC's powers with regard to any bridge financial company created under the receivership. Upon its appointment, and periodically during the receivership, the FDIC will be required to report to the House and Senate Judiciary Committees, as well as to other committees, why a receivership is necessary rather

than using bankruptcy, and the consequences for the rights of other creditors.

The Committee also added amendments to the Bankruptcy Code to clarify how a case brought by the FDIC proceeds, including authority for the FDIC to serve as trustee, with accommodations to certain trustee obligations in order to make it feasible for the FDIC to serve.

The Committee also adapted a number of key protections from the Bankruptcy Code into the FDIC's new dissolution procedure. These protections include:

Priority protection for unpaid wages and benefit plan contributions for employees of the financial company, who do not have the same recourse against their employer as business creditors have against the company.

Protection of collective bargaining agreements from repudiation by the FDIC, unless the FDIC determines repudiation is necessary for the orderly dissolution of the financial company, taking into consideration the cost to taxpayers and financial stability of the U.S.

Appointment of a consumer privacy advisor to protect the privacy of consumers whose personal information is in the possession of the financial company.

The Committee also directed the Government Accountability Office to undertake two studies and reports:

The first is a report in the event a financial company is taken into emergency receivership and assets are removed by the FDIC, on the extent to which claims against the company for violations of the Truth in Lending Act have been satisfied.

The other is a report on the "safe harbor" provisions for derivatives, swaps, and securities under federal law, that excludes them from bankruptcy and receivership proceedings, on how they have affected the ability of businesses to reorganize.

#### ANTITRUST LAW

One major impetus of this legislation is to address the problem faced last year by financial institutions that were deemed "too big to fail." The emergency efforts to deal with those institutions led to infusions of billions of federal dollars, and federal guarantees of billions more, putting the Treasury at significant risk.

But "too big to fail" has another aspect that places our nation at significant risk—and that is the potential danger to competition when the marketplace becomes concentrated in the hands of so few competitors that consumers no longer have meaningful choice, and the healthy influence of competition on price, quality, and innovation are lost.

It is important to the Judiciary Committee, as the Committee in charge of the laws protecting our economic freedoms against monopolization and other anticompetitive restraints of trade, that should our nation ever be faced with a similar financial system emergency in the future, that antitrust protections remain in place to ensure that our response does not leave us, when the dust clears, with an even more concentrated market, with companies that are even bigger, with more market power, and less responsive to the consumers they are supposed to serve.

Accordingly, the Committee revised the emergency FDIC dissolution procedures for financial institutions posing imminent toxic dan-

ger to the broader financial system, to ensure that any proposed sale of significant assets to a competitor that occurs after the initial urgency has passed would be subject to effective pre-merger antitrust review when warranted, under the procedure developed for reviewing sales of assets during a bankruptcy proceeding. This procedure expedites the initial review, while permitting the antitrust enforcement agency to extend the period when more information is needed to make its assessment. The Committee also clarified that the federal antitrust enforcement agencies would retain their legal authority to challenge a merger or acquisition that would harm competition in violation of the antitrust laws.

These changes balance the need for expeditious transfer of assets from a failing financial company to a safe new home with the imperative of preserving our competitive free market system.

The Committee also revised provisions in the title of the bill dealing with regulation of over-the-counter derivatives markets. Provisions in the legislation as introduced sought to prohibit entities involved in the derivatives markets from engaging in or facilitating anticompetitive conduct. These entities included derivatives clearing organizations, swap dealers, major swap participants, swap execution facilities, clearing agencies, security-based swap dealers, and major security-based swap participants. There was language in these provisions that appeared to create exceptions, and that the Committee was concerned might potentially be read to create exemptions from the antitrust laws.

The Committee revised these provisions to make clear that no antitrust exemptions are intended. In two instances, in parts of the derivatives title amending the Securities Exchange Act, the provisions were removed entirely. In three instances, in parts of the derivatives title amending the Commodity Exchange Act, the exception language was removed to make clear that the prohibitions apply without exception, and to further clarify that the antitrust laws remain fully in effect with respect to any conduct involved.

#### PRACTICE OF LAW

The Constitutional freedoms and legal rights we enjoy as Americans are ultimately protected in our courts, through the advocacy of attorneys who are licensed to practice before them. In keeping with these critical responsibilities, the activities of these "officers of the court" are regulated by the States, through government bodies, generally overseen by the State's highest court, with specialized expertise in the duties imposed by the code of legal ethics.

Accordingly, the Judiciary Committee revised the Consumer Financial Protection Agency Act title to clarify that the new agency is not being given authority to regulate the practice of law, which is regulated by the State or States in which the attorney is licensed to practice. The Committee further clarified that this is not intended to preclude the new agency from regulating other conduct engaged in by individuals who happen to be attorneys or acting under their direction, as long as the conduct is not part of the practice of law or incidental to the practice of law.

#### OTHER CONTRIBUTIONS

Other contributions by the Judiciary Committee include revisions to the Consumer Financial Protection Agency's new investigative authority to bring it closer into conformity with the Antitrust Civil Process Act, on which it is modeled; clarifications to the new revised procedures for FTC rulemaking in the unfair and deceptive acts or practices area, to bring them closer in line with the Administrative Procedure Act, as intended; clarifications to the FDIC's new rulemaking authority to ensure it is used in compliance with the Administrative Procedure Act; and revisions to the new authority for nationwide service of subpoenas by the Securities and Exchange Commission to ensure that the authority will be exercised consistent with due process.

Ms. MCCOLLUM. Madam Chair, I rise in strong support of the Wall Street Reform and Consumer Protection Act (H.R. 4173). This legislation will finally bring accountability to big banks and ensure families are protected from high-stakes Wall Street speculation. I thank Chairman FRANK, the House Leadership, and all of my colleagues who have worked to shape this important legislation.

It was one year ago that our country's financial system stood on the brink of collapse. The failure of large financial institutions such as Bear Stearns and Lehman Brothers quickly led to sinking home prices, a collapse in retirement savings, and job losses on a scale not seen since the Great Depression. Today this Congress faces a choice. We can cling to the failed policies of lax regulation that nearly drove our economy off a cliff, or take decisive action to prevent another crisis of this proportion by passing H.R. 4173.

This legislation combines eight separate reform measures into one comprehensive package. H.R. 4173 establishes a new Consumer Financial Protection Agency to protect Americans from unfair and abusive financial practices and to bring needed transparency and accountability to the financial system. It regulates the exotic debt instruments that contributed to the unraveling of our financial markets. And this bill reigns in Wall Street excess by banning egregiously high executive bonuses and giving shareholders input on executive compensation.

In addition, H.R. 4173 will put an end to "too big to fail" financial firms. American taxpayers should never again be called upon to rescue large financial institutions because their failure threatens to bring down the entire financial system. This legislation creates a Dis-solution Fund, paid for by the industry, which would be used to dismantle failing financial institutions in an orderly manner and without taxpayer assistance.

The Wall Street Reform and Consumer Protection Act is vital to our economic security because it will restore confidence in our financial system—an essential step toward rebuilding our economy. Although this bill is not perfect, my constituents and all citizens across the nation should recognize H.R. 4173 as a tremendous step in the right direction.

Once again, I thank Chairman FRANK for his leadership and I urge my colleagues to join me in supporting this important legislation.

Mr. FRANK of Massachusetts. I yield back the balance of my time.

The Acting CHAIR. All time for general debate has expired.

Under the rule, the Committee rises. Accordingly, the Committee rose; and the Speaker pro tempore (Mr. WATT) having assumed the chair, Ms. TITUS, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, had come to no resolution thereon.

### IMMIGRATION CREATES JOBS

(Mr. POLIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. POLIS. Mr. Speaker, I rise today to highlight a report just released by the Fiscal Policy Institute, a non-partisan research group, regarding the contributions of immigrants in the 25 largest U.S. metropolitan areas. The report makes official what we have known all along: Immigration and economic growth go hand-in-hand. That's right. Immigrants boost economic productivity and create jobs.

This has been true throughout our Nation's history. It's been true during boom times and during tough times. It's true yesterday, today, and tomorrow. Immigrants help our economy. Cities with a growing proportion of foreign-born workers have "well above average economic growth." Immigrants expand the labor and consumer markets and fuel growth.

In my home State of Colorado, immigrant workers and business owners have added billions of dollars and tens of thousands of jobs. The usual suspects will cry we lie with these facts. But their prejudices will no longer prey on our uncertainties. Thanks to this report, we can all say we know better. Together we can embrace comprehensive immigration reform, help our Nation recover, and create jobs for Americans.

#### IMMIGRANTS AND THE ECONOMY (From the Fiscal Policy Institute) EXECUTIVE SUMMARY

This report examines the economic role of immigrants in the 25 largest metropolitan areas in the United States. The results are clear: immigrants contribute to the economy in direct relation to their share of the population. The economy of metro areas grows in tandem with immigrant share of the labor force. And, immigrants work across the occupational spectrum, from high-paying professional jobs to low-wage service employment.

Immigrants contribute significantly to the U.S. economy. In the 25 largest metropolitan areas combined, immigrants make up 20 percent of the population and are responsible for 20 percent of economic output. Together,

these metro areas comprise 42 percent of the total population of the country, 66 percent of all immigrants, and half of the country's total Gross Domestic Product. This report looks at all U.S. residents who were born in another country, regardless of immigration status or year of arrival in the United States.

#### 1. IMMIGRATION AND ECONOMIC GROWTH OF METRO AREAS GO HAND IN HAND

An analysis of data from the past decade and a half show that in the 25 largest metropolitan areas, immigration and economic growth go hand in hand. That's easily understandable: Economic growth and labor force growth are closely connected, and immigrants are likely to move to areas where there are jobs, and not to areas where there are not.

Between 1990 and 2006, the metropolitan areas with the fastest economic growth were also the areas with the greatest increase in immigrant share of the labor force. The economies of Phoenix, Dallas, and Houston saw the fastest growth in immigrant share of labor force, while all showed well above average economic growth in these years and Phoenix experienced the fastest growth of all metro areas. By contrast, Cleveland, Pittsburgh and Detroit metro areas experienced the slowest economic growth and among the smallest increases in immigrant share of labor force.

Economic growth does not guarantee, however, that pay and other conditions of employment improve significantly for all workers. The challenge is to make sure that immigrants and U.S.-born workers struggling in low-wage jobs share in the benefits of economic growth.

#### 2. IMMIGRANTS CONTRIBUTE TO THE ECONOMY IN PROPORTION TO THEIR SHARE OF THE POPULATION

The most striking finding in the analysis of 25 metro areas is how closely immigrant share of economic output matches immigrant share of the population. From the Pittsburgh metro area, where immigrants make up 3 percent of the population and 4 percent of economic output, to the Miami metro area, where immigrants represent 37 percent of all residents and 38 percent of economic output, immigrants are playing a consistently proportionate role in local economies.

The Immigrant Economic Contribution Ratio (IECR) captures this relationship, measuring the ratio of immigrant share of economic output to immigrant share of population. An IECR of 1.00 would show that immigrants contribute to the economy in exact proportion to their share of the population; above 1.00 indicates a higher contribution than share of population and below indicates lower.

In over half of the largest 25 metro areas, the IECR hovers very close to parity, measuring between 0.90 and 1.10. In only three metro areas—Phoenix, Minneapolis, and Denver—does the IECR go below 0.90; in eight metro areas it is above 1.10.

Two main factors explain this close relationship. First, immigrants are more likely than their U.S.-born counterparts to be of working age. A higher share of the population in the labor force offsets cases where immigrants have lower wages.

Second, immigrants work in jobs across the economic spectrum, and are business owners as well. Although immigrants are more likely than U.S.-born workers to be in lower-wage service or blue-collar occupations, 24 percent of immigrants in the 25

metro areas work in managerial and professional occupations. Another 25 percent work in technical, sales, and administrative support occupations. In fact, in 15 of the 25 metro areas, there are more immigrants in these two higher-pay job categories taken together than there are in service and blue-collar jobs combined. And, immigrants are also entrepreneurs. Immigrants account for 22 percent of all proprietors' earnings in the 25 largest metro areas—slightly higher than their share of the population.

#### 3. FAVORABLE EARNINGS AT THE TOP OF THE LABOR MARKET; DIFFICULTIES AT THE BOTTOM

At the high end of the economic ladder, immigrants earn wages that are broadly comparable to their U.S.-born counterparts in the same occupations. Immigrants working in the professions—doctors, engineers, lawyers, and others—earn about the same as U.S.-born professionals in almost all metro areas. The same is true for registered nurses, pharmacists, and health therapists, and for technicians.

At the low-end of the labor market, wages can also be roughly similar for foreign- and U.S.-born workers. However, in service occupations, most workers have a hard time making ends meet. Both U.S.- and foreign-born workers earn well below the median in almost every service occupation examined in this report—including guards, cleaning, and building services; food preparation; and dental, health, and nursing aides.

The clear challenge for service jobs is to raise pay for all workers, U.S.- and foreign-born alike.

Some blue-collar workers are in a similar position, with both immigrants and U.S.-born workers showing low annual earnings. In certain blue-collar occupations, however, immigrant workers earn considerably less than their U.S.-born counterparts. In the 25 metro areas combined, for example, the median earnings for U.S.-born workers in construction trades is \$45,000, while the median for immigrants is just \$27,000. Although wages in blue-collar jobs have eroded in recent decades, in the early years of the post-World War II period several blue-collar occupations paid workers, primarily men without college degrees, family-sustaining wages. The discrepancy today between U.S.- and foreign-born earnings in these occupations thus presents a challenge: to raise all workers to the standard that has been set by some, as a means to improve pay for low-wage workers in the occupation and to protect higher-wage earners.

Unions have played an important role in raising pay in many areas, including some blue-collar jobs. By contrast, the relatively low unionization rate in service jobs helps explain the consistently low pay. Unions continue to play an important role in raising wages and equalizing differences in pay for all workers, documented or otherwise. Although undocumented immigrants are legally permitted to join unions, in practice unscrupulous employers have frequently found ways to take advantage of the status of undocumented workers to thwart their efforts.

In the 25 largest metro areas, the average unionization rate is lower for immigrants than for U.S.-born workers—10 percent compared to 14 percent. With immigrants playing a major role in the labor force, they are also playing a significant role in unions, making up 20 percent of all union members in the 25 largest metro areas.

A closer look at the five largest metro areas in the East—New York, Philadelphia, Washington, Atlanta, and Miami—reveals



that the same experience applies to them. Economic growth and immigration generally go hand in hand; immigrants work in all occupations; those in managerial, professional, and technical occupations fare relatively well, those in service and blue-collar jobs less so. Atlanta experienced the biggest growth in immigrant share of the labor force and the fastest growth in its overall economy.

THE POLICY CONTEXT

The current recession has pushed up unemployment, prompting some to feel that sharp restrictions on immigration would help the economy. But, creating a climate that is hostile to immigrants would risk damaging a significant part of the country's economic fabric. Immigrants are an important part of the economies of the 25 largest metro areas, working in jobs up and down the economic ladder. Immigration is highly responsive to demand—the immigrant share of the labor force increases with economic growth. Immigrants are part of the same economy as other workers, getting paid well in jobs at the top of the ladder and struggling in jobs in the economy's lower rungs.

While the immigrant labor force brings many benefits to the U.S. economy, it also presents political, economic and social challenges. This is especially true in the context of an extremely polarized economy, relatively low unionization rates, weak enforcement of labor standards, and a broken immigration system. Immigration has always been an important part of America's history, and it will continue to be a part of our future. Addressing these complex problems would be a better path for policymakers than wishing away immigration. This report presents an empirical look at the role of immigrants in the U.S. economy, in the hopes of informing a constructive public debate that will result in much-needed policy reform.

REVISION TO BUDGET ALLOCATIONS AND AGGREGATES FOR CERTAIN HOUSE COMMITTEES FOR FISCAL YEAR 2010 AND THE PERIOD OF FISCAL YEARS 2010 THROUGH 2014

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from South Carolina (Mr. SPRATT) is recognized for 5 minutes.

Mr. SPRATT. Madam Speaker, under section 325 of S. Con. Res. 13, the concurrent resolution on the budget for fiscal year 2010, I hereby submit for printing a revision to the budget allocations and aggregates for certain House committees for fiscal year 2010 and the period of fiscal years 2010 through 2014. This adjustment responds to House consideration of the bill H.R. 4213, the Tax Extenders Act of 2009. A corresponding table is attached.

This revision represents an adjustment for the purposes of sections 302 and 311 of the Congressional Budget Act of 1974, as amended. For the purposes of the Congressional Budget Act of 1974, as amended, this revised allocation is to be considered as an allocation included in the budget resolution, pursuant to section 427(b) of S. Con. Res. 13.

BUDGET AGGREGATES  
[On-budget amounts, in millions of dollars]

	Fiscal years—		
	2009	2010	2010–2014
Current Aggregates: <sup>1</sup>			
Budget Authority—	3,668,601–	2,882,149–	( <sup>2</sup> )
Outlays—	3,357,164–	3,002,606–	( <sup>2</sup> )
Revenues—	1,532,579–	1,653,728–	10,500,149
Change for Tax Extenders Reform Act (H.R. 4213):—			
Budget Authority—	0–	4,548–	( <sup>2</sup> )
Outlays—	0–	4,548–	( <sup>2</sup> )
Revenues—	0–	– 6,049–	4,688
Revised Aggregates:—			
Budget Authority—	3,668,601–	2,886,697	( <sup>2</sup> )
Outlays—	3,357,164–	3,007,154–	( <sup>2</sup> )
Revenues—	1,532,579–	1,647,679–	10,504,837

<sup>1</sup> Current aggregates do not include the disaster allowance assumed in the budget resolution, which if needed will be excluded from current level with an emergency designation (section 423(b)).  
<sup>2</sup> Not applicable because annual appropriations Acts for fiscal years 2011 through 2014 will not be considered until future sessions of Congress.

DIRECT SPENDING LEGISLATION—AUTHORIZING COMMITTEE 302(a) ALLOCATIONS FOR RESOLUTION CHANGES  
[Fiscal Years, in millions of dollars]

House Committee	2009		2010		2010–2014 Total	
	BA	Outlays	BA	Outlays	BA	Outlays
Current allocation:						
Ways and Means <sup>1</sup>	0	0	6,840	6,840	37,000	37,000
Change for Tax Extenders Reform Act (H.R. 4213):						
Ways and Means	0	0	4,548	4,548	4,574	4,574
Revised allocation:						
Ways and Means	0	0	11,388	11,388	41,574	41,574

<sup>1</sup> Does not include allowable adjustments for SGR.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BUYER (at the request of Mr. BOEHNER) for today after 8 p.m. and for the balance of the week on account of family medical reasons.

Ms. BALDWIN (at the request of Mr. HOYER) for today on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SCOTT of Georgia) to revise and extend their remarks and include extraneous material:)

Mr. DAVIS of Tennessee, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. LANGEVIN, for 5 minutes, today.

Mr. DEFazio, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. GRAYSON, for 5 minutes, today.

Mr. SPRATT, for 5 minutes, today.

(The following Members (at the request of Mr. GARRETT of New Jersey) to revise and extend their remarks and include extraneous material:)

Mr. SMITH of New Jersey, for 5 minutes, December 10.

Mr. POE of Texas, for 5 minutes, December 16.

Mr. JONES, for 5 minutes, December 16.

Mr. DEAL of Georgia, for 5 minutes, December 16.

Mr. PITTS, for 5 minutes, December 10.

Ms. FOXX, for 5 minutes, December 10.

ADJOURNMENT

Mr. SCOTT of Georgia. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 8 minutes a.m.), the House adjourned until today, Thursday, December 10, 2009, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from

the Speaker's table and referred as follows:

4948. A letter from the Acting Farm Bill Coordinator, Department of Agriculture, transmitting the Department's final rule — Wildlife Habitat Incentive Program (RIN: 0578-AA49) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4949. A letter from the Acting Farm Bill Coordinator, Department of Agriculture, transmitting the Department's final rule — Farm and Ranch Lands Protection Program (RIN: 0578-AA46) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4950. A letter from the Vice Chairman, Defense Nuclear Facilities Safety Board, transmitting the Board's Recommendation 2009-2, Los Alamos National Laboratory Plutonium Facility Seismic Safety; to the Committee on Armed Services.

4951. A letter from the Assistant Secretary, Department of the Navy, Department of Defense, transmitting notice of the completion of a public-private competition for identification card and administrative functions; to the Committee on Armed Services.

4952. A letter from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting the Department's final rule — Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations — Administrative Ruling System (RIN: 1506-AB03) received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

4953. A letter from the Secretary, Securities and Exchange Commission, transmitting the Commission's final rule — Regulation S-AM: Limitations on Affiliate Marketing; Extension of Compliance Date [Release Nos. 34-60946; IA-2946; IC-28990; File No. S7-29-04] (RIN: 3235-AJ24) November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

4954. A letter from the Secretary, Securities and Exchange Commission, transmitting the Commission's final rule — Final Model Privacy Form under the Gramm-Leach-Bliley Act [Release Nos.: 34-61003, IA-2950, IC-28997; File No. S7-09-07] (RIN: 3235-AJ06) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

4955. A letter from the Director, OSHA Directorate of Standards and Guidance, Department of Labor, transmitting the Department's final rule — Revising Standards Referenced in the Acetylene Standard [Docket No.: OSHA-2008-0034] (RIN: 1218-AC08) received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and Labor.

4956. A letter from the Department Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting the Department's final rule — Medical Device; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Cardiac Allograft Gene Expression Profiling Test Systems [Docket No.: FDA-2009-N-0472] received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4957. A letter from the Administrator, Environmental Protection Agency, transmitting a report entitled: "Mercury Compounds: Potential for Conversion to Elemental Mercury for Export"; to the Committee on Energy and Commerce.

4958. A letter from the Chief of Staff, Media Bureau, Federal Communications Commis-

sion, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Wheatland, Wyoming) [MD Docket No.: 08-3] received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4959. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Dubois, Wyoming) [MB Docket No.: 09-83] received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4960. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 2009-26: Eligibility of Economic Community of Central African States (CEEAC) to be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act, pursuant to 22 U.S.C. 2753(a); to the Committee on Foreign Affairs.

4961. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting weekly Iraq Status Reports for the August 15 to October 15, 2009 period; to the Committee on Foreign Affairs.

4962. A letter from the Chairman, Consumer Product Safety Commission, transmitting Fiscal Year 2009 Annual Performance Accountability Report; to the Committee on Oversight and Government Reform.

4963. A letter from the Chairman and President, John F. Kennedy Center for the Performing Arts, transmitting the Center's audited financial statements for the period ending September 28, 2008 and September 30, 2007, pursuant to 20 U.S.C. 761(c); to the Committee on Oversight and Government Reform.

4964. A letter from the Acting Director, Pension Benefit Guaranty Corporation, transmitting the Corporation's Annual Management Report for Fiscal Year 2009, as required under OMB Circular No. A-136, Section I.6, pursuant to 31 U.S.C. 9106; to the Committee on Oversight and Government Reform.

4965. A letter from the Acting Assistant Administrator, NMFS, Department of Commerce, transmitting the Department's final rule — Sea Turtle Conservation; Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic [Docket No.: 0910141365-91366-01] (RIN: 0648-AY21) received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

4966. A letter from the Director, Fish and Wildlife Service, Department of the Interior, transmitting the Department's final rule — Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Gray Wolf in the Western Great Lakes in Compliance with Settlement Agreement and Court Order [Docket No.: FWS-R3-ES-2009-0063] received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

4967. A letter from the Chief, Division of Scientific Authority, USFWS, Department of the Interior, transmitting the Department's final rule — Endangered and Threatened Wildlife and Plants; Listing the Chatham Petrel, Fiji Petrel, and Magenta Petrel as Endangered Throughout Their Ranges [FWS-R8-IA-2007-0021; 96100-1671-0000-B6] (RIN: 1018-AV21) received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

4968. A letter from the Attorney-Advisor, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Elizabeth River, Southern Branch, VA [Docket No. USCG-2009-0814] (RIN: 1625-AA09) received November 12, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4969. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Establishment of Class D and E Airspace and Modification of Class E Airspace; State College, PA [Docket No.: FAA-2009-0750; Airspace Docket No. 09-AEA-16] received November 13, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4970. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Amendment of Class E Airspace; Tioga, ND [Docket No.: FAA-2009-0504; Airspace Docket No. 09-AGL-7] received November 13, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4971. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Establishment of VOR Federal Airway V-626; UT [Docket No.: FAA-2009-0311; Airspace Docket No. 09-ANM-3] (RIN: 2120-AA66) received November 13, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4972. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Anniston, AL [Docket No.: FAA-2009-0653; Airspace Docket 09-ASO-22] received November 13, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4973. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Nantucket, MA [Docket No. FAA-2008-1253; Airspace Docket No. 08-ANE-103] received November 13, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4974. A letter from the Chief, Publications and Regulations Branch, Department of the Treasury, transmitting the Department's final rule — Margins and Other Unsubstantiated Additions to Insurance Company Reserves for Unpaid Losses and Claims received November 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

4975. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev. Rul. 2009-38) received November 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

4976. A letter from the Administrator, FEMA, transmitting the Department's report on the Preliminary Damage Assessment information on FEMA-1860-DR for the State of Kansas; jointly to the Committees on Appropriations, Transportation and Infrastructure, and Homeland Security.

4977. A letter from the Administrator, FEMA, transmitting the Department's report on the Preliminary Damage Assessment information on FEMA-1859-DR for the Territory of American Samoa; jointly to the Committees on Appropriations, Transportation and Infrastructure, and Homeland Security.

4978. A letter from the Administrator, FEMA, transmitting the Department's report on the Preliminary Damage Assessment

information on FEMA-1858-DR for the State of Georgia; jointly to the Committees on Appropriations, Transportation and Infrastructure, and Homeland Security.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. WAXMAN: Committee on Energy and Commerce. H.R. 3126. A bill to establish the Consumer Financial Protection Agency, and for other purposes; with an amendment (Rept. 111-367, Pt. 1). Order to be printed.

Ms. SLAUGHTER: Committee on Rules. House Resolution 961. Resolution providing for consideration of the conference report to accompany the bill (H.R. 3288) making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes (Rept. 111-368). Referred to the House Calendar.

Mr. HASTINGS of Florida: Committee on Rules. House Resolution 962. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 111-369). Referred to the House Calendar.

#### PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. GEORGE MILLER of California (for himself and Mrs. McMORRIS RODGERS):

H.R. 4247. A bill to prevent and reduce the use of physical restraint and seclusion in schools, and for other purposes; to the Committee on Education and Labor.

By Mr. PAUL:

H.R. 4248. A bill to repeal the legal tender laws, to prohibit taxation on certain coins and bullion, and to repeal superfluous sections related to coinage; to the Committee on Financial Services, and in addition to the Committees on Ways and Means, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. McHENRY:

H.R. 4249. A bill to establish a commission to develop legislation designed to reform entitlement benefit programs and ensure a sound fiscal future for the United States, and for other purposes; to the Committee on the Budget, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MELANCON (for himself, Mr. ALEXANDER, Mr. CAO, Mr. CASSIDY, Mr. BOUSTANY, and Mr. FLEMING):

H.R. 4250. A bill to direct the Secretary of Health and Human Services to revise regulations implementing the statutory reporting and auditing requirements for the Medicaid disproportionate share hospital ("DSH") payment program to be consistent with the scope of the statutory provisions and avoid substantive changes to preexisting DSH pol-

icy; to the Committee on Energy and Commerce.

By Mr. FILNER:

H.R. 4251. A bill to amend title 31, United States Code, to provide for payments in lieu of taxes for certain Department of Homeland Security land; to the Committee on Natural Resources.

By Mr. BACA (for himself and Mrs. NAPOLITANO):

H.R. 4252. A bill to direct the Secretary of the Interior to conduct a study of water resources in the Rialto-Colton Basin in the State of California, and for other purposes; to the Committee on Natural Resources.

By Mr. BUTTERFIELD:

H.R. 4253. A bill to amend the Small Business Act to change the net worth amount under the small business program for socially and economically disadvantaged individuals from \$750,000 to \$978,722, and for other purposes; to the Committee on Small Business.

By Ms. KAPTUR:

H.R. 4254. A bill to direct amounts derived from the repayment of TARP assistance to the Deposit Insurance Fund of the Federal Deposit Insurance Corporation to reduce the amount of any increase in premiums that would otherwise be required of smaller insured depository institutions and community banks whose prudent activities did not contribute to the financial crisis, and for other purposes; to the Committee on Financial Services.

By Mr. MITCHELL (for himself and Mr. PAUL):

H.R. 4255. A bill to prevent Members of Congress from receiving any automatic pay adjustment in 2011; to the Committee on House Administration, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. LINDA T. SÁNCHEZ of California (for herself, Mr. HELLER, Ms. BERKLEY, and Mr. NUNES):

H.R. 4256. A bill to amend the American Recovery and Reinvestment Tax Act of 2009 to allow specified energy property grants to real estate investment trusts without regard to the ratable share income limitations; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. TITUS (for herself, Ms. GIFFORDS, and Mr. HEINRICH):

H.R. 4257. A bill to amend the Energy Policy Act of 2005 relating to contracts for Federal purchases of renewable energy; to the Committee on Oversight and Government Reform.

By Mr. YOUNG of Alaska:

H.R. 4258. A bill to amend the Internal Revenue Code of 1986 to allow a business credit for donations for vocational educational purposes; to the Committee on Ways and Means.

By Mr. POE of Texas:

H. Res. 959. A resolution amending the Rules of the House of Representatives to prohibit the consideration of a regulation of individual activity disguised as a tax; to the Committee on Rules.

By Mr. POE of Texas:

H. Res. 960. A resolution expressing support for designation of January 2010 as "National Stalking Awareness Month" to raise aware-

ness and encourage prevention of stalking; to the Committee on the Judiciary.

By Mr. KILDEE (for himself, Mr. CAMP, Mr. CONYERS, Mr. DINGELL, Mr. EHLERS, Mr. HOEKSTRA, Ms. KILPATRICK of Michigan, Mr. LEVIN, Mr. MCCOTTER, Mrs. MILLER of Michigan, Mr. PETERS, Mr. ROGERS of Michigan, Mr. SCHAUER, Mr. STUPAK, and Mr. UPTON):

H. Res. 963. A resolution congratulating the Great Lakes Bay Regional Convention and Visitors Bureaus for securing the 2012 Region II United States Youth Soccer Association (USYSA) tournament; to the Committee on Oversight and Government Reform.

#### MEMORIALS

Under clause 4 of Rule XXII,

223. The SPEAKER presented a memorial of the Senate of the Commonwealth of Pennsylvania, relative to Senate Resolution No. 153 urging the U.S. Congress to exclude all youth all-terrain vehicles, off-highway motorcycles and snowmobiles from the provisions of the Consumer Product Safety Improvement Act of 2008; to the Committee on Energy and Commerce.

#### ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 25: Mr. SOUDER.

H.R. 272: Mr. LUETKEMEYER and Mr. WILSON of South Carolina.

H.R. 391: Mr. BOOZMAN, Mr. SOUDER, Mr. SESSIONS, Ms. JENKINS, and Mr. FLAKE.

H.R. 406: Ms. SLAUGHTER.

H.R. 571: Mr. PAULSEN.

H.R. 646: Mr. PETERSON.

H.R. 690: Ms. VELÁZQUEZ.

H.R. 775: Ms. ESHOO, Mr. UPTON, Mr. CARDOZA, and Mr. NEAL of Massachusetts.

H.R. 847: Mr. WALZ.

H.R. 930: Mrs. DAHLKEMPER.

H.R. 938: Mr. FRANK of Massachusetts.

H.R. 997: Mr. TIM MURPHY of Pennsylvania and Mr. BISHOP of Utah.

H.R. 1126: Mr. JACKSON of Illinois.

H.R. 1135: Mrs. DAHLKEMPER.

H.R. 1177: Mr. DAVIS of Kentucky and Ms. SHEA-PORTER.

H.R. 1193: Mr. GERLACH.

H.R. 1326: Mr. KILDEE, Mr. CROWLEY, Mr. HODES, Mr. OLVER, Mr. CUMMINGS, and Mr. LATOURETTE.

H.R. 1409: Mr. OWENS.

H.R. 1428: Ms. ZOE LOFGREN of California.

H.R. 1458: Mr. SMITH of New Jersey.

H.R. 1523: Mr. KENNEDY.

H.R. 1551: Mrs. DAHLKEMPER.

H.R. 1821: Mr. STUPAK.

H.R. 2085: Mr. FRANK of Massachusetts.

H.R. 2106: Mr. PLATTS.

H.R. 2194: Mr. HOLT.

H.R. 2254: Mr. KING of New York, Mr. NADLER of New York, Mr. OBERSTAR, Mr. PERRIELLO, Ms. MOORE of Wisconsin, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. CLARKE, Mr. BOOZMAN, and Mr. BISHOP of Utah.

H.R. 2262: Mr. YOUNG of Alaska.

H.R. 2308: Mr. MORAN of Virginia.

H.R. 2378: Mr. SCHAUER.

H.R. 2450: Mr. CARNY.

H.R. 2480: Ms. SLAUGHTER.

H.R. 2553: Mr. TEAGUE.

H.R. 2608: Mr. MORAN of Kansas and Mr. CRENSHAW.

H.R. 2698: Mr. TAYLOR and Mr. HILL.  
 H.R. 2699: Mr. TAYLOR.  
 H.R. 2799: Mr. HINOJOSA, Mr. TAYLOR, Mrs. MALONEY, Mr. HALL of New York, Mrs. KIRKPATRICK of Arizona, and Ms. RICHARDSON.  
 H.R. 2807: Mr. LIPINSKI and Ms. LEE of California.  
 H.R. 2829: Mr. JOHNSON of Georgia.  
 H.R. 2906: Ms. SCHAKOWSKY.  
 H.R. 2946: Mr. GUTHRIE, Mr. CLEAVER, and Mrs. CAPITO.  
 H.R. 3010: Mr. DELAHUNT.  
 H.R. 3044: Mr. BARTON of Texas and Mr. HOEKSTRA.  
 H.R. 3105: Mr. GARY G. MILLER of California.  
 H.R. 3129: Mr. OLSON and Mr. BOOZMAN.  
 H.R. 3212: Mr. CONYERS.  
 H.R. 3251: Mr. CHAFFETZ.  
 H.R. 3286: Mr. HODES and Ms. WOOLSEY.  
 H.R. 3359: Mr. BERMAN.  
 H.R. 3380: Mr. SCHAUER, Mr. UPTON, Mr. KILDEE, and Mr. MASSA.  
 H.R. 3393: Mr. MURPHY of New York, Mrs. BLACKBURN, and Mr. JONES.  
 H.R. 3486: Mr. MICA and Mr. SPACE.  
 H.R. 3531: Mr. PASTOR of Arizona and Mr. STARK.  
 H.R. 3554: Ms. HARMAN.  
 H.R. 3564: Mr. HARE and Mr. GONZALEZ.  
 H.R. 3586: Mr. FRANK of Massachusetts and Mr. PASCARELL.  
 H.R. 3589: Mr. PAYNE.  
 H.R. 3646: Ms. ROYBAL-ALLARD, Ms. CHU, Mr. HONDA, Mr. FARR, and Ms. BALDWIN.  
 H.R. 3699: Mr. FRANK of Massachusetts and Mr. PAUL.  
 H.R. 3712: Mr. QUIGLEY and Ms. FUDGE.  
 H.R. 3721: Mr. MEEK of Florida.  
 H.R. 3758: Mr. YOUNG of Alaska, Mr. HOEKSTRA, Mr. CONYERS, Mrs. MYRICK, Mr. SIRES, Mr. POE of Texas, and Mr. ROSS.  
 H.R. 3778: Mr. KING of New York.  
 H.R. 3810: Mr. CUMMINGS.  
 H.R. 3828: Mr. POSEY, Mr. GARRETT of New Jersey, and Mr. ROYCE.  
 H.R. 3838: Mr. MEEKS of New York.  
 H.R. 3855: Mr. POLIS, Ms. DEGETTE, and Mr. CLEAVER.  
 H.R. 3942: Mrs. DAHLKEMPER.  
 H.R. 4000: Mr. FOSTER and Mr. FILNER.  
 H.R. 4052: Mr. REICHERT.  
 H.R. 4067: Mr. QUIGLEY and Mr. ALTMIRE.  
 H.R. 4090: Mr. LEVIN.  
 H.R. 4100: Mr. GINGREY of Georgia, Mr. ALEXANDER, Mr. BURTON of Indiana, Mr. OLSON, Mr. ROE of Tennessee, Mr. BARTLETT, Mr. THOMPSON of Pennsylvania, and Mr. SOUDER.

H.R. 4104: Mr. CASTLE.  
 H.R. 4114: Mr. JOHNSON of Georgia.  
 H.R. 4116: Mr. NADLER of New York, Mr. JACKSON of Illinois, Ms. VELÁZQUEZ, and Mr. RAHALL.  
 H.R. 4127: Mr. ADERHOLT and Mr. ROGERS of Kentucky.  
 H.R. 4132: Ms. ROS-LEHTINEN and Mrs. NAPOLITANO.  
 H.R. 4134: Mr. BUTTERFIELD, Mr. AL GREEN of Texas, Mr. THOMPSON of Mississippi, Mr. MEEKS of New York, Mr. CLEAVER, Ms. JACKSON-LEE of Texas, Ms. RICHARDSON, Ms. WATSON, Ms. KILPATRICK of Michigan, Mr. CUMMINGS, Ms. EDWARDS of Maryland, Mr. JOHNSON of Georgia, Mr. SCOTT of Georgia, Mr. KUCINICH, and Mr. FATTAH.  
 H.R. 4138: Mr. PITTS, Mr. MARCHANT, Mr. SHADEGG, Mr. CONAWAY, Mr. KING of Iowa, Mr. COLE, Mr. BURTON of Indiana, Mr. OLSON, Mr. GOHMERT, Mr. BARTLETT, Mr. JORDAN of Ohio, Mr. BISHOP of Utah, Mr. LAMBORN, Mr. POSEY, Mr. THOMPSON of Pennsylvania, Mr. BILBRAY, Mr. AKIN, and Ms. FALLIN.  
 H.R. 4157: Mr. WILSON of South Carolina and Mr. DUNCAN.  
 H.R. 4162: Mr. CULBERSON.  
 H.R. 4163: Ms. SCHAKOWSKY.  
 H.R. 4177: Mr. BISHOP of Georgia.  
 H.R. 4184: Ms. BERKLEY and Mr. CROWLEY.  
 H.R. 4185: Ms. HERSETH SANDLIN.  
 H.R. 4190: Ms. SLAUGHTER.  
 H.R. 4191: Mr. CONYERS and Ms. ZOE LOFGREN of California.  
 H.R. 4196: Mr. JACKSON of Illinois, Mr. FILLNER, Mr. LARSEN of Washington, and Ms. CORRINE BROWN of Florida.  
 H.R. 4219: Mr. MARIO DIAZ-BALART of Florida, Mr. DUNCAN, Ms. ROS-LEHTINEN, Mr. ROGERS of Alabama, Mr. COFFMAN of Colorado, Mr. ROE of Tennessee, Mr. GUTHRIE, Mr. HARPER, Mr. HUNTER, Mr. MCHENRY, and Mr. CHAFFETZ.  
 H.R. 4235: Mr. LANGEVIN.  
 H.J. Res. 47: Mr. BACHUS and Mr. ROSS.  
 H. Con. Res. 24: Mr. RYAN of Ohio.  
 H. Res. 111: Mr. CAPUANO and Mr. McMAHON.  
 H. Res. 166: Mr. SPRATT.  
 H. Res. 704: Ms. WASSERMAN SCHULTZ, Mr. CAMPBELL, Mr. DAVIS of Alabama, Mr. HINOJOSA, Mr. OLSON, Mr. McKEON, Mr. MARCHANT, and Mr. WILSON of South Carolina.  
 H. Res. 708: Mr. BISHOP of New York, Mrs. BIGGERT, Mrs. BLACKBURN, Ms. McMORRIS RODGERS, Ms. GRANGER, Ms. GINNY BROWN-WAITE of Florida, and Mrs. BONO MACK.  
 H. Res. 713: Mr. SKELTON, Mr. THOMPSON of Mississippi, Mr. PATRICK J. MURPHY of Penn-

sylvania, Mr. BACA, Mr. BRALEY of Iowa, Mrs. CHRISTENSEN, Ms. MATSUI, Mr. DOYLE, Ms. SUTTON, Mr. WELCH, Ms. ROYBAL-ALLARD, Ms. WATERS, Mr. DAVIS of Illinois, Mr. CARSON of Indiana, Mr. CONYERS, Mr. CUMMINGS, Ms. LEE of California, Mr. JACKSON of Illinois, Ms. NORTON, Mr. TOWNS, Ms. HIRONO, Mr. WU, Mr. BURGESS, and Mr. GOHMERT.

H. Res. 812: Mr. SPRATT and Mrs. MYRICK.

H. Res. 860: Mr. KAGEN, Mr. GEORGE MILLER of California, and Mr. POLIS of Colorado.

H. Res. 862: Mr. RUSH, Mr. JACKSON of Illinois, Mr. GUTIERREZ, Ms. SCHAKOWSKY, Mr. COSTELLO, and Ms. HERSETH SANDLIN.

H. Res. 864: Mr. PRICE of North Carolina, Mr. MAFFEI, Mr. HOYER, Mr. KISSELL, Mr. KIND, Mr. MEEK of Florida, Mr. OWENS, Mr. HOLDEN, Mr. MICHAUD, Mrs. HALVORSON, Mr. HILL, Mr. BAIRD, Mr. ETHERIDGE, Mr. HODES, Ms. TITUS, Mr. STUPAK, Mr. EDWARDS of Texas, and Mr. SARBANES.

H. Res. 879: Mrs. LOWEY, Ms. HIRONO, and Mr. JOHNSON of Georgia.

H. Res. 901: Mr. JOHNSON of Georgia.

H. Res. 904: Mrs. Kirkpatrick of Arizona, Mr. WALZ, Mr. FALOMAVAEGA, Mr. SHULER, Mrs. CHRISTENSEN, Ms. MOORE of Wisconsin, and Mr. McNERNEY.

H. Res. 924: Mr. CONAWAY, Mr. FORBES, and Mr. LAMBORN.

H. Res. 925: Mr. WITTMAN and Mr. TAYLOR.

H. Res. 933: Mr. McCOTTER.

H. Res. 934: Mr. McCOTTER.

H. Res. 945: Mr. THOMPSON of Pennsylvania, Mr. AKIN, Mr. WAMP, Mr. HUNTER, Mr. SHAD-EGG, Mr. BURTON of Indiana, Mr. ROE of Tennessee, Mr. HENSARLING, Mr. RYAN of Wisconsin, Mr. MARCHANT, Mr. CONAWAY, Mr. GOHMERT, Mr. HALL of Texas, Mr. ALEXANDER, Mr. JORDAN of Ohio, Mr. BILIRAKIS, and Mr. SCALISE.

H. Res. 947: Ms. SCHAKOWSKY, Mrs. MALONEY, and Mrs. DAVIS of California.

H. Res. 951: Mr. COBLE, Mr. NEUGEBAUER, Mr. MARCHANT, Mr. PITTS, Mr. GINGREY of Georgia, Mr. HENSARLING, Mr. GOODLATTE, Mrs. BLACKBURN, Ms. FALLIN, Mr. ISSA, Mr. WAMP, Mr. AKIN, Mr. ADERHOLT, Mr. BILBRAY, Mr. THOMPSON of Pennsylvania, Mr. POSEY, Mr. BISHOP of Utah, Mr. JORDAN of Ohio, Mr. BARTLETT, Mr. ROE of Tennessee, Mr. HALL of Texas, Mr. GOHMERT, Mr. ALEXANDER, Mr. SHADEGG, Mr. WESTMORELAND, and Mrs. BACHMANN.

## EXTENSIONS OF REMARKS

### SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, December 10, 2009 may be found in the Daily Digest of today's RECORD.

### MEETINGS SCHEDULED DECEMBER 15

10 a.m.

Foreign Relations  
East Asian and Pacific Affairs Subcommittee  
To hold hearings to examine reevaluating United States policy in Central Asia.

SD-419

Energy and Natural Resources

To hold hearings to examine S. 2052, to amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out a research and development and demonstration program to reduce manufacturing and construction costs relating to nuclear reactors, and S. 2812, to amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out programs to develop and demonstrate 2 small modular nuclear reactor designs.

SD-366

Judiciary

To hold hearings to examine ensuring the effective use of DNA evidence to solve rape cases nationwide.

SD-226

Homeland Security and Governmental Affairs

Oversight of Government Management, the Federal Workforce, and the District of Columbia Subcommittee

To hold hearings to examine efforts to improve management integration at the Department of Homeland Security.

SD-342

2:30 p.m.

Commerce, Science, and Transportation

To hold hearings to examine the nominations of Julie Simone Brill, of Vermont, and Edith Ramirez, of California, both to be a Federal Trade Commissioner, David L. Strickland, of Georgia, to be Administrator of the National Highway Traffic Safety Administration, and David Matsuda, to be Administrator of the Maritime Administration, both of the Department of Transportation, Michael A. Khouri, of Kentucky, to be a Federal Maritime Commissioner, and Nicole Yvette Lamb-Hale, of Michigan, to be Assistant Secretary of Commerce.

SR-253

### DECEMBER 16

10:30 a.m.

Judiciary

Human Rights and the Law Subcommittee  
To hold hearings to examine United States implementation of human rights treaties.

SD-226

2:30 p.m.

Homeland Security and Governmental Affairs

Federal Financial Management, Government Information, Federal Services, and International Security Subcommittee

To hold hearings to examine tools to combat deficits and waste, focusing on enhanced rescission authority.

SD-342

3 p.m.

Judiciary

To hold hearings to examine the nominations of James A. Wynn, Jr., of North Carolina, and Albert Diaz, of North Carolina, both to be United States Circuit Judge for the Fourth Circuit.

SD-226

### DECEMBER 17

9:30 a.m.

Armed Services

To hold hearings to examine the nominations of Douglas B. Wilson, of Arizona, to be Assistant Secretary for Public

Affairs, Malcolm Ross O'Neill, of Virginia, to be Assistant Secretary of the Army for Acquisition, Logistics and Technology, Mary Sally Matiella, of Arizona, to be Assistant Secretary of the Army for Financial Management and Comptroller, Paul Luis Oostburg Sanz, of Maryland, to be General Counsel of the Department of the Navy, and Jackalyn Pfannenstiel, of California, to be Assistant Secretary of the Navy for Installations and Environment, all of the Department of Defense, and Donald L. Cook, of Washington, to be Deputy Administrator for Defense Programs, National Nuclear Security Administration, Department of Energy.

SD-G50

10 a.m.

Commerce, Science, and Transportation

Business meeting to consider pending calendar business.

SR-253

Homeland Security and Governmental Affairs

To hold hearings to examine prospects for our economic future and proposals to secure it.

SD-342

2 p.m.

Homeland Security and Governmental Affairs

Contracting Oversight Subcommittee

To hold hearings to examine an overview of Afghanistan contracts.

SD-342

2:30 p.m.

Energy and Natural Resources

Public Lands and Forests Subcommittee

To hold hearings to examine S. 1470, to sustain the economic development and recreational use of National Forest System land and other public land in the State of Montana, to add certain land to the National Wilderness Preservation System, to release certain wilderness study areas, to designate new areas for recreation, S. 1719, to provide for the conveyance of certain parcels of land to the town of Alta, Utah, S. 1787, to reauthorize the Federal Land Transaction Facilitation Act, H.R. 762, to validate final patent number 27-2005-0081, and H.R. 934, to convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands.

SD-366

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

**SENATE—Thursday, December 10, 2009**

The Senate met at 10 a.m. and was called to order by the Honorable MARK L. PRYOR, a Senator from the State of Arkansas.

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Gracious and merciful God, You promised never to leave us alone, and we are grateful for Your comforting presence. Thank You for Your whispers of love and peace. Help us to see Your face in others and to show them Your love.

Today, give our Senators the wisdom to know Your will and to choose Your way and purpose. When the choice is between honor and self-interest, help them to do right. May they exercise themselves to have a conscience void of offense toward You and humanity. Lord, give them strength equal to their task, as You undergird them with Your loving providence.

We pray in Your precious Name. Amen.

**PLEDGE OF ALLEGIANCE**

The Honorable MARK L. PRYOR led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE**

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The bill clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 10, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK L. PRYOR, a Senator from the State of Arkansas, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. PRYOR thereupon assumed the chair as Acting President pro tempore.

**RECOGNITION OF THE MAJORITY LEADER**

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

**SCHEDULE**

Mr. REID. Mr. President, following leader marks, the Senate will resume consideration of H.R. 3590, the health care reform legislation. The time until 1 p.m. today will be equally divided and controlled and will be for debate only, with the time until 11 a.m. controlled between the two leaders or their designees and the remaining time controlled in 30-minute alternating blocks. The majority will control the first block and Republicans will control the next. Senators will be permitted to speak for up to 10 minutes each.

I expect the House of Representatives to send a conference report to the Senate this afternoon. When it arrives, we will consider it. If cloture needs to be invoked, the Senate will have to be in session this weekend for a Saturday vote and a Sunday vote in order to complete action on these bills. This bill includes the bills we have tried to complete. We have been held up by the minority on these bills, but we have made progress. The first will be the Transportation appropriations bill, Commerce-Justice-Science, Military Construction, Labor-HHS, financial services, and State-Foreign Operations. That would leave the only remaining bill to be the Defense appropriations bill, which we will do sometime before the end of the year. We hope we can get word from the Republicans today what they want to do. Whatever they want to do, it is in their hands.

Everyone should understand that procedurally, no one can stop us from moving to the appropriations bills. It is bipartisan. We have worked closely with Republicans on this matter. We automatically go off the health care bill when we get on this. We are waiting for the score to come back from the Congressional Budget Office. There isn't a lot we can do until we get that done, which would be next week. So no time is lost on health care. We have to complete our work for the year anyway. So we have to do this bill.

Whenever we hear from the Republicans, Senators will know what their schedules can be. We could complete our work today and come back and work something out so that we can have a Monday vote. But whatever the Republicans want, we will be happy to cooperate with them—I shouldn't say whatever they want.

**RESERVATION OF LEADER TIME**

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

**SERVICEMEMBERS HOME OWNERSHIP TAX ACT OF 2009**

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Dorgan amendment No. 2793 (to amendment No. 2786), to provide for the importation of prescription drugs.

Crapo motion to commit the bill to the Committee on Finance with instructions.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11 a.m. shall be equally divided and controlled by the two leaders or their designees.

The Senator from Montana.

Mr. BAUCUS. Mr. President, for the benefit of all Senators, let me lay out today's program. It has been 3 weeks since the majority leader moved to proceed to the health care reform bill. This is the 11th day of debate. The Senate has considered 18 amendments or motions. It has conducted 14 rollcall votes. Today, the Senate will continue debating the amendment by the Senator from North Dakota on prescription drug reimportation, we will continue debating the motion by the Senator from Idaho on taxes, and we will continue debate on the bill. Under the previous order, the time until 1 p.m. today will be for debate only, with the time equally divided and controlled between the two leaders or their designees. Beginning at 11 o'clock, Republicans will control the first half hour, and the majority will control the second half hour. We will continue discussions to try to find a way forward.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, I appreciate the statistics the Senator from Montana cited about how long we have been debating this and how many amendments we have done. That is how few amendments we have done, actually. The majority is now filibustering their own bill. I have no idea why that is happening. We have been calling for votes on both of these amendments that have been proposed so far and haven't been able to get the votes. I don't understand how they can talk about how many amendments are being done.

I also have to voice some other frustration. I don't know how many times

I have heard the exact same speech by the Senator from Illinois, Mr. DURBIN, on this floor talking about the amount of hours that have been spent together working on these bills in the HELP Committee and the Gang of 6 in the Finance Committee. It isn't about how many hours we spend together. It isn't about how many hours we spend on the floor. It is whether we are accepting ideas. I understand the other party won the last election, but somehow they will have to get over this attitude that they won the election, they get to write the bill, they don't have to take any ideas from anybody else.

In the HELP Committee, I keep pointing out that most of the things we turned in were kind of punctuation corrections and spelling corrections. Any ideas we actually had that appeared to be accepted to be in the bill were ripped out of the bill before it was actually formally printed, without talking to us. What kind of bipartisan deal is that?

Another thing with the HELP Committee, we have only had 10 days of debate on this. We did more than that in the HELP Committee when we were marking up the bill.

But we are having, in the words of Yogi Berra, *déjà vu* all over again. When we were having that markup, the majority withheld a significant part of the bill, a big part of the bill. It was the government-run option part of the bill. They wouldn't give us the wording on that. I think they were still writing it. Maybe that is what is happening right now too. But we couldn't get the text we were going to write amendments on so that we could deal with the bill. I think America noticed that in August. People said: How come everybody isn't reading the bill? You can't read what you don't have.

The point I am making is, right now the newspapers are full of information—well, speculation; it has to be speculation—about what this new Medicare expansion does. I haven't run into anybody who has seen the text of that. I have asked some of the media, and they didn't see the text. They got a briefing. We haven't even had a briefing. The majority side has had a briefing, but our folks who have talked to those folks said: Wow, that was pretty general. How could you make up your mind on whether you are going to support it based on the little bit of information you received? That is not the way to run any kind of an organization, especially if you want bipartisan votes.

You can't write the bill in secret, which is what was done with this bill. There wasn't a Republican involved in the behind-the-door stuff Leader REID did to put together the bill we have now. That is not bipartisan. There hasn't been a single person from the Republican side briefed on this new proposal that is going to save the world.

Actually, I noticed that the American Medical Association suddenly left the bill and said: This will be the worst thing that could happen to us. The hospital associations, which have been strong supporters of the bill, have also said this won't work, particularly the Mayo Clinic, which we have been holding up as one of the prime examples of the way to do health care, saying: If this Medicare expansion happens, it will cost us millions. We won't be able to provide the kind of care we have been providing.

What is the deal around here? When are we going to actually get to see something? When is the majority actually going to share with us this marvelous idea they have had? What kind of a way to run a business is that?

Are we going to recess for the weekend? I don't want to recess for the weekend. I am conscious of the 11 days we have been debating, and we have only covered 14 amendments. We have a lot of important amendments that either will be a part of the bill or will help the people in this country to understand what is being thrust on them. There has never been a bill of such importance as this one from the standpoint of how many people it affects. We are talking about reforming health care in America. That is everybody. That is every single individual, every single provider. Every single business will be affected by this bill.

We talk about 2,074 pages, which seems like a lot. It would be for a normal bill that you could debate in a limited period, which is what we are being asked to do. But 2,074 pages isn't nearly enough to cover health care for America.

So why is it only 2,074 pages? There are hundreds of references in there to how the Secretary of Health and Human Services is going to solve all the problems. The things we aren't able to put into detail in there we just assign to her, and she will magically be able to solve the problems for American health care. After all, it is her Department. But that is not going to happen. You can't give that many assignments to any agency, any department, any group of people and expect them, in a reasonable amount of time, to come up with solutions, solutions that ought to be decided on by this body, the elected officials—not appointed officials but elected officials. That is not going to happen with this bill.

The only way that could happen is if we took significant parts of it and put it up one piece at a time and solved it. That is what seniors are asking for. They are asking for us to take the Medicare part and give them some assurance that when we are through, it will work. We are not even getting to see a significant part of it. We have been pointing out how taking \$464 billion out of Medicare will break it, will ruin it. You just can't steal \$464 billion

out of Medicare and have it come out good. The majority recognizes that. That is why they put in the special commission that is going to come to us each and every year and suggest the kinds of cuts we ought to make to keep that solvent.

The biggest thing we ought to do is take these cuts that are provided and make them actually apply only to Medicare. But how are you going to fund the expansion of Medicare now down to age 55? How do you do that? I guess you charge a premium to those people. That is kind of the rumor that is out there. How big of a premium? How big of a premium are you going to thrust on those people? I suspect it is going to be the older and the sicker people in that 55- to 64-age category who are going to want to shift over to Medicare.

If it is a higher premium so the system stays solvent—having nothing to do, of course, with age, because we cannot do that under the bill, or sickness, because we cannot do that under the bill—and those are good ideas—but those better be up in that range of the high-risk pools that the States already have.

People come to me and say: You have to do something about health care because we cannot afford that high-risk pool; it is too expensive. Well, how much more are we going to expect the young people to pitch in in their paycheck? That is where the Medicare money comes from right now. They deduct a portion of the paycheck from every single working American, and that goes into Medicare, and gets paid out right away to Medicare recipients, none of whom or hardly any of whom are the ones paying into the system. They are hoping that system is going to be there when they get older.

What I am asking for is for the majority to show us the paper and give us a reasonable time to look at it and give America a reasonable time to look at it. I do not think it is unreasonable for that to be on the Internet. That is a significant part of the bill. That would be a significant bill all by itself. It was held from our view when the HELP Committee did it. Incidentally, that HELP Committee bill—that was put together in 2 weeks without our help and put on us—parts of it were withheld, as this has been withheld, until the last minute and then thrust in.

That is what created this enormous outrage across America of: Did you read the bill? How can you read the bill if you have not seen anything in it, if it has not been given to you? I do not think it is intended to be given to us until we have to shuffle this thing through at the end.

The anticipation was to get this done by Christmastime, and the majority side keeps talking about getting this done by Christmastime. Will we have time to read it before Christmastime?



Will we have a chance to do any amendments on it before Christmas-time? I am willing to stay around and work through the weekend and keep doing amendments, but I would like to see this marvelous idea that is going to solve the whole problem. If it was that marvelous and that good of an idea, I think it would be shared already.

Mr. President, I yield the floor and reserve the remainder of our time.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be equally charged against both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, commenting on the budget process in the 1980s, former CBO Director Rudy Penner said:

The process is not the problem; the problem is the problem.

The chairman and ranking member of the Budget Committee have proposed another new budget process. No one has shown greater zeal in taking on the budget deficit than the chairman and ranking Republican Member of the Budget Committee. I commend their good intentions. They work hard. But we should reject this process. Instead, we should solve the problem.

In their press release yesterday, Senators CONRAD and GREGG said that "Everything needs to be on the table, including spending and revenues." That is a quote: "Everything needs to be on the table, including spending and revenues." But why stop there?

If Congress is going to outsource its core fiscal responsibilities, why stop with those responsibilities? Why not cede to this Commission all of the legislation in the next Congress? Why don't we outsource the entire year's work and then adjourn for the year?

Come to think of it, if we do cede all of our powers to this Commission, what is to stop them from inserting any and all business for the next Congress into the Commission's one, nonamendable, omnibus vehicle? No restrictions. They could put anything they want into it.

There is the rub. For if the Commission were merely a farce, then we could be satisfied with ridiculing it. But this Commission and its new fast-track process are truly dangerous. If we were to cede all of our responsibilities to this Commission, and we were to tie our hands so we could not amend its recommendations, then we would risk

setting in motion some truly terrible policy.

Under the proposed fast-track procedures, we would not be able to amend the proposal. What if we did not like the Commission's recommendations? We would not be able to replace the Commission's recommendations with our own.

It is clear from their press release that Senators CONRAD and GREGG have painted a big red target on Social Security and Medicare. That is what this Commission is all about. It is a big roll of the dice for Social Security and Medicare.

Advocates of the task force say the regular order is not working. They say we need a new process to address our long-term fiscal challenges. But they are wrong. The regular order is working. We are enacting health care reform. And serious people know that controlling the costs of health care is the central path to addressing our long-term budget challenges.

The lion's share of the reason why deficits are projected to grow so much in the long run is the enormous increase in the costs of health care. We are doing something about it. We are doing it the right way. We held open hearings. We legislated in committee. We are voting on amendments. We are legislating. We are doing what our people back home sent us here to do.

The Congressional Budget Office says that health care reform will cut the deficit \$130 billion in the first 10 years and \$650 billion in the second 10 years. That is nearly \$800 billion in CBO-certified deficit reduction in health care alone. And next year we will legislate fundamental tax reform.

But some appear to want to throw in the towel. Some want to punt our responsibilities away. I can see that a commission may be attractive to some. After all, it is an easy way out. It takes away our accountability for what we do. Senators can blame it all on the Commission. Senators could say: The Commission made me do it.

But this is no time to abdicate responsibility. This new Commission and this Congress are less than a year old. We should not shirk our responsibility. Rather, we should do the job our constituents sent us here to do.

Luckily, we already have a process to address the budget. It is called the congressional budget process. Here is a novel idea: Why don't we use the budget process to address the budget deficit? If the chairman and ranking Republican Member of the Budget Committee are in such broad agreement on their goals, why don't they skip the Commission and go straight to their recommendation? That is exactly why Congress created the budget resolution and the reconciliation bill in the first place.

We do not need a new commission to do our work. We do not need a new

process to solve the problem. To solve the problem, we just need to solve the problem.

I urge my colleagues to reject this Commission idea. Let's get back to solving the problem. Let's get back to enacting real health care reform.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. ENZI. Mr. President, I am fascinated by the speech we heard. There has been a bipartisan proposal. The chairman of the Budget Committee and the ranking member of the Budget Committee have proposed a commission, and that bipartisan deal is being chastised here. So we are on the bill, where 64 percent of the amendments that have been filed so far were filed by the Democrats, and I keep wondering why they are filibustering their own bill.

Then when something bipartisan does come up, they are opposed to that too. I know they think the only good ideas come from the other side of the aisle, and I do get frustrated with that.

Mr. BAUCUS. Mr. President, will the Senator yield on that one point? Just on that one point, will my good friend from Wyoming yield, on our time?

Mr. ENZI. Certainly.

Mr. BAUCUS. The question is this: Doesn't the Senator agree—it is kind of a hard question to ask—that this Senator spent an inordinate amount of time in the last year trying to get a bipartisan solution to health care reform; that is, in our committee, in the Finance Committee, having an open process, fully consulting on both sides of the aisle? Then we had that other group called the Group of 6, of which the Senator is a part. I think we had 130—I have forgotten how many days and meetings we had, how many hours we met.

But isn't it true that at least this Senator tried as hard as he could to get a bipartisan solution?

Mr. ENZI. I cannot fault the Senator from Montana for his efforts to get a bipartisan solution. As I have said many times, I am sorry he had to be cut off by phony time deadlines that kept us from reaching that kind of a solution, and then winding up with things that are in this bill we are talking about that were not a part of our discussions—again, the things that were proposed by people on this side of the aisle that are not in that bill.

There were some possibilities for solutions. But we wound up with that same situation of: We won the election, we get to write the bill, and it has to be done quickly. So I am disappointed in the whole process.

Mr. GREGG. Will the Senator yield for a question on that point?

Mr. ENZI. I will.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. I certainly respect that the Senator from Montana worked very

hard to have a bipartisan initiative here, but this bill we are dealing with has no bipartisanship to it at all. Was this not written in camera behind closed doors for 8 weeks by the majority leader? Was there a Republican in that room at any time? And we have now been on it for what, 8 days or something, while they wrote it for 8 weeks. And furthermore, is there not rumored to be floating around this Congress somewhere, in some room, again—that we have not been invited to—a major rewrite of this bill called the managers' amendment, which supposedly is going to expand coverage to people under Medicare to 55 years of age, with Medicare already being bankrupt, and already cannot afford the people they have on Medicare? It is going to expand it. We have not seen it. Yet this is going to change this bill fundamentally and change health care fundamentally.

Is that bipartisan? I ask the Senator from Wyoming if that is the case? Was this bill written in a bipartisan manner? Were any Republicans in the room? Did it go through a committee process? Was it amended? Did it not take 8 weeks to write it, and it has now been on the floor for 8 days, and all of our amendments are being pushed to the side? And are we not hearing about a massive—a massive—rewrite of this bill that is going to appear *deus ex machina* from the majority leader's office and fundamentally change the way health care is delivered in this country? Is that going to be bipartisan?

Mr. ENZI. The Senator is absolutely right. We have not even seen this new piece. Nobody wants to show us the new piece. They keep talking about it. They have leaked it to the newspapers, but they will not show it to us, and then they keep talking about how this bill is going to solve the deficits for this country; that there is \$157 billion or something saved in the first 10 years. That is only—only—if you use the phoney accounting they are using. It is only if you don't do the doc fix. It is only if you don't solve the myriad of other things we have brought out.

We have a bill they keep talking about as being the solution. America has figured it out, but the Democrats haven't figured it out.

I see the leader is on the Senate floor. I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I apologize to my colleagues for interrupting their conversation. Hopefully, it can continue upon completion of my remarks, and I may well wish to join in.

HEALTH CARE REFORM

Mr. MCCONNELL. Mr. President, the American people have seen what Democrats in Congress plan to do with sen-

iors' health care. They have looked on in disbelief as almost every Democrat in the Senate voted again and again and again to slash Medicare. Now they are watching in disbelief as Democrats float the idea of herding millions more—millions more—into this nearly bankrupt program as part of a back-room deal to force their plan for health care on the American people by Christmas.

Every day it seems we hear new revelations about secret conference room deliberations where Democrats are frantically working to get their 60 votes by Christmas. And every day we hear about some new idea they have come up with for creating a government plan by another name. This week's version would have the Office of Personnel Management running the program, an idea that was shot down almost as soon as it was announced by the former OPM Director who said it couldn't be done.

This is what she said: "I flat out think that OPM doesn't have the capacity to do this type of role."

This is precisely the kind of approach Americans are tired of in Washington, and this is precisely the kind of health care plan Americans did not want.

Seniors thought they could expect lower costs. What they are getting instead is an assault on their Medicare. Small business owners thought they could expect lower costs. What they are getting instead are higher taxes, stiff fines, and costly mandates. Working Americans thought they would get more efficiency, less fraud, cheaper rates. What they are getting instead are new bureaucracies and higher costs.

Business leaders from across the country enthusiastically support the idea of health care reform. They know better than anyone that costs are out of control and that something needs to be done. But they have read the bill Democrats in Congress have come up with and they are telling us this isn't it. This isn't it, they are saying. Not only won't this bill solve the problem, they say, it makes the existing problems actually worse.

The Vice President of the U.S. Chamber of Commerce was here yesterday. He said there is a desperate need for reform—reform that bends the cost curve down. He said, unfortunately, this bill fails the test. He says this bill will only lead businesses to lower wages, decrease working hours, reduce hiring, and cut jobs. He said it adds to the deficit; it adds to the debt. It includes massive new spending programs and entitlements and incredibly, as I have noted, it also borrows from existing entitlement programs. It borrows from existing entitlement programs that are already in trouble.

Businesses look at this bill and they see \$½ trillion in new taxes, as many as 10 million employees at risk of los-

ing coverage, and crushing new mandates. This is not reform. This bill doesn't solve our problems, it spreads them. That is why seniors don't like this bill. That is why job creators don't like this bill. That is why public opinion has dramatically shifted against this bill.

Americans want reform, but this is not the one they asked for. This bill is fundamentally flawed and it can't be fixed. There is no way to fix this bill.

Americans want us to stop, they want us to start over, and they want us to get it right. Democrats should stop talking at the American people and start listening to them.

Now, Republicans are prepared to provide a platform for the debate as long as it takes—as long as it takes. The majority leader said we would be working every weekend. We take him at his word. We expect to be here this weekend, and we look forward to it. Republicans are convinced there is nothing more important we could do than to stop this bill and start over with the kind of step-by-step reforms Americans really want.

We have amendments. We want votes. We have been waiting since Tuesday to have more votes. We are eager to continue the debate.

Here is what my good friend, the majority leader, said when we started the debate on November 30:

Debating and voting late at night. It definitely means the next weekends—plural—we'll be working. I have events I'll have to postpone, some I'll have to cancel. There is not an issue more important than finishing this legislation. I know people have things they want to do back in their States, and rightfully so. I know people have fundraisers because they're running for reelection. I know there are other important things people have to do, but nothing could be more important than this, and we notified everybody prior to the break that we would be working weekends.

We took the majority leader at his word when we started this debate on November 30 that we would be working weekends. Actually, it is a week later—this past Monday of this week—he said, "It appears we certainly will be here this weekend again."

My Members understood we would be here on the weekends. We don't think there is anything more important we can do, and we are a little bit upset—maybe more than a little bit—that we were not able to vote on an amendment yesterday. We have been prepared to vote for several days. There are amendments that have been offered that we can't seem to get a vote on. The American people are expecting us to vote on this bill, and we are here and prepared to do it. We would like to get started voting on amendments today.

Mr. GREGG. Mr. Leader, if I might ask a question through the Chair.

The PRESIDING OFFICER (Mr. BENNET). The Senator from New Hampshire.

Mr. GREGG. On that last point, it does seem there is a slowdown occurring on amendments. As I understand it, we have four or five very substantive amendments dealing with taxes, dealing with employer mandates, that we are ready to go to, and we are ready to vote on; is that not correct?

Mr. MCCONNELL. I say to my friend from New Hampshire, that is absolutely the case. We waited around all day to get a vote on the amendment by the Senator from Idaho, Mr. CRAPO. We were told there would be a side-by-side, and it mysteriously has not yet appeared. But we are here ready to work. We share the view of the majority leader that this is an extremely important issue, and we want to vote.

Mr. GREGG. I hope at some point today maybe we should propound a unanimous consent setting those four items up for votes on Saturday and Sunday.

Mr. MCCONNELL. Well, I think that is a good idea. Of course, we would prefer to vote today. We are going to be voting Saturday and Sunday too. I think the sooner the better. The American people are actually expecting us—they thought we were here voting and debating amendments on this bill, and we are going to continue to press forward and try to get that done.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, could I inquire of the Chair before the Senator from North Dakota speaks how much time remains.

The PRESIDING OFFICER. The majority has 14 minutes, and the Republicans have just under 8.

Mr. GREGG. Mr. President, I would ask, is the Senator from North Dakota recognized under an order of a colloquy at this point?

The PRESIDING OFFICER. The Chair simply recognized the Senator from North Dakota.

Mr. CONRAD. Mr. President, was there a time reserved for a colloquy between myself and the Senator from New Hampshire?

The PRESIDING OFFICER. No.

Mr. CONRAD. Mr. President, the reason we are here on the floor is our understanding was we had time reserved at 10:30 for a colloquy between the Senator from New Hampshire and myself.

Mr. GREGG. Mr. President, I ask unanimous consent that we have 20 minutes equally divided between myself and the Senator from North Dakota at this time. I see the Senator from Connecticut obviously wishes to speak also.

Mr. DODD. Mr. President, I was not a party to the request, but I am certainly prepared to yield 10 minutes of our time to our colleagues for a col-

loquy and whatever time the Republican side may want to yield to Senator GREGG from their time remaining for that purpose as well. Is that satisfactory?

Mr. GREGG. Do we have time remaining on our side?

Mr. DODD. Mr. President, I ask unanimous consent that 10 minutes of our time be allocated to Senator CONRAD for the purpose of a colloquy or whatever other purpose he may have.

Mr. CONRAD. Do the Republicans have 10 minutes remaining for Senator GREGG?

Mr. ENZI. Mr. President, it is my understanding the leader spoke under leader time.

The PRESIDING OFFICER. That is correct.

Mr. ENZI. So we should have an adequate 10 minutes to allocate to the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senators may engage in a 20-minute colloquy.

Mr. CONRAD. I thank the Chair. I thank our colleagues. I especially thank our colleague, the Senator from Wyoming, and our colleague from Connecticut. Thank you for your courtesy. We appreciate it very much.

Mr. President, this is a headline from Newsweek, December 7. In fact, it was the cover story: "How Great Powers Fall. Steep Debt, Slow Growth, High Spending Kill Empires—and America Could Be Next."

If you go to the story—by the way, interestingly enough, this was on December 7, Pearl Harbor day. If you go into the story that is in the magazine, it says:

This is how empires decline. It begins with a debt explosion. It ends with an inexorable reduction in the resources available for the Army, Navy, and the Air Force. If the United States doesn't come up soon with a credible plan to restore the Federal budget to balance over the next 5 to 10 years, the danger is very real that a debt crisis could lead to a major weakening of American power.

All we have to do is look at the facts. This shows the debt of the United States from 2001 projecting to 2019. Obviously, the first half of this chart is not a projection. It has already happened. We are approaching a debt that is 100 percent of the gross domestic product of the United States, the highest the debt has been since after World War II and the only time in our Nation's history it has been that high. The projection is by 2019 the debt will be high. The projection is by 2019 the debt will be 114 percent of the gross domestic product of the United States.

More alarming, the long-term outlook of the Congressional Budget Office says we will have a debt that will reach 400 percent of the gross domestic product of the United States by 2050 on the current trend line. No one believes that is a sustainable circumstance. We have had testimony from the head of the

General Accounting Office, the Congressional Budget Office, the Secretary of the Treasury, and the Chairman of the Federal Reserve all saying this is a completely unsustainable circumstance.

The Congressional Budget Office said this in June of 2009:

The difficulty of the choices notwithstanding, CBO's long-term budget projections make clear that doing nothing is not an option.

Doing nothing is not an option.

The National Journal, in an article entitled "The Debt Problem is Worse Than You Think" said this in a story just weeks ago:

Simply put, even alarmists may be underestimating the size of the debt problem, how quickly it will become unbearable, and how poorly prepared our political system is to deal with it.

I hope people are listening. I hope they are paying attention. I hope our colleagues are.

Yesterday a group of us introduced legislation to confront this debt threat head on. There are now 31 cosponsors of that legislation: 19 Republicans, 12 Democrats. This legislation offers the following: to address the unsustainable long-term fiscal imbalance; that a task force should be created with everything on the table. It would consist of 18 Members: 8 Republicans from the Congress, 8 Democrats from the Congress, and 2 representatives of the administration.

All task force members must be currently serving in Congress or the administration so they are accountable to the public. If 14 of the 18 Members could agree on a report, that report would come to Congress for a vote.

There would be no filibustering, a straight up-or-down vote on the recommendations. The report would be submitted after the 2010 election to insulate it from politics. And, the vote would be designed to occur before the end of the 111th Congress. It would receive fast-track consideration in the Senate and the House. There would be no amendments. It would be a straight up-or-down vote. A supermajority of the House and the Senate would have to vote for it, and the President would retain his ability to veto.

This is legislation that is designed to get to the floors of the House and the Senate, legislation to deal with our long-term debt threat, to face up to it. All of us know that with a problem, the sooner you deal with it, the less draconian the solutions need to be. For those who say this poses a threat to Social Security and Medicare, the opposite is true. A failure to act is what threatens Social Security and Medicare.

The trustees of Medicare have told us Medicare will go broke in 8 years. They have also told us Medicare is cash negative today. That means more money is going out than is coming in. The

same is true of Social Security today. It is cash negative.

Now is the time. We are the ones who have an opportunity to help our country face up to a critical threat to the economic security of America. Some suggest the bill before us on health care is an example that the regular order will deal with this problem. Again, I believe the reverse is true.

I believe the health care bill before us does modestly deal with the deficit and debt—modestly. But it doesn't come close to dealing with the debt bomb I have outlined. In fact, the reality is, we are on a course that is absolutely unsustainable. It is our responsibility to face up to it.

In our past, we have chosen special processes, commissions, a summit, or some other special process to deal with fiscal challenges because we have learned, in our history, that going through the regular process and regular order is simply not going to succeed.

I have been here 23 years. I am on the Finance Committee. I am chairman of the Budget Committee. I have been on those committees for many years. If there is one thing that is absolutely clear to me, it is the regular order cannot and will not face up to a crisis of this dimension. It is going to take a special process, a special commitment of the Members and representatives of the administration to develop a plan that gets us back on track. It is going to take a special process to bring that plan to this floor for a vote up or down. That holds, I believe, the best prospects for success.

I believe this is a defining moment for this Chamber, for this Congress, for this administration. It is imperative that we find a way to deal with this debt threat. It poses one of the most dramatic challenges to American economic strength that we have confronted in the history of this country. It is time to stand and be counted.

Thirty-one of us have sent forward a proposal—a bipartisan proposal—that would assure a vote on a plan to bring America back from the brink. Let's give it a chance.

I thank the chair, and I especially thank the ranking member, Senator GREGG, for his energy, his commitment, and his devotion to facing up to, I believe, one of the greatest challenges confronting America.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I am privileged to join the Senator from South Dakota, the chairman of the Budget Committee, on this initiative. We have worked on it for a while, and we have come to a position of having a piece of legislation that accomplishes the goal as outlined by the Senator from North Dakota. That is good news.

The outpouring of support in the Senate—over 31 cosponsors in just a brief period of time—is a sign that there is a willingness to move in a bipartisan way. That is good news.

Right now, for this country, after the possibility of a terrorist getting a weapon of mass destruction and using it against us in the United States, the single biggest threat we have as a nation is the fact that we are on course toward fiscal insolvency. You cannot get around it. If we continue on the present course, this Nation goes bankrupt. We are already seeing the early signs of it. The early signs are devastating enough. We are seeing some of the nations who lend to us—and remember we are a debtor nation now of massive proportions—saying: Hold on, you folks are not being responsible, especially about your outyear debt.

Two days ago, we saw one of the rating agencies, Moody's, say England and the United States now are going to be put into a special category relative to the rest of the industrialized world because their fiscal situation is in such risk, and they are not managing their fiscal house correctly.

We know, as the Senator from North Dakota has outlined so correctly, that within 10 years—maybe sooner—we are going to get to a point where our debt has gotten so large we simply cannot pay it or, if we have to pay it, we are going to have to do some extraordinary things to do that, such as inflating the currency or raising taxes to a level where we reduce productivity and the opportunity for jobs. It is akin to a dog chasing its tail when you get your debt to a certain level. When you have spent so much more than you have taken in and you have promised so much more than you can afford to pay and your debt gets to such a level, as a nation, you only have two choices: You inflate the currency and destroy the quality of people's lives, destroying the value of their savings, and you put in an inflation economy, which is one of the worst things that can ever happen to a country or you have to radically increase your tax burden to levels that are simply going to choke off the capacity of the Nation to create prosperity because people will not be able to be productive. You will start to lose tax revenues as a result of that.

This is not a theoretical case. This is no longer something that is over the horizon. This problem is directly in front of us. We are hearing it from the people who lend us money, from the rating agencies, and we know it from intuitive common sense. Most Americans know this is an extraordinary problem.

We talked about this for a long time and we worked on it for a long time. Yes, regular order should take care of this, but we know it will not because we have seen what happens. When you put an idea on the table to deal with

major entitlement programs that affect so many people, in such a personal way, immediately, those ideas are attacked and savaged, misrepresented, exploited, exaggerated, and hyperbolized by the interest groups that populate this city and other parts of the country for the purpose of making their political agenda move forward or their money-raising formula move forward.

When substantive, good ideas have been put on the table to try to correct this fiscal imbalance by dealing with questions of Social Security and Medicare or tax policy, we get clobbered on the policy side. We came to the conclusion from the right and the left that it is equally outrageous and equally destructive of constructive public policy. We came to the conclusion that the only way you can do this is to create a process that drives the policy, rather than put the policy on the table first, saying here is the policy and everybody jumps on it and kicks it and screams at it and so it never even gets to the starting line. We decided let's get to a process that leads to policy and leads to an absolute vote.

The theory is, basically, threefold: One, the process has to be absolutely fair and bipartisan. Nobody can feel they are being gamed. The American people will not allow major policy to occur in these areas unless they are comfortable the policy is bipartisan and fair. So this process we have set up is a bipartisan affair. There will be 18 people. We decided to go with people who actually have a responsibility for making decisions and understand the issues intimately; 16 from the Congress, as was mentioned—8 Republicans and 8 Democrats—and the 2 from the administration, with a supermajority to meet, to report, and there will be co-chairmen from each party. That gives us the bipartisan nature.

The second part that is critical to the exercise is that it be real and that it not end up being a game. We have seen so many commissions end up being just commissions. They put their report out and it ends up on a shelf somewhere.

Something has to happen. What happens is, when this Commission reports with a supermajority and comes to Congress, by supermajority it must be voted up or down. So there is an absolute right to a vote, and the vote occurs on the policies proposed. That is critical. It is much along the lines of what we did for base closures, for many of the same reasons. You couldn't close bases politically, so we did it by fast-track approval.

Third, there will be no amendments. Why? Amendments allow Members to hide in the corners. It is that simple: Somebody throws an amendment up—even if it is well intentioned—and people vote for the amendment and then say it didn't pass or I will not vote for

the final product. You have to have a policy put forward, and it will either attract a bipartisan supermajority and be a fair policy or it is not. If it doesn't attract a bipartisan supermajority, clearly, it wasn't well thought out.

That is the process we have come to. The amount of sponsors we have reflects the fact that it is viable and that it is bipartisan. We have 12 Democratic sponsors already and 19 Republicans. What else around here has that with serious legislation? This is it.

I congratulate the Senator from North Dakota for his efforts. I am hopeful we can get a vote on it. Then, I hope it can pass, and I am hopeful we can get White House support and House support to do this.

We are running out of time. If we don't accomplish this fairly soon, the outcome is very simple: We will pass on to our children less opportunity, a lower standard of living, and a weaker Nation than we received from our parents. No generation in American history has done that. But that is what we are going to do if we don't take action. That is exactly what is going to happen. How can one generation do that to another? In American history, that has never happened. This is an opportunity to avoid having that occur or at least help avoid it. I hope it will move forward.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, how much time remains of the 20 minutes?

The PRESIDING OFFICER. Two minutes 40 seconds.

Mr. CONRAD. How much on my side?

The PRESIDING OFFICER. The time is equally shared.

Mr. CONRAD. Let me sum up by saying this: I have been here 23 years. We saw the debt double in the previous 8 years. We know the debt is scheduled to more than double over the next 8 years if we fail to act. That will be a debt, as I indicated earlier, of well over 100 percent of the gross domestic product of the United States.

The Congressional Budget Office tells us, on the current trend line, we are headed for a debt that will be 400 percent of the gross domestic product of the United States. That is absolutely beyond the pale. We know, from every serious expert who advises the Congress of the United States, we can't go there. We can't possibly be on a course to have a debt that is 400 percent of the gross domestic product of the country.

The question is, What do we do about it? There are some who say: Well, you stick with the status quo approach. It hasn't worked so far. Why is there any reason to believe it will work now? I would say the health care legislation before us is a perfect example. The President had a health care summit; he had a fiscal responsibility summit. At those summits, it was asserted—and I

think it was well intended—that health care reform would deal with a major part of the debt projection facing us. Well, here we are. My belief is, this bill does modestly reduce the deficit in the short- and long-term. But it in no way deals with the trajectory that is headed for a debt of this country of 400 percent of the GDP, because when you are in this circumstance, the regular legislative process cannot face up to short-term pain in exchange for long-term gain. It will not do it. This is our opportunity. We must act.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

Under the previous order, the time until 1 o'clock will be controlled in 30-minute alternating blocks, with the majority controlling the first block and the Republicans controlling the second 30 minutes.

The Senator from Connecticut.

Mr. DODD. Mr. President, before my colleagues from North Dakota and New Hampshire leave, let me commend them for their efforts in this regard. There may be debates about the details of this legislation.

One of the first amendments I ever offered, sitting back in the far corner, as a freshman Member of this body was a pay-as-you-go budget in the Reagan administration. Then I was a cosponsor of Gramm-Rudman-Hollings back in 1985—that was 24 years ago—which was an effort to try to put some restraints on the exploding process at the time.

While I am not prepared necessarily to sign on this morning, I would be remiss if I did not thank them for their efforts. And either something like this or a variation of it is needed so there is some process in place to allow us to deal with these issues.

Before they wandered off and we were back on the health care debate, I wanted to thank them for their efforts.

Let me once again address issues that need to be clarified. We have disagreements about the health care bill.

I want the record to reflect the efforts that have been made for over a year now to involve our colleagues across the spectrum, beginning with my predecessor, Senator Kennedy, who would be otherwise standing at this very podium but for his illness and his death. My office and his staff worked closely together and I want to share the details of those meetings that occurred beginning about a year ago to formulate the very bill we are grappling with today. I was not a participant in those early meetings. Senator Kennedy was, with his staff and Members of the minority staff right after the elections. I began to work in his place starting around the first of the year or shortly thereafter.

There were numerous meetings between Members from across the spectrum from the Budget Committee, the Finance Committee, the HELP Com-

mittee, countless meetings of staff in all three of these committees. Many of them occurred in Chairman BAUCUS's office, the chairman of the Finance Committee.

Battling over the substance of the bill is a very legitimate process. There are 100 of us representing various constituencies and various ideas. There is nothing inherently wrong about that. In fact, it is a healthy process to go through. But I cannot stand here and accept the notion that people have been excluded from the process. That is not the case at all.

There are times when the majority, who has the responsibility to pose ideas, will meet together to formulate an idea or a series of ideas to bring forward. To say this is a historical, unprecedented occurrence defies what anyone who has known 5 minutes of the history of this institution knows. I recall only a few years ago when the minority leader and others were excluded from conference meetings between the House and the Senate. If Tom Daschle showed up, the word was, the conference committee would be canceled. Imagine, the minority leader, a conferee, dealing with the House and Senate, would show up and the meeting would be canceled. With all due respect, it is that old line of Claude Rains in the famous movie "Casablanca," walking into Rick's Café, looking around with Humphrey Bogart there and saying: "Is there gambling going on here? Shocking." Is politics going on in the Senate? Yes, it is. And it has back to 1789, to the founding of the Republic. Politics has happened in this institution where people try to formulate ideas to bring together on behalf of our constituents across the country.

It needs pointing out, as I will, and I will lay out and provide shortly every single amendment offered by the other side—hardly technical, so everybody can read them—the provisions in this bill that were specifically offered by Members of the minority that were accepted either in our committee or in other places and are reflected in the substance of this bill.

Is it their bill? No. Obviously, they have not voted for it. But a lot of the substance in it is theirs, and to suggest otherwise is not true. The notion that people have been excluded from this process is just not the case at all. In fact, going back, if you will, since January of 2007 the HELP Committee has held 30 bipartisan hearings on health care reform, with 15 alone in 2009. Taken together, the HELP and Finance Committees held more than 100 bipartisan meetings. Beginning in December 2008, the bipartisan leadership of the HELP Committee, the Finance Committee, and the Budget Committee met 10 times to discuss health care reform legislation. Staff met even more frequently. Ideas discussed in those meetings are reflected in this bill. In 2008,

the HELP Committee held 15 bipartisan health reform staff roundtables, which included Republican and Democratic staff from the HELP, Finance, and Budget Committees. Over 80 stakeholders from the pharmaceutical industry, the insurance industry, those who advocated single-payer approaches—80 stakeholder meetings were held in the health care debate from across the political spectrum. Democrats, Republicans, patients, providers, employers, unions, insurers, and drug device manufacturers contributed recommendations to this bill. They were not all accepted. The idea that we would take everyone's idea that comes to the table is ludicrous on its face. But certainly the opportunity to affect the outcome of this bill was very much an open process.

In addition, committee staff held regular meetings with smaller representative groups. Since April of 2009, these

meetings have included staff from Senator ENZI's office, Senator GREGG's office, and Senator HATCH's office. These meetings included groups from across the political spectrum who met for 2-hour sessions twice a week to provide detailed and thoughtful contributions to this bill.

In addition to these stakeholders, hundreds of groups attended larger stakeholder meetings on March 13 and May 15 where further recommendations on reform were heard.

On June 10 and 11, prior to beginning of the markup of the HELP Committee bill, Members had detailed, bipartisan discussions of the draft legislation, including extensive options contributed by our Republican colleagues. Options provided by Republican Members were reflected in the legislation approved by the committee.

On June 22, HELP Committee Senators also met with the nonpartisan

Congressional Budget Office Director Doug Elmendorf and other CBO staff.

The markup in the HELP Committee lasted almost a month—a record for that committee, by the way. The committee held 56 hours of executive consideration of the legislation, stretching across 23 different sessions over 13 days. Taken together with the Finance Committee, more than 20 days were devoted to the amendment process alone. During the HELP Committee markup—I have mentioned this over and over again—we considered 287 amendments, almost 300 amendments, and 161 of those 287 were accepted Republican amendments.

I ask unanimous consent to have printed in the RECORD all of those amendments that were accepted and the description of those amendments.

There being no objection, the material was ordered to be printed in the RECORD, as follows:



HELP and SFC Republican Amendments in the PPACA

<u>HELP/</u> <u>SFC</u>	<u>AHCA/AHFA</u> <u>Title</u>	<u>AHCA/AHFA</u> <u>Amendment</u>	<u>Page in</u> <u>PPACA</u>	<u>Line on Page</u>	<u>Amendment Purpose</u>
HELP I		Burr 202	200	7	To apply the same laws to private plans and the community health insurance option.
HELP I		Burr 217	184	9	To provide for the application of certain State laws to the public plan
HELP I		Burr 235	31	3	To strike provisions that prevent a full accounting of costs.
HELP I		Burr 242	142	6	To limit the use of Gateway surcharges
HELP III		Burr 5	1166	15	To require all services to be age appropriate under the school-based health clinic program
HELP III		Burr 6	1143	23	To require the Preventive Services Task Force to consider clinical preventive best practice recommendations
HELP I		Coburn 225	367	7	To provide that no insurer shall be required to participate in any Federal health insurance program.
HELP I		Coburn 226	156	6	To require Members of Congress and congressional staff to enroll in a Federal health insurance program.
HELP I		Coburn 228	195	7	To require the use of available technologies to reduce and help prevent waste, fraud, and abuse.
HELP I		Coburn 229	364	21	To ensure taxpayers are not forced to fund assisted suicide.
HELP I		Coburn 231	143	1	To provide for a full accounting of costs.
HELP I		Coburn 237	364	21	To ensure health care providers are not forced to participate in assisted suicide or discriminated against because they choose not to participate in assisted suicide.
HELP III		Coburn 25	1151	17	To for Federal messaging on health promotion and disease prevention
HELP I		Coburn 280	366	10	To Preserve and Protect Patient's Rights.
HELP VI		Coburn 293			To ensure that scientific data used by the Federal Government is publicly available for the general betterment of scientific research.
HELP I		Coburn 307	150	6	To allow for independent insurance agents
HELP VI		Coburn 312	1864	4	To clarify the definition of interchangeability.
HELP I		Coburn 315	196	20	Ensure taxpayer dollars do not fund waste, fraud, or other abuse in the Community Health Insurance Plan.
HELP I - CLASS		Coburn 4	1973	2	Merged bill also includes a Coburn 4, an amendment to ensure that no federal money will be used to fund CLASS
HELP II		Enzi 11	1660	24	To provide special safeguards for comparative effectiveness research on rare diseases.



**HELP and SFC Republican Amendments in the PPACA**

HELP II	Enzi 12	1670	22	To require that experience regarding the actual practice of medicine be among the "diverse and broad range of perspectives" represented on the comparative effectiveness research Advisory Council.
HELP II	Enzi 15	1659 (conceptual)	25 (conceptual)	To allow expert advisory panels comprising doctors and other clinical experts with relevant specialized experience to advise the government how to conduct comparative effectiveness research studies.
HELP I - CLASS	Enzi 16	1958	15	To increase the period in which premium payments are required for purposes of eligibility for CLASS benefits.
HELP I - CLASS	Enzi 17	1931	8	To increase the number of benefit plan as alternatives for consideration for designation by the Secretary.
HELP I - CLASS	Enzi 18	1933	22	To require health care practitioner certification of functional limitation for the benefit trigger.
HELP I - CLASS	Enzi 20	1936	17	To strike the Secretarial response to the public comment on the designation of benefit plan.
HELP I - CLASS	Enzi 21	1937	13	To require the Secretary to consider the Inspector General's annual report on waste, fraud, and abuse related to the program in setting the premium amount.
HELP I	Enzi 210	186	9	To prohibit the community health insurance option from limiting access to end of life care.
HELP I - CLASS	Enzi 22	1937	13	To require the Secretary to consider the Inspector General's annual report on waste, fraud, and abuse related to the program in setting the premium amount.
HELP I	Enzi 241	185	22	To ensure that an individual enrolled in the community health insurance option has access to all services.
HELP I	Enzi 250	30	8	To require the GAO to conduct a study and report on the quality and cost of health care.
HELP I - CLASS	Enzi 26	1945	7	To require coordination with the Secretary of the Treasury with respect to payroll deductions.
HELP I - CLASS	Enzi 27	640	15	To provide for the development of regulations concerning the process for eligibility determinations.
HELP I	Enzi 272	105	18	To prevent denial of care based on patient age, disability, medical dependency or quality of life
HELP I	Enzi 274	143	19	To protect pro-patient plans and prevent rationing

**HELP and SFC Republican Amendments in the PPACA**

HELP I	Enzi 278	105	18	To prohibit rationing on the basis of patient age, disability, medical dependency or quality of life
HELP I - CLASS	Enzi 28	1950-51	22	To clarify that advocacy services and advise and assistance counseling services are included as administrative expenses.
HELP I	Enzi 285	105	9	To prohibit the Secretary of Health and Human Services from limiting access to end of life care
HELP VI	Enzi 295	1859	12	To set forth the Sense of the Senate that a biosimilars pathway balancing innovation and consumer interests should be established.
HELP I	Enzi 296	29, 163, 1509 9, 22, 14		To make technical amendments.
HELP VI	Enzi 297	1859	24	To amend the Public Health Service Act to establish a pathway for the licensure of biosimilar biological products, to promote innovation in the life sciences.
HELP I - CLASS	Enzi 31	1969	11	To clarify provisions relating to reports on amounts in the Independence Fund.
HELP I - CLASS	Enzi 32	n/a		To require an option with respect to burdens on the disability determinations of the Social Security Administration.
HELP I - CLASS	Enzi 33	1967	18	To clarify provisions relating to the soundness of the Independence Fund.
HELP I - CLASS	Enzi 35	966	7	To provide for an Inspector General's report.
HELP I - CLASS	Enzi 36	1946	19	To require coordination with the Secretary of the Treasury.
HELP I - CLASS	Enzi 37	277,810	4,3,8	To require coordination with the Commissioner of Social Security.
HELP III	Enzi 44	1248	11	To ensure that data is collected on underserved rural populations.
HELP III	Enzi 45	1248	20	To require that data collection requirements are not effective without a direct appropriation for that purpose.
HELP III	Enzi 50	1254	24	To ensure that the Secretary conducts workplace wellness evaluations in publicly funded programs before evaluating privately funded programs.
HELP III	Enzi 51	1255	9	To ensure that information under the workplace wellness provisions are not used to establish Federal requirements.
HELP III	Enzi 62	1139	1	To modify provisions relating to the national prevention, health promotion, and public health strategy.
HELP III	Enzi 69	1146	5	To provide that all members of the Preventive Services Task Force are independent.
HELP III	Enzi 81	1166	19	To strike the definition of community under the school-based health clinic program.

**HELP and SFC Republican Amendments in the PPACA**

HELP III	Enzi 82	1159	3	To strike the authority for optional services under the school-based health clinic program.
HELP III	Enzi 85	1167	16	To clarify that certain oral health activities are subject to appropriations.
HELP III	Enzi 89	1209	13	To prohibit the use of funds to create video games or other similar tools that lead to higher rates of obesity under the community transformation grant programs.
HELP III	Enzi 92	1207	21	To clarify provisions relating to community measures under the community transformation grant program.
HELP II	Enzi 96	1658	10	To require comparative effectiveness research to assess whether treatments benefitting the "average" patient might nevertheless benefit many individuals
HELP I	Gregg 213	198	13	To require new Federal health entitlement programs to be fiscally solvent.
HELP I	Gregg 224	Conceptually	Conceptually	To protect taxpayer funds.
HELP I - CLASS	Gregg 6	1931	18	To protect the long-term fiscal health of the United States
HELP I - CLASS	Gregg 7	1972	13	To ensure honest budgeting by requiring CLASS Act payments, receipts, and deficits are reflected in the Budget.
HELP II	Gregg 9	1111	4	To modify provisions relating to distribution of information to the public.
HELP III	Hatch 10	1257	14	To promote research and treatment of pain care
HELP III	Hatch 14	1172	23	To define tooth-level surveillance for purposes of oral healthcare surveillance activities
HELP III	Hatch 17	1237	9	To utilize community health centers to test several approaches to improve wellness and promote the adoption of healthy lifestyles among several at-risk populations
HELP III	Hatch 19	1265	11	To ensure that better methodologies are developed to measure prevention and wellness programs
HELP VI	Hatch 209	1924	15	To authorize a GAO study on the 340B program once the Affordable Health Choices Act is implemented.
HELP IV	Hatch 22	1355	1	To make technical corrections and improve the bill
HELP I	Hatch 223	151	19	To modify provisions relating to navigators
HELP IV	Hatch 23	1302	6	To make technical corrections to improve the bill

**HELP and SFC Republican Amendments in the PPACA**

HELP IV	Hatch 24	1295	10	To ensure that the language in the Affordable Health Choices Act is consistent with professional terminology
HELP III	Hatch 25	1225	21	To ensure that there is no decrease in children's access to immunizations
HELP II	Hatch 27	1069	3	To ensure that community health teams include doctors of chiropractic
HELP II	Hatch 9	1133	7	To ensure that the Patient Navigator Outreach and Chronic Disease Prevention Act of 2005 (PL 109-18) has minimum core proficiency standards for patient navigators
HELP III	McCain 2	1265	22	To determine whether existing Federal Government sponsored health and wellness initiatives are effective in achieving their stated goals
HELP I	McCain 205	Conceptually in Section 1252	Conceptually in Section 1252	To establish certain policies for small group health plans.
HELP III	Murkowski 13	1159	8	Strike lines 4-5 on page 368 and replace with "residents of an area designated medically underserved areas or health professional shortage areas"
HELP III	Murkowski 14	1163	10	Strike lines 9-12 on page 372 and replace language
HELP III	Murkowski 20	1224	15	Add language to page 397, line 16 "(l) and immunization information systems to allow all states to have electronic databases for immunization records"
HELP I	Murkowski 202	80	23	To allow insurers to adjust premium rates for tobacco use.
HELP IV	Murkowski 23	1274	7	Add definition to page 429
HELP IV	Murkowski 26	1280	1	Add language to page 433, line 8: "and frontier"
HELP IV	Murkowski 28	1311	5	Add language to page 463 "(c)(1)(A)..."
HELP II	Murkowski 3	719	9	Add language to page 243, line 10 "Federal Indian Health Service programs and tribally-operated health programs."
HELP IV	Murkowski 32	1421	14	Add language to page 558, line 16: "and community health workers."
HELP III	Murkowski 34	1168	5	Add language to page 376, line 22 after the word "disabilities"; and American Indian, Alaskan Native, and Native Hawaiian
HELP III	Murkowski 35	1168	5	Add language to page 376, line 22 after the word "disabilities"; and American Indian, Alaskan Native, and Native Hawaiian
HELP II	Murkowski 38	1091	21	Add language to page 281, line 21 after the word "and"; "expenses associated with physician services."



**HELP and SFC Republican Amendments in the PPACA**

HELP II		Murkowski 4	1063	23	Add language to page 255, line 15 "and Federal Indian Health Service programs and tribally-operated health programs."
HELP IV		Murkowski 40	1357	2	Add language after line 7 on page 510
HELP IV		Murkowski 44	1316	22	Strike lines 12-13 of page 470; "rate of 2 percent less than the."
HELP IV		Murkowski 47	1318	18	Line 12 replace "cost-of-living" with "cost of attendance"
HELP IV		Murkowski 48	1322	22	"(1)" and place it at (2)(c)
HELP II		Murkowski 5	1068	11	Add language to page 259, line 22 "or Tribe or tribal organization as defined under the Indian Self-Determination and Education Assistance Act."
HELP IV		Murkowski 51	1325	13	Add Section (4) "must not have received loan forgiveness through public service loan forgiveness under the Higher Education Act."
HELP IV		Murkowski 53	1327	16	Strike "other reasonable education expenses"
HELP II		Murkowski 6	1069	5	Add language to page 260, line 12 "and physicians' assistants"
HELP II		Murkowski 60	1063	17	Add "Indian health organization" before "quality improvement organization"
HELP II		Murkowski 61	1082	15	Add "and an Indian tribe or partnership of 1 or more Indian tribes."
HELP III		Murkowski 65	1246	1	Revise language on line 1
HELP IV		Murkowski 67	1291	17	Line 8 after "State and local health departments," add "the Indian tribes,"
HELP III		Murkowski 7	1136	21	Add language to page 348, line 24 "and an Indian tribe and tribal organization"
HELP III		Murkowski 70	1235	5	Add language to line 10 on page 406 and t line 11 on page 407
HELP IV		Murkowski 71	1356	8	On page 509, line 20 add "dental health aides"
HELP IV		Murkowski 72	1356	21	Add language to line 6
HELP IV		Murkowski 73	1358	18	Add language to page 501, line 10
HELP III		Murkowski 74	1168	5	Add language to page 376, line 22
HELP III		Murkowski 75	1169	8	Add language to page 377, line 23
HELP III		Murkowski 76	1171	1	Add language to page 379, line 13
HELP I		Roberts 210	105	18	To protect patients by preventing the rationing of health care
HELP I		Roberts 211	105	18	To protect patients by preventing the rationing of health care
SFC II		Baucus Amdt. To Hatch C10	604	3	To establish Side-by-side provision to restore \$50 million in federal funding to Personal Responsibility Education for Adulthood Training

**HELP and SFC Republican Amendments in the PPACA**

SFC	III		Baucus Amdt. To Hatch D7	733	11	To grant the Secretary and Chief Actuary of CMS the authority to terminate implementation of Medicare reforms if proven to reduce benefits
SFC	IX		Bunning F4 (as modified)	2033	18	To require a study of how the provisions in the bill will affect the cost of medical care provided to veterans
SFC	I		Cornyn C14	172	12	To strike the political appointment process for the Co-op Advisory Board
SFC	I		Cornyn C15	171	1	Restriction of Federal fund use by the CO-Ops for propaganda
SFC	I		Cornyn C16	171	4	Restriction of Federal fund use by the CO-Ops for marketing
SFC	I		Cornyn C17	176	1	To require that the CO-Ops must meet state solvency standards
SFC	I		Cornyn C18	176	13	To specify that before CO-Ops can operate, the state must have implemented all the insurance reforms required by AHFA
SFC	I		Cornyn C20	176	1	To clarify that CO-Ops must comply with the same state laws as private health insurers
SFC	I		Cornyn C5	157	8	Clarification that existing minimum creditable coverage is exempt from penalty
SFC	III		Ensign D6	739	18	Requires Medicare savings to stay in Medicare
SFC	I		Ensign/Carper C8	87	14	Healthy Behaviors Amendment- To allow a premium discount rate of 30% of the cost of employee-only coverage (with the opportunity to increase to 50%
SFC	I		Enzi C3 (as modified)	356	23	To require a study of how the provisions in the bill will affect employer wages
SFC	I		Grassley C2	177	7	Prohibiting Group Purchasing Councils from Setting Payment Rates
SFC	VI		Grassley D4	1670	7	Would eliminate requirement that Cabinet secretaries and other high ranking officials be appointed to board of PCOR
SFC	I		Grassley/ Bunning C3	156	4	To Require Members of Congress/Congressional Staff to Purchase Healthcare through the Exchange
SFC	III		Grassley/ Hatch D2	797	19	To assure Medicare physician payment equity (Modification: Change "1/2" to "3/4" the difference between the relative costs of employee wages and rents and the national average for the year 2010)
SFC	II		Grassley/ Snowe C11 (incorporates Snowe C5)	407	1	To allow states to scale back coverage to 133%FPL by striking maintenance of effort provision

**HELP and SFC Republican Amendments in the PPACA**

SFC	II	Hatch C10	618	13	Restores \$50 million in federal funding to Abstinence Only-Marriage programs
SFC	I	Hatch C12	364	21	To prohibit Federal funds from being used to pay for assisted suicide and offer conscience protections to providers
SFC	I	Hatch C9	176	1	To Ensure a level-playing field for fair competition
SFC	III	Hatch D7	903	16	Medicare Advantage Benefit Protection
SFC	I	Schumer C6 (and Snowe F4)	326	18	Lower the responsibility penalty and index up to \$750 in 2016
SFC	IX	Schumer F1 (Snowe F3, Roberts F3, Enzi F1)	1999	1	To establish a \$2500 limit on salary reductions by an employee for a taxable year for purposes of coverage under a health FSA under a cafeteria plan
SFC	I	Schumer/ Snowe C3	332	9	To change the affordability level to no greater than 7% of a beneficiary's income level (modification: changed to 8% in the merged bill)
SFC	I	Snowe C10	159	9	To allow small businesses that grow beyond the upper employee limit in the SHOP exchange to continue to purchase in the SHOP exchange
SFC	I	Snowe C6 (Modified)	109	16	To require small employers to provide a plan with a deductible that does not exceed \$2000 for individuals and \$4000 for families, unless offering contributions which offset any increase in deductible above these limits
SFC	I	Snowe C9	149	24	To allow Small Business Development Centers to receive grants to assist in navigation of the system
SFC	II	Snowe D1	547	1	Establishment of a Medicaid Emergency Psychiatric Demonstration Project
SFC	I	Snowe F5	115	17	To allow individuals who would otherwise qualify for the exemption from the individual assessment (due to low income) in the Exchange could purchase the "young invincibles" policy
SFC	I	Snowe/ Lincoln C3 (Snowe C8)	130	11	Establishment of Small-business Health Options Program (SHOP) in the Exchange
SFC	I	Wyden C8 (Grassley C15 & C16)	212	12	A State may apply to the Secretary for the waiver of all or any requirements of the Exchange beginning 2017



Mr. DODD. Mr. President, specific pages in this bill and the language of these amendments or a synopsis of the language is included. These were not just technical amendments. Let me mention some that were included.

Our colleague from North Carolina, Mr. BURR, offered an amendment that subjects the public option to the same laws and requirements as private plans. This discussion that they were not involved in the public option—here are amendments offered by Republicans accepted in the committee dealing with the public option. Did we take all of them? Of course not. Of the 287 amendments, 161 of them, as you will now read, are reflected in these efforts.

Follow-on biologics: A bipartisan, Enzi-Hatch-Hagan—HAGAN, a Democrat, and HATCH and ENZI, Republicans—amendment establishes the pathway for biosimilar biological products. This Republican amendment is reflected in the bill on page 1859.

Long-term care: Senator GREGG ensured that the new voluntary program to approve long-term care options would remain solvent for 75 years—the CLASS Act—reflected on page 1931 of the bill.

Prevention—again, a bipartisan amendment offered by Senator GREGG and Senator HARKIN that expands and strengthens the incentives available for participation in workplace wellness programs, reflected in the bill on page 80.

The Murkowski of Alaska amendment will allow insurance companies to offer discounts for those who do not smoke. This is a Republican amendment reflected on page 80 of the bill.

Coverage: Several amendments were offered by Senators ENZI, COBURN, ROBERTS, and others to make certain that nothing in the legislation would allow for rationing of care and that no one would be denied care based on age, disability, medical dependency, or quality of life. That is reflected as well on page 105 of the bill.

My colleague from Wyoming, the ranking member of the committee, had 41 amendments that were included in the bill. For instance, in Title I, Enzi amendment No. 241 appears on page 185 of the marked-up bill. Line 22: to ensure that individuals enrolled in the community health service option have access to all services. Senator ENZI's amendment is included in the bill. He offered amendments on page 272 to prevent denial of care based on patient age, disability, medical dependency, quality of life, and antirationing proposals; follow-on biologics; amendments to protect and ensure that data and prevention programs include rural populations. Again, I will provide a list of the 41 amendments so my colleagues and others can read a synopsis of those amendments—hardly punctuation marks in the bill. We may not agree with every one. We accepted them. I

thought they contributed to the bill, made a better bill. I did not decry them; I welcomed them.

So the suggestion that this somehow has been jammed down the throats of people, with secret meetings going on—I don't think people ought to engage in that. You can vote against the bill if you want, but don't suggest to me this process denied people a chance to be heard, to be involved, to be engaged. I went out of way my in the markup of that bill to stay for as many hours as people wanted to, for as long as they wanted to, to offer as many amendments as they wanted to. Staff worked all during the weekends of that process to go through these amendments. I remember on one occasion, after work over one weekend, I proposed accepting 40 amendments. I offered to accept all 40 of them, and my Republican friends objected to a request to accept their amendments in the committee.

So the notion we marked up titles of this bill without adequate notice of language is false. Titles of the bill had to be scored by CBO. The idea that we would markup our bill without notice of language or CBO scores again is false. The markup dates were postponed by me to allow more time to read language and to ensure that CBO scores were distributed to all Members as well.

As someone who has been around here a number of years, I know when there is a true willingness to have a bipartisan effort and I know when there is one that is not going to happen. Senator Kennedy understood that as well. I have had numerous bipartisan agreements with my colleagues on committees I have served on over the years. It is certainly far better when you can achieve that, I don't deny that at all, but I will not accept the notion that there has been a refusal to accept or willingness to listen to bipartisan ideas as part of this bill.

Again, there is a debate that I know is going on on the other side as to whether to have amendments or not have amendments, whether Rush Limbaugh is controlling the show, or the Republican leader. Those things happen. I understand that. But the fact is, we have a bill here, far from perfect—I will be the first to acknowledge it. It is not a bill I would have written on my own. But we serve in a body of 100 coequals who bring to our debate and discussion various backgrounds, experiences, and viewpoints. It is not an easy task.

Every Congress going back to the 1940s to one degree or another has tried to deal with this issue. Every administration, from Harry Truman through every Republican and Democratic administration since the 1940s, has, to one degree or another, grappled with this issue of health care. To a large extent, everyone has failed or has not tried because it has been so monu-

mental an undertaking that it has been daunting. Certainly, we are seeing that as we grapple with it in our hour of watch. Those of us who are privileged to be here serving with an administration that has made this a priority have been challenged to do what no other Congress and no other administration has been able to achieve over the past 70 years. We are close to achieving a major beginning, and it is a beginning. Anyone who suggests otherwise does not understand the complexity or the largeness of this undertaking—a beginning, to begin to change and bring down costs, increase access, and affordability, as well as the quality of something that ought to be a basic right in the United States of America, and that is health care.

I am excited and optimistic about the possibility of achieving that. It is less than what I wished we could have done, but it is far more than has ever been achieved by others.

The product we have before us, while it is not one that has been endorsed on a bipartisan basis, reflects a lot of good contributions made by all Members. In fact, every single member of the HELP Committee—every single member—offered amendments that were adopted as part of our product—every single one. Substantive amendments were offered as well. I find it somewhat intriguing, that people claim to feel excluded from the public option idea. I had no idea they were interested in one. It is exciting to know they have some ideas on the public option. The reflection that occurred during our debate was they were totally opposed to any public option in this bill. So we adopted one as part of the HELP Committee process, under the leadership of SHERROD BROWN and SHELDON WHITEHOUSE and KAY HAGAN of North Carolina, who sat together and, working with others outside, came up with an option that we thought would appeal on a bipartisan basis. It did not, and we are very much involved in that debate as we speak.

Anyway, I wanted to respond to these earlier suggestions, and I will leave them as suggestions, that somehow this product and process has been totally written on a partisan basis. It is anything but that, and I want the RECORD to reflect that, hence the decision to include the specific amendments, the pages on which they exist in our product, and the substance of the ideas that were contributed by our Republican friends.

Mr. President, I saw my colleague from Montana a moment ago, who may be interested in addressing some of these ideas and thoughts as well that are coming before us. But while I wait for him to come to the floor, let me say that, again, I hear constantly this talk about Medicare and the cutting of Medicare. Let me reflect on how false those allegations are.

Again, what we are trying to do is to reduce the overpayments under the

Medicare Advantage Program. That is what has happened here. These private plans—and that is what they are—operating under Medicare Advantage have two options: They can cut benefits or reduce their profits. We have to bring down these costs when you have an average of 14 percent overpayments occurring in the country that are being borne by 80 percent of Medicare recipients.

We talk about the numbers. I have a number: 96,000 people in the State of Connecticut who utilize the Medicare Advantage plan. I am not opposed to that. I think it is a wonderful option for people. But the fact is 470,000 other people in my State, who are Medicare recipients, are paying \$90 extra in order to subsidize the Medicare Advantage plan and they are getting none of the benefits for it. So there is a huge percentage—about 80 percent of the elderly in this country—who are writing a check every year to subsidize private health care plans. These plans are profiting at the expense of people who never get a benefit from it.

What Senator BAUCUS and others have suggested is let's reduce these overpayments. It is up to the plans to decide what they want to do with that. They can decide to cut the benefits or take less profit. These are for-profit plans that are doing this. Maybe they don't want to take less profit. That might be a part of the motivation. But traditional Medicare, the guaranteed benefits under that—a nonprofit operation—are not touched in this bill—not a single guaranteed benefit. For over a week now I have challenged any Member in this body to identify a single guaranteed benefit under Medicare that is affected by this bill. Not one. Eliminating the overpayments under Medicare Advantage are, clearly, because we don't think that 80 percent of the population who qualify for Medicare ought to bear the financial burden of financing a benefit they never get.

None of us are opposed to Medicare Advantage, but we are opposed to the idea that these for-profit companies can play the game by suggesting they don't want to take less profit, they don't want to reduce any benefit, so they want to leave it exactly as it is. You want to know why Medicare is in trouble? That is why. If you want to put it on a solid footing for an additional 5 years, then take the proposal we have in the bill to reduce these overpayments. In the absence of doing that, the very people who are worried about the solvency of Medicare are going to be correct, because Medicare will be in financial jeopardy far earlier if we have these amendments adopted that would jeopardize the traditional Medicare Program.

Clarity is needed on all of this. The fact something is called Medicare Advantage, as I have said repeatedly, doesn't make it Medicare and it is cer-

tainly not an advantage. It is only an advantage for those private companies that are benefitting in terms of the profits they make. In fact, studies done by independent analysts say, that these companies have seen a 75 percent growth in profits as a result of this program. They are doing very well financially as a result of this. But they shouldn't be doing necessarily that well at the expense of others who are paying an additional \$90, on average per couple of retirees, elderly people, who are contributing that amount every year without receiving a single benefit under Medicare Advantage.

Our simple question is: Why should they be asked to pay that much more? Ninety dollars a year may not sound like that much to a Member of Congress, but if you are a retired elderly person, living on a fixed income, that \$90 a year can make a huge difference. It may not be much to a Member of Congress, many of whom, of course, are very wealthy indeed, but it is if you are sitting out there across America writing a check each year for \$90 to go into a program you never get a benefit from, which serves 20 percent of the senior population.

I don't blame the 20 percent at all. I understand how they feel. They wish to continue to get those benefits. And they can get them, provided the companies they are getting those benefits from are willing to take less in profits. That is what our bill is designed to do—to provide that choice. Obviously, we can't mandate that from them—although we were promised early on they would be able to reduce the cost of Medicare. That was the original proposal when Medicare Advantage was adopted many years ago—a number of years ago.

Again, it is anything but Medicare and it is anything but an advantage, except for the profit-making companies that have done very well off this program. Our bill here merely restrains the overpayments. I know that may bother these companies. They would like to make more, if they could, and I respect that, from their vantage point. But we should not, as the Senate, sanction and necessarily approve a proposal that allows them to make more money out of the pockets of people on fixed incomes to support a fraction of the population at the expense of the overwhelming majority. Where is the equity in that, when 80 percent of Medicare recipients are writing a check each year to private companies, in effect, to pay for benefits they never get?

I appreciate the support of organizations across the country—AARP and certainly the National Committee to Preserve Social Security and Medicare—and we thank them for their very strong letters. These major organizations, representing 43 million of our elderly in this country, have taken a very strong position against the as-

saults on this bill regarding the overpayments that are occurring, and we thank them for it. That may not be enough for some people to appreciate, but I believe if they look and listen to what is going on here, they will understand what is at stake. If you are part of the 80 percent of seniors out there who are writing those checks every year and getting none of the benefits, those who oppose our bill want to maintain and probably expand on it in the years ahead. So for you out there who are worried about the cost and solvency of Medicare, our bill is a major step in the direction of reducing those overpayments and providing the options that ought to exist to reduce profits or extend benefits.

Again, I think it is important to remind our colleagues that under this bill, there is \$130 billion in budget reductions in the first 10 years. It is the largest single reduction. We listened to our colleagues from North Dakota and New Hampshire talk about deficit reduction. This bill provides \$130 billion in deficit reduction in the first 10 years and \$650 billion of deficit reduction in the second 10 years.

We are now told by the Congressional Budget Office there are the millions of people today who are paying insurance and watching the costs escalate almost on an hourly basis. Even with zero inflation, we are watching private companies raise the cost of premiums—going up dramatically. There are 32 million people in the individual insurance market, according to the Congressional Budget Office, and they would pay 14 to 20 percent less in premiums for an equivalent plan than under the status quo. That is a huge reduction, potentially, in the years ahead for 32 million of our fellow citizens in the individual market. If you are in the small-group market—there are 25 million people in that, according to the CBO's analysis—you are eligible for tax credits and would pay 8 to 11 percent less in premiums. If you work for a small business and don't qualify for a tax credit, you would see a reduction, potentially, of 2 to 3 percent in premiums. If you are in the large-group market—and there are 134 million of our fellow citizens who are in that market, according to the Congressional Budget Office—again, you could see a reduction.

So in any category, you have a choice here to make—and we do in the coming hours. Do you want to continue the present process? And when people say status quo, it is such a misnomer. The status quo might even be acceptable to people if you could freeze everything. But you can't freeze everything. The status quo allows for a dramatic increase in premiums—dramatic increase. If we don't take steps to deal with rising costs, as we do in this bill, you are looking at premiums going from \$12,000 a year for a family of four

in this country to \$24,000 to \$35,000 in the next 7 to 10 years.

If this gets defeated—and, obviously, our Republican friends want this bill defeated—the idea that we are going to jump back into this is a pipe dream. We will end up with dramatically increasing costs to millions of our fellow citizens, which this bill restrains because of the hard work done by the Finance Committee, particularly, that had to work on these issues. So for those who suggest the status quo is okay, it is anything but okay.

In terms of cost reduction overall, as well as premium reduction, which is so important—and I thank my colleague from Indiana, Senator BAYH, who was the one who insisted CBO give us the analysis of what the impact of this bill would be on premiums—the fact is we see significant reductions of premium costs.

I see my colleague from Montana is now here, but I would give the example that in Connecticut, premiums in the year 2000 for a family of four were about \$6,000. In the year 2009, that family of four in Connecticut is now paying around \$12,000. So in 9 years, premiums have jumped from \$6,000 to \$12,000. And those numbers continue to escalate. So for those who say no to this bill, then—if you succeed in these efforts—prepare to answer the question why is it the premiums of those people you claim you are defending around here—if they have insurance—will escalate to the rates we have talked about. That is what is at stake—nothing less than that.

Whether it is so-called Medicare Advantage or cost reduction or premium reduction, this bill, with all of its imperfections, is a major, giant, positive step forward for our country. Again, I thank the members of the Finance Committee and Members of the HELP Committee, both staffs, and others who have worked to include many of the ideas that our friends on the other side wisely and thoughtfully made a part of these efforts.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I want to underline the huge bipartisan effort that this side undertook to put this bill together in many, many ways. I very much appreciate the comments of the Senator from Connecticut on that point.

Let's go back. A year ago, I held an all-day health care summit at the Library of Congress for members of the Finance Committee, Republicans and Democrats. They were all there. We spent a whole day. In addition, I talked to all the groups. I called them up and said: Look, we are all in this together—we Americans—consumer groups, labor, big business, small business, the pharmaceutical industry, hospitals, hospice, all these CEOs. I said: We are

all working together to get health care reform passed for our country—for all Americans.

So we kept that process up to keep it—and I don't like that word "bipartisan." It is more accurate to say that everybody was working together. If you don't like something, maybe you will like something else somewhere else.

The PRESIDING OFFICER (Mr. KIRK). The time of the majority has expired.

Mr. BAUCUS. Just as I was getting wound up, Mr. President. I will continue when the majority's half-hour comes around.

Mr. MCCAIN. Mr. President, I ask unanimous consent the Senator from Montana be given 2 additional minutes.

Mr. BAUCUS. I appreciate very much the 2 minutes from the Senator from Arizona. This could take a couple more than 2 minutes, but I very much appreciate the offer. I will just wait.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. I ask unanimous consent to enter into a colloquy with the Senators from Oklahoma, Tennessee, and Tennessee, both of them.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, we are here, obviously, as we are on a daily basis, to discuss the issue of health care reform. But we are in a rather unusual situation this morning because we don't know what we are discussing or debating. We find ourselves in an interesting situation.

After almost a year of consideration of health care reform, with a measure that has been—at least a couple of the outlines of it we know but, frankly, we have had no details except that Medicare is going to be extended, eligibility for Medicare is going to be extended to age 55.

I just would quote: There was a meeting yesterday amongst Senate Democrats. Many Senate Democrats emerged from yesterday's caucus meeting saying they had learned little about the public option agreement and there were many outstanding concerns.

Senator MARY LANDRIEU called the agreement "a very good idea." Senator BLANCHE LINCOLN said, "More information is needed." And Senator BEN NELSON said, "I just want to know what the costs are."

So do the rest of us. So do the rest of us. Here we have a proposal after nearly a year that is being assessed by the Congressional Budget Office, and here we are with no knowledge of what that bill is about, with the exception of some bare essentials that have been leaked.

What did this have to do with change? What does this have to do with bipartisanship? What does this have to do with anything?

Frankly, we have an editorial in the Washington Post this morning that calls it "Medicare Sausage?"

I ask unanimous consent the editorial from the Washington Post be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post]

MEDICARE SAUSAGE?

THE EMERGING BUY-IN PROPOSAL COULD HAVE COSTLY UNINTENDED CONSEQUENCES

The only thing more unsettling than watching legislative sausage being made is watching it being made on the fly. The 11th-hour "compromise" on health-care reform and the public option supposedly includes an expansion of Medicare to let people ages 55 to 64 buy into the program. This is an idea dating to at least the Clinton administration, and Senate Finance Committee Chairman Max Baucus (D-Mont.) originally proposed allowing the buy-in as a temporary measure before the new insurance exchanges get underway. However, the last-minute introduction of this idea within the broader context of health reform raises numerous questions—not least of which is whether this proposal is a far more dramatic step toward a single-payer system than lawmakers on either side realize.

The details of how the buy-in would work are still sketchy and still being fleshed out, but the basic notion is that uninsured individuals 55 to 64 who would be eligible to participate in the newly created insurance exchanges could choose instead to purchase coverage through Medicare. In theory, this would not add to Medicare costs because the coverage would have to be paid for—either out of pocket or with the subsidies that would be provided to those at lower income levels to purchase insurance on the exchanges. The notion is that, because Medicare pays lower rates to health-care providers than do private insurers, the coverage would tend to cost less than a private plan. The complication is understanding what effect the buy-in option would have on the new insurance exchanges and, more important, on the larger health-care system.

Currently, Medicare benefits are less generous in significant ways than the plans to be offered on the exchanges. For instance, there is no cap on out-of-pocket expenses. So would near-seniors who buy in to Medicare get Medicare-level benefits? If so, who would tend to purchase that coverage? Sicker near-seniors might be better off purchasing private insurance on the an exchange. But the educated guessing—and that's a generous description—is that sicker near-seniors might tend to place more trust in a government-run program; they might assume, with good reason, that the government will be more accommodating in approving treatments, and they might flock to Medicare. That would raise premium costs and, correspondingly, the pressure to dip into federal funds for extra help.

In addition, the insurance exchanges proposal is being increasingly sliced and diced in ways that could narrow its effectiveness. Remember, the overall concept is to group together enough people to spread the risk and obtain better rates. But so-called "young invincibles"—the under-30 crowd—would already be allowed to opt out of the regular exchange plans and purchase high-deductible catastrophic coverage. Those with income under 133 percent of the poverty level would be covered by Medicaid. The exchanges risk becoming less effective the more they are Balkanized this way.

Presumably, the expanded Medicare program would pay Medicare rates to providers,

raising the question of the spillover effects on a health-care system already stressed by a dramatic expansion of Medicaid. Will providers cut costs—or will they shift them to private insurers, driving up premiums? Will they stop taking Medicare patients or go to Congress demanding higher rates? Once 55-year-olds are in, they are not likely to be kicked out, and the pressure will be on to expand the program to make more people eligible. The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milquetoast public option plans rejected by Senate moderates as too disruptive of the private market.

Mr. McCAIN. “The emerging buy-in proposal could have costly unintended consequences.”

But we don’t know what it is. But we know that never before in this entire year—I ask my colleagues—have we seen a proposal that would change eligibility for Medicare down to age 55, never before.

The majority leader came to the floor this morning and said if we accept an omnibus, a multitrillion-dollar bill by unanimous consent—by the way, the Omnibus appropriations bill is six bills totaling \$450 billion, 1,351 pages long, with 4,752 earmarks totaling \$3.7 billion. And, by the way, spending on domestic programs is increased by 14 percent except for veterans, which is increased by only 5 percent.

The majority leader wants us to go out for the weekend, after keeping us in all last weekend. Here we have an unspecified proposal—none of us know the details or the cost—so I am supposed to go home to Arizona this weekend and say: My friends, we have been working on health care reform for a year. And guess what. I can tell you nothing.

We need to stay in, we need to know what the proposals are, we need to have votes on it, and we need to tell the American people what is going on behind closed doors.

Mr. MCCONNELL. Will the Senator from Arizona yield?

Mr. McCAIN. Gladly.

Mr. MCCONNELL. I recall our good friend, the majority leader, telling us on November 30 that we would be here the next two weekends. Then I recall our friend, the majority leader, saying Monday of this week we would be here this weekend.

My assumption was we were here to deal with this important issue that the majority has been indicating to everyone is so important, that we must stay here and do it. We are prepared to be here.

Mr. McCAIN. And vote.

Mr. MCCONNELL. And vote. In fact, we have been trying to vote for a couple of days now, and it has been difficult to vote.

Mr. McCAIN. If we are not going to have a vote, maybe we ought to have a vote to table the pending amendments, at least to have the Senate on record.

Could I finally say, I know New Orleans is very nice this time of year, but

perhaps we ought to stay here and get this job done?

Mr. ALEXANDER. I think it is important to reflect on the season we have here. A couple of nights ago, the Senator from Arizona gave an impressive speech in front of the Capitol for the lighting of the Christmas tree. This is the Christmas season coming up, 2 weeks from tomorrow, a very important season. The majority leader said it is very important for us to stay through Christmas if necessary to debate this bill. We said: All right, that is what we will do. We will stay to New Year’s Day. We will stay to Valentine’s Day because this is indeed a historic bill and we don’t want to make a historic mistake because it affects our children, our grandchildren, 17 percent of the economy, all 300 million Americans.

None of us have ever seen our constituents more involved in an issue than in this issue. So we are here ready to go to work.

I am wondering, as I listen to the Senator from Arizona, not only do we not know what this bill is that we are supposed to enact by 2 weeks from today, our friends on the other side don’t know what it is. They cannot tell each other what it is.

They came out of—they had sort of a rally yesterday. One of the Senators described it as sort of a “go team, go” rally, but they did not know what they were going to. All we have heard they are going to—and I imagine the Senator from Oklahoma, who is a physician, who has delivered many babies, seen many patients, still continues to do it, would have some comment on this—all we have heard is they may try to expand Medicare.

We heard yesterday from the executive director of the Mayo Clinic Health Policy Center, I ask unanimous consent to have his letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEDICARE EXPANSION WON’T GET US THERE  
PROPOSAL WOULD NOT INCREASE ACCESS TO  
HEALTH CARE SERVICES OR CONTROL COSTS

The current Medicare payment system is financially unsustainable. Any plan to expand Medicare, which is the government’s largest public plan, beyond its current scope does not solve the nation’s health care crisis, but compounds it. We need to fix Medicare by moving it to a system that pays for value—quality health outcomes that are affordable over time—and ensure its success, before bringing more people into a broken system.

Expanding this system to persons 55 to 64 years old would ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across the country. A majority of Medicare providers currently suffer great financial loss under the program. Mayo Clinic alone lost \$840 million last year under Medicare. As a result of these types of losses, a growing number of providers have begun to limit the number of Medicare patients in

their practices. Despite these provider losses, Medicare has not curbed overall spending, especially after adjusting for benefits covered and the cost shift from Medicare to private insurance. This is clearly an unsustainable model, and one that would be disastrous for our nation’s hospitals, doctors and eventually our patients if expanded to even more beneficiaries.

It’s also clear that an expansion of the price-controlled Medicare payment system will not control overall Medicare spending or curb costs. The Commonwealth Fund has reported this result for Medicare overall by looking at two time periods—one four-year period where Medicare physician fees increased and one four-year period where Medicare physician fees decreased. Overall cost per beneficiary increased at the same rate during each time period. This scenario follows the typical pattern for price controls—reduced access, compromised quality and increasing costs anyway. We need to address these problems—not perpetuate them—through health reform legislation.

We believe insurance coverage can be achieved without creating or expanding a government-run, price-controlled, Medicare-like insurance model.

Mayo Clinic supports the proposed insurance exchange model based on the Office of Personnel Management’s Federal Employees Health Benefit Plan (FEHBP). This system will improve access to insurance, make reforms to the current insurance system that eliminate pre-existing condition exclusions, and create an individual mandate where individuals can purchase private insurance in various ways: through employers; on the individual market; through co-operatives; or through an exchange model like the FEHBP.

We also believe that the government should help people pay for insurance premiums through sliding scale subsidies as needed.

JEFFREY O. KORSMO,  
Executive Director,

Mayo Clinic Health Policy Center.

Mr. ALEXANDER. I will just read one sentence from it:

Expanding the current Medicaid system to persons 55 to 64 years old would ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across this country.

I am very puzzled why ideas like this are being cooked up behind closed doors 2 weeks before Christmas, and we do not know what they are, they don’t know what they are, and the suggestion is we not vote today and we go home this weekend.

Mr. McCAIN. Not only are there questions—not only is there opposition from the Mayo Clinic but the American Hospital Association and the AMA. They have all come up steadfastly against this.

Could I ask my colleague from Oklahoma—and I quote from this editorial. Here we are supposedly going out for the weekend and the editorial from the Washington Post says:

Presumably, the expanded Medicare program would pay Medicare rates to providers raising the question of the spillover effects on a health-care system already stressed by a dramatic expansion of Medicaid. Will providers cut costs—or will they shift them to private insurers, driving up premiums? Will they stop taking Medicare patients or go to

Congress demanding higher rates? Once 55-year-olds are in, they are not likely to be kicked out and the pressure will be on to expand the program to make more people eligible. The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milque-toast public option plans rejected by Senate moderates as too disruptive of the private market.

Mr. COBURN. I will answer my colleague as somebody who has practiced medicine for 25 years: MedPAC, last year, said 29 percent of Medicare beneficiaries it surveyed were looking for a primary care doctor and had great difficulty in finding somebody to treat them.

That is now. In the State of Texas, 58 percent of the State's doctors took new Medicare patients, but only 38 percent of the State's primary care doctors took new Medicare patients.

I would make the case to you that if you delay care, that is denied care. It is exacerbated in our older population because an older person with a medical need is much more susceptible to the complications that can come from that initial problem. So if you delay the care, you are denying the care and you are actually increasing the cost.

There are 15 million people in this population. I have no idea if their plans include all of them. But if you add 15 million new people to Medicare, what you are going to have is 50 percent of them are not going to find a primary care physician to care for them because the rate of reimbursement does not cover the cost of care.

I think the editorial you quote is exactly right.

I would also note, if I may, that President Obama loves the Mayo Clinic, and rightly so. I had a brain tumor removed the summer before last by the Mayo Clinic. I am standing here on the Senate floor because of their expertise.

Mr. MCCAIN. There are many who believe the Senator from Oklahoma could not have a heart attack.

Mr. COBURN. I will ignore that comment.

The fact is, what Mayo says is we have to figure out how we create incentives in terms of how do we get people cared for at a lower cost. Medicare is not the way to do it.

As a matter of fact, I heard our colleagues talk. We have had eight votes since last Saturday. We are ready to vote. This is a 2,074-page bill. I have 15 amendments in the queue. I want to vote on them.

They don't want to vote because they don't want the American people to hear all the bad things about what is going to happen to their health care if this bill passes. If we do Medicare, what is going to happen is Medicare costs are going to skyrocket, but access is going to go down.

Mr. MCCAIN. Apparently, I would ask my colleague from Tennessee, we do not know what we would be voting on

because there has been a whole rewrite of this health care reform here after a year. We do not even know what the provisions of that bill are except what has been leaked. Apparently, my colleagues on the other side of the aisle, with the exception of the majority leader, don't know what it is either.

Mr. COBURN. If the Senator will yield, there are some things we could vote on. President Obama outlined some very specific things that ought to be in this bill. We ought to vote to put them in the bill.

What he said he wanted and what this bill presents are two different things. We ought to vote on making sure everybody has access. We ought to vote on making sure we are under the same plan as everybody else we are going to put into any new expanded health care coverage. We ought to vote in making sure everybody is treated fairly in this country. We ought to vote on your prescription drug reimportation. We ought to vote. But what we are doing is we are getting a slowdown.

We heard we are obstructing the bill. We are not obstructing the bill. Any other bill that comes before this body that had 2,000 pages in it we would allot 8 weeks, 10 weeks to debate.

As our colleague from Maine knows, there is not a more complicated subject that will affect more people that this body has ever taken up. We are trying to squeeze that into 3½ weeks, and the last 2 weeks we don't know what is in the bill.

Time out.

Mr. CORKER. I would like to thank the Senator from Arizona for his great leadership on this issue. I agree with all here. I would like to continue to discuss this, "colloquize," if you will, and vote. That is what we need to do all weekend is talk about this issue and vote.

There are numbers of amendments. But the thing that is interesting to me, I say to the Senator from Arizona—he has been one of the great champions in this country as it relates to how we live within our means. He has pointed out waste in government. He has pointed out overspending.

What has happened during this Christmas season is, for our friends on the other side of the aisle Medicare has become the gift that just keeps on giving.

I know the Senator talked about, during his campaign—and all of us have—that we need to get Medicare to a point where it is solvent, where seniors actually have the ability to use the benefits later on that now are in place. We have all talked about the need to make it solvent.

What does the base of this bill do? It takes \$464 billion out of Medicare to create a whole new entitlement. It doesn't even deal with the doc fix, as we have said many times.

The reason, by the way, we do not know what this says is the leadership

on the other side—this is another one of those yellow post-its. They are throwing it up on the wall just to see if it works. They are not telling us what the game plan is because they don't yet know whether it works. What they are hoping to do is to solve a major problem they have within their caucus, again, by taking from Medicare.

If you think about the fact that the Mayo Clinic, which is the model for all of us, would not even take new Medicare patients, and yet our friends on the other side of the aisle are trying to throw a whole new decade of seniors into the plan, what that means is less and less seniors are going to have access to care. That is what this means.

The other side of the aisle, I will have to say, based on history, I am surprised, but they continue, through their policies, to throw seniors under the bus.

I do not understand what has happened. This must be about a political victory and not about health care reform. What we would do is more firmly put in place, again, bad policy. The problem with Medicare today is physicians and providers are paid fees to do more work. So now what we would be doing, instead of health care reform, which is what Senator COBURN and all of us have talked about for some time, we are putting in place, in cement, something that works poorly, that the Mayo Clinic said is damaging to them and their patients, we would be putting it in place for even more people.

I thank the Senator for his leadership. I hope to be with him all weekend discussing amendments that are important and voting on those amendments. I can't imagine a better place for all of us to be.

Mr. MCCAIN. I thank the Senator. May I ask the Republican leader, again, to be very clear that it is his view and that of all Republican Members that we will stay in for as long as it takes to get this issue resolved and we are prepared to vote throughout the entire weekend. If the majority leader moves to the Omnibus appropriations bills, we will have a conference report, and we will certainly have discussion about a bill that has 4,752 earmarks totaling \$3.7 billion. But we should not get off this, should we?

Mr. MCCONNELL. My friend is entirely correct. I can only quote the majority leader himself who said we were going to be here this weekend. We expect to be here this weekend. If he tries to leave, we will have a vote to adjourn, and I am confident every Republican will vote against adjourning. This either is or it isn't as important as the majority says it is. If it is that important, we need to be here. More importantly than being here, equally important to being here is to vote. We tried to get a vote all day yesterday on a motion by Senator CRAPO. What we heard from the other side is: We are

working on a side-by-side. That is kind of parliamentary inside talk for delay. We are ready to vote. As several of our colleagues have suggested, we keep hearing about these new iterations of this bill. It reminds me of the end of a football game, trying to throw a "Hail Mary" pass, just somehow, some way find a way to pass this bill. I think it important to remember what happens to most Hail Marys. They fall to the ground incomplete. You get the impression they are far less interested in the substance of the bill than just passing something.

When the President came up here last Sunday, he said: Make history. Make history? The American people are not asking us to make history by passing this bill. They don't believe it is about the President. They believe it is about the substance. We are out here prepared to talk about the substance of this measure, offer amendments, and we fully intend to do it for as long as it takes. As the Senator has suggested, if the majority leader pivots to a conference report, which he is able to do under our process, we will spend all the time it takes to deal with the conference report.

Mr. McCAIN. May I point out, again, as the Senator from Maine, Ms. SNOWE, pointed out—and it was highlighted in the Wall Street Journal—no major reform in the modern history of this Senate has been enacted without bipartisan support, a reason for us to go back to the drawing board.

I know the Senator from Texas has been heavily involved in the issue of hospitalization and the American Hospital Association's reaction to what appears to be an expansion of Medicare.

Mrs. HUTCHISON. I thank the Senator from Arizona. I am pleased our leader is standing strong to say nothing should take precedence over our handling of this bill and making sure it is done right. That is what the Republicans are trying to do, to make sure this is done right. We talked about the Medicare expansion that is in the purported bill that we have not seen yet but that Democrats appear to be putting forward. We have also been spending the week talking about  $\frac{1}{2}$  trillion in cuts to Medicare. Now we are talking about possibly expanding Medicare at the same time we are cutting  $\frac{1}{2}$  trillion out of the care Medicare patients would get.

I have an amendment. It would stop the \$135 billion in cuts in the underlying bill to hospitals, cutting hospital reimbursements for Medicare patients. That is my amendment. Now we are talking about possibly expanding Medicare. The American Hospital Association put out an alarm, an action alert. It says:

Medicare pays hospitals 91 cents for every dollar of care provided. Medicaid pays just 88 cents for each dollar of care provided.

Medicaid, which may also be expanded, and the cuts in Medicare,

which we are talking about possibly expanding, would go forward. Which means what? The hospital association knows what. "What" is rural hospitals that care for Medicare patients are going to go under. What kind of services can be provided if there is no hospital in the whole county that can provide care to these senior citizens? I ask the Senator from Arizona, who has been such a leader on this, we are going to cut \$135 billion out of Medicare coverage for hospitals. We are going to now talk about expanding the coverage of more Medicare patients, which will mean we will cut more from the hospitals than is even envisioned in the underlying bill. Help me understand this, Senator. How would you suggest that passes the commonsense test?

Mr. McCAIN. May I say, having stood fifth from the bottom of my class at the Naval Academy, I cannot explain it. But perhaps before I turn to the Senator from South Dakota, maybe we could get a response from Dr. COBURN to that question.

Mr. COBURN. They are going to cut care. We are going to have more complications and worse outcomes. That is what is going to happen. Rather than changing the payment formula, which is what we should do, by rewarding quality and rewarding outcome, rather than rewarding flipping a switch, that is what needs to happen. We are going to take the same antiquated system, we are going to cut \$465 billion from it, and then we are going to add, as my colleague from Tennessee said, it is 34 million people, if they include everybody from 55 to 64 in the same program.

Mrs. HUTCHISON. Is the Senator saying that whether you were at the top of your class, such as the Senator from Oklahoma or the Senator from Tennessee or the Senator from South Dakota, or the bottom of your class, as the Senator from Arizona has admitted he held down the fort, regardless of where you are on the quotient of where you stood in your class, you know what the bottom line is.

Mr. COBURN. Care is going to be impacted. Here is a survey of 90,000 physicians. That is more than the active practicing physicians of the AMA. More than 8 in 10 physicians surveyed think payment reform is best to improve the system for all Americans. Only 5 percent of the physicians surveyed rated the current government health care program as effective, 5 percent.

Mr. McCAIN. I yield to the Senator from South Dakota.

Mr. THUNE. I ask my colleague from Arizona if this is what happens when you end up with one-party rule, one party trying to go this on their own. This seems to be a model of dysfunction in how to come up with a solution to one of the major problems facing the American people, dysfunctional by

Washington's twisted standards. They seem to be desperately throwing things at the wall, hoping something will stick. Surely, there has to be a better suggestion coming from the other side than to expand a program that is destined to be bankrupt in the year 2017. It is the equivalent of a ship that is sinking. It is similar to the Titanic. You will put more people on the deck of a sinking ship. Clearly, the overall objective, at least among some, and I think some have been very transparent about it—someone quoted earlier today the Congressman from New York in the other body who said this is the mother of all public options. He went on to say:

Never mind the camel's nose. We have his head and neck in the tent on the way to a single-payer system.

Obviously, there are people here who want to see a single-payer system, who want to see government-run health care. We don't happen to believe that is the best solution for America's health care system, but the amazing thing about this proposal is, it takes a program that is destined to be bankrupt in a few short years, cuts \$1 trillion out of it over 10 years, when fully implemented, and then adds millions of new people into that program. It is hard to come up with any rational explanation for what is going on here, other than that they are left with, in desperation, trying to throw something at the wall, hoping it will stick. Is this typically what happens around here when one party tries to go on its own on something that is this consequential to America? One-sixth of our economy is represented by health care.

Essentially, what they are saying is, we want to expand that part of the economy that isn't working today, that is headed for bankruptcy, that underreimburses doctors and hospitals, put more money into that failed system, exacerbate the cost-shift problem by forcing people in the private-payer market to pay higher premiums. It seems like this creates all sorts of problems that make matters even worse.

I appreciate my colleague's leadership on this issue of pointing out what inevitably is going to happen. When you have the Washington Post editorial this morning even acknowledging the terrible problems this creates for health care and the way this is being conducted, sausage being made here in Washington, DC. Even by Washington's twisted standards, this process has become so dysfunctional, I don't know how they can recover.

One thing they could do is decide to sit down with Republicans and actually figure out some things we could do that would drive health care costs down, rather than making them go up.

Mr. McCAIN. I thank the Senator from South Dakota. I have to say I have never, in the years I have been



here, seen a process such as this. It is incredibly bizarre that after a year, after hundreds of hours in the HELP Committee, after how many hundreds of hours in the Finance Committee, products are here on our desks. Yet there is a meeting yesterday of the Democrats. They come out, and they don't know what the proposal is either. Apparently, there is only one Senator who knows what the proposal is and that is the majority leader. Also, then it is OK to go home for the weekend. I honestly say to my colleague from South Dakota, I have never seen anything quite like this, especially when we are talking about one-sixth of the gross national product. Of course, already from what they know, the hospitals and doctors and others have come out in strong opposition to expansion of a program, as the Senator points out, that is going broke.

Mr. MCCONNELL. I say to my friend from Arizona, he made reference today to the senior Senator from Maine and her very insightful and thoughtful and correct speech a couple weeks ago about how an issue of this magnitude was historically dealt with here and how it was not being dealt with this way. She pointed out, major domestic legislation in modern U.S. history was, without exception, done on a largely bipartisan basis. That whole process, as the Senator from Maine pointed out, has been entirely missing, as we have moved along toward developing this 2,074-page monstrosity of a bill, designed to entirely restructure one-sixth of our economy on a totally partisan basis.

I don't think that is what the American people had in mind. They want us here, as we have all indicated, debating, discussing, and amending this proposal. That is what we would like to do for as long as it takes.

Mr. ALEXANDER. Mr. President, if the Republican leader will think back when he first came to the Senate as a young aide in 1969, the year before I was a young aide in the Senate.

I can remember President Johnson, a Democrat, and Everett Dirksen, the Republican leader, dealing with the open housing legislation in 1968, a very controversial bill. How did they deal with it? The Democratic President had the bill literally written in the office of the Republican leader, with staff members and Senators trooping in and out. The country looked to Washington and said: Well, the Republican leader and the Democratic President both think it is important. They are trying to work it out. In the end, they voted for cloture. In the end, they got the bill.

Mr. MCCONNELL. My friend from Tennessee is entirely correct. Right before we got here—right before we got here—in 1964 and 1965, the Democrats had overwhelming majorities, as they do now, and the civil rights bill of 1964 and the voting rights bill of 1965 passed

on an overwhelming bipartisan basis. The leader of the Republicans, Everett Dirksen, was every bit as much involved in that, if not more involved in it, than even the Democrats. Republicans supported it. On a percentage basis, a greater number—

The PRESIDING OFFICER (Mr. BURRIS). The minority time has expired.

Mr. MCCONNELL. Mr. President, I ask unanimous consent for 1 more minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. An even greater percentage of Republicans ended up supporting the civil rights bills of 1964 and 1965 than Democrats. But it was a truly bipartisan landscape for our country—a landmark, important. It was widely accepted by the American people because of the broad bipartisan support it enjoyed. That is what has been lacking here from the beginning.

Mr. MCCAIN. Mr. President, I ask unanimous consent that a list of physician organizations that oppose this act, representing nearly one-half million physicians, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PHYSICIAN ORGANIZATIONS THAT OPPOSE SENATE'S PATIENT PROTECTION AND AFFORDABLE CARE ACT

To date over 40 state, county and national medical societies, representing nearly one-half million physicians, have stated their public opposition to the Senate healthcare overhaul bill, the Patient Protection and Affordable Care Act (H.R. 3590). It is time for Congress to slow down, take a step back, and change the direction of current reform efforts to ensure that it is done right!

NATIONAL MEDICAL ASSOCIATIONS

American Academy of Cosmetic Surgery, American Academy of Dermatology Association, American Academy of Facial Plastic and Reconstructive Surgery, American Academy of Otolaryngology Head and Neck Surgery, American Association of Neurological Surgeons, American Association of Orthopaedic Surgeons, American College of Obstetricians and Gynecologists, American College of Osteopathic Surgeons, American College of Surgeons, American Osteopathic Academy of Orthopaedics, American Society for Metabolic & Bariatric Surgery, American Society of Anesthesiologists, American Society of Breast Surgeons, American Society of Cataract and Refractive Surgery, American Society of Colon and Rectal Surgeons, American Society of General Surgeons, American Society of Plastic Surgeons, American Urological Association, Association of American Physicians and Surgeons, Coalition of State Rheumatology Organizations, Congress of Neurological Surgeons, Heart Rhythm Society, National Association of Spine Specialists, Society for Vascular Surgeons, Society of American Gastrointestinal and Endoscopic Surgeons, Society for Cardiovascular Angiography and Interventions, Society of Gynecologic Oncologists.

STATE AND COUNTY MEDICAL ASSOCIATIONS

Medical Association of the State of Alabama, California Medical Association, Medical Society of Delaware, Medical Society of

the District of Columbia, Florida Medical Association, Medical Association of Georgia, Kansas Medical Association, Louisiana State Medical Society, Missouri State Medical Association, Nebraska Medical Association, Medical Society of New Jersey, Ohio State Medical Association, South Carolina Medical Association, Texas Medical Association, Westchester (NY) County Medical Society.

DECEMBER 1, 2009.

Hon. HARRY REID,  
Majority Leader, U.S. Senate,  
Washington, DC.

DEAR LEADER REID: On behalf of the over 240,000 surgeons and anesthesiologists we represent and the millions of surgical patients we treat each year, the undersigned 19 organizations strongly support the need for national health care reform and share the Senate's commitment to make affordable quality health care more accessible to all Americans. As you know, we have been working diligently and in good faith with the Senate during the past year and have provided input at various stages in the process of drafting the Senate's health care reform bill. To this end, we have reviewed the Patient Protection and Affordable Care Act of 2009.

As you may recall, on November 4 our coalition sent you a letter outlining a number of serious concerns that needed to be addressed to ensure that any final health care reform package would be built on a solid foundation in the best interest of our patients. Since those concerns have not been adequately addressed, as detailed below, we must oppose the legislation as currently written.

We oppose:

Establishment and proposed implementation of an Independent Medicare Advisory Board whose recommendations could become law without congressional action;

Mandatory participation in a seriously flawed Physician Quality Reporting Initiative (PQRI) program with penalties for non-participation;

Budget-neutral bonus payments to primary care physicians and rural general surgeons;

Creation of a budget-neutral value-based payment modifier which CMS does not have the capability to implement and places the provision on an unrealistic and unachievable timeline;

Requirement that physicians pay an application fee to cover a background check for participation in Medicare despite already being obligated to meet considerable requirements of training, licensure, and board certification;

Relying solely on the limited recommendations of the United States Preventive Services Task Force (USPSTF) in determining a minimum coverage standard for preventive services and associated cost-sharing protections;

The so-called "non-discrimination in health care" provision that would create patient confusion over greatly differing levels of education, skills and training among health care professionals while inappropriately interjecting civil rights concepts into state scope of practice laws;

The absence of a permanent fix to Medicare's broken physician payment system and any meaningful proven medical liability reforms; and

The last-minute addition of the excise tax on elective cosmetic medical procedures. This tax discriminates against women and the middle class. Experience at the state level has demonstrated that it is a failed policy which will not result in the projected

revenue. Furthermore, this provision is arbitrary, difficult to administer, unfairly puts the physician in the role of tax collector, and raises serious patient confidentiality issues.

This bill goes a long way towards realizing the goal of expanding health insurance coverage and takes important steps to improve quality and explore innovative systems for health care delivery. Despite serious concerns, there are several provisions in the Patient Protection and Affordable Care Act of 2009 that the surgical community supports, strongly believes are in the best interest of the surgical patients, and should be maintained in any final package. Specifically these include: health insurance market reforms, including the elimination of coverage denials based on preexisting medical conditions and guaranteed availability and renewability of health insurance coverage; strengthening patient access to emergency and trauma care by ensuring the survival of trauma centers, developing regionalized systems of care to optimize patient outcomes, and improving emergency care for children; well-designed clinical comparative effectiveness research, conducted through an independent institute and not used for determining medical necessity or making coverage and payment decisions or recommendations; and the exclusion of ultrasound from the increase in the utilization rate for calculating the payment for imaging services.

Further, while redistribution of unused residency positions to general surgery is a positive step in addressing the predicted shortage in the surgical workforce, we believe that the Senate should look more broadly at the issue of limits on residency positions for all specialties that work in the surgical setting that are also facing severe workforce problems.

Finally, we are pleased that you have accepted our suggestion and removed language which would reduce payments to physicians who are found to have the highest utilization of resources—without regard to the acuity of the patient's physical condition or the complexity of the care being provided. We thank you for making this important change.

While we must oppose the Patient Protection and Affordable Care Act as currently written, the surgical coalition is committed to the passage of meaningful and comprehensive health care reform that is in the best interest of our patients. We are committed to working with you to make critical changes that are vital to ensuring that this legislation is based on sound policy, and that it will have a long-term positive impact on patient access to safe and effective high-quality surgical care.

Sincerely,

American Academy of Facial Plastic and Reconstructive Surgery; American Academy of Otolaryngology-Head and Neck Surgery; American Association of Neurological Surgeons; American Association of Orthopaedic Surgeons; American College of Obstetricians and Gynecologists; American College of Osteopathic Surgeons; American College of Surgeons; American Osteopathic Academy of Orthopedics; American Society of Anesthesiologists; American Society of Breast Surgeons.

American Society of Cataract and Refractive Surgery; American Society of Colon and Rectal Surgeons; American Society for Metabolic & Bariatric Surgery; American Society of Plastic Surgeons; American Urological Association; Congress of Neurological Sur-

geons; Society for Vascular Surgery; Society of American Gastrointestinal and Endoscopic Surgeons; Society of Gynecologic Oncologists.

DECEMBER 7, 2009.

Hon. HARRY REID,  
Majority Leader, U.S. Senate,  
Washington, DC.

DEAR SENATOR REID: The undersigned state and national specialty medical societies are writing you on behalf of more than 92,000 physicians in opposition to passage of the "Patient Protection and Affordable Care Act" (H.R. 3590) and to urge you to draft a more targeted bill that will reform the country's flawed system for financing healthcare, while preserving the best healthcare in the world. While continuance of the status quo is not acceptable, the shifting to the federal government of so much control over medical decisions is not justified. We are therefore united in our resolve to achieve health system reform that empowers patients and preserves the practice of medicine—without creating a huge government bureaucracy.

H.R. 3590 creates a number of problematic provisions, including:

The bill undermines the patient-physician relationship and empowers the federal government with even greater authority. Under the bill, (1) employers would be required to provide health insurance or face financial penalties; (2) health insurance packages with government prescribed benefits will be mandatory; (3) doctors would be forced to participate in the flawed Physician Quality Reporting Initiative (PQRI) or face penalties for nonparticipation; and (4) physicians would have to comply with extensive new reporting requirements related to quality improvement, case management, care coordination, chronic disease management, and use of health information technology.

The bill is unsustainable from a financial standpoint. It significantly expands Medicaid eligibility, shifting healthcare costs to physicians who are paid below the cost of delivering care and to the states that are already operating under severe budget constraints. It also postpones the start of subsidies for the uninsured long after the government levies new user fees and new taxes to cover expanded coverage and benefits. This "back-loading" of new spending makes the long-term costs appear deceptively low.

The government-run community health insurance option eventually will lead to a single-payer, government run healthcare system. Despite the state opt-out provision, the community health insurance option contains the same liabilities (i.e., government-run healthcare) as the public option that was passed by the House of Representatives. Such a system will ultimately limit patient choice and put the government between the doctor and the patient, interfering with patient care decisions.

Largely unchecked by Congress or the courts, the federal government would have unprecedented authority to change the Medicare program through the new Independent Medicare Advisory Board and the new Center for Medicare & Medicaid Innovation. Specifically, these entities could arbitrarily reduce payments to physicians for valuable, life-saving care for elderly patients, reducing treatment options in a dramatic way.

The bill is devoid of real medical liability reform measures that reduce costs in proven demonstrable ways. Instead, it contains a "Sense of the Senate" encouraging states to develop and test alternatives to the current civil litigation system as a way of addressing

the medical liability problem. Given the fact that costs remain a significant concern, Congress should enact reasonable measures to reduce costs. The Congressional Budget Office (CBO) recently confirmed that enacting a comprehensive set of tort reforms will save the federal government \$54 billion over 10 years. These savings could help offset increased health insurance premiums (which, according to the CBO, are expected to increase under the bill) or other costs of the bill.

The temporary one-year SGR "patch" to replace the 21.2 percent payment cut in 2010 with a 0.5 percent payment increase fails to address the serious underlying problems with the current Medicare physician payment system and compounds the accumulated SGR debt, causing payment cuts of nearly 25 percent in 2011. The CBO has confirmed that a significant reduction in physicians' Medicare payments will reduce beneficiaries' access to services.

The excise tax on elective cosmetic medical procedures in the bill will not produce the revenue projected. Experience at the state level has demonstrated that this is a failed policy. In addition, this provision is arbitrary, difficult to administer, unfairly puts the physician in the role of tax collector, and raises serious patient confidentiality issues. Physicians strongly oppose the use of provider taxes or fees of any kind to fund healthcare programs or to finance health system reform.

Our concerns about this legislation also extend to what is not in the bill. The right to privately contract is a touchstone of American freedom and liberty. Patients should have the right to choose their doctor and enter into agreements for the fees for those services without penalty. Current Medicare patients are denied that right. By guaranteeing all patients the right to privately contract with their physicians, without penalty, patients will have greater access to physicians and the government will have budget certainty. Nothing in the Patient Protection and Affordable Care Act addresses these fundamental tenets, which we believe are essential components of real health system reform.

Senator Reid, we are at a critical moment in history. America's physicians deliver the best medical care in the world, yet the systems that have been developed to finance the delivery of that care to patients have failed. With congressional action upon us, we are at a crossroads. One path accepts as "necessary" a substantial increase in federal government control over how medical care is delivered and financed. We believe the better path is one that allows patients and physicians to take a more direct role in their healthcare decisions. By encouraging patients to own their health insurance policies and by allowing them to freely exercise their right to privately contract with the physician of their choice, healthcare decisions will be made by patients and physicians and not by the government or other third party payers.

We urge you to slow down, take a step back, and change the direction of current reform efforts so we get it right for our patients and our profession. We have a prescription for reform that will work for all Americans, and we are happy to share these solutions with you to improve our nation's healthcare system.

Thank you for considering our views.

Sincerely,

Medical Association of the State of Alabama, Medical Society of Delaware,

Medical Society of the District of Columbia, Florida Medical Association, Medical Association of Georgia, Kansas Medical Society, Louisiana State Medical Society, Missouri State Medical Association, Nebraska Medical Association, Medical Society of New Jersey, South Carolina Medical Association, American Academy of Cosmetic Surgery, American Academy of Facial Plastic and Reconstructive Surgery, American Association of Neurological Surgeons, American Society of Breast Surgeons, American Society of General Surgeons, Congress of Neurological Surgeons.

Past Presidents of the American Medical Association: Daniel H. Johnson, Jr., MD, AMA President 1996–1997; Donald J. Palmisano, MD, JD, FACS, AMA President 2003–2004; William G. Plested, III, MD, FACS, AMA President 2006–2007.

Mr. McCAIN. Mr. President, I thank the Senator from Montana for his courtesy.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I must say, some of the debate on the other side of the aisle is a little surreal. They say they want to move ahead, and then they refuse to enter into any reasonable time agreement to consider a necessary appropriations measure. I find it very impressive—I am very impressed—how the minority can maintain both that they want to move more quickly and not move at all—surreal.

I wish to also explain, despite what the claims on the other side are, that we have attempted mightily to work together on both sides of the aisle to get health care reform passed. They claim it is all one-party rule. Nothing could be further from the truth. Let me explain why.

When we began this effort over a year ago, we had many hearings. In fact, last year I think I had 10 hearings in the Finance Committee on health care reform to educate ourselves because we knew health care reform was going to be a big issue in the year 2009. So, in 2008, we had many Finance Committee hearings on all different aspects of health care. How does our system work? How do parts fit together? How does this all work? We were there to educate ourselves. We did not have a political ax to grind. We were not trying to make points. We got the experts in and asked: How does it work? How do the different parts of our system work together?

Then we issued a white paper. It was in November of last year. It was basically a call to action, which is what we called it. It was about an 80-, 90-page paper. It was a statement of the health care options: delivery system reforms, various ways to get increased health care coverage, various ways to help with insurance market reform—lots of different provisions.

I might say, casting all modesty to the wind, that white paper, that call to

action, back in November of 2008, is probably the basis and springboard from which most of the ideas we have been debating, both in the House and in the Senate and on both sides of the aisle, come from. They basically come from there.

I might say, it has all been totally transparent. It is all on the Internet. It has all been open for everybody. Republicans and Democrats participated fully. First was the Library of Congress all-day session, both sides fully—that was over a year ago.

Since then, in 2009, this year, we have had a countless number—in the Finance Committee—of what we call roundtables, a countless number of walk-throughs, a countless number of hearings on all the various aspects of health care reform—bipartisan, fully open.

Also, I instituted something else here; that is, we got to the point where we finally got to the markup, and we put the marked up bill on the Internet, again, so everybody sees everything. We also made sure all amendments were on the Internet and fully debated by both sides—totally open, totally transparent. I prided myself on doing that.

In fact, one very well-known health journalist who works for a very major paper walked up to me and said: MAX, is this a new way of doing things? Maybe you started something, MAX, in being so transparent and working so much together. Do you think this is the model for the future? I said: I don't know. But it impressed him how much we tried to work together and did work together with people on both sides of the aisle.

I cannot think of a more comprehensive, more transparent, more bipartisan effort than this.

So what happened? Well, the HELP Committee had their version passed. So we in the Finance Committee worked on ours. To move the ball, I shifted it to another group—we called it the Gang of 6; three Republicans, three Democrats—to try to get a core provision together that we could take to the full committee.

We had a countless number of meetings. I have forgotten the number of days we met—I think in the nature of 30 or 40 meetings and close to 100 hours and with Republicans and Democrats to and fro. Guess what. It was very, very constructive. I wish the American public could have been an eye on the wall at those meetings and watched these meetings proceed. There were very good questions asked by Senators on both sides, Republicans and Democrats.

I highly compliment my friend from Wyoming, Senator ENZI. I highly compliment my friend from Maine, Senator SNOWE. I highly compliment everybody who was there. They asked very good questions—and Senator GRASSLEY, of

course, he is the ranking member of the Finance Committee; and the same on the Democratic side—in an effort to try to find a good, solid health care reform bill.

Well, we kept working—bipartisan—working together for days, days, hours, hours. Then, unfortunately, we got to the point where—I am just calling it as I see it; one of my failings is I am too honest about things—and the Republicans started to walk away. They pulled away from the table. They had to leave.

I ask you, why? Why did that happen? The answer—to be totally fair and above board—is because their leadership asked them to. Their leadership asked them to become disengaged from the process. I know that to be a fact. Why did their leadership ask Republicans to leave and become disengaged from the process? To be totally candid, it is because they wanted to score political points by just attacking this bill. They were not here to help be constructive, to find some bipartisan solution. They were for a while. Then, when the rubber started to meet the road, when it came time to try to make some decisions, they left and began to attack.

I think a big, unfortunate circumstance in all this—we are going to pass health care reform. It is going to pass. It is going to do wonders for the American people. We are going to dramatically reform the health insurance market. People are going to have health insurance they do not now have. We are going to help put in place delivery system reforms. That is just a fancy term for saying changing the way we reimburse hospitals and doctors in a very positive way, so we are focusing more on quality and less on quantity and volume. This bill is going to pass. It is going to be a very good bill when it finally does pass and people understand it.

But the unfortunate part is this: It is unfortunate, in my judgment, that the other side pursued a strategy of just saying no, just saying no, and attack, attack, attack. That is basically what we have heard here in the last several weeks, instead of coming up with a comprehensive alternative, instead of coming up with a comprehensive alternative health care reform package. Then it would have been wonderful if we had an honest-to-goodness, solid debate on the pros and cons of each side, the merits of each side, a constructive dialog, pursuit, inquiry, focus on which portions of this should be put in the bill and which should not. But that did not happen. We did not have this constructive alternative provision presented to us. We had no provision presented to us—and by “to us,” I mean the American public—so we could debate here. But, rather, they just said no.

We have worked as hard as we could to be bipartisan. But to be honest and

candid about it, the other side walked away. They walked away, and I think it is very unfortunate that happened.

Mr. President, I yield 5 minutes to the Senator from Massachusetts, Mr. KIRK.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KIRK. Mr. President, before I say anything else, I wish to, once again, commend the Senator from Montana for his leadership on this historic piece of legislation. It is going to have an impact on people more widely and broadly than our Social Security system, and this will be as important a domestic piece of legislation as that. Every American who looks forward to their golden years knows what Social Security means.

The Senator from Montana has quite correctly mentioned how this legislation will have an impact on people's lives. I have only been in the Senate a short period of time, but I cannot tell you the numbers of constituents who have communicated with me about their situation in the Commonwealth of Massachusetts; whereas, in 2006, Massachusetts enacted health care reform, many of the aspects of that legislation are contained in the bill we are debating.

For the record, today the Boston Globe published a story indicating that more than 96 percent of the State's adult taxpayers had health insurance in 2008. This is close to universal coverage, and I am sure, before too long, we will be able to say we hit the 100-percent mark.

This is providing affordable insurance to people who otherwise would never have had it. When the Senator from Montana talked about how this bill would impact people's lives, I am going to tell you a story that was told to me by a family who had a situation. I will call them Daniel and Brenda. Those are their names.

They had been living without health insurance for years. In fact, Brenda said she could barely remember when they had last gone to the doctor because they did not have health insurance. But she learned about our Health Care for All on the Helpline that is in existence in Massachusetts from a close friend. Soon after she contacted it, her husband was diagnosed with a serious heart condition. With the indispensable assistance of the Helpline, her family was able to enroll in coverage they could afford.

Brenda's husband Daniel had started to feel constant fatigue. He never imagined that someday he would need to have a strong supporting device inserted in his heart. Brenda said they truly appreciated all the assistance given to them through the Helpline. But there is more.

Brenda and Daniel recently welcomed a new addition to their family. Unfortunately, their son was born with res-

piratory problems and had to stay in the intensive care unit for 7 days immediately after his birth. Brenda told us she had a hard time leaving the hospital without her newborn son in her arms. But she could also take comfort in being surrounded by top medical professionals who were dedicated to caring for her son. Here is what she wrote:

Health Care for All has been such a gift to our lives. First, my husband had no idea of the seriousness of his health issue. If it wasn't for our eligibility with the [State's new health care reform] programs, we would probably have found out about his heart disease too late. And right after came the unexpected surprise of having my son in neonatal care for a week. Both of these situations were hard to go through just emotionally. We just couldn't imagine how it could have been hard financially speaking. That's why, and for many other reasons, we are just so amazed to be Massachusetts residents and count on the tremendous support we have been receiving from the Helpline counselors.

This is just one example of countless families I have heard from in Massachusetts.

It clearly shows how important it is to pass national health care reform and enable all Americans to have the quality, affordable health care that Brenda, Daniel, and their son were able to have.

So I wanted to bring to the attention of our colleagues in the Senate a real life story of what health care reform can mean and what will be great relief for the financial and health security to American families when we enact this legislation.

I ask unanimous consent that the Boston Globe article I mentioned be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Boston Globe, Dec. 10, 2009]

**FEWER TAXPAYERS ARE PENALIZED FOR NOT HAVING HEALTH COVERAGE**  
(By Elizabeth Cooney)

Fewer Massachusetts taxpayers were penalized for lacking required health insurance last year than were fined in 2007, the state said yesterday in a report reflecting the second year that residents had to report on their tax returns whether they were covered under the state's near-universal-coverage mandate.

More than 96 percent, or 3.8 million, of the state's 3.95 million adult taxpayers said they had health insurance for at least part of 2008, according to the state Department of Revenue, and 3.65 million had coverage for the entire year.

About 45,000 tax filers did not have health insurance, although they were classified as able to afford it under state guidelines. They paid a penalty of up to \$76 for each month they went without coverage, depending on a sliding scale matched to their income. Another 8,000 successfully appealed their penalties, based on hardship, to the Commonwealth Health Insurance Connector Authority.

In 2007, when 95 percent of tax filers said they were insured, more people were fined: 60,000 people lost their personal exemption, about \$219 for an individual, for not having health insurance that year.

"This report gives us yet another data point demonstrating the continued success of health reform with exceptionally high rates of insurance and a smooth system for the mandate in the Commonwealth," Lindsey Tucker, health reform policy manager at the advocacy group Health Care For All, said in an e-mailed statement.

"The report also reminds us of one of the major gaps in our reform: the thousands of residents unable to purchase insurance due to its lack of affordability," she said. "We must continue to search for ways to keep quality coverage affordable for all our residents."

The penalty, which is pegged to one half the cost of the lowest premium offered by the Commonwealth Connector, went up to a maximum of \$89 a month for 2009, and the Revenue Department has proposed raising it to \$93 in 2010.

People who are deemed unable to afford insurance are not penalized, and those who have a lapse of up to three months in their coverage are also not subject to the penalty.

The high percentage of tax filers reporting they have insurance fits with other state reports saying that 97 percent of all residents have coverage. Navjeet K. Bal, commissioner of the Department of Revenue, said in an interview.

"From 2007 to 2008, we did not see a real drop in health insurance," she said. "Even with the economic turmoil that started in [fall] 2008, people still had health insurance. A year from now, we'll see."

Mr. KIRK. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I rise this afternoon to speak on two subjects as part of our health care debate. The first is what happens to our children. We have had an opportunity over the last couple of weeks, and will continue to have a full debate about so many aspects of this legislation. When it comes to the question of what happens to our children—and I speak of in this case poor children and special needs children—I have said from the beginning of this debate and even before the debate began many months ago that the standard ought to be four words: No child worse off. It is a very simple standard. I think it is a standard we can meet and I believe it is a standard we should meet for the most vulnerable children in America—those who happen to be poor or suffer from or are burdened by special needs, both the impact on that child, that individual life, as well as the impact on his or her family.

The good news is that over the last couple of years, we have gotten it right with regard to children's health insurance, a program I am proud to say had a good bit of its foundation and its origins in Pennsylvania. It became a national effort in 1997 when President Clinton signed the legislation. We have had, frankly, a lot of bipartisan support for this program over many years, although we had less bipartisan support when it was reauthorized this past year when President Obama signed it into law.

Here is what it means. The Children's Health Insurance Program, known by

the acronym CHIP, has provided millions of children with health insurance coverage they would never have absent that program. We don't know the exact number as we speak today, but we are at a point now where we have in the range of 7 million or more children covered. Over the next couple of years, we will have 14 million American children covered. That is an enormous achievement, but more important than any kind of legislative achievement, it will mean that 14 million children or their families won't have to worry about whether they get quality health care.

In the first year of a child's life, the experts tell us they should get to the doctor at least six times for a so-called well child visit. A Children's Health Insurance Program in America ensures these children receive many benefits, including dental, immunization, and preventive care. But the fact I always point to is that for six times in the first year of a child's life, he or she will get to see a doctor because they are in the CHIP program, and that has an enormous impact for that one life, for that one family, but I would argue—and I think the evidence is irrefutable—it will have a positive impact on all of our lives, because of the impact of millions of children getting that kind of help in the early years of their life.

We know this program works. The Children's Health Insurance Program works. That is an understatement. It works well.

What we are worried about, though—what I am worried about—is that there have been people in Washington who have advocated putting the Children's Health Insurance Program in the new insurance exchange. The exchange is going to be a very positive development for our health care system and for adults, but I would argue strongly and vigorously that it is not good for kids. So we are going to be debating that maybe in a couple of years, but we want to make sure as we debate that question that we have as much evidence to show that and put forth the reasons why the Children's Health Insurance Program should not—should not—be part of the exchange.

In terms of why we say that, the research on this question is indisputable. The director of CBO, the Congressional Budget Office, Doug Elmendorf—and we know a lot about CBO. They make determinations about this bill and about costs. CBO has said that children will have better benefits and more cost savings in CHIP than they will in the exchange.

Yesterday, an organization many people here know as First Focus released a white paper which compared Children's Health Insurance coverage versus coverage those children would get in the exchange. Here are some of the results of that research paper.

No. 1, the question of children's coverage from 2009 through 2013:

If health reform were to repeal CHIP in 2013, States would not invest in improving coverage for those children when those very efforts will be dismantled just a few years later.

It stands to reason. Why would a State go forward to strengthen a program they know is going to change as a matter of Federal policy a couple of years later?

The increased coverage of 4 million children that is expected from passing Children's Health Insurance legislation earlier this year would be largely lost.

That whole effort that took years—years—and two Presidential vetoes, before President Obama became President, to get to continue the CHIP program and expand.

No. 2, First Focus, another one of their conclusions:

Children in most State Children's Health Insurance Plans receive coverage for all approved vaccinations, dental care and well-baby and well-child visits. This level of benefits stand in contrast to private plans, like those in the exchanges.

What is good for an adult may not be good for a child. Children are not small adults as so many advocates have said over and over. But the level of benefits that children get in CHIP stands in contrast to the provisions in private plans such as those in the exchange which often impose limits that are particularly harmful to low-income children and children with special needs.

That is conclusion No. 2 by First Focus.

Conclusion No. 3 is the following:

An actuarial study—

A recent study—

finds that children moved from CHIP to the exchange plans would dramatically increase out-of-pocket costs for those kids. Out-of-pocket costs for a child living in a family earning 225 percent of the Federal poverty level would increase by 1,100 percent—

not 1,100 dollars, but 1,100 percent—

if the Senate were to join the House in repealing Children's Health Insurance Program.

This is another reason why it is a bad idea. We want to make sure this program is strong. We know it works. We also don't want to exponentially, radically increase out-of-pocket costs.

Conclusion No. 4, premiums:

Because Children's Health Insurance keeps premiums and other out-of-pocket costs for children at low levels, the cost of health insurance exchange plans will be many times higher than that, even for just covering children.

An increase in premiums will lead to a number of children currently enrolled in CHIP to lose coverage—to lose coverage—according to the Congressional Budget Office.

No. 5, reason to do the right thing, access to pediatric providers:

Children's Health Insurance plans specifically focus on the unique health care needs

of children, which is not the case in the proposed exchanges. The recent Children's Health Insurance reauthorization—

For those who watch these Senate debates, we use words such as "reauthorization." My simple way of saying that is we do it again. We take an existing program, evaluate it, see if it is working, and keep doing it. That is what reauthorization is all about. But we did that earlier in the year, thank goodness, for children's health insurance.

The recent effort to continue CHIP included improvements to pediatric-specific quality measures that may get lost in the conversion of CHIP as a stand-alone program put into the exchange. We don't want to do that for kids. We want to make sure every pediatric-specific quality measure that we have in place now, all of these years later, is maintained. We don't want to injure that. We don't want to cut that back.

Finally, in terms of another item on the list of reasons, guarantee to care:

In exchange plans, some children currently eligible for the Children's Health Insurance Program may be barred—may be barred—from receiving subsidies for coverage due to the cost of employer-sponsored plans.

Once again, what is good for an adult may not be good for our kids. We have to watch this.

Moreover, the families that are eligible for subsidies and coverage through exchange plans may find coverage so unaffordable that they are left without insurance entirely.

So we don't want to send a family into the exchange who is trying to get insurance for themselves and their kids and find out that they can't cover their kids because it costs too much. We have an existing, stand-alone Children's Health Insurance Program that we know works.

This amendment I filed for this debate on health care—the children's health insurance amendment to guarantee that we keep it strong, strengthen it and continue it—the Children's Health Insurance Program has the support of over 500 national and State organizations that focus on children's health, health policy generally, social workers, children's mental health advocates, school educators, health plans in particular, faith groups across the country, and more. These 500 national and State organizations speak volumes about why this amendment is so important. We must strengthen and ensure the continuity of CHIP in this health care reform bill. That is what our amendment is all about.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter addressed to me, dated December 9, from more than 500 organizations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 9, 2009.

Hon. ROBERT P. CASEY, JR.,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR CASEY: As organizations committed to ensuring that all of our nation's children get the health coverage they need and deserve, we are writing to thank you for your commitment to making children an important priority by filing Amendment #2790 to the Patient Protection and Affordable Care Act (H.R. 3590). Your amendment builds on the provisions of the underlying bill, continuing to protect and improve the country's successful Children's Health Insurance Program (CHIP) and ensuring that no child ends up worse off as a result of health reform. We applaud your leadership.

America's children have a lot at stake in health reform. More than eight million children remain uninsured, and more are losing employer-sponsored coverage daily. Families are just one playground accident away from medical bankruptcy. Each day a child is uninsured is a lost opportunity to strengthen our next generation, America's future. Your amendment goes a long way toward protecting and improving coverage for millions of children in low-income working families across the nation by:

Providing full funding for CHIP through 2019;

Maintaining current CHIP eligibility through 2013, and setting a floor for income eligibility for children in all states at 250 percent of poverty (\$55,125 for a family of four) beginning in 2014;

Streamlining enrollment procedures making it easier for children to get coverage and keep it;

Ensuring that coverage for children remains affordable;

Guaranteeing all children in CHIP the comprehensive care they need from head to toe; and

Requiring an HHS report in 2016 that will compare coverage for children in CHIP with coverage for children in the new Health Insurance Exchange and if coverage (including benefits, cost-sharing, premiums, and other features) is comparable or better, children can be transitioned from CHIP into the Exchange in 2019.

Our nation has made great strides over the last decade in securing health coverage for low-income children of working families. We must now seize this historic opportunity to build on the success of prior efforts and the bipartisan CHIP program, and ensure that children will be better off, not worse off, as a result of health reform. Your amendment will do just that.

We offer our strong support for your CHIP Amendment (#2790). We stand ready to work with you and your Senate colleagues to achieve our common goal of reforming our nation's health care system and ensuring that *all* children, indeed everyone in America, have access to the health coverage they need and deserve.

Sincerely,

National Organizations.

Mr. CASEY. Thank you very much. I wish to inquire as to how much time I have.

The PRESIDING OFFICER. There is 3½ minutes remaining.

Mr. CASEY. I will move quickly.

The second part of my remarks focuses on pregnant and parenting teens and women. We have an amendment that focuses on a group of pregnant women in America that we are not

doing enough about. Neither party, in my judgment, is doing enough about them, enough about help for those women. I will come back to this maybe later today. But it is vitally important, whether we are Democrats, Republicans, or Independents, but as Americans, that we give integrity and meaning to the sentiment that is often expressed that we care about pregnant women, that we care about a teen mother who decides to bear a child, that we are going to help her through if she makes that decision.

If a woman on a college campus becomes pregnant and decides to have that child, we want to give her all the help we can. If a woman is a victim of domestic violence or other sexual violence or stalking, and through all of the horrific nightmare of that violence, she determines that she is going to go through with a pregnancy and have a child, that we help her in the midst of that darkness, that we give her some light in that darkness. What we don't want to have is women who are deciding to bear a child who feel all alone, who have to walk that path all by themselves.

That is what this amendment is about. I will return to it later today.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that we be able to go into a colloquy for the next half hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I rise today to talk about the taxes that are in this bill—taxes that are imposed in 3 weeks—not 3 weeks from 6 months from now, not 3 weeks from 2014, but 3 weeks from now, January 1, 2010. Three weeks from now, on January 1, 2010, we are going to see the taxes in this bill start.

I know people are saying: Wait a minute. This bill doesn't take effect until 2014. That is what we have been talking about. It is what we have been hearing. But, no, the tax part starts in 3 weeks—January of 2010.

I have partnered with Senator THUNE, who has been working on this problem, and Senator GRASSLEY and Senator HATCH and many others who will be speaking today.

I see my colleagues from Florida, Nebraska, Wyoming, as well as my colleague, Senator CRAPO, from Idaho, all of whom—Senator CRAPO, of course, is waiting for a vote on his amendment, which would stop the taxes on everyone who makes \$200,000 or less.

We are talking about the taxes because it is such a huge issue. Here is what is going to happen with the taxes in the bill that start in 3 weeks. Americans will pay more in insurance premiums. Americans will pay more in

prescription drugs. Americans will pay more for medical equipment. Let's walk through those taxes.

In a few weeks, in January of 2010, this will begin: \$22 billion in taxes on prescription drug manufacturers; \$19 billion in taxes on medical device manufacturers; \$60 billion in taxes on insurance companies. That is around \$100 billion, which starts in 3 weeks. Then, in 2013, the taxes on high-benefit plans take effect. That is \$150 billion in taxes. So for every union member who has a good plan that gives them the benefits they have negotiated for over the years, those taxes come in at 40 percent of the benefits. That starts in 2013.

You are still saying: Wait a minute. I thought the bill started in 2014—and that is right. But the taxes start in 3 weeks, and they keep right on going. In 2013, the high-benefit plans start getting a 40-percent excise tax.

Mr. President, when the \$100 billion in taxes start in 3 weeks on drug manufacturers, medical device manufacturers, and insurance companies, what happens? Premiums go up immediately, prescription drug prices go up immediately, and the medical devices—hearing aids and things people need for medical treatments—go up immediately.

We have been talking about health care reform and the need for it, and the need to make history. Yet the reform we are going to see go into effect right away is huge tax increases. I am here with many colleagues, who are so concerned about this for their constituents.

I ask the Senator from Wyoming, who is one of the two physicians in the Senate—he has been so active in this area. When the taxes go up on our insurance premiums, our prescription drugs, and our medical equipment, I ask the Senator from Wyoming, as a physician, what does he think is going to happen to the cost of health care.

Mr. BARRASSO. Mr. President, I have great concern about the cost of health care for American families. We see it with our seniors certainly, as they will be seeing Medicare cuts. In this bill, there is \$464 billion in Medicare cuts, but there are taxes that are going to go up, which will impact all of the people in this country.

I remember a promise the President made. He said his plan would not raise taxes one penny. He went on to say: not your income taxes, payroll taxes, capital gains taxes—any of your taxes.

We are seeing that taxes are going up, and in a way that is basically—you hate to say it, but it is a gimmick in this bill, where they are going to collect taxes for 10 years but only give benefits for 6, and it is the last 6 years.

As my colleague from Texas said, they are going to start collecting taxes—today is December 10—on the 31st of this month, 21 days from now,



but the services would not be given for 4 years. That is how they get the number under \$1 trillion, and it is at a time when the President makes a statement that this would not add a penny or a dime to the deficit. Eighty percent of the American people don't believe it because they know what is in front of them. They know what it is like to live their own lives. Is this what the Senator from Texas is seeing as well?

Mrs. HUTCHISON. The President said, in his address to the joint session of Congress, that this bill had to come in at a cost of no more than \$900 billion. So the CBO scored the bill at \$847 billion. But the Senator from Wyoming has brought up a point that is because they started scoring the bill in 2010, but the services in the bill don't start until 2014.

If you take the years from 2010 to 2019, it probably comes in at \$847 billion. But if you start when the spending starts and go to 2023, the cost is \$2.5 trillion.

I just ask the Senator from Nebraska if his constituents are hearing of this \$2.5 trillion cost, with one-quarter of it coming from Medicare cuts and about one-quarter of it in new taxes that start next week. What does the Senator from Nebraska say about this?

Mr. JOHANNES. Mr. President, the citizens from Nebraska are absolutely on to this gimmick. They know it is a gimmick. Here is what I tell the Senator from Texas: I had an opportunity, as she knows, to be their Governor for 6 years. Every year, I had to walk in front of the unicameral—our one-house system—and give a state of the State address and lay out a budget plan. If I had walked into that chamber with a budget plan with these kinds of gimmicks, they would have been rolling in the aisles laughing at me, literally. They would have been rolling in the aisles.

I always did a State fly-around, where I visited the communities and talked about my budget vision and my legislative package, et cetera. The people of Nebraska would have run me out of the State had I tried to balance the State budget based upon this kind of gimmicky approach.

The Senator has absolutely hit the nail on the head. What we have here is a situation where those who wrote this bill—as we all know, it was written behind closed doors and nobody knew what the bill was until a few weeks ago—but those who wrote the bill said: Oh my goodness, the President has said we have to bring this bill in under \$900 billion. That is what he said. How are we going to get that accomplished? So they used gimmicks. They uploaded the bill, front-end loaded the bill on the revenues, so that starts right away. Then the benefits don't start for 3 or 4 years. So it is magic; we have made the bill come in under \$900 billion.

Let me offer this thought: Who loses on this crazy accounting gimmick? Do

you know who loses? The constituents we represent in the United States—not just in Nebraska. They are going to pay the taxes. They are not going to see the benefits. It is like buying a car and paying on it for 4 years but not getting the car for 4 years. They are going to pay on it.

Sadly, and most concerning to me, is that this gimmickry is going to be passed on to the next generation because, when it doesn't work, somebody has to pick up the bill. The full cost of this bill, we have come to recognize, is \$2.5 trillion. This bill doesn't fit together. It doesn't pass the smell test, as we say back home in Nebraska.

My hope is that sanity will revisit what we are doing and people will say: Time out. We can't ask the American people to go along with this. We have to call a timeout and get this right.

Mrs. HUTCHISON. I thank the Senator from Nebraska. I think having been a former Governor, his view is especially important. What we have heard through the grapevine—we haven't seen any new proposals, but we heard there is going to be an expansion of Medicare and an expansion of Medicaid. Medicaid, in particular, is going to be very costly to States because they have a matching requirement for Medicaid. Many Governors are concerned about that.

I know the former Governor of Nebraska, in his background, realizes that is one of the biggest issues in a State's budget.

I know the Senator from Florida also has experience with being in a Governor's office, being a chief of staff for a Governor. He has been very active, especially because the population of Florida has a very high rate of senior citizens. The cuts in Medicare in the bill are huge. He is on the Senate floor. I am just wondering, when we are looking at the cuts in Medicare and the huge taxes, how that will impact the State of Florida, and how he thinks we are going to have to deal with that.

Mr. LEMIEUX. Mr. President, I thank the Senator from Texas. This is budget gimmickry. As the Senator from Texas said, as a former chief of staff who worked on trying to balance the budget because our constitution in Florida requires that, we try to figure out how much revenue we have and how much we can spend. If there were not enough revenues, we either had to cut spending or find a new source of revenues. We could not engage in this budget gimmickry.

If I may borrow an analogy from my friend from Nebraska, this is like paying for a car for 4 years before you even get to drive it. Imagine you are going to make a substantial purchase—a house or car—and they show you the house, and they say here is your mortgage payment, and you will live in the house for 10 years, but you will start paying for it today. But you can't

move in until 2014. That is what this bill does.

In order to make this “budget neutral,” we steal  $\frac{1}{2}$  trillion from Medicare—health care for seniors, which seniors have paid into—and we raise taxes, which is going to increase, not decrease, the cost of insurance. When we tax pharmaceutical companies and tax the providers of medical devices, what happens? They pass those costs right along to the citizens. Not only are we stealing from Medicare, not only are we raising taxes, which will be passed on to the citizens, now we are going to tell the States we are going to increase Medicaid.

We are hearing about this secret deal that has been put together behind closed doors. My friends are in the dark, and a lot of Democrats don't know what is going on either. They are trying to figure out what the deal is. The deal will put more of a burden on the States.

I know my friend from Nebraska knows this, being a former Governor. The American people need to know, when you increase Medicaid, the States pay the vast majority of that; and because they have to balance their budget, they will have to cut something else. So they are going to have to cut teachers or law enforcement. So we steal from seniors, steal from the States, raise taxes, and we don't cut the cost of health care for most Americans.

I am new to this Chamber, and perhaps my friend from Idaho can help me understand this. It doesn't make a lot of sense as to how we should proceed with health care reform.

Mr. CRAPO. No, it does not. I appreciate the comments of my colleague from Florida, all my colleagues on the Senate floor today.

As the Senator from Texas indicated, one of the items of business before us today is my motion to commit this bill to the Finance Committee to take out the taxes that the President pledged would not be in there. The President pledged that no one who makes less than \$250,000 as a family or \$200,000 as an individual will pay any taxes under this bill. Yet in the very first 10 years, there is almost \$500 billion of those taxes, a huge portion of which falls on people who are in that category.

As has been indicated, the real implementation of the bill on the spending side does not happen until 2014. If you count the amount of taxes that start when the spending starts, it is about \$1.2 trillion of new taxes. Really, the only thing that is transparent—because this was all crafted behind closed doors—the only thing that is transparent is the gimmick.

The President said, as the Senator from Texas pointed out, that he would not let a bill come across his desk and get a signature if it spent more than \$900 billion. First of all, you have to

say: Wow, why do we need almost \$1 trillion of new spending? But when they went behind closed doors and came up with this bill, it turns out it cost around \$2 trillion or \$2.5 trillion.

How did they make it meet the \$900 billion test? They just said: Look, let's delay its implementation for long enough that the number comes out to under \$900 billion. That happened to be the year 2014. So if you don't count the first 4 years and only count 6 of the 10, then in this budget window we are working in you can get your number. It is just remarkable.

Before I ask the Senator from South Dakota about his perspective, because I know he is working with the Senator from Texas on an amendment to try to correct this gimmick, I would like to respond to one quick point I know our opposition on the other side has continued to make, and that is they actually say there are no tax increases in the bill.

How do they say that? Here is the way they say it. There are subsidies in the bill that are provided to people with low income who do not have adequate access to insurance. Those subsidies total about \$400 billion in the bill in the first 10 years, which is really only 6. They count those subsidies as a tax cut. The technical term given to them is a "refundable tax credit," although \$300 billion of those subsidies do not go to taxpayers. The people who receive them do not have a tax liability. But then they offset those subsidies against the taxes the rest of America will pay and say, therefore, there are no taxes in the bill.

I think that is another form of gimmickry. I ask my colleague from South Dakota what his perspective is on the types of gimmicks we are seeing and whether the American people should insist that these kinds of things be removed from the bill.

Mr. THUNE. I say to my colleague from Idaho that I support his motion. I hope we get a chance to vote on it. I know right now they are scrambling to find an alternative to put up so they can have something on which to give their side political cover because they know the reason they are trying so hard is because they know this raises taxes. To say with a straight face this does not raise taxes—the American people get this. I think the gig is up. They figured out there are huge Medicare cuts in this bill, huge tax increases in this bill. And as the Senator from Idaho pointed out, when they say these refundable tax credits are going to go back in the form of premium subsidies and there are not that many people who are going to pay, as he pointed out, 73 percent of the people who will get those premium subsidies are people who do not have an income tax liability already. Therefore, it is hard to say you are going to reduce taxes on somebody who does not have an income tax liability.

More important than that, there are still 42 million Americans with incomes under \$200,000 a year, according to the Joint Tax Committee, who are going to see their taxes go up under this bill. So you literally have millions and millions of Americans under \$200,000 a year. And as the Senator from Idaho mentioned, the President's promise was he would not raise taxes on anybody earning under \$250,000 a year. This flatly contradicts that, flatly violates that pledge. I cannot fathom anybody coming here with a straight face and saying: Oh, yes, this doesn't raise taxes. Of course it raises taxes.

What the Senator from Texas and I intend to do on our motion—and I hope we have a chance to vote on it and the Senator's motion—we will go back to the committee and figure this out. We want to offer a motion that we think makes sense because it aligns and synchronizes the dates of all this.

What has happened here, I would say, in a very deceptive way, is they understated the costs of the bill. My colleagues on the floor already alluded to this. They tried to get it under \$1 trillion, and in attempt to get it under \$1 trillion, they had to come up with budget gimmicks.

To illustrate that with a bar chart, we can see in the first 10 years of this bill—starting today and going to 2019—the spending in the early years does not show up much. That is because most of the spending gets put off until January 1, 2014.

So if we look at that first 10-year period, the spending under the bill is less than it will be when the bill is fully implemented. When the bill is fully implemented, looking at the years 2014 to 2023, it explodes the spending in the bill from about \$1 trillion over the first 10 years to \$2.5 trillion over the 10 years when it is fully implemented.

The reason they were able to do that is because of this sort of smoke-and-mirrors way of enacting the tax increases immediately and delaying the spending. The American people are going to end up spending \$71 billion in tax increases out of their pockets, out of the American taxpayers' pockets, about \$600 per taxpayer, before they ever see a benefit under this bill.

What the Senator from Texas, Mrs. HUTCHISON, and I are offering is a motion that would delay the tax increases until such time as the benefits begin. That, to me, seems to be a fair way to go about making public policy.

What they have done, in an effort to obscure the overall cost of this bill, is to say that 22 days from now, we are going to raise your taxes. On January 1 of this year is when most of these taxes—the taxes on prescription drugs, taxes on medical devices, taxes on health plans—all the taxes in the bill begin to take effect January 1 of next year. For 4 years, people will be paying

taxes out of their pockets. I might add, because of the taxes that are going to go on all the device manufacturers, prescription drugs, and health plans, they will get passed on in the form of higher premiums. They are going to see tax increases and premium increases before they ever see a dollar of benefits.

It is 1,483 days until the benefits under this bill kick in. That is unfair. It is unfair to the American taxpayer, it is unfair to the American people, and it is unfair to try to obscure and mask the total cost of this bill and say we are only spending \$1 trillion on this bill when we know full well when it is fully implemented, the total cost of that is \$2.5 trillion.

I appreciate the discussion that is being held here in pointing out the smoke and mirrors, the sort of underhanded way to try to shield the cost of this bill but also to support the Senator from Idaho with his motion that would commit this bill and get these tax increases out of here because the one thing small businesses are saying right now is we want to invest, we want to create jobs. But you cannot raise taxes on small businesses when you want them to create jobs. That is what this bill does.

The National Federation of Independent Business, the Chamber of Commerce, the National Association of Wholesalers and Distributors—all the major business organizations—have come out opposed to this bill.

The National Federation of Independent Business in a letter yesterday said: We do not support policies that increase the cost of doing business and that raise taxes. Clearly, that is what this bill does.

Our motion is very simple; that is, it simply delays tax increases until such time as the benefits begin.

Mrs. HUTCHISON. I am very pleased that the Senator from South Dakota talked about what we are trying to do because it is very simple. It is very simple. The Hutchison-Thune motion to commit says, if we do nothing else, if we do nothing else in this bill, we have to be fair and transparent with the American people; that is, we do not start the taxes, we do not start the increases in premiums, increases in prescription drug benefits, increases in medical devices until at least there is an implementation of this insurance program that we hear is going to be offered to the American people. We have not seen it, but we are told that there is going to be an insurance program that Americans can sign up for, but they are going to be paying higher taxes and premiums and costs in health care for 4 years before they ever see it. All we are saying is, let's send this bill back to committee and fix that.

It does not—as the Senator from Nebraska said earlier—pass the smell test. It does not pass the smell test in

Nebraska, Wyoming, Florida, Idaho, South Dakota, or Texas. To tax people for 4 years, to raise their costs until they basically are going to say, Give me an alternative, and the alternative is, guess what: A big government takeover of our health care system. That is like saying: I am from the Federal Government, and I am here to help you. We have heard that before.

I do not think the American people will in any way believe that this bill is fair or honest with them if we start the taxes 22 days from now, as the Senator from South Dakota has pointed out, but they do not see a program. They are going to go online and say: Oh, my premiums are going up, my prescription drugs are going up; my goodness, where is the insurance program they have been talking about? They are going to go online, but, hey, there is no program.

How can we go home—I ask any of the Senators who would like to add their perspective on this—how are you going to go home and tell your constituents that your taxes start in 22 days, and maybe in 4 years, roughly, maybe you are going to see a program, and we are from the Federal Government, and we are here to help you?

Mr. BARRASSO. You cannot go home and say that with a straight face. There are many rural areas in our States. People see through all this.

There are two articles next to each other in today's New York Times. One talks about the details of the secret agreement they are working on behind closed doors. It says: "Details Are Scanty." Right next to it it talks about: "For Rural Elderly, Times Are Distinctly Harder." These are the people who are going to see taxes going up, these are the people who are going to see cuts in Medicare.

I want to read the first paragraph because this is from Lingle, WY, a community in my State. It talks about Norma Clark, 80. It says:

Norma Clark, 80, slipped on the ice out by the horse corral one afternoon and broke her hip in four places.

I am an orthopedic doctor. I have taken care of these over the years.

Alone, it took her three hours—

These are the kind of wonderful Americans we have—

Alone, it took her 3 hours to drag herself 40 yards back to the house through snow and mud, after she had tied her legs together with rope to stabilize the injury.

This is a person who is on Medicare, and they are going to cut \$464 billion from Medicare, and they are going to use gimmicks that are going to harm our people.

I have a former Governor and a former chief of staff for a Governor's office. You know in the rural parts of your community, I say to Governor, now the Senator from Nebraska, you have people like that—hard-working people who expect honesty from a gov-

ernment, and they are not getting it in this bill which is going to tax for 10 years and only give services for 6.

Mr. JOHANNES. That is such a compelling story. I want to add something to that. When you think the policy could not get more crazy and insane, you hear about this idea that they are going to expand Medicare, which is due to be insolvent in 2017. But the tragedy of that in relating it to the story you just told us is this: That will hammer our rural hospitals. Why? Because they cannot stay open on Medicare reimbursement rates. They cannot stay open on Medicaid reimbursement rates.

This poor woman who dragged herself to try to get some care all of a sudden could be faced with the possibility that the hospital she relies on will not stay open under this health care bill.

I have been to those hospitals. I have seen the struggles they are going through with Medicaid and Medicare reimbursement. Every hospital administrator tells me the same thing: We would close our doors if we had to live on that.

So what is their solution? Expand Medicaid and Medicare. You have got to be kidding me. Who are they listening to? You know what. Take this bill out to the rural areas of Nebraska. You will get an earful.

Mrs. HUTCHISON. How much time is left on our side?

The PRESIDING OFFICER. Seven seconds—2, 1, 0. Time has expired.

Mrs. HUTCHISON. Let me give the last 5 seconds to the Senator from South Dakota.

The PRESIDING OFFICER. Time has expired.

Mr. THUNE. I yield back my 5 seconds. I don't have enough time to distribute equally. It would not be fair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the time for debate only be extended until 2 p.m., with the time equally divided, with Senators permitted to speak for up to 10 minutes each, with no amendments in order during this time.

Mrs. HUTCHISON. Reserving the right to object, I ask the Senator from Florida, it is 10 minutes and going back and forth. It is not 30 minutes allocated per side; is that correct?

Mr. NELSON of Florida. It is back and forth.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I ask to be advised when I have used 8 of my 10 minutes.

The PRESIDING OFFICER. The Senator will be so notified.

Mr. BOND. Mr. President, small businesses are the backbone of our economy. They make up 99.7 percent of all employer firms. They employ just over

half of all private sector employees. They pay 44 percent of the total U.S. private payroll. They have generated 64 percent—a majority—of the net new jobs over the past 15 years. They create more than half of the nonfarm private gross domestic product, and they hire 40 percent of all high-tech workers.

Small businesses drive this economy. They are also the sector most in need of real health reform that will reduce cost and make it easier to buy insurance. It is estimated that 26 million of the uninsured are small business owners, employees, and their dependents. That is a majority of the uninsured. They continue to struggle to be able to afford health care.

Here are two examples: Jim Henderson, president of Dynamic Sales in St. Louis, has made every adjustment in the book to continue to provide health insurance to his employees. He covered both employees and their families back in the 1980s, but he is now at a point where he can only afford to provide for his employees. He pays 70 percent, his employees 30 percent. Jim is one of the very few small businesses that right now have weathered the storm despite the economy. He wants reform that lowers cost and helps individuals better spend their health care dollars.

Unfortunately, the Democratic health care bills we have seen so far—and I guess we haven't seen all of them—won't help Jim to continue to provide his employees health care.

Kathie and Tom Veasey own True Value Hardware in Wilmington, DE, the hometown of Vice President BIDEN. They employ 28 people, most of whom they consider family. They cover 100 percent of the cost for their employees and half for their families. But they have seen huge increases in premiums over the years, with a 36-percent increase just this year after an employee got sick. Each year, they are forced to shop for health insurance, but they continue to have limited choices due to an uncompetitive market.

Unfortunately, the Democratic bills won't fix the problem or help Kathie and Tom continue to provide their employees health care.

If we really want to get out of this recession, if we really want to address the problem of affordable and accessible health insurance, then the majority party needs to take a hard look at health care reform.

First of all, we need to allow small businesses to go together and purchase health care across State lines so they have true competition and so they can lower costs. We need medical malpractice reform, which would cut \$120 billion to \$200 billion out of the cost of health care.

However, when we look closely, the bills we see before us do not address the real health care needs, and, in fact, by imposing more taxes—and taxes which the CBO said will be passed from

health care companies down to those who are paying the private bills—not only will it make health care less affordable for these small businesses, it will force many of them to drop whatever coverage they have now.

Tax equity is extremely important. An employee of a large corporation or a union member who gets health care premiums paid for by their employer or by their union doesn't have to record them as income. Small businesses, their employees, farmers, and individual purchasers need the same benefit that the employees of large corporations and union members get.

Now, instead of proposing common-sense health care solutions for small businesses, the bills we have seen coming out of the smoke-filled rooms run by the majority leader continue to heap costly new burdens on small businesses that are trying to keep their doors open. More and more it seems small businesses are under attack, and that is what they are telling us. One of the universities that visited me this past week is trying to do something to help small businesses, and I said: What is the attitude? They say: The attitude of small business is that they are under attack by what is being done in Congress and what is being proposed by the administration.

The 2010 budget calls for tax increases on those earning \$250,000 or more. For small businesses that are taxed at their personal rate—proprietorships, partnerships, and sub S corporations—these tax increases hit the returns of those small businesses, and they are taxed at the punitive rate. Higher energy taxes on businesses in the cap-and-trade plan will put many small businesses in my part of the country out of work. New taxes and new mandates in the health care bill will be passed on.

Randy Angst of Lebanon, MO, says the following about the Senate bill:

The new taxes would eliminate roughly half of my profits. It would force me to let employees go, refrain from hiring new employees and prevent me from reinvesting in my business. The mandates would be very harmful and make it much more costly for me to operate my business.

This bill—the last bill we have seen—requires a costly \$28 billion new mandate on businesses that do not offer health care. Who pays that mandate? Anybody looking for a job. If you tell businesses they have to spend big money on a mandate, they cannot spend it on hiring new workers. The mandates do nothing to reduce insurance costs, and because they are focused on full-time workers, the mandate gives companies an incentive to classify more of their workers as part time.

Gene Schwartz, with K&S Wire Products in Neosho, MO, says:

We are in a recession and I am in manufacturing. The legislation would be nothing but

detrimental to us. Our workforce is already down 25 percent from last year, and if this bill goes through in its current form, the new taxes and mandates will force me to make further cuts. Also, this bill will increase my costs by further raising my already sky-high insurance premiums.

This bill also includes more paperwork which is costly for a small business. Section 9006 requires that every time a business vendor sells a service or property exceeding \$600 to another business, the receiving business must report the transaction to the IRS. That is an enormous new costly paperwork burden that will hit almost every business regardless of how small.

These mandates and regulations disproportionately affect small businesses and come at a high cost. According to the SBA's own Web site, very small firms with fewer than 20 employees annually spend 45 percent more per employee than larger firms to comply with Federal regulations. These very small firms spend 4½ times as much per employee to comply with environmental regulations and 67 percent more per employee on tax compliance than their larger counterparts.

The bill clearly fails to bring down the cost of health care for small businesses. It fails to bring down the cost of health care at all, but it is especially hard on small businesses that can't afford coverage under the current law.

Small business owners from my State have come to me for two decades looking for more affordable ways to make health insurance available. They want to be able to provide insurance for their people. That is why I have long been a champion of small business health care reform.

Does the majority's bill include strong reform that will allow small businesses and the self employed access to more affordable, more accessible health care? No.

Does the bill include protections for small businesses that disproportionately feel the burden of increased government mandates and taxes? No.

In fact, CBO has said that this bill will increase premiums for individuals in the non group market by 10–13 percent.

Premiums for small businesses could increase by 1 percent or be reduced by 2 percent but it is easy math. If a small business cannot afford to provide health insurance now, they will not be able to afford to do so under this bill.

According to CBO, under current law families in a small group plan today pay about \$13,300. In 2016, they will pay about \$19,200 if this bill becomes law.

That is the wrong direction.

Health care is already too expensive for small businesses. We need to make it cheaper. It should not cost a family \$19,200 in 2016 for health insurance.

This bill continues down the path of unsustainable health care costs.

In fact that is one of the main reasons the National Federation of Inde-

pendent Businesses opposes this bill. They say, "Small businesses can't support a proposal that does not address their number 1 problem—the unsustainable cost of healthcare. With unemployment at a 26-year high and small business owners struggling to simply keep their doors open, this kind of reform is not what we need to encourage small business to thrive."

This bill also imposes new taxes and fees, like the \$6.7 billion per year tax increase on health insurance companies.

Yes, the majority wants to sock it to the insurance companies.

Well, guess what. The insurance companies are going to pass the costs along to consumers.

Small businesses cannot self-insure, they must purchase products available in the marketplace. That is why CBO has found that increased costs due to fees being passed on to the consumer will be more pronounced for small businesses. NFIB has also said this new tax will fall almost exclusively on small businesses.

This bill just does not help small businesses.

I know the argument my colleagues on the other side offer.

They say they provide a tax credit to help small businesses.

What they don't say is that this is a bait and switch.

First of all, in order to get the full credit, you cannot have more than 10 workers who get paid an average of \$20,000.

After that, the credit begins to phase out for each employee you have above 10. It also phases out for each \$1,000 increase in average wages above \$20,000. If you have 25 employees or you pay more than an average wage of above \$40,000, you don't even get the credit.

The real kicker is that the full credit is only available for 2 years after the exchange takes effect. Then that is it.

A small business will either have to offer an employee health insurance—which will really not be any cheaper than it is today—or they will have to pay a fine. Or an employee can go into the exchange as an individual where insurance will cost 10–13 percent more.

Let us examine a realistic situation using Jim from St. Louis as an example.

As I mentioned before, the small business tax credit is filled with thresholds and variations that make it of limited value for the few small businesses that are eligible to claim the credit.

The full value of the credit, which is equal to 50 percent of the business owner's costs, is available for small businesses with 10 or fewer workers that pay their employees an average annual wage of \$20,000 or less. But the credit also starts to phase out as the employer adds employees or gives raises, so the entire credit is gone if the employer has 25 or more employees and

pays them an average wage of \$40,000 or more.

Jim has six employees and his average annual wage is about \$39,000. Jim has to ask if he meets the two threshold questions before he can determine whether he gets the tax credit. He passes the first test, since he only has six employees. But Jim's credit is reduced because he has paid his employees too much in wages.

Today, Jim's health care costs are \$30,540. If he qualified for the full value of the credit, his annual health care costs would be \$15,270—about half of what he pays now.

But the value of his small business tax credit is directly related to wage, so the value of Jim's credit is reduced to \$763 based on the formula. That is a small fraction of his health care costs and wouldn't even cover the cost of hiring an accountant to figure out how much the credit is worth.

Because Jim is already so close to the highest average wage to be eligible for any credit at all, this means if he gives his employees a well-earned and well-deserved raise, he will lose the credit altogether.

In these tough economic times, the government is encouraging small business owners like Jim to create more jobs, but if they create too many or pay people too much, then the government will reward them by taking away their small business tax credit.

And even worse, the phase-outs mean that Jim has a disincentive to hire more workers.

So this bill completely misses the mark for small businesses.

Mr. President, our small businesses are struggling. We owe more to this critical sector of our economy which is responsible for half of the private-sector jobs and employees than a bill that mandates taxes and fails to provide real health care reform.

In a recent letter to Senator REID, the NFIB outlines how the bill will adversely affect business owners.

When evaluating healthcare reform options, small business owners ask themselves two specific questions. First, will the bill lower insurance costs? Second, will the bill increase the overall cost of doing business? If a bill increases the cost of doing business or fails to reduce insurance costs, then the bill fails to achieve their No. 1 goal—lower costs.

In both cases, the Patient Protection and Affordable Care Act (H.R. 3590) fails the small business test and, therefore, fails small business.

They further say in the letter:

Despite the inclusion of insurance market reforms in the small-group and individual marketplaces, the savings that may materialize are too small for too few and the increase in premium costs are too great for too many. Those costs, along with greater government involvement, higher taxes and new mandates that are disproportionately targeted at small business and are being used to finance H.R. 3590, create a reality that is worse than the status quo for small business.

It is worse than the status quo.

Mr. President, it is time to stop attacking small business and work on real reform. We should defeat this proposal that does not make insurance more affordable, is a massive government intrusion into health care and that will pay for new entitlement programs on the backs of our small businesses.

Let us put this debate in context. If small businesses do most of the hiring, and we are counting on them to help lead us out of the recession, why would we want to increase their costs of doing business and make it less likely they will hire new workers?

President Obama hosted a Forum on Jobs and Economic Growth last week, where he invited ideas to jump start job growth in our sluggish economy.

Now, he and the majority are considering a new plan to jump-start job growth using "unspent" or returned TARP funds. Have they forgotten that it is all borrowed money, and thus deficit spending, in the first place?

Let me submit that the bill before us will hurt job creation.

Before practicing medicine, doctors often take an oath, the Hippocratic Oath, where they promise to refrain from doing harm. I would like to see Congress and the President take the same oath.

How can you on the one hand legislate new taxes on businesses in the name of health reform—coupled with new energy taxes in the name of climate protection—and on the other hand ask businesses to generate new jobs? It cannot be done. Massive tax increases and job creation are mutually exclusive.

Employers who face uncertainty regarding new, oppressive taxes and mandates are not going to want to sink money into new jobs. It is that simple.

We should think about the harm we will do to small businesses through this legislation and instead work on commonsense reforms that have bipartisan support.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from the National Federation of Independent Businesses.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION  
OF INDEPENDENT BUSINESS,  
December 8, 2009.

Senator HARRY REID,  
Majority Leader, Hart Senate Office Building,  
Washington, DC.

Senator MITCH MCCONNELL,  
Minority Leader, Russell Senate Office Building,  
Washington, DC.

DEAR SENATORS REID AND MCCONNELL: As the Senate continues to debate the future of comprehensive healthcare reform, the National Federation of Independent Business, the nation's leading small business association, is writing in opposition to the Patient Protection and Affordable Care Act (H.R. 3590).

When evaluating healthcare reform options, small business owners ask themselves

two specific questions. First, will the bill lower insurance costs? Second, will the bill increase the overall cost of doing business? If a bill increases the cost of doing business or fails to reduce insurance costs, then the bill fails to achieve their No. 1 goal—lower costs.

In both cases, the Patient Protection and Affordable Care Act (H.R. 3590) fails the small business test and, therefore, fails small business. The most recent CBO study detailing the effect that H.R. 3590 will have on insurance premiums reinforces that, despite claims by its supporters, the bill will not deliver the widely-promised help to the small business community. Instead, CBO findings report that the bill will increase non-group premiums by 10 to 13 percent and result in, at best, a 2 percent decrease for small group coverage by 2016. These findings tell small business all it needs to know—that the current bill does not do enough to reduce costs for small business owners and their employees.

Despite the inclusion of insurance market reforms in the small-group and individual marketplaces, the savings that may materialize are too small for too few and the increase in premium costs are too great for too many. Those costs, along with greater government involvement, higher taxes and new mandates that are disproportionately targeted at small business and are being used to finance H.R. 3590, create a reality that is worse than the status quo for small business. The shortcomings of the Patient Protection and Affordable Care Act include:

#### A New Small Business Health Insurance Tax

Unlike large businesses, which self-insure and find security under the blanket of ERISA, most small businesses are only able to find and purchase insurance in the fully-insured marketplace. The Senate bill includes a new \$6.7 billion annual tax (\$60.7 billion over 10 years) that falls almost exclusively on small business because the fee is assessed on the insurance companies. CBO's most recent study reinforces those costs will ultimately be passed on to their consumers, leaving the cost to be disproportionately borne by small business consumers in the individual and small-group marketplace whose only choice is to purchase those products or forgo insurance altogether.

#### A New Mandate That Punishes Employers, Employees and Hinders Job Creation

Employer mandates fail employers and employees in two ways. First, mandates do nothing to address the core issue facing small business—high healthcare costs. Second, mandates destroy job creation opportunities for employees. The job loss, whether through lost hiring or greater reliance on part-time employees, harms low-wage or entry-level workers the most. The employer mandate in H.R. 3590 sets up potentially troubling outcomes for this sector of the workforce. The multiple penalties assessed on full-time workers will most certainly result in a reduction of full-time workers to part-time workers and discourage the hiring of those entrants into the workforce who might qualify for a government subsidy, hardly an outcome that contributes to a greater insured population.

#### A Poorly-Structured Small Business Tax Credit

As structured, the small business tax credit will do little, if nothing, to propel either more firms to take-up coverage or produce greater overall affordability. Due to its short-term temporary nature and the limitations based on the business' average wage, its benefit is, at best, a temporary solution

to the long-term cost and affordability problem. A tax credit that is poorly structured is not going to provide sustainable and long-term relief from high healthcare costs, and the recent CBO finding that the tax credit would benefit only 12 percent of the small business population illustrates its lack of effectiveness.

#### A Benefit Package That Is Too High a Hurdle for Small Business

NFIB has voiced concern over establishing a benefit threshold that is too high a price tag for small businesses to meet. Small businesses are especially price sensitive. They need purchasing choices that provide the flexibility in coverage options that reflect their marketplace and business needs. If Congress doesn't adjust the actuarial value standards in the legislation, what may be affordable this year may be unaffordable next year. As a result, small business owners will be at risk of having to drop coverage due to cost increases that outpace their healthcare budgets.

#### Destructive Rating Reforms and Phase-In Timelines That Threaten Affordability for All

NFIB supports balanced federal rating reforms that protect access and affordability, regardless of an individual or group's health status. However, the excessively tight age rating (3:1) in H.R. 3590 will increase more costs than it will decrease, and make coverage unaffordable for the very populations that are most beneficial to the insurance pool—the young and the healthy. Independent actuaries have analyzed the negative impact of such tight bands and have indicated that there will be devastating effects to the long-term viability of a pool without action to correct this rating imbalance.

Additionally, to prevent volatile spikes in insurance premiums, also known as "rate shock," federal rating reforms must be appropriately applied to all marketplaces and phased in over a responsible period of time. If this is not done, then certain plans, including "grandfathered plans," will utilize different rating practices when underwriting risk, which can create adverse selection issues. Those selection problems will have a striking negative impact on the new exchanges—exchanges that are meant to improve, rather than decrease, affordability for small business and individuals.

#### National Plans That Provide Limited Promise for Success

Leveling the playing field for small business starts with allowing uniform benefit packages to be purchased across state lines. If done right, this can provide a greater security that, as people change jobs and move from state to state, they can keep the benefit plan that meets their healthcare needs. National plans would be particularly helpful for states with smaller populations and where consumers lack a robust marketplace with choice and competition for private plans. Specifically, the state "opt-out" language in the Patient Protection and Affordable Care Act would create more disincentives than incentives for carriers to embark on these new opportunities. If the national plan section is not significantly restructured to make national plans a viable option, then these new opportunities will never materialize for small business.

#### Threatens Flexibility and Choice for Employers and Employees

Small employers need more affordable health insurance options and new alternatives for employers to voluntarily con-

tribute to individually-owned plans. Provisions also need to be structured to insure that options are widely available to both employers and employees. The simple cafeteria plan language in H.R. 3590 excludes the owners of many "pass-through" business entities from participating in these arrangements. If owners are unable to participate in the plan, they will be less likely to provide insurance to their workforce. Finally, small business needs the freedom and flexibility to preserve options that are already proven to work. Prohibiting the use of HSA, FSA and HRA funds to purchase over-the-counter medications, along with the \$2,500 limit on FSA contributions, diminishes that flexibility and threatens to further limit the options employers have to provide meaningful healthcare to their employees.

#### New Paperwork Costs on Small Businesses

The cost associated with tax paperwork is the most expensive paperwork burden that the federal government imposes on small business owners. The Senate bill dramatically increases that cost with a new reporting requirement that is levied on business transactions of more than \$600 annually, leaving small business buried in paperwork and increasing their paperwork compliance expenses.

#### An Unprecedented New Payroll Tax on Small Employers

Since its creation the payroll taxes that fund the Medicare programs have not been wage-based and are dedicated specifically to funding Medicare. The Senate bill changes the nature of the tax and creates a precedent to use payroll taxes to pay for non-Medicare programs.

#### The Absence of Real Medical Liability Reform

NFIB strongly supports medical liability reform as a means to both inject more fairness into the medical malpractice legal system, and to reduce unnecessary litigation and legal costs. Taking serious steps to adopt meaningful medical liability reform is a significant step toward restoring common sense to our medical liability litigation system. It also is especially critical to improving access to healthcare for those living in rural areas, where it is becoming increasingly difficult for those in need to locate specialists such as OB/GYNs and surgeons.

#### The Creation of a New Government-Run Healthcare Program

A government-run plan will drive the private healthcare marketplace out of business. Private insurers will be unable to compete in a climate where the rules and practices are tilted in favor of a massive government-run plan. This means millions could lose their current coverage. This will decrease choice and increase costs. On both accounts, the government-run plan will leave small business with a single option—the government-run plan, which is the exact opposite outcome small businesses want from healthcare reform.

There is near universal agreement that, if done right, small business has much to gain from healthcare reform. But if it is done wrong, then small business will have the most to lose. The Patient Protection and Affordable Care Act, which is short on savings and long on costs, is the wrong reform, at the wrong time and will increase healthcare costs and the cost of doing business. NFIB remains committed to healthcare reform, and urges the Senate to develop common sense solutions to lower healthcare costs while ensuring that policies empower small

business with the ability to make the investments necessary to move our economy forward.

Sincerely,

SUSAN ECKERLY,  
Senior Vice President,  
Public Policy.

Mr. BOND. Mr. President, I have a couple of other comments I wish to add.

We have now learned that there is a new proposal coming out of the back rooms—the smoke-filled rooms. Every time something new is thrown up on the wall, we stand around with a great deal of interest to see whether it sticks. When you look at this one, I don't believe it sticks. I think it stinks.

If you read the Washington Post's lead editorial today, its headline is "Medicare sausage? The emerging buy-in proposal could have costly unintended consequences."

Mr. President, I ask unanimous consent to have printed in the RECORD, after my remarks, the Washington Post article.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

(See exhibit 1.)

Mr. BOND. At the end of the article, it says:

The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milquetoast public option plans rejected by Senate moderates as too disruptive of the private market.

To say that it moves toward a public takeover is confirmed by one of the most outspoken backers of the public option, the one most interested in getting public control or governmental control of all of health care, New York Representative ANTHONY WEINER. He is quoted in Politico today as having hailed the expansion of Medicare as an unvarnished triumph for Democrats like himself who have been pushing for a single-payer run health care system. In the article, he says: "Never mind the camel's nose, we've got his head and his neck in the tent."

I think that is clear. Trying to expand Medicare will almost assuredly drive all the private plans out of the market. Why? Medicare pays 80 percent of the cost of hospitals and less for doctors, and they have to make up the rest of their cost by charging privately covered patients more money. It will raise the cost so that private health care can no longer succeed.

#### EXHIBIT 1

[From the Washington Post, Dec. 10, 2009]

#### MEDICARE SAUSAGE?

The only thing more unsettling than watching legislative sausage being made is watching it being made on the fly. The 11th-hour "compromise" on health-care reform and the public option supposedly includes an expansion of Medicare to let people ages 55 to 64 buy into the program. This is an idea



dating to at least the Clinton administration, and Senate Finance Committee Chairman Max Baucus (D-Mont.) originally proposed allowing the buy-in as a temporary measure before the new insurance exchanges get underway. However, the last-minute introduction of this idea within the broader context of health reform raises numerous questions—not least of which is whether this proposal is a far more dramatic step toward a single-payer system than lawmakers on either side realize.

The details of how the buy-in would work are still sketchy and still being fleshed out, but the basic notion is that uninsured individuals 55 to 64 who would be eligible to participate in the newly created insurance exchanges could choose instead to purchase coverage through Medicare. In theory, this would not add to Medicare costs because the coverage would have to be paid for—either out of pocket or with the subsidies that would be provided to those at lower income levels to purchase insurance on the exchanges. The notion is that, because Medicare pays lower rates to health-care providers than do private insurers, the coverage would tend to cost less than a private plan. The complication is understanding what effect the buy-in option would have on the new insurance exchanges and, more important, on the larger health-care system.

Currently, Medicare benefits are less generous in significant ways than the plans to be offered on the exchanges. For instance, there is no cap on out-of-pocket expenses. So would near-seniors who buy in to Medicare get Medicare-level benefits? If so, who would tend to purchase that coverage? Sicker near-seniors might be better off purchasing private insurance on the an exchange. But the educated guessing—and that's a generous description—is that sicker near-seniors might tend to place more trust in a government-run program; they might assume, with good reason, that the government will be more accommodating in approving treatments, and they might flock to Medicare. That would raise premium costs and, correspondingly, the pressure to dip into federal funds for extra help.

In addition, the insurance exchanges proposal is being increasingly sliced and diced in ways that could narrow its effectiveness. Remember, the overall concept is to group together enough people to spread the risk and obtain better rates. But so-called “young invincibles”—the under-30 crowd—would already be allowed to opt out of the regular exchange plans and purchase high-deductible catastrophic coverage. Those with incomes under 133 percent of the poverty level would be covered by Medicaid. The exchanges risk becoming less effective the more they are Balkanized this way.

Presumably, the expanded Medicare program would pay Medicare rates to providers, raising the question of the spillover effects on a health-care system already stressed by a dramatic expansion of Medicaid. Will providers cut costs—or will they shift them to private insurers, driving up premiums? Will they stop taking Medicare patients or go to Congress demanding higher rates? Once 55-year-olds are in, they are not likely to be kicked out, and the pressure will be on to expand the program to make more people eligible. The irony of this late-breaking Medicare proposal is that it could be a bigger step toward a single-payer system than the milque-toast public option plans rejected by Senate moderates as too disruptive of the private market.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BOND. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. BURRIS. Mr. President, over the past several months, I have come to the floor of this body many times to speak about the urgent need for comprehensive health care reform. I have said that our bill must accomplish three goals in order to be effective: It must bring competition to the insurance market—competition to the insurance market—it must provide significant cost savings to ordinary Americans, and it must restore accountability to an industry that has run roughshod over the American public for far too long. I would like to focus on this last point with my remarks today.

We need real accountability in the insurance market. After almost 100 years of debate about health care reform, this Senate stands on the verge of making history. There are many good elements in the legislation that is before us today, but without accountability, any reform measure would be toothless and inconsequential. If we don't give the American people a chance to hold their insurance providers accountable, quality care will continue to elude certain segments of our population. We can't stand for this any longer. We must prevent insurance companies from discriminating against people by charging them higher rates or denying coverage because of certain conditions.

Everyone knows it is hard for uninsured patients to get quality medical care. Under the current law, in the case of catastrophic injury or illness, anyone admitted to the emergency room should receive equal treatment to save their life. Shockingly, Harvard researchers have found that this is not the case. They examined 690,000 individual cases over 4 years and found that uninsured patients are nearly twice as likely to die in the hospital as patients with similar injuries who do have insurance. And even after these results were adjusted to account for age, race, gender, and the severity of the injuries, they found that the uninsured were still 80 percent more likely to die than those with health coverage, including Medicaid.

I just had a delegation of physicians in my office. I listened to their comments in reference to wanting us to make sure we passed a health care reform bill this session. One of those physicians began to relate to me the story of his brother, who was employed but was without health insurance. At 41 years old, he died of cancer because he waited too long to try to get treatment. And because he was uninsured and no one would treat him, that took his life at the young, tender age of 41.

So this new evidence is conclusive, and it is truly disturbing. The poor and

the uninsured suffer disproportionately under our current system. In the most advanced country on Earth, there is no excuse for this stunning inequality.

Big corporations know there is a lot of money to be made out of the poor and they do not hesitate to rake in large profits and their expenses. These companies exploit minor technicalities to deny coverage to people who are sick. They use gaping holes in the system to refuse treatment for those with certain conditions. That is because they do not see patients as real people who need help, they see them as numbers in the corporate ledger. They see risk and expenses and lower dividends for their shareholders. That is why we need to prioritize patients over profits. That is why we need to extend coverage to more people and make these companies accountable for the first time in decades.

If we pass insurance reform with a strong public option it would be illegal to deny coverage because of a pre-existing condition. For the first time in many years, ordinary Americans would be able to shop around if they are paying too much, or they are not being treated fairly. Costs would come down, coverage would improve, and lives would be saved.

Let us pledge ourselves to this cause. Let us make sure every American can get the treatment they need in the emergency room regardless of their income, need, or the insurance coverage they have. We must not fall short in this regard. We must not settle for anything less.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, my friends on the other side of the aisle have consistently stated that this 2074-page Reid bill, according to the Joint Committee on Taxation, is a net tax cut. I want to put emphasis throughout my remarks on the word “net.”

Yesterday a chart was used to illustrate this point. This chart had multiple bars with dollar figures. For example, in 2019 the chart showed a \$40.8 billion net tax cut. My Democratic friends said this number came from the Joint Committee on Taxation, a very responsible, intellectually honest group.

Unfortunately, the chart my friends were using was not entirely clear on how they came up with this net tax cut for Americans. So it was natural for most of the fellow Senators and the country at large to wonder how my Democratic friends got this number. They said show me the data.

To clear up any confusion, right here is the Joint Committee on Taxation table that the Democrats relied on to claim that the Reid bill results in a net tax cut. Here it is. We can see the negative \$40,786, for example. That is the figure that was used. As the chart indicates, these dollar amounts are in the

millions, so \$40,786 million. The Joint Committee on Taxation says it this way: This means negative—the negative mark there—negative \$40.8 billion.

My friends on the other side unfortunately did not explain what was going on here. It appears my friends simply made an assertion that they hoped many of us and those in the media would believe. But I cannot let my Democratic friends get off the hook this easily. Why? Because the entire story is not being told, so let me take a moment to explain.

First, in simplest terms, where you see negative numbers on this chart, the Joint Committee on Taxation is telling us there is some type of tax benefit going to the taxpayers. So this group and these groups here, wherever there is a negative here, those are tax benefits to the benefit of the taxpayers.

For example, families making \$50,000 to \$75,000 have a negative of \$10,489 in their column. This means the Joint Committee on Taxation is telling us that this income category is receiving \$10.4 billion in tax benefits.

I hope you will listen closely. When we see a negative number on this chart, the Joint Committee on Taxation tells us there is a tax benefit so, conversely, where we see a positive number the Joint Committee on Taxation is telling us that these taxpayers are seeing a tax increase. I have actually enlarged those numbers, the number of tax returns and the dollar amounts where there is a positive number for individuals and families. Again, these positive numbers indicate tax increase.

My friends have said that all tax returns in this chart are receiving a net tax cut. If that were so, why aren't there negative numbers next to all of the dollar amounts listed? Because not everyone in this chart is receiving a tax cut, despite what my friends have said. Quite to the contrary, a group of taxpayers is clearly seeing a tax increase and this group of taxpayers in middle income is seeing tax increases.

I didn't come down to the floor to say my friends on the other side of the aisle are wrong. After all, you can see here the negative \$40,786 million figure they used is right there, out in the open. What I am doing is clarifying that my Democratic friends cannot spread this \$40.8 billion tax cut across all the affected taxpayers on this chart, and then say that all have received a tax cut.

You want to know why. Because this chart, produced by the nonpartisan Joint Committee on Taxation, shows that taxes go up for those making more than \$50,000 and families making more than \$75,000. It is right here in the yellow, as you can see.

The numbers obviously do not lie. I say the nonpartisan Joint Committee on Taxation, I think everybody agrees, is very intellectually honest. So let me

give you my read on what the Joint Committee on Taxation is saying here as evidenced by the figures on the chart.

First, there is a group of low- and middle-income taxpayers who clearly benefits under the 2074-page bill that is before the Senate. They benefit from the government subsidy of health insurance. This group, however, is relatively small.

There is another much larger group of middle-income taxpayers who are seeing their taxes go up due to one or a combination of the following tax increases: the high-cost plan tax increase, which actually is a brandnew tax; the medical expense deduction limitation, which used to be 7.5 percent, and now before you can deduct you have to have 10 percent of your income be medical expenses or you don't deduct anything, so that is a tax increase; and then a Medicare payroll tax increase, where everybody is going to pay—well, everybody over a certain income is going to pay an additional half a percentage point or, if you are self-employed, pay 1 percent more of payroll tax. In general, this group is not benefiting from the government subsidy. After all, how can a taxpayer see a tax cut if they are not even eligible for the subsidy?

Also, there is an additional group of taxpayers who would be affected by other tax increase provisions in the Reid bill that the Joint Committee on Taxation could not distribute in the way people are distributed on this chart. These undistributed tax increases include, among others, the cap on Federal savings—flexible savings accounts. Then there is a tax on cosmetic surgery.

My friend from Idaho, the author of the amendment before us, Mr. CRAPO, recently received a letter from the Joint Committee on Taxation stating that this additional group exists and many in this group will make less than \$250,000 and, hence, have a tax increase that is not accounted for here and also a tax increase if they are under \$250,000. That is a violation of the President's promise in the last campaign that nobody under that figure would get a tax increase—only people over \$250,000.

So you see, my Democratic friends cannot, No. 1, say that all taxpayers receive a tax cut—I have proven that here—and, No. 2, say that middle-income Americans will not see a tax increase under the Reid bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, some of the charges from the other side of the aisle have taken us down some detours to essentially try to distract us from some of the main points of this legislation. I want to take a few moments to discuss one of the key features of the

bill and that is insurance market reform.

The bill would change the way insurance companies do business in America. Sometimes I think this reform is part of the reason some on the other side are fighting this bill so hard. Our bill will end the practice, widespread today, of insurance companies denying coverage altogether, or charging someone an exorbitant amount of money if they have some preexisting condition, something in their health history which is an issue. Our bill would make those changes right away. They start going into effect in 2010. That is, the prohibition on companies denying coverage for preexisting conditions or health care stats, and right down the list, would take effect right away, 2010.

We all have countless numbers of examples, either directly or through friends or relatives of small insurance companies that either denied insurance coverage or you have to pay much greater increase in premiums because of a preexisting condition, whatever it may be, of something. It is wrong, flat, outright, 100 percent wrong. This bill stops that, stops those practices by insurance companies.

I think it is important that we not get sidetracked by some other very important matters but keep focused on what this legislation does. It reforms the health insurance industry.

What else does our bill do with respect to reforming the health insurance industry? It would prohibit lifetime limits on payments to people who get sick. Right now, insurance companies limit how much they pay out to people when they get sick. They have lifetime limits, annual limits. No matter how sick you are, some catastrophic coverage you have, the insurance company says: Sorry, we are putting a limit on it. That is not right. Sometimes people have conditions that require a lot more attention, more hospitalization, more attention by doctors. Our legislation would prohibit lifetime limits on payments to people who get sick.

Our bill also prohibits unreasonable annual limits. These are limits that insurance companies impose on policyholders. This reform would apply in both the group market and the individual market. What does that mean, that gobbledygook. It implies that for everybody, whether you are an individual or whether you are working for a company, this would take effect 6 months after enactment. That is pretty important. A lot of people have insurance policies with limits, where the insurance company will only pay so much to an individual or during the person's lifetime or in any year. It is not right because some conditions require a significant increase in payments or coverage for the person.

Our bill would require any insurance plan that provides dependent coverage

for children to continue to make that coverage available until the child turns age 26. We know that is a problem today. Often, in a State, once a child turns 21 or 22, that person can't find health insurance. In today's economic recession, with unemployment so high, it is kind of hard for kids to find jobs, and that is how they would otherwise get their health insurance. We say family coverage covers your child until the child turns age 26. This reform would take effect 6 months after enactment.

In addition, when the exchanges are up and running, our bill would prohibit insurance companies from discriminating against consumers because of health status, generally. Sometimes the insurance industry says it is not a preexisting condition, but you have not been healthy lately so we will not give you insurance. No longer can insurance companies refuse to sell or renew policies because a person gets sick. If you pay your premiums, the insurance company has to renew your coverage.

When the exchanges are up and running, the legislation before us today would limit the ability of insurance companies to charge people much more just because of their age. That is what they do today. Sometimes, depending upon the State, the insurance company is able to charge somebody much more for the same coverage because of that person's age. Right now it is not at all unusual for insurance companies to charge more than five times as much just because a person is, say, age 55. Our bill would prohibit insurance companies from charging more than three times as much because of age. In some States, there is no limit whatsoever. In my State of Montana, we have no limit. Some States have five. We are saying down to three.

When the exchanges are up and running, our bill would prohibit insurance companies from charging women more than men. Think of that. Some insurance companies charge women more than men. That is not right. This is also a widespread practice among insurance companies that is charging women more than men. It is just plain wrong. Our legislation would stop that.

Health insurance reform also means real insurance market reform. It means real change in the way insurance companies do business. No longer will insurance companies be able to build their business by cherry-picking only the healthiest and the youngest. That is what they do today, especially for individuals, to some degree, in smaller organizations. No longer will they be able to insure only those who don't need insurance. We bring real reform. It would make insurance much more fair, and that is literally a matter of life and death.

As a recent Harvard study reported, people without insurance are 40 percent more likely to die prematurely than people with private insurance. Think of

that. People without insurance are 40 percent more likely to die prematurely than people with private insurance. Tens of thousands of Americans die each and every year because they do not have insurance. Is that America? That doesn't sound like the United States we are all so proud of, where we allow tens of thousands of Americans to die each and every year simply because we have not set up a system for them to have health insurance. That is something we stop in this bill.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I have said, for the last 2 days, I was going to speak on the Dorgan amendment, a bipartisan amendment to allow the importation of drugs into the United States. I haven't done it until now, so I am glad to rise in support of this bipartisan amendment to add provisions of the Pharmaceutical Market Access and Drug Safety Act to this bill. That legislation is the result of a collaborative effort by Senators DORGAN, SNOWE, MCCAIN, and this Senator to finally make drug importation legal.

I have, for a long time, been a proponent of drug reimportation. In 2000, 2002, and 2003, I supported an amendment permitting the importation of prescription drugs into the United States from one country, Canada. This amendment is much broader than only Canada.

In 2004, the late Senator Kennedy and I worked together on a bill that would authorize drug importation, but it did not survive the partisan politics of this Chamber. I then introduced my own comprehensive drug importation bill in 2004. That was S. 2307, the Reliable Entry for Medicines at Everyday Discounts Through the Importation with Effective Safeguards Act. The REMEDIES Act is what the acronym finally spells out. In 2005, I combined my bill with a proposal sponsored by Senators DORGAN and SNOWE. In 2007, we reintroduced a version of that legislation with the hope that our combined efforts would finally lower the cost of prescription drugs for all Americans. That is what we are still working together to do this very day. I thank Senator DORGAN for his leadership.

This time around, I should be confident that this effort will finally pass. Historically, Democrats claim to be champions of holding the big pharmaceutical companies accountable. Now

we have a Democratic supermajority in the Congress and a Democratic President who has supported drug importation in the past. I am not as confident as maybe I should be. That is because the White House has participated in some back-room negotiations since the last time this legislation was brought before the Senate and then Senator Obama supported it. Behind closed doors, the Democratic White House found new friends in the pharmaceutical industry. Last summer, the head of the pharmaceutical lobbying group bragged that drug manufacturers had negotiated a "rock-solid deal"—those are their words—with the present administration.

An article in the New York Times detailed the administration's deal with big drug companies. This quote comes from the New York Times:

Foreseeing new profits from the expansion of health coverage, big drug companies are spending as much as \$150 million on advertisements to support the President's plan.

But in 2008, when President Obama was campaigning for the position he now holds, he promised that:

We'll take on drug and insurance companies, hold them responsible for the prices they charge and the harm they cause.

Certainly, the President knows that a great way to hold drug companies accountable is to allow drug importation. In fact, in 2004, when he was a candidate to be a Member of this Chamber, he challenged his opponents to support drug importation. He said at that time:

I urge [my opponent] to stop siding with the drug manufacturers and put aside his opposition to the re-importation of lower-priced prescription drugs. . . .

But, unfortunately, it has been reported that during backroom negotiations at the White House, the big pharmaceutical companies have convinced the President to drop his strong support for drug importation.

The New York Times reports that:

On July 7—

Meaning this year—

Rham Emanuel, [President] Obama's chief of staff . . . assured at least five pharmaceutical companies during a White House meeting that there would be no provision in the final health care package to allow the reimportation of cheaper drugs. . . .

I thought we were going to hold drug companies accountable. I thought health care reform was supposed to drive down the cost of health care, including the cost of prescription drugs for all Americans. The Dorgan amendment is a commonsense, bipartisan approach to achieve both of these goals. Drug importation achieves these goals without imposing arbitrary fees, and without flexing the muscles of the Federal Government.

I have always considered this a free trade issue. I know most people see it as a health issue, and it is a health issue. But I come at it from the point of view that there are only a couple

items Americans cannot buy in this country from anyplace else in the world they want to buy it. One class is pharmaceutical drugs, the other class is Cuban—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRASSLEY. Mr. President, I ask unanimous consent for 4 additional minutes and that it come off the next block of time from our side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. So I see this as a free-trade issue. Imports create competition and keep domestic industry more responsive to consumers. In the United States, we import everything consumers want. So I ask again, why not pharmaceuticals? That is why it is a trade issue for me as much as a health issue. Consumers in the United States pay far more for prescription drugs than those in other countries. If Americans could legally and safely access prescription drugs outside the United States, then drug companies would be forced to reevaluate their pricing strategies. They would no longer be able to gouge American consumers by making them pay more than their fair share for research and development.

It is true that pharmaceutical companies do not like the idea of opening up America to the global marketplace. They want to keep the United States closed to other markets in order to charge higher prices here.

Based on the reports I just read, it seems that the White House has already sided with the drug manufacturers and promised them the ability to continue to gouge American consumers, otherwise known as the status quo.

The debate is not over. With the Dorgan amendment, prescription drug companies will be forced to be competitive and establish fair prices in America. The drug companies will try to find loopholes in order to protect their bottom line.

The Dorgan amendment would make such action illegal. It would not allow manufacturers to discriminate against registered exporters or importers. It would prohibit drug companies from engaging in any actions to restrict, prohibit, or delay the importation of a qualifying drug.

The Dorgan amendment would give the Federal Trade Commission the authority to prevent this kind of abuse. It develops an effective and safe system that gives Americans access to lower prices. Our effort goes to great lengths to ensure the safety of imported drugs. The Dorgan amendment requires that all imported drugs be approved by the FDA. It puts in place a stringent set of safety requirements that must be met before Americans can import drugs from that country.

The amendment requires all exporting pharmacies and importing whole-

salers to be registered with the FDA and inspected. It gives the authority for the FDA to inspect the entire distribution chain for imported drugs. It sets very stringent penalties for violations of the safety requirements in this bill, including criminal penalties and up to 10 years imprisonment.

We need to make sure Americans have even greater, more affordable access to innovative drugs by further opening the doors to competition in the global pharmaceutical industry.

If my colleagues on both sides of the aisle are serious about bending down the cost curve of health care inflation—and doing it in that direction, the right direction—then they will support the Dorgan amendment, a bipartisan amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN. Thank you, Mr. President.

I echo the comments of the senior Senator from Iowa. He is exactly right about the Dorgan amendment. There are a lot of reasons, as he pointed out, why the Dorgan amendment makes sense for the American people.

It makes sense for taxpayers because we pay way too much for prescription drugs as taxpayers. It makes sense for government programs—whether it is TRICARE, whether it is Medicare, whether it is Medicaid, whether it is the Federal Employees Health Benefits Program. It makes sense for small businesses and large businesses alike who are paying too much for prescription drugs. And it makes sense for seniors and all Americans who are paying too high a price for prescription drugs out of their pockets. It also makes sense in terms of, sort of, internationally as to what we do on the buying and selling of prescription drugs.

I was part of these discussions in the House where we had the same amendment. We would pass it, and then it would die in the Senate, or things would happen in the conference committees or whatever, where the drug companies really did exert their influence over the Congress and with the President during the Bush years.

But one of the arguments they always make is to question the safety of these drugs, that these drugs coming from Canada or these drugs coming from France are not safe, as if they did not have a food and drug administration as efficient and effective as ours in terms of protecting the public.

But what sort of shoots a hole in that argument is how many American drug companies—over and over and over, and in increasing numbers—how many American drug companies are importing ingredients especially from China.

Senator Kennedy, 1½ years or so ago, asked me to chair an oversight hearing with the Health, Education, Labor, and Pensions Committee on this issue of

what is happening when these American drug companies are increasing their outsourcing of jobs, particularly to China. It was in response to what happened in Toledo, OH, among other places, where a number of Americans died because of contaminated heparin.

Heparin is a blood thinner drug that is a very important drug to keep people healthier and live longer and live better. But some of the ingredients for heparin were made in China, and the drug company is not able to trace back, if you will, the supply chain, where they are getting their ingredients. They know they get them from China. The American drug companies—whether it is Pfizer or another drug company—when they outsource their production to China, may know where the plant is that puts all these ingredients together, but they cannot trace back—or at least they will not tell us or cannot tell us—all their ingredients. So they may get this ingredient from Wuhan, and this ingredient from Shanghai, and that ingredient from a rural outpost in Hebei or Henan Province, but they cannot tell us exactly where they come from. So no wonder these drugs are not as safe as they should be.

So if they were interested in drug safety, it would not be that they would stop us from drug importation because we know if we buy it from France or Canada or Germany, they have a food and drug agency, an FDA equivalent, that keeps their drugs safe. They know that. It is all about protecting their profits. There is simply no doubt about that. Their profits get to be bigger because they make some of these drugs in China.

So let's not have it both ways. Let's not say we cannot import drugs safely into this country—when they are exporting jobs, as so many other industries are doing, to China, exporting jobs to little villages where they manufacture these ingredients. They end up in America's medicine cabinets. Let's not talk out of both sides of our mouths, as the drug industry is doing.

A couple other comments about the underlying bill and how important it is we move on this legislation. There are more than 400 people every day—in Defiance, OH, in Gallipolis and Zanesville and Saint Clairsville and Cadiz and all over my State—400 people every single day who lose their insurance.

Every day my friends on the other side of the aisle delay, every day they offer amendments and then will not let us vote on them, and stand up and object to even voting on things, every day they try to filibuster, every day they put up another hurdle, 400 more people in my State lose their insurance. It is about 1,000 people in this country every week—1,000 people in this country every week—who die because they do not have health insurance. It is 45,000 people a year, so 900-

some people every week in this country die because they do not have health insurance.

A woman with breast cancer without insurance is 40 percent more likely to die than a woman with breast cancer with insurance. I heard President Bush, in Ohio, maybe a couple years ago, say every American can get health care. They can go to an emergency room. Well, a woman suffering from breast cancer, who did not get a mammogram because she could not afford it, did not get the kinds of tests she should have because she did not have a doctor she could afford to pay, and because she did not have insurance—the emergency room does not do those kinds of things. Even if she got sick, the emergency room would not take care of her until she was almost dead. Then she could go into the emergency room and they will take care of her in her last few days or her last few weeks of life.

That is not the way we should do health care. This kind of delay, hearing these kinds of delaying actions, these kinds of delaying tactics, these kinds of “we can’t pass this,” “chicken little,” “the sky is following”—every day we have Republicans coming down here saying “the sky is falling,” and it simply is not.

I want this bill to be bipartisan. I am a member of the Health, Education, Labor, and Pensions Committee, as is my friend, Senator ROBERTS from Kansas, who is in the Chamber. During that markup in June and July, we passed 160 Republican amendments. Some of them were major, some of them were not so major. But this bill had a bipartisan flavor to it.

It is only on the big questions—the role of Medicare, the role of the public option—some of the bigger questions, where there are philosophical differences; the same reasons that back in the 1960s, when Medicare passed, it was passed almost only by Democrats because Republicans did not agree there should be a major role in government in our health care system.

So it is a philosophical difference. It is not so much partisan as that. So even though there are many good Republican ideas in this bill, on the big questions there is that difference.

So, Mr. President, I think it is so important—when I hear that many Ohioans, every day, lose their insurance, this many Americans, every week, die because they do not have insurance—to pass this legislation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. BROWN. I object.

The PRESIDING OFFICER. Objection is heard.

The bill clerk continued with the call of the roll.

Mr. ROBERTS. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator is advised the Senate is in a quorum call.

Mr. ROBERTS. I will try it again. I thought it was worked out.

I ask unanimous consent for the second time that the order for the quorum call be rescinded so I may be—

The PRESIDING OFFICER. Is there objection?

Mr. ROBERTS. So I may proceed for 15 minutes.

Ms. CANTWELL. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERTS. Is this a bipartisan objection, I would ask the Presiding Officer?

The bill clerk continued with the call of the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I ask unanimous consent that over the next 30 minutes, the time be equally divided with 15 minutes for the majority and 15 minutes for the minority for debate purposes only.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Kansas is recognized.

Mr. ROBERTS. I thank the President. I rise today to talk about health care in general and the latest proposal to come out in the form of the so-called compromise, if there is no objection. I wish to talk about the latest proposal to come out from what some of us have determined is the majority leader’s behind-closed-doors effort for the compromise on the government-run health insurance plan. I will admit very readily I do not know all of the details of this plan, although I hope to in the very near future. I think most of my friends across the aisle are in the same boat and we are all getting our information from the Post, the Times, and the rest of the catch-up media.

But this is the compromise, as I understand it: The majority leader will drop the government plan in exchange for two major policies: first, a national insurance plan run by nonprofit insurance companies and supervised by the Office of Personnel Management; and second, a massive expansion of Medicare to tens of millions of people age 55 and older.

Putting aside the first policy which, frankly, I don’t understand how it could possibly work, I cannot believe anyone is seriously considering expand-

ing Medicare as a compromise to the government-run or so-called public option. It doesn’t take a genius to see that a huge expansion of Medicare is, as one single-payer advocate in the House dubbed it, “the mother of all public plans,” further quoting: “An unvarnished and complete victory” for advocates of single-payer health care and socialized medicine. That is a very strong quote, but that is the way it was.

In other words, this is not a compromise to the public option—it is worse. Maybe we need to remind ourselves why moving toward more government control of our health care system is such a bad idea. We need look no further than our current government-run insurance plans, Medicare and Medicaid, for examples. Government-run insurance plans currently control nearly half of the market. With the government’s power, they have the ability to set payment levels for doctors and hospitals and home health care agencies and even hospices and all other health care providers, not based on the actual costs those providers incur when treating patients, but instead based on whatever arbitrary spending target the budget crunching bean counters determine the government can afford.

To paraphrase one observer: These types of global government budgets transform patients from sources of revenue over which providers compete to attract and serve, into sources of cost for the government to avoid, shunt off, and treat as cheaply as possible. That is not right. This has clearly been the result in the Medicare Program, often heralded as the best of all of the government’s health care programs.

So to review: Medicare has been on an ever shrinking path toward bankruptcy for years. The latest reports from the Medicare trustees say the hospital insurance trust fund will go broke within the next 8 years. The program has \$38 trillion in unfunded liabilities. How has the government responded? By severely underpaying Medicare providers and denying Medicare patients’ claims. Medicare only pays doctors around 80 percent of their costs, and hospitals even lower.

Privately insured Americans pay a hidden tax of nearly \$90 billion a year to make up for these underpayments. But even that hasn’t been enough to keep some providers in business and able to afford to accept Medicare patients. Medicaid is even worse. Medicare is also a huge denier of claims. I think many of my colleagues would be surprised to hear that Medicare denies claims more often than most private insurance companies. In fact, in 2008, Medicare had the highest percentage and the highest number of denied claims in the country. Think about that when you hear some Senators demonize private insurance companies

for denying claims. Medicare is even worse.

This bill already exacerbates these Medicare problems by cutting almost \$½ trillion from this already woefully underfunded program. Now we are considering adding even more people. This is a sinking ship with no lifeboats, and we are adding more folks to the deck.

By underpaying health care providers and denying claims, Medicare already rations health care. Expanding Medicare to tens of millions of new people as envisioned by this compromise we hear about will take government rationing to a whole new level. Because as the government takes over more of the health care system and becomes responsible for more of the increasing costs of that system, the only way it will be able to afford this commitment is to ration health care. As I have said countless times before, this bill gives the government all the tools it requires to ration care.

From Comparative Effectiveness Research, to the independent Medicare advisory board, to the new powers granted to the Centers for Medicare and Medicaid Services, CMS and the U.S. Preventive Services Task Force, this bill puts the rationing infrastructure into place. The U.S. Preventive Services Task Force's recent change to its guidelines pertaining to mammograms was a perfect illustration of how your health care will be rationed under this bill. For those who don't know, the task force recently reversed its longstanding advice that women should start getting regular mammograms to detect breast cancer at age 40.

Why is this important? Because under this bill, the recommendations of this task force will carry the weight of law for both government-run—i.e., Medicare—and private insurance. If the task force recommends a particular treatment or a particular set of patients, then Medicare and private insurers must cover it. If it doesn't, they don't.

What do you think will happen to treatments and tests that don't get the task force's recommendation? They simply will not be covered. That is how the government will hold down health care costs, by rationing access to treatments and tests such as mammograms.

Some government-controlled health care systems such as the one that exists in the United Kingdom are much more explicit about rationing. The rationing in this bill, quite frankly, is not as honest. Since Americans would never stand for the government explicitly rationing their health care, the authors of this bill had to come up with a pseudoscientific justification for rationing, and that justification is the main feature of this bill: Comparative Effectiveness Research, or CER.

Very generally, it is very simple. CER is the comparison of two or more treatment options to see which one is

better. Sounds great, right? Except when you realize that CER is not being conducted for the purpose of improving patient care but for the purpose of saving the government money instead.

I read the CER section of the bill and I remember my amendment on CER and the distinguished chairman of the HELP Committee was very helpful, and said he would study it overnight. Because I had the word "prohibit" in the amendment we got into a great debate on what prohibit means. I thought it was pretty clear but, unfortunately, that was dropped from the bill, from the HELP Committee bill. We tried that again in Finance. It didn't work. We would like to try it again if we have time.

This bill establishes a CER institute to conduct this research for the purpose of justifying government rationing of health care. CER will be the golden ring of rationing.

So what we have here is a recipe for disaster: a bill that already significantly weakens the woefully underfunded Medicare Program and lays the foundation for a rationing infrastructure, plus a "compromise" that apparently will pour millions of more people into the program.

In the no-holds barred search for a proposal that can attract 60 votes, I don't understand how any Senator can support this idea.

This is just another Trojan horse, another incremental step toward the single-payer system. Again, as one House Member in the leadership observed:

This gets not only the camel's nose under the tent, but his whole head and neck, too.

It is another step toward socialized medicine and increased government rationing of health care.

The American Hospital Association, American Medical Association, and the Federation of American Hospitals are finally taking notice of the advice they are receiving from their State and local hospitals and doctors. They, finally, have seen the light and have come out in opposition to this deal at least.

I urge my friends across the aisle to resist this latest misguided attempt at deal making. The consequences are too dangerous.

There is an awful lot of cactus in this health care world. I don't think we need to sit on each and every one of them.

Before yielding back my time, I truly thank the distinguished Senator from Connecticut for his comity and allowing me to make these debate comments. I thank the acting Presiding Officer in his effort to be bipartisan.

I think we will have a sad day in this body if one side or the other gets into a situation where we do not allow people to make remarks on not only the pending bills and specifically on the general issue of health care.

Mr. DODD. If my colleague will yield, he raises an interesting point. I am

going back several months. As we get older, it is hard enough to remember what happened yesterday. The Presiding Officer is on the committee, as is my colleague from Vermont. There was a debate over the word "construed" to prohibit. I remember that word, talking about various practices. As I recall, the compromise that was offered either by my friend and colleague from Kansas or some other member was to strike the word "construed," so nothing would be prohibited. I still, to this day, am not quite sure why we should not accept language that eliminates the word "construed." That went on for about a day back and forth. I invite my colleague, again, to maybe get our staffs together and talk about that. I don't think he is wrong about this. I think it is good to have best practices. If a physician and patient decide, as a certainty, it is essential for that patient, then you should not be prohibited from doing that. As I recall, the debate was over the word "construed." I don't want to take time from the Senator from Vermont.

Mr. ROBERTS. Mr. President, I agree with the Senator. I point out that in the specifics of the bill, I think it says shall not, in regard to cost containment on Medicare A and B, but the rest is encouraged. That is where we get into problems because CER is the blueprint on how we allot health care dollars in this country.

I might mention to the Senator, I had a chart on what CER recommended, and it had a figure of a humpback whale and how much money we would be devoting to different age groups. If you are 60—and, by the way, the average age of the Senate is 62—you are out of luck. If you are 70, you better get something fixed real quickly before this bill passes. That is my point. I thank the Senator for his comments.

Mr. DODD. Mr. President, I thank Senator ROBERTS for his amendment in the HELP Committee to protect patients by preventing rationing of health care. That is in the Senate bill. That was language we adopted, I say to my friend from Vermont. It was a Roberts amendment that was adopted in our markup that prohibits any rationing of health care in our bill. I thank him for that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. Mr. President, when Republicans controlled the White House, the Senate, and the House, they had the opportunity to do something about the health care disaster in America. From 2000 to 2008, some 7 million Americans lost their health insurance. Where were the Republicans? During that same period, health care costs soared in America. Small



businesspeople found themselves unable to provide health care to their workers.

Where were our Republican friends? I am delighted they are down on the floor every single day criticizing an effort to try to improve the situation. But it might have been a little better if they were here 8 years ago, bringing forth their ideas. But they were not.

Having said that, let me suggest that in the midst of this health care crisis, in which 46 million Americans have no health insurance and health care costs are soaring and, as the President indicates, that will double in 8 years if we do nothing, at a time when 45,000 Americans this year will die because they don't get to a doctor when they should, when close to 1 million Americans are going to go bankrupt from medically related bills, we need real health care reform.

That is something that I, and I know many other Members in Congress, have been fighting for for years. More than anything, I wish to see us pass strong health care reform. I must express a disagreement with some of my colleagues on the Democratic side, who think we are on the 2-yard line, we are almost there. I don't think so. I think there are a number of problems that remain in this legislation that have to be resolved. I wish to touch on a few of them.

One of the parts of this legislation is that, finally, we are going to add some 30 million Americans to health care insurance. That is a good thing. About half of them will be added to an expanded Medicaid—a huge expansion of Medicaid. But here is my concern. Right now, our primary health care system is extremely weak. Everybody knows we don't have enough primary health care doctors. We know that Medicaid, today, is on wobbly legs as it tries to take care of the people who access that program. I am not quite sure how you add 15 million more people to Medicaid if you don't have a primary health care infrastructure to accommodate their needs.

In this regard, I have fought very hard for authorization language in the Senate to greatly expand community health centers and the National Health Service Corps, for which we will train and make sure that we have the primary health care doctors, dentists, and nurses we need, desperately need.

In the House bill, there is language introduced by Representative CLYBURN, supported by the Democratic leadership, that would provide \$14 billion over a 5-year period to expand community health centers, enable tens of millions more to access health care, and make sure we have the primary health care doctors and dentists we need.

It would be a cruel hoax to tell people they now have health insurance—Medicaid or another program—but not create a situation by which they can

get into the doctor's office. I fear that may happen. I am going to fight as hard as I can to make sure we have the primary health care infrastructure we need. That means, in the Senate, adopting the language that currently exists in the House bill for \$14 billion over a 5-year period—money which, according to a variety of studies, will pay for itself as we keep people out of the emergency room and keep people from getting sicker than they otherwise should be and ending up in a hospital. This makes a lot of sense. Community health centers have had wide bipartisan support. We have to support the House language.

On another issue, I found it interesting that my friend from Kansas, a moment ago, was denouncing the United Kingdom's health care system, denouncing socialized medicine, single payer. Well, I got a little confused by my Republican friends, who have been in Congress, saying: We love Medicare. My word, do we love Medicare. We are very angry that those Democrats are trying to cut back on that.

Republicans who, year after year, wanted to privatize Medicare, this week they love it. If they love it so much, why don't they join us in trying to expand Medicare and address some of the problems in Medicare? Let's work together.

Last week, we were criticized, but now, I guess, the tune has changed a little. Get your act together, my Republican friends. Either you continue the line you have had for many years about detesting Medicare because it is a single-payer health care program, a government health care program—that is what it is, a single-payer government health care program. You have been on the floor defending it all week long, until a couple days ago.

I support Medicare. In fact, what I believe and am fighting for is a Medicare-for-all, single-payer program because, at the end of the day, I disagree with many on this side of the aisle. I think, at the end of the day, the only way you are going to provide comprehensive universal health care to all Americans, in a cost-effective manner, is through a Medicare-for-all, single-payer system, which ends the hundreds of billions of dollars of bureaucracy and waste engendered by the private insurance companies.

One of my concerns, as we seem to be hurtling down the finish line, is I don't know who is going to be able to offer amendments. I have an amendment that speaks to what millions of Americans want, including the Physicians for a National Health Program—17,000 doctors, mostly primary health care doctors but not exclusively. They want to see this country have a Medicare-for-all, single-payer system. I understand I am not going to get very many Republicans supporting that amendment—or any Republicans. I also understand I

will get few enough Democrats supporting that amendment. In the years to come, we are going to have a Medicare-for-all, single-payer system. I want that debate on the floor of the Senate. I have offered an amendment and I want to have that debated. I don't need 20 hours or 5 days. I would love to discuss that issue with my Republican friends.

Democrats, I think it is an amendment that has a right to be offered and it should be. I understand that will not pass. I will tell you what could pass and what could have Republican support, it is the provision I have been working on that at least says that in our Federalist system, where each State learns from other States, at least give States the option. If the Governor or the legislature wants to go forward with a single-payer model; maybe it works, maybe it doesn't work. I have the feeling if one State—whether it is Vermont, California, Pennsylvania, States that have strong single-payer movements, a lot of support for that concept—if one State does it well, then other States will be saying we want the same thing. It is a cost-effective way to provide comprehensive health care to all our people.

I want to touch on another issue, where I think my colleagues in the Senate are wrong and my former colleagues in the House are right. This is an issue the occupant of the chair has worked on with me. We held a press conference this morning. It is to understand this legislation is going to cost between \$800 billion and \$1 trillion.

How do you get the money? Well, the Senate bill contains a tax on health insurance benefits. I think that is wrong. I think that is regressive. It is called a tax on Cadillac plans. Given the soaring cost of health care in America today, what may be a Cadillac plan today will be a junk car plan 5 years from now. Millions of Americans are going to be forced to pay taxes on their health care benefits or else their employer will cut back on those benefits, and they are going to have to pay out of their own pockets. That is wrong. It is a regressive and unfortunate and unfair way to raise the revenue we need.

Our friends in the House did the right thing. They said that millionaires should be asked to pay a little bit more in taxes to make sure we expand health care coverage in this country. I support what our friends in the Senate and the House did, and I disagree with what is in the Senate bill. There will be a poll coming out this afternoon in which 70 percent of the American people, as I understand it, disagree with the tax on health care benefits. They understand that is a tax on the middle class.

Let's be clear. We are in a terrible recession now. Working families are struggling. It is wrong for us to propose a tax on health care benefits, which in a few years will be impacting millions

of middle-class workers. We should follow what the House has done and say to people at the top—millionaires who have received huge tax breaks under President Bush—that they have to pay a little bit more in taxes so we can provide health care to all our people.

There is a lot in the bill in the Senate that makes a lot of sense to me. I congratulate Senator DODD and Senator BAUCUS and all those people and their staffs who have worked so very hard on this bill. We have 31 million more people who will get insurance. There is insurance reform dealing with preexisting conditions. We made progress in disease prevention. There are a lot of good things in it.

I want to be very clear: I do not think we are at the 2-yard line. I think a lot of work has to be done to improve this bill. We need to, as I mentioned a moment ago, make major improvements in primary health care. We need to change how we fund many parts of the expansion of insurance and do away with the tax on health care benefits. We have to give States the option, the flexibility to go forward with a single-payer system if that is what they want to do.

Also, I hope very much that this afternoon we will vote and adopt the reimportation prescription drug legislation championed by Senator DORGAN. It is an absurdity in this country that we remain the country that pays by far the highest prices in the world for prescription drugs. When I was in the House, I was the first Member of Congress, as I understand it, to take Americans over the Canadian border. Back then—10, 15 years ago—women were able to purchase the breast cancer drug Tamoxifen for one-tenth the price they were forced to pay in the United States. I know the drug companies are very powerful. I know they have a lot of influence in this institution. But I hope we can do the right thing and provide affordable medicine to all Americans through reimportation. And I hope we can adopt that amendment.

I did want to say I have some very serious concerns about this legislation, and I hope they will be addressed in the coming days and weeks. I very much want to be able to vote for this bill, but I am not there now, not by any means. I yield the floor.

Mr. WYDEN. Mr. President, at the end of the day, Americans don't care if a health reform proposal originated with a Democrat or a Republican, what matters to them is that it works. That is why I am proud to join forces with Senator COLLINS to offer commonsense amendments that will hold down premium costs and make health care more affordable for American families and their employers. As I have long said, the best way to hold down health care costs and make insurance companies accountable is to put Americans in the driver's seat and empower them to pick the plan that best fits their needs.

Along with Senator COLLINS, I am proposing as amendments to the Patient Protection and Affordable Care Act three amendments that will improve the Senate bill by doing more to hold down premium increases for all Americans while expanding health care choices for more Americans and their employers. Our amendments are as follows:

First, we are offering an amendment to provide more choices for employers and workers. While the current Senate legislation will eventually make it possible for employers to insure their workforce in the new health insurance exchanges, the legislation does not contain a mechanism to make it possible for employers to offer their workers the ability to choose any plan offered in the exchange. This Wyden-Collins amendment would correct that by making it possible for employers—who want to offer their employees the full range of choices in the exchange—to do just that while increasing competition in the new marketplace.

Under the amendment, any employer that sponsors a health plan would have the option to offer tax-free vouchers to its workers equal to the amount the employer contributes to its own health plan. Workers could then use that voucher to purchase the exchange plan that works best for them and their family. If a worker decides to purchase a less-expensive plan, the worker would keep the savings as added income just as workers wanting to purchase more generous plans in the exchange will be able to pay the additional cost out of pocket. Whatever employers pay for vouchers will remain tax deductible for employers and tax free for employees and while no employer will be required to offer vouchers under the new system, in order to encourage participation, employers who want to offer their employees tax-free vouchers will be given accelerated access to the new health insurance exchanges. Under the amendment, any employer offering its workers vouchers would have access to the exchange in 2015 rather than 2017, which is the schedule for employer access in the bill.

Our second amendment offers more choices to individuals and families in the insurance exchanges. This amendment will make it possible for individuals who are not eligible for a subsidy to purchase a catastrophic plan, regardless of age. Catastrophic plans will typically have much lower premiums than other plans offered through the exchange but subscribers will pay for most of their health care expenses out of pocket up until they exceed their plan's catastrophic limit.

Americans should have the choice to purchase more affordable coverage, if that is what works best for them. Under the Patient Protection and Affordable Care Act, individuals up to the age of 30 are eligible to purchase these

plans. This Collins-Wyden amendment will extend that option to individuals—not receiving government subsidies—over the age of 30. This amendment would give consumers more choice and help ensure that more people can purchase coverage that fits their needs and is affordable to them.

The amendment includes aggressive disclosure requirements that will require catastrophic subscribers to certify that they understand the terms of the coverage and know that they are purchasing the lowest level of coverage available.

Finally, we are sponsoring an amendment to help hold down premium increases for consumers. Starting in 2010, the Patient Protection and Affordable Care Act will impose an annual fee on insurance companies based on the number of premiums written each year. This Wyden-Collins amendment will modify that fee to create an incentive for insurers to hold down rates. So, for example, insurance companies that hold down premium increases will pay lower fees, while insurers who jack up their premiums will pay much higher fees. Starting in 2010 the fee will be varied by as much as 50 percent based on how aggressively insurers control costs which will give them a strong incentive to hold the line on overhead, executive salaries, provider payments, and inefficiency. As under the bill, the total amount of the annual fee will be \$6.7 billion per year.

I urge our colleagues on both sides of the aisle will support these bipartisan, commonsense amendments.

Mr. JOHNSON. Mr. President, as more American families struggle in the face of job loss and rising health care costs, the urgency with which the Senate health care debate must progress is clear.

Americans feel a growing insecurity about the future of their family and the future of our country. The recent economic crisis demonstrated the interconnectedness of Wall Street and Main Street. It confirmed what we already knew: that the strength and stability of our economy is intimately tied to the welfare of working families and our ability to direct spending down a more sustainable path.

In 2008, the United States spent \$2.4 trillion on health care. By 2018, national health spending is expected to almost double, reaching \$4.4 trillion and comprising 20 percent of our economy. If the growth of health care costs is not addressed, America's economy won't be able to keep up and more jobs will be lost, wages will drop, and health care benefits will be cut.

In addition to the unsustainable growth of health care costs, further faults in our current health care system leave millions of Americans one illness or job loss away from losing their health care benefits. Guaranteed access to affordable and meaningful

health benefits would provide Americans with the security they deserve.

I recently heard from Brad and Joanne in Goodwin, SD. Brad is a cancer survivor and Joanne is a heart attack survivor. They had health insurance coverage at the time of their illnesses but still carry medical debt. After the economy forced the plant Joanne worked for to close in October 2008, she fell back on the health insurance coverage offered by Brad's employer. She relies on medication to manage her heart health and Brad requires regular checkups to make sure he stays cancer-free. In March of this year, the family hit hard times again when Brad's employer downsized and he was laid off.

Today, Brad and Joanne are still unable to find work and their unemployment benefits are set to run out at the end of the year. Even if they could find an insurance policy that approved them for coverage despite their pre-existing conditions, the price of health insurance in the individual market is far beyond their reach. So Joanne pays entirely out-of-pocket for her pricey heart medication and Brad can't afford to visit his doctor as often as he should. They do not know what they will do in the event they suffer another medical emergency or if their unemployment benefits run out before they are able to secure a new job.

Joanne and Brad's story illustrates the insecurity of many American families who are one job loss away from losing access to the health care they need. While South Dakota has been fortunate not to have as high of unemployment rate as other parts of the country, the economic crisis has put more and more South Dakotans on unsteady financial footing.

It is estimated that over 88 percent of South Dakotans have health insurance. This too is an impressive figure compared with other states, but it does not paint the whole picture. Nearly 61 percent of South Dakotans either purchase health insurance in the individual market or have coverage through their employer. These families are at risk of losing their coverage for reasons out of their control, such as those experienced by Brad and Joanne.

The Patient Protection and Affordable Care Act will guarantee these families access to affordable health insurance through life's ups and downs. Insurers will be barred from denying coverage for pre-existing conditions, discriminating based on gender or medical history, and will not be able to drop your coverage the moment you become ill and need costly treatment. New health insurance exchanges in every state will provide a menu of quality, affordable health insurance plans for the self-employed and those not offered coverage through their employer. Families who need assistance will be eligible for tax credits to make the plan of their choice affordable.

These commonsense solutions will give every American one less thing to worry about when they get sick, change or lose their job. As we continue to work out the details of health care reform, let us keep in mind the American families who are struggling to make ends meet in the face of job loss and rising health care costs. When we think of them, the urgency of health care reform is clear.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT

Mr. REID. Mr. President, I move to proceed to the conference report to accompany H.R. 3288, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that I be allowed to proceed for a moment here prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I say to my good friend the majority leader, we have been anxious to have health care votes since Tuesday, and we have had the Crapo amendment pending since Tuesday. You have said repeatedly, and I agree with you, that the health care issue is extraordinarily important and that we should be dealing with it and debating it.

So it is my hope that somehow, through our discussions both on and off the floor, we can get back to a process of facilitating the offering of amendments on both sides of the aisle at the earliest possible time and we can get back to the health care bill.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I am happy to respond through the Chair to my distinguished colleague.

I think it is pretty evident to everyone here not only what has happened here on the Senate floor but the statements that have been made publicly and privately. And certainly I am not going to discuss any private conversations I have had, but based on Rush Limbaugh and Glenn Beck, which is on all the news today, they are upset at Senator MCCONNELL because he is not opposing the health care bill enough—

that in a reasonable process on this, there are no efforts being made to improve this bill, only to kill this bill.

I think the debate has come to a point that I have rarely seen in the Senate. In fact, I have never seen it. To have my friends on the other side of the aisle come to the floor and in some way try to embarrass or denigrate me by virtue of the fact that—in fact, trying to embarrass me. What they should understand is that any events I had scheduled for this weekend have been canceled. Events I had last weekend had been canceled—four or five of them. To say the least, I would never, ever intentionally come to the floor and try to talk to somebody about having had a fundraiser and that is why they are trying to get out of here.

The reason I laid out to the Senate what I thought was a reasonable schedule is because, procedurally, we are where we are. The rules of the Senate are such that once cloture is invoked, that is what you stay with. I thought it would be appropriate, because we have worked pretty hard here, to have a day or two off. Anything that was reasonable, I would be happy to deal with everyone. But there was no result from this. Everything that can be done to stall and to divert attention from this bill is being done. And that is too bad, because it is important legislation.

Today, 14,000 Americans will lose their health insurance. Between now and 3:30, a number of people will die as a result of having no health insurance. So we are engaged in some important stuff; as pundits have said, some of the most important legislation that has ever been in this body.

So I am going to proceed to follow the rules of the Senate, and I am sorry we haven't been able to work with the Republicans in a constructive fashion on this health care bill, but it is obvious we haven't.

Mr. MCCONNELL. Mr. President, I ask unanimous consent to be able to respond briefly.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I reiterate to my good friend from Nevada, all I said was the Crapo amendment has been pending since Tuesday. We would like to vote on amendments. There has been some difficulty, apparently, in coming up with a side by side to the Crapo amendment. I understand that. But I am perplexed that it would take 2 days to come up with a side by side.

This, as has been stated by my good friend the majority leader, is the most important issue—some have said in history. It has been equated with a variety of different monumentally important pieces of legislation in American history. All we are asking is the opportunity to offer amendments and get votes. I said it in a most respectful way

and meant it in a most respectful way. I think it is pretty hard to argue with a straight face that we are not trying to proceed to amend and have votes on this bill. That is what we desire to do.

The majority leader certainly has the right to move to the conference report. He has now done that—or we are about to vote on doing that. All I suggested was we would like to get back on the health care bill as soon as we can, resume the debate process on what has been described on an issue of historic importance, and let Senators vote, which is what we do here in this body.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I say to my friend from Kentucky that I have an event I am going to now. I will vote and come back, and I will see if we can work something out.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

The PRESIDING OFFICER (Ms. KLOBUCHAR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 371 Leg.]

#### YEAS—56

Akaka	Hagan	Nelson (NE)
Baucus	Harkin	Nelson (FL)
Begich	Inouye	Pryor
Bennet	Johnson	Reed
Bingaman	Kaufman	Reid
Boxer	Kerry	Rockefeller
Brown	Kirk	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskey	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murray	

#### NAYS — 43

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bayh	Enzi	Menendez
Bennett	Feingold	Murkowski
Bond	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Collins	Johanns	Voinovich
Corker	Kyl	Wicker
Cornyn	LeMieux	
Crapo	Lugar	

#### NOT VOTING—1

Byrd

The motion was agreed to.

Mrs. BOXER. Madam President, I move to reconsider the vote.

Mr. AKAKA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. BOXER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, it is my understanding we are now on the fiscal year 2010 Consolidated Appropriations Act. I will have a lot to say about this 3,000-page omnibus appropriations bill, but I would point out to my colleagues that it is loaded down with 4,752 earmarks, totaling \$3.7 billion; six bills, totaling \$450 billion; 1,351 pages long, with 409 pages of earmarks. Spending on domestic programs is increased by 14 percent. Veterans spending is increased by 5 percent. That shows the priorities around here. Let me repeat that. Domestic spending programs are increased by 14 percent. Military construction and veterans spending is increased by only 5 percent.

Here we go again. Just a matter of months ago, in March, the Senate passed a monstrous \$410 billion, 3,000-page omnibus appropriations bill that was loaded up with over 9,000 earmarks. At that time, those of us who complained about the ridiculous amount of waste were ignored. In fact, the President's Director of the Office of Management and Budget, Peter Orszag, said in an interview that "this is last year's business. . . . We want to just move on"—a truly remarkable statement coming from the man the President put in charge of the government's budget.

In March, the majority leader placed the blame for the omnibus spending bill at the feet of President Bush. Senator REID said:

. . . we have a lot of issues we need to get to after we fund the Government—something we should have done last year but we could not because of the difficulty we had working with President Bush.

So what is the excuse this time? Where will the blame be placed now? Is the majority leader having difficulty working with President Obama? We have had all year to work on 12 annual spending bills, and we only enacted 5 of them through the regular order, and 1 of those 5 was passed and sent to the President before the new fiscal year began.

We should be embarrassed by this process. Here we go again—faced with a whopping 1,350-page omnibus appropriations conference report, which contains six bills, spends \$450 billion, and is loaded up with 4,752 earmarks, totaling \$3.7 billion. Meanwhile, people are out of jobs, they are out of their homes, unemployment in my home State is 17 percent, and we are going to spend money on things such as \$2.7 mil-

lion—get this; I am not making it up—\$2.7 million for supporting surgical operations in outer space—supporting surgical operations in outer space—at the University of Nebraska Medical Center, Omaha, NE; \$30,000 for Woodstock Film Festival Youth Initiative; \$13.9 million for fisheries in Hawaii—the list goes on and on and on and on—\$200,000 to renovate and construct the Laredo Little Theatre.

We should not be spending American taxpayer dollars to replace worn auditorium seating and soundproofing materials. The list goes on and on and on: \$800,000 for jazz at the Lincoln Center; \$3.4 million for a rural bus program in Hawaii—you will note that Hawaii pops up all the time here—\$1.6 million to build a tram between the Huntsville Botanical Garden and the Marshall Flight Center in Alabama; \$750,000 for the design and fabrication of exhibits to be placed in the World Food Prize Hall of Laureates in Iowa.

I am not making these up. This is the same party and President that promised to scrub each one of these appropriations bills and get rid of the unnecessary ones.

So we will be talking a lot about this bill. But I want to point out again what is before us to the American people: six bills—not one—six bills, totaling \$450 billion; 409 pages of earmarks, 4,752 earmarks, totaling \$3.7 billion; and spending on domestic programs is increased by 14 percent; MILCON and veterans spending is increased by 5 percent.

I have met recently with the Governor of my State. We are suffering under incredible economic difficulties. We are having the greatest financial crisis in the history of my State. Couldn't they use some of this \$3.7 billion in earmarks to pay for some of the essential services that are having to be cut back, not only in my State but all over America? No. The beat goes on. It is business as usual here in Washington.

And do not be surprised at the anger of the American people over this way of doing business—bills 1,351 pages long, filled with earmarks and pork that have nothing to do with the betterment of our Nation.

So we will be talking a lot more about many of these porkbarrel amendments that are in it. But it is awful: \$200,000 for "design and construction of the Garapan Public Market" in the Northern Mariana Islands. We will be hearing a lot more about it.

Mr. THUNE. Will the Senator yield for a question?

Mr. MCCAIN. I will be glad to yield.

Mr. THUNE. The Senator mentioned that for these seven bills, the year-over-year increase in spending is 12 percent. Does the Senator from Arizona know what the CPI this last year was?

Mr. MCCAIN. The CPI was minus 1.3 percent, not to mention 10 percent unemployment in America, not to mention people not being able to stay in

their homes, not to mention the hardest economic conditions in history, certainly, since the Great Depression.

Spending on domestic programs is increased by 14 percent. What brings that down to 12 percent is they only increased veterans spending—veterans spending—by 5 percent. But opera houses, rural bus programs, music programs—\$300,000 for music programs at Carnegie Hall. Do you think Carnegie Hall needs \$300,000 for music programs?

Mr. THUNE. If the Senator will yield for another question, do any of these numbers the Senator is talking about—this 12-percent increase in spending in these seven appropriations bills over the previous year, at a time when families across this country are being asked to tighten their belts, small businesses are tightening their belts; as the Senator said, we have record unemployment—do these numbers include the almost \$1 trillion that was spent earlier this year in the stimulus bill?

Mr. MCCAIN. The stimulus bill has nothing to do with that, I would say to my colleague, and we all know that. This is entirely new, six appropriations bills, totaling nearly \$450 billion which, by the way, the majority leader wanted to pass by unanimous consent. Remarkable.

Mr. THUNE. I say to my colleague and friend from Arizona, that is a 12-percent year-over-year increase and the five bills that have already passed had increases that were in the teens in terms of the year-over-year increases too. I do not know how, when you pass a \$1 trillion stimulus bill, much of which was distributed to Federal agencies that are also going to get these year-over-year 12-percent, 14-percent, 15-percent increases in spending, we can justify that to the American taxpayer or to hard-working Americans who are struggling right now to make ends meet and have to balance their family budgets. States are struggling to balance their budgets. But here in Washington, it seems as though it is spend, spend, spend.

Mr. MCCAIN. I would also respond to my friend, it has to be in the context of a revision over 10 years, recently, by the Office of Management and Budget from a \$10 trillion to a \$12 trillion deficit. The deficit for this year is \$1.4 trillion, and I am not sure what it is next year. But they could not have known that in the Appropriations Committee when they passed spending measures such as this.

The point is, in the face of massive, unprecedented deficits, unfunded liabilities in Social Security and Medicare, where we are asking Americans all over to tighten their belts—in my State essential services are being cut because they do not have enough money—this is the same business as usual that we have seen for years.

I saw a poll yesterday—it was in a Hotline poll or one of those—that the

approval rating of Members of Congress is below that of used car salesmen. I have not met those who express their approval. So we should not be surprised at some very interesting things that may take place in the elections coming up this November. But it is unfortunate, that is all.

Mr. THUNE. I say to the Senator, one final point I would make is, of all that spending the Senator mentioned—and again the \$1 trillion in stimulus money was all borrowed money; that was all added to the debt, will be added to the debt, and is going to be paid for by our children and grandchildren, but the \$1.4 trillion the Senator mentioned that last year constituted the Federal deficit means that out of every dollar the Federal Government spent last year, 43 cents was borrowed.

Mr. MCCAIN. Forty-three cents. And do you know who they borrowed it against? Our kids and our grandkids. They are the ones who are going to have to pay for it. I do not think I will. It is our kids and our grandkids whom we are laying it on. This is a colossal act of generational theft that we have committed. And believe it or not, the American people have figured it out.

Mr. THUNE. There is no question. The one thing that I guess is bothersome is most generations of Americans—your generation, obviously—worked hard, sacrificed so the next generation could have a better life. What we are basically doing is borrowing from the next generation because we have not been able to live within our means. That turns on its head one of the great ethics of America that has served this country so well for generations. Washington, DC, has not learned the lesson that when you borrow money, it has to be paid back, and that you cannot spend more than you take in. Forty-three cents out of every dollar last year was borrowed—all to be put on the bills of our children and grandchildren.

Mr. MCCAIN. The Senator is correct. Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the conference report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3288), making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and

for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of the two Houses.

(The conference report is printed in the RECORD of December 8, 2009, beginning at page 29920.)

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I know we have moved to the Omnibus appropriations bill to continue government, and the time is running out for the current authorization bill, and this brings us back to the authorization of spending, but it also takes us away from health care reform.

On this side of the aisle, we have been waiting for a long period of time to vote on some amendments that are now before the Senate, such as the Crapo motion which would send the bill back to committee to take out the tax increases that are in it. Then we also have the Dorgan amendment. I can understand why maybe the majority does not want to vote on Republican amendments, but I sure don't understand why they would object to voting on Senator DORGAN's amendment, a Democratic amendment, because there have always been more Democrats than Republicans for the Dorgan amendment, and quite frankly, I am in a position where I agree with that amendment. I am a cosponsor of it. I think we would have a great deal of bipartisan support for the Dorgan amendment. But now we are just automatically away from the health care debate and those amendments.

So I am wondering why we had to do this appropriations bill right now. I think there is growing realization that maybe public reaction, negative reaction to the legislation before us—remember that 2,074-page bill that is before us—the public is getting wise to what is in that bill and there is objection to it, and maybe now the majority party would like to have a little respite from that debate. So I thought I would come back to not the substance of the health care reform bill debate but to a lot of organizations that oppose it and why they oppose it, just to keep the public's attention that we on this side of the aisle feel the health care issue is very important.

As I travel around Iowa, I hear a lot of concern about out-of-control government spending. People are worried about all of the bailouts, the banks, and the automakers, the automakers such as General Motors being nationalized. They are worried about the rising rate of unemployment, which is 10 percent now. They don't see how we will ever dig ourselves out of the deficit hole we are in, a deficit that has been increased by \$1.3 trillion since President Obama's inauguration.

As Senator MCCAIN just pointed out, the bill that has now come before the

Senate to fully fund the Federal Government has 12.5-percent increases in it. From that standpoint, it seems to me we are getting away from a commonsense principle that we ought to use around here on spending, and that is that spending shouldn't eat up any more than the economic growth of the tax base that is coming into the Federal Treasury to support that spending. Quite obviously, you can't have 12.5 percent increases in appropriations this year over last year, and last year was 9 percent over the previous year. You just can't sustain that. Commonsense dictates against it. But what rules here in Washington is just a lot of nonsense.

So our constituents are confused. They are confused as to why, in the face of all these fiscal problems, some in Congress are now proposing \$500 billion in tax increases. Tax increases are very bad for the economy. It is more difficult to get out of the recession as you increase expenditures. They don't understand why some are proposing the largest Medicaid expansion since the program's creation. They want to know why they are proposing \$500 billion in Medicare cuts to create an entirely new entitlement program that this country can't afford.

Nowhere are these worries and this confusion more evident than among business leaders of America because business is where jobs are created. Government does not produce wealth; government consumes wealth. So if you want to expand the economy, you do it through the private sector. That is where the resources of government come from. That is where the resources that sustain our people come from.

So whether it is a small business owner on Main Street or a CEO on Wall Street, the message is clear: Stop spending, get the economy back on track, and get people back to work.

Unfortunately, the health reform bill will not address any of these goals. In fact, it may just do the opposite. Don't take my word for it. Let's take a look at what the groups that represent American businesses are saying.

Let's start with the Chamber of Commerce representing 3 million American businesses. In a press release distributed November 19, 1 day after the release of the Senate bill, the Chamber called the Senate bill a "Missed Opportunity to Enact Meaningful Reform." That was their title.

Let me go to a specific quote:

This bill still contains a government-run plan and an onerous employer mandate, it taxes working Americans, slashes Medicare, spends over a trillion dollars—and after all this—CBO tells us 24 million Americans will still not have health insurance.

That doesn't sound like the kind of reform that is going to help get the chamber members back on track hiring more workers so we can get this unemployment down. It sounds as though

they will end up being forced to pay higher taxes and cut jobs. I am not an economist, but that certainly doesn't sound like a formula for getting this country out of the recession.

In fact, the chamber's press release says:

The Chamber believes the path to a healthier economy is to cut taxes, not to raise them by \$500 billion.

They go on to ask a question for which I still can't find an answer:

Why is there still no meaningful medical liability reform? Is currying favor with the trial lawyers worth passing up \$50 billion in CBO verified savings?

I think it is pretty clear that the Chamber of Commerce doesn't think this \$2.5 trillion bill will cure what ails the U.S. economy.

Let's see what some other business groups have to say. The National Association of Manufacturers put out a press release the same day as the Chamber of Commerce, November 19. The National Association of Manufacturers is the Nation's largest industrial trade association. Their members build the machines that keep America running, so they should know a little bit about how to get our economy running again. Unfortunately, they see Senator REID's bill as a step in the wrong direction. Like the Chamber and like pretty much every other business group, the National Association of Manufacturers has announced that they cannot support the pending bill.

I find it hard to believe that some Senators who claim to be probusiness can support a bill that is opposed by almost the entire business community—or am I missing something? How can some Democrats who claim to want to get people back to work support a bill that economists from the far right to the far left say will reduce wages and increase unemployment? It just doesn't seem to make sense.

Like other business groups, the National Association of Manufacturers is in favor of reform. Manufacturers realize that we need health reform to lower costs, increase access, and improve quality. But according to their press release, they cannot support a bill that will—this is their quote—"add massive financial burdens to businesses that are already struggling in this recession." They go on to express deep concern about huge tax increases that will hurt small business manufacturers, and they are worried that both the so-called public option and the massive Medicaid expansion will just end up shifting more costs and higher premiums to private businesses.

The National Association of Manufacturers ends their press release by saying:

Oppose the majority leader's bill and urge Senators to do the same as it raises costs and ultimately will destroy jobs.

Again, I find myself asking how someone can claim to be probusiness

but support a bill that is so strongly opposed by the business community.

Let's take a look at what small businesses have to say. Maybe that is where the answer is. You have to remember that small businesses create 70 percent of the net new jobs in America. In fact, it was Christina Romer, the President's top economic adviser, who said in a recent Webcast that health care reform will "benefit small business—not burden it."

Unfortunately, the National Federation of Independent Businesses, the voice of small businesses, doesn't seem to agree. After the release of Senator REID's bill, the National Federation of Independent Businesses said this:

This kind of reform is not what we need to encourage small business to thrive. We oppose the Patient Protection and Affordable Care Act due to the amount of new taxes, the creation of new mandates, and the establishment of new entitlement programs.

Like the chamber and the National Association of Manufacturers, small businesses want and need reform, probably more so than even chamber members and the National Association of Manufacturers. But it doesn't sound as though the pending bill actually addresses the problems of small business. In fact, it sounds as though the pending bill simply creates a host of new problems—problems at a time when this country is coming back from the brink of the greatest economic downturn since the Depression.

The National Federation of Independent Businesses goes on to say:

There is no doubt all of these burdens will be paid for on the backs of small businesses.

Over the coming weeks, I am sure some Senators are going to come down here and talk about all of the benefits for small businesses that are in this bill. But in the interest of honest debate, I hope they will at least mention in their remarks that despite all of the so-called benefits, this bill is still opposed by the voices of America's small businesses. It is still opposed by the National Federation of Independent Businesses. I could go on and list about half a dozen other business groups that oppose this bill. The Associated Builders and Contractors, the Independent Electrical Contractors, the International Franchise Association, the National Association of Wholesalers, the Small Business and Entrepreneurship Council, and the International Food Service Distribution Association—all of these groups recognize the devastating impact this bill will have on our economy.

We are facing the highest unemployment rate in 26 years. We have already seen the national debt increase by \$1.3 trillion since inauguration or per household \$11,535. The pending bill misses the mark on business' top priority, and that is lowering costs. Don't take my word for it. The Congressional Budget Office says the Reid bill bends



the Federal spending curve further upward by a net of \$160 billion between 2010 and 2019.

For these reasons, the pending bill is opposed by these organizations I have quoted: the National Association of Manufacturers, the Chamber of Commerce, the National Federation of Independent Businesses, as well as almost every other business group based in Washington, DC, or maybe, for all I know, they are based in other parts of the country, but they still follow legislation here in this city, in the Congress.

The business community has spoken, and their message is loud and clear. For Senators who want to bend the growth curve down—and that is what we all set out to do, but we don't have a bill before us that does it—this bill is not the answer. For those Senators who want to get people back to work, this bill is not the answer.

For those Senators who want to get this country's economy back on track, this bill is not the answer.

If you support American businesses—and American businesses are what provide the income into the Federal Treasury, whether it is corporate tax or income tax—it seems to me that if you have pride in American businesses and the jobs they create, you cannot support this bill.

I yield the floor.

The PRESIDING OFFICER (Mrs. McCASKILL). The Senator from Washington is recognized.

Mrs. MURRAY. Madam President, I rise this afternoon to speak about the Transportation-Housing title of the bill now before the Senate. This is a bill that has broad bipartisan support because it addresses the very real housing and transportation needs of American families across the Nation.

There is a lot to be proud of in this conference report, and I am pleased with what we have been able to accomplish working with my colleague from across the aisle, Senator BOND, Chairman OLVER on the House side, and Congressman LATHAM and all their staffs.

This bill makes needed investments in our transportation infrastructure, creating critical jobs, while also supporting housing and services for our Nation's most vulnerable.

It ensures that two critical Federal agencies—departments that communities across the country depend on—have the resources they need to keep our commuters safe and our communities moving and prospering.

The bill before us touches the lives of Americans in ways they can appreciate each day. Because we are talking about transportation projects and housing assistance, we are also talking about jobs and stemming a housing crisis that has contributed to our current economic troubles.

Whether it is the parent who commutes every day and needs safe roads

or new public transportation options so they can spend more time with their families or a business that depends on solid infrastructure to move goods and attract customers or the young family searching for a safe and affordable community in which to raise their children or the recently laid-off worker who needs help to keep his or her family in their home, this omnibus bill before us has a real impact on Americans who are struggling in these troubling economic times.

Our bill takes a balanced approach that addresses the most critical needs we face in both transportation and housing, while remaining financially responsible and staying within the constraints of the budget resolution.

I am especially pleased that the bill provides over \$10.3 billion to support and expand public transit, which continues to see record growth in ridership.

The bill also includes \$600 million for the competitive multimodal surface transportation grant program, which supports projects making a significant impact on communities and regions—in addition to the over \$41.8 billion included for our Nation's roads and bridges, which will support good-paying construction jobs and lead to safer and more reliable infrastructure.

These transportation investments are critical to supporting our Nation's economy and creating good-paying jobs.

In addition to these important investments in transportation, the bill represents a firm commitment to provide critical housing and supportive services to families most impacted by the economic crisis.

This bill includes increased funding for the section 8 program, which provides housing for low-income families across the country. In addition, the bill increases housing programs for some of our Nation's most underserved populations, such as the elderly, the disabled, and Native American communities.

Senator BOND and I are particularly proud that this bill includes \$75 million for vouchers for the joint HUD-Veterans Affairs Supportive Housing Program. That program will provide an additional 10,000 homeless veterans and their families housing and supportive services. We should all be very proud of the inclusion of that in the bill.

I am also pleased the bill includes more than \$150 million for housing counseling programs to help families avoid scams and stay in their homes, instead of facing foreclosure.

Our bill provides assistance to those who need it most, and it directs resources in a responsible and fiscally prudent way.

It addresses the needs of families and businesses in every region of the country—families who are looking for the Federal Government to step up and

provide solutions to everything from congestion solutions to transportation safety, to foreclosure assistance, to affordable housing.

This bill helps our commuters, homeowners, and the most vulnerable in society. Most important, it will create jobs and support the continued recovery of our national economy.

I hope we can get past the differences we have and move quickly to send this bill to the President's desk.

Before I close, I thank all our Senate staff who worked extremely hard over this past year to move this bill forward to our subcommittee, through full committee, to the floor of the Senate, through conference committee, and now here at its final stop before it reaches the President's desk. They have worked many weekends and evenings putting this together. These staff members are: Matt McCardle, John Kamarck, Ellen Beares, Joanne Waszczak, Travis Lumpkin, Grant Lahmann, Michael Bain, Dedra Goodman and Alex Keenan and especially Meaghan McCarathy and Rachel Milberg for their outstanding efforts to help us get this bill to the floor today. We are the ones who stand before everybody and take credit for these bills, but it is our staffs who have helped us get here. I thank the staffs on both sides of the aisle for getting us here today.

I urge our colleagues to get past our differences and move the bill quickly to the President's desk.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Madam President, I wish to speak on the Omnibus appropriations bills, to which we just moved, as well as to return and make some comments on the health care legislation from which we just retreated.

First, regarding the Omnibus appropriations bill, I am very concerned about the fact that, as my motion is pending on the health care bill, dealing with one of the more important issues; namely—the President's pledge to make sure no one in America who makes less than \$250,000 as a couple or \$200,000 as an individual will be required to pay for the unbelievably high cost of this bill.

While we were facing that amendment, the majority has decided they will shift from the bill—I understand that is a tough vote to take because the bill contains so many hundreds of billions of dollars of new tax increases that the American people squarely in the middle class will be called upon to share. We should not have shifted from the health care debate to move to the Omnibus appropriations bill, not only because of the importance of the issues we are dealing with on the health care legislation but because of the Omnibus appropriations bill itself.

This Congress cannot control its appetite for spending. The appropriations

bill we see before us now is called omnibus because it packages together seven of the original appropriations bills this Congress has been working on—and we are studying them to find out the details. But from the information I have received, the average rate of growth in spending in this bill overall—over those seven bills—is somewhere between 12 percent and 14 percent growth in

Federal spending.

This Congress has generated a \$1.4 trillion deficit in less than 12 months. For next year, we want to see Federal Government grow by another 12 to 14 percent. That doesn't count the new stimulus package spending that is being talked about, and it doesn't count the spending—that almost \$2.5 trillion in new spending—contemplated in the health care legislation, and any number of other pieces of legislation waiting in the queue to come before the Congress.

At some point, fiscal restraint has to return to Washington, DC. We have not seen it here for far too long. I know it is very tempting to just say we can pile the debt on our children and grandchildren and spend what we want to spend today. There are those who say the only way we can have a strong economy is to spend ourselves into prosperity. Yet it is not the government that creates jobs. It is the formation of capital, the investment by small businesses and entrepreneurs in new ideas and products, and the expansion of business in the United States that will allow us to sustain a strong, healthy growth in our economy.

If we continue to rely on borrowing money from the future in order to spend ourselves into prosperity, we will continue to see our national debt mount to a point where it cannot be sustained. We are already at a \$12 trillion national debt, a national debt that is projected to double over the next 10 years to \$24 trillion. I object to moving off the health care bill, where we had such critical amendments and motions pending. I object to moving to a bill that will now increase the spending of the Federal Government by 12 to 14 percent.

Let me shift for a moment and talk more about the health care bill. The motion I had brought—the pending motion before the Senate—or it was before we shifted off the health care bill—was a simple motion that would have required the bill to be committed to the Finance Committee, with instructions to the Finance Committee to take out those parts of the bill that impose a tax increase on people in the United States who earn less than \$250,000 as a couple or \$200,000 as individuals.

Very straightforward, it is exactly what the President pledged he would do, on multiple occasions, to the American people. Yet we have shown there are almost \$500 billion of taxes in the

first 10 years of this bill. If you look at the real first 10 years after the spending has kicked in—the 2014 to 2023 time period—it is almost \$1.2 trillion in new taxes, a huge portion of which falls on the middle class. The response has been that actually this bill is a net tax cut. How can that be? The only way it can be claimed to be a tax cut is if you take the subsidies in the bill—about \$400 billion worth of them—which are used to provide people at lower income categories, who don't have adequate access to insurance, with a subsidy toward the purchase of insurance and if you call that a tax cut. In the bill, it is actually called a renewable tax credit—even though \$300 billion of the \$400 billion goes to individuals who do not pay taxes, do not have a tax liability, and it is scored by the CBO as spending, not tax relief. Even if you were willing to count that money as tax relief, then you would have a situation in which 7 percent of the Americans would be receiving these government subsidies, while the remainder would be paying the price—paying the taxes.

To put some numbers on that, out of 282 million Americans who have insurance in America today—or will have in 2019—only 19 million would receive this tax credit being talked about. Remember, the vast majority of them get what is called a tax credit, but it is a government subsidy going to those who have not generated a tax liability, and 157 million of the 282 million would be people who get health insurance through their employer and will not be eligible for that health insurance.

After you do all the numbers and take out the taxpayers who make less than \$250,000 a year as a couple or \$200,000 as an individual, the bottom line is, after all those who are subsidized are taken out, there are still 42 million Americans in the middle class, as defined by the President, who will pay hundreds of billions of dollars in taxes.

My amendment would simply require that those taxes be taken out of the bill, the President's pledge be honored in the bill, and the bill then be put into a posture to return to the floor for further debate.

There is one other item I would like to talk about. One of the things that is often said by the opponents of my amendment is that this bill actually drives down the spending curve.

When they say that, I wonder what curve they are talking about. Are they talking about the size of government? No. The size of government under this bill grows up by \$2.5 trillion. Are they talking about the cost of health care? No. The CBO study indicated very clearly that at best Americans will not see the cost of their health care go down. For those in the most needy categories, the 17 percent of Americans who are in the individual market, their health insurance will actually go up by 10 to 13 percent.

Are they talking about the Federal deficit? Actually, CBO says the deficit will go down. That is not the size of the government, but that is the size of the debt or spending each year. But how does it go down? It goes down only if you use the budget gimmicks that I will outline in just a minute or if you include all the taxes, the hundreds of billions of dollars of taxes that are in the bill, and if you count the Medicare cuts that are in the bill.

Take out any one of those—the nearly \$500 billion of Medicare cuts, the nearly \$500 billion of taxes, or the budget gimmicks—and this bill does not drive the deficit curve down.

What are the budget gimmicks—and I will close with this—what are the budget gimmicks about which I am talking? There are a number of them. The biggest is that the proponents of the bill do not count the first 4 years of spending. If you look at the 10-year spending cycle of the first 10 years of the first part of this bill, the taxes go into effect on the first day the bill is law, on January 1 of next year. The spending does not start until the year 2014.

So we have 10 years of taxes, 10 years of Medicare cuts, and 6 years of spending. That is how they are able to say it balances out. If they started the spending and the taxing on the same day and did not give themselves a 4-year run of tax collection until they start the actual implementation of the spending part of the bill, it would drive the deficit down also.

All we need to do in this Senate is to slow down, refer the bill back to committee, have them fix the provisions on taxes, and then work on some of the common ground we know we have that will help bend the spending curve down and will help improve the situation for Americans across this country who are calling for us to control the skyrocketing costs of health care.

It is my hope that as the Senate goes through the next few weeks of debate on this legislation, as well as the other legislation we bring before us, we will remember our children and our grandchildren and all Americans today who are calling for the kind of true health care reform that will truly address the kind of fiscal responsibility and the kind of cost containment that we should be seeking in this Chamber.

I yield back my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Madam President, I rise to reiterate exactly what my colleague just said, that transparency with the American people on the cost of this plan is absolutely essential. If you are going to tax the American people, tell them what you are going to tax. If you are going to cut their benefits, tell them what you are going to cut. Do not use smoke and mirrors to create a panacea for the people down the road to

find out they have been sold a pig in a poke.

I want to talk about not what has been introduced but what has been reported in the press as to where we may go on this bill.

As many know, the bill that is under consideration that is supposed to reform health care is a bill that was crafted in a back office in the Capitol where very few people participated, and those who did participate were only Democrats. It was not until it was rolled out on the Senate floor that many of us had an opportunity to read the 2,074 pages. If the American people are like I am, we are still working our way through section by section trying to figure out exactly what it says and, more importantly, exactly what it means and, even more important than that, how does it affect me? How does it affect my family?

You see, health care is a very personal issue for everybody in this country. It is important that we display the honesty they expect from us. If, in fact, we are going to reform health care, then let's reform it. If we are going to do what we have done over the past several weeks, which is have a debate about coverage expansion, then let's be honest with the American people. Who is going to pay for it?

We know how CBO looked at the bill and how it was designed by the majority leader. They are going to steal \$464 billion from Medicare. That is a fact. Nobody disagrees with that. Madam President, \$464 billion would be stolen from Medicare which the Medicare trustees say will be insolvent in 2017, a mere 8 years from now. I am not sure that is fiscal responsibility, but it is in the bill.

In the last 24 hours, the press reports the majority leader has sent a new proposal to CBO, the Congressional Budget Office, because he is seeking to find out what that new proposal will cost. If the reports are correct, he has decided to drop the public option and to craft a new coverage plan for some segment of the American people. Again, by news accounts only, that would be an expansion of coverage for individuals in this country 55 to 64. I do not know whether that is the entirety of the group. That is 24 million to 30 million people. The likelihood is if it were opened to any segment, it would be like a magnet to those who probably had some type of health condition because if you do not have a health condition, the likelihood is, in the open marketplace through your employer, if you are employed, you can find a reasonably priced plan. Automatically, the way we have designed it is we are going to attract the sickest of that population.

In the process of doing that, we have to pause for a moment and realize that we have over 40 million seniors and disabled already in Medicare. It is a system that does not reimburse for 100

percent of the services provided. In other words, for Medicare, we reimburse a doctor and a hospital less than it costs them to deliver the service. Nationally, we have accepted that because in that system, when a senior goes in under Medicare and gets a service, what is not reimbursed is then shifted over to the private sector side. It is shifted over to people who pay out of pocket. It is shifted over to people who have private insurance.

Doctors and hospitals have been successful at managing their payer mix. A lot of doctors have X amount of Medicare, X amount of Medicaid, and X amount of private pay. When they put them all together, they find a way to stay in business.

I think it is safe to say if you change the doctors' payer mix or you change the hospitals' payer mix, you could take a provider and move them from slightly profitable, enabling them to practice, over to losing money based upon how the payer mix reimburses them.

My point is, as you take people out of private pay, which is coverage by their employer under a health care plan, payment out of pocket or purchase of health insurance, where that health insurance pays at 100-plus percent of the cost of a service provided, we are basically putting 24 million possibly new additional covered lives into Medicare under Medicare reimbursements. Through that, we automatically change the payer mix of every potential provider in America. We put in jeopardy the doctor. We put in jeopardy the hospital. We put in jeopardy anybody who provides a service under Medicare.

What is the doctor going to do? The doctor can look at it and say: I can absorb the reduction and the change in the payer mix or the doctor may look at it and say: I cannot add any more Medicare beneficiaries. I am sorry, I saw you before when you were on private insurance, but I cannot continue to see you because now I do not get reimbursed sufficiently. So you are going to have to find another doctor.

Now we have gotten into the core pledges of the President where he said: If you like your plan, you get to keep it; if you like your doctor, you can continue with him. We are putting a burden on the doctor or the hospital to make a determination as to how they monitor and control their payer mix by one simple change: by increasing the opportunity for people to participate in a program that up to this time has been sacred and, I might also add, is a program that every participant has paid in their lifetime to be enrolled in.

Medicare is a trust fund. I think we forgot that, when we arbitrarily said we can take \$464 billion and steal it out of Medicare and use it to fund this new entitlement. This is not our money to steal. This is the beneficiaries' money

that they have paid taxes on their entire life to fund their Medicare benefits.

I am not sure why we believe we have the right to go in and move that money from one account to another, where, in essence, we are moving it from one account and using it for somebody totally different. It is unfair to those who planned a lifetime for this.

Let me go back to the payer mix. As you increase the rolls of Medicare beneficiaries, you affect the viability of every outlet of medical services—hospitals, doctors, this could also affect pharmacists. It is important that we realize we have already increased in this bill the number of individuals who will be covered under Medicaid. The majority leader's original bill mandates that every State will now raise their limit on Medicaid participation from 100 percent of poverty to 133 percent of poverty. Medicaid reimburses at about 72 cents of every dollar of service provided. When you do that, you have now enrolled between 11 million and 15 million new covered lives under Medicaid.

So every provider in the system is already looking at what has been proposed—until the press accounts of the last 24 hours—and said: I am going to have 11 million to 15 million more people. I am being reimbursed 72 cents of every dollar provided. It is hard to stay in business when it costs you a dollar to deliver a service and you get 72 cents back as payment.

They are already trying to figure out how they are going to adjust their payer mix to meet the demands when all of a sudden we come out with a new proposal that the press accounts say we could enroll 24 million people in, that further contributes to cost shift.

Let me say to my colleagues, I was in full agreement with the President when he came out and said: Here are our goals. We have to reform health care. We have to focus on making sure every American has access and affordable options to health care. We have to make sure it is fiscally sustainable.

Why, in the 21st century, would we design a health care system that we could not be certain was financially sound for generations to come?

The truth is, by every account, in a real 10-year period, 10 years of taxes and 10 years of benefits going out, this bill before the revision yesterday is a \$2.5 trillion bill. It will contribute to the debt. It will borrow money that our children will be obligated to pay interest on and pay back.

This just compounds the problem, a breakthrough. This is not about policy; this is about in a back room in Washington in the U.S. Capitol, where the majority leader was trying to get to 60 votes. It is real simple.

Listen to the American people and we would start over and we would start over with the principles of the President: Make sure what you do reforms

health care, attracts 100 percent of the American people because of access and affordability, and it is fiscally sustainable for generations to come.

The truth is, we have been on the Senate floor for 2 weeks. We have debated a bill that does coverage expansion. I admit openly, it covers 31 million more Americans. But it misses the mark of doing any health care reform because, you see, the bill, before the press accounts of the last 24 hours, assured every American that if they had private insurance or they paid out of pocket, their health care costs were going up. There is no way they could not.

Now what we have done is we have shifted and said we are going to increase the amount of the cost shift. Let me explain for just a minute what a cost shift is. Cost shift is when somebody goes in and is provided a medical service, and if they do not pay for that service or they do not pay the entire cost of that service, what is left over is shifted somewhere in the system. Well, somewhere in the system is the next person who walks in with insurance or who pays out of pocket. Because of the blend they have to meet, they pick up the difference.

Why has health care had such a phenomenal increase in cost? It is because as we increased the rolls of Medicaid, as we had more seniors go into Medicare, we had more costs that were shifted. Up to this point, the President, the Congress, and others were only focused on the uninsured and the underinsured. Well, they are a contributor to the cost shift, there is no question. But let me suggest to you that if we provide insurance—and we should provide access and affordability for every American. By putting people into Medicaid, all you are doing is exacerbating the cost shift. If, in fact, you create a health care system that has an incentive for an individual not to purchase their own health care because it is cheaper to pay the fine, all you are doing is exacerbating the problem of cost shift.

Health care reform is about changing the health system so that cost shift is eliminated. Quite frankly, it starts with making sure we pay 100 percent of what the cost of the services are. But we are not having that debate. This debate on the Senate floor right now, 2 weeks before Christmas, is about coverage expansion. It is not about health care reform. If it were about health care reform, we would be talking about how we create an incentive for private companies to create products that allow an individual to construct their health insurance so that it matches their age, their income, and their health condition. That is not what we are doing. We are sitting in Washington, creating a one-size-fits-all program and saying: You know what, if this doesn't fit, well, we are going to

create a government option for you, and we will subsidize you and put you in the government option. Where is that fair to the American taxpayer?

That is why Senator CRAPO's motion is so important. Refer it back to committee. Start over. We have our priorities wrong as it relates to our ability to dip into the American people's pockets and use their money to fund something that is not going to benefit them one bit. This would be a different debate if we could look at the people who are not covered and say: We have fiscally maximized our ability to provide you health care but not necessarily abused the American people's pockets to do it.

America is the most compassionate country in the world. But when we debate things such as this, we are also the most foolish country in the world because it is irresponsible on our part to abuse the power of this government to spend money like this without the benefits that we set out to achieve.

So it is my hope that as we go through the weekend, we will have an opportunity to see what the new proposal is that is laid down on the table. Again, I have to go by what I read, and that is not always accurate in this town.

The CBO has stated that a similar proposal, which was a proposal for a buy-in at the age of 62, would result in an adverse selection in the Medicare Program and would drive up premiums. Let me quote CBO because I don't want it just to be me. This is what the CBO said:

A potential problem with this option is that the amount of adverse selection that the program experienced could be greater than anticipated, which would put upward pressure on premiums.

CBO is the entity that is evaluating the cost of the current proposal, which nobody knows what is in it. But this was a proposal that was sent to them some time ago that had the buy-in starting at 62, not 55, and their assessment of it, with a buy-in of 62, is that the adverse selection—meaning more sick people were going to migrate to this new option—would cause upward pressure on Medicare premiums and upward pressure on premiums across the board.

So it is my hope that we will have an opportunity very soon to know what is in the proposal and to be able to debate the facts versus just trying to educate ourselves based on the leaks from the media. But there is one thing for certain: The American people have voiced their position on health care reform. They do not see it as reform. They do not see it as positively affecting themselves. They see it as too expensive, they see it as a breach of trust on a plan that seniors have become 100 percent reliant on because they paid into it.

This path has a lot of problems. It is not just the new proposals, it is the

proposal that has been on the table for some time. It is my hope that we will continue this debate as long as it takes to make sure that at the end of the day we do what is right for the American people and not necessarily what is expeditious for Members who would like to be home for the holidays.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, earlier today I explained to my fellow Senators, and hopefully to my friends in the media, that the Reid bill does not provide a net tax cut for Americans. Contrary to the Democrats' claims, that seems to be the situation. They claim there is a net tax cut. I hope I proved earlier today that it does not have a net tax cut. Some Americans are cut, but don't forget that some Americans have increases in taxes. I pointed directly to this data, as prepared by the Joint Committee on Taxation, to show that a group of middle-income taxpayers will see their taxes go up under the Reid bill, and that would be this class of taxpayers right here. I don't disagree with Democrats saying there is \$40,786 million of tax cuts, but there are also tax increases for a large share of Americans.

I want to now build on those earlier remarks. As I stated, there is clearly a group of individuals and families who benefit from the government subsidy for health care. However, that group is relatively small. Another much larger group would see their taxes go up. So I want to take a minute to provide some statistics that we pulled from the data of the Joint Committee on Taxation looking at both the winners and the losers under the bill.

For the benefit of the public, the Joint Committee on Taxation is an intellectually honest group of professionals who are nonpartisan, and they give Congress information on the impact of policies we make here in our various committees or as individuals or the Senate as a whole.

According to this professional group, the Joint Committee on Taxation, out of those individuals and families affected by four major tax provisions under the Reid bill, individuals earning more than \$50,000 and families earning more than \$75,000 would see, on average, their taxes going up. Only individuals with incomes below \$50,000 and families with incomes below \$75,000 would, on average, see some tax relief on account of receiving subsidies for health insurance.

The data of the Joint Committee on Taxation indicates that in 2019, individuals earning less than \$50,000 would, on average, receive tax relief through this subsidy equal to \$875. Families earning less than \$75,000 would, on average, receive tax relief equal to \$2,031

from the subsidy. This so-called tax relief, however, is in the form of an advance refundable tax credit that is delivered directly to the insurance company providing health insurance coverage, not to the individual but signed, sealed, and delivered directly to the insurance company—100 percent of it. I repeat: not to the individual but to the insurance company. Clearly, this group is a winner under the Reid bill. But the same data from the Joint Committee on Taxation indicates that in 2019, individuals earning between \$50,000 and \$200,000 would, on average, see a tax increase of \$593. That is for individuals. Now, let's go to families earning between \$75,000 and \$200,000. They would, on average, see a tax increase of \$670.

So what does all this mean? This means the Reid bill does not cut taxes for all Americans. To the contrary, the Reid bill breaks Obama's promise not to tax individuals making less than \$200,000 and families making less than \$250,000 a year. And you just can't know how many times President Obama, during his Presidential campaign—whether in debates or in individual appearances when he was a candidate—made it very clear that nobody with under \$200,000 a year in income was going to see a tax increase. To the contrary, the Reid bill breaks President Obama's pledge not to tax individuals making less than \$200,000, and then a higher figure for families making less than \$250,000.

Does the tax relief provided to individuals earning less than \$50,000 and families making less than \$75,000 represent a tax cut? Generally, no, because based upon the report of the Joint Committee on Taxation, of the \$395 billion the government will spend on tax credits for health insurance—or subsidies for health insurance—\$288 billion will be refundable, meaning individuals and families who have no tax liability will still receive the full benefit. The Joint Committee on Taxation tells us that the remaining \$106 billion will go toward reducing real tax liability.

The Congressional Budget Office classifies a benefit provided to tax filers with no tax liability as government spending, not as a tax decrease. This is compared to a tax benefit that actually will reduce a taxpayer's tax liability. This means the \$288 billion of government spending through the Tax Code cannot be considered a true tax reduction.

The Democrats count the \$288 billion in government spending when claiming the Reid bill provides a tax cut. And the reason is if the Democrats do not count this government spending as a tax cut, they could not hide the fact that the Reid bill increases taxes.

Bottom line: The Reid bill does not provide a net tax cut. Instead, the bill raises taxes and it raises taxes on individuals and families earning less than

\$250,000, contrary to Candidate Obama's presentation during the campaign that nobody below that figure would get a tax increase.

Check the data. No one can dispute it. It is right here in these figures. Everybody in the United States is represented by these figures here highlighted. They are the ones who are going to get a tax increase. That is the rest of the story.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Madam President, we are on the floor today, as we have been for many days and weeks now, discussing health care. One thing I think is undeniably clear is that there is a basic divide in the Senate on health care. That is not news to most people. But I believe on this side of the aisle there is a great deal of consensus about what health care reform should be about.

We have been trying throughout this debate to make it very clear that we are not only concerned about the tens of millions of Americans who do not have any insurance at all—that is obviously a focus of our work and focus of the debate—but we are also concerned at the same time, as we must be, with those who have insurance—with families with insurance, families who believe they have the security of insurance but, unfortunately, under our system many of them don't.

Many families, in fact millions of families, over the last couple of years have had a member of their family denied coverage because of a preexisting condition. That should be illegal. In this legislation we deal with that directly for the first time ever.

We also provide other protections. When you say "consumer protections," that is a nice sounding phrase but in some ways it does not describe what we are trying to do. We are trying to prevent people from being denied coverage because of preexisting conditions. We are trying to make sure that other families don't have a tragedy such as the family I have spoken on before on this floor, the Ritter family in Manheim, PA. They had the tragedy of finding out a number of years ago that their two 4-year-old daughters, twins, had leukemia but also the insult and the outrage of our system saying to them: Your daughters have leukemia, we can treat them, we have a lot of experts and knowledge and technology to help them, but we are going to limit their care.

That is an outrage. The first provision in this bill says we are not going to put caps on treatment for people who are very sick.

We also recognize that, as President Obama said a number of months ago, if you get sick, you shouldn't go bankrupt. But that is happening more and more in America. It is an outrage and

we should not allow it to go on any longer.

We are trying also to keep premiums affordable. Fortunately, the Congressional Budget Office helped us make that argument. In their own way they weighed in on that question and talked about the fact that so many American families will have their premiums reduced if not kept level.

We are obviously trying to enhance quality and prevention. All of these strategies that we know work, the research is irrefutable, but we talk about them as a way of a good example instead of talking about them as something we ought to put in the law and make part of our system. Why should we have all of those prevention strategies and then throw up our hands and say that would be nice if insurance companies did that in their policies instead of make it part of the law. And we will, both in terms of prevention strategies as well as quality.

Finally, as a quick summary of what we are trying to do, we are trying to control costs. I think this bill does that. We still have a bill to do and amendments to make. It also cuts the deficit by \$130 billion over 10 years, and much more, several hundred billion, in the years after that.

One fundamental recognition, I guess, in this debate—at least on this side of the aisle—is that our system has left people out. In some cases it has left them out in a very tragic way when they are denied coverage because of a preexisting condition. Our health care system has left out others in different ways, and I rise today to speak about an amendment I filed, along with Senator KLOBUCHAR, my cosponsor on this amendment, that seeks to address a group of Americans who have been left out of our health care system and forgotten at a very difficult time in their lives. The name of the amendment is the Pregnant and Parenting Teens and Women Amendment. It recognizes what I believe to be a fundamental reality in America. I will describe two scenarios—one that so many of us have had the opportunity to experience as parents but especially those in this Chamber and those who are listening to this debate who are women who become pregnant.

For many women that moment when they find out they are pregnant is a moment of joy. It is the miracle of pregnancy. They feel that joy and they share it with their family and their friends. It is a time of real happiness. Many of these women in that first scenario do not need help beyond what their families provide or what they might receive by way of adequate support within our existing framework of programs and services—whether that is government help or private sector or nonprofit help. That is wonderful and we hope that becomes more and more the case.

But there is a second scenario in America, a second category where a woman finds out she is pregnant and that moment of discovery is not a moment of joy. For her, it is a moment of terror or panic or even shame. She may be in a doctor's office or she may be at home—she may be in a number of places—but for her that moment begins with a crisis in which she feels overwhelmingly and perhaps unbearably alone, all alone. She could be wealthy, middle income, or poor—but most likely, if that pregnancy is a crisis, she is poor. Whatever her income, she feels very simply all alone.

A pregnant woman who is facing those horrific circumstances may be a woman who has an abusive spouse or boyfriend who is tormenting her. She is all alone in many instances.

Another pregnant woman may believe that she cannot support or care for her new baby at this point in her life. She is all alone.

Another woman might believe that her financial situation is so precarious that she cannot care for or raise a child. She may feel all alone and helpless. If she decides to bear a child, she needs our help. She needs our help to walk with her along that difficult journey—not only through the 9 months of her pregnancy but also through the early months and years of that child's life.

I believe that is an obligation we have. I know some may not agree with that, but it is important that we are honest about where we stand.

We understand that many women face that reality. So what do we do about it? Do we say: That is too bad and that is kind of their problem and let them find their own way or there is a little program down the street that might help them or there might be a little government program over here or there might be some charity that will help them. They will do fine. Don't worry about them.

This country has shown a capacity to reach out and help people who are in crisis, to try to give people a sense that they are not all alone, that there are lots of ways to help. Unfortunately, neither political party has adequately met this challenge, in my judgment. We hear a lot of discussion about it. We hear a lot of sentiment about it. But we do not do nearly enough about it.

Here is what the amendment will do. First, it will provide assistance and support for pregnant and parenting college students. Second, it will provide assistance and support for pregnant and parenting teens. Third, it will improve services for pregnant women who are victims of domestic violence, sexual violence, and stalking. And fourth, it will increase public awareness of the resources available to pregnant or parenting teens and women.

Let me give some examples of these services. First, funding for colleges to

provide pregnant and parenting resources located on campus or within the local community and improve such resources, including: the inclusion of maternity coverage, which a lot of insurance companies do not provide now, unfortunately and insultingly, in my judgment; make available riders for coverage for additional family members in student health care on a college campus; make sure that woman, if she has chosen to bear a child, gets housing and childcare and flexible or alternative academic scheduling to allow her to remain in school; education to improve her parenting skills; maternity and baby clothing, baby food, baby furniture—all of the things some of us take for granted in our families prior to or upon the birth of a child.

The other part of this is funding for programs that help pregnant and parenting teens stay in or complete high school and prepare for college or vocational education, by providing resources and assistance.

Next, assistance to States in providing intervention services, accompaniment and supportive social services for pregnant victims of domestic violence and other kinds of violence as well, to start.

Finally, making people aware, providing public awareness and outreach so that pregnant and parenting teens and women are aware of the services available to them.

We cannot stand here on the floor and say we care about these folks and we want to help them if we are not willing to make good on that promise. It is not enough to have good intentions. It is not enough to say there might be a program out there. We know for sure that at least these three categories—maybe others could add to it, maybe others may not, but these three categories of pregnant women are in many cases all alone. Neither political party nor our Government—and I would argue other parts of our society—are doing enough. It is time as we debate health care that we say one part of our health care system is going to be made much better.

In addition to the substantial changes on protecting families from the ravages of what insurance companies have done to some families, protecting them at long last, those with insurance, ensuring 30 million Americans, cutting the deficit, having prevention strategies, controlling chronic disease and making it something we can manage better, and save money—all of that is important. But I do not think in the debate here we should leave out those who are asking for a little bit of the help we are not giving them.

We should never ask a pregnant woman to walk that journey all alone. I think that is the least we can do in this Chamber, in this debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, my friends on the other side of the aisle have taken to the floor to make the argument in favor of the Reid bill that it eliminates a so-called hidden tax. What is this so-called hidden tax? The other party argues that there is a hidden health tax that families pay in increased premium costs to cover the costs of caring for the uninsured. In short, when doctors and hospitals provide treatment to the uninsured they are forced to compensate for this "uncompensated care" and do so by charging more to private health insurers. The cost of this care that is shifted to the insurers is then passed on to health care consumers in the form of higher health insurance premiums. Unfortunately, this so-called hidden tax is often overstated.

Families USA conducted a study attempting to quantify the cost shift associated with uncompensated care. According to this study, about \$43 billion in uncompensated care is shifted to private health insurance which led Families USA to conclude that there is a hidden tax of about \$1,100 that families pay in increased premiums. A Kaiser Family Foundation study dissected the Families USA numbers and estimated that the total amount of uncompensated care shifted to private insurers was closer to \$11 billion, making the so-called hidden tax around \$200 for a family, compared to the \$1,100 that Families USA said. Let me give some ground to my friends on the other side and assume that the hidden tax does equal that higher figure, \$1,100, as compared to the Kaiser Family Foundation figure of \$200.

The Democrats' bill does not get rid of the hidden tax entirely. Actually, this bill makes it worse. How? First, the Democrats' health care reform bill still leaves a large number of Americans uninsured. Specifically, the Reid bill leaves 23 million out of 54 million still without health insurance at the end of this decade, remembering that this bill does not actually take effect until 2014. So between 2014 and at the end of the budget window, we still have 23 million people without health insurance. At best, the reform in this 2,074-page Democratic bill cut the hidden tax in half; in this case, to about \$500 for a family.

The Reid bill adds, however, new hidden taxes. These impose \$67 billion worth of so-called fees on health insurance companies and self-insured arrangements beginning in 2010. The Congressional Budget Office, the Joint Committee on Taxation, the non-partisan experts and official congressional scorekeepers have testified that these fees will be passed on to health care consumers.

The Congressional Budget Office and the Joint Committee on Taxation have



further testified that this will result in higher insurance premiums for all Americans. The actuaries at Oliver-Wyman estimate that the fees imposed on health insurers would add \$488 to the cost of the average family health insurance policy. A new hidden tax is also created as a result of the Medicaid expansion and Medicare cuts. The major cost shift in health care derives from the government programs, Medicare and Medicaid, which reimburse providers at rates roughly 20 percent to 40 percent lower than what private providers pay to the same doctors and hospitals.

President Obama understands that paying doctors below market rates leads to a cost shift. After all, in a townhall on health care reform, the President said:

If they're only collecting 80 cents on the dollar, they've got to make it up somewhere, and they end up getting it from people who have private insurance.

The Medicare and Medicaid cost shift will be increased significantly under the Democrats' health care reform bill. According to CBO's estimate, Medicaid will be increased by more than 40 percent, from 35 million to 50 million people by the end of the budget window in 2019. Additionally, the bill includes almost  $\frac{1}{2}$  trillion in Medicare cuts which will result in lower payments to providers.

The actuaries at Milliman Consulting studied the current cost shifting resulting from Medicare and Medicaid underpaying providers and found that this cost shift for Medicare and Medicaid totaled almost \$89 billion per year, adding \$1,788 to the current family health insurance policy. Increasing the current Medicare and Medicaid cost shift, as a result of this 2,074-page health reform bill before us, would add even more cost to a family health insurance policy.

The easier cost shift to address would be the \$1,700 cost shift from defensive medicine. The Democrats do not address cost shift from defensive medicine which Dr. Mark McClellan, former head of CMS, and Daniel Kessler estimated adds \$1,700 in additional cost per average family. Addressing this reform alone could save more than covering all of the uninsured.

So you see, the Democrats say their bill will eliminate the so-called hidden tax. My friends seem to come up short on that one. Also, my friends add new hidden taxes that will burden middle-class Americans.

I ask my friends to be transparent when they are talking about getting rid of the hidden tax. The Democratic health reform bill actually makes things worse.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Utah.

Mr. BENNETT. Last night, I held a telephone townhall meeting. As usual,

because we get over 10,000 people on the telephone townhall talking to us, I said: This is a meeting that is open to any subject you can talk about.

Overwhelmingly, they all wanted to talk about health care. I had one call where the fellow said he liked this health care bill. He was a small businessman. He said: This will help me as a small businessman, and why are you opposed to it?

I said to him: I have been a small businessman, and I would like to point out to you that NFIB, the organization that helps small business, is opposed to it. And I went through some of the reasons. Then I told him of other small- or medium-size businessmen in Utah who have said to me: If this bill passes, we are out of here. We could do our manufacturing overseas. We could send our product to South America and have it made there. We have stayed in Utah more out of patriotism than money. But if this bill passes, the impact on us in small business will be sufficiently great that we will leave Utah. We will leave America. We will take all of these jobs and go overseas.

That was that one discussion with the one caller. Every other caller talked about the health care bill and said: Don't pass it. Every other caller was opposed. There was only the one who made comments in favor of it, comments on which I think I was able to dissuade him.

Every other one came up: Do you want to talk about Afghanistan?

No, we want to talk about health care. We are opposed to this bill.

Do you want to talk about some other aspects of what is going on in Washington?

No, we want to talk about health care, and we are opposed to this bill.

Over and over, the only other subject that came up that I can recall with any regularity—there were several calls that talked about cap and trade and expressed their opposition to that. But, overwhelmingly, the entire hour was people who were saying: We are opposed to this bill.

I want to share with the Members some aspects of the reaction of Utahns to the campaigns that have been mounted by various groups in favor of this bill. Let's go to the campaign that has been mounted by the AARP. AARP is one of the strongest lobbying organizations in the country. Indeed, there are those who say it is the most powerful lobbying organization. AARP, in an effort to make sure this bill gets passed, has prepared preprinted petitions and sent them out to their members. Here is a copy of one. It is addressed directly to me and was sent to people in the State of Utah: "Petition to Senator Robert F. Bennett. Dear Senator Robert F. Bennett, As one of your constituents . . ." so on and so forth.

Then all the AARP member has to do is sign it and send it to me. This one

was sent to me. But as we can see, he didn't just sign it, instead he wrote on it. This is what it says in handwriting:

Absolutely not! Please vote against current legislation being proposed by the current administration and endorsed by the AARP.

The "not" is underlined. He signed his name. I have taken it off this facsimile to protect the man's privacy, but he made it clear that he was not in favor of what the AARP was saying and doing in this situation. We have others who have said the same kind of thing.

Here is a letter I will quote from:

Senator Bennett, please do not vote to pass the health care bill that contains a public option. The present medical is broken and surely needs fixing. However, it should be done in ways that do not bankrupt the country, close hospitals and doctors offices.

Who is saying this? He says:

I will probably withdraw from AARP since they support the present health care proposals. Several of my doctor friends have withdrawn from the AMA due to its support of these proposals.

Then he signed his name, and his initials make it clear he, too, is a physician, a member of AARP who clearly wants to drop out of AARP, and a member of AMA who supports those who drop out of the AMA.

Let me quote from another physician who wrote a lengthier letter, more analytical. I will quote from parts of the letter. He starts out:

As a practicing Utah physician, I see and treat patients every day. I try to accurately diagnose what their troubles are and offer an incremental plan for their recovery. I am thorough, methodical and exacting in my plan, purposely first doing no harm, as my Hippocratic oath reads, not making the situation worse, not causing more pain or suffering. The Senate bill before you will make America more ill, with increased pain and suffering. I plead with you to first do no harm. Please do not make the situation worse as with the current bill. It is beyond repair. Please recognize that the Senate plan will add to America's ills.

Then he goes on later in the letter to make this comment:

Patients ask me why the AMA appears to support this bill. They sense that the AMA is not looking out for patients and doctors. I agree that the AMA is misdirected and explained that the AMA represents fewer than one in five U.S. doctors and has compromised its mission.

I find that interesting. I didn't realize that the AMA membership had dropped so low. When I first became interested in politics, the AMA represented virtually every doctor in the country. Not anymore.

I tell my patients about the multitude of other medical organizations of which I am a member, state medical organizations, specialty groups, and the Coalition to Protect Patients Rights, representing thousands of doctors who actively oppose the Senate bill in its entirety and are fighting for patients and the right fixes for affordable, quality care.

Well, as I found out in my telephone town meeting, which covered the entire State—and with no filtering on the part of my staff as to who could get in and who could not—this is, indeed, very clearly the majority opinion for members of the State, seniors who presumably belong to AARP, and physicians who either used to belong to the AMA or understand the AMA.

Here is an e-mail from a doctor. I cannot pronounce the specialty he is in. He says:

As a constituent and practicing—

And then he goes on to say whatever kind of “ologist” he is—

I strongly urge you to oppose the passage of the current Senate healthcare reform legislation. . . . Although our nation would benefit from targeted healthcare reform, the proposed legislation is not the answer and will harm, not help, healthcare delivery in our nation. . . .

As surgeons, we take pride in our work and strive to provide the best patient care possible. We will support reform efforts that truly preserve access to high quality specialty care without jeopardizing the physician-patient relationship. As such, I oppose the “Patient Protection and Affordable Healthcare Act” as it has the potential to seriously compromise the delivery of healthcare in the United States by creating additional pressures on an already overburdened healthcare system.

Well, I have a number more. I will not go into all of them; I will just pick a few from the stack I brought with me.

Here is one:

I am a Surgeon who has been practicing for about 30 years. I am against the total overhaul of the health care system. All entitlement programs are not cost effective and all are in danger of bankrupting the U.S.

Here is one, who is a retiree, who says:

Please vote against these healthcare “reforms” that will limit options, cost us all more and reduce our freedoms. We need real change: portability, tort reform, and less government control.

Back to the doctors. He says:

Dear Mr. Bennett,

I am a pediatrician in Utah and met you at the hospital in Orem. Thank you for your opposition to the current process happening in Washington. We do not need to rush through and push the American people into government run health care and more red tape. Medicaid is already my biggest head ache in my practice.

And so on and so forth, as I say.

I want to make this other point with respect to all of these people who are so concerned that we will have an immediate bad impact if this bill passes. They do not realize—and I did my best to point this out to those who were on the telephone townhall meeting last night—that this bill will not fully take effect—indeed, most of the aspects of this bill will not take effect—until January of 2014. That is correct, January of 2014—4 years away.

Here we are meeting on weekends, coming in here on Sunday, driving to

get this done by Christmas because it is so pressing that we have to do it, and, by the way, we are not going to start, really, any of these reforms for 4 years. So these people who are writing me, these doctors who are complaining about AMA’s endorsement, these people who are complaining about AARP not representing them, are worried about an immediate impact.

Let me tell you what the immediate impact of this bill will be. The immediate impact of the bill will be financial. The taxes will take place immediately upon passage. The increase in premiums will begin to start on passage, as the pressure on the insurance companies, the pressure on manufacturers, the pressure on pharmaceutical companies will all begin with the passage of this bill. But all of the wonderful things we are being promised as benefits from this bill will be delayed for 4 years. Why? There is only one reason why: in order to use smoke and mirrors in the budgetary process to make it look as if this is cheaper than it really is. If you get the money coming in for 10 years but the expenses only going out for 6 years in your calculation, it looks as if it is a whole lot cheaper than it really is.

The only honest way to score this is to say the expenses start the same day the taxes start, the expenses going out start the same day the revenue coming in starts. Then you get an accurate description of how much this costs.

I cannot imagine any businessman going before his board of directors and saying: I have a new program I want to institute in this company, and it is going to cost X, and here is how I have calculated it is going to cost X. I am calculating the revenue from the sales of the product over a 10-year period, but the actual sales will only occur in the last 6 years.

His board of directors would take one look at him and say: There is no way we can make a strategic plan based on that kind of smoke and mirrors. What in the world is wrong with you to do accounting of that kind?

He will say: That is the kind of accounting I learned from the U.S. Senate—start counting the revenues immediately, but don’t count the expenses until 4 years later.

Well, let’s look at the impact of that 4-year gap and tie it to the messages I am receiving from my constituents, and I think we will see something very interesting happen. Between now and the time the benefits of this bill begin to take hold, there will be three or four open seasons of people who will look at their health care plan and be allowed to make changes in it. They will see the costs go up, and they will say: Wait a minute, what is happening here? The costs are going up, but there are no changes coming from this bill the Senate passed back in 2009—or 2010, if we push it until next year. What is happening?

Well, your costs are going up in anticipation of the costs of this bill that will take hold in January of 2014.

At that point, the anger we are seeing from constituents now will get worse. The anger we are seeing in the e-mails and letters I am receiving now will get more intense, and people will start to say: You mean I am being forced to pay extra premiums in 2010 because the government needs to accumulate cash against the time when these great changes hit us in 2014? When they start writing me that kind of complaint, I will say: That is exactly what I mean. The government is going to start taxing you in 2010, but they are not going to do this program until 2014—at which point, the outcry from constituents will be: Well, let’s stop the taxes and let’s kill the effective date of 2014.

I am not sure I can predict that with certainty, but I can go back in history and remember the catastrophic bill that was passed with respect to Medicare, and the senior citizens suddenly discovered how much it was costing them. The outcry was so overwhelming that the Congress, within a matter of 6 months of the passage of the bill, repealed the bill. I remember the pictures that appeared in national magazines of Congressman Rostenkowski, who was at the time the chairman of the Ways and Means Committee, being accosted physically when he went home to Chicago by seniors who would stand in front of his car and not allow him to move, who would sit on the hood of his car to block his way in every conceivable way. The outcry was enormous when they saw this increased cost for something where they did not see a corresponding benefit, and Congress responded to that outcry and repealed that bill.

In this case, there will be a 4-year period for the outcry to build before they start to see the benefits, if, indeed, the bill does confer benefits. There will be a 4-year period with that many open seasons for people to look at their programs and see their premiums go up and see their plans change and see the adjustments made in preparation for this, adjustments they will not want; 4 years in which they will see the statement of the President of the United States, that “if you like your plan, you don’t have to lose it,” prove not to be the case.

In that 4-year period, it is entirely possible that the outcry from constituents, like the ones who are complaining now, will have tremendously more impact and more force. I hope that is, indeed, the case, if we pass this bill. I hope that in that 4-year period, before we start to see the wonderful things we are being promised from the other side of the aisle come to pass—the increased premiums, the increased taxes, and the increased costs will be with us—the people of this country will

rise up and say: We want this bill repealed. They have 4 years in which to do it, 4 years in which to think about it, 4 years in which to experience it.

Why are we rushing to get this done before Christmas when we have 4 years before the thing finally kicks in? Let's take the time to do it right. Let's take the time to listen to our constituents. Let's take the time to listen to the American people who are examining this bill and, by ever-increasing margins, telling us again and again that they do not like it.

We have heard from many people the reactions of the polls. The Quinnipiac Poll made the comment: It is a good thing the Senate is not letting the American people vote on this bill because the American people are against it. We have seen the Gallup Poll show a tremendous swing, as their people are against it. The more they know about it, the less they like it. Yet we are trying to rush it through in the holiday season to get it done before Christmas even though it is 4 years away before all of the wonderful things that are being promised will surface.

Mr. President, I think my constituents have it right. I think those people who belong to AARP who are saying they are going to drop out because of AARP's endorsement are right. I think those physicians who say they are either not members of the AMA or they are going to drop out from the AMA because of the AMA's position are right. And I think if we cram this thing through in a sense of urgency, even though it is 4 years from implementation, we will see an outcry in the intervening 4 years from the American people that will cause Members of the Senate to wish they had taken more time to examine it all, to do it right, and not to panic over pressure from various special interest groups that see ways in which they can profit from this.

The American people, the American physicians, the American patients all see ways in which they will be hurt, and I speak for them, as they say: Slow this down. Do this thing right. Do not panic under pressure of an artificial time deadline.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

IN PRAISE OF WENDY TADA

Mr. KAUFMAN. Mr. President, I rise to speak today about my great Federal employee of the week who works at the Department of Education.

Whenever I enter this hallowed Chamber, I never fail to notice the inspirational words written on each wall above the doors. Above the east door is inscribed the Latin phrase "Annuit Coepit," or "Fortune favored Us in Our Beginnings." This refers to our Founders' belief that Providence looked kindly upon our Republic during its earliest days.

In that time, ours was mostly an agrarian society. Town life centered on

planting seeds and harvesting crops. Children worked alongside their parents in the field, and when it came to their education, homeschooling or learning to read and add in a one-room schoolhouse was the norm.

Thomas Jefferson wrote, some years after his Presidency, that "Science is more important in a republic than in any other government." It was this belief in the importance of knowledge and reason—including political and historical literacy—that led education pioneers such as Horace Mann to promote universal schooling in the early part of the 19th century.

Shortly before the Civil War, access to compulsory and free public education spread across the country as States passed laws inspired by this principle. The Morrill Land-Grant Colleges Act provided for the construction of some of our Nation's greatest colleges and universities in the late 1800s. In the early years of the 20th century, States increased access by expanding free, compulsory education to include high school. The last 60 years saw dramatic advances in this area, with the legal desegregation of schools and the passage of critical legislation such as the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act.

I am proud to have been serving in the Senate earlier this year when we passed the American Recovery and Reinvestment Act. That legislation sent much needed funding to fix schools, make student loans more readily available, and to keep teachers in the classroom. The Recovery Act so far saved over 230 teaching jobs in my home State of Delaware alone.

In 1980, the U.S. Department of Education was created, and its employees have been working tirelessly to make sure students from all 50 States, including Delaware and Rhode Island, receive the same strong support. They oversee the Federal loan programs that enable tens of millions of Americans to afford college and postcollege studies. They help develop policies to ensure that Americans with physical and intellectual disabilities have education programs in their communities and can pursue a full range of opportunities.

Wendy Tada, who has worked at the Department of Education for 9 years, is one of those outstanding employees. When she arrived at the Department in 2000, Wendy already had a great deal of experience working to expand opportunities for rural special needs students in Hawaii and Alaska.

Wendy, who is a lifelong learner herself, holds a bachelor's degree in psychology from Seattle University, a master's in physical therapy from Stanford, and a master's in public health from San Diego State. She also earned a doctorate in developmental psychology from the University of California in San Diego.

Wendy's experience includes working at the State and local levels. She provided physical therapy to disabled students in Washington State, developed an education curriculum for special needs children in Hawaii and its remote Pacific Islands, and evaluated health and education services in Native Alaskan villages.

Wendy has taught college and graduate courses in education and public health at the University of Washington and the University of Hawaii.

Her first job with the Department of Education was as a research analyst in the Office of Special Education Programs. Wendy's talents and experience led to a promotion within a year, when she became Chief of Staff to the Assistant Secretary overseeing that office. She continued as his top adviser when he was appointed to serve as Assistant Secretary for the Office of Vocational and Adult Education. In 2006, Wendy became the Chief of Staff to the Deputy Secretary of Education.

This January, after a brief stint as an education analyst for the Office of Management and Budget, she was asked by the Deputy Secretary of Education to serve as senior adviser for policy and programs.

During her years in the Department, Wendy has been instrumental in developing important regulations and guidance documents relating to IDEA and title I of the ESEA. Today, her time is spent in developing and putting into practice education programs funded by the Recovery Act.

One of the central programs under the Recovery Act is the new Race to the Top Fund. This initiative represents the largest Federal competitive investment in elementary and secondary education in our history. It will offer over \$4 billion—that is billion—in grants to States to develop comprehensive education reform plans. This will help all States, including Delaware, save even more teaching jobs and add new resources for schools.

Wendy's work and that of her colleagues throughout the Department of Education continue to benefit American students nationwide. They ensure that all our children are favored in their beginnings so they may pursue the opportunities they deserve. Education is, without a doubt, the most important investment our Nation can make, for its dividends are our future prosperity and global leadership.

I hope my colleagues will join me in honoring Wendy Tada and all the hard-working employees of the Department of Education for their service to this country. Our future is in their hands.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Arizona.

Mr. KYL. Mr. President, I wish to say a few words about the legislation which is pending before us, which is the Omnibus appropriations bill. It is a bill

that will substantially add to our national debt and substantially increase spending and I think it is worthwhile to point out some of the features of this bill, since presumably we will be voting on it sometime this weekend.

I would start by pointing out that our national deficit for the past fiscal year now stands at \$1.4 trillion. So the fiscal year which just concluded added \$1.4 trillion to the national debt. That is the largest deficit we have ever had, by far. It is about three times as much as the largest deficit under the Bush administration. Our current unemployment level is at 10 percent, despite the administration's insistence earlier this year that Congress pass a \$1 trillion-plus stimulus package that was supposed to reduce unemployment. The Senate is currently in the middle of a debate on a health care bill that has a 10-year implementation cost of \$2.5 trillion. Sometime in the next month we will be forced to raise the Nation's debt ceiling for the second time this year to a level that exceeds the current ceiling of \$12.1 trillion.

If all that were not enough, we are now presented with this Omnibus appropriations bill that costs nearly \$500 billion more; to be exact, \$446.8 billion. This is simply irresponsible. When is it going to end? We are piling spending bill on spending bill and debt on debt. At a time when many Americans are being forced to get by on less, the majority has crafted a bill that uses the government's credit card to increase spending on the six appropriations bills that make up this package—by how much? By 12 percent total.

For perspective, according to the Bureau of Labor Statistics, the consumer price index, the CPI, the measurement of inflation over the past 12 months, was .2 percent. So the cost of living is going up by .2 percent. Yet we are giving these government agencies 12 percent more money for next year. Let me give some examples.

The Transportation-HUD bill receives a 23-percent increase over last year. Has anybody had their income go up by 23 percent over last year? Well, if you are in the Federal Government, you can make it happen. That is not responsible.

How about the State-Foreign Operations bill, a 33-percent increase, a third over last year—a 33-percent increase. Included in that is a 24-percent increase for the State Department's salaries and operations account. That is not responsible.

The Commerce, Justice, and Science bill receives a 12-percent increase over last year. At least that is the average of the six bills in total.

How about earmarks? Well, they are in here, big time. According to Taxpayers for Common Sense, this bill is larded up with 5,224 earmarks—5,224 earmarks—that total \$3.8 billion. That is not responsible.

Some examples include \$600,000 for a streetscape beautification in California and \$300,000 for Carnegie Hall music and education programs in New York City. In the current economic environment, that doesn't seem to be the most responsible use of Federal taxpayer dollars.

If the irresponsible levels of spending were not bad enough, the bill makes a number of significant policy changes as well. Ordinarily, we are not supposed to have policy changes in an appropriations bill, but when you lump them all together in a take-it-or-leave-it form, such as this omnibus, well, if you are the majority, you think you can get away with it. Here are 134 examples.

With respect to the fairness doctrine, this omnibus does not include the fiscal year 2008 ban on Federal funds being used to enforce or implement the so-called fairness doctrine—so nothing to implement or enforce the so-called fairness doctrine.

The bill makes some changes to several longstanding policy provisions contained in the financial services bill and specifically the District of Columbia section dealing with abortion, medical marijuana, needle exchange, domestic partners, and the DC Opportunity Scholarship Program. That program has been enormously popular and enormously successful. Yet this bill provides only enough money—\$13.2 million—to allow the currently enrolled students in this popular program, the DC Opportunity Scholarship Program, ultimately leading to the termination of the program. I have met with some of these students and their parents. They are doing very well because of the environment in which they are finally able to study and learn and be safe. This program is so popular that people have lined up in long queues to take advantage of it. Yet we are going to terminate the program as a result of language in this bill.

Well, it is a cross between irresponsible policy and spending.

The bill reduces funding for the Office of Labor Management standards at the Department of Labor by 10 percent. This is the office that investigates union activity and the use of membership dues. Since fiscal year 1998, it has secured 1,400 convictions, resulting in the return of \$106 million in embezzled funds to union workers. So where are our priorities? The only place where we see cuts in this bill are in areas where, in this case, the Department of Labor has been enforcing labor law and getting convictions for embezzlement of workers' funds. This is not an area where we want to cut, unless, of course, you are trying to do the bidding of the labor unions who don't like to be called to account for embezzlement of trust fund moneys of their members.

Well, what is missing from this bill? Despite spending nearly \$500 billion and covering 6 of the 10 appropriations

bills, this bill is significant for what it does not include: The fiscal year 2010 Defense appropriations bill, arguably the most important bill yet to be acted upon. Just shortly after President Obama announced his surge strategy for Afghanistan, the majority has decided to play politics on the backs of our troops. The majority is holding the Defense bill back from this package so it can be used as a vehicle for other purposes; for example, to increase our Nation's debt ceiling and potentially push through a number of other bills that likely don't have the votes to pass on their own. That is wrong. While our commanders in the field and civilians at the Pentagon wait, our other less-urgent appropriations priorities will receive double-digit spending increases. That is not responsible and it is not right.

Given what I know about this bill—and I haven't had a chance to read it all yet—I would echo my friend in the House, Republican leader JOHN BOEHNER, who requested the President uphold his campaign promise to go through the budget, line by line, and eliminate irresponsible and wasteful spending.

I can assure my colleagues, we will go through this and we will identify those earmarks and we will bring them to the attention of our colleagues, and we will, undoubtedly, because of these spending increases and earmarks and bad policy, attempt to defeat this legislation.

Finally, I wish to make reference to some comments I saw delivered by Dr. Christina Romer, Chair of the White House Council of Economic Advisers, as I was drinking my coffee and watching TV a couple days ago. This was on CNN's "American Morning" program on December 8. I was rather startled because she said she was getting rid of the jobs deficit and dealing with the budget deficit, two big problems we inherited and absolutely have to deal with.

Well, it is true, on January 20 of this year when President Obama took office, we had a deficit and we also had a problem with unemployment. The problem is in inferring they are doing something about it, whereas the Bush administration created the problem. I think they create a misimpression. So I asked my staff to get just two numbers. What was the national debt the last day of President Bush's second term and what is it today—or actually December 7 is the date we got the number for, the 322nd day of President Obama's term. In other words, Dr. Christina Romer was saying these are big problems we inherited and we have to deal with them. So how have they dealt with them? Well, it turns out the national debt the last day of President Bush's second term was \$10.6 trillion. What is it today, 322 days later? It is \$12 trillion. That is some way to fix that problem.

If they are going to complain about the national debt, then get it reduced instead of increased in less than a year—it has gone from \$10.6 trillion to \$12 trillion; that is \$4.5 billion in new debt every single day. These are not my numbers, these are the official statistics of the Bureau of the Public Debt.

The other statistic was unemployment. “We inherited unemployment.” That is true. I don’t know the average, but I think it is somewhere around 4 or 5 percent in our country. On the last day President Bush was in office, unemployment stood at 7.6 percent. I thought, given the stimulus package, surely we have reduced unemployment. What is the unemployment number today? It is 10 percent—after nearly a year of President Obama’s failed \$1 trillion stimulus experience.

When Dr. Romer said “we inherited this problem,” my immediate reaction is that the President has been in office for a year. What has he done about it? Answer: It has gotten worse. We have added well over \$1 trillion to the national debt, and unemployment is now up to 10 percent from 7.6 percent under President Bush.

Some fixing of the problem. I suggest that President Obama and his White House officials and staff stop trying to blame President Bush for everything. If the President has been in office long enough to get the Nobel Peace Prize, presumably he has been in office long enough to do something about the public debt or unemployment.

He has done something about it all right: Unemployment is up from 7.6 percent to 10 percent, and the national debt is up from \$10.6 trillion to \$12 trillion.

In view of these facts, it doesn’t make sense to me to pass a nearly \$500 billion omnibus appropriations bill, with departments of this government receiving 26, 30, and 33 percent increases in their budget, when the CPI has only gone up .2 percent this year, and when Americans are scrimping and saving and trying to get by with less. It makes no sense at all.

I hope my colleagues, as we consider this omnibus appropriations bill before us right now, will take these things into consideration before we vote to pile yet more debt on the backs of our taxpaying constituents.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I want to speak for a few minutes on the Labor, Health and Human Services, Education, and Related Agencies appropriations bill. The Senator from Michigan was kind enough to let me do this now, even though she had been on the floor.

I ask unanimous consent that at the end of my comments, the Senator from Michigan be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, as chairman of the subcommittee on Labor, Health and Human Services, Education and Related Agencies, I want to take a few minutes to go over the bill we have before us, the so-called “minibus.”

I wish in the beginning the Senate could have debated and voted on the Labor-HHS bill individually, rather than having it as part of the so-called minibuss. Unfortunately, it is now December. We still have to complete the health care bill and, frankly, we have run out of time.

However, I want to assure my colleagues that the Labor-HHS appropriations bill is a bipartisan bill. We worked closely with Senator COCHRAN and his staff to reflect Democratic and Republican priorities alike. That is the tradition in our subcommittee—one we take very seriously.

In fact, the full Appropriations Committee approved our bill by a vote of 29 to 1. You cannot do much better than that to accommodate the concerns of both parties.

I also want to assure Senators that this is a fiscally responsible bill. Overall, our bill increases discretionary spending by just 2 percent over the fiscal year 2009 Labor-HHS appropriations bill.

With money so tight, we had to be selective about which programs received increases. One high priority is worker protections. Agencies that enforce rules protecting the health, safety, and rights of workers have been seriously shortchanged in recent years. This bill adds \$121 million over last year’s level and brings staffing levels at the Occupational Safety and Health Administration, the Employee Benefits Administration, and the Employment Standards Administration back to where they were in 2001. This means the agencies will have the resources they need to prevent wage theft and ensure safe workplaces for our Nation’s workers.

The bill also includes a 50-percent increase—a total \$1.1 billion—to reduce improper payments, fraud, and abuse from mandatory benefit programs, such as unemployment insurance, Medicare, and Social Security. These antifraud, anti-abuse measures could result in over \$48 billion in savings and increased revenues over the next 10 years.

Another priority we had was getting people back to work. This bill provides an increase of \$72 million, or 43 percent, for nurse training programs, including a new program to train nursing home aides and home health aides.

This bill also provides a major increase—\$260 million—for the national service programs. This will boost the number of AmeriCorps members significantly and create a new social innovation fund that will help small nonprofits tackle a host of social programs.

In the area of education, increases are targeted to programs that are de-

signed to reform schools, such as performance-based pay for teachers and principals, charter schools, and a comprehensive new literacy program.

Providing increases, such as the ones I have described, meant making some tough choices. Our bill eliminated 11 duplicative and ineffective programs, and we cut several others. Not everybody will be happy with all of those decisions. I may not be happy with all of them, but we did the best we could, struck compromises, and I stand by the outcome.

I also support the other five bills in this minibuss, if I might say that. I worked closely with our colleagues on the Appropriations Committee. I want to particularly thank Senator MURRAY regarding her work to allow fiscal year 2009 Community Development Block Grant funds to be used as a match for other Federal programs. The reason this is important is because many States and local governments were hard hit by both disasters—such as the floods in Iowa—and the poor economy. They would have great difficulty providing Federal match requirements without this modification. I thank Senator MURRAY for putting that in her bill.

I also thank Senator DURBIN for the inclusion of a provision regarding auto dealers. In my State, there are a number of decisions that were made by General Motors to close down certain dealerships that met the criteria set down by General Motors for staying in business. I hope this provision that Senator DURBIN put in will allow for needed fairness for a number of these family businesses.

Again, I believe the package of bills we have before us is fiscally responsible. They move our country in the right direction, and I hope the Senate will approve them as soon as possible so we can send them to the President.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, before my good friend from Iowa leaves the floor, I thank him for his wonderful leadership on the health care reform bill, on the appropriations that he chaired—formerly on Agriculture. It has been a pleasure to partner with him on so many things.

Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for up to 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. STABENOW. Mr. President, I want to talk about health care. I have to say that if 20 percent of what was being said by our Republicans friends was true about this bill, I could not vote for it either.

I keep hearing things described that have no relationship to the reality of the bill that I helped to write in the Finance Committee, or my friends helped

to write in the HELP Committee or the bill that is on the floor now. I see all kinds of comments that, frankly, concern me because I don't see them reflected in the reality of the legislation in front of us.

I encourage people to take the opportunity to read the bill or the summaries. For the people in Michigan, we have had it up on our Web site, and we have had every bill, as it is introduced and passed, on the Web site, so people will have an opportunity to look at the information available.

I do know this: What we have been hearing from our colleagues is not good enough, when we think about the fact that we had a Congress and a White House for 6 out of the last 8 years that was controlled the by Republican Party and yet nothing was done. Proposals have come forward now about all these things that should be done. But they weren't done when they were in charge. What we saw was a lot of tax cuts for the wealthy people and a lot of no-bid contracts for friends of people in the administration. We saw a lot of things that didn't affect people in my State very positively and didn't help the working people in my great State of Michigan.

But now, as we are trying to move forward and do something for people, for small businesses and large businesses, and bring down costs and provide health care for people, there are all kinds of suggestions about why we should wait and do it over. What I heard in committee and what I am hearing now on the floor, as a proposal—because we don't have a Republican bill in front of us or one that has been offered—is this: Wait, wait, wait. We don't need to do this. That doesn't have to be done right now. There is no sense of urgency. We should wait, wait, wait.

That is what we hear. We hear that business as usual for the insurance companies is OK. Let them decide what is covered—if you can find insurance—and how much it should cost, whether or not they are going to be able to provide a test for you or an operation for you. That is OK. Let the insurance companies continue to be the ones between you and your doctor. That is what we have seen over and over. We saw it in committee. Every time we were trying to lower costs for families and small businesses, they were on the side of helping the insurance companies. They were willing to take tax cuts we put in the bill, and they offered amendment after amendment that would have had higher costs for middle-class families and small businesses, in order to help the insurance industry.

I will share a few stories from people who have become part of our health care people's lobby through my Web site, who have been willing to share stories.

David is from Sutton's Bay, which is a beautiful part of Michigan. We would

love to have you come visit. It is a gorgeous part right on the water. David says:

I'm a 61-year-old cancer survivor with diabetes and high blood pressure. I am self-employed, and lately, uninsured. I worked all my life to build a stake here in farm country and almost lost it last fall to foreclosure because of a medical emergency. This farm is all I have . . . the savings and cash are gone. I continue to work with no retirement in sight. I have put everything I had for retirement into my farm. Please, help me keep it.

I know that David is not saying wait, wait, wait. He wants us to act, and to act now, on something that will be meaningful and makes sense to bring down costs, to give him a chance to find affordable insurance that doesn't bankrupt him and his family.

I want to share also another story from Jeff from Rockford, MI:

It has been over five years since death stared me down. I was diagnosed with testicular cancer. Losing my job to a layoff, mortgage to pay, among other things—and my options were minuscule. I had no insurance then because there was none that I could afford.

I thank God and the staff at Grand Rapids Spectrum Health for my life today. Unfortunately, I am still \$25,000 in debt because of lack of coverage.

I served in the Marines from 1984–1988. One of their mottos is, "We take care of our own." Imagine what this country would be like if we all thought like that.

Jeff is right. We are in this together and, just as we have dramatically increased our support for our veterans and their health care, we need to make sure we are taking care of our own American families and American businesses.

Wait, wait, wait? I don't think so. I don't think that is what Jeff is asking us to do.

Jennifer from Hollow, MI:

I am married and have one beautiful little girl. But about 6 months ago, my husband's work informed us they would no longer be able to carry health insurance for their workers.

A very common story, having to choose between keeping people employed and paying for health care.

We could have gone on COBRA but it would have cost double what we were paying and we couldn't meet that cost.

Mr. President, as you know, we have worked to lower the cost of COBRA, and we hope to be able to continue that lower cost in legislation that will be coming up shortly. But it is still very expensive.

We are lucky because Michigan has a program for children, so we didn't have to worry about our daughter's coverage. When we went to look for insurance for my husband and me, the prices were steep or we were denied because of my preexisting condition.

That is one of the things we are going to change.

Right now going to the doctor is next to impossible, but to see a specialist is like asking for the Moon. We know that we are highly blessed. My husband has a job. That is

more than a lot of people have. We just want affordable health insurance, and we don't mind paying for it. It just doesn't seem like too much to ask, does it?

No, Jennifer, it is not too much to ask, and that is what we are all about. We are all about putting together a plan—and that is what is in front of us—that will lower costs, that will save lives, save Medicare, that will focus on making sure each American has a health care bill of rights, has protections they know will allow them to make sure their health insurance will be available if they pay for it; that they cannot get dropped because of a technicality; that if they have a pre-existing condition, they can still find affordable insurance; that there will no longer be lifetime caps on insurance policies; that we will allow our young people to stay on mom's or dad's insurance until age 26.

We have a number of changes we are making for people in the insurance exchange, for policies that take effect after the effective date of this act, and it is about making sure people have affordable insurance and they are getting what they are paying for. That is what this is about.

What happens if we do nothing—if we do nothing; if we wait, wait, wait, like the Republicans are saying? Every single day 14,000 Americans lose their health insurance; 14,000 people got up today with health insurance and they will go to bed without it. That happens every single day.

Insurance rates are going to double in the next few years, by 2016. Business costs are going to double. Increased premiums are going to cost us, it is expected, 3.5 million more jobs. I don't know about any of my colleagues, but we cannot afford to lose any more jobs in Michigan. Health care is directly related to jobs and our international competitiveness.

We know incomes of families will be reduced. We know every 5,000 homes will be foreclosed as a result of a health crisis, and 62 percent of the bankruptcies are as a result of a health care crisis.

Wait, like our Republican colleagues say? No, we cannot wait. The families, the people I talked about and read their stories, they cannot wait. Families cannot wait. Businesses cannot wait. Small businesses that cannot find insurance cannot wait. Large businesses that are finding themselves in difficult situations, considering pulling up shop and going to another country because of lower health care costs cannot wait.

People expect us to solve this problem. They expect us to come together and work together, without all the stalling and the objections and the partisan politics. They expect us to come together and solve what is a huge American problem by bringing down costs and creating access to affordable



health care where people know that the insurance company will not be the one that is standing between them and their doctor.

This is about saving lives, saving money, saving Medicare. Mr. President, 45,000 people will lose their lives in the coming year. And 45,000 families will have one less chair or an empty chair at the holiday dinners that are coming up because 45,000 people could not find affordable insurance in this country—Americans, in America.

Saving money—this is about making sure small businesses get the tax cuts they need to help them buy insurance, to make sure that families who are buying through the new insurance pool get the tax cuts they need to afford to buy insurance.

This is about making sure large businesses begin to see costs come down over time because when they are providing insurance already, they are not going to pay the extra costs of folks walking into an emergency room uninsured who are treated and then the costs get rolled over on to everybody with insurance.

We as a country are going to save dollars, save money over time for taxpayers and strengthen Medicare to bring down costs.

And, yes, we are going to save Medicare. We are going to lengthen the Medicare trust fund solvency. We are going to make sure overpayments to for-profit insurance companies are reined in so that the majority of seniors do not see their premiums go up under Medicare to pay for those excess profits.

We are going to make sure we are closing that gap in coverage for prescription drugs that has now been called the doughnut hole, where too many seniors or people with disabilities fall into that hole, cannot afford their medicine, and are not able to get the care they need.

We are going to make sure preventive care does not have an extra cost of a copay or deduction because we know it saves money and saves lives. Under Medicare, we are going to make sure that is there as well.

That is what this is about. It is not about waiting. It is not about all the other stuff we have heard that are scare tactics. This is about tackling and solving a problem for the American people that we cannot afford to wait to do any longer.

Coming from Michigan, I have to say everything I do, everything I care about is about saving jobs. We know in addition, we truly are saving jobs. We are saving jobs for our large employers right now that provide insurance, have been doing the right thing for years but have seen their costs go up 10 percent, 20 percent, 30 percent every year and cannot sustain it anymore. They are cutting health care benefits, raising premiums, or laying people off because they cannot afford it.

We know our small employers under our package will save 25 percent. I believe we are going to be doing even more for small businesses.

We have tax credits to help companies, and, as I indicated before, our plan is going to save 3.5 million jobs that would otherwise be lost because of the increased health care costs that cause employees to be let go or companies to move overseas.

We are talking about saving lives, saving money, saving Medicare. We are talking about saving jobs.

What we are not talking about is waiting. We are not talking about stall tactics or politics. We are way beyond that. I understand there is a big strategy to make sure the President of the United States is not successful. There is a big strategy to make sure we are not successful in the Senate. We have seen more filibusters and more objections than ever before. The vast majority of the days we have been in session—I believe it is 39 weeks now—all but 4 of those we have seen filibusters. It has never been done before—filibusters and objections over and over again.

We are committed to getting beyond that and focusing on the reality of what is happening in people's lives. People are waiting for us to step up and to solve this problem and to give them the ability to have access to affordable health insurance for themselves and their families.

We are not proposing something radical. We are proposing that we fill in the gaps for the folks who do not have insurance today, most of whom are in a small business, most of whom are working maybe one, two, three part-time jobs but they are working and they don't have access to health insurance, or they are self-employed, as the gentleman I talked about, David, in Suttons Bay, maybe a farmer, maybe a realtor, maybe the next Bill Gates in their garage coming up with the next great invention. They don't have access to the same big insurance pool that a big business has to bring down costs.

What we are talking about for those folks who are working or have recently been laid off and cannot find insurance is giving them a way, a competitive way to buy insurance from an insurance pool.

I cannot imagine a more important Christmas present to give to American families than the ability to know going forward that when they lose their job, they are not going to lose their health insurance; that they have an opportunity, a way to get affordable insurance, and that we have come together as a Senate to focus on saving lives, saving money, and saving Medicare.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I would love to interject a question to the distinguished Senator from Michigan.

We are in a situation in which the other side is repeatedly coming to the Senate floor to ask us to delay, to stop, to slow down, to start over. I am curious, as somebody who has watched this debate very closely, what the Senator from Michigan thinks about where we would be if we acceded to that wish? Bearing in mind that one of the sort of ideological firebrands who seems to be leading a measure of the debate on the other side has indicated this is not about health care and people; this is about giving President Obama a Waterloo; this is about creating a political defeat for the President of the United States on their side; it has nothing to do with health care; it is entirely about creating a defeat for this new President; when, in the face of all the obstruction the distinguished Senator from Michigan described so eloquently, this recordbreaking, "unprecedented in the history of the Senate" obstruction we are seeing, the person whom I think right now seems to characterize the leadership of the radicalized rightwing and is running the Republican Party, Rush Limbaugh, is telling the other side they have not been obstructive enough.

So if we were to go back, start all over, and reach out our hands again to our friends on the Republican side, is there any reason to believe that we would not be just as rebuffed going forward as we have been in the long arduous process of negotiation and hearing and public meeting and all of the work that has taken us to this point right now?

Ms. STABENOW. Mr. President, I thank my friend from Rhode Island for the question and for his advocacy and understanding of how we bring down costs and what we should be doing in so many areas for families and for businesses in the country.

I will just say that we have, first of all, attempted to get something done for years. In the last couple of years, reaching out to Republicans in an unprecedented way, our distinguished chairman of the Finance Committee, as everyone knows, went to unparalleled lengths in reaching out and spending months and months putting together a work group of three Democrats and three Republicans to work in good faith to get something done.

We have accepted Republican ideas. I know on the HELP Committee there were many amendments accepted from Republican colleagues. We have continued to reach out and look for ways to work together.

But what we are seeing is a lack of desire to work together and more than just a lack of desire, as the Senator indicated, but simply to attempt to embarrass the President of the United

States, to stop him from being successful, and to stop us politically, when the reality is very serious. This is not about a President. We have had 100 years of Presidents trying to do this. This is not a particular Senate. We have had Senates for years that have been trying to do this. This is about when are we going to get beyond all this? When are we going to actually get beyond this and focus on the reality of what is going on in people's lives, what is going on in every small business that is trying to figure out how to pay the bills and hold it together or every manufacturer in my great State that is trying to figure out how they are going to hold it together. At one point, the American people will have every right to say to us: When are you guys going to get beyond this stuff?

The good news is, we have a President who has said now is when we are going to put it behind us and the Senate has said now is the time and we will work in good faith with anyone who wants to work with us. But we will not wait, which is what we are being asked to do—wait until another time, when 45,000 more people will have died next year, when another 5,000 people a day will have lost their homes to foreclosure.

Mr. WHITEHOUSE. If we were to wait, does the Senator think there is any likelihood people on the other side would suddenly want to cooperate with President Obama and not hand him a defeat? If Rush Limbaugh would say: OK, Republicans in the Senate, go ahead, work with the Democrats now; don't just be the party of obstruction and delay but try to work cooperatively for the American people, does the Senator think there is any likelihood of that happening?

Ms. STABENOW. I would like to think there would be a likelihood of that happening, but I can't imagine it. Frankly, and I think unfortunately, they view it in their self-interest, whether it is a business decision, as a radio host, or whether it is a decision of the other party. I appreciate the fact that it is hard to lose elections. We have all been in those situations. I appreciate the fact that folks don't want to be in the minority. Most of us have been in that situation. So I appreciate that. But I think all of us were hoping this year, with two wars, with the deficit we have, with the challenge on health care, with the need to create jobs, and with the financial crisis we are in, that somehow it would be different for a while.

I would ask my colleague if he had the same sense of hope coming in; that this year maybe there would be a moratorium on the partisanship; that we could actually come together in the interest of the country and solve problems before going back to the elections. I would ask my friend if he was as surprised as I was that there was not

only no stopping after the election but that the same folks who led things during the election are leading them right here on the floor.

Mr. WHITEHOUSE. I share the disappointment of the Senator from Michigan; that the promise and the outreached hands have been rejected and rebuffed; that this place has become so bitterly partisan. This is my first time in the Senate with a Democratic President, and I have been surprised at the tone of the debate, at the lack of truth of a great many of the arguments, of the very apparent motivation.

I have spoken to members of our caucus who I think are probably viewed as some of the most moderate when it comes to seeking bipartisanship, who are calm and respected Members of the Senate and who have been here a long time, and I have asked them how this compares to their long years of experience in the Senate. One of them said he has literally never seen anything like it in all the years he has been in the Senate. He has never seen anything like it. They are always on message, he said, but I have never seen them so off truth.

I think it is regrettable, but if your mission is to destroy a strong and important piece of legislation, not because it is bad legislation but because you can't stand having this new President win a political victory, are you going to go out and disclose that is your motivation? No, you are going to come up with a bunch of other cockamamie arguments to paper that over. You will talk about death panels and you will go through all the nonsense we have seen and it is regrettable.

Ms. STABENOW. If I might interject with my friend, I have been handed a note that says, in fact, there have been over 150 amendments offered by Republicans, and so our attempts have been ongoing to reach out.

Mr. WHITEHOUSE. I think those were the Republican amendments that were accepted into the HELP Committee bill. In fact, I think there were 161, if I remember correctly from my time sitting on the committee. We took Republican amendment after Republican amendment after Republican amendment trying to reach out to them.

Ms. STABENOW. So we have over 300 pages of the bill which contain Republican amendments, and that is fine. There is no ownership in the sense of who has the better ideas. In fact, what I find interesting is the insurance exchange we have in the bill for small businesses—which is at the heart of coverage of small businesses and individuals—has been offered by Republicans and Democrats. I believe distinguished former Senator Bob Dole offered some form of an exchange back during the debate when President Clinton was in office.

So we are not trying to claim a corner on ideas. There are many ideas that have been available and talked about for years. It is a matter of having the will, the commitment to actually do the hard work people expect us to do in order to get this done. I think that is what is so important about this time, when the average family is finding themselves unraveling, with not knowing if their job is going to continue to be available or if there will be a cut in wages. They are paying more out of pocket for everything under the Sun and then worrying if the employer is thinking: Well, you can have your job or your health insurance because the employer can't keep both going.

The fact is, we have lost so many middle-class jobs—and I will spend another time talking about the loss of manufacturing jobs in this country. We have lost a lot of our middle class in terms of good-paying jobs. So people are now saying: Wait a minute, just being the party of no, that is not going to be enough. That is not good enough—just saying no for political reasons. That is not enough. We want to know what you are going to say yes to. We want to know how you are going to work together. We want to know how are you going to actually solve a problem.

When someone such as Joe, from Rockford, MI, says he served in the Marines for 4 years and their motto is: "We take care of our own," my question is: When are we going to come together and take care of our own Americans? I don't mean literally taking care of every person but creating opportunity for people, creating the climate for people to have a job, to have health insurance, to send the kids to college, to be able to afford to keep their lights on, and to be able to know that their country is on their side. That is what this is about. They do not want us to wait more, they want us to move quickly—move quickly on health care and jobs and all the other issues that are so important to their families.

So I thank my friend from Rhode Island for joining me, because there is a sense of urgency that people have, and we need to have that sense of urgency to get things done—to work together and to get things done. Frankly, one of the things our colleagues on the other side of the aisle have successfully done is united our caucus in its determination to not let this kind of stalling and objections and tactics, which are slowing things down, stop us from actually solving a huge problem that has gone too long unsolved for the American people.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are considering the omnibus bill. Once again, I have to say that we are heading recklessly, at a high rate of speed,

toward the most reckless spending this Nation has ever seen. We saw some big spending during World War II but nothing like this, in the kind of environment we are in today. Plus, then we had the whole Nation working to win that life-and-death struggle.

I will just say a few things about this omnibus bill. First, I don't think any of us should support it. Why? It is unacceptable. Why? It is the kind of spending that has caused the American people to be outraged and to go out in the streets. People told me they had never been to a rally before in their lives, but they went out because they are afraid for their country.

Look at the package of spending that is in this legislation—the Commerce, Justice, and Science bill has been cobbled together with the others. There are 6 of the 13 appropriations bills all packaged together into 1 to see if they can't ram it through during the last days before Christmas so nobody will have the gumption to cause a fuss about it and so we can just get this done. What is it that is contained in the legislation that causes such angst on my part and on the part of others? I will explain it for you.

Here are the numbers. The Commerce, Justice, Science appropriations bill contains \$64 billion in spending. The percent of growth over last year's spending is 12 percent. Just to recall for my colleagues, if you know the rule of seven, which you learn in accounting: at a 7-percent growth rate—or if you have an interest rate of 7 percent—your money will double in value in 10 years. Here we have a 12-percent increase. That means the expenditure line of Commerce, Justice, and Science increases at 12 percent, which would double that whole amount in about 7 years. Do you think that is what the American people want? This does not count the stimulus package we passed earlier this year. My wife says: Quit saying we passed, when you voted against it. I didn't vote for it. It was \$800 billion, and \$15 billion went into Commerce, Justice, and Science appropriations. So we go from \$64 billion in this bill and add \$15 billion on top of that amount, which is already being spent.

What about a second one—financial services. It has a 7-percent increase. The rate of inflation is what, 1 percent? On top of this bill, we add about a \$7 billion infusion in financial services from the stimulus package. Last year, the spending was \$22 billion; this year, it is \$24 billion. Add \$6.9 billion on top of that and you have about \$31 billion, which is a massive increase.

Labor, HHS, and Education also increased at 7 percent, and it received \$72 billion extra from the stimulus package. I am not counting the stimulus when I say it is a 7-percent increase. I am talking about the baseline budget. Military Construction and Veterans Af-

fairs is oddly the lowest. It only received a 5-percent raise. Well, 5 percent is still a big increase when the inflation rate is below 2, and it received \$4 billion from the stimulus, which is not much. The stimulus gave very little to military matters.

What about the State Department and Foreign Operations? How much did that budget line increase over last year? Thirty-three percent. We don't have to increase State and Foreign Operations 33 percent. This is beyond a reasonable amount by any stretch of the imagination, and it also received an increase in the stimulus package.

What about Transportation and Housing and Urban Development? What kind of increase did they get in this year's budget, in a time when the American people are having to cut their budgets, when they try to save more than they ever saved before, trying to find work if they or family members are losing jobs, when they are not getting overtime like they did before, when other things are tightening them up and the fear of unemployment is out there; what does Transportation and HUD get in the baseline budget? Not counting the stimulus money: 23 percent increase. With a 23-percent increase you double the whole Transportation-HUD budget in 4 years. This is not responsible.

By the way, the baseline Transportation-HUD budget in 2009 was \$54 billion. It was \$54 billion, and the stimulus package added \$61.8 billion on top of that.

The omnibus bill in all of the spending lines amounts to an increase of 12 percent. This is unsustainable, and the 12 percent does not include the huge amount of money that was funded through the stimulus package.

I see my colleague here, one of our stalwart Members of this Senate. I will yield to him, but I just want to be on record saying I would love to vote for these bills. I voted for many of these funding bills in years past, but I am not going to vote for a package that increases spending of the Federal Government at 12 percent when the average American is lucky to have a job and inflation in this country is 1 or 2 percent. This makes no sense to me.

Remember, this spending is in addition to the amount of money approved in the stimulus package—\$800 billion.

If you would like to know how much money \$800 billion amounts to, the general fund budget in my State of Alabama—we are an average size State—is less than \$2 billion. The entire total spending of these six bills in this omnibus package is \$445 billion, and we spent in February—this Congress approved without my support \$800 billion extra to try to stimulate the economy. Unfortunately, it has been frittered away without the kind of impact we need.

I am worried what we are doing. I appreciate having this opportunity to

share those comments, and I will speak more about it in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I appreciate my colleague's great remarks. I rise today to discuss an important aspect of this multifaceted health care reform bill that is now pending on the Senate floor. It is tax increases and who will bear the burden of those tax increases. I have actually heard some stand on the Senate floor and say there are tax reductions. Who are they kidding? The gargantuan piece of legislation laying before us provides plenty of fodder for debate and discussion. This debate and discussion is taking place all over the country among Americans everywhere: over the family breakfast table, during breaks at work around the water cooler, in corporate boardrooms, and bowling alleys, and during Christmas shopping trips.

Of course, right here in the Senate we have already had many hours of debate about the health care bill, with many more likely to come. As one peruses the 2,074 pages that comprise the Patient Protection and Affordable Care Act—this bill—it quickly becomes obvious that this bill encompasses many topics and touches on a comprehensive array of issues dealing with our health care system.

However, it is not until near the very end of the bill, starting on page 1,979, that we find title IX, which deals with revenue offset provisions. Perhaps it is because this title is near the end of this seemingly endless bill that we have heard relatively little discussion about the new taxes it creates or perhaps it is because the tax title is relatively short, a mere 67 pages.

No matter the reason, I believe it is vital that the American people understand something about these new taxes before we are asked to vote on this legislation, this gargantuan legislation.

Before I get into the specifics of the new taxes and tax increases in this bill, I need to inform my Utahns and Americans everywhere that they are being sold a bill of goods when it comes to these taxes.

Based on what President Obama promised during his campaign last year, every individual American taxpayer earning less than \$200,000 per year, and every family making less than \$250,000 per year is justified in believing that this health care bill, which has been endorsed by the President, would not raise their taxes. Here is the direct quote from candidate Barack Obama in New Hampshire on September 12, 2008:

I can make a firm pledge. Under my plan no family making less than \$250,000 a year will see any form of tax increase.

Unfortunately, this bill places the cost of health care reform squarely on the backs of the taxpayers and mostly

on the 98 percent of Americans the President promised to protect from new taxes. That is what it said. President Obama's exact words were:

I can make a firm pledge. Under my plan, no family making less than \$250,000 a year will see any form of tax increase.

The President went on to promise:

Not your income tax, not your payroll tax, not your capital gains taxes, not any of your taxes.

However, when one looks at the list of revenue offsets beginning on page 1,979, we see all but 5 of the 14 revenue raisers included there would hit families making less than \$250,000.

There is a cornucopia of new taxes on middle-income Americans in this legislation: a limitation on itemized medical expense deductions for medical expenses; an excise tax on the high-cost health insurance plans; a new tax on medical devices such as wheelchairs, breast pumps, and syringes used by diabetics for insulin injections; a limit on contributions to flexible spending accounts; an increase on the penalty for unqualified distributions from a health savings account; an increase in the payroll tax, and on and on.

Look at all these taxes: itemized medical expense deduction, fees on drug manufacturers, high-cost plan tax—by the way those are passed on to you and me and every other consumer, most of whom are less than \$250,000-a-year earners—fees on health insurers, nonqualified HSA distribution from 10 percent to 20 percent, fees on medical device manufacturers, fees on FSAs—a \$2,500 cap on FSAs—people who have suffered from disabilities and other problems, they can't live with that kind of cap—and an individual mandate penalty excise tax, all of those. That is just mentioning a few of them. It goes on and on.

Some of these would directly hit many taxpayers who make less than \$200,000, such as this 5 percent excise tax on cosmetic surgery, while others would in the form of higher fees and penalties that would ultimately be passed on to the consumer.

This is certainly the indication with the new "industry fees" that would be assessed on several sectors of the health care industry.

Who do they think is going to pay for those? It is you and me and everybody else. Look at this chart, the biggest single tax increase in this health care bill is also one of the most insidious. This is the 40-percent excise tax on high-cost insurance.

By 2019, 88 percent, or \$30.5 billion will be borne by individual taxpayers. Eighty-four percent of those will be individuals who make less than \$200,000 or families who make less than \$250,000. That is according to the Joint Committee on Taxation, upon which I sit. It is a nonpartisan committee.

This is the 40-percent excise tax on health insurance coverage that exceeds

\$8,500 for single families or \$23,500 for families.

The unions in this country are going crazy over that, and with good reason.

The proponents of this idea tell us it is necessary in order to "bend the cost curve" downward and get the cost of health care under control. However, in reality, this is simply a bastardized version of the concept that might have been effective in discouraging employees from bargaining for too much insurance because it is a tax-free benefit; that is, for corporations that provide it, a cap on the value of tax-free, employer-provided health insurance.

The original concept, which was discussed at length in the finance committee earlier in the process of developing health care reform legislation this year, has merit if done correctly. By providing a direct disincentive to the very individuals who would suffer the tax increase, this original idea would have discouraged purchasing or bargaining for higher cost insurance simply because of the tax benefit.

However, this bill and the one approved by the Finance Committee does not take this route. Instead, it takes the cowardly approach and applies the tax increase at the insurer level.

Why is this a bad idea? For one thing, the tax increase occurs at a level two steps removed from the individual employee, which is where the decision to buy a less costly plan is made. Rather, the tax is assessed on the insurance company which has no choice but to pass the cost of the tax on to the employer and the employee who, together, pay the cost of the policy.

Instead of providing a disincentive for purchasing more health insurance than is necessary, applying the tax at the insurer level simply increases the cost of insurance without the employer and employee necessarily even knowing why the cost has gone up.

You wonder why insurance costs go up?

So for the sake of avoiding what appears to be a direct tax increase on workers, this approach loses the benefit of the original idea of bending down the cost curve by providing a disincentive. But make no mistake, this increased cost of these insurance plans will be passed on to the employees.

"Forty percent excise tax on high-cost insurance"—which most people will have. This is not even—

... by 2019, 88 percent or \$30.5 billion will be borne by individual taxpayers; 84 percent of those will be individuals who make less than \$200,000 or families who make less than \$250,000. The Joint Tax Committee.

My gosh, when does it end?

Moreover this tax burden would not be just on those whom the President says he wants to target for tax increases, those making over \$200,000 per year as individuals or \$250,000 per year for families. Far from it.

Data from the staff of the Joint Committee on Taxation showed that only

16 percent of the \$30.5 billion borne by individual taxpayers in 2019 would be paid by those making over \$200,000 per year. This means that 84 percent or almost \$26 billion for this 1 year only would be paid by those whom the President promised to protect against tax increases.

Unfortunately, the excise tax on high-cost insurance policies is not the only way the health care bill would increase the cost of health insurance. To add insult to injury, the bill also includes a \$6 billion annual fee assessed on providers of health insurance.

I have heard the other side just condemn health insurers, day in and day out. Yet they are adding all these costs to the health insurers that have to pass them on to the individual citizens, or insureds.

As I understand it, the rationale behind this misguided idea is that health insurance companies will be enjoying a windfall from this bill in that millions of new customers will become insured for the first time. Therefore, the reasoning goes, the health insurance industry will be earning billions of dollars that they would not have otherwise made, all because of the beneficial aspects of this health reform bill.

Therefore, since these companies will be reaping all of this extra profit, why should we not tax them on this windfall in the form of this annual fee as though those costs are not going to be passed on? This is a bad idea on so many levels. First, it assumes that the insurance companies will actually be gaining all of these new customers. Secondly, it assumes that the insurance companies will be making money from these new customers if they indeed gain them. Keep in mind, they are talking now in the back rooms. Nobody knows what they have concluded. They are talking about putting people into Medicare from 55 years old on, where today you have to be 65 years of age to be able to qualify for Medicare. Now they want to do that at 55. What does that mean? That means the sickest of the sick will go into Medicare. People are going to push them out of regular policies and others will go into Medicare, so these insurance companies aren't going to make all the money the Democrats say they are.

The third assumption is the most troubling. That is that it would be the insurance companies themselves that would bear the burden of these fees. These are all dangerous assumptions. The third one is downright fallacious. It assumes that corporations suffer the incidence of taxation. As anyone with a modicum of economic training knows, corporations do not bear the burden of taxes, people do. Specifically, it is the people who work for the corporation, who own the corporation, and who are the customers of the corporation who ultimately pay the tax. They are passed right on to the people. This is

not the only dangerous new excise tax in this bill. We have a whole passel of them. A new excise tax on health insurance providers. Look at this, excise taxes in the health care bill, excise tax on health insurance providers, new tax on pharmaceuticals, a new tax on medical devices, a new tax on high-cost insurance plans, and a new tax on cosmetic surgery. In the case of competitive markets, an excise tax is generally borne by consumers in the form of higher prices in the long term. At least this is what the staff of the Joint Committee on Taxation said to me in a letter on these insurance industry fees, dated October 28, 2009. Why in the world would we want to add a fee to the health insurance industry when we know it will be passed right on to consumers of the health insurance in the form of higher insurance costs? That means you and me. That means the employee. That means the person who bears the burden. I thought the purpose of this health reform bill was to rein in health care costs.

How much does this so-called health care reform bill harm taxpayers and violate President Obama's promise not to raise taxes on the middle class? Let me tell you about one of the most egregious tax increases in this bill. I have always believed that one of the major purposes of health care reform is to lower the cost of medical expenses to American families and especially to vulnerable American families. Therefore, it makes no sense to me that this bill should include this next tax increase which would largely hit the sickest Americans. This proposal would increase the threshold for deducting medical expenses from today's level of 7.5 percent to 10 percent of adjusted gross income. This seemingly small change is projected by the Joint Committee on Taxation to cost taxpayers over \$15 billion over 10 years. Which taxpayers would suffer this tax increase? The ones earning more than \$250,000 per year that President Obama pledged would be the only Americans to be saddled with a tax hike under his administration? Hardly. Of the many millions of families affected by this change, only a few thousand have incomes over \$200,000. Think about that. The vast majority of the victims of this tax hit would be below that figure, with many of them being far from wealthy. In fact, a high percentage of the taxpayers affected by this change make less than \$75,000 per year.

Look at this. If your income equals \$100,000, then you need to incur \$10,000 worth of medical expenses before you become eligible for the deduction. Millions of taxpayers making less than \$200,000 will be affected. The deduction for medical expenses has been in the Tax Code for decades. Its purpose is to provide relief to Americans who face catastrophic medical expenses in relation to the size of their income. It is

designed so that an average or usual amount of health care costs will not trigger the relief. Like I say, a family earning \$100,000 this year would have to have medical expenses exceeding \$7,500 before the deduction kicks in. This does not count what insurance pays but only what the family would fork over in out-of-pocket costs.

Even for those with the most basic health insurance, 7.5 percent of family income spent for medical expenses is a large amount. In many cases, this much medical cost relative to income is caused by chronic health conditions or serious accidents or injuries, and this is exactly the point. The current tax law rightly says that if a family has to pay catastrophic or near catastrophic amounts for health care during the year, relief is available. By design this deduction is there only for those who need it. So the big question is: Why we would want to increase taxes on those with already high medical expenses by making it tougher for them to get relief from catastrophic medical expenses. But the real conundrum is why would we do this as part of a bill that is supposed to rein in health care costs.

It is no wonder my fellow Utahns and Americans everywhere are questioning the wisdom of this bill. As with so many other features of this so-called health reform plan, this doesn't make sense.

There is much more I want to say about the tax increases in this bill. American taxpayers need to know the truth about what is about to hit them, if the majority has its way. I have not yet mentioned the new industry fee on medical device companies. Because my home State of Utah has many such companies, I plan to address this new fee in a separate floor statement as this debate progresses.

Let me summarize by reminding my colleagues that the tax increases in this bill fly in the face of the promises made by the President, the leader of the majority party in Congress who has explicitly endorsed this legislation. The staff of the Joint Committee on Taxation recently conducted a distributional analysis of how four of these tax increase provisions affect American taxpayers. Under that analysis, in 2019, individuals making over \$75,000 and families making over \$75,000 will see their taxes increase under this bill. That is equal to 42 million middle-income taxpayers. Think about that: 42 million middle-income taxpayers all making less than \$200,000 per year and all of them, told by the President that they would be protected from tax increases, will be hit and hit hard by this bill. This is after taking into account the tax effects of the advanced refundable tax credit for health insurance.

Think about this: Millions more middle-income taxpayers will be hit by indirect tax increases from the health in-

dustry segment fees included in this bill. There is no question that these fees and other excise taxes will be passed through to the individuals who are consumers of the health care products that are being passed. As we debate this health care bill, it is imperative that the American people know what is in the legislation and how it will affect them. It would be a travesty for us to vote on this before these things are fully understood and debated. This is one of those few bills that come along only once in a generation or so. It is one of those bills that has the potential to change our country forever, for good or bad. In this case, it is not for good.

The tax increases in this bill are unprecedented in many ways and not well thought out. They will have a devastating effect on the people the President has promised to protect. The tax increase aspect alone of this leviathan is enough to demand its defeat here in the Senate. But there are so many more ill-advised provisions in the other 2,007 pages as well.

I urge my colleagues to take a good and honest look at these tax increases and make sure they are ready to face the vast majority of their unsuspecting constituents once they discover what has been done to them with this bill, should it pass.

I am very concerned about this bill. The American people are very concerned about this bill. Polls show they don't support this bill. I can't believe my colleagues on the other side are trying to present it as though it is a tax deduction bill when, in fact, it raises taxes in billions and billions of dollars, most of which go to the middle class or lower in transferred payments, and causes other problems added to their woes in health care and their very lives, as we go through all of our lives here in the United States. I am very concerned about it. I think everybody ought to be concerned about it. This is one-sixth of the American economy. If we can't get 75 to 80 votes in a bipartisan way, you know it is a lousy bill. This is a lousy bill. From what I have heard of the one that even Democrats don't know what form it will be in, it is going to be even more lousy.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Illinois.

**MR. DURBIN.** Mr. President, pending before us now is an omnibus bill which contains six different appropriations bills. It was not our intention to call this omnibus bill but to call each one of the appropriation bills. Unfortunately, it has been impossible to reach that goal because of a strategy that has been employed by the Republican side of the aisle to slow down any debate on any topic as much as possible, to challenge us with filibusters and force cloture votes and make the Senate go into interminable quorum calls.

So many times we have called bills that came out of the Appropriations Committee with overwhelmingly positive votes only to run into roadblocks on the floor. And then after weeks and weeks and weeks of procedural problems tossed our way by the Republican side of the aisle, the bill is finally called and passes by an overwhelming margin. The strategy is clear.

It is as clear on the health care bill as it is on the appropriations bills that the Republican side of the aisle doesn't want us to complete. So we are attempting to do our best by consolidating into one appropriations bill six different appropriations bills that passed with overwhelmingly positive margins out of the Senate Appropriations Committee. There were three bills that received 30 to nothing votes in the Appropriations Committee and three others that were reported out 29 to 1, to give an idea of the kind of support they had. We brought up the Commerce-Justice-Science appropriations bill on October 6. It took us a month to finish that bill because of the delay tactics of the other side. That is the reality of what we face. We have run ourselves into the ground day after day, week after week with amendments relating to things of little or no consequence. I cannot count how many ACORN amendments we voted on. It would be a forest of oak trees if those acorns were planted. But we voted on them regularly, religiously. We made sure we took care of ACORN, but we didn't take care of the people's business because those amendments wasted our time.

These appropriations bills have taken longer and longer because the minority will not agree to reasonable time agreements to consider amendments and finish debate.

Instead, we found ourselves consistently sidetracked by the minority, spending hours on the floor taking the same votes on keeping ACORN from receiving money from different Federal agencies like the Interior Department.

So, here we are. We have 21 days before the end of the calendar year and we need to finish the business of the Congress.

To do so, we engaged Republican members of the Appropriations Committee and worked on reasonable compromises to the differing bills in the House and Senate.

This package of appropriations bills is the result of a truly bicameral and bipartisan effort.

This package represents the priorities of the American people. The conference report invests in students, veterans and law enforcement.

The bill before us makes college education more affordable for students by increasing Pell grants to \$5,500.

This will help all students, whether they are going to college for the first time or going back to acquire new

skills, get the college education necessary to compete in the global economy.

The conference report also helps local governments fight crime and puts more police on our streets.

We have increased grants for State and local law enforcement by \$480 million over last year.

These grant programs were cut by almost \$2 billion during the last administration.

This conference report sets the right priorities by increasing funding essential to helping our States and local police departments fight crime.

We also help local law enforcement with hiring and training by including \$298 million for the Community Oriented Policing Services or COPS program to put more cops on the beat.

This funding will help hire or retain approximately 1,400 police officers.

The COPS program has helped train nearly 500,000 law enforcement personnel and put over 121,500 additional officers on the beat nationwide.

This conference report also helps keep our promise to our Nation's veterans by increasing funding for the Veterans Affairs Department by \$5.3 billion above last year's level.

This funding will increase access to quality health care for our veterans. In particular, the conference report increases discretionary spending at the VA by more than \$5 billion to help the VA care for the more than 6.1 million veterans they expect to see in 2010.

As chairman of the subcommittee responsible for Division C of this consolidated appropriations bill, I would like to take the next few minutes to describe the key components of that portion of this bill.

Before doing so, I want to recognize and commend my ranking member, Senator COLLINS, for her helpful counsel, input, and support in crafting the bill. It has been a privilege and pleasure to collaborate with her in addressing the needs of the agencies and programs dependent on funding under our division of this conference agreement. I am proud that we have produced a truly bipartisan product.

This conference agreement allocates budgetary resources totaling \$46.3 billion. This consists of \$24.2 billion in discretionary spending and \$22.1 billion in mandatory spending for financial services and general government accounts. The discretionary funds are \$1.6 billion above the fiscal year 2009 enacted level and \$40 million less than the President's request.

Our work has provided a valuable opportunity to evaluate the responsibilities, functions, and budgetary needs of the diverse agencies and programs under our jurisdiction. Our challenge has been deliberating carefully to make tough decisions within our conference funding allocation to address many worthy requests.

The bill provides resources for the Department of the Treasury, the Executive Office of the President and White House operations, the Federal judiciary, and the District of Columbia.

In addition, the bill funds over two dozen independent and vital, but often obscure, Federal agencies responsible for a wide array of critical functions in the delivery of public services.

I would like to share some of the highlights of the bill:

My top priority this year was to continue to address the resource needs of two of our Nation's premier regulatory agencies: the Securities and Exchange Commission and the Commodity Futures Trading Commission. These two agencies occupy pivotal positions at the forefront of stimulating and sustaining economic growth and prosperity in our country.

The CFTC received its fiscal 2010 funding as part of the Agriculture appropriations bill, signed into law in September. I am pleased to have played a role in providing that agency with \$168.8 million, a 16-percent boost above last year.

For the Securities and Exchange Commission, this bill includes \$1,111,000,000, an increase of \$85 million above the President's budget request and \$151 million more than the fiscal year 2009 enacted level.

The SEC is the investor's advocate. I want to make certain that the SEC has the necessary resources to effectively fulfill its singular obligation: protecting shareholders.

SEC Chairman Mary Schapiro has charted an aggressive new course to strengthen SEC vigilance by recruiting professional expertise and investing in enhanced technology. The \$85 million increase in this bill will support 420 additional investigators, attorneys, and analysts to expand significantly the SEC's enforcement, examination, risk assessment, and market oversight functions.

In addition, the SEC will be able to accelerate investments in several key information technology projects, including installing and launching a new system to track tips and complaints.

The conference bill supports community and small business development at a time when these investments are more crucial than ever. With the economy struggling, economic development must be a top priority.

Treasury's Community Development Financial Institutions Fund program—CDFI—helps finance community development projects throughout the country and supports basic financial services for underserved communities. The bill provides \$166.8 million for CDFIs to provide financing for projects such as day care centers, community centers, and affordable housing projects in America's underserved neighborhoods.

Through the Small Business Administration, the bill provides over \$824



million to promote the development of America's small businesses. The bill supports \$28 billion in new lending to small businesses, providing financing opportunities for small businesses at a time when private sector credit is difficult, if not impossible, to access. The bill also provides \$22 million for microloan technical assistance grants and supports \$25 million in micro-lending.

Funding also supports SBA's partners, including Small Business Development Centers, Women's Business Centers, and Veterans Business Outreach Centers. These partners form a foundation of support to help America's small businesses weather the economic downturn and assist newly unemployed Americans seeking advice on starting a small business as a new career path.

As we have done in the past few years, this bill provides a significant funding increase for the Consumer Product Safety Commission. To help keep CPSC on track to meet its new responsibilities under the Consumer Product Safety Improvement Act, the bill provides \$118.2 million, an increase of \$13 million above last year's level and \$11 million above the budget request.

These funds will help expand the import safety initiative, which puts CPSC inspectors at key U.S. ports, and to further investigate suspected problems with imported drywall from China. With these resources, the CPSC can provide the nation with a robust safety program and protect the public against unreasonable risk of injury associated with consumer products.

For the Internal Revenue Service, the bill provides \$12.2 billion. Of this, \$7 billion is for tax law enforcement, \$387 million more than last year, to help advance the administration's initiative to target wealthy individuals and businesses who avoid U.S. taxes by sheltering money in overseas tax havens.

The bill provides nearly \$6.4 billion to enable the Federal judiciary to carry out constitutional responsibilities to administer justice and resolve disputes impartially under the rule of law.

Of the \$752 million in Federal funding for the District in this bill, the largest portion, \$563 million, is designated for the local courts and criminal justice system including public defender services and pretrial and postconviction offender supervision.

In addition, the bill provides a total of \$186 million in Federal funds for local District of Columbia activities under the control of the mayor. Of this amount, \$110 million is for education-related functions, specifically support for local school improvement and post-secondary tuition assistance.

This \$110 million continues our commitment to improving the quality of education for children in the District

of Columbia. I convened two hearings this fall to assess the Federal investment in school improvement over the past 5 years. To date, including this bill, Congress has provided \$348 million since fiscal year 2004 as special payments to help the District address long-standing deficiencies in its education system.

This conference agreement provides \$75.4 million for school improvement in the District in three sectors: \$42.2 million for public schools, \$20 million for charter schools, and \$13.2 million for opportunity scholarships. The bill also includes \$35.1 million to continue the District of Columbia resident tuition assistance grant program which permits eligible District residents to attend out-of-state colleges and universities at in-state tuition rates.

Finally, just a few words about earmarks. This is a very transparent appropriations bill shining a light on requests from Senators, House Members, and the Obama administration. Quite frankly, that is the way it should be.

Nothing is buried or disguised. The name of every Member who has asked for anything in the House or Senate bill that has been included in this conference agreement is disclosed in the explanatory statement. Every Member has to stand by every request he or she makes, and it is printed right there for the world to see.

After the document went to print, Senator SCHUMER submitted a letter to the committee conveying his support for several items included in the bill at the request of House members.

I ask unanimous consent to have the text of Senator SCHUMER's letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, December 7, 2009.

HON. RICHARD DURBIN,  
*Chairman, Subcommittee on Financial Services and General Government, Senate Committee on Appropriations, Dirksen Senate Office Building, Washington, DC.*

HON. SUSAN COLLINS,  
*Ranking Member, Subcommittee on Financial Services and General Government, Senate Committee on Appropriations, Hart Senate Office Building, Washington, DC.*

DEAR CHAIRMAN DURBIN AND RANKING MEMBER COLLINS: As your Subcommittee works toward a conference with the House of Representatives on the Fiscal Year 2010 Financial Services and General Government Appropriations bill, I respectfully request your support for several projects that are important to the state of New York, as well as to our nation.

I urge the Senate Conferees to fully fund my priority project included in the FY10 Senate version of the Financial Services Appropriations bill:

Support the Senate Appropriations Committee (SAC) addition of \$117,500 for the City of Buffalo for the Buffalo Clean Energy Incubator, in the Small Business Administration account;

Support the SAC addition of \$117,500 for the Community Service Society of New York

for a financial education project, in the Small Business Administration account;

Support the SAC addition of \$117,500 for the Greater Syracuse Chamber of Commerce for the Space Alliance Technology Outreach Program, in the Small Business Administration account.

In addition to my Senate priorities, I also offer my support for the following projects included in the House version of the bill:

Support the House Appropriations Committee (HAC) addition of \$17,500,000 for National Archives and Records Administration, Washington, D.C., for FDR Presidential Library, New York, in the National Archives and Records Administration account;

Support the HAC addition of \$150,000 for Agudath Israel of America, New York, NY, for Mentoring and training services, in the Salaries and Expense account;

Support the HAC addition of \$250,000 for the Buffalo Niagara International Trade Foundation, Buffalo, NY, to support small businesses, in the Salaries and Expenses account;

Support the HAC addition of \$150,000 for the Center for Economic Growth, Albany, for Watervliet Innovation Center, in the Salaries and Expenses account;

Support the HAC addition of \$150,000 for the Consortium for Worker Education, New York, NY, for Financial training and guidance programs, in the Salaries and Expenses account;

Support the HAC addition of \$151,000 for Girl Scouts of the USA, New York, NY, for a national program to improve financial literacy, in the Salaries and Expenses account;

Support the HAC addition of \$200,000 for Greater Syracuse Chamber of Commerce, Syracuse, NY, for Clean Tech Startup Camp, in the Salaries and Expenses account;

Support the HAC addition of \$350,000 for Hudson Valley Agribusiness Development Corporation, Hudson, NY, for Hudson Valley Food Processing Incubator Facility, in the Salaries and Expenses account;

Support the HAC addition of \$75,000 for Hunter College, New York, NY, for the Roosevelt House Institute Public Policy Institute, Financial Literacy Project, in the Salaries and Expenses account;

Support the HAC addition of \$150,000 for Metropolitan Council on Jewish Poverty, New York, NY, for Employment and training programs, in the Salaries and Expenses account;

Support the HAC addition of \$100,000 for New York College of Environmental Science & Forestry, Syracuse, NY, for the New York Forest Community Economic Assistance Program, in the Salaries and Expenses account;

Support the HAC addition of \$125,000 for Pace University Lienhard School of Nursing, White Plains, NY, for nursing workforce education and training initiative, in the Salaries and Expenses account;

Support the HAC addition of \$85,000 for Pratt Institute, Brooklyn, NY, for Green Community Career & Business Training Center, in the Salaries and Expenses account;

Support the HAC addition of \$150,000 for SUNY Fredonia, Fredonia, NY, for Small business incubator, in the Salaries and Expenses account;

Support the HAC addition of \$100,000 for YMCA of Long Island, Inc., Holtsville, NY, for Diversity Training Program at the Brookhaven-Roe YMCA, in the Salaries and Expenses account.

I certify that to the extent of my knowledge neither I nor my immediate family has a pecuniary interest, consistent with the requirements of Paragraph 9 of Rule XLIV of

the Standing Rules of the Senate, in any congressional directed spending item that I requested as reported by the Committee on Appropriations.

I thank you for your consideration of these important requests.

Sincerely,

SENATOR CHARLES E. SCHUMER.

The PRESIDING OFFICER. The majority leader.

#### CLOTURE MOTION

Mr. REID. Mr. President, we are here at 7 o'clock. My friend—I want to make sure the RECORD reflects that he is my friend—the Republican leader, we scuffle and argue out here, but we have done a lot of things together over the years. But I do have a direct quote from my friend just this afternoon:

We have been anxious to have health care votes since Tuesday and we have had the Crapo amendment pending since Tuesday. We would like to vote on amendments. All we are asking is an opportunity to offer amendments and get votes.

That is what we have been trying to do now for the last several hours. First of all, I have a cloture motion at the desk with respect to the conference report to accompany H.R. 3288.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report to accompany H.R. 3288, the Transportation, HUD, Related Agencies Appropriations Act for Fiscal Year 2010.

Daniel K. Inouye, Al Franken, Jon Tester, Paul G. Kirk, Jr., Roland W. Burris, Edward E. Kaufman, Jack Reed, Daniel K. Akaka, Mark Begich, Patty Murray, Jeff Bingaman, Robert P. Casey, Jr., Sherrod Brown, Thomas R. Carper, Byron L. Dorgan, Richard J. Durbin, Harry Reid.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNANIMOUS CONSENT REQUEST—H.R. 3590

Mr. REID. Mr. President, I now ask unanimous consent that the Senate resume consideration of H.R. 3590, the health care bill, for the purposes of considering the pending Crapo motion to commit and the Dorgan amendment No. 2739, as modified; that Senator BAUCUS be recognized to call up his side-by-side amendment to the Crapo motion; that once that amendment has been reported by number, Senator LAUTENBERG be recognized to call up his side-by-side amendment to the Dorgan amendment, as modified; that prior to each of the votes specified in this agreement, there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use or yielding back of the time, the Senate proceed to vote in relation to the Lau-

tenberg amendment; that upon disposition of the Lautenberg amendment, the Senate then proceed to vote in relation to the Dorgan amendment; that upon disposition of that amendment, the Senate proceed to vote in relation to the Baucus amendment; that upon disposition of that amendment, the Senate proceed to vote in relation to the Crapo motion to commit; that no other amendments be in order during the pendency of this agreement; that the above-referenced amendments and motion to commit be subject to an affirmative 60-vote threshold and that if they achieve that threshold, then they be agreed to and the motion to reconsider be laid upon the table; that if they do not achieve that threshold, then they be withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. As I stated earlier today, and as the majority leader has indicated, we have waited since Tuesday to vote on additional health care amendments, including the pending Crapo motion to commit on taxes. Finally, tonight the other side gave us language on their alternative to Senator CRAPO's motion.

Senator CRAPO's motion would ensure that the bill does not raise taxes on the middle class. I understand that their alternative is sense-of-the-Senate language on that subject. This consent request now has us voting on two drug reimportation amendments from the other side—not one but two on the Democratic side—one of which we just received less than an hour ago and is 100 pages long.

We are prepared to return to the health care bill and proceed to the two tax-related votes tonight. After those votes, I would suggest we continue to work on the bill and other amendments. I assume there could be votes on the drug reimportation issue and a whole host of other amendments we have all been anxious to offer at a later time. But at this stage, regretfully, I object and propound the following alternative.

Is my objection registered?

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. I would say to my friend, the majority leader, could we just get in the queue the Crapo amendment and the, I believe, Baucus side by side to the Crapo amendment? I ask unanimous consent that we do that, which would give us a way to go forward on two measures that both sides seem to want to vote on.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Just this afternoon, my friend, the Republican leader, said—and I quote—"I think it is pretty hard to argue with a straight face that we're"—"we" meaning Republicans—"not trying to proceed to amend and have votes on this bill. That's what we desire to do."

Mr. President, it is obvious the Republicans have said privately to their friends and publicly here and in the media that this is a bill they want to kill. To think they are interested in doing something that is positive about this stretches the imagination.

Also, let me just say this. I did not come to this body yesterday. I am not the expert with procedures in the Senate, but I am pretty good. I want everyone to understand this is a ploy procedurally to stop us from completing this bill. We are not going to have a bunch of amendments stacked up. Amendments have been offered. We are agreeing to vote on the amendments. We know the drug importation is a difficult vote for the Republicans; it is a difficult vote for the Democrats. But that is what we do around here.

Every amendment we have had so far has been 60-vote margins. This should not be any different. So I want the RECORD to reflect that we are ready to vote. He keeps talking about "since Tuesday." There have been quite a few things going on around here since Tuesday. It is not as if we have been sitting around staring in space. There has been good debate on the Senate floor. It is just that we have amendments that would—if we move off the motion they have filed, it creates a procedural issue that we would have difficulty getting out of. That is why they are wanting to do that. We have to clear the deck, continue offering amendments, as we have. I think that is the right way to do it.

So, Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Republican leader.

Mr. MCCONNELL. Mr. President, could I just say, at the risk of being redundant—and I do not want to get into a spirited debate with my friend and colleague over this—the facts are we were just handed a 100-page Lautenberg amendment about an hour ago. I have 39 Members here, all interested in that issue. It is simply impossible for me to clear voting on an amendment of 100 pages in duration that I just got an hour ago.

The reason I had suggested—and I was hopeful that maybe it would be a good way forward—we vote on the Crapo amendment, which everybody understands has been out there since Tuesday, and a sense-of-the-Senate resolution that is fairly brief, I assume—a very brief sense of the Senate that Senator BAUCUS was going to offer—is because both sides fully understand those two measures. They are not 100

pages long and enormously complicated. We did not just receive them.

So I do not want to get into an extensive back and forth with the majority leader, but I would say to him through the Chair, sincerely, it strikes me a good way to just get started would be to vote on these two issues, the Crapo motion and the Baucus amendment that both sides fully understand.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, this is no sucker punch the Democrats have just leveled to the Republicans. This amendment was previously offered by Senator COCHRAN, a Republican, that Senator LAUTENBERG is offering. This is something people have known about for a long time. So I understand people may have forgotten what was in that. They can have the evening to look it over. But I will renew my request tomorrow. We are ready to legislate.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, I guess I will have to prolong it just a little bit further.

I just learned something from the majority leader, that in fact this is an amendment that has been around before. We just learned that from his comments, having just received it a short time ago. Nevertheless, we will continue to talk and see if we cannot move forward and make progress and give both sides votes they are clearly interested in having.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I appreciate the attitude of the Republican leader. I think it is fair to have a chance to look at that amendment. We will be here in the morning and try to work through this.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The omnibus conference report.

Mr. MENENDEZ. Thank you, Mr. President.

Mr. President, I rise to speak about the omnibus conference bill before the Senate and specifically about provisions on Cuba that have not passed the Senate and have not been subjected to debate by this body. These provisions would undo current law where the Castro regime would have to pay in advance of shipment for goods being sold to them because of their terrible credit history.

Yes, Cuba's credit history is horrible. The Paris Club of creditor nations recently announced that Cuba has failed to pay almost \$30 billion in debt. Among poor nations that is the worst credit record in the world.

So I ask: If the Cuban Government has put off paying those to whom it al-

ready owes \$30 billion, why does anyone think it would meet new financial obligations to American farmers?

Considering the serious economic crisis we are facing right now, we need to focus on solutions for hard-working Americans, not subsidies for a brutal dictatorship. We should evaluate how to encourage the regime to allow a legitimate opening—not in terms of cell phones and hotel rooms that Cubans cannot afford but in terms of the right to organize, the right to think and speak what they believe.

However, what we are doing with this omnibus bill is far from that evaluation, and the process by which these changes have been forced upon this body is so deeply offensive to me and so deeply undemocratic that I have no intention—no intention—of continuing to vote for Omnibus appropriations bills if they are going to jam foreign policy changes down throats of Members in what some consider “must-pass” bills.

I am putting my colleagues on notice: You may have the wherewithal to do that because you have a committee perch or an opportunity to stick something in that has not been debated on the floor of the Senate in what you think is a must-pass bill, but do not expect me to cast critical votes to pass that bill.

An example of the danger of what we are doing by changing the definition that is now being changed in this omnibus bill of what we call “cash in advance” is exhibited by a *Europapress* report. I want to quote from that press report: “During a trade fair this month in Havana, Germany's Ambassador to Cuba, Claude Robert Ellner, told German businessmen that Cuba's debt to the German government had been forgiven”—forgiven—“in the hopes that Cuba will meet its debt obligations to them”—meaning to the businessmen.

In other words, German taxpayers will now be responsible for bailing out its private sector and, by implication, the Castro regime.

Thanks to the U.S. policy we have had up to now, of requiring the Castro regime to pay “cash in advance” for its purchases of agricultural products, U.S. taxpayers could rest assured that the same would not happen to them—that we would not have to forgive any debt or obligations in order to make sure private businesspeople got paid by the regime because, otherwise, they would be left defaulted.

The Castro regime has mastered the art of making some European Governments acquiesce to its every whim, even if it means a free pass for its daunting repression.

So how do they do it? It is rather simple. They give European countries a choice: either you do what we say or we will freeze your nationals' bank accounts and default on any debts. To me, that is also known as blackmail.

Let's take Spain, for example. Recently, European news services reported that Spain has begun a diplomatic offensive to convince the Castro regime to unblock nearly 266 million euros—or the equivalent of about 400 million United States dollars—in funds that have been frozen by the Castro regime of over 300 Spanish companies in Cuba. These are Spanish companies doing business in Cuba and now cannot get access to their money.

So what does the Spanish Government do? Not coincidentally, the Spanish Government announced that upon assuming the Presidency of the European Union in 2010, it would enter into a new bilateral agreement with the Castro regime that would replace the current European Union policy which contains diplomatic sanctions for human rights violations.

The Castro regime had made it clear to Spain that the current European Union policy was an “insurmountable obstacle” to normal relations and, I might add, for Spanish nationals and companies to get their money back. Therefore, the Spanish Government immediately responded to what I consider to be blackmail.

On a recent visit to Cuba, Spain's Foreign Minister, Miguel Angel Moratinos, met for 3 hours with Raul Castro. He did not get one concession—not one—on human rights. But he did get \$300 million that Cuba owed to Spanish companies that do business inside of Cuba.

Is that what the United States of America intends to do?

So the lesson for dictators is, go ahead and freeze the bank accounts of other countries' companies and create debt you do not intend to pay for and you get a free pass for repression.

Look at another article. A recent Reuters article highlights that Cuba continues to block access to foreign business bank accounts. Let me quote from that article:

Many foreign suppliers and investors in Cuba are still unable to repatriate hundreds of millions of dollars from local accounts almost a year after Cuban authorities blocked them because of the financial crisis, foreign diplomats and businessmen said.

It goes on to say in the article:

The businessmen, who asked not to be identified—

Because they are fearful if they are—said they were increasingly frustrated because the Communist authorities refused to offer explanations or solutions for the situation, which stems from a cash crunch in the Cuban economy triggered by the global downturn and heavy hurricane damage last year.

This is a quote from one of those people. He says:

I have repeatedly e-mailed, visited the offices and sent my representative to the offices of a company I did business with for years and which owes me money, and they simply refuse to talk to me.

That is what a Canadian businessman told Reuters.

The article goes on:

Delegations from foreign banks and investment funds holding commercial paper from Cuba's State banks have repeatedly traveled to Cuba this year seeking answers from the Central Bank or other authorities—without success.

Representatives of some companies with investment or joint ventures on the island say they were bracing for the possibility of not being able to repatriate year-end dividends paid to their accounts in Cuba.

Now, let's remember that some 90 percent of the country's economic activity is in the regime's hands, in the state's hands.

Foreign economic attachés and commercial representatives in Cuba said most of their nationals doing business with the Caribbean island still face payment problems.

That is all from that article. These are all those who are doing business with Cuba now finding themselves and their money trapped.

Last week, the Russian Federation's Audit Chamber revealed that the Cuban regime failed on three occasions to pay installments on the equivalent of \$355 million in a credit deal it signed with Russia in September of 2006. That is just the latest episode in a saga that in 2009 alone includes, first, reports by Mexico's *La Jornada* and Spain's *El País* newspapers that hundreds of foreign companies that transact business with the Cuban regime's authorities have had their accounts frozen—frozen—since January of 2009 by the regime-owned bank that is solely empowered to conduct commercial banking operations in that country.

Second, a June 9, 2009, Reuters article said:

Cuba has rolled over 200 million Euros in bond issues that were due in May, as the country's central bank asked for another year to repay foreign holders of the debt, financial sources in London and Havana said this week.

Those are direct quotes from those articles.

As a reminder, in Castro's Cuba, you can only do business with the regime because private business activity is strictly restricted.

So the real reason so many whose work is often subsidized by business interests advocate Cuba policy changes is about money and commerce, not about freedom and democracy. It makes me wonder why those who spend hours and hours in Havana listening to Castro's soliloquies cannot find minutes—minutes—for human rights and democracy activists. It makes me wonder why those who go and enjoy the Sun of Cuba will not shine the light of freedom on its jails full of political prisoners. They advocate for labor rights in the United States, but they are willing to accept forced labor inside of Cuba. They talk about democracy in Burma, but they are willing to sip the rum with Cuba's dictators.

Which takes me to a place in Cuba called Placetas. Placetas is a city in

the Villa Clara Province in the center of Cuba, in the heart of the island, in the center of Cuba. In other words, it is not a beachside resort frequented by Canadian and European tourists.

Placetas is also the home of this couple. It is the home of Cuban political prisoner and prodemocracy leader Jorge Luis Garcia Perez Antunez, generally known as Antunez. On March 15 of 1990, a then-25-year-old Antunez stood at the center square of Placetas listening to the government's official radio transmission calling for the Fourth Congress of the Communist Party. He spontaneously began to shout: "What we want and what we need are reforms like the ones performed in Eastern Europe." Immediately, he was beaten by state security agents, charged with "oral enemy propaganda," and imprisoned. That would begin a 17-year prison term, which is about half of his current life that he spent in prison. His crime? Saying: We need the types of changes that took place in Eastern Europe. For that, 17 years in prison. He was not released until 2007. He is now 45 years old, hopefully with an entire life ahead of him.

The Castro regime would love for Mr. Antunez and his wife, who is also a prodemocracy activist—this says in Spanish, "we are all the resistance" and "long live human rights." They would love for him to leave the island permanently, but he refuses to do so. He has decided to stay in Cuba and demand that the human and civil rights of the Cuban people be respected. For this, he has been rearrested over 30 times since 2007.

Last week, at that same center in that small town of Placetas where he had been originally arrested simply for saying that: What we need is a change as we saw in Eastern Europe, Antunez and other local prodemocracy leaders gathered to honor Cuba's current political prisoners, people who simply, through peaceful means, try to create changes for democracy and human rights inside of their country and get arrested and languish in jail.

Antunez and his colleagues were not "educated" on the importance of human rights and civil disobedience by foreign tourists, as some of my colleagues suggest would happen—that we need to send foreign tourists to educate the Cubans about human rights and civil disobedience. He and all of those who are languishing in Castro's jails understand about human rights and civil disobedience in a way to try to capture your rights. Unwittingly, though, foreign tourists have financed their repression. They give money to the regime that ultimately gives them the state security forces that throw people such as Antunez in jail.

Let me read an open letter that just came out by Mr. Antunez that was sent to Cuba's dictator Raul Castro. I am

going to quote from an English translation.

It says:

Mr. Raul Castro—

This is Mr. Antunez speaking now—

My name is Jorge Luis Garcia Perez Antunez—a former political prisoner—and I am writing to you again not because I pretend to make you aware of something that, far from alien, is commonplace in Cuba due to the nature and politics of your government. For several months now my spouse Yris Tamara Perez Aguilera and I find ourselves under forced house arrest by your political police. The week before the Juanes concert—

That is the concert of the famous Colombian singer Juanes—

a high ranking State security official upon arresting me informed me that there had been an order for my arrest throughout the island of Cuba, wherever I might be found. He emphasized that they were going to be watching every step I take. Since that date I have lost count of how many times I have been arrested, the majority of times with violence.

Mr. Dictator—allow me a few questions that may help you clarify some doubts amongst those compatriots of mine who are hopeful that your government would diminish repression or that even Democratic openings could be made.

He poses this question:

With what right do the authorities, without a prior crime being committed, detain and impede the free movement of their citizens in violation of a universally recognized right? What feelings could move a man like Captain Idel Gonzalez Morfi to beat my wife, a defenseless woman, so brutally, causing lasting effects to her bones for the sole act of arriving at a radio station to denounce with evidence the torture that her brother received in a Cuban prison. Or is it that for you there are only five families that exist in our country that have the right to protest and demand justice for their jailed relatives? Should you not be ashamed that your corrupt police officers remain stationed for days at the corner of my home to impede us from leaving our house and monitoring our movements in our own city?

Where is the professionalism and ethics of your subordinates that with their ridiculous operations provoke the mockery of the populace towards these persons on almost a daily basis? How do you feel when you encourage or allow these persons who call themselves men to beat and drag women through the streets such as: Damaris Moya Portieles, Marta Diaz, Ana Alfonso Arteaga, Sara Marta Fonseca, Yris Perez, and most recently—

The well-known blogger, Yoani Sanchez. I am adding for the record "the well-known blogger." He doesn't say that, but she is a well-known blogger, internationally known, recently beaten simply as she was trying to go to a place of civil disobedience.

How can you and your subordinates sleep calmly after deliberately and maliciously physically knocking down on more than one occasion Idania Yanez Contreras who is several months pregnant? How can you and your government speak about the battle of ideas when you are constantly repressing ideas through beatings, arrests, and years of incarceration?

Maybe your followers cannot find or even attempt to find a response. However, I find myself in the long list of persons that are not afraid to respond.

You act this way because you are a cruel man, and insensitive to the pain and suffering of others. You act this way because you are faithful to your anti Democratic and dictatorial vocation, because you are convinced that dictatorships like the one you preside over can only be maintained through terror and torture, and because the most minimal opening can lead to the loss of the one thing that you are interested in—which is maintaining yourself in power.

Lastly, returning to my case in particular, I will respond without even asking you beforehand the concrete motives of your continued repression against my person. Your government and your servants in the repressive corps cannot forgive my two biggest and only "crimes." First, that despite almost two decades of torture and cruel and inhuman punishment during my unjust and severe sanction, you could not break my dignity and my position as a political prisoner. And second, because even though I am accosted and brutalized and above all risk returning to prison, I have taken the decision not to leave my country in which I will continue struggling for a change that I believe is both necessary and inevitable.

The letter is signed: From Placetas, Jorge Luis Garcia Perez Antunez, December 2009.

This is the voice of those who languish under Castro's brutal dictatorship. As you can see, Mr. Antunez is an Afro-Cuban, not part of the White elite of the regime's dictatorship; not what the regime tells the world, that Cubans who are all White seek to oppose the dictatorship. Most of the movement for democracy inside of Cuba are Afro-Cubans. Inside of Cuba, they are subjected to a citizenship status that is less than any human being should be subjected to.

Antunez's voice rings in my head. It tugs at my conscience.

His words:

Despite almost two decades of torture and cruel and inhuman punishment during my unjust and severe sanction, you could not break my dignity and my position as a political prisoner, because even though I am accosted and brutalized and above all risk returning to prison, I have taken the decision not to leave my country in which I will continue struggling for a change I believe is both necessary and inevitable.

Antunez is right. Change in Cuba is inevitable, but the United States needs to be a catalyst of that change. It does not need to be a sustainer of that dictatorship. It does not need to create an infusion of money that only goes to a regime that ultimately uses it not to put more food on the plates of Cuban families but to arrest and brutalize people such as Mr. Antunez.

These are the human rights activists on whom some would turn their backs for the sake of doing business. I guess the only thing they can see is the color of money. Well, not me, not now, and not ever.

Thank you, Mr. President. With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I don't rise to add to what the Senator from New Jersey said. I just wish to take this opportunity to tell him I agree with him, and I appreciate his leadership on this issue over several years—even the years before he came to the Senate.

Often, I am asked in my State, because we can export so much agricultural stuff, if I would vote to open trade with Cuba. I said I am willing to open trade for Cuba when they give political freedom and economic freedom to the people of that country because this dictator has run Cuba into the most impoverished country in the world. Before he took over, they had a very viable middle class and they were a prosperous country.

I stand ready to help the Senator on what he is trying to do in that area.

Mr. MENENDEZ. If the Senator will yield, I thank the distinguished Senator from Iowa for his comments and for the position he has taken over a long period of time. It may not be the easiest, but I believe it is the one that is morally correct. Most important, on that day—which I believe is sooner rather than later—in which Cubans are free, they will remember who stood with them in the midst of this. That will make all the difference in the world. I thank the Senator.

Mr. GRASSLEY. Mr. President, I come to the floor at this point to give some breadth to a statement that was made on the floor earlier today. It was made by my friend, Senator BAUCUS. I don't take offense to what he said because I sensed a great deal of frustration in his statement. I will read what he said so you know what I am reacting to. The reason I don't take offense to what he said is because he and I have worked so closely together over 10 years, with one or the other of us being chairman of the Finance Committee, that we have such an understanding of each other.

Just prior to the remarks I am going to read, he had spoken positively about Senator ENZI and me. So I want my colleagues to know this statement is not made out of anger that I am going to give a rebuttal to.

Well, we kept working bipartisan—working together, for days and days, hours and hours, and then, fortunately, Mr. President, it got to the point where I'm just calling it as I see it. I can't—I—one of my feelings is I'm too honest about things. And it's—the Republicans started to walk away. They pulled away from the table. They had to leave.

I ask you why? Why did that happen? And the answer is, to be totally fair and above board, is—and above board, is because their leadership asked them to. Their leadership asked them to become disengaged from the process. I know that to be a fact. Why did their leadership ask Republicans to leave and become disengaged from the process? To be totally candid, they wanted to score political points by just attacking this bill. They

were not here to help—help be constructive, to find bipartisan solutions. They were for a while, then when the rubber started to meet the road and it came time to try to make some decisions, they left and began to attack—and began to attack.

I wish to take a few minutes to respond to these remarks that I read. It was asserted, through these remarks on the floor, that some Republicans in the so-called Gang of 6 were directed by the Senate Republican leadership to cease participating in bipartisan talks. The Gang of 6 referred to the six bipartisan members of the Senate Finance Committee. On the Democratic side, the members were my friends, three chairmen, including Senator BAUCUS, Budget Committee chairman; Senator CONRAD; and Energy Committee chairman, Senator BINGAMAN. All are senior members of the Democratic Caucus. On the Republican side, the three members included Senator SNOWE, ranking member of the Small Business Committee; Senator ENZI, ranking member of the Health, Education, Labor, and Pensions Committee; and this Senator. Senators SNOWE and ENZI are senior Members of the Republican caucus.

Chairman BAUCUS convened this working group with a singular goal of a bipartisan health care reform bill. We met for several weeks up in the Montana Room of Chairman BAUCUS's office. I would agree with the way participating Members have described these discussions. They were well informed, thoughtful, provocative, challenging, and frustrating all at the same time. But I would say that in the months we negotiated, there was never once that anyone walked away from the table. There was never once that there were any harsh words.

While we were engaged in those discussions, there was constant pressure from folks outside the room for us to reach a quick deal. That pressure came from the White House, it came from the Democratic leadership, it came from advocacy groups outside, and it came from many media folks covering the day-by-day meetings. To be fair, the Senate Republican leadership was very concerned about some of the directions the policy discussions were taking in the Gang of 6. That concern grew, particularly after the very partisan HELP Committee markup occurred. Senator HATCH left the original Gang of 7 because of the character and result of the HELP Committee markup.

Most important, the Senate Republican leadership was concerned that a bipartisan Finance Committee bill would be co-opted into a partisan floor bill, when the Democratic leadership merged the bills. Senators SNOWE, ENZI, and I anticipated that concern.

To be fair to Senator BAUCUS, as he was negotiating with us, he tried to convince us that we would be very much a part of those merging of the bills. He offered that in good faith. I

believe him. I even believe him today saying that. But seeing how neither the HELP Committee nor the Finance Committee was as involved as they should have been in what Senator REID put together in this 2,074-page bill, I wonder whether Senator BAUCUS could have, if we had a bipartisan agreement, actually carried out that guarantee.

From the get-go, we Republican members of the Gang of 6, to make sure we were a part of the process that I described, as Senator BAUCUS told us we would be, asked for assurances from the White House and from the Senate Democratic leadership on the next step in the legislative process, if we, in fact, did arrive at a bipartisan agreement.

I also found that many in the broader group of Republicans, who provided the bipartisan glue for the CHIP bill of 2008, had similar concerns. All Republicans had process concerns, such as where would it go once it left the Senate Finance Committee.

We wanted assurances, and here is what we wanted. The assurances requested boiled down to a good-faith promise that the bipartisan Finance Committee health care bill would not morph into a partisan health care reform bill when Majority Leader REID merged the two committee bills. We wanted to make sure the bipartisan character of a bipartisan Finance Committee bill was going to be retained through these next steps. To do otherwise would be akin to getting on a bus and not knowing where the bus was going or how much the bus ticket would cost. Assurances were also requested with respect to a conference between the House and Senate. The assurances were similar to assurances requested by Senator REID and made by the then-majority Republican leadership during the period of 2005 and 2006. The Democratic minority leader, at that time, made these assurances a condition to letting major regular order Finance Committee bills even go to conference.

As an example, take a look at the CONGRESSIONAL RECORD, and you will see the assurances made by then-Majority Leader Frist to then-Minority Leader REID. These requests were made repeatedly to the Democratic leadership, publicly and privately, about how the postcommittee action of the bipartisan group would be handled in the merger with the HELP Committee bill. It was a focus of a July 8 lunchtime, face-to-face meeting at the majority leader's office, with Senators REID, BAUCUS, CONRAD, BINGAMAN, SNOWE, ENZI, and myself. The bottom-line response from Senator REID at that meeting was he needed 60 votes.

I guess, the implication was, despite the fact that the Democratic caucus contained 60 members then and now, Senator REID didn't think it was possible to secure the votes of all members of his caucus. A restatement of the re-

ality of the Senate rules was not the assurances the three Republican Senators—this one included—sought from Senator REID.

Senator REID, himself, recognized the validity of this request in an August 8 Washington Post article. I ask unanimous consent to have that article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 3, 2009]

DEMOCRATS FIND RALLYING POINTS ON HEALTH REFORM, BUT SPLINTERS REMAIN

(By Shailagh Murray and Paul Kane)

Democrats leave town for the August recess with frayed nerves and fragile agreements on health-care reform, and a new bogeyman to fire up their constituents: the insurance industry.

With the House already gone and the Senate set to clear out by Friday, the terms of the recess battle are becoming clear. Republicans will assail the government coverage plan that Democrats and President Obama are advocating as a recklessly expensive federal takeover of health care. And Democrats will counter that GOP opposition represents a de facto endorsement of insurance industry abuses.

"We know what we're up against," House Speaker Nancy Pelosi (Calif.) told reporters on Friday. "Carpet-bombing, slash and burn, shock and awe—anything you want to say to describe what the insurance companies will do to hold on to their special advantage."

Although Pelosi won a significant victory last week when the Energy and Commerce Committee approved the House bill, setting up a floor debate after Labor Day, conservative Democrats were able to demand that negotiators weaken the government-plan provision. The uprising, which lasted for several days, suggested that the public option is growing increasingly vulnerable even as a consensus forms around other reform policies.

Republican leaders have pledged to use town halls, ads and other forums to intensify their assault on the Democratic-led reform effort. "I think it's safe to say that, over the August recess, as more Americans learn more about [Democrats'] plan, they're likely to have a very, very hot summer," House Minority Leader John A. Boehner (R-Ohio) said.

In the Senate, a bipartisan coalition of Finance Committee lawmakers is backing a member-run cooperative model as an alternative to the public option. But Republicans are beginning to push back against that cooperative approach, too.

The latest critic is Sen. John McCain (R-Ariz.), who on Sunday compared insurance co-ops to Fannie Mae and Freddie Mac, the government-backed mortgage giants that played prominent roles in the housing crisis. "I have not seen a public option that, in my view, meets the test of what would really not eventually lead to a government takeover," McCain said on CNN's "State of the Union."

Pelosi and other Democrats have countered that Republicans are seeking to protect a health insurance industry that is their business ally, not so much from a government insurance option, but from the broad industry reforms that enjoy public support, including the elimination of coverage caps and the practice of denying coverage to those with pre-existing conditions. The White House also wants to steer the debate

toward insurance reform, as it is easier to digest than long-term cost control, which is another chief objective.

"How you regulate the insurance industry is as important to health-care reform as controlling costs," said White House Chief of Staff Rahm Emanuel. The public plan, he said, is one of an array of measures intended to change industry behavior.

As the rhetoric against the industry heated up, the leading insurance trade group issued a statement Thursday calling for lawmakers to cool down their criticisms and redouble efforts toward "bipartisan health-care reform." Robert Zirkelbach, spokesman for America's Health Insurance Plans, defended his industry, saying it had already proposed many of the changes that Congress is seeking, including those involving pre-existing conditions and ratings based on health status and gender.

Despite the sparring, House and Senate Democrats and three GOP Senate negotiators have reached broad consensus on the outlines of reform. Lawmakers generally agree that individuals must be required to buy health insurance, that Medicaid should be significantly expanded, and that tax increases, in some form, will be required. The final bill also could bring about some of the most significant changes to Medicare since the program was created in 1965.

But the rebellion from fiscal conservatives on the Energy and Commerce Committee last week served as a political wake-up call for Democratic leaders. With enough votes on the panel and on the floor to sink reform legislation, the Blue Dog Coalition forced Pelosi and Emanuel into concessions that made the government plan similar to private health insurance, sparking a new fight with House liberals.

Sensing that the Blue Dogs had dug in for a prolonged fight, Pelosi and Emanuel gave in to most demands in order to get the legislation moving again. They essentially decided that it was better to pick a fight with their liberal flank, where Pelosi remains popular and where loyalty to Obama is strongest, particularly in the Congressional Black Caucus.

Despite threats from almost 60 progressive House Democrats—who outnumber the Blue Dogs—Pelosi defended the compromise, saying it was similar to one backed by Sen. Edward M. Kennedy (D-Mass.). Pelosi predicted that the liberal wing would fall in line because the legislation is so important to them.

"Are you asking me, 'Are the progressives going to take down universal, quality, affordable health care for all Americans?' I don't think so," Pelosi told reporters Friday, breaking into laughter at the question.

Just as troublesome as the internal House divisions is the burgeoning distrust among House Democrats, their Senate counterparts and the White House.

Pelosi acknowledged that "there are concerns" in her caucus that the White House, namely their former colleague Emanuel, takes House Democrats for granted. House lawmakers are being encouraged to pass the most liberal bill possible, she said, while the White House works on a bipartisan compromise with a select group of senators.

"It's no secret," Pelosi said, "that members sometimes think: 'Why do I always read in the paper that they're checking with the Finance Committee all the time? What does that mean, that they just want to know what's happened with the Finance Committee? What about the [Senate health] committee? What about our committees over here?'"



The six Senate Finance Committee negotiators have burrowed in for another six weeks of talks, having set a Sept. 15 deadline for producing a bill. The group includes an array of small-state senators with little national prominence who have proven surprisingly resistant to pressure from their party leaders and the White House.

Although the House bill and the Senate Health Committee version have attracted no Republican support, the Senate Finance Committee coalition includes Sens. Mike Enzi (Wyo.) and Charles Grassley (Iowa), both Republicans, along with moderate GOP Sen. Olympia Snowe (Maine). And the lead Democratic negotiator, Finance Committee Chairman Max Baucus (Mont.), is a moderate who has broken with his party on numerous bills co-authored with Grassley.

The closer these negotiators move to striking a deal, the more fraught the discussions become by issues of trust and political will. Among Republicans, the pressure is especially acute. All three GOP senators fear they will be sidelined once the bill is approved at the committee level, with their names invoked to demonstrate bipartisanship even as they're left with no say over the final product as it is meshed with the Senate health panel's version and then ultimately with the House bill.

For Republicans, a prime concern is that Senate Majority Leader Harry Reid (Nev.) will abandon the Finance Committee bill and force legislation to the Senate floor using budget rules that would protect against a Republican filibuster. Even advocates concede that the option is highly risky and that it would vastly limit the policy scope of the bill. For instance, Senate budget experts say most insurance reforms would have to be sidelined.

Treasury Secretary Timothy F. Geithner said Sunday that the administration would consider all options. "Ideally, you want to do this with as broad a base of consensus as possible," he said in an interview on ABC's "This Week." "But people on the Hill are going to have to make that choice: Do they want to help shape this and be part of it, or do they want this country, the United States of America, to go another several decades [without reform]?"

Reid said he already provided the Republicans with some assurances, and added, "I'll do more if necessary." He said of GOP concerns, "I don't blame them." And he added that, considering the political realities of the Senate, with its large number of moderate Democrats, health-care reform would have to gain significant bipartisan support to cross the finish line.

"I sure hope we can get a bipartisan bill; it makes it easier for me to go home," moderate Sen. Mary Landrieu (D-La.) told the Democratic caucus last week, according to Reid.

"We all feel that way," Reid added.

Mr. GRASSLEY. Mr. President, I will quote, in part, from the article:

The closer these negotiators move to striking a deal, the more fraught the discussions become by issues of trust and political will. Among Republicans, the pressure is especially acute. All three GOP senators fear they will be sidelined once the bill is approved at the committee level, with their names invoked to demonstrate bipartisanship even as they're left with no say over the final product as it is meshed with the Senate health panel's version and then ultimately with the House bill.

Republicans were also worried that the bipartisan product could be lifted

into a partisan reconciliation bill. I quote further from that same Post article:

Reid said he already provided the Republicans with some assurances, and added, "I'll do more if necessary."

Continuing to quote from the Post article:

He said of GOP concerns, "I don't blame them." And he added that, considering the political realities of the Senate, with its large number of moderate Democrats, health-care reform would have to gain significant bipartisan support to cross the finish line.

President Obama and the Senate Democratic leadership set a deadline of September 15 for the bipartisan Gang of 6 to produce a proposal. If the proposal were not available by then, the President and Senate Democratic leadership made it clear the plug would be pulled on further bipartisan talks.

I point that out because that is very significant. A powerful member of the Senate Democratic leadership, the senior Senator from New York, made it crystal clear the Senate Democratic leadership would pull the plug. That member, who is very smart and articulate, made it as transparent as possible that the September 15 deadline was more important than a bipartisan deal.

I ask you to go back and look at the media reports. The Gang of 6 was unable to reach a deal on contentious issues such as abortion, the individual mandate, and financing issues by White House/Democratic leadership's deadline.

Chairman BAUCUS had to move forward. I respect the pressure my friend from Montana was under. I have been there myself. But the record needs to be correctly made that the September 15 deadline was not a Republican deadline. It was a deadline imposed by the White House and the Senate Democratic leadership. I might say that wasn't just the GOP deadline—it wasn't a deadline for the Gang of 6 either. I didn't sense, from the three Democratic members, that they agreed with that.

So the Senate Democratic leadership pulled the plug on the talks. Again, go check the public comments and press reports. They pulled the plug. Senator ENZI and I could not agree to the product at that point because of substantive issues that were resolved against us and the failure of the White House or Senate Democratic leadership to deliver on those process assurances that we asked for.

Senator SNOWE did have substantive issues resolved sufficiently at the Finance Committee markup so that she could support the bill.

I might note today that I heard Senator SNOWE caution the Democrats as she gave them the boost from her vote in the Finance Committee—that was right after the bill passed—she made it clear that her vote for later stages

would depend in part on data on the key question of whether the product makes health care more affordable. Her letter to CBO dated December 3 lays out the issues in precision.

At the next stage of the process, the merged-bill stage, all of the Senate Republicans' worst fears were confirmed, but it was especially telling to Senator ENZI and me. My sense is Senator SNOWE appreciated it more than any other member of our conference. The bottom line was that the majority leader's merged bill was constructed in such a partisan way that Senator SNOWE's input was cast aside.

Let's be clear. Senate Republicans did not set deadlines. Senate Republicans did not threaten to go their own way if the deadlines were not met. Even today, the pending motion from this side of the aisle puts the question to the Senate this way: Take the bill back to the Finance Committee.

As the old saying goes, hindsight is 20/20. As I look back on the process, I make these observations: There was an uncanny disconnect between those inside and outside the room. Many on the outside, mainly from the left side of the political spectrum, seemed to want a reform deal just to have a deal. They did not seem to be that curious about the contents. Perhaps for some of those folks, it was a bit of an imperative to draw on the good will that any President has in the first few months of office.

For those of us in the room—meaning the room where the negotiations were going on—there was a realization that we were tackling, as Chairman BAUCUS has described it, an extremely complex set of issues. We learned very quickly that closing the loop on the policy issues, let alone finding political consensus, was not easy.

The pressure to close a deal by the July 4 recess was overwhelming. My friend, the chairman, wisely pushed back and said we would get a deal when we reached a bipartisan deal. The Group of 6 was unable to reach a deal on contentious issues such as abortion, individual mandate, and financing issues faced by the White House-Democratic leadership deadline. Chairman BAUCUS had to move. In my heart, I feel he would rather not have had that sort of pressure or make that decision. But that was not our deadline. It was a deadline imposed by the White House and the Senate Democratic leadership. They pulled the plug on the talks. Go check the public comments and the press reports. They pulled the plug. Senator ENZI and I could not agree to a product at that point because of the substantive issues that were very much involved.

I want to make it very clear, for this Senator, of the three Republicans who were negotiating, kind of in summary, that the Republican leadership, I think, had questions about a lot of

things that were going on in those negotiations. But never once did Senator MCCONNELL, my leader, say to me: Get out of there.

That is the impression that was left this morning.

I can only say that I think I have established a reputation in the Senate, particularly while I was chairman of the Senate Finance Committee, that I did not listen to either the White House or people in leadership necessarily when I thought a bipartisan compromise was the only way to get things done. I suppose there is a whole long list of things that I ought to write down before I make this statement, but I can only think of two or three right now that I can be sure of that I can say in an intellectually honest way that I stood up to the Bush White House when I was chairman of the committee.

They came out immediately for a \$1.7 trillion tax cut in 2001. I made a decision early on that it was not good for the economy and it was not politically possible. So we passed a much smaller, in a bipartisan way, tax bill for that year. And yet it was the biggest tax cut in the history of the country.

In 2003, when the White House and House Republicans in the majority at that time said we had to have a \$700 billion tax cut in addition to the tax cut that was passed in 2001, there were not votes in the Senate among just Republicans to get it done. To secure the votes to get it done, we had to limit it to half that amount of money, or just a little bit more than half that amount of money. And in order to get those votes, contrary to the \$700 billion tax cut that the Bush White House wanted and the House Republicans wanted that we could not get through here, I said I will not come out of conference with a tax cut more than that amount of roughly \$300 billion.

We got that done by just the bare majority to get it done. But I stood up to the White House, I stood up to the House Republican leadership who thought we should not be doing anything that was short of that full \$700 billion.

There have been other health care bills very recently where I stood up against the White House and against our Republican leadership.

I think I have developed a reputation where I am going to do what is right for the State of Iowa and for our country. And I am going to try to represent a Republican point of view as best I can, considering first the country and my own constituency.

Then when it comes to whether people in this body or outside of this body might think that for the whole months of May, June, and July, and through August, with a couple meetings we had during the month of August, that we were dragging our feet to kill a health care reform bill, I want to ask people if they would think I wouldn't have bet-

ter things to do with my time than to have 24 different meetings, one on one with Chairman BAUCUS, or that I wouldn't have more than something else to do than have 31 meetings with the Group of 6. These were not just short meetings. These were meetings that lasted hours. There was another group of people—GRASSLEY, BAUCUS, and others, sometimes that included people from the HELP Committee and the Budget Committee. But we had 25 meetings like that. I wonder if people think we would just be meeting and spending all those hours to make sure that nothing happened around here. No. Every one of the 100 Senators in this body, if you were to ask them, would suggest changes in health care that need to be made. Even in that 2,074-page bill, there are some things that most conservative people in this country would think ought to be done.

We all know to some extent something has to be done about this system. We worked for a long period of time, thinking we could have something bipartisan. But it did not work out that way, and now we are at a point where we have a partisan bill.

That is not the way you should handle an issue such as health care reform. Just think of the word "health," "health care." It deals with the life and death of 306 million Americans. Just think, you are restructuring one-sixth of the economy.

Senator BAUCUS and I started out in January and February saying to everybody we met, every group we talked to, that something this momentous ought to be passing with 75 or 80 votes, not just 60 votes. Maybe one of the times the White House decided to pull the plug on September 15 may have come on August 5 when the Group of 6 had our last meeting with President Obama. He was the only one from the White House there and the six of us. It was a very casual discussion.

I said this before so I am not saying something that has not been said. But President Obama made one request of me and I asked him a question. For my part, I said: You know, it would make it a heck of a lot easier to get a bipartisan agreement if you would just say you could sign a bill without a public option. That is no different than what I said to him on March 5 when I was down at the White House, that the public option was a major impediment to getting a bipartisan agreement. Then he asked me would I be willing to be one of three Republicans, along with the rest of the Democrats, to provide 60 votes. My answer was upfront: No. As I told him, you can clarify with Senator BAUCUS sitting right here beside you, that 4 or 5 months before that, I told Senator BAUCUS: Don't plan on three Republicans providing the margin, that we were here to help get a broad-based consensus, as Senator BAUCUS and I said early on this year, that something

this massive ought to pass with a wide bipartisan majority.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I need to correct the RECORD. In the part of my statement where I refer to the July 8 meeting with Senator REID, it was only SNOWE, GRASSLEY, and ENZI, not the other Senators I named. So I wish to correct that for the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

#### MORNING BUSINESS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### DNA SAMPLING

Mr. KYL. Mr. President, I ask unanimous consent that the following letter, which consists of my May 19, 2008, comments on proposed Federal regulations governing the collection of DNA samples from Federal arrestees and illegal-immigrant deportees, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, May 19, 2008.

Re OAG Docket Number 119

Mr. DAVID J. KARP,  
Senior Counsel, Office of Legal Policy, Main  
Justice Building, Pennsylvania Avenue,  
NW., Washington, DC.

DEAR MR. KARP: I am writing to comment on the Justice Department's April 18, 2008, proposed regulation for implementing the DNA sample collection authority created by section 1004 of the DNA Fingerprint Act, Public Law 109-162, and by section 155 of the Adam Walsh Act, Public Law 109-248. I am the legislative author of both of these provisions.

Allow me to note at the outset that I have reviewed the proposed regulations and have concluded that they properly implement the authority created by the laws noted above. I do not recommend that you make any changes to the proposed regulations, as I believe that they are consistent with the clear meaning and spirit of their underlying statutory authorization.

The remainder of this letter first comments on the general privacy objections that have been raised by other commenters with regard to the proposed regulations, and then

addresses several other criticisms and recommendations that are made in some of those comments.

#### PRIVACY CONCERNS

The most common criticism leveled against the proposed regulations by other commenters is that the proposed rules pose a threat to individual privacy. The general argument made is that although fingerprints are routinely taken at arrest, DNA fingerprinting is not like ordinary fingerprinting because DNA has the potential to reveal medically sensitive or other private information. This concern usually also is the basis for arguments that the proposed regulations are unconstitutional.

I think that the privacy concern is best addressed by explaining the legal framework governing the operation of the National DNA Index System (NDIS) and the practical realities of DNA analysis.

A number of statutes prescribe privacy restrictions for use of DNA samples. See 42 U.S.C. 14132(b)(3), (c), 14133(b)–(c), 14135(b)(2), 14135e. In general, DNA information is treated like other law-enforcement case file information—its dissemination is prohibited and subject to serious professional and even criminal sanctions. In particular, section 14133(c) of title 42 provides that any person who has access to individually identifiable DNA information in NDIS and knowingly discloses such information in an unauthorized manner may be fined up to \$100,000, and any person who accesses DNA information without authorization may be fined up to \$250,000 and imprisoned up to one year.

Lab employees are professionals. The notion that they will violate the laws and regulations governing DNA analysis not only requires one to assume that these employees will jeopardize their careers, but also that they will risk criminal fines and even imprisonment. Such fears are not realistic. Indeed, when arguments were made that such violations might occur during the Senate Judiciary Committee's consideration of the Justice for All Act in 2004, I proposed an amendment, which was subsequently enacted into law, to increase the penalties in section 14133(c) for misuse of DNA samples. When I consulted with the Justice Department about my proposal, I was told that the FBI had no objection to the amendment because there was no chance that any lab employee would ever run afoul of the provision.

Let us assume, however, that a rogue lab employee were not deterred by professional and criminal sanctions and were determined to use a DNA sample to discover private information. That lab employee would find that it is virtually impossible for him to use the NDIS system to do so.

Developing a DNA profile from a saliva or blood sample involves three broad steps: (1) the DNA is extracted from the sample; (2) the DNA is copied or amplified at one of the sites on the DNA strand from which the profile will be drawn; and (3) the amplified DNA is processed in a genetic analyzer to produce a DNA profile.

Each law enforcement DNA laboratory has a defined number of staff who have access to DNA samples, the identity of the person who submitted the sample, and DNA analysis equipment. This is currently the universe of people who could hypothetically use collected samples to try to violate someone's privacy. If one of these employees sought to analyze an individual's DNA to find medically sensitive or other private information, he would run into a series of virtually insurmountable practical problems.

First, the 13 sites at which a DNA strand is analyzed for purposes of entry of a profile

into the national database are sites that do not reveal any medically sensitive information. The 13 sites were chosen because the sites do not reveal sensitive information, the sites are relatively stable and do not degrade easily, and the sites tend to demonstrate great variation between different individuals (with the exception of identical twins). Even the American Civil Liberties Union's (ACLU) May 19, 2008, comment on the proposed regulations, while speculating that the 13 sites may be found to reveal sensitive information in the future, concedes "none of the CODIS loci have been found to date to be predictive for any physical or disease traits."

So our hypothetical rogue lab employee would need to draw a profile of different sites on the DNA strand in order to discover medically sensitive information. This would be extremely difficult to do. The second step of the analysis—amplifying the relevant DNA sites for analysis—requires the use of specialized reagents and equipment to copy the DNA fragments in question.

Once the DNA is amplified, the DNA is pushed through a column that separates out the DNA fragments. The columns used in the lab serve to duplicate DNA for the specific 13 CODIS sites. So our rogue employee would need to purchase a specialized column for duplicating a different type of DNA. Next the employee would need to obtain different reagents for reproducing the DNA that he seeks. Reagents consist of polymerase, certain chemicals, and DNA primers. A primer is a piece of DNA that recognizes its complementary DNA on a molecule and attaches itself, allowing that part to be reproduced when the remaining reagents are added. Access to primers is extremely limited—our rogue employee couldn't just buy them on the internet or from a medical supply store. Primers usually are only available from the DNA researcher who discovered the DNA gene or site in question. These researchers generally have a proprietary interest in their discovery; they do not publish all of the information necessary to analyze that gene and do not give the necessary primers to others. A lab employee is very unlikely to be able to obtain the necessary information and primers to amplify the DNA that he seeks.

Moreover, even if our hypothetical lab employee were able to copy the DNA in question, he would next need to retrofit the DNA analyzer to draw a profile from that DNA. This would require breaking down, reassembling, and recalibrating the lab equipment, and reprogramming the equipment and software to analyze different DNA sites. This is an extremely complex process and requires specialized software that, again, is generally only available from the researchers who identified the gene in question. The lab employees are not trained to analyze any DNA other than at the 13 sites used in CODIS; to analyze DNA used for medical purposes is a completely different specialization that requires the use of equipment that lab employees have no experience using.

Finally, our hypothetical rogue employee would need to figure out how to do this analysis by himself and would need to account for his use of the equipment. DNA analysis of database samples is an assembly-line process that involves different persons carrying out different steps of the analysis. An employee acting alone would need to come in at night and perform all of the steps by himself. Although usually no employees are in the lab at night, the equipment runs through the night. To use the equipment for a different purpose, the rogue employee would need to shut it down, which itself would lead to an

inquiry into why the equipment did not perform a programmed analysis at night. Moreover, the robotics and most of the instruments used in DNA analysis have programmed activity logs that record what process was run on the equipment, and employees must log in to operate the equipment. Any inquiry into why the equipment was not running at night would immediately reveal that a different process was run on the equipment and would reveal who ran that process.

Although it is not completely impossible, it is extremely unlikely that a lab employee would be able to perform all of these steps on his own, and it is virtually impossible that he would be able to do so without getting caught. Suffice to say that although the NDIS database has existed for 10 years and nearly 6 million offender profiles have been added to that database, and although the lab has been conducting analysis of DNA from criminal suspects and victims for 20 years, there has never been one noted case in which a lab employee has ever made an unauthorized disclosure of DNA information. The risk that lab employees will undertake such acts is not substantial enough to merit consideration in a reasoned analysis of the privacy risks posed by the operation of NDIS.

Finally, it bears weighing the virtually nonexistent risk to privacy posed by NDIS against other potential risks to DNA privacy. Many of the arguments about the privacy threats created by law-enforcement DNA sampling and analysis appear to assume that DNA samples and the information within them could not be accessed in any other way. A quick internet search of the words "DNA testing," however, reveals that there are many private laboratories that offer to the public at large a wide variety of DNA tests for sensitive information. Nor are DNA samples particularly difficult to obtain. Every time an individual spits on the sidewalk, or even drinks from a paper cup and discards it, he leaves a DNA sample behind. Particularly in light of the criminal penalties attached to misuse of the NDIS system, a person determined to analyze another person's DNA for an improper purposes would find much easier sources of DNA than the samples collected by law enforcement, and would have much readier access to DNA analysis than that made possible by law-enforcement laboratories. The incremental threat to DNA privacy posed by the NDIS system is extremely small.

#### RESPONSE TO OTHER COMMENTERS

A number of other commenters have offered various criticisms of the proposed regulations beyond generalized privacy arguments. Many of these comments are very similar and appear to have been generated by news stories and notices placed by various organizations and publications. Other criticisms and recommendations are unique to particular commenters. The remainder of this letter responds to those criticisms, first addressing the mass comments and then the arguments of particular organizations and individuals.

#### Constitutionality

The argument that arrestee and illegal-immigrant DNA sampling violates the Fourth Amendment mostly rests on the privacy arguments that are addressed above. It is beyond argument that the Constitution permits arrestees and immigration detainees to be fingerprinted and searched. If the privacy risks posed by law-enforcement DNA sampling are properly understood, there is no constitutionally significant difference between ordinary fingerprinting and DNA

fingerprinting. Both are used for the legitimate purpose of biometric identification and neither poses a significant risk to individual privacy.

The physical intrusion necessary to collect a DNA sample is minor and is commensurate with the other types of privacy intrusions endured by arrestees, who are generally subject to search following arrest. Some commenters cite the 1966 *Schmerber* decision as a benchmark, and note that the court upheld the drawing of a blood sample in that case because the blood was drawn by a medical professional rather than by a police officer. These commenters neglect to mention, however, that the disposable and sterile pinprick kits used to draw blood samples for purposes of DNA analysis are much different from and much less medically invasive than the needle-drawn blood samples of 1966. And cheek swabs present even less of an intrusion. Modern DNA sample-collection techniques present less of a privacy intrusion than do the physical searches that regularly accompany arrest.

#### Presumption of Innocence

Many commenters argue that DNA profiling of arrestees violates the presumption of innocence that attaches to an arrestee before he is convicted of a crime. Arrestees are presumed innocent, but DNA sampling and analysis does not constitute a finding or judgment of guilt. If biometric identification did constitute such a judgment, then the photographs and fingerprints taken at and kept after arrest also would violate the presumption of innocence. They do not, and neither does DNA sampling.

#### Disparate Impact

A number of commenters condemn the proposed regulations on the basis that a disproportionate number of members of racial minorities may be subjected to DNA sampling. A disparate effect, however, is not the same thing as discrimination and is not unconstitutional or otherwise proscribed. Nor could it be. Most laws have some type of disparate effect; it is a rare (if nonexistent) law that affects each racial or ethnic group in the United States in proportion to its percentage of the U.S. population. The proposed regulations are tied to an individual's arrest or his detention on account of his illegal presence in this country; they do not discriminate between individuals on account of their race.

#### Analysis Backlog

Several commenters complain that adding DNA samples of arrestees and detained illegal immigrants to NDIS will increase the number of DNA samples that the FBI lab or private labs used by the FBI must analyze, and that a backlog of samples may result. The FBI lab and other law enforcement authorities, however, have ample discretion to decide which samples should be analyzed first. These commenters suggest that a backlog of samples may hinder investigations, but a murder or rape for which no suspect has been identified would be hindered more by never collecting a DNA sample from the perpetrator than by collecting that sample and analyzing it after a delay. To the extent that these commenters are concerned about the cost of analyzing DNA samples, they should bear in mind the massive costs of the labor-intensive police manhunts for serial murderers and rapists that would be avoided if the perpetrator could be identified through DNA sample collection, and the enormous costs of crime to its victims and to society as a whole.

#### Outsourcing

Many commenters suggest that the proposed regulations pose a privacy risk by allowing private contractors to aid in DNA sample processing. These private laboratories are subject to a comprehensive system of regulation, however. They also have a powerful incentive to handle samples properly: a lab that fails to do so will lose its contract and will go out of business.

#### ACLU Letter

In addition to raising arguments addressed above, the ACLU's May 19 comment argues that biological samples should be destroyed after analysis. This recommendation is outside the scope of the proposed regulations, and in any event should be rejected. Biological samples need to be retained in case the technology used for analysis is changed and all existing samples must be reanalyzed, something that has happened once already. Moreover, such samples are used for quality control, and for rechecking a purported match to crime scene evidence without taking a new sample from the suspect identified by the match.

The ACLU argues that collection of DNA from immigration detainees will deepen resentment and hostility among ethnic communities living in or visiting the United States. Few things exacerbate tensions between Americans and foreign visitors to this country more severely, however, than the serious crimes committed in the United States by illegal immigrants. Angel Resendiz, the so-called Railway Killer, was in this country illegal and is believed to have murdered 15 people here (and an untold number in Mexico). Santana Aceves, the so-called Chandler rapist and also an illegal immigrant, sexually assaulted half a dozen young girls in their homes in the Chandler suburb of Phoenix in 2007 and 2008. Both cases "deepened resentment and hostility" toward illegal immigrants in this country. And both Resendiz and Aceves would have been identified and their crime sprees likely stopped early had their DNA been taken during one of their earlier deportations. Relations between different groups in this country surely would be bettered rather than worsened has these two men's names not been permitted to become household words in the communities that they targeted.

The ACLU recommends that the proposed regulations "prohibit comparison of an individual's DNA profile with anything other than the DNA profiles generated from the crime scene evidence for which she [sic] is suspected unless or until that person is convicted." This is a proposal to bar the use of arrestee and detainee DNA to make cold-case matches to crime-scene evidence. It is effectively a recommendation to gut the proposed regulations and to abdicate the Justice Department's responsibility to use the authority created by the DNA Fingerprint Act and the Adam Walsh Act. My floor statement commenting on final Senate action on the DNA Fingerprint Act describes the dozens of rapes and murders that could have been prevented in just one American city had arrestee sampling been in place; I offer it as rebuttal to the ACLU's argument that the proposed regulations should not permit arrestee DNA to be used to solve cold-case crimes.

The ACLU suggests that the Justice Department reassess the costs and benefits of broad sampling and consider narrower alternatives. "Narrower alternatives" would mean fewer rapes and murders prevented, a cost which alone justifies the proposed regulations.

The ACLU argues that the proposed regulations, by allowing some exceptions to their

sampling rules, fail to give individuals adequate notice whether they will be subject to sampling. The proposed rule clearly requires that all federal arrestees and illegal immigrants being deported be sampled. Allowing a few exceptions to this rule for practical and other reasons does not significantly detract from the notice given by the proposed regulations.

The ACLU complains that the proposed rule does not address how to avoid duplicative sampling of the same individual. This is an administrative matter that does not merit attention in the text of the proposed regulation.

The ACLU questions the Justice Department's estimate of the cost of analyzing and storing DNA samples. The Justice Department's estimate is comparable to other estimates of the costs of DNA storage and analysis.

The ACLU concludes that Congress "doubtless intended that the regulations would address [legal, privacy, and policy] concerns and would limit the DNA sampling to instances where . . . the benefits outweigh the costs." I believe that the proposed rule adequately considers these concerns and appropriately exercises the authority given to the Justice Department by Congress.

#### McLain and Mercer Letter

William McClain and Stephen Mercer, both law professors at the University of the District of Columbia, contend in a May 19, 2008 comment that the proposed regulations should be modified to allow an individual to retain counsel and file a lawsuit before a sample is collected. I urge the Justice Department to reject this recommendation. Any individual wishing to contest the legality of arrestee sampling may challenge such sampling after the fact; the interests at stake are not substantial enough to justify a pre-litigation injunction in the regulations themselves. Such a delay in sampling would also undermine the administration of the proposed system, as it is far easier to collect a sample at booking, when fingerprints and pictures are also taken.

The professors also suggest that the "reasonable means" authorized to collect samples be defined more specifically and be defined in the same way for all agencies collecting samples. The different agencies collecting samples have different means at their disposal and deal with different populations of offenders and detainees; it is appropriate that reasonableness should be defined in the context of each agency and by that agency.

The professors also recommend that all DNA processing agreements with private entities specify that all constitutional, statutory, and regulatory federal law requirements that would apply to government processing also apply to private processing. Such a requirement is superfluous, and in any event is unnecessary in light of the comprehensive regulation of private entities processing DNA on behalf of the Federal government.

#### Center for Constitutional Rights Letter

Aside from arguments addressed above, CCR argues in a May 19, 2008 comment that the proposed regulations would give Homeland Security staff discretion to "take DNA samples of everyone pulled out of line for questioning at an airport immigration station." This is an unreasonable reading of the regulations, which exclude from sampling "aliens held at a port of entry during consideration of admissibility and not subject to further detention or proceedings." The regulation's "further detention or proceedings"

clearly contemplates more than just minor additional questioning at a port of entry.

Alliance for Democracy and United for Peace and Justice et al.

These two groups submitted comments on May 19, 2008 suggesting that the proposed regulations would inhibit speech because DNA samples would be taken from persons arrested for civil disobedience. A person wishing to criticize the government or communicate other messages has many ways of doing so without committing a crime, and if he chooses to commit a crime, he should be prepared to face the consequences of doing so, including booking, fingerprinting, DNA sample collection, and a fine or imprisonment.

National Lawyers Guild—Columbia Law School

NLG suggests in an April 21, 2008 comment that the proposed regulations be amended to expressly bar DNA sample collection from LPRs until they are ordered removed and their appeals are exhausted. LPRs very rarely find themselves in immigration detention, and when they do so, it is overwhelmingly because they have committed a crime—and therefore would be subject to sampling on that basis. The remaining class of LPRs not subject to sampling is *de minimis*; their situation does not rise to the level of a matter that needs to be addressed on the face of the proposed regulations.

NLG also suggests that, because of the risk that a citizen may be mistakenly detained in immigration proceedings, no illegal immigrant should be sampled unless his nationality is conceded or proved, or in the alternative that no sampling ought to take place until a final order of removal has been entered. This proposal would substantially defeat administration of illegal-immigrant sampling by precluding sampling as part of the booking process. Moreover, cases in which citizens are mistakenly detained for deportation are extremely rare and are almost always corrected very quickly. The few cases that might occur should be dealt with on a case-by-case basis and do not merit attention in the text of the proposed rule.

NLG also suggests that subsection (b)(1) of the proposed rule suggests that “the Secretary of Homeland Security could authorize that which is not authorized by Congress”—apparently LPR sampling, though NLG is unclear on this point. NLG’s concern is misplaced. The bar on LPR sampling is implicit in the proposed regulation, which earlier in the same subsection clearly excludes LPRs.

Administrative Office of the United States Courts

The AOC suggests in a May 16, 2008 comment that the word “agency” as used in the proposed rule be defined to exempt judicial agencies from the obligation to collect DNA samples from persons facing charges. A person facing Federal charges may have been arrested by state authorities or turned himself in, and therefore may not have had a DNA sample collected by an executive agency during a Federal arrest. I do not recommend that judicial agencies be exempted from the proposed rule, as they may be the only—or at least the first—Federal agency that is in a position to collect a DNA sample from an offender. I see no reason to exempt judicial pre-trial services agencies from the obligation of all parts of the Federal government to carry out those ministerial tasks necessary to the prevention of violent crime.

AOC also notes that the proposed regulation does not identify a system for determining whether an offender’s sample is al-

ready in NDIS. This is an administrative matter that need not be addressed in the text of the proposed regulation.

Canadian Embassy and MP

The Canadian Embassy and a Canadian Member of Parliament submitted comments on May 19, 2008 posing several questions about the scope of the proposed rules, most of which appear to be based on a misunderstanding that the rule would require sampling of routine Canadian visitors to the United States. The rule exempts persons processed for lawful entry to the United States or held at a port of entry for consideration for admission to the United States, exceptions that address the concerns raised in these comments.

Sincerely,

JON KYL,  
U.S. Senator.

#### FUNDING FOR PEACEKEEPER TRAINING

Mr. LEVIN. Mr. President, I want to speak today in favor of the administration’s funding request for the Global Peace Operations Initiative and one of its important components, the Africa Contingency Operations Training and Assistance Program, for which the bill before the Senate, the fiscal year 2010 State-Foreign Operations appropriations bill, includes \$96.8 million in funding. These programs, which I have supported in their various forms for more than a decade, are vital tools in helping the United States and nations around the world, but especially in Africa, to contain crises, violence and instability that threaten not only other nations, but also our own.

The Global Peace Operations Initiative, or GPOI, began in fiscal year 2005 as an effort to address worrisome gaps in the world community’s ability to support, equip, and sustain a growing number of peacekeeping operations. This initiative comprised, in part, the fulfillment of a U.S. pledge at the June 2004 G-8 summit meeting at Sea Island, Georgia, to train 75,000 new peacekeepers. The GPOI built on and incorporated the Africa Contingency Operations Training and Assistance Program, or ACOTA, which has trained African peacekeepers since 1997. The objective of these programs is to train and equip military units to deploy to peacekeeping operations, many of them in Africa. In addition, GPOI supports efforts to train special “gendarme” police units to participate in peacekeeping operations.

Why are these programs so important? I think we all recognize that the world has become a more challenging and less stable place, but we may not recognize just how pronounced regional security problems have become. We do not need to look further than the two largest United Nations peacekeeping operations, in Darfur, Sudan, and in the Democratic Republic of the Congo. Both of these missions were authorized in response to complex regional conflicts. The United Nations, which over-

sees the majority of peacekeeping operations worldwide, reports that more than 100,000 peacekeepers and police personnel are deployed on peacekeeping operations—a sevenfold increase since 1999. Those troops are deployed in 17 separate operations, nearly half of which are on the African continent.

Through ACOTA and GPOI, the United States has helped to meet the growing demand for peacekeeping personnel. Since its start in 2005 through the end of fiscal year 2009, GPOI has provided training for nearly 87,000 personnel representing more than 50 nations. Appropriately, given the security challenges in Africa, ACOTA is GPOI’s biggest initiative. Since 2005, more than 77,000 personnel from about two dozen African nations have received training through the initiative, and almost 14,000 more have received training under ACOTA through other funding sources. To make these numbers more significant, on average, 90 percent of units trained under ACOTA have deployed between 2005 and 2009.

GPOI provides partner nations with the training and equipment they need to perform peacekeeping missions through the UN or regional groups such as the African Union. This training is broad, and appropriately focuses on peacekeeping-specific tasks such as how to operate checkpoints and convoys, maintaining peace by safely disarming potential combatants, protecting refugees and internally displaced persons, developing and following appropriate rules of engagement, and, in some cases, peacemaking operations.

According to a report by the Department of State Inspector General, GPOI training through ACOTA “is a win-win situation in which minimal numbers of U.S. military troops are involved, African professionalism and capacity are built up, and the participating African troops are rewarded well when deployed.” Significantly, the IG report states “that there have been minimal disciplinary problems and no ACOTA trained troops have been cited for atrocities or notable human rights abuses,” an important sign that the emphasis on adherence to human rights standards and following the UN’s rules of engagement has paid off.

The bill before the Senate, the State-Foreign Operations appropriations bill, includes funding for the administration’s request of \$96.8 million in funding for GPOI in fiscal year 2010. All of this funding is contained in the peacekeeping operations, or PKO, account of the bill. Based on past practice and the demand for peacekeeping in Africa, the Department of State will likely allocate more than half of this funding to ACOTA. Nearly \$100 million is a substantial commitment of taxpayer dollars. But the price of failing to fund these important efforts would be far higher.

Our military leaders are particularly supportive of such efforts, with good reason. Admiral Mike Mullen, the Chairman of the Joint Chiefs of Staff, believes the U.S. commitment to aid the peacekeeping efforts of other nations is “extremely important and cost effective in comparison to unilateral operations these peacekeepers help promote stability and help reduce the risks that major U.S. military interventions may be required to restore stability in a country or region. Therefore, the success of these operations is very much in our national interest.”

I agree with Admiral Mullen. Programs such as GPOI are important not only because they help alleviate suffering around the globe—which they surely do—but also because they are a cost-effective way of managing U.S. security interests.

I am especially pleased that the administration intends to concentrate going forward on strengthening the capability of partner nations to train their own peacekeeping forces. This “train the trainers” approach multiplies the impact of U.S. efforts by giving partner nations the ability to sustain their own peacekeeping efforts. Using this model, the State Department plans to assist in the training and equipping of more than 240,000 peacekeepers over the next 5 years. The other focus will be on growing the planning and operational capability of the regional security organizations on the African continent.

There are other steps we should take to make these vital programs more effective, particularly in Africa. Outside that continent, the U.S. military’s Geographic Combatant Commands are responsible for much of the day-to-day management of GPOI programs, including contract management. In Africa, however, those tasks have been performed by contractors working for the State Department’s Bureau of African Affairs. With the stand-up of U.S. Africa Command, AFRICOM, in 2008, there is now a Combatant Command in place that could take over the same types of management duties performed elsewhere by its sister commands. I believe the Departments of State and Defense should explore whether such arrangements are advisable. Given the State Department’s deep reliance on contractor personnel to manage the ACOTA program and AFRICOM’s unique interagency command structure, I believe AFRICOM ought to be given a more significant role in the day-to-day execution of this critical program. Meanwhile, both departments should make efforts to ensure close cooperation between the State Department and AFRICOM personnel so that the taxpayers and partner nations see the maximum bang for the buck because they are a cost-effective way of managing U.S. security interests and supporting U.N. peacekeeping while re-

serving U.S. troops for other operations.

Having successfully completed the first 5-year phase, GPOI is entering a new phase. I urge my colleagues to support fully the administration’s funding request for GPOI. With this money, we can help contain violence and chaos in many of the world’s most troubled places. We can reduce the chance for such instability to create direct and immediate threats to our own security. We can enhance the ability of partner nations to maintain the peace in their own sectors of the globe. And we can accomplish all these things with a relatively modest amount of money—an investment with a substantial return, in both human and financial terms.

#### MESSAGE FROM THE HOUSE

At 11:35 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 86. An act to eliminate an unused lighthouse reservation, provide management consistency by incorporating the rocks and small islands along the coast of Orange County, California, into the California Coastal National Monument managed by the Bureau of Land Management, and meet the original Congressional intent of preserving Orange County’s rocks and small islands, and for other purposes.

H.R. 3603. An act to rename the Ocmulgee National Monument.

H.R. 3951. An act to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the “Roy Rondeno, Sr. Post Office Building”.

H.R. 4213. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

The message also announced that pursuant to section 125(c)(1) of Public Law 110-343, the minority leader appointed from private life Mr. J. Mark McWatters of Texas as a member of the Congressional Oversight Panel on the part of the House.

At 2:32 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3288) making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

#### MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 86. An act to eliminate an unused lighthouse reservation, provide management

consistency by incorporating the rocks and small islands along the coast of Orange County, California, into the California Coastal National Monument managed by the Bureau of Land Management, and meet the original Congressional intent of preserving Orange County’s rocks and small islands, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3603. An act to rename the Ocmulgee National Monument; to the Committee on Energy and Natural Resources.

H.R. 3951. An act to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the “Roy Rondeno, Sr. Post Office Building”; to the Committee on Homeland Security and Governmental Affairs.

H.R. 4213. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; to the Committee on Finance.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-3966. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Hong Kong; to the Committee on Banking, Housing, and Urban Affairs.

EC-3967. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export” (FRL No. 9091-7) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC-3968. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Protection of Stratospheric Ozone: Ban on Sale or Distribution of Pre-Charged Appliances” (FRL No. 9091-9) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC-3969. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Clothianidin: Pesticide Tolerances” (FRL No. 8793-6) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC-3970. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act” (FRL No. 9091-8) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Environment and Public Works.

EC-3971. A communication from the Program Manager, Centers for Medicare and



Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Changes to the Medicare Claims Appeal Procedures" (RIN0938-AM73) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Finance.

EC-3972. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Application of Certain Appeals Provisions to the Medicare Prescription Drug Appeals Process" (RIN0938-A087) received in the Office of the President of the Senate on December 8, 2009; to the Committee on Finance.

EC-3973. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2009-0213-2009-0223); to the Committee on Foreign Relations.

EC-3974. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Chile relative to the design and manufacture of the Sig 556 Rifle in the amount of \$1,000,000 or more; to the Committee on Foreign Relations.

EC-3975. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-238, "Omnibus Election Reform Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-3976. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18-239, "Hospital and Medical Services Corporation Regulatory Amendment Act of 2009"; to the Committee on Homeland Security and Governmental Affairs.

EC-3977. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-3978. A communication from the Director, Congressional Affairs, Federal Election Commission, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-3979. A communication from the Secretary of Education, transmitting, pursuant to law, a report entitled "Fiscal Year 2009 Agency Financial Report"; to the Committee on Homeland Security and Governmental Affairs.

EC-3980. A communication from the Acting Chief Executive Officer, Millennium Challenge Corporation, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 1755. A bill to direct the Department of Homeland Security to undertake a study on emergency communications (Rept. No. 111-105).

By Mr. INOUE, from the Committee on Appropriations:

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution, Fiscal Year 2010" (Rept. No. 111-106).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. HARKIN from the Committee on Health, Education, Labor, and Pensions.

\*Jacqueline A. Berrien, of New York, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2014.

\*Chai Rachel Feldblum, of Maryland, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2013.

\*P. David Lopez, of Arizona, to be General Counsel of the Equal Employment Opportunity Commission for a term of four years.

\*Victoria A. Lipnic, of Virginia, to be a Member of the Equal Employment Opportunity Commission for the remainder of the term expiring July 1, 2010.

\*Victoria A. Lipnic, of Virginia, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2015.

\*Adele Logan Alexander, of the District of Columbia, to be a Member of the National Council on the Humanities for a term expiring January 26, 2014.

\*Sara Manzano-Diaz, of Pennsylvania, to be Director of the Women's Bureau, Department of Labor.

\*Patrick Alfred Corvington, of Maryland, to be Chief Executive Officer of the Corporation for National and Community Service.

\*Lynnae M. Rutledge, of Washington, to be Commissioner of the Rehabilitation Services Administration, Department of Education.

By Mr. LEAHY for the Committee on the Judiciary.

Denny Chin, of New York, to be United States Circuit Judge for the Second Circuit.

Rosanna Malouf Peterson, of Washington, to be United States District Judge for the Eastern District of Washington.

William M. Conley, of Wisconsin, to be United States District Judge for the Western District of Wisconsin.

Paul R. Verkuil, of Florida, to be Chairman of the Administrative Conference of the United States for the term of five years.

Richard G. Callahan, of Missouri, to be United States Attorney for the Eastern District of Missouri for the term of four years.

John Gibbons, of Massachusetts, to be United States Marshal for the District of Massachusetts for the term of four years.

John Leroy Kammerzell, of Colorado, to be United States Marshal for the District of Colorado for the term of four years.

By Mrs. FEINSTEIN for the Select Committee on Intelligence.

\*Philip S. Goldberg, of the District of Columbia, to be an Assistant Secretary of State (Intelligence and Research).

\*Caryn A. Wagner, of Virginia, to be Under Secretary for Intelligence and Analysis, Department of Homeland Security.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. PRYOR:

S. 2863. A bill to provide that an outbreak of infectious disease or act of terrorism may be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 et seq.), and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. PRYOR:

S. 2864. A bill to provide for the enhancement of United States preparedness for outbreaks of infectious disease to protect homeland security; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LIEBERMAN (for himself and Ms. COLLINS):

S. 2865. A bill to reauthorize the Congressional Award Act (2 U.S.C. 801 et seq.), and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BURRIS:

S. 2866. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize the juvenile accountability block grants program through fiscal year 2014; to the Committee on the Judiciary.

By Mrs. MURRAY:

S. 2867. A bill to require the Secretary of the Treasury to provide assistance to community depository institutions under the Public-Private Investment Program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN:

S. 2868. A bill to provide increased access to the General Services Administration's Schedules Program by the American Red Cross and State and local governments; to the Committee on Homeland Security and Governmental Affairs.

By Ms. LANDRIEU (for herself and Ms. SNOWE):

S. 2869. A bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

By Mr. INOUE (for himself, Ms. SNOWE, Mr. BEGICH, and Ms. MURKOWSKI):

S. 2870. A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUE:

S. 2871. A bill to make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

## ADDITIONAL COSPONSORS

S. 583

At the request of Mr. PRYOR, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 583, a bill to provide grants and loan guarantees for the development and construction of science parks to promote the clustering of innovation through high technology activities.

At the request of Mr. JOHANNIS, his name was added as a cosponsor of S. 583, *supra*.

S. 812

At the request of Mr. BAUCUS, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 812, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

S. 848

At the request of Mrs. MCCASKILL, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 848, a bill to recognize and clarify the authority of the States to regulate intrastate helicopter medical services, and for other purposes.

S. 864

At the request of Mr. DORGAN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 864, a bill to amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts for charitable purposes.

S. 941

At the request of Mr. CRAPO, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 1067

At the request of Mr. FEINGOLD, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1076

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1129

At the request of Mr. DURBIN, the name of the Senator from New York

(Mrs. GILLIBRAND) was added as a cosponsor of S. 1129, a bill to authorize the Secretary of Education to award grants to local educational agencies to improve college enrollment.

S. 1160

At the request of Mr. SCHUMER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1160, a bill to provide housing assistance for very low-income veterans.

S. 1243

At the request of Mr. HATCH, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1243, a bill to require repayments of obligations and proceeds from the sale of assets under the Troubled Asset Relief Program to be repaid directly into the Treasury for reduction of the public debt.

S. 1439

At the request of Mr. WYDEN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1439, a bill to provide for duty-free treatment of certain recreational performance outerwear, and for other purposes.

S. 1932

At the request of Mr. BENNET, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1932, a bill to amend the Elementary and Secondary Education Act of 1965 to allow members of the Armed Forces who served on active duty on or after September 11, 2001, to be eligible to participate in the Troops-to-Teachers Program, and for other purposes.

S. 2747

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 2747, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 2755

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2755, a bill to amend the Internal Revenue Code of 1986 to provide an investment credit for equipment used to fabricate solar energy property, and for other purposes.

S. 2796

At the request of Mr. ENZI, the names of the Senator from Nebraska (Mr. JOHANNIS) and the Senator from Mississippi (Mr. WICKER) were added as cosponsors of S. 2796, a bill to extend the authority of the Secretary of Education to purchase guaranteed student loans for an additional year, and for other purposes.

S. 2816

At the request of Mr. BUNNING, the name of the Senator from Indiana (Mr.

BAYH) was added as a cosponsor of S. 2816, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs and to allow the adoption credit to be claimed in the year expenses are incurred, regardless of when the adoption becomes final.

S. 2853

At the request of Mr. GREGG, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 2853, a bill to establish a Bipartisan Task Force for Responsible Fiscal Action, to assure the long-term fiscal stability and economic security of the Federal Government of the United States, and to expand future prosperity growth for all Americans.

At the request of Mr. CONRAD, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 2853, *supra*.

S. RES. 316

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. Res. 316, a resolution calling upon the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide, and for other purposes.

AMENDMENT NO. 2789

At the request of Mr. COBURN, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of amendment No. 2789 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2793

At the request of Mr. BEGICH, his name was added as a cosponsor of amendment No. 2793 proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2878

At the request of Mr. CARDIN, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from Colorado (Mr. UDALL) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of amendment No. 2878 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2923

At the request of Mr. DORGAN, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of amendment No. 2923 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2928

At the request of Mr. CASEY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment No. 2928 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2938

At the request of Mrs. GILLIBRAND, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of amendment No. 2938 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2947

At the request of Ms. KLOBUCHAR, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment No. 2947 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2991

At the request of Mr. MENENDEZ, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of amendment No. 2991 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3011

At the request of Ms. LANDRIEU, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of amendment No. 3011 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3030

At the request of Mrs. FEINSTEIN, the names of the Senator from California (Mrs. BOXER) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of amendment No. 3030 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3046

At the request of Mr. KERRY, the names of the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of amendment No. 3046 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3051

At the request of Mr. BARRASSO, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of amendment No. 3051 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3069

At the request of Mr. KOHL, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of amendment No. 3069 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3071

At the request of Mrs. HAGAN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of amendment No. 3071 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3085

At the request of Mrs. LINCOLN, the name of the Senator from Michigan

(Ms. STABENOW) was added as a cosponsor of amendment No. 3085 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3102

At the request of Mr. DURBIN, the names of the Senator from Illinois (Mr. BURRIS) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of amendment No. 3102 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRYOR:

S. 2863. A bill to provide that an outbreak of infectious disease or act of terrorism may be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122 et seq.), and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. PRYOR. Mr. President, I rise today to introduce two pieces of legislation to address gaps in our preparedness and ability to respond to widespread infectious disease outbreaks and biological attacks.

The H1N1 outbreak demonstrated to us how investments in pandemic preparedness activities, such as the creation of pandemic influenza strategies, can lessen the effects of a pandemic and improve our response. However, we have learned from the H1N1 pandemic that we still have gaps in our ability to prepare for and respond to these types of events and that state and local entities are uncertain in their abilities to respond to a more severe event.

Apart from shortcomings in government coordination and planning, there is also a glaring deficiency in an important statute that underpins our nation's response to disasters. When a natural disaster such as flooding in Arkansas occurs, local and State government resources can be quickly overextended. When that occurs a governor can request and the President can issue a major disaster declaration, which triggers the maximum amount of resources from the Federal disaster response system.

Sometimes the system works well and other times not as well, but we know for certain that without a disaster declaration and effective Federal intervention a natural disaster can have devastating effects on life, property, and our economy.

Unfortunately, due to a lack of clarification of the definition of a major disaster in the Stafford Act, there is no precedent for the President to issue a major disaster declaration when local medical resources are overwhelmed by the exponential spread of life-threatening diseases, or alternatively, a deliberate biological attack by terrorists. The bills that I am introducing today will help to address preparedness shortcomings as well as the deficiency in law.

My first bill, S. 2863, entitled *The Emergency Response Act*, addresses this shortcoming in law. It will ensure the Federal Government can provide the maximum amount of support to State and local governments by allowing pandemics, acts of terrorism or other man-made disasters to be considered a major disaster under the Stafford Act. This clarification in law will permit the President to issue a major disaster declaration and allow Federal agencies to coordinate their efforts, give technical assistance, give advisory assistance, and work with local authorities and people in the private sector for events such as pandemics, biological attacks or chemical releases.

The second bill, S. 2864, entitled *The Defense Against Infectious Disease Act*, requires the Federal government to periodically update the National Strategy for Pandemic Influenza and the National Pandemic Implementation plan with the assistance of State, Local and Tribal stakeholders in order to ensure our preparedness plans are up to date and incorporate the latest technologies, medical developments and logistical challenges.

This bill addresses concerns raised by the U.S. Government Accountability Office about both the completeness of these emergency plans and the need for them to be updated. Most Americans may not even know that these emergency plans exist, but they do understand that strong planning is the foundation for effective action. An out-of-date plan is not a plan, and after watching the spread of H1N1 and the missteps in our government's response, Americans can easily imagine what it would be like in the event of an even more serious disease outbreak, and the importance of planning for such an emergency.

This bill will also help address the situation I described previously in which a severe infectious disease outbreak can overwhelm our local medical facilities, many of which have limited resources to handle even their every day needs. To address situations which will over extend local resources, my bill also requires the Federal Government to identify alternative medical care facilities and other resources such as medical equipment, daily supplies and personnel to ensure we know what assets we have to help State and local communities.

The idea here is preparation. We should make the best of the H1N1 outbreak and learn from this experience. That is why I introduced the Emergency Response Act and the Defense Against Infectious Diseases Act. I ask that my colleagues support these bills to ensure that we are prepared for the next pandemic.

Mr. President, I ask unanimous consent that a bill summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### EMERGENCY RESPONSE ACT OF 2009 SUMMARY

The Emergency Response Act of 2009 is intended to improve response to infectious disease outbreaks, acts of terrorism and other disasters.

Section 2 of the legislation amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide that a pandemic, act of terrorism or other manmade disaster be considered a trigger to issue a "major disaster" declaration under the Act. Section 3 creates a working group under the auspices of the Secretary of Homeland Security to prepare recommendations for facilitating the dissemination of public health information to State fusion centers and the greater homeland security community.

#### DEFENSE AGAINST INFECTIOUS DISEASES ACT OF 2009 SUMMARY

The Defense Against Infectious Disease Act of 2009 is intended to address gaps in preparedness in the event of a significant outbreak of an infectious disease.

Section 3 of the legislation directs that a consortium of state, local, and tribal representatives be convened to assess the adequacy of existing guidance and support in the National Strategy for Pandemic Influenza and National Strategy for Pandemic Influenza Implementation plans. Section 4 directs the Secretary of Health and Human Services in coordination with the Secretary of Homeland Security to identify alternative medical care facilities and resources available to locate and distribute both medical and non-medical supplies to support communities over extended by an infectious disease outbreak. Section 5 directs GAO to prepare a report describing the roles and responsibilities, capabilities and coordination of federal government assets in place across various departments for responding to infectious disease outbreaks and biological attacks.

By Ms. LANDRIEU (for herself and Ms. SNOWE):

S. 2869. A bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

Ms. LANDRIEU. Mr. President, our Nation's small businesses have created 64 percent of all new jobs in the last 15 years, yet in the last year nearly 85 percent of the jobs lost have come from small businesses. To reverse this job loss trend and allow small businesses to be the engine of economic growth once again, we must make sure they have the access to capital they need to be successful and help grow our economy.

That is exactly why I, along with the ranking member of the Small Business

Committee, OLYMPIA SNOWE of Maine, am introducing the Small Business Job Creation and Access to Capital Act of 2009. This bipartisan legislation is a result of five hearings and roundtables in the Small Business Committee this year as well as numerous meetings with small business owners. It builds off of S. 1832, the Small Business Access to Capital Act of 2009, and S. 1615, the Next Step for Main Street Credit Availability Act of 2009, legislation Senator SNOWE and I have previously introduced.

This legislation enhances the ability of the SBA to support larger loans and provide more options to small businesses. As many other sources of capital have evaporated, loans guaranteed by the SBA, with support of funding through the Recovery Act, have been able to support \$16.5 billion in loans to small businesses. Specifically, this act would: increase the loan limit on 7(a) loans from \$2 million to \$5 million; increase the loan limit on 504 loans from \$1.5 million to \$5.5 million; increase the loan limit on microloans from \$35,000 to \$50,000, as well as increase the loan limit to microloan intermediaries from \$3.5 million to \$5 million; allow the 504 loan program to refinance short-term commercial real estate debt into long-term, fixed rate loans; extend the authorization to provide 90 percent guarantees on 7(a) loans and fee elimination for borrowers on 7(a) and 504 loans through December 31, 2010; and direct the SBA to create a website where small businesses can identify lenders in their communities.

These provisions will have an immediate impact on increasing the availability of credit for small businesses and spurring job growth, with many of these provisions coming at little or no cost to the government. For example, the SBA estimates that the loan limit increases will be budget neutral, but will increase SBA lending by \$5 billion next year alone. The refinancing provisions could help save 60,000 jobs next year by allowing small businesses to refinance short-term commercial real estate debt into long-term fixed rate mortgages. To ensure that this program is budget neutral we have included a provision that would require any additional cost created by the program to be funded by the fees of the participants. Additionally, we have placed a number of safeguards on this program, such as requiring that the refinanced loan be current for at least one year, that the business owner invest a minimum of 20 percent equity and that the availability of funds be capped at \$65,000 for every job retained.

The extension of the 90 percent guarantees on 7(a) loan and the fee elimination for borrowers on traditional 504 and 7(a) loans extends critical provisions in the Recovery Act. This legislation does not include the appropriations for this funding, but does provide

an extension of its authorization should appropriations be made available. It is estimated that if an additional \$479 million were to be appropriated for these programs, the SBA would be able to support \$18.5 billion in lending to small businesses. Alternately, we are starting to see the impact of this funding not being available. In the first full week of lending since the SBA had to create a waiting list for the final Recovery Act funding, 7(a) loan volume fell from \$985 million in the last week of the full funding being available, to \$71 million. This \$71 million in loan volume is lower than the average weekly volume we were experiencing before the Recovery Act was approved. We also know that as of today there are more than 700 small businesses in the SBA waiting list approved for \$350 million in loans if we made more funding available.

It is clear that now is the time to act. Our Nation's small businesses need access to capital and this bill helps facilitate this crucial need.

Ms. SNOWE. Mr. President, we all know the statistics are bleak. Unemployment is at 10 percent, more than 7 million Americans have lost their jobs since the start of this current recession, and the National Federation of Independent Businesses' Optimism Index, a compilation of 10 survey indicators, is at 88.3, a number the NFIB calls "stuck at recession levels." These statistics, and the stories they represent present Congress with myriad challenges including: What will we do to lower unemployment, create jobs, and help our small businesses to grow again?

The legislation Chair LANDRIEU and I are introducing today, the Small Business Job Creation and Access to Capital Act of 2009, aims to meet this challenge and takes the best ideas from Republicans and Democrats, to help put American small businesses back to work. I would especially like to thank the Chair for working with me in such an open manner in developing this bill. Creating jobs and helping small businesses should not be a partisan issue and the Chair has been extremely open to my suggestions, incorporating many of the provisions I originally introduced in the Small Business Lending Improvement Act, the 10 Steps for a Main Street Economic Recovery Act, and the Next Step for a Main Street Economic Recovery Act into this legislation.

In the past year, one cornerstone of small business recovery has been Small Business Administration, SBA, backed lending. Last year, to help address the chronic shortage of capital for small business borrowers, I introduced the 10 Steps for a Main Street Economic Recovery Act. Many of the provisions in this legislation were included in the American Recovery and Reinvestment Act and some have been credited with

helping to increase SBA loan volume 79 percent.

One provision which has been extremely popular has been fee reductions for 7(a) and 504 loans. In fact, at a round table on reauthorizing the SBA's access to capital programs the Senate Committee on Small Business and Entrepreneurship heard from Mr. Michael Heath, the owner of Ramunto's Brick Oven Pizza in St. Johnsbury, Vermont. Mr. Heath told the Committee that the funds he saved in SBA fee reductions helped him buy his pizzeria. The bill we are introducing today would extend the fee reductions I originally proposed in 10 Steps to December 31st, 2010. This critical step ensures that we can continue to help entrepreneurs like Mike open businesses on Main Streets across America.

Another vital provision contained in this legislation expands the number of businesses eligible for SBA-backed loans and expands the size of those loans. I originally proposed this idea in the Small Business Lending Improvement Act which calls for an alternative size standard that would help more small businesses meet the SBA's requirements to access SBA-backed loans, and also included it in the Next Step for Main Street Credit Availability Act, which includes provisions allowing borrowers to take out larger 7(a) loans, microloans, and 504 loans. President Obama has also recognized the need for larger loan sizes and has advocated for this position as a way to create jobs and help small businesses.

Underscoring the inadequate size of SBA loans, I heard testimony earlier this year at a field hearing Senator SHAHEEN and I held in Portland, Maine from Mr. Richard Pfeffer, a local business owner, on how small SBA loan sizes have directly impacted his business. Mr. Pfeffer testified that his two businesses, Aroostook Starch and Gritty McDuff's, a restaurant and pub regarded by many as a Portland landmark, were close to bankruptcy not because of the economic downturn, but rather because of his inability to access larger SBA loans. Mr. Pfeffer is still in business today, and Gritty's is now serving its famous Christmas Ale, but his inability to access capital still looms and it is costing him the opportunity to expand his business and hire more workers. The increased loan limits in this bill would help Mr. Pfeffer and others like him to put the American economy back on track.

This bill also includes another provision I proposed in March and introduced in my Next Steps legislation that would allow SBA borrowers to shop and compare SBA loan rates online, offering borrowers the opportunity to make an informed choice and save time and money.

Finally, the Small Business Job Creation and Access to Capital Act of 2009

would allow borrowers of 504 loans to refinance their debt. This provision will give borrowers critical working capital that they can use to grow and expand their businesses.

These targeted reforms will help put Americans back to work, ease the capital crunch for small businesses, and help bring SBA lending into the future. I urge my colleagues to support this critical legislation to improve America's economy and increase small business lending.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3115. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3116. Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3117. Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3118. Ms. COLLINS (for herself, Mr. WYDEN, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3119. Mr. WARNER (for himself, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mrs. SHAHEEN, Mrs. HAGAN, Mr. MERKLEY, Mr. BEGICH, Mr. BURRIS, Mr. KAUFMAN, Mr. BENNET, Mrs. GILLIBRAND, Mr. FRANKEN, Mr. KIRK, Ms. COLLINS, Ms. KLOBUCHAR, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3120. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3121. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3122. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3123. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to

SA 3136. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3150. Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr.

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, *supra*; which was ordered to lie on the table.



## TEXT OF AMENDMENTS

**SA 3115.** Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1609, after line 23, insert the following:

**SEC. 6108. COMMUNITY INTEGRATED NURSING CARE HOMES DEMONSTRATION PROGRAM.**

(a) **SHORT TITLE.**—This section may be cited as the “Community Integrated Nursing Care Homes Demonstration Program Act” or the “CINCH Demonstration Program”.

(b) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—The Secretary shall establish the CINCH demonstration program to test the viability of multiple small house nursing homes that are embedded within residential neighborhoods and collectively certified to provide services through a single eligible operating entity in order to reduce administrative costs and provide related cost savings to the Medicare and Medicaid programs.

(2) **DURATION AND SCOPE.**—

(A) **DURATION.**—The Secretary shall conduct the CINCH demonstration program for a period of 5 years.

(B) **SCOPE.**—The Secretary shall select not more than 6 sites (as described in paragraph (3)) to participate in the CINCH demonstration program, with each site to be operated by a different eligible operating entity (as described under subsection (c)(2)) and not less than 2 sites to be located in rural areas.

(3) **SITES.**—

(A) **IN GENERAL.**—A site shall consist of not less than 2 locations, with each location containing not more than 2 small house nursing homes, that are operated by an eligible operating entity under such entity's nursing home license and provider certification.

(B) **LOCATIONS.**—

(i) **DISTANCES.**—Distances between locations within a site may vary based upon market demand and availability, with maximum distances between locations to be established by the eligible operating entity based upon the ability of such entity to—

(I) deliver required services and supervision in a timely and appropriate manner; and

(II) subject to paragraph (5), meet all applicable statutory and regulatory requirements for operation of a nursing home.

(ii) **ADJOINING PARCELS.**—A location shall—

(I) consist of a single parcel of land or multiple adjoining parcels of land; and

(II) be separate from any other location and operate on a non-adjoining parcel of land from such location.

(C) **NUMBER OF SMALL HOUSE NURSING HOMES PER SITE.**—A site shall contain not less than 4 small house nursing homes and not greater than—

(i) in rural areas (or a site that encompasses a rural area), 12 small house nursing homes; or

(ii) in urban or suburban areas, 24 small house nursing homes.

(4) **CONTINUATION OF TREATMENT AS SINGLE PROVIDER.**—The Secretary shall develop a process to allow a site, following the 5-year

period for the CINCH demonstration program, to continue operation through a single operating entity and receive certification as a single provider for purposes of Medicare and Medicaid, including provisions to permit such continuation following a change in ownership of a participating small house nursing home.

(5) **WAIVER AUTHORITY.**—The Secretary may waive such requirements of titles XI, XVIII, and XIX of the Social Security Act as may be necessary to carry out the CINCH demonstration program and shall develop a process that permits sites to be certified and reimbursed under Medicare and Medicaid.

(c) **SELECTION.**—

(1) **TECHNICAL ASSISTANCE PROVIDER.**—

(A) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Secretary, through a request for proposal process, shall select a technical assistance provider that shall be responsible for assisting and monitoring eligible operating entities (as described under paragraph (2)).

(B) **MINIMUM REQUIREMENTS.**—In selecting the technical assistance provider, the Secretary shall ensure that such organization—

(i) is a national not-for-profit organization that is in good standing;

(ii) has a consistent, clearly articulated, and research-based model for operation of small house nursing homes;

(iii) has not less than 10 years of experience in providing development, operation, regulatory, policy, and financial consulting services to clients or partners seeking to innovate the provision of long-term care;

(iv) has demonstrated a successful process and record (for not less than 4 years) for selection and assistance of multiple organizations in implementation of a small house nursing home model, including development, operations, and staff training;

(v) has established curricula for training of leadership, clinical, and direct care staff;

(vi) has demonstrated capacity, through its own resources and consultants, to—

(I) collect Minimum Data Set (“MDS”) information and financial data from eligible operating entities; and

(II) benchmark and analyze such financial data on not less than a quarterly basis;

(vii) has the ability to administer the CINCH demonstration program without additional funding from Federal, State, or local governmental sources;

(viii) agrees to provide technical assistance services to eligible operating entities for a fee that is not greater than its usual and customary fee for such services; and

(ix) agrees to maintain a provider network for small house nursing homes participating in the CINCH demonstration program for a fee that is not greater than its usual and customary fee for such services.

(C) **PREFERENCES.**—In selecting the technical assistance provider, the Secretary shall give preference to an organization that has demonstrated experience in related business activities, including community-based care models, health care financing, and demonstration programs.

(2) **ELIGIBLE OPERATING ENTITY.**—

(A) **IN GENERAL.**—Selection of eligible operating entities shall be determined by the technical assistance provider through a request for proposal process on a continual basis.

(B) **MINIMUM REQUIREMENTS.**—An eligible operating entity seeking to participate in the CINCH demonstration program shall be required to—

(i) commit to maintaining the small house nursing home requirements described under

subsection (d) and permit the technical assistance provider to conduct periodic evaluations to ensure adherence to such requirements;

(ii) maintain membership in a small house nursing home provider network that is maintained by the technical assistance provider; and

(iii) ensure that, for each site, at least 30 percent of the total capacity developed under the CINCH demonstration program is provided to residents that are receiving nursing home benefits under Medicaid.

(d) **SMALL HOUSE NURSING HOME REQUIREMENTS.**—To be eligible to participate in the CINCH demonstration program, a small house nursing home shall—

(1) subject to subsection (b)(5), have been certified by a State or local entity (in accordance with applicable State and local law) to operate a nursing home;

(2) operate in compliance with any direct care and certified nurse assistant staffing requirements under Federal and State law;

(3) provide nursing home services, as required under State law and applicable licensing standards, that shall not be less comprehensive or high-acuity than services provided by the eligible operating entity within the immediate surrounding community;

(4) provide for meals cooked in the small house nursing home and not prepared in a central kitchen and transported to the nursing home;

(5) provide for a universal worker approach to resident care (such as a certified nursing assistant who provides personal care, socialization services, meal preparation services, and laundry and housekeeping services);

(6) provide for direct care staffing at a rate of not less than 4 hours per resident per day, with direct care staff (including certified nurse assistants) to be onsite, awake, and available within each nursing home at all times;

(7) provide for direct nursing care at a rate of not less than 1 hour per resident per day, with a nurse to be awake and available at each location at all times (with nurses to be shared between not more than 2 nursing homes on each site) as part of a nursing staff that meets or exceeds applicable Federal and State requirements for qualifications, services, and availability;

(8) provide for any other clinical, operational, management, or facility staff and services as required under applicable Federal and State requirements, with such staff to be available from centralized or distributed locations;

(9) provide for consistent staff assignments and self-directed work teams of direct care staff;

(10) provide training for all staff involved in the operations of the nursing home (for not less than 120 hours for each universal worker and not less than 60 hours for each leadership and clinical team member, to be completed for the majority of the staff before they start to work in a small house nursing home) concerning the philosophy, operations, and skills required to implement and maintain self-directed care, self-managed work teams, a noninstitutional approach to life and care in long-term care, appropriate safety and emergency skills, cooking from scratch by the direct care staff and food handling and safety, and other elements required for successful operation of the nursing home;

(11) ensure that the percentage of residents in each nursing home who are short-stay rehabilitation residents does not exceed 20 percent at any time (unless the small house

nursing home is entirely devoted to providing rehabilitation services), except that a long-term resident transferring back to a nursing home after an acute episode and who is receiving rehabilitation services for which payment is made under the Medicare program shall not be counted toward such limitation;

(12) provide the technical assistance provider with MDS information and financial data in a timely manner on a monthly basis; and

(13) consist of a physical environment designed to look and feel like a home, rather than an institution, and that shall—

(A) be designed to serve as a fully independent and disabled accessible house or apartment, with not more than 10 residents within such house or apartment, and that shall only be connected to or share areas that would be generally shared between private homes (such as a driveway) or apartments (such as a lobby or laundry room);

(B) contain residential-style design elements and materials throughout the home that are similar to those in the immediate surrounding community and that do not use commercial and institutional elements and products (such as a nurses' station, medication carts, hospital or office-type florescent lighting, acoustical tile ceilings, institutional-style railings and corner guards, and room numbering and labeling) unless mandated by authorities with appropriate jurisdiction over the nursing home;

(C) provide private, single occupancy bedrooms that are shared only at the request of a resident to accommodate a spouse, partner, family member, or friend, and that contains a full private bathroom that includes, at a minimum, a toilet, sink, and accessible shower;

(D) contain a living area where residents and staff may socialize, dine, and prepare food together that provides, at a minimum, a living room seating area, a dining area large enough for a single table serving all residents and not less than 2 staff members, and an open full kitchen;

(E) contain ample natural light in each habitable space that is provided through exterior windows and other means, with window areas, exclusive of skylights and clerestories, being a minimum of 10 percent of the area of the room;

(F) have a life-safety rating that is sufficient to meet State and local standards for nursing facilities and appropriately accommodate individuals who cannot evacuate the nursing home without assistance; and

(G) contain built-in safety features to allow all areas of the nursing home to be accessible to residents during the majority of the day and night.

(e) **NO ADDITIONAL PAYMENT.**—The technical assistance provider, as well as any eligible operating entities and participating small house nursing homes, shall not receive any additional payment or reimbursement under the Medicare or Medicaid programs based upon their participation in the CINCH demonstration program.

(f) **EVALUATION AND REPORT.**—

(1) **IN GENERAL.**—Not later than 4 years after the date of enactment of this Act, the technical assistance provider shall evaluate the performance of each of the sites participating under the CINCH demonstration program and shall submit to Congress and the Secretary a report containing the results of such evaluation.

(2) **EVALUATION REQUIREMENTS.**—The evaluation shall include an analysis of—

(A) not less than 12 months of MDS information and financial data from at least 10 small house nursing homes; and

(B) results from focus groups or surveys regarding health outcomes for residents and program costs.

(g) **DEFINITIONS.**—In this section:

(1) **CINCH DEMONSTRATION PROGRAM.**—The term “CINCH demonstration program” means the demonstration program conducted under this section.

(2) **MEDICAID.**—The term “Medicaid” means the program for medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(3) **MEDICARE.**—The term “Medicare” means the program for medical assistance established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) **NURSING HOME.**—The term “nursing home” means—

(A) a skilled nursing facility (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i-3(a))); or

(B) a nursing facility (as defined in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a))).

(5) **RESEARCH-BASED.**—The term “research-based” means research that—

(A) has been conducted by an objective researcher or research team that has—

(i) no financial or affiliated organizational interest in the success of the model; and

(ii) expertise in long-term care, with not less than 3 research articles relating to long-term care that have been published in leading peer-reviewed journals;

(B) has been conducted according to generally accepted research practices;

(C) has been published in a leading peer-reviewed journal on aging or long-term care; and

(D) indicates a measurable improvement in multiple aspects of quality of life and care.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(7) **RURAL AREA.**—The term “rural area” means any area other than an urban or suburban area.

(8) **SUBURBAN AREA.**—The term “suburban area” means any urbanized area that is contiguous and adjacent to an urban area.

(9) **URBAN AREA.**—The term “urban area” means a city or town that has a population of greater than 50,000 inhabitants.

**SA 3116.** Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2028, strike lines 9 and 10 and insert the following:

(3) **EFFICIENCY ADJUSTMENT BASED ON PREMIUM INCREASES.**—

(A) **IN GENERAL.**—The portion of the fee determined under paragraph (1) with respect to a covered entity for a calendar year which is attributable to net premiums written shall be multiplied by an amount equal to the sum of—

(i) 50 percent, plus

(ii) the applicable percentage.

(B) **APPLICABLE PERCENTAGE.**—The applicable percentage is a percentage determined by the Secretary in the following manner:

(i) The applicable percentage for the covered entity with the lowest per-capita premium change shall be 0 percent.

(ii) The applicable percentage for the covered entity with the highest per-capita premium change shall be 100 percent.

(iii) The applicable percentage for each other cover entity shall be based on the degree to which the per-capita premium change for such covered entity is greater than the covered entity with the lowest per-capita premium change, except that in determining such amount the Secretary shall ensure that the aggregate fees for all covered entities under this section for the calendar year (after application of this subsection) is equal to \$6,700,000,000.

(iv) Notwithstanding clause (iii), the Secretary may reduce the applicable percentage for a covered entity (but not below zero) with respect to any calendar year if the Secretary determines that the amount of the per-capita premium increase for such entity was primarily due to government restrictions on rates, but only to the extent that the amount of the per-capita premium increase was due to such government restrictions, as determined by the Secretary. In the case of any reduction under the preceding sentence, proper adjustment shall be made to the applicable percentages for other covered entities described in clause (iii) such that the aggregate fees for all covered entities under this section for the calendar year (after application of this subsection) is equal to \$6,700,000,000. In no case shall any adjustment cause the applicable percentage for any covered entity to exceed 100 percent.

(C) **PER-CAPITA PREMIUM CHANGE.**—For purposes of this paragraph—

(i) **IN GENERAL.**—The term “per-capita premium change” means, with respect to any calendar year, the excess of—

(I) the per-capita premium amount for the such calendar year, over

(II) the per capita premium amount for the preceding calendar year.

(ii) **PER-CAPITA PREMIUM AMOUNT.**—The term “per-capita premium amount” means, with respect to any calendar year, the total amount of net premiums written with respect to health insurance for any United States health risk for such calendar year divided by the number of United States health risks which are covered under such net written premiums.

(iii) **REPORTING.**—

(I) **IN GENERAL.**—Each covered entity shall include in the report required under subsection (g) the number of United States health risks which are covered under net written premiums with respect to health insurance.

(II) **PENALTY.**—The rules of subsection (g)(2) shall apply to the information required to be reported under subclause (I).

(4) **SECRETARIAL DETERMINATION.**—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under this subsection.

**SA 3117.** Mr. WYDEN (for himself, Ms. COLLINS, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain

other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 164, between lines 2 and 3, insert the following:

**SEC. 13 . . . OPTIONAL FREE CHOICE VOUCHERS.**

(a) IN GENERAL.—Any employer may provide a free choice voucher to any employee of such employer, but only if such employer offers free choice vouchers to—

(1) in the case of an offering employer, all employees of such employer who are eligible to participate in an employer-sponsored plan described in subsection (c)(1), and

(2) in the case of any other employer, all employees of the employer.

(b) FREE CHOICE VOUCHER.—

(1) AMOUNT.—

(A) OFFERING EMPLOYERS.—

(i) IN GENERAL.—In the case of an offering employer, the amount of the free choice voucher provided under subsection (a) shall be equal to the monthly portion of the cost of the eligible employer-sponsored plan which would have been paid by the employer if the employee were covered under the plan with respect to which the employer pays the largest portion of the employee's premium. Such amount shall be equal to the amount the employer would pay for an employee with self-only coverage unless such employee elects family coverage (in which case such amount shall be the amount the employer would pay for family coverage).

(ii) DETERMINATION OF COST.—The cost of any health plan shall be determined under the rules similar to the rules of section 2204 of the Public Health Service Act, except that such amount may be adjusted for age and category of coverage in accordance with regulations established by the Secretary.

(B) OTHER EMPLOYERS.—In the case of any other employer, the amount of the voucher provided under subsection (a) shall be not greater than the amount equal to the lowest cost bronze plan of the individual market in the rating area in which the employee resides which—

(i) is offered through an Exchange, and

(ii) provides—

(I) in the case of an employee electing self-only coverage, self-only coverage, and

(II) in any other case, family coverage.

(2) USE OF VOUCHERS.—An Exchange shall credit the amount of any free choice voucher provided under subsection (a) to the monthly premium of any qualified health plan in the Exchange in which the qualified employee is enrolled and the offering employer shall pay any amounts so credited to the Exchange.

(3) PAYMENT OF EXCESS AMOUNTS.—If the amount of the free choice voucher exceeds the amount of the premium of the qualified health plan in which the qualified employee is enrolled for such month, such excess shall be paid to the employee. Any amount paid to the employee under the preceding sentence shall not be taken into account in determining the rate of pay of the employee under the Fair Labor Standards Act of 1938.

(c) OFFERING EMPLOYER.—For purposes of this section, the term “offering employer” means any employer who—

(1) offers minimum essential coverage to its employees consisting of coverage through an eligible employer-sponsored plan; and

(2) pays any portion of the costs of such plan.

(d) OTHER DEFINITIONS.—Any term used in this section which is also used in section 5000A of the Internal Revenue Code of 1986 shall have the meaning given such term under such section 5000A.

(e) ACCELERATED ACCESS TO EXCHANGES.—Notwithstanding section 1312(f)(2)(B)—

(1) beginning in 2015, each State may allow issuers of health insurance coverage in the large group market in the State to offer qualified health plans in such market through an Exchange, but only in connection with employers who provide free choice vouchers under subsection (a); and

(2) if a State under paragraph (1) allows issuers to offer qualified plans in the large group market through an Exchange, the term “qualified employer” (as defined in section 1312(f)(2)) shall include a large employer that—

(A) provides free choice vouchers to its employees under subsection (a); and

(B) elects to make all full-time employees eligible for 1 or more qualified health plans offered in the large group market through the Exchange.

(f) EXCLUSION FROM INCOME FOR EMPLOYEE.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139C the following new section:

**“SEC. 139D. FREE CHOICE VOUCHERS.**

“Gross income shall not include the amount of any free choice voucher provided by an employer under part I of subtitle D of title I of the Patient Protection and Affordable Care Act to the extent that the amount of such voucher does not exceed the amount paid for a qualified health plan (as defined in section 1301 of such Act) by the taxpayer.”.

(2) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139C the following new item:

“Sec. 139D. Free choice vouchers.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

(g) DEDUCTION ALLOWED TO EMPLOYER.—

(1) IN GENERAL.—Section 162(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: “For purposes of paragraph (1), the amount of a free choice voucher provided under part I of subtitle D of title I of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

(h) VOUCHER TAKEN INTO ACCOUNT IN DETERMINING PREMIUM CREDIT.—

(1) IN GENERAL.—Subsection (b)(2) of section 36B of the Internal Revenue Code of 1986, as added by section 1401, is amended by adding at the end the following new flush sentence:

“The amount of any monthly premium under subsection subparagraph (A) and the amount of the adjusted monthly premium for the second lowest cost silver plan under subparagraph (B) shall be reduced by the amount of any free choice voucher provided to the taxpayer under section \_\_\_\_\_ of the Patient Protection and Affordable Care Act.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2013.

(i) COORDINATION WITH EMPLOYER RESPONSIBILITIES.—

(1) SHARED RESPONSIBILITY PENALTY.—

(A) IN GENERAL.—Subsection (c) of section 4980H of the Internal Revenue Code of 1986, as added by section 1513, is amended by adding at the end the following new paragraph:

“(3) SPECIAL RULES FOR EMPLOYERS PROVIDING FREE CHOICE VOUCHERS.—The assess-

able payment imposed under paragraph (1) shall be reduced (but not below zero) by the amount of any free choice voucher provided to a full-time employee under section \_\_\_\_\_ of the Patient Protection and Affordable Care Act for any month during which such employee is enrolled in a qualified health plan with respect to which an applicable premium credit or cost-sharing subsidy is allowed or paid with respect to such employee.”.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to months beginning after December 31, 2013.

(2) NOTIFICATION REQUIREMENT.—Section 18B(a)(3) of the Fair Labor Standards Act of 1938, as added by section 1512, is amended—

(A) by inserting “and the employer does not offer a free choice voucher” after “Exchange”; and

(B) by striking “will lose” and inserting “may lose”.

**SA 3118.** Ms. COLLINS (for herself, Mr. WYDEN, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 116, between lines 2 and 3, insert the following:

(3) SPECIAL RULE FOR INDIVIDUALS AGE 30 AND OVER NOT ELIGIBLE FOR EXCHANGE CREDITS AND REDUCTIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), an individual who has attained at least the age of 30 before the beginning of a plan year shall be treated as an individual described in paragraph (2) if the individual is not eligible for the plan year for the premium tax credit under section 36B of the Internal Revenue Code of 1986 or the cost-sharing reductions under section 1402 with respect to enrollment in a qualified health plan offered through an Exchange. The preceding sentence shall not apply to an individual if the individual is not eligible for such credit or reductions because the individual is eligible to enroll in minimum essential coverage consisting of coverage under a government sponsored program described in section 5000A(f)(1)(A).

(B) REQUIREMENTS.—Subparagraph (A) shall only apply to an individual if the individual elects the application of this paragraph and such election provides that—

(i) the individual acknowledges that coverage under the catastrophic plan is the lowest coverage available, that the plan provides no benefits for any plan year until the individual has incurred cost-sharing expenses in an amount equal to the annual limitation in effect under subsection (c)(1) for the plan year (except as provided for in section 2713), and that these cost-sharing expenses could involve significant financial risk for the individual; and

(ii) the individual agrees that—

(I) the individual will not change such coverage until the next applicable annual or special enrollment period under section 1311(c)(5); and

(II) if the individual elects to change such coverage at the time of such enrollment period, the individual may only enroll in the bronze level of coverage.

(4) STATE AUTHORITY.—In accordance with section 1321(d), a State may impose additional requirements or conditions for catastrophic plans described in this subsection to the extent such requirements or conditions are not inconsistent with the requirements under this subsection.

**SA 3119.** Mr. WARNER (for himself, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mrs. SHAHEEN, Mrs. HAGAN, Mr. MERKLEY, Mr. BEGICH, Mr. BURRIS, Mr. KAUFMAN, Mr. BENNET, Mrs. GILLIBRAND, Mr. FRANKEN, Mr. KIRK, Ms. COLLINS, Ms. KLOBUCHAR, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1134, strike line 3 and insert the following:

**Subtitle G—Modernizing America's Health Care System**

**PART I—IMPROVING QUALITY AND VALUE THROUGH DELIVERY SYSTEM REFORM**

**SEC. 3601. QUALITY REPORTING FOR PSYCHIATRIC HOSPITALS.**

(a) IN GENERAL.—Section 1886(s) of the Social Security Act, as added by section 3401(f), is amended by adding at the end the following new paragraph:

“(4) QUALITY REPORTING.—

“(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

“(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

“(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

“(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(D) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been en-

dorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

“(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit has the opportunity to review the data that is to be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.”.

(b) CONFORMING AMENDMENT.—Section 1890(b)(7)(B)(i)(I) of the Social Security Act, as added by section 3014, is amended by inserting “1886(s)(4)(D),” after “1886(o)(2),”.

**SEC. 3602. PILOT TESTING PAY-FOR-PERFORMANCE PROGRAMS FOR CERTAIN MEDICARE PROVIDERS.**

(a) IN GENERAL.—Not later than January 1, 2016, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall, for each provider described in subsection (b), conduct a separate pilot program under title XVIII of the Social Security Act to test the implementation of a value-based purchasing program for payments under such title for the provider.

(b) PROVIDERS DESCRIBED.—The providers described in this paragraph are the following:

(1) Psychiatric hospitals (as described in clause (i) of section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B))) and psychiatric units (as described in the matter following clause (v) of such section).

(2) Long-term care hospitals (as described in clause (iv) of such section).

(3) Rehabilitation hospitals (as described in clause (ii) of such section).

(4) PPS-exempt cancer hospitals (as described in clause (v) of such section).

(5) Hospice programs (as defined in section 1861(dd)(2) of such Act (42 U.S.C. 1395x(dd)(2))).

(c) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act as may be necessary solely for purposes of carrying out the pilot programs under this section.

(d) NO ADDITIONAL PROGRAM EXPENDITURES.—Payments under this section under the separate pilot program for value based purchasing (as described in subsection (a)) for each provider type described in paragraphs (1) through (5) of subsection (b) for applicable items and services under title XVIII of the Social Security Act for a year shall be established in a manner that does not result in spending more under each such value based purchasing program for such year than would otherwise be expended for such provider type for such year if the pilot program were not implemented, as estimated by the Secretary.

(e) EXPANSION OF PILOT PROGRAM.—The Secretary may, at any point after January 1, 2018, expand the duration and scope of a pilot program conducted under this subsection, to the extent determined appropriate by the Secretary, if—

(1) the Secretary determines that such expansion is expected to—

(A) reduce spending under title XVIII of the Social Security Act without reducing the quality of care; or

(B) improve the quality of care and reduce spending;

(2) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under such title XVIII; and

(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under such title XIII for Medicare beneficiaries.

**SEC. 3603. PLANS FOR A VALUE-BASED PURCHASING PROGRAM FOR AMBULATORY SURGICAL CENTERS.**

Section 3006 of this Act is amended by adding at the end the following new subsection:

“(f) AMBULATORY SURGICAL CENTERS.—

“(1) IN GENERAL.—The Secretary shall develop a plan to implement a value-based purchasing program for payments under the Medicare program under title XVIII of the Social Security Act for ambulatory surgical centers (as described in section 1833(i) of the Social Security Act (42 U.S.C. 1395l(i))).

“(2) DETAILS.—In developing the plan under paragraph (1), the Secretary shall consider the following issues:

“(A) The ongoing development, selection, and modification process for measures (including under section 1890 of the Social Security Act (42 U.S.C. 1395aaa) and section 1890A of such Act, as added by section 3014), to the extent feasible and practicable, of all dimensions of quality and efficiency in ambulatory surgical centers.

“(B) The reporting, collection, and validation of quality data.

“(C) The structure of value-based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value-based bonus payments.

“(D) Methods for the public disclosure of information on the performance of ambulatory surgical centers.

“(E) Any other issues determined appropriate by the Secretary.

“(3) CONSULTATION.—In developing the plan under paragraph (1), the Secretary shall—

“(A) consult with relevant affected parties; and

“(B) consider experience with such demonstrations that the Secretary determines are relevant to the value-based purchasing program described in paragraph (1).

“(4) REPORT TO CONGRESS.—Not later than January 1, 2011, the Secretary shall submit to Congress a report containing the plan developed under paragraph (1).”.

**SEC. 3604. REVISIONS TO NATIONAL PILOT PROGRAM ON PAYMENT BUNDLING.**

Section 1866D of the Social Security Act, as added by section 3023, is amended—

(1) in paragraph (a)(2)(B), in the matter preceding clause (i), by striking “8 conditions” and inserting “10 conditions”;

(2) by striking subsection (c)(1)(B) and inserting the following:

“(B) EXPANSION.—The Secretary may, at any point after January 1, 2016, expand the duration and scope of the pilot program, to the extent determined appropriate by the Secretary, if—

“(i) the Secretary determines that such expansion is expected to—

“(I) reduce spending under title XVIII of the Social Security Act without reducing the quality of care; or

“(II) improve the quality of care and reduce spending;

“(ii) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under such title XVIII; and

“(iii) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under this title for individuals.”; and

(3) by striking subsection (g).

#### **SEC. 3605. IMPROVEMENTS TO THE MEDICARE SHARED SAVINGS PROGRAM.**

Section 1899 of the Social Security Act, as added by section 3022, is amended by adding at the end the following new subsections:

“(i) **OPTION TO USE OTHER PAYMENT MODELS.**—

“(1) **IN GENERAL.**—If the Secretary determines appropriate, the Secretary may use any of the payment models described in paragraph (2) or (3) for making payments under the program rather than the payment model described in subsection (d).

“(2) **PARTIAL CAPITATION MODEL.**—

“(A) **IN GENERAL.**—Subject to subparagraph (B), a model described in this paragraph is a partial capitation model in which an ACO is at financial risk for some, but not all, of the items and services covered under parts A and B, such as at risk for some or all physicians’ services or all items and services under part B. The Secretary may limit a partial capitation model to ACOs that are highly integrated systems of care and to ACOs capable of bearing risk, as determined to be appropriate by the Secretary.

“(B) **NO ADDITIONAL PROGRAM EXPENDITURES.**—Payments to an ACO for items and services under this title for beneficiaries for a year under the partial capitation model shall be established in a manner that does not result in spending more for such ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented, as estimated by the Secretary.

“(3) **OTHER PAYMENT MODELS.**—

“(A) **IN GENERAL.**—Subject to subparagraph (B), a model described in this paragraph is any payment model that the Secretary determines will improve the quality and efficiency of items and services furnished under this title.

“(B) **NO ADDITIONAL PROGRAM EXPENDITURES.**—Subparagraph (B) of paragraph (2) shall apply to a payment model under subparagraph (A) in a similar manner as such subparagraph (B) applies to the payment model under paragraph (2).

“(j) **INVOLVEMENT IN PRIVATE PAYER AND OTHER THIRD PARTY ARRANGEMENTS.**—The Secretary may give preference to ACOs who are participating in similar arrangements with other payers.

“(k) **TREATMENT OF PHYSICIAN GROUP PRACTICE DEMONSTRATION.**—During the period beginning on the date of the enactment of this section and ending on the date the program is established, the Secretary may enter into an agreement with an ACO under the demonstration under section 1866A, subject to rebasing and other modifications deemed appropriate by the Secretary.”.

#### **SEC. 3606. INCENTIVES TO IMPLEMENT ACTIVITIES TO REDUCE DISPARITIES.**

Section 1311(g)(1) of this Act is amended—

(1) in subparagraph (C), by striking “; and” and inserting a semicolon;

(2) in subparagraph (D), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(E) the implementation of activities to reduce health and health care disparities, including through the use of language services, community outreach, and cultural competency trainings.”.

#### **SEC. 3607. NATIONAL DIABETES PREVENTION PROGRAM.**

Part P of title III of the Public Health Service Act 42 U.S.C. 280g et seq.), as amended by section 5405, is amended by adding at the end the following:

#### **“SEC. 399V-2. NATIONAL DIABETES PREVENTION PROGRAM.**

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a national diabetes prevention program (referred to in this section as the ‘program’) targeted at adults at high risk for diabetes in order to eliminate the preventable burden of diabetes.

“(b) **PROGRAM ACTIVITIES.**—The program described in subsection (a) shall include—

“(1) a grant program for community-based diabetes prevention program model sites;

“(2) a program within the Centers for Disease Control and Prevention to determine eligibility of entities to deliver community-based diabetes prevention services;

“(3) a training and outreach program for lifestyle intervention instructors; and

“(4) evaluation, monitoring and technical assistance, and applied research carried out by the Centers for Disease Control and Prevention.

“(c) **ELIGIBLE ENTITIES.**—To be eligible for a grant under subsection (b)(1), an entity shall be a State or local health department, a tribal organization, a national network of community-based non-profits focused on health and wellbeing, an academic institution, or other entity, as the Secretary determines.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.”.

#### **SEC. 3608. SELECTION OF EFFICIENCY MEASURES.**

Sections 1890(b)(7) and 1890A of the Social Security Act, as added by section 3014, are amended by striking “quality” each place it appears and inserting “quality and efficiency”.

#### **SEC. 3609. REGIONAL TESTING OF PAYMENT AND SERVICE DELIVERY MODELS UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.**

Section 1115A(a) of the Social Security Act, as added by section 3021, is amended by inserting at the end the following new paragraph:

“(5) **TESTING WITHIN CERTAIN GEOGRAPHIC AREAS.**—For purposes of testing payment and service delivery models under this section, the Secretary may elect to limit testing of a model to certain geographic areas.”.

#### **SEC. 3610. ADDITIONAL IMPROVEMENTS UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.**

Section 1115A(a) of the Social Security Act, as added by section 3021, is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A)—

(i) in the second sentence, by striking “the preceding sentence may include” and inserting “this subparagraph may include, but are not limited to,”; and

(ii) by inserting after the first sentence the following new sentence: “The Secretary shall

focus on models expected to reduce program costs under the applicable title while preserving or enhancing the quality of care received by individuals receiving benefits under such title.”; and

(B) in subparagraph (C), by adding at the end the following new clause:

“(viii) Whether the model demonstrates effective linkage with other public sector or private sector payers.”;

(2) in subsection (b)(4), by adding at the end the following new subparagraph:

“(C) **MEASURE SELECTION.**—To the extent feasible, the Secretary shall select measures under this paragraph that reflect national priorities for quality improvement and patient-centered care consistent with the measures described in 1890(b)(7)(B).”; and

(3) in subsection (c)—

(A) in paragraph (1)(B), by striking “care and reduce spending; and” and inserting “patient care without increasing spending;”; and

(B) in paragraph (2), by striking “reduce program spending under applicable titles.” and inserting “reduce (or would not result in any increase in) net program spending under applicable titles; and”; and

(C) by adding at the end the following:

“(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under the applicable title for applicable individuals.

In determining which models or demonstration projects to expand under the preceding sentence, the Secretary shall focus on models and demonstration projects that improve the quality of patient care and reduce spending.”.

#### **SEC. 3611. IMPROVEMENTS TO THE PHYSICIAN QUALITY REPORTING SYSTEM.**

(a) **IN GENERAL.**—Section 1848(m) of the Social Security Act (42 U.S.C. 1395w-4(m)) is amended by adding at the end the following new paragraph:

“(7) **ADDITIONAL INCENTIVE PAYMENT.**—

“(A) **IN GENERAL.**—For 2011 through 2014, if an eligible professional meets the requirements described in subparagraph (B), the applicable quality percent for such year, as described in clauses (iii) and (iv) of paragraph (1)(B), shall be increased by 0.5 percentage points.

“(B) **REQUIREMENTS DESCRIBED.**—In order to qualify for the additional incentive payment described in subparagraph (A), an eligible professional shall meet the following requirements:

“(i) The eligible professional shall—

“(I) satisfactorily submit data on quality measures for purposes of paragraph (1) for a year; and

“(II) have such data submitted on their behalf through a Maintenance of Certification Program (as defined in subparagraph (C)(i)) that meets—

“(aa) the criteria for a registry (as described in subsection (k)(4)); or

“(bb) an alternative form and manner determined appropriate by the Secretary.

“(ii) The eligible professional, more frequently than is required to qualify for or maintain board certification status—

“(I) participates in such a Maintenance of Certification program for a year; and

“(II) successfully completes a qualified Maintenance of Certification Program practice assessment (as defined in subparagraph (C)(ii)) for such year.

“(iii) A Maintenance of Certification program submits to the Secretary, on behalf of the eligible professional, information—

“(I) in a form and manner specified by the Secretary, that the eligible professional has successfully met the requirements of clause

(ii) (which may be in the form of a structural measure);

“(II) if requested by the Secretary, on the survey of patient experience with care (as described in subparagraph (C)(i)(II)); and

“(III) as the Secretary may require, on the methods, measures, and data used under the Maintenance of Certification Program and the qualified Maintenance of Certification Program practice assessment.

“(C) DEFINITIONS.—For purposes of this paragraph:

“(i) The term ‘Maintenance of Certification Program’ means a continuous assessment program, such as qualified American Board of Medical Specialties Maintenance of Certification program or an equivalent program (as determined by the Secretary), that advances quality and the lifelong learning and self-assessment of board certified specialty physicians by focusing on the competencies of patient care, medical knowledge, practice-based learning, interpersonal and communication skills and professionalism. Such a program shall include the following:

“(I) The program requires the physician to maintain a valid, unrestricted medical license in the United States.

“(II) The program requires a physician to participate in educational and self-assessment programs that require an assessment of what was learned.

“(III) The program requires a physician to demonstrate, through a formalized, secure examination, that the physician has the fundamental diagnostic skills, medical knowledge, and clinical judgment to provide quality care in their respective specialty.

“(IV) The program requires successful completion of a qualified Maintenance of Certification Program practice assessment as described in clause (ii).

“(ii) The term ‘qualified Maintenance of Certification Program practice assessment’ means an assessment of a physician’s practice that—

“(I) includes an initial assessment of an eligible professional’s practice that is designed to demonstrate the physician’s use of evidence-based medicine;

“(II) includes a survey of patient experience with care; and

“(III) requires a physician to implement a quality improvement intervention to address a practice weakness identified in the initial assessment under subclause (I) and then to remeasure to assess performance improvement after such intervention.”.

(b) AUTHORITY.—Section 3002(c) of this Act is amended by adding at the end the following new paragraph:

“(3) AUTHORITY.—For years after 2014, if the Secretary of Health and Human Services determines it to be appropriate, the Secretary may incorporate participation in a Maintenance of Certification Program and successful completion of a qualified Maintenance of Certification Program practice assessment into the composite of measures of quality of care furnished pursuant to the physician fee schedule payment modifier, as described in section 1848(p)(2) of the Social Security Act (42 U.S.C. 1395w-4(p)(2)).”.

(c) ELIMINATION OF MA REGIONAL PLAN STABILIZATION FUND.—

(1) IN GENERAL.—Section 1858 of the Social Security Act (42 U.S.C. 1395w-27a) is amended by striking subsection (e).

(2) TRANSITION.—Any amount contained in the MA Regional Plan Stabilization Fund as of the date of the enactment of this Act shall be transferred to the Federal Supplementary Medical Insurance Trust Fund.

#### SEC. 3612. IMPROVEMENT IN PART D MEDICATION THERAPY MANAGEMENT (MTM) PROGRAMS.

(a) IN GENERAL.—Section 1860D-4(c)(2) of the Social Security Act (42 U.S.C. 1395w-104(c)(2)) is amended—

(1) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (E), (F), and (G), respectively; and

(2) by inserting after subparagraph (B) the following new subparagraphs:

“(C) REQUIRED INTERVENTIONS.—For plan years beginning on or after the date that is 2 years after the date of the enactment of the Patient Protection and Affordable Care Act, prescription drug plan sponsors shall offer medication therapy management services to targeted beneficiaries described in subparagraph (A)(ii) that include, at a minimum, the following to increase adherence to prescription medications or other goals deemed necessary by the Secretary:

“(i) An annual comprehensive medication review furnished person-to-person or using telehealth technologies (as defined by the Secretary) by a licensed pharmacist or other qualified provider. The comprehensive medication review—

“(I) shall include a review of the individual’s medications and may result in the creation of a recommended medication action plan or other actions in consultation with the individual and with input from the prescriber to the extent necessary and practicable; and

“(II) shall include providing the individual with a written or printed summary of the results of the review.

The Secretary, in consultation with relevant stakeholders, shall develop a standardized format for the action plan under subclause (I) and the summary under subclause (II).

“(ii) Follow-up interventions as warranted based on the findings of the annual medication review or the targeted medication enrollment and which may be provided person-to-person or using telehealth technologies (as defined by the Secretary).

“(D) ASSESSMENT.—The prescription drug plan sponsor shall have in place a process to assess, at least on a quarterly basis, the medication use of individuals who are at risk but not enrolled in the medication therapy management program, including individuals who have experienced a transition in care, if the prescription drug plan sponsor has access to that information.

“(E) AUTOMATIC ENROLLMENT WITH ABILITY TO OPT-OUT.—The prescription drug plan sponsor shall have in place a process to—

“(i) subject to clause (ii), automatically enroll targeted beneficiaries described in subparagraph (A)(ii), including beneficiaries identified under subparagraph (D), in the medication therapy management program required under this subsection; and

“(ii) permit such beneficiaries to opt-out of enrollment in such program.”.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall limit the authority of the Secretary of Health and Human Services to modify or broaden requirements for a medication therapy management program under part D of title XVIII of the Social Security Act or to study new models for medication therapy management through the Center for Medicare and Medicaid Innovation under section 1115A of such Act, as added by section 3021.

#### SEC. 3613. EVALUATION OF TELEHEALTH UNDER THE CENTER FOR MEDICARE AND MEDICAID INNOVATION.

Section 1115A(b)(2)(B) of the Social Security Act, as added by section 3021, is amend-

ed by adding at the end the following new clause:

“(xix) Utilizing, in particular in entities located in medically underserved areas and facilities of the Indian Health Service (whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act)), telehealth services—

“(I) in treating behavioral health issues (such as post-traumatic stress disorder) and stroke; and

“(II) to improve the capacity of non-medical providers and non-specialized medical providers to provide health services for patients with chronic complex conditions.”.

#### SEC. 3614. REVISIONS TO THE EXTENSION FOR THE RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Subsection (g) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2272), as added by section 3123(a) of this Act, is amended to read as follows:

“(g) FIVE-YEAR EXTENSION OF DEMONSTRATION PROGRAM.—

“(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall conduct the demonstration program under this section for an additional 5-year period (in this section referred to as the ‘5-year extension period’) that begins on the date immediately following the last day of the initial 5-year period under subsection (a)(5).

“(2) EXPANSION OF DEMONSTRATION STATES.—Notwithstanding subsection (a)(2), during the 5-year extension period, the Secretary shall expand the number of States with low population densities determined by the Secretary under such subsection to 20. In determining which States to include in such expansion, the Secretary shall use the same criteria and data that the Secretary used to determine the States under such subsection for purposes of the initial 5-year period.

“(3) INCREASE IN MAXIMUM NUMBER OF HOSPITALS PARTICIPATING IN THE DEMONSTRATION PROGRAM.—Notwithstanding subsection (a)(4), during the 5-year extension period, not more than 30 rural community hospitals may participate in the demonstration program under this section.

“(4) HOSPITALS IN DEMONSTRATION PROGRAM ON DATE OF ENACTMENT.—In the case of a rural community hospital that is participating in the demonstration program under this section as of the last day of the initial 5-year period, the Secretary—

“(A) shall provide for the continued participation of such rural community hospital in the demonstration program during the 5-year extension period unless the rural community hospital makes an election, in such form and manner as the Secretary may specify, to discontinue such participation; and

“(B) in calculating the amount of payment under subsection (b) to the rural community hospital for covered inpatient hospital services furnished by the hospital during such 5-year extension period, shall substitute, under paragraph (1)(A) of such subsection—

“(i) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the first day of the 5-year extension period, for

“(ii) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program.”.



(b) CONFORMING AMENDMENTS.—Subsection (a)(5) of section 410A of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2272), as amended by section 3123(b) of this Act, is amended by striking “1-year extension” and inserting “5-year extension”.

## PART II—PROMOTING TRANSPARENCY AND COMPETITION

### SEC. 3621. DEVELOPING METHODOLOGY TO ASSESS HEALTH PLAN VALUE.

(a) DEVELOPMENT.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”), in consultation with relevant stakeholders including health insurance issuers, health care consumers, employers, health care providers, and other entities determined appropriate by the Secretary, shall develop a methodology to measure health plan value. Such methodology shall take into consideration, where applicable—

- (1) the overall cost to enrollees under the plan;
- (2) the quality of the care provided for under the plan;
- (3) the efficiency of the plan in providing care;
- (4) the relative risk of the plan's enrollees as compared to other plans;
- (5) the actuarial value or other comparative measure of the benefits covered under the plan; and
- (6) other factors determined relevant by the Secretary.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report concerning the methodology developed under subsection (a).

### SEC. 3622. DATA COLLECTION; PUBLIC REPORTING.

Section 399I(a) of the Public Health Service Act, as added by section 3015, is amended to read as follows:

“(a) IN GENERAL.—

“(1) ESTABLISHMENT OF STRATEGIC FRAMEWORK.—The Secretary shall establish and implement an overall strategic framework to carry out the public reporting of performance information, as described in section 399JJ. Such strategic framework may include methods and related timelines for implementing nationally consistent data collection, data aggregation, and analysis methods.

“(2) COLLECTION AND AGGREGATION OF DATA.—The Secretary shall collect and aggregate consistent data on quality and resource use measures from information systems used to support health care delivery, and may award grants or contracts for this purpose. The Secretary shall align such collection and aggregation efforts with the requirements and assistance regarding the expansion of health information technology systems, the interoperability of such technology systems, and related standards that are in effect on the date of enactment of the Patient Protection and Affordable Care Act.

“(3) SCOPE.—The Secretary shall ensure that the data collection, data aggregation, and analysis systems described in paragraph (1) involve an increasingly broad range of patient populations, providers, and geographic areas over time.”.

### SEC. 3623. MODERNIZING COMPUTER AND DATA SYSTEMS OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES TO SUPPORT IMPROVEMENTS IN CARE DELIVERY.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall develop a plan

(and detailed budget for the resources needed to implement such plan) to modernize the computer and data systems of the Centers for Medicare & Medicaid Services (in this section referred to as “CMS”).

(b) CONSIDERATIONS.—In developing the plan, the Secretary shall consider how such modernized computer system could—

- (1) in accordance with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, make available data in a reliable and timely manner to providers of services and suppliers to support their efforts to better manage and coordinate care furnished to beneficiaries of CMS programs; and
- (2) support consistent evaluations of payment and delivery system reforms under CMS programs.

(c) POSTING OF PLAN.—By not later than 9 months after the date of the enactment of this Act, the Secretary shall post on the website of the Centers for Medicare & Medicaid Services the plan described in subsection (a).

### SEC. 3624. EXPANSION OF THE SCOPE OF THE INDEPENDENT MEDICARE ADVISORY BOARD.

(a) ANNUAL PUBLIC REPORT.—

(1) REPORT.—Section 1899A of the Social Security Act, as added by section 3403, is amended by adding at the end the following new subsection:

“(n) ANNUAL PUBLIC REPORT.—

“(1) IN GENERAL.—Not later than July 1, 2014, and annually thereafter, the Board shall produce a public report containing standardized information on system-wide health care costs, patient access to care, utilization, and quality-of-care that allows for comparison by region, types of services, types of providers, and both private payers and the program under this title.

“(2) REQUIREMENTS.—Each report produced pursuant to paragraph (1) shall include information with respect to the following areas:

“(A) The quality and costs of care for the population at the most local level determined practical by the Board (with quality and costs compared to national benchmarks and reflecting rates of change, taking into account quality measures described in section 1890(b)(7)(B)).

“(B) Beneficiary and consumer access to care, patient and caregiver experience of care, and the cost-sharing or out-of-pocket burden on patients.

“(C) Epidemiological shifts and demographic changes.

“(D) The proliferation, effectiveness, and utilization of health care technologies, including variation in provider practice patterns and costs.

“(E) Any other areas that the Board determines affect overall spending and quality of care in the private sector.”.

(2) ALIGNMENT WITH MEDICARE PROPOSALS.—Section 1899A(c)(2)(B) of the Social Security Act, as added by section 3403, is amended—

(A) in clause (v), by striking “and” at the end;

(B) in clause (vi), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new clause:

“(vii) take into account the data and findings contained in the annual reports under subsection (n) in order to develop proposals that can most effectively promote the delivery of efficient, high quality care to Medicare beneficiaries.”.

(b) ADVISORY RECOMMENDATIONS FOR NON-FEDERAL HEALTH CARE PROGRAMS.—Section 1899A of the Social Security Act, as added by

section 3403 and as amended by subsection (a)(1), is amended by adding at the end the following new subsection:

“(o) ADVISORY RECOMMENDATIONS FOR NON-FEDERAL HEALTH CARE PROGRAMS.—

“(1) IN GENERAL.—Not later than January 15, 2015, and at least once every two years thereafter, the Board shall submit to Congress and the President recommendations to slow the growth in national health expenditures (excluding expenditures under this title and in other Federal health care programs) while preserving or enhancing quality of care, such as recommendations—

“(A) that the Secretary or other Federal agencies can implement administratively;

“(B) that may require legislation to be enacted by Congress in order to be implemented;

“(C) that may require legislation to be enacted by State or local governments in order to be implemented;

“(D) that private sector entities can voluntarily implement; and

“(E) with respect to other areas determined appropriate by the Board.

“(2) COORDINATION.—In making recommendations under paragraph (1), the Board shall coordinate such recommendations with recommendations contained in proposals and advisory reports produced by the Board under subsection (c).

“(3) AVAILABLE TO PUBLIC.—The Board shall make recommendations submitted to Congress and the President under this subsection available to the public.”.

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall preclude the Independent Medicare Advisory Board, as established under section 1899A of the Social Security Act (as added by section 3403), from solely using data from public or private sources to carry out the amendments made by subsections (a)(1) and (b).

### SEC. 3625. ADDITIONAL PRIORITY FOR THE NATIONAL HEALTH CARE WORKFORCE COMMISSION.

Section 5101(d)(4)(A) of this Act is amended by adding at the end the following new clause:

“(v) An analysis of, and recommendations for, eliminating the barriers to entering and staying in primary care, including provider compensation.”.

## PART III—PROMOTING ACCOUNTABILITY AND RESPONSIBILITY

### SEC. 3631. HEALTH CARE FRAUD ENFORCEMENT.

(a) FRAUD SENTENCING GUIDELINES.—

(1) DEFINITION.—In this subsection, the term “Federal health care offense” has the meaning given that term in section 24 of title 18, United States Code, as amended by this Act.

(2) REVIEW AND AMENDMENTS.—Pursuant to the authority under section 994 of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall—

(A) review the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses;

(B) amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs to provide that the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss by the defendant; and

(C) amend the Federal Sentencing Guidelines to provide—

(i) a 2-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than \$1,000,000 and less than \$7,000,000;

(ii) a 3-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than \$7,000,000 and less than \$20,000,000;

(iii) a 4-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than \$20,000,000; and

(iv) if appropriate, otherwise amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs.

(3) REQUIREMENTS.—In carrying this subsection, the United States Sentencing Commission shall—

(A) ensure that the Federal Sentencing Guidelines and policy statements—

(i) reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud; and

(ii) provide increased penalties for persons convicted of health care fraud offenses in appropriate circumstances;

(B) consult with individuals or groups representing health care fraud victims, law enforcement officials, the health care industry, and the Federal judiciary as part of the review described in paragraph (2);

(C) ensure reasonable consistency with other relevant directives and with other guidelines under the Federal Sentencing Guidelines;

(D) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal Sentencing Guidelines, as in effect on the date of enactment of this Act, provide sentencing enhancements;

(E) make any necessary conforming changes to the Federal Sentencing Guidelines; and

(F) ensure that the Federal Sentencing Guidelines adequately meet the purposes of sentencing.

(b) INTENT REQUIREMENT FOR HEALTH CARE FRAUD.—Section 1347 of title 18, United States Code, is amended—

(1) by inserting “(a)” before “Whoever knowingly”; and

(2) by adding at the end the following:

“(b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.”.

(c) HEALTH CARE FRAUD OFFENSE.—Section 24(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking the semicolon and inserting “or section 1128B of the Social Security Act (42 U.S.C. 1320a-7b); or”; and

(2) in paragraph (2)—

(A) by inserting “1349,” after “1343,”; and

(B) by inserting “section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331), or section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131),” after “title,”.

(d) SUBPOENA AUTHORITY RELATING TO HEALTH CARE.—

(1) SUBPOENAS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.—Section 1510(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by striking “to the grand jury”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “grand jury subpoena” and inserting “subpoena for records”; and

(ii) in the matter following subparagraph (B), by striking “to the grand jury”.

(2) SUBPOENAS UNDER THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT.—The Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997 et seq.) is amended by inserting after section 3 the following:

**“SEC. 3A. SUBPOENA AUTHORITY.**

“(a) AUTHORITY.—The Attorney General, or at the direction of the Attorney General, any officer or employee of the Department of Justice may require by subpoena access to any institution that is the subject of an investigation under this Act and to any document, record, material, file, report, memorandum, policy, procedure, investigation, video or audio recording, or quality assurance report relating to any institution that is the subject of an investigation under this Act to determine whether there are conditions which deprive persons residing in or confined to the institution of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

“(b) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

“(1) ISSUANCE.—Subpoenas issued under this section—

“(A) shall bear the signature of the Attorney General or any officer or employee of the Department of Justice as designated by the Attorney General; and

“(B) shall be served by any person or class of persons designated by the Attorney General or a designated officer or employee for that purpose.

“(2) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under this section, the United States district court for the judicial district in which the institution is located may issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt that court.

“(c) PROTECTION OF SUBPOENAED RECORDS AND INFORMATION.—Any document, record, material, file, report, memorandum, policy, procedure, investigation, video or audio recording, or quality assurance report or other information obtained under a subpoena issued under this section—

“(1) may not be used for any purpose other than to protect the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States of persons who reside, have resided, or will reside in an institution;

“(2) may not be transmitted by or within the Department of Justice for any purpose other than to protect the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States of persons who reside, have resided, or will reside in an institution; and

“(3) shall be redacted, obscured, or otherwise altered if used in any publicly available manner so as to prevent the disclosure of any personally identifiable information.”.

**SEC. 3632. DEVELOPMENT OF STANDARDS FOR FINANCIAL AND ADMINISTRATIVE TRANSACTIONS.**

(a) ADDITIONAL TRANSACTION STANDARDS AND OPERATING RULES.—

(1) DEVELOPMENT OF ADDITIONAL TRANSACTION STANDARDS AND OPERATING RULES.—Section 1173(a) of the Social Security Act (42 U.S.C. 1320d-2(a)), as amended by section 1104(b)(2), is amended—

(A) in paragraph (1)(B), by inserting before the period the following: “, and subject to the requirements under paragraph (5)”; and

(B) by adding at the end the following new paragraph:

“(5) CONSIDERATION OF STANDARDIZATION OF ACTIVITIES AND ITEMS.—

“(A) IN GENERAL.—For purposes of carrying out paragraph (1)(B), the Secretary shall solicit, not later than January 1, 2012, and not less than every 3 years thereafter, input from entities described in subparagraph (B) on—

“(i) whether there could be greater uniformity in financial and administrative activities and items, as determined appropriate by the Secretary; and

“(ii) whether such activities should be considered financial and administrative transactions (as described in paragraph (1)(B)) for which the adoption of standards and operating rules would improve the operation of the health care system and reduce administrative costs.

“(B) SOLICITATION OF INPUT.—For purposes of subparagraph (A), the Secretary shall seek input from—

“(i) the National Committee on Vital and Health Statistics, the Health Information Technology Policy Committee, and the Health Information Technology Standards Committee; and

“(ii) standard setting organizations and stakeholders, as determined appropriate by the Secretary.”.

(b) ACTIVITIES AND ITEMS FOR INITIAL CONSIDERATION.—For purposes of section 1173(a)(5) of the Social Security Act, as added by subsection (a), the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall, not later than January 1, 2012, seek input on activities and items relating to the following areas:

(1) Whether the application process, including the use of a uniform application form, for enrollment of health care providers by health plans could be made electronic and standardized.

(2) Whether standards and operating rules described in section 1173 of the Social Security Act should apply to the health care transactions of automobile insurance, worker's compensation, and other programs or persons not described in section 1172(a) of such Act (42 U.S.C. 1320d-1(a)).

(3) Whether standardized forms could apply to financial audits required by health plans, Federal and State agencies (including State auditors, the Office of the Inspector General of the Department of Health and Human Services, and the Centers for Medicare & Medicaid Services), and other relevant entities as determined appropriate by the Secretary.

(4) Whether there could be greater transparency and consistency of methodologies and processes used to establish claim edits used by health plans (as described in section 1171(5) of the Social Security Act (42 U.S.C. 1320d(5))).

(5) Whether health plans should be required to publish their timeliness of payment rules.

(c) ICD CODING CROSSWALKS.—

(1) ICD-9 TO ICD-10 CROSSWALK.—The Secretary shall task the ICD-9-CM Coordination and Maintenance Committee to convene a meeting, not later than January 1, 2011, to receive input from appropriate stakeholders (including health plans, health care providers, and clinicians) regarding the crosswalk between the Ninth and Tenth Revisions of the International Classification of Diseases (ICD-9 and ICD-10, respectively) that is posted on the website of the Centers for

Medicare & Medicaid Services, and make recommendations about appropriate revisions to such crosswalk.

(2) **REVISION OF CROSSWALK.**—For purposes of the crosswalk described in paragraph (1), the Secretary shall make appropriate revisions and post any such revised crosswalk on the website of the Centers for Medicare & Medicaid Services.

(3) **USE OF REVISED CROSSWALK.**—For purposes of paragraph (2), any revised crosswalk shall be treated as a code set for which a standard has been adopted by the Secretary for purposes of section 1173(c)(1)(B) of the Social Security Act (42 U.S.C. 1320d-2(c)(1)(B)).

(4) **SUBSEQUENT CROSSWALKS.**—For subsequent revisions of the International Classification of Diseases that are adopted by the Secretary as a standard code set under section 1173(c) of the Social Security Act (42 U.S.C. 1320d-2(c)), the Secretary shall, after consultation with the appropriate stakeholders, post on the website of the Centers for Medicare & Medicaid Services a crosswalk between the previous and subsequent version of the International Classification of Diseases not later than the date of implementation of such subsequent revision.

**SA 3120.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 1997, strike line 1 and all that follows through page 1998, line 12.

**SA 3121.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2045, strike line 1 and all that follows through page 2046, line 24.

**SA 3122.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1998, strike lines 13 through 24.

**SA 3123.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue

Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2034, strike line 16 and all that follows through page 2035, line 15.

**SA 3124.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2040, strike line 18 and all that follows through page 2044, line 7.

**SA 3125.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1999, strike lines 1 through 20.

**SA 3126.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, insert the following:

**SEC. 9024. EXEMPTION FROM TAXES, FEES, AND PENALTIES.**

(a) **IN GENERAL.**—No tax, fee, or penalty imposed by this Act shall apply to any taxpayer for any taxable year if, as determined by the Secretary of the Treasury, such tax, fee, or penalty would increase the rate of tax imposed on such taxpayer under any provision of the Internal Revenue Code of 1986 or any other applicable Federal law in effect on the day before the date of the enactment of this Act, as compared to the rate of tax imposed on such taxpayer under such provision of law on December 31, 1999.

(b) **NEW TAXPAYERS.**—In the case of a taxpayer that was not in existence on December 31, 1999, or that had no Federal tax liability on such date, subsection (a) shall be applied by substituting “December 31 of the first calendar year after 1999 in which such taxpayer had Federal tax liability greater than zero” for “December 31, 1999”.

**SA 3127.** Mr. MERKLEY (for himself and Mrs. MURRAY) submitted an amendment intended to be proposed to

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1382, between lines 10 and 11, insert the following:

(c) **ADVANCED TECHNOLOGY EDUCATION PROGRAM FOR NURSING.**—Title VIII of the Public Health Service Act is amended by inserting after section 831A (42 U.S.C. 296b), as added by subsection (b), the following:

**“SEC. 831B. ADVANCED TECHNOLOGY EDUCATION PROGRAM FOR NURSING.**

“(a) **IN GENERAL.**—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall establish a grant program to assist consortia in advancing nursing education and the career ladder.

“(b) **PROGRAM DESIGN.**—The grant program established under subsection (a) shall—

“(1) be designed to strengthen and expand the nursing career ladder, particularly with regard to innovative programs that encourage registered nurses to pursue advanced degrees in nursing, with an emphasis on integrating innovative technology into nursing education programs; and

“(2) place emphasis on the needs of non-traditional students and underserved groups.

“(c) **APPLICATIONS.**—An application for a grant under subsection (a) shall be submitted—

“(1) by a two-year educational institution on behalf of the consortia seeking the grant; and

“(2) at such time, in such manner, and containing such information as the Secretary may require.

“(d) **ADVANCED TECHNOLOGY EDUCATION PROJECTS IN NURSING.**—Funds made available through a grant under subsection (a) shall be used to support nursing education projects, to enhance nursing education programs, and to assist students in transferring academic credit from a two-year educational institution to an advanced degree program in nursing through activities such as—

“(1) alignment and enhancement of curriculum to ensure that academic credit earned at a two-year educational institutions can be transferred to baccalaureate or graduate degree programs in nursing;

“(2) establishment of innovative partnerships and articulation agreements to facilitate the transfer by students of academic credit from a two-year educational institution to an advanced degree program in nursing;

“(3) the purchase or lease of state-of-the-art technologies essential in developing innovative nursing education programs and in preparing nursing students to use current and future health technologies, such as simulation and visualization tools and telehealth;

“(4) the acquisition of technical support necessary for developing innovative nursing curriculum and advanced technology training capabilities among nursing faculty;

“(5) professional development and training of nursing faculty, both full- and part-time, in the nursing profession;

“(6) development and dissemination of exemplary curricula and instructional materials in nursing;

“(7) development and implementation of innovative workshops, mentoring activities,

and professional development activities for nursing students, registered nurses, and nursing faculty to encourage education advancement and retention in a nursing career; and

“(8) development and implementing internship programs for nurses or nursing students to encourage mentoring.

“(e) DEFINITION.—In this section—

“(1) the term ‘consortia’ means a collaboration that—

“(A) shall include a two-year educational institution in partnership with a four-year college or university; and

“(B) may include one or more of the following: another two-year or four-year college or university, a school of nursing, the private sector, a State or local government, a State workforce investment board, a local workforce investment board, a community-based allied health program, a health professions school, a teaching hospital, a graduate medical education program, an academic health center, and any other appropriate public or private non-profit entity;

in order to inform and improve nursing education programs;

“(2) the term ‘four-year educational institution’ means a department, division, or other administrative unit in a college or university which provides primarily or exclusively an accredited program in professional nursing and related subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, or to an equivalent degree, and including advanced training related to such program of education provided by such school;

“(3) the term ‘local workforce investment board’ refers to a local workforce investment board established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832);

“(4) the term ‘State workforce investment board’ refers to a State workforce investment board established under section 111 of the Workforce Investment Act of 1998 (29 U.S.C. 2821); and

“(5) the term ‘two-year educational institution’ means a department, division, or other administrative unit in a junior or community college which provides primarily or exclusively a two-year accredited nursing program leading to an associate degree in nursing or an equivalent degree, but only if such program, or such unit or college, is accredited.

“(f) FUNDING.—There are authorized to be appropriated to award grants under this section, \$12,000,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2015.”.

**SA 3128.** Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 921, between lines 20 and 21, insert the following:

**SEC. 3210. EXPANSION OF 340B PROGRAM COVERED ENTITIES AND RECEIPT BY CERTAIN PACE PROGRAMS AND SNPs OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.**

(a) EXPANSION OF 340B PROGRAM COVERED ENTITIES.—Section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)), as amended by section 7101, is further amended by adding at the end the following:

“(P) An entity that is—

“(i) a PACE program under section 1894 of the Social Security Act; or

“(ii) a specialized MA plan for special needs individuals described in section 1859(b)(6)(B)(ii) of such Act, all or nearly all of whom are nursing home certifiable, that is fully integrated with capitated contracts with States for Medicaid benefits.”.

(b) RECEIPT BY CERTAIN PACE PROGRAMS AND SNPs OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.—

(1) PACE PROGRAMS.—Section 1894 of the Social Security Act (42 U.S.C. 1395eee), as amended by section 3201(i), is further amended—

(A) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(B) by inserting after subsection (h) the following new subsection:

“(i) RECEIPT BY CERTAIN PACE PROGRAMS OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.—

“(1) IN GENERAL.—An applicable PACE program is eligible to receive from the Secretary an amount equal to 10 percent of the estimated savings to the program under this title as a result of participation in the program under section 340B of the Public Health Service Act (as determined by the Secretary).

“(2) APPLICABLE PACE PROGRAM DEFINED.—For purposes of paragraph (1), the term ‘applicable PACE program’ means a PACE program that—

“(A) is participating in the program under section 340B of the Public Health Service Act;

“(B) submits to the Secretary an application in such form and manner, and containing such information, as the Secretary may specify; and

“(C) has in effect a plan approved by the Secretary for the use of any amounts received by the program or plan under paragraph (1) to provide enhanced formulary coverage, medication management, or disease management to enrollees.”.

(2) SNPs.—Section 1859 of the Social Security Act (42 U.S.C. 1395w–28), as amended by section 3208, is further amended by adding at the end the following new subsection:

“(h) RECEIPT BY CERTAIN SNPs OF PERCENTAGE OF SAVINGS FROM PARTICIPATION IN 340B PROGRAM.—

“(1) IN GENERAL.—An applicable specialized MA plan for specialized needs individuals is eligible to receive from the Secretary an amount equal to 10 percent of the estimated savings to the program under this title as a result of participation in the program under section 340B of the Public Health Service Act (as determined by the Secretary).

“(2) APPLICABLE SPECIALIZED MA PLAN FOR SPECIAL NEEDS INDIVIDUALS DEFINED.—For purposes of paragraph (1), the term ‘applicable specialized MA plan for special needs individuals’ means a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii), all or nearly all of whom are nursing home certifiable, that is fully integrated with capitated contracts with States for Medicaid benefits that—

“(A) is participating in the program under section 340B of the Public Health Service Act;

“(B) submits to the Secretary an application in such form and manner, and containing such information, as the Secretary may specify; and

“(C) has in effect a plan approved by the Secretary for the use of any amounts received by the program or plan under paragraph (1) to provide enhanced formulary coverage, medication management, or disease management to enrollees.”.

(c) DEVELOPMENT OF NEW PROGRAM.—The Secretary of Health and Human Services may develop and implement a program whereby such Secretary enters into an agreement with manufacturers that participate in the program under section 340B of the Public Health Service Act (42 U.S.C. 256b) under which enrollees in PACE programs under section 1894 of the Social Security Act (42 U.S.C. 1395eee) and specialized MA plans for special needs individuals described in section 1859(b)(6)(B)(ii) of such Act (42 U.S.C. 1395w–28) may receive covered drugs (as defined under such section 340B) from pharmacies selected by the PACE program or specialized MA plan, including local pharmacies.

**SA 3129.** Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1411, between lines 5 and 6, insert the following:

**SEC. 5316. SECONDARY SCHOOL HEALTH SCIENCES TRAINING PROGRAM.**

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to establish a health sciences training program consisting of awarding grants, on a competitive basis, to eligible recipients to enable the eligible recipients to prepare secondary school students for careers in health professions.

(2) CONSULTATION AND COLLABORATION.—The Secretary of Education shall—

(A) consult with the Secretary of Health and Human Services and the Secretary of Labor prior to the issuance of a solicitation for grant applications under this section; and

(B) specifically collaborate with the Secretary of Health and Human Services to coordinate the program under this section with any programs administered by the Health Resources and Services Administration that create a pipeline of professionals for the health care workforce.

(b) DEVELOPMENT AND IMPLEMENTATION OF HEALTH SCIENCES PROGRAMS OF STUDY.—An eligible recipient receiving a grant under this section shall use grant funds—

(1) to implement a secondary school health sciences program of study that—

(A) meets the requirements for a career and technical program of study under section 122(c)(1)(A) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2342(c)(1)(A));

(B) is aligned with—

(i) the career and technical programs of study supported by the State in which the eligible recipient is located, in accordance with the State's plan under section 122(c) of such Act (20 U.S.C. 2342(c)); and

(ii) any technical standards required for State licensure in a health profession; and

(C) prepares students for—

(i) a postsecondary certificate, credential, or accredited associate's or baccalaureate degree program in the health profession; or

(ii) an accredited baccalaureate degree program in an academic major related to the health profession; and

(2) to increase the interest of secondary school students in applying to, and enrolling in, programs described in clause (i) or (ii) of paragraph (1)(C), including through—

(A) work-study programs;

(B) pre-apprenticeship programs;

(C) programs to increase awareness of careers in health professions; or

(D) other activities to increase such interest.

(c) **ELIGIBILITY.**—To be eligible for a grant under this section, an eligible recipient shall—

(1) provide assurances that activities under the grant will be carried out in partnership with—

(A) an accredited health professions school or program at the postsecondary level; and

(B) a public or private nonprofit hospital or public or private nonprofit entity with a focus on health sciences or health professions; and

(2) provide an explanation of how activities under the grant are consistent with the State plan and local plan being implemented under sections 122 and 134, respectively, of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2342, 2354), for the area to be served by the grant.

(d) **PREFERENCE.**—In awarding grants under this section, the Secretary shall give preference to an eligible recipient that has a demonstrated record of not less than one of the following:

(1) Graduating, or collaborating with an eligible recipient that graduates, a high or significantly improved percentage of students who have exhibited mastery in secondary school State science standards.

(2) Graduating students from disadvantaged backgrounds, including racial and ethnic minorities who are underrepresented in—

(A) the programs described in clause (i) or (ii) of subsection (b)(1)(C); or

(B) the health professions.

(e) **REPORT.**—The Secretary shall submit to Congress an annual report on the program carried out under this section.

(f) **DEFINITIONS.**—In this section:

(1) **ELIGIBLE RECIPIENT.**—The term “eligible recipient” means an eligible recipient described in section 3(14)(A) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(14)(A)).

(2) **HEALTH CARE WORKFORCE.**—The term “health care workforce” has the meaning given the term in section 5101(i).

(3) **HEALTH PROFESSION.**—The term “health profession” means the profession of a member of the health care workforce.

(4) **LOCAL EDUCATIONAL AGENCY.**—The term “local educational agency” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(5) **SECONDARY SCHOOL.**—The term “secondary school”—

(A) means a secondary school, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); and

(B) includes a middle school.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Education, except as otherwise specified.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2011 through 2015.

**SA 3130.** Mr. JOHANNIS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 245, between lines 14 and 15, and insert the following:

(B) **SPECIAL RULE FOR LOW-INCOME ADULTS NOT ELIGIBLE FOR MEDICAID.**—If a taxpayer is an individual who, but for the application of section 1902(k)(2) of the Social Security Act, a State would be required under subclause (VIII) of subsection (a)(10)(A)(i) to provide medical assistance to under the State Medicaid plan, the taxpayer shall—

(i) for purposes of the credit under this section, be treated as an applicable taxpayer and the applicable percentage with respect to such taxpayer shall be 2.0 percent; and

(ii) for purposes of reduced cost-sharing under section 1402 of the Patient Protection and Affordable Care Act, shall be treated as having household income of more than 100 percent but less than 150 percent of the poverty line (as so defined) applicable to a family of the size involved.

On page 398, between lines 9 and 10, insert the following:

(B) **SPECIAL RULES FOR STATES WITH A BUDGET DEFICIT OR AT RISK OF HAVING TO RAISE TAXES OR BEING UNABLE TO DELIVER ESSENTIAL STATE FUNCTIONS.**—Section 1902(k) of such Act (42 U.S.C. 1396a(k)), as added by subparagraph (A), is amended by adding at the end the following:

“(2) If a State submits a certification to the Secretary in 2013 that in 2014, complying with the requirement under subclause (VIII) of subsection (a)(10)(A)(i) to provide medical assistance to individuals described in that subclause would cause the State to have a budget deficit, or require the State to raise taxes, or reduce or eliminate spending for education, transportation, law enforcement or other essential State functions, then, in the case of individuals described in the subclause who have attained 19 years of age, the State only shall be required to provide medical assistance under that subclause to those individuals with income (as determined under subsection (e)(14)) that does not exceed 75 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved.”.

**SA 3131.** Mr. KOHL (for himself and Mr. DURBIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

## **TITLE —PROHIBITION ON DATA MINING**

### **SEC. 01. PURPOSE.**

(a) **IN GENERAL.**—It is the purpose of this title to—

(1) safeguard the confidentiality of prescribing information;

(2) protect the integrity of the doctor-patient relationship;

(3) maintain the integrity and public trust in the medical profession;

(4) combat vexatious and harassing sales practices;

(5) restrain undue influence exerted by pharmaceutical industry marketing representatives over prescribing decisions; and

(6) improve the quality and lower the cost of health care.

(b) **RULE OF CONSTRUCTION.**—Nothing in this title shall be construed to regulate the monitoring of prescribing practices for uses other than marketing (such as quality control, research unrelated to marketing, or use by governments or other entities not in the business of selling health care products).

### **SEC. 02. DEFINITIONS.**

In this title:

(1) **BONA FIDE CLINICAL TRIAL.**—The term “bona fide clinical trial” means any research project that—

(A) prospectively assigns human subjects to intervention and comparison groups to study the cause and effect relationship between a medical intervention and a health outcome;

(B) has received approval from an appropriate Institutional Review Board; and

(C) has been registered at ClinicalTrials.gov prior to commencement.

(2) **COMPANY MAKING OR SELLING PRESCRIBED PRODUCTS.**—The term “company making or selling prescribed products” means a pharmacy, a pharmacy benefit manager, a pharmaceutical manufacturer, pharmaceutical wholesaler, or any other entity whose primary purpose is the marketing of pharmaceutical product for financial gain. Such term does not include health plans, health care providers, or State or Federal public health programs and research organizations.

(3) **INDIVIDUAL IDENTIFYING INFORMATION.**—The term “individual identifying information” means information that directly or indirectly identifies a prescriber or a patient, where the information is derived from or relates to a prescription for any prescribed product.

(4) **HEALTH CARE PROVIDER.**—The term “health care provider” means a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(5) **HEALTH PLAN.**—

(A) **IN GENERAL.**—The term “health plan” means an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg-91(a)(2))). Such term includes the following (singly or in combination):

(i) A group health plan, as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

(ii) A health insurance issuer, as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

(iii) A health maintenance organization, as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

(iv) Part A or part B of the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(v) The Medicaid program under title XIX of the Act, 42 U.S.C. 1396, et seq.

(vi) An issuer of a Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss(g)(1)).

(vii) An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.

(viii) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(ix) The health care program for active military personnel under title 10, United States Code.

(x) The veterans health care program under chapter 17 of title 38, United States Code.

(xi) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in section 1072(4) of title 10, United States Code).

(xii) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

(xiii) The Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code.

(xiv) An approved State child health plan under title XXI of the Social Security Act, providing benefits for child health assistance that meet the requirements of section 2103 of such Act (42 U.S.C. 1397, et seq.).

(xv) The Medicare+Choice program under Part C of title XVIII of the Social Security Act (42 U.S.C. 1395w-21 et seq.).

(xvi) A high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals.

(xvii) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg-91(a)(2))).

(B) LIMITATION.—Such terms shall not include the following:

(i) Any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the Public Health Service Act (42 U.S.C. 300gg-91(c)(1)).

(ii) A government-funded program (other than a program listed in clauses (i) through (xvi) of subparagraph (A)).

(I) whose principal purpose is other than providing, or paying the cost of, health care; or

(II) whose principal activity is—

(aa) the direct provision of health care to persons; or

(bb) the making of grants to fund the direct provision of health care to persons.

(6) MARKETING.—The term “marketing” means any activity advertising, promoting, or selling a prescribed product for commercial gain, including—

(A) identifying individuals to receive a message promoting use of a particular product;

(B) identifying individuals to receive any form of gift, product sample, consultancy, or any other item, service, compensation or employment of value;

(C) planning the substance of a sales representative visit or communication or the

substance of an advertisement or other promotional message or document; or

(D) evaluating or compensating sales representatives.

(7) PERSON.—The term “person” means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

(8) PHARMACY.—The term “pharmacy” means any person licensed under State or Federal law to dispense prescribed products.

(9) PRESCRIBED PRODUCT.—The term “prescribed product” includes a biological product as defined in section 351 of the Public Health Service Act (42 U.S.C. 262) and a device or a drug as defined in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

(10) REGULATED RECORD.—The term “regulated record” means information or documentation from a prescription.

#### SEC. 03. PRIVACY PROTECTIONS.

(a) PROHIBITION.—No company or person in possession of regulated records, or their agents, or those acting on their behalf shall knowingly disclose, sell, or use regulated records containing individual identifying information for marketing a prescribed product.

(b) PERMITTED TRANSFERS.—A regulated record containing individual identifying information may be transferred to another entity, including to another branch or subsidiary of the same entity, only if the transfer provides satisfactory assurance that the recipient will safeguard the records from being disclosed or used for a marketing purpose prohibited under this section.

(c) PERMITTED USES.—

(1) IN GENERAL.—Regulated records containing individual identifying information may be disclosed, sold, transferred, exchanged, or used for any purpose other than marketing a prescribed product, including—

(A) to fill a valid prescription, including communication by a pharmacist about patient safety or generic substitution, or in response to patient or physician questions about a medication, as well as any transfer necessary for billing or pharmacy reimbursement;

(B) to conduct of a bona fide clinical trial;

(C) to disseminate safety warnings, labeling changes, risk evaluation and mitigation strategies (REMS) compliance communications, or to facilitate adverse event reporting, or to otherwise implement a REMS;

(D) for the purposes of academic detailing or public health communications;

(E) for the administration of a patient's health insurance or benefits plan, including determining compliance with the terms of coverage or medical necessity; or

(F) to comply with existing State or Federal law.

(2) RULES OF CONSTRUCTION.—This section shall not be construed to—

(A) prohibit any communication between a health care provider and patients under his or her care, or any communication between health care providers for the purpose of patient care;

(B) prohibit the use of data by a health plan or a pharmacy benefit manager where such plan or manager is acting in the fiduciary interest of such organizations, for purposes of planning, conducting, or evaluating formulary compliance or quality assurance program based on evidence based prescribing or cost-containment goals;

(C) prohibit conduct that involves the collection, use, transfer, or sale of regulated records for marketing purposes if—

(i) the data involved does not contain individually identifying information; and

(ii) there is no reasonable basis to believe that the data can be used to obtain individually identifying information; and

(D) prevent any person from disclosing regulated records to the identified individual as long as the information does not include protected information pertaining to any other person.

(d) REGULATIONS.—The Attorney General may promulgate regulations as necessary to implement this title.

(e) ENFORCEMENT.—Any person who knowingly fails to comply with the requirements of this title, or regulations promulgated pursuant to this title, by using or disclosing regulated records in a manner not authorized by this title, or regulations, shall be subject to a civil penalty of at least \$10,000, and not more than \$50,000, per violation, as assessed by the Attorney General. Each disclosure of a regulated record shall constitute a violation of this title. The Attorney General shall take necessary action to enforce the payment of penalties assessed under this section.

#### SEC. 04. SEVERABILITY.

If any provision of this title, or its application to any person or circumstance, is held invalid, the remainder of this title, or the application of the provision, to other persons or circumstances shall not be affected.

#### SEC. 05. NO EFFECT ON TRUTHFUL SPEECH TO DOCTORS OR PATIENTS.

Nothing in this title shall be construed to regulate the content, time, place, or manner of any discussion between a prescriber and their patient, or a prescriber and any person representing a prescription drug manufacturer.

**SA 3132.** Mrs. McCASKILL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, between lines 21 and 22, insert the following:

#### SEC. 1003A. STUDY TO PROVIDE HEALTH CARE INFLATION TRANSPARENCY AND ACCOUNTABILITY.

(a) FINDINGS.—Congress finds the following:

(1) Manufacturers of drugs have increased wholesale prices of brand-name drugs by approximately 9 percent in the period from 2008 to 2009, while all other sectors of the economy experienced a 1.3 percent decline in such period.

(2) Insurance brokers and benefits consultants predict that the small business clients of such brokers and consultants will experience an increase in premiums by an average of approximately 15 percent for 2010, which is double the rate of such increase that occurred for 2009.

(b) DEFINITIONS.—In this section:

(1) HEALTH CARE SECTOR.—The term “health care sector” includes manufacturers of drugs, manufacturers of devices, hospitals, insurance companies, laboratories, and health care providers that are affected by this Act (and the amendments made by this Act).

(2) HEALTH INSURANCE ISSUER.—The term “health insurance issuer” means those



health insurance issuers subject to section 2794(a) of the Public Health Service Act (as added by section 1003)

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(c) **ANNUAL STUDY.**—

(1) **IN GENERAL.**—The Secretary, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, shall, on an annual basis, collect and study data on pricing in the health care sector. Such data shall include the information provided to the Secretary under section 2794(b)(1)(A) of the Public Health Service Act (as added by section 1003).

(2) **INITIAL STUDY.**—The initial such study shall be for the 1-year period beginning on July 1, 2009, and ending on the date of the first report under subsection (e).

(3) **SUBSEQUENT STUDIES.**—Each subsequent study shall be for the 1-year period following the date of the preceding report under subsection (e).

(d) **COLLECTION OF DATA.**—Health insurance issuers and entities operating within the health care sector shall provide to the Secretary information on price, demographics, and any other variable or factor the Secretary may deem necessary to determine if premiums, retail or wholesale prices, or other costs are being increased unreasonably, including information about the actuarial value of the plans of the issuer and the medical loss ratio of such plans.

(e) **REPORTS.**—

(1) **IN GENERAL.**—Based on the annual study conducted under subsection (c), the Secretary, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, shall publish an annual report on the excess price inflation in the health care sector that occurred during the period described in such subsection.

(2) **EXCESS PRICE INFLATION.**—For purposes of the report, the term “excess price inflation” shall be defined by the Secretary, in consultation with the Attorney General, the Director of the Congressional Budget Office, and other Government experts and economists as the Secretary determines appropriate.

(f) **EFFECT OF STUDY AND REPORTS.**—

(1) **REIMBURSEMENT RATES.**—The results of the study and report under this section shall be taken into account—

(A) when reimbursement rates for Federal health programs are established for the years following such report; and

(B) by States, when making recommendations under section 2974(b)(1)(B) of the Public Health Service Act (as added by section 1003).

(2) **REBATES.**—

(A) **HEALTH INSURANCE ISSUERS.**—Based on a study conducted under subsection (c), if insurance premiums of a health insurance issuer are determined by the Secretary, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, to meet the definition of excess price inflation, such issuer shall provide to each enrollee of such issuer a rebate. The amount of the rebate shall be calculated using the formula described under section 2718(b) of the Public Health Service Act (as added by section 1001), except for the amount of the excess price inflation shall be substituted for the amount of the premium revenues.

(B) **HEALTH CARE SECTOR ENTITIES.**—Based on a study conducted under subsection (c), if the Secretary determines, in coordination with the Attorney General and the Chairman of the Federal Trade Commission, that an

entity within the health care sector has increased price of goods or services related to such entity’s participation in the health care sector, such as drugs or devices, sufficient to meet the definition of excess price inflation, then such entity shall pay to the Treasury the amount of the excess price inflation for the purpose of deficit reduction.

(3) **APPEAL OF DETERMINATION.**—The Secretary shall establish an effective appeals process under which a health insurance issuer or health care entity within the health care sector may appeal the determination of excess price inflation described in paragraph (2). In making an appeals determination, the Secretary may consult with the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Congressional Budget Office, and other Government experts and economists as the Secretary determines appropriate.

(g) **PUBLIC AVAILABILITY.**—The Secretary shall make each report under subsection (e), and the supporting data describing excess price inflation in the health care sector, available to the public.

**SA 3133.** Mr. WICKER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

**TITLE X—ADDITIONAL PROVISIONS**  
**Subtitle A—Physician Payment Update Commission**

**SEC. 10001. SHORT TITLE.**

This subtitle may be cited as the “Physician Payment Update Commission Act”.

**SEC. 10002. ESTABLISHMENT OF PHYSICIAN PAYMENT UPDATE COMMISSION.**

(a) **MEDICARE PHYSICIAN FEE SCHEDULE UPDATE AND SUNSET OF MEDICARE SUSTAINABLE GROWTH RATE FORMULA.**—

(1) **UPDATE FOR 2010 AND 2011.**—Section 1848(d)(10) of the Social Security Act (42 U.S.C. 1395w-4(d)(10)), as added by section 3101, is amended to read as follows:

“(10) **UPDATE FOR 2010 AND 2011.**—

“(A) **IN GENERAL.**—The update to the single conversion factor established in paragraph (1)(C) for 2010 and 2011 shall be 0 percent.

“(B) **NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2012 AND SUBSEQUENT YEARS.**—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2012 and subsequent years as if subparagraph (A) had never applied.”.

(2) **SUNSET OF MEDICARE SUSTAINABLE GROWTH RATE FORMULA.**—Effective January 1, 2012, subsection (f) of section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is repealed.

(b) **ESTABLISHMENT OF PHYSICIAN PAYMENT UPDATE COMMISSION.**—

(1) **IN GENERAL.**—There is established a commission to be known as the “Physician Payment Update Commission” (referred to in this section as the “Commission”).

(2) **MEMBERSHIP.**—

(A) **COMPOSITION.**—The Commission shall be composed of 17 members appointed by the Comptroller General of the United States, upon the recommendation of the majority

and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives.

(B) **DATE OF APPOINTMENTS.**—Members of the Commission shall be appointed not later than 2 months after the date of enactment of this Act.

(3) **QUALIFICATIONS.**—

(A) **IN GENERAL.**—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, integrated delivery systems, allopathic and osteopathic medicine and other areas of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(B) **INCLUSION.**—The members of the Commission shall include (but not be limited to) physicians and other health professionals, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

(C) **MAJORITY PHYSICIANS AND OTHER HEALTH PROFESSIONALS.**—Individuals who are physicians or other health professionals shall constitute a majority of the membership of the Commission.

(4) **TERM; VACANCIES.**—

(A) **TERM.**—A member shall be appointed for the life of the Commission.

(B) **VACANCIES.**—A vacancy on the Commission—

(i) shall not affect the powers of the Commission; and

(ii) shall be filled in the same manner as the original appointment was made.

(5) **MEETINGS.**—The Commission shall meet at the call of the Chairperson.

(6) **QUORUM.**—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(7) **CHAIRPERSON.**—The Comptroller General shall designate a member of the Commission, at the time of the appointment of the member, as Chairperson.

(c) **DUTIES.**—

(1) **STUDY.**—The Commission shall conduct a study of all matters relating to payment rates under the Medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w-4).

(2) **RECOMMENDATIONS.**—The Commission shall develop recommendations on the establishment of a new physician payment system under the Medicare program that would appropriately reimburse physicians by keeping pace with increases in medical practice costs and providing stable, positive Medicare updates.

(3) **REPORT.**—Not later than December 1, 2010, the Commission shall submit to the appropriate Committees of Congress and the Medicare Payment Advisory Commission—

(A) a detailed statement of the findings and conclusions of the Commission;

(B) the recommendations of the Commission for such legislation and administrative actions as the Commission considers appropriate (including proposed legislative language to carry out such recommendations); and

(C) a long-term CBO cost estimate regarding such recommendations (as described under subsection (i)).

(d) **POWERS.**—

(1) **HEARINGS.**—The Commission may hold such hearings, meet and act at such times

and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this section.

(B) PROVISION OF INFORMATION.—On request of the Chairperson of the Commission, the head of the agency shall provide the information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(e) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—

(A) IN GENERAL.—Members of the Commission shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.

(B) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(2) STAFF AND SUPPORT SERVICES.—

(A) EXECUTIVE DIRECTOR.—The Chairperson shall appoint an executive director of the Commission.

(B) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director considers appropriate.

(C) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

(D) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(f) TERMINATION OF COMMISSION.—The Commission shall terminate 30 days after the date on which the Commission submits its report under subsection (c)(3).

(g) REVIEW AND RESPONSE TO RECOMMENDATIONS BY THE MEDICARE PAYMENT ADVISORY COMMISSION.—

(1) IN GENERAL.—Not later than February 1, 2011, the Medicare Payment Advisory Commission shall—

(A) review the recommendations included in the report submitted under subsection (c)(3);

(B) examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities; and

(C) submit to the appropriate Committees of Congress a report on such review.

(2) CONTENTS OF REPORT ON REVIEW OF COMMISSION RECOMMENDATIONS.—The report submitted under paragraph (1)(C) shall include—

(A) if the Medicare Payment Advisory Commission supports the recommendations of the Commission, the reasons for such support; or

(B) if the Medicare Payment Advisory Commission does not support such recommendations, the recommendations of the Medicare Payment Advisory Commission, to-

gether with an explanation as to why the Medicare Payment Advisory Commission does not support the recommendations of the Commission.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the Commission to carry out this section. Such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t).

(i) LONG-TERM CBO COST ESTIMATE.—

(1) PREPARATION AND SUBMISSION.—When the Commission submits a written request to the Director of the Congressional Budget Office for a long-term CBO cost estimate of recommended legislation or administrative actions (as described under subsection (c)(3)), the Director shall prepare the estimate and have it published in the Congressional Record as expeditiously as possible.

(2) CONTENT.—A long-term CBO cost estimate shall include—

(A) an estimate of the cost of each provision (if practicable) or group of provisions of the recommended legislation or administrative actions for first fiscal year it would take effect and for each of the 49 fiscal years thereafter; and

(B) a statement of any estimated future costs not reflected by the estimate described in subparagraph (A).

(3) FORM.—To the extent that a long-term CBO cost estimate presented in dollars is impracticable, the Director of the Congressional Budget Office may instead present the estimate in terms of percentages of gross domestic product, with rounding to the nearest  $\frac{1}{10}$  of 1 percent of gross domestic product.

(4) LIMITATIONS ON DISCRETIONARY SPENDING.—A long-term CBO cost estimate shall only consider the effects of provisions affecting revenues and direct spending (as defined by the Balanced Budget and Emergency Deficit Control Act of 1985), and shall not assume that any changes in outlays will result from limitations on, or reductions in, annual appropriations.

(j) EXPEDITED CONSIDERATION OF COMMISSION RECOMMENDATIONS.—

(1) INTRODUCTION.—

(A) IN GENERAL.—The proposed legislative language contained in the report submitted pursuant to subsection (c)(3) (referred to in this subsection as the "Commission bill") shall be introduced within the first 10 calendar days of the 112th Congress (or on the first session day thereafter) in the House of Representatives and in the Senate by the majority leader of each House of Congress, for himself, the minority leader of each House of Congress, for himself, or any member of the House designated by the majority leader or minority leader. If the Commission bill is not introduced in accordance with the preceding sentence in either House of Congress, then any Member of that House may introduce the Commission bill on any day thereafter. Upon introduction, the Commission bill shall be referred to the appropriate committees under subparagraph (B).

(B) COMMITTEE CONSIDERATION.—A Commission bill introduced in either House of Congress shall be jointly referred to the committee or committees of jurisdiction, which shall report the bill without any revision and with a favorable recommendation, an unfavorable recommendation, or without recommendation, not later than 10 calendar days after the date of introduction of the bill in that House. If any committee fails to report the bill within that period, that committee shall be automatically discharged

from consideration of the bill, and the bill shall be placed on the appropriate calendar.

(2) EXPEDITED PROCEDURE.—

(A) IN THE HOUSE OF REPRESENTATIVES.—

(i) IN GENERAL.—Not later than 5 days of session after the date on which a Commission bill is reported or discharged from all committees to which it was referred, the majority leader of the House of Representatives or the majority leader's designee shall move to proceed to the consideration of the Commission bill. It shall also be in order for any Member of the House of Representatives to move to proceed to the consideration of the Commission bill at any time after the conclusion of such 5-day period.

(ii) MOTION TO PROCEED.—A motion to proceed to the consideration of the Commission bill is highly privileged in the House of Representatives and is not debatable. The motion is not subject to amendment or to a motion to postpone consideration of the Commission bill. A motion to proceed to the consideration of other business shall not be in order. A motion to reconsider the vote by which the motion to proceed is agreed to or not agreed to shall not be in order. If the motion to proceed is agreed to, the House of Representatives shall immediately proceed to consideration of the Commission bill without intervening motion, order, or other business, and the Commission bill shall remain the unfinished business of the House of Representatives until disposed of.

(iii) LIMITS ON DEBATE.—Debate in the House of Representatives on a Commission bill under this paragraph shall not exceed a total of 100 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate is in order and shall not be debatable. It shall not be in order to move to recommit a Commission bill under this paragraph or to move to reconsider the vote by which the bill is agreed to or disagreed to.

(iv) APPEALS.—Appeals from decisions of the chair relating to the application of the Rules of the House of Representatives to the procedure relating to a Commission bill shall be decided without debate.

(v) APPLICATION OF HOUSE RULES.—Except to the extent specifically provided in this paragraph, consideration of a Commission bill shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any Commission bill introduced pursuant to the provisions of this subsection under a suspension of the rules or under a special rule.

(vi) NO AMENDMENTS.—No amendment to the Commission bill shall be in order in the House of Representatives.

(vii) VOTE ON FINAL PASSAGE.—In the House of Representatives, immediately following the conclusion of consideration of the Commission bill, the vote on final passage of the Commission bill shall occur without any intervening action or motion, requiring an affirmative vote of  $\frac{3}{4}$  of the Members, duly chosen and sworn. If the Commission bill is passed, the Clerk of the House of Representatives shall cause the bill to be transmitted to the Senate before the close of the next day of session of the House.

(B) IN THE SENATE.—

(i) IN GENERAL.—Not later than 5 days of session after the date on which a Commission bill is reported or discharged from all committees to which it was referred, the majority leader of the Senate or the majority leader's designee shall move to proceed to the consideration of the Commission bill. It shall also be in order for any Member of the

Senate to move to proceed to the consideration of the Commission bill at any time after the conclusion of such 5-day period.

(ii) **MOTION TO PROCEED.**—A motion to proceed to the consideration of the Commission bill is privileged in the Senate and is not debatable. The motion is not subject to amendment or to a motion to postpone consideration of the Commission bill. A motion to proceed to consideration of the Commission bill may be made even though a previous motion to the same effect has been disagreed to. A motion to proceed to the consideration of other business shall not be in order. A motion to reconsider the vote by which the motion to proceed is agreed to or not agreed to shall not be in order. If the motion to proceed is agreed to, the Senate shall immediately proceed to consideration of the Commission bill without intervening motion, order, or other business, and the Commission bill shall remain the unfinished business of the Senate until disposed of.

(iii) **LIMITS ON DEBATE.**—In the Senate, consideration of the Commission bill and on all debatable motions and appeals in connection therewith shall not exceed a total of 100 hours, which shall be divided equally between those favoring and those opposing the Commission bill. A motion further to limit debate on the Commission bill is in order and is not debatable. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of the Commission bill, including time used for quorum calls and voting, shall be counted against the total 100 hours of consideration.

(iv) **NO AMENDMENTS.**—No amendment to the Commission bill shall be in order in the Senate.

(v) **MOTION TO RECOMMIT.**—A motion to recommit a Commission bill shall not be in order under this paragraph.

(vi) **VOTE ON FINAL PASSAGE.**—In the Senate, immediately following the conclusion of consideration of the Commission bill and a request to establish the presence of a quorum, the vote on final passage of the Commission bill shall occur and shall require an affirmative vote of  $\frac{2}{3}$  of the Members, duly chosen and sworn.

(vii) **OTHER MOTIONS NOT IN ORDER.**—A motion to postpone or a motion to proceed to the consideration of other business is not in order in the Senate. A motion to reconsider the vote by which the Commission bill is agreed to or not agreed to is not in order in the Senate.

(viii) **CONSIDERATION OF THE HOUSE BILL.**—

(I) **IN GENERAL.**—If the Senate has received the House companion bill to the Commission bill introduced in the Senate prior to the vote required under clause (vi) and the House companion bill is identical to the Commission bill introduced in the Senate, then the Senate shall consider, and the vote under clause (vi) shall occur on, the House companion bill.

(II) **PROCEDURE AFTER VOTE ON SENATE BILL.**—If the Senate votes, pursuant to clause (vi), on the bill introduced in the Senate, the Senate bill shall be held pending receipt of the House message on the bill. Upon receipt of the House companion bill, if the House bill is identical to the Senate bill, the House bill shall be deemed to be considered, read for the third time, and the vote on passage of the Senate bill shall be considered to be the vote on the bill received from the House.

(C) **NO SUSPENSION.**—No motion to suspend the application of this paragraph shall be in

order in the Senate or in the House of Representatives.

#### **Subtitle B—Medical Care Access Protection SEC. 10101. SHORT TITLE.**

This subtitle may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

#### **SEC. 10102. FINDINGS AND PURPOSE.**

(a) **FINDINGS.**—

(1) **EFFECT ON HEALTH CARE ACCESS AND COSTS.**—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) **EFFECT ON INTERSTATE COMMERCE.**—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) **EFFECT ON FEDERAL SPENDING.**—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) **PURPOSE.**—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

#### **SEC. 10103. DEFINITIONS.**

In this subtitle:

(1) **ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than

through a civil action brought in a State or Federal court.

(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COLLATERAL SOURCE BENEFITS.**—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) **COMPENSATORY DAMAGES.**—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical

services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for

the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

#### **SEC. 10104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

#### **SEC. 10105. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a

claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

#### **SEC. 10106. MAXIMIZING PATIENT RECOVERY.**

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

## (2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingency fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33½ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

## (b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

## (c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

**SEC. 10107. ADDITIONAL HEALTH BENEFITS.**

(A) IN GENERAL.—The amount of any damages received by a claimant in any health

care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(B) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(C) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

**SEC. 10108. PUNITIVE DAMAGES.**

## (a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

## (b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care law-

suit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

## (c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term "medical product" means a drug or device intended for humans. The terms "drug" and "device" have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

**SEC. 10109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(A) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(B) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

**SEC. 10110. EFFECT ON OTHER LAWS.**

## (a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

## (b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal

rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### SEC. 10111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 10105(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### SEC. 10112. APPLICABILITY; EFFECTIVE DATE.

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

#### Subtitle C—Rescission of Unused Stimulus Funds

##### SEC. 10201. RESCISSION IN ARRA.

Effective as of October 1, 2010, any unobligated balances available on such date of funds made available by division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) are rescinded.

**SA 3134.** Mr. BURR (for himself, Mrs. HUTCHISON, and Mr. WICKER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25 insert the following:

#### TITLE X—ADDITIONAL PROVISIONS

##### Subtitle A—Medicare Physician Fee Schedule Update for 2010, 2011, and 2012

##### SEC. 10001. MEDICARE PHYSICIAN FEE SCHEDULE UPDATE FOR 2010, 2011, AND 2012.

Section 1848(d)(10) of the Social Security Act (42 U.S.C. 1395w-4(d)), as added by section 3101, is amended to read as follows:

“(10) UPDATE FOR 2010, 2011, AND 2012.—

“(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for each of 2010, 2011, and 2012, the update to the single conversion factor shall be 0.5 percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR 2013 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2013 and subsequent years as if subparagraph (A) had never applied.”.

##### Subtitle B—Medical Care Access Protection

##### SEC. 10101. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

##### SEC. 10102. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment



opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the

number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

#### **SEC. 10103. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

- (1) fraud;
- (2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

#### **SEC. 10104. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

#### SEC. 10105. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33½ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

#### SEC. 10106. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

#### SEC. 10107. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term "medical product" means a drug or device intended for humans. The terms "drug" and "device" have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

#### SEC. 10108. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future

damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

#### **SEC. 10109. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) **SMALLPOX VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) **OTHER FEDERAL LAW.**—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### **SEC. 10110. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) **HEALTH CARE LAWSUITS.**—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) **PREEMPTION OF CERTAIN STATE LAWS.**—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory

or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 10104(a).

(c) **PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.**—

(1) **IN GENERAL.**—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) **RULE OF CONSTRUCTION.**—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### **SEC. 10111. APPLICABILITY; EFFECTIVE DATE.**

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

#### **Subtitle C—Rescission of Discretionary Amounts Appropriated by the American Recovery and Reinvestment Act of 2009**

#### **SEC. 10201. RESCISSION OF DISCRETIONARY AMOUNTS APPROPRIATED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

(a) **IN GENERAL.**—All discretionary amounts made available by the American Recovery and Reinvestment Act of 2009 (123 Stat. 115; Public Law No. 111-5) that are unobligated on the date of the enactment of this Act are hereby rescinded.

(b) **ADMINISTRATION.**—Not later than 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall—

(1) administer the reduction specified in subsection (a); and

(2) submit to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives a report specifying the account and the amount of each reduction made pursuant to subsection (a).

**SA 3135.** Mr. SANDERS (for himself, Mr. BROWN, Mr. FRANKEN, and Mr. BURRIS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 1979, line 20, strike all through page 1996, line 3, and insert the following:

#### **SEC. 9001. SURCHARGE ON HIGH INCOME INDIVIDUALS.**

(a) **IN GENERAL.**—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new part:

#### **“PART VIII—SURCHARGE ON HIGH INCOME INDIVIDUALS**

“Sec. 59B. Surcharge on high income individuals.

#### **“SEC. 59B. SURCHARGE ON HIGH INCOME INDIVIDUALS.**

“(a) **GENERAL RULE.**—In the case of a taxpayer other than a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 5.4 percent of so much of the modified adjusted gross income of the taxpayer as exceeds \$4,800,000.

“(b) **TAXPAYERS NOT MAKING A JOINT RETURN.**—In the case of any taxpayer other than a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), subsection (a) shall be applied by substituting ‘\$2,400,000’ for ‘\$4,800,000’.

“(c) **MODIFIED ADJUSTED GROSS INCOME.**—For purposes of this section, the term ‘modified adjusted gross income’ means adjusted gross income reduced by any deduction (not taken into account in determining adjusted gross income) allowed for investment interest (as defined in section 163(d)). In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e).

“(d) **SPECIAL RULES.**—

“(1) **NONRESIDENT ALIEN.**—In the case of a nonresident alien individual, only amounts taken into account in connection with the tax imposed under section 871(b) shall be taken into account under this section.

“(2) **CITIZENS AND RESIDENTS LIVING ABROAD.**—The dollar amount in effect under subsection (a) (after the application of subsection (b)) shall be decreased by the excess of—

“(A) the amounts excluded from the taxpayer's gross income under section 911, over

“(B) the amounts of any deductions or exclusions disallowed under section 911(d)(6) with respect to the amounts described in subparagraph (A).

“(3) **CHARITABLE TRUSTS.**—Subsection (a) shall not apply to a trust all the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).

“(4) **NOT TREATED AS TAX IMPOSED BY THIS CHAPTER FOR CERTAIN PURPOSES.**—The tax imposed under this section shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.”.

(b) **CLERICAL AMENDMENT.**—The table of parts for subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

#### **“PART VIII. SURCHARGE ON HIGH INCOME INDIVIDUALS.”.**

(c) **SECTION 15 NOT TO APPLY.**—The amendment made by subsection (a) shall not be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

**SA 3136.** Mr. UDALL of New Mexico submitted an amendment intended to

be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, AND MR. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 796, between lines 5 and 6, insert the following:

**PART IV—TELEHEALTH AND REMOTE PATIENT MONITORING**

**SEC. 3031. TELEHEALTH AND REMOTE PATIENT MONITORING.**

(a) IMPROVING CREDENTIALING AND PRIVILEGING STANDARDS FOR TELEHEALTH SERVICES.—Section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)) is amended by adding at the end the following new paragraph:

“(5) ESTABLISHMENT OF REMOTE CREDENTIALING AND PRIVILEGING STANDARDS.—

“(A) IN GENERAL.—Not later than 2 years after the date of the enactment of this paragraph, the Secretary shall establish regulations for considering the remote credentialing and privileging standards applicable to telehealth services, including interpretative services, for originating sites under this subsection. Such regulations shall allow an originating site to accept, and not duplicate, the credentialing and privileging processes and decisions made by another site.

“(B) CLARIFICATION REGARDING ACCEPTANCE OF PROCESSES AND DECISIONS PRIOR TO ENACTMENT OF REGULATIONS.—During the period beginning on such date of enactment and ending on the effective date of the regulations under subparagraph (A), the Secretary shall not take any punitive action under any rule or regulation against an originating site on the basis of that site's acceptance, for purposes of receiving telehealth services (including interpretive services), the credentialing and privileging processes and decisions made by another site that is certified by a national body recognized by the Secretary if the site accepting such credentialing and privileging processes is also so certified and complies with the applicable requirements for such acceptance.”.

(b) EXPANDING ACCESS TO STROKE TELEHEALTH EVALUATION.—

(1) IN GENERAL.—Section 1834(m)(4) of the Social Security Act (42 U.S.C. 1395m(m)(4)) is amended by adding at the end the following new subparagraph:

“(G) STROKE TELEHEALTH SERVICES.—The term ‘stroke telehealth services’ means a telehealth service used for the evaluation of individuals with acute stroke.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to telehealth services furnished on or after the date that is 6 months after the date of enactment of this Act.

(c) IMPROVING ACCESS TO TELEHEALTH SERVICES AT IHS FACILITIES.—

(1) COVERAGE OF METROPOLITAN SITES.—Section 1834(m)(4)(C)(i) of such Act (42 U.S.C. 1395m(m)(4)(C)(i)) is amended—

(A) in subclause (II), by deleting “or” at the end;

(B) in subclause (III), by deleting the period at the end and inserting “; or”; and

(C) by adding at the end the following subclause:

“(IV) from a facility of the Indian Health Service (whether operated by such Service or

by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act)).”.

(2) INCLUSION OF IHS FACILITIES AS ORIGINATING SITES.—Section 1834(m)(4)(C)(ii) of the Social Security Act (42 U.S.C. 1395m(m)(4)(C)(ii)) is amended by adding at the end the following new subclause:

“(IX) A facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act)).”.

(3) EFFECTIVE DATE.—The amendments made by this subsection apply to telehealth services furnished on or after the date that is 6 months after the date of enactment of this Act.

(d) COMMUNITY-BASED PATIENT MONITORING.—Section 3026(B) of this Act is amended by adding at the end the following new clause:

“(vi) Utilizing telehealth, remote patient monitoring, and other technology when medically appropriate to enhance care transition services provided across the continuum of care.”.

(e) TELEHEALTH ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Section 1868 of the Social Security Act (42 U.S.C. 1395ee) is amended—

(A) in the heading, by adding at the end the following: “TELEHEALTH ADVISORY COMMITTEE”; and

(B) by adding at the end the following new subsection:

“(c) TELEHEALTH ADVISORY COMMITTEE.—

“(1) IN GENERAL.—A Telehealth Advisory Committee (in this subsection referred to as the ‘Advisory Committee’) shall be appointed by the Secretary to make annual recommendations to the Secretary on policies of the Centers for Medicare & Medicaid Services regarding telehealth services as established under section 1834(m), including the appropriate addition or deletion of services (and HCPCS codes) to those specified in paragraphs (4)(F)(i) and (4)(F)(ii) of such section and for authorized payment under paragraph (1) of such section, and to Congress on areas in which originating sites are located (as specified in paragraph (4)(C)(i) of such section) and eligible telehealth sites (as described in paragraph (4)(C)(ii) of such section).

“(2) MEMBERSHIP; TERMS.—

“(A) MEMBERSHIP.—

“(i) IN GENERAL.—The Advisory Committee shall be composed of 10 members, to be appointed by the Secretary, of whom—

“(I) 5 shall be practicing physicians;

“(II) 2 shall be practicing nonphysician health care practitioners;

“(III) 2 shall be administrators of telehealth programs; and

“(IV) 1 shall be an informatics or technology expert.

“(ii) REQUIREMENTS FOR APPOINTING MEMBERS.—In appointing members of the Advisory Committee, the Secretary shall—

“(I) ensure that each member has prior experience with the practice of telemedicine or telehealth;

“(II) give preference to individuals who are currently providing telemedicine or telehealth services or who are involved in telemedicine or telehealth programs;

“(III) ensure that the membership of the Advisory Committee represents a balance of specialties and geographic regions; and

“(IV) take into account the recommendations of stakeholders.

“(B) TERMS.—The members of the Advisory Committee shall serve for a 3-year term.

“(C) CONFLICTS OF INTEREST.—A member of the Advisory Committee may not participate with respect to a particular matter considered in a meeting of the Advisory Committee if such member (or an immediate family member of such member) has a financial interest that could be affected by the advice given to the Secretary with respect to such matter.

“(D) PRIORITY AREAS FOR CONSIDERATION.—In making recommendations under paragraph (1), the committee shall consider recommendations to Congress on the following:

“(i) Increasing coverage of telehealth services to all geographic areas of the United States. Such consideration shall take into account the costs to the Federal Government of such increased coverage and the total offsetting savings accrued to the Federal Government as a result of investments in telehealth.

“(ii) Including providing payments under section 1834(m) for store and forward services for all eligible areas. Such consideration should take into account the experience in Alaska and Hawaii in providing such services under this title, including the impact on costs, the effect on the quality and availability of health services, and ways in which the Federal Government can minimize the risk of fraud and abuse for such services.

“(iii) Expanding coverage under this title of remote monitoring services for—

“(I) individuals with chronic diseases;

“(II) individuals recently discharged from a facility that is an originating site under such section; and

“(III) individuals assigned to an accountable care organization under section 1899, individuals discharged from a hospital that receives disproportionate share payments under section 1886(d)(5)(F) who are in need of transitional care, and individuals who are furnished services under the national pilot program on payment bundling under section 1866D.

Each recommendation made under paragraph (1) shall take into consideration the costs to the Federal Government and the total offsetting savings accrued to the Federal Government as a result of investments in telehealth and ways in which the Federal Government can minimize the risk of fraud and abuse for telehealth services.

“(3) REQUIREMENT TO REVIEW AND PROVIDE RECOMMENDATIONS.—The Advisory Committee shall review and provide recommendations to the Secretary on legislation that would allow other providers of services and suppliers to provide telehealth services to Medicare beneficiaries.

“(4) DEADLINE.—Not later than December 31, 2010, the Advisory Committee shall submit to Congress any recommendations to Congress under paragraph (1), including the recommendations considered under paragraph (2)(D).”.

(2) FOLLOWING RECOMMENDATIONS.—Section 1834(m)(4)(F) of such Act (42 U.S.C. 1395m(m)(4)(F)) is amended by adding at the end the following new clause:

“(iii) RECOMMENDATIONS OF THE TELEHEALTH ADVISORY COMMITTEE.—In making determinations under clauses (i) and (ii), the Secretary shall take into account the recommendations of the Telehealth Advisory Committee (established under section 1868(c)) when adding or deleting services (and HCPCS codes) and in establishing policies of the Centers for Medicare & Medicaid Services regarding the delivery of telehealth services. If the Secretary does not implement such a recommendation, the Secretary

shall publish in the Federal Register a statement regarding the reason such recommendation was not implemented.”.

(3) **WAIVER OF ADMINISTRATIVE LIMITATION.**—The Secretary of Health and Human Services shall establish the Telehealth Advisory Committee under the amendment made by paragraph (1) notwithstanding any limitation that may apply to the number of advisory committees that may be established (within the Department of Health and Human Services or otherwise).

(f) **LIST OF COVERED TELEHEALTH SERVICES.**—Section 1834(m)(4)(F) of such Act (42 U.S.C. 1395m(m)(4)(F)), as amended by subsection (e), is further amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv);

(2) by inserting after clause (i) the following new clause:

“(ii) **ORIGINATING SITE SERVICES.**—

“(I) **IN GENERAL.**—Subject to subclause (II), the Secretary may make payments under this subsection to an originating site described in subparagraph (C)(ii) for services originating at the site.

“(II) **LIMITATION.**—The Secretary may not make such payments with respect to a service described in subclause (I) if the Secretary finds, upon review of the available evidence, that a service is not safe, effective, or medically beneficial when performed as a telehealth service.”; and

(3) by striking clause (iii), as redesignated under paragraph (1), and inserting the following new clause:

“(iii) **YEARLY UPDATE.**—The Secretary shall establish a process that provides, on an annual basis—

“(I) for the addition of telehealth services (and HCPCS codes), to those specified in clauses (i) and (ii) for authorized payment under this subsection, unless the Secretary finds, upon review of the available evidence, that a service is not safe, effective, or medically beneficial when performed as a telehealth service; and

“(II) for the deletion of such services (and HCPCS codes), from those specified in clauses (i) and (ii) for authorized payment under this subsection, that the Secretary finds, upon review of additional evidence, are not safe, effective, or medically beneficial when performed as a telehealth service.”.

(g) **TELEHEALTH ACCESS TO SMALL POPULATION METROPOLITAN COUNTIES.**—Section 1834(m)(4)(C)(i)(II) of such Act (42 U.S.C. 1395m(4)(C)(i)(II)) is amended to read as follows:

“(II) in a county with a population of less than 35,000, according to the most recent decennial census, or that is not included in a Metropolitan Statistical Area; or”.

(h) **TELEHEALTH ACCESS FOR “STORE AND FORWARD” DIAGNOSTIC CONSULTATIONS.**—Section 1834(m)(1) of such Act (42 U.S.C. 1395(m)(1)) is amended by adding at the end the following sentence: “For purposes of the first sentence, in the case of telehealth services that are furnished by a facility of the Indian Health Service, a rural health clinic, a Federally qualified health center, or a critical access hospital (as described in paragraph (4)(C)(ii)), or a sole community hospital (as defined in section 1886(d)(5)(D)(iii)), the term ‘telecommunications system’ includes store-and-forward technologies described in the preceding sentence.”.

**SA 3137.** Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R.

3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1339, between lines 18 and 19, insert the following:

**SEC. 5211. INCREASING ACCESS TO PRIMARY CARE SERVICES.**

(a) **STATE GRANTS TO HEALTH CARE PROVIDERS WHO PROVIDE SERVICES TO A HIGH PERCENTAGE OF MEDICALLY UNDERSERVED POPULATIONS OR OTHER SPECIAL POPULATIONS.**—

(1) **IN GENERAL.**—A State may award grants to health care providers who treat a high percentage, as determined by such State, of medically underserved populations or other special populations in such State.

(2) **SOURCE OF FUNDS.**—A grant program established by a State under paragraph (1) may not be established within a department, agency, or other entity of such State that administers the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), and no Federal or State funds allocated to such Medicaid program, the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), or the TRICARE program under chapter 55 of title 10, United States Code, may be used to award grants or to pay administrative costs associated with a grant program established under paragraph (1).

(b) **PROVIDING FOR UNDERSERVED MEDICARE POPULATIONS DEMONSTRATION PROJECT.**—Subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 2541 et seq.) is amended by adding at the end the following:

**“SEC. 338N. PROVIDING FOR UNDERSERVED MEDICARE POPULATIONS DEMONSTRATION PROJECT.**

“(a) **IN GENERAL.**—The Secretary shall establish, in not more than 5 States, a demonstration project, to be known as the Providing for Underserved Medicare Populations Demonstration Project, for the purpose of encouraging health care providers who are recent graduates of a health care program to enter into primary care practice, by providing incentive payments to eligible primary health services providers.

“(b) **DEMONSTRATION PROJECT.**—

“(1) **IN GENERAL.**—The Secretary shall grant awards, on a competitive basis, to eligible primary health services providers, as described in paragraph (2). Each recipient of such an award shall receive such award for a period of 3 years, provided such recipient continues to meet the eligibility criteria described in subsection (c).

“(2) **AWARD AMOUNTS.**—Each award described in paragraph (1) shall be in an amount not to exceed—

“(A) \$50,000 per year for the repayment of student loans associated with the health care educational expenses of such recipient; or

“(B) \$37,500 per year in cash incentive payments.

“(c) **ELIGIBLE PRIMARY HEALTH SERVICES PROVIDERS.**—The Secretary shall establish criteria for individuals to be eligible to receive an award under this section, which shall include requirements that such individual—

“(1) be actively employed as a primary health services provider, or have arrangements to commence active employment as a primary health services provider, in one of the 5 States that the Secretary has selected

for participation in this demonstration project and in a community with a population of not less than 35,000 and not more than 350,000 and not designated as a health professional shortage area;

“(2) have graduated, not more than 2 years after the date on which such individual would begin receiving incentive payments under this project, from an accredited program that qualifies such individual to maintain employment as a primary health services provider;

“(3) agree that, of the patients receiving care from such primary health services provider in the period during which such individual participates in the project, not less than 60 percent of such patients shall be enrolled in the Medicare program under title XVIII of the Social Security Act;

“(4) be employed, as described in paragraph (1), in a State in which the 65-and-over population is expected to grow at least 50 percent between 2010 and 2020, according to United States Census Bureau projections; and

“(5) meet such other eligibility criteria established by the Secretary.

“(d) **DURATION OF PROGRAM.**—The Secretary shall make initial awards to individuals under this section for each of fiscal years 2011 through 2013.

“(e) **REPORT.**—Not later than December 31, 2015, the Secretary shall submit to Congress a report concerning the results of the demonstration project.

“(f) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out this section, there are authorized to be appropriated \$25,000,000 for fiscal years 2011 through 2015.”.

(c) **FACULTY LOAN REPAYMENT FOR PHYSICIAN ASSISTANTS.**—Section 738(a)(3) of the Public Health Service Act (42 U.S.C. 293b(a)(3)) is amended by inserting “schools offering physician assistant education programs,” after “public health.”.

(d) **NATIONAL HEALTH SERVICE CORPS.**—

(1) **FULFILLMENT OF OBLIGATED SERVICE REQUIREMENT THROUGH HALF-TIME SERVICE.**—

(A) **WAIVERS.**—Subsection (i) of section 331 (42 U.S.C. 254d) is amended—

(i) in paragraph (1), by striking “In carrying out subpart III” and all that follows through the period and inserting “In carrying out subpart III, the Secretary may, in accordance with this subsection, issue waivers to individuals who have entered into a contract for obligated service under the Scholarship Program or the Loan Repayment Program under which the individuals are authorized to satisfy the requirement of obligated service through providing clinical practice that is half time.”;

(ii) in paragraph (2)—

(I) in subparagraphs (A)(ii) and (B), by striking “less than full time” each place it appears and inserting “half time”;

(II) in subparagraphs (C) and (F), by striking “less than full-time service” each place it appears and inserting “half-time service”; and

(III) by amending subparagraphs (D) and (E) to read as follows:

“(D) the entity and the Corps member agree in writing that the Corps member will perform half-time clinical practice;

“(E) the Corps member agrees in writing to fulfill all of the service obligations under section 338C through half-time clinical practice and either—

“(i) double the period of obligated service that would otherwise be required; or

“(ii) in the case of contracts entered into under section 338B, accept a minimum service obligation of 2 years with an award amount equal to 50 percent of the amount

that would otherwise be payable for full-time service; and"; and

(iii) in paragraph (3), by striking "In evaluating a demonstration project described in paragraph (1)" and inserting "In evaluating waivers issued under paragraph (1)".

(B) DEFINITIONS.—Subsection (j) of section 331 (42 U.S.C. 254d) is amended by adding at the end the following:

"(5) The terms 'full time' and 'full-time' mean a minimum of 40 hours per week in a clinical practice, for a minimum of 45 weeks per year.

"(6) The terms 'half time' and 'half-time' mean a minimum of 20 hours per week (not to exceed 39 hours per week) in a clinical practice, for a minimum of 45 weeks per year."

(2) REAPPOINTMENT TO NATIONAL ADVISORY COUNCIL.—Section 337(b)(1) (42 U.S.C. 254j(b)(1)) is amended by striking "Members may not be reappointed to the Council."

(3) LOAN REPAYMENT AMOUNT.—Section 338B(g)(2)(A) (42 U.S.C. 254l-1(g)(2)(A)) is amended by striking "\$35,000" and inserting "\$50,000, plus, beginning with fiscal year 2012, an amount determined by the Secretary on an annual basis to reflect inflation."

(4) TREATMENT OF TEACHING AS OBLIGATED SERVICE.—Subsection (a) of section 338C (42 U.S.C. 254m) is amended by adding at the end the following: "The Secretary may treat teaching as clinical practice for up to 20 percent of such period of obligated service."

**SA 3138.** Mrs. HUTCHISON (for herself and Mr. HATCH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike sections 2551 and 3133.

**SA 3139.** Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 354, between lines 2 and 3, insert the following:

(D) EXEMPTION FOR EMPLOYERS IN STATES WITH HIGH PREMIUM INCREASES.—

(i) IN GENERAL.—If a State is described in clause (ii), then, on and after the certification date, no employer in such State shall be treated as an applicable large employer for purposes of this section.

(ii) STATE DESCRIBED.—For purposes of this subparagraph—

(I) IN GENERAL.—A State is described in this clause if the applicable State authority determines for any calendar year after 2013 that the percentage increase in average annual premiums for health insurance coverage in such State for the calendar year over the preceding calendar year exceeds the percentage increase for such period in the Consumer

Price Index for all urban consumers published by the Department of Labor.

(II) CERTIFICATION DATE.—The term "certification date" means the first date on which the applicable State authority certifies a determination described in subclause (I).

(III) APPLICABLE STATE AUTHORITY.—The term "applicable State authority" has the meaning given such term by section 2791(d)(1) of the Public Health Service Act.

**SA 3140.** Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 339, between lines 16 and 17, insert the following:

"(g) LIMITATION.—

"(1) IN GENERAL.—This section shall not apply to any individual residing in a State where the Secretary makes the determination described in paragraph (2) for a taxable year.

"(2) DETERMINATION.—A determination described in this paragraph is a determination that the average cost of premiums for health insurance coverage within the State for the year involved has increase by a percentage that is greater than the percentage increase in the Consumer Price Index for the year."

**SA 3141.** Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### **TITLE MEDICAL CARE ACCESS PROTECTION**

##### **SEC. 1. SHORT TITLE.**

This title may be cited as the "Medical Care Access Protection Act of 2009" or the "MCAP Act".

##### **SEC. 2. DEFINITIONS.**

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term "alternative dispute resolution system" or "ADR" means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term "claimant" means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term "collateral source benefits" means any

amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term "compensatory damages" means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term "contingent fee" includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term "economic damages" means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term "health care goods or services" means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider in a medically underserved community, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term "health care institution" means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services) in a medically underserved community.

(9) HEALTH CARE LAWSUIT.—The term "health care lawsuit" means any health care liability claim concerning the provision of health care goods or services in a medically underserved community, affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services



affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r))), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this title, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **MEDICALLY UNDERSERVED COMMUNITY.**—The term “medically underserved community” means a health manpower shortage area as designated under section 332 of the Public Health Service Act.

(15) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic

service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider who delivers services in a medically underserved community or a health care institution located in a medically underserved community. Punitive damages are neither economic nor noneconomic damages.

(17) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

### **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this title applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable

conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

### **SEC. 4. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

**SEC. 5. MAXIMIZING PATIENT RECOVERY.**

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a

showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

**SEC. 6. ADDITIONAL HEALTH BENEFITS.**

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

**SEC. 7. PUNITIVE DAMAGES.**

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the

case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term "medical product" means a drug or device intended for humans. The terms "drug" and "device" have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

**SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

**SEC. 9. EFFECT ON OTHER LAWS.**

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and  
(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### SEC. 10. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this title) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section 4(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### SEC. 11. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the

date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3142.** Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2026, strike line 3 and insert the following:

(1) EXCLUSION OF DEVICES FOR CANCER DIAGNOSIS AND TREATMENT.—

(1) IN GENERAL.—The term “medical device sales” shall not include sales of any device which is primarily designed to diagnose or treat any form of cancer.

(2) REDUCTION OF AGGREGATE FEE AMOUNT.—The \$2,000,000,000 amount in subsection (b)(1) shall be reduced by the amount which bears the same ratio to such \$2,000,000,000 amount as the amount of the sales of devices described in paragraph (1) for calendar year 2010 bears to the amount of total medical device sales (without regard to this subsection) for such calendar year, as determined by the Secretary.

(j) APPLICATION OF SECTION.—This section shall

**SA 3143.** Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title I, insert the following:

#### SEC. 1. STATE OPT OUT.

(a) IN GENERAL.—The provisions described in subsection (b) shall not apply to

(1) individuals residing within a State;

(2) employers located within a State; and

(3) health coverage offered within a State; if the State enacts a law rejecting such provisions as described in subsection (b) and attests to the Secretary that the State will implement reforms appropriate for application within the State to reduce the uninsured population of the State and increase access to affordable health insurance options.

(b) EFFECT OF STATE LAW.—The provisions described in this subsection are the following:

(1) The insurance market reform provisions of title I (and the amendments made by such title), except for section 2704 of the Public Health Service Act (as added by section 1201 (relating to preexisting condition exclusions)).

(2) The requirements relating to obtaining or providing individual and employer health insurance coverage under title I (and the amendments made by such title).

(3) The provisions relating to Medicaid expansion under the amendments made by title I.

(4) The provisions relating to the Medicare program (and the amendments to such program) under title III and (IV).

(5) The provisions relating to the imposition of, or increases in, fees paid by insurance issuers and drug and medical device manufacturers under the amendments made by this Act.

(6) Any other provision of this Act (or an amendment made by this Act), except for this section.

#### (c) ABOVE-THE-LINE DEDUCTION FOR HEALTH INSURANCE PREMIUMS.—

(1) IN GENERAL.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by inserting after paragraph (21) the following new paragraph:

“(22) HEALTH INSURANCE PAYMENTS.—

“(A) IN GENERAL.—Any amount allowable as a deduction under section 213 (determined without regard to any income limitation under subsection (a) thereof) by reason of subsection (d)(1)(D) thereof for qualified health insurance.

“(B) QUALIFIED HEALTH INSURANCE.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘qualified health insurance’ means insurance offered to individuals located in a State that enacts a law described in section 4(a) of the Patient Protection and Affordable Care Act which constitutes medical care as defined in section 213(d) without regard to—

“(I) paragraph (1)(C) thereof; and

“(II) so much of paragraph (1)(D) thereof as relates to qualified long-term care insurance contracts.

“(ii) EXCLUSION OF CERTAIN OTHER CONTRACTS.—Such term shall not include insurance if a substantial portion of its benefits are excepted benefits (as defined in section 9832(c)).”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2009.

**SA 3144.** Mr. FRANKEN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title VI, insert the following:

#### SEC. 1. ANTI-FRAUD CONSULTATION GROUP.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services jointly with the Attorney General shall establish an anti-fraud consultation group for the purpose of coordinating expertise and best practices relating to the analysis, detection, and prevention of fraud, waste, and abuse arising from, or related to, health care.

(b) COMPOSITION.—The anti-fraud consultation group under subsection (a) shall be composed of individuals, to be appointed jointly by the Secretary of Health and Human Services and the Attorney General, with expertise from both the public and private sectors in fraud arising from, or related to, health care, including law enforcement personnel, health insurance issuers, physicians and other health care providers, insurance anti-fraud organizations, academic experts, consumer groups, and insurance regulators.

(c) DUTIES.—At the request of the Secretary of Health and Human Services and the Attorney General, the anti-fraud consultation group under subsection (a) shall provide advice concerning—

(1) methods of preventing fraud against Federal and State health care programs, consumers, providers, employers, and health insurance issuers;

(2) the evaluation of information and data to improve the ability to detect and prevent fraud;

(3) the enhancement of anti-fraud information data systems, consistent with the protection of personal privacy; and

(4) the coordination of public and private resources in the analysis, detection, and prevention of fraud arising from, or related to, health care.

(d) ANNUAL REPORT.—The anti-fraud consultation group under subsection (a) shall, not later than 1 year after the date of enactment of this Act, and annually thereafter, submit to the Secretary of Health and Human Services and the Attorney General a report concerning the group's—

(1) accomplishments to improve the coordination of public and private health care anti-fraud actions;

(2) development of enhanced techniques for the analysis, detection, and prevention of fraud; and

(3) recommendations for the improvement of anti-fraud programs.

(e) FUNDING.—The Secretary and the Attorney General shall use funds appropriated to the Secretary or Attorney General prior to the date of enactment of this Act, and otherwise available, to carry out this section.

**SA 3145.** Mr. MCCONNELL (for himself, Mr. ENSIGN, and Mr. MCCAIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

#### SEC. 2. FINDINGS AND PURPOSE.

##### (a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this Act to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

#### SEC. 3. DEFINITIONS.

In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term “health care liability claim” means a

demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this Act, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

**SEC. 4. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this Act applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

**SEC. 5. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this Act shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or

State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

**SEC. 6. MAXIMIZING PATIENT RECOVERY.**

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingency fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or

approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanence of medical or physical impairment.

**SEC. 7. ADDITIONAL HEALTH BENEFITS.**

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) **APPLICATION OF PROVISION.**—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

**SEC. 8. PUNITIVE DAMAGES.**

(a) **PUNITIVE DAMAGES PERMITTED.**—

(1) **IN GENERAL.**—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) **FILING OF LAWSUIT.**—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may

allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) **SEPARATE PROCEEDING.**—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) **LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.**—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) **DETERMINING AMOUNT OF PUNITIVE DAMAGES.**—

(1) **FACTORS CONSIDERED.**—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) **MAXIMUM AWARD.**—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) **LIABILITY OF HEALTH CARE PROVIDERS.**—

(1) **IN GENERAL.**—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) **MEDICAL PRODUCT.**—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

**SEC. 9. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

**SEC. 10. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(b) **SMALLPOX VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such part C shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(c) **OTHER FEDERAL LAW.**—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

**SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) **HEALTH CARE LAWSUITS.**—The provisions governing health care lawsuits set forth in this Act shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or



(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) **PREEMPTION OF CERTAIN STATE LAWS.**—No provision of this Act shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 5(a).

(c) **PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.**—

(1) **IN GENERAL.**—Any issue that is not governed by a provision of law established by or under this Act (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this Act;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

This Act shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3146.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 340, between lines 14 and 15, insert the following:

“(g) **PENALTIES CREDITED TO INDIVIDUAL ACCOUNTS AND USED FOR PREMIUMS.**—

“(1) **IN GENERAL.**—The Secretary shall not later than January 1, 2014, establish and implement a program under which—

“(A) if a penalty has been imposed under this section with respect to an applicable individual for months during any calendar year, the Secretary—

“(i) establishes an account on behalf of the applicable individual, and

“(ii) credits such account with an amount equal to the amount of the penalty, and

“(B) if the applicable individual subsequently becomes covered under minimum essential coverage for 1 or more months, the

Secretary pays to or on behalf of the applicable individual an amount equal to the premiums paid by the individual for such coverage (or, if lesser, the balance in the account established under subparagraph (A)).

“(2) **AMOUNTS AVAILABLE ONLY FOR 3 YEARS.**—

“(A) **IN GENERAL.**—If an account is credited under paragraph (1)(A) with an amount for any calendar year, such amount shall be available for payment under paragraph (1)(B) only for premiums for minimum essential coverage for months occurring during the 3 calendar years immediately following such calendar year.

“(B) **SPECIAL RULES.**—For purposes of this subsection—

“(i) the Secretary need only establish 1 account for an individual, and

“(ii) amounts shall be treated as paid out of an account on a first-in, first-out basis.”.

**SA 3147.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 339, between lines 12 and 13, insert the following:

“(5) **HIGH DEDUCTIBLE HEALTH PLAN.**—

“(A) **IN GENERAL.**—If an applicable individual—

“(i) is an employee of an employer who ceases to offer the employee the opportunity to enroll in an eligible employer-sponsored plan, or

“(ii) ceases employment with an employer and is not otherwise eligible to enroll in an eligible employer-sponsored plan, the applicable individual may enroll in a high deductible health plan described in subparagraph (C) and such plan shall be treated as minimum essential coverage.

“(B) **CONTINUED ENROLLMENT.**—If an individual described in subparagraph (A) enrolls in a high deductible health plan described in subparagraph (C), such plan shall continue to be treated as minimum essential coverage with respect to that individual during any continuous period of enrollment even if the individual is otherwise eligible to enroll in an eligible employer-sponsored plan.

“(C) **PLAN DESCRIBED.**—A health plan is described in this subparagraph if it is a high deductible health plan (as defined in section 223(c)(2)) that meets all requirements under such section to be offered in connection with a health savings account. No requirement imposed by any provision of, or any amendment made by, the Patient Protection and Affordable Care Act shall apply with respect to the plan or issuer thereof.

**SA 3148.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 396, between lines 8 and 9, insert the following:

#### **Subtitle H—Sunset if Premiums Increase Too Rapidly**

##### **SEC. 1601. SUNSET.**

(a) **IN GENERAL.**—The following requirements shall not apply to health insurance coverage and group health plans offered in the individual or group market within a State during plan years beginning after the sunset date with respect to that market:

(1) Any requirement under section 1301 of this title, section 2707 of the Public Health Service Act, or any other provision of, or amendment made by, this title that a health plan provide an essential health benefits package described in section 1302(a) of this title, including any requirement that the plan provide—

(A) for essential health benefits described in section 1302(b);

(B) in the case of a plan offered in the group market, an annual limitation on the plan's deductible described in section 1302(c)(2); and

(C) a level of coverage described in section 1302(d).

(2) The requirements of section 2701 of the Public Health Service Act (relating to limits on premiums).

(b) **COORDINATION WITH QUALIFIED HEALTH PLANS AND PREMIUM TAX CREDITS AND COST-SHARING REDUCTIONS.**—In the case of a State to which subsection (a) applies, the Secretary shall establish procedures for establishing which health plans shall be treated as qualified health plans for purposes of the Exchanges established within such State. Such procedures shall ensure that the aggregate amount of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 with respect to qualified health plans in the individual market within such State does not exceed the aggregate amount of such credits and reductions that would have been allowed if subsection (a) did not apply to such State.

(c) **SUNSET DATE.**—For purposes of this section—

(1) **IN GENERAL.**—The term “sunset date” means, with respect to the individual or group market within a State, the first date on which the applicable State authority determines under paragraph (2) that the percentage increase in average annual premiums within such market for a calendar year over the preceding calendar year exceeds the percentage increase for such period in the Consumer Price Index for all urban consumers published by the Department of Labor.

(2) **DETERMINATION.**—The applicable State authority shall for each calendar year after 2013 make the determination described in paragraph (1).

(3) **APPLICABLE STATE AUTHORITY.**—The term “applicable State authority” has the meaning given such term by section 2791(d)(1) of the Public Health Service Act.

**SA 3149.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 999, between lines 16 and 17, insert the following:

(q) **BUDGET-NEUTRAL EXEMPTION OF CERTAIN PROVIDERS.**—Notwithstanding the provisions of, and amendments made by, the preceding subsections of this section—

(1) such provisions and amendments shall not apply to a health care provider that—

(A) is described in section 340B(a)(4) of the Public Health Service Act or 1927(c)(1)(D)(i)(IV) of the Social Security Act (42 U.S.C. 1396r-8(c)(1)(D)(i)(IV)); and

(B) is located in an area that is not a metropolitan statistical area (as determined by the Bureau of the Census); and

(2) the Secretary of Health and Human Services shall make appropriate adjustments in the application of such provisions and amendments to ensure that the amount of expenditures under title XVIII of the Social Security Act is equal to the amount of expenditures that would have been made under such title if this subsection had not been enacted, as estimated by the Secretary.

**SA 3150.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, strike line 23 and insert the following: “plan. When establishing geographically adjusted premium rates under the preceding sentence, the Secretary shall not take into account direct graduate medical education payments, Medicare disproportionate share payments, and health information technology funding under the American Recovery and Reinvestment Act of 2009.”.

**SA 3151.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 201, between lines 6 and 7, insert the following:

**SEC. 1325. PROHIBITION ON FEDERAL BAILOUT OF A CO-OP PLAN OR A COMMUNITY HEALTH INSURANCE OPTION.**

(a) **PROHIBITION.**—Notwithstanding any provision of (or amendment made by) this Act, no Federal funds shall paid to, or used to support the operation of (including ensuring the solvency of), a qualified health plan offered under the Consumer Operated and Oriented Plan (CO-OP) program under section 1322 or a community health insurance option under section 1323.

(b) **EXCEPTIONS.**—Subsection (a) shall not apply to—

(1) loans and grants under section 1322(b) or loans or payments under section 1323(c); or

(2) any premium tax credit under section 36B of the Internal Revenue Code of 1986 or

any cost-sharing reduction under section 1402, or any advance payment of either, with respect to an individual enrolled in a plan or option described in subsection (a).

**SA 3152.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**TITLE —MEDICAL CARE ACCESS PROTECTION**

**SEC. 1. SHORT TITLE.**

This title may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

**SEC. 2. DEFINITIONS.**

In this title:

(1) **ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COLLATERAL SOURCE BENEFITS.**—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) **COMPENSATORY DAMAGES.**—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and

all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42

U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this title, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

### SEC. 3. INCREASED FMAP FOR MEDICAL LIABILITY REFORM.

With respect to fiscal years 2011 and 2012, the Secretary of Health and Human Services shall increase by an amount equal to 2 percent of the total amount of Federal payments estimated to be made to a State under section 1903(a)(1) of the Social Security Act (42 U.S.C. 1396b(a)(1)) for providing medical assistance for children under the State Medicaid program during the fiscal year if the Secretary determines that the State has enacted a law that substantially complies with this title.

### SEC. 4. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit

shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

- (1) fraud;
- (2) intentional concealment; or
- (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this title applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

### SEC. 5. COMPENSATING PATIENT INJURY.

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against

whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

### SEC. 6. MAXIMIZING PATIENT RECOVERY.

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingency fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

## (c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

**SEC. 7. ADDITIONAL HEALTH BENEFITS.**

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

**SEC. 8. PUNITIVE DAMAGES.**

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by

the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

**SEC. 9. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without

reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

**SEC. 10. EFFECT ON OTHER LAWS.**

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

**SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this title shall be construed to preempt any State law (whether effective

before, on, or after the date of the enactment of this title) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section 5(a).

—(C) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

**SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3153.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 339, between lines 16 and 17, insert the following:

“(g) LIMITATION.—This section shall not apply to an individual for a taxable year if such individual—

“(1) in under 30 years of age when such year begins; or

“(2) has a modified gross income that does not exceed \$30,000 for such year.”.

**SA 3154.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2034, strike lines 8 through 15.

**SA 3155.** Mr. BARRASSO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 201, between lines 6 and 7, insert the following:

**SEC. 1325. ANNUAL AUDITS.**

(a) IN GENERAL.—The Secretary shall enter into contracts with one or more private accounting firms for the conduct of annual audits of the CO-OP program under section 1322 and the community health insurance option program under section 1323. SUCH contracts shall require that such firms submit annual reports to the Secretary concerning the results of such audits.

(b) INCLUSION IN MEDICARE TRUSTEES REPORT.—Sections 1817(b) and 1841(b) of the Social Security Act (42 U.S.C. 1395i(b); 1395t(b)) are each amended by inserting at the end the following new sentence: “Each report submitted under paragraph (2) (beginning with the report for 2014) shall include a description of the results of the audits conducted under section 1325(a) of the Patient Protection and Affordable Care Act for the year involved.”.

**SA 3156.** Mr. LAUTENBERG (for himself, Mr. CARPER, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

**TITLE X—IMPORTATION OF PRESCRIPTION DRUGS**

**SEC. 10001. SHORT TITLE.**

This title may be cited as the “Pharmaceutical Market Access and Drug Safety Act of 2009”.

**SEC. 10002. FINDINGS.**

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American spend more than \$200,000,000,000 on prescription drugs every year;

(6) the Congressional Budget Office has found that the cost of prescription drugs are

between 35 to 55 percent less in other highly-developed countries than in the United States; and

(7) promoting competitive market pricing would both contribute to health care savings and allow greater access to therapy, improving health and saving lives.

**SEC. 10003. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.**

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

**SEC. 10004. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.**

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 10003, is further amended by inserting after section 803 the following:

**“SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.**

“(a) IMPORTATION OF PRESCRIPTION DRUGS.—

“(1) IN GENERAL.—In the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

“(A) the limitation on importation that is established in section 801(d)(1) is waived; and

“(B) the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

“(2) IMPORTERS.—A qualifying drug may not be imported under paragraph (1) unless—

“(A) the drug is imported by a pharmacy, group of pharmacies, or a wholesaler that is a registered importer; or

“(B) the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

“(3) RULE OF CONSTRUCTION.—This section shall apply only with respect to a drug that is imported or offered for import into the United States—

“(A) by a registered importer; or

“(B) from a registered exporter to an individual.

“(4) DEFINITIONS.—

“(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

“(i) The term ‘registered exporter’ means an exporter for which a registration under subsection (b) has been approved and is in effect.

“(ii) The term ‘registered importer’ means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

“(iii) The term ‘registration condition’ means a condition that must exist for a registration under subsection (b) to be approved.

“(B) QUALIFYING DRUG.—For purposes of this section, the term ‘qualifying drug’ means a drug for which there is a corresponding U.S. label drug.

“(C) U.S. LABEL DRUG.—For purposes of this section, the term ‘U.S. label drug’ means a prescription drug that—

“(i) with respect to a qualifying drug, has the same active ingredient or ingredients, route of administration, dosage form, and strength as the qualifying drug;

“(ii) with respect to the qualifying drug, is manufactured by or for the person that manufactures the qualifying drug;

“(iii) is approved under section 505(c); and

“(iv) is not—

“(I) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

“(II) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262), including—

“(aa) a therapeutic DNA plasmid product;

“(bb) a therapeutic synthetic peptide product;

“(cc) a monoclonal antibody product for in vivo use; and

“(dd) a therapeutic recombinant DNA-derived product;

“(III) an infused drug, including a peritoneal dialysis solution;

“(IV) an injected drug;

“(V) a drug that is inhaled during surgery;

“(VI) a drug that is the listed drug referred to in 2 or more abbreviated new drug applications under which the drug is commercially marketed; or

“(VII) a sterile ophthalmic drug intended for topical use on or in the eye.

“(D) OTHER DEFINITIONS.—For purposes of this section:

“(i)(I) The term ‘exporter’ means a person that is in the business of exporting a drug to individuals in the United States from Canada or from a permitted country designated by the Secretary under subclause (II), or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

“(II) The Secretary shall designate a permitted country under subparagraph (E) (other than Canada) as a country from which an exporter may export a drug to individuals in the United States if the Secretary determines that—

“(aa) the country has statutory or regulatory standards that are equivalent to the standards in the United States and Canada with respect to—

“(AA) the training of pharmacists;

“(BB) the practice of pharmacy; and

“(CC) the protection of the privacy of personal medical information; and

“(bb) the importation of drugs to individuals in the United States from the country will not adversely affect public health.

“(ii) The term ‘importer’ means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

“(iii) The term ‘pharmacist’ means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

“(iv) The term ‘pharmacy’ means a person that—

“(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

“(II) employs 1 or more pharmacists.

“(v) The term ‘prescription drug’ means a drug that is described in section 503(b)(1).

“(vi) The term ‘wholesaler’—

“(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

“(II) does not include a person authorized to import drugs under section 801(d)(1).

“(E) PERMITTED COUNTRY.—The term ‘permitted country’ means—

“(i) Australia;

“(ii) Canada;

“(iii) a member country of the European Union, but does not include a member country with respect to which—

“(I) the country’s Annex to the Treaty of Accession to the European Union 2003 includes a transitional measure for the regula-

tion of human pharmaceutical products that has not expired; or

“(II) the Secretary determines that the requirements described in subclauses (I) and (II) of clause (vii) will not be met by the date on which such transitional measure for the regulation of human pharmaceutical products expires;

“(iv) Japan;

“(v) New Zealand;

“(vi) Switzerland; and

“(vii) a country in which the Secretary determines the following requirements are met:

“(I) The country has statutory or regulatory requirements—

“(aa) that require the review of drugs for safety and effectiveness by an entity of the government of the country;

“(bb) that authorize the approval of only those drugs that have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs;

“(cc) that require the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country to be adequate to preserve their identity, quality, purity, and strength;

“(dd) for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective; and

“(ee) that require the labeling and promotion of drugs to be in accordance with the approval of the drug.

“(II) The valid marketing authorization system in the country is equivalent to the systems in the countries described in clauses (i) through (vi).

“(III) The importation of drugs to the United States from the country will not adversely affect public health.

“(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

“(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a ‘registrant’) submits to the Secretary a registration containing the following:

“(A)(i) In the case of an exporter, the name of the exporter and an identification of all places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter.

“(ii) In the case of an importer, the name of the importer and an identification of the places of business of the importer at which the importer initially receives a qualifying drug after importation (which shall not exceed 3 places of business except by permission of the Secretary).

“(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

“(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of imported qualifying drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

“(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the

sources of exported qualifying drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation; and maintenance of records and samples).

“(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

“(D) An agreement by the registrant to—

“(i) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

“(ii) provide for the return to the registrant of such drug; and

“(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

“(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

“(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

“(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

“(H) An agreement by the registrant to notify the Secretary not more than 30 days before the registrant intends to make the change, of—

“(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

“(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

“(I) In the case of an exporter:

“(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

“(ii) An agreement to post a bond, payable to the Treasury of the United States that is equal in value to the lesser of—

“(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

“(II) \$1,000,000.

“(iii) An agreement by the exporter to comply with applicable provisions of Canadian law, or the law of the permitted country designated under subsection (a)(4)(D)(i)(II) in which the exporter is located, that protect the privacy of personal information with respect to each individual importing a prescription drug from the exporter under subsection (a)(2)(B).

“(iv) An agreement by the exporter to report to the Secretary—

“(I) not later than August 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the 6-month period from January 1 through June 30 of that year; and

“(II) not later than January 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the previous fiscal year.



“(J) In the case of an importer, an agreement by the importer to report to the Secretary—

“(i) not later than August 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the 6-month period from January 1 through June 30 of that fiscal year; and

“(ii) not later than January 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the previous fiscal year.

“(K) Such other provisions as the Secretary may require by regulation to protect the public health while permitting—

“(i) the importation by pharmacies, groups of pharmacies, and wholesalers as registered importers of qualifying drugs under subsection (a); and

“(ii) importation by individuals of qualifying drugs under subsection (a).

“(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

“(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

“(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(H) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

“(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website and the information provided through the toll-free telephone number accordingly.

“(4) SUSPENSION AND TERMINATION.—

“(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

“(i) Subject to clause (ii), the Secretary may suspend the registration if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with a registration condition.

“(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not comply with subsection (g)(2)(A) or (g)(4), or has exported a qualifying drug to an individual in violation of subsection (i), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hear-

ing not later than 10 days after the date on which the registration is suspended.

“(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

“(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

“(5) DEFAULT OF BOND.—A bond required to be posted by an exporter under paragraph (1)(I)(ii) shall be defaulted and paid to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has—

“(A) exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsection (g)(2)(A), (g)(4), or (i); or

“(B) failed to permit the Secretary to conduct an inspection described under subsection (d).

“(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported into the United States only if there is compliance with the following:

“(1) The drug was manufactured in an establishment—

“(A) required to register under subsection (h) or (i) of section 510; and

“(B)(i) inspected by the Secretary; or

“(ii) for which the Secretary has elected to rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided for under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

“(2) The establishment is located in any country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug is manufactured for distribution in a foreign country that is not a permitted country).

“(3) The exporter or importer obtained the drug—

“(A) directly from the establishment; or

“(B) directly from an entity that, by contract with the exporter or importer—

“(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

“(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

“(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities, including records, of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

“(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

“(4)(A) The foreign country from which the importer will import the drug is a permitted country; or

“(B) The foreign country from which the exporter will export the drug is the permitted country in which the exporter is located.

“(5) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

“(6) The exporter or importer retains a sample of each lot of the drug for testing by the Secretary.

“(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

“(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

“(A) the exporter agrees to permit the Secretary—

“(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

“(ii) to have access, including on a day-to-day basis, to—

“(I) records of the exporter that relate to the export of such drugs, including financial records; and

“(II) samples of such drugs;

“(iii) to carry out the duties described in paragraph (3); and

“(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

“(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary randomly, but not less than 12 times annually, on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

“(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence shall—

“(A) be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

“(B) include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies.

“(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

“(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the exporter at which qualifying drugs are stored and from which qualifying drugs are shipped.

“(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an exporter.

“(C) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

“(D) Monitoring the affixing of markings under paragraph (2).

“(E) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records, of other parties in the chain of custody of qualifying drugs.

“(F) Determining whether the exporter is in compliance with all other registration conditions.

“(4) PRIOR NOTICE OF SHIPMENTS.—A registration condition is that, not less than 8 hours and not more than 5 days in advance of the time of the importation of a shipment of qualifying drugs, the importer involved agrees to submit to the Secretary a notice with respect to the shipment of drugs to be imported or offered for import into the United States under subsection (a). A notice under the preceding sentence shall include—

“(A) the name and complete contact information of the person submitting the notice;

“(B) the name and complete contact information of the importer involved;

“(C) the identity of the drug, including the established name of the drug, the quantity of the drug, and the lot number assigned by the manufacturer;

“(D) the identity of the manufacturer of the drug, including the identity of the establishment at which the drug was manufactured;

“(E) the country from which the drug is shipped;

“(F) the name and complete contact information for the shipper of the drug;

“(G) anticipated arrival information, including the port of arrival and crossing location within that port, and the date and time;

“(H) a summary of the chain of custody of the drug from the establishment in which the drug was manufactured to the importer;

“(I) a declaration as to whether the Secretary has ordered that importation of the drug from the permitted country cease under subsection (g)(2)(C) or (D); and

“(J) such other information as the Secretary may require by regulation.

“(5) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the importer involved agrees, before wholesale distribution (as defined in section 503(e)) of a qualifying drug that has been imported under subsection (a), to affix to each container of such drug such markings or other technology as the Secretary determines necessary to iden-

tify the shipment as being in compliance with all registration conditions, except that the markings or other technology shall not be required on a drug that bears comparable, compatible markings or technology from the manufacturer of the drug. Markings or other technology under the preceding sentence shall—

“(A) be designed to prevent affixation of the markings or other technology to any container that is not authorized to bear the markings; and

“(B) shall include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of such technologies.

“(6) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

“(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the importer at which a qualifying drug is initially received after importation.

“(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an importer.

“(C) Reviewing notices under paragraph (4).

“(D) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records of other parties in the chain of custody of qualifying drugs.

“(E) Determining whether the importer is in compliance with all other registration conditions.

“(e) IMPORTER FEES.—

“(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of \$10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

“(2) INSPECTION FEE.—A registration condition is that the importer involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

“(3) AMOUNT OF INSPECTION FEE.—

“(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for importers for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered importers, including the costs associated with—

“(i) inspecting the facilities of registered importers, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(6);

“(ii) developing, implementing, and operating under such subsection an electronic system for submission and review of the notices required under subsection (d)(4) with respect to shipments of qualifying drugs under subsection (a) to assess compliance with all registration conditions when such shipments are offered for import into the United States; and

“(iii) inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

“(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered importers under subsection (a).

“(C) TOTAL PRICE OF DRUGS.—

“(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

“(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during that fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

“(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered importers during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered importer on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

“(D) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an importer shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of qualifying drugs imported by importers under subsection (a).

“(4) USE OF FEES.—

“(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

“(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

“(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

“(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

“(f) EXPORTER FEES.—

“(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of \$10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

“(2) INSPECTION FEE.—A registration condition is that the exporter involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

“(3) AMOUNT OF INSPECTION FEE.—

“(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for exporters for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered exporters, including the costs associated with—

“(i) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(3);

“(ii) developing, implementing, and operating under such subsection a system to screen marks on shipments of qualifying drugs under subsection (a) that indicate compliance with all registration conditions, when such shipments are offered for import into the United States; and

“(iii) screening such markings, and inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

“(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered exporters under subsection (a).

“(C) TOTAL PRICE OF DRUGS.—

“(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

“(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during that fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

“(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United

States by registered exporters during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered exporter on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

“(D) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an exporter shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of qualifying drugs exported by exporters under subsection (a).

“(4) USE OF FEES.—

“(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

“(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

“(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

“(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

“(g) COMPLIANCE WITH SECTION 801(a).—

“(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

“(2) SECTION 505; APPROVAL STATUS.—

“(A) IN GENERAL.—A qualifying drug that is imported or offered for import under subsection (a) shall comply with the conditions established in the approved application under section 505(b) for the U.S. label drug as described under this subsection.

“(B) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

“(i) IN GENERAL.—The person that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country shall in accordance with this paragraph submit to the Secretary a notice that—

“(I) includes each difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

“(aa) the variations provided for in the application; and

“(bb) any difference in labeling (except ingredient labeling); or

“(II) states that there is no difference in the qualifying drug from a condition estab-

lished in the approved application for the U.S. label drug beyond—

“(aa) the variations provided for in the application; and

“(bb) any difference in labeling (except ingredient labeling).

“(ii) INFORMATION IN NOTICE.—A notice under clause (i)(I) shall include the information that the Secretary may require under section 506A, any additional information the Secretary may require (which may include data on bioequivalence if such data are not required under section 506A), and, with respect to the permitted country that approved the qualifying drug for commercial distribution, or with respect to which such approval is sought, include the following:

“(I) The date on which the qualifying drug with such difference was, or will be, introduced for commercial distribution in the permitted country.

“(II) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the qualifying drug from a condition established in the approved application for the U.S. label drug.

“(III) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

“(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

“(I) the information provided in the notice is complete and true; and

“(II) a copy of the notice has been provided to the Federal Trade Commission and to the State attorneys general.

“(iv) FEE.—

“(I) IN GENERAL.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

“(II) FEE AMOUNT FOR CERTAIN YEARS.—If no fee amount is in effect under section 736(a)(1)(A)(ii) for a fiscal year, then the amount paid by a person under subclause (I) shall—

“(aa) for the first fiscal year in which no fee amount under such section is in effect, be equal to the fee amount under section 736(a)(1)(A)(ii) for the most recent fiscal year for which such section was in effect, adjusted in accordance with section 736(c); and

“(bb) for each subsequent fiscal year in which no fee amount under such section is in effect, be equal to the applicable fee amount for the previous fiscal year, adjusted in accordance with section 736(c).

“(v) TIMING OF SUBMISSION OF NOTICES.—

“(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (C)

applies shall be submitted to the Secretary not later than 120 days before the qualifying drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the qualifying drug with the difference begin less than 120 days after the country requires the difference.

“(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than the day on which the qualifying drug with the difference is introduced for commercial distribution in a permitted country.

“(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary on the date that the qualifying drug is first introduced for commercial distribution in a permitted country and annually thereafter.

“(vi) REVIEW BY SECRETARY.—

“(I) IN GENERAL.—In this paragraph, the difference in a qualifying drug that is submitted in a notice under clause (i) from the U.S. label drug shall be treated by the Secretary as if it were a manufacturing change to the U.S. label drug under section 506A.

“(II) STANDARD OF REVIEW.—Except as provided in subclause (III), the Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, using the safe and effective standard for approving or disapproving a manufacturing change under section 506A.

“(III) BIOEQUIVALENCE.—If the Secretary would approve the difference in a notice submitted under clause (i) using the safe and effective standard under section 506A and if the Secretary determines that the qualifying drug is not bioequivalent to the U.S. label drug, the Secretary shall—

“(aa) include in the labeling provided under paragraph (3) a prominent advisory that the qualifying drug is safe and effective but is not bioequivalent to the U.S. label drug if the Secretary determines that such an advisory is necessary for health care practitioners and patients to use the qualifying drug safely and effectively; or

“(bb) decline to approve the difference if the Secretary determines that the availability of both the qualifying drug and the U.S. label drug would pose a threat to the public health.

“(IV) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

“(V) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection of the establishment in which the qualifying drug is manufactured—

“(aa) such inspection by the Secretary shall be authorized; and

“(bb) the Secretary may rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

“(vii) PUBLICATION OF INFORMATION ON NOTICES.—

“(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall readily make available to

the public a list of notices submitted under clause (i).

“(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

“(aa) a notice is under review;

“(bb) the Secretary has ordered that importation of the qualifying drug from a permitted country cease; or

“(cc) the importation of the drug is permitted under subsection (a).

“(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

“(C) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under subsection (c) or (d)(3)(B)(i) of section 506A, require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

“(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general that the notice has been submitted with respect to the qualifying drug involved.

“(ii) If the Secretary has not made a determination whether such a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the qualifying drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

“(I) order that the importation of the qualifying drug involved from the permitted country not begin until the Secretary completes review of the notice; and

“(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the order.

“(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

“(I) order that the importation of the qualifying drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

“(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

“(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

“(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall—

“(I) vacate the order under clause (ii), if any;

“(II) consider the difference to be a variation provided for in the approved application for the U.S. label drug;

“(III) permit importation of the qualifying drug under subsection (a); and

“(IV) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

“(D) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

“(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the qualifying drug involved continues in effect.

“(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

“(I) order that the importation of the qualifying drug involved from the permitted country cease;

“(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

“(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

“(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the difference shall be considered to be a variation provided for in the approved application for the U.S. label drug.

“(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of a notice under subparagraph (B)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

“(i) shall consider such difference to be a variation provided for in the approved application for the U.S. label drug;

“(ii) may not order that the importation of the qualifying drug involved cease; and

“(iii) shall promptly notify registered exporters and registered importers.

“(F) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

“(i) IN GENERAL.—A person who manufactures a drug approved under section 505(b) shall submit an application under section 505(b) for approval of another drug that is manufactured for distribution in a permitted country by or for the person that manufactures the drug approved under section 505(b) if—

“(I) there is no qualifying drug in commercial distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the drug approved under section 505(b); and

“(II) each active ingredient of the other drug is related to an active ingredient of the drug approved under section 505(b), as defined in clause (v).

“(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

“(I) request approval of the other drug for the indication or indications for which the drug approved under section 505(b) is labeled;

“(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the other drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

“(III) include a right of reference to the application for the drug approved under section 505(b); and

“(IV) include such additional information as the Secretary may require.

“(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on

which the information referred to in clause (ii)(I) is submitted to the government of the permitted country.

“(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

“(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

“(I) the same; or

“(II) different salts, esters, or complexes of the same moiety.

“(3) SECTION 502; LABELING.—

“(A) IMPORTATION BY REGISTERED IMPORTER.—

“(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the qualifying drug bears—

“(I) a copy of the labeling approved for the U.S. label drug under section 505, without regard to whether the copy bears any trademark involved;

“(II) the name of the manufacturer and location of the manufacturer;

“(III) the lot number assigned by the manufacturer;

“(IV) the name, location, and registration number of the importer; and

“(V) the National Drug Code number assigned to the qualifying drug by the Secretary.

“(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

“(iii) REQUESTED LABELING.—The labeling provided by the Secretary under clause (ii) shall—

“(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the qualifying drug;

“(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof;

“(III) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the qualifying drug is safe and effective but not bioequivalent to the U.S. label drug; and

“(IV) if the inactive ingredients of the qualifying drug are different from the inactive ingredients for the U.S. label drug, include—

“(aa) a prominent notice that the ingredients of the qualifying drug differ from the ingredients of the U.S. label drug and that the qualifying drug must be dispensed with an advisory to people with allergies about this difference and a list of ingredients; and

“(bb) a list of the ingredients of the qualifying drug as would be required under section 502(e).

“(B) IMPORTATION BY INDIVIDUAL.—

“(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the packaging and labeling of the qualifying drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and the labeling of the qualifying drug includes—

“(I) directions for use by the consumer;

“(II) the lot number assigned by the manufacturer;

“(III) the name and registration number of the exporter;

“(IV) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug;

“(V) if the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

“(aa) a prominent advisory that persons with an allergy should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

“(bb) a list of the ingredients of the drug as would be required under section 502(e); and

“(VI) a copy of any special labeling that would be required by the Secretary had the U.S. label drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears any trademark involved.

“(ii) PACKAGING.—A qualifying drug offered for import to an individual by an exporter under this section that is packaged in a unit-of-use container (as those items are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

“(I) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

“(II) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the exporter will provide the drug in packaging that is compliant at no additional cost.

“(iii) REQUEST FOR COPY OF SPECIAL LABELING AND INGREDIENT LIST.—The Secretary shall provide to the registered exporter involved a copy of the special labeling, the advisory, and the ingredient list described under clause (i), upon request of the exporter.

“(iv) REQUESTED LABELING AND INGREDIENT LIST.—The labeling and ingredient list provided by the Secretary under clause (iii) shall—

“(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the drug; and

“(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof.

“(4) SECTION 501; ADULTERATION.—A qualifying drug that is imported or offered for import under subsection (a) shall be considered to be in compliance with section 501 if the drug is in compliance with subsection (c).

“(5) STANDARDS FOR REFUSING ADMISSION.—A drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

“(A) The drug is not a qualifying drug.

“(B) A notice for the drug required under paragraph (2)(B) has not been submitted to the Secretary.

“(C) The Secretary has ordered that importation of the drug from the permitted country cease under subparagraph (C) or (D) of paragraph (2).

“(D) The drug does not comply with paragraph (3) or (4).

“(E) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

“(F) The Secretary becomes aware that—

“(i) the drug may be counterfeit;

“(ii) the drug may have been prepared, packed, or held under insanitary conditions; or

“(iii) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

“(G) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

“(H) The Secretary has under section 505(e) withdrawn approval of the drug.

“(I) The manufacturer of the drug has instituted a recall of the drug.

“(J) If the drug is imported or offered for import by a registered importer without submission of a notice in accordance with subsection (d)(4).

“(K) If the drug is imported or offered for import from a registered exporter to an individual and 1 or more of the following applies:

“(i) The shipping container for such drug does not bear the markings required under subsection (d)(2).

“(ii) The markings on the shipping container appear to be counterfeit.

“(iii) The shipping container or markings appear to have been tampered with.

“(h) EXPORTER LICENSURE IN PERMITTED COUNTRY.—A registration condition is that the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

“(1) the exporter is authorized under the law of the permitted country in which the exporter is located to dispense prescription drugs; and

“(2) the exporter employs persons that are licensed under the law of the permitted country in which the exporter is located to dispense prescription drugs in sufficient number to dispense safely the drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such drugs to individuals.

“(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION.—

“(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

“(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

“(i) is valid under applicable Federal and State laws; and

“(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

“(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of the permitted country in which the exporter is located, as a condition of dispensing the drug to the individual.

“(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

“(i) to indicate that the prescription, and the equivalent document in the permitted country in which the exporter is located, have been filled; and

“(ii) to prevent a duplicative filling by another pharmacist.

“(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

“(E) The quantity of the drug does not exceed a 90-day supply.

“(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an ‘ineligible subpart H drug’ if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

“(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

“(j) MAINTENANCE OF RECORDS AND SAMPLES.—

“(1) IN GENERAL.—A registration condition is that the importer or exporter involved shall—

“(A) maintain records required under this section for not less than 2 years; and

“(B) maintain samples of each lot of a qualifying drug required under this section for not more than 2 years.

“(2) PLACE OF RECORD MAINTENANCE.—The records described under paragraph (1) shall be maintained—

“(A) in the case of an importer, at the place of business of the importer at which the importer initially receives the qualifying drug after importation; or

“(B) in the case of an exporter, at the facility from which the exporter ships the qualifying drug to the United States.

“(k) DRUG RECALLS.—

“(1) MANUFACTURERS.—A person that manufactures a qualifying drug imported from a permitted country under this section shall promptly inform the Secretary—

“(A) if the drug is recalled or withdrawn from the market in a permitted country;

“(B) how the drug may be identified, including lot number; and

“(C) the reason for the recall or withdrawal.

“(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

“(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of qualifying drugs in the country; or

“(B) monitor recalls and withdrawals of qualifying drugs in the country using any information that is available to the public in any media.

“(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a qualifying drug in a permitted country.

“(l) DRUG LABELING AND PACKAGING.—

“(1) IN GENERAL.—When a qualifying drug that is imported into the United States by an importer under subsection (a) is dispensed by a pharmacist to an individual, the pharmacist shall provide that the packaging and labeling of the drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and shall include with any other labeling provided to the individual the following:

“(A) The lot number assigned by the manufacturer.

“(B) The name and registration number of the importer.

“(C) If required under paragraph (2)(B)(vi)(III) of subsection (g), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug.

“(D) If the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

“(i) a prominent advisory that persons with allergies should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

“(ii) a list of the ingredients of the drug as would be required under section 502(e).

“(2) PACKAGING.—A qualifying drug that is packaged in a unit-of-use container (as those terms are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

“(A) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

“(B) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the pharmacist will provide the drug in packaging that is compliant at no additional cost.

“(m) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, this section does not authorize the importation into the United States of a qualifying drug donated or otherwise supplied for free or at nominal cost by the manufacturer of the drug to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country.

“(n) UNFAIR AND DISCRIMINATORY ACTS AND PRACTICES.—

“(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing agreement or other agreement), to—

“(A) discriminate by charging a higher price for a prescription drug sold to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section than the price that is charged, inclusive of rebates or other incentives to the permitted country or other person, to another person that is in the same country and that does not export a qualifying drug into the United States under this section;

“(B) discriminate by charging a higher price for a prescription drug sold to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a qualifying drug under this section, or that does not distribute, sell, or use such a drug;

“(C) discriminate by denying, restricting, or delaying supplies of a prescription drug to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

“(D) discriminate by publicly, privately, or otherwise refusing to do business with a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or with a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

“(E) knowingly fail to submit a notice under subsection (g)(2)(B)(i), knowingly fail to submit such a notice on or before the date specified in subsection (g)(2)(B)(v) or as otherwise required under paragraphs (3), (4), and (5) of section 10004(e) of the Pharmaceutical Market Access and Drug Safety Act of 2009, knowingly submit such a notice that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such a notice;

“(F) knowingly fail to submit an application required under subsection (g)(2)(F), knowingly fail to submit such an application on or before the date specified in subsection (g)(2)(F)(iii), knowingly submit such an application that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such an application;

“(G) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country;

“(H) refuse to allow an inspection authorized under this section of an establishment that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country;

“(I) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country to good manufacturing practice under this Act;

“(J) become a party to a licensing agreement or other agreement related to a qualifying drug that fails to provide for compliance with all requirements of this section with respect to such drug;

“(K) enter into a contract that restricts, prohibits, or delays the importation of a qualifying drug under this section;

“(L) engage in any other action to restrict, prohibit, or delay the importation of a qualifying drug under this section; or

“(M) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages or attempts to engage in the importation of a qualifying drug under this section.

“(2) REFERRAL OF POTENTIAL VIOLATIONS.—The Secretary shall promptly refer to the Federal Trade Commission each potential violation of subparagraph (E), (F), (G), (H), or (I) of paragraph (1) that becomes known to the Secretary.

“(3) AFFIRMATIVE DEFENSE.—

“(A) DISCRIMINATION.—It shall be an affirmative defense to a charge that a manufacturer has discriminated under subparagraph (A), (B), (C), (D), or (M) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial, restriction, or delay of supplies of a prescription drug to a person, the refusal to do business with a person, or other discriminatory activity against a person, is not based, in whole or in part, on—

“(i) the person exporting or importing a qualifying drug into the United States under this section; or

“(ii) the person distributing, selling, or using a qualifying drug imported into the United States under this section.



“(B) DRUG DIFFERENCES.—It shall be an affirmative defense to a charge that a manufacturer has caused there to be a difference described in subparagraph (G) of paragraph (1) that—

“(i) the difference was required by the country in which the drug is distributed;

“(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug;

“(iii) the person manufacturing the drug for distribution in the United States has given notice to the Secretary under subsection (g)(2)(B)(i) that the drug for distribution in the United States is not different from a drug for distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries; or

“(iv) the difference was not caused, in whole or in part, for the purpose of restricting importation of the drug into the United States under this section.

“(4) EFFECT OF SUBSECTION.—

“(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

“(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

“(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

“(ii) require that such discounts be made available to other purchasers of the prescription drug; or

“(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

“(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

“(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

“(ii) apply to such donations or supplying of a prescription drug.

“(5) ENFORCEMENT.—

“(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

“(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

“(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section; and

“(ii) may seek monetary relief threefold the damages sustained, in addition to any other remedy available to the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

“(6) ACTIONS BY STATES.—

“(A) IN GENERAL.—

“(i) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State have been adversely affected by any manufacturer that violates paragraph (1), the attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction to—

“(I) enjoin that practice;

“(II) enforce compliance with this subsection;

“(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

“(IV) obtain such other relief as the court may consider to be appropriate.

“(ii) NOTICE.—

“(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

“(aa) written notice of that action; and

“(bb) a copy of the complaint for that action.

“(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

“(B) INTERVENTION.—

“(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Federal Trade Commission shall have the right to intervene in the action that is the subject of the notice.

“(ii) EFFECT OF INTERVENTION.—If the Federal Trade Commission intervenes in an action under subparagraph (A), it shall have the right—

“(I) to be heard with respect to any matter that arises in that action; and

“(II) to file a petition for appeal.

“(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

“(i) conduct investigations;

“(ii) administer oaths or affirmations; or

“(iii) compel the attendance of witnesses or the production of documentary and other evidence.

“(D) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Federal Trade Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

“(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

“(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

“(i) is an inhabitant; or

“(ii) may be found.

“(G) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a

cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

“(H) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

“(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term ‘antitrust laws’ has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

“(8) MANUFACTURER.—In this subsection, the term ‘manufacturer’ means any entity, including any affiliate or licensee of that entity, that is engaged in—

“(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

“(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.”

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

“(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

“(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

“(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

“(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

“(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(B) or in an application required under section 804(g)(2)(F), or the failure to submit such a notice or application.

“(4) The importation of a drug in violation of a registration condition or other requirement under section 804, the falsification of any record required to be maintained, or provided to the Secretary, under such section, or the violation of any registration condition or other requirement under such section.”; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

“(6) Notwithstanding subsection (a), any person that knowingly violates section 301(i)

(2) or (3) or section 301(aa)(4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.”.

(c) AMENDMENT OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

“(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

“(1) the drug has been refused admission because the drug was not a lawful import under section 804;

“(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

“(3) the individual may under section 804 lawfully import certain prescription drugs from exporters registered with the Secretary under section 804; and

“(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration or through a toll-free telephone number required under section 804.”.

(2) ESTABLISHMENT REGISTRATION.—Section 510(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) is amended in paragraph (1) by inserting after “import into the United States” the following: “, including a drug that is, or may be, imported or offered for import into the United States under section 804,”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) EXHAUSTION.—

(1) IN GENERAL.—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

“(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.”.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

(e) EFFECT OF SECTION 804.—

(1) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall permit the importation of qualifying drugs (as defined in such section 804) into the United States without regard to the status of the issuance of implementing regulations—

(A) from exporters registered under such section 804 on the date that is 90 days after the date of enactment of this Act; and

(B) from permitted countries, as defined in such section 804, by importers registered under such section 804 on the date that is 1 year after the date of enactment of this Act.

(2) REVIEW OF REGISTRATION BY CERTAIN EXPORTERS.—

(A) REVIEW PRIORITY.—In the review of registrations submitted under subsection (b) of such section 804, registrations submitted by

entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of enactment of this Act will have priority during the 90 day period that begins on such date of enactment.

(B) PERIOD FOR REVIEW.—During such 90-day period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) LIMITATION.—That an exporter in Canada exports, or has exported, prescription drugs to individuals in the United States on or before the date that is 90 days after the date of enactment of this Act shall not serve as a basis, in whole or in part, for disapproving a registration under such section 804 from the exporter.

(D) FIRST YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”) may limit the number of registered exporters under such section 804 to not less than 50, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(E) SECOND YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 100, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(F) FURTHER LIMIT ON NUMBER OF EXPORTERS.—During any 1-year period beginning on a date that is 2 or more years after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 25 more than the number of such exporters during the previous 1-year period, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(3) LIMITS ON NUMBER OF IMPORTERS.—

(A) FIRST YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 100 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs imported into the United States.

(B) SECOND YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 2 years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 200 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs into the United States.

(C) FURTHER LIMIT ON NUMBER OF IMPORTERS.—During any 1-year period beginning on

a date that is 3 or more years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 50 more (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups) than the number of such importers during the previous 1-year period, so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs to the United States.

(4) NOTICES FOR DRUGS FOR IMPORT FROM CANADA.—The notice with respect to a qualifying drug introduced for commercial distribution in Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 30 days after the date of enactment of this Act if—

(A) the U.S. label drug (as defined in such section 804) for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period most recently completed before the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(5) NOTICE FOR DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notice with respect to a qualifying drug introduced for commercial distribution in a permitted country other than Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act if—

(A) the U.S. label drug for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period that is first completed on the date that is 120 days after the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(6) NOTICE FOR OTHER DRUGS FOR IMPORT.—

(A) GUIDANCE ON SUBMISSION DATES.—The Secretary shall by guidance establish a series of submission dates for the notices under subsection (g)(2)(B)(i) of such section 804 with respect to qualifying drugs introduced for commercial distribution as of the date of enactment of this Act and that are not required to be submitted under paragraph (4) or (5).

(B) CONSISTENT AND EFFICIENT USE OF RESOURCES.—The Secretary shall establish the dates described under subparagraph (A) so that such notices described under subparagraph (A) are submitted and reviewed at a rate that allows consistent and efficient use of the resources and staff available to the Secretary for such reviews. The Secretary may condition the requirement to submit such a notice, and the review of such a notice, on the submission by a registered exporter or a registered importer to the Secretary of a notice that such exporter or importer intends to import such qualifying drug to the United States under such section 804.

(C) PRIORITY FOR DRUGS WITH HIGHER SALES.—The Secretary shall establish the dates described under subparagraph (A) so that the Secretary reviews the notices described under such subparagraph with respect to qualifying drugs with higher dollar volume of sales in the United States before the notices with respect to drugs with lower sales in the United States.

(7) **NOTICES FOR DRUGS APPROVED AFTER EFFECTIVE DATE.**—The notice required under subsection (g)(2)(B)(i) of such section 804 for a qualifying drug first introduced for commercial distribution in a permitted country (as defined in such section 804) after the date of enactment of this Act shall be submitted to and reviewed by the Secretary as provided under subsection (g)(2)(B) of such section 804, without regard to paragraph (4), (5), or (6).

(8) **REPORT.**—Beginning with the first full fiscal year after the date of enactment of this Act, not later than 90 days after the end of each fiscal year during which the Secretary reviews a notice referred to in paragraph (4), (5), or (6), the Secretary shall submit a report to Congress concerning the progress of the Food and Drug Administration in reviewing the notices referred to in paragraphs (4), (5), and (6).

(9) **USER FEES.**—

(A) **EXPORTERS.**—When establishing an aggregate total of fees to be collected from exporters under subsection (f)(2) of such section 804, the Secretary shall, under subsection (f)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered exporters during the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to \$1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365.

(B) **IMPORTERS.**—When establishing an aggregate total of fees to be collected from importers under subsection (e)(2) of such section 804, the Secretary shall, under subsection (e)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered importers during—

(i) the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to \$1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365; and

(ii) the second fiscal year in which this title is in effect to be \$3,000,000,000.

(C) **SECOND YEAR ADJUSTMENT.**—

(i) **REPORTS.**—Not later than February 20 of the second fiscal year in which this title is in effect, registered importers shall report to the Secretary the total price and the total volume of drugs imported to the United States by the importer during the 4-month period from October 1 through January 31 of such fiscal year.

(ii) **REESTIMATE.**—Notwithstanding subsection (e)(3)(C)(ii) of such section 804 or subparagraph (B), the Secretary shall reestimate the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during the second fiscal year in which this title is in effect. Such reestimate shall be equal to—

(I) the total price of qualifying drugs imported by each importer as reported under clause (i); multiplied by

(II) 3.

(iii) **ADJUSTMENT.**—The Secretary shall adjust the fee due on April 1 of the second fiscal year in which this title is in effect, from each importer so that the aggregate total of fees collected under subsection (e)(2) for such fiscal year does not exceed the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during such fiscal year as reestimated under clause (ii).

(D) **FAILURE TO PAY FEES.**—Notwithstanding any other provision of this section,

the Secretary may prohibit a registered importer or exporter that is required to pay user fees under subsection (e) or (f) of such section 804 and that fails to pay such fees within 30 days after the date on which it is due, from importing or offering for importation a qualifying drug under such section 804 until such fee is paid.

(E) **ANNUAL REPORT.**—

(i) **FOOD AND DRUG ADMINISTRATION.**—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e), (f), or (g)(2)(B)(iv) of such section 804, the Secretary shall prepare and submit to the House of Representatives and the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for the fiscal year for which the report is made and credited to the Food and Drug Administration.

(ii) **CUSTOMS AND BORDER PROTECTION.**—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e) or (f) of such section 804, the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall prepare and submit to the House of Representatives and the Senate a report on the use, by the Bureau of Customs and Border Protection, of the fees, if any, transferred by the Secretary to the Bureau of Customs and Border Protection for the fiscal year for which the report is made.

(I) **SPECIAL RULE REGARDING IMPORTATION BY INDIVIDUALS.**—

(A) **IN GENERAL.**—Notwithstanding any provision of this title (or an amendment made by this title), the Secretary shall expedite the designation of any additional permitted countries from which an individual may import a qualifying drug into the United States under such section 804 if any action implemented by the Government of Canada has the effect of limiting or prohibiting the importation of qualifying drugs into the United States from Canada.

(B) **TIMING AND CRITERIA.**—The Secretary shall designate such additional permitted countries under subparagraph (A)—

(i) not later than 6 months after the date of the action by the Government of Canada described under such subparagraph; and

(ii) using the criteria described under subsection (a)(4)(D)(i)(II) of such section 804.

(F) **IMPLEMENTATION OF SECTION 804.**—

(1) **INTERIM RULE.**—The Secretary may promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

(2) **NO NOTICE OF PROPOSED RULEMAKING.**—The interim rule described under paragraph (1) may be developed and promulgated by the Secretary without providing general notice of proposed rulemaking.

(3) **FINAL RULE.**—Not later than 1 year after the date on which the Secretary promulgates an interim rule under paragraph (1), the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule provided for under paragraph (1), to the extent that such provisions are not modified.

(G) **CONSUMER EDUCATION.**—The Secretary shall carry out activities that educate consumers—

(1) with regard to the availability of qualifying drugs for import for personal use from an exporter registered with and approved by the Food and Drug Administration under

section 804 of the Federal Food, Drug, and Cosmetic Act, as added by this section, including information on how to verify whether an exporter is registered and approved by use of the Internet website of the Food and Drug Administration and the toll-free telephone number required by this title;

(2) that drugs that consumers attempt to import from an exporter that is not registered with and approved by the Food and Drug Administration can be seized by the United States Customs Service and destroyed, and that such drugs may be counterfeit, unapproved, unsafe, or ineffective;

(3) with regard to the suspension and termination of any registration of a registered importer or exporter under such section 804; and

(4) with regard to the availability at domestic retail pharmacies of qualifying drugs imported under such section 804 by domestic wholesalers and pharmacies registered with and approved by the Food and Drug Administration.

(H) **EFFECT ON ADMINISTRATION PRACTICES.**—Notwithstanding any provision of this title (and the amendments made by this title), the practices and policies of the Food and Drug Administration and Bureau of Customs and Border Protection, in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, shall remain in effect.

(I) **REPORT TO CONGRESS.**—The Federal Trade Commission shall, on an annual basis, submit to Congress a report that describes any action taken during the period for which the report is being prepared to enforce the provisions of section 804(n) of the Federal Food, Drug, and Cosmetic Act (as added by this title), including any pending investigations or civil actions under such section.

**SEC. 10005. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.**

(a) **IN GENERAL.**—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 10004, is further amended by adding at the end the following section:

**“SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.**

“(a) **IN GENERAL.**—The Secretary of Homeland Security shall deliver to the Secretary a shipment of drugs that is imported or offered for import into the United States if—

“(1) the shipment has a declared value of less than \$10,000; and

“(2)(A) the shipping container for such drugs does not bear the markings required under section 804(d)(2); or

“(B) the Secretary has requested delivery of such shipment of drugs.

“(b) **NO BOND OR EXPORT.**—Section 801(b) does not authorize the delivery to the owner or consignee of drugs delivered to the Secretary under subsection (a) pursuant to the execution of a bond, and such drugs may not be exported.

“(c) **DESTRUCTION OF VIOLATIVE SHIPMENT.**—The Secretary shall destroy a shipment of drugs delivered by the Secretary of Homeland Security to the Secretary under subsection (a) if—

“(1) in the case of drugs that are imported or offered for import from a registered exporter under section 804, the drugs are in violation of any standard described in section 804(g)(5); or

“(2) in the case of drugs that are not imported or offered for import from a registered exporter under section 804, the drugs

are in violation of a standard referred to in section 801(a) or 801(d)(1).

“(d) CERTAIN PROCEDURES.—

“(1) IN GENERAL.—The delivery and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

“(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to described in subsection (c) are identified and destroyed.

“(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

“(f) RULE OF CONSTRUCTION.—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than \$10,000.”.

(b) PROCEDURES.—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

**SEC. 10006. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.**

(a) STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking “and who is not the manufacturer or an authorized distributor of record of such drug”;

(B) by striking “to an authorized distributor of record or”; and

(C) by striking subparagraph (B) and inserting the following:

“(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

“(C)(i) The Secretary shall by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as ‘alternative requirements’) to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include standardized anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the discrete package of the drug from which the drug is dispensed with equal or greater certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

“(ii) When the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition may be met in lieu of the registration condition established in such clause (i).”;

(2) in paragraph (2)(A), by adding at the end the following: “The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.”; and

(3) in paragraph (3), by striking “and subsection (d)—” in the matter preceding subparagraph (A) and all that follows through “the term ‘wholesale distribution’ means” in subparagraph (B) and inserting the following: “and subsection (d), the term ‘wholesale distribution’ means”.

(b) CONFORMING AMENDMENT.—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

“(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

“(5) For purposes of this subsection, the term ‘authorized distributors of record’ means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer’s products.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on January 1, 2012.

(2) DRUGS IMPORTED BY REGISTERED IMPORTERS UNDER SECTION 804.—Notwithstanding paragraph (1), the amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act with respect to qualifying drugs imported under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by section 10004.

(3) EFFECT WITH RESPECT TO REGISTERED EXPORTERS.—The amendment made by subsection (a)(2) shall take effect on the date that is 90 days after the date of enactment of this Act.

(4) ALTERNATIVE REQUIREMENTS.—The Secretary shall issue regulations to establish the alternative requirements, referred to in the amendment made by subsection (a)(1), that take effect not later than January 1, 2012.

(5) INTERMEDIATE REQUIREMENTS.—The Secretary shall by regulation require the use of standardized anti-counterfeiting or track-and-trace technologies on prescription drugs at the case and pallet level effective not later than 1 year after the date of enactment of this Act.

(6) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary shall, not later than 18 months after the date of enactment of this Act, require that the packaging of any prescription drug incorporates—

(i) a standardized numerical identifier unique to each package of such drug, applied at the point of manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacturing); and

(ii) (I) overt optically variable counterfeit-resistant technologies that—

(aa) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(bb) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(cc) are manufactured and distributed in a highly secure, tightly controlled environment; and

(dd) incorporate additional layers of non-visible convert security features up to and including forensic capability, as described in subparagraph (B); or

(II) technologies that have a function of security comparable to that described in subclause (I), as determined by the Secretary.

(B) STANDARDS FOR PACKAGING.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to this paragraph, the manufacturers of such drugs shall incorporate the technologies described in subparagraph (A) into at least 1 additional element of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

**SEC. 10007. INTERNET SALES OF PRESCRIPTION DRUGS.**

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503B the following:

**“SEC. 503C. INTERNET SALES OF PRESCRIPTION DRUGS.**

“(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

“(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

“(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

“(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

“(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

“(i) are not intended to be accessed by purchasers or prospective purchasers; or

“(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

“(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

“(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

“(i) The name of such person.

“(ii) Each State in which the person is authorized by law to dispense prescription drugs.

“(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

“(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

“(v) If the person provides for medical consultations through the site for purposes of

providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

“(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words ‘licensing and contact information’.

“(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

“(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

“(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

“(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

“(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

“(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

“(2) EXCEPTIONS.—Paragraph (1) does not apply to—

“(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

“(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

“(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

“(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

“(3) QUALIFYING MEDICAL RELATIONSHIP.—

“(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

“(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

“(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

“(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

“(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-

son medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

“(4) RULES OF CONSTRUCTION.—

“(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (e)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

“(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

“(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

“(c) ACTIONS BY STATES.—

“(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

“(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

“(A) to intervene in such action;

“(B) upon so intervening, to be heard on all matters arising therein; and

“(C) to file petitions for appeal.

“(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

“(5) ACTIONS BY OTHER STATE OFFICIALS.—

“(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

“(B) In addition to actions brought by an attorney general of a State under paragraph

(1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

“(d) EFFECT OF SECTION.—This section shall not apply to a person that is a registered exporter under section 804.

“(e) GENERAL DEFINITIONS.—For purposes of this section:

“(1) The term ‘practitioner’ means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

“(2) The term ‘prescription drug’ means a drug that is described in section 503(b)(1).

“(3) The term ‘qualifying medical relationship’, with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

“(f) INTERNET-RELATED DEFINITIONS.—

“(1) IN GENERAL.—For purposes of this section:

“(A) The term ‘Internet’ means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

“(B) The term ‘link’, with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

“(i) to move from viewing one portion of a page on such site to another portion of the page;

“(ii) to move from viewing one page on such site to another page on such site; or

“(iii) to move from viewing a page on one Internet site to a page on another Internet site.

“(C) The term ‘page’, with respect to the Internet, means a document or other file accessed at an Internet site.

“(D)(i) The terms ‘site’ and ‘address’, with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

“(ii) The term ‘domain name’ means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as ‘.com’, ‘.edu’, ‘.gov’, ‘.net’, or ‘.org’.

“(iii) The term ‘Internet Protocol numbers’ includes any successor protocol for determining a specific location on the Internet.

“(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

“(g) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person’s selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.

“(h) NO EFFECT ON OTHER REQUIREMENTS; COORDINATION.—The requirements of this section are in addition to, and do not supersede, any requirements under the Controlled

Substances Act or the Controlled Substances Import and Export Act (or any regulation promulgated under either such Act) regarding Internet pharmacies and controlled substances. In promulgating regulations to carry out this section, the Secretary shall coordinate with the Attorney General to ensure that such regulations do not duplicate or conflict with the requirements described in the previous sentence, and that such regulations and requirements coordinate to the extent practicable.”

(b) **INCLUSION AS PROHIBITED ACT.**—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

“(l) The dispensing or selling of a prescription drug in violation of section 503C.”

(c) **INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.**—In carrying out section 503C of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) **REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF FEDERAL AND STATE LAWS ON DISPENSING OF DRUGS.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of Federal or State laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out paragraph (1), there is authorized to be appropriated \$100,000 for each of the first 3 fiscal years in which this section is in effect.

(e) **EFFECTIVE DATE.**—The amendments made by subsections (a) and (b) take effect 90 days after the date of enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

#### **SEC. 10008. PROHIBITING PAYMENTS TO UNREGISTERED FOREIGN PHARMACIES.**

(a) **IN GENERAL.**—Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following:

“(h) **RESTRICTED TRANSACTIONS.**—

“(1) **IN GENERAL.**—The introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system is prohibited.

“(2) **PAYMENT SYSTEM.**—

“(A) **IN GENERAL.**—The term ‘payment system’ means a system used by a person described in subparagraph (B) to effect a credit transaction, electronic fund transfer, or money transmitting service that may be used in connection with, or to facilitate, a restricted transaction, and includes—

“(i) a credit card system;

“(ii) an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service; and

“(iii) any other system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic fund transfers, or money transmitting services.

“(B) **PERSONS DESCRIBED.**—A person referred to in subparagraph (A) is—

“(i) a creditor;

“(ii) a credit card issuer;

“(iii) a financial institution;

“(iv) an operator of a terminal at which an electronic fund transfer may be initiated;

“(v) a money transmitting business; or

“(vi) a participant in an international, national, regional, or local network used to effect a credit transaction, electronic fund transfer, or money transmitting service.

“(3) **RESTRICTED TRANSACTION.**—The term ‘restricted transaction’ means a transaction or transmittal, on behalf of an individual who places an unlawful drug importation request to any person engaged in the operation of an unregistered foreign pharmacy, of—

“(A) credit, or the proceeds of credit, extended to or on behalf of the individual for the purpose of the unlawful drug importation request (including credit extended through the use of a credit card);

“(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the individual for the purpose of the unlawful drug importation request;

“(C) a check, draft, or similar instrument which is drawn by or on behalf of the individual for the purpose of the unlawful drug importation request and is drawn on or payable at or through any financial institution; or

“(D) the proceeds of any other form of financial transaction (identified by the Board by regulation) that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the individual for the purpose of the unlawful drug importation request.

“(4) **UNLAWFUL DRUG IMPORTATION REQUEST.**—The term ‘unlawful drug importation request’ means the request, or transmittal of a request, made to an unregistered foreign pharmacy for a prescription drug by mail (including a private carrier), facsimile, phone, or electronic mail, or by a means that involves the use, in whole or in part, of the Internet.

“(5) **UNREGISTERED FOREIGN PHARMACY.**—The term ‘unregistered foreign pharmacy’ means a person in a country other than the United States that is not a registered exporter under section 804.

“(6) **OTHER DEFINITIONS.**—

“(A) **CREDIT; CREDITOR; CREDIT CARD.**—The terms ‘credit’, ‘creditor’, and ‘credit card’ have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

“(B) **ACCESS DEVICE; ELECTRONIC FUND TRANSFER.**—The terms ‘access device’ and ‘electronic fund transfer’—

“(i) have the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a); and

“(ii) the term ‘electronic fund transfer’ also includes any fund transfer covered under Article 4A of the Uniform Commercial Code, as in effect in any State.

“(C) **FINANCIAL INSTITUTION.**—The term ‘financial institution’—

“(i) has the meaning given the term in section 903 of the Electronic Transfer Fund Act (15 U.S.C. 1693a); and

“(ii) includes a financial institution (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

“(D) **MONEY TRANSMITTING BUSINESS; MONEY TRANSMITTING SERVICE.**—The terms ‘money transmitting business’ and ‘money transmitting service’ have the meaning given the terms in section 5330(d) of title 31, United States Code.

“(E) **BOARD.**—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(7) **POLICIES AND PROCEDURES REQUIRED TO PREVENT RESTRICTED TRANSACTIONS.**—

“(A) **REGULATIONS.**—The Board shall promulgate regulations requiring—

“(i) an operator of a credit card system;

“(ii) an operator of an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service;

“(iii) an operator of any other payment system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic transfers or money transmitting services where at least one party to the transaction or transfer is an individual; and

“(iv) any other person described in paragraph (2)(B) and specified by the Board in such regulations,

to establish policies and procedures that are reasonably designed to prevent the introduction of a restricted transaction into a payment system or the completion of a restricted transaction using a payment system

“(B) **REQUIREMENTS FOR POLICIES AND PROCEDURES.**—In promulgating regulations under subparagraph (A), the Board shall—

“(i) identify types of policies and procedures, including nonexclusive examples, that shall be considered to be reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; and

“(ii) to the extent practicable, permit any payment system, or person described in paragraph (2)(B), as applicable, to choose among alternative means of preventing the introduction or completion of restricted transactions.

“(C) **NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTION.**—

“(i) **IN GENERAL.**—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, and any participant in such payment system that prevents or otherwise refuses to honor transactions in an effort to implement the policies and procedures required under this subsection or to otherwise comply with this subsection shall not be liable to any party for such action.

“(ii) **COMPLIANCE.**—A person described in paragraph (2)(B) meets the requirements of this subsection if the person relies on and complies with the policies and procedures of a payment system of which the person is a member or in which the person is a participant, and such policies and procedures of the



payment system comply with the requirements of the regulations promulgated under subparagraph (A).

**“(D) ENFORCEMENT.—**

**“(i) IN GENERAL.—**This subsection, and the regulations promulgated under this subsection, shall be enforced exclusively by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

**“(ii) FACTORS TO BE CONSIDERED.—**In considering any enforcement action under this subsection against a payment system or person described in paragraph (2)(B), the Federal functional regulators and the Federal Trade Commission shall consider the following factors:

**“(I) The extent to which the payment system or person knowingly permits restricted transactions.**

**“(II) The history of the payment system or person in connection with permitting restricted transactions.**

**“(III) The extent to which the payment system or person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.**

**“(8) TRANSACTIONS PERMITTED.—**A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, is authorized to engage in transactions with foreign pharmacies in connection with investigating violations or potential violations of any rule or requirement adopted by the payment system or person in connection with complying with paragraph (7). A payment system, or such a person, and its agents and employees shall not be found to be in violation of, or liable under, any Federal, State or other law by virtue of engaging in any such transaction.

**“(9) RELATION TO STATE LAWS.—**No requirement, prohibition, or liability may be imposed on a payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, under the laws of any state with respect to any payment transaction by an individual because the payment transaction involves a payment to a foreign pharmacy.

**“(10) TIMING OF REQUIREMENTS.—**A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, must adopt policies and procedures reasonably designed to comply with any regulations required under paragraph (7) within 60 days after such regulations are issued in final form.

**“(11) COMPLIANCE.—**A payment system, and any person described in paragraph (2)(B), shall not be deemed to be in violation of paragraph (1)—

**“(A)(i) if an alleged violation of paragraph (1) occurs prior to the mandatory compliance date of the regulations issued under paragraph (7); and**

**“(ii) such entity has adopted or relied on policies and procedures that are reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; or**

**“(B)(i) if an alleged violation of paragraph (1) occurs after the mandatory compliance date of such regulations; and**

**“(ii) such entity is in compliance with such regulations.”**

**(b) EFFECTIVE DATE.—**The amendment made by this section shall take effect on the day that is 90 days after the date of enactment of this Act.

**(c) IMPLEMENTATION.—**The Board of Governors of the Federal Reserve System shall promulgate regulations as required by subsection (h)(7) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333), as added by subsection (a), not later than 90 days after the date of enactment of this Act.

**SEC. 10009. IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.**

Section 1006(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)(2)) is amended by striking “not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.” and inserting “import into the United States not more than 10 dosage units combined of all such controlled substances.”.

**SEC. 10010. SEVERABILITY.**

If any provision of this title, an amendment by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

**SEC. 10011. CERTIFICATION.**

**(a) IN GENERAL.—**This title (other than this section), and the amendments made by this title, shall become effective only if the Secretary of Health and Human Services certifies to Congress that the implementation of this title, and the amendments made by this title, will—

**(1) pose no additional risk to the public's health and safety; and**

**(2) result in a significant reduction in the cost of covered products to the American consumer.**

**(b) EFFECTIVE DATE.—**Notwithstanding any other provision of this title, or of any amendment made by this title—

**(1) any reference in this title, or in such amendments, to the date of enactment of this title shall be deemed to be a reference to the date of the certification under subsection (a); and**

**(2) each reference to “January 1, 2012” in section 10006(c) shall be substituted with “90 days after the effective date of this title”.**

**SA 3157.** Mrs. SHAHEEN (for herself, and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1703, between lines 4 and 5, insert the following:

**SEC. 6303. IMPROVEMENTS TO COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH.**

Section 1181 of the Social Security Act (as added by section 6301) is amended—

**(1) in subsection (d)(2)(B)—**

**(A) in clause (ii)(IV)—**

**(i) by inserting “, as described in subparagraph (A)(ii),” after “original research”; and**

**(ii) by inserting “, as long as the researcher enters into a data use agreement with the Institute for use of the data from the original research, as appropriate” after “publication”; and**

**(B) by amending clause (iv) to read as follows:**

**“(iv) SUBSEQUENT USE OF THE DATA.—**The Institute shall not allow the subsequent use of data from original research in work-for-hire contracts with individuals, entities, or instrumentalities that have a financial interest in the results, unless approved under a data use agreement with the Institute.”;

**(2) in subsection (d)(8)(A)(iv), by striking “not be construed as mandates for” and inserting “do not include”; and**

**(3) in subsection (f)(1)(C), by amending clause (ii) to read as follows:**

**“(ii) 5 members representing physicians and providers, including 3 members representing physicians (at least 1 of whom is a surgeon), 1 of whom is either a nurse or a State-licensed integrative health care practitioner, and 1 of whom is a representative of a hospital.”**

**SA 3158.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, insert the following:

**TITLE —PROVIDING TAX EQUITY**

**Subtitle A—Use of Health Savings Accounts for Non-Group High Deductible Health Plan Premiums**

**SEC. 001. USE OF HEALTH SAVINGS ACCOUNTS FOR NON-GROUP HIGH DEDUCTIBLE HEALTH PLAN PREMIUMS.**

**(a) IN GENERAL.—**Section 223(d)(2)(C) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking “or” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, or”, and by adding at the end the following new clause:

**“(v) a high deductible health plan, other than a group health plan (as defined in section 5000(b)(1)).”**

**(b) EFFECTIVE DATE.—**The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

**Subtitle B—Medical Care Access Protection**

**SEC. 101. SHORT TITLE.**

This subtitle may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

**SEC. 102. FINDINGS AND PURPOSE.**

**(a) FINDINGS.—**

**(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—**Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

**(2) EFFECT ON INTERSTATE COMMERCE.—**Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to

the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) **EFFECT ON FEDERAL SPENDING.**—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) **PURPOSE.**—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

#### **SEC. 103. DEFINITIONS.**

In this subtitle:

(1) **ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COLLATERAL SOURCE BENEFITS.**—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the

cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) **COMPENSATORY DAMAGES.**—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defend-

ants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

#### **SEC. 104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the

commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

#### **SEC. 105. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

#### **SEC. 106. MAXIMIZING PATIENT RECOVERY.**

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33½ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery

is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

#### **SEC. 107. ADDITIONAL HEALTH BENEFITS.**

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) **APPLICATION OF PROVISION.**—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

#### **SEC. 108. PUNITIVE DAMAGES.**

(a) **PUNITIVE DAMAGES PERMITTED.**—

(1) **IN GENERAL.**—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury

that such person knew the claimant was substantially certain to suffer.

(2) **FILING OF LAWSUIT.**—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) **SEPARATE PROCEEDING.**—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) **LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.**—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) **DETERMINING AMOUNT OF PUNITIVE DAMAGES.**—

(1) **FACTORS CONSIDERED.**—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) **MAXIMUM AWARD.**—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) **LIABILITY OF HEALTH CARE PROVIDERS.**—

(1) **IN GENERAL.**—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) **MEDICAL PRODUCT.**—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), re-

spectively, including any component or raw material used therein, but excluding health care services.

#### **SEC. 109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

#### **SEC. 110. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) **SMALLPOX VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) **OTHER FEDERAL LAW.**—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### **SEC. 111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) **HEALTH CARE LAWSUITS.**—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) **PREEMPTION OF CERTAIN STATE LAWS.**—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 105(a).

(c) **PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.**—

(1) **IN GENERAL.**—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) **RULE OF CONSTRUCTION.**—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### **SEC. 112. APPLICABILITY; EFFECTIVE DATE.**

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3159.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, insert the following:

#### **TITLE K—HSA CONTRIBUTION LIMIT** **Subtitle A—Increase in HSA Contribution Limit**

#### **SEC. 001. INCREASE IN LIMIT FOR HSA CONTRIBUTIONS TO EQUAL MAXIMUM HIGH DEDUCTIBLE HEALTH PLAN OUT-OF-POCKET LIMIT.**

(a) **IN GENERAL.**—Section 223(b)(2) of the Internal Revenue Code of 1986 (relating to exceptions) is amended—

(1) by striking “\$2,250” in subparagraph (A) and inserting “the dollar amount specified under subsection (c)(2)(A)(ii)(I) for such taxable year”, and

(2) by striking “\$4,500” in subparagraph (B) and inserting “the dollar amount specified under subsection (c)(2)(A)(ii)(II) for such taxable year”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to months beginning after the date of the enactment of this Act.

#### **Subtitle B—Medical Care Access Protection**

##### **SEC. 101. SHORT TITLE.**

This subtitle may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

##### **SEC. 102. FINDINGS AND PURPOSE.**

###### **(a) FINDINGS.—**

(1) **EFFECT ON HEALTH CARE ACCESS AND COSTS.**—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) **EFFECT ON INTERSTATE COMMERCE.**—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) **EFFECT ON FEDERAL SPENDING.**—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) **PURPOSE.**—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will re-

duce unintended injury and improve patient care.

##### **SEC. 103. DEFINITIONS.**

In this subtitle:

(1) **ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COLLATERAL SOURCE BENEFITS.**—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) **COMPENSATORY DAMAGES.**—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a

health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

###### **(12) HEALTH CARE PROVIDER.—**

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for

physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

#### **SEC. 104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee.

Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

#### **SEC. 105. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall

determine the proportion of responsibility of each party for the claimant’s harm.

#### **SEC. 106. MAXIMIZING PATIENT RECOVERY.**

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingency fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to



a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

#### **SEC. 107. ADDITIONAL HEALTH BENEFITS.**

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) **APPLICATION OF PROVISION.**—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

#### **SEC. 108. PUNITIVE DAMAGES.**

(a) **PUNITIVE DAMAGES PERMITTED.**—

(1) **IN GENERAL.**—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) **FILING OF LAWSUIT.**—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) **SEPARATE PROCEEDING.**—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) **LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.**—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) **DETERMINING AMOUNT OF PUNITIVE DAMAGES.**—

(1) **FACTORS CONSIDERED.**—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) **MAXIMUM AWARD.**—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) **LIABILITY OF HEALTH CARE PROVIDERS.**—

(1) **IN GENERAL.**—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) **MEDICAL PRODUCT.**—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

#### **SEC. 109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

#### **SEC. 110. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) **SMALLPOX VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that part C of title II of the Public Health Service Act

establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) **OTHER FEDERAL LAW.**—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### **SEC. 111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) **HEALTH CARE LAWSUITS.**—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) **PREEMPTION OF CERTAIN STATE LAWS.**—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 105(a).

(c) **PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.**—

(1) **IN GENERAL.**—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) **RULE OF CONSTRUCTION.**—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

**SEC. 112. APPLICABILITY; EFFECTIVE DATE.**

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3160.** Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title IV, insert the following:

**SEC. 4208. INTERAGENCY TASK FORCE TO ASSESS AND IMPROVE ACCESS TO HEALTH CARE IN THE STATE OF ALASKA.**

(a) **ESTABLISHMENT.**—There is established a task force to be known as the “Interagency Access to Health Care in Alaska Task Force” (referred to in this section as the “Task Force”).

(b) **DUTIES.**—The Task Force shall—  
(1) assess access to health care for beneficiaries of Federal health care systems in Alaska; and

(2) develop a strategy for the Federal Government to improve delivery of health care to Federal beneficiaries in the State of Alaska.

(c) **MEMBERSHIP.**—The Task Force shall be comprised of Federal members who shall be appointed, not later than 45 days after the date of enactment of this Act, as follows:

(1) The Secretary of Health and Human Services shall appoint one representative of each of the following:

(A) The Department of Health and Human Services.

(B) The Centers for Medicare and Medicaid Services.

(C) The Indian Health Service.

(2) The Secretary of Defense shall appoint one representative of the TRICARE Management Activity.

(3) The Secretary of the Army shall appoint one representative of the Army Medical Department.

(4) The Secretary of the Air Force shall appoint one representative of the Air Force, from among officers at the Air Force performing medical service functions.

(5) The Secretary of Veterans Affairs shall appoint one representative of each of the following:

(A) The Department of Veterans Affairs.

(B) The Veterans Health Administration.

(6) The Secretary of Homeland Security shall appoint one representative of the United States Coast Guard.

(d) **CHAIRPERSON.**—One chairperson of the Task Force shall be appointed by the Secretary at the time of appointment of members under subsection (c), selected from among the members appointed under paragraph (1).

(e) **MEETINGS.**—The Task Force shall meet at the call of the chairperson.

(f) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Task Force shall submit to Congress a report de-

tailing the activities of the Task Force and containing the findings, strategies, recommendations, policies, and initiatives developed pursuant to the duty described in subsection (b)(2). In preparing such report, the Task Force shall consider completed and ongoing efforts by Federal agencies to improve access to health care in the State of Alaska.

(g) **TERMINATION.**—The Task Force shall be terminated on the date of submission of the report described in subsection (f).

**SA 3161.** Mr. THUNE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 101, between lines 19 and 20, insert the following:

**(3) INCLUSION OF HIGH DEDUCTIBLE HEALTH PLANS IN CERTAIN STATES.—**

(A) **IN GENERAL.**—If a State is described in subparagraph (B) with respect to health plans offered in the individual or small group market, then, on and after the certification date—

(i) a health plan described in subparagraph (C) shall be treated as a qualified health plan under this section, and as minimum essential coverage under section 5000A of such Code, for purposes of this Act and the amendments made by this Act; and

(ii) no requirement imposed by any provision of, or any amendment made by, this Act shall apply with respect to such plan or issuer thereof.

(B) **STATE DESCRIBED.**—For purposes of this paragraph—

(i) **IN GENERAL.**—A State is described in this subparagraph with respect to the individual or small group market within the State if the applicable State authority determines for any calendar year after 2013 that the percentage increase in average annual premiums for health insurance coverage in such market for the calendar year over the preceding calendar year exceeds the percentage increase for such period in the Consumer Price Index for all urban consumers published by the Department of Labor.

(ii) **CERTIFICATION DATE.**—The term “certification date” means the first date on which the applicable State authority certifies a determination described in clause (i).

(iii) **APPLICABLE STATE AUTHORITY.**—The term “applicable State authority” has the meaning given such term by section 2791(d)(1) of the Public Health Service Act.

(C) **HIGH DEDUCTIBLE HEALTH PLAN.**—A health plan is described in this subparagraph if the plan is a high deductible health plan (as defined in section 223(c)(2) of the Internal Revenue Code of 1986) that meets all requirements under such section to be offered in connection with a health savings account.

**SA 3162.** Mr. SPECTER (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time

homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1925, between lines 14 and 15, insert the following:

**Subtitle C—Provisions Relating to the Safety of Drugs and Biological Products****SEC. 7201. ENSURING THE SAFETY OF DRUGS AND BIOLOGICAL PRODUCTS CONTAINING BLOOD, BLOOD COMPONENTS, AND BLOOD DERIVATIVES.**

Section 351 of the Public Health Service Act (42 U.S.C. 262), as amended by section 7002, is further amended by adding at the end the following:

“(m) BLOOD, BLOOD COMPONENTS, AND BLOOD DERIVATIVES.—

“(1) **REGULATION AND LICENSURE.**—The Secretary shall issue regulations that—

“(A) require a person seeking approval of any drug or licensure of a biological product that contains blood, blood components, or blood derivatives to—

“(i) submit an application for licensure pursuant to this section; and

“(ii) demonstrate the clinical safety, purity, and potency of such drug or product; and

“(B) provide analytical methods and standards to evaluate the quality of the blood, blood components, or blood derivatives contained in the new drug or biological product throughout the manufacturing process.

“(2) **BIOLOGICAL PRODUCTS AND DRUG PRODUCTS CONTAINING BLOOD, BLOOD COMPONENTS, OR BLOOD DERIVATIVES.**—A drug or biological product described in paragraph (1) that contains blood, blood components, or blood derivatives shall include any drug or biological product that includes an active or inactive ingredient that—

“(A) contains blood, blood components, or blood derivatives and has the potential to—

“(i) transmit infectious agents, such as of a prion or a microbial origin; or

“(ii) cause an adverse immune reaction due to the presence of blood, blood components, or blood derivatives; and

“(B) is—

“(i) essential to the manufacture of the drug or product;

“(ii) determinate of the absorption and distribution of the drug or product when administered; and

“(iii) essential to the safety and efficacy of the drug or product.

“(3) **OTHER PRODUCTS CONTAINING BLOOD, BLOOD PRODUCTS, OR BLOOD DERIVATIVES.**—In addition to the drugs and biological products that meet the criteria described in paragraph (2), the Secretary may issue regulations to include other products containing blood, blood products, or blood derivatives as biological products subject to paragraph (1).

“(4) **CONSISTENCY OF DEFINITIONS.**—Notwithstanding any other provision of this Act or the Federal Food, Drug, and Cosmetic Act, after the date of enactment of the Patient Protection and Affordable Care Act, a drug or biological product that has been approved under section 505 of the Federal Food, Drug, and Cosmetic Act and that meets the criteria described in paragraph (2) shall be treated by the Secretary as a biological product approved under a biologics license application under this section.”.

**SA 3163.** Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr.

DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 869, between lines 14 and 15, insert the following:

**SEC. 3143. REVISION TO PAYMENT FOR CONSULTATION CODES.**

(a) TEMPORARY DELAY OF ELIMINATION OF PAYMENT FOR CONSULTATION CODES.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not, prior to January 1, 2011, implement any provision contained in a final rule that eliminates or discontinues payment for consultation codes under the physician fee schedule and part B of title XVIII of the Social Security Act.

(b) EVALUATION PERIOD.—During the period prior to January 1, 2011, the Secretary of Health and Human Services shall consult with the Current Procedural Terminology Editorial Panel of the American Medical Association for the purpose of developing proposals to—

- (1) modify existing consultation codes or establish new consultation codes to more accurately reflect the value provided through such consultation services; and
- (2) minimize coding errors.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation, and Community Development, be authorized to meet during the session on the Senate on December 10, 2009 at 9:30 a.m., to conduct a hearing entitled "Examining the Federal Role in Overseeing the Safety of Public Transportation Systems."

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on December 10, at 10 a.m., in room SD-366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on December 10, 2009, at 9:30 a.m. in room 406 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON FOREIGN RELATIONS**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Com-

mittee on Foreign Relations be authorized to meet during the session of the Senate on December 10, 2009, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet during the session of the Senate on December 10, 2009.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on December 10, 2009, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON THE JUDICIARY**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on December 10, 2009, at 10 a.m., in SD-226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

**AD HOC SUBCOMMITTEE ON DISASTER RECOVERY**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on Disaster Recovery of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on December 10, 2009, at 2:30 p.m. to conduct a hearing entitled, "Children and Disasters: A Progress Report on Addressing Needs."

The PRESIDING OFFICER. Without objection, it is so ordered.

**SELECT COMMITTEE ON INTELLIGENCE**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on December 10, 2009, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

**SUBCOMMITTEE ON AVIATION OPERATIONS, SAFETY, AND SECURITY**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Subcommittee on Aviation Operations, Safety, and Security of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on December 10, 2009, at 10 a.m. in room 253 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

**PRIVILEGES OF THE FLOOR**

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following

staff of the Finance Committee be permitted the privileges of the floor during debate on the health care bill: Angela Franklin, Kaitlin Guarascio, and Scott Allen.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

**EXTENSION OF AUTHORITY OF THE SECRETARY OF THE ARMY**

Mr. DURBIN. Mr. President, I ask unanimous consent to proceed to the immediate consideration of H.R. 4165, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 4165) to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4165) was ordered to a third reading, was read the third time, and passed.

**EXTENDING AIRPORT AND AIRWAY TRUST FUND AUTHORITY**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4217, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 4217) to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4217) was ordered to a third reading, was read the third time, and passed.

**NO SOCIAL SECURITY BENEFITS FOR PRISONERS ACT OF 2009**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of H.R. 4218, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 4218) to amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators.

There being no objection, the Senate proceeded to consider the bill.

Mr. BAUCUS. Mr. President, I urge the Senate to pass by unanimous consent the "No Social Security Benefits for Prisoners Act of 2009," which was recently passed by the House of Representatives.

This bill would prevent retroactive Social Security and Supplemental Security Income benefit payments from being issued to individuals while they are in prison, or in violation of conditions of parole or probation, or are fleeing to avoid prosecution for a felony or a crime punishable by sentence of more than one year.

Under current law, the Social Security Act already prohibits payment of current monthly benefits to such individuals. This bill ensures this prohibition applies to retroactive benefit payments as well. The bill allows any payments that are withheld to be paid once the person is no longer in prison, or in violation of conditions of parole or probation, or are fleeing to avoid prosecution.

This bill makes a common sense reform to the Social Security Act and I urge my colleagues to support the bill.

I thank my colleagues for their support.

Mr. DURBIN. I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements relating to the matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4218) was ordered to a third reading, was read the third time, and passed.

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ORDERS FOR FRIDAY,  
DECEMBER 11, 2009

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Friday, December 11; that follow the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each, with Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DURBIN. Mr. President, the majority leader came to the floor this evening and asked for permission to move to four pending amendments on the health care bill and it was not given. The Republican leader objected. We are hoping to renew that unanimous consent request tomorrow so we can wrap up the Omnibus appropriations bill and move quickly back to debate on the health care bill. I am hoping we can do that, in the interests of moving through some of the important amendments now pending.

We expect two votes tomorrow on motions to waive points of order with respect to the consolidated appropriations conference report. Those votes should require 60 affirmative votes. Senators will be notified when votes are scheduled. Senators should also be prepared for votes Saturday morning.

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ADJOURNMENT UNTIL 10 A.M.  
TOMORROW

Mr. DURBIN. If there is no further business to come before the Senate, I ask unanimous consent it adjourn under the previous order.

There being no objection, the Senate, at 8:04 p.m., adjourned until Friday, December 11, 2009, at 10 a.m.

## HOUSE OF REPRESENTATIVES—Thursday, December 10, 2009

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. BLUMENAUER).

### DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
December 10, 2009.

I hereby appoint the Honorable EARL BLUMENAUER to act as Speaker pro tempore on this day.

NANCY PELOSI,  
*Speaker of the House of Representatives.*

### PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, for people who live in the light of faith and who are attuned to Your greatest commandment, peace is always more than the absence of war. It remains a matter of the human heart.

Peace cannot be reduced to a human concept as only the balance of power for opposing forces. We know, Lord, peace cannot be imposed by human authority or by simple majority. Peace, Lord, is often illusive for us because it remains beyond our imagining or achievement. Peace is a gift.

Peace, Lord, is born out of the right ordering of things which You, the Creator, have invested in human society. Peace is realized by us, when our thirsting for an ever more perfect realm of justice and union reaches a certain plateau that invites us to go even further.

Lord, grant us peace of heart so we may bring this gift to our family life, work for justice, and so gift our world, both now and forever.

Amen.

### THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

### PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from Ohio (Ms. KILROY) come forward and lead the House in the Pledge of Allegiance.

Ms. KILROY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to 10 requests for 1-minute speeches on each side of the aisle.

### WAR IS A WEAPON OF MASS DESTRUCTION

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. According to the Center for Economic and Policy Research, the sharp increase in war spending is taking up a greater portion of our gross domestic product, which will cost the United States about 2 million jobs because such spending "is a direct drain on the economy, reducing efficiency, slowing growth and costing jobs." Contrary to popular assumptions, massive spending for war does not create jobs; it costs jobs. War spending is capital-intensive, not labor-intensive. War creates unemployment.

The current plans to make extension of unemployment benefits contingent on Congress' passing a war spending bill raises serious questions about economic policy, not to mention basic decency and common sense. We're telling people that as long as we're at war they'll get their unemployment benefits. And of course, as long as we're at war, there will be more people unemployed.

Instead of unemployment benefits, people need work. Instead of war, people need work. War drives up the deficit. War takes away money from job creation. War results in unemployment. War is a weapon of mass destruction.

### THE NEW YORK TIMES REFUSES TO REPORT ON CLIMATEGATE

(Mr. POE of Texas asked and was given permission to address the House for 1 minute.)

Mr. POE of Texas. Mr. Speaker, in the aftermath of the Climategate scandal, we now learn that prominent scientists were so determined to advance the idea of human-made global warming that they worked together to hide contradictory temperature data, black-

balled dissenting scientists, and manipulated the peer-review process. The New York Times says that Climategate is no big deal. In a recent article in the Times, an editor, Clark Hoyt, responded to criticism that the newspaper has downplayed the story. Predictably, Hoyt, a "Warmer" disagreed, writing that Climategate is not a "three-alarm story." He defended the Times' decision to ignore evidence that doesn't support global warming. He failed to mention that global warming alarmism and fears are largely based on discredited data.

The New York Times and the national media should report the news fairly, rather than downplaying stories that don't conform to their media bias agenda. Otherwise, Americans will continue to doubt the media's credibility. And that's just the way it is.

### CLIMATEGATE

(Mr. QUIGLEY asked and was given permission to address the House for 1 minute.)

Mr. QUIGLEY. Mr. Speaker, scientists at the Climate Research Unit in eastern England have received more attention than their subject of study, global warming. Climategate, as it was dubbed, has been the focus of rampant speculation.

As some accuse these scientists of manipulating figures to conclude that global warming was man-made, we forget that polar ice caps are melting, and that we're hitting threshold points that cannot be reversed. We're forgetting that over 200 peer-reviewed, scientific studies have determined that global warming is real; and that man significantly contributes to global warming; and that zero peer-reviewed scientific studies have determined that global warming is not real; and that man does not contribute to that.

Today, over 1,700 scientists from the UK announced their belief that global warming is real and that man contributes to this. Congress must send climate legislation to the President for approval. And the United States must agree to a final and meaningful treaty this week in Copenhagen that binds countries to commit to reduce emissions.

### AMERICA, YOU MUST TAKE NOTICE

(Mrs. EMERSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. EMERSON. Mr. Speaker, Fannie Mae and Freddie Mac send chills down the spine of Federal regulators, but the financial regulation bill before the House this week ignores those and other government-sponsored enterprises, the institutions at the heart of the worst financial crisis in modern American history.

The crisis was explosive, more than a decade in the making. During the slow lead-up to the crash, Fannie and Freddie guaranteed that a national subprime lending problem would seep into every other financial sector of our economy. The GSEs ignored their public responsibility to assure a stable U.S. market for lending. So if that's the case, then why is this bill silent on their misdeeds and the perverse incentives that drove our country to the brink of financial disaster?

As the government gets bigger, this bill requires government to regulate everything but itself. As of October 31, Fannie Mae held \$771 billion in its gross mortgage portfolio, and another \$2.8 trillion in mortgage-backed securities and other guarantees. Their omission from this bill is glaring. It's irresponsible to exempt GSEs from this legislation.

America, you must take notice.

#### GOOD NEWS ABOUT JOBS

(Ms. SCHWARTZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SCHWARTZ. The American people received much-needed good news last week. Job loss is slowing. In November the number of jobs lost was 11,000, quite a contrast to the 700,000 lost in January 2009. While no one should underestimate the challenges ahead or the struggles of far too many families whose wage earners are unemployed, this news shows that the policies of the Democratic majority are working. The economy is turning around.

Last Friday I joined President Obama in Allentown, Pennsylvania, to talk with and hear from business leaders and college students and veterans about how to create new jobs and grow the economy. The President laid out a jobs plan that will spur small business hiring, improve infrastructure, and encourage energy efficiency.

We need to take action on this plan that builds economic opportunity for the long term, new jobs that are sustainable for years ahead, in rebuilding our infrastructure, creating new energy sources, and developing new technology and innovative products and services that we and the world want to buy. We are committed to rebuilding America's economy, putting Americans back to work and ensuring our Nation's economic future.

#### MAKE SURE THAT WALL STREET PLAYS BY THE RULES

(Ms. KILROY asked and was given permission to address the House for 1 minute.)

Ms. KILROY. For 8 years the Bush administration and its Republican allies looked the other way as Wall Street and the finance industry engaged in risky practices, risky practices which resulted a little more than a year ago in the whole house of cards tumbling down, and the American taxpayers had to pick up the pieces.

We can't let that happen again. And we know Wall Street won't police itself. We need tough new laws and regulations. H.R. 4173, the Wall Street Reform and Consumer Protection Act, will rein in those abusive practices. A new consumer agency will be established to protect consumers from fine print gimmickry and prevent fraud and abuse. It will end the "too big to fail" problem by creating a mechanism for the controlled dissolution of failed financial institutions, a financial death panel, so to speak, paid for, not by American taxpayers, but by the financial industry itself.

This bill will help protect Main Street and make sure that Wall Street plays by the rules.

#### ECONOMIC DISCIPLINE

(Mrs. SCHMIDT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHMIDT. Mr. Speaker, I rise to once again report that we are in jeopardy of losing the AAA credit rating of the United States if we do not impose economic discipline in this Congress and impose it now. The record deficits, coupled with poor economic growth and high unemployment, are making it increasingly difficult for the U.S. to maintain its debt.

Last year this Congress created a deficit of \$1.4 trillion. That's an average of \$4 billion a day. Now we're being asked to raise our debt ceiling an additional \$1.84 trillion so we can continue to borrow money. This spending must stop. It must stop now. And we need the discipline and courage in this Congress to do it.

#### OPTIMISM ABOUT CLEAN ENERGY

(Mr. INSLEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, I hear that the former Vice President has made an assertion about the Governor who quit in Alaska, Sarah Palin. He asserted that hers is the attitude of a denier, a denier of the clear need to address global warming. But that attitude is worse than being a denier.

It is the attitude of a defeatist, because the defeatists believe that we Americans can't build electric cars. The defeatists believe we can't, in America, build solar thermal plants. The defeatists believe we can't build offshore wind turbine plants. The defeatists believe that we can't build thousands of jobs here in America, rather than allow those jobs in clean energy to go to China.

When those people like Sarah Palin, who have the attitude of defeatists, join us in a sense of optimism that we can change our economy to a green collar economy, we will build a clean energy economy that is the envy of the world. And we urge them to join us.

#### AMERICA CANNOT AFFORD ANOTHER SPENDING SPREE

(Mr. GINGREY of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY of Georgia. Mr. Speaker, I ask you to reflect on the impact that Democratic plans for the economy have on working families across the United States. This past November we reached the highest level of unemployment since 1983, 10.2 percent. And given the Democrats' pending misguided ideas for overhauling the health care and the energy sectors, there is no end in sight.

And now, Mr. Speaker, we hear plans for, yes, you guessed it, more spending. After their failed "non-stimulus" stimulus bill, the Democrats are planning another reckless round of stimulus spending, even if they may call it something else.

Mr. Speaker, America simply cannot afford another spending spree by this Democratic majority. There's a way to boost the economy without relying on all this irresponsible and unnecessary spending. Simply put, Republicans have superior plans for energy independence and health care reform that are attainable. They will not drive our country further into debt and will not kill jobs.

□ 1015

#### RTD MANUFACTURING

(Mr. SCHAUER asked and was given permission to address the House for 1 minute.)

Mr. SCHAUER. Mr. Speaker, I rise on behalf of RTD Manufacturing in Jackson, Michigan, and my constituents desperately in need of a job. Just 6 years ago, this family-owned auto supplier had 60 workers. Today, only 12 are left.

To diversify their business, RTD teamed with several other firms, and just 6 weeks ago, we learned that RTD would be the principal manufacturer for a major Army contract. What great



news—until I was contacted by RTD's president last week.

Their long-time bank, Citizens Bank, denied RTD's loan to buy \$85,000 worth of steel from another local company to produce components to protect our troops from improvised explosive devices, IEDs. So instead of hiring six workers to build supplies that our troops in the field need now, RTD is the latest victim of the credit crunch.

Get this. Citizens Bank—the number one small business lender in Michigan that has received \$300 million in Federal bailout funds—denied this loan. I'm working overtime to ensure RTD doesn't lose this chance to create jobs and save soldiers' lives.

#### JOE WILSON WAS RIGHT

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute.)

Mr. SMITH of Texas. Mr. Speaker, it has taken months, but there's one thing even the national media now acknowledges—Joe Wilson was right. Illegal immigrants are covered by the health care bill.

This week the Associated Press reported that the House health care bill, which was the bill under consideration at the time of President Obama's speech to Congress and Mr. WILSON's remark, will allow illegal immigrants to participate in the government-run and government-funded insurance plan. To its credit, CBS News said something similar back in September but only on a Web post.

These articles are few and far between and fairly well hidden from public view. They also fail to address the other illegal immigration-related loopholes in both the House and the Senate bills.

It's no wonder that only one in 10 Americans now have a great deal of faith in the media to report the news fully, accurately, and fairly, according to a recent poll.

#### THE LINK BETWEEN JOBS AND HEALTH CARE REFORM

(Mr. YARMUTH asked and was given permission to address the House for 1 minute.)

Mr. YARMUTH. Mr. Speaker, our colleagues have asked a question, and many of the American people are asking a question which deserves an answer, and that is: Why should we worry about health care reform? Why don't we focus on jobs? Well, the truth of the matter is that no job strategy can avoid a health insurance reform strategy.

As Ezra Klein pointed out in The Washington Post earlier this week, the history of the last two decades have shown, when health care premiums go up, wages go down. Every dollar that is spent on health care in my district

can't be spent to buy a Ford, can't be spent to buy a GE refrigerator, can't be spent to buy a package that UPS will ship.

The unavoidable truth is, if we don't get a handle on health care costs, jobs will never improve the way we need them to. We already know the automobile industry in this country has lost tens of thousands of jobs because of the unaffordable cost of the health care for their employees. No. A successful employment strategy must include a successful health care reform strategy, and that is why it's so critical that we pass that in this Congress.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT

(Mr. HEINRICH asked and was given permission to address the House for 1 minute.)

Mr. HEINRICH. Mr. Speaker, when I took office back in January, the economy was on the verge of collapse. We've taken some tough votes this year to promote a strong economic recovery, and we're beginning to see some signs that the economy is turning around. But to avoid this sort of economic crisis from happening again, we need to rein in the Wall Street banks that brought us to this point and begin to make Washington more responsible.

The Wall Street Reform and Consumer Protection Act will prevent risky dealings by Wall Street and begin an end to the days of taxpayer-funded bailouts. At the same time, this bill ensures that small banks and credit unions, which play a key role in their communities, are not subject to undue regulatory burdens.

We must bring an end to the era of irresponsible and recklessness on Wall Street. Our country's working families, our small businesses are playing by the rules. It's time that Wall Street must learn to do the same.

I would urge my colleagues to support this legislation.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT

(Mr. HALL of New York asked and was given permission to address the House for 1 minute.)

Mr. HALL of New York. Mr. Speaker, I rise today in strong support of H.R. 1473, the Wall Street Reform and Consumer Protection Act. To help Main Street, we must reform the way Wall Street has done business and end the risky practices that have caused millions of Americans to lose their jobs, their homes, and life savings.

This legislation will protect American consumers and prevent the irresponsible behaviors and practices that caused the financial crisis last fall. H.R. 1473 restores responsibility and accountability on Wall Street through tough rules and regulations of risky

practices. It protects consumers on Main Street by ensuring that bank loans, mortgages, and credit cards are fair and transparent. It also ensures that taxpayers will never again need to bail out Wall Street banks by ensuring the "too big to fail" firms don't have a stranglehold on the market.

These firms' practices led us to the brink of disaster last fall, and we cannot allow them to threaten our economy again with dangerous behavior. H.R. 1473 reforms these practices, and I urge my colleagues to support it.

#### INTERNATIONAL CLIMATE TREATY IS NEEDED

(Mr. TONKO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TONKO. Mr. Speaker, I rise today to talk about the 15th United Nations Climate Change Conference in Copenhagen, Denmark, that is currently underway.

First, Mr. Speaker, I wholly reject false notions and political attacks attempting to destroy sound science and evidence. This issue, from its environmental to its energy and economic impacts, is too important for false political attacks and deceitful op-eds and letters to the editor.

The Copenhagen discussions are about responsible governments coming together to negotiate an international climate treaty to better our environmental and energy outcomes, not to mention creating a fair marketplace in which the world's economies will indeed compete.

There is a global race today, a race for a clean energy economy, the outcome of which will allow the winner to export clean energy intellect and expertise. Other countries are passing us by in this race. Like the space race of decades ago, we must come together as a Nation bound by the common goals of reducing global emissions, bettering our energy outcome, and enhancing our economy. The future of our Nation depends on us.

#### PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 3288, CONSOLIDATED APPROPRIATIONS ACT, 2010

Mr. MCGOVERN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 961 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 961

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 3288) making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30,

2010, and for other purposes. The conference report shall be considered as read. All points of order against the conference report and against its consideration are waived. The previous question shall be considered as ordered on the conference report to its adoption without intervening motion except: (1) one hour of debate; and (2) one motion to recommit.

#### POINT OF ORDER

Mr. FLAKE. Mr. Speaker, I raise a point of order against H. Res. 961 because the resolution violates section 426(a) of the Congressional Budget Act. The resolution carries a waiver of all points of order against consideration of the conference report, which includes a waiver of section 425 of the Congressional Budget Act which causes a violation of section 426(a).

The SPEAKER pro tempore. The gentleman from Arizona makes a point of order that the resolution violates Section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden under the rule. The gentleman from Arizona and a Member opposed each will control 10 minutes of debate on the question of consideration. After that debate, the Chair will put the question of consideration.

The Chair recognizes the gentleman from Arizona.

Mr. FLAKE. Mr. Speaker, I raise this point of order not so much out of a concern for unfunded mandates, but again, it's about the only opportunity we have to stand up and talk about the process by which this conference report is being brought to the floor.

We all remember that earlier this year we had something unprecedented happen. We have never in the history of the Republic ever had every appropriation bill come to the floor under a closed rule where Members from both sides of the aisle were denied the ability to offer amendments.

Now, until a decade or two ago, appropriation bills typically came to the floor without even going through the Rules Committee at all. It would simply come under an open rule, and amendments would be disposed of on the floor and there would be open debate.

A couple of decades ago, we started to go to the Rules Committee, but only to set overall parameters. It was still an open rule, and any Member could offer any amendment to strike funding or move funding around within the bill as long as it was germane. But this year we were told by the majority that we had to rush this legislation through, these appropriation bills.

Remember, the main reason Congress is here is because of the power of the purse. It's article 1: to dispose of funding legislation, to fund the agencies of the Federal Government. So that is the important reason we're here.

But we were told we had to rush that through and had to do it under what amounts to a form of legislative mar-

tial law where every appropriation bill this year, every one, came to the floor under a closed rule. Members were denied the ability to offer the amendments they wanted to offer. They could only offer the amendments that the Rules Committee saw fit for them to offer.

Over 1,000 amendments were offered. Just 12 percent of those amendments were actually allowed onto the House floor. Now, I was fortunate to have a number of those amendments allowed. Some of my colleagues came to the floor or came to the Rules Committee over and over again with multiple amendment requests on every bill, and in the entire year, not allowed one, not one amendment. We had several members not allowed one amendment the entire year because we had to rush these bills through for some unknown reason. We were told that we had to do this because we wanted to avoid an omnibus.

Well, here we are with an omnibus. This is a bill that spends north of a trillion dollars, one bill brought to the floor under one rule. And in it, let me tell you what's in it.

□ 1030

Let me just tell you what is in it. In it is more than 5,000 earmarks.

Mr. DREIER. Would the gentleman yield?

Mr. FLAKE. I would.

Mr. DREIER. I thank my friend for yielding.

Mr. Speaker, I congratulate him for his remarks. Basically it's what I'm going to say when we begin the process here. But one of the arguments that has been propounded and was utilized up in the Rules Committee last night was that when we completed our work here in the House of Representatives, that it was our friends on the other side of the Capitol who did not comply with the kind of schedule that we had. And the fact is, it's important to remember that there are 58 Democrats and two Independents who organize with the Democrats in the United States Senate, giving them a total of 60 votes, and they have complete control. And so the notion of somehow saying, "Well, we had to get our work done. We had intended to avoid an omnibus if we had been able to complete our work, but it's those guys over on the other side of the Capitol who failed to meet their responsibilities" is a very, very specious and weak argument to make in light of the fact that they have control of everything now.

And I thank my friend for yielding.

Mr. FLAKE. I thank the gentleman and reserve the balance of my time.

Mr. MCGOVERN. I claim time in opposition.

The SPEAKER pro tempore. The gentleman is recognized for 10 minutes.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have great respect for my colleague from Arizona, but technically, this point of order is about whether or not to consider this rule and ultimately the underlying conference report. In reality, it is about trying to block this report without any opportunity for debate and without any opportunity for an up-or-down vote on the legislation itself. I think that is wrong, and I hope my colleagues will vote "yes" so we can consider this important legislation on its merits and not stop it on a procedural motion. Those who oppose the conference report can vote against it on final passage. We must consider this rule, we must have a debate, and we must pass this legislation today.

I have the right to close, but in the end, I will urge my colleagues to vote "yes" to consider the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. FLAKE. Here again, I'm claiming my time on the unfunded mandates point of order because it's about the only opportunity we've had. And all throughout this appropriations season, I did something similar because it was the only opportunity I got. I was offered so few opportunities to offer amendments to earmarks during this appropriations season.

But let me just give you some of the examples of earmarks that are in this bill, just a couple of examples of the more than 5,000 earmarks that are stuffed into this legislation; again, earmarks that, for the most part, we were unable to challenge on the House floor because we weren't afforded the opportunity.

We made a law in the past couple of years, and I'm glad we have, about transparency, to make sure that Members' names are next to the earmarks they request. But as important as transparency is, accountability must also be present. And without the ability of Members to challenge those earmarks, then transparency doesn't mean a whole lot. And we haven't had the ability to have accountability here.

In this legislation, \$125,000 goes for the defense procurement assistance program in southwestern Pennsylvania. Now, those who follow the appropriations process around here, particularly with Defense Appropriations, realize that southwestern Pennsylvania needs help with defense procurement like Arizona needs more cactus. This is a region that gets billions and billions of dollars in no-bid contracts to private companies, and yet we are appropriating here an earmark, a specifically designated earmark, for defense procurement assistance. Now, how ridiculous is that? Yet, it's in this legislation, and it was in the prior legislation that we dealt with under, as I said, the legislative equivalent of martial law earlier this year.

There's \$500,000 for the Botanical Research Institute of Texas to enhance

its collections; \$292,000 to eliminate slum and blight in Scranton, Pennsylvania; \$700,000 for an arts pavilion in Mississippi; \$300,000 for Carnegie Hall music and education programs in New York.

Again, these may well be worthy programs. I'm not sure the Federal Government ought to be funding them. But, in any case, should any Member have the right to designate that portion of funding for his or her district without the ability of other Members to challenge it on the House floor? That is the question we have here.

We went through a process the entire year where we were told we can't have open debate, we can't allow Members to challenge these earmarks on the House floor because we have to rush these bills through to avoid an omnibus. Here we are in December with an omnibus. We all knew we would be here.

During the years 2006 to 2008 when the majority party was in the majority of Congress but the Republicans had the White House, we were told, "Well, we could get these bills through in regular order were it not for the White House." Now, as the ranking member on the Rules Committee stated, the majority party is in control of the White House, has a huge majority here in the House and a 60-vote majority in the Senate, and still we are here with an omnibus. We knew we would be here. So you can only conclude that we rushed through this process during the entire year just to shield Members from uncomfortable votes to be forced to defend \$250,000 for the Brooklyn Children's Museum or \$600,000 for streetscape beautification in California and \$250,000 for a farmer's market in Kentucky. If it weren't for that, why in the world did we have to shield Members from these uncomfortable votes?

So, Mr. Speaker, I simply wanted something different to come with this new majority in 2006. I wanted a transparent process with earmarks, wanted an accountable process with earmarks. But this year, I have to say, with the closed rules that have come on appropriations bills, we haven't had a more opaque year in a long, long time, and it doesn't speak well for this House. It doesn't speak well for our leadership to allow this kind of thing to happen, and particularly at a time when we have story after story after story in the newspapers about, particularly, problems with defense procurement, when you have no-bid contracts to private companies that are in legislation that we aren't allowed to challenge.

I realize the Defense bill is not part of this legislation. That will come next week. But it will come again with one rule, no ability to amend and no ability to challenge. When that Defense bill came to the floor earlier this year, there were more than 1,000 earmarks, more than 500 of which represented no-

bid contracts to private companies. I offered more than 500 amendments to challenge some of those, and I was allowed just a tiny fraction of those. I think I was allowed 8 percent of the amendments that were offered, and so we are only allowed to challenge just a fraction of those no-bid contracts to private companies. And that, Mr. Speaker, is simply wrong.

We cannot continue to do that in this House. We need to be above reproach here. And we can't have a process when you have no-bid contracts to private companies without the ability of Members of Congress to come to this floor and challenge those earmarks. When you have a process that shields those projects and those Members from any vetting or criticism or debate or anything else, we shouldn't be doing that, yet we are still doing it.

With that, I urge to overturn this rule.

I yield back the balance of my time.

Mr. MCGOVERN. Mr. Speaker, again, I want to urge my colleagues to vote "yes" on this motion to consider so that we can debate and pass this important piece of legislation today.

I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

The question is, will the House now consider the resolution?

The question of consideration was decided in the affirmative.

The SPEAKER pro tempore. The gentleman from Massachusetts is recognized for 1 hour.

Mr. MCGOVERN. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from California (Mr. DREIER). All time yielded during consideration of the rule is for debate only.

GENERAL LEAVE

Mr. MCGOVERN. I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 961.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MCGOVERN. I yield myself such time as I may consume.

Mr. Speaker, House Resolution 961 provides for the consideration of the conference report to accompany H.R. 3288, the Consolidated Appropriations Act, 2010. The rule waives all points of order against the conference report and against consideration. It provides that the conference report shall be considered as read and, finally, it provides that the previous question shall be considered as ordered without intervention of any motion except 1 hour of debate and one motion to recommit.

Mr. Speaker, we're here finishing up the fiscal year 2010 appropriations bills. This consolidated appropriations bill is the product of many, many months of

hard work. It contains six of the seven outstanding appropriations bills.

Mr. Speaker, in all candor, I must admit that I have a slightly different perspective on the appropriations process than I did 3 years ago. Then, in the minority, I questioned why the then-Republican majority wasn't able to finish their bills on time. I realize now that in many cases, finishing the bills in a timely fashion wasn't always the fault of the majority in the House but rather a result of the dysfunction in the Senate.

Now, 3 years later, the situation is similar. We, this House, this Democratic majority, did our job. We passed every single bill in a timely way and we did so responsibly, and in many cases joined by many of my colleagues on the other side of the aisle. For example, the Homeland Security bill passed with 389 votes, including the support of my good friend from California.

Now, despite our hard work to move this process forward, I am sure that the gentleman from San Dimas is going to protest about the process here, that this bill is made up of six bills, and I'm sure he will come up with some clever, colorful phrases to describe his feelings today, and we all look forward to that. But we are essentially reaffirming votes that have already been taken on issues that have already been previously debated and discussed.

The chairmen and ranking members of the appropriations subcommittees deserve credit for their bills. There is critical funding included for roads and bridges; for rail projects; for greenhouse gas emissions; for public housing and other housing vouchers; for critical international aid programs like the response to global HIV/AIDS, poverty, food security, education, and international disaster assistance; for programs that prevent and prosecute violence against women and other justice programs; critical health programs including NIH funding, public health programs, programs addressing health professions workforce shortages, LIHEAP, Head Start, and other education programs. These bills are about priorities. They are about values. They show who we are as a Congress, and I stand by the values articulated in these bills.

While some will complain that we are spending too much money, that these bills are too big, I look at it in a very different way. Mr. Speaker, I see these bills as an opportunity to reverse years of neglect: neglect to our roads and our bridges, neglect to our lower income neighbors and friends, neglect to our education system, and neglect to our veterans.

You see, Mr. Speaker, this Democratic majority inherited a troubled country. Our Republican friends squandered budget surpluses. Their reverse Midas touch turned surpluses into deficits. They spent money like they were

drunken sailors and yet never felt the responsibility to pay for their spending. They turned a blind eye to transgressions of Wall Street, allowing Main Street to feel the pain of Wall Street running wild.

What did we start out with? We started out with, we inherited, a financial system on the brink of collapse, the worst recession since the Great Depression, two wars that weren't paid for, a broken health care system, and a 1950s energy policy. That was the gift from the Bush administration and a Republican majority in Congress. So there's been a lot to fix this year.

Just look at some of the numbers, Mr. Speaker. Job growth under the current administration is reversing a long downward spiral that started under the last President. The stimulus plan is working as planned. We are making sound investments in helping Americans find good jobs and getting this economy moving again. The unemployment rate dropped last month and the efforts of this Congress are helping people afford a home, helping to breathe life back into our real estate economy. Even the TARP program is working better than expected. Confidence has been restored to Wall Street, and more than \$200 billion will be returned to the government.

So here we are, Mr. Speaker, digging out from the Bush economy, the Bush recession. It's time to get this done, but it's not going to happen overnight. It's time to fund our priorities and meet the needs of the American people. Simply, Mr. Speaker, this is a good bill we will consider today, and it deserves to be supported by every single Member of this body.

With that, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I thank my friend from Worcester for yielding me the customary 30 minutes, and I yield myself such time as I might consume.

Mr. Speaker, I appreciate my friend's comments, and it appears to me that no matter how colorful or creative I am that I probably won't be as persuasive with him as I hope I am with others in pointing to how absolutely ridiculous it is that we are here doing what we are doing with this. And this is really a challenge.

I'm told that this weighs more than a baby, in fact. The child of the woman sitting right behind me says this weighs more than her baby. It is 2,500 pages that we have been given in this omnibus appropriations bill which we were promised would not be utilized as a process if we shut down all of the appropriations bills, which, if I could remind everyone, we did last summer.

□ 1045

Actually, Mr. Speaker, I would like to call my colleagues' attention to today's date. Today is December 10. For

those keeping track, we are now 71 days past the end of the fiscal year, 71 days overdue in completing work on our constitutionally mandated power of the purse.

How far along in the process are we at this date, 71 days into the fiscal year? Well, five of the 12 appropriations bills have been enacted into law. With time quickly running out and over half of its work left undone, the Democratic majority has chosen to cram six of our remaining seven spending bills into this one massive half-trillion dollar bill.

The underlying measure before us today spends \$500 billion of the taxpayers' money on disparate issues and agencies, from the Department of Housing and Urban Development to the FBI to infrastructure to veterans programs.

My friend is absolutely right. Of course, I supported the Homeland Security bill. It's one of the top priorities that we have. In fact, there's nothing more important than the security of the United States of America, so I supported that. But that doesn't mean that I'm supportive of taking it when it should have gone through the regular process, which is what the gentleman with whom you're speaking right now promised we were going to be able to do if we had this closed, structured process for considering appropriations bills, and yet here we are with this omnibus bill.

They were kind enough, kind enough now, by virtue of having this as a conference report, to grant us an entire hour of debate for this 2,500-page measure that's before us. Mr. Speaker, that works out to just about \$7.5 billion for every minute of debate that we're going to be allowed on the bill, \$7.5 billion.

And I'm sure the American people will feel completely confident that 1 hour to debate a \$500 billion measure, half of the discretionary spending that we've got before us, is enough. Actually, an hour for oversight and accountability of their hard-earned taxpayer dollars at a time, Mr. Speaker, when virtually everyone I know is engaged in cutting back. They're engaged in cutting back spending. Why? Because of the economic downturn through which we're going.

And what is it that has happened? We've seen an 85 percent increase in nondefense discretionary spending. An 85 percent increase at a time when families across this country are working very hard to figure out how they can make ends meet.

Now, as I have said repeatedly throughout the appropriations process, legislating is not a pretty business. It's not unusual for our work on the Federal budget to extend beyond the close of the fiscal year. It's not unprecedented to consider several appropriations bills in one package. And it's hap-

pened under both political parties. The debate that takes place here on the House floor is often heated. That's the way it's supposed to be. The task, Mr. Speaker, of forging consensus and compromise in the face of competing views and priorities is all part of the legislative process.

Furthermore, spending the taxpayers' money is a very, very enormous responsibility that we have. Article I, section 9 of the Constitution places that responsibility in our hands. It demands, it demands, Mr. Speaker, a great deal of deliberation, which is not always compatible with setting timetables. Deliberation, Mr. Speaker, is not always compatible with setting timetables. Ultimately, Mr. Speaker, getting it right is more important than getting it done by September 30.

In light of this, the fact that we have arrived at December 10, 71 days after the end of the fiscal year, having completed only five of the 12 appropriations bills, is not surprising, based on what we've seen here, or even necessarily problematic.

But there is far more to this story, Mr. Speaker. At the very outset of this process 6 months ago, the Democratic majority announced that they would be foregoing the messiness of real debate. And I'm very pleased that my friend from Wisconsin, the distinguished Chair of the committee, is here on the House floor. In their calculation, concluding by September 30 was more important than getting things done right. Rather than a lengthy, deliberative, accountable process, they chose to pursue a neat and tidy one that shut out real debate, shut out real debate, but did conclude on time for our work here in the House. Democrats and Republicans alike were denied the opportunity to participate. True to their word, they made the unprecedented move of closing down the entire appropriations process.

Now, Mr. Speaker, everybody in this House who is a first-termer or they've been here as long as my friend Mr. OBEY has been here—he's been here almost 200 years, I think. He's been here a long, long period of time. And he knows that never before, never before in the history of this Republic have we seen the process shut down as it was shut down last summer. We have had rank-and-file Members, again Democrats and Republicans—Mr. Speaker, this is not simply my attempt to stand up for Republicans. We've been standing up for Democrats who have been denied the opportunity to offer amendments as well, and it's very, very unfortunate.

By endeavoring to take the messiness out of the legislative process, they took out the real debate, they took out the accountability, all in the name of a deadline, a deadline that came and went 71 days ago. Seventy-one days ago was when that deadline arrived, Mr.

Speaker. And here we are scrambling to consider half of the entire discretionary budget in one single 2,500-page bill with one single hour of debate. As I said, that's \$7.5 billion per minute of debate that's going to be allowed on this.

Our traditional deliberative process is messy and lengthy and ugly for the sake of good results. The Democratic majority set out to sacrifice good results for the sake of expediency. What we have gotten is the worst of both worlds: neither timely nor deliberative action. Neither timely nor deliberative. And as we've seen time and again, bad process begets bad substance.

It's no coincidence that the Democratic majority has been blocking all accountability of their spending practices. The deficit has skyrocketed to nearly \$1.5 trillion. That's larger than the entire Federal budget was just a decade ago. And our national debt, as we all know, exceeded \$12 trillion, and the unemployment rate is double digit at 10 percent.

The fact that this outcome is not surprising does not make it any less grim. We can't go on recklessly spending money that we simply don't have, piling mountains of debt upon future generations. Unless and until this Democratic majority returns to regular order and open debate, the taxpayers will continue to see their hard-earned money spent unwisely and our country saddled with an ever-growing level of crippling debt.

Mr. Speaker, I have to say that we constantly hear the finger of blame. I was managing last night the rule for general debate on this massive 1,279-page bill that re-regulates virtually everything when it comes to the delivery of financial services, and I constantly heard the finger of blame being pointed at the Republicans.

We need to remind ourselves that the Republicans have not been in control of the House of Representatives since 2006. Mr. Speaker, what that means is that we have gone through now 3 full years, 2007, 2008, and 2009, under a Democratic majority. So as we continue to hear this argument that somehow Republicans are to blame for all of these problems, it is a very, very specious one.

I'm going to urge my colleagues, Mr. Speaker, in the name of accountability, in the name of deliberation, and in the name of good results, to defeat this rule. We can do better.

Mr. Speaker I reserve the balance of my time.

Mr. McGOVERN. Mr. Speaker, let me just say that this Congress has a very tough job. We are digging ourselves out of the mess that Mr. Bush and his Republican allies created. Years and years of neglect. Years of ignoring the most important pressing problems facing our country.

When President Obama got elected, he inherited a crumbling infrastructure

in this country because of the years of neglect by the Republicans and by the Republican President. He inherited a country that had no solid plans for alternative or renewable or clean energy because of the neglect and the obstructionism on the other side. He inherited a country where the health and well-being of our citizens had been neglected for years and years and years. So what we are doing here and what these appropriations bills are responding to are the years of neglect.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. McGOVERN. I yield 30 seconds to the gentleman from California.

Mr. DREIER. I thank my friend for yielding.

Let me just say, Mr. Speaker, that the gentleman obviously didn't listen to the remarks that I just provided here reminding Members that while we continue to get the finger of blame pointed at us for the last 3 years, this institution where the power of the purse exists, the people's House, has been in the control of the Democratic Party, not the Republican Party.

Mr. McGOVERN. For 2 of those years, we had a Republican President who obstructed every single progressive, positive idea that came out of this Chamber. So this is the response to the neglect of the years of Republican rule, and we have to clean up this mess.

Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. OBEY), the chairman of the Appropriations Committee.

Mr. OBEY. I thank the gentleman for the time.

Mr. Speaker, it is hard for me to respond to the gentleman's comments with a straight face. I really think we've had a big lesson in Alice in Wonderland reasoning here today.

Let's simply let the facts speak for themselves. We presently have had five appropriation bills already signed by the President of the United States. In addition, the bill which we will consider today and which will be sent to the President will mean that we have sent six additional appropriation bills to the White House. That means that during this session, we will have passed every single regular appropriation bill except the defense bill, which we expect to deal with next week. And we did that on top of having to deal with the most calamitous collapse of the economy in 75 years, necessitating a whole round of legislative action to try to salvage the economy.

The gentleman and several of his friends on that side of the aisle have continued to complain that we haven't gotten all of these bills done by the end of the fiscal year. Engaging how seriously we should take that—

Mr. DREIER. Will the gentleman yield?

Mr. OBEY. No, I will not.

Mr. Speaker, I do not intend to yield until I have finished my entire state-

ment. The gentleman habitually asks people to yield in the middle of their statement. I'm going to complete my thoughts, and then I will be happy to yield.

The fact is I think this House ought to compare our record this year with the record when the gentleman's party was in control. When we took control of this House 3 years ago, what did we find? We found that they had only been able to pass two appropriation bills.

□ 1100

They had not been able to pass a single appropriation bill that appropriated a dime for the domestic portion of the Federal budget. And they, in fact, left to the next Congress the necessity to pass all of those domestic appropriation bills. How, with that record, they can come forward on this floor and complain because we are 60 days late in their mind is a joke in my view.

Let me cite some of the other records. So far this year, without this bill, we have passed more individual appropriation bills than has been done in five of the last seven years, and most of those years were under Republican control. In fiscal year 2003, Republican control, only two bills were enacted as freestanding measures; the rest were part of an omnibus. In fiscal year 2004, Republican control, six bills were enacted as freestanding measures; the rest were in an omnibus. Fiscal year 2005, Republican control, four bills were enacted as freestanding measures; the rest were put in an omnibus. And the story goes on and on and on.

With respect to the amendment process, our friends on the other side of the aisle were able to offer 96 amendments in full committee, they offered 155 amendments on the floor, and in the conference, on this bill alone, they offered nine amendments. Significantly, their Republican counterparts in the Senate didn't offer any; they felt we had done a pretty good bipartisan job in producing these bills, and I do, too.

The fact is, we have been subjected to obstruction by delay as the minority has apparently tried to turn the House of Representatives into the Senate through filibuster by amendment. We don't have a filibuster in the House rules, but they can achieve the same thing by tossing up countless amendments, many of which are not serious amendments.

With respect to the cost of the bill, they make much of the fact that this bill costs significantly more than its counterparts last year.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. McGOVERN. I yield the gentleman 2 additional minutes.

Mr. OBEY. Let's walk through what those differences are. Would they suggest that we take out the \$3.2 billion increase for veterans so that we can clean up the disability backlog? Would

they suggest that there is something wrong with the fact that, in contrast to what happened when they were running the show, we chose to put \$14.8 billion for war costs that were previously funded in a supplemental, we chose to put them in the regular bill so you didn't hide the cost in a regular bill?

On infrastructure, as the gentleman pointed out, we've had collapsing infrastructure in this country. Would they suggest we remove the \$10.8 billion in additional infrastructure funding?

On health, we are about to pass the most momentous health care changes in the history of the country. We have \$6.3 billion of additional funding over last year to expand the capacity of the health care system to deal with the fact that 31 million more people are going to be using that health care system. Would they suggest that we take that money out?

When you total up the cost for those items that I have just recited, the rest of the increase in the bill is \$4.8 billion; that is equal to a 1 percent increase. I make no apology for that because, as the gentleman pointed out, we are trying to deal with years of neglect of our domestic economy. This is the bill that does that, and I make no apology for the fact that we bring it to the House today. And I make no apology for comparing our ability to deliver the goods before the end of this Congress in contrast to the inability of the other party to do that when they controlled the House.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. DREIER. Mr. Speaker, I yield myself such time as I might consume, and I would be happy to engage in a colloquy with my very good friend.

Let me say that obviously the appropriations process is a challenging and difficult and messy one, but I think that it's important to note a few things as we look at last summer.

My friend will, I'm sure, acknowledge—and I would be happy to yield to him—that never before in the history of the Republic have we had the kind of structure put into place that prevented Members from offering amendments that we did through this appropriations process.

I am happy to yield to my friend.

Mr. OBEY. I would say never before have we had the kind of systematic obstruction on the part of the minority that we had either.

Mr. DREIER. If I could reclaim my time, Mr. Speaker, let me just say that the problem we had was this: The first appropriation bill came forward, it was a total of 20 minutes of debate. Twenty minutes of debate took place, Mr. Speaker, and then all of a sudden the process was shut down and Mr. McGOVERN and I and our other Rules Committee colleagues were forced upstairs to take the first step towards shutting down the process. So let's say that this

extraordinarily dilatory process lasted 20 minutes before we took the first step towards shutting this place down.

The second thing, Mr. Speaker, is that as we talk about the sacrosanct September 30 end-of-fiscal-year date, that's only part of it. The only reason that we point that out, recognizing that under both Democrats and Republicans through a difficult appropriations process in the past, we have clearly had to go beyond that September 30 deadline for the end of the fiscal year. And the problem was that when we were told that we would not exceed that because we were shutting down the process. So, unfortunately, we lost both the opportunity for deliberation and this sacrosanct deadline that was constantly held up as the *raison d'être* here for this kind of action.

The third point is, as my friend, the distinguished Chair of the committee, went through the 95 amendments that were offered in committee, the 160 amendments that were made in order on the House floor for consideration, Mr. Speaker, with all due respect, the selection of those amendments in the hand of one individual Member of this institution—not those of us on the House Rules Committee. Yeah, we ultimately, with the majority vote in the House Rules Committee, saw our Democratic colleagues put the stamp of approval on it, but the decision of what amendments were made in order was made by one person, the distinguished Chair of the Committee on Appropriations. That's where the decisions were.

Now, Mr. Speaker, under the historic tradition, the tradition of consideration of appropriations bills, knowing how sacrosanct article I, section 9 of the Constitution is, Members of the House had the chance, as Mr. FLAKE said in his remarks, to stand up and offer amendments. One of the things that we believe strongly about, with the 85 percent increase that we have in nondefense discretionary spending; not those issues that the gentleman pointed to that we of course agree to in a bipartisan way—the national security of the United States of America—but in the multifarious other areas, there is a real desire for Members to stand up and have a chance to offer amendments that might be able to bring about, with a scalpel, some kind of spending reduction because we've gone through such huge increases. And so, Mr. Speaker, I have to say that it's very, very troubling to hear these kinds of arguments.

Mr. KIRK, to whom I'm going to yield in just a moment, has the 2,500 pages very, very gingerly propped up there on the lectern. At this time, I am happy to yield 2 minutes—which, based on the level of spending in this 2,500 page bill, will amount to \$15 billion since we're spending \$7.5 billion per minute—to my friend from Highland Park.

Mr. KIRK. I thank the gentleman.

This bill totals 2,500 pages. Initial estimates show that it has 5,000 earmarks, and these earmarks in this legislation stretch over several hundred pages. Now, any time Congress moves a 2,500-page appropriation bill on short notice, we should urge caution. This kind of spending may be in line with other spending of this Congress.

This morning, Congressman PRICE and I released a list of the 11 worst spending items approved by the 111th Congress. Items included \$1.9 million for a water taxi to nowhere in Pleasure Beach, Connecticut, opposed by a local mayor there that said the reason why we never did this is there is no local support for this project. Or \$578,000 to fight homelessness in Union, New York, a town that has reported no homeless citizens. HUD officials said, "We hope and encourage these new grantees to develop creative strategies for this funding."

Now, remember, the Bureau of Public Debt reports that we must borrow \$160 billion per week for the United States to service our current debt and add new IOUs. Forty-six cents of every dollar spent by this Congress is borrowed, and most of it from abroad.

This bill has 5,000 earmarks over several hundred pages buried in this legislation. I do not think that it represents responsible management of Federal finances. The press reports indicate that the congressional leaders will soon approve adding \$1.8 trillion to our national debt next year. They need to do this to fund 10,000 earmarks they've already approved—5,000 just in this legislation—that totals \$446 billion in a 2,500-page bill, accelerating spending by \$50 billion over last year alone. I think we should turn away from this kind of spending and enact a more frugal set of spending priorities.

Mr. McGOVERN. Mr. Speaker, let me just make a couple of observations.

First of all, the gentleman talked about earmarks. Under the Democratic leadership, earmarks have been curtailed significantly from where they were when the Republicans were in control of the Congress.

Secondly, I guess it's good theatrics to hold up all the pages of the appropriations bills that are gathered there, but I should point out to my colleague that the Republican omnibus appropriations acts were longer in length than the one he has there. So what? I mean, has this debate become so shallow that it's all about the number of pages of the bill?

The gentleman talked about responsibility. The responsibility that the Democratic majority has is to clean up the mess that the Republicans left us. The responsibility of the Democratic majority is to deal with the years and years of neglect on important programs ranging from transportation to health care to veterans affairs. That is what we are doing here.



This is a debate about issues that matter to everyday people. These bills contain monies for roads and bridges, monies for our veterans, monies for our health care facilities. These are important matters, and that is what we should be debating.

Mr. Speaker, I would like to yield 2 minutes now to the gentleman from Mississippi, the chairman of the Homeland Security Committee, Mr. THOMPSON.

Mr. THOMPSON of Mississippi. Mr. Speaker, today I rise with significant concerns about section 159 of the Transportation division of this legislation. It requires Amtrak to allow passengers to check their guns when riding the rails.

It is no secret that rail systems are an attractive target for terrorists. In fact, in last year's attack in Mumbai, two terrorists executed a commando-style raid on a major railway station, gunning down 150 innocent commuters. To date, we have been fortunate that no such attacks have occurred on U.S. soil, but with passage of this legislation, securing the Nation's railway systems becomes far more difficult.

Section 159 requires Amtrak to allow passengers to travel with guns without checking them against a terrorist watch list. We all get checked against a terrorist watch list when we fly, regardless of whether we check firearms or not. How can we justify not using the terrorist watch list on people who travel the rail?

Amtrak policy of prohibiting passengers from traveling with guns was established in response to 9/11. With this bill, Congress, in a heavy-handed way, is interfering with Amtrak's security protocols without a single congressional hearing. This bill would abruptly undermine nearly a decade of conscientious efforts by Amtrak to enhance rail security and protect its passengers and employees. I am also concerned that it does not distinguish between checked baggage transported in a separate car and that which is loaded onto the same car as passengers.

Section 159 also lacks safeguards to ensure that State and local gun laws are respected. Specifically, it is silent on the question of preemption, thereby implying that individuals can carry firearms into jurisdictions where it is unlawful to do so.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MCGOVERN. I yield the gentleman an additional 30 seconds.

□ 1115

Mr. THOMPSON of Mississippi. I would like to also add that, last year, we spent more than twice as much money per passenger on aviation security as we did on rail security. Section 159 will undermine the security of Amtrak's passengers, employees, and infrastructure. I sincerely hope that we

do not soon come to regret this hasty and unexamined passage.

Mr. DREIER. I yield myself such time as I may consume.

Mr. Speaker, I would like to say to my good friend from Mississippi—and I know my friend from Florida is raising concerns about this as well—this underscores procedurally the challenge that we are facing when we have one individual making these kinds of decisions that should be made by Democrats and Republicans in the House of Representatives. When we listen to this argument put forward about spending and about the fact that this 2,500-page bill is theatrical, you bet. I mean, you bet, Mr. Speaker. It is theatrical to hold up a 2,500-page bill, but it's a way to graphically underscore what is taking place here.

Now, my friend said that he is interested and concerned about the fact that everyday people have priorities on transportation and on a wide range of issues. National security is again, to me, priority number one. Yet, Mr. Speaker, in this 2,500-page bill, we have a 63 percent increase in funding for the Intergovernmental Panel on Climate Change.

Mr. Speaker, I don't believe that everyday people who constantly, over the past year or two, have been focusing on trying to rein in their spending believe that a 63 percent increase on the Intergovernmental Panel on Climate Change is an appropriate utilization of this money. So that is the reason, Mr. Speaker, that we point to this.

Now I yield 3 minutes to the distinguished ranking member of the Subcommittee on Transportation and Housing, my good friend from Iowa (Mr. LATHAM).

Mr. LATHAM. I thank the gentleman from California for the time.

Mr. Speaker, I hear all of this talk about the past. If I remember a little bit of the past, recently, somebody ran on the idea of "change you can believe in."

Is this the kind of change that people were talking about, to continue the same type of efforts in the House here that are so bad as far as what was in the past?

I am very, very disturbed today that we bring a rule to the floor 5 months after this bill has passed the floor of the House and 3 months after it has passed the Senate. Now, today, almost 3 months into the new fiscal year, we finally bring the Transportation-HUD bill to the floor. Why? Why wait? This bill has been done for months and months.

The frustration, I think, that a lot of us have on both sides of the aisle is there is no reason that this bill should not have been completed other than for the fact that they wanted to use it as it is being used today, which is as a vehicle to carry other bills that maybe could not stand on their own and be-

cause the work hasn't been done; but anyone who talks about some kind of delay tactic when you have an 80-vote margin in the House and a supermajority in the Senate is simply beyond having any kind of rational argument today.

Mr. Speaker, I will tell you, a couple of days ago, I had a motion to instruct conferees—and this is why I think everyone should oppose this rule. I had a motion which said that we would have, as conferees on this bill, 72 hours to look at what is in those 2,500 pages which are being dumped on us today. We were given 30 minutes. When the bill was completed and we were in conference, we had gotten the opportunity for 30 minutes, which is after the House had voted to give us 72 hours to study what is in that bill. Also, the House voted, and a sizable majority said, that we should take this bill by itself rather than have these other five bills added onto it. Again, totally ignored. So here we are today with almost a \$500 billion bill which we had 30 minutes to look at.

Just as one example of why it is important to have a chance to look at something like this, there was a provision airdropped that no one knew about. I asked about it in conference. No one knew the answer to it. It is one which is a huge safety issue on transportation.

Airdropped into this conference report just before our conference convened was a special exemption for the State of Vermont to have 98,000-pound trucks travel on interstate highways.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. DREIER. Mr. Speaker, I yield my friend an additional 30 seconds.

Mr. LATHAM. Now, maybe this is okay. Maybe it's fine. This is exactly why we should have time to look at it. I know there are a lot of States which would like to have their weights increased. Certainly, this is a safety issue in many parts of the country, so to have someone airdrop a provision of that importance into a bill like this is simply outrageous.

There was no debate. No one knew a thing about it. Even the people who were in charge of the bill could not explain the provision when I asked, What is this under that section? Why is this language in there as it is? It had absolutely no debate. No one knew what it was.

Please vote against this rule. Let's get a decent bill on the floor.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Ms. CORRINE BROWN).

Ms. CORRINE BROWN of Florida. Mr. Speaker, I've been here 17 years, and I really believe that you have got to stand for something or fall for everything.

Today, as subcommittee Chair of Railroads, I am appalled that we are

including language in this omnibus bill that allows people to carry guns on Amtrak. This is a failure of leadership on every single level. We are passing legislation that endangers the safety of 27 million passengers who ride Amtrak each year. This language was opposed by both the Transportation and Infrastructure Committee and the Homeland Security Committee as well as opposed by numerous other Members. Yet we are forcing this unnecessary provision on millions of passengers and are jeopardizing homeland security for absolutely no reason.

I have traveled the rail systems throughout the world. None of them allow guns on their systems. We are taking a dangerous step backwards and are stripping Amtrak of its ability to set security standards and to protect its customers and employees. There was a deadly terrorist attack in Russia just 2 weeks ago on a train. The same thing happened in Madrid, Spain, in Mumbai, India, and in London, England. Each attack has emphasized the importance of passenger rail security.

These incidents also clearly demonstrate the fact that security in rail environments presents unique opportunities for terrorists. Trains are not like airplanes. You don't have metal detectors, and you don't have the TSA officials there or law enforcement officers processing passengers through these stations. We haven't provided Amtrak the resources to fully fund this operation, let alone the additional costs and manpower that will be needed to comply with this legislation.

The traveling public deserves better. I am asking each Member to vote "no" on this rule so we can come back and get a fair rule pertaining to the traveling public.

Mr. DREIER. Mr. Speaker, as I prepare to yield to my good friend from Alpine, Utah (Mr. CHAFFETZ), I would simply say that I will give him 2 minutes, which would total \$15 billion of this measure based on the \$7.5 billion per minute that it is costing us to do this.

I yield 2 minutes to our hardworking new colleague from Utah.

Mr. CHAFFETZ. Thank you for yielding.

Mr. Speaker, this rule is really bad government at its worst. I really do believe that in my heart of hearts. It seems to be a vehicle to drop in things that would never pass by themselves, and we are hearing that criticism on both sides of the aisle.

It's 2,500 pages, and the gentleman from Massachusetts asks, Well, why is that important?

It is important because we have been given just hours to try to review this. It is a physical impossibility to actually read and comprehend what is in this bill. I, for one, was elected as a freshman because I was critical of the Republicans and the Democrats. It is a

shame that this bill and this rule are being pushed upon us without an opportunity to properly review it:

2,500 pages. \$446 billion in expenses. Nearly a 12 percent increase in spending year after year in the base spending. Over 5,000 earmarks that could never withstand the light of day if we had to vote on them and look at them one at a time, as my friend Mr. FLAKE has brought many times before this floor.

Next week, there is going to be legislation moved forward to raise the debt ceiling by \$1.8 trillion. Let no person in this body try to kid themselves that they are concerned about the debt and the deficit when they have to continually raise the debt ceiling to try to clean things up. No. We continue to mortgage our future every time we are met with a challenge. The only thing I hear is we need billions and billions more.

It is time for this Congress to make tough, difficult decisions and to limit the spending. That will help grow the economy. That is the responsible thing to do. That is what the American people asked us to do, but that is not what this body is doing. It is time for some personal responsibility here in the United States Congress. We should defeat this rule, and we should get serious about limiting the amount of expenditures that happen in the United States Congress.

Mr. MCGOVERN. Mr. Speaker, I would just make a couple of observations.

First of all, I should remind everybody that, when Bill Clinton left office, he left George Bush with a record surplus which President Bush and his Republican Congress squandered. We ended up going from record surpluses to record deficits and debts. That's just a fact. I understand the frustrations of my friends on the other side as their goal is to obstruct and to make sure we get nothing done here. That is what they think is the winning strategy—to basically get nothing done.

They are failing in that because Congress is moving and is getting things done. We are beginning to turn this economy around, and we are responding to the needs and the desires of the American people. We are going to continue to do that in this bill. The inclusion of moneys for veterans, for our infrastructure, for health care, for job creation, and for worker training during this difficult economy is vital and important. We are going to get this done, and we are going to help the American people.

At this time, I yield 3 minutes to the gentleman from New York (Mr. SERRANO).

Mr. SERRANO. I thank the gentleman for his time.

Mr. Speaker, I rise in strong support of this rule, and I am pleased to be able to comment on the Financial Services

and General Government section of this bill, which provides for a total of \$24.1 billion in discretionary appropriations. The agencies that this bill funds touch all of our lives, and the spending has been carefully allocated to those programs where the American people will benefit the most.

In an effort to rebuild the regulatory agencies that protect investors, consumers, and taxpayers, the Securities and Exchange Commission is given a 16 percent increase over fiscal year 2009 to \$1.1 billion. In addition, because we are committed to implementing important consumer protection legislation which was enacted in 2008, the Consumer Product Safety Commission receives \$118 million, which is the full amount authorized, and a \$13 million increase over last year.

In this conference report, we also want to make sure that capital and other assistance gets to small businesses and disadvantaged communities, not just to large businesses and the wealthy. The Small Business Administration and the Community Development Financial Institutions Fund both received significant increases above fiscal year 2009.

The IRS is sufficiently funded to allow for the fair and effective collection of taxes, including resources to pursue wealthy individuals and businesses who avoid U.S. taxes by parking money in overseas tax havens. There is also more than the budget request for taxpayer services.

The Federal Judiciary receives the funding that it needs to keep up with increased costs and responsibilities. We also provide a 2 percent pay adjustment in 2010 to our hardworking Federal workers.

In this bill, we meet our obligations to the District of Columbia. I feel very strongly that Congress should not be overly involved in local affairs of the District of Columbia. Like any other citizens, D.C. residents should have the right to manage their local affairs on their own.

□ 1130

In this year's bill, with respect to both abortion funding and medical marijuana, we allowed the District of Columbia to make its own decisions, just like each of the 50 States. We also dropped some other outdated and unwarranted restrictions.

I would like to thank Chairman OBEY for his leadership, and my ranking member, Jo Ann Emerson, for her many contributions. I would also like to recognize our staff who have worked long hours to put together this conference report. In particular, I would like to mention David Reich, Bob Bonner, Lee Price, Ed O'Kane, Ariana Sarar and Alex Jabal from our majority staff, and Alice Hogans, Dena Baron and John Martens from our minority staff. On my personal staff I would like

to thank Philip Schmidt, George Sullivan, Matt Alpert and Nadine Berg.

I hope that you would support this bill. Very briefly, on the size of the bill, it's great theater to show that bill, but that's composed of bills that passed this House, some as far back as 6 months ago.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MCGOVERN. I yield the gentleman an additional 30 seconds.

Mr. SERRANO. Those bills went through the committee process, the subcommittee process, the full committee process, the amendment process in committee, the amendment process on the floor. If anyone says that they haven't read that bill, it's because they didn't take time to read those five or six or seven bills that are included there which were passed about 6 months ago.

Mr. DREIER. Mr. Speaker, at this time, with the somewhat unprecedented procedure utilizing the 2,500-page bill as the lectern, I am happy to yield 2½ minutes to the distinguished chair of the Republican Conference, my friend from Columbus, Indiana, a self-described favorite Hoosier of mine, my friend, Mr. PENCE.

Mr. PENCE. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the conference report before us today and the rule that we debate at this moment.

It really is astonishing. At a time when American families are hurting, 10 percent unemployment, now comes before the Congress this massive piece of legislation. The numbers tell the tale—2,500 pages, nearly half a trillion dollars in spending, 5,000 earmarks on hundreds of pages. Now, I know my distinguished colleague on the other side says that the number of pages is a "so what," and I defer to him. I don't think it's about the number of pages; I think it's about the size of the bill that will be offensive to millions of Americans.

When you get down to the details here, Military Construction and Veterans funding gets a 5.2 percent increase; Commerce, Justice, Science gets 11.6 percent; Foreign Operations gets a 33 percent increase this year; Transportation and Housing and Urban Development gets a 23.5 percent increase—I feel like I ought to call for a drum roll here, Mr. Speaker—for a 12.2 percent increase in spending in a single year.

As I told the President of the United States yesterday in the Cabinet Room, there is not a business in Muncie, Indiana, that's going to see a 12 percent increase in its budget this year.

Here in Washington D.C., proving just how out of touch this Nation's Capital is with the struggles that American families and small business and family farmers are facing, here it is, a 12 percent increase in Federal

spending. And it's not just what is in this bill, it's what isn't in this bill.

Gone is the ban on Federal funding of abortions in the District of Columbia. Gone is the ban on legalizing marijuana in our Nation's Capital. Gone is the ban on Federal funding for domestic partnership benefits. And eventually gone is the support for the D.C. Opportunity Scholarship Program, doing away with opportunities for a largely minority population to go to the school of their choice. Also, I might add, gone is any restriction on the use of Federal funds to enforce or implement the Fairness Doctrine.

You know, the President said to us yesterday in the Cabinet Room that we needed to get back to fiscal discipline as a means of encouraging economic growth. I told him he could do one thing this week—veto this bill. Let's have level funding. Let's tell the American people that we get it in Washington D.C.

Mr. MCGOVERN. I yield myself such time as I may consume.

Again, I appreciate the theatrics on the other side. I will remind them again that these bills have all gone through committee and have all been voted on in the House.

I would also like to say to my colleagues, I am reminded of the old saying, "Physician, heal thyself." My colleagues complain about earmarks. I don't have a count here, but my guess is that a good portion of those earmarks are Republican earmarks.

I would say one other thing, Mr. Speaker. Yes, there is increased spending in this bill for things like veterans, veterans' health. I mean, in this bill, there is money for military construction and family housing to support America's military forces and their families at home and overseas.

There is money for Guard and Reserve. There is money for overseas contingency operations; money for Veterans Health Administration; for rural health. There is money here to deal with mental health challenges that so many of our veterans have to deal with, women's veterans programs, long-term care, assistance for homeless vets, medical and prosthetic research, medical facilities, VA construction programs. They go on and on and on.

If my colleagues oppose that, fine. They can vote against the final passage of the bill. But I say that these are priorities for our country, and I am glad that the Appropriations Committee has put this in the bill. I am going to enthusiastically support final passage.

I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I am happy to yield 1½ minutes to my good friend from Mesa, Arizona (Mr. FLAKE).

Mr. FLAKE. I thank the gentleman for yielding.

I have to say, the chairman of the Appropriations Committee said a while ago that they had to have what

amounts to a legislative form of martial law during the consideration of these appropriation bills because many amendments were being brought forward. He said many were not serious amendments.

I can only assume that he was referring to some of mine, because I had a lot of them. But let me tell you, we had more than 500 no-bid contracts going to private companies in the Defense bill alone, and I had many amendments to examine those because, heaven knows, they weren't being examined in the Appropriations Committee sufficiently.

We have had story after story and a cloud hanging over this body, investigations going on; the Ethics Committee has seen fit to investigate the relationship between earmarks and campaign contributions. Yet we say that many of these amendments are not serious amendments.

Who has to decide that? Why don't we let the body here decide and allow those to come to the floor.

Also, the gentleman from Massachusetts mentioned that we have to have this level of funding because of years and years of neglect. I would submit that we would do well to have a little more neglect on the taxpayers' behalf if what we are funding in this bill, and we are, is nearly \$200,000 to renovate a building in Massachusetts to attract private capital investment; \$700,000 for an arts pavilion in Mississippi. I think the taxpayers would be happy for a little more neglect by the Federal Government in this area.

Mr. MCGOVERN. I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, may I inquire of my friend how many speakers he has remaining?

Mr. MCGOVERN. I am the lone remaining speaker.

Mr. DREIER. At this point I am very happy to yield 1 minute to the lectern-in-front-of-him, bill-holding gentleman from Dallas, Texas (Mr. HENSARLING).

Mr. HENSARLING. I thank the gentleman for yielding.

Mr. Speaker, I guess at 5'6" inches I am doing well simply to look over the 2,500-page bill that spends yet another half a trillion dollars of money we do not have. Since the Democrats have come to power, they have increased the deficit tenfold.

We have our first trillion-dollar deficit, a budget plan to triple—triple—the national debt in the next 10 years. Mr. Speaker, every page of this behemoth spending bill represents an IOU to the Chinese to be paid for by our children and grandchildren. Every single page of this 2,500-page, half-a-trillion-dollar bill crushes yet another job in America.

Nobody is going to launch new jobs in America when they have to pay for this, Mr. Speaker. Our highest levels of spending, our highest levels of unemployment. Mr. Speaker, the Democrats don't get it.

Mr. MCGOVERN. I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, may I inquire of the Chair how much time is remaining on each side?

The SPEAKER pro tempore. The gentleman from California has 30 seconds remaining, and the gentleman from Massachusetts has 4 minutes.

Mr. DREIER. Mr. Speaker, I yield myself the balance of my time, the 30 seconds, to simply say that in the name of fairness, there are both Democrats and Republicans who are opposing this rule. Why? Because Democrats and Republicans have been shut out of this process.

On the Republican side, Mr. Speaker, we believe that an 85 percent increase in nondefense discretionary spending is outrageous when the American people are struggling to make ends meet. Only the Federal Government, as my friend from Indiana said, would proceed with a dramatic increase in spending when businesses across this country are working to bring about reductions.

There are shared priorities that we have on national defense; on transportation. But the notion of a 63 percent increase for the Intergovernmental Panel on Climate Change, or \$375 million for the Clean Technology Fund is not the route to go.

Defeat the previous question. Defeat this rule.

Over the last few months, the American people have written and called their Members of Congress or they've made their opinions known at town hall meetings to ask their Congressmen whether they will pledge to read bills before they vote on them. The reason is that the people are upset after finding out the majority leadership forced Congress to vote on a number of sweeping and very expensive bills without giving Members time to understand or really even to read the bills.

For example, we were forced to vote on the final so-called "stimulus" bill, on the omnibus appropriations bill, and on cap-and-trade with less than 24 hours to read the bills; in some instances, much less than 24 hours. And that's no way to run this House. Our constituents are rightly upset.

You would think, Mr. Speaker, this would not be an issue, as the distinguished Speaker is on record as saying in *A New Direction for America*, "Members should have at least 24 hours to examine bills and conference reports before floor consideration." It's even on her Web site; yet, time and time again, the distinguished Speaker and majority leadership have refused to live up to their pledge.

That is why a bipartisan group of 182 Members have signed a discharge petition to consider a bill that would require that all legislation and conference reports be made available to Members of Congress and the general public for 72 hours before they be brought to the House floor for a vote.

That's why today I will be asking for a "no" vote on the previous question so that we can amend this rule and allow the House to consider that legislation, H. Res. 554, a bipartisan bill by my colleagues, Representatives BAIRD and CULBERSON.

By voting no on the previous question, Members will still have an opportunity to debate and consider this conference report, but if the previous question is defeated, it will also allow for separate consideration of the Baird-Culberson bill within 3 days. So we can vote on the conference report and then, once we are done, consider H. Res. 554.

Mr. Speaker, I would like to insert the text of the amendment and extraneous materials immediately prior to the vote on the previous question.

Mr. Speaker, I ask my colleagues to vote "no" on the previous question and on the rule.

Mr. MCGOVERN. Mr. Speaker, the American people, indeed, are struggling, and they are struggling because of years of neglect by President Bush and the Republicans here in this Congress who have neglected, I think, the most important pressing priorities that everyday people face. What we are trying to do is clean up their mess, and this bill represents an increase in spending on important priorities that have been underfunded in the past, everything from infrastructure, because our infrastructure all over our country is crumbling because of neglect, to an increase in funding for veterans health and for veterans housing.

I am proud of the priorities in these appropriations bills. We have appropriations bills that have a conscience, that actually respond to the needs of the American people. I understand, as I said before, the frustration of the other side, because what they would like is for us to get nothing done.

But the reality, Mr. Speaker, is that this Democratic Congress is doing the opposite. Politico said, "A Democratic Congress that is enjoying its greatest political and legislative success since at least the beginning of the Clinton administration and arguably since its legislative heyday in the mid-1960s."

We are moving forward on things like the American Recovery and Reinvestment Act to help keep people's jobs and create more jobs; the Cash for Clunkers bill which jump-started the U.S. auto industry and provided consumers with up to \$4,500 to trade in an old vehicle for one with higher fuel efficiency. We have passed a bill to help families save their homes.

We passed the Edward M. Kennedy Serve America Act, tripling volunteerism opportunities to a quarter of a million people. We have passed health care for 11 million more children that without this bill would not have access to health care. The FDA regulation of tobacco, the Ryan White HIV/AIDS Treatment Extension Act, the Omnibus Public Lands Management Act, the Fraud Enforcement and Recovery Act, the military procurement reform bill, strengthening oversight of TARP, the Lilly Ledbetter Fair Pay Act.

I can go on and on and on, but this has been an activist Congress, responding to the needs of the American people,

responding to those who are struggling or who are out of work, because they were neglected for so many years.

We are trying to deal with our debt as well, trying to go back to what President Clinton established, a time of record surpluses. But when the Republicans came in, the first thing they did was pass tax cuts for wealthy people without paying for it. The rich got richer while the middle class got poorer.

Mr. Speaker, this omnibus bill before us represents, I think, the right priorities, the priorities of the American people.

I would urge a "yes" vote on the previous question and on the rule.

The material previously referred to by Mr. DREIER is as follows:

AMENDMENT TO H. RES. 961 OFFERED BY MR. DREIER

At the end of the resolution, insert the following new section:

SEC. 2. On the third legislative day after the adoption of this resolution, immediately after the third daily order of business under clause 1 of rule XIV and without intervention of any point of order, the House shall proceed to the consideration of the resolution (H. Res. 554) amending the Rules of the House of Representatives to require that legislation and conference reports be available on the Internet for 72 hours before consideration by the House, and for other purposes. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution and any amendment thereto to final adoption without intervening motion or demand for division of the question except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Rules; (2) an amendment, if offered by the Minority Leader or his designee and if printed in that portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII at least one legislative day prior to its consideration, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read and shall be separately debatable for twenty minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit which shall not contain instructions. Clause 1(c) of rule XIX shall not apply to the consideration of House Resolution 554.

(The information contained herein was provided by Democratic Minority on multiple occasions throughout the 109th Congress.)

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Democratic majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's *Precedents of the House of Representatives*, (VI, 308-311) describes the vote on the previous question on the rule as "a motion to direct or control the consideration of the subject before the House being made by the Member in charge." To defeat the previous question is to give the

opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that "the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition" in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: "The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition."

Because the vote today may look bad for the Democratic majority they will say "the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . [and] has no substantive legislative or policy implications whatsoever." But that is not what they have always said. Listen to the definition of the previous question used in the Floor Procedures Manual published by the Rules Committee in the 109th Congress, (page 56). Here's how the Rules Committee described the rule using information from Congressional Quarterly's "American Congressional Dictionary": "If the previous question is defeated, control of debate shifts to the leading opposition member (usually the minority Floor Manager) who then manages an hour of debate and may offer a germane amendment to the pending business."

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled "Amending Special Rules" states: "a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate." (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon."

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Democratic majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. MCGOVERN. I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on ordering the previous question will be followed by 5-minute votes on adoption of House Resolution 961, if ordered; and the motion to suspend the rules on House Resolution 35.

The vote was taken by electronic device, and there were—yeas 227, nays 187, not voting 20, as follows:

[Roll No. 947]

#### YEAS—227

Abercrombie	Gutierrez	Oberstar
Ackerman	Hall (NY)	Obey
Adler (NJ)	Halvorson	Oliver
Altmire	Hare	Ortiz
Andrews	Harman	Owens
Arcuri	Hastings (FL)	Pallone
Baca	Herseeth Sandlin	Pascarell
Barrow	Higgins	Pastor (AZ)
Bean	Himes	Payne
Becerra	Hinchev	Perlmutter
Berkley	Hinojosa	Perriello
Berman	Hirono	Peters
Berry	Hodes	Peterson
Bishop (GA)	Holden	Pingree (ME)
Bishop (NY)	Holt	Polis (CO)
Blumenauer	Honda	Pomeroy
Boccieri	Hoyer	Price (NC)
Boswell	Inslee	Quigley
Boucher	Israel	Rahall
Boyd	Jackson (IL)	Rangel
Brady (PA)	Johnson (GA)	Reyes
Butterfield	Johnson, E. B.	Richardson
Capps	Kagen	Rodriguez
Capuano	Kanjorski	Ross
Cardoza	Kaptur	Rothman (NJ)
Carnahan	Kennedy	Roybal-Allard
Carney	Kildee	Ruppersberger
Carson (IN)	Kilpatrick (MI)	Rush
Castor (FL)	Kilroy	Ryan (OH)
Chandler	Kind	Salazar
Chu	Kirkpatrick (AZ)	Sanchez, Linda T.
Clarke	Kissell	Sanchez, Loretta
Clay	Klein (FL)	Sarbanes
Cleaver	Kosmas	Schakowsky
Clyburn	Kucinich	Schauer
Cohen	Langevin	Schiff
Connolly (VA)	Larsen (WA)	Schrader
Conyers	Larson (CT)	Schwartz
Cooper	Lee (CA)	Scott (GA)
Costello	Levin	Scott (VA)
Courtney	Lewis (GA)	Serrano
Crowley	Lipinski	Sestak
Cuellar	Loebbeck	Shea-Porter
Cummings	Lofgren, Zoe	Sherman
Dahlkemper	Lowe	Shuler
Davis (AL)	Lujan	Skelton
Davis (CA)	Lynch	Slaughter
Davis (IL)	Maffei	Smith (WA)
Davis (TN)	Maloney	Snyder
DeFazio	Markey (CO)	Space
DeGette	Markey (MA)	Speier
Delahunt	Marshall	Spratt
DeLauro	Massa	Stark
Dicks	Matheson	Sutton
Dingell	Matsui	Teague
Doggett	McCarthy (NY)	Thompson (CA)
Doyle	McCollum	Tierney
Edwards (MD)	McDermott	Titus
Edwards (TX)	McGovern	Tonko
Ellison	McMahon	Towns
Eshoo	McNerney	Tsongas
Etheridge	Meek (FL)	Van Hollen
Farr	Melancon	Velázquez
Fattah	Michaud	Visclosky
Filner	Miller (NC)	Walz
Foster	Miller, George	Watson
Frank (MA)	Minnick	Watt
Fudge	Mollohan	Waxman
Garamendi	Moore (KS)	Weiner
Gonzalez	Moore (WI)	Welch
Gordon (TN)	Murphy (CT)	Wexler
Grayson	Murphy (NY)	Wilson (OH)
Green, Al	Murphy, Patrick	Woolsey
Green, Gene	Nadler (NY)	Wu
Griffith	Neal (MA)	Yarmuth
Grijalva	Nye	

#### NAYS—187

Aderholt	Boehner	Burgess
Akin	Bonner	Burton (IN)
Alexander	Bono Mack	Calvert
Austria	Boozman	Camp
Bachmann	Boren	Campbell
Bachus	Boustany	Cao
Baird	Brady (TX)	Capito
Barton (TX)	Bright	Carter
Biggert	Brown (GA)	Cassidy
Bilbray	Brown (SC)	Castle
Bilirakis	Brown, Corrine	Chaffetz
Bishop (UT)	Brown-Waite,	Childers
Blackburn	Ginny	Coble
Blunt	Buchanan	Coffman (CO)

Cole	King (IA)	Price (GA)
Conaway	King (NY)	Putnam
Crenshaw	Kirk	Rehberg
Culberson	Kline (MN)	Reichert
Davis (KY)	Kratovil	Roe (TN)
Deal (GA)	Lamborn	Rogers (AL)
Dent	Lance	Rogers (KY)
Diaz-Balart, L.	Latham	Rogers (MI)
Diaz-Balart, M.	LaTourrette	Rohrabacher
Donnelly (IN)	Latta	Rooney
Dreier	Lee (NY)	Ros-Lehtinen
Driehaus	Lewis (CA)	Roskam
Duncan	Linder	Royce
Ehlers	LoBiondo	Ryan (WI)
Ellsworth	Lucas	Scalise
Emerson	Luetkemeyer	Schmidt
Fallin	Lummis	Schock
Flake	Lungren, Daniel E.	Sensenbrenner
Fleming	Mack	Sessions
Forbes	Manzullo	Shadegg
Fortenberry	Marchant	Shimkus
Fox	McCarthy (CA)	Shuster
Franks (AZ)	McCaul	Simpson
Frelinghuysen	McClintock	Smith (NE)
Gallagher	McCotter	Smith (NJ)
Garrett (NJ)	McHenry	Smith (TX)
Gerlach	McIntyre	Souder
Giffords	McMorris	Stearns
Gingrey (GA)	Rodgers	Stupak
Gohmert	Miller (FL)	Sullivan
Goodlatte	Miller (MI)	Taylor
Granger	Miller, Gary	Terry
Graves	Mitchell	Thompson (MS)
Guthrie	Moran (KS)	Thompson (PA)
Hall (TX)	Murphy, Tim	Thornberry
Harper	Myrick	Tiahrt
Hastings (WA)	Napolitano	Tiberi
Heller	Neugebauer	Turner
Hensarling	Nunes	Upton
Herger	Olson	Walden
Hill	Paul	Wamp
Hoekstra	Paulsen	Westmoreland
Hunter	Pence	Whitfield
Inglis	Petri	Wilson (SC)
Issa	Pitts	Wittman
Jenkins	Platts	Wolf
Johnson (IL)	Poe (TX)	Young (AK)
Johnson, Sam	Posey	Young (FL)
Jones		
Jordan (OH)		

#### NOT VOTING—20

Baldwin	Heinrich	Radanovich
Barrett (SC)	Jackson-Lee	Sires
Bartlett	(TX)	Tanner
Braley (IA)	McKeon	Wasserman
Buyer	Meeks (NY)	Schultz
Cantor	Mica	Waters
Costa	Moran (VA)	
Engel	Murtha	

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in the vote.

□ 1210

Mrs. NAPOLITANO and Messrs. BOREN and MCINTYRE changed their vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 221, nays 200, not voting 13, as follows:

[Roll No. 948]

## YEAS—221

Abercrombie  
Ackerman  
Adler (NJ)  
Altmire  
Andrews  
Arcuri  
Baca  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Berry  
Bishop (GA)  
Bishop (NY)  
Blumenauer  
Bocieri  
Boswell  
Boucher  
Boyd  
Brady (PA)  
Braley (IA)  
Butterfield  
Capps  
Capuano  
Cardoza  
Carnahan  
Carson (IN)  
Castor (FL)  
Chandler  
Chu  
Clarke  
Clay  
Clever  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Courtney  
Crowley  
Cuellar  
Cummings  
Davis (AL)  
Davis (CA)  
Davis (IL)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dicks  
Dingell  
Doggett  
Doyle  
Edwards (MD)  
Edwards (TX)  
Ellison  
Engel  
Eshoo  
Etheridge  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Fudge  
Garamendi  
Gonzalez  
Gordon (TN)  
Grayson  
Green, Al  
Green, Gene  
Grijalva  
Gutierrez

Hall (NY)  
Halvorson  
Hare  
Harman  
Hastings (FL)  
Heinrich  
Herseth Sandlin  
Himes  
Hinchey  
Hinojosa  
Hirono  
Hodes  
Holden  
Holt  
Honda  
Hoyer  
Inslee  
Israel  
Jackson (IL)  
Jackson-Lee  
(TX)  
Johnson (GA)  
Johnson, E.B.  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
Kissell  
Klein (FL)  
Kosmas  
Langevin  
Larsen (WA)  
Larson (CT)  
Lee (CA)  
Levin  
Lewis (GA)  
Loeb  
Loeb  
Lofgren, Zoe  
Lowey  
Luján  
Lynch  
Maffei  
Maloney  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (NY)  
McColum  
McDermott  
McGovern  
McMahon  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Michaud  
Miller (NC)  
Miller, George  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy, Patrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Nye  
Oberstar

Obey  
Oliver  
Ortiz  
Owens  
Pallone  
Pascarelli  
Pastor (AZ)  
Payne  
Perlmutter  
Perriello  
Peters  
Peterson  
Pingree (ME)  
Polis (CO)  
Pomeroy  
Price (NC)  
Rahall  
Rangel  
Reyes  
Richardson  
Rodriguez  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)  
Salazar  
Sánchez, Linda  
T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Sires  
Slaughter  
Smith (WA)  
Snyder  
Space  
Speier  
Spratt  
Stark  
Tanner  
Teague  
Thompson (CA)  
Tierney  
Titus  
Tonko  
Townes  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Schultz  
Waters  
Watson  
Waxman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

## NAYS—200

Aderholt  
Akin  
Alexander  
Austria  
Bachmann  
Bachus  
Baird  
Barton (TX)  
Biggart  
Bilbray  
Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehner

Bonner  
Bono Mack  
Boozman  
Boren  
Boustany  
Brady (TX)  
Bright  
Broun (GA)  
Brown (SC)  
Brown, Corrine  
Brown-Waite,  
Ginny  
Buchanan  
Burgess  
Burton (IN)

Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Carney  
Carter  
Cassidy  
Castle  
Chaffetz  
Childers  
Coble  
Coffman (CO)  
Cole

Conaway  
Costello  
Crenshaw  
Culberson  
Dahlkemper  
Davis (KY)  
Deal (GA)  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Donnelly (IN)  
Dreier  
Driehaus  
Duncan  
Ehlers  
Ellsworth  
Emerson  
Fallin  
Flake  
Fleming  
Forbes  
Fortenberry  
Foxy  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Giffords  
Gingrey (GA)  
Gohmert  
Goodlatte  
Granger  
Graves  
Griffith  
Guthrie  
Hall (TX)  
Harper  
Hastings (WA)  
Heller  
Hensarling  
Herger  
Hill  
Hoekstra  
Hunter  
Inglis  
Issa  
Jenkins  
Johnson (IL)  
Johnson, Sam  
Jones  
Jordan (OH)  
King (IA)

King (NY)  
Kingston  
Kirk  
Kirkpatrick (AZ)  
Kline (MN)  
Kratovil  
Kucinich  
Lamborn  
Lance  
Latham  
LaTourette  
Latta  
Lee (NY)  
Lewis (CA)  
Linder  
Lipinski  
LoBiondo  
Lucas  
Luetkemeyer  
Lummis  
Lungren, Daniel  
E.  
Mack  
Manzullo  
Marchant  
McCarthy (CA)  
McCaul  
McClintock  
McCotter  
McHenry  
McIntyre  
McKeon  
McMorris  
Rodgers  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Minnick  
Mitchell  
Moran (KS)  
Murphy (NY)  
Murphy, Tim  
Myrick  
Neugebauer  
Nunes  
Olson  
Paul  
Paulsen  
Pence  
Petri  
Pitts  
Platts  
Poe (TX)

Posey  
Price (GA)  
Putnam  
Quigley  
Rehberg  
Reichert  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Ross  
Royce  
Ryan (WI)  
Scalise  
Schmidt  
Schock  
Sensenbrenner  
Sessions  
Shadegg  
Shimkus  
Shuler  
Shuster  
Simpson  
Skelton  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Souder  
Stearns  
Stupak  
Sullivan  
Taylor  
Terry  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Turner  
Upton  
Walden  
Wamp  
Westmoreland  
Whitfield  
Wilson (SC)  
Wolf  
Young (AK)  
Young (FL)

## NOT VOTING—13

Baldwin  
Barrett (SC)  
Bartlett  
Buyer  
Davis (TN)  
Higgins  
Mica  
Moran (VA)  
Murtha  
Radanovich

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1219

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Ms. SUTTON. Mr. Speaker, on rollcall No. 948, I inserted my voting card to vote "aye" and my vote failed to register. Had I been present, I would have voted "yea."

## FUNDING FOR CONTINUED TYPE 1 DIABETES RESEARCH

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 35.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by

the gentlewoman from California (Mrs. CAPPs) that the House suspend the rules and agree to the resolution, H. Res. 35.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

## REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H.R. 4173, WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

Mr. ARCURI, from the Committee on Rules, submitted a privileged report (Rept. No. 111-370) on the resolution (H. Res. 964) providing for further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## CONFERENCE REPORT ON H.R. 3288, CONSOLIDATED APPROPRIATIONS ACT, 2010

Mr. OLIVER. Mr. Speaker, pursuant to House Resolution 961, I call up the conference report on the bill (H.R. 3288) making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. WEINER). Pursuant to House Resolution 961, the conference report is considered read.

(For conference report and statement, see proceedings of the House of December 8, 2009, at page 29920.)

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. OLIVER) and the gentleman from Iowa (Mr. LATHAM) each will control 30 minutes.

The Chair recognizes the gentleman from Massachusetts.

## GENERAL LEAVE

Mr. OLIVER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include tabular and extraneous material on the conference report to accompany H.R. 3288.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. OLIVER. Mr. Speaker, I yield myself 3 minutes.



It is my privilege and pleasure to present the Consolidated Appropriations Act for fiscal year 2010 to the House.

This conference report is the product of many hours of hearings and briefings across six subcommittees, always with bipartisan input and excellent Member participation, and culminated by extensive negotiations with our Senate colleagues. I especially would like to recognize the important contributions of our ranking member, TOM LATHAM of Iowa, in putting together the Transportation and Housing portions of this bill. While we may not always agree, I always appreciate his partnership, and his input has made the bill better.

I am particularly proud of the Transportation and Housing portion of the report because it demonstrates our mutual commitment to investing in our Nation's housing and transportation infrastructure; our mutual commitment to maintaining critical services in urban and rural communities; our mutual commitment to vulnerable populations such as the elderly and disabled; our mutual commitment to building sustainable communities for our Nation's families; and our mutual commitment to maintaining an efficient and safe transportation system that contributes to America's place in a global economy.

Notably, the conference agreement provides funding to improve and repair roughly 1 million miles of Federal aid highways; to support and expand a public transit system that carried more than 10 billion riders last year; to meet demand for 21st century intercity passenger rail systems, demonstrated by Amtrak's 11 percent growth in annual ridership; and modernizing the air traffic control system that is outdated and manages over 10.5 million flights annually.

Within the Housing and Urban Development programs, the conference agreement fully funds the section 8 rental housing assistance program, thereby ensuring affordable housing for 3½ million families and individuals; the agreement provides 10,000 new vouchers to homeless veterans; the agreement keeps a roof over the heads of 1.2 million households living in public housing; and the agreement helps communities improve local economies and create jobs through the Community Development Block Grant program.

In conclusion, we worked hard to balance many competing demands to produce a bill that reflects the bipartisan needs for transportation and housing, and strengthens the foundation upon which our economic turnaround is being built. This is a good product, and I urge Members to support it.

I reserve the balance of my time.

Mr. LATHAM. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I first want to thank Chairman OLVER for his kind words and his leadership this year. The gentleman from Massachusetts truly is a gentleman. And I appreciate very much the work that he has done. He has very artfully negotiated a good conference report for the House. Those of you who know JOHN OLVER know that he puts a great deal of effort and thought into this bill and to the issues in the transportation and housing worlds. In fact, sometimes you feel like he has gone a little bit too far into the weeds, but his dedication is to be admired.

It is all the more unfortunate that we are here today under these circumstances. Instead of presenting a Transportation-HUD conference report, Chairman OLVER is forced to carry five other bills with him, bills that should be considered on their own as conference reports.

The Transportation-HUD bill, like all appropriations bills, was considered under a closed rule in the name of expediency. The Transportation-HUD bill passed the floor of the House in July. The Senate even passed the bill. That was on September 17. The Senate, apparently the body that can't get their work done on time, managed to do it at that time under an open amendment process. They even actually got to offer amendments on the bill, which is something we didn't get to do here in the House.

□ 1230

Realistically, we could have and should have been able to bring the Transportation-HUD conference report to the floor by the end of the fiscal year. Instead, here we are today 3 months into the fiscal year, 3 months after the Senate passed its bill in an omnibus today.

The Transportation-HUD is not alone in this situation. The MilCon-Veterans bill was also considered and passed by both bodies. MilCon-VA should be a stand-alone conference report. Commerce, Justice, Science actually had a conference meeting noticed up, but that got yanked. The CJS should be a stand-alone bill. Instead, it also got stuck in this omnibus. Three other bills—the Foreign Operations bill, the Financial Services bill, and even the Labor-HHS bill, Mr. OBEY's own bill—weren't considered in the Senate and are buried in this package.

Members of this House should be aware you voted against this type of a package on Tuesday. The House voted to adopt a motion to instruct that said no extraneous matters may be added to the Transportation-HUD conference report. Instead, against the wishes of the House, we've added five bills to this conference report.

I regret very much that I am unable to support this bill. It's my first year on this bill and I have enjoyed, obviously, working with the chairman. The

issues are interesting and our subcommittee members are really engaged and bring a variety of experiences to the table. However, the price tag on this bill is simply too high.

Mr. LEWIS offered an amendment, very reasonable, to have the spending levels proposed by Congress at the 2010 level, everything but Defense and Veterans, at 2 percent over last year. We spent a lot of money last year, so a 2 percent increase over last year would really be quite generous.

However, when we finish the 2010 bills, the Democrats will have increased government spending by 85 percent, 85 percent over the last 2 years. You tell me one American family that has 85 percent more in 2009. I can tell you none of my constituents have an additional 85 percent to spend this year. And they sure don't have the funds to pay for the tax increases that will be needed to pay for this or the debt that the other party is dumping on our taxpayers.

Another issue I think the Members need to be aware of in this package, despite our earlier efforts, the Justice Department has issued an opinion that the government will still give funds to ACORN. Let me say that again. We will still be funding ACORN under this bill and their existing contracts. Federal funds will still flow. I had an amendment in conference to substitute new language to get at this issue, as I think all of us were under the impression that ACORN was cut off for good. That's what we were told. However, the Justice Department has another view, and the agencies at least in the HUD area will still cut checks to ACORN.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. LATHAM. I yield myself another 30 seconds.

I told the Rules Committee yesterday this is a bittersweet time. The THUD conference is completed, and that in itself is an accomplishment. There's a lot of good policy in the Transportation-HUD conference bill, but this package with all of the six bills piled together is about \$390 billion and five appropriations bills too large.

Mr. Speaker, I reserve the balance of my time.

Mr. OLVER. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. LOWEY). NITA LOWEY is the chairwoman of the State and Foreign Operations Subcommittee of Appropriations, one of the bills which is included in this package.

Mrs. LOWEY. I thank the chairman for his important work on this bill.

I am very pleased to present Division F of the fiscal year 2010 omnibus, which includes \$48.764 billion in appropriations for the Department of State, foreign operations, and related programs. At \$1.235 billion, or 2 percent below fiscal year 2009 enacted levels including supplemental appropriations, and \$3.28

billion below the President's fiscal year 2010 request, these funds support the U.S. diplomatic and development priorities, a cornerstone of U.S. national security.

To address security imperatives, it includes \$4.5 billion to help stabilize, strengthen, and rebuild Afghanistan, Pakistan, and Iraq; in conjunction with funding in the 2009 supplemental, full funding for our commitments to allies and partners in the Middle East, including a total of \$2.775 billion in FMF for Israel, \$1.3 billion for Egypt, \$300 billion for Jordan; a provision to prevent the Export-Import Bank from entering into any deals with foreign companies that significantly contribute to Iran's refined petroleum industry and gives the Secretary of State authority to exempt countries cooperating closely with the United States to stop Iran from acquiring nuclear weapons; \$873.6 million for counternarcotics and alternate development programs in Latin America.

This bill continues the congressional commitment to increase diplomatic and development capacity with resources to hire, train, support, and protect 700 new Department of State personnel and 300 new USAID personnel.

The bill increases funding for key long-term development priorities, including \$7.7 billion for global health activities including \$5.7 billion for global HIV/AIDS; \$1.1 billion to improve access to quality basic and higher education; \$1.1 billion for food security and agricultural development; over \$1.25 billion in bilateral and multilateral assistance for clean energy, biodiversity, and climate change initiatives; and \$315 million to expand access to safe water and sanitation; and \$2.57 billion for refugee and disaster assistance.

Finally, to improve accountability and oversight, the bill provides \$149 million for the Inspectors General of the Department of State and USAID and the Special Inspectors General for Iraq and Afghanistan Reconstruction.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. OLVER. Mr. Speaker, I yield 2 additional minutes to the gentleman.

Mrs. LOWEY. Mr. Speaker, the bipartisan foreign assistance package before you preserves our Nation's interests. I'm also pleased this appropriations package invests in worthy initiatives in our communities that will improve health, education, law enforcement, environment, and infrastructure in New York and around the Nation.

So I urge my colleagues to give this bill our bipartisan support.

Mr. LATHAM. Mr. Speaker, it's my pleasure to yield 5 minutes to the distinguished gentleman from California (Mr. LEWIS), ranking member of the full committee.

Mr. LEWIS of California. I appreciate very much my colleague's yielding.

As I open my remarks, I know I want to join my chairman to express our appreciation for the fine work of our staff. They worked long hours and should be very much appreciated by all of us. So as we break for the Christmas recess, I hope you all take some time to really enjoy yourselves. You deserve it.

Once again, interestingly enough, Mr. Speaker, we find ourselves approaching the holiday season with our appropriations work largely unfinished. Here we are 2 weeks before Christmas and 10 weeks after the end of the fiscal year demonstrating to the world that Congress remains incapable of getting its work done.

It's ironic that some in the House are quick to find fault in the lack of efficiency of governments such as Iraq and Afghanistan. Perhaps if we did a better job of meeting our own milestones, like finishing our spending bills by October 1 of each year, we would be in a better position to suggest milestones for others.

It's laughable to this Member that some in the Democrat majority are pointing fingers at the Republican minority for this failure of leadership. After all, it's the Democrat majority that controls both the House and the Senate and the White House. As much as it may pain my friends on the other side of the aisle, they can no longer blame George Bush or the Republican Party for their own failure to lead.

Still left unfinished is the Defense Appropriations bill, which many believe will be used by the majority leadership to pass unpopular legislation that has little chance of passing on its own. On this point let me be very clear: The House Republicans will not support passage of a Defense Appropriations measure if it is used as a vehicle to raise the debt limit and if it contains other controversial legislative items.

The reckless record of spending by the Congress has caused our national debt to more than triple over the last year. In this \$450 billion package that's before us today, spending on domestic programs has increased by an astonishing 14 percent, while Military Construction and Veterans funding, for example, is held to only 5 percent.

Sadly, the misplaced priorities of this Congress have resulted in too much spending, fewer jobs, and bigger government that the public doesn't want and certainly cannot afford. Some in Washington refer to this unrestrained spending as a "change we can believe in." Most people in our country call it "business as usual."

There is no question that the era of Big Government has returned to Washington. One need only look at the so-called Recovery Act or double-digit unemployment, a job-killing cap-and-trade bill, and an unpopular government takeover of health care as evi-

dence. It's no wonder that the public confidence in the Congress is at an all-time low.

Mr. Speaker, I cannot and will not support this package of spending bills because it simply spends too much money and makes a mockery of our legislative process.

Mr. OLVER. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. OBEY). Mr. OBEY is the chairman of the full Appropriations Committee but also serves as the chairman of the Labor, Health, and Education Subcommittee.

Mr. OBEY. Mr. Speaker, I have a question. Is the gentleman from California (Mr. LEWIS) the same Mr. LEWIS who chaired the Appropriations Committee the last year that the Republicans were in control? It's my impression that he is. As I recall, in that year the Republicans passed exactly two appropriation bills through the Congress and had them signed into law. The other nine appropriation bills were not passed in October. They were not passed in November. They were not passed in December. They were never passed. And so the incoming Congress under our control was forced to pass their bills at the beginning of the next session before we could even get to our own. Yet the gentleman with that record is now complaining because, with the passage of this bill, we will only have sent to the President 11 of the 12 appropriation bills needed for the year. And I would point out that by next week, we intend to send the last bill to him. If that happens, the only difference between our friends on that side of the aisle and us is that we will have gotten our work done. Despite the fact that we had to deal with the greatest economic collapse in 75 years, we will have finished every appropriation bill.

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In contrast to our friends on the other side of the aisle who in the last year they controlled this place were not able to complete action on a single domestic appropriation bill, under those circumstances, for the gentleman on that side of the aisle to squawk about the fact that we are a few days late is truly a case of the pot calling the kettle black. It is very interesting logic.

With respect to the spending amount in this bill, I would simply point out, as the gentleman from Massachusetts did earlier, that we are in the process of trying to deal with years of neglect and we are in the process of trying to deal with an economic emergency and catastrophe.

The gentleman complains that this bill is 14 percent above last year for comparable bills. The fact is, let's look at what those differences are. We added \$3 billion more than last year so we could clean up the disability backlog

for veterans' claims. Anybody on that side of the aisle want to take that money out? We have an additional \$4.2 billion for the census because we are required by law to conduct that census so we can redirect huge amounts of Federal money to all of the localities in this country in an accurate fashion. Anybody think we ought to forgo that for the next 10 years?

We've also put \$14.8 billion above the previous year in this bill to cover war costs. We put it in the regular bill so it would show up rather than hiding it in the supplemental as previous Congresses did. Would you really rather go back to the old practice of hiding that \$14.8 billion?

Infrastructure investments. We have a 28 percent unemployment rate in the construction industry in 14 States in this country, so we are trying to respond to that by putting an extra \$11 billion into infrastructure construction programs. Anybody think we ought to take that money out?

Health care. We are about to pass the most momentous health care reform bill in the history of the country. That is going to put 31 million more people under our health care system. This bill provides \$6 billion in order to expand the capacity of our health care system to deal with those people. Anybody think we shouldn't do that?

And then on education, I plead fully guilty. We've got \$5.6 billion more than last year, so that people who are losing their jobs and need retraining or need some additional education in community colleges can get it.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. OLVER. Mr. Speaker, I yield the gentleman 2 additional minutes.

Mr. OBEY. Does anybody really think we should abandon those students and those workers? We don't think we should.

So I would simply say, this country is struggling to overcome the longest and deepest economic downturn since the Great Depression. This bill before us today is a key measure to help address the problems and provide relief for millions of hardworking Americans caught in the struggle for economic survival. And for the minority to complain about the fact that we are 90 days or 70 days late in getting the job done when they never got the job done when they were in control of this place is, to me, strange, if not laughable.

With that, I thank the gentleman for the time.

Mr. LATHAM. Mr. Speaker, I would like to yield 3 minutes to the gentleman from Virginia (Mr. WOLF).

Mr. WOLF. I want to thank Chairman MOLLOHAN and Senator SHELBY and Senator MIKULSKI for their efforts. I will not be supporting the bill for the reasons that are in my submitted statement.

But I want to raise another issue that somebody ought to focus on in

this Congress. This bill will allow people like Khalid Sheik Mohammed to be sent from Guantanamo Bay to New York City and I believe personally it will endanger the citizens of New York City. And they're now going to come in and ask for up to \$75 or \$100 million to do that. That's money that you could put in food pantries or education.

Secondly, we have asked that this information be nonclassified so people can know where these people from Guantanamo Bay are going. Twenty-six of them—and it's classified and I can't say any more—are being sent to Yemen. Yemen. That's where the sheikh who had the impact on Major Hasan Nidal, who killed 13 people at Fort Hood, that's where he operates. And al Qaeda in the Arabian Peninsula is all over Yemen. So you are going to release people from Guantanamo Bay, who served with Khalid Sheik Mohammed, who was the mastermind of 9/11 that killed 3,000 people, 30 from my congressional district. Khalid Sheik Mohammed beheaded Daniel Pearl. Think of Daniel Pearl's family. Think of Debra Burlingame and the family of others; and they're going to send them to Yemen. And then they're also going to send two others to a place that no one would believe that they're really going to send them.

By not adopting the amendments that we offered in conference, one, I believe this bill will endanger people in New York City; two, it will put pressure on New York City. You will see stories in the paper. As you vote for this bill, know that you will see stories in the paper of snipers on the rooftops, and tanks moving.

Khalid Sheik Mohammed will be in New York City for 4 years, 4 years or more—Moussaoui was in northern Virginia for over 4 years—and Khalid Sheik Mohammed will say things and do things that will be unconscionable. So as you vote for this bill, you are, in essence, allowing that to take place. It's crazy, absolutely crazy, to think that you can try Khalid Sheik Mohammed in Guantanamo Bay with no cost and no danger to the American citizens, but then they're going to bring him and others into the U.S.

So Khalid Sheik Mohammed gets a civilian trial when a young 19-year-old person in the Army, man or woman, who does something wrong has to go through a military court system.

The bill spends too much. I believe that by bringing Khalid Sheik Mohammed and the others here, we may very well endanger people and bring about another attack. And secondly, to spend all that money to protect Khalid Sheik Mohammed when he could have been tried down at Guantanamo Bay just doesn't make any sense. No one believes that that makes sense. And lastly, to send people to Yemen and other places I think will endanger this country.

Mr. Speaker, I would like to speak briefly on the Commerce Justice Science division of this conference report, as I serve as the Ranking Member on that Subcommittee.

First, I want to thank Chairman MOLLOHAN, Chairman MIKULSKI and Senator SHELBY for their hard work on the CJS portion of the bill, and for their spirit of collaboration and cooperation on this conference agreement.

However, I believe the subcommittee was given an overly generous conference allocation. At \$64.4 billion, the bill is almost a 12 percent increase above last year's level. In my view, this level of funding was well in excess of the amount necessary to produce a good bill.

The bill contains important funding to support NASA, fight terrorism and gangs, and to give our federal law enforcement critical resources.

The CJS division of this package places important limitations and reporting requirements related to the closure of Guantanamo and the movement of detainees.

However, I believe stronger language is necessary, and I regret that amendments I offered at conference to prohibit the transfer and release of detainees into the United States and to require unclassified reports were defeated on party line votes.

There were press reports just yesterday that a former Guantanamo detainee transferred to Saudi Arabia is now a kingpin for al Qaeda in the Arabian Peninsula and at large in Yemen. There are already 10 ex-Gitmo detainees on Saudi Arabia's list of most-wanted terrorists. The current transfer policies will likely result in many more similar stories.

Because my amendments were defeated, this bill will allow dangerous detainees to be transferred to the United States and to unstable countries abroad.

It will allow 26 Yemeni detainees to be returned to Yemen—the emerging al Qaeda stronghold in the Arabian Peninsula where radical cleric Anwar al Aulaqi—the advisor of Ft. Hood terrorist Maj. Hasan Nidal—operates freely. I submit for the RECORD an article on al Aulaqi that appeared in today's Washington Post.

It will allow 2 other detainees to be released to a country worse than Yemen. I cannot share the location because my amendment to declassify this information for the American people was defeated on a party-line vote.

It will allow Khalid Sheik Mohammed to be transferred to New York City and provide him a platform to spread his hateful message—endangering our country.

I am disappointed that the CJS conference report was not brought to the floor as a stand-alone bill, as we were prepared to do weeks ago. Instead we are once again faced with a bloated, half a trillion dollar omnibus.

[From the Washington Post, Dec. 10, 2009]

CLERIC LINKED TO FORT HOOD ATTACK GREW MORE RADICALIZED IN YEMEN  
(By Sudarsan Raghavan)

SANAA, YEMEN.—The Yemeni American cleric at the center of investigations into last month's massacre of 13 people at Fort Hood, Tex., became more openly radical in Yemen, following a path taken by other extremists in this failing Middle East nation with a growing al-Qaeda presence, according to relatives, friends and associates in Yemen.

In interviews, they said Anwar al-Aulaqi, 38, blamed the United States for 18 months he spent in a Yemeni jail, a little-known chapter in the cleric's life that some described as a key path in his radicalization.

Aulaqi, who was born in the United States and spent time in Yemen as a child, left for Britain in early 2002 after he drew scrutiny from U.S. authorities. The United States alleges that Aulaqi was a spiritual adviser to three of the Sept. 11, 2001, hijackers while he was a prayer leader at the Dar al-Hijrah mosque in Falls Church and at a mosque in San Diego.

An examination of some of Aulaqi's sermons and lectures, as well as interviews conducted here, shows that he increasingly began to publicly endorse violence as a religious duty after he returned to Yemen in early 2004, completing his transformation from an imam who condemned the Sept. 11 attacks to an Internet preacher who views Americans as legitimate targets.

Maj. Nidal M. Hasan, who has been charged in the Fort Hood shootings, first contacted Aulaqi by e-mail last December. U.S. authorities intercepted some of the e-mails, but no threat was perceived. The FBI has declined to comment on Aulaqi, citing an ongoing investigation.

After the Fort Hood attack, Aulaqi issued a statement calling Hasan a "hero." In an interview later with a Yemeni journalist, Aulaqi denied that he had ordered or incited Hasan to carry out the attack but said Hasan considered him a confidant.

Aulaqi's path to radicalization, at first, appeared unlikely. The Aulaqis' descendants were sultans who once ruled what is now Yemen's southern province of Shabwa, home to the ancestral village where Aulaqi now lives with his wife and five children. Aulaqi's father, Nasser al-Aulaqi, is a former president of Sanaa University and agriculture minister.

While in Yemen during his childhood, Aulaqi studied in a secular high school in the capital, Sanaa, along with children from other elite families, before returning to Colorado in 1991 to attend college, said a close relative in an hour-long interview. The relative spoke on the condition of anonymity to avoid harming his family's efforts to persuade Aulaqi to become moderate.

He said Aulaqi was an avid swimmer who enjoyed deep-sea fishing. His ambition was to become college professor, focusing on finding ways to address water shortages in Yemen, the relative said. Like many Arabs, the relative said, Aulaqi was angered by the U.S. assault on Iraq in the first Persian Gulf War but didn't show signs of radicalization afterward.

"He was very moderate. He was always against al-Qaeda ideology," said the relative, adding that Aulaqi's contact with the hijackers was a "coincidence."

After Sept. 11, Aulaqi grew frustrated and felt targeted by U.S. authorities, the relative said.

"Sept. 11 changed a lot of Muslims," the relative said. "And the invasion in Iraq in 2003 made him even stronger in his beliefs."

U.S. authorities have alleged that Aulaqi had become radicalized while still in the United States, before the Sept. 11 attacks, but they never found evidence to detain him.

Beginning in 2002, when he left the United States for Britain, Aulaqi lauded Palestinian suicide bombers on a Web site and in lectures attended by ultraconservative Muslims. He spoke at fundraising events hosted by Cage Prisoners, a rights group in Britain, but did not incite violence or express support for al-

Qaeda, said Moazzam Begg, a former Guantanamo Bay, Cuba, detainee who heads the group. "He wouldn't have been so popular if his message was not moderate and across the board," Begg said in a phone interview from London.

In early 2004, Aulaqi returned to Yemen. At a lecture at Sanaa University, he spoke eloquently about Islam's role in the world. He railed against U.S. policies in Iraq. He denounced Israel, according to those present at the lecture. But he stopped short of calling for violent jihad.

"He was not inciting us to use arms," recalled Adil al-Howlari, who now works as a journalist for the United Nations. "He was talking about how to use English to spread Islamic values."

Aulaqi eventually took classes and lectured at Iman University in Sanaa. The university is led by Sheik Abdul Majeed al-Zindani, an influential religious figure whom U.S. officials have described as Osama bin Laden's spiritual leader and placed on a list of global terrorists.

The university has a reputation as an incubator of radicalism. John Walker Lindh, an American who fought with the Taliban, is a former student. Other students allegedly took part in numerous attacks.

Aulaqi's relative said the cleric had given four lectures at the university about Islam's role in medieval Spain.

By 2006, Aulaqi's influence had widened into the world of terrorism through his Web site and Facebook page, even though most Yemenis had never heard of him. Starting that year, investigators have found Aulaqi's sermons downloaded on the computers of suspects in nearly a dozen terrorism cases in Britain and Canada.

In mid-2006, Yemeni authorities arrested him. Aulaqi was accused of inciting attacks against a man over a tribal matter involving a woman. Aulaqi denied the allegations in an interview with Begg last year and accused the U.S. government of pressuring Yemen to keep him locked up.

In that interview, Aulaqi said he spent the first nine months in solitary confinement in an underground cell. Around September 2007, FBI agents interrogated him about the Sept. 11 attacks and other issues, Aulaqi told Begg. Although he wasn't physically abused, Aulaqi said, a U.S. Embassy legal attache swore at him. He was never charged and was released in December 2007.

Yemeni officials have declined to comment.

After his release, Aulaqi's stance on using violence for jihad grew more forceful. Last December, he penned a letter calling for fighters and financing for al-Shabab, the Somali Islamist movement with ties to al-Qaeda. And this January, he published an essay titled "44 Ways to Support Jihad." It called, among other things, for Muslims to stay fit and train in weapons to fight on the battlefield.

Mr. OLIVER. Mr. Speaker, at this time, I yield 3 minutes to the gentleman from Texas (Mr. EDWARDS), chairman of the Veterans Administration and Military Construction Subcommittee of the Appropriations Committee.

Mr. EDWARDS of Texas. Mr. Speaker, this bill supports America's veterans, our troops, and their families in a meaningful way by improving their health care, their benefits, and their quality of life. Those who defend our Nation have earned and deserve this support.

For the first time ever, we provide 2-year funding for VA medical programs. This is an historic achievement and has been one of the highest priorities of our Nation's most respected veterans organizations. The advance funding is a win for veterans and for taxpayers. It will allow the VA to plan its spending more efficiently, which will improve health care for veterans and save taxpayers dollars.

This bill funds President Obama's VA request, a \$5.4 billion increase, the largest Presidential request for increased veterans' funding in over 30 years. Other major initiatives in this bill include new training barracks for military recruits, homeowners assistance for troops being re-stationed, additional funding for the modernization of National Guard and Reserve facilities, and a robust energy conservation program for Department of Defense facilities.

When the gentlewoman from California (Ms. PELOSI) became Speaker in 2007, she promised that supporting veterans would be one of Congress' highest priorities. Speaker PELOSI, with the strong leadership of Chairmen SPRATT and OBEY and FILNER, has kept that promise. Here are some of the significant results in just 3 years: A 60 percent increase in VA funding; 145 new VA community-based outpatient clinics; 70 new vet centers, 3,384 new VA doctors, 14,426 new VA nurses, 8,300 new VA claims processors, an expansion of middle-income veterans' eligibility for VA health care, more than a doubling of mental health care funding for vets, and a historic new GI college education bill.

Ultimately, this is about more than even the importance of better health care and benefits for our troops and vets, it is about respect, respect for the service and sacrifice of those who defend our Nation and their families.

I especially want to thank our ranking member on our subcommittee, Mr. WAMP of Tennessee, who was a critical partner in our work on this portion of this bill, and who would once again demonstrate his deep commitment to our troops and our veterans.

Finally, but certainly not least, I want to thank and salute our subcommittee staff whose professionalism and tireless work has made possible our unprecedented achievements for our veterans and troops: Carol Murphey, the committee clerk; Mary Arnold, Tim Peterson, Walter Hearne, Donna Shabaz, Martin Delgado, Kelly Shea, and Liz Dawson. In my book, they personify the best ideals of public service.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. OLIVER. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. EDWARDS of Texas. Mr. Speaker, with this bill, we keep our promises to those magnificent Americans who

have kept their promise to serve our Nation and the American family.

The fiscal year 2010 Military Construction and Veterans Affairs and Related Agencies Appropriations bill provides \$134.6 billion for projects and programs of critical importance to America's veterans and military troops and their families, including veterans benefits and healthcare, and military family housing, barracks and mission critical facilities.

The bill provides \$53 billion in discretionary funding for the Department of Veterans Affairs (VA) and \$56.6 billion for mandatory VA programs, \$23.3 billion for military construction and family housing, and \$1.4 billion for military construction projects in support of the war in Afghanistan.

In a major victory for America's veterans, the bill for the first time includes advance appropriations for the VA to ensure a stable and uninterrupted source of funding for medical care for veterans. For fiscal year 2011, the bill includes \$48.2 billion for VA medical programs.

The bill provides funding to address several significant priorities, including:

- Renovating surplus building on VA medical campuses to use as housing for homeless veterans;

- Increasing the number of VA outpatient clinics in rural communities where veterans do not have ready access to VA hospitals;

- Accelerating the Army's program to modernize troop housing for trainees;

- Addressing critical unfunded construction requirements of the Guard and reserve;

- Providing mortgage relief to military families required to relocate during the current mortgage crisis;

- Expediting environmental cleanup on closed military bases; and

- Investing in renewable and alternative energy initiatives on military installations.

For Military Construction and Family Housing, the bill includes \$23.3 billion to support American's military forces and their families at home and overseas, \$333.9 million above the request. The bill includes \$11.8 billion for such items as barracks, child care centers, installation chapels, and mission critical operational facilities. Of this amount, \$350 million is provided to accelerate the Army's program to modernize troop housing facilities for trainees. The Army has a need for \$2.2 billion to bring all 115,413 trainee barracks spaces up to standard and the program currently is not scheduled to finish until 2017.

Also includes \$174 million for the Energy Conservation Investment Program (ECIP), \$84 million above the request, to increase the level of investment in renewable and alternative energy resources and to promote energy conservation, green building initiatives, and energy security programs on U.S. military installations.

For the Guard and Reserve component, the bill includes \$1.6 billion, \$601.7 million above the request, to provide readiness centers and operational facilities for the Army National Guard, Air Guard, and Army, Navy, Marine Corps, and Air Force reserve forces. Within this amount, the bill includes \$200 million in additional construction funding to address critical unfunded requirements.

For military and family housing programs, the bill includes \$2.59 billion for family hous-

ing, \$300 million above the request, to further eliminate inadequate military housing, including \$323 million for the Homeowners Assistance Program, \$300 million above the request, to provide additional funding for the expanded mortgage relief program for military families who are required to relocate during the current mortgage crisis and must sell their home at a loss, as well as to wounded warriors who must relocate for medical reasons and to the spouses of fallen warriors similarly affected by the mortgage crisis.

The bill includes funding for base realignment and closure (BRAC) at the level of \$496.8 million for the 1990 BRAC round, \$100 million above the request, to address the large unfunded backlog of environmental cleanup for bases that were closed during the four previous BRAC rounds, and \$7.5 billion for the 2005 BRAC program, the full authorized amount.

Finally, for overseas contingency operations the bill includes \$1.4 billion, matching the request, to support additional military construction requirements to support operations and previously scheduled troop deployments to Afghanistan.

For the Department of Veterans Affairs, the bill includes \$109.6 billion, \$15.3 billion above 2009 and \$747 million above the request. The funding includes \$56.6 billion for mandatory veterans benefit programs and \$53 billion for discretionary funding. Total discretionary funding is \$5.4 billion above 2009, an increase of 11 percent. In addition, the bill provides \$48.2 billion in advance appropriations for veterans medical care programs for fiscal year 2011.

For the Veterans Health Administration, the bill includes \$45.1 billion, matching the request and \$4.1 billion above 2009, for veterans' medical care. The Veterans Health Administration estimates that it will treat more than 6.1 million patients in 2010, including more than 419,000 veterans of Iraq and Afghanistan (56,000 more than 2009).

A major initiative in the VHA includes \$250 million as requested to continue the Rural Health Initiative to which the Congress added \$30 million to increase the number of Community Based Outpatient Clinics (CBOCs) in rural areas for veterans who do not have ready access to VA hospitals. More than 3.2 million (41%) of enrolled veterans live in rural or highly rural areas.

In the area of mental health funding, we have included \$4.6 billion, matching the request and \$300 million above 2009, to treat the psychological wounds of returning combat veterans, including post-traumatic stress disorder. Also included is an additional \$1 million to provide education debt relief as a hiring incentive for mental health professionals.

Funding to treat Operation Enduring Freedom and Operation Iraqi Freedom (OEF/OIF) Veterans is at \$2.1 billion, matching the request and \$463 million above 2009, to meet the healthcare needs of veterans who have served in Iraq and Afghanistan. The VA estimates that the number of OEF/OIF veterans in the VA healthcare system in 2010 will have increased by 61 percent since 2008.

One of the areas of increasing concern is the assistance for homeless veterans, where we have provided \$3.2 billion, matching the request and \$421 million above 2009, for

healthcare and support services for homeless veterans; including \$26 million for a Presidential Initiative to combat homelessness, \$150 million for the homeless grants and per diem program, \$20 million for supportive services for low income veterans and families, and \$21 million to hire additional personnel for the HUD-Veterans Affairs Supportive Housing Program.

The program for medical and prosthetic research is funded at \$581 million, \$71 million above 2009, for research in a number of areas including mental health, traumatic brain injury, spinal cord injury, burn injury, polytrauma injuries, and sensory loss; including a \$48 million increase for research to address the critical needs of Operation Enduring Freedom and Operation Iraqi Freedom veterans.

The effort to improve the condition of medical facilities of the Department of Veteran Affairs continues with a construction program of \$1.9 billion, \$103 million above the request and \$232 million above 2009, including major construction of \$1.2 billion for major medical facilities, including hospitals and clinics, to enable the Department to implement the recommendations made by the Capitol Asset Realignment for Enhanced Services (CARES) Commission, which was established to look at facilities and determine their construction needs. In addition, the bill includes \$703 million, \$103 million above the President's budget request, including \$50 million for the renovation of vacant buildings on VA campuses to be used as housing with supportive services for homeless veterans. The VA estimates that on any given night, 131,000 veterans are homeless. This program will strengthen the VA's goal of eliminating homelessness among veterans by providing housing and counseling services in settings that are in close proximity for VA hospitals.

Funding for grants to states for the construction of extended care facilities is set at \$100 million, an increase of \$15 million above the request. And \$42 million in grant funding for state veterans' cemeteries is provided in this bill.

Finally, for the Department of Veterans Affairs, we have included \$1.7 billion for benefits claims processors, \$223 million above 2009, to enable the Department to hire roughly 1,200 additional claims processors to continue to address the backlog of benefits claims and to reduce the time to process new claims. The most recent VA quarterly status report estimates that nearly 397,000 claims are pending. When added to funding and hiring provided in prior years, this will result in a total of 8,300 new claims processors being hired since January of 2007.

With passage of this bill, Congress has provided a 60 percent increase in funding for veterans health care and benefits since January 2007. This funding has resulted in a total increase of 8,300 claims processors as mentioned, 145 community-based outpatient clinics, 70 Vet Centers, and more than 47,000 additional Veterans Health Administration employees. These additional resources will provide our veterans with their benefits more quickly and improve access to health care and other services.

Congress has also funded several initiatives to improve the quality of life for our military

and their families to include: \$3.2 billion for new military hospitals, \$1 billion for new child care centers to serve 20,000 military children, and \$920 million in additional funding for barracks.



MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010  
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
TITLE I - DEPARTMENT OF DEFENSE							
Military construction, Army.....	4,692,648	3,660,779	3,630,422	3,477,673	3,719,419	-973,229	+58,640
Rescission.....	-51,320	---	-59,500	---	---	+51,320	---
Emergency appropriations (P.L. 111-5).....	180,000	---	---	---	---	-180,000	---
Overseas contingency operations /1.....	---	923,884	924,484	---	---	---	-923,884
Overseas contingency operations (P.L. 111-32).....	1,182,989	---	---	---	---	-1,182,989	---
Overseas contingency operations (P.L. 111-32) (emergency).....	143,242	---	---	---	---	-143,242	---
Overseas contingency operations (P.L. 111-32) (rescission) (emergency).....	-143,242	---	---	---	---	+143,242	---
Total.....	6,004,317	4,584,663	4,495,406	3,477,673	3,719,419	-2,284,898	-865,244
Military construction, Navy and Marine Corps.....	3,333,369	3,763,264	3,757,330	3,548,771	3,769,003	+435,634	+5,739
Emergency appropriations (P.L. 111-5).....	280,000	---	---	---	---	-280,000	---
Overseas contingency operations (P.L. 111-32).....	235,881	---	---	---	---	-235,881	---
Total.....	3,849,250	3,763,264	3,757,330	3,548,771	3,769,003	-80,247	+5,739
Military construction, Air Force.....	1,117,746	1,145,434	1,359,171	1,251,039	1,450,426	+332,680	+304,992
Rescission.....	-20,821	---	---	-38,500	-37,500	-16,679	-37,500
Emergency appropriations (P.L. 111-5).....	180,000	---	---	---	---	-180,000	---
Overseas contingency operations /1.....	---	474,500	474,500	---	---	---	-474,500
Overseas contingency operations (P.L. 111-32).....	281,620	---	---	---	---	-281,620	---
Total.....	1,558,545	1,619,934	1,833,671	1,212,539	1,412,926	-145,619	-207,008
Military construction, Defense-Wide.....	1,695,204	3,097,526	2,743,526	3,137,614	3,093,679	+1,398,475	-3,847
Rescission.....	-3,589	---	-25,800	-69,500	-151,160	-147,571	-151,160
Emergency appropriations (P.L. 111-5).....	1,450,000	---	---	---	---	-1,450,000	---
Overseas contingency operations.....	---	6,800	---	---	---	---	-6,600
Overseas contingency operations (P.L. 111-32).....	661,552	---	---	---	---	-661,552	---
Total.....	3,803,167	3,104,126	2,717,726	3,068,114	2,942,519	-860,648	-161,607
=====							
Total, Active components.....	15,215,279	13,071,987	12,804,133	11,307,097	11,843,867	-3,371,412	-1,228,120
Military construction, Army National Guard.....	736,317	426,491	529,129	497,210	582,056	-154,261	+155,565
Rescission.....	-1,400	---	---	---	---	+1,400	---
Emergency appropriations (P.L. 111-5).....	50,000	---	---	---	---	-50,000	---
Total.....	784,917	426,491	529,129	497,210	582,056	-202,861	+155,565
Military construction, Air National Guard.....	242,924	128,261	226,126	297,661	371,226	+128,302	+242,965
Emergency appropriations (111-5).....	50,000	---	---	---	---	-50,000	---
Total.....	292,924	128,261	226,126	297,661	371,226	+78,302	+242,965
Military construction, Army Reserve.....	282,607	374,862	432,516	379,012	431,566	+148,959	+56,704
Military construction, Navy Reserve.....	57,045	64,124	125,874	64,124	125,874	+68,829	+61,750
Military construction, Air Force Reserve.....	36,958	27,476	103,169	47,376	112,269	+75,311	+84,793
=====							
Total, Reserve components.....	1,454,451	1,021,214	1,416,814	1,285,383	1,622,991	+168,540	+601,777
=====							
Total, Military construction.....	16,669,730	14,093,201	14,220,947	12,592,480	13,466,858	-3,202,872	-626,343
Appropriations.....	(12,194,818)	(12,688,217)	(12,907,263)	(12,700,480)	(13,655,518)	(+1,460,700)	(+967,301)
Rescissions.....	(-77,130)	---	(-85,300)	---	(-188,660)	(-111,530)	(-188,660)
Emergency appropriations.....	(2,190,000)	---	---	---	---	(-2,190,000)	---
Overseas contingency operations.....	(2,362,042)	(1,404,984)	(1,398,984)	---	---	(-2,362,042)	(-1,404,984)
1/ The Senate bill and conference agreement provide funding at the same level in title IV							
North Atlantic Treaty Organization Security Investment Program.....	230,867	276,314	234,914	276,314	197,414	-33,453	-78,900
Overseas contingency operations (P.L. 111-32).....	100,000	---	---	---	---	-100,000	---
Total.....	330,867	276,314	234,914	276,314	197,414	-133,453	-78,900

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010  
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
Family housing construction, Army.....	646,580	273,236	273,236	273,236	273,236	-373,344	---
Emergency appropriations (111-5).....	34,507	---	---	---	---	-34,507	---
Total.....	681,087	273,236	273,236	273,236	273,236	-407,851	---
Family housing operation and maintenance, Army.....	716,110	523,418	523,418	523,418	523,418	-192,692	---
Emergency appropriations (P.L. 111-5).....	3,932	---	---	---	---	-3,932	---
Total.....	720,042	523,418	523,418	523,418	523,418	-196,624	---
Family housing construction, Navy and Marine Corps.....	380,123	146,569	146,569	146,569	146,569	-233,554	---
Family housing operation and maintenance, Navy and Marine Corps.....	376,062	368,540	368,540	368,540	368,540	-7,522	---
Family housing construction, Air Force.....	395,879	66,101	66,101	66,101	66,101	-329,778	---
Emergency appropriations (P.L. 111-5).....	80,100	---	---	---	---	-80,100	---
Total.....	475,979	66,101	66,101	66,101	66,101	-409,878	---
Family housing operation and maintenance, Air Force.....	594,465	502,936	502,936	502,936	502,936	-91,529	---
Emergency appropriations (P.L. 111-5).....	16,461	---	---	---	---	-16,461	---
Total.....	610,926	502,936	502,936	502,936	502,936	-107,990	---
Family housing construction, Defense-Wide.....	---	2,859	2,859	2,859	2,859	+2,859	---
Rescission.....	-6,040	---	---	---	---	+6,040	---
Total.....	-6,040	2,859	2,859	2,859	2,859	+8,899	---
Family housing operation and maintenance, Defense-Wide	49,231	49,214	49,214	49,214	49,214	-17	---
Department of Defense Family Housing Improvement Fund.....	850	2,600	2,600	2,600	2,600	+1,750	---
Homeowners assistance fund.....	4,500	23,225	23,225	323,225	323,225	+318,725	+300,000
Emergency appropriations (P.L. 111-5).....	555,000	---	---	---	---	-555,000	---
Total.....	559,500	23,225	23,225	323,225	323,225	-236,275	+300,000
Total, Family housing.....	3,847,760	1,958,698	1,958,698	2,258,698	2,258,698	-1,589,062	+300,000
Appropriations.....	(3,163,800)	(1,958,698)	(1,958,698)	(2,258,698)	(2,258,698)	(-905,102)	(+300,000)
Rescissions.....	(-6,040)	---	---	---	---	(+6,040)	---
Emergency appropriations.....	(690,000)	---	---	---	---	(-690,000)	---
Chemical demilitarization construction, Defense-Wide..	144,278	146,541	146,541	151,541	151,541	+7,263	+5,000
Base realignment and closure:							
Base realignment and closure account, 1990.....	458,377	396,768	536,768	421,768	496,768	+38,391	+100,000
Base realignment and closure account, 2005.....	8,765,613	7,479,498	7,479,498	7,479,498	7,455,498	-1,310,115	-24,000
Overseas contingency operations (P.L. 111-32).....	263,300	---	---	---	---	-263,300	---
Total.....	9,028,913	7,479,498	7,479,498	7,479,498	7,455,498	-1,573,415	-24,000
Total, Base realignment and closure.....	9,487,290	7,876,266	8,016,266	7,901,266	7,952,266	-1,535,024	+76,000
General Reductions (Sec. 129)							
Military Construction, Army.....	---	---	---	---	-230,000	-230,000	-230,000
Military Construction, Navy and Marine Corps.....	---	---	---	---	-235,000	-235,000	-235,000
Military Construction, Air Force.....	---	---	---	---	-64,091	-64,091	-64,091
General Rescissions (Sec. 130)							
Military Construction, Army.....	---	---	---	---	-33,000	-33,000	-33,000
Military Construction, Navy and Marine Corps.....	---	---	---	---	-51,468	-51,468	-51,468
Military Construction, Defense-Wide.....	---	---	---	---	-93,268	-93,268	-93,268
Military Construction, Army National Guard.....	---	---	---	---	-33,000	-33,000	-33,000
Military Construction, Air National Guard.....	---	---	---	---	-7,000	-7,000	-7,000
Air National Guard Fire Stations (Sec. 131).....	28,000	---	---	---	---	-28,000	---
Army National Guard Aviation and Training (Sec. 132)...	147,000	---	---	---	---	-147,000	---
Total, title I.....	30,654,925	24,351,020	24,577,366	23,180,299	23,279,950	-7,374,975	-1,071,070
Appropriations.....	(25,132,753)	(22,946,036)	(23,263,682)	(23,288,299)	(23,686,346)	(-1,446,407)	(+740,310)
Rescissions.....	(-83,170)	---	(-85,300)	(-108,000)	(-406,396)	(-323,226)	(-406,396)
Emergency appropriations.....	(2,880,000)	---	---	---	---	(-2,880,000)	---
Overseas contingency operations.....	(2,725,342)	(1,404,984)	(1,398,984)	---	---	(-2,725,342)	(-1,404,984)

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010  
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
TITLE II - DEPARTMENT OF VETERANS AFFAIRS							
Veterans Benefits Administration							
Compensation and pensions.....	43,111,681	47,218,207	47,218,207	47,218,207	47,396,106	+4,284,425	+177,899
Readjustment benefits.....	3,832,944	8,663,624	8,663,624	8,663,624	9,232,369	+5,399,425	+568,745
Veterans insurance and indemnities.....	42,300	49,288	49,288	49,288	49,288	+6,988	---
Veterans housing benefit program fund.....							
(indefinite).....	2,000	23,553	23,553	23,553	23,553	+21,553	---
(Limitation on direct loans).....	(500)	(500)	(500)	(500)	(500)	---	---
Credit subsidy.....	-246,000	-133,000	-133,000	-133,000	-133,000	+113,000	---
Administrative expenses.....	157,210	165,082	165,082	165,082	165,082	+7,872	---
Guaranteed Transitional Housing Loans for Homeless Veterans.....	(750)	(750)	(750)	(750)	(750)	---	---
Vocational rehabilitation loans program account.....	61	29	29	29	29	-32	---
(Limitation on direct loans).....	(3,180)	(2,298)	(2,298)	(2,298)	(2,298)	(-882)	---
Administrative expenses.....	320	328	328	328	328	+8	---
Native American veteran housing loan program account.....	646	664	664	664	664	+18	---
Total, Veterans Benefits Administration.....	46,901,162	55,987,775	55,987,775	55,987,775	56,734,419	+9,833,257	+746,644
Veterans Health Administration							
Medical services.....	30,969,903	34,704,500	34,705,500	34,705,250	34,707,500	+3,737,597	+3,000
Advance appropriation, FY 2011.....	---	---	37,136,000	37,136,000	37,136,000	+37,136,000	+37,136,000
Subtotal.....	30,969,903	34,704,500	71,841,500	71,841,250	71,843,500	+40,873,597	+37,139,000
Medical support and compliance.....	4,450,000	5,100,000	4,896,500	5,100,000	4,930,000	+480,000	-170,000
Advance appropriation, FY 2011.....	---	---	5,307,000	5,307,000	5,307,000	+5,307,000	+5,307,000
Subtotal.....	4,450,000	5,100,000	10,203,500	10,407,000	10,237,000	+5,787,000	+5,137,000
Medical facilities.....	5,029,000	4,693,000	4,893,000	4,849,883	4,859,000	-170,000	+166,000
Emergency appropriations (P.L. 111-5).....	1,000,000	---	---	---	---	-1,000,000	---
Advance appropriation, FY 2011.....	---	---	5,740,000	5,740,000	5,740,000	+5,740,000	+5,740,000
Subtotal.....	6,029,000	4,693,000	10,633,000	10,589,883	10,599,000	+4,570,000	+5,906,000
Medical and prosthetic research.....	510,000	580,000	580,000	580,000	581,000	+71,000	+1,000
Medical care cost recovery collections:							
Offsetting collections.....	-2,544,000	-2,954,000	-2,954,000	-2,954,000	-2,954,000	-410,000	---
Appropriations (indefinite).....	2,544,000	2,954,000	2,954,000	2,954,000	2,954,000	+410,000	---
Total, Veterans Health Administration.....	41,958,903	45,077,500	93,258,000	93,418,133	93,260,500	+51,301,597	+48,183,000
Appropriations.....	(40,958,903)	(45,077,500)	(45,075,000)	(45,235,133)	(45,077,500)	(+4,118,597)	---
Emergency appropriations.....	(1,000,000)	---	---	---	---	(-1,000,000)	---
Advance appropriations, FY 2011.....	---	---	(48,183,000)	(48,183,000)	(48,183,000)	(+48,183,000)	(+48,183,000)
National Cemetery Administration							
National Cemetery Administration.....	230,000	242,000	250,000	250,000	250,000	+20,000	+8,000
Emergency appropriations (P.L. 111-5).....	50,000	---	---	---	---	-50,000	---
Total, National Cemetery Administration.....	280,000	242,000	250,000	250,000	250,000	-30,000	+8,000
Emergency appropriations.....	(50,000)	---	---	---	---	(-50,000)	---
Departmental Administration							
General operating expenses.....	1,801,867	2,218,500	2,086,200	2,081,501	2,086,707	+284,840	-131,793
Emergency appropriations (P.L. 111-5).....	150,000	---	---	---	---	-150,000	---
Subtotal.....	1,951,867	2,218,500	2,086,200	2,081,501	2,086,707	+134,840	-131,793
Information technology systems.....	2,489,391	3,307,000	3,307,000	3,307,000	3,307,000	+817,609	---
Emergency appropriations (P.L. 111-5).....	50,000	---	---	---	---	-50,000	---
Subtotal.....	2,539,391	3,307,000	3,307,000	3,307,000	3,307,000	+767,609	---
Office of Inspector General.....	87,818	107,000	106,000	109,000	109,000	+21,182	+2,000
Emergency appropriations (P.L. 111-5).....	1,000	---	---	---	---	-1,000	---
Subtotal.....	88,818	107,000	106,000	109,000	109,000	+20,182	+2,000

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010  
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
Construction, major projects.....	923,382	1,194,000	1,194,000	1,194,000	1,194,000	+270,618	---
Construction, minor projects.....	741,534	600,000	722,800	735,000	703,000	-38,534	+103,000
Grants for construction of State extended care facilities.....	175,000	85,000	85,000	115,000	100,000	-75,000	+15,000
Emergency appropriations (P.L. 111-5).....	150,000	---	---	---	---	-150,000	---
Subtotal.....	325,000	85,000	85,000	115,000	100,000	-225,000	+15,000
Grants for the construction of State veterans cemeteries.....	42,000	42,000	46,000	46,000	46,000	+4,000	+4,000
Total, Departmental Administration.....	6,611,992	7,553,500	7,547,000	7,587,501	7,545,707	+933,715	-7,793
Appropriations.....	(6,260,992)	(7,553,500)	(7,547,000)	(7,587,501)	(7,545,707)	(+1,284,715)	(-7,793)
Emergency appropriations.....	(351,000)	---	---	---	---	(-351,000)	---
Administrative Provisions							
IRS income verification.....	-2,000	---	---	---	---	+2,000	---
Sec. 160 Filipino Veterans Compensation Fund (P.L. 110-329) (emergency).....	198,000	---	---	---	---	-198,000	---
Total, title II.....	95,948,057	108,860,775	157,042,775	157,243,409	157,790,626	+61,842,569	+48,929,851
Appropriations.....	(94,349,057)	(108,860,775)	(108,859,775)	(109,060,409)	(109,607,826)	(+15,258,569)	(+746,851)
Emergency appropriations.....	(1,599,000)	---	---	---	---	(-1,599,000)	---
Rescissions (emergency appropriations).....	---	---	---	---	---	---	---
Advance appropriations, FY 2011.....	---	---	(48,183,000)	(48,183,000)	(48,183,000)	(+48,183,000)	(+48,183,000)
(Limitation on direct loans).....	(3,680)	(2,798)	(2,798)	(2,798)	(2,798)	(-882)	---
Discretionary.....	(49,205,132)	(53,039,103)	(101,223,103)	(101,421,737)	(101,222,310)	(+52,017,178)	(+48,183,207)
Mandatory.....	(46,742,925)	(55,821,672)	(55,821,672)	(55,821,672)	(56,568,316)	(+9,825,391)	(+746,644)
TITLE III - RELATED AGENCIES							
American Battle Monuments Commission							
Salaries and expenses.....	59,470	60,300	61,800	63,549	62,675	+3,205	+2,375
(By transfer).....	(500)	---	---	---	---	(-500)	---
Foreign currency fluctuations account.....	17,100	17,100	17,100	17,100	17,100	---	---
Total, American Battle Monuments Commission.....	76,570	77,400	78,900	80,649	79,775	+3,205	+2,375
U.S. Court of Appeals for Veterans Claims							
Salaries and expenses.....	30,975	27,115	28,115	27,115	27,115	-3,860	---
Department of Defense - Civil							
Cemeterial Expenses, Army							
Salaries and expenses.....	36,730	37,200	42,500	37,200	39,850	+3,120	+2,650

MILITARY CONSTRUCTION - VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS BILL - 2010  
(Amounts in thousands)

	FY 2009 Enacted	FY 2010 Request	House	Senate	Conference	Conference vs. Enacted	Conference vs. Request
<b>Armed Forces Retirement Home</b>							
Operation and maintenance.....	54,985	62,000	62,000	62,000	62,000	+7,015	---
Capital program.....	8,025	72,000	72,000	72,000	72,000	+63,975	---
<b>Total, Armed Forces Retirement Home.....</b>	<b>63,010</b>	<b>134,000</b>	<b>134,000</b>	<b>134,000</b>	<b>134,000</b>	<b>+70,990</b>	<b>---</b>
=====							
<b>Total, title III.....</b>	<b>207,285</b>	<b>275,715</b>	<b>283,515</b>	<b>278,964</b>	<b>280,740</b>	<b>+73,455</b>	<b>+5,025</b>
(By transfer).....	(500)	---	---	---	---	(-500)	---

**TITLE IV - OVERSEAS CONTINGENCY OPERATIONS**

Military Construction, Army /1.....	---	---	---	924,484	924,484	+924,484	+924,484
Military Construction, Air Force /1.....	---	---	---	474,500	474,500	+474,500	+474,500
=====							
<b>Total, title IV.....</b>	<b>---</b>	<b>---</b>	<b>---</b>	<b>1,398,984</b>	<b>1,398,984</b>	<b>+1,398,984</b>	<b>+1,398,984</b>

1/ The House bill provides funding at the same level in title I

<b>Grand total.....</b>	<b>126,810,267</b>	<b>133,487,510</b>	<b>181,903,656</b>	<b>182,101,658</b>	<b>182,750,300</b>	<b>+55,940,033</b>	<b>+49,262,790</b>
Appropriations.....	(119,689,095)	(132,082,526)	(132,406,972)	(132,627,672)	(133,574,712)	(+13,885,617)	(+1,492,186)
Rescissions.....	(-83,170)	---	(-85,300)	(-108,000)	(-406,396)	(-323,226)	(-406,396)
Emergency appropriations.....	(4,479,000)	---	---	---	---	(-4,479,000)	---
Advance appropriations, FY 2011.....	---	---	(48,183,000)	(48,183,000)	(48,183,000)	(+48,183,000)	(+48,183,000)
Overseas contingency operations.....	(2,725,342)	(1,404,984)	(1,398,984)	(1,398,984)	(1,398,984)	(-1,326,358)	(-6,000)
(By transfer).....	(500)	---	---	---	---	(-500)	---
(Limitation on direct loans).....	(3,680)	(2,798)	(2,798)	(2,798)	(2,798)	(-882)	---
=====							

Mr. LATHAM. Mr. Speaker, may I inquire as to how much time is available on each side?

The SPEAKER pro tempore. The gentleman from Iowa has 18 minutes remaining. The gentleman from Massachusetts has 17½ minutes remaining.

Mr. LATHAM. At this point, I would be proud to give 3 minutes to the gentleman from Kansas (Mr. TIAHRT).

Mr. TIAHRT. I thank the gentleman from Iowa. I also want to thank Chairman OBEY for working with me on Labor, Health and Human Services. But Mr. Speaker, this bill is a classic example of a dysfunctional appropriation process.

My principal opposition to this bill is the excessive amount of spending. We are spending more and more money each year and we don't know where we are going to get it. The American people don't have it; in fact, this past fiscal year, fiscal year 2009, we overspent by \$1.4 trillion. That's \$5,000 per person, approximately that we didn't have. And for those of us that pay Federal taxes, that's about \$14,000 per taxpayer overspent last year. This year, we have already overspent \$259 billion and we're on course to overspend by \$1.6 trillion. That will be an increase in the deficit of about \$16,000 per taxpayer, money we don't have that we have to go out and borrow.

So where is the money going to come from? We're going to borrow it from the Chinese. Well, maybe the Chinese don't want to loan it to us. Then we'll just have to print it. Well, if we print it, that drives inflation. If the Chinese don't loan it to us, we're in trouble. We will be headed for a round of inflation based on the current projections.

The excuse that we get for borrowing and spending all this money is we've got to get the economy to recover. Borrowing money to fund big government doesn't grow our economy, it only grows big government. But we go out and hire all these people in big government. They've got to do something, so they write regulations. Regulations slow down our economy. If you want to speed up the economy, freeze the regulations; put them on a benefit-cost analysis. We forget that for every one of these government workers, it takes five private sector employees to pay for that one Federal Government job. So we have the idea of how we are going to create private sector jobs instead of growing the size of government.

This bill spends so much money they have had trouble finding out where to spend more money. They decided that they were going to fund free needles to dope addicts and junkies—I'm just glad that we're not buying kegs for Alcoholics Anonymous meetings. They pay for abortions in the District of Columbia and they can't prove that it's not Federal tax dollars by their Federal funds provision because it all gets com-

mingled. And then we're borrowing about \$350 million we think, from the Chinese to give to the World Bank so that we can give it to some third-world countries to fight global warming. So we have a questionable source of funds sent to questionable countries to fight a program based on questionable science.

Mr. Speaker, this bill is out of the question. I would ask all my colleagues to vote "no."

□ 1300

Mr. OLVER. I yield 2 minutes to the gentlewoman from Michigan (Ms. KILPATRICK), who is a member of the Transportation, Housing and Urban Development Subcommittee.

Ms. KILPATRICK of Michigan. I thank the chairman for yielding.

Mr. Speaker, as a member of the House Appropriations Committee and as an honored member serving on the conferee committee, this is a good bill. As you know, in the House of Representatives, we passed all 12 of our appropriations bills. The Senate passed nine of their 12 bills. Unfortunately, they were not able to do them all. Yet we met many hours a night and passed what is considered, I believe, a good bill for all of the reasons that you have mentioned—health care, veterans, education, transportation, helping our military men and women who are on active duty and those who are not. This is a bill that wraps up our 2009 appropriations process, less one bill, and we will take that up next week.

I commend Chairman DAVID OBEY as well as our ranking member, JERRY LEWIS. I commend JOHN OLVER and all of the Chair people who have brought the bills together and who have worked many long hours to see that we get the work of the people done.

Our Appropriations Committee handles over \$1 trillion for various programs of the Federal Government. We take our work very strongly. We work long hours. We spend many hours on it. All of the bills before us today have been reviewed. All 12 which have passed the House are pretty much the same bills we had in conference the other evening. I am proud of our work.

As an appropriator and in working with our colleagues on both sides of the aisle, but specifically with the Democrats and under the leadership of Chairman OBEY, I want the American citizens to rest assured you have a good product before you. We will continue to do what is necessary to fund our children's programs, our health programs, transportation, veterans—you name it. This completes, bar one bill, the 2009 appropriations process.

I am honored to be a part of that, and I look forward to the new year.

Mr. LATHAM. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. I thank the gentleman for yielding.

Mr. Speaker, I want to thank all of our chairmen and ranking members of the 12 Appropriations subcommittees for their work this year because it is important work. It is the only "must do" work that the Congress has every year, which is part of the power of the Appropriations Committee. I do think that just blaming each other for our shortcomings is not particularly helpful, but I want to point out a couple of things.

Chairman EDWARDS is our chairman of the Military Construction, Veterans Affairs Appropriations Subcommittee, and I am the ranking member. It is an incredible privilege for both of us to carry out those functions. Chairman EDWARDS is a true patriot and does an excellent job. We have got a great staff. Our bill is certainly not the controversial part of this omnibus bill at all. As a matter of fact, our bill passed the House 415-3, and it passed the Senate unanimously.

So there is huge consensus here, and we deserve bipartisan praise for doing right by our Nation's veterans and by the men and women and their families who are in uniform today. That is what we are supposed to do. But I have to say this:

We had hearings every week through the spring, and we always asked, What is the most important thing we can do for you? We heard virtually every week, The most important thing you can do for us is to get our bill passed and enacted into law on time—by October 1.

As a matter of fact, that is the battle cry for why we need advance funding, which is that they have to rely on the funding flow in veterans affairs and in military construction, and here we are more than 10 weeks later just now passing our bill. Last year, we got our bill done on time. That's not Mr. EDWARDS, and it's not me. It's somebody else on the scheduling of when these bills come up. This bill had such consensus, it could have just flown through in late September, and everyone under the \$78 billion funding profile would have had their money on time.

That is a problem. I don't care whether you are Republican or Democrat. That is a problem especially when you come and say, Let's start funding them in the future, 2 years out, so that they have the knowledge that the money is going to be there. Yet you don't get the bill done on time, and you're 10 weeks late or more. That makes no sense. It's not only ironic; it's unfortunate.

Maybe they were holding this bill in case they needed a vehicle for all of the other bills that they couldn't pass. I hope not. I hope you're not doing that to our men and women in uniform and to their families and to our veterans. We can do better than that, I know.

I was a conferee. I was there on Monday night as we negotiated this bill. I



tried to take the TARP money, of which now there is \$200 billion left, and put it back against the debt. I would put it in the Treasury because now there is a plan to go spend that money on things that may or may not work. Why not pay our debt down? The Chinese are worried about whether we will ever pay our debt. We are sinking as a Nation under a mountain of government debt, and we've got to do something about it. Neither party has got a lot to brag about, but you all are in charge. We can do better.

Mr. OLVER. I yield myself 2 minutes, Mr. Speaker.

I fully recognize the argument that is being made by the other side on this issue of the level of expenditure. There has been an increase in the discretionary expenditure that we are providing for the needs of this country.

The fact is that, through the 6 previous years before we came into the majority, there was constraint in discretionary expenditures for programs that do things for people in this country and which provided money for our education system, for our health care system, for our transportation systems, and for our infrastructure in general—not just the transportation infrastructure but whatever source of infrastructure—and for our housing, just to name a few, and even for our veterans affairs.

Even with regard to our veterans programs, which provided services while we had two different wars going on around the world—all of them over in Asia—our discretionary expenditures were under very severe constraint, and the level of discretionary expenditure during that 6-year period before fiscal year 2007 was under constraint.

So the budgets that we have passed in the last three sessions when we have been in the majority have had an increase in discretionary expenditure to provide a catch-up expenditure for things going on in this country. We hear among our constituents all the time, Why are we spending so much money in other places around the world when we should be spending it here?

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. OLVER. I yield myself 1 additional minute.

Why are we spending so much money there if we cannot find a way of expending for those things that I've mentioned—the housing, the transportation, the health services, and education? Why can't we spend some of that here?

So, yes, our expenditure has been up, but we make no apology for that kind of expenditure given the very reason for why it has occurred. So I will leave it at that. We make no apology for increasing discretionary expenditures on our own people and on the needs of our own people, and that should continue in fact.

I reserve the balance of my time.

Mr. LATHAM. Mr. Speaker, first of all, I want to thank the gentleman for recognizing the fact that we were fiscally responsible before and that to catch up in 2 years by spending 85 percent more, by increasing spending by 85 percent, is truly more than catching up, I would say.

I yield 3 minutes to the distinguished gentlewoman from Missouri (Mrs. EMERSON).

Mrs. EMERSON. Thank you.

Mr. Speaker, I would like to address the Financial Services and General Government division of the omnibus.

I first want to commend Chairman SERRANO for his efforts in crafting the bill. It has been a pleasure to work with him, and while we don't always agree, he has at least been open to listening to the minority's ideas.

While I appreciate Chairman SERRANO's efforts, I have got a lot of concern with the Financial Services division insofar as it is a 7 percent increase over fiscal year 2009, or \$24.2 billion. This is very, very generous, and I believe that the resource requirements of the agencies funded in this bill can be met with a smaller allocation, particularly given the government's financial situation.

However, with the allocation provided to Mr. SERRANO, he has done a good job of allocating funding in the bill, and I am grateful for efforts to provide increases to critical programs such as the Financial Crimes Enforcement Network, Treasury Terrorism and Financial Intelligence programs, Drug Free Communities, and High Intensity Drug Trafficking Areas.

I am also pleased that the bill provides \$75 million for D.C. education programs, including \$42 million to D.C. public schools. I am happy, to some extent, that the bill doesn't totally eliminate the Opportunity Scholarships program, but I must say I am very disappointed that the program is limited to students currently enrolled in the program.

My own daughter teaches in the D.C. public schools, so I know firsthand how these schools are failing the city's children. I ask how we can possibly limit educational opportunities for low-income students when we know the public school system is underperforming?

Another area of the bill that deeply concerns me are the controversial changes to long-standing general provisions regarding abortion and medical marijuana in the District of Columbia. We heard Mr. TIAHRT address that a little while ago.

Let me then lastly discuss an issue that is not directly related to this bill but that is related to the Department of the Treasury, which is part of our bill, and it is the administration of TARP.

The TARP has greatly expanded the Federal Government's reach into the

private sector, not by purchasing troubled assets, as was its original purpose, but by purchasing common shares of banks, by owning large auto companies, and by subsidizing home mortgages.

Today, many Democrats, including the President and the Secretary of the Treasury, are discussing using TARP funds to pay for yet another stimulus bill when the first stimulus bill has already been a failure. Unemployment is at 10 percent. Only 12 percent of the discretionary funding in the stimulus bill has been spent. Yet our friends on the other side of the aisle plan to shove through more government spending under the guise of job creation, which is going to do more harm than good, and we are going to offset it with surplus TARP funding.

Well, the TARP funding was never supposed to be used again and again and again. Our national debt is \$12 trillion, and the fiscal year 2010 deficit is projected to be over \$1 trillion. Members are going to be asked to increase the debt limit. We cannot sustain this level of spending. TARP savings must be used for debt reduction.

Mr. OLVER. How much time remains on both sides?

The SPEAKER pro tempore. The gentleman from Massachusetts has 13 minutes remaining. The gentleman from Iowa has 9 minutes remaining.

Mr. OLVER. I yield 3 minutes to the gentleman from North Carolina (Mr. PRICE), who is also a member of the Transportation, Housing and Urban Development Subcommittee.

Mr. PRICE of North Carolina. Mr. Speaker, our Republican colleagues this afternoon have once again raised the issue of Guantanamo Bay, so I would like to take just a moment to clarify the treatment of Guantanamo Bay detainees in this bill and in previous bills.

As our colleagues surely know, this is an issue that was debated and addressed by Congress in mid-October in the Homeland Security bill, the bill produced by the subcommittee that I Chair. This has already been signed into law. The language in our bill restricts the movement of detainees from Guantanamo Bay. It requires greater transparency on the part of the administration as it disposes of each detainee's case. It allows the transfer of detainees to the U.S. only for prosecution and with requirements that the administration provide a risk mitigation plan for each transfer and advance notice to Congress and to the destination State.

That same exact language was carried in the Interior appropriations bill, which was also signed into law. The conference report before us restates this language yet again, exactly the same language. There shouldn't be any confusion at all as to where Congress stands on this issue.

Now, in conference, our Republican friends attempted, once again, to play

“gotcha” with this Gitmo issue. They attempted to overturn these provisions included in previous bills and to bar the administration from prosecuting detainees in U.S. criminal courts. We ought to strongly oppose any such effort to stand in the way of bringing terrorists to justice. That’s exactly what this is all about. We must not tie the hands of the Departments of Justice and Defense as they seek to prosecute, where appropriate in U.S. courts, terrorism suspects housed at Guantanamo Bay.

Our Republican colleagues would rather keep Guantanamo open, apparently, and would exclusively use military tribunals for prosecutions. They seem to think that three convictions by military tribunals in the entire period of their existence is an impressive record. One of those was by a guilty plea. This isn’t an impressive record; it’s a dismal record. By contrast, recent analysis of the 119 terrorism cases involving 289 defendants tried over the last 20 years in U.S. courts shows a 91 percent conviction rate for the cases that had been resolved as of June 2.

I can’t tell you whether one option or the other is better for any given case, but that’s not the call we have to make in an appropriations bill. With current law, we can leave that decision to the experts in the administration who can best decide on a case-by-case basis who should be prosecuted in the U.S. and what mitigation plans are necessary to address any risks that may result from these trials.

The purpose of the Republican amendment, which was rightly rejected in the conference committee, was to shut off access to U.S. courts for terrorism prosecution. That is a proposition that is patently absurd and that, I dare say, our Republican colleagues would not be putting forward if there were a Republican President.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. OLVER. I yield the gentleman 1 additional minute.

Mr. PRICE of North Carolina. Is criminal prosecution an option we simply summarily want to close off? Of course, the answer is “no.”

□ 1315

We should be using these carefully selected prosecutions to send a message to the world that we will not be intimidated by the prospect of bringing terrorists to justice or allow terrorism to undermine the rule of law in our country.

Mr. LATHAM. At this time, it is my privilege to yield 3 minutes to the gentlewoman from Texas (Ms. GRANGER).

Ms. GRANGER. Mr. Speaker, I rise to speak briefly about the State/Foreign Operations division of this omnibus package.

As the ranking member of the subcommittee, I am pleased that I have

been able to work closely with Chairwoman LOWEY this year. She and her staff have worked to address concerns by committee Republicans and by me, and I thank her for her commitment to bipartisanship.

I also thank our Senate colleagues and our staff for working together to achieve common ground in the conference agreement. In the end, many priorities were preserved: funding a new compact for the Millennium Challenge Corporation; fighting drug trafficking in Mexico, Central America, and Colombia; and continuing security assistance to key allies like Israel, Egypt, and Jordan.

Funds provided in this bill will allow State and USAID to hire more than 1,000 new staff, which will help balance the three D’s of smart power, the approach to national security. The increase for development and diplomacy will, in turn, support our Nation’s defense and allow our military men and women to refocus on their core mission.

As the Congress provides additional staff and increases foreign assistance funding, the level of commitment to reform must be equal to funding commitment made. Oversight must be a priority. For that reason, the bill provides \$149 million for inspectors general, and many oversight provisions and reporting requirements are also included.

The conference agreement retains language that prevents U.S. tax dollars from going to organizations that support or participate in involuntary or coercive methods of family planning. There are legitimate plans about family planning funding that goes abroad, and legislative safeguards will remain in place the next fiscal year.

I regret that this package lumps six bills together in a package of close to half a trillion dollars and does not allow this body to address appropriations bills individually and fully vet them so that I could support them. I support the many programs in this bill. However, we must be aware of the tremendous debt held by this country and work competently, being aware of this issue.

Again, I thank Chairman LOWEY, our excellent committee staff, and our Senate colleagues for working together to address shared priorities.

Mr. OLVER. I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I would like to comment very briefly on the comments of the gentleman from Tennessee, who a few moments ago criticized us because we were some 70 days late in passing the Military Construction-VA appropriation bill.

Let me simply point out that we may be 70 days late, but we are getting the job done. In addition to passing the basic bill, we are, for the first time in history, providing advance funding for

VA activities. That is something that the veterans community has wanted for years and years, and it has been this Congress that delivered.

That stands in contrast to the performance of the minority party when they chaired this institution with respect to what they produced on the Military Construction-VA bill. They complain about the fact that we were 70 days late. They never passed that bill at all. They didn’t pass it in October. They didn’t pass it in November, which would have been 30 days late. They didn’t pass it in December, which would have been 60 days late. They never passed it. When a new Congress took over, we had to pass all of those domestic appropriation bills and the Military Construction bill. I think it is quaint, indeed, when they attack us on the question of performance on, of all bills, the Military Construction bill. I think they need to go back and take a look at the record when they chaired this place.

With respect to the funding overall levels in this overall bill, let me simply repeat what I said earlier. When you take into account the necessary increases for veterans disability, for the census, for the war costs which are not being hidden in a supplemental as they were under the stewardship of our friends on the other side of the aisle, when you take into account the infrastructure change in funding and the \$6 billion that we needed to prepare the health care system for the legislation which is about to pass, the rest of the increases in the bill before us amount to 1 percent. I hardly think that that’s excessive, given the economic crisis that we face.

Mr. LATHAM. Mr. Speaker, just one comment. I think it’s interesting to note the gentleman talked about that we are finally getting the Military Construction bill done, VA funding. The last two bills that we are funding are Defense, which will be 80 days out from the start of the new fiscal year, the Military Construction-VA bill.

But if you remember back with the schedule, the very first bill that was passed and signed into law was to fund Congress itself. We took care of ourselves here first and the military was the very, very last. I think that is very unfortunate.

I am now pleased to yield 2 minutes to the gentleman from Ohio (Mr. LATOURETTE).

Mr. LATOURETTE. I thank the gentleman for yielding. I am going to break the mold here and say something nice about five pages of the bill, this bill in front of me—I think those pages are right here—and say something nice about Mr. OBEY as well, and Mr. SERRANO is waving in the back.

By way of history, people know that the auto industry in this country got into trouble, and this administration made a decision to use leftover TARP

funds to bail out Chrysler and General Motors. Both car companies submitted reorganization plans in February of this year and both were rejected by the auto task force.

The auto task force was kind of a strange collection of people that didn't have any experience in the auto industry at all. Most of them didn't own cars. Those that did own cars owned foreign cars, but they determined that the car companies had to be more aggressive when it came to dealerships. As a result, about 800 Chrysler dealers were closed and about 2,000 GM dealers. The problem with that is, with rampant unemployment, about 60 people work at each car dealership across this country. Car dealerships don't cost the car companies any money, and it was a strange way to do business and potentially take 200,000 people and put them on the street.

A couple of young, fresh-faced Democrats, Mr. MAFFEI of New York and Mr. KRATOVL of Maryland, launched a legislative effort. But as a grizzled veteran, having been here for the last 15 years, I know that the one piece of legislation or pieces of legislation that have to leave town are the appropriations bills. We drafted some language and put it in Mr. SERRANO's bill, and Mr. OBEY took it. They didn't have to—they probably got in trouble for taking it—but that became the 800-pound gorilla that had to be dealt with as General Motors and Chrysler have moved forward on how to deal with this dealer situation.

I also want to say something nice about the majority leader, Mr. HOYER. He took up the mantle and said we are going to solve this problem. As a result, the five pages that are here in the bill indicate that those aggrieved dealers now have the opportunity for binding arbitration, and the facts need to be brought forward, and hopefully fairness will prevail. But that wouldn't happen without something good and bipartisan happening in the United States Congress.

Mr. LATHAM. Mr. Speaker, it is my honor to yield 1 minute to the minority leader of the House, the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. We're broke. We're broke. America is broke. All year long our friends across the aisle have been on this massive spending spree that our Nation can't afford.

We had a trillion dollar stimulus bill that was supposed to create jobs immediately, and yet unemployment is now 10 percent in America. Three million people have lost their jobs since the bill was signed into law.

We passed a budget that's going to double the national debt in 5 years, triple it in 10 years. We have got a \$12 trillion national debt.

We brought a national energy tax bill to the floor that's going to cost a trillion dollars, passed it. We had a health

care bill here several weeks ago, another trillion dollars, passed it.

When are we going to say enough is enough? Here we are today. We are wrapping six appropriation bills together. We are going to spend a half a trillion dollars, and it has got over 5,000 earmarks in the bill, you know, things like \$292,000 for the elimination of slum and blight in Scranton, Pennsylvania; \$300,000 for music and education programs at New York City's Carnegie Hall, where they pay the employee who runs this program \$530,000 a year in salary and benefits. There is plenty in here for Washington as well: \$150,000 for the National Building Museum; \$250,000 for the Wolf Trap Foundation for the Performing Arts, a concert venue.

Listen, I don't know how worthy any of these projects are, but I do have to ask the question, are they more important than our kids and our grandkids who have to pay the debt, because we don't have the money to spend on this. It's our kids and grandkids who are going to pay for it. Yet we can't find ways to cut spending.

Before the President took office, he said that he must go through the budget and these bills line by line and page by page. Well, after Congress passed the \$410 billion omnibus spending bill earlier this year, with 9,000 earmarks, the President signed it and he said, well, that was last year's business. Now the President says reducing the deficit is next year's business and that we need to spend our way out of this economic recession that we are in.

Well, I think the President ought to go through this bill line by line and page by page, all 2,500 pages of it, then maybe he will figure out that we don't need to be spending this money that we don't have and piling more and more debt on the backs of our kids and grandkids. Instead, our bond rating, our AAA bond rating is in jeopardy and our Democrat friends want to raise the debt limit next week by \$1.8 trillion.

Let's stop the madness and vote "no."

□ 1330

Mr. OLVER. Mr. Speaker, how much time does each side now have?

The SPEAKER pro tempore. The gentleman from Massachusetts has 7 minutes remaining, and the gentleman from Iowa has 3 minutes remaining.

Mr. OLVER. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I regret that this has become another typical "Who Shot John" debate, but since it has, let me respond to the distinguished minority leader. Let's compare what President Obama inherited with what President Bush inherited. When President Bush walked into the White House, he inherited \$6 trillion in projected surpluses. He inherited 3 years in a row of

budget surpluses under President Clinton. And he inherited an economy in which all income groups saw their income rise by roughly the same percentage.

In contrast, when Mr. Obama walked into the White House, he inherited a \$1 trillion deficit, he inherited two wars that were paid for on the cuff, with borrowed money. He inherited \$6 trillion in projected deficits. And he inherited an economy in which, for six straight years, 94 percent of the income growth went to the wealthiest 10 percent of people, and everybody else got table scraps. In addition, he inherited an economy that was projected to have a \$2.5 trillion hole because of the biggest collapse of the economy in 75 years.

And so, indeed, Mr. Obama and the majority party in this Congress spent money to try to prime the pump, to keep the economy going, because we were losing 700,000 jobs a month the last 3 months of the Bush administration. We have now got that down to an 11,000 job loss last month. That's not good enough, but it's certainly a lot better than the situation was when we inherited it.

The gentleman squawks about the debt ceiling. The debt has already been rung up, and now the question is, when the bill comes in the mail, is it going to be paid or not. The fact is, out of that \$1.8 trillion debt increase, \$1.4 trillion of that is directly traceable to policy actions that were taken by the previous administration and the previous Republican Congress. And \$400 billion of it are directly traceable to the actions we've had to take to try to bail the economy out of the mess that you folks got us into.

So if you want to start comparing records, I'd be happy to. I'd much prefer to talk about the contents of this bill and the individual programs of this bill. But since some the gentlemen on that side of the aisle prefer to politicize everything, I guess we're going to have to have the debate at that level. That's too bad, but I've come to expect very little but that from the other side, I regret to say.

I do want to thank the gentleman from Ohio for trying insert a bit of bipartisanship into the debate.

Mr. LATHAM. Mr. Speaker, I yield myself as much times as I may consume.

I don't know if the gentleman has more speakers, but I'm planning on closing. I just want to thank the staff, on both sides. Our subcommittee does an outstanding job working together, and I'm just very, very proud of the work that they've done and the kind of commitment they've shown, and just want to say thank you for the professionalism that they have exhibited throughout this whole process.

Mr. Speaker, I'm going to oppose this for various reasons. Number one, the

fact that this \$450 billion bill is a 14 percent increase in spending over last year. At a time when people are hurting, we cannot afford this kind of additional debt that's being put on the taxpayers, on the families at home. Realizing that in the last 2 years, discretionary spending in this House of Representatives has increased now, 85 percent; 85 percent more money, discretionary money, being spent today than just 2 years ago. Does anybody at home have 85 percent more money today than what they had 2 years ago? Is it responsible in any way, shape or form to have that kind of an increase?

The gentleman from Massachusetts—and I appreciate his professionalism—made the case, basically, for me before. We held down spending previously. And this explosion that we've seen just throughout the budget is simply wrong. We cannot sustain it, and it is about the next generations. I've got four grandchildren. They're going to pay this bill, and their children are going to pay this bill, and it simply is not fair. It's generational theft, and we've got to finally hold the line as far as spending in this Congress and find some kind of sanity around here.

With that, again, I would hope that everyone would vote "no." We could get some reality. We could separate these bills, have them done correctly and in a responsible way. And just one other thing in closing. I want to, again, thank Chairman OLVER for being a very good friend, his professionalism, and someone that I really admire.

Mr. Speaker, I yield back the balance of my time.

Mr. OLVER. I yield myself the remainder of the time.

The SPEAKER pro tempore. The gentleman from Massachusetts is recognized for 4 minutes.

Mr. OLVER. Mr. Speaker, my counterpart, the ranking member from Iowa, has graciously thanked the people on both sides who have done all of the work that our subcommittee dealt with. Actually, since there's six different bills here, I would like to extend that thanks to the people on the staffs of each of the six subcommittees on each side of the aisle who put countless hours into the work that has brought this bill to the floor at this time.

But particularly, let me just personalize it one more step. On our side, my clerk, Kate Hallahan, and on the Republican side, their clerk, Dena Baron, and the people who work under them, for them and with them, and for us and for the people of the country. They have done an exemplary job in the THUD committee, as I think each of the other groups have done for their own particular subcommittee. We should all be very grateful for that.

With the passage of this bill—and I'm going to urge passage as I close—we will on our side have completed the work on 11 of the 12 bills, and thereby

we will be a very large step closer to the finish of the budgetary process necessary to provide for the year 2010. And so I am very optimistic today, in fact, a great load rises from the shoulders of all the chairs and ranking members of the subcommittees.

With that, let me just urge a "yes" vote on this budget bill in order to be able to reach that point very close to the completion of our work.

Mr. VAN HOLLEN. Mr. Speaker, I rise in support of the Consolidated Appropriations Act of 2010 and urge its swift consideration by our colleagues in the Senate.

This legislation includes final conference reports for the FY 2010 Transportation-HUD, Commerce-Justice-Science, Financial Services, Labor-HHS-Education, Military Construction-VA and State-Foreign Operations bills. Its total funding of \$446.8 billion makes priority investments in infrastructure, health care, and education, while supporting our veterans, funding the upcoming census and honestly accounting for war costs previously left to supplementals. Remaining items in the bill are limited to a 1% funding increase.

The \$50 billion in infrastructure spending in this bill—including \$150 million for the Washington Metropolitan Area Transit Authority—will enable us to modernize our aging infrastructure, ease congestion, facilitate commerce and create good-paying, homegrown American jobs. To further bolster our economic recovery, HR 3288 provides \$824 million to the Small Business Administration for its work helping our job-generating small businesses succeed. This investment will help facilitate an additional \$28 billion in new lending to small businesses. I am delighted that the National Institutes of Health is funded at \$31 billion so that it can continue driving scientific innovation and health system reform. Finally, I am especially pleased that the Financial Services division of this consolidated legislation sets up a fair and reasonable process by which profitable auto dealers can have an opportunity to get back into business so that they and their employees can play their part in supporting our ongoing economic recovery. In that regard, I ask that the full text of the attached statement be entered into the legislative RECORD.

Mr. Speaker, I rise today to express my appreciation that language has been included in the Financial Services Appropriations Conference Report that will give automobile dealers around the nation a fair and reasonable shot at getting back into business. For the past several months, I have been pleased to join with Majority Leader HOYER, Congressmen KRATOVIL and MAFFEI, and others to ensure that profitable car dealers have every opportunity to contribute to our economic recovery and put their employees back to work.

Profitable and viable dealers should have never been terminated in the first place, and I was proud to join the fight to have these short-sighted decisions reversed. Automobile manufacturers won't be able to get back on their feet without a strong dealer network, and Congress is committed to ensuring that such a network exists. I salute the tenacity and determination of these small business owners, many of whom have been selling cars and

supporting the American auto industry for decades. Under the provision we are approving today, these terminated dealers will have an opportunity, once again, to do what they do best—sell and service cars. And that is good for our economy, for job creation and for the American car industry.

It would have been my preference that we would not need to legislate on this matter. We convened talks with the auto dealer groups and the manufacturers and while both sides offered significant concessions, efforts to achieve a non-legislative solution failed when auto manufacturers offered plans that fell short of what was needed to add dealers to their dealer networks and put their employees back to work.

As 2009 comes to a close, the federal government still maintains a substantial financial stake in Chrysler and General Motors and therefore in the United States automobile industry. Clearly, it is in the national interest to have the domestic automobile industry regain profitability and maintain sufficient dealerships to meet consumer demand.

Section 747 of the Financial Services Appropriations division of this bill recognizes the valuable role that dealers play in the auto industry and our local economies. Automobile dealers are essential to the success of automobile manufacturers because at no material cost to the manufacturers, they facilitate distribution, sales, and servicing of hundreds of millions of vehicles annually. This legislation is premised on the notion that it is in the best interest of automobile manufacturers, the automotive industry, dealers and the public to have an extensive and competitive automobile distribution network throughout the country, including in urban, suburban and rural areas.

Section 747 mandates that manufacturers promptly provide covered auto dealers in writing the specific criteria and supporting data relied upon by a manufacturer in its decision to end or wind down the dealership relationship. In the spirit of cooperation and to ensure an efficient process as this legislation is implemented, we expect that the manufacturers will provide the information in a format that is user friendly, clearly identifies facts, readily accessible, and understandable by the dealer and that the data may be transmitted either by mail or electronically. We intend that this process provide transparency and avoid the excessive costs and delays of litigation and discovery disputes. The manufacturers should provide their respective covered dealers with each and every detail and criterion related to the evaluations of the dealership and the decisions to terminate, not assign, not renew or discontinue. It is anticipated that the manufacturers will be cooperative and forthcoming and that all relevant information will be provided promptly.

It further provides such dealers with the opportunity to participate in a neutral arbitration process designed for the dealer to make the case for being added to the manufacturer's dealer network. Congress has included specific timeliness for this process and we expect both parties to the arbitration to act in good faith and expeditiously so that added dealers can return to full-fledged operations quickly.

Section 747 expressly permits the manufacturer and dealer to present any kind of relevant information during the arbitration and

provides that the arbitrator shall decide whether the dealer should be added to the manufacturer's dealer network based on a balancing of the interests of the dealer, the manufacturer, and the general public. The public interest includes reasonably convenient access for consumers to a dealer who can service their vehicles, which is of particular concern in rural areas where many dealers were terminated in 2009. It has been well-reported that more and more individuals have to drive substantial distances to obtain service from an authorized dealer of a specific brand because of a dealer termination.

Congress has provided seven enumerated factors for the arbitrator to consider, but this list is not exhaustive because the legislation provides that the parties can introduce "any relevant information." For example, we expect that arbitrators should consider relevant State laws, which provide a context for analyzing franchise agreements and the obligations of dealers and manufacturers.

A couple of these enumerated criteria merit additional explanation. For example, Congress has directed that the demographic and geographic characteristics of the market are taken into account. This reflects our intention that the arbitrator should pay special attention to the concerns expressed by some terminated dealers that there are factors in their market areas or States that affect their performance and render some measurements, such as State averages, less than accurate in portraying the true picture of a dealer's operations.

Another one of the factors involves the dealer's performance under the franchise agreement terminated in 2009. In considering this factor and related factors, it is important for arbitrators to recognize that state law is part and parcel of and modifies auto dealer franchise agreements. To look only at a franchise agreement, in other words, misses an important contextual element. Accordingly, it is anticipated that the arbitrators will consider State law elements of good faith and fair dealing in this process and that, for example, the franchise agreement's performance standards and a dealer's performance under the original agreement will be evaluated in accordance with State law.

Another factor is the historic profitability of the dealership. During the legislative process, Congress learned that some dealers, for tax planning reasons or other reasons use a variety of legitimate, widely recognized accounting conventions, such as LIFO, that could, depending on the date a snapshot is taken, affect materially whether the dealership appears profitable. It is important that arbitrators recognize such accounting conventions when considering the profitability of a dealership so a fair and accurate picture is obtained.

With respect to being added back to a dealer network, it is the intent of Congress that notwithstanding the preference of a manufacturer to have several brands in the same dealership, in the case of a dealer seeking to be added to a dealer network but with fewer than all of the preferred brands, the dealer nonetheless will be eligible to be added.

It is worth noting that pursuant to subsection (f), manufacturers and dealers may, of their own volition, decide to enter into legally bind-

ing agreements with one another instead of going through the arbitration process. It is the intent of Congress that for this subsection to apply, the legally binding agreements shall be consensual, non-coercive resolutions of the issue between the dealer and the manufacturer entered into or ratified after the date of enactment. Coercive agreements should not be upheld.

In conclusion, I want to recognize the tireless efforts of dealers from around the Nation who worked to develop and implement a truly historic grassroots effort over the past seven months. Groups such as the Committee to Restore Dealer Rights, the Automobile Trade Association Executives, National Automobile Dealers Association and the National Association of Minority Auto Dealers, were instrumental in bringing about the legislation we are approving today.

Mrs. BACHMANN. Mr. Speaker, today, the House of Representatives once again sidestepped its constitutional obligation to fund our Nation's Federal priorities in a responsible manner and railroaded a massive spending bill through the House without allowing an open and honest debate that American taxpayers deserve. While I believe this legislation contains important funding for many programs administered by Federal agencies, spending bills and the projects they fund must be considered individually on their merits, and not obscured by being tucked into a giant "omnibus" spending package.

Right now, the national debt has already ballooned to a whopping \$12.1 trillion and Democrats are ready to increase the debt limit by another \$1.8 billion to accommodate their rabid spending habits. But at a time when American families are struggling to make ends meet and Federal deficits are skyrocketing at a record pace, it is absolutely necessary for Congress to fully commit to fiscal responsibility and scrutinize how every tax dollar is spent. While I understand the difficulty associated with such a large task, I, like so many of my colleagues, believed the Democrat majority when they pledged to "create the most honest, most open, and most ethical Congress in history." I was hopeful that their stated commitment to open government would entail the individual consideration of each of the 12 annual appropriations bills, setting a path towards restoring the confidence and trust of the American people.

Unfortunately, the actions taken today indicate that our leadership is content with the status quo, and will avoid difficult decisions that should be made in order to prevent saddling future generations with debilitating debt. By combining half of the total appropriations bills into one measure, this majority has shown that it has no interest in real transparency and is more focused on growing government to accommodate their tax-and-spend agenda than being good stewards of the taxpayers' money.

Congress should show the American people that it is serious about making the same tough choices American families make every month. But this bill's 24 percent increase in government spending ignores the realities of our limited budget and assumes the taxpayers will just pick up the tab in future years. While the bill includes some of Minnesota's local prior-

ities, it strays far from representing anything but a big government spending bill that lacks any consideration of our massive budget deficit.

Indeed, in the same manner as households across America set a budget, Washington needs to set a budget, and stick to it. However, the tax and spend approach to government being exhibited this year serves as a haunting indication that no amount of spending or government control is too much for the Democrats. That said, it is my sincere hope that as Congress moves forward with next year's budget and spending priorities, strict attention will be paid to protecting the American taxpayer and fostering an atmosphere of bipartisan cooperation and fiscal responsibility.

Mr. CONYERS. Mr. Speaker, I would like to thank the Conferees for including section 747, which regulates the relationship between automobile manufacturers and automobile dealerships. I, along with Majority Leader STENY HOYER, and Representatives CHRIS VAN HOLLEN, DANIEL MAFFEI, FRANK KRATOVIL, STEVEN LATOURETTE, JACKIE SPEIER, ROBERT BRADY, BETTY SUTTON, and BOB ETHERIDGE have worked together to create legislation that will best serve the interests of the automobile industry, including manufacturers and dealerships, and the citizens who have a significant portion of their tax dollars invested in the success of this critical industry. The following is a description of the legislation.

Section 747 of the Conference Agreement includes language establishing an arbitration process to determine whether previously terminated, non-assigned, non-renewed, or non-continued auto dealerships should be added to dealership networks of automobile manufacturers that received federal assistance under the TARP program, or that are partially owned by the Federal Government. This provision replaces Section 745 of the House bill, which also addressed concerns regarding terminated auto dealerships.

It is in the national interest to protect the substantial federal investment in automobile manufacturers by assuring the viability of such companies through the maintenance of sufficiently sized dealership networks to meet consumer demand for sales and servicing nationally. In addition to facilitating the maintenance and growth of industry market share among manufacturers that benefitted from TARP funds, and in which the taxpayers have a significant financial investment, it is in the national interest to ensure that dealerships and manufacturers are each treated fairly in their business relationships based on their respective economic interests.

Evidence obtained over the course of numerous Congressional hearings in 2009 demonstrates that the automobile industry is integral to the health of the United States economy as a whole. Automobile manufacturers have been among the largest and most successful corporations in the United States, providing significant numbers of jobs and producing valuable goods for consumers. Automobile dealerships are also essential businesses in most communities nationally, providing many jobs to local residents and facilitating the distribution, sales, and servicing of millions of vehicles annually. Our investigations have made clear that it is in the best interest of the automobile industry, automobile

manufacturers, dealerships and the public to have a competitive and economically viable domestic automobile distribution network throughout the country, including urban, suburban, and rural areas.

This provision was included because we also believe that by providing a process for working out the relationship between automobile manufacturers and dealerships that ensures transparency and review by a neutral arbitrator according to an equitable and balanced standard, taking into account the interests of all affected parties, the property and due process rights of manufacturers and dealerships will be safeguarded.

Section 747 establishes a procedure by which an automobile dealership that had a franchise agreement for a vehicle brand that was not assigned to a covered manufacturer, or that was terminated in a manner not consistent with applicable state law, on or before April 29, 2009, may seek continuation or reinstatement of the franchise agreement, or seek to be added as a franchisee to a dealership network of the covered manufacturer who manufactures the vehicle brand of the covered dealership, with such franchisee being located in the geographic area where the covered dealership was located when its franchise agreement was terminated, not assigned, not renewed, or not continued. Absent such election by the covered dealership, no such binding arbitration would occur.

In order to provide a covered automobile dealership with the information useful to determine whether to elect to enter into binding arbitration, the dealership will receive in writing notice from the covered manufacturer detailing the specific criteria pursuant to which such dealership's franchise agreement was terminated, was not renewed, or was not assumed and assigned to a covered manufacturer. This notice must be provided within the 30-day period beginning on the date of the enactment of this Section. This transparency is a vital step in giving dealerships the opportunity to understand why their franchise agreements were terminated, not renewed, or were not assumed and assigned to a covered manufacturer. It is our expectation that this transparency will obviate the need for unnecessary arbitration. It is also our expectation that this transparency will encourage informal agreements between covered dealerships and manufacturers without recourse to the more formal procedures provided in this Section. We expect that the written transmittal letter will also provide appropriate contact information, including an e-mail address, to enable the dealership to contact the manufacturer should the dealership have specific questions about the dealership's information and individual criteria contained in such letter.

The Conference Agreement provides such dealerships with the opportunity to elect to participate in a neutral arbitration process designed to permit the dealership to present information in support of its addition to the manufacturer's dealership network, and for the manufacturer to present information against such addition based on its business plan and future economic viability. The arbitrator in each case shall balance the interests of the covered dealership, the covered manufacturer, and the public and will decide based on that

balancing whether or not the covered dealership should be added to the dealership network of the covered manufacturer. These are the only remedies the arbitrator may provide. The Conference Agreement specifically prohibits the awarding of compensatory, punitive, or exemplary damages to any party.

The Conference Agreement sets out seven specific factors that the arbitrator should consider in ruling on each case. The list is not exclusive, and the arbitrator would have the discretion to consider all the relevant facts on a case-by-case basis. In considering whether adding the covered dealership to the covered manufacturer's dealership network is in the public interest, the arbitrator should consider, among other factors, the need for reasonable access for consumers to a dealership that can service their vehicles, which is of particular concern in rural areas. The arbitrator should also consider the impact on the viability of the manufacturer of adding the dealership to the manufacturer's network, the length of experience of the dealership, the dealership's historical profitability and current economic viability, and demographic and geographic characteristics of the market.

It is our understanding that the General Commercial Rules of the American Arbitration Association shall apply to the arbitration proceeding, except to the extent that a rule is inconsistent with any provision of this Section.

Subsection (f) addresses negotiations between a covered manufacturer and a covered dealership, whether acting individually, as a group, or through an organization acting on behalf of one or more covered dealerships. The provision is intended to ensure that any legally binding agreement, such as a memorandum of understanding, resulting from a voluntary negotiation between a covered manufacturer and a covered dealership, a group of covered dealerships, or an organization acting on behalf of one or more covered dealerships will not be disturbed by this section. It also makes clear that once a covered dealership is party to such an agreement, such covered dealership would not be eligible for the arbitration remedy in this section.

It is not the intent of Congress to bar a covered dealership from the provisions of this section if the covered dealership accepted a standard form contract prepared by the covered manufacturer and offered on a "take-it-or-leave-it" basis, even if the agreement was entered into voluntarily. As a consequence, a covered dealership that accepted a "wind-down" agreement drafted by a covered manufacturer would be able to avail itself of the provisions of this section. An agreement between a covered manufacturer and a covered dealership, whether acting individually, as a group, or as part of a group of dealerships acting through an organization, will be considered voluntarily negotiated if the agreement between the parties reflects a compromise based on written or oral discussions, even if one party to the negotiation is the principal or primary drafter of the agreement.

We chose this approach because binding arbitration by a neutral arbitrator is the most appropriate means of resolving the differences between covered dealerships and manufacturers, and to protect the taxpayers, and the broader economy. For this reason, the Con-

ference Agreement sets out a procedure for ensuring that a neutral arbitrator conducts the arbitration according to a clear standard with factors the arbitrator must weigh.

Due to the time sensitive nature of this situation, the Conference Agreement provides that a covered dealership must elect to pursue arbitration no later than 40 days of the date of enactment of this section, that such arbitration must commence as soon as practicable and must be submitted to the arbitrator for deliberation not later than 180 days of such date. The arbitrator is given the flexibility to extend that period for up to 30 days for good cause. The arbitrator then has seven business days after the arbitrator determines that the case has been fully submitted to issue a written opinion.

Section 747 expressly permits the manufacturer and dealership to present any kind of relevant information during the arbitration. As an additional means of ensuring efficiency and economy in the arbitration process, the provision prohibits depositions and limits discovery to documents specific to the covered dealership.

Section 747 also makes clear that a manufacturer may terminate a covered dealership in accordance with applicable state law.

Ms. BORDALLO. Mr. Speaker, this week, as world leaders convene in Copenhagen, Denmark, for the United Nations Climate Change Conference, the House of Representatives has taken an important, if incremental, step to improve our Nation's ability to strategically respond and adapt to an unpredictable climate by authorizing a study which advances the idea of creating a Federal National Climate Service.

H.R. 3288, the Consolidated Appropriations Act, 2010, directs the National Oceanic and Atmospheric Administration, NOAA, to enter into a contract with the National Academy of Public Administration to investigate the effectiveness and efficiency of alternative organizational frameworks for the establishment of a National Climate Service within NOAA.

I would like to commend my colleague from Wisconsin and the Chairman of the Appropriations Committee, Congressman DAVID OBEY, and the rest of the conferees, for their recognition that the establishment of a National Climate Service within NOAA is absolutely critical at this time. The American public will need climate information, products and services in order to plan for and adapt to climate variability, and it is essential that the Federal Government have in place an organizational architecture that is science-based, reliable, and responsive to address this need.

Most important, this study will provide another opportunity to comparatively evaluate and assess the merits of a public-private approach for a National Climate Service. Last June, I introduced H.R. 2685, the Climate and Ocean Research and Coordination Act of 2009, to establish, in part, a National Climate Enterprise comprised of federal and non-federal partners which would have NOAA function as the operational lead. This framework, which would build from and strengthen existing Federal climate research and science capacities within NOAA, NASA, the U.S. Geological Survey, National Science Foundation, and other



agencies, would also incorporate the significant contributions of non-Federal climate scientists, researchers and stakeholders to provide to end users on the ground climate information, products and services at variable scales that are credible, reliable and usable.

As NOAA and the National Academy of Public Administration consider alternative frameworks for a National Climate Service, I respectfully urge consideration of the public/private concepts within H.R. 2685, which have been enthusiastically endorsed by the University Corporation for Atmospheric Research, UCAR, the Joint Ocean Commission Initiative, and the Coastal States Organization. All Americans, from the District of Columbia to my congressional district in Guam, should have at their disposal an effective and accessible National Climate Service, and I again commend Chairman OBEY for advancing this idea.

Mr. HOLT. Mr. Speaker, I rise in support of this bill.

Too many of our fellow citizens are suffering as a result of the biggest economic downturn in 75 years. In light of the number of Americans who continue to be unemployed or under-employed, it is essential that we focus our efforts on helping Americans find jobs. H.R. 3288 is responsible legislation which will help employ Americans, assist communities suffering from decreases in tax payments, and provide more stability to our economy.

H.R. 3288 would put an estimated 1.5 million Americans back to work by investing \$41.8 billion in improving our transportation infrastructure. The bill also provides 4.5 billion for commuter and passenger rail projects to help reduce congestion and provide more environmentally-friendly ways for Americans to get to work and travel. I am pleased that my colleague from Pennsylvania PATRICK MURPHY and I were able to get language removed from this bill preventing Amtrak from being able to offer discounted fares to commuters on the Northeast Corridor. Since it was first included in the 2006 Fiscal Year, this language prevented Amtrak from being able to offer a more than 50 percent discount off peak fares to commuters on any of its lines. This resulted in a 20 percent fare increase to my constituents. The removal of this provision recognizes the need to make public transportation more affordable and more accessible, and I expect it will result in discounted Amtrak ticket rates.

Our economy nearly collapsed last year because of the combination of reckless and abusive financial services and mortgage-industry practices, and astounding regulatory failures. To help re-establish real oversight and control over our financial markets, the bill provides \$1.111 billion to strengthen and enforce rules that govern investments and financial markets and to detect and prosecute fraudulent schemes, and allow the hiring of another 420 investigators, lawyers and analysts to support the mission of the Securities and Exchange Commission. The bill also provides \$292 million to strengthen the Federal Trade Commission's capacity to protect consumers and combat anti-competitive behavior. Additionally, the bill allocates \$118 million for the Consumer Product Safety Commission to continue implementing bipartisan consumer protection legislation enacted in 2008 in response to massive toxic product scandals, including children's toys from China.

The bill also provides \$1.4 billion for training and support services to workers affected by mass layoffs and plant closures, and \$125 million for competitive grants to community colleges and partnership with local adult education providers to prepare workers for careers in high-demand and emerging industries. To assist affected parents in ensuring that their children get good meals and quality health care, the bill provides \$7.2 billion for Head Start, an investment that will help nearly 1 million children from low-income families.

To help America's students pay for a college education, this bill maintains the discretionary portion of the maximum Pell Grant at \$4,860, which, combined with a mandatory supplement of \$690, will support a \$5,550 maximum Pell Grant in FY 2010. Since January 2007, the maximum Pell Grant has been increased by \$1,500 or 37 percent—from \$4,050 to \$5,550. In FY 2010, more than 8 million college students will receive Pell Grants.

This bill maintains investments in math and science education by providing \$180 million toward the Department of Education's Mathematics and Science Partnerships. The program is the only national teacher development program available to teachers across the U.S.

It is widely understood that early language education is the key to language proficiency later on. In order to start addressing the pressing needs for skilled linguists and other language professionals that currently exist, this bill maintains investments in the Foreign Language Assistance Program at \$27 million, which is currently the only federal program that supports foreign language education at the elementary and secondary school level.

This bill also contains provision and funding for programs to protect Americans' access to health care coverage until national health care reform is enacted. To that end, the bill provides \$2.2 billion to provide primary health care to 17 million patients, of whom 40 percent are uninsured, in 7,500 service delivery sites. These centers provide high quality care in both urban and rural underserved areas across the country. The bill also seeks to increase the number of health care professionals by providing \$498 million to support the training of health professionals in fields where there are shortages, such as nursing. And to help find cures for the diseases afflicting Americans, the bill provides \$31 billion for NIH-funded biomedical research to improve health and reduce health care expenditures.

At a time when the recession has created a fiscal crisis for state and local governments, requiring them to let go of key law enforcement and related personnel, federal support for state and local law enforcement programs has never been more important. To help keep police on the beat, the bill provides \$792 million to support local law enforcement agencies with hiring, technology, training, body armor, and sex-offender enforcement management grants. This includes \$298 million specifically for COPS Hiring Grants to hire or retain approximately 1,400 police officers. The bill also provides \$519 million for the Byrne Justice Assistance Grant (JAG) program, which helps local law enforcement agencies engage in a broad range of activities to better fight and prevent crime. I'm pleased that this year sev-

eral municipalities in my district will receive funding for projects under this program, including the Borough of Jamesburg (to modernize communications), the city of Trenton (for an anti-gang program), and the township of North Brunswick (for a video surveillance system).

Meeting our obligations to America's veterans is a national trust. The bill provides over \$109 billion for the operation of the Department of Veterans Affairs, with \$45.1 billion allocated for medical care. In a breakthrough long sought by veterans, the bill also provides advance appropriations for the VA to ensure a stable and uninterrupted source of funding for medical care for veterans, providing \$48.2 billion for FY 2011.

I am very pleased that this bill reflects a strong commitment by this Congress to provide robust, secure funding for science. The bill keeps the U.S. on track to double the funding for basic research by providing over \$31 billion for the National Science Foundation, the National Institute of Standards and Technology, the National Aeronautics and Space Administration, and the National Oceanic and Atmospheric Administration. An additional \$31 billion will support biomedical research through the National Institutes of Health. These investments in our science and innovation infrastructure will help create jobs immediately while stimulating the discoveries and investments that will ensure sustained economic growth in the future.

I am also pleased that this bill includes \$17.4 million in disability access funding under the Help America Vote Act, including \$12.1 million to help ensure that polling places are accessible and \$5.3 million for protection and advocacy funding. The bill also includes \$70 million in funding to help States meet the voting system requirements of the Help America Vote Act, and better protect and preserve the integrity of elections. This sum is much less than I requested, and it is less than the \$100 million passed in the House, but it will go a long way in helping States improve the administration of elections—the foundation of our Democracy.

Finally, this bill makes much needed investments in our foreign affairs institutions, including funding increases that will allow the State Department and the U.S. Agency for International Development to hire additional foreign service personnel to address the neglected staffing needs of these agencies. Key initiatives continue to receive vigorous support, including efforts to combat HIV/AIDS and other diseases, agriculture and food security programs, basic education programs, microfinance and microcredit, and the Peace Corps. I am especially pleased that the final bill recognizes the important contributions that scientists and scientific engagement can make to our international relations.

Mr. Speaker, I encourage my colleagues to join me in supporting this critical funding bill.

Mr. KUCINICH. Mr. Speaker, I rise in opposition to H.R. 3288, the Consolidated Appropriations for FY 2010. Our commitment to a strategy of aggression rather than a strategy of dialogue is evident in the State and Foreign Operations portion of this legislation that includes billions of dollars in military aid, sanctions and funds for policies in the Middle East that undermine the Administration's call for a

commitment to diplomacy. There are many laudable provisions in this bill but I cannot support legislation that includes funding for programs and support for the failed policies of aggression and disregard for international human rights.

I oppose the inclusion of the Export-Import Bank provision regarding Iran. This section calls on the President to implement the Iran Sanctions Act of 1996 and encourages all foreign governments to require state-owned and private entities to cease all investment in Iran's energy sector. In June of this year, I joined the House of Representatives in voting to express support for the people of Iran who embrace the values of freedom, civil liberties and human rights. Sanctions are meant to destabilize economies and have disastrous effects on the citizens at the receiving end. This provision will not harm the leadership in Iran; it will harm the people of Iran we claim to support.

I oppose the inclusion of \$239 million in foreign military financing for Pakistan. More unmanned drone attacks have been authorized in the first few months of this Administration than in the last year of the Bush Administration. Hundreds of innocent civilians have been killed by these predator drones that contravene international law and cement anti-American sentiment. Military operations in the region will only serve to further destabilize a faltering Pakistan and undermine our national security.

This legislation includes provisions that further undermine the image of the United States in the Middle East as an honest broker. It includes language that places conditions on aid to the West Bank and Gaza that cannot be satisfied in the immediate future. At the same time, the bill provides military aid to Israel without investigating credible accusations that Israel is using weapons provided by the U.S. in an offensive posture in contravention of U.S. law and international law. The perception of the U.S. as an honest broker is necessary for good-faith negotiations.

I support many provisions in this bill, such as the \$4.8 billion investment in transportation infrastructure and \$1.4 billion allocated for dislocated worker programs. I fully support the \$2.2 billion authorized for Community Health Centers that provide primary health care to almost 17 million patients, forty-percent of whom are uninsured. The \$14.5 billion appropriated for Title 1 grants for 20 million disadvantaged children in school districts across the country and high-quality early learning programs are to be supported.

Regrettably, these essential services were folded into a continuing resolution with programs that I cannot support. We cannot claim to travel the path toward peace when funding for a strengthened diplomatic core is paralleled by funding for policies of isolation and aggression.

Mr. PERLMUTTER. Mr. Speaker, I rise to day to let the CONGRESSIONAL RECORD reflect a clerical error in the Consolidated Appropriations Act for Fiscal Year 2010.

In July of this year, shortly after the Committee on Appropriations made available the appropriations requests included in its Transportation and Housing and Urban Development Appropriations Act, it came to my atten-

tion my name was incorrectly placed as a joint sponsor of a project request which provides \$10,312 for the Southeast Corridor Light Rail in Denver, Colorado. While I am supportive of this project and the broader FasTracks mass transit plan of Colorado's Regional Transportation District, RTD, I did not request funding for this project. Upon discovery, my staff informed the Committee on Appropriations of this error and asked that it be corrected.

On December 10, the House passed the Consolidated Appropriations Act for Fiscal Year 2011. In that conference report, my name was again mistakenly attached to this project by committee staff during the filing process. Because both chambers have passed this conference report, there is no method short of a Presidential veto for me to correct this error. Therefore, I would like to let the CONGRESSIONAL RECORD reflect this mistake and my lack of involvement in this project.

To be clear, no official from RTD or any other organization asked me or my staff to request funding for this project. Nor did I submit any material to the Appropriations Committee requesting funding for this project. As such, I did not post information on the process on my official website. However, for the sake of transparency and public accountability, I have certified in writing that I have no financial interest in this project.

Mr. ORTIZ. Mr. Speaker, I rise in support of H.R. 3288, the Consolidated Appropriations Act, 2010. This bill provides the necessary funding to sustain our agencies covered by six regular appropriations bills and incorporates many key projects that directly benefit our communities nationwide.

I am very supportive of providing resources to ensure that quality programs and projects continue to receive assistance to improve infrastructure, expand education programs, retain jobs, and provide adequate equipment and service to our military personnel and veterans. I would like to thank my colleagues for their leadership on this bill and their support of projects in South Texas.

I am happy to note that within this agreement I was able to secure funding for several projects benefiting my district. Through these appropriations, new jobs and innovative developments will continue to advance our community as well as contribute to the future of our country. Some of these projects include: \$500,000 for facilities and equipment at the University of Texas at Brownsville and Texas Southmost College, \$250,000 for the Texas A&M Corpus Christi Adjuncted Youth Program, \$150,000 for Global Marketing and Logistics Certification Program at the University of Texas at Brownsville, \$300,000 for street improvements at the Robstown Inland Port, \$500,000 for the Corpus Christi and Robstown Regional Intermodal Transit Facility, \$700,000 for Shrimp Industry Fishing Effort Research Continuation in the Gulf of Mexico and throughout the country, \$19,764,000 for Corpus Christi Naval Air Station Operational Facilities to support T-6 planes, \$4,470,000 for the Solar Panel Array at Kingsville Naval Air Station, \$10,200,000 for the Robstown Tactical Equipment Maintenance Facility, and \$200,000 for the Brownsville and Corpus Christi Independent School Districts' joint South Texas Library Literacy Project.

I want to make clear that my vote for this bill reflects solely my support for the aforementioned priorities. I have consistently voted against using federal funds to support abortion services and am pleased that this bill upholds those limitations so that my constituents' tax dollars are not used in a way inconsistent with their moral beliefs.

My vote in favor of H.R. 3288 reflects my commitment to fund this nation's economic priorities and help our South Texas communities, educational facilities, and small businesses in the midst of a deep recession.

Mr. THOMPSON of Mississippi. Mr. Speaker, as I mentioned during debate on the rule, I have strong objections to section 159 of the Transportation division of this bill.

Over the last decade it has become abundantly clear that rail systems are key targets for terrorists.

And the consequences have been devastating for many of our friends around the globe.

In last year's attack in Mumbai, 2 terrorists executed a "commando-style" raid on a major railway station, gunning down 150 innocent commuters.

I am grateful that, thus far, Americans have been spared the horror of an attack on our domestic rail system.

But approving section 159 is to act as though the terrible events in Madrid, Mumbai, and Russia could never happen here.

Amtrak's ban on firearms was instituted in response to September 11th, and re-evaluated after each major terrorist attack since.

Section 159 interferes with Amtrak's carefully developed security protocols and exacerbates the vulnerability of railways without hearings or debate.

Still, I would like to recognize Chairman OLVER and Chairman OBEY for reaching out to discuss my security concerns and potential changes to proposed language.

Unfortunately, none of those concerns are addressed in the provision that is in the conference package.

The bottom line is that it still forces Amtrak to allow passengers to transport guns as checked baggage without even the most basic safeguards.

For example, section 159 does not distinguish between checked baggage transported in a separate car and that which is loaded onto passenger cars.

Moreover, there is not even language that requires checked baggage to be secure.

This means that guns and ammunition could be loaded onto the same cars as the passengers who are transporting them.

As my colleague from Florida, Chairwoman BROWN, stated earlier, it is absolutely critical for everyone to understand that checked baggage on a train is not the same as checked baggage on an airplane.

What is even more puzzling is that section 159 requires Amtrak to allow passengers to travel with guns without checking their names against the terrorist watchlist.

We all know that our names are checked against the watchlist when we fly, even if we don't check firearms.

I do not understand how anyone can justify using the watchlist to protect air passengers but refusing to provide the same protection to rail passengers.

This section also lacks safeguards to ensure that State and local gun laws are respected.

Specifically, it fails to address preemption, with the implication that individuals may carry firearms into jurisdictions where it is unlawful to do so.

Last year, we spent more than twice as much money per-passenger on aviation security as we did on passenger rail security.

Still, Congress saw fit to cut Amtrak's security funding by 20 percent for this year.

And since section 159 creates new problems without providing any additional funding, Amtrak will now face more security obstacles with even fewer resources.

Section 159 will reverse nearly a decade of conscientious efforts by Amtrak to protect its passengers, employees, and infrastructure—and I sincerely hope that we do not soon come to regret its hasty and unexamined passage.

Mr. SKELTON. Mr. Speaker, today, the House of Representatives is considering H.R. 3288, the Consolidated Appropriations Act for Fiscal Year 2010. This legislation contains six of the fiscal year 2010 appropriations bills that have not yet been signed into law by the President. I commend my colleagues for gluing together this very complex measure that invests in important American priorities.

I support a vast majority of this legislation, especially funds that have been directed toward veterans health care, military construction, public safety, health research, education, highways, and international diplomacy. But, I am terribly concerned about other aspects of the bill, namely its \$1.1 trillion price tag as well as provisions that would allow federal funds to be used for needle exchange programs and for abortion services in the District of Columbia.

While I cannot lend my support to H.R. 3288, I remain committed to working with my Democratic and Republican colleagues as we finish the fiscal year 2010 appropriations process and begin work on the bills for next year.

Mr. BRALEY of Iowa. Mr. Speaker, I rise today in strong support of H.R. 3288, the Consolidated Appropriations Act. While there are many good provisions in this bill, I'm particularly pleased to see funding included in this legislation intended for a Biodegradable Lubricants Study which will reduce our dependency on foreign sources of oil.

In 2008, I successfully included language in the Passenger Rail Investment and Improvement Act which authorized a Biodegradable Lubricants Study to reduce our dependency on foreign sources of oil. This authorization language was included in the Railroad Safety Enhancement Act which was signed into law on October 16, 2008.

In 2009, I was pleased to secure an additional \$3 million in funding for the Railroad Research and Development Account in the Transportation HUD Appropriations Act. This additional \$3 million in funding is intended to fund the Biodegradable Lubricants study authorized in Division B: Section 405 of the Railroad Safety Enhancement Act of 2008, as well as other feasibility studies authorized in that bill.

I was pleased to see that additional \$3 million for Railroad Research and Development included in the Consolidated Appropriations

Act. I was also pleased to see language in the Joint Explanatory Statement which specifies that Railroad Research and Development funding will go towards studies and research authorized in the Railroad Safety Enhancement Act of 2008. The Biodegradable Lubricants Study authorized in this legislation will help reduce our dependence on foreign oil and reduce our national addiction to petroleum imports. If all industrial lubricants used annually in the U.S. could be replaced with biobased versions, over 2 billion gallons of petroleum per year would be replaced.

In performing this study, the National Ag-Based Lubricants Center (NABL) at the University of Northern Iowa would be a perfect partner for the Federal Railroad Administration. NABL's expertise and resources in biobased lubricants is unmatched, and it is the only entity whose primary mission is the research and testing of agricultural-based lubricants. I thank the Conferees for including the \$3 million in additional funding for the FRA's Railroad Research and Development account and I look forward to seeing the Consolidated Appropriations Act signed into law.

Mr. DINGELL. Mr. Speaker, although I intend to vote in favor of H.R. 3288, the "Consolidated Appropriations Act, 2010," I do so with regret. This legislation contains a provision that affords the right of binding third-party arbitration to terminated automobile dealership franchises with Chrysler and General Motors (GM). Moreover, this provision governs the very nature of that arbitration, in effect dictating the criteria arbiters must take into account when deciding whether to cause an auto manufacturer to reinstate a particular dealer franchise. While I lament the painful cuts to dealerships both Chrysler and GM had to make in order to protect their viability and moreover disagree with the manner in which both companies pursued dealership rationalization, particularly with regard to Chrysler, I continue to maintain that statutorily mandated arbitration is at best a mistake and, rather frankly, unconstitutional. Chrysler's and GM's respective dealership cuts were approved in bankruptcy court, and undoing them ex post facto is tantamount to violation of due process, the spending and commerce clauses, and the bankruptcy clause's uniformity requirement.

From an economic perspective, effectively causing Chrysler and GM to engage in thousands of arbitrations at significant legal cost will impede each company's ability to complete its restructuring plans. To add uncertainty to these companies' futures after taxpayers have invested \$60 billion to finance their restructuring is quite simply irresponsible and, more broadly, potentially harmful to the country's overall economic recovery.

I recognize the sincere efforts of my friend, Majority Leader HOYER, to broker a compromise between dealers and automakers but cannot in good conscience remain silent on this matter, given the grave constitutional and economic defects of the arbitration provision in H.R. 3288. It remains my strong preference that disputes of this nature be resolved outside of statute.

Mr. SIMPSON. Mr. Speaker, as the House considers the conference report on H.R. 3288, the Omnibus Appropriations Act for FY2010, I wanted to clarify the sponsorship of one con-

gressionally-directed projects included in the report that has been attributed to me. Division A of the Conference Report, the Transportation, Housing and Urban Development Appropriations Act, includes \$400,000 in funding for FH-24, Banks to Lowman. The Report mistakenly names me as the sponsor of this project. While this project is located in Idaho, I did not submit a request for this project, which is located in the first district. I appreciate the Committee's work in providing funding for important projects in Idaho, but in the interest of transparency, I wanted to clarify this for the record.

Mr. OLVER. I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Under the rule, the previous question is ordered.

The question is on the conference report.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, this 15-minute vote on adoption of the conference report will be followed by a 5-minute vote on suspending the rules and passing H.R. 4017.

The vote was taken by electronic device, and there were—yeas 221, nays 202, answered "present" 1, not voting 10, as follows:

[Roll No. 949]

YEAS—221

Abercrombie	Dicks	Kanjorski
Ackerman	Dingell	Kaptur
Altmire	Doggett	Kennedy
Andrews	Doyle	Kildee
Arcuri	Edwards (MD)	Kilpatrick (MI)
Baca	Edwards (TX)	Kilroy
Barrow	Ellison	Kirkpatrick (AZ)
Bean	Engel	Kissell
Becerra	Eshoo	Klein (FL)
Berkley	Etheridge	Kosmas
Berman	Farr	Langevin
Berry	Fattah	Larsen (WA)
Bishop (GA)	Filner	Larson (CT)
Bishop (NY)	Foster	Lee (CA)
Blumenauer	Fudge	Levin
Boccheri	Garamendi	Lewis (GA)
Boswell	Giffords	Loebuck
Boucher	Gonzalez	Loftgren, Zoe
Boyd	Grayson	Lowe
Brady (PA)	Green, Al	Lujan
Braley (IA)	Green, Gene	Lynch
Butterfield	Griffith	Maffei
Capps	Grijalva	Maloney
Capuano	Gutierrez	Markey (CO)
Cardoza	Hall (NY)	Markey (MA)
Carnahan	Halvorson	Massa
Carson (IN)	Hare	Matsui
Castor (FL)	Harman	McCarthy (NY)
Chandler	Hastings (FL)	McCollum
Chu	Heinrich	McDermott
Clarke	Herseth Sandlin	McGovern
Clay	Higgins	McIntyre
Cleaver	Hill	McMahon
Clyburn	Himes	McNerney
Cohen	Hinchey	Meek (FL)
Connolly (VA)	Hinojosa	Meeks (NY)
Conyers	Hirono	Michaud
Costa	Hodes	Miller (NC)
Courtney	Holden	Miller, George
Crowley	Holt	Mollohan
Cuellar	Honda	Moore (KS)
Cummings	Hoyer	Moore (WI)
Davis (AL)	Inslee	Murphy (CT)
Davis (CA)	Israel	Murphy (NY)
Davis (IL)	Jackson (IL)	Murphy, Patrick
Davis (TN)	Jackson-Lee	Nadler (NY)
DeFazio	(TX)	Napolitano
DeGette	Johnson (GA)	Neal (MA)
DeLauro	Johnson, E. B.	Nye
	Kagen	Oberstar

Obey  
Olver  
Ortiz  
Pallone  
Pascarell  
Pastor (AZ)  
Payne  
Perlmutter  
Perriello  
Peters  
Pingree (ME)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Richardson  
Rodriguez  
Ross  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)

Salazar  
Sánchez, Linda T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Sires  
Slaughter  
Smith (WA)  
Snyder  
Space  
Spratt  
Stark  
Sutton  
Teague

Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

## NAYS—202

Aderholt  
Adler (NJ)  
Akin  
Alexander  
Austria  
Bachmann  
Bachus  
Baird  
Bartlett  
Barton (TX)  
Biggert  
Bilbray  
Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehner  
Bonner  
Bono Mack  
Boozman  
Boren  
Boustany  
Brady (TX)  
Bright  
Broun (GA)  
Brown (SC)  
Brown-Waite, Ginny  
Buchanan  
Burgess  
Burton (IN)  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Carter  
Cassidy  
Castle  
Chaffetz  
Childers  
Coble  
Coffman (CO)  
Cole  
Conaway  
Costello  
Crenshaw  
Culberson  
Dahlkemper  
Davis (KY)  
Deal (GA)  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Donnelly (IN)  
Dreier  
Driehaus  
Duncan  
Ehlers  
Ellsworth  
Emerson  
Fallin  
Flake  
Fleming  
Forbes

Fortenberry  
Fox  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Gingrey (GA)  
Gohmert  
Goodlatte  
Gordon (TN)  
Granger  
Graves  
Guthrie  
Hall (TX)  
Harper  
Hastings (WA)  
Heller  
Hensarling  
Herger  
Hoekstra  
Hunter  
Ingليس  
Issa  
Jenkins  
Johnson (IL)  
Johnson, Sam  
Jones  
Jordan (OH)  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kline (MN)  
Kratovil  
Kucinich  
Lamborn  
Lance  
Latham  
LaTourette  
Latta  
Lee (NY)  
Lewis (CA)  
Linder  
Lipinski  
LoBiondo  
Luetkemeyer  
Lummis  
Lungren, Daniel E.  
Mack  
Manzullo  
Marchant  
Marshall  
Matheson  
McCarthy (CA)  
McCaul  
McClintock  
McCotter  
McHenry  
McKeon  
McMorris  
Rodgers  
Melancon  
Miller (FL)

Miller (MI)  
Miller, Gary  
Minnick  
Mitchell  
Moran (KS)  
Murphy, Tim  
Myrick  
Neugebauer  
Nunes  
Olson  
Owens  
Paul  
Paulsen  
Pence  
Peterson  
Petri  
Pitts  
Platts  
Poe (TX)  
Posey  
Price (GA)  
Putnam  
Radanovich  
Rehberg  
Reichert  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Royce  
Ryan (WI)  
Scalise  
Schmidt  
Schock  
Sensenbrenner  
Sessions  
Shadegg  
Shimkus  
Shuler  
Shuster  
Simpson  
Skelton  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Souder  
Stearns  
Stupak  
Sullivan  
Tanner  
Taylor  
Terry  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Turner  
Upton  
Walden  
Wamp  
Westmoreland

Whitfield  
Wilson (SC)  
Wittman  
Wolf  
Young (AK)  
Young (FL)

## ANSWERED “PRESENT”—1

Brown, Corrine

## NOT VOTING—10

Baldwin  
Barrett (SC)  
Buyer  
Cooper

Frank (MA)  
Mica  
Moran (VA)  
Murtha

Polis (CO)  
Speier

□ 1403

Messrs. CAMPBELL, CARTER and MELANCON changed their vote from “yea” to “nay.”

Messrs. MILLER of North Carolina and SCHRADER changed their vote from “nay” to “yea.”

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. OWENS. Madam Speaker, on Thursday, December 10, 2009, I recorded an incorrect vote on Passage of the Consolidated Appropriations Act of 2010.

I intended to vote “yea” on rollcall vote No. 949, in support of the overall bill which contained funding that would go towards an All Weather Marksmanship Facility for Fort Drum in my Congressional District.

Stated against:

Mr. COOPER. Mr. Speaker, earlier today I was in a meeting with a senior administration official and inadvertently missed rollcall vote 949 on Agreeing to the Conference Report for H.R. 3288, the Consolidated Appropriations Act for Fiscal Year 2010. Had I been present, I would have voted “nay.”

## ANN MARIE BLUTE POST OFFICE

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill, H.R. 4017.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and pass the bill, H.R. 4017.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

## RECORDED VOTE

Mr. HASTINGS of Florida. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This shall be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 419, noes 0, not voting 15, as follows:

[Roll No. 950]

AYES—419

Abercrombie  
Ackerman  
Aderholt  
Adler (NJ)  
Akin  
Alexander

Altmire  
Andrews  
Arcuri  
Austria  
Baca  
Bachmann

Bachus  
Baird  
Barrow  
Bartlett  
Barton (TX)  
Bean

Berkley  
Berman  
Berry  
Biggert  
Bilbray  
Bilirakis  
Bishop (GA)  
Bishop (NY)  
Bishop (UT)  
Blackburn  
Blumenauer  
Blunt  
Bocchieri  
Boehner  
Bonner  
Bono Mack  
Boozman  
Boren  
Boswell  
Boucher  
Boustany  
Boyd  
Brady (PA)  
Brady (TX)  
Braley (IA)  
Bright  
Broun (GA)  
Brown (SC)  
Brown, Corrine  
Brown-Waite, Ginny  
Buchanan  
Burgess  
Burton (IN)  
Butterfield  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Carter  
Cassidy  
Castle  
Castor (FL)  
Chaffetz  
Chandler  
Childers  
Chu  
Clarke  
Clay  
Cleaver  
Clyburn  
Coble  
Coffman (CO)  
Cohen  
Cole  
Conaway  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crenshaw  
Crowley  
Cuellar  
Culberson  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
Deal (GA)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Dreier  
Driehaus  
Duncan

Edwards (MD)  
Ehlers  
Ellison  
Ellsworth  
Emerson  
Engel  
Eshoo  
Etheridge  
Fallin  
Farr  
Fattah  
Filner  
Flake  
Fleming  
Forbes  
Fortenberry  
Foster  
Foxy  
Frank (MA)  
Franks (AZ)  
Frelinghuysen  
Fudge  
Gallegly  
Garamendi  
Garrett (NJ)  
Gerlach  
Giffords  
Gingrey (GA)  
Gohmert  
Gonzalez  
Goodlatte  
Gordon (TN)  
Granger  
Graves  
Grayson  
Green, Al  
Green, Gene  
Griffith  
Grijalva  
Guthrie  
Gutierrez  
Hall (NY)  
Hall (TX)  
Halvorson  
Hare  
Harman  
Harper  
Hastings (FL)  
Hastings (WA)  
Heinrich  
Heller  
Hensarling  
Herger  
Herseth Sandlin  
Higgins  
Hill  
Himes  
Hinchey  
Hinojosa  
Hirono  
Hodes  
Hoekstra  
Holden  
Holt  
Honda  
Hoyer  
Hunter  
Ingليس  
Inslee  
Israel  
Issa  
Jackson (IL)  
Jackson-Lee  
(TX)  
Jenkins  
Johnson (GA)  
Johnson (IL)  
Johnson, E. B.  
Johnson, Sam  
Jones  
Jordan (OH)  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)

Kline (MN)  
Kosmas  
Kratovil  
Kucinich  
Lamborn  
Lance  
Langevin  
Larsen (WA)  
Larson (CT)  
Latham  
LaTourette  
Latta  
Lee (CA)  
Lee (NY)  
Levin  
Lewis (CA)  
Lewis (GA)  
Lipinski  
LoBiondo  
Loeb sack  
Lofgren, Zoe  
Lowey  
Lucas  
Luetkemeyer  
Lujan  
Lummis  
Lungren, Daniel E.  
Lynch  
Mack  
Maffei  
Maloney  
Manzullo  
Marchant  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (CA)  
McCarthy (NY)  
McCaul  
McClintock  
McCollum  
McCotter  
McDermott  
McGovern  
McHenry  
McIntyre  
McKeon  
McMahon  
McMorris  
Rodgers  
McNerney  
Meek (FL)  
Melancon  
Michaud  
Miller (FL)  
Miller (MI)  
Miller (NC)  
Miller, Gary  
Miller, George  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moore (WI)  
Moran (KS)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Murphy, Tim  
Myrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Neugebauer  
Nunes  
Nye  
Oberstar  
Olson  
Olver  
Ortiz  
Owens  
Pallone  
Pascarell  
Pastor (AZ)  
Paul  
Paulsen  
Payne  
Pence  
Perlmutter  
Perriello  
Peters  
Peterson

Petri	Sarbanes	Terry
Pingree (ME)	Scalise	Thompson (CA)
Pitts	Schakowsky	Thompson (MS)
Platts	Schauer	Thompson (PA)
Poe (TX)	Schiff	Thornberry
Polis (CO)	Schmidt	Tiahrt
Pomeroy	Schock	Tiberi
Posey	Schwartz	Tierney
Price (GA)	Scott (GA)	Titus
Price (NC)	Scott (VA)	Tonko
Putnam	Sensenbrenner	Towns
Quigley	Serrano	Tsongas
Radanovich	Sessions	Turner
Rahall	Sestak	Upton
Rangel	Shadegg	Velázquez
Rehberg	Shea-Porter	Visclosky
Reichert	Sherman	Walden
Reyes	Shimkus	Walz
Richardson	Shuler	Wamp
Rodriguez	Shuster	Wasserman
Roe (TN)	Simpson	Schultz
Rogers (AL)	Sires	Waters
Rogers (KY)	Skelton	Watson
Rogers (MI)	Slaughter	Watt
Rohrabacher	Smith (NE)	Waxman
Rooney	Smith (NJ)	Weiner
Ros-Lehtinen	Smith (TX)	Welch
Roskam	Smith (WA)	Westmoreland
Ross	Snyder	Wexler
Rothman (NJ)	Souder	Whitfield
Roybal-Allard	Space	Wilson (OH)
Royce	Speier	Wilson (SC)
Ruppersberger	Spratt	Wittman
Rush	Stearns	Wolf
Ryan (OH)	Stupak	Woolsey
Ryan (WI)	Sullivan	Wu
Salazar	Sutton	Yarmuth
Salánchez, Linda	Tanner	Young (AK)
T.	Taylor	Young (FL)
Sanchez, Loretta	Teague	

## NOT VOTING—15

Baldwin	Edwards (TX)	Murtha
Barrett (SC)	Linder	Obey
Becerra	Meeks (NY)	Schrader
Buyer	Mica	Stark
Davis (KY)	Moran (VA)	Van Hollen

## □ 1411

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. HASTINGS of Florida. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 962 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

## H. RES. 962

*Resolved*, That the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to any resolution reported on the legislative day of December 10, 2009, providing for further consideration or disposition of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

The SPEAKER pro tempore (Mr. SERRANO). The gentleman from Florida is recognized for 1 hour.

Mr. HASTINGS of Florida. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to my good friend, the gentleman from Texas (Mr. SESSIONS). All time yielded during consideration of the rule is for debate only. I yield myself such time as I may consume, Mr. Speaker.

## GENERAL LEAVE

Mr. HASTINGS of Florida. Mr. Speaker, I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 962.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. HASTINGS of Florida. Mr. Speaker, House Resolution 962 waives clause 6(a) of rule XIII which requires a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee. This waiver would apply to any rule reported through the legislative day of December 10, 2009, that provides for same-day consideration of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009.

## □ 1415

I hope Members on both sides of the aisle will support this rule so that we can move quickly to enact this critically important legislation.

Over the past year, the financial crisis has shown that the deregulation or even the lack of regulation over financial firms is not an option anymore. For the first time ever, this legislation provides key provisions that will mandate oversight of certain parts of the United States financial system. It will ensure that mortgage lenders are subject to high national standards so they can no longer give an individual a loan that they cannot afford to pay back. Furthermore, it will provide for a new interagency oversight council that will allow Federal regulators to oversee the entire system and identify activities that pose a risk to our Nation's financial system. It will also require comprehensive regulation of the opaque over-the-counter derivatives marketplace.

In my home State of Florida, we are undoubtedly facing an insurance crisis. Homeowners are burdened by continuously increasing property insurance premiums, or some are losing their coverage altogether while companies are going under or simply leaving the State. This poses a problem not only to property owners who cannot afford increasing costs in this difficult economy but also to the State, which has taken on the responsibility of covering those who cannot get insurance elsewhere, and to the Federal Government, which may be left to deal with the damage when disaster strikes.

H.R. 4173 directs the Federal Insurance Office to conduct a study on the

modernization and improvement of the insurance industry in the United States. I introduced an amendment to the underlying legislation asking that they also look at the geographic disparities in cost and access within this study.

Hurricanes, floods, fires, windstorms are factors driving the cost of insurance higher in Florida than in some other areas of the country. Numerous private insurers have recently sought rate hikes, with regulators approving increases as much as 15 percent.

Now, we certainly cannot change the fact that certain regions face higher risks than others. However, the amendment that I filed will help determine what changes to the industry and its regulation can help ensure that these necessary insurance protections are available, accessible, and reasonably affordable for all Americans.

H.R. 4173 will also provide American consumers with long overdue safeguards and reflects the Congress's commitment to putting the needs of the American people before those of Wall Street. I am pleased that Chairman FRANK has seen fit to include the amendment that I just spoke of in his manager's amendment.

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. I thank the gentleman from Florida (Mr. HASTINGS), my friend, for the time.

Mr. Speaker, I yield myself such time as I may consume.

"Mr. Speaker, I rise in strong opposition to this martial law rule and in opposition to the outrageous process that continues to plague this House. We have before us a martial law rule that allows the leadership to once again ignore the rules of the House and the precedents and traditions of this House. Martial law is no way to run a democracy, no matter what your ideology, no matter what your party affiliation."

Mr. Speaker, I strongly agree with these words, but I cannot, in good faith, take credit for them, because I did not write them. My staff did not write them nor did the Republican staff of the Rules Committee. In fact, so far as I know, not one Republican had any hand in the composition of this eloquent defense of democracy in this House of Representatives, because their author is actually the gentleman from Massachusetts and a senior member of the Democrat-run Rules Committee, Mr. JIM MCGOVERN of Massachusetts.

He spoke these exact words on the floor over 2 years ago regarding what he eloquently and accurately called a "martial law rule," which is what we're being asked to consider here today. We're being asked to consider this outrageous process on the House floor today, yet the Democratic Party knows it's not the right thing to do. It

was not right then and it's not right now. My friends on the other side of the aisle know it's not right, and that's why they spoke up at the time, and I agree with them.

Last month, the Democrat majority barreled a 2,037-page health care bill through Congress forcing government-run health care on every single American. Today, in similar form, they are considering a 1,300-page Federal takeover of the financial services industry, 1,300 pages. This is simply another example of the government overstepping its boundary into the private market courtesy of the Democratic Party.

This monstrous financial reform package includes provisions to extend TARP, make Federal bailout authority permanent, and allow bureaucrats to determine the types of financial products that will be made available to consumers and set the salaries of private sector employees.

This bill does nothing to help create private sector jobs or to provide financial relief to Americans in these tough times, which should be Congress's number one priority. But not this majority.

Over the past 3 years, America has witnessed a reckless multitrillion dollar spending binge by this Democrat-controlled Congress with more borrowing, more taxing, and more spending. The Treasury Department has reported the total deficit for fiscal year 2009 reached a record \$1.4 trillion. This is nine times the size of the deficit when the Democrats first took control of Congress.

Despite the Obama administration and congressional Democrats' promise that their trillion dollar "stimulus" plan would create jobs and unemployment would not rise above 8 percent, the Department of Labor once again reported an unemployment level of 10 percent. Since the Democrats took control of Congress, the number of unemployed persons has doubled to 15.4 million people, and this is only what is being reported.

It's time to stop the bailouts. It's time to get the government out of business industry takeovers, and it's time to stop killing jobs. Unfortunately, this bill we are considering today puts the American people on the hook once again for one of the greatest expansions of Federal Government in the history of United States while doing nothing to create jobs.

The first major provision of this bill was best summarized by a Democratic Congressman, BRAD SHERMAN from California, as "TARP on steroids." It creates a permanent bailout authority for the Federal Government by assessing \$150 billion in new taxes on American businesses that will ultimately result in higher interest rates and higher fees for consumers.

Most disastrous, however, is that this tax, according to the minority on the Financial Services Committee will

shrink available credit by as much as \$55 billion and result in the loss of as many as 450,000 more American jobs in the financial services area.

Congress should be focusing on doing things to create jobs, not to tax investors, the financial services, and destroy jobs. This is the core difference between my Republican colleagues and our friends the Democrats in Congress.

Republicans believe it's time to allow business to pay back TARP funds, knock down TARP authority, and pay down the debt with returning the money to the taxpayer. Our friends the Democrats want to create a perpetual TARP-like fund, a bottomless treasure chest to continue their happy spending ways.

In an effort to thwart this trend and to protect American workers from job-killing provisions in this bill, I introduced an amendment in the Rules Committee last night which would eliminate this legislation if the Government Accounting Office finds that the provisions of this bill would kill 1 million or more jobs. If my colleagues on the other side of the aisle, my friends that are Democrats, were really serious about this, they would have made this amendment in order. Mr. Speaker, on a party-line basis, even when the facts of the case said if this bill is going to destroy a million or more jobs, every single Democrat said don't include that as a provision in this bill because politics are more important than policy in this House.

I think we can all agree that protecting consumers is an essential role for Congress. Ensuring consumer safety is absolutely necessary for a successful, prosperous economy. Yet one of the most far-reaching provisions of this bill is the creation of the Consumer Financial Protection Agency. This CFPA is a classic example of the government's overstepping its authority into the free enterprise system simply to make government bigger and to further control the free enterprise system and free market.

This massive new agency will be led by a credit czar, yet another czar, who will have unprecedented, unchecked authority to restrict product choices for consumers, impose fees on consumer products, and rule over financial transactions. The new bureaucracy would raise costs for consumers, reduce the number and type of products available to them, increase the micro-management of financial services firms, greatly increase the confusion caused by conflicting consumer laws, and ensure the demise of American competitiveness around the world.

In addition to the CFPA, this bill provides for the greatest Federal expansion of the Federal Reserve since the central bank's creation almost a hundred years ago.

Mr. Speaker, Americans pride themselves on the free enterprise system,

the free market, and choices. Yet Congress once again today will pass legislation that increases government control and interference in the financial markets, rations resources, limits consumer choice, and dictates wages and projects as well as prices involved.

□ 1430

In a time of economic recession, with record unemployment and record deficits, I think—and the Republican Party thinks—Congress should be enacting legislation to grow our economy and to help with the creation of jobs, not to destroy jobs.

Mr. Speaker, the motives are clear; our Democrat colleagues are using policy and regulation to force a government takeover of the free enterprise system once again.

I encourage my colleagues to vote "no" on the previous question, "no" on the rule, and "no" on the underlying legislation because Republicans K-N-O-W what our Democrat colleagues are trying to do.

I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am prepared to yield myself some time and then yield to the dean of the House. But I would like, previous to yielding to the dean, to address my colleague's immediate concerns regarding the procedure in this measure.

He decries the procedure. I served in the minority with my colleague, who is now in the minority. This is not an unusual procedure, particularly given the importance of this legislation.

I want to point out that in the 109th Congress, the Republican majority reported at least 21 rules that allowed same-day consideration. In fact, five of those rules waived this requirement against any rule reported from the committee; by contrast, this rule is only for this one specific bill and only for today.

Additionally, I would like to address my colleague's concerns regarding where we are. I've been hearing repeatedly on this floor that the Democrats have not done anything. I won't give the litany of everything that we have done, but I do want to clear up, when we are referred to as persons that are happily spending like we are drunk sailors, I want to know what we started out with.

My colleagues seem to forget that we inherited a financial mess, a system on the brink of collapse. I didn't hear the cry when Mr. Paulson came here and said that our financial system was on its knees. We reacted, both Democrat and Republican, and I might add even the TARP did better than most Democrats and Republicans expected.

We inherited the worst recession since the Great Depression, two wars that weren't paid for, a broken health care system, and a 1950s energy policy. That was the gift from the Bush administration and the Republican majority in Congress. So there has been a



lot to fix this year, and we've been about that business.

So here we are digging out from the Bush economy. It's time to get this done, but it's not going to happen overnight. It's time to fund our priorities and meet the needs of the American people.

Simply, Mr. Speaker, this rule is a good basis for the bill we will consider today and deserves to be supported by every single Member in this body.

I am very pleased and privileged to yield 2 minutes to the distinguished gentleman from Michigan (Mr. DINGELL), the dean of the House of Representatives.

Mr. DINGELL. Mr. Speaker, I begin by expressing great respect and affection to my dear friend from Texas. Unfortunately, he's wrong. Here, the Democrats came in and found that the Republicans had left them two wars, a depression, and \$1.3 trillion deficit. And we found that when Mr. Bush came in, he converted a \$2 trillion surplus in virtually no time to a \$7 trillion deficit.

Now, I was a young boy when my dad was here and we passed Glass-Steagall. And I want to say that this legislation does not reinstitute Glass-Steagall. It does much that had to be done by the Democrats when they were dealing with the Hoover depression, which was very much like this one and was caused by the same good-hearted folks up in New York, gambling with depositors' money guaranteed by the Federal Government. And when they repealed the Glass-Steagall Act with the Graham-Leach-Bliley Act, the result was that all of a sudden we had to rush in and bail out corporations too big to fail—insurance companies and God knows what else—in order to save the American economy.

Yes, we are having to spend money, and we're having to spend money because of misgovernment, mismanagement, and because of outright rascality up in New York and conniving by a number of people to see to it that they had the powers that we took away from them to engage in that kind of rascality.

We here have a chance to begin again to protect the American people from the rascality that goes on when a bunch of sharpshooting MBAs are interested only in grubbing money and not caring about the free financial system which we have here.

The American economic system is too precious to trust unattended to New York and to the big banks and to the other wheelers and dealers up there. What we are doing today is seeing to it that that system is protected.

I urge my colleagues to support the rule and to support the legislation.

Mr. Speaker, I rise in strong support of H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009." I applaud my friends, Chairman BARNEY FRANK of the Committee on

Financial Services and Chairman HENRY WAXMAN of the Committee on Energy and Commerce, for their fine work on this legislation, particularly related to augmenting the powers of the Federal Trade Commission and preserving the ability of the Federal Energy Regulatory Commission to regulate utilities.

Nevertheless, I posit a decision by the Congress 10 years ago not to repeal the Glass-Steagall Act would have obviated the need for the legislation pending our consideration today. Glass-Steagall, enacted in 1933 as an appropriate response to the findings of the Pecora Commission concerning the causes of the Great Depression, successfully governed the financial services industry for over 60 years. My father wisely voted in favor of that legislation, and I fought to defend it until this body mistakenly decided to overturn it in 1999. I gave full-throated opposition to the Graham-Leach-Bliley Act, which repealed Glass-Steagall, based in no small part on my belief that it would permit the creation of financial institutions that would be too big to fail and free to gamble with depositor's money guaranteed by the Federal Government. My opposition had the merit of being correct ten years ago and, at the very least, prophetic today. Indeed, Graham-Leach-Bliley gave rise to the creation of financial juggernauts, whose underhanded actions, gone unregulated by design of that Act, have driven this great country over an economic precipice of proportions not last seen since the Great Depression, in which regulatory and statutory action of that time made those unfortunate events possible to happen.

With this in mind, it is incumbent upon the Congress to re-impose a regulatory environment upon the financial services industry that will ensure that the abuses that gave rise to the present and aptly-named "Great Recession" never again occur. I again insist H.R. 4173 would be strengthened immeasurably by including an amendment to re-instate the Glass-Steagall Act but, in its absence, can find some solace in the sage words of my dear friend, John Moss, who maintained the perfect good is the enemy of the good. In brief, I offer my support for H.R. 4173 and urge my colleagues to recognize and support it as a laudable effort by which to counter the deregulation of the financial services industry and the chaos that ensued from it.

Mr. SESSIONS. Mr. Speaker, I think it's very interesting that my Democrat colleagues are saying that Republicans handed them this big mess, which they couldn't wait to get, and they have made it worse. They're acting like they made it better. They have diminished the employment in this country, they have raised spending 85 percent in the last 2 years, and they are making this problem even worse. They begged for a chance to get their hands on this. They're doing it the way they wanted, and it's making matters worse for this country.

Mr. Speaker, at this time, I would like to yield 2 minutes to the gentleman from Topeka, Kansas (Ms. JENKINS).

Ms. JENKINS. I would like to thank the gentleman from Texas (Mr. SESSIONS) for yielding.

Mr. Speaker, it would be extremely shortsighted of us to disregard how the underlying bill will increase the debt, its impact on job creation, and how it greatly misses the mark of restoring financial stability.

When Congress passed the TARP bank bailout last year, it was intended to be a 1-year emergency program, not permanent, but this administration has continued the bailouts. Even more troubling, this legislation codifies the bailout authority used by the Treasury Department and the Federal Reserve, leaving taxpayers on the hook.

Who is looking out for the taxpayers? They didn't cause these problems. My constituents in Kansas and folks across the Nation have bailout fatigue. So at a time when folks are struggling to find work and make ends meet, this legislation restricts credit, increases the already record deficits, and kills jobs.

Creating jobs and restoring fiscal responsibility should be the priority in Washington; yet, all Kansans see coming out of Washington are expensive plans to grow government. That's the wrong direction. Instead, this body should end bailouts, protect consumers without restricting credit with smarter, leaner regulations, enact meaningful reform to prevent future collapse, and ensure that any repaid or remaining TARP funds be used to reduce the deficit.

I strongly urge my colleagues to oppose this underlying bill.

Mr. HASTINGS of Florida. Mr. Speaker, before yielding to the distinguished gentleman from California, I would like to yield to my friend from Texas and ask him a question.

It appears that my friend and I are like ships passing in the night. Both of us have been here during the period that Democrats have been in the majority, the minority, and the majority gain. When your party gained the majority, does my friend have a recollection of what the surplus was and the fact that there was a surplus?

Mr. SESSIONS. How much time is the gentleman willing to give me, 1 minute?

Mr. HASTINGS of Florida. I will yield the gentleman such time as to answer that question, and then I would like to ask the gentleman another question.

Mr. SESSIONS. I appreciate the opportunity.

The gentleman knows that the surplus was literally trillions of dollars, and that is always a guesstimate in the future of where we exist. The gentleman knows that on 9/11 of 2001 there was a surplus in this country. On 9/11 of 2001, this country was struck by a group of terrorists who intended to harm our financial economy.

Mr. HASTINGS of Florida. Absolutely. Reclaiming my time.

Mr. SESSIONS. Well, this is what I was talking about. The gentleman said he would give me enough—

Mr. HASTINGS of Florida. Reclaiming my time, I have yet another question.

When you lost the majority, what was the deficit? And I understand 9/11. I understand all of the things that took place. I also understand that had we never been in the Iraq war in the first place we wouldn't be here in this situation.

So tell me, if you can, my friend, what the deficit was when you lost the majority, and what in fact did President Obama inherit when we gained the majority again?

Mr. SESSIONS. I will answer the gentleman if he will allow me a full answer.

Mr. HASTINGS of Florida. Well, I will do it rhetorically and allow that you answer on your own time.

The simple fact of the matter is when this administration took office, they had a \$1.2 trillion deficit. And to continue along the lines of saying that nothing was done, I want you to know that you don't just create a situation that gives rise to eliminating that with a magic wand. The American public understands this dynamic and will be patient as we go forward to try and remedy this matter.

The gentleman spoke earlier to my colleague, Mr. SHERMAN. But before turning to him I want to look at some of the numbers. Job growth under the current administration is reversing a long downward spiral that started under the last President. The stimulus plan is working as planned. We are making sound investments in helping Americans find good jobs and getting this economy moving again.

The unemployment rate dropped last month. And the efforts of this Congress are helping people afford a home. And we need to do a lot more to un-seize the frozen dollars in these banks that are not helping small businesses, and that is what some of this financial regulatory reform is referencing.

Even the TARP program is working better than expected, and confidence has been restored to Wall Street, evidenced by the market and everybody's 401(k)s, and more than \$200 billion is going to be returned to the government.

I am very pleased at this time to yield 2 minutes to the distinguished gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. The gentleman from Texas seems quite aware of the statement I made about the first draft of this bill that was submitted by the Treasury Department. I referred to that draft as "TARP on steroids." Unfortunately, the gentleman from Texas seems blissfully unaware of all the changes that were made to the bill in many days of markup.

On balance, today, this bill before this House reduces executive power to bail out Wall Street. Yes, the bill does

include some additional authority to the executive branch under sections 1109 and 1604. But pursuant to amendments that I offered, these additional powers are limited in amount and are sunsetted in the year 2013. So additional power is limited and sunsetted.

What this bill does, however, is it deals with the existing enormous bailout powers that exist under present statute. It suspends 12 U.S.C. 1823, of present statute, which allows, or has been interpreted to allow, the FDIC to make unlimited loan guarantees of more than \$300 billion. This bill reins in section 13-3 of the Federal Reserve Act, which allows the Fed to make loans of any amount to anybody they want to under virtually any circumstances. They have already used this to the tune of \$3 trillion.

□ 1445

A vote against this bill is a vote for unchecked power in the Fed. It is a vote not only to preserve the provision that allows them to loan \$3 trillion, but that same provision would allow them to loan \$30 trillion. Only by voting for this bill can we rein in the Fed and their powers under section 13-3. Only by voting for this bill can we audit the Fed pursuant to the amendment drafted by Congressmen PAUL and GRAYSON.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. HASTINGS of Florida. I yield the gentleman an additional 30 seconds.

Mr. SHERMAN. Voting against this bill is voting against the unchecked power of the Federal Reserve.

Mr. SESSIONS. Mr. Speaker, by the way, the gentleman will be able to vote for Mr. BACHUS' amendment, which says exactly the right thing to address this issue.

The SPEAKER pro tempore. The Chair will note that the gentleman from Texas has 17 minutes remaining, and the gentleman from Florida has 15 minutes remaining.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from Chester Springs, Pennsylvania (Mr. GERLACH).

Mr. GERLACH. Mr. Speaker, I rise today in opposition to the Democrats' same-day rule on the underlying bill, H.R. 4173.

There is no doubt that the American people are hurting. Our Nation's unemployment rate is at 10 percent and, in some States, even higher. Our citizens are struggling to make ends meet.

The Democrats' permanent bailout bill, however, will not put Americans back to work. In fact, it will actually cost more Americans their jobs. This bill will make it harder for our families and for our small businesses to get credit in our local communities that they absolutely need to create more jobs. It is certainly going to expand the Federal Government even beyond its

current size, and it will empower Washington bureaucrats through the creation of yet another Federal agency, the Consumer Financial Protection Agency.

This is despite the fact that there has already been a multitude of efforts this year to expand Federal power into the auto industry, the housing industry, the energy industry, the health care industry, and now the financial services industry. The effort of seeking more and more power by the Federal Government over more and more aspects of our daily lives is simply breathtaking.

Mr. Speaker, this is the wrong approach to take, and the American people deserve better. Republicans have a better plan to end taxpayer-funded bailouts. I urge my colleagues to oppose this rule and to support our substitute amendment.

Mr. HASTINGS of Florida. Mr. Speaker, I inquire from the gentleman from Texas if he has any remaining speakers.

Mr. SESSIONS. I appreciate the gentleman for asking. In fact, I do have two further speakers who are expected. Neither are here at this time, but I intend to consume that time.

Mr. HASTINGS of Florida. I am the last speaker for this side, so I am going to reserve my time until the gentleman has closed for his side and has yielded back his time.

Mr. SESSIONS. I appreciate the gentleman for providing such information, and I yield myself such time as I may consume.

On Monday, my colleagues and I sent a more recent letter to Treasury Secretary Geithner, which was a followup to a letter that had been sent by many, many Republican Members of Congress to adhere to the December 31 TARP expiration date and to dedicate all returning funds to reducing the public debt. We had sent Secretary Geithner a letter on December 7, 2009, which spoke about how the original concept of TARP—the Troubled Asset Relief Program, that which we know as TARP—should be implemented and used.

CONGRESS OF THE UNITED STATES,  
Washington, DC, December 7, 2009.

Hon. TIMOTHY GEITHNER,  
Secretary of the Treasury,  
Washington, DC.

DEAR SECRETARY GEITHNER: As the December 31, 2009 deadline for the end of the Troubled Asset Relief Program (TARP) approaches, we urge you to adhere to this expiration date and decline to use your authority to extend TARP into 2010. As additional preferred shares are repurchased and dividends and interest are collected, we also urge you to dedicate all returned funds and other revenue to reducing the national debt.

During a recent Congressional hearing you stated that you were working to "put the TARP out of its misery." We support your intention and believe putting the program "out of its misery" entails nothing less than ending the disbursement of any remaining TARP funds on December 31, 2009.

The purpose of TARP was to provide immediate support and emergency stabilization to

the financial system. Regardless of whether we voted for or against TARP, we believe the financial system is now significantly stabilized compared with the situation from a year ago. While there will continue to be ups and downs as the economy recovers, the federal government does not need a dedicated support fund for the financial system. In order for the government to exit from the unprecedented interventions of the past year and a half, the government must first stop spending funds on more interventions.

When TARP was enacted, the public debt limit was increased to \$11.3 trillion. Since January, the national debt has increased more than \$1.4 trillion, and Congress is now set to consider a debt limit increase of up to \$13.2 trillion, the fourth debt limit increase since July 2008. Not spending the remaining TARP funds, \$246 billion according to the last SIGTARP quarterly report, will reduce the already staggering amount our nation is borrowing.

SIGTARP also reported repayments of \$72.9 billion, \$9.5 billion from dividends and interest and \$2.9 billion in proceeds from sale of warrants, and we understand \$45 billion more in repayment is pending. All of these TARP receipts and future receipts must be devoted to debt reduction rather than spent on further government interventions or other programs. While estimates vary on the final cost to the taxpayers from TARP, all estimates are that the taxpayers will lose billions of dollars and that there will be no profit from TARP. Ensuring every dime of income goes to debt reduction reduces the taxpayers' ultimate loss.

The first TARP program, the Capital Purchase Program, offered taxpayers the greatest opportunity to recover their investment. Additional programs added to TARP, such as assistance to the automakers and AIG, carry much less assurance for the taxpayers, and the mortgage modification program will result in no recoupment for the taxpayers. The longer the remaining unspent TARP funds and revenue remain on the table, the more money that will be spent and not recovered. The emergency has ended, and TARP must end as well.

The taxpayers understand the difference between ending TARP on December 31 and setting aside a portion of unspent funds as some type of reserve. They know the difference between devoting all repaid funds, dividends and other income to debt reduction and using just some of these funds for debt reduction and spending the rest. In the interest of our nation's fiscal health and the certainty for the financial system that comes with knowing the government is done with this intervention, we urge your consideration of our request and await your response.

Sincerely,

Randy Neugebauer, John Boehner, Eric Cantor, Spencer Bachus, Mike Pence, Adam Putnam, J. Gresham Barrett, John P. Carter, Tom Price, Kenny Marchant, Pete Sessions, Wally Herger, Ron Paul, Joe Wilson.

The bottom line is that the money which was debated on this floor, passed on this floor, passed by the United States Senate, and signed by the former President had a very clear understanding about the money that would be spent and about the money that would be returned. I believe that Secretary Geithner should respond to this letter to let this body know and to let these signers of this letter know how he intends to approach this TARP money that is being returned.

There was a report earlier in the week that virtually 90 percent of this money had been repaid. Yet what we see in this bill is some \$200 billion more in a permanent fund which would be established. You and I both recognize that \$200 billion more going in behalf of and spent would simply extend our deficit. Our deficit in 2007 was \$161 billion. The deficit in 2009 is \$1.4 trillion. This is a nine-times growth since our friends, the Democrats, have taken control of Congress.

Mr. Speaker, this country was not attacked like we were on 9/11. We have not had another Katrina. We have not had the things which have been natural disasters, which were dealt with by the Republicans in the majority. This is pure and simple spending that has taken place and that has been raised 85 percent in the last 2 years. To say that someone has laid that at the doorstep and has raised the deficit spending from \$161 billion in 2007 to \$1.4 trillion in 2009, and yet has blamed that on anyone else other than the people who voted for it, which is the Democrat majority, would be a misnomer. That is mismanagement.

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Fullerton, California, Congressman ROYCE.

Mr. ROYCE. Mr. Speaker, I rise in opposition to the rule and to this legislation because, for the first time in history, Washington will be at the center of our financial system. This is not the way our Founders intended this system to work. They didn't intend for the decisions and the political pull to come out of Washington. For the first time in history, we will institutionalize the "too big to fail" doctrine that has plagued our economy for too long. For the first time in history, Congress is authorizing perpetual bailout authority by those in Washington.

I have opposed these bailouts, and I have opposed the bailouts put forward over the last 14 months because of the concern I had with the precedent that would be set by using tax dollars to bail out failed institutions. Now we are going to do it far into the future. Unfortunately, it appears that that precedent that was set last fall could become official U.S. policy should this legislation become law.

Our Democratic colleagues have controlled the Congress for the last 3 years. I think, while some will try to portray this resolution fund as something other than taxpayers paying for the mistakes of failed financial firms, I would direct my colleagues to the very language in this bill, to page 406, line 22, Borrowing from Treasury: "The Corporation may borrow from the Treasury, and the Secretary of the Treasury is authorized to lend to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are required."

This is saying the resolution fund in every institution that falls under its purview has the support of—who?—the U.S. taxpayer, and that you are going to be on the hook for these loans.

My colleague from California (Mr. SHERMAN) referred to this authority as "TARP on steroids." Well, considering that the bill fails to even put a cap on potential taxpayer exposure, I think Mr. SHERMAN is spot on. It is, indeed, TARP on steroids. While some have compared this model to the FDIC insurance fund, folks, that's like comparing apples to oranges. The FDIC fund is backed by the full faith and credit of the Federal Government to protect insured deposits inside the fund. That's what the FDIC fund does.

While there is a level of moral hazard that comes with this support, insured deposits are only a small portion of our financial system. Here it extends far beyond that. This bill gives that type of government support to the vast majority of our capital markets. It is a fundamentally flawed approach. It is what economists call "moral hazard" for a reason. It is a hazard. We need to scale back that government safety net under our financial system, not expand it to every possible institution, and we need to signal to markets that the Federal Government is out of the business of bailing out failed firms. That is the only way to officially put an end to the "too big to fail" problem. This legislation fails to take that critical step.

I urge my colleagues to oppose this rule and to oppose the underlying legislation for a second reason as well, which is my concern with the Consumer Protection Agency, also known as the "credit czar." It weakens our regulatory model.

Every one of our banking regulators has come in to testify before the Financial Services Committee on this issue of separating "safety and soundness" regulation from consumer protection regulation. Many have raised the comparison between this model and the regulatory model over Fannie Mae and Freddie Mac. With Fannie Mae and Freddie Mac, which failed and lost \$1 trillion, you had the regulator focused on safety and soundness who was saying one thing, but you had HUD enforcing the affordable housing goals that Congress had given HUD. Those housing goals were to have one half of the portfolio in subprime lending, in Alt-A loans, and in zero downpayment loans. This was what Congress was muscling through HUD.

These things made the regulators very, very nervous. We had the Federal Reserve regulators come up and tell us that what is happening here is a systemic risk to the entire financial system. Now the over-leveraging through this arbitrage is over 100 to 1. You had to allow the regulators to deleverage this, but Congress would not.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SESSIONS. I yield the gentleman an additional 4 minutes.

Mr. ROYCE. So, to meet these affordable housing mandates, Fannie and Freddie strayed into the junk mortgage market. They piled up over \$1 trillion worth of subprime and Alt-A loans. The affordable housing goals were at odds with the long-term viability of these firms, and they led to 85 percent of their losses.

As this past example has shown us, separating these two responsibilities can lead to unintended consequences—like systemic financial failure down the road. If the ultimate objective of our regulatory reform effort is to ensure a more resilient and stable financial system, creating another agency with broad, unchecked authority is not the right approach.

I brought an amendment to the Rules Committee which would have solved this problem by ensuring that safety and soundness regulators have a say on the rule-writing process at the CFPB. Guess what? It's unfortunate. My amendment was not made in order. It won't even be heard on this floor.

I urge my colleagues to listen to those regulators, every one of whom urges us to adopt that type of approach—the approach that was in my amendment which was not allowed to go forward on this floor today.

The safety and soundness of our financial institutions is critical. Instead, we have undercut that, and we are walking down that same path that Congress took, against the advice of the regulators, with respect to Fannie Mae and Freddie Mac. The result of that, as you all know, was the collapse of our housing market as a consequence of the collapse of those institutions.

Mr. HASTINGS of Florida. Mr. Speaker, I continue to reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I appreciate the gentleman from California, a senior member of the Financial Services Committee, coming down to provide us an update on the reality of this bill.

□ 1500

Mr. Speaker, we have been here arguing about deficits and who is responsible for what, and who is guilty of acting like a drunk sailor and who is spending money. The bottom line is that it is true, George Bush and Republicans during 8 years had some deficits. The largest was in 2008, some \$415 billion. The first year of the Democrats' spending spree, over a \$1.4 trillion deficit. Republicans seem to create jobs. Some 5.3 million jobs were created within this deficit that occurred.

Our friends, the Democrats, massive unemployment, massive spending, massive deficits. Those are the facts of the case. This shows where we are headed, the American people know it, and

that's why there is an outcry all across this country to stop what is happening, even today, with a bill that will lose 400,000 more jobs.

Look, I get it. I know that the Speaker's political agenda, the three biggest items, health care, cap-and-trade and card check will not lose 10 million more American jobs. I get that, but so do the American people. The Republican Party is saying, let's not lose 400,000 more jobs with the passage of this massive takeover of the financial services industry. We don't have the votes to stop it, but there are a lot of skid marks in the concrete today to say we shouldn't be doing this. We don't have the votes to stop it, but we are saying let's be careful because we know, k-n-o-w, where you are headed.

Mr. Speaker, in closing, I think while it's important to provide consumer safety and security in the marketplace, our constituents are more concerned with the economy and the jobs. They see this as a massive government takeover, and the industry knows exactly what it is also.

My friends on the other side of the aisle are simply looking for more problems so they can put their government takeover solutions in place. Week after week, we come to the House floor to debate bills, bills that kill our economy, diminish jobs and put us further into debt, whether it's cap-and-trade or health care. Now today the government takeover of the financial sector with the Barney Frank bill, we are talking about hundreds of thousands and soon to be millions of jobs at a time of record unemployment.

We ask the Democrat majority to please just put a caveat in here that if this bill were going to lose more than 1 million jobs, let's not do it. The Democrats on a party-line basis have said, Look, pal, our agenda is more important than any facts of the case about losing jobs.

The Republican Party is on the floor here today asking that we defeat this rule, defeat this bill, defeat the things which are going on which will encourage more borrowing, more taxing, more spending, record deficits, record unemployment, and, of course, making sure that the government wins every tie. We disagree with the Democrat majority. We disagree with the politics, the policies, and we disagree with the results.

The Republican Party will be voting "no" today, Mr. Speaker.

I yield back the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I appreciate very much the opportunity to speak on this measure, and I yield myself the balance of my time.

Would you tell me how much time I have, Mr. Speaker?

The SPEAKER pro tempore. The gentleman has 15 minutes remaining.

Mr. HASTINGS of Florida. I shall not use all of that time, Mr. Speaker, but I

am very much tempted, because my good friend—and he is my good friend—seems to fail to understand some of the things that we do and have done.

One of the things that I think would help some context and perspective is the subject of jobs, which should be and I believe is the concern of the 435 voting Members of the U.S. House of Representatives and the six Delegates and Representatives from the Territories.

Let's not continue down the path of myth. When my mom was alive, she, like many of our mothers, became interested more in what we do in Congress by looking at it on television. At some point, I don't remember the day when I came home and she said, Y'all always talk about what happened before. She said, you know, Ford said Nixon did it, and Carter said Ford did it, and Reagan said Carter did it, and then Bush said Reagan did it. She said if you do that, then George Washington must have done it if you just keep going back all the time.

So let's start with some real numbers, not something that is created, and get one thing straight: When we talk about spending, whether it's Republicans or Democrats that spend on behalf of the American people, we rarely do anything other than talk about cost. We don't talk about benefits.

Toward that end, I would only use two, and I have a considerable list of areas that I could address that the Democrats have spent money on. I would ask any of our colleagues, do they feel that we should not have spent \$31 billion in science, technology, innovation, math education, cutting-edge research and advanced manufacturing technologies and workforce training? That was passed by the House of Representatives.

I would ask my friend, is there anything about national security troops and veterans that they would not have spent? The fiscal year supplemental for the rest of 2009 provides our troops with everything they need to wind down the war that we shouldn't have been in in the first place, Iraq, and change the strategy in Afghanistan, requiring a progress report and making retroactive payment to 185,000 plus servicemembers whose enlistments were involuntarily extended since 9/11. That was signed into law. Would they not have spent that money?

Would they not have spent the money expanding the new GI Bill benefits to cover the full cost of college education for all children of fallen United States servicemembers? That was signed into law.

Would they not have spent the money on the 3.4 percent raise for our troops, strengthening military readiness, expanding support for military

families such as health care and housing, focusing on our strategy in Afghanistan and Pakistan and redeployment from Iraq and military procurement reform? That was signed into law.

Would they not have spent the money on one of our top priorities of veterans groups, authorizing Congress to approve VA medical care appropriations 1 year in advance to ensure reliable and timely funding and prevent politics from ever delaying VA health care funding? That was signed into law.

Would they not have spent the money on strengthening quality health care for more than 5 million veterans by investing 15 percent more than 2009 for medical care, benefits claims processors and facility improvements? That was passed by the House.

I could go on the entire 15 minutes on that, but let me go to where I digressed from. Richard Nixon created during his administration and received credit for—and that's what these Presidents do—the creation of 9.4 million jobs. Under President Ford, under strenuous circumstances, his administration was credited with creating 1.8 million jobs.

Under President Reagan coming in with a near identical in many respects, absent 9/11. And a footnote right there. When my colleague mentioned Katrina, I am sure he knows that we haven't finished what's needed to be done with reference to the people on the gulf coast and specifically in the City of New Orleans. But to President Reagan's credit and during his administration and whatever tax decreases or however else it was achieved, I can assure you of the exact number of 16 million jobs. Under President George H.W. Bush, 2.5 million jobs. Under Bill Clinton, 23.1 million jobs. Under President Bush, and my friend from Texas' majority Congress, that at one point had the House, the Senate and the Presidency, under his administration, taking into consideration everything that he has talked about, 3 million jobs, the worst track record on record.

Now, what's needed here, Mr. Speaker, is some fair and straightforward accounting and not the off-budget stuff that I have heard here during the period of time that I am here and that I heard from my colleague.

What this bill will do and what this rule permits us to discuss is not off-budget kind of accounting. Is it sort of like the same kind of off-budget accounting that Wall Street does that my friends on the other side seem to think that we should do? No, fair and straightforward accounting.

My good friend from California that I served with on the Africa Subcommittee, when he was in the majority, we traveled together, an outstanding person and Congressperson. But when he came in here, he described that accountants say this is a moral hazard. I will tell you what a moral

hazard is. A moral hazard is putting wars off-budget and not being prepared to pay for them and not asking the American people to make the necessary sacrifices in order that all of us, rich and poor, black and white, conservative and liberal, will pay our fair share to protect this great country of ours. Enough of all of this doom talking and finger-pointing. What is needed is a great consensus for all of us to be able to go forward to straighten out our Nation, and we can do this. I believe that we will.

One of the primary culprits of this current recession was a regulatory system that looked out for the wealth of Wall Street firms rather than the security of average American consumers. This legislation, however, recognizes that the strength of our financial system is not measured simply by the value of the Dow Jones, it's measured by the prosperity of the American people.

One of my friends, Phil Hare, who is here, says, it ain't the GDP, it's the j-o-b. I believe, Mr. SESSIONS k-n-o-w-s what I am talking about. Our constituents deserve to know that they are not going to be taken advantage of by the institutions to which they have entrusted their financial security. They deserve to know that our financial regulations will stop those institutions who engage in irresponsible practices without placing an unnecessary burden on those who are acting in the best interests of their consumers.

They deserve to know that this Congress, Republican and Democrat, should not, and I believe the Democrats will not stand idly by, allowing monstrous financial institutions to put our entire economy at risk, rake in billions and shell out egregious bonuses while everyday Americans lose their life savings and struggle from paycheck to paycheck.

As to the Wall Street Reform and Consumer Protection Act, we should give BARNEY FRANK and the Financial Services Committee, Republican and Democrat, every credit for extraordinary work in these extremely difficult times for our country. This act makes reasonable and responsible changes to our financial regulatory system and enacts long-needed consumer protections. After months of debate, countless hearings and votes on this very floor, this rule will finally allow for its complete and timely consideration.

Mr. Speaker, I urge a "yes" vote on the previous question and on the rule.

I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SESSIONS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 239, nays 183, not voting 12, as follows:

[Roll No. 951]

YEAS—239

Abercrombie	Grijalva	Nye
Ackerman	Gutierrez	Oberstar
Adler (NJ)	Hall (NY)	Obey
Altmire	Halvorson	Olver
Andrews	Hare	Ortiz
Arcuri	Harman	Owens
Baca	Heinrich	Pallone
Baird	Herseth Sandlin	Pascarella
Barrow	Higgins	Pastor (AZ)
Bean	Hill	Payne
Becerra	Himes	Perlmutter
Berkley	Hinchey	Peters
Berman	Hinojosa	Peterson
Berry	Hirono	Pingree (ME)
Bishop (GA)	Hodes	Polis (CO)
Bishop (NY)	Holden	Pomeroy
Blumenauer	Holt	Price (NC)
Boswell	Honda	Quigley
Boucher	Inslee	Rahall
Boyd	Israel	Rangel
Brady (PA)	Jackson (IL)	Reyes
Braley (IA)	Jackson-Lee	Richardson
Bright	(TX)	Rodriguez
Brown, Corrine	Johnson (GA)	Ross
Butterfield	Johnson, E. B.	Rothman (NJ)
Capps	Kagen	Roybal-Allard
Capuano	Kanjorski	Ruppersberger
Cardoza	Kaptur	Rush
Carnahan	Kennedy	Ryan (OH)
Carson (IN)	Kildee	Salazar
Castor (FL)	Kilpatrick (MI)	Sánchez, Linda
Chandler	Kilroy	T.
Childers	Kind	Sanchez, Loretta
Chu	Kissell	Sarbanes
Clarke	Klein (FL)	Schakowsky
Clay	Kosmas	Schauer
Cleaver	Kratovil	Schiff
Clyburn	Kucinich	Schrader
Cohen	Langevin	Schwartz
Connolly (VA)	Larsen (WA)	Scott (GA)
Conyers	Larson (CT)	Scott (VA)
Cooper	Lee (CA)	Serrano
Costa	Levin	Sestak
Costello	Lewis (GA)	Sherman
Courtney	Lipinski	Sires
Crowley	Loebach	Skelton
Cuellar	Lofgren, Zoe	Slaughter
Cummings	Lowey	Smith (WA)
Dahlkemper	Lujan	Snyder
Davis (AL)	Lynch	Space
Davis (CA)	Maffei	Speier
Davis (IL)	Maloney	Spratt
Davis (TN)	Markey (CO)	Stark
DeFazio	Markey (MA)	Stupak
DeGette	Marshall	Sutton
Delahunt	Massa	Tanner
DeLauro	Matheson	Thompson (CA)
Dicks	Matsui	Thompson (MS)
Dingell	McCarthy (NY)	Tierney
Doggett	McCormack	Titus
Donnelly (IN)	McDermott	Tonko
Doyle	McGovern	Towns
Driehaus	McIntyre	Tsongas
Edwards (MD)	McMahon	Van Hollen
Edwards (TX)	McNerney	Velázquez
Ellison	Meek (FL)	Visclosky
Engel	Meeks (NY)	Walz
Eshoo	Melancon	Wasserman
Etheridge	Michaud	Schultz
Farr	Miller (NC)	Waters
Fattah	Miller, George	Watson
Filner	Minnick	Watt
Frank (MA)	Mollohan	Waxman
Fudge	Moore (KS)	Weiner
Garamendi	Moore (WI)	Welch
Giffords	Murphy (CT)	Wexler
Gonzalez	Murphy (NY)	Wilson (OH)
Gordon (TN)	Murphy, Patrick	Woolsey
Grayson	Nadler (NY)	Wu
Green, Al	Napolitano	Yarmuth
Green, Gene	Neal (MA)	

## NAYS—183

Aderholt	Franks (AZ)	Murphy, Tim
Akin	Frelinghuysen	Myrick
Alexander	Gallely	Neugebauer
Austria	Garrett (NJ)	Nunes
Bachmann	Gerlach	Olson
Bachus	Gingrey (GA)	Paul
Bartlett	Gohmert	Paulsen
Barton (TX)	Goodlatte	Pence
Biggert	Granger	Perriello
Billray	Graves	Petri
Bilirakis	Griffith	Pitts
Bishop (UT)	Guthrie	Platts
Blackburn	Hall (TX)	Poe (TX)
Blunt	Harper	Posey
Boccheri	Hastings (WA)	Price (GA)
Boehner	Heller	Putnam
Bonner	Hensarling	Rehberg
Bono Mack	Herger	Reichert
Boozman	Hoekstra	Roe (TN)
Boren	Hunter	Rogers (AL)
Boustany	Inglis	Rogers (KY)
Brady (TX)	Issa	Rogers (MI)
Broun (GA)	Jenkins	Rohrabacher
Brown (SC)	Johnson (IL)	Rooney
Brown-Waite,	Johnson, Sam	Ros-Lehtinen
Ginny	Jones	Roskam
Buchanan	Jordan (OH)	Royce
Burgess	King (IA)	Ryan (WI)
Burton (IN)	King (NY)	Scalise
Calvert	Kingston	Schmidt
Camp	Kirk	Schock
Campbell	Kirkpatrick (AZ)	Sensenbrenner
Cantor	Kline (MN)	Sessions
Cao	Lamborn	Shadegg
Capito	Lance	Shimkus
Carney	Latham	Shuler
Carter	LaTourette	Shuster
Cassidy	Latta	Simpson
Castle	Lee (NY)	Smith (NE)
Chaffetz	Lewis (CA)	Smith (NJ)
Coble	Linder	Smith (TX)
Coffman (CO)	LoBiondo	Souder
Cole	Lucas	Stearns
Conaway	Luetkemeyer	Sullivan
Crenshaw	Lummis	Taylor
Culberson	Lungren, Daniel	Teague
Davis (KY)	E.	Terry
Dent	Mack	Thompson (PA)
Diaz-Balart, L.	Manzullo	Thornberry
Diaz-Balart, M.	Marchant	Tiahrt
Dreier	McCarthy (CA)	Tiberi
Duncan	McCaull	Turner
Ehlers	McClintock	Upton
Ellsworth	McCotter	Walden
Emerson	McKeon	Wamp
Fallin	McMorris	Westmoreland
Flake	Rodgers	Whitfield
Fleming	Miller (FL)	Wilson (SC)
Forbes	Miller (MI)	Wittman
Fortenberry	Miller, Gary	Wolf
Foster	Mitchell	Young (AK)
Foxx	Moran (KS)	Young (FL)

## NOT VOTING—12

Baldwin	Hastings (FL)	Moran (VA)
Barrett (SC)	Hoyer	Murtha
Buyer	McHenry	Radanovich
Deal (GA)	Mica	Shea-Porter

□ 1540

Mr. BILBRAY changed his vote from "yea" to "nay."

Mr. RUSH changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

# PROVIDING FOR FURTHER CONSIDERATION OF H.R. 4173, WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

Mr. PERLMUTTER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 964 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

## H. RES. 964

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes. No further general debate shall be in order.

SEC. 2.(a) The bill, as amended, shall be considered for amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived.

(b) Notwithstanding clause 11 of rule XVIII, no further amendment to the bill, as amended, shall be in order except the amendments printed in the report of the Committee on Rules accompanying this resolution and amendments en bloc described in section 3 of this resolution.

(c) Each amendment printed in the report of the Committee on Rules shall be considered only in the order printed in the report (except as specified in section 4 of this resolution), may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

(d) All points of order against amendments printed in the report of the Committee on Rules or amendments en bloc described in section 3 of this resolution are waived except those arising under clause 9 or 10 of rule XXI.

SEC. 3. It shall be in order at any time for the chair of the Committee on Financial Services or his designee to offer amendments en bloc consisting of amendments printed in the report of the Committee on Rules accompanying this resolution not earlier disposed of Amendments en bloc offered pursuant to this section shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The original proponent of an amendment included in such amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc.

SEC. 4. The Chair of the Committee of the Whole may recognize for consideration of any amendment printed in the report of the Committee on Rules accompanying this resolution out of the order printed, but not sooner than 30 minutes after the chair of the Committee on Financial Services or his designee announces from the floor a request to that effect.

SEC. 5. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. In the case of sundry amendments reported from the Committee, the question of their adoption shall be put to the House en gros and without division of the question. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommend with or without instructions.

SEC. 6. The Chair may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee. The Chair may not entertain a motion to strike out the enacting words of the bill (as described in clause 9 of rule XVIII).

SEC. 7. During consideration of H.R. 4173, the Chair may reduce to two minutes the minimum time for electronic voting under clause 6 of rule XVIII and clauses 8 and 9 of rule XX.

SEC. 8. In the engrossment of H.R. 4173, the Clerk is authorized to make technical and conforming changes to amendatory instructions.

□ 1545

The SPEAKER pro tempore. The gentleman from Colorado is recognized for 1 hour.

Mr. PERLMUTTER. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. SESSIONS).

## GENERAL LEAVE

Mr. PERLMUTTER. I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 964.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. PERLMUTTER. I yield myself such time as I may consume.

Mr. Speaker, House Resolution 964 provides for consideration of amendments to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. The rules provide for consideration of 36 amendments and authorizes the chairman of the Financial Services Committee to move amendments en bloc. In the case of amendments reported from the committee, the question of their adoption in the House shall be put en gros and without division of the question. The rule provides one motion to recommit with or without instructions and allows the Chair to reduce to 2 minutes the minimum time for electronic voting and also authorizes the Clerk to make technical and conforming changes to amendatory instructions.

Mr. Speaker, as we have seen over the past year, our financial system is broken, and we can no longer afford to maintain the status quo. We face a recession. I call it a Republican recession based on the Wild West practices of Wall Street and the Republican Congress and the Bush administration.

As a result of this Republican recession, we are talking about people losing their investments and retirement savings last year when the stock market reacted to the heart attack our banking system suffered and the countless jobs that were lost throughout the recession. This bill makes critical reforms to our financial system to address this Wild West era of lax regulation that the Bush administration encouraged.



When Wall Street operates like the Wild West, Main Street suffers, and that is precisely what we've seen for the last few years. The Wall Street Reform and Consumer Protection Act preserves our economic system, restores confidence and takes reasonable steps to prevent future meltdowns. It establishes a robust regulatory oversight regime creating transparency in areas previously hidden from the public.

In this bill, we address consumer protection, investor protection, regulation of hedge funds, credit rating agencies, insurance, derivatives, executive pay, mortgage reform, and we eliminate "too big to fail." Loopholes are closed, consolidated regulation is improved, and transparency is increased so there is no place to hide.

But, Mr. Speaker, yesterday we heard repeatedly from the other side that this bill puts the taxpayers on the hook in addressing "too big to fail." Well, taxpayers were put on the hook by the lax regulation of the Bush administration which cost this country and each and every citizen trillions and trillions of dollars and millions of jobs, 4 million jobs during the last year of the Bush administration.

In this bill, with those institutions that are so big that they would create a domino effect such as we saw last year, we liquidate or close those firms at no expense to the taxpayer. And I put in precisely a provision that any moneys get paid to the taxpayer first.

Unlike our colleagues on the other side of the aisle, we do not want these firms to reorganize. We want to put them out of their existence, for no one is too big to fail. There is no guarantee for these institutions, and precisely what we do is provide preventive measures before this comes about, divestiture, increasing capital, a whole variety of preventive measures before bringing about a liquidation. But, ultimately, if an institution that affects the financial system grows so large or is so complex, ultimately, it is the liquidation.

This bill is about more than just reforming our financial system, though. It is about people's lives and the jobs lost and restoring confidence to a broken system. None of us wants to ever face anything like we did last year, and this bill will help ensure that the Wild West mentality and lax regulation promoted by the Republican Party, which led to huge frauds and robberies, like those committed by Bernard Madoff, Petters, and Stanford and their various Ponzi schemes, doesn't happen again. It is not a coincidence that those kinds of frauds on a scale unlike anything we had ever seen before occurred under the Bush administration.

We are reforming our regulatory system so it is able to fix problems before they become a threat to our economic system. The changes this bill makes are essential to rebuilding Main Street

and getting credit flowing to small businesses, creating jobs, and rebuilding our economy.

I urge my colleagues to vote in favor of the rule and the underlying bill.

With that, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I appreciate the gentleman from Colorado yielding me the time, and I will use such time as I may consume.

Mr. Speaker, I do admit, I know the gentleman was not here back in 2003, but on September 11, 2003, President Bush formally asked the Congress for legislation to regulate Freddie and Fannie, seeing a problem that was ahead. The ranking member of the Financial Services Committee, the gentleman, Mr. FRANK, had a quick response that said there is no problem. There is no problem. That's the last thing we should be doing. Their books are clean. They knew that everything was okay. In 2005, just the next session, legislation did pass and was filibustered in the Senate by Democrats, filibustered by Democrats.

To say that the Wild West exists would be a misnomer in financial services terms. There were people who broke the law. There have always been people who break the law. But the people who broke the law knew that they were breaking the law and did so at the expense of other people's money.

But if you want to talk about recession, let's talk about the recession that we are in right now after 3 years of Democratic control in this House of Representatives. Let's talk about 85 percent increase in spending that this body is going to take up a bill today to spend 85 percent more in the last 2 years by this Democrat-controlled Congress. So, I think that we should be very careful about trying to describe a problem when, in fact, someone else is adding to it and making it worse.

Today we are going to consider a 1,300-page bill which will be a Federal takeover of the financial services industry. That is a heck of an answer. An hour ago, I discussed the flaws of the underlying bill, and now you will hear about a number of amendments that were shut out by our friends, the Democrats. They shut out Democrats. They shut out Republicans. They shut out bipartisan amendments. And here we have on the floor today this massive bill.

I offered a cautionary amendment that would make this bill ineffective if the Government Accountability Office were to find that this bill would kill more than 1 million free enterprise jobs. I stood before the Rules Committee and said that if this bill kills more than 1 million jobs, let's not do it. Forget it. On a party-line vote, my friends in the Rules Committee, the Democrats, voted "no." That's because we are more concerned about politics than we are about the American people, jobs, and the economy.

Also, I offered two commonsense amendments that simply clarify that this bill would not create a bottomless fund for frivolous lawsuits by trial lawyers. The first amendment deals with giving shareholders a nonbinding vote on executive compensation packages. My amendment clarifies that this new vote creates no new private right of action. Without this amendment, trial lawyers will be able to exploit a brand new opportunity to shake down companies for huge payouts. This is a commonsense amendment, and it was rejected by the Rules Committee on a party-line vote. Once again, the Democrats said no, no.

The second amendment I introduced was to protect businesses from frivolous lawsuits and simply clarifies that none of the new registration requirements for investment advisers of private funds shall be construed as creating a private right of action. This is a noncontroversial measure, or it should be, seeking to protect investors from frivolous lawsuits, and this, too, was rejected.

Mr. Speaker, it is my belief that my colleagues on the other side of the aisle care more about creating a trial lawyer bonanza than protecting businesses, consumers, our financial systems and certainly the free enterprise system.

In an effort to clarify the intent of the executive compensation provisions, I introduced an amendment that would have provided sunshine and transparency for shareholders by requiring full SEC disclosure about who is financing that purchase to influence votes on this new, congressionally mandated, nonbinding shareholder resolution. Put simply, this amendment would provide shareholders with access to information about who is trying to influence a vote. Of course not. We would never want to do that. Trial lawyers would hate that. So the Democrat Party up in the Rules Committee, they got it. They complied. No.

As Federal candidates, we are obligated to disclose to the Federal Election Commission the name, occupation, and amount given by our donors. We require this because public interest is advanced by letting voters know who funds each candidate's campaign. This is important. My amendment asks for the same disclosure so that shareholders know who is trying to influence a vote, what people, what organizations, what groups, what consumer advocates, the amount of money, and who is influencing this. Surprisingly, this amendment was also voted down. So much for transparency and the light of day.

The goal of regulatory reform should be to help, not hinder, our economy and to sustain economic growth and job creation. This legislation does the opposite. It takes a one-size-fits-all approach to governing, undermining U.S. economic competitiveness and business

growth. That's why so many business groups oppose this. This Democratic solution will only increase government intervention in the financial markets, ration resources, limit consumer choice, raise taxes, dictate wages, and kill jobs.

Mr. Speaker, the motives are clear. My Democrat colleagues are using policy and regulation to force a government takeover of the free enterprise system while paving the road for trial lawyers and killing American jobs. I guess this is nothing new. We should get used to this.

I encourage my colleagues to vote against this rule and the underlying legislation.

I reserve the balance of my time.

Mr. PERLMUTTER. I would like to yield 2 minutes to the gentleman from Texas (Mr. DOGGETT).

□ 1600

Mr. DOGGETT. Mr. Speaker, a year ago as home foreclosures shot up and retirement accounts fell to new lows, after years of permissiveness toward corporate misconduct, the Bush administration responded by handing Wall Street the biggest subprime loan in American history using American taxpayer money. I opposed that Bush bailout because it did not provide adequate protection for our taxpayers. I wanted those who caused the crisis to be responsible for a little more of the clean-up. Instead, Wall Street banks took taxpayer money and they continued their scams with teaser rates and hiding rate increases in the fine print.

Well, now today through this legislation, we respond with extensive reforms. Maybe not all the reforms that I personally would prefer, but reforms that can really empower the cops on the beat. One of the most important of these is the Consumer Finance Protection Agency envisioned by Professor Elizabeth Warren, who Democrats appointed to head the oversight committee over all of these bailout funds. Professor Warren is independent. She is a visionary and an expert in this area. Working with our colleagues Representatives MILLER, DELAHUNT, FRANK, and others of us, we have provided cops on the beat to address abusive lending practices that helped cause this crisis to see that they do not plague consumers once again.

There's a line in an old Hank Williams, Jr. song, "The cops are against the robbers but the laws are against the cops." We need this law to create a new squad of financial cops whose sole job is to protect taxpayers from others' greed. It is working families that we cannot let fail, and it is time we enacted the meaningful protections for American consumers that are embodied in this legislation.

Mr. SESSIONS. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from San Dimas, California

(Mr. DREIER), the ranking member of the Rules Committee.

Mr. DREIER. Mr. Speaker, I rise in strong opposition to this rule.

It's been fascinating to listen to the debate here, and a lot of hyperbole has come forward. We have heard terms like the "Republican recession," and "Wild West mentality." And the fascinating thing that I have just been talking to a couple of my staff members about is much of the legislation which is being criticized so harshly was signed into law by not George W. Bush but the President before George W. Bush, President Bill Clinton. So I think that we should recognize that there has been a lot of bipartisanship in creating what we all admit have been excesses.

Unfortunately, Mr. Speaker, we found that the regulators were asleep at the switch. The name Bernie Madoff was thrown out earlier. The fact of the matter is we know that the regulators were asleep at the switch when it came to dealing with that. We can look at a wide range of other areas where inadequate oversight took place. The question that we have before us right now is do we want to create what many of us are concerned about, and that is unintended consequences?

One of the things that we have found over the past year plus has been a tremendous contraction in credit. Individuals who want to utilize their credit cards or start a business, buy a home, have been having real difficulty gaining access to credit. We've seen this contraction take place.

My concern, as we look at this legislation, is that we're going to take this contraction of credit and make it permanent. We will basically be making it permanent. Why? Because we are going to codify a regulatory structure which is going to undermine the ability of the American people to have access to the best quality product at the lowest possible price.

A lot of things have been said and done over the past year which I think lead us to be overreacting. This massive expansion of government. We can start with the stimulus bill, cap-and-trade, this 2,500-page bill that we just reported out with all these appropriation bills that had an 85 percent increase in nondefense discretionary spending. This is not a way to encourage and lay the groundwork for us to get our economy moving again. So I am very concerned about that.

I want to talk about one particular amendment, Mr. Speaker, that I offered in the Rules Committee, and that amendment dealt with a huge inequity that unfortunately took place when the economic downturn began. We unfortunately have seen a lot of financial institutions go under. One of them that went under very early on was a California institution known as IndyMac Bank. At that time, which was July of

last year, we found that we had the \$100,000 guarantee and that was it. Shortly thereafter, as more institutions went down, we increased that level to \$250,000.

My colleague Ms. HARMAN introduced an amendment which I offered in the Rules Committee earlier today which would simply have allowed us to have a chance to debate that. There are just under 9,000 depositors and a total of \$233 million that would be making these individuals whole who have been depositors because the depositors in other financial institutions, Mr. Speaker, were able to have the \$250,000 guarantee provided, and yet these depositors at IndyMac, victimized in the same way that these other depositors were with the failure of institutions, were unfortunately prevented from being able to do that. We simply wanted the House to debate that amendment so that we'd have the chance to make these hardworking men and women from not only California but across the country who happened to be depositors at this institution to be able to receive what every other depositor who dealt with a failed institution following its failure was able to face.

I offered Ms. HARMAN's amendment, I was happy to join with her in doing that, and on a party-line vote, we as Republicans said that this amendment should be made in order; the Democrats chose to vote en masse against allowing a debate to take place for these hardworking individuals who had deposits that were in excess of \$100,000.

So, Mr. Speaker, in light of that and the unintended consequences which I right now am foreseeing, I hope very much that we can defeat this rule. Defeating the rule, because so many amendments that should have been made in order were not made in order, will allow us to come back and put into place a very, very decent work product that can end this contraction of credit and get our economy back on track.

Mr. PERLMUTTER. Madam Speaker, first to respond to my good friend from California, he talked about getting the best quality product at the best price. Part of the problem that we had, Madam Speaker, is the fact that you didn't know if you had the best quality product because the way things were done under the Bush administration and the lax regulation that occurred, you didn't know whether there was money in the Bernie Madoff account. The whole approach here is to make sure that these things are scrutinized and that people know what it is that they're getting into when they invest or when they buy a product.

Mr. DREIER. Will the gentleman yield?

Mr. PERLMUTTER. I yield to my good friend.

Mr. DREIER. I just want to say that the issue of transparency and disclosure is what we are focusing on with

the alternative that we put forward. This bill does not do that at all.

I thank my friend for yielding.

Mr. PERLMUTTER. Reclaiming my time, I would say that my friend is mistaken because the bill proposed by my friends on the Republican side does nothing but protect Wall Street, not make it transparent and to avoid hidden bombs that might go off from time to time.

I would like to yield now 3 minutes to my colleague from Colorado (Mr. POLIS).

Mr. POLIS. Madam Speaker, I rise in support of the rule to bring H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, to the floor of the House. I'd like to thank Chairman FRANK and my colleagues on the Financial Services Committee as well as their staffs for the hard work in crafting this legislation. I'd also like to thank the other committees who worked on this bill, including the Agriculture Committee; the Energy and Commerce Committee; the Judiciary Committee; the Budget Committee; the Committee on Oversight and Government Reform; the Committee on Ways and Means; and, of course, my Chair, Chairwoman SLAUGHTER, on the Committee on Rules, as well as my colleague Representative PERLMUTTER for managing the rule. The crafting of this legislation has truly been an all-hands-on effort.

The rule is a fair one. I would like to thank Chairman FRANK for including two amendments which I offered into his manager's amendment.

Our economy is driven by private investment. In order to encourage investment, we need to give investors peace of mind that at the end of a fraud, they have some recourse. Due to limited protections available, many investors realized significant losses as a result of investment fraud, the most infamous of which was the Madoff Ponzi scheme. In my district in Colorado, the dreams of a comfortable retirement from a lifetime of work or a college education for their kids were stolen from many of my constituents, most of whom had no idea that they were investing in Madoff. The Securities Investor Protection Corporation, or SIPC, is a wise insurance program that is simply outdated and insufficient. Investor protection must evolve. My first amendment is an important step in this evolution. My amendment directs the Comptroller General to study the feasibility of optional, premium-based additional coverage for investors. While there is private insurance available, SIPC plus will give investors at once choice and peace of mind to know that should they become a victim of a fraud, they're protected and will be able to realize a cash settlement in the event of a fraud to begin rebuilding.

My second amendment relates to student loans. As a representative of the

district that's home to one of our Nation's premier public institutions of higher learning, the University of Colorado at Boulder, I'm keenly aware of the importance of college affordability. Families have had less income to pay for students' education, and State governments have had fewer dollars to fund higher education, resulting in higher tuition for students and families. We have a healthy Federal student loan program because we recognize that subsidizing investment in education yields positive economic results. Unfortunately, high interest private industry loans disguised as equal alternatives to Federal loans have condemned graduates to debts so outrageous as to destroy the very opportunity for prosperity that college offers. An alarming number of students are taking out high-cost debt, frequently with interest rates as high as 18 percent, and debt that doesn't offer the same favorable deferment or repayment options as Federal loans. Even more troubling, one out of four private loan borrowers took out no Federal Stafford loans and more than half of them didn't even apply for student aid.

My amendment addresses this by requiring that before a private loan is funded, financial aid advisers inform students about the Federal loan options that are available to them. In 2007, two out of three students with private loans hadn't exhausted their lower-cost Federal financial aid. Students and their families should apply for and exhaust all of their available less-expensive Federal financial aid options before turning to risky and expensive student loans.

I am also grateful to Chairman FRANK and the Rules Committee for eliminating troubling language regarding liability of Internet access providers and also for the study of how best to fund dissolution authority and hopefully find alternatives to the current language.

Mr. SESSIONS. Madam Speaker, I yield 2 minutes to the gentlewoman from the great State of Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding.

Madam Speaker, I rise in strong opposition to this restrictive rule.

I filed several amendments to protect taxpayers in the economy from regulatory mismanagement. Unfortunately, they were summarily rejected by the Rules Committee. On a bill of this magnitude and significance, I would hope the majority wouldn't be so eager to shut the door on bipartisan amendments or, for that matter, any good ideas from Members of any party that would improve the bill.

Thanks to the rule, Madam Speaker, amendments I offered to prevent a shift of U.S. businesses overseas are barred from consideration. My amendments would have preserved language in the

underlying bill, a result of amendments that I offered in the Financial Services Committee that unfortunately will be undone by the Peterson-Frank amendment.

The result, according to testimony provided by one of my constituents who is the head of the largest U.S. futures exchange in the world, will be a dramatic shift of transactions out of the U.S. exchanges and over to foreign competitors abroad.

The two amendments I offered at Rules would have safeguarded competition, flexibility, and innovation in the U.S. markets. At a time of record job losses, how can we afford to push businesses out of the country?

My third amendment would have prevented the misuse of housing counseling funds by ACORN and its affiliates. It would withdraw ACORN's Federal housing certification. Given the group's clear link to illegal and inappropriate activities, how can we divert precious resources from legitimate housing counselors working overtime to help struggling homeowners?

Unfortunately, this bill will not allow an up-or-down vote on any of these amendments. Madam Speaker, these issues deserve a full and fair debate and a vote on the House floor. I urge my colleagues to oppose this rule.

Mr. PERLMUTTER. Madam Speaker, I yield 3 minutes to the gentlewoman from Maine (Ms. PINGREE).

□ 1615

Ms. PINGREE of Maine. I thank the gentleman from Colorado, my good colleague on the Rules Committee, both for yielding me the time and for all of his hard work on the Financial Services Committee, and to the Chair, BARNEY FRANK, as well. I know these committee members have worked long and hard on this particular bill that is soon to be before us.

For too long we have looked the other way as the big banks and the credit card companies ran roughshod over American consumers. By exploiting loopholes, they have acted recklessly and irresponsibly to line their pockets, leaving America's families and small businesses to pay the price.

Effective Wall Street reform is vital to creating jobs and growing our economy. This bill puts in place common-sense rules to ensure that these same irresponsible actors that caused the worst financial crisis since the Great Depression are not allowed to jeopardize the recovery we have worked so hard to begin. This bill, Madam Speaker, H.R. 4173, holds the big banks and the credit card companies accountable.

Today we can create a new Consumer Financial Protection Agency to make sure that credit card companies stop misleading consumers with hidden fees buried in the small print or teaser rates that lure people in and let the banks make huge profits. Americans

look to the FDA and the Consumer Product Safety Commission to keep the food we eat, the medicine we take and the toys we buy for our children safe; now it's time to make sure that the financial products and services that we buy are secure, understandable, and transparent.

With this bill, we can ensure that hardworking families in Maine and across the country are never again on the hook for risky and irresponsible schemes by putting an end to taxpayer bailouts and "too big to fail" firms that threaten to bring down our entire economy. We can inject transparency and accountability into a financial system that has far too long been allowed to operate behind closed doors, trading complex financial instruments in secret without the necessary regulation and enforcement.

Madam Speaker, the big banks, irresponsible mortgage lenders, and predatory credit card companies have made a mess out of our economy, and they have expected the American taxpayer to clean up. We can't let that happen again. It is time to ensure that those who acted so irresponsibly are finally held accountable and made to play by rules that are fair.

I realize this bill is not perfect. It could go further, and I think many rightfully agree we should go further. But this bill before us today is a critical first step in restoring confidence in our financial markets. We must act now to create jobs and grow the economy. This is the fair and commonsense regulation that the American public expects and deserves.

Mr. SESSIONS. Madam Speaker, the Republican Party is made up of a group of Members here in Congress who have various backgrounds, and one of them who I am getting ready to yield to came as a small businessman from a manufacturing firm that employed people, cared about their community and the families that worked therein.

I am delighted to yield 2 minutes to the gentleman from Clarence, New York (Mr. LEE).

Mr. LEE of New York. Madam Speaker, I rise today to oppose the rule and to speak on behalf of two commonsense amendments I offered which were not accepted.

The first amendment, sponsored with my friend from Texas (Mr. HENSARLING), simply limits the power of the Consumer Financial Product Agency's credit czar if the national employment rate remains at these astronomical levels. Studies have shown that this bill will stifle job growth across our entire economic spectrum. We should be focusing on job creation, not job extinction. Handing off more control of the private sector to unelected bureaucrats is not going to solve our economic problems.

The second amendment I offered would restrict the CFPB, this new mas-

sive agency created by this bill, from mandating disclosures to be made in any language other than English. English is the principal language in which commerce is conducted in the United States. Imagine the nightmare if disclosures must be reported in any of the more than 300 languages that are spoken here in the United States; it would ultimately be sheer chaos. The cost of compliance for private businesses to print materials in multiple languages amounts to more or less an added tax and pushing people further into the unemployment ranks.

H.R. 4173 is going to eliminate jobs, raise taxes, create a new bailout authority, and create a massive new government bureaucracy. I urge my colleagues to vote against this rule.

Mr. PERLMUTTER. Madam Speaker, I would just say to my friend from the Financial Services Committee two things as to his amendments. It was in January of 2009, the last month that George Bush was in office, that we had the highest job loss throughout this whole period. Since that time, it has been shrinking. So under the Bush administration, tremendous job loss in 2008, up to 4 million jobs. And those job losses have been shrinking ever since.

I would also say to my friend from the Financial Services Committee, we had this debate in the committee on the language issue. As he knows, my grandparents are from Ukraine. My grandfather came over here, was a successful businessman, but even over a 40- or 50-year period, he had difficulty with the written language. And where we have seen so much fraud and so much con artistry is with people who have difficulty with the language being taken advantage of. And part of this bill, the consumer protection bill, is so that we avoid that kind of fraud and scheming because of people who can't speak the language.

With that, I would yield 1½ minutes to my friend from Illinois (Mr. QUIGLEY).

Mr. QUIGLEY. Madam Speaker, I rise today in support of this measure, which includes two important proposals that I wrote and worked with the Financial Services Committee to include.

The first one ensures that regulators can do their jobs and regulate effectively for systemic risk. Under current law, regulators are not best equipped to prevent systemically risky behavior because their focus is on individual firms, not on the system as a whole.

My second measure that is included in the manager's amendment came from a constituent request and is strongly supported by groups like the AFL-CIO, the NAACP, and the National Fair Housing Alliance. It simply says that if your loan modification is denied, you deserve to know why. It makes the loan modification program more transparent by giving home-

owners the ability to verify their mortgage servicer's net present value analysis. If the servicer used an incorrect credit score, or misstated income, or made any number of mistakes, then you might be improperly denied loan modification.

I urge my colleagues to support this measure which includes both of these proposals.

Mr. SESSIONS. Madam Speaker, the gentleman from Colorado keeps trying to search and search and search and find who to pin this on, this bad economy and the job loss. Well, I would direct the gentleman to something that we have known for a long, long time in this country. The answer is, pin the tail on the donkey.

Madam Speaker, at this time, I would like to yield 2 minutes to the gentleman from Clinton Township, New Jersey (Mr. LANCE).

Mr. LANCE. Thank you, Mr. SESSIONS.

I rise today in opposition to this restrictive rule and in opposition to the underlying legislation.

This bill will have severe negative consequences on our financial sector and economy as a whole. Specifically, I am strongly opposed to title I, which would create a permanent bailout fund at the FDIC, paid for in part by companies that will never see any real benefit. Furthermore, while every Member of this body supports increased consumer protection, title IV of the bill related to that important issue could do more harm than good by restricting choice and further tightening consumer credit markets.

The language of this title is far too broad and ill-defined. Its uncertainty will only hurt consumers while financial companies retreat from the market to avoid running afoul of a new Federal bureaucracy.

I am also concerned with the title's insistence on completely separating consumer protection regulation from prudential safety and soundness regulation. In my judgment, to accomplish either, regulators should be looking at both. This bill does not accomplish that.

Finally, I want to express my disappointment that this body will not be allowed to debate and vote on an issue of importance to all taxpayers, renewing the Troubled Asset Relief Program set to expire on December 31. I offered an amendment last evening in the Rules Committee to ensure that TARP ends as scheduled and any funds repaid or not yet spent are used for the statutorily mandated purpose of debt reduction and not for further spending. The amendment failed on a purely partisan basis.

The President's plan announced earlier this week to use TARP to fund more governmental spending violates the intent of the law, does very little to create jobs, and further adds to

America's ever-growing debt burden. Colleagues on both sides of the aisle believe we need to end TARP. This body should have been allowed to have a substantive debate on this issue.

Mr. PERLMUTTER. Madam Speaker, to my good friend from Texas, I think it is easy to know who to blame, and that is the policies of the Republican Congress and the President, George Bush, because things fell apart, jobs were lost, trillions of dollars lost, and companies fleeing as a result of those policies, which we are trying to repair and correct.

Madam Speaker, I would like to inquire as to how much time each side has remaining.

The SPEAKER pro tempore (Ms. LORETTA SANCHEZ of California). The gentleman from Colorado has 13½ minutes. The gentleman from Texas has 11½ minutes.

Mr. PERLMUTTER. Madam Speaker, I would like to yield 3 minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. I have had to sit here and listen as one Republican after another comes down and says that this bill facilitates bailouts. Most of those Republicans have quoted me. I did say that the Treasury draft of this bill submitted last summer was "TARP on steroids," but apparently they didn't notice that the bill changed in committee. In fact, the gentleman from New Jersey came down and said he wants to end TARP—which I voted against twice—and that on a straight party-line vote, the Rules Committee turned down his amendment. I voted for such an amendment in the Financial Services Committee, and last I checked, I was a Democrat. But I want to focus on the issue of bailouts, comparing the bill to the Republican substitute.

Now, keep in mind that most of the bailouts we've done have not been through the TARP program, but rather were pursuant to sections of law that existed long ago, including, and especially, 13-3 of the Federal Reserve Act, which was adopted in 1932. It is that one code section alone that has allowed \$3 trillion to be spent on what could be called bailouts.

So, since the biggest bailouts have come from the Fed, we ought to end secrecy at the Fed. The Democratic bill includes the Ron Paul-Alan Grayson amendment to audit the Fed; for reasons I do not understand, the Republican substitute does not. Their substitute allows the Fed to continue to be exempt from many GAO audits.

Now, as I said, the biggest bailouts are under section 13-3 of the Federal Reserve Act. That has been used for \$3 trillion, but the Fed could legally use it for \$30 trillion. The Republican bill does very little to limit the Fed's power under section 13-3. The Democratic bill includes my amendments to

put a dollar limit on the amount that the Fed can obligate and my amendment to require that only the most secure loans are made. For some reason, the Republican bill limits the Fed barely at all.

12 U.S.C. 1823(c)(4)(G)(i) under the Federal Deposit Insurance Act has been used by the FDIC to make loan guarantees of more than \$300 billion, and in fact there is no dollar limit on this section. What they've done with \$300 billion they could have done with \$800 billion. The Democratic bill suspends this broad authority. The Republican bill contains no limits on this authority.

So if you want to live in Bailout Nation, then you've got to make sure that the Fed doesn't lose its exemptions from audits.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. PERLMUTTER. I yield the gentleman another 30 seconds.

Mr. SHERMAN. You have to make sure that the Fed's powers under 13-3, which have already been used to the tune of \$3 trillion, remain unlimited and could go to \$30 trillion. And you have to keep the FDIC with unlimited powers under 12 U.S.C. 1823(c)(4)(G)(i). If you want to live in Bailout Nation, you have to vote for the Republican substitute.

If you want to rein in the bailout powers of the executive branch, and if you want to make sure that the Fed is subject to audit, you have to vote for the Democratic bill.

□ 1630

Mr. SESSIONS. I yield 2 minutes to the gentleman from Eden Prairie, Minnesota (Mr. PAULSEN).

Mr. PAULSEN. I thank the gentleman.

Madam Speaker, I rise to oppose this rule because there were numerous amendments which would have improved this bill, but they were not made in order in the Rules Committee.

Now, many of these amendments were actually "good government" amendments. They were amendments that would have assured the reforms we were making were smart and would not be harmful to the economy. One amendment I offered with Representative TIAHRT would have guaranteed the end of the TARP bailout program at the end of this year, and it would have applied the remaining \$200 billion-plus worth of taxpayer money towards reducing the Federal budget deficit.

We all know that the TARP program has had a myriad of problems since day one. We have heard testimony in committee that has said the funds have not been properly monitored. This is the program that was used to fund executive bonuses by taxpayers. We have been told by the special inspector general that the program is "almost certainly" going to result in a loss to the taxpayers. Last month, it was just re-

ported that now taxpayers could lose over \$5 billion in investments in foreign banks.

Rather than ending this flawed program once and for all, the administration announced just yesterday that they will extend the bailout for TARP for another 10 months. This was after the Treasury Secretary just said last month that he wanted to work to put TARP out of its misery. So the Treasury Secretary has kind of flip-flopped now, and taxpayers are going to be forced to stand idly by while this administration will have the ability with Congress to spend over \$200 billion of taxpayer money as "walking around" money.

What is even more alarming, I think, Madam Speaker, is the fact that the legislation before us creates a TARP second bailout program and more bailout authority. With all of the problems we've had on this first bailout program, why on Earth is the Federal Government pursuing a sequel?

Without these amendments, the underlying legislation will make it harder to create jobs, harder to get credit for companies, and most importantly, it will make it more difficult for consumers to have freedom in their financial decisions.

I would urge Members to oppose this closed rule, which has effectively limited debate on many good amendments.

Mr. PERLMUTTER. I would just remind my friend from Minnesota that he has an amendment that was made in order, and he and I cosponsored an amendment in the Financial Services Committee, an amendment which has become part of the manager's amendment.

I would also remind him that we create in this a fund assessed against the banking institutions to deal with their liquidation. There is no bailout. As much as my friends on the other side of the aisle would like to be on message and continue to repeat that, there is no bailout.

I yield 3 minutes to the gentleman from Ohio (Mr. DRIEHAUS).

Mr. DRIEHAUS. Madam Speaker, when the American people listen to this debate, they hear a lot of rhetoric, but they don't get much in the way of facts as they were not able to sit through all of the committee hearings which so many of us went through. I want to go through some facts because I hear about amendments not being offered.

The fact of the matter is that we have spent weeks marking up this bill in committee. We had over 65 hours of debate alone in the markup. The hearings concerning these issues have been going on for the entire year. The number of Republican amendments heard in committee was 137. One hundred thirty-seven Republican amendments were heard in committee. There were over 50 rollcall votes on those Republican

amendments. There were over 140 Democratic amendments and over 30 bipartisan amendments. There were days and days of markup in considering the legislation.

What the Republicans don't want you to pay any attention to is their inaction for years on these critical issues. We had predatory lending legislation in 2001. They don't want to let you know that it was ignored, that it was ignored again in 2002, in 2003, in 2004, in 2005, in 2006, and in 2007. They don't want you to know that, for all of the years that they were in power, they failed to take up this legislation.

Now we have legislation, and they bring out stacks of paper with fewer words than in a Harry Potter book. I don't know if we have to get as small as "Good Night, Moon" or as "Harold and the Purple Crayon." I'm not quite sure what it takes. This is a big topic, and that's why we took so much time in committee to address the complexities of a derivatives market run astray. That's why we took the time to address the complexity of mortgage-backed securities, which wasn't addressed during those many years the Republicans were in power.

The results of that inaction are millions of foreclosures across the States, the worst recession since the Great Depression, over 700,000 jobs lost the month the President was sworn into office. This is because of the inaction of the Republican Party.

Now the American people demand that we step up and that we take action. What do they want to do? They want to do the same thing they did when they were in power year after year after year, which is nothing.

Mr. SESSIONS. Madam Speaker, I yield 3 minutes to the distinguished gentleman from Fullerton, California (Mr. ROYCE).

Mr. ROYCE. Madam Speaker, I would like to make a couple of points here.

One is that the Democrats have been in control of this institution—of the House and the Senate. If anybody remembers back in November of 2006, the Republicans lost control of the House and Senate. So, for 2007, 2008 and 2009, the Democrats have controlled this process. Every spending bill originates in this House, and under that Democratic leadership in this House, we have watched the unemployment rate more than double for the American public.

As far as those of us attempting to do something about the cockamamie schemes put forward years ago in 1992—and it was under Democratic leadership in this Congress that this was done—we gave Fannie Mae and Freddie Mac the ability to go out there and participate in arbitrage at a 100-1 leverage for affordable housing. That was the goal. Yet look at the consequences of it when you pushed that zero down payment loan on them, when you pushed

the requirement that 50 percent of their mortgage portfolio be in subprime and in Alt-A. Well, we see those results today.

Let me speak to another issue, which is the opposition to this bill. I voted against the bailouts. Regardless of what you call it, this is an extension of bailouts. While the new language regarding the preemption of State consumer financial laws in the manager's amendment represents a step in the right direction, I believe it is far from sufficient and should be improved.

For example, there are aspects of the preemption standard and process for reaching preemption decisions which need to be clarified. In addition, the visitation provisions dealing with the authority of State officials over federally chartered banks and thrifts continue to contain serious problems. These provisions are an unnecessary extension of State jurisdiction over federally chartered institutions which are already subject to Federal oversight, which raise significant new potential liabilities and uncertainties and which go far beyond the standards recognized in the recent Supreme Court decision in the Cuomo case.

I raise this issue because, as it is currently written, the underlying legislation will move us in the wrong direction in terms of Federal preemption.

The architects of our Constitution threw out the Articles of Confederation and added the commerce clause precisely to prevent a fragmented economy. They envisioned one national market, not a market where local and State governments could strangle free trade among the States. We have seen the ill-effects of an inconsistent regulatory framework in our insurance market where we have 50 separate markets with 50 sets of rules. It is inefficient, anticompetitive, and it fails to provide adequate, consistent consumer protections.

If we are looking for the most effective regulatory model for our financial sector, we should not move toward a regulatory framework with varying standards from State to State for federally chartered institutions.

Mr. PERLMUTTER. Madam Speaker, may I inquire as to how much time both sides have remaining?

The SPEAKER pro tempore. The gentleman from Colorado has 6½ minutes remaining. The gentleman from Texas has the equivalent.

Mr. PERLMUTTER. I would like to first say to my friend from California—and this does cut both ways—the House of Representatives in 2005 did pass legislation to reform Fannie Mae and Freddie Mac. It was bipartisan. I am referring to an article from September 9, 2008, in the FinancialTimes.com, which interviewed Mr. Oxley, who was the chairman of the Financial Services Committee at the time. The bill was never acted on.

In that article he fumed about the criticism of his House colleagues. "All the handwringing and bedwetting is going on without remembering how the House stepped up on this," he says. "What did we get from the White House?"—remember, George Bush was in the White House—"We got a one-finger salute."

That was from the Republican chairman of the House Financial Services Committee.

Mr. ROYCE. Will the gentleman yield?

Mr. PERLMUTTER. No, I am going to yield 3 minutes to my friend from North Carolina (Mr. WATT).

Mr. WATT. I thank the gentleman for yielding time.

Madam Speaker, obviously, I am a very strong supporter of this legislation, and I was here on into the evening last night to express my support for it; but there is one aspect of it that I want to point out that I have some discomfort with and which I would like to speak about. There is really nothing we can do about it, and it is not going to cause me to vote against the bill, but I think we need to continue to work on it.

The Financial Services' version of the bill requires swap dealers and major participants to execute their standardized swaps on exchanges, or swap execution platforms. These provisions, we thought, were very important to the bill. The reason for that is, 15 years ago, the only way to search for a swap transaction was to use the telephone. It was time-consuming, expensive, and a company was never sure that it had found the best deal.

Today, new electronic technology creates pre-trade price transparency. The House Financial Services' version required the use of that platform for transparency purposes so that companies could get the best price in an open transparent market and so that regulators could have a high-resolution view of risk as they moved through the system.

It was our intent that the regulators would require these new technologies to be used for price discovery so that impartial, instantaneous information was available to all participants at the same time. So we kind of lost the totality of that in merging the Financial Services' version of the bill and the Agriculture Committee's version of the bill. I just want to rise to put it back on the radar screen as something that we need to continue to try to resolve. When you have got a \$600 trillion over-the-counter derivatives business, there needs to be absolute transparency as there is in the stock market. That is the only way you can bring this out of the shadows and onto a transparent platform.

So I hope we will be able to continue to work with it. The chairman of Financial Services has been excellent on



this issue. I hope we will continue, as the House and the Senate move these bills, to figure out a way to make sure that we have the maximum amount of transparency as we did in the Financial Services' version of the bill.

I thank the gentleman for yielding me time to raise this issue.

Mr. SESSIONS. Madam Speaker, without challenging the gentleman's words on the floor, I challenge anyone to think that there would be \$600 trillion worth of derivatives business that has taken place in this country.

I yield 2 minutes to a member of the Financial Services Committee, the gentleman from Lubbock, Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. I thank the gentleman.

Madam Speaker, Treasury Secretary Geithner gave my colleagues, the Democrats on the other side of the aisle, a Christmas present yesterday in that he extended their revolving slush fund until October of next year—again, going down the road of rewarding bad behavior and punishing good behavior. The American people were deceived from the very beginning on this—this TARP money, this revolving slush fund as it has evolved into—because they were told it was just for emergency purposes.

□ 1645

Now we are told that, even by the Secretary and the President, that maybe the financial emergency is over. Well, if it's over, we ought to be giving that money back to the American people or, unfortunately, some of that money was borrowed, and we are borrowing the money from the Chinese. But, no, we are going to put that money back into a slush fund and now we are going to use it for whatever purposes our colleagues on the other side of the aisle decide to do with it. Let me tell you, they are very good at it. If you want somebody to teach you how to spend, they can teach you how to spend.

Unfortunately, Mr. President, and to my colleagues on the other side of the aisle, we are spending money that we don't have. We are borrowing all of this money. Here we are today talking about now making a permanent slush fund, a permanent TARP fund, over \$150 billion.

The American people are tired of the bailouts. They are tired of making their own mortgage payment and then they are being asked to make their neighbor's house payment. You know what the American people are doing is they are getting their own financial household in order.

But the other part of this bill that bothers me, and it should bother the American people, is we are going to have this new czar or czarina that is going to be able to tell you what kinds of financial products that are appro-

priate for you. Maybe there is only a certain kind of mortgage that you should have or a certain kind of car loan you should have, certain kind of student loan that you should have when you are trying to send your kids to college.

But the big concern I have is it's going to hurt the credit, limit the credit for small businesses across this country, the people that create the most jobs in this country and have the ability to bring us out of this economic slump. Yet now we are going to be able to put this big regulatory umbrella over them.

Defeat this bill. It's a bad bill.

Mr. PERLMUTTER. Madam Speaker, I would ask my friend from Texas how many more speakers he might have, because we have no other speakers, and I will close.

Mr. SESSIONS. Good, I appreciate the gentleman. It sounds to me like you would like me to go ahead and take the time to close.

Mr. PERLMUTTER. Yes.

I reserve the balance of my time.

Mr. SESSIONS. I appreciate the gentleman advising me of such.

Madam Speaker, at this time I would like to yield 2 minutes to the gentleman from Rockledge, Florida (Mr. POSEY).

Mr. POSEY. Madam Speaker, I have been sitting here listening to the debate, and it's almost laughable that I have heard my friends across the aisle blame everything except Hurricane Katrina and the tsunami on President Bush and the Republicans. I think everyone with half a brain knows this meltdown created—or began a couple of administrations ago when they came up with the Community Redevelopment Act and Congress decided to get in and start telling Fannie Mae and Freddie Mac how to behave, when they said everybody in this country deserved to own a home, doesn't matter if you don't have a job, doesn't matter if it's overpriced, doesn't matter if you can't afford it, this is the better world we are looking for.

I think most of the people back home, at least where I am from, remember the days when no banker wanted to make a bad loan. If you wanted to borrow money from a bank, you had to convince the bank you needed the money before they were going to loan it to you, basically. That all changed after the Community Redevelopment Act, so it's no surprise that we have people buying houses they can't afford and that they can't pay for, and that's the tip of the iceberg.

Yes, we need to make some changes in the way that we deal with derivatives and some of the downstream spending. To blame it all on one side or the other is laughable. There is more than enough blame to go around to both sides of this Chamber, and I think it's unfair to the people that we rep-

resent that we spend so much time trying to place blame and not focus on a solution.

This bill is very well intended, but it's not going to solve the problem. If regulation and creating more bureaucracies would have solved the problem, we wouldn't be here today. We have gone through that cycle a couple of times. We know what happened with Bernard Madoff. We know the attorneys at the SEC only file one-half a case every other year. That's one case each lawyer files every other year.

Somebody is not watching out for the citizens of this country, the people that put us here. Our job, I think, is to put those people to work before we hire more bureaucrats and create more bureaucracies that will lead to more of the same.

Mr. SESSIONS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, as I said earlier, while it's important to provide consumer safety and security in the marketplace, our constituents are more concerned with the economy, the debt and the loss of jobs. When my friends on the other side of the aisle finally focus on this, I think we are going to start making advances for the American people to reduce our debt and to get back to where we have a growing economy.

Week after week we come to the House floor to debate bills that kill and diminish jobs. It's not what I want to spend my time doing, but, by golly, the Republican Party is going fight the Democrat Party all the way on these job-killing bills, whether it's cap-and-trade, health care, or government takeover of the financial sector. And we are talking about millions of jobs at a time that are coming up for unemployment. The Republican Party will stand up for the American people.

I would like to encourage our friends and Democrats to start listening to the American people. Stop the borrowing, stop the taxing, stop the spending policies, including an 85 percent increase in spending in a 2-year cycle increase, that have led this country to record deficits and record unemployment.

Unfortunately, due to a tragic event that happened back in my home State, I will be unable to be here tomorrow to vote "no" on all these bills. I will be attending a funeral tomorrow in Dallas, Texas, of a dear friend. However, if I were here, I would vote "no"—"no" on taxing, "no" on spending, and "no" on bigger government.

So I will encourage my colleagues right now to do the same. Just say "no." We have heard that before. Just say "no" to more taxes, more spending, and more unemployment in this country.

Madam Speaker, I yield back the balance of my time.

Mr. PERLMUTTER. Madam Speaker, I yield myself so much time as I might consume.

The SPEAKER pro tempore (Ms. RICHARDSON). Is there objection to the request of the gentleman from Illinois?

There was no objection.

#### NATIONAL PRADER-WILLI SYNDROME AWARENESS MONTH

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 55.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the resolution, H. Res. 55.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 964 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4173.

□ 1725

#### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, with Ms. LORETTA SANCHEZ of California (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose on Wednesday, December 9, 2009, all time for general debate had expired pursuant to House Resolution 956.

Pursuant to House Resolution 964, no further general debate shall be in order. The bill, as amended, shall be considered for amendment under the 5-minute rule and shall be considered as read.

The text of the bill, as amended, is as follows:

H.R. 4173

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “The Wall Street Reform and Consumer Protection Act of 2009”.

#### SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.  
Sec. 2. Table of contents.

#### TITLE I—FINANCIAL STABILITY IMPROVEMENT ACT

Sec. 1000. Short title; definitions.

Sec. 1000A. Restrictions on the Federal Reserve System pending audit report.

#### Subtitle A—The Financial Services Oversight Council

Sec. 1001. Financial Services Oversight Council established.

Sec. 1002. Resolution of disputes among Federal financial regulatory agencies.

Sec. 1003. Technical and professional advisory committees.

Sec. 1004. Financial Services Oversight Council meetings and council governance.

Sec. 1005. Council staff and funding.

Sec. 1006. Reports to the Congress.

Sec. 1007. Applicability of certain Federal laws.

Sec. 1008. Oversight by GAO.

#### Subtitle B—Prudential Regulation of Companies and Activities for Financial Stability Purposes

Sec. 1101. Council and Board authority to obtain information.

Sec. 1102. Council prudential regulation recommendations to Federal financial regulatory agencies.

Sec. 1103. Subjecting financial companies to stricter prudential standards for financial stability purposes.

Sec. 1104. Stricter prudential standards for certain financial holding companies for financial stability purposes.

Sec. 1105. Mitigation of systemic risk.

Sec. 1106. Subjecting activities or practices to stricter prudential standards for financial stability purposes.

Sec. 1107. Stricter regulation of activities and practices for financial stability purposes.

Sec. 1108. Effect of rescission of identification.

Sec. 1109. Emergency financial stabilization.

Sec. 1110. Corporation must receive warrants when paying or risking taxpayer funds.

Sec. 1111. Examinations and enforcement actions for insurance and resolutions purposes.

Sec. 1112. Study of the effects of size and complexity of financial institutions on capital market efficiency and economic growth.

Sec. 1113. Exercise of Federal Reserve authority.

Sec. 1114. Stress tests.

Sec. 1115. Contingent Capital.

Sec. 1116. Restriction on proprietary trading by designated financial holding companies.

Sec. 1117. Rule of construction.

#### Subtitle C—Improvements to Supervision and Regulation of Federal Depository Institutions

Sec. 1201. Definitions.

Sec. 1202. Amendments to the Home Owners' Loan Act relating to transfer of functions.

Sec. 1203. Amendments to the revised statutes.

Sec. 1204. Power and duties transferred.

Sec. 1205. Transfer date.

Sec. 1206. Expiration of term of comptroller.

Sec. 1207. Office of Thrift Supervision abolished.

Sec. 1208. Savings provisions.

Sec. 1209. Regulations and orders.

Sec. 1210. Coordination of transition activities.

Sec. 1211. Interim responsibilities of office of the comptroller of the currency and office of thrift supervision.

Sec. 1212. Employees transferred.

Sec. 1213. Property transferred.

Sec. 1214. Funds transferred.

Sec. 1215. Disposition of affairs.

Sec. 1216. Continuation of services.

Sec. 1217. Contracting and leasing authority.

Sec. 1218. Treatment of savings and loan holding companies.

Sec. 1219. Practices of certain mutual thrift holding companies preserved.

Sec. 1220. Implementation plan and reports.

Sec. 1221. Composition of board of directors of the Federal Deposit Insurance Corporation.

Sec. 1222. Amendments to section 3.

Sec. 1223. Amendments to section 7.

Sec. 1224. Amendments to section 8.

Sec. 1225. Amendments to section 11.

Sec. 1226. Amendments to section 13.

Sec. 1227. Amendments to section 18.

Sec. 1228. Amendments to section 28.

Sec. 1229. Amendments to the Alternative Mortgage Transaction Parity Act of 1982.

Sec. 1230. Amendments to the Bank Holding Company Act of 1956.

Sec. 1231. Amendments to the Bank Protection Act of 1968.

Sec. 1232. Amendments to the Bank Service Company Act.

Sec. 1233. Amendments to the Community Reinvestment Act of 1977.

Sec. 1234. Amendments to the Depository Institution Management Interlocks Act.

Sec. 1235. Amendments to the Emergency Homeowners' Relief Act.

Sec. 1236. Amendments to the Equal Credit Opportunity Act.

Sec. 1237. Amendments to the Federal Credit Union Act.

Sec. 1238. Amendments to the Federal Financial Institutions Examination Council Act of 1978.

Sec. 1239. Amendments to the Federal Home Loan Bank Act.

Sec. 1240. Amendments to the Federal Reserve Act.

Sec. 1241. Amendments to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Sec. 1242. Amendments to the Housing Act of 1948.

Sec. 1243. Amendments to the Housing and Community Development Act of 1992 and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

Sec. 1244. Amendment to the Housing and Urban-Rural Recovery Act of 1983.

Sec. 1245. Amendments to the National Housing Act.

Sec. 1246. Amendments to the Right to Financial Privacy Act of 1978.

Sec. 1247. Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985.

Sec. 1248. Amendments to the Crime Control Act of 1990.

Sec. 1249. Amendment to the Flood Disaster Protection Act of 1973.

Sec. 1250. Amendment to the Investment Company Act of 1940.

Sec. 1251. Amendment to the Neighborhood Reinvestment Corporation Act.

Sec. 1252. Amendments to the Securities Exchange Act of 1934.

Sec. 1253. Amendments to title 18, United States Code.

Sec. 1254. Amendments to title 31, United States Code.

- Sec. 1255. Requirement for Countercyclical Capital Requirements.
- Sec. 1256. Transfer of authority to the Board with respect to savings and loan holding companies.
- Subtitle D—Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions
- Sec. 1301. Treatment of industrial loan companies, savings associations, and certain other companies under the bank holding company act.
- Sec. 1302. Registration of certain companies as bank holding companies.
- Sec. 1303. Reports and examinations of bank holding companies; regulation of functionally regulated subsidiaries.
- Sec. 1304. Requirements for financial holding companies to remain well capitalized and well managed.
- Sec. 1305. Standards for interstate acquisitions.
- Sec. 1306. Enhancing existing restrictions on bank transactions with affiliates.
- Sec. 1307. Eliminating exceptions for transactions with financial subsidiaries.
- Sec. 1308. Lending limits applicable to credit exposure on derivative transactions, repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions.
- Sec. 1309. Restriction on conversions of troubled banks and thrifts.
- Sec. 1310. Lending limits to insiders.
- Sec. 1311. Limitations on purchases of assets from insiders.
- Sec. 1312. Rules regarding capital levels of bank holding companies.
- Sec. 1313. Enhancements to factors to be considered in certain acquisitions.
- Sec. 1314. Elimination of elective investment bank holding company framework.
- Sec. 1315. Examination fees for large bank holding companies.
- Subtitle E—Improvements to the Federal Deposit Insurance Fund
- Sec. 1401. Accounting for actual risk to the Deposit Insurance Fund.
- Sec. 1402. Creating a risk-focused assessment base.
- Sec. 1403. Elimination of procyclical assessments.
- Sec. 1404. Enhanced access to information for deposit insurance purposes.
- Sec. 1405. Transition reserve ratio requirements to reflect new assessment base.
- Subtitle F—Improvements to the Asset-Backed Securitization Process
- Sec. 1501. Short title.
- Sec. 1502. Credit risk retention.
- Sec. 1503. Periodic and other reporting under the Securities Exchange Act of 1934 for asset-backed securities.
- Sec. 1504. Representations and warranties in asset-backed offerings.
- Sec. 1505. Exempted transactions under the Securities Act of 1933.
- Sec. 1506. Study on the macroeconomic effects of risk retention requirements.
- Subtitle G—Enhanced Dissolution Authority
- Sec. 1601. Short title.
- Sec. 1602. Definitions.
- Sec. 1603. Systemic risk determination.
- Sec. 1604. Resolution; stabilization.
- Sec. 1605. Judicial review.
- Sec. 1606. Directors not liable for acquiescing in appointment of receiver.
- Sec. 1607. Termination and exclusion of other actions.
- Sec. 1608. Rulemaking.
- Sec. 1609. Powers and duties of corporation.
- Sec. 1610. Clarification of prohibition regarding concealment of assets from receiver or liquidating agent.
- Sec. 1611. Office of Resolution.
- Sec. 1612. Miscellaneous provisions.
- Sec. 1613. Amendment to Federal Deposit Insurance Act.
- Sec. 1614. Application of executive compensation limitations.
- Subtitle H—Additional Improvements for Financial Crisis Management
- Sec. 1701. Additional improvements for financial crisis management.
- Sec. 1702. Certain restrictions related to foreign currency swap authority.
- Sec. 1703. Additional oversight of financial regulatory system.
- Subtitle I—Miscellaneous
- Sec. 1801. Inclusion of minorities and women; Diversity in agency workforce.
- Subtitle J—International Policy Coordination
- Sec. 1901. International policy coordination.
- Subtitle K—International Financial Provisions
- Sec. 1951. Access to United States financial market by foreign institutions.
- TITLE II—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS ACT**
- Sec. 2001. Short title.
- Sec. 2002. Shareholder vote on executive compensation disclosures.
- Sec. 2003. Compensation committee independence.
- Sec. 2004. Enhanced compensation structure reporting to reduce perverse incentives.
- TITLE III—OVER-THE-COUNTER DERIVATIVES MARKETS ACT**
- Sec. 3001. Short title.
- Subtitle A—Regulation of Swap Markets
- Sec. 3101. Definitions.
- Sec. 3102. Jurisdiction.
- Sec. 3103. Clearing.
- Sec. 3104. Public reporting of aggregate swap data.
- Sec. 3105. Swap repositories.
- Sec. 3106. Reporting and recordkeeping.
- Sec. 3107. Registration and regulation of swap dealers and major swap participants.
- Sec. 3108. Segregation of assets held as collateral in swap transactions.
- Sec. 3109. Conflicts of interest.
- Sec. 3110. Swap execution facilities.
- Sec. 3111. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 3112. Designated contract markets.
- Sec. 3113. Position limits.
- Sec. 3114. Enhanced authority over registered entities.
- Sec. 3115. Foreign boards of trade.
- Sec. 3116. Legal certainty for swaps.
- Sec. 3117. Multilateral clearing organizations.
- Sec. 3118. Primary enforcement authority.
- Sec. 3119. Enforcement.
- Sec. 3120. Retail commodity transactions.
- Sec. 3121. Large swap trader reporting.
- Sec. 3122. Authority to ban abusive swaps.
- Sec. 3123. International harmonization.
- Sec. 3124. Authority to ban access to the United States Financial System.
- Sec. 3125. Other authority.
- Sec. 3126. Antitrust.
- Sec. 3127. Effective date.
- Subtitle B—Regulation of Security-Based Swap Markets
- Sec. 3201. Definitions under the Securities Exchange Act of 1934.
- Sec. 3202. Repeal of prohibition on regulation of security-based swaps.
- Sec. 3203. Amendments to the Securities Exchange Act of 1934.
- Sec. 3204. Registration and regulation of swap dealers and major swap participants.
- Sec. 3205. National security exchange registration requirements.
- Sec. 3206. Reporting and recordkeeping.
- Sec. 3207. State gaming and bucket shop laws.
- Sec. 3208. Amendments to the Securities Act of 1933; treatment of security-based swaps.
- Sec. 3209. Other authority.
- Sec. 3210. Jurisdiction.
- Sec. 3211. Effective date.
- Subtitle C—Miscellaneous
- Sec. 3301. Study on feasibility of requiring use of standardized algorithmic descriptions for financial derivatives.
- Sec. 3302. Study of desirability and feasibility of establishing single regulator for all transactions involving financial derivatives.
- Sec. 3303. Recommendations for changes to insolvency laws.
- Sec. 3304. Prohibition against government assistance.
- TITLE IV—CONSUMER FINANCIAL PROTECTION AGENCY ACT**
- Sec. 4001. Short title.
- Sec. 4002. Definitions.
- Subtitle A—Establishment of the Agency
- Sec. 4101. Establishment of the Consumer Financial Protection Agency.
- Sec. 4102. Director.
- Sec. 4103. Consumer Financial Protection Oversight Board.
- Sec. 4104. Executive and administrative powers.
- Sec. 4105. Administration.
- Sec. 4106. Consumer Advisory Board.
- Sec. 4107. Coordination.
- Sec. 4108. Reports to the Congress.
- Sec. 4109. Funding; fees and assessments; penalties and fines.
- Sec. 4110. Amendments relating to other administrative provisions.
- Sec. 4111. Effective date.
- Subtitle B—General Powers of the Director and Agency
- Sec. 4201. Mandate and objectives.
- Sec. 4202. Authorities.
- Sec. 4203. Examination and enforcement for small banks, thrifts, and credit unions.
- Sec. 4204. Simultaneous and coordinated supervisory action.
- Sec. 4205. Limitations on authority of agency and director.
- Sec. 4206. Collection of information; confidentiality regulations.
- Sec. 4207. Monitoring; assessments of significant regulations; reports.
- Sec. 4208. Authority to restrict mandatory predispute arbitration.

- Sec. 4209. Registration and supervision of nondepository covered persons.
- Sec. 4210. Effective date.
- Subtitle C—Specific Authorities**
- Sec. 4301. Prohibiting unfair, deceptive, or abusive acts or practices.
- Sec. 4302. Disclosures.
- Sec. 4303. Sales practices.
- Sec. 4304. Pilot disclosures.
- Sec. 4305. Adopting operational standards to deter unfair, deceptive, or abusive practices.
- Sec. 4306. Duties.
- Sec. 4307. Consumer rights to access information.
- Sec. 4308. Prohibited acts.
- Sec. 4309. Treatment of remittance transfers.
- Sec. 4310. Effective date.
- Sec. 4311. No authority to require the offering of financial products or services.
- Sec. 4312. Appraisal independence requirements.
- Subtitle D—Preservation of State Law**
- Sec. 4401. Relation to State law.
- Sec. 4402. Preservation of enforcement powers of States.
- Sec. 4403. Preservation of existing contracts.
- Sec. 4404. State law preemption standards for national banks and subsidiaries clarified.
- Sec. 4405. Visitorial standards.
- Sec. 4406. Clarification of law applicable to nondepository institution subsidiaries.
- Sec. 4407. State law preemption standards for Federal savings associations and subsidiaries clarified.
- Sec. 4408. Visitorial standards.
- Sec. 4409. Clarification of law applicable to nondepository institution subsidiaries.
- Sec. 4410. Effective date.
- Subtitle E—Enforcement Powers**
- Sec. 4501. Definitions.
- Sec. 4502. Investigations and administrative discovery.
- Sec. 4503. Hearings and adjudication proceedings.
- Sec. 4504. Litigation authority.
- Sec. 4505. Relief available.
- Sec. 4506. Referrals for criminal proceedings.
- Sec. 4507. Employee protection.
- Sec. 4508. Effective date.
- Subtitle F—Transfer of Functions and Personnel; Transitional Provisions**
- Sec. 4601. Transfer of certain functions.
- Sec. 4602. Designated transfer date.
- Sec. 4603. Savings provisions.
- Sec. 4604. Transfer of certain personnel.
- Sec. 4605. Incidental transfers.
- Sec. 4606. Interim authority of the Secretary.
- Subtitle G—Regulatory Improvements**
- Sec. 4701. Collection of deposit account data.
- Sec. 4702. Small business data collection.
- Sec. 4703. Annual financial autopsy.
- Subtitle H—Conforming Amendments**
- Sec. 4801. Amendments to the Inspector General Act of 1978.
- Sec. 4802. Amendments to the Privacy Act of 1974.
- Sec. 4803. Amendments to the Alternative Mortgage Transaction Parity Act of 1982.
- Sec. 4804. Amendments to the Consumer Credit Protection Act.
- Sec. 4805. Amendments to the Expedited Funds Availability Act.
- Sec. 4806. Amendments to the Federal Deposit Insurance Act.
- Sec. 4807. Amendments to the Gramm-Leach-Bliley Act.
- Sec. 4808. Amendments to the Home Mortgage Disclosure Act of 1975.
- Sec. 4809. Amendments to division D of the Omnibus Appropriations Act, 2009.
- Sec. 4810. Amendments to the Homeowners Protection Act of 1998.
- Sec. 4811. Amendments to the Real Estate Settlement Procedures Act of 1974.
- Sec. 4812. Amendments to the Right to Financial Privacy Act of 1978.
- Sec. 4813. Amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.
- Sec. 4814. Amendments to the Truth in Savings Act.
- Sec. 4815. Amendments to the Tele-marketing and Consumer Fraud and Abuse Prevention Act.
- Sec. 4816. Membership in Financial Literacy and Education Commission.
- Sec. 4817. Effective date.
- Subtitle I—Improvements to the Federal Trade Commission Act**
- Sec. 4901. Amendments to the Federal Trade Commission Act.
- TITLE V—CAPITAL MARKETS**
- Subtitle A—Private Fund Investment Advisers Registration Act**
- Sec. 5001. Short title.
- Sec. 5002. Definitions.
- Sec. 5003. Elimination of private adviser exemption; Limited exemption for foreign private fund advisers; Limited intrastate exemption.
- Sec. 5004. Collection of systemic risk data.
- Sec. 5005. Elimination of disclosure provision.
- Sec. 5006. Exemption of and reporting by venture capital fund advisers.
- Sec. 5007. Exemption of and reporting by certain private fund advisers.
- Sec. 5008. Clarification of rulemaking authority.
- Sec. 5009. GAO study.
- Sec. 5010. Effective date; Transition period.
- Sec. 5011. Qualified client standard.
- Subtitle B—Accountability and Transparency in Rating Agencies Act**
- Sec. 6001. Short title.
- Sec. 6002. Enhanced regulation of nationally recognized statistical rating organizations.
- Sec. 6003. Standards for private actions.
- Sec. 6004. Issuer disclosure of preliminary ratings.
- Sec. 6005. Change to designation.
- Sec. 6006. Timeline for regulations.
- Sec. 6007. Elimination of exemption from fair disclosure rule.
- Sec. 6008. Advisory Board.
- Sec. 6009. Removal of statutory references to credit ratings.
- Sec. 6010. Review of reliance on ratings.
- Sec. 6011. Publication of rating histories on the EDGAR system.
- Sec. 6012. Effect of Rule 436(g).
- Sec. 6013. Studies.
- Subtitle C—Investor Protection Act**
- Sec. 7001. Short title.
- PART 1—DISCLOSURE**
- Sec. 7101. Investor Advisory Committee established.
- Sec. 7102. Clarification of the Commission's authority to engage in consumer testing.
- Sec. 7103. Establishment of a fiduciary duty for brokers, dealers, and investment advisers, and harmonization of regulation.
- Sec. 7104. Commission study on disclosure to retail customers before purchase of products or services.
- Sec. 7105. Beneficial ownership and short-swing profit reporting.
- Sec. 7106. Revision to recordkeeping rules.
- Sec. 7107. Study on enhancing investment advisor examinations.
- Sec. 7108. GAO study of financial planning.
- PART 2—ENFORCEMENT AND REMEDIES**
- Sec. 7201. Authority to restrict mandatory pre-dispute arbitration.
- Sec. 7202. Comptroller General study to review securities arbitration system.
- Sec. 7203. Whistleblower protection.
- Sec. 7204. Conforming amendments for whistleblower protection.
- Sec. 7205. Implementation and transition provisions for whistleblower protections.
- Sec. 7206. Collateral bars.
- Sec. 7207. Aiding and abetting authority under the Securities Act and the Investment Company Act.
- Sec. 7208. Authority to impose penalties for aiding and abetting violations of the Investment Advisers Act.
- Sec. 7209. Deadline for completing examinations, inspections and enforcement actions.
- Sec. 7210. Nationwide service of subpoenas.
- Sec. 7211. Authority to impose civil penalties in cease and desist proceedings.
- Sec. 7212. Formerly associated persons.
- Sec. 7213. Sharing privileged information with other authorities.
- Sec. 7214. Expanded access to grand jury material.
- Sec. 7215. Aiding and abetting standard of knowledge satisfied by recklessness.
- Sec. 7216. Extraterritorial jurisdiction of the antifraud provisions of the Federal securities laws.
- Sec. 7217. Fidelity bonding.
- Sec. 7218. Enhanced SEC authority to conduct surveillance and risk assessment.
- Sec. 7219. Investment company examinations.
- Sec. 7220. Control person liability under the Securities Exchange Act.
- Sec. 7221. Enhanced application of antifraud provisions.
- Sec. 7222. SEC authority to issue rules on proxy access.
- PART 3—COMMISSION FUNDING AND ORGANIZATION**
- Sec. 7301. Authorization of appropriations.
- Sec. 7302. Investment adviser regulation funding.
- Sec. 7303. Amendments to section 31 of the Securities Exchange Act of 1934.
- Sec. 7304. Commission organizational study and reform.
- Sec. 7305. Capital Markets Safety Board.
- Sec. 7306. Report on implementation of "post-Madoff reforms".
- Sec. 7307. Joint Advisory Committee.
- PART 4—ADDITIONAL COMMISSION REFORMS**
- Sec. 7401. Regulation of securities lending.
- Sec. 7402. Lost and stolen securities.
- Sec. 7403. Fingerprinting.
- Sec. 7404. Equal treatment of self-regulatory organization rules.
- Sec. 7405. Clarification that section 205 of the Investment Advisers Act of 1940 does not apply to State-registered advisers.
- Sec. 7406. Conforming amendments for the repeal of the Public Utility Holding Company Act of 1935.

Sec. 7407. Promoting transparency in financial reporting.  
 Sec. 7408. Unlawful margin lending.  
 Sec. 7409. Protecting confidentiality of materials submitted to the Commission.  
 Sec. 7410. Technical corrections.  
 Sec. 7411. Municipal securities.  
 Sec. 7412. Interested person definition.  
 Sec. 7413. Rulemaking authority to protect redeeming investors.  
 Sec. 7414. Study on SEC revolving door.  
 Sec. 7415. Study on internal control evaluation and reporting cost burdens on smaller issuers.  
 Sec. 7416. Analysis of rule regarding smaller reporting companies.  
 Sec. 7417. Financial Reporting Forum.  
 Sec. 7418. Investment advisers subject to State authorities.  
 Sec. 7419. Custodial requirements.  
 Sec. 7420. Ombudsman.

#### PART 5—SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

Sec. 7501. Increasing the minimum assessment paid by SIPC members.  
 Sec. 7502. Increasing the borrowing limit on treasury loans.  
 Sec. 7503. Increasing the cash limit of protection.  
 Sec. 7504. SIPC as trustee in SIPA liquidation proceedings.  
 Sec. 7505. Insiders ineligible for SIPC advances.  
 Sec. 7506. Eligibility for direct payment procedure.  
 Sec. 7507. Increasing the fine for prohibited acts under SIPA.  
 Sec. 7508. Penalty for misrepresentation of SIPC membership or protection.  
 Sec. 7509. Futures held in a portfolio margin securities account protection.  
 Sec. 7510. Study and report on the feasibility of risk-based assessments for SIPC members.  
 Sec. 7511. Budgetary treatment of Commission loans to SIPC.

#### PART 6—SARBANES-OXLEY ACT AMENDMENTS

Sec. 7601. Public Company Accounting Oversight Board oversight of auditors of brokers and dealers.  
 Sec. 7602. Foreign regulatory information sharing.  
 Sec. 7603. Expansion of audit information to be produced and exchanged with foreign counterparts.  
 Sec. 7604. Conforming amendment related to registration.  
 Sec. 7605. Fair fund amendments.  
 Sec. 7606. Exemption for nonaccelerated filers.  
 Sec. 7607. Whistleblower protection against retaliation by a subsidiary of an issuer.  
 Sec. 7608. Congressional access to information.  
 Sec. 7609. Creation of ombudsman for the PCAOB.  
 Sec. 7610. Auditing Oversight Board.

#### PART 7—SENIOR INVESTMENT PROTECTION

Sec. 7701. Findings.  
 Sec. 7702. Definitions.  
 Sec. 7703. Grants to States for enhanced protection of seniors from being misled by false designations.  
 Sec. 7704. Applications.  
 Sec. 7705. Length of participation.  
 Sec. 7706. Authorization of appropriations.

#### PART 8—REGISTRATION OF MUNICIPAL FINANCIAL ADVISORS

Sec. 7801. Municipal financial adviser registration requirement.

Sec. 7802. Conforming amendments.  
 Sec. 7803. Effective dates.

#### TITLE VI—FEDERAL INSURANCE OFFICE

Sec. 8001. Short title.  
 Sec. 8002. Federal Insurance Office established.  
 Sec. 8003. Report on global reinsurance market.  
 Sec. 8004. Study on modernization and improvement of insurance regulation in the United States.

#### TITLE VII—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

Sec. 9000. Short title; designation as enumerated consumer law.

##### Subtitle A—Residential Mortgage Loan Origination Standards

Sec. 9001. Definitions.  
 Sec. 9002. Residential mortgage loan origination.  
 Sec. 9003. Prohibition on steering incentives.  
 Sec. 9004. Liability.  
 Sec. 9005. Regulations.  
 Sec. 9006. Study of shared appreciation mortgages.

##### Subtitle B—Minimum Standards For Mortgages

Sec. 9101. Ability to repay.  
 Sec. 9102. Net tangible benefit for refinancing of residential mortgage loans.  
 Sec. 9103. Safe harbor and rebuttable presumption.  
 Sec. 9104. Liability.  
 Sec. 9105. Defense to foreclosure.  
 Sec. 9106. Additional standards and requirements.  
 Sec. 9107. Rule of construction.  
 Sec. 9108. Effect on State laws.  
 Sec. 9109. Regulations.  
 Sec. 9110. Amendments to civil liability provisions.  
 Sec. 9111. Lender rights in the context of borrower deception.  
 Sec. 9112. Six-month notice required before reset of hybrid adjustable rate mortgages.  
 Sec. 9113. Required disclosures.  
 Sec. 9114. Disclosures required in monthly statements for residential mortgage loans.  
 Sec. 9115. Legal assistance for foreclosure-related issues.  
 Sec. 9116. Effective date.  
 Sec. 9117. Report by the GAO.  
 Sec. 9118. State Attorney General enforcement authority.

##### Subtitle C—High-Cost Mortgages

Sec. 9201. Definitions relating to high-cost mortgages.  
 Sec. 9202. Amendments to existing requirements for certain mortgages.  
 Sec. 9203. Additional requirements for certain mortgages.  
 Sec. 9204. Regulations.  
 Sec. 9205. Effective date.

##### Subtitle D—Office of Housing Counseling

Sec. 9301. Short title.  
 Sec. 9302. Establishment of Office of Housing Counseling.  
 Sec. 9303. Counseling procedures.  
 Sec. 9304. Grants for housing counseling assistance.  
 Sec. 9305. Requirements to use HUD-certified counselors under HUD programs  
 Sec. 9306. Study of defaults and foreclosures.  
 Sec. 9307. Default and foreclosure database.  
 Sec. 9308. Definitions for counseling-related programs.

Sec. 9309. Accountability and transparency for grant recipients.  
 Sec. 9310. Updating and simplification of mortgage information booklet.  
 Sec. 9311. Home inspection counseling.  
 Sec. 9312. Warnings to homeowners of foreclosure rescue scams.

##### Subtitle E—Mortgage Servicing

Sec. 9401. Escrow and impound accounts relating to certain consumer credit transactions.  
 Sec. 9402. Disclosure notice required for consumers who waive escrow services.  
 Sec. 9403. Real Estate Settlement Procedures Act of 1974 amendments.  
 Sec. 9404. Truth in Lending Act amendments.  
 Sec. 9405. Escrows included in repayment analysis.

##### Subtitle F—Appraisal Activities

Sec. 9501. Property appraisal requirements.  
 Sec. 9502. Unfair and deceptive practices and acts relating to certain consumer credit transactions.  
 Sec. 9503. Amendments relating to Appraisal Subcommittee of FIEC, Appraiser Independence Monitoring, Approved Appraiser Education, Appraisal Management Companies, Appraiser Complaint Hotline, Automated Valuation Models, and Broker Price Opinions.  
 Sec. 9504. Study required on improvements in appraisal process and compliance programs.  
 Sec. 9505. Equal Opportunity Act amendment.  
 Sec. 9506. Real Estate Settlement Procedures Act of 1974 amendment relating to certain appraisal fees.

##### Subtitle G—Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform

Sec. 9601. Sense of Congress regarding the importance of Government-sponsored enterprises reform to enhance the protection, limitation, and regulation of the terms of residential mortgage credit.

##### Subtitle H—Reports

Sec. 9701. GAO study report on government efforts to combat mortgage foreclosure rescue scams and loan modification fraud.

##### Subtitle I—Multifamily Mortgage Resolution

Sec. 9801. Multifamily mortgage resolution program.

##### Subtitle J—Study of Effect of Drywall Presence on Foreclosures

Sec. 9901. Study of effect of drywall presence on foreclosures.

#### TITLE I—FINANCIAL STABILITY IMPROVEMENT ACT

##### SEC. 1000. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the “Financial Stability Improvement Act of 2009”.

(b) DEFINITIONS.—For purposes of this title, the following definitions shall apply:

(1) The term “Board” means the Board of Governors of the Federal Reserve System.

(2) The term “Council” means the Financial Services Oversight Council established under section 1001.

(3) The term “Federal financial regulatory agency” means any agency that has a voting



member of the Council as set forth in section 1001(b)(1).

(4) The term “financial company” means a company or other entity—

(A) that is—

(i) incorporated or organized under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands; or

(ii) a company incorporated in or organized in a country other than the United States that has significant operations in the United States through—

(I) a Federal or State branch or agency of a foreign bank as such terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101 et seq.); or

(II) a United States affiliate or other United States operating entity of a company that is incorporated or organized in a country other than the United States;

(B) that is, in whole or in part, directly or indirectly, engaged in financial activities; and

(C) that is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.).

(5) **FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.**—The term “financial holding company subject to stricter standards” means—

(A) a financial company that has been subjected to stricter prudential standards under subtitle B; or

(B) in the case of a financial company described in subparagraph (A) that is required to establish an intermediate holding company under section 6 of the Bank Holding Company Act, the section 6 holding company through which the financial company is required to conduct its financial activities.

(6) The term “primary financial regulatory agency” means the following:

(A) The Comptroller of the Currency, with respect to any national bank, any Federal branch or Federal agency of a foreign bank, and, after the date on which the functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision are transferred under subtitle C, a Federal savings association.

(B) The Board, with respect to—

(i) any State member bank;

(ii) any bank holding company and any subsidiary of such company (as such terms are defined in the Bank Holding Company Act), other than a subsidiary that is described in any other subparagraph of this paragraph to the extent that the subsidiary is engaged in an activity described in such subparagraph;

(iii) any financial holding company subject to stricter standards and any subsidiary (as such term is defined in the Bank Holding Company Act) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph to the extent that the subsidiary is engaged in an activity described in such subparagraph;

(iv) any organization organized and operated under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq. or 611 et seq.); and

(v) any foreign bank or company that is treated as a bank holding company under subsection (a) of section 8 of the International Banking Act of 1978 and any subsidiary (other than a bank or other subsidiary that is described in any other subparagraph of this paragraph) of any such foreign bank or company.

(C) The Federal Deposit Insurance Corporation, with respect to a State nonmember bank, any insured State branch of a foreign bank (as such terms are defined in section 3 of the Federal Deposit Insurance Act), and, after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any State savings association.

(D) The National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.).

(E) The Securities and Exchange Commission, with respect to—

(i) any broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(ii) any investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) with respect to the investment advisory activities of such company and activities incidental to such advisory activities;

(iv) any clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934;

(v) any exchange registered as a national securities exchange with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any credit rating agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vii) any securities information processor registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(viii) any transfer agent registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(F) The Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant, any commodity trading adviser, any retail foreign exchange dealer and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the commodities activities of such entity and activities incidental to such commodities activities; and

(ii) any derivatives clearing organization, designated contract market, or swap execution facility (as defined in the Commodity Exchange Act).

(G) The Federal Housing Finance Agency with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks.

(H) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law.

(I) The Office of Thrift Supervision, with respect to any Federal savings association, State savings association, or savings and loan holding company, until the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C.

(7) **TERMS DEFINED IN OTHER LAWS.**—

(A) **AFFILIATE.**—The term “affiliate” has the meaning given such term in section 2(k) of the Bank Holding Company Act of 1956.

(B) **STATE MEMBER BANK, STATE NONMEMBER BANK.**—The terms “State member bank” and “State nonmember bank” have the same meanings as in subsections (d)(2) and (e)(2), respectively, of section 3 of the Federal Deposit Insurance Act.

#### **SEC. 1000A. RESTRICTIONS ON THE FEDERAL RESERVE SYSTEM PENDING AUDIT REPORT.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, the Comptroller General of the United States shall perform an audit of all actions taken by the Board of Governors of the Federal Reserve System and the Federal reserve banks during the current economic crisis pursuant to the authority granted under section 13(c) of the Federal Reserve Act. Such audit shall be completed as expeditiously as possible after the date of the enactment of the Financial Stability Improvement Act of 2009.

(b) **REPORT.**—

(1) **REQUIRED.**—Not later than the end of the 90-day period beginning on the date the audit referred to in subsection (a) is completed, the Comptroller General of the United States shall submit a report to the Congress, and make such report available to the public.

(2) **CONTENTS.**—The report under paragraph (1) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

#### **Subtitle A—The Financial Services Oversight Council**

##### **SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ESTABLISHED.**

(a) **ESTABLISHMENT.**—Immediately upon enactment of this title, there is established a Financial Services Oversight Council.

(b) **MEMBERSHIP.**—The Council shall consist of the following:

(1) **VOTING MEMBERS.**—Voting members, who shall each have one vote on the Council, as follows:

(A) The Secretary of the Treasury, who shall serve as the Chairman of the Council.

(B) The Chairman of the Board of Governors of the Federal Reserve System.

(C) The Comptroller of the Currency.

(D) The Director of the Office of Thrift Supervision, until the functions of the Director of the Office of Thrift Supervision are transferred to pursuant to subtitle C.

(E) The Chairman of the Securities and Exchange Commission.

(F) The Chairman of the Commodity Futures Trading Commission.

(G) The Chairperson of the Federal Deposit Insurance Corporation.

(H) The Director of the Federal Housing Finance Agency.

(I) The Chairman of the National Credit Union Administration.

(2) **NONVOTING MEMBERS.**—Nonvoting members, who shall serve in an advisory capacity:

(A) A State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners, provided that the term for which a State insurance commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.

(B) A State banking supervisor, to be designated by a selection process determined by the State bank supervisors, provided that the term for which a State banking supervisor may serve shall last no more than the

2-year period beginning on the date that the supervisor is selected.

(c) **DUTIES.**—The Council shall have the following duties:

(1) To advise the Congress on financial domestic and international regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, orderliness, competitiveness, and stability of the United States financial markets.

(2) To monitor the financial services marketplace to identify potential threats to the stability of the United States financial system.

(3) To identify potential threats to the stability of the United States financial system that do not arise out of the financial services marketplace.

(4) To develop plans (and conduct exercises in furtherance of those plans) to prepare for potential threats identified under paragraphs (2) and (3).

(5) To subject financial companies and financial activities to stricter prudential standards in order to promote financial stability and mitigate systemic risk in accordance with subtitle B.

(6) To issue formal recommendations that a Council member agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk in accordance with subtitle B of this title.

(7) To monitor international regulatory developments, including both insurance and accounting developments, and to identify those developments that may conflict with the policies of the United States or place United States financial services firms or United States financial markets at a competitive disadvantage.

(8) To facilitate information sharing and coordination among the members of the Council regarding financial services policy development, rulemakings, examinations, reporting requirements, and enforcement actions.

(9) To provide a forum for discussion and analysis of emerging market developments and financial regulatory issues among its members.

(10) At the request of an agency that is a Council member, to resolve a jurisdictional dispute between that agency and another agency that is a Council member in accordance with section 1002.

(11) To review and submit comments to the Securities and Exchange Commission and any standards setting body with respect to an existing or proposed accounting principle, standard, or procedure.

#### **SEC. 1002. RESOLUTION OF DISPUTES AMONG FEDERAL FINANCIAL REGULATORY AGENCIES.**

(a) **REQUEST FOR DISPUTE RESOLUTION.**—The Council shall resolve a dispute among 2 or more Federal financial regulatory agencies if—

(1) a Federal financial regulatory agency has a dispute with another Federal financial regulatory agency about the agencies' respective jurisdiction over a particular financial company or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute among themselves; and

(3) any of the Federal financial regulatory agencies involved in the dispute—

(A) provides all other disputants prior notice of its intent to request dispute resolution by the Council; and

(B) requests in writing, no earlier than 14 days after providing the notice described in paragraph (A), that the Council resolve the dispute.

(b) **COUNCIL DECISION.**—The Council shall decide the dispute—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter or by determining a compromise position.

(c) **FORM AND BINDING EFFECT.**—A Council decision under this section shall be in writing and include an explanation and shall be binding on all Federal financial regulatory agencies that are parties to the dispute.

#### **SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.**

The Council is authorized to appoint—

(1) subsidiary working groups composed of Council members and their staff, Council staff, or a combination; and

(2) such temporary special advisory, technical, or professional committees as may be useful in carrying out its functions, which may be composed of Council members and their staff, other persons, or a combination.

#### **SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS AND COUNCIL GOVERNANCE.**

(a) **MEETINGS.**—The Council shall meet as frequently as the Chairman deems necessary, but not less than quarterly.

(b) **VOTING.**—Unless otherwise provided, the Council shall make all decisions the Council is required or authorized to make by a majority of the total voting membership of the Council under section 1001(b)(1).

#### **SEC. 1005. COUNCIL STAFF AND FUNDING.**

(a) **DEPARTMENT OF THE TREASURY.**—The Secretary of the Treasury shall—

(1) detail permanent staff from the Department of the Treasury to provide the Council (and any temporary special advisory, technical, or professional committees appointed by the Council) with professional and expert support; and

(2) provide such other services and facilities necessary for the performance of the Council's functions and fulfillment of the duties and mission of the Council.

(b) **OTHER DEPARTMENTS AND AGENCIES.**—In addition to the assistance prescribed in subsection (a), departments and agencies of the United States may, with the approval of the Secretary of the Treasury—

(1) detail department or agency staff on a temporary basis to provide additional support to the Council (and any special advisory, technical, or professional committees appointed by the Council); and

(2) provide such services, and facilities as the other departments or agencies may determine advisable.

#### **(c) STAFF STATUS; COUNCIL FUNDING.**

(1) **STATUS.**—Staff detailed to the Council by the Secretary of the Treasury and other United States departments or agencies shall—

(A) report to and be subject to oversight by the Council during their assignment to the Council; and

(B) be compensated by the department of agency from which the staff was detailed.

(2) **FUNDING.**—The administrative expense of the Council shall be paid by the departments and agencies represented by voting members of the Council on an equal basis.

#### **SEC. 1006. REPORTS TO THE CONGRESS.**

(a) **IN GENERAL.**—Semiannually the Council shall submit a report to the Committee

on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Comptroller General of the United States that—

(1) describes significant financial and regulatory developments, including insurance and accounting regulations and standards, and assesses the impact of those developments on the stability of the financial system;

(2) recommends actions that will improve financial stability;

(3) details the size, scale, scope, concentration, activities, and interconnectedness of the 50 largest financial institutions, by total assets, in the United States;

(4) describes plans developed by the Council to respond to potential threats to the stability of the United States financial system and the outcome of exercises conducted in furtherance of those plans;

(5) describes the nature and scope of any company or activities identified under subtitle B and steps taken to address them; and

(6) describes any dispute resolutions undertaken under section 1002 and the result of such resolutions.

(b) **EVALUATION OF ANNUAL REPORT BY GAO.**—Not later than 120 days after receiving the report required by subsection (a), the Comptroller General of the United States shall submit an evaluation of such report to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) **STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.**—At the time each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to prevent systemic risk that would negatively affect the economy, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(d) **TESTIMONY BY THE CHAIRMAN.**—The Chairman of the Council shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at a semi-annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

**SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

(a) The Federal Advisory Committee Act shall not apply to the Financial Services Oversight Council, or any special advisory, technical, or professional committees appointed by the Council (except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States government, the Council shall publish a list of the names of the members of such committee).

(b) The Council shall not be deemed an "agency" for purposes of any State or Federal law.

**SEC. 1008. OVERSIGHT BY GAO.**

(a) **AUTHORITY TO AUDIT.**—The Comptroller General of the United States may audit the activities and financial transactions of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent such activities and financial transactions relate to such person's or entity's work for the Council.

(b) **ACCESS TO INFORMATION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the Comptroller General of the United States shall have access, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, to—

(A) any records or other information under the control of the Council; and

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent such records or other information is relevant to an audit under subsection (a).

(2) **CERTAIN INFORMATION SPECIFIED.**—Access under paragraph (1) includes access to—

(A) information provided to the Council by its voting and nonvoting members under section 1101; and

(B) the identity of each financial holding company subject to stricter standards.

(c) **PERIODIC EVALUATIONS.**—The Comptroller General of the United States shall periodically evaluate the processes and activities of the Council and the extent to which the Council is fulfilling its duties under this title. The Comptroller General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of each such evaluation.

(d) **CONFIDENTIALITY.**—Any committees or Members of Congress receiving reports or other information from the Comptroller General of the United States shall maintain the confidentiality of any such information relating to—

(1) dispute resolutions undertaken under section 1002, including the result of such dispute resolutions; and

(2) financial holding companies subject to stricter standards.

**Subtitle B—Prudential Regulation of Companies and Activities for Financial Stability Purposes****SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN INFORMATION.**

(a) **IN GENERAL.**—The Council and the Board are authorized to receive, and may request the production of, any data or information from members of the Council, as necessary—

(1) to monitor the financial services marketplace to identify potential threats to the stability of the United States financial system;

(2) to identify global trends and developments that could pose systemic risks to the stability of the economy of the United States or other economies; or

(3) to otherwise carry out any of the provisions of this title, including to ascertain a primary financial regulatory agency's implementation of recommended prudential standards under this subtitle.

(b) **SUBMISSION BY COUNCIL MEMBERS.**—Notwithstanding any provision of law, any voting or nonvoting member of the Council is authorized to provide information to the Council, and the members of the Council shall maintain the confidentiality of such information.

(c) **FINANCIAL COMPANY DATA COLLECTION.**—

(1) **IN GENERAL.**—The Council or the Board may require the submission of periodic and other reports from any financial company solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the company itself, poses a threat to financial stability.

(2) **MITIGATION OF REPORT BURDEN.**—Before requiring the submission of reports from financial companies that are regulated by the primary financial regulatory agencies, the Council or the Board shall coordinate with such agencies and shall, whenever possible, rely on information already being collected by such agencies.

(d) **CONSULTATION WITH AGENCIES AND ENTITIES.**—The Council or the Board, as appropriate, may consult with Federal and State agencies and other entities to carry out any of the provisions of this subtitle.

(e) **ADDITIONAL PROVISIONS.**—

(1) **DATA AND INFORMATION SHARING.**—The Chairman of the Council, in consultation with the other members of the Council may—

(A) establish procedures to share data and information collected by the Council under this section with the members of the Council;

(B) develop an electronic process for sharing all information collected by the Council with the Chairman of the Board on a real-time basis; and

(C) issue any regulations necessary to carry out this subsection; and

(D) designate the format in which requested data and information must be submitted to the Council, including any electronic, digital, or other format that facilitates the use of such data by the Council in its analysis.

(2) **APPLICABLE PRIVILEGES NOT WAIVED.**—A Federal financial regulator, State financial regulator, United States financial company, foreign financial company operating in the United States, financial market utility, or other person shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

(A) the Council;

(B) any Federal financial regulator or State financial regulator, in any capacity; or

(C) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(3) **DISCLOSURE EXEMPTION.**—Any information obtained by the Council under this section shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(4) **CONSULTATION WITH FOREIGN GOVERNMENTS.**—Under the supervision of the President, and in a manner consistent with sec-

tion 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Chairman of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(5) **REPORT.**—Not later than 6 months after the date of the enactment of this title, the Chairman of the Council shall report to the Financial Services Committee of the House of Representatives and the Banking, Housing, and Urban Affairs Committee of the Senate the opinion of the Council as to whether setting up an electronic database as described in paragraph (1)(B) would aid the Council in carrying out this section.

**SEC. 1102. COUNCIL PRUDENTIAL REGULATION RECOMMENDATIONS TO FEDERAL FINANCIAL REGULATORY AGENCIES.**

(a) **IN GENERAL.**—The Council is authorized to issue formal recommendations, publicly or privately, that a Federal financial regulatory agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk.

(b) **AGENCY AUTHORITY TO IMPLEMENT STANDARDS.**—A Federal financial regulatory agency specifically is authorized to impose, require reports regarding, examine for compliance with, and enforce stricter prudential standards and safeguards for the firms it regulates to mitigate systemic risk. This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective Federal financial regulatory agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(c) **AGENCY NOTICE TO COUNCIL.**—A Federal financial regulatory agency shall, within 60 days of receiving a Council recommendation under this section, notify the Council in writing regarding—

(1) the actions the Federal financial regulatory agency has taken in response to the Council's recommendation, additional actions contemplated, and timetables therefore; or

(2) the reason the Federal financial regulatory agency has failed to respond to the Council's request.

**SEC. 1103. SUBJECTING FINANCIAL COMPANIES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.**

(a) **IN GENERAL.**—The Council shall, in consultation with the Board and any other primary financial regulatory agency that regulates the financial company or a subsidiary of such company, subject a financial company to stricter prudential standards under this subtitle if the Council determines that—

(1) material financial distress at the company could pose a threat to financial stability or the economy; or

(2) the nature, scope, size, scale, concentration, and interconnectedness, or mix of the company's activities could pose a threat to financial stability or the economy.

(b) **CRITERIA.**—In making a determination under subsection (a), the Council shall consider the following criteria:

(1) The amount and nature of the company's financial assets.

(2) The amount and nature of the company's liabilities, including the degree of reliance on short-term funding.

(3) The extent of the company's leverage.

(4) The extent and nature of the company's off-balance sheet exposures.

(5) The extent and nature of the company's transactions and relationships with other financial companies.

(6) The company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system.

(7) The nature, scope, and mix of the company's activities.

(8) The degree to which the company is already regulated by one or more Federal financial regulatory agencies.

(9) Any other factors that the Council deems appropriate.

(c) **NOTIFICATION OF DECISION.**—The Board, in an executive capacity on behalf of the Council, shall immediately upon the Council's decision notify the financial company by order, which shall be public, that the financial company is subject to stricter prudential standards, as prescribed by the Board in accordance with section 1104.

(d) **PERIODIC REVIEW AND RESCISSION OF FINDINGS.**—

(1) **SUBMISSION OF ASSESSMENT.**—The Board shall periodically submit a report to the Council containing an assessment of whether each company subjected to stricter prudential standards should continue to be subject to such standards.

(2) **REVIEW AND RESCISSION.**—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial holding company subject to stricter standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting a company to stricter prudential standards if the Council determines that the company no longer meets the conditions for being subjected to stricter prudential standards in subsections (a) and (b).

(e) **EMERGENCY EXCEPTION TO MAJORITY VOTE OF COUNCIL REQUIREMENT.**—If each of the Secretary of the Treasury, the Board, and the Federal Deposit Insurance Corporation determines that a financial company must be subjected to stricter prudential standards in accordance with this section immediately to prevent destabilization of the financial system or economy, the Secretary, the Board, and the Corporation may, upon approval by the President, subject such company to stricter prudential standards under this section.

(f) **APPEAL.**—

(1) **ADMINISTRATIVE.**—The Council and the Board, in an executive capacity on behalf of the Council, shall establish a procedure through which a financial company that has been subjected to stricter prudential standards in accordance with this section may appeal being subjected to stricter prudential standards.

(2) **JUDICIAL REVIEW.**—Any financial company which has been subjected to stricter prudential standards may seek judicial review by filing a petition for such review in the United States Court of Appeals for the District of Columbia.

(g) **EFFECT OF COUNCIL DECISION.**—

(1) **APPLICATION OF THE BANK HOLDING COMPANY ACT.**—A financial company that is not a bank holding company as defined in the Bank Holding Company Act at the time the financial company is subjected to stricter prudential standards in accordance with this section, shall—

(A) if such company conducts at the time such company is subjected to stricter pruden-

tial standards in accordance with this section only activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, be treated as a bank holding company that has elected to be a financial holding company for purposes of the Bank Holding Company Act of 1956, the Federal Deposit Insurance Act, and all other Federal laws and regulations governing bank holding companies and financial holding companies and be the financial holding company subject to stricter standards for purposes of this subtitle; or

(B) if such company conducts at the time that such company is subjected to stricter prudential standards in accordance with this section activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, be required to establish and conduct all its activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956 in an intermediate holding company established under section 6 of the Bank Holding Company Act of 1956, which intermediate holding company shall be treated as a bank holding company that has elected to be a financial holding company for purposes of the Bank Holding Company Act of 1956, the Federal Deposit Insurance Act, and all other Federal laws and regulations governing bank holding companies and financial holding companies, and such section 6 holding company shall be a financial holding company subject to stricter standards for purposes of this title.

(2) **EXEMPTIVE AUTHORITY.**—Notwithstanding any provision of the Bank Holding Company Act of 1956, the Board may, if it determines such action is necessary to ensure appropriate stricter prudential supervision, issue such exemptions from that Act as may be necessary with regard to financial holding companies subject to stricter standards that do not control an insured depository institution.

(3) **LEVERAGE LIMITATION.**—The Board shall require each financial holding company subject to stricter standards to maintain a debt to equity ratio of no more than 15 to 1, and the Board shall issue regulations containing procedures and timelines for how a financial holding company subject to stricter standards with a debt to equity ratio of more than 15 to 1 at the time such company becomes a financial holding company subject to stricter standards shall reduce such ratio.

#### **SEC. 1104. STRICTER PRUDENTIAL STANDARDS FOR CERTAIN FINANCIAL HOLDING COMPANIES FOR FINANCIAL STABILITY PURPOSES.**

(a) **STRICTER PRUDENTIAL STANDARDS.**—

(1) **IN GENERAL.**—To mitigate risks to financial stability and the economy posed by a financial holding company that has been subjected to stricter prudential standards in accordance with section 1103, the Board shall impose stricter prudential standards on such company. Such standards shall be designed to maximize financial stability taking costs to long-term financial and economic growth into account, be heightened when compared to the standards that otherwise would apply to financial holding companies that are not subjected to stricter prudential standards pursuant to this subtitle (including by addressing additional or different types of risks than otherwise applicable standards), and reflect the potential risk posed to financial stability by the financial holding company subject to stricter standards.

(2) **STANDARDS.**—

(A) **REQUIRED STANDARDS.**—The heightened standards imposed by the Board under this section shall include—

- (i) risk-based capital requirements;
- (ii) leverage limits;
- (iii) liquidity requirements;
- (iv) concentration requirements (as specified in subsection (c));
- (v) prompt corrective action requirements (as specified in subsection (e));
- (vi) resolution plan requirements (as specified in subsection (f));
- (vii) overall risk management requirements; and
- (viii) and may establish short-term debt limits in accordance with subsection (d).

(B) **ADDITIONAL STANDARDS.**—The heightened standards imposed by the Board under this section also may include any other prudential standards that the Board deems advisable, including taking actions to mitigate systemic risk.

(C) **CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.**—The Board, in developing stricter prudential standards under this subsection, shall consult with other Federal financial regulatory agencies with respect to any standard that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial holding company that is subject to stricter prudential standards under this title.

(3) **APPLICATION OF REQUIRED STANDARDS.**—In imposing prudential standards under this subsection, the Board may differentiate among financial holding companies subject to stricter standards on an individual basis or by category, taking into consideration their capital structure, risk, complexity, financial activities, the financial activities of their subsidiaries, and any other factors that the Board deems appropriate.

(4) **WELL CAPITALIZED AND WELL MANAGED.**—A financial holding company subject to stricter standards shall at all times after it is subject to such standards be well capitalized and well managed as defined by the Board.

(5) **APPLICATION TO FOREIGN FINANCIAL COMPANIES.**—The Board shall prescribe regulations regarding the application of stricter prudential standards to financial companies that are organized or incorporated in a country other than the United States, and that own or control a Federal or State branch, subsidiary, or operating entity that is a financial holding company subject to stricter standards, giving due regard to the principle of national treatment and equality of competitive opportunity and taking into account the extent to which such companies are subject to home country standards comparable to those applied to financial holding companies in the United States.

(6) **INCLUSION OF OFF BALANCE SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.**—

(A) **IN GENERAL.**—In the case of any financial holding company subject to stricter standards, the computation of capital requirements shall take into account off balance sheet activities for such a company.

(B) **EXEMPTION.**—If the Board determines that an exemption from the requirements under subparagraph (A) is appropriate, the Board may exempt a financial holding company subject to stricter standards from the requirements under subparagraph (A) or any transaction or transactions engaged in by such a company.

(C) **OFF BALANCE SHEET ACTIVITIES DEFINED.**—For purposes of this paragraph, the term "off balance sheet activities" means a liability that is not currently a balance

sheet liability but may become one upon the happening of some future event, including the following transactions, to the extent they may create a liability:

(i) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(ii) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(iii) Risk participation in bankers' acceptances.

(iv) Sale and repurchase agreements.

(v) Asset sales with recourse against the seller.

(vi) Interest rate swaps.

(vii) Credit swaps.

(viii) Commodity contracts.

(ix) Forward contracts.

(x) Securities contracts.

(xi) Such other activities or transactions as the Board may, by rule, define.

(b) PRUDENTIAL STANDARDS AT FUNCTIONALLY REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSITORY INSTITUTIONS.—

(1) BOARD AUTHORITY TO RECOMMEND STANDARDS.—With respect to a functionally regulated subsidiary (as such term is defined in section 5 of the Bank Holding Company Act) or a subsidiary depository institution of a financial holding company subject to stricter standards, the Board may recommend that the relevant Federal financial regulatory agency for such functionally regulated subsidiary or subsidiary depository institution prescribe stricter prudential standards on such functionally regulated subsidiary or subsidiary depository institution. Any standards recommended by the Board under this section shall be of the same type as those described in subsection (a)(2) that the Board is required or authorized to impose directly on the financial holding company subject to stricter standards.

(2) AGENCY AUTHORITY TO IMPLEMENT HEIGHTENED STANDARDS AND SAFEGUARDS.—Each Federal financial regulatory agency that receives a Board recommendation under paragraph (1) is authorized to impose, require reports regarding, examine for compliance with, and enforce standards under this subsection with respect to the entities such agency regulates, as such entities are described in section 1006(b)(6). This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(3) IMPOSITION OF STANDARDS.—Standards imposed by a Federal financial regulatory agency under this subsection shall be the standards recommended by the Board in accordance with paragraph (1) or any other similar standards that the Board deems acceptable after consultation between the Board and the primary financial regulatory agency.

(4) FEDERAL FINANCIAL REGULATORY AGENCY RESPONSE; NOTICE TO COUNCIL AND BOARD.—A Federal financial regulatory agency shall notify the Council and the Board in writing on whether and to what extent the agency has imposed the stricter prudential standards described in paragraph (3) within 60 days of the Board's recommendation under paragraph (1). A Federal financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

(c) CONCENTRATION LIMITS FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

(1) STANDARDS.—In order to limit the risks that the failure of any company could pose to a financial holding company subject to stricter standards and to the stability of the United States financial system, the Board, by regulation, shall prescribe standards that limit the risks posed by the exposure of a financial holding company subject to stricter standards to any other company.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall prohibit each financial holding company subject to stricter standards from having credit exposure to any unaffiliated company that exceeds 25 percent of capital stock and surplus of the financial holding company subject to stricter standards, or such lower amount as the Board may determine by regulation to be necessary to mitigate risks to financial stability.

(3) CREDIT EXPOSURE.—For purposes of this subsection and with respect to a financial holding company subject to stricter standards, the term "credit exposure" to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreement with the company;

(C) all securities borrowing and lending transactions with the company to the extent that such transactions create credit exposure of the financial holding company subject to stricter standards to the company;

(D) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(E) all purchases of or investment in securities issued by the company;

(F) counterparty credit exposure to the company in connection with a derivative transaction between the financial holding company subject to stricter standards and the company; and

(G) any other similar transactions that the Board by regulation determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a financial holding company subject to stricter standards with any person is deemed a transaction with a company to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board may issue such regulations and orders, including definitions consistent with this subsection, as may be necessary to administer and carry out the purpose of this subsection.

(6) EXEMPTIONS.—

(A) IN GENERAL.—

(i) FEDERAL HOME LOAN BANKS.—This subsection shall not apply to any Federal home loan bank, but Federal home loan banks are not exempt from any other provision of this title.

(ii) APPLICABILITY TO OTHER ENTITIES.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not exempt from any provision of this title.

(B) REGULATIONS.—The Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of credit exposure if it finds that the exemption is in the public interest and consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—This subsection and any regulations and orders of the Board under the authority of this subsection shall

not take effect until the date that is 3 years from the date of the enactment of this subsection. The Board may extend the effective date for up to 2 additional years to promote financial stability.

(d) SHORT-TERM DEBT LIMITS FOR CERTAIN FINANCIAL HOLDING COMPANIES.—

(1) IN GENERAL.—In order to limit the risks that an overaccumulation of short-term debt could pose to financial holding companies and to the stability of the United States financial system, the Board shall by regulation prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any financial holding company subject to stricter standards for purposes of this title.

(2) BASIS OF LIMIT.—The limit prescribed under paragraph (1) shall be based on a financial holding company's short-term debt as a percentage of its capital stock and surplus or on such other measure as the Board considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term "short-term debt" means such liabilities with short-dated maturity that the Board identifies by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board may prescribe such regulations, including definitions consistent with this subsection, and issue such orders as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a financial holding company that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(6) TRANSITION PERIOD.—This subsection and any regulation or order of the Board under this subsection shall take effect 3 years after the date of the enactment of this title. The Board may postpone the date when this subsection takes effect by not more than 2 years in order to promote financial stability.

(e) PROMPT CORRECTIVE ACTION FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

(1) PROMPT CORRECTIVE ACTION REQUIRED.—The Board shall take prompt corrective action to resolve the problems of financial holding companies subject to stricter standards. Except as specifically provided otherwise, this subsection shall apply only to financial holding companies that are incorporated or organized under United States laws.

(2) DEFINITIONS.—For purposes of this section—

(A) CAPITAL CATEGORIES.—

(i) WELL CAPITALIZED.—A financial holding company subject to stricter standards is "well capitalized" if it exceeds the required minimum level for each relevant capital measure.

(ii) UNDERCAPITALIZED.—A financial holding company subject to stricter standards is "undercapitalized" if it fails to meet the required minimum level for any relevant capital measure.

(iii) SIGNIFICANTLY UNDERCAPITALIZED.—A financial holding company subject to stricter standards is "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure.

(iv) **CRITICALLY UNDERCAPITALIZED.**—A financial holding company subject to stricter standards is “critically undercapitalized” if it fails to meet any level specified in paragraph (4)(C)(i).

(3) **OTHER DEFINITIONS.**—

(A) **AVERAGE.**—The “average” of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(B) **CAPITAL DISTRIBUTION.**—The term “capital distribution” means—

(i) a distribution of cash or other property by a financial holding company subject to stricter standards to its owners made on account of that ownership, but not including any dividend consisting only of shares of the financial holding company subject to stricter standards or rights to purchase such shares;

(ii) a payment by a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance any person’s acquisition of those shares or interests; and

(iii) a transaction that the Board determines, by order or regulation, to be in substance a distribution of capital to the owners of the financial holding company subject to stricter standards.

(C) **CAPITAL RESTORATION PLAN.**—The term “capital restoration plan” means a plan submitted under paragraph (6)(B).

(D) **COMPENSATION.**—The term “compensation” includes any payment of money or provision of any other thing of value in consideration of employment.

(E) **RELEVANT CAPITAL MEASURE.**—The term “relevant capital measure” means the measures described in paragraph (4).

(F) **REQUIRED MINIMUM LEVEL.**—The term “required minimum level” means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the Board by regulation.

(G) **SENIOR EXECUTIVE OFFICER.**—The term “senior executive officer” has the same meaning as the term “executive officer” in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

(4) **CAPITAL STANDARDS.**—

(A) **RELEVANT CAPITAL MEASURES.**—

(i) **IN GENERAL.**—Except as provided in clause (ii)(II), the capital standards prescribed by the Board under section 1104(a)(2) shall include—

(I) a leverage limit; and

(II) a risk-based capital requirement.

(ii) **OTHER CAPITAL MEASURES.**—The Board may by regulation—

(I) establish any additional relevant capital measures to carry out this section; or

(II) rescind any relevant capital measure required under clause (i) upon determining that the measure is no longer an appropriate means for carrying out this section.

(B) **CAPITAL CATEGORIES GENERALLY.**—The Board shall, by regulation, specify for each relevant capital measure the levels at which a financial holding company subject to stricter standards is well capitalized, undercapitalized, and significantly undercapitalized.

(C) **CRITICAL CAPITAL.**—

(i) **BOARD TO SPECIFY LEVEL.**—

(I) **LEVERAGE LIMIT.**—The Board shall, by regulation, specify the ratio of tangible equity to total assets at which a financial holding company subject to stricter standards is critically undercapitalized.

(II) **OTHER RELEVANT CAPITAL MEASURES.**—The Board may, by regulation, specify for 1 or more other relevant capital measures, the level at which a financial holding company subject to stricter standards is critically undercapitalized.

(ii) **LEVERAGE LIMIT RANGE.**—The level specified under clause (i)(I) shall require tangible equity in an amount—

(I) not less than 2 percent of total assets; and

(II) except as provided in subclause (I), not more than 65 percent of the required minimum level of capital under the leverage limit.

(5) **CAPITAL DISTRIBUTIONS RESTRICTED.**—

(A) **IN GENERAL.**—A financial holding company subject to stricter standards shall make no capital distribution if, after making the distribution, the financial holding company subject to stricter standards would be undercapitalized.

(B) **EXCEPTION.**—Notwithstanding subparagraph (A), the Board may permit a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the financial holding company subject to stricter standards in at least an equivalent amount; and

(ii) will reduce the financial obligations of the financial holding company subject to stricter standards or otherwise improve the financial condition of the financial holding company subject to stricter standards.

(6) **PROVISIONS APPLICABLE TO UNDERCAPITALIZED FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.**—

(A) **MONITORING REQUIRED.**—The Board shall—

(i) closely monitor the condition of any undercapitalized financial holding company subject to stricter standards;

(ii) closely monitor compliance by any undercapitalized financial holding company subject to stricter standards with capital restoration plans, restrictions, and requirements imposed under this section; and

(iii) periodically review the plan, restrictions, and requirements applicable to any undercapitalized financial holding company subject to stricter standards to determine whether the plan, restrictions, and requirements are effective.

(B) **CAPITAL RESTORATION PLAN REQUIRED.**—

(i) **IN GENERAL.**—Any undercapitalized financial holding company subject to stricter standards shall submit an acceptable capital restoration plan to the Board within the time allowed by the Board under clause (iv).

(ii) **CONTENTS OF PLAN.**—The capital restoration plan shall—

(I) specify—

(aa) the steps the financial holding company subject to stricter standards will take to become well capitalized;

(bb) the levels of capital to be attained by the financial holding company subject to stricter standards during each year in which the plan will be in effect;

(cc) how the financial holding company subject to stricter standards will comply with the restrictions or requirements then in effect under this section; and

(dd) the types and levels of activities in which the financial holding company subject to stricter standards will engage; and

(II) contain such other information that the Board may require.

(iii) **CRITERIA FOR ACCEPTING PLAN.**—The Board shall not accept a capital restoration plan unless it determines that the plan—

(I) complies with clause (ii);

(II) is based on realistic assumptions, and is likely to succeed in restoring the capital of the financial holding company subject to stricter standards; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the financial holding company subject to stricter standards is exposed.

(iv) **DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.**—The Board shall, by regulation, establish deadlines that—

(I) provide financial holding companies subject to stricter standards with reasonable time to submit capital restoration plans, and generally require a financial holding company subject to stricter standards to submit a plan not later than 45 days after it becomes undercapitalized; and

(II) require the Board to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted.

(C) **ASSET GROWTH RESTRICTED.**—An undercapitalized financial holding company subject to stricter standards shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards;

(ii) any increase in total assets is consistent with the plan; and

(iii) the ratio of tangible equity to total assets of the financial holding company subject to stricter standards increases during the calendar quarter at a rate sufficient to enable it to become well capitalized within a reasonable time.

(D) **PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF BUSINESS.**—An undercapitalized financial holding company subject to stricter standards shall not, directly or indirectly, acquire any interest in any company or insured depository institution, or engage in any new line of business, unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards, the financial holding company subject to stricter standards is implementing the plan, and the Board determines that the proposed action is consistent with and will further the achievement of the plan;

(ii) the Board determines that the specific proposed action is appropriate; or

(iii) the Board has exempted the financial holding company subject to stricter standards from the requirements of this paragraph with respect to the class of acquisitions that includes the proposed action.

(E) **DISCRETIONARY SAFEGUARDS.**—The Board may, with respect to any undercapitalized financial holding company subject to stricter standards, take actions described in any clause of paragraph (7)(B) if the Board determines that those actions are necessary.

(7) **PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS AND UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.**—

(A) **IN GENERAL.**—This paragraph shall apply with respect to any financial holding company subject to stricter standards that—



(i) is significantly undercapitalized; or  
(ii) is undercapitalized and—

(I) fails to submit an acceptable capital restoration plan within the time allowed by the Board under paragraph (6)(B)(iv); or

(II) fails in any material respect to implement a capital restoration plan accepted by the Board.

(B) SPECIFIC ACTIONS AUTHORIZED.—The Board shall carry out this paragraph by taking 1 or more of the following actions—

(i) REQUIRING RECAPITALIZATION.—Doing one or more of the following:

(I) Requiring the financial holding company subject to stricter standards to sell enough shares or obligations of the financial holding company subject to stricter standards so that the financial holding company subject to stricter standards will be well capitalized after the sale.

(II) Further requiring that instruments sold under subclause (I) be voting shares.

(III) Requiring the financial holding company subject to stricter standards to be acquired by or combine with another company.

(ii) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

(I) Requiring the financial holding company subject to stricter standards to comply with section 23A of the Federal Reserve Act (12 U.S.C. 371c), as if it were a member bank.

(II) Further restricting the transactions of the financial holding company subject to stricter standards with affiliates and insiders.

(iii) RESTRICTING ASSET GROWTH.—Restricting the asset growth of the financial holding company subject to stricter standards more stringently than paragraph (6)(C), or requiring the financial holding company subject to stricter standards to reduce its total assets.

(iv) RESTRICTING ACTIVITIES.—Requiring the financial holding company subject to stricter standards or any of its subsidiaries to alter, reduce, or terminate any activity that the Board determines poses excessive risk to the financial holding company subject to stricter standards.

(v) IMPROVING MANAGEMENT.—Doing one or more of the following:

(I) NEW ELECTION OF DIRECTORS.—Ordering a new election for the board of directors of the financial holding company subject to stricter standards.

(II) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the financial holding company subject to stricter standards became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(III) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to employ qualified senior executive officers (who, if the Board so specifies, shall be subject to approval by the Board).

(vi) REQUIRING DIVESTITURE.—Requiring the financial holding company subject to stricter standards to divest itself of or liquidate any subsidiary if the Board determines that the subsidiary is in danger of becoming insolvent, poses a significant risk to the financial holding company subject to stricter standards, or is likely to cause a significant dissipation of the assets or earnings of the financial holding company subject to stricter standards.

(vii) REQUIRING OTHER ACTION.—Requiring the financial holding company subject to

stricter standards to take any other action that the Board determines will better carry out the purpose of this section than any of the actions described in this subparagraph.

(C) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with subparagraph (B), the Board shall take the following actions, unless the Board determines that the actions would not be appropriate—

(i) The action described in subclause (I) or (III) of subparagraph (B)(i) (relating to requiring the sale of shares or obligations, or requiring the financial holding company subject to stricter standards to be acquired by or combine with another company).

(ii) The action described in subparagraph (B)(ii) (relating to restricting transactions with affiliates).

(D) SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.—

(i) IN GENERAL.—The financial holding company subject to stricter standards shall not do any of the following without the prior written approval of the Board:

(I) Pay any bonus to any senior executive officer.

(II) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the financial holding company subject to stricter standards became undercapitalized.

(ii) FAILING TO SUBMIT PLAN.—The Board shall not grant any approval under clause (i) with respect to a financial holding company subject to stricter standards that has failed to submit an acceptable capital restoration plan.

(E) CONSULTATION WITH OTHER REGULATORS.—Before the Board makes a determination under subparagraph (B)(vi) with respect to a subsidiary that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board shall consult with the Securities and Exchange Commission and, in the case of any other subsidiary which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such subsidiary with respect to the proposed determination of the Board and actions pursuant to such determination.

(8) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

(A) IN GENERAL.—If the Board determines (after notice and an opportunity for hearing) that a financial holding company subject to stricter standards is in an unsafe or unsound condition or, pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)), deems the financial holding company subject to stricter standards to be engaging in an unsafe or unsound practice, the Board may—

(i) if the financial holding company subject to stricter standards is well capitalized, require the financial holding company subject to stricter standards to comply with one or more provisions of paragraphs (6) and (7), as if the institution were undercapitalized; or

(ii) if the financial holding company subject to stricter standards is undercapitalized, take any one or more actions authorized under paragraph (7)(B) as if the financial holding company subject to stricter standards were significantly undercapitalized.

(B) CONTENTS OF PLAN.—A plan that may be required pursuant to subparagraph (A)(i) shall specify the steps that the financial holding company subject to stricter standards will take to correct the unsafe or unsound condition or practice.

(9) IMPLEMENTATION.—The Board shall prescribe such regulations, issue such orders, and take such other actions the Board determines to be necessary to carry out this subsection.

(10) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the Board, any other Federal regulatory agency, or a State to take action in addition to (but not in derogation of) that required under this section.

(11) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with their foreign counterparts and through appropriate multilateral organizations to reach agreement to extend comprehensive and robust prudential supervision and regulation to all highly leveraged and substantially interconnected financial companies.

(12) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

(A) TIMELY PETITION REQUIRED.—A director or senior executive officer dismissed pursuant to an order under paragraph (7)(B)(v)(II) may obtain review of that order by filing a written petition for reinstatement with the Board not later than 10 days after receiving notice of the dismissal.

(B) PROCEDURE.—

(i) HEARING REQUIRED.—The Board shall give the petitioner an opportunity to—

(I) submit written materials in support of the petition; and

(II) appear, personally or through counsel, before 1 or more members of the Board or designated employees of the Board.

(ii) DEADLINE FOR HEARING.—The Board shall—

(I) schedule the hearing referred to in clause (i)(II) promptly after the petition is filed; and

(II) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(iii) DEADLINE FOR DECISION.—Not later than 60 days after the date of the hearing, the Board shall—

(I) by order, grant or deny the petition;

(II) if the order is adverse to the petitioner, set forth the basis for the order; and

(III) notify the petitioner of the order.

(C) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the burden of proving that the petitioner's continued employment would materially strengthen the ability of the financial holding company subject to stricter standards—

(i) to become well capitalized, to the extent that the order is based on the capital level of the financial holding company subject to stricter standards or such company's failure to submit or implement a capital restoration plan; and

(ii) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on paragraph (8)(A).

(13) ENFORCEMENT AUTHORITY FOR FOREIGN FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) TERMINATION AUTHORITY.—If the Board believes that a condition, practice, or activity of a foreign financial holding company subject to stricter standards does not comply with this title or the rules or orders prescribed by the Board under this title or otherwise poses a threat to financial stability, the Board may, after notice and opportunity for a hearing, take such actions as necessary to mitigate such risk, including ordering a foreign financial holding company subject to stricter standards in the United States to terminate the activities of such branch, agency, or subsidiary.

(B) DISCRETION TO DENY HEARING.—The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

(f) REPORTS REGARDING RAPID AND ORDERLY RESOLUTION AND CREDIT EXPOSURE.—

(1) IN GENERAL.—The Board shall require each financial holding company subject to stricter standards incorporated or organized in the United States to report periodically to the Board on—

(A) its plan for rapid and orderly resolution in the event of severe financial distress;

(B) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies; and

(C) the nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards.

(2) NO LIMITING EFFECT.—A rapid resolution plan submitted in accordance with this subsection shall not be binding on a receiver appointed under subtitle G, a bankruptcy court, or any other authority that is authorized or required to resolve the financial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(3) REPORTING TRIGGERED BY STRESS TEST RESULTS.—

(A) FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—Each time the results of a quarterly stress test under baseline or adverse conditions conducted by a financial holding company subject to stricter standards under section 1114(a) or the results of a stress test of that financial holding company subject to stricter standards conducted by the Board under subsection (g) indicate that the financial holding company subject to stricter standards is, in the determination of the Board, significantly or critically undercapitalized, that financial holding company subject to stricter standards shall submit a rapid resolution plan in accordance with this subsection that has been revised to address the causes of those results.

(B) FINANCIAL COMPANIES THAT ARE NOT FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—Each time the results of a semiannual stress test under baseline or adverse conditions conducted by a financial company under section 1114(b) indicate that the financial company is, in the determination of the Board, significantly or critically undercapitalized, that financial company shall be required to report under this subsection. The Board shall prescribe regulations establishing expedited procedures for such reporting.

(C) TRANSPARENCY.—Any rapid resolution plan submitted pursuant to this paragraph shall be subject to any restrictions regarding the disclosure of any other rapid resolution plan submitted pursuant to this subsection.

(g) STRESS TESTS.—

(1) The Board, in coordination with the appropriate primary financial regulatory agency, shall conduct annual stress tests of each financial holding company subject to stricter standards. The Board may, as the Board determines appropriate, conduct stress tests of financial companies that are not financial holding companies subject to stricter standards. The Board shall publish a summary of the results of such stress tests.

(2) The Board shall issue regulations to define the term “stress test” for purposes of this subsection. Such a definition shall provide for not less than 3 different sets of conditions under which a stress test should be

conducted: baseline, adverse, and severely adverse scenarios.

(h) AVOIDING DUPLICATION.—The Board shall take any action the Board deems appropriate to avoid imposing duplicative requirements under this subtitle for financial holding companies subject to stricter standards that are also bank holding companies.

(i) RESOLUTION PLANS REQUIRED.—

(1) IN GENERAL.—The Corporation and the Board, after consultation with the Council, shall jointly issue regulations requiring financial holding companies subject to stricter standards to develop plans designed to assist in the rapid and orderly resolution of the company.

(2) STANDARDS FOR RESOLUTION PLANS.—The regulations required by paragraph (1) shall—

(A) define the scope of financial holding companies subject to stricter standards covered by these requirements and may exempt financial holding companies subject to stricter standards from the requirements of this subsection if the Corporation and the Board jointly determine that exemption is consistent with the purposes of this title;

(B) require each plan to demonstrate that any insured depository institution affiliated with a financial holding company subject to stricter standards is adequately insulated from the activities of any non-bank subsidiary of the institution or financial holding companies subject to stricter standards;

(C) require that each plan include information detailing—

(i) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies;

(ii) the nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards;

(iii) full descriptions of the financial holding company subject to stricter standards' ownership structure, assets, liabilities, and contractual obligations; and

(iv) the cross-guarantees tied to different securities, a list of major counterparties, and a process for determining where the financial holding company subject to stricter standards' collateral is pledged; and

(D) establish such other standards as the Corporation and the Board may jointly deem necessary to carry out this subsection.

(3) REVIEW OF PLANS.—

(A) SUBMISSION OF PLANS.—Each financial holding company subject to stricter standards that is subject to the requirement under paragraph (1) shall submit its plan to the Corporation and the Board.

(B) REVIEW.—Upon the submission of a plan pursuant to subparagraph (A), and not less often than annually thereafter, the Corporation and the Board, after consultation with any Federal financial regulatory agencies with jurisdiction over the financial holding company subject to stricter standards, shall jointly review such plan and may require a financial holding company subject to stricter standards to revise its plan consistent with the standards established pursuant to paragraph (2).

(4) ENFORCEMENT.—

(A) IN GENERAL.—The Corporation, after consultation with the Board, shall have the authority to take any enforcement action in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) against any financial holding company subject to stricter standards that fails to comply with the requirements of this section or any regulations issued pursuant to this section.

(B) NO LIMITATION ON BOARD AUTHORITY.—Nothing under this subsection shall be construed as limiting any enforcement authority available to the Board under any other provision of law.

(5) NO LIMITING EFFECT ON RECEIVER.—A rapid resolution plan submitted under this section shall not be binding on a receiver appointed under subtitle G, a bankruptcy court, or any other authority that is authorized or required to resolve the financial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(6) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted under this section.

#### SEC. 1105. MITIGATION OF SYSTEMIC RISK.

(a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS AND ACTIVITIES.—If the Council determines, after notice and an opportunity for hearing, that despite the higher prudential standards imposed pursuant to section 1104(a)(2), the size of a financial holding company subject to stricter standards or the scope, nature, scale, concentration, interconnectedness, or mix of activities directly or indirectly conducted by a financial holding company subject to stricter standards poses a grave threat to the financial stability or economy of the United States, the Council shall require the company to undertake 1 or more mitigatory actions described in subsection (d).

(b) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.—The Council, in determining whether to impose any requirement under this section that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial company subjected to stricter prudential standards under this title, shall consult with the Federal financial regulatory agency for any such subsidiary.

(c) FACTORS FOR CONSIDERATION.—In reaching a determination described in subsection (a), the Council shall take into consideration the following factors, as appropriate—

(1) the amount and nature of the company's financial assets;

(2) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(3) the extent and nature of the company's off-balance sheet exposures;

(4) the company's reliance on leverage;

(5) the extent and nature of the company's transactions, relationships, and interconnectedness with other financial and non-financial companies;

(6) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(7) the scope, nature, size, scale, concentration, interconnectedness and mix of the company's activities;

(8) the extent to which prudential regulations mitigate the risk posed; and

(9) any other factors identified that the Council determines appropriate.

(d) MITIGATORY ACTIONS.—

(1) IN GENERAL.—Mitigatory action may include—

(A) modifying the prudential standards imposed pursuant to section 1104(a);

(B) terminating 1 or more activities;

(C) imposing conditions on the manner in which a financial holding company subject to stricter standards conducts 1 or more activities;

(D) limiting the ability to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(E) restricting the ability to offer a financial product or products; and

(F) in the event the Council deems subparagraphs (A) through (E) inadequate as a means to address the identified risks, selling, divesting, or otherwise transferring business units, branches, assets, or off-balance sheet items to unaffiliated companies.

(2) INTERNATIONAL COMPETITIVENESS CONSIDERATIONS.—In making any decision pursuant to paragraph (1), the Council shall consider—

(A) the need to maintain the international competitiveness of the United States financial services industry; and

(B) the extent to which other countries with a significant financial services industry have established corresponding regimes to mitigate threats to financial stability or the economy posed by financial companies.

(e) DUE PROCESS.—

(1) NOTICE AND HEARING.—The Council shall give notice to a financial company subject to stricter prudential standards, and opportunity for hearing if requested, that the financial company is being considered for mitigatory action pursuant to subsection (a). The hearing shall occur no later than 30 days after the financial company receives notice of the proposed action from the Council.

(2) NOTICE.—The Council shall notify the financial company subject to stricter prudential standards of the Council's determination, and, if the Council determines that mitigatory action is appropriate, require the company to submit a plan to the Council to implement the required mitigatory action.

(3) SUBMISSION OF PLAN.—The financial holding company subject to stricter standards shall submit its proposed plan to implement the required mitigatory action or actions to the Council within 60 days from the date it receives notice under paragraph (2) or such shorter timeframe as the Council may require, if the Council determines an emergency situation merits expeditious implementation.

(4) APPROVAL OR AMENDMENT OF THE PLAN.—The Council shall review the plan submitted pursuant to paragraph (3) and determine whether the plan achieves the goal of mitigating a grave threat to the financial stability or the economy of the United States. The Council may approve or disapprove the plan with or without amendment.

(5) EFFECT OF PLAN APPROVAL.—The Council shall—

(A) notify a financial holding company subject to stricter standards by order, which shall be public, that the Council has approved the plan with or without amendment; and

(B) direct the Board to require a financial holding company subject to stricter standards to comply with the plan to implement mitigatory action or actions within a reasonable timeframe after the Council's approval and in accordance with such deadlines established in the plan.

(f) TREASURY SECRETARY CONCURRENCE.—Mitigatory action imposed by the Council involving the sale, divestiture, or transfer of more than \$10,000,000,000 in total assets by a financial holding company subject to stricter standards shall require the Secretary of the Treasury's concurrence before the issuance of the notice in subsection (e)(5)(A). If the sale, divestiture, or transfer of total assets by a financial holding company subject to stricter standards exceeds \$100,000,000,000, the Secretary of the Treasury shall consult with the President before concurrence.

(g) FAILURE TO IMPLEMENT THE PLAN.—If a financial holding company subject to stricter standards fails to implement a plan for mitigatory action imposed pursuant to subsection (e)(5) within a reasonable timeframe, the Council shall direct the Board to take such actions as necessary to ensure compliance with the plan.

(h) JUDICIAL REVIEW.—For any plan required under this section, a financial holding company subject to stricter standards may, not later than 30 days after receipt of the Council's notice under subsection (e)(5), bring an action in the United States district court for the judicial district in which the home office of such company is located, or in the United States District Court for the District of Columbia, for an order requiring that the requirement for a mitigatory action be rescinded. Judicial review under this section shall be limited to the imposition of a mitigatory action. In reviewing the Council's imposition of a mitigatory action, the court shall rescind or dismiss only those mitigatory actions it finds to be imposed in an arbitrary and capricious manner.

#### SEC. 1106. SUBJECTING ACTIVITIES OR PRACTICES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may subject a financial activity or practice to stricter prudential standards under this subtitle if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among financial institutions or markets and local, minority, or underserved communities, and thereby threaten the stability of the financial system or economy.

(b) PERIODIC REVIEW OF ACTIVITY IDENTIFICATIONS.—

(1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to the Council containing an assessment of whether each activity or practice subjected to stricter prudential standards should continue to be subject to such standards.

(2) REVIEW AND RESCISON.—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial activity subjected to stricter prudential standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting an activity to heightened prudential supervision if the Council determines that the activity no longer meets the criteria in subsection (a).

(c) PROCEDURE FOR SUBJECTING OR CEASING TO SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRUDENTIAL STANDARDS.—

(1) COUNCIL AND BOARD COORDINATION.—The Council shall inform the Board if the Council is considering whether to subject or cease to subject an activity to stricter prudential standards in accordance with this section.

(2) NOTICE AND OPPORTUNITY FOR CONSIDERATION OF WRITTEN MATERIALS.—

(A) IN GENERAL.—The Board shall, in an executive capacity on behalf of the Council, provide notice to financial companies that the Council is considering whether to subject an activity or practice to heightened prudential regulation, and shall provide a financial company engaged in such activity or practice 30 days to submit written materials to inform the Council's decision. The Council shall decide, and the Board shall provide notice of the Council's decision, within 60 days of the due date for such written materials.

(B) EMERGENCY EXCEPTION.—The Council may waive or modify the requirements of subparagraph (A) if the Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by an activity to financial stability. The Board shall, in an executive capacity on behalf of the Council, provide notice of such waiver or modification to financial companies as soon as practicable, which shall be no later than 24 hours after the waiver or modification.

(3) FORM OF DECISION.—The Board shall provide all notices required under this subsection by posting a notice on the Board's web site and publishing a notice in the Federal Register.

#### SEC. 1107. STRICTER REGULATION OF ACTIVITIES AND PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) PRUDENTIAL STANDARDS.—

(1) BOARD AUTHORITY TO RECOMMEND.—

(A) IN GENERAL.—To mitigate the risks to United States financial stability and the United States economy posed by financial activities and practices that the Council identifies for stricter prudential standards under section 1106 the Board shall recommend prudential standards to the appropriate primary financial regulatory agencies to apply to such identified activities and practices.

(B) CONSULTATION WITH PRIMARY FINANCIAL REGULATORY AGENCIES.—The Board, in developing recommendations under this subsection, shall consult with the relevant primary financial regulatory agencies with respect to any standard that is likely to have a significant effect on entities described in section 1000(b)(6).

(2) CRITERIA.—The actions recommended under paragraph (1)—

(A) shall be designed to maximize financial stability, taking costs to long-term financial and economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, nature, size, scale, concentration, or interconnectedness, or applying particular capital or risk-management requirements to the conduct of the activity) or prohibiting the activity or practice altogether.

(b) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—Each primary financial regulatory agency is authorized to impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities described in section 1000(b)(6) for which it is the primary financial regulatory agency. This authority is in addition to and does not limit any other authority of the primary financial regulatory agencies. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective primary financial regulatory agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—Standards imposed under this subsection shall be the standards recommended by the Board in accordance with subsection (a) or any other similar standards that the Board deems acceptable after consultation between the Board and the primary financial regulatory agency.

(3) PRIMARY FINANCIAL REGULATORY AGENCY RESPONSE.—A primary financial regulatory

agency shall notify the Council and the Board in writing on whether and to what extent the agency has imposed the stricter prudential standards described in paragraph (2) within 60 days of the Board's recommendation. A primary financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

#### **SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.**

(a) NOTICE.—When the Council determines that a company or activity or practice no longer is subject to heightened prudential scrutiny, the Board shall inform the relevant primary financial regulatory agency or agencies (if different from the Board) of that finding.

(b) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—A primary financial regulatory agency that has imposed stricter prudential standards for financial stability purposes under this subtitle shall determine whether standards that it has imposed under this subtitle should remain in effect.

#### **SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.**

(a) IN GENERAL.—Upon the written determination of the Council that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of the Council then serving) and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), the Corporation may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by guaranteeing obligations of solvent insured depository institutions or other solvent companies that are predominantly engaged in activities that are financial in nature or are incidental thereto pursuant to section 4(k) of the Bank Holding Company Act, if necessary to prevent systemic financial instability during times of severe economic distress, except that a guarantee of obligations under this section may not include provision of equity in any form.

(b) POLICIES AND PROCEDURES.—Prior to exercising any authority under this section, the Corporation shall establish policies and procedures governing the issuance of guarantees. The terms and conditions of any guarantees issued shall be established by the Corporation with the approval of the Secretary of the Treasury and the Financial Stability Oversight Council.

##### **(c) FUNDING.—**

(1) ADMINISTRATIVE EXPENSES AND COST OF GUARANTEES.—A program established pursuant to this section shall require funding only for the purposes of paying administrative expenses and for paying a guarantee in the event that a guaranteed loan defaults.

(2) FEES AND OTHER CHARGES.—The Corporation shall charge fees or other charges to all participants in such program established pursuant to this section. To the extent that a program established pursuant to this section has expenses or losses, the program will be funded entirely through fees or other charges assessed on participants in such program.

(3) EXCESS FUNDS.—If at the conclusion of such program there are any excess funds collected from the fees associated with such program, the funds will be deposited into the Systemic Resolution Fund established pursuant to section 1609(n).

(4) AUTHORITY OF CORPORATION.—For purposes of conducting a program established pursuant to this section, the Corporation—

(A) may borrow funds from the Secretary of the Treasury, which shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraph (2), and, to the extent such additional amounts are necessary, assessments on large financial companies under paragraph (5), and there shall be available to the Corporation amounts in the Treasury not otherwise appropriated, including for the payment of reasonable administrative expenses;

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act; and

(C) may not borrow funds from the Systemic Resolution Fund established pursuant to section 1609(n).

(5) BACK-UP SPECIAL ASSESSMENT.—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses (including monies borrowed pursuant to paragraph (4)) arising from a program established pursuant to this section, the Corporation shall impose a special assessment on—

(A) large financial companies subject to assessments under section 1609(n) (whether or not such company participated in such program) in the manner provided in such section 1609(n); and

(B) participants in the program that are not large financial companies paying assessments pursuant to section 1609(n).

(d) PLAN FOR MAINTENANCE OR INCREASE OF LENDING.—In connection with any application or request to participate in such program authorized pursuant to this section, a solvent company seeking to participate in such program shall be required to submit to the Corporation a plan detailing how the use of such guaranteed funds will facilitate the increase or maintenance of such solvent company's level of lending to consumers or small businesses.

(e) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The term "activities that are financial in nature" means activities that are determined to be financial in nature, or incidental to such activities, under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and activities that are identified for stricter prudential standards under section 1106.

(2) COMPANY.—The term "company" means any entity other than a natural person that is incorporated or organized under Federal law or the laws of any State.

(3) CORPORATION.—The term "Corporation" means the Federal Deposit Insurance Corporation.

(4) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" shall have the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(5) SOLVENT.—The term "solvent" means assets are more than the obligations to creditors.

(f) SUNSET OF CORPORATION'S AUTHORITY.—The Corporation's authority under subsections (a) and (c) and the authority to borrow or obligate funds under section 1609(n) shall expire on December 31, 2013.

#### **SEC. 1110. CORPORATION MUST RECEIVE WARRANTS WHEN PAYING OR RISKING TAXPAYER FUNDS.**

(a) IN GENERAL.—The Federal Deposit Insurance Corporation (hereinafter in this sec-

tion referred to as the "Corporation") may not provide any payment, credit extension, or guarantee, or make any such commitment under the authority of section 1109 or 1604, unless the Corporation receives from the financial company for which the credit extension or guarantee is intended, as fair market value consideration for such payment, credit extension or guarantee—

(1) in the case of a financial company, the securities of which are traded on a national securities exchange, a warrant giving the right to the Corporation to receive non-voting common stock or preferred stock in such financial institution, or voting stock with respect to which, the Corporation agrees not to exercise voting power, as the Corporation determines appropriate; or

(2) in the case of any financial company other than one described in paragraph (1), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in subsection (b)(3).

(b) TERMS AND CONDITIONS.—The terms and conditions of any warrant or senior debt instrument required under subsection (a) shall meet the following requirements:

(1) PURPOSES.—Such terms and conditions shall, at a minimum, be designed—

(A) to provide for reasonable participation by the Corporation, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity security, or a reasonable interest rate premium, in the case of a debt instrument; and

(B) to provide additional protection for the taxpayer against losses from such payment, extension of credit, or guarantee by the Corporation under this title.

(2) AUTHORITY TO SELL, EXERCISE, OR SURRENDER.—The Corporation may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection, based on the conditions established under paragraph (1).

(3) CONVERSION.—The warrant shall provide that if, after the warrant is received by the Corporation under this subsection, the financial company that issued the warrant is no longer listed or traded on a national securities exchange or securities association, as described in subsection (a)(1), such warrants shall convert to senior debt, or contain appropriate protections for the Corporation to ensure that the Corporation is appropriately compensated for the value of the warrant, in an amount determined by the Corporation.

(4) PROTECTIONS.—Any warrant representing securities to be received by the Corporation under this subsection shall contain anti-dilution provisions of the type employed in capital market transactions, as determined by the Corporation. Such provisions shall protect the value of the securities from market transactions such as stock splits, stock distributions, dividends, and other distributions, mergers, and other forms of reorganization or recapitalization.

(5) EXERCISE PRICE.—The exercise price for any warrant issued pursuant to this subsection shall be set by the Corporation, in the interest of the taxpayers.

(6) SUFFICIENCY.—The financial company shall guarantee to the Corporation that it has authorized shares of nonvoting stock available to fulfill its obligations under this subsection. Should the financial company not have sufficient authorized shares, including preferred shares that may carry dividend rights equal to a multiple number of common shares, the Corporation may, to the extent necessary, accept a senior debt note in an amount, and on such terms as will compensate the Corporation with equivalent

value, in the event that a sufficient shareholder vote to authorize the necessary additional shares cannot be obtained.

(c) EXCEPTIONS.—

(1) The Corporation shall establish an exception to the requirements of this section and appropriate alternative requirements for any participating financial company that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(2) If the Corporation is providing a payment, extension of credit, or guarantee with regard to its authority under section 1604 and the Corporation determines that it is certain that at the conclusion of the Resolution Process the shareholders of all classes shall lose their entire investment and receive nothing therefor, then the requirements of this section shall not apply.

**SEC. 1111. EXAMINATIONS AND ENFORCEMENT ACTIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.**

(a) EXAMINATIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking “whenever the Board of Directors determines” and all that follows through the period and inserting “or financial holding company subject to stricter standards (as defined in section 1000(b)(5) of the Financial Stability Improvement Act of 2009) whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance or such financial holding company subject to stricter standards for resolution purposes.”.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (2)—

(A) at the end of subparagraph (B), by striking “or”;

(B) at the end of subparagraph (C), by striking the period and inserting “; or”; and

(C) by inserting at the end the following new subparagraph:

“(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund.”; and

(2) by adding at the end the following new paragraph:

“(6) For purposes of this subsection:

“(A) The Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

“(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.”.

**SEC. 1112. STUDY OF THE EFFECTS OF SIZE AND COMPLEXITY OF FINANCIAL INSTITUTIONS ON CAPITAL MARKET EFFICIENCY AND ECONOMIC GROWTH.**

(a) STUDY REQUIRED.—The Chairman of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the effect on the efficiency of capital markets, costs imposed on the financial sector, and on national economic growth, of—

(1) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(2) limits on the organizational complexity and diversification of large financial institutions;

(3) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(4) limits on risk transfer between business units of large financial institutions;

(5) requirements to carry contingent capital or similar mechanisms;

(6) limits on commingling of commercial and financial activities by large financial institutions;

(7) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(8) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

The study shall include recommendations for the optimal structure of any limits considered in paragraphs (1) through (5) in order to maximize their effectiveness and minimize their economic impact.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

**SEC. 1113. EXERCISE OF FEDERAL RESERVE AUTHORITY.**

(a) NO DECISIONS BY FEDERAL RESERVE BANK PRESIDENTS.—No provision of this title relating to the authority of the Board shall be construed as conferring any decision-making authority on presidents of Federal reserve banks.

(b) VOTING DECISIONS BY BOARD.—The Board of Governors of the Federal Reserve System shall not delegate the authority to make any voting decision that the Board is authorized or required to make under this title in contravention of section 11(k) of the Federal Reserve Act.

**SEC. 1114. STRESS TESTS.**

(a) A financial holding company subject to stricter standards shall—

(1) conduct quarterly stress tests; and

(2) submit a report on its quarterly stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(b) A financial company that has more than \$10,000,000,000 in total assets and is not a financial holding company subject to stricter standards shall—

(1) conduct semiannual stress tests; and

(2) submit a report on its semiannual stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(c) A stress test under this section shall provide for testing under each of the following sets of conditions:

(1) Baseline.

(2) Adverse.

(3) Severely adverse.

(d) The head of each primary financial regulatory agency, in coordination with the Board, shall issue regulations to define the term “stress test” for purposes of this section.

**SEC. 1115. CONTINGENT CAPITAL.**

(a) IN GENERAL.—The Board, in coordination with the appropriate primary financial regulatory agency, may promulgate regula-

tions that require a financial holding company subject to stricter standards to maintain a minimum amount of long-term hybrid debt that is convertible to equity when—

(1) a specified financial company fails to meet prudential standards established by the agency; and

(2) the agency has determined that threats to United States financial system stability make such a conversion necessary.

(b) FACTORS TO CONSIDER.—In establishing regulations under this section, the Board shall consider—

(1) an appropriate transition period for implementation of a conversion under this section;

(2) capital requirements applicable to the specified financial company and its subsidiaries; and

(3) any other factor that the Board deems appropriate.

(c) STUDY REQUIRED.—The Chairman of the Council shall carry out a study to determine an optimal implementation of contingent capital requirements to maximize financial stability, minimize the probability of drawing on the Systemic Resolution Fund established under section 1609(n) in a financial crisis, and minimize costs for financial holding companies subject to stricter standards. To the extent practicable, the study shall take place with input from industry participants and international financial regulators. Such study shall include—

(1) an evaluation of the characteristics and amounts of convertible debt that should be required, including possible tranche structure;

(2) an analysis of possible trigger mechanisms for debt conversion, including violation of regulatory capital requirements, failure of stress tests, declaration of systemic emergency by regulators, market-based triggers and other trigger mechanisms;

(3) an estimate of the costs of carrying contingent capital;

(4) an estimate of the effectiveness of contingent capital requirements in reducing losses to the systemic resolution fund in cases of single-firm or systemic failure; and

(5) recommendations for implementing legislation.

(d) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (c).

**SEC. 1116. RESTRICTION ON PROPRIETARY TRADING BY DESIGNATED FINANCIAL HOLDING COMPANIES.**

(a) IN GENERAL.—If the Board determines that propriety trading by a financial holding company subject to stricter standards poses an existing or foreseeable threat to the safety and soundness of such company or to the financial stability of the United States, the Board may prohibit such company from engaging in propriety trading.

(b) EXCEPTIONS PERMITTED.—The Board may exempt from the prohibition of subsection (a) propriety trading that the Board determines to be ancillary to other operations of such company and not to pose a threat to the safety and soundness of such company or to the financial stability of the United States, including—

(1) making a market in securities issued by such company;

(2) hedging or managing risk;

(3) determining the market value of assets of such company; and

(4) propriety trading for such other purposes allowed by the Board by rule.

(c) **RULEMAKING AUTHORITY.**—The primary financial regulatory agencies of banks and bank holding companies shall jointly issue regulations to carry out this section.

(d) **EFFECTIVE DATE.**—The provisions of this section shall take effect after the end of the 180-day period beginning on the date of the enactment of this title.

(e) **PROPRIETARY TRADING DEFINED.**—For purposes of this section and with respect to a company, the term “proprietary trading” means the trading of stocks, bonds, options, commodities, derivatives, or other financial instruments with the company’s own money and for the company’s own account.

#### SEC. 1117. RULE OF CONSTRUCTION.

The authorities granted to agencies under this subtitle are in addition to any rulemaking, report-related, examination, enforcement, or other authority that such agencies may have under other law and in no way shall be construed to limit such other authority, except that any standards imposed for financial stability purposes under this subtitle shall supersede any conflicting less stringent requirements of the primary financial regulatory agency but only the extent of the conflict.

#### SEC. 1118. ANTITRUST SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to modify, impair, or supercede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term “antitrust laws” has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section related to unfair methods of competition.

#### Subtitle C—Improvements to Supervision and Regulation of Federal Depository Institutions

#### SEC. 1201. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) **BOARD OF GOVERNORS.**—The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

(2) **CORPORATION.**—The term “Corporation” means the Federal Deposit Insurance Corporation.

(3) **OFFICE OF THE COMPTROLLER OF THE CURRENCY.**—The term “Office of the Comptroller of the Currency” means the office established by section 324 of the Revised Statutes (12 U.S.C. 1).

(4) **OFFICE OF THRIFT SUPERVISION.**—The term “Office of Thrift Supervision” means the office established by section 3 of the Home Owners’ Loan Act (12 U.S.C. 1462a).

(5) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(6) **TRANSFER DATE.**—The term “transfer date” has the meaning provided in section 1205.

(7) **CERTAIN OTHER TERMS.**—The terms “affiliate”, “bank holding company”, “control” (when used with respect to a depository institution), “depository institution”, “Federal banking agency”, “Federal savings association”, “including”, “insured branch”, “insured depository institution”, “savings association”, “State savings association”, and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

#### SEC. 1202. AMENDMENTS TO THE HOME OWNERS’ LOAN ACT RELATING TO TRANSFER OF FUNCTIONS.

(a) **AMENDMENTS TO SECTION 2.**—Section 2 of the Home Owners’ Loan Act (12 U.S.C. 1462) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

“(1) **BOARD OF GOVERNORS.**—The term ‘Board of Governors’ means the Board of Governors of the Federal Reserve System.”; and

(2) by striking paragraph (3) and inserting the following new paragraph:

“(3) [repealed]”.

(b) **AMENDMENTS TO SECTION 3.**—Section 3 of the Home Owners’ Loan Act (12 U.S.C. 1462a) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

“(a) **ESTABLISHMENT OF DIVISION OF THRIFT SUPERVISION.**—To carry out the purposes of this Act, there is hereby established the Division of Thrift Supervision, which shall be a division within the Office of the Comptroller of the Currency.”;

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following new paragraph:

“(1) **IN GENERAL.**—The Division of Thrift Supervision shall be headed by a Senior Deputy Comptroller of the Currency who shall be subject to the general oversight of the Comptroller of the Currency.”;

(B) in paragraph (2), by striking “Director” and inserting “Comptroller of the Currency”;

(C) by striking paragraphs (3) and (4);

(3) by striking subsections (c), (d), and (e) and inserting the following new subsection:

“(c) **POWERS OF THE COMPTROLLER OF THE CURRENCY.**—The Comptroller of the Currency shall have all the powers, duties, and functions transferred by the Financial Stability Improvement Act of 2009 to the Comptroller of the Currency to carry out this Act.”;

(4) by redesignating subsections (f) and (i) as subsections (d) and (e), respectively;

(5) in subsection (d) (as so redesignated), by striking “Director” each place such term appears and inserting “Comptroller of the Currency”;

(6) by striking subsections (g), (h), and (j); and

(7) in subsection (e) (as so redesignated), by striking “compensation of the Director and other employees of the Office and all other expenses thereof” and inserting “expenses incurred by the Comptroller of the Currency in carrying out this Act”.

(c) **AMENDMENTS TO SECTION 4.**—Section 4 of the Home Owners’ Loan Act (12 U.S.C. 1463) is amended by striking “Director” each time it appears and inserting “Comptroller of the Currency”.

(d) **AMENDMENTS TO SECTION 5.**—

(1) **UNIVERSAL.**—Section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) is amended—

(A) by striking “Director” and “Director of the Office of Thrift Supervision” each place such terms appear and inserting “Comptroller of the Currency”;

(B) by striking “Director’s” each place such term appears and inserting “Comptroller of the Currency’s”.

(2) **SPECIFIC PROVISIONS.**—

(A) Section 5(d)(2)(E) of the Home Owners’ Loan Act is amended by striking “or the Resolution Trust Corporation, as appropriate,” each place such term appears.

(B) Section 5(d)(3)(B) of the Home Owners’ Loan Act is amended by striking “or the Resolution Trust Corporation”.

(e) **AMENDMENTS TO SECTIONS 8 AND 9.**—Sections 8 and 9 of the Home Owners’ Loan Act (12 U.S.C. 1466a and 1467) are each amended by striking “Director” each place such term appears and inserting “Comptroller of the Currency”.

(f) **TECHNICAL AND CONFORMING AMENDMENTS.**—

(1) **SECTION 3.**—The heading for section 3 of the Home Owners’ Loan Act is amended by striking “**DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION**” and inserting “**DIVISION OF THRIFT SUPERVISION**”.

(2) **SECTION 5.**—The heading for paragraph (2)(E)(ii) of section 5(d) of the Home Owners’ Loan Act and the heading for paragraph (3)(B) of such section are each amended by striking “OR RTC”.

(g) **CLERICAL AMENDMENT.**—The table of contents section for the Home Owners’ Loan Act is amended by striking the item relating to section 3 and inserting the following new item:

“Sec. 3. Division of Thrift Supervision.”.

#### SEC. 1203. AMENDMENTS TO THE REVISED STATUTES.

(a) **AMENDMENT TO SECTION 324.**—Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended to read as follows:

#### “SEC. 324. COMPTROLLER OF THE CURRENCY.

“There shall be in the Department of the Treasury a bureau, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Comptroller of the Currency shall have the same authority over matters as were vested in the Director of the Office of Thrift Supervision or the Office of Thrift Supervision on the day before the date of enactment of the Financial Stability Improvement Act of 2009 other than those authorities with respect to savings and loan holding companies and any affiliate of any such company (other than a savings association) as were vested in the Director of the Office of Thrift Supervision on such date. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions) unless otherwise specifically provided by law.”.

(b) **AMENDMENTS TO SECTION 327.**—Section 327 of the Revised Statutes of the United States (12 U.S.C. 4) is amended to read as follows:

#### “SEC. 327. DEPUTY COMPTROLLERS.

“(a) **APPOINTMENT.**—The Secretary of the Treasury shall appoint no more than 5 Deputy Comptrollers of the Currency—

“(1) 1 of whom shall be designated the Senior Deputy Comptroller for National Banks, who shall oversee the regulation and supervision of national banks; and

“(2) 1 of whom shall be designated the Senior Deputy Comptroller for Thrift Supervision, who shall oversee the regulation and supervision of Federal savings associations.

“(b) **PAY.**—The Secretary of the Treasury shall fix the compensation of the Deputy Comptrollers of the Currency and provide such other benefits as the Secretary may determine to be appropriate.

“(c) **OATH OF OFFICE; DUTIES.**—Each Deputy Comptroller shall take the oath of office and shall perform such duties as the Comptroller of the Currency shall direct.

“(d) **SERVICE AS ACTING COMPTROLLER.**—During a vacancy in the office or during the absence or disability of the Comptroller, each Deputy Comptroller shall possess the power and perform the duties attached by law to the Office of the Comptroller under such order of succession as the Comptroller shall direct.”.

(c) **AMENDMENT TO SECTION 329.**—Section 329 of the Revised Statutes of the United



States (12 U.S.C. 11) is amended by inserting "or any Federal savings association" before the period at the end.

(d) AMENDMENT TO SECTION 5240.—The fourth sentence of the second undesignated paragraph of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481) is amended by striking "Secretary of the Treasury;" and all that follows through the end of the sentence, and inserting "Secretary of the Treasury; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency whose compensation is and shall be paid from assessments on banks or affiliates thereof or from other fees or charges imposed pursuant to this subchapter shall be set and adjusted pursuant to chapter 71 of title 5, United States Code and without regard to the provisions of other laws applicable to officers or employees of the United States."

(e) AMENDMENT TO SECTION 5240.—The first sentence in the first undesignated paragraph of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 482) is amended by inserting "pursuant to chapter 71 of title 5, United States Code," after "shall,".

#### SEC. 1204. POWER AND DUTIES TRANSFERRED.

(a) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this subtitle, all functions of the Director of the Office of Thrift Supervision are transferred to the Office of the Comptroller of the Currency.

(2) COMPTROLLER'S AUTHORITY.—Except as otherwise provided in this subtitle, the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date other than those powers, authorities, rights, and duties with respect to savings and loan holding companies and any affiliate of any such company (other than a savings association) as were vested in the Director of the Office of Thrift Supervision on such date.

(3) FUNCTIONS RELATING TO SUPERVISION OF STATE SAVINGS ASSOCIATIONS.—

(A) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of State savings associations are transferred to the Corporation.

(B) CORPORATION'S AUTHORITY.—The Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date, relating to the supervision and regulation of State savings associations.

(b) APPROPRIATE FEDERAL BANKING AGENCY.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended in subsection (q)—

(1) by amending paragraph (1) to read as follows:

"(1) the Comptroller of the Currency in the case of any national bank, Federal savings association or any Federal branch or agency of a foreign bank;"

(2) in paragraph (2)(F), by adding "and" at the end after the semicolon;

(3) by amending paragraph (3) to read as follows:

"(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank, a State savings association or a foreign bank having an insured branch.";

(4) by striking paragraph (4).

(c) TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in subsection (a) or (b) shall affect any transfer of consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

(d) EFFECTIVE DATE.—Subsections (a) and (b) shall become effective on the transfer date.

#### SEC. 1205. TRANSFER DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the date for the transfer of functions to the Office of the Comptroller of the Currency and the Corporation under section 1204 shall be 1 year after the date of enactment of this title.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of the Currency and the Director of the Office of Thrift Supervision, may designate a calendar date for the transfer of functions of the Office of Thrift Supervision to the Office of the Comptroller of the Currency, and the Corporation under section 1204 that is later than 1 year after the date of enactment of this title if the Secretary—

(A) transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) a written determination that orderly implementation of this subtitle is not feasible on the date that is 1 year after the date of enactment of this subtitle;

(ii) an explanation of why an extension is necessary for the orderly implementation of this subtitle; and

(iii) a description of the steps that will be taken to effect an orderly and timely implementation of this subtitle within the extended time period; and

(B) publishes notice of that designated later date in the Federal Register.

(2) EXTENSION LIMITED.—In no case shall any date designated under paragraph (1) be later than 18 months after the date of enactment of this subtitle.

(3) EFFECT ON REFERENCES TO "TRANSFER DATE".—If the Secretary takes the actions provided in paragraph (1) for designating a date for the transfer of functions to the Office of the Comptroller of the Currency, and the Corporation under section 1204, references in this title to "transfer date" shall mean the date designated by the Secretary.

#### SEC. 1206. EXPIRATION OF TERM OF COMPTROLLER.

(a) IN GENERAL.—Notwithstanding section 325 of the Revised Statutes of the United States, the term of the person serving as Comptroller on the date of the enactment of this title shall terminate as of such date.

(b) ACTING COMPTROLLER.—Subject to sections 3345, 3346, and 3347 of title 5, United States Code, the President may designate a person to serve as acting Comptroller and perform the functions and duties of the Comptroller until a Comptroller has been appointed and qualified in the manner established in section 325 of the Revised Statutes of the United States.

#### SEC. 1207. OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective 90 days after the transfer date, the position of Director of the Office of Thrift Supervision and the Office of Thrift Supervision are abolished.

#### SEC. 1208. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1204(a) and 1207 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This subtitle shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that—

(A) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency or the Office of the Comptroller of the Currency shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, as the case may be, as a party to the action or proceeding as of the transfer date; and

(B) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Corporation by this title, the Chairman of the Corporation shall be substituted for the Director of the Office of Thrift Supervision as a party to the action or proceeding as of the transfer date.

(b) CONTINUATION OF EXISTING OTS ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against—

(1) the Office of the Comptroller of the Currency, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency, by any court of competent jurisdiction, or by operation of law; and

(2) the Corporation, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Corporation, until modified, terminated, set aside, or superseded in accordance with applicable law by the Corporation, by any court of competent jurisdiction, or by operation of law.

(c) CONTINUATION OF EXISTING OTS ENFORCEMENT ACTIONS.—Any formal or informal enforcement action taken by the Director of the Office of Thrift Supervision with respect to a savings and loan holding company, a subsidiary of a savings and loan holding company (other than a savings association) or an institution-affiliated party of a savings and loan holding company or such a subsidiary, that is in effect on the day before the date of the enactment of this title shall continue to be effective and enforceable against such company, subsidiary, or institution-affiliated party after such date as if—



(1) such savings and loan holding company, or the savings and loan holding company related to such subsidiary or institution-affiliated party, had been a bank holding company on the effective date of the final enforcement action; and

(2) the action had been taken by the Board, unless otherwise terminated or modified by the Board.

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—

(1) BY OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Comptroller of the Currency shall—

(A) after consultation with the Chairperson of the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

(B) publish a list of such regulations in the Federal Register.

(2) BY THE CORPORATION.—Not later than the transfer date, the Corporation shall—

(A) after consultation with the Office of the Comptroller of the Currency, identify the regulations continued under subsection (b) that will be enforced by the Corporation; and

(B) publish a list of such regulations in the Federal Register.

(e) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision, which that agency, in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision, which that agency, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.

#### SEC. 1209. REGULATIONS AND ORDERS.

In addition to any powers transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency may prescribe such regulations and issue such orders as the Comptroller of the Currency determines to be appropriate to carry out this title and the powers and duties transferred to the Comptroller of the Currency by this title.

#### SEC. 1210. COORDINATION OF TRANSITION ACTIVITIES.

Before the transfer date, the Comptroller of the Currency shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Comptroller of the Currency;

(2) determine and redetermine, from time to time—

(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on the date of enactment of this title and ending on the transfer date;

(B) what personnel are appropriate to facilitate the orderly transfer of functions by this title; and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency during the

period beginning on the date of enactment of this title and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

#### SEC. 1211. INTERIM RESPONSIBILITIES OF OFFICE OF THE COMPTROLLER OF THE CURRENCY AND OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—When requested by the Comptroller of the Currency to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Comptroller of the Currency, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts that the Comptroller of the Currency determines to be necessary under section 1210(2)(A);

(2) detail to the Office of the Comptroller of the Currency such personnel as the Comptroller of the Currency determines to be appropriate under section 1210(2)(B); and

(3) make available to the Office of the Comptroller of the Currency such property and provide the Office of the Comptroller of the Currency such administrative services as the Comptroller of the Currency determines to be necessary under section 1210(2)(C).

(b) NOTICE REQUIRED.—The Comptroller of the Currency shall give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency intends to make under subsection (a).

#### SEC. 1212. EMPLOYEES TRANSFERRED.

(a) IN GENERAL.—

(1) OTS EMPLOYEES.—

(A) IN GENERAL.—All employees of the Office of Thrift Supervision shall be transferred to either the Comptroller of the Currency or the Corporation for employment.

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support—

(I) the functions of the Office of Thrift Supervision that are transferred to the Office of the Comptroller of the Currency by this title; and

(II) the functions of the Office of Thrift Supervision that are transferred to the Corporation by this title;

(ii) consistent with the numbers determined under clause (ii), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation in a manner that the Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation, in their discretion, deem equitable.

(2) TRANSFER OF EMPLOYEES PERFORMING CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in paragraph (1) shall affect the transfer of employees performing or supporting consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted service, any appointment authority established pur-

suant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—The Office of the Comptroller of the Currency and the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of his or her position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS SUBTITLE.—If any provision of this subtitle conflicts with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this subtitle shall control.

(d) EMPLOYEES' STATUS AND ELIGIBILITY.—The transfer of functions and employees under this title, and the abolition of the Office of Thrift Supervision, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—Each employee transferred from the Office of Thrift Supervision shall be placed in a position at either the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as he or she held on the day before the transfer date.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—Examiners transferred to the Office of the Comptroller of the Currency or the Corporation shall not be subject to any additional certification requirements before being placed in a comparable examiner's position at the Office of the Comptroller of the Currency or the Corporation examining the same types of institutions as they examined before they were transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 3-YEAR PROTECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each affected employee shall not, during the 3-year period beginning on the transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area as defined by the Office of Personnel Management.

(B) AFFECTED EMPLOYEES.—For purposes of this paragraph, the term "affected employee" means—

(i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date;

(ii) an employee of the Office of the Comptroller of the Currency holding a permanent position on the day before the transfer date; and

(iii) an employee of the Corporation holding a permanent position on the day before the transfer date.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to—

(A) separate an employee for cause or for unacceptable performance; or

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

(1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each employee transferred from the Office of Thrift Supervision shall, during the 1-year period beginning on the transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to reduce a transferred employee's rate of basic pay—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee's consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Office of the Comptroller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Office of the Comptroller of the Currency or the Corporation to increase a transferred employee's pay.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each employee transferred from the Office of Thrift Supervision may remain enrolled in his or her existing retirement plan or plans as long as he or she remains employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation shall pay any employer contributions to the existing retirement plan of each employee transferred from the Office of Thrift Supervision as required under that plan.

(B) DEFINITION.—For purposes of this paragraph, the term "existing retirement plan" means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency from which the employee was transferred, which the employee was enrolled in on the day before the transfer date.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the transfer date, retain membership in any other employee benefit program of the Office of Thrift Supervision, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation shall pay any employer cost in continuing to extend coverage in the benefit program to the employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Cor-

poration decides not to continue participation in any dental, vision, or life insurance program of the Office of Thrift Supervision, an employee transferred from the Office of Thrift Supervision pursuant to this title who is a member of such a program may, before the decision of the Office of the Comptroller of the Currency or the Corporation takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits program established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; and

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation decides not to continue participation in any long term care insurance program of the Office of Thrift Supervision, an employee transferred from the Office of Thrift Supervision pursuant to this title who is a member of such a program may, before the decision of the Office of the Comptroller of the Currency or the Corporation takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in Part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE'S CONTRIBUTION.—

(i) IN GENERAL.—Subject to clause (ii), an individual enrolled in the Federal Employees Health Benefits program under this subparagraph shall pay any employee contribution required by the plan.

(ii) COST DIFFERENTIAL.—The difference in costs between the benefits that the Office of Thrift Supervision is providing on the date of enactment of this title and the benefits provided by this section shall be paid by the Comptroller of the Currency or the Corporation.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Office of the Comptroller of the Currency or the Corporation and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Office of Thrift Supervision on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE'S CONTRIBUTION.—

(I) IN GENERAL.—Subject to subclause (II), an individual enrolled in a life insurance

plan under this clause shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The difference in costs between the benefits that the Office of Thrift Supervision is providing on the date of enactment of this title and the benefits provided by this section shall be paid by the Comptroller of the Currency or the Corporation.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Office of the Comptroller of the Currency or the Corporation and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a life insurance plan administered by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Corporation immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) EQUITABLE TREATMENT.—In administering the provisions of this section, the Office of the Comptroller of the Currency and the Corporation—

(1) shall take no action that would unfairly disadvantage transferred employees relative to other employees of the Office of the Comptroller of the Currency or the Corporation based on their prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees' status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time, for prior periods of service with any Federal agency;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safeguards adopted pursuant to paragraph (3), and demonstrating that the requirements of this subsection have been met; and shall, not later than 365 days after the transfer date, submit a copy of such study to Congress.

#### SEC. 1213. PROPERTY TRANSFERRED.

(a) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation, allocated in a manner consistent with section 1212(a).

(b) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—All contracts, agreements, leases, licenses, permits, and similar arrangements relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation together with that property.

(c) **PRESERVATION OF PROPERTY.**—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

(d) **PROPERTY DEFINED.**—For purposes of this section, the term “property” includes all real property (including leaseholds) and all personal property (including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers and correspondence related to such reports, and any other information or materials).

#### SEC. 1214. FUNDS TRANSFERRED.

Except to the extent needed to dispose of affairs under section 1215, all funds that, on the day before the transfer date, are available to the Director of the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation, allocated in a manner consistent with section 1212(a), on the transfer date.

#### SEC. 1215. DISPOSITION OF AFFAIRS.

(a) **IN GENERAL.**—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the agency related to any function transferred to the Office of the Comptroller of the Currency or the Corporation by this subtitle—

(A) manage any employees of the Office of Thrift Supervision and provide for the payment of the compensation and benefits of any such employees that accrue before the transfer date; and

(B) manage any property of the Office of Thrift Supervision until the property is transferred under section 1213; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision relating to the transferred functions.

(b) **AUTHORITY AND STATUS OF DIRECTOR.**—

(1) **IN GENERAL.**—Notwithstanding the transfers of functions under this subtitle, the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, retain and may exercise any authority vested in the Director on the day before the transfer date that is necessary to carry out the requirements of this subtitle during that period.

(2) **OTHER PROVISIONS.**—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that he or she was receiving on the day before the transfer date.

#### SEC. 1216. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions to be transferred to the Office of the Comptroller of the Currency or the Corporation, shall—

(1) continue to provide those services, subject to reimbursement, until the transfer of those functions is complete; and

(2) consult with any such agency to coordinate and facilitate a prompt and orderly transition.

#### SEC. 1217. CONTRACTING AND LEASING AUTHORITY.

In addition to any powers transferred to the Comptroller of the Currency by this subtitle, the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire in any lawful manner such goods and services, or real or personal property, or interest in property, as the Comptroller of the Currency determines to be necessary or convenient to carry out the duties and responsibilities of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of any real or personal property or interest in property without regard to title 40, United States Code, title III of the Federal Properties and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and other Federal laws of a similar type governing the procurement of goods and services or the acquisition or disposition of any property or interest in property by Federal agencies.

#### SEC. 1218. TREATMENT OF SAVINGS AND LOAN HOLDING COMPANIES.

Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended as follows:

(1) In subsection (m)—

(A) in paragraph (2), by striking “Director” and inserting “Comptroller”; and

(B) in paragraph (2), by striking “Director may grant” and inserting “Comptroller of the Currency may grant”; and

(C) in paragraph (2), by striking “the Director deems” and inserting “the Comptroller deems”; and

(D) in paragraph (2)(A), by striking “Director” and inserting “Comptroller”; and

(E) in paragraph (2)(B), by striking “Director” and inserting “Comptroller”; and

(F) in paragraph (2)(B)(iii), by striking “Director” and inserting “Comptroller”; and

(G) by striking subparagraph (A) of paragraph (3) and inserting the following new subparagraph:

“(A) **IN GENERAL.**—A savings association that fails to become or remain a qualified thrift lender shall—

“(i) immediately be subject to the restrictions in subparagraph (B); and

“(ii) become one or more banks (other than a savings bank) within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, except as provided in subparagraph (C)(i).”;

(H) by striking subclause (III) of paragraph (3)(B)(i) and inserting the following new subclause:

“(III) **DIVIDENDS.**—The savings association shall be prohibited from paying dividends except for such dividends—

“(aa) as would be permissible for a national bank;

“(bb) that are necessary to meet obligations of a company that controls such savings association; and

“(cc) that are specifically approved by the Comptroller and the Board of Governors after prior written request of at least 30 days to the Comptroller and the Board of Governors.”;

(I) by striking clause (ii) of paragraph (3)(B);

(J) by striking subparagraphs (C) and (D) of paragraph (3) and inserting the following new subparagraphs:

“(C) **REGULATORY AUTHORITY.**—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners' Loan Act and subject to actions authorized by section 5(d) of the Home Owners' Loan Act.

“(D) **REQUALIFICATIONS.**—

“(i) A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (A)(ii) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender.

“(ii) If the savings association referred to in clause (i) (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender it shall immediately be subject to subparagraph (A)(ii) as if the one-year time period provided for in subparagraph (A)(ii) already has expired, and as if the exception in clause (i) was not applicable or available to such savings association.”;

(K) in paragraph (4)(D) by striking “Director” and inserting “Comptroller”; and

(L) in paragraph (4)(E) by striking “Director” and inserting “Comptroller”; and

(M) in paragraph (7)(B) by striking “Director” and inserting “Comptroller”.

(2) In subsection (o)—

(A) in paragraph (3) in the heading by striking “DIRECTOR” and inserting “BOARD”; and

(B) in paragraph (3)(A) by striking “Director” and inserting “Board”; and

(C) in paragraph (3)(B) by striking “Director” and inserting “Board”; and

(D) in paragraph (3)(C) by striking “Director” and inserting “Board”; and

(E) in paragraph (3)(D) by striking “Director” and inserting “Comptroller”; and

(F) in paragraph (5)(E), by striking “activities described in subsection (c)(2) or (c)(9)(A)(ii)” and inserting “activities otherwise permissible for the company pursuant to, and in accordance with, section 4 of the Bank Holding Company Act of 1956”; and

(G) in paragraph (7) by striking “chartered by the Director” and inserting “chartered by the Comptroller”; and

(H) in paragraph (7) by striking “regulations as the Director may” and inserting “regulations as the Board may”.

#### SEC. 1219. PRACTICES OF CERTAIN MUTUAL THRIFT HOLDING COMPANIES PRESERVED.

(a) **TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL HOLDING COMPANIES.**—Section 3(g) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)) is amended by adding at the end the following new paragraphs:

“(3) **DECLARATION OF DIVIDENDS.**—Every subsidiary savings association of a mutual holding company shall give the Board not less than 30 days advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Board. Any such dividend declared within such period, or without the giving of such notice to the Board, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

“(4) **WAIVER OF DIVIDENDS.**—Any mutual thrift holding company organized under section 10(b) of the Home Owners' Loan Act shall be permitted to waive such company's right to receive any dividend declared by a subsidiary, if—

“(A) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

“(B) the mutual holding company provides the Board with written notice of its intent to waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend and the Board does not object.

“(5) STANDARDS FOR WAIVER OF DIVIDEND.—The Board shall not object to a notice of intent to waive dividends under paragraph (4) if—

“(A) the waiver would not be detrimental to the safe and sound operation of the savings association; and

“(B) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the directors’ fiduciary duties to the mutual members of such company.

“(6) RESOLUTION INCLUDED IN WAIVER NOTICE.—A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the Board, together with any supporting materials relied upon by the board of directors, concluding that the proposed dividend waiver is consistent with the board of director’s fiduciary duties to the mutual members of the mutual holding company.

“(7) VALUATION.—The Board will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.”.

#### SEC. 1220. IMPLEMENTATION PLAN AND REPORTS.

(a) PLAN SUBMISSION.—Within 90 days of the enactment of the Financial Stability Improvement Act of 2009, the Secretary and the Corporation, in consultation with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, shall jointly submit a plan to the Congress and the Inspectors General of the Department of the Treasury and of the Corporation detailing the steps the Secretary, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 1201 through 1216, and the provisions of the amendments made by such sections.

(b) INSPECTORS GENERAL REVIEW OF THE PLAN.—Within 60 days of the date on which the Congress receives the plan required under subsection (a), the Inspectors General of the Department of the Treasury and of the Corporation shall jointly provide a written report to the Secretary and the Corporation and shall submit a copy to the Congress detailing whether the plan conforms with the intent of the provisions of sections 1201 through 1216, and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes into consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) IMPLEMENTATION REPORTS.—Not later than 6 months after the date on which the

Congress receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury and the Corporation shall jointly provide a written report on the status of the implementation of the plan to the Secretary and the Corporation and shall submit a copy to the Congress.

#### SEC. 1221. COMPOSITION OF BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Chairman of the Board of Governors of the Federal Reserve System, or such other member of the Board of Governors as the Chairman of the Board of Governors shall designate”;

(2) by amending subsection (d)(2) to read as follows:

“(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency, the acting Comptroller of the Currency shall be a member of the Board of Directors in the place of the Comptroller of the Currency.”; and

(3) in subsection (f)(2), by striking “or of the Office of Thrift Supervision”.

#### SEC. 1222. AMENDMENTS TO SECTION 3.

Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (b)(1)(C) (relating to the definition of the term “savings association”), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(2) in subsection (1)(5) (relating to the definition of the term “deposit”), in the introductory text, by striking “Director of the Office of Thrift Supervision.”; and

(3) in subsection (z) (relating to the definition of the term “Federal banking agency”), by striking “the Director of the Office of Thrift Supervision.”.

#### SEC. 1223. AMENDMENTS TO SECTION 7.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in paragraph (2)(A)—

(A) in the first sentence, by striking “the Director of the Office of Thrift Supervision”;

(B) in the second sentence, by striking “the Director of the Office of Thrift Supervision.”;

(2) in paragraph (3), in the first sentence, by striking “, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency and the Chairman of the Board of Governors of the Federal Reserve System”; and

(3) in paragraph (7), by striking “, the Director of the Office of Thrift Supervision.”.

#### SEC. 1224. AMENDMENTS TO SECTION 8.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) in subsection (a)(8)(B)(ii), in the last sentence—

(A) by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”; and

(B) by inserting “the Office of Thrift Supervision, as a successor to” after “as a successor to”;

(2) in subsection (o), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(3) in subsection (w)(3)(A), by striking “Office of Thrift Supervision” and inserting “Office of the Comptroller of the Currency”.

#### SEC. 1225. AMENDMENTS TO SECTION 11.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (c)(6)—

(A) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION” and inserting “COMPTROLLER OF THE CURRENCY”;

(B) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(C) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(2) in subsection (d)—

(A) in paragraph (17)(A)—

(i) by striking “, or the Director of the Office of Thrift Supervision”; and

(ii) by striking “appropriate”; and

(B) in paragraph (18)(B), by striking “or the Director of the Office of Thrift Supervision”; and

(3) in subsection (n)—

(A) in paragraph (1)(A), by striking “the Director of the Office of Thrift Supervision, with respect to 1 or more insured”

(B) in paragraph (2)(A), by striking “the Director of the Office of Thrift Supervision”;

(C) in paragraph (4)(D), by striking “and the Director of the Office of Thrift Supervision, as appropriate.”;

(D) in paragraph (4)(G), by striking “and the Director of the Office of Thrift Supervision, as appropriate.”; and

(E) in paragraph (12)(B), by striking “or the Director of the Office of Thrift Supervision, as appropriate.”.

#### SEC. 1226. AMENDMENTS TO SECTION 13.

Section 13(k)(1)(A)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(1)(A)(iv)) is amended by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

#### SEC. 1227. AMENDMENTS TO SECTION 18.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (A), by striking “bank,” and inserting “bank or a savings association; and”;

(B) in subparagraph (B), by inserting “and” at the end after the semicolon;

(C) in subparagraph (C), by striking “bank (except a savings bank supervised by the Director of the Office of Thrift Supervision); and” and inserting “bank or State savings association.”; and

(D) by striking subparagraph (D); and

(2) in subsection (g)(1), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(3) in subsection (i)(2)—

(A) by striking subparagraph (B) and inserting the following new subparagraph:

“(B) the Corporation, if the resulting institution is to be a State nonmember insured bank or insured State savings association.”; and

(B) by striking subparagraph (C);

(4) in subsection (m)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in subparagraph (B)—

(I) by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”; and

(II) by striking “Director may deem appropriate” and inserting “Comptroller may deem appropriate”; and

(C) in paragraph (3)—

(i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in subparagraph (B), by striking “Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

#### SEC. 1228. AMENDMENTS TO SECTION 28.

Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(1) in subsection (e)—

(A) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(ii) in subparagraph (C), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(iii) in subparagraph (F), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(2) in subsection (h)(2), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

#### SEC. 1229. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) AMENDMENTS TO SECTION 802.—Section 802(a)(3) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801(a)(3)) is amended—

(1) by striking “Comptroller of the Currency,” and inserting “Comptroller of the Currency and”; and

(2) by striking “, and the Director of the Office of Thrift Supervision”.

(b) AMENDMENTS TO SECTION 804.—Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803(a)) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) with respect to banks, savings associations, mutual savings banks, and savings banks, only to transactions made in accordance with regulations governing alternative mortgage transactions as prescribed by the Comptroller of the Currency to the extent that such regulations are authorized by rule-making authority granted to the Comptroller of the Currency under laws other than this section; and”;

(2) in paragraph (2), by striking “; and” and inserting a period; and

(3) by striking paragraph (3).

#### SEC. 1230. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

Section 4(f)(12)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(12)(A)) is amended striking “the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or” and inserting “the Federal Deposit Insurance Corporation or”.

#### SEC. 1231. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.

Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) in paragraph (1), by striking “national banks,” and inserting “national banks and federal savings associations,”;

(2) in paragraph (2), by inserting “and” at the end;

(3) in paragraph (3), by striking “, and” and inserting a period; and

(4) by striking paragraph (4).

#### SEC. 1232. AMENDMENTS TO THE BANK SERVICE COMPANY ACT.

Section 1(b) of the Bank Service Company Act (12 U.S.C. 1861(b)) is amended—

(1) in paragraph (4), by striking “insured bank,” and inserting “insured bank or”;

(2) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(3) by striking “, the Federal Savings and Loan Insurance Corporation,”.

#### SEC. 1233. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking “national banks” and inserting “national banks or savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)”; and

(B) in subparagraph (B), by striking “and bank holding companies,” and inserting “, bank holding companies and savings and loan holding companies,”; and

(2) by striking the first paragraph (2) (relating to section 8 of the Federal Deposit Insurance Act).

#### SEC. 1234. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

(a) AMENDMENT TO SECTION 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

(1) in paragraph (1), by striking “national banks,” and inserting “national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”; and

(2) in paragraph (2), by striking “and bank holding companies,” and inserting “, bank holding companies, and savings and loan holding companies,”

(3) by striking paragraph (4); and

(4) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(b) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) in paragraph (1), by striking “national banks,” and inserting “national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”; and

(2) in paragraph (2), by striking “and bank holding companies,” and inserting “, bank holding companies, and savings and loan holding companies,”;

(3) at the end of paragraph (3), by inserting “and” after the comma;

(4) by striking paragraph (4); and

(5) by redesignating paragraph (5) as paragraph (4).

(c) AMENDMENT TO SECTION 210.—Subsection 210(a) of the Depository Institution Management Interlocks Act (12 U.S.C. 3208(a)) is amended—

(1) by striking “his” and inserting “the”; and

(2) by inserting “of the Attorney General” after “enforcement functions”.

#### SEC. 1235. AMENDMENTS TO THE EMERGENCY HOMEOWNERS’ RELIEF ACT.

Section 110 of the Emergency Homeowners’ Relief Act (12 U.S.C. 2709) is amended—

(1) by striking the “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”; and

(2) by striking “the Federal Savings and Loan Insurance Corporation,”.

#### SEC. 1236. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

Section 704(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)) is amended—

(1) in paragraph (1)(A), by striking “and Federal branches and Federal agencies of foreign banks,” and inserting “Federal branches and Federal agencies of foreign banks, or a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation,”;

(2) by striking paragraph (2); and

(3) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8).

#### SEC. 1237. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.

(a) AMENDMENTS TO SECTION 206.—Section 206(g)(7) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)) is amended—

(1) in subparagraph (A)—

(A) in clause (v), by inserting “and” after the semicolon;

(B) in clause (vi)—

(i) by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”; and

(ii) by striking “; and” and inserting a period; and

(C) by striking clause (vii); and

(2) in subparagraph (D)—

(A) in clause (iii), by inserting “and” after the semicolon;

(B) in clause (iv), by striking “; and” and inserting a period; and

(C) by striking clause (v).

#### SEC. 1238. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

(a) AMENDMENT TO SECTION 1002.—Section 1002 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301) is amended by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

(b) AMENDMENT TO SECTION 1003.—Section 1003(1) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(1)) is amended by striking “the Office of Thrift Supervision,”.

(c) AMENDMENTS TO SECTION 1004.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

#### SEC. 1239. AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.

(a) AMENDMENTS TO SECTION 18.—Section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is amended—

(1) by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”;

(2) in paragraph (1)(B), by striking “and the agencies under its administration or supervision”; and

(3) in paragraph (5), by striking “and such agencies”.

(b) **REPEAL OF SECTION 21A.**—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is hereby repealed.

**SEC. 1240. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

Section 19(b) of the Federal Reserve Act (12 U.S.C. 461) is amended—

(1) in paragraph (1)(F), by striking “the Director of the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”; and

(2) in paragraph (4)(B), by striking “the Director of the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”.

**SEC. 1241. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.**

(a) **AMENDMENTS TO SECTION 302.**—Section 302(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

(b) **AMENDMENT TO SECTION 305.**—Section 305(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

(c) **AMENDMENT TO SECTION 308.**—Section 308(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note) is amended by striking “Director of the Office of Supervision” and inserting “Comptroller of the Currency”.

(d) **AMENDMENTS TO SECTION 402.**—Section 402 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437 note) is amended—

(1) in subsection (a), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(2) in subsection (b), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(3) in subsection (e)—

(A) in paragraph (1), by striking “Office of Thrift Supervision” and inserting “Office of the Comptroller of the Currency”; and

(B) in paragraph (2), by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”;

(C) in paragraph (3), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(D) in paragraph (4), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

(e) **AMENDMENT TO SECTION 1103.**—Section 1103(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)(2)) is amended by striking “and the Resolution Trust Corporation”.

(f) **AMENDMENTS TO SECTION 1205.**—Subsection 1205(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 note) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking “Director of the Office of Thrift Supervision, or the Director’s designee” and inserting “Comptroller of the Currency, or the Comptroller’s designee”; and

(B) by striking subparagraph (D); and

(C) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively;

(2) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”; and

(3) in paragraph (3), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”; and

(4) in paragraph (5), by striking “through (E)” and inserting “through (D)”.

(g) **AMENDMENTS TO SECTION 1206.**—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(1) by striking “the Oversight Board of the Resolution Trust Corporation” and inserting “and”; and

(2) by striking “, and the Office of Thrift Supervision.”.

(h) **AMENDMENTS TO SECTION 1216.**—Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2), (5), and (6);

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(C) in paragraph (2) (as redesignated), by adding “and” at the end;

(2) in subsection (c)—

(A) by striking “the Director of the Office of Thrift Supervision,” and inserting “and”; and

(B) by striking “, the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation”; and

(3) in subsection (d)—

(A) by striking paragraphs (3), (5) and (6); and

(B) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.

**SEC. 1242. AMENDMENTS TO THE HOUSING ACT OF 1948.**

Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended in the introductory text by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

**SEC. 1243. AMENDMENTS TO THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992 AND THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.**

(a) **AMENDMENTS TO SECTION 543 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.**—Section 543 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(1) in subsection (c)(1)—

(A) by striking subparagraphs (D) through (F); and

(B) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and (E), respectively; and

(2) in subsection (f)—

(A) in paragraph (2)—

(i) by striking “the Office of Thrift Supervision,”; and

(ii) in subparagraph (D), by striking “the Office of Thrift Supervision,”; and

(B) in paragraph (3)—

(i) by striking “the Office of Thrift Supervision,”; and

(ii) in subparagraph (D), by striking “Office of Thrift Supervision,” and inserting “Comptroller of the Currency.”.

(b) **AMENDMENT TO SECTION 1315 OF THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.**—Section 1315(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4515(b)) is amended by striking “the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.” and inserting “and the Federal Deposit Insurance Corporation.”.

(c) **AMENDMENT TO SECTION 1317 OF THE FEDERAL HOUSING ENTERPRISES FINANCIAL**

**SAFETY AND SOUNDNESS ACT OF 1992.**—Section 1317(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(c)) is amended by striking “the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision” and inserting “or the Federal Deposit Insurance Corporation”.

**SEC. 1244. AMENDMENT TO THE HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983.**

Section 469 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701p-1) is amended in the first sentence by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

**SEC. 1245. AMENDMENTS TO THE NATIONAL HOUSING ACT.**

Section 202(f) of the National Housing Act is amended—

(1) by amending paragraph (5) to read as follows:

“(5) if the mortgagee is a national bank, a subsidiary or affiliate of such a bank, a Federal savings association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency;”;

(2) in paragraph (6), by adding “and” at the end;

(3) in paragraph (7)—

(A) by inserting “or State savings association” after “State bank”; and

(B) by striking “; and” and inserting a period; and

(4) by striking paragraph (8).

**SEC. 1246. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.**

Section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended by striking subparagraph (B).

**SEC. 1247. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.**

(a) **AMENDMENTS TO SECTION 255.**—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by striking “Office of Thrift Supervision (20-4108-0-3-373);”.

(b) **AMENDMENTS TO SECTION 256.**—Section 256(h)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

(1) by striking subparagraphs (C) and (G); and

(2) by redesignating subparagraphs (D), (E), (F), and (H) as subparagraphs (C) through (G), respectively.

**SEC. 1248. AMENDMENTS TO THE CRIME CONTROL ACT OF 1990.**

(a) **AMENDMENTS TO SECTION 2539.**—Section 2539(c)(2) of the Crime Control Act of 1990 (Public Law 101-647) is amended by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) through (G), respectively.

(b) **AMENDMENT TO SECTION 2554.**—Section 2554(b)(2) of the Crime Control Act of 1990 (Public Law 101-647) is amended by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

**SEC. 1249. AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.**

Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking “the Office of Thrift Supervision.”.

**SEC. 1250. AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.**

Section 6(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(3)) is amended by striking “Federal Savings and Loan Insurance Corporation” and inserting “Comptroller of the Currency”.



**SEC. 1251. AMENDMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.**

Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act is amended by striking "Federal Home Loan Bank Board" and inserting "Federal Housing Finance Agency".

**SEC. 1252. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.**

(a) AMENDMENTS TO SECTION 3.—Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking "bank;" and inserting "bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;"

(B) in clause (iii), by adding "and" at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv);

(2) in subparagraph (B)—

(A) in clause (i), by striking "bank;" and inserting "bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;"

(B) in clause (iii), by adding "and" at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv);

(3) in subparagraph (C)—

(A) in clause (i), by striking "bank;" and inserting "bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;"

(B) in clause (iii), by adding "and" at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv); and

(4) in subparagraph (F)—

(A) in clause (i), by striking "bank;" and inserting "or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation;"

(B) by striking clause (ii); and

(C) redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii) and (iv), respectively.

(b) AMENDMENTS TO SECTION 15C.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended in subsection (g)(1) by striking "the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,".

**SEC. 1253. AMENDMENTS TO TITLE 18, UNITED STATES CODE.**

(a) AMENDMENT TO SECTION 212.—Section 212(c)(2) of title 18, United States Code, is amended—

(1) by striking subparagraph (C); and

(2) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively.

(b) AMENDMENT TO SECTION 657.—Section 657 of title 18, United States Code, is amended by striking "Office of Thrift Supervision, the Resolution Trust Corporation,".

(c) AMENDMENT TO SECTION 981.—Section 981(a)(1)(D) of title 18, United States Code, is amended—

(1) by striking "the Resolution Trust Corporation,"; and

(2) by striking "or the Office of Thrift Supervision".

(d) AMENDMENT TO SECTION 982.—Section 982(a)(3) of title 18, United States Code, is amended—

(1) by striking "the Resolution Trust Corporation,"; and

(2) by striking "or the Office of Thrift Supervision".

(e) AMENDMENT TO SECTION 1006.—Section 1006 of title 18, United States Code, is amended—

(1) by striking "Office of Thrift Supervision,"; and

(2) by striking "the Resolution Trust Corporation,".

(f) AMENDMENT TO SECTION 1014.—Section 1014 of title 18, United States Code, is amended—

(1) by striking "the Office of Thrift Supervision,"; and

(2) by striking "the Resolution Trust Corporation,".

(g) AMENDMENT TO SECTION 1032.—Section 1032(1) of title 18, United States Code, is amended—

(1) by striking "the Resolution Trust Corporation,"; and

(2) by striking "or the Director of the Office of Thrift Supervision".

**SEC. 1254. AMENDMENTS TO TITLE 31, UNITED STATES CODE.**

(a) AMENDMENT TO SECTION 309.—Section 309 of title 31, United States Code, is amended to read as follows:

**"§ 309. Division of Thrift Supervision**

"The Division of Thrift Supervision established under section 3(a) of the Home Owners' Loan Act shall be a division in the Office of the Comptroller of the Currency."

(b) AMENDMENTS TO SECTION 321.—Section 321 of title 31, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1), by adding "and" at the end;

(B) in paragraph (2), by striking "and" and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(c) AMENDMENTS TO SECTION 714.—Section 714 of title 31, United States Code, is amended—

(1) in subsection (a), by striking "the Office of the Comptroller of the Currency, and the Office of Thrift Supervision." and inserting "and the Office of the Comptroller of the Currency,";

(2) in subsection (b), by striking all after "has consented in writing." and inserting the following: "Audits of the Federal Reserve Board and Federal reserve banks shall not include unreleased transcripts or minutes of meetings of the Board of Governors or of the Federal Open Market Committee. To the extent that an audit deals with individual market actions, records related to such actions shall only be released by the Comptroller General after 180 days have elapsed following the effective date of such actions.";

(3) in subsection (c)(1), in the first sentence, by striking "subsection," and inserting "subsection or in the audits or audit reports referring or relating to the Federal Reserve Board or Reserve Banks,"; and

(4) by adding at the end the following:

"(f) AUDIT AND REPORT OF THE FEDERAL RESERVE SYSTEM.—

"(1) IN GENERAL.—An audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) shall be completed within 12 months of the enactment of the Financial Stability Improvement Act of 2009.

"(2) REPORT.—

"(A) REQUIRED.—A report on the audit referred to in paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to—

"(i) the Speaker of the House of Representatives;

"(ii) the majority and minority leaders of the House of Representatives;

"(iii) the majority and minority leaders of the Senate;

"(iv) the Chairman and Ranking Member of the committee and each subcommittee of jurisdiction in the House of Representatives and the Senate; and

"(v) any other Member of Congress who requests it.

"(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed—

"(A) as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office; or

"(B) to limit the ability of the Government Accountability Office to perform additional audits of the Board of Governors of the Federal Reserve System or of the Federal reserve banks."

**SEC. 1255. REQUIREMENT FOR COUNTERCYCLICAL CAPITAL REQUIREMENTS.**

Section 908(a) of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)) is amended by adding at the end the following new paragraph:

"(3) Each appropriate Federal banking agency shall, in establishing capital requirements under this Act or other provisions of Federal law for banking institutions, seek to make such requirements countercyclical so that the amount of capital required to be maintained by a banking institution increases in times of economic expansion and may decrease in times of economic contraction, consistent with the safety and soundness of the institution."

**SEC. 1256. TRANSFER OF AUTHORITY TO THE BOARD WITH RESPECT TO SAVINGS AND LOAN HOLDING COMPANIES.**

(a) TRANSFER OF FUNCTIONS.—Notwithstanding any other provision of this subtitle, all functions of the Director of the Office of Thrift Supervision with respect to savings and loan holding companies that are, on a consolidated basis, predominantly engaged in the business of insurance are transferred to the Board.

(b) BOARD'S AUTHORITY.—Notwithstanding any other provision of this subtitle, the Board shall succeed to all powers, authorities, rights, and duties with respect to savings and loan holding companies that are, on a consolidated basis, predominantly engaged in the business of insurance that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date.

(c) SAVINGS AND LOAN HOLDING COMPANY DEFINED.—The term "savings and loan holding company" shall have the meaning given such term under section 10 of the Home Owners' Loan Act.



**Subtitle D—Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions**

**SEC. 1301. TREATMENT OF INDUSTRIAL LOAN COMPANIES, SAVINGS ASSOCIATIONS, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT.**

(a) **DEFINITIONS.**—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) by striking subsection (a)(1) and inserting the following:

“(a) **BANK HOLDING COMPANY.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (5), the term ‘bank holding company’ means—

“(A) any company, other than a company described in section 4(p), which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act; and

“(B) any section 6 holding company established by a company described in section 6(a)(1)(C).”.

(2) in subsection (a)(5), by adding at the end the following new subparagraph:

“(G) No company is a bank holding company by virtue of its ownership or control of a section 6 holding company or any subsidiary of a section 6 holding company, so long as the requirements of sections 4(p) and 6 of this Act are met, as applicable, by the section 6 holding company.”;

(3) in subsection (a)(1)(A), by striking “insured bank” and inserting “insured depository institution”, and by striking “section 3(h) of the Federal Deposit Insurance Act” and inserting “section 3(c)(2) of the Federal Deposit Insurance Act”;

(4) in subsection (c)(2)—

(A) in subparagraph (B), by inserting before the period the following: “that is controlled by a company that is, on a consolidated basis, predominantly engaged in the business of insurance”; and

(B) by striking subparagraph (H); and

(5) by adding at the end the following new subsection:

“(r) **SECTION 6 HOLDING COMPANIES.**—The term ‘section 6 holding company’ means a company that is required to be established as an intermediate holding company under section 6 of this Act.”.

(b) **NONBANKING ACTIVITIES EXCEPTIONS.**—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(1) in subsection (f)(1)(B) by striking “for purposes of this Act” and inserting “for purposes of section 4(a)”; and

(2) in subsection (f)(2)—

(A) in subparagraph (B)(ii), by striking “; or” and inserting a semicolon;

(B) in subparagraph (C), by striking the period and inserting “; or”; and

(C) by adding at the end the following new subparagraph:

“(D) such company fails to—

“(i) establish and register a section 6 holding company pursuant to section 6 of this Act within 180 days after the adoption of rules required by this section; and

“(ii) conduct such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 com-

pany) may continue to engage in that activity so long as at least two-thirds of the assets or two-thirds of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk.”; and

(3) by inserting at the end the following new subsections:

“(p) **CERTAIN COMPANIES NOT SUBJECT TO THIS ACT.**—

“(1) **IN GENERAL.**—Except as provided in paragraphs (6) and (7), any company which—

“(A) was—

“(i) a unitary savings and loan holding company on May 4, 1999, or became a unitary savings and loan holding company pursuant to an application pending before the Director of the Office of Thrift Supervision on or before that date, and that—

“(I) on June 30, 2009, continued to control not fewer than 1 savings association that it controlled on May 4, 1999, or that such company acquired pursuant to an application pending before the Director of the Office of Thrift Supervision on or before such date, which became a bank for purposes of the Bank Holding Company Act as a result of the enactment of section 1301(a)(4)(A); and

“(II) on June 30, 2009, and the date of enactment of the Financial Stability Improvement Act of 2009, such savings association subsidiary was and remains a qualified thrift lender (as determined by section 10 of the Home Owners’ Loan Act); or

“(ii) on November 23, 2009—

“(I) controlled an institution which became a bank as a result of the enactment of section 1301(a)(3)(B) of the Financial Stability Improvement Act of 2009;

“(II) had an application pending, or approved but not executed, before the Federal Deposit Insurance Corporation, that, if approved, would permit the applicant to control an industrial loan company, industrial bank, or other similar institution—

“(aa) that is a federally insured, State-chartered depository institution;

“(bb) that is organized under the laws of a State that on March 5, 1987, had in effect, or had under consideration in the legislature of such State, a statute that required such institution to obtain insurance under the Federal Deposit Insurance Act; and

“(cc) that—

“(AA) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties; or

“(BB) maintains total assets of less than \$100,000,000; or

“(III) controlled an institution it has continuously controlled since March 5, 1987, which became a bank as a result of the enactment of the Competitive Equality Banking Act of 1987, pursuant to subsection (f);

“(B) was not on June 30, 2009—

“(i) a bank holding company; or

“(ii) subject to the Bank Holding Company Act of 1956 by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

“(C) on June 30, 2009, directly or indirectly controlled shares or engaged in activities that did not, on the day before the date of enactment of the Financial Stability Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board,

shall not be treated as a bank holding company for purposes of this Act solely by virtue

of such company’s control of such institution and control of a section 6 holding company established pursuant to section 6.

“(2) **LOSS OF EXEMPTION.**—A company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—

“(A) such company fails to—

“(i) establish and register a section 6 holding company pursuant to section 6 of this Act within 180 days after adoption of rules required by this section, unless the Board grants an extension of such period for compliance which shall not exceed 180 additional days; and

“(ii) maintain a section 6 holding company in compliance with all the requirements for a section 6 holding company under section 6 of this Act.

“(B) such company directly or indirectly (including through the section 6 holding company it must form pursuant to this subsection and section 6 of this Act) acquires control of an additional bank or insured depository institution after June 30, 2009, provided that such company directly or indirectly (including through the section 6 holding company) may acquire—

“(i) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

“(ii) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

“(iii) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

“(iv) shares held in an account solely for trading purposes;

“(v) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

“(vi) loans or other accounts receivable acquired from an insured depository institution in the normal course of business;

“(vii) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

“(viii) shares or assets acquired directly or indirectly by a depository institution controlled by such company in a transaction involving an insured depository institution for which the Federal Deposit Insurance Corporation has been appointed as receiver or which has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority;

“(ix) shares or assets of another industrial loan company meeting the requirements of this Act if such company continuously controlled an industrial loan company since the date of enactment of the Financial Stability Improvement Act of 2009; and

“(x) shares or assets of a savings association acquired directly or indirectly by the savings association controlled by such company if such company continuously controlled a savings association since the date of enactment of the Financial Stability Improvement Act of 2009;

“(C)(i) the section 6 holding company required to be established by such company, or any subsidiary bank of such company undergoes a change in control after the date of enactment of the Financial Stability Improvement Act of 2009, other than—

“(I) the merger or whole acquisition of such parent company in a bona fide merger or acquisition (as shall be determined by the Board, which is authorized to find that a transaction is not a bona fide merger or acquisition and thus results in the loss of exemption), with a company that is predominantly engaged in activities not permissible for a financial holding company pursuant to section 4(k), or

“(II) the acquisition of additional shares by a company that owned or controlled 7.5 percent or more of any class of such parent company's outstanding voting stock on or before June 30, 2009, and continuously owned or controlled at least such 7.5 percent since June 30, 2009.

“(ii) Nothing in this subparagraph shall be construed as preventing the Board from requiring compliance with this subsection, section 6 or the requirements of the Change in Bank Control Act, as applicable to a company that is permitted to acquire control without loss of the exemption in this subsection 4(p)(2); or

“(D) any subsidiary bank of such company engages in any activity after the date of enactment of the Financial Stability Improvement Act of 2009 which would have caused such institution to be a bank (as defined in section 2(c) of this Act, as in effect before such date) if such activities had been engaged in before such date.

“(3) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has—

“(A) either—

“(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

“(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

“(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

“(4) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

“(A) registers as a bank holding company under section 2(a) of this Act;

“(B) immediately upon such registration, complies with all of the requirements of this chapter, and regulations prescribed by the Board pursuant to this chapter, including the nonbanking restrictions of this section; and

“(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

“(5) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Financial Stability Improvement Act of 2009, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

“(6) EXAMINATIONS AND REPORTS.—The Board may, from time to time, examine a company described in paragraph (1) or a bank controlled by such a company, and may require reports under oath from a company described in paragraph (1), and appropriate officers or directors of such company, in each case solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

“(7) LIMITED ENFORCEMENT.—

“(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act, and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

“(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company described in paragraph (1) or any bank controlled by such a company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

“(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

“(q) PRESERVATION OF CERTAIN SAVINGS AND LOAN HOLDING COMPANY AUTHORITIES.—Notwithstanding subsection (a), a company that was a savings and loan holding company on June 30, 2009, that became a bank holding company by operation of section 1301 of the Financial Stability Improvement Act of 2009 may continue to engage in the following activities in which such company was continuously engaged on June 30, 2009 through the day of enactment of the Financial Stability Improvement Act of 2009:

“(1) Furnishing or performing management services for a savings association subsidiary of such company.

“(2) Conducting an insurance agency or escrow business.

“(3) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

“(4) Holding or managing properties used or occupied by a savings association subsidiary of such company.

“(5) Acting as trustee under deed of trust.

“(6) Any other activity in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.”

(c) SECTION 6 HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 5 the following new section:

**“SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.**

“(a) ESTABLISHMENT, PURPOSE AND REQUIREMENTS OF SPECIAL PURPOSE HOLDING COMPANIES.—

“(1) REQUIREMENT.—A special purpose holding company (hereafter in this section referred to as a ‘section 6 holding company’) shall be established and maintained by a company—

“(A) described in section 4(f)(1) as required by section 4(f)(2)(D) of this Act;

“(B) described in section 4(p)(1) as required by section 4(p)(2)(A) of this Act; or

“(C) that—

“(i) is subject to stricter prudential standards under subtitle B of the Financial Stability Improvement Act of 2009;

“(ii) is not—

“(I) a bank holding company, or

“(II) subject to the Bank Holding Company Act by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

“(iii) directly or indirectly controlled shares or engaged in activities that did not, on the date the company is first subject to stricter prudential standards pursuant to subtitle B of the Financial Stability Improvement Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board.

“(2) PURPOSE.—

“(A) The purpose of this section is to provide for consolidated supervision of certain financial companies by the Board.

“(B) A company that is required to form a section 6 holding company shall conduct such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as at least two-thirds of the assets or two-thirds of the revenues of generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk.

“(C) A section 6 holding company shall be prohibited from conducting any nonbanking activities or investing in any nonbank companies other than those permissible for a financial holding company under sections 3 and 4, unless the Board specifically determines otherwise in accordance with paragraph (6), and provided that, for purposes of this paragraph, a company designated as a section 6 holding company and described under paragraph (4) (or any permitted successor) is not prohibited from continuing to engage in any impermissible activity in which it was engaged continuously during the 6 months prior to the date of enactment, from owning any shares or types of assets related to such activity, or continuing to own such other shares or assets that it owned on the date of enactment.

“(3) REGISTRATION.—

“(A) A section 6 holding company required to be established by a company described in paragraph (1)(A) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(f).

“(B) A section 6 holding company required to be established by a company described in paragraph (1)(B) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(p).

“(C) A section 6 holding company required to be established by a company described in paragraph (1)(C) shall be—

“(i) established, and such company shall register with the Board, as a bank holding company within 90 days after such company or such company's parent holding company has been notified by the Board that such company is subject to stricter prudential standards under subtitle B of the Financial

Stability Improvement Act of 2009, unless the Board grants an extension of such period for compliance which shall not exceed 180 additional days;

“(ii) treated as a financial holding company under this Act; and

“(iii) subject to the authority of the Board to enforce compliance with the provisions of this section under section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such company were a bank holding company.

“(4) **RULE OF CONSTRUCTION.**—For purposes of this section, designation of an already established intermediate holding company that will serve as the section 6 holding company shall satisfy the requirement to establish a section 6 holding company, provided that such existing intermediate holding company complies with all other provisions applicable to a section 6 holding company.

“(5) **LIMITATIONS ON AUTHORITY OF COMMERCIAL PARENT.**—A company that is not a bank holding company or treated as a bank holding company pursuant to section 8(a) of the International Bank Act of 1978 that has been notified that it is a financial holding company subject to stricter standards, pursuant to subtitle A of the Financial Stability Improvement Act of 2009, shall—

“(A) not be deemed to be, or treated as, a bank holding company, solely because of its ownership or control of a section 6 holding company; and

“(B) not be subject to this Act, except for such provisions as are explicitly made applicable in this section.

“(6) **BOARD AUTHORITY.**—

“(A) **RULES AND EXEMPTIONS.**—In addition to any other authority of the Board, the Board shall prescribe rules and regulations or issue orders providing for the establishment and registration of section 6 holding companies and shall provide exemptions from the requirements of this Act (including an order in response to a request from an affected company), including, but not limited to, exemptions—

“(i) with respect to the requirement to conduct such activities which are financial in nature, as determined under section 4(k), other than financial activities conducted for such company or any affiliate, including any financial activity engaged in for both the company or an affiliate and a nonaffiliate as permitted under section 4(f)(2)(D) or section 6(a)(2)(B), through such section 6 holding company, if the Board makes a finding that such exemption—

“(I)(aa) would facilitate the extension of credit to individuals, households, and businesses; or

“(bb) would allow for greater efficiency, improved customer service, or other public benefits in the conduct of financial activities by affected companies;

“(II) would not threaten the safety and soundness of the section 6 holding company, or of any insured depository institution or other subsidiary of the section 6 holding company;

“(III) would not increase systemic risk or threaten the stability of the overall financial system;

“(IV) would not, as applied to the activities that are the subject of the rule, order or request, result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; and

“(V) would meet the financial and managerial standards for financial holding companies described in subparagraphs (A) and (B) of section 4(j)(4); and

“(ii) from the affiliate transaction requirements of subsection (b), including but not limited to exemptions that would facilitate extensions of credit to unaffiliated persons for the personal, household, or business purposes of such unaffiliated persons, unless the Board makes a finding that such exemption—

“(I) is not consistent with the purposes of section 23A and section 23B of the Federal Reserve Act;

“(II) would threaten the safety and soundness of the section 6 holding company, or any insured depository institution or other subsidiary of the section 6 holding company;

“(III) would increase systemic risk or threaten the stability of the overall financial system;

“(IV) would not, as applied to the activities that are the subject of the rule, order or request result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; or

“(V) would permit an unfair, deceptive, abusive, or unsafe-and-unsound act or practice.

“(B) **PARENT COMPANY REPORTS.**—The Board may, from time to time, require reports under oath from a company that controls a section 6 holding company, and appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section (including assessing the company's ability to serve as a source of financial strength pursuant to subsection (g)) and enforcing such compliance.

“(C) **LIMITED PARENT COMPANY ENFORCEMENT.**—

“(i) **IN GENERAL.**—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

“(ii) **APPLICATION OF OTHER ACT.**—Any violation of this subsection by any company that controls a section 6 holding company or any bank controlled by such a company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of clause (i).

“(iii) **NO EFFECT ON OTHER AUTHORITY.**—No provision of this subparagraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

“(b) **RESTRICTIONS ON AFFILIATE TRANSACTIONS.**—

“(1) **SECTION 23A AND 23B APPLICABILITY.**—

“(A) **IN GENERAL.**—Transactions between a section 6 holding company (or any nonbank subsidiary thereof) and any affiliate not controlled by the section 6 holding company shall be subject to the restrictions and limitations contained in section 23A and section 23B of the Federal Reserve Act as if the section 6 holding company were a member bank, provided, that a transaction that otherwise

would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services but shall be subject to review under section 23A(f)(1) of such Act.

“(B) **COVERED TRANSACTIONS.**—A depository institution controlled by a section 6 holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate that is not the section 6 holding company or a subsidiary of the section 6 holding company; provided that, for purposes of the prohibition, a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services, but shall be subject to review under section 23A(f)(1) of the Federal Reserve Act.

“(2) **RULE OF CONSTRUCTION.**—No provision of this subsection shall be construed as exempting any subsidiary insured depository institution of a section 6 holding company from compliance with section 23A or 23B of the Federal Reserve Act with respect to each affiliate of such institution (as defined in section 23A or 23B of the Federal Reserve Act), including any affiliate that is the section 6 holding company or subsidiary of the section 6 holding company.

“(c) **TYING PROVISIONS.**—A company that directly or indirectly controls a section 6 holding company shall be—

“(1) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

“(2) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

“(d) **FINANCIAL HOLDING COMPANY REQUIREMENTS.**—A section 6 holding company shall be subject to—

“(1) the conditions for engaging in expanded financial activities in section 4(l); and

“(2) the provisions applicable to financial holding companies that fail to meet certain requirements in section 4(m).

“(e) **INDEPENDENCE OF SECTION 6 HOLDING COMPANY.**—

“(1) No less than 25 percent of the members of the board of directors of a section 6 holding company, and each subsidiary of a section 6 holding company, shall be independent of the parent company of the section 6 holding company and any subsidiary of such parent company. For purposes of this subsection, a director shall be independent of the parent company if such person is not currently serving, and has not within the previous two-year period served, as a director, officer, or employee of any affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

“(2) No executive officer of a section 6 holding company or any subsidiary of a section 6 holding company may serve as a director, officer, or employee of an affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

“(3) The Board shall issue regulations that require effective legal and operational separation of the functions of a section 6 holding company from its affiliates that are not subsidiaries of such section 6 holding company,

provided, however that such rules shall not require operational separation of internal functions including, but not limited to, human resources management, employee benefit plans, and information technology.

“(f) **SOURCE OF STRENGTH.**—A company that directly or indirectly controls a section 6 holding company shall serve as a source of financial strength to its subsidiary section 6 holding company.”.

(d) **CONFORMING CHANGES.**—Section 4(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)), is amended—

(1) in paragraph (1), by striking “subparagraph (D), (F), (G), or (H)” and inserting “subparagraph (C) or (D)”;

(2) in paragraph (2), by striking “subparagraph (D), (F), (G), or (H)” and inserting “subparagraph (C) or (D)”.

**SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS BANK HOLDING COMPANIES.**

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting at the end the following new subsection:

“(h) **CONVERSION TO BANK HOLDING COMPANY BY OPERATION OF LAW.**—

“(1) **CONVERSION BY OPERATION OF LAW.**—A company that, on the day before the date of enactment of the Financial Stability Improvement Act of 2009, was not a bank holding company but which, by reason of sections 4(p) and 6 becomes a bank holding company by operation of law, shall register as a bank holding company with the Board in accordance with section 5(a) within 90 days of the date of enactment of that Act.

“(2) **COMPLIANCE WITH BANK HOLDING COMPANY ACT.**—With respect to any company described in paragraph (1), the Board may grant temporary exemptions or provide other appropriate temporary relief to permit such company to implement measures necessary to comply with the requirements under the Bank Holding Company Act.”.

**SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.**

(a) **REPORTS OF BANK HOLDING COMPANIES.**—Sections 5(c)(1)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)(A) and (B)) are amended to read as follows:

“(A) **IN GENERAL.**—The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath that the Board determines are necessary or appropriate for the Board to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with the applicable provisions of law.

“(B) **USE OF EXISTING REPORTS.**—

“(i) **IN GENERAL.**—The Board shall, to the fullest extent possible, use:

“(I) reports that a bank holding company or any subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

“(II) information that is otherwise required to be reported publicly; and

“(III) externally audited financial statements.

“(ii) **AVAILABILITY.**—A bank holding company or a subsidiary of such company shall promptly provide to the Board, at the request of the Board, a report referred to in clause (i)(I).”.

(b) **FUNCTIONALLY REGULATED SUBSIDIARY.**—Section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end the following new subparagraph:

“(C) **DEFINITION.**—For purposes of this subsection and section 6, the term ‘functionally regulated subsidiary’ means any subsidiary (other than a depository institution) of a bank holding company that is—

“(i) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, for which the Securities and Exchange Commission is the Federal regulatory agency;

“(ii) an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency;

“(iii) an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; and

“(iv) a futures commission merchant, commodity trading advisor, and commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, for which the Commodity Futures Trading Commission is the Federal regulatory agency, with respect to the commodities activities of such entity and activities incidental to such commodities activities.”.

(c) **EXAMINATIONS OF BANK HOLDING COMPANIES.**—Sections 5(c)(2)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)(A) and (B)) are amended to read as follows:

“(A) **IN GENERAL.**—The Board may make examinations of a bank holding company and any subsidiary of such a company to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with applicable provisions of law.

“(B) **FUNCTIONALLY REGULATED AND DEPOSITORY INSTITUTION SUBSIDIARIES.**—The Board shall, to the fullest extent possible, use reports of examination of functionally regulated subsidiaries and subsidiary depository institutions made by other Federal or State regulatory authorities.”.

(d) **REGULATION OF FINANCIAL HOLDING COMPANIES.**—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended by striking subparagraphs (C), (D), and (E).

(e) **AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK HOLDING COMPANIES.**—The Bank Holding Company Act of 1956 (12 U.S.C. 1841, et seq.) is amended by striking section 10A (12 U.S.C. 1848a).

**SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.**

Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking “and”;

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following new subparagraph:

“(C) the bank holding company is well capitalized and well managed; and”;

(4) in subparagraph (D) (as so redesignated) by amending clause (ii) to read as follows:

“(ii) a certification that the company meets the requirements of subparagraphs (A) through (C).”.

**SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.**

(a) **BANK HOLDING COMPANY ACT OF 1956 AMENDMENT.**—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

(1) by striking “adequately capitalized” and inserting “well capitalized”; and

(2) by striking “adequately managed” and inserting “well managed”.

(b) **FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.**—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to read as follows:

“(B) the responsible agency determines that the resulting bank will be well capitalized and well managed upon the consummation of the transaction.”.

**SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.**

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)(1), by striking subparagraph (D) and inserting the following new subparagraph:

“(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and”

(2) in subsection (b)(7)(A), by inserting “(including a purchase of assets subject to an agreement to repurchase)” after “affiliate”;

(3) in subsection (b)(7)(C), by striking “, including assets subject to an agreement to repurchase.”;

(4) in subsection (b)(7)(D)—

(A) by inserting “or other debt obligations” after “acceptance of securities”, and

(B) by striking “or” after the semicolon;

(5) in subsection (b)(7), by inserting at the end the following new subparagraphs:

“(F) any securities borrowing and lending transactions with an affiliate to the extent that the transactions create credit exposure of the member bank to the affiliate; or

“(G) current and potential future credit exposure to the affiliate on derivative transactions with the affiliate.”;

(6) in subsection (c)(1), by striking “at the time of the transaction,” and inserting “at all times”;

(7) in subsection (c)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively;

(8) in subsection (c)(3) (as so redesignated by paragraph (7)), by inserting “or other debt obligations” after “securities”;

(9) in subsection (f)(2), by inserting at the end the following: “The Board may not, by regulation or order, grant an exemption under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.”; and

(10) in subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4);

(B) and inserting after paragraph (2) the following new paragraph:

“(3) **CONCURRENCE OF THE COMPTROLLER OF THE CURRENCY.**—With respect to a transaction or relationship involving a national bank or Federal savings association, the Board may not grant an exemption under this section unless the Board obtains the concurrence of the Comptroller of the Currency (in addition to obtaining the concurrence of the Chairman of the Federal Deposit Insurance Corporation under paragraph (2)).”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 23B(e) of the Federal Reserve

Act (12 U.S.C. 371-1(e)), is amended by inserting at the end the following new paragraph:

“(3) The Board may not grant an exemption or exclusion under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.”.

**SEC. 1307. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.**

Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

**SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.**

Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

(1) in subsection (b)(1), by striking “shall include all direct or indirect” and all that follows through “commitment;” and inserting: “shall include—

“(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

“(B) to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

“(C) credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;”.

(2) in subsection (b)(2) by striking the period at the end and inserting “; and”;

(3) in subsection (b), by inserting after paragraph (2) the following new paragraph:

“(3) the term ‘derivative transaction’ means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.”; and

(4) in subsection (d), by inserting after paragraph (2) the following new paragraph:

“(3) The Comptroller of the Currency shall prescribe rules to administer and carry out the purposes of this section with respect to credit exposures arising from any derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. Rules required to be prescribed under this paragraph (3) shall take effect, in final form, not later than 180 days after the date of enactment of the Financial Stability Improvement Act of 2009.”.

**SEC. 1309. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS AND THRIFTS.**

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.) is amended by redesignating section 7 as section 8 and by inserting after section 6 the following:

**“SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.**

“A national bank may not convert to a State bank during any period of time in which it is subject to a cease and desist

order, memorandum of understanding, or other enforcement action entered into with or issued by the Comptroller of the Currency.”

(b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended by adding at the end the following new sentence: “The Comptroller of the Currency shall not approve the conversion of a State bank to a national bank during any period of time in which the State bank is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into or issued by a State bank supervisor, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or a Federal Reserve Bank.”.

(c) CONVERSION BETWEEN A FEDERAL SAVINGS ASSOCIATION AND A STATE SAVINGS ASSOCIATION.—Section 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following new paragraph:

“(6) PROHIBITION ON CERTAIN CONVERSIONS.—A Federal savings association may not convert to a State savings association, and a State savings association may not convert to a Federal savings association, during any period of time in which such savings association is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into with or issued by the Director of the Office of Thrift Supervision or a State savings association supervisor.”.

**SEC. 1310. LENDING LIMITS TO INSIDERS.**

Section 22(h)(9)(D)(ii) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by inserting “, except that a member bank shall be deemed to have extended credit to a person if the member bank has credit exposure to the person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person” before the period at the end.

**SEC. 1311. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.**

(a) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (y) (as added by section 1408) the following new subsection:

“(z) GENERAL PROHIBITION.—An insured depository institution shall not purchase an asset from, or sell an asset to, one of its executive officers, directors, or principal shareholders or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act) unless the transaction is on market terms and, if the transaction represents more than 10 percent of the institution’s capital stock and surplus, the transaction has been approved in advance by a majority of the institution’s board of directors (with interested directors of the insured depository institution not participating in the approval of the transaction).”.

(b) FDIC RULEMAKING AUTHORITY.—The Federal Deposit Insurance Corporation may prescribe rules to implement the requirements of subsection (a) and the amendments made by subsection (a).

(c) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22 of the Federal Reserve Act (12 U.S.C. 375) is amended by striking subsection (d).

**SEC. 1312. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING COMPANIES.**

Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by

inserting “, including regulations relating to the capital levels of bank holding companies” before the period at the end.

**SEC. 1313. ENHANCEMENTS TO FACTORS TO BE CONSIDERED IN CERTAIN ACQUISITIONS.**

(a) BANK ACQUISITIONS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by inserting at the end the following new paragraph:

“(7) FINANCIAL STABILITY.—

“(A) IN GENERAL.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation may pose risk to the stability of the United States financial system or the economy of the United States, including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature.

“(B) STANDARDS FOR APPROVAL.—The Board may in its sole discretion disapprove any acquisition, merger, or consolidation of, or by, a financial company subject to stricter prudential standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a greater threat to financial stability during times of severe economic distress.”.

(b) NONBANK ACQUISITIONS.—

(1) Section 4(j)(2)(A) of the Bank Holding Company is amended by—

(A) striking “or” before “unsound banking practices”; and

(B) inserting before the period at the end the following: “, or risk to the stability of the United States financial system or the economy of the United States”.

(2) Section 4(k)(6) of the Bank Holding Company Act of 1956 is amended by striking subparagraph (B) and inserting the following new subparagraph:

“(B) A financial holding company may commence any activity or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board, except—

“(i) for a transaction in which the total assets to be acquired by the financial holding company exceed \$25 billion; and

“(ii) as provided in subsection (j) with regard to the acquisition of a savings association.”.

(c) BANK MERGER ACT TRANSACTIONS.—Section 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by—

(1) in paragraph (5), by striking “and” before “the convenience and needs of the community to be served”;

(2) in paragraph (5), by inserting before the period at the end the following: “, and the risk to the stability of the United States financial system and the economy of the United States based on, among other things, the scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature”; and

(3) in paragraph (7)(B), by inserting “subparagraphs (A) and (B) of” before “paragraph”.

**SEC. 1314. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.**

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

**SEC. 1315. EXAMINATION FEES FOR LARGE BANK HOLDING COMPANIES.**

The Bank Holding Company Act of 1956 is amended by inserting after section 5 the following new section:

**“SEC. 5A. EXAMINATION FEES.**

“The Board of Governors of the Federal Reserve System or the Federal Reserve Banks shall assess fees on bank holding companies with total consolidated assets of \$10 billion or more. Such fees shall be sufficient to defray the cost of the examination of such bank holding companies.”

**Subtitle E—Improvements to the Federal Deposit Insurance Fund****SEC. 1401. ACCOUNTING FOR ACTUAL RISK TO THE DEPOSIT INSURANCE FUND.**

(a) Section 7(b)(1)(C) of the Federal Deposit Insurance Act is amended to read as follows:

“(C) ‘RISK-BASED ASSESSMENT SYSTEM’ DEFINED.—For purposes of this paragraph, the term ‘risk-based assessment system’ means a system for calculating a depository institution’s assessment based on—

“(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution;

“(ii) the likely amount of any such loss;

“(iii) the risks to the Deposit Insurance Fund attributable to such depository institution, including risks posed by its affiliates to the extent the Corporation determines appropriate, taking into account—

“(I) the amount, different categories, and concentrations of assets of the insured depository institution and its affiliates, including both on-balance sheet and off-balance sheet assets;

“(II) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the insured depository institution and its affiliates; and

“(III) any other factors the Corporation determines are relevant to assessing the risks; and

“(iv) the revenue needs of the Deposit Insurance Fund.”

(b) Section 7(b)(2) of the Federal Deposit Insurance Act is amended by striking subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

**SEC. 1402. CREATING A RISK-FOCUSED ASSESSMENT BASE.**

Section 7(b)(2) of such Act, as amended, is further amended by amending subparagraph (C) to read as follows:

“(C) ASSESSMENT.—The assessment of any insured depository institution imposed under this subsection shall be an amount equal to the product of—

“(i) an assessment rate established by the Corporation; and

“(ii) the amount of the insured depository institution’s average total assets during the assessment period minus the amount of the insured depository institution’s average tangible equity during the assessment period.”

**SEC. 1403. ELIMINATION OF PROCYCLICAL ASSESSMENTS.**

Section 7(e) of the Federal Deposit Insurance Act is amended—

(1) in paragraph (2)—

(A) by amending subparagraph (B) to read as follows:

“(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).”;

(B) by amending subparagraph (C) to read as follows:

“(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph”; and

(C) by striking subparagraphs (D) through (G); and

(2) in paragraph (4)(A) by striking “paragraphs (2)(D) and” and inserting “paragraphs (2) and”.

**SEC. 1404. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.**

(a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking “, after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision, as appropriate.”

(b) Section 7(b)(1)(E) of the Federal Deposit Insurance Act is amended—

(1) in clause (i), by striking “such as” and inserting “including”; and

(2) by striking clause (iii).

**SEC. 1405. TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE.**

(a) Section 7(b)(3)(B) of the Federal Deposit Insurance Act is amended to read as follows:

“(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.15 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).”

(b) Section 3(y)(3) of the Federal Deposit Insurance Act is amended by inserting “, or such comparable percentage of the assessment base set forth in section 7(b)(2)(C)” before the period.

(c) For a period of not less than 5 years after the date of the enactment of this title, the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under section 7(b)(2)(C) of the Federal Deposit Insurance Act.

**Subtitle F—Improvements to the Asset-backed Securitization Process****SEC. 1501. SHORT TITLE.**

This subtitle may be cited as the “Credit Risk Retention Act of 2009”.

**SEC. 1502. CREDIT RISK RETENTION.**

(a) AMENDMENT.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 28 the following new section:

**“SEC. 29. CREDIT RISK RETENTION.**

“(a) IN GENERAL.—

“(1) INTEREST IN LOANS MADE BY CREDITORS.—Within 180 days of the date of the enactment of this section, the appropriate agencies shall prescribe regulations to require any creditor that makes a loan to retain an economic interest in a material portion of the credit risk of any such loan that the creditor transfers, sells, or conveys to a third party, including for the purpose of including such loan in a pool of loans backing an issuance of asset-backed securities.

“(2) INTEREST IN ASSETS BACKING ASSET-BACKED SECURITIES.—The appropriate agencies shall prescribe regulations to require any securitizer of asset-backed securities that are backed by assets not described in paragraph (1) to retain an economic interest in a material portion of any such asset used to back an issuance of securities.

“(b) ALTERNATIVE RISK RETENTION FOR CREDIT SECURITIZERS.—The appropriate agencies may apply the risk retention requirements of this section to securitizers of loans or particular types of loans in addition to or in substitution for any or all of the requirements that apply to creditors that make such loans or types of loans, if the agencies determine that applying the requirements to such securitizers would—

“(1) be consistent with helping to ensure high quality underwriting standards for creditors, taking into account other applicable laws, regulations, and standards; and

“(2) facilitate appropriate risk management practices by such creditors, improve access of consumers to credit on reasonable terms, or otherwise serve the public interest.

“(c) STANDARDS FOR REGULATION.—Regulations prescribed under subsections (a) and (b) shall—

“(1) prohibit a creditor or securitizer from directly or indirectly hedging or otherwise transferring the credit risk such creditor or securitizer is required to retain under the regulations;

“(2) require a creditor or securitizer to retain 5 percent of the credit risk on any loan that is transferred, sold, or conveyed by such creditor or securitized by such securitizer except—

“(A) an appropriate agency may specify that the percentage of risk may be less than 5 percent of the credit risk, or exempt such creditor or securitizer from the risk retention requirement, if—

“(i) the credit underwriting by the creditor or the due diligence by the securitizer meets such standards as an appropriate agency prescribes; and

“(ii) the loan that is transferred, sold, or conveyed by such creditor or securitized by such securitizer meets terms, conditions, and characteristics that are determined by an appropriate agency to reflect loans with reduced credit risk, such as loans that meet certain interest rate thresholds, loans that are fully amortizing, and loans that are included in a securitization in which a third-party purchaser specifically negotiates for the purchase of the first-loss position and provides due diligence on all individual loans in the pool prior to the issuance of the asset-backed securities, and retains a first-loss position; and

“(B) an appropriate agency may specify that the percentage of risk may be more than 5 percent of the credit risk if the underwriting by the creditor or due diligence by the securitizer is insufficient;

“(3) specify that the credit risk retained must be no less at risk for loss than the average of the credit risk not so retained; and

“(4) set the minimum duration of the required risk retention.

“(d) EXEMPTIONS AND ADJUSTMENTS.—

“(1) IN GENERAL.—The appropriate agencies shall have authority to provide exemptions or adjustments to the requirements of this section, including exemptions or adjustments relating to the percentage of risk retention required to be held and the hedging prohibition.

“(2) APPLICABLE STANDARDS.—Any exemptions or adjustments provided under paragraph (1) shall—

“(A) be consistent with the purpose of ensuring high quality underwriting standards for creditors, taking into account other applicable laws, regulations, or standards; and

“(B) facilitate appropriate risk management practices by such creditors, improve access for consumers to credit on reasonable terms, or otherwise serve the public interest.

“(e) APPROPRIATE AGENCY DEFINED.—For purposes of this section, the term ‘appropriate agency’ means any of the following agencies with regard to the respective loans and asset-backed securities:

“(1) BANKING AGENCIES.—The Federal banking agencies, the National Credit Union Administration Board, and the Commission, with respect to any loan or asset-backed security for which there is no appropriate agency under paragraph (2).



“(2) OTHER AGENCIES.—

“(A) With regard to any mortgage insured under title II of the National Housing Act, the Secretary of Housing and Urban Development.

“(B) With regard to any loan meeting the conforming loan standards of the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation or any asset-backed security issued by either such corporation, the Federal Housing Finance Agency.

“(C) With regard to any loan insured by the Rural Housing Service, the Rural Housing Service.

“(f) JOINT APPROPRIATE AGENCY REGULATIONS.—All regulations prescribed by the agencies identified in subsection (e)(1) shall be prescribed jointly by such agencies.

“(g) ENFORCEMENT.—

“(1) Compliance with the requirements imposed under this section shall be enforced under—

“(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

“(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

“(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, bank holding companies, and subsidiaries of bank holding companies (other than insured depository institutions), by the Board; and

“(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

“(B) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation and a savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank); and

“(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union.

“(2) Except to the extent that enforcement of the requirements imposed under this section is specifically committed to some other Federal agency under paragraph (1), the Commission shall enforce such requirements.

“(3) The authority of the Commission under this section shall be in addition to its existing authority to enforce the securities laws.

“(h) EXCLUSIONS.—Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan—

“(1) insured, guaranteed, or administered by the Secretary of Education, the Secretary of Agriculture, the Secretary of Veterans Affairs, or the Small Business Administration; or

“(2) made, insured, guaranteed, or purchased by any person that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

“(i) DEFINITIONS.—For purposes of this section:

“(1) The term ‘asset-backed security’ has the meaning given such term in section

229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto.

“(2) The term ‘Federal banking agencies’ means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation.

“(3) The term ‘insured depository institution’ has the meaning given such term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

“(4) The term ‘securitization vehicle’ means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

“(A) is the issuer, or is created by the issuer, of pass-through certificates, participation certificates, asset-backed securities, or other similar securities backed by a pool of assets that includes loans; and

“(B) holds such loans.

“(5) The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans for the benefit of the securitization vehicle.”.

(b) STUDY ON RISK RETENTION.—

(1) STUDY.—The Board, in coordination and consultation with the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission, shall conduct a study of the combined impact by each individual class of asset-backed security of—

(A) the new credit risk retention requirements contained in the amendment made by subsection (a); and

(B) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board.

(2) REPORT.—Not later than 90 days after the date of enactment of this title, the Board shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

**SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE SECURITIES EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.**

Section 15(d) of Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

(1) by inserting “, other than securities of any class of asset-backed security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto),” after “securities of each class”; and

(2) by inserting at the end the following: “The Commission may by rules and regulations provide for the suspension or termination of the duty to file under this subsection for any class of issuer of asset-backed security upon such terms and conditions and for such period or periods as it deems necessary or appropriate in the public interest or for the protection of investors. The Commission may, for the purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuer of asset-backed security.”; and

(3) by inserting after the fifth sentence the following: “The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security,

information regarding the assets backing that security. In adopting regulations under this subsection, the Commission shall set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes. The Commission shall require issuers of asset-backed securities at a minimum to disclose asset-level or loan-level data necessary for investors to independently perform due diligence. Asset-level or loan-level data shall include data with unique identifiers relating to loan brokers or originators, the nature and extent of the compensation of the broker or originator of the assets backing the security, and the amount of risk retention of the originator or the securitizer of such assets.”.

**SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.**

The Commission shall prescribe regulations on the use of representations and warranties in the asset-backed securities market that—

(1) require credit rating agencies to include in reports accompanying credit ratings a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from representations, warranties, and enforcement mechanisms in similar issuances; and

(2) require disclosure on fulfilled repurchase requests across all trusts aggregated by originator, so that investors may identify asset originators with clear underwriting deficiencies.

**SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.**

(a) IN GENERAL.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

(b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking “(4)(6)” and inserting “(4)(5)”.

**SEC. 1506. STUDY ON THE MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS.**

(a) STUDY REQUIRED.—The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic effects of the risk retention requirements under this subtitle, and the amendments made by this subtitle, with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market. Such study shall include—

(1) an analysis of the effects of risk retention on real estate asset price bubbles, including a retrospective estimate of what fraction of real estate losses may have been averted had such requirements been in force in recent years;

(2) an analysis of the feasibility of minimizing real estate price bubbles by proactively adjusting the percentage of risk retention that must be borne by creditors and securitizers of real estate debt, as a function of regional or national market conditions;

(3) a comparable analysis for proactively adjusting mortgage origination requirements;

(4) an assessment of whether such proactive adjustments should be made by an independent regulator, or in a formulaic and transparent manner;

(5) an assessment of whether such adjustments should take place independently or in concert with monetary policy; and



(6) recommendations for implementation and enabling legislation.

(b) **REPORT.**—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of the Financial Services Oversight Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

**Subtitle G—Enhanced Dissolution Authority**  
**SEC. 1601. SHORT TITLE; PURPOSE.**

(a) **SHORT TITLE.**—This subtitle may be cited as the “Dissolution Authority for Large, Interconnected Financial Companies Act of 2009”.

(b) **PURPOSE.**—The purpose of this subtitle is to protect the financial system of the United States in times of severe crisis by providing for the orderly resolution of large, interconnected financial companies whose failure could create, or increase, the risk of significant liquidity, credit, or other financial problems spreading among financial institutions or markets and thereby threaten the stability of the overall financial system of the United States. There shall be a strong presumption that resolution under the bankruptcy laws will remain the primary method of resolving financial companies, and the authorities contained in this subtitle will only be used in the most exigent circumstances.

**SEC. 1602. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) **APPROPRIATE REGULATORY AGENCY.**—

(A) **CORPORATION AND COMMISSION.**—The term “appropriate regulatory agency” means—

- (i) the Corporation;
- (ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) (other than an insured depository institution)); and
- (iii) if the financial company or an affiliate of the financial company is an insurance company (other than an insured depository institution), the applicable State insurance authority of the State in which the insurance company is domiciled.

(B) **RULES OF CONSTRUCTION.**—More than 1 agency may be an appropriate regulatory agency with respect to any given financial company. In such instances, the Commission shall be the appropriate regulatory agency for purposes of section 1603 if the largest subsidiary of the financial company is a broker or dealer as measured by total assets as of the end of the previous calendar quarter, the applicable State insurance authority of the State in which the insurance company is domiciled shall be the appropriate regulatory agency for purposes of section 1603 if the largest subsidiary of the financial company is an insurance company as measured by total assets as of the end of the previous calendar quarter, and otherwise the Corporation shall be the appropriate regulatory agency for purposes of section 1603.

(2) **BRIDGE FINANCIAL COMPANY.**—The term “bridge financial company” means a new financial company organized in accordance with section 1609(h) by the Corporation.

(3) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

(4) **CORPORATION.**—The term “Corporation” means the Federal Deposit Insurance Corporation.

(5) **COVERED FINANCIAL COMPANY.**—The term “covered financial company” means a financial company for which a determination has

been made pursuant to and in accordance with section 1603(b).

(6) **COVERED SUBSIDIARY.**—The term “covered subsidiary” means a subsidiary covered in paragraph (9)(B)(v).

(7) **CUSTOMER PROPERTY.**—The term “customer property” has the meaning ascribed to it in the Securities Investor Protection Act of 1970.

(8) **FEDERAL RESERVE BOARD.**—The term “Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

(9) **FINANCIAL COMPANY.**—The term “financial company” means any company that—

(A) is incorporated or organized under Federal law or the laws of any State;

(B) is—

(i) any bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any company that has been subjected to stricter prudential regulation under section 1103;

(iii) any insurance company;

(iv) any company predominantly engaged in activities that are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) or that have been identified for stricter prudential standards under section 1103 of this title; or

(v) any subsidiary of companies described in clauses (i) through (iv) (other than an insured depository institution or any broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) that is a member of the Securities Investor Protection Corporation); and

(C) that is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.).

(10) **FUND.**—The term “Fund” means the Systemic Dissolution Fund established in accordance with section 1609(n).

(11) **INSURANCE COMPANY.**—The term “insurance company” includes any person engaged in the business of insurance to the extent of such activities.

(12) **SECRETARY.**—The term “Secretary” shall mean the Secretary of the Treasury.

(13) **STATE.**—The term “State” means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(14) **CERTAIN OTHER TERMS.**—The terms “affiliate,” “company,” “control,” “deposit,” “depository institution,” “foreign bank,” “insured depository institution,” and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

**SEC. 1603. SYSTEMIC RISK DETERMINATION.**

(a) **WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE APPROPRIATE REGULATORY AGENCY.**—

(1) **VOTE REQUIRED.**—At the request of the Secretary or the Chairman of the Federal Reserve Board or, in cases where an financial company has a broker or dealer as its largest subsidiary as measured by total assets as of the end of the previous calendar quarter, the Commission, the Federal Reserve Board and the appropriate regulatory agency shall; or on their own initiative, the Federal Reserve Board and the appropriate regulatory agency may; consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company, which recommendation shall be made upon a

vote of not less than two-thirds of the members of the Federal Reserve Board then serving and two-thirds of the members of the board or of the commission then serving of the appropriate regulatory agency, as applicable.

(2) **RECOMMENDATION REQUIRED.**—Any written recommendations made by the Federal Reserve Board and the appropriate regulatory agency under paragraph (1) shall contain the following:

(A) A description of the effect that the default of the financial company would have on economic conditions or financial stability in the United States.

(B) A description of the effect that the default of the financial company would have on economic conditions or financial stability for low-income, minority, or underserved communities.

(C) A recommendation regarding the nature and the extent of actions that the Board and the appropriate regulatory agency recommend be taken under section 1604 regarding the financial holding company subject to stricter standards.

(b) **DETERMINATION BY THE SECRETARY.**—Notwithstanding any other provision of Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve Board and the board of directors or commission of the appropriate regulatory agency as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines that—

(1) the financial company is in default or is in danger of default;

(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability or economic conditions in the United States; and

(3) any action under section 1604 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system or economic conditions, the cost to the general fund of the Treasury, and the potential to increase moral hazard on the part of creditors, counterparties, and shareholders in the financial company, then the Secretary must take action under section 1604(a), the Corporation must act in accordance with section 1604(b), and the Corporation may take 1 or more actions specified in section 1604(c) in accordance with the requirements of that subsection, except that, prior to the Secretary or Corporation taking any action under section 1604, the Federal Reserve Board or the appropriate Federal regulatory agency shall take action to avoid or mitigate potential adverse effects on low-income, minority, or underserved communities affected by the failure of such financial company.

(c) **DOCUMENTATION AND REVIEW.**—

(1) **IN GENERAL.**—The Secretary shall—

(A) document any determination under subsection (b); and

(B) retain the documentation for review under paragraph (2).

(2) **GAO REVIEW.**—The Comptroller General of the United States shall review and report to the Congress on any determination under subsection (b), including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto; and

(C) the likely effect of the determination and such action on the incentives and conduct of financial holding companies subject to stricter standards and their creditors, counterparties, and shareholders.

(3) **REPORT TO CONGRESS.**—Within 48 hours after a determination is made under subsection (b), the Secretary shall provide written notice of the determination to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives. The notice shall include a description of the basis for the determination.

(d) **DEFAULT OR IN DANGER OF DEFAULT.**—For purposes of subsection (b), a financial holding company subject to stricter standards shall be considered to be in default or in danger of default if any of the following conditions exist, as determined in accordance with that subsection:

(1) A case has been, or likely will promptly be, commenced with respect to the financial holding company subject to stricter standards under title 11, United States Code.

(2) The financial holding company subject to stricter standards is critically undercapitalized, as such term has been or may be defined by the Federal Reserve Board.

(3) The financial holding company subject to stricter standards has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance under section 1604.

(4) The assets of the financial holding company subject to stricter standards are, or are likely to be, less than its obligations to creditors and others.

(5) The financial holding company subject to stricter standards is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

#### **SEC. 1604. RESOLUTION; STABILIZATION.**

(a) **APPOINTMENT OF RECEIVER.**—

(1) **IN GENERAL.**—Upon the Secretary making a determination in accordance with section 1603(b), the Secretary shall appoint the Corporation as receiver for the covered financial company.

(2) **TIME LIMIT ON RECEIVERSHIP AUTHORITY.**—Any appointment of the Corporation as receiver under paragraph (1) shall terminate on the date that is the end of the 1-year period beginning on the date such appointment is made.

(b) **RESOLUTION LIMITATIONS.**—

(1) **IN GENERAL.**—An insolvent financial company may be resolved under this subtitle only if the failure and resolution of such company under title 11, United States Code, would be systemically destabilizing, as determined by the appropriate Federal regulatory agencies and the Secretary of the Treasury (in consultation with the President) in accordance with section 1603(b).

(2) **LIQUIDATION.**—A financial company that comes within coverage of this subtitle for resolution shall be placed in liquidation, and the associated liquidation costs shall be paid from the company's assets and borne by the shareholders and unsecured creditors of such company.

(3) **ASSESSMENT FOR EXCESS LIQUIDATION COSTS.**—Any liquidation costs that exceed the amount of liquidated assets of the company shall be paid through assessments on large financial companies.

(c) **CONSULTATION.**—The Corporation, as receiver—

(1) shall consult with the regulators of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly resolution of the covered financial company;

(2) may consult with, or under section 1609(a)(1)(B)(v) or section 1609(a)(1)(K) acquire services of, any outside experts as appropriate to inform and aid the Corporation in the resolution process; and

(3) shall consult with the primary regulators of any subsidiaries of the covered financial company that are not covered subsidiaries as described in section 1602(9)(B)(iv) and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate.

(d) **EMERGENCY STABILIZATION AFTER APPOINTMENT OF RECEIVER.**—Upon the Secretary appointing the Corporation as receiver under subsection (a), the Corporation may, in its corporate capacity and as an agency of the United States, with the approval of the Secretary and subject to the conditions in subsections (f) through (g), take the following actions under such terms and conditions that the Corporation and the Secretary jointly deem appropriate:

(1) Making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary.

(2) Purchasing assets of the covered financial company or any covered subsidiary directly or through an entity established by the Corporation for such purpose.

(3) Assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to one or more third parties.

(4) Taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the company or any covered subsidiary to secure repayment of any transactions conducted under this subsection.

(5) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary.

(e) **TREATMENT OF CERTAIN INSURANCE SUBSIDIARIES.**—

(1) **IN GENERAL.**—Notwithstanding subsection (a), if a covered financial company is an insurance company covered by a State law designed specifically to deal with the insolvency of an insurance company, resolution of such company, and any subsidiary of such company, will be conducted as provided under such State law.

(2) **EXCEPTION FOR COVERED SUBSIDIARIES.**—The requirement of paragraph (1) shall not apply with respect to any covered subsidiary of such an insurance company.

(3) **BACKUP AUTHORITY.**—Notwithstanding paragraph (1), with respect to a covered financial company described under paragraph (1), if, after the end of the 60-day period beginning on the date a determination is made under section 1603(b) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into resolution under the State's laws and requirements, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into resolution under the State's laws and requirements.

(f) **MANDATORY TERMS AND CONDITIONS FOR ALL STABILIZATION ACTIONS.**—The Corporation as receiver is authorized to take the stabilization actions listed in subsection (d) only if—

(1) the Secretary and the Corporation determine that such action is necessary for the

purpose of financial stability and not for the purpose of preserving the covered financial company;

(2) the Corporation ensures that the shareholders of a covered financial company do not receive payment until after all other claims are fully paid;

(3) the Corporation ensures that any funds from taxpayers shall be repaid as part of the resolution process before payments are made to creditors;

(4) the Corporation ensures that unsecured creditors bear losses;

(5) the Corporation ensures that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time the Corporation is appointed as receiver); and

(6) the Corporation ensures that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed (if such members have not already been removed at the time the Corporation is appointed as receiver).

(g) **RECOUPMENT OF FUNDS EXPENDED FOR SYSTEMIC STABILIZATION PURPOSES.**—Amounts expended from the Fund by the Corporation under this section shall be repaid in full to the Fund from the following sources:

(1) **RESOLUTION PROCESS.**—Amounts attributable to the proceeds of the sale of, or income from, the assets of the covered financial company.

(2) **INDUSTRY ASSESSMENTS.**—If the sources described in paragraph (1) are insufficient to repay the amount of the stabilization action in full, the difference shall be recouped through assessments on financial companies in accordance with section 1609(o).

#### **SEC. 1605. JUDICIAL REVIEW.**

If a receiver is appointed, the covered financial company may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the receiver be removed, and the court shall, upon the merits, dismiss such action or direct the receiver to be removed. Review of such an action shall be limited to the appointment of a receiver under section 1604.

#### **SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.**

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the covered financial company's shareholders or creditors for acquiescing in or consenting in good faith to—

(1) the Secretary's appointment of the Corporation as receiver for the covered financial company under section 1604; or

(2) an acquisition, combination, or transfer of assets or liabilities under section 1609.

#### **SEC. 1607. TERMINATION AND EXCLUSION OF OTHER ACTIONS.**

(a) **TERMINATION AND EXCLUSION OF BANKRUPTCY.**—The Corporation's acting as receiver for a covered financial company under this subtitle shall immediately, and by operation of law, terminate any case commenced with respect to the covered financial company under title 11, United States Code, or any proceeding under any State insolvency law with respect to the covered financial company, and no such case or proceeding may be commenced with respect to the covered financial company at any time while

the Corporation acts as receiver for the covered financial company.

(b) CONVERSION TO BANKRUPTCY.—

(1) CONVERSION.—The Corporation may at any time, with the approval of the Secretary and after consulting with the Council, convert the receivership of a covered financial company to a proceeding under chapter 7 or 11 of title 11, United States Code, by filing a petition against the covered financial company under section 303(m) of such title. The Corporation may serve as the trustee for the covered financial company in bankruptcy.

(2) BRIDGE FINANCIAL COMPANY.—The Corporation's exercise of authority under paragraph (1) shall not affect any powers or duties of the Corporation with regard to any bridge financial company established under section 1609(h).

(c) REPORTING TO THE CONGRESS.—

(1) IN GENERAL.—

(A) INITIAL REPORT.—Upon the appointment of the Corporation as receiver under section 1604(a), the Corporation shall issue a report on the issue described under paragraph (3)(A).

(B) CONTINUING REPORTS.—At the end of each 180-day period after the appointment of the Corporation as receiver under section 1604(a), and continuing while the Corporation is acting as receiver, the Corporation shall issue a report on the issues described under subparagraph (A) through (C) of paragraph (3).

(2) COMMITTEES TO RECEIVE REPORTS.—Reports issued under this subsection shall be issued to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives.

(3) REPORTING ISSUES.—

(A) Why the receivership should continue instead of converting the receivership into a proceeding under chapter 7 or 11 of title 11, United States Code.

(B) The extent to which unsecured creditors are likely to receive at least as much as they would receive if the receivership of the covered financial company was converted to a case under chapter 7 of title 11, United States Code.

(C) An explanation of each instance where the Corporation as receiver of a covered financial company waived the requirement of 12 CFR Part 366 with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership.

#### SEC. 1608. RULEMAKING.

The Corporation may, after following the notice and comment rulemaking requirements under the Administrative Procedures Act, prescribe such regulations as the Corporation considers necessary or appropriate to implement the provisions of this title.

#### SEC. 1609. POWERS AND DUTIES OF CORPORATION.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under section 1604, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company, and of any stockholder, member, officer, or director of such institution with respect to the covered financial company and the assets of the covered financial company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) OPERATE THE COVERED FINANCIAL COMPANY.—The Corporation as receiver for a covered financial company may—

(i) take over the assets of and operate the covered financial company with all the powers of the members or shareholders, the directors, and the officers of the covered financial company and conduct all business of the covered financial company;

(ii) collect all obligations and money due the covered financial company;

(iii) perform all functions of the covered financial company in the name of the covered financial company;

(iv) preserve and conserve the assets and property of the covered financial company; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—

(i) IN GENERAL.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this section.

(ii) PRESUMPTION.—There shall be a strong presumption that the Corporation, as receiver, will remove management responsible for the failed condition of the covered financial company (if such management has not already been removed at the time the Corporation is appointed as receiver).

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as receiver, and subject to all legally enforceable and perfected security interests, place the covered financial company in liquidation and proceed to realize upon the assets of the covered financial company in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) ORGANIZATION OF NEW COMPANIES.—The Corporation as receiver may organize a bridge financial company under subsection (h).

(F) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Subject to clause (ii), the Corporation as receiver may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(I) IN GENERAL.—If a transaction described in clause (i) requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on

which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section, or is extended pursuant to subsection (e)(2) of such section.

(II) EMERGENCY.—If the Secretary in consultation with the Chairman of the Federal Reserve Board has found that the Corporation must act immediately to prevent the probable failure of the covered financial company involved, the approval and prior notification referred to in subclause (I) shall not be required and the transaction may be consummated immediately by the Corporation. The preceding sentence shall not otherwise modify, impair, or supercede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition).

(G) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver, shall, to the extent funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver in accordance with the prescriptions and limitations of this title.

(H) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation may, for purposes of carrying out any power, authority, or duty with respect to a covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This section shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) under any other provision of law.

(I) INCIDENTAL POWERS.—The Corporation, as receiver, may—

(i) exercise all powers and authorities specifically granted to receivers under this section and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Corporation determines is in the best interests of the covered financial company, its customers, its creditors, its counterparties, or the stability of the financial system.

(J) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from a covered financial company, the Corporation, as receiver, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services is practicable, efficient, and cost effective.

(K) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation as receiver for a covered financial company pursuant to this section and its succession, by operation of law, to the rights, titles, powers, and privileges described in subparagraph (A) shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have

against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions in section 1609(b).

(L) **COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.**—The Corporation as receiver for a covered financial company shall coordinate with the appropriate foreign financial authorities regarding the resolution of subsidiaries of the covered financial company that are established in a country other than the United States.

(M) **APPOINTMENT OF CONSUMER PRIVACY ADVISOR.**—

(i) **APPOINTMENT.**—Upon the appointment of the Corporation as receiver under section 1604(a), the Corporation shall appoint a Consumer Privacy Advisor.

(ii) **DUTIES.**—The Consumer Privacy Advisor appointed under clause (i) shall advise the Corporation with respect to—

(I) the covered financial company's consumer privacy policies;

(II) the potential losses or gains of privacy to consumers upon any sale, lease, or other transfer of material assets of the covered financial company;

(III) the potential costs or benefits to consumers upon any sale, lease, or other transfer of material assets of the covered financial company; and

(IV) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(2) **AUTHORITY OF CORPORATION TO DETERMINE CLAIMS.**—

(A) **IN GENERAL.**—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (3).

(B) **NOTICE REQUIREMENTS.**—The receiver, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the covered financial company's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) **MAILING REQUIRED.**—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the covered financial company's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the covered financial company's books, within 30 days after the discovery of such name and address.

(3) **RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.**—

(A) **IN GENERAL.**—Subject to subsection (b), the Corporation shall, after following the notice and comment rulemaking requirements under the Administrative Procedures Act, prescribe rules and regulations regarding the allowance or disallowance of claims by the Corporation and providing for administrative determination of claims and review of such determination.

(B) **EXISTING RULES.**—The Corporation may elect to use the regulations adopted pursuant to the provisions of section 11 of the Fed-

eral Deposit Insurance Act with respect to the determination of claims for a covered financial company as if the covered financial company were an insured depository institution.

(4) **PROCEDURES FOR DETERMINATION OF CLAIMS.**—

(A) **DETERMINATION PERIOD.**—

(i) **IN GENERAL.**—Before the end of the 180-day period beginning on the date any claim against a covered financial company is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) **EXTENSION OF TIME.**—The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) **MAILING OF NOTICE SUFFICIENT.**—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the covered financial company's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) **CONTENTS OF NOTICE OF DISALLOWANCE.**—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) **ALLOWANCE OF PROVEN CLAIM.**—The Corporation shall allow any claim received on or before the date specified in the notice published under paragraph (2)(B)(i) by the Corporation from any claimant which is proved to the satisfaction of the Corporation.

(C) **DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) **CERTAIN EXCEPTIONS.**—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (2)(B)(i) and such claim may be considered by the receiver if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) **AUTHORITY TO DISALLOW CLAIMS.**—

(i) **IN GENERAL.**—The Corporation may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the Corporation.

(ii) **PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.**—In the case of a claim of a creditor against a covered financial company which is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the covered financial company; and

(II) may not make any payment with respect to such unsecured portion of the claim

other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) **EXCEPTIONS.**—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal Reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable or perfected security interest in the assets of the covered financial company securing any such extension of credit.

(iv) **PAYMENTS TO FULLY SECURED CREDITORS.**—Notwithstanding any other provision of law, in any receivership of a covered financial company in which amounts realized from the resolution are insufficient to satisfy completely any amounts owed to the United States or to the Fund, as determined in the receiver's sole discretion, an allowed claim under a legally enforceable or perfected security interest (that became a legally enforceable or perfected security interest after the date of the enactment of this clause), other than a legally enforceable or perfected security interest of the Federal Government, in any of the assets of the covered financial company in receivership may be treated as an unsecured claim in the amount of up to 20 percent as necessary to satisfy any amounts owed to the United States or to the Fund. Any balance of such claim that is treated as an unsecured claim under this subparagraph shall be paid as a general liability of the covered financial company.

(E) **NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).**—No court may review the Corporation determination pursuant to subparagraph (D) to disallow a claim.

(F) **LEGAL EFFECT OF FILING.**—

(i) **STATUTE OF LIMITATION TOLLED.**—For purposes of any applicable statute of limitations, the filing of a claim with the Corporation shall constitute a commencement of an action.

(ii) **NO PREJUDICE TO OTHER ACTIONS.**—Subject to paragraph (9), the filing of a claim with the Corporation shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(5) **PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.**—

(A) **IN GENERAL.**—Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (4)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (4)(A)(i), the claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the covered financial company's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) **STATUTE OF LIMITATIONS.**—If any claimant fails to file suit on such claim (or continue an action commenced before the appointment of the receiver) before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as

of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(6) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (4) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any covered financial company for which the Corporation has been appointed as receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (4); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue such a suit filed before the appointment of the Corporation as receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

(8) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The Corporation as receiver may, in its discretion and to the ex-

tent funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the Corporation pursuant to a final determination pursuant to paragraph (6); or

(iii) determined by the final judgment of any court of competent jurisdiction.

(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver's sole discretion and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation (in the Corporation's capacity as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a covered financial company following satisfaction by the receiver of the principal amount of all creditor claims.

(9) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay for a period not to exceed 90 days in any noncriminal judicial action or proceeding to which such covered financial company is or becomes a party.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(10) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as receiver.

(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the appointment of the receiver under section 1604) and the Corporation, including but not limited to removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation

is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) minimizes the cost to the general fund of the Treasury;

(iv) mitigates the potential for serious adverse effects to the financial system and the U.S. economy;

(v) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(vi) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers.

(11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as receiver, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(12) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of an institution affiliated party, or any person who the Corporation determines is a debtor of the covered financial company, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation was appointed receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the covered financial company or the Corporation.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the

value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (B)—

(i) any transfer that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver of a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(E) DEFINITION.—For purposes of this subsection, the term “institution affiliated party” means—

(i) any director, officer, employee, or controlling stockholder of, or agent for, a covered financial company;

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Corporation (by regulation or otherwise) who participates in the conduct of the affairs of a covered financial company; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(I) any violation of any law or regulation;

(II) any breach of fiduciary duty; or

(III) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the covered financial company.

(13) ATTACHMENT OF ASSETS AND OTHER JUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed

to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of a covered financial company the Corporation may destroy any records of such covered financial company which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of a covered financial company which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such company in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered financial company, or the receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than management responsible for the failed condition of the covered financial company who have been removed), subject to the limitations for such payments contained in title 11, United States Code, including the amount (11 U.S.C. 507(a)(4)) and restrictions on severance payments to insiders (11 U.S.C. 503(c)).

(D) Contributions to employee benefit plans, subject to the limitations in title 11, United States Code (11 U.S.C. 507(a)(5)).

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F) or (E)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G)).

(G) Any obligation to shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation as receiver is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—Subject to the priorities established under paragraphs (2) and (3), all claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects on financial stability or the U.S. economy; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (d)(2).

(3) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured claims, except to the extent that the security is insufficient to satisfy the claim and then only with regard to the difference between the claim and the amount realized from the security.

(4) DEFINITIONS.—As used in this subsection, the term “administrative expenses of the receiver” includes—

(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a covered financial company or liquidating or otherwise resolving the affairs of a covered financial company for which the Corporation has been appointed as receiver; and

(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the covered financial company.

(5) RULEMAKING.—The Corporation shall, after following the notice and comment rulemaking requirements under the Administrative Procedures Act, prescribe rules to carry out this section.

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the receiver, in the receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the receiver determines, in the receiver's discretion, will promote the orderly administration of the covered financial company's affairs.

(2) **TIMING OF REPUDIATION.**—The receiver appointed for any covered financial company under section 1604 shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) **CLAIMS FOR DAMAGES FOR REPUDIATION.**—

(A) **IN GENERAL.**—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) **NO LIABILITY FOR OTHER DAMAGES.**—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) **MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.**—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (d) except as otherwise specifically provided in this subsection.

(4) **LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.**—

(A) **IN GENERAL.**—If the receiver disaffirms or repudiates a lease under which the covered financial company was the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) **PAYMENTS OF RENT.**—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (d).

(5) **LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.**—

(A) **IN GENERAL.**—If the receiver repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) **PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.**—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) **CONTRACTS FOR THE SALE OF REAL PROPERTY.**—

(A) **IN GENERAL.**—If the receiver repudiates any contract (which meets the requirements of subsection (a)(7)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) **PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.**—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) **ASSIGNMENT AND SALE ALLOWED.**—

(i) **IN GENERAL.**—No provision of this paragraph shall be construed as limiting the right of the receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) **NO LIABILITY AFTER ASSIGNMENT AND SALE.**—If an assignment and sale described in clause (i) is consummated, the receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) **PROVISIONS APPLICABLE TO SERVICE CONTRACTS.**—

(A) **SERVICES PERFORMED BEFORE APPOINTMENT.**—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the appointment of the receiver shall be—

(i) a claim to be paid in accordance with subsections (a), (b) and (d); and

(ii) deemed to have arisen as of the date the receiver was appointed.

(B) **SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.**—If, in the case of any contract for services described in subparagraph (A), the receiver accepts performance by the other person before the receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) **ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.**—The acceptance by any receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the receiver to repudiate such contract under this section at any time after such performance.

(8) **CERTAIN QUALIFIED FINANCIAL CONTRACTS.**—

(A) **RIGHTS OF PARTIES TO CONTRACTS.**—Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this section (other than subsection (a)(7)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i).

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) **APPLICABILITY OF OTHER PROVISIONS.**—Subsection (a)(9) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the covered financial company for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such company.

(C) **CERTAIN TRANSFERS NOT AVOIDABLE.**—

(i) **IN GENERAL.**—Notwithstanding paragraph (11), section 542 of the Revised Statutes of the United States or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as receiver of a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) **EXCEPTION FOR CERTAIN TRANSFERS.**—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or any receiver appointed for such company.

(D) **CERTAIN CONTRACTS AND AGREEMENTS DEFINED.**—For purposes of this subsection, the following definitions shall apply:

(i) **QUALIFIED FINANCIAL CONTRACT.**—The term “qualified financial contract” means



any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) **SECURITIES CONTRACT.**—The term “securities contract” —

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement,” as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) **COMMODITY CONTRACT.**—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) **FORWARD CONTRACT.**—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement,” as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in

subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) **REPURCHASE AGREEMENT.**—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (which for purposes of this clause shall mean a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development as determined by regulation or order adopted by the Federal Reserve Board) or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement

or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraph (10)—

(I) The term “default” shall mean, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed; and

(II) The term “in danger of default” shall mean a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(CC) in the opinion of the Corporation or such authority—

(bb) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(cc) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the covered financial company’s equity of redemption.

(x) PERSON.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does

not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by a receiver of such covered financial company, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) RECORDKEEPING.—The Corporation, in consultation with the Federal Reserve Board, may prescribe regulations requiring that the covered financial company maintain such records with respect to qualified financial contracts (including market valuations) as the Corporation determines to be necessary or appropriate in order to assist the receiver of the covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default which includes any qualified financial contract, the receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation by regulation to be a financial institution, and the term “clearing organization” has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the receiver for a covered financial company in default or in danger of default transfers any assets and liabilities of the covered financial company; and

(ii) the transfer includes any qualified financial contract,

the receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection solely by reason of or incidental to the appointment under this section of a receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company if the receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a receiver with respect to any qualified financial contract to which a covered financial company is a party, the receiver for such covered financial shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company except where such an interest is taken in contemplation of the company's insolvency or with the intent to hinder, delay, or defraud the company or the creditors of such company; or

(B) legally enforceable interest in customer property.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The receiver may enforce any contract, other than a director's or officer's liability insurance contract or a financial institution bond, entered into by the covered financial company notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the receiver to enforce or recover under a director's or officer's liability insurance contract or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party, or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the receiver, as appropriate, of the covered financial company during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the receiver to fail to comply with otherwise enforceable provisions of such contract.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal Reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, def-

inition, or treatment of any similar terms under any other statute, regulation, or rule, including, but not limited, to the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(16) AUTHORITY REGARDING COLLECTIVE BARGAINING AGREEMENTS.—The Corporation as receiver for any covered financial company shall not disaffirm or repudiate any collective bargaining agreement to which the covered financial company is a party unless the Corporation determines that repudiation is necessary for the orderly resolution of the covered financial company after taking into consideration the cost to taxpayers and the financial stability of the United States.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Corporation determines to utilize with respect to a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the covered financial company for which such receiver is appointed shall equal the amount such claimant would have received if—

(A) a determination had not been made under section 1603(b) with respect to the covered financial company; and

(B) the covered financial company had been liquidated under title 11, United States Code, or any case related to title 11, United States Code (including a case initiated by the Securities Investor Protection Corporation with respect to a financial company subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation may, as receiver and with the approval of the Secretary, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of a covered financial company if the Corporation determines that such payments or credits are necessary or appropriate to—

(i) minimize losses to the receiver from the resolution of the covered financial company under this section; or

(ii) prevent or mitigate serious adverse effects to financial stability or the United States economy.

(B) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the receiver appointed for a covered financial company, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of

the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver of such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under section 1604.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a covered financial company's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any covered financial company's assets shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver of one or more covered financial companies may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—If the Corporation is appointed as receiver for a covered financial company, the Corporation may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial shall have such terms as the Corporation may provide, and shall be

executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including, but not limited to, the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures as are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraphs (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (in-

cluding the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which a receiver has been appointed may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) TRANSFER OF ASSETS AND LIABILITIES.—The Corporation, as receiver, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies in accordance with and subject to the restrictions of paragraph (1)(B).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1)(B).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1) in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take actions (including making payments) that do not comply with this subparagraph, if—

(i) the Corporation determines that such actions are necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects to financial stability or the U.S. economy; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided in subsection (d)(2).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision

of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) **STAY OF JUDICIAL ACTION.**—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of up to 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) **AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.**—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

(8) **NO FEDERAL STATUS.**—

(A) **AGENCY STATUS.**—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) **EMPLOYEE STATUS.**—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) **EXEMPT TAX STATUS.**—

(A) **EXEMPTION FROM FEDERAL INCOME TAX.**—Subsection (l) of section 501 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph: “(4) Any bridge financial company organized under section 1609(h) of the Financial Stability Improvement Act of 2009.”

(B) **EXEMPTION FROM CERTAIN OTHER TAXES.**—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States, or by any State, county, municipality, or local taxing authority.

(10) **FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.**—

(A) **IN GENERAL.**—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney

General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section, or is extended pursuant to subsection (e)(2) of such section.

(B) **EMERGENCY.**—If the Secretary, in consultation with the Chairman of the Federal Reserve Board, has found that the Corporation must act immediately to prevent the probable failure of the covered financial company involved, the approval and prior notification referred to in subparagraph (A) shall not be required and the transaction may be consummated immediately by the Corporation. The preceding sentence shall not otherwise modify, impair, or supercede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition).

(11) **DURATION OF BRIDGE FINANCIAL COMPANY.**—Subject to paragraphs (12), (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for 3 additional 1-year periods.

(12) **TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.**—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge financial company as provided in paragraph (14).

(13) **EFFECT OF TERMINATION EVENTS.**—

(A) **MERGER OR CONSOLIDATION.**—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with

paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) **CHARTER CONVERSION.**—Following the sale of a majority of the capital stock of the bridge financial company as provided in paragraph (12)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) **SALE OF STOCK.**—Following the sale of 80 percent or more of the capital stock of a bridge financial company as provided in paragraph (12)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) **ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.**—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (12)(D), at the election of the Corporation the bridge financial company may retain its status as such for the period provided in paragraph (11) or may be dissolved at the election of the Corporation.

(E) **AMENDMENTS TO CHARTER.**—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(14) **DISSOLUTION OF BRIDGE FINANCIAL COMPANY.**—

(A) **IN GENERAL.**—Notwithstanding any other provision of State or Federal law, if a bridge financial company's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge financial company was chartered, or any extension thereof, as provided in paragraph (11).

(B) PROCEDURES.—The Corporation shall remain the receiver of a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as such receiver shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of a covered financial company and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(15) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) BURDEN OF PROOF.—In any hearing under this subsection, the Corporation has the burden of proof on the issue of adequate protection.

(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—Whenever the Corporation has been appointed as receiver for a covered financial company, the Federal Reserve Board and the company's primary appropriate regulatory agency, if any, shall each make all records relating to the company available to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a cov-

ered financial company's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—A court of the United States shall expedite the consideration of any case brought by the Corporation against a covered financial company's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver of any covered financial company and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Notwithstanding any other provision of law (other than a conflicting provision of this section), the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(1) in the case of any covered financial company or bridge financial company that is or has a subsidiary that is a stockbroker (as that term is defined in section 101 of title 11 of the United States Code) but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of title 11 of the United States Code in respect of the distribution to any "customer" of all "customer name securities" and "customer property" (as such terms are defined in section 741 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(2) in the case of any covered financial company or bridge financial company that is a commodity broker (as that term is defined

in section 101 of title 11 of the United States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of the United States Code in respect of the distribution to any "customer" of all "customer property" (as such terms are defined in section 761 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(n) SYSTEMIC DISSOLUTION FUND.—

(1) ESTABLISHMENT AND PURPOSE.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the "Systemic Dissolution Fund"—

(i) to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets or economy, as determined under 1603(b); and

(ii) to ensure that any taxpayer funds utilized to facilitate such liquidations are fully repaid from assessments levied on financial companies that have assets of \$50,000,000,000, adjusted for inflation, or more.

(B) ADJUSTMENT OF THRESHOLD.—The threshold referred to in subparagraph (A)(ii) shall be adjusted on an annual basis, based on the growth of assets owned or managed by financial companies (as defined in section 1602(9)).

(2) AUTHORITY.—The Systemic Dissolution Fund shall be administered by the Corporation, which shall have exclusive authority to—

(A) impose assessments on covered financial companies in accordance with paragraphs (6) through (8);

(B) maintain and administer the Fund in a manner so as to make clear to the general public that such Fund is unrelated to any other Fund maintained and administered by the Corporation, including the Deposit Insurance Fund;

(C) utilize the Fund to facilitate the dissolution of a covered financial company (as defined by section 1602(5)) as provided in paragraph (3), or take such other actions as are authorized by this subtitle;

(D) invest the Fund in accordance with section 13(a) of the Federal Deposit Insurance Act; and

(E) exercise borrowing authority as prescribed in subsection (o).

(3) USES.—

(A) The Fund shall be available to the Corporation for use with respect to the dissolution of a covered financial company to—

(i) cover the costs incurred by the Corporation, including as receiver, in exercising its rights, authorities, and powers and fulfilling its obligations and responsibilities under this section;

(ii) repay such funds in accordance with subsection (o)(6); and

(iii) cover the costs of systemic stabilization actions, pursuant to subsections (d) and (f) of section 1604.

(B) The Fund shall not be used in any manner to benefit any officer or director of such company removed pursuant to section 1604(f)(6).

(4) DEPOSITS TO FUND.—All amounts assessed against a financial company under this section shall be deposited into the Fund.

(5) SIZE OF FUND.—The Corporation shall, by rule, establish the minimum size of the Fund consistent with subparagraphs (C) and (D) of paragraph (6).

(6) ASSESSMENTS.—

(A) ASSESSMENTS TO MAINTAIN FUND.—The Corporation shall impose risk-based assessments on financial companies in such amount and manner and subject to such terms and conditions that the Corporation

determines, by regulation and in consultation with the Council, are necessary for the amount in the Fund to at least equal the minimum size established pursuant to paragraph (5).

(B) ASSESSMENTS TO REPLENISH THE FUND.—If the Fund falls below the minimum size established pursuant to paragraph (5), the Corporation shall impose assessments on financial companies in such amounts and manner and subject to such terms and conditions as the Corporation determines, by regulation and in consultation with the Council, are necessary to replenish the fund subject to the limitations in subparagraph (D).

(C) MINIMUM ASSESSMENT THRESHOLD.—

(i) IN GENERAL.—The Corporation shall not assess financial companies with less than \$50,000,000,000, adjusted for inflation, of assets on a consolidated basis, subject to any differentiation as permitted in paragraph (8) and shall assess financial companies with \$10,000,000,000, adjusted for inflation or more in assets in accordance with paragraphs (7) and (8).

(ii) HEDGE FUNDS.—The Corporation shall not assess financial companies that manage hedge funds (as defined by the Corporation for the purpose of this section, in consultation with the Securities and Exchange Commission) with less than \$10,000,000,000, adjusted for inflation, of assets, under management on a consolidated basis, subject to any differentiation as permitted in paragraph (8) and shall assess any financial companies that manage hedge funds with \$10,000,000,000 or more of assets under management in accordance with paragraphs (7) and (8).

(D) MAXIMUM SIZE OF FUND VIA ASSESSMENTS.—

(i) IN GENERAL.—The Corporation shall suspend assessments on financial companies on the day after the date on which the total of the assessments, excluding interest or other earnings from investments made pursuant to paragraph (2)(D), equals \$150,000,000,000.

(ii) EXCEPTIONS.—Any suspension of assessments under clause (i)—

(I) may be set aside if the Fund falls below \$150,000,000,000; and

(II) shall be set aside if the Fund falls below the minimum level established in subparagraph (C).

(7) FACTORS.—The Corporation, in consultation with the Council shall establish a risk matrix to be used in establishing assessments that takes into account—

(A) the actual or expected risk of losses to the Fund;

(B) economic conditions generally affecting financial companies so as to allow assessments and the Fund to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(C) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78dd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation or other State insolvency proceeding with respect to 1 or more insurance companies;

(D) the risks presented by the financial company to the financial system and the extent to which the financial company has benefited, or likely would benefit, from the dissolution of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the company's liabilities, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

(viii) the stability and variety of the company's sources of funding;

(ix) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates; and

(E) such other factors as the Corporation, in consultation with the Council, may determine to be appropriate.

(8) REQUIREMENT FOR EQUITABLE TREATMENT IN ASSESSMENTS.—In establishing the assessment system for the Fund, the Corporation, by regulation and in consultation with the Council, shall differentiate among financial companies based on complexity of operations or organization, interconnectedness, size, direct or indirect activities, and any other factors the Corporation or the Council may deem appropriate to ensure that the assessments charged equitably reflect the risk posed to the Fund by particular classes of financial companies.

(9) MINIMUM COMMENT PERIOD.—In order to ensure sufficient opportunity for public and congressional review and evaluation of any assessment system, any proposed regulations regarding the implementation of the assessment system under this subtitle shall provide an opportunity for public comment during a period of not less than 60 days.

(O) BORROWING AUTHORITY.—

(1) BORROWING FROM TREASURY.—

(A) IN GENERAL.—Subject to paragraphs (3), (4), and (5), the Corporation may borrow from the Treasury, and the Secretary of the Treasury is authorized to lend to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are required, in addition to the funds available in the Systemic Dissolution Fund, to permit the orderly dissolution of 1 or more covered systemically significant financial companies,

covered affiliates, or covered subsidiaries under this title.

(B) RATE OF INTEREST.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(2) PUBLIC DEBT ISSUANCES.—For the purposes described in subsection (1), the Secretary of the Treasury may use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States.

(3) BORROWING AUTHORITY WHEN FUND ASSETS ARE LESS THAN \$150,000,000,000.—

(A) Subject to paragraph (B), the borrowing authority granted in paragraph (1) shall be available to the Corporation where—

(i) the value of the Fund is less than \$150,000,000,000;

(ii) the Corporation determines that the immediate dissolution of a financial company or financial companies requires more funds than are available in the Fund; and

(iii) the Corporation has provided a specific plan for repayment under paragraph (7)(A).

(B) The Corporation may borrow, and the Secretary may lend, any amount of funds that, when added to the amount available in the Fund on the date the Corporation makes a request to borrow funds, would not exceed \$150,000,000,000.

(C) For purposes of paragraph (1), the Corporation's total debt may not exceed \$150,000,000,000 (not including any funds borrowed pursuant to subsection (s)).

(4) ADDITIONAL BORROWING AUTHORITY.—

(A) If at any time the Corporation anticipates that the dissolution of any financial company or financial companies will require funds in excess of \$150,000,000,000—

(i) the Corporation shall submit to the Secretary and the President a written request for additional borrowing authority subject to the limitation in subparagraph (5), which shall be accompanied by a certification indicating the anticipated amount needed, the basis on which such amount was determined, and any such information as the Secretary may deem necessary; and

(ii) the President shall transmit a request to the House of Representatives and the Senate requesting the additional borrowing authority, which shall include the certification referred to in clause (i) and which includes a repayment schedule as outlined in paragraph (7).

(B) Any request for borrowing authority under paragraph (A) shall be effective only if approved by affirmative vote of the House of Representatives and the Senate in accordance with subsection (s).

(5) LIMITATIONS ON ADDITIONAL BORROWING AUTHORITY.—

(A) No request for borrowing authority is permitted under paragraph (4) unless the President, in consultation with the Council, certifies to the House of Representatives and the Senate that the borrowing authority is necessary to avoid or mitigate an imminent financial emergency.

(B) The amount of borrowing authority requested under subparagraph (A)(i) may not exceed \$50,000,000,000.

(6) PROCEEDS FROM LIQUIDATION, REPAYMENT OF FUNDS.—



(A) IN GENERAL.—The Corporation shall take such measures as may be appropriate to maximize the amount of funds from any dissolution that may be available for repayment under subparagraph (B) consistent with systemic concerns.

(B) REPAYMENT PRIORITY.—Amounts realized from the dissolution of any financial company under this subtitle that are not otherwise utilized by the Corporation to dissolve a financial company under subsection (n)(3)(A) shall be paid—

(i) first, to repay any costs incurred in exercising the borrowing authority granted in paragraph (1); and

(ii) second, to recapitalize the Fund to such level as the Corporation deems necessary, but not to exceed \$150,000,000,000.

(7) REPAYMENT PLAN AND SCHEDULES REQUIRED FOR ANY BORROWING.—

(A) IN GENERAL.—No amount may be provided by the Secretary of the Treasury to the Corporation under paragraph (1) unless an agreement is in effect between the Secretary and the Corporation which—

(i) provides a specific plan and schedule for assessments under (n)(6) to achieve the repayment of the outstanding amount of any borrowing under such subsection; and

(ii) demonstrates that income to the Corporation from assessments under this section will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

(B) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary of the Treasury and the Corporation shall—

(i) consult with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement; and

(ii) submit a copy of each repayment schedule agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under paragraph (1).

(p) INFORMATION GATHERING AND VERIFICATION; PAYMENTS.—

(1) IN GENERAL.—The Corporation may require each financial company to make available such information as the Corporation may require—

(A) for purposes of—

(i) determining the financial company's assessment under this section;

(ii) verifying the accuracy of information; and

(iii) preparing for resolution, including a resolution plan as required by this section; and

(B) for such other purposes as may be appropriate and necessary to promote the orderly dissolution of the financial company.

(2) USE OF EXISTING REPORTS.—The Corporation shall, to the fullest extent possible, accept—

(A) reports that a financial company has provided or been required to provide to other Federal or State supervisors or to appropriate self-regulatory organizations;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(3) AUTHORITY FOR ON-SITE INSPECTION.—The Corporation may make on-site inspections of a financial company's books and records as necessary to carry out the purposes of this subsection.

(4) RULEMAKING.—The Corporation may promulgate such rules or regulations as are necessary or appropriate to implement this subsection.

(5) PAYMENTS OF ASSESSMENTS REQUIRED.—

(A) IN GENERAL.—Any financial company subject to an assessment under this section shall pay to the Corporation such assessment.

(B) FORM OF PAYMENT.—The payments required under this section shall be made in such manner and at such time or times as the Corporation, in consultation with the Council, shall prescribe by regulation.

(6) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—Any financial company that fails or refuses to pay any assessment under this section shall be subject to a penalty under section 18(h) of the Federal Deposit Insurance Act, as if that financial company were an insured depository institution.

(q) ASSESSMENT ACTIONS.—

(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any financial company the amount of any unpaid assessment lawfully payable by such company.

(2) STATUTE OF LIMITATIONS.—Notwithstanding any other provision in Federal law, or the law of any State—

(A) any action by a financial company to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C);

(B) any action by the Corporation to recover from a financial company the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C); and

(C) if a financial company has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(r) REQUIREMENT TO MAINTAIN SYSTEMIC DISSOLUTION FUND AS SEPARATE FUND.—The Systemic Dissolution Fund shall at all times be administered in a manner that is separate and distinct from the Deposit Insurance Fund, and the Corporation shall take such actions as may be necessary to ensure that such distinction is made with respect to internal processes and procedures as well as with regard to any public information, discussion or other communications involving either Fund.

(s) CONGRESSIONAL APPROVAL OF ADDITIONAL BORROWING AUTHORITY.—

(1) INTRODUCTION.—On the day on which the request of the President is received by the House of Representatives and the Senate under subsection (o)(4)(A)(ii), a joint resolution specified in paragraph (5) shall be introduced in the House by the majority leader of the House and in the Senate by the majority leader of the Senate. If either House is not in session on the day on which such a request is received, the joint resolution with respect to such request shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(2) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(A) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution introduced under paragraph (1) is referred shall report such joint resolution to the House not later than

5 calendar days after the applicable date of introduction of the joint resolution. If a committee fails to report such joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(B) PROCEEDING TO CONSIDERATION.—After all committees authorized to consider a joint resolution have reported such joint resolution to the House or have been discharged from its consideration, it shall be in order, not later than the sixth day after the applicable date of introduction of the joint resolution for the majority leader, to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution and shall not be in order if the House has received a message from the Senate under paragraph (4)(C). The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(C) CONSIDERATION.—The joint resolution shall be considered in the House and shall be considered as read. All points of order against a joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of a joint resolution shall not be in order.

(3) CONSIDERATION IN THE SENATE.—

(A) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(B) FLOOR CONSIDERATION.—

(i) IN GENERAL.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the applicable date of introduction in the Senate and ending on the 6th day after the applicable date of introduction in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the

Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(4) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

(A) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee.

(ii) With respect to the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

(B) TREATMENT OF COMPANION MEASURES.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(C) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

(i) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(ii) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(D) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This paragraph and the preceding paragraphs are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(5) DEFINITION.—In this section, the term “joint resolution” means only a joint resolution—

(A) which does not have a preamble;

(B) the title of which is as follows: “Joint resolution relating to the approval of request for borrowing authority under the Financial Stability Improvement Act of 2009.”; and

(C) the sole matter after the resolving clause of which is as follows: “That the Congress approves the request for additional borrowing authority transmitted to the Congress on \_\_\_\_\_ by the President under section 1609(o)(4)(A)(ii) of the Financial Stability Improvement Act of 2009.”, the blank space being filled with the appropriate date.

(t) NO FEDERAL STATUS.—

(1) AGENCY STATUS.—A covered financial company (or any covered subsidiary thereof) that is placed into receivership is not a department, agency, or instrumentality of the United States for purposes of statutes that confer powers on or impose obligations on government entities.

(2) EMPLOYEE STATUS.—Interim directors, directors, officers, employees, or agents of a covered financial company that is placed into receivership are not, solely by virtue of service in any such capacity, officers or em-

ployees of the United States. Any employee of the Corporation, acting as receiver or of any Federal agency who serves at the request of the receiver as an interim director, director, officer, employee, or agent of a covered financial company that is placed into receivership shall not—

(A) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or;

(B) receive any salary or benefits for service in any such capacity with respect to a covered financial company that is placed into receivership in addition to such salary or benefits as are obtained through employment with the Corporation or other Federal agency.

(u) STUDY OF PAYMENT OF CONSUMER CLAIMS.—Not later than 6 months following the dissolution of a covered financial company under section 1603(b), the Comptroller General of the United States shall carry out a study, and report on such study to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives, regarding the satisfaction of claims arising from violations of the provisions of the Truth in Lending Act, if any, in instances where any assets were transferred from such covered financial company.

#### **SEC. 1610. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.**

(a) IN GENERAL.—Section 1032 of title 18, United States Code, is amended in paragraph (1) by deleting “or” before “the National Credit Union Administration Board,” and by inserting immediately thereafter “or the Corporation, as defined in section 1602 of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009.”.

(b) CONFORMING CHANGE.—The heading of section 1032 of title 18, United States Code, is amended by striking “of financial institution”.

#### **SEC. 1611. OFFICE OF RESOLUTION.**

(a) TRIGGER OF AND PLAN FOR ESTABLISHMENT.—

(1) TRIGGER.—If the Secretary appoints the Corporation as receiver for a financial company under section 1604, the Inspector General of the Corporation shall, as soon as possible after such appointment, establish in accordance with this section the Office of Resolution as an office within the Office of the Inspector General of the Corporation.

(2) PLAN.—The Inspector General of the Corporation shall, in consultation with the Council of Inspectors General on Financial Oversight established under section 1702, formulate and maintain a plan to allow for the timely establishment of an Office of Resolution in accordance with paragraph (1). The Inspector General of the Corporation shall make such plan available to the Financial Services Oversight Council established under section 1001.

(b) SPECIAL DEPUTY INSPECTOR GENERAL.—The head of the Office of Resolution is the Special Deputy Inspector General for Resolution (in this section referred to as the “Special Deputy Inspector General”), who shall be appointed by and report to the Inspector General of the Corporation.

(c) DUTIES.—

(1) AUDITS AND INVESTIGATIONS.—It shall be the duty of the Special Deputy Inspector General, in consultation with and subject to

the approval of the Inspector General of the Corporation, to conduct, supervise, and coordinate audits and investigations of the activities of the Corporation in its capacity as receiver for a financial company under section 1604, including by collecting the following information:

(A) A description of each financial company for which the Corporation has been appointed as receiver under section 1604.

(B) A description of the activities and future plans of the Corporation with respect to each financial company for which it has been appointed as receiver, and an analysis of whether such activities and plans conform to the requirements of this subtitle and other applicable law and are in the best interest of the overall stability of the financial system.

(C) Such other information as the Special Deputy Inspector General considers appropriate, in consultation with and subject to the approval of the Inspector General of the Corporation.

(2) ADDITIONAL DUTIES.—

(A) SYSTEMS, PROCEDURES, AND CONTROLS.—The Special Deputy Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Deputy Inspector General considers appropriate, in consultation with and subject to the approval of the Inspector General of the Corporation, to discharge the duties under paragraph (1).

(B) REPORTING OF CRIMINAL VIOLATIONS TO ATTORNEY GENERAL.—If the Special Deputy Inspector General, in carrying out this section, discovers facts that give the Special Deputy Inspector General reasonable grounds to believe there has been a violation of Federal criminal law, the Special Deputy Inspector General shall expeditiously report such facts to the Attorney General.

(C) MINIMIZING DUPLICATION OF EFFORT.—The Inspector General of the Corporation and the Special Deputy Inspector General shall coordinate to minimize duplication of effort in the oversight of the Corporation's activities as receiver for financial companies under section 1604.

(3) DUTIES UNDER THE INSPECTOR GENERAL ACT OF 1978.—In addition to the duties specified in paragraphs (1) and (2), the Special Deputy Inspector General shall assist the Inspector General of the Corporation in carrying out such duties and responsibilities of inspectors general under the Inspector General Act of 1978 as the Inspector General of the Corporation considers appropriate.

(d) AUTHORITIES UNDER THE INSPECTOR GENERAL ACT OF 1978.—The Inspector General of the Corporation may confer on the Special Deputy Inspector General such authorities provided to the Inspector General of the Corporation in section 6 of the Inspector General Act of 1978 as the Inspector General of the Corporation considers necessary to enable the Special Deputy Inspector General to carry out the duties specified in subsection (c).

(e) PERSONNEL, FACILITIES, AND OTHER RESOURCES.—

(1) IN GENERAL.—The Special Deputy Inspector General may, in consultation with and subject to the approval of the Inspector General of the Corporation, expend such amounts from the fund established under section 1609(n) as are necessary to carry out the duties described in subsection (c) and to submit the reports required by subsection (h).

(2) ADDITIONAL FUNDS.—If the fund established under section 1609(n) is insufficient to enable the Special Deputy Inspector General to begin carrying out the duties of the Special Deputy Inspector General in a timely

fashion or later becomes insufficient to enable the Special Deputy Inspector General to carry out such duties, the Inspector General of the Corporation shall detail the necessary personnel, facilities, or other resources to the Special Deputy Inspector General.

(f) **CORRECTIVE RESPONSES TO AUDIT PROBLEMS.**—The Chairman of the Corporation shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Deputy Inspector General; or

(2) certify to the appropriate committees of Congress that no action is necessary or appropriate.

(g) **COOPERATION AND COORDINATION WITH OTHER ENTITIES.**—In carrying out the duties, responsibilities, and authorities of the Special Deputy Inspector General under this section, the Special Deputy Inspector General shall work with each of the inspectors general who is a member of the Council of Inspectors General on Financial Oversight established under section 1703(a)(1), in order to avoid duplication of effort and ensure comprehensive oversight of the Corporation's activities as a receiver appointed under section 1604.

(h) **REPORTS.**—

(1) **IN GENERAL.**—In lieu of the semiannual reports required by section 5(a) of the Inspector General Act of 1978, the Special Deputy Inspector General shall submit to the appropriate committees of Congress at the following times a report prepared in consultation with and approved by the Inspector General of the Corporation:

(A) Not later than 30 days after the appointment of the Special Deputy Inspector General.

(B) During the first 3 years after such appointment, not later than 30 days after the end of each fiscal quarter during which the Corporation acts as receiver for a financial company under section 1604.

(C) During the 4th year after such appointment and each year thereafter, not later than 30 days after the end of the 2nd and the 4th fiscal quarters, if the Corporation acts as receiver for a financial company under section 1604 during such semiannual period.

(2) **CONTENT OF REPORTS.**—Each report required by paragraph (1) shall include a summary, for the period since the last required report (or, in the case of the first report, for the period since the Corporation was first appointed as a receiver under section 1604) of—

(A) the activities of the Special Deputy Inspector General; and

(B) the activities and future plans of the Corporation with respect to each financial company for which it served as receiver.

(i) **TERMINATION.**—The Office of Resolution shall terminate 6 months after the Corporation ceases to serve as a receiver for any financial company under section 1604, subject to reestablishment pursuant to subsection (a)(1).

#### **SEC. 1612. MISCELLANEOUS PROVISIONS.**

(a) **BANKRUPTCY CODE AMENDMENTS.**—(1) Section 109(b)(2) of title 11 of the United States Code is amended by inserting “covered financial company (as that term is defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009),” after “a domestic insurance company.”

(2) Section 303 of title 11, United States Code, is amended—

(A) in subsection (h)—

(i) by striking “ or ” at the end of paragraph (1);

(ii) by striking the period at the end of paragraph (2) and inserting “; or”; and

(iii) by adding at the end the following new paragraph:

“(3) an involuntary case is filed against a covered financial company, as defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009, by the Federal Deposit Insurance Corporation under section 1607 of that Act.”; and

(B) by adding at the end the following new subsection:

“(m) Notwithstanding subsections (a) and (b) of this section and section 109(b)(2), an involuntary case may be commenced by the Federal Deposit Insurance Corporation against a covered financial company (as defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009). Such involuntary case may be commenced by the Federal Deposit Insurance Corporation in accordance with section 1607 of that Act.”

(3) Title 11, United States Code, is amended by inserting after section 303 the following new section:

#### **“SEC. 304. CASES INVOLVING FDIC DISSOLUTION AUTHORITY.**

“(a) **APPOINTMENT.**—In any case commenced by the Federal Deposit Insurance Corporation under section 303(m), on the request of the Federal Deposit Insurance Corporation, such Corporation shall be appointed to serve as trustee in such case, notwithstanding any other provision of this title.

“(b) **QUALIFICATION.**—Sections 321, 322, 324, and 326 shall not apply with respect to the appointment or service of such Corporation as trustee in any case so commenced.”

(b) **FEDERAL DEPOSIT INSURANCE ACT AND FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.**—

(1) Section 18(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is amended by inserting at the end the following new sentence: “The determination with regard to the Corporation's exercise of authority under this subparagraph shall apply to only an insured depository institution except when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions.”

(2) Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting “section 1609(c) of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)),” after “section 11(e) of the Federal Deposit Insurance Act.”

#### **SEC. 1613. AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.**

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 11A the following new section:

#### **“SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.**

“(a) **SYSTEMIC DISSOLUTION AUTHORITY.**—The Corporation shall establish a Systemic Dissolution Authority, which shall function as a subsidiary of the Corporation.

“(b) **SYSTEMIC DISSOLUTION FUND.**—Any fund established for the purpose of facilitating the dissolution of a financial company under subtitle G of the Financial Stability Improvement Act shall be called the Systemic Dissolution Fund, which shall be managed by the Corporation, through the Systemic Dissolution Authority.

“(c) **MANAGEMENT OF FUND.**—

“(1) **SEPARATE MAINTENANCE.**—The Systemic Dissolution Fund shall be separately

maintained and not commingled with any other fund of the Corporation.

“(2) **TREATMENT OF AND ACCOUNTING FOR ASSETS.**—The assets and liabilities of the Systemic Dissolution Fund—

“(A) shall be the assets and liabilities of the Fund and not of the Corporation; and

“(B) shall not be consolidated with the assets and liabilities of the Deposit Insurance Fund or the Corporation for accounting, reporting, or any other purpose.

“(d) **RIGHTS, POWERS, AND DUTIES.**—

“(1) **IN GENERAL.**—The Corporation, in addition to any rights, powers, and duties under this Act or any other law, shall, through the Systemic Dissolution Authority, have all rights, powers, and duties necessary to implement and maintain the Systemic Dissolution Fund in accordance with subtitle G of the Financial Stability Improvement Act of 2009.

“(2) **POWERS AS RECEIVER FOR COVERED FINANCIAL COMPANY.**—When acting as receiver with respect to any covered financial company, as defined in subtitle G of the Financial Stability Improvement Act of 2009, the Corporation, through the Systemic Dissolution Authority, shall have all rights, powers, and duties that the Corporation has as receiver under such subtitle.

“(3) **SPECIFIC AND INCIDENTAL POWERS.**—The Corporation, through the Systemic Dissolution Authority, or any duly authorized officer or agent of the Authority, may exercise all powers specifically granted by the provisions of this Act and subtitle G of the Financial Stability Improvement Act and such incidental powers as shall be necessary to carry out the powers so granted and accomplish the purposes of subtitle G of the Financial Stability Improvement Act.

“(e) **STAFF AND RESOURCES.**—

“(1) **IN GENERAL.**—The Corporation shall assign such staff, and provide such administrative and other support services to the Systemic Dissolution Authority as is necessary to fulfill the statutory responsibilities of the Authority.

“(2) **ADMINISTRATIVE EXPENSES.**—The cost of all personnel, services, and resources provided on behalf of the Systemic Dissolution Authority shall be paid from the Systemic Dissolution Fund.”

#### **SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION LIMITATIONS.**

The provisions of section 111 of the Emergency Economic Stabilization Act of 2008 shall apply to a covered financial institution for which a receiver has been appointed pursuant to section 1604. Such covered financial institution shall be considered a TARP recipient for purposes of such section 111 for so long as such institution is in receivership.

#### **SEC. 1615. STUDY ON THE EFFECT OF SAFE HARBOR PROVISIONS IN INSOLVENCY CASES.**

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study of the safe harbor provisions under Federal law for derivatives, swaps, and securities transactions addressing—

(1) how the safe harbor provisions have been applied in insolvency cases;

(2) how such provisions impact the rights of parties in interest in insolvency cases;

(3) whether these provisions impede or interfere with allowing a debtor a reasonable period of time to pursue rehabilitation and reorganization; and

(4) whether these provisions had an adverse impact on the financial marketplace.

(b) **REPORT TO THE CONGRESS.**—Not later than 180 days after the date of the enactment of this title, the Comptroller General shall

submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report on the results of the study conducted under subsection (a), together with any recommendations for legislation to address any adverse impacts presented by the Federal safe harbor provisions.

**Subtitle H—Additional Improvements for Financial Crisis Management**

**SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL CRISIS MANAGEMENT.**

Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended by striking the 3rd undesignated paragraph and inserting the following new subsection:

**“(c) FINANCIAL CRISIS MANAGEMENT.—**

**“(1) IN GENERAL.—**In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, upon the written determination, pursuant to section 1109 of the Financial Stability Improvement Act of 2009, of the Financial Stability Oversight Council, that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of such Council then serving), and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), may authorize any Federal reserve bank, during such periods as the Board may determine and at rates established in accordance with the provision designated as (d) of section 14, to discount for an individual, partnership, or corporation, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal reserve bank and in conformance with regulations or guidelines issued by the Board of Governors regarding the quality of notes, drafts, and bills of exchange available for discount and of the security for those notes, drafts and bills of exchange, unless a joint resolution (as defined in paragraph (5)) is adopted. Upon making any determination under this paragraph, with the consent of the Secretary of the Treasury, the Financial Stability Oversight Council shall promptly submit a notice of such determination to the House of Representatives and the Senate. The amounts made available under this subsection shall not exceed \$4,000,000,000,000.

**“(2) CLARIFICATION OF ‘SECURED TO THE SATISFACTION OF THE FEDERAL RESERVE BANK’.—**No member of the Board of Governors of the Federal Reserve System shall vote to authorize any action permitted under paragraph (1) and the Secretary of the Treasury shall not provide the written consent required by paragraph (1) unless that member believes and the Secretary of the Treasury believes:

**“(A)** that there is at least a 99 percent likelihood that all funds disbursed or put at risk by such action will be repaid to the Federal Reserve System; and

**“(B)** that there is at least a 99 percent likelihood that all interest due on any funds disbursed will also be paid to the Federal Reserve System.

**“(3) LOW QUALITY ASSETS EXCLUDED.—**The notes, drafts, and bills of exchange available for discount for purposes of paragraph (1), and the security for those notes, drafts and bills of exchange may only include any of the following assets if such asset is used to further enhance the security for those notes, drafts and bills of exchange which shall be fully secured with assets that are not any of the following assets:

**“(A)** An asset (including a security) that would be classified as “substandard,”

“doubtful,” or “loss,” or treated as “special mention” or “other transfer risk problems,” in a report of examination or inspection of bank or an affiliate of a bank prepared by either a Federal or State supervisory agency or in any internal classification system used by such individual, partnership or corporation.

**“(B)** An asset in a nonaccrual status.

**“(C)** An asset on which principal or interest payments are more than 30 days past due.

**“(D)** An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor unless such asset has been performing for at least 6 months since the renegotiation.

**“(4) NO SINGLE OR SPECIFIC BENEFICIARIES.—**The Board of Governors of the Federal Reserve System may authorize a Federal reserve bank to discount notes, drafts, or bills of exchange under this section only as part of a broadly available credit or other facility and may not authorize a Federal Reserve bank to discount notes, drafts, or bills of exchange for only a single and specific individual, partnership, or corporation.

**“(5) EVIDENCE OF UNAVAILABILITY OF CREDIT.—**Before discounting any note, draft, or bill of exchange under this subsection for an individual, a partnership or corporation as part of a broadly available credit or other facility the Federal reserve bank shall obtain evidence that such individual, partnership, or corporation is unable to secure adequate credit accommodations from other banking institutions. All discounts under this subsection for individuals, partnerships, or corporations shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

**“(6) CONGRESSIONAL DISAPPROVAL OF ADDITIONAL BORROWING AUTHORITY.—**

**“(A) INTRODUCTION.—**Within 90 days of the day on which notice from the Financial Stability Oversight Council is received by the House of Representatives and the Senate under paragraph (1), a joint resolution specified in subparagraph (E) may be introduced in the House by the majority leader and in the Senate by the majority leader.

**“(B) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—**

**“(i) REPORTING AND DISCHARGE.—**Any committee of the House of Representatives to which a joint resolution introduced under subparagraph (A) is referred shall report such joint resolution to the House not later than 5 calendar days after the applicable date of introduction of the joint resolution. If a committee fails to report such joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

**“(ii) PROCEEDING TO CONSIDERATION.—**After all committees authorized to consider a joint resolution have reported such joint resolution to the House or have been discharged from its consideration, it shall be in order, not later than the sixth day after the applicable date of introduction of the joint resolution, for the majority leader to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution and shall not be in order if the House has received a message from the Senate under subparagraph (D)(iii)(I). The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

**“(iii) CONSIDERATION.—**The joint resolution shall be considered in the House and shall be considered as read. All points of order against a joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of a joint resolution shall not be in order.

**“(C) CONSIDERATION IN THE SENATE.—**

**“(i) PLACEMENT ON CALENDAR.—**Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

**“(ii) FLOOR CONSIDERATION.—**

**“(I) IN GENERAL.—**Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the applicable date of introduction of the joint resolution in the Senate and ending on the 6th day after the applicable date of introduction in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

**“(II) DEBATE.—**Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

**“(III) VOTE ON PASSAGE.—**The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

**“(IV) RULINGS OF THE CHAIR ON PROCEDURE.—**Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

**“(D) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—**

**“(i) COORDINATION WITH ACTION BY OTHER HOUSE.—**If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

**“(I)** The joint resolution of the other House shall not be referred to a committee.

**“(II)** With respect to the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

**“(ii) TREATMENT OF COMPANION MEASURES.—**If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of

Representatives, the companion measure shall not be debatable.

“(iii) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

“(I) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

“(II) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

“(iv) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This paragraph and the preceding paragraphs are enacted by Congress—

“(I) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

“(E) DEFINITION.—In this paragraph, the term ‘joint resolution’ means only a joint resolution—

“(i) which does not have a preamble;

“(ii) the title of which is as follows: ‘Joint resolution relating to the use of authority relevant to section 13(c) of the Federal Reserve Act under the Financial Stability Improvement Act of 2009.’; and

“(iii) the sole matter after the resolving clause of which is as follows: ‘That the Congress disapproves the use of authority pursuant to section 13(c) of the Federal Reserve Act transmitted to the Congress on \_\_\_\_\_ by the Board of Governors of the Federal Reserve System’, the blank space being filled with the appropriate date.

“(F) NONSCORING OF JOINT RESOLUTIONS OF DISAPPROVAL.—A joint resolution of disapproval shall be treated as having no budgetary effect by the Congressional Budget Office and the Office of Management and Budget for any purpose under the Rules of the House of Representatives, the Standing Rules of the Senate, the Congressional Budget Act of 1974, or any statutory pay-as-you-go requirement.”.

#### SEC. 1702. CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.

Section 14 of the Federal Reserve Act is amended by adding at the end the following new subsection:

“(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.—A Federal reserve bank may not take any action pursuant to the authority provided under this section with respect to foreign currency swaps unless—

“(1) such action is approved in advance by the affirmative vote of not less than five members of the Board of Governors of the Federal Reserve System; and

“(2) such action is taken with the written concurrence of the Secretary of the Treasury.”.

#### SEC. 1703. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this sec-

tion referred to as the “Council of Inspectors General”) chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(h) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(h))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—The Council of Inspectors General shall, each year within a timeframe that permits consideration by the Financial Services Oversight Council (in this section referred to as the “Oversight Council”) prior to the submission of its report for such year under section 1006, submit to the Oversight Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general’s ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) COUNCIL OF INSPECTORS GENERAL WORKING GROUPS.—

(A) WORKING GROUPS TO EVALUATE OVERSIGHT COUNCIL.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Oversight Council.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—A Council of Inspectors General Working Group established under this subparagraph shall submit regular reports to the Oversight Council and to Congress on its evaluations pursuant to this subparagraph.

(B) WORKING GROUPS FOR FINANCIAL COMPANIES UNDERGOING RESOLUTION.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General shall convene a Council of Inspectors General Working Group for each financial company for which the Secretary of the Treasury appoints the Federal Deposit Insurance Corporation as receiver under section 1604.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—Not later than 270 days after the appointment of the Federal Deposit Insurance Corporation as receiver for the financial company for which a Council of Inspectors General Working Group is convened under clause (i), such Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company’s failure;

(II) the reasons for the Secretary of the Treasury’s appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY OVERSIGHT COUNCIL.—The Oversight Council shall include in its annual report under section 1006 responses to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

#### Subtitle I—Miscellaneous

#### SEC. 1801. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—Not later than 180 days following the enactment of this title, each agency shall establish an Office of Minority and Women Inclusion (hereinafter in this section referred to as the “Office”) that shall advise the agency administrator of the impact of policies and regulations of the agency on minority-owned and women-owned businesses, and shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities, including the coordination of technical assistance, in accordance with such standards and requirements as the Director of the Office shall establish.

(2) CONSOLIDATION.—Each agency that has assigned these or comparable responsibilities to existing offices shall ensure that such responsibilities are consolidated within the Office.

(b) DIRECTOR.—

(1) IN GENERAL.—For each Office, the President shall appoint, by and with the advice and consent of the Senate, a Director of Minority and Women Inclusion (hereinafter in this section referred to as the “Director”), who shall also hold a title within such agency comparable to that of other senior level staff who are, as applicable, either appointed by the President, by and with the advice and consent of the Senate, or act in a managerial capacity that requires reporting directly to the agency administrator.

(2) DUTIES.—Each Director shall—

(A) ensure equal employment opportunity and the racial, ethnic and gender diversity of the agency’s workforce and senior management;

(B) increase the participation of minority-owned and women-owned businesses in the programs and contracts of the agency;

(C) provide guidance to the agency administrator to ensure that the policies and regulations of the agency strengthen minority-owned and women-owned businesses; and

(D) conduct an assessment, as part of the examination process for the entities regulated or monitored by the agency of the diversity and inclusion efforts by such entities.

(c) **INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.**—

(1) **IN GENERAL.**—Each Director shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), women, and minority-owned and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts (including, as applicable, contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of its assets, the making of its equity investments, and the implementation of programs to address economic recovery).

(2) **CONTRACTS.**—The processes established by each agency for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

(3) **WRITTEN ASSURANCE.**—All such contract proposals, provided such proposals are of an amount greater than \$50,000 and the contractor employs more than 50 employees, shall include a written assurance, in a form and substance that the Director shall prescribe, that the contractor shall ensure, to the maximum extent possible, the inclusion of minorities and women in its workforce and, as applicable, by its subcontractors.

(4) **TERMINATION.**—A Director may terminate any contract upon a finding that the contractor has failed to make a good faith effort to comply with paragraph (3), except that a contractor may appeal such finding and termination to the agency administrator within a reasonable amount of time as determined by the Director.

(d) **APPLICABILITY.**—This section shall apply to all contracts of an agency for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

(e) **REPORTS.**—Not later than 90 days before the end of each Federal fiscal year, each Director shall report to the Congress detailed information describing the actions taken by the agency and the Director pursuant to this section, which shall—

(1) to the extent contracts exceed the contract amount and employment levels established in subsection (c)(3), include a statement of the total amounts paid by the agency to third party contractors since the last such report;

(2) the percentage of such amounts paid to businesses described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) such other information, findings, conclusions, and recommendations for legislative or agency action, as the Director may determine to be appropriate to include in such report.

(f) **DIVERSITY IN AGENCY WORKFORCE.**—Each agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States and the Federal government, which shall include—

(1) heavily recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(5) such other mass media communications that the Director determines are necessary.

(g) **DEFINITIONS.**—For purposes of this section:

(1) **AGENCY.**—The term “agency” means—

(A) the Department of the Treasury,

(B) the Federal Deposit Insurance Corporation,

(C) the Federal Housing Finance Agency,

(D) each of the Federal reserve banks,

(E) the Board,

(F) the National Credit Union Administration,

(G) the Office of the Comptroller of the Currency,

(H) the Office of Thrift Supervision,

(I) the Securities and Exchange Commission,

(J) the Federal department or agency that the President has identified as the main department or agency responsible for consumer financial protection,

(K) the Federal department or agency that the President has identified as the main department or agency responsible for insurance information,

and any successors to such entities.

(2) **AGENCY ADMINISTRATOR.**—The term “agency administrator” means the head of an agency.

## **Subtitle J—International Policy Coordination**

### **SEC. 1901. INTERNATIONAL POLICY COORDINATION.**

The President of the United States, or a designee of the President, shall coordinate through all available international policy channels similar policies as found in United States law related to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies in order to protect financial stability and the global economy.

## **Subtitle K—International Financial Provisions**

### **SEC. 1951. ACCESS TO UNITED STATES FINANCIAL MARKET BY FOREIGN INSTITUTIONS.**

(a) **ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.**—Subsection 7(d)(3) of the International Banking Act of 1978 (U.S.C. 3105(d)(3)) is amended—

(1) by striking “and” at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(E) for a foreign bank that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such systemic risk.”

(b) **TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.**—Subsection 7(e)(1) of the International Banking Act of 1978 (U.S.C. 3105(e)(1)) is amended—

(1) by striking “or” at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting “; or”; and

(3) by inserting after subparagraph (B), the following new subparagraph:

“(C) for a foreign bank that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), the home country of the foreign bank has not adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.”

(c) **REGISTRATION OR SUCCESSION TO UNITED STATES BROKERAGE OR DEALER AND TERMINATION OF SUCH REGISTRATION.**—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

“(k) **REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.**—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Securities and Exchange Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), the home country of the foreign person has adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.

“(l) **TERMINATION OF A UNITED STATES BROKER OR DEALER.**—For a foreign person or an affiliate of a foreign person that presents such a systemic risk to the United States, the Securities and Exchange Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such systemic risk.”

### **SEC. \_\_\_\_ . REDUCING TARP FUNDS TO OFFSET COSTS.**

Section 115(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C.

5525(a)(3)) is amended by striking “\$700,000,000,000, as such amount is reduced by \$1,259,000,000, as such amount is reduced by \$1,244,000,000, outstanding at any one time” and inserting “\$700,000,000,000, as such amount is reduced by \$22,059,000,000, outstanding at any one time”.

## **TITLE II—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS ACT**

### **SEC. 2001. SHORT TITLE.**

This title may be cited as the “Corporate and Financial Institution Compensation Fairness Act of 2009”.

### **SEC. 2002. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.**

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

“(1) ANNUAL VOTE.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission’s compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

“(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

“(A) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

“(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material con-

taining the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under paragraph (1). A vote by the shareholders shall not be binding on the issuer or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by any such person or issuer, nor to create or imply any additional fiduciary duty by any such person or issuer.

“(3) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to paragraphs (1) or (2) of this section, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

“(4) RULEMAKING.—Not later than 6 months after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue final rules to implement this subsection.

“(5) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of this subsection, where appropriate in view of the purpose of this subsection. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.”.

### **SEC. 2003. COMPENSATION COMMITTEE INDEPENDENCE.**

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

#### **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.**

“(a) COMMISSION RULES.—

“(1) IN GENERAL.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

“(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

“(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

“(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

“(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

“(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors,

or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

“(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

“(4) DEFINITION.—As used in this section, the term ‘compensation committee’ means—

“(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

“(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

“(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation.

“(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

“(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee’s ability or obligation to exercise its own judgment in fulfillment of its duties.

“(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

“(3) REGULATIONS.—In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any such category.

“(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly



responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

“(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

“(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c), and

“(2) to any independent counsel or other adviser to the compensation committee.”.

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Securities Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 2 years after the rules required by the amendment made by this section take effect, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

#### SEC. 2004. ENHANCED COMPENSATION STRUCTURE REPORTING TO REDUCE PERVERSE INCENTIVES.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) is aligned with sound risk management;

(B) is structured to account for the time horizon of risks; and

(C) meets such other criteria as the appropriate Federal regulators jointly may determine to be appropriate to reduce unreasonable incentives offered by such institutions for employees to take undue risks that—

(i) could threaten the safety and soundness of covered financial institutions; or

(ii) could have serious adverse effects on economic conditions or financial stability.

(2) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this subsection shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, and taking into account the factors described in subparagraphs (A), (B), and (C) of subsection (a)(1), the appropriate Federal regulators shall jointly prescribe regulations that prohibit any incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encour-

ages inappropriate risks by covered financial institutions that—

(1) could threaten the safety and soundness of covered financial institutions; or

(2) could have serious adverse effects on economic conditions or financial stability.

(c) ENFORCEMENT.—The provisions of this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section shall be treated as a violation of subtitle A of title V of such Act.

(d) DEFINITIONS.—As used in this section—

(1) the term “appropriate Federal regulator” means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

(F) the Securities and Exchange Commission; and

(G) the Federal Housing Finance Agency; and

(2) the term “covered financial institution” means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(e) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than \$1,000,000,000.

(f) LIMITATION.—No regulation promulgated pursuant to this section shall be allowed to require the recovery of incentive-based compensation under compensation arrangements in effect on the date of enactment of this title, provided such compensation agreements are for a period of no more than 24 months. Nothing in this title shall prevent or limit the recovery of incentive-based compensation under any other applicable law.

(g) GAO STUDY.—

(1) STUDY REQUIRED.—

(A) IN GENERAL.—The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.

(B) FACTORS TO CONSIDER.—In carrying out the study required under subparagraph (A), the Comptroller General shall—

(i) consider compensation structures used by companies from 2000 to 2008; and

(ii) compare companies that failed, or nearly failed but for government assistance, to companies that remained viable through-

out the housing and credit market crisis of 2007 and 2008, including the compensation practices of all such companies.

(C) DETERMINING COMPANIES THAT FAILED OR NEARLY FAILED.—In determining whether a company failed, or nearly failed but for government assistance, for purposes of subparagraph (B)(ii), the Comptroller General shall focus on—

(i) companies that received exceptional assistance under the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2009 (12 U.S.C. 5211 et seq.) or other forms of significant government assistance, including under the Automotive Industry Financing Program, the Targeted Investment Program, the Asset Guarantee Program, and the Systemically Significant Failing Institutions Program;

(ii) the Federal National Mortgage Association;

(iii) the Federal Home Loan Mortgage Corporation; and

(iv) companies that participated in the Security and Exchange Commission's Consolidated Supervised Entities Program as of January 2008.

(2) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this title, the Comptroller General shall issue a report to the Congress containing the results of the study required under paragraph (1).

### TITLE III—OVER-THE-COUNTER DERIVATIVES MARKETS ACT

#### SEC. 3001. SHORT TITLE.

This title may be cited as the “Over-the-Counter Derivatives Markets Act of 2009”.

#### Subtitle A—Regulation of Swap Markets

#### SEC. 3101. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (9) through (34) as paragraphs (10) through (35), respectively;

(2) by adding after paragraph (8) the following:

“(9) DERIVATIVE.—The term ‘derivative’ means—

“(A) a contract of sale of a commodity for future delivery; or

“(B) a swap.”;

(3) by redesignating paragraph (35) (as redesignated by paragraph (1)) as paragraph (36);

(4) by adding after paragraph (34) (as redesignated by paragraph (1)) the following:

“(35) SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction that—

“(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities,

instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

“(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

“(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

“(B) EXCLUSIONS.—The term ‘swap’ does not include:

“(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

“(ii) any sale of a nonfinancial commodity for deferred shipment or delivery, so long as such transaction is physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

“(v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless such

agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

“(ix) any foreign exchange swap;

“(x) any foreign exchange forward;

“(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank or the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

“(xii) any security-based swap, other than a security-based swap as described in paragraph (38)(C).

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).”;

(5) in paragraph (13) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in clause (vii), by striking “\$25,000,000” and inserting “\$50,000,000”; and

(ii) in clause (xi), by striking “total assets in an amount” and inserting “amounts invested on a discretionary basis”; and

(B) in subparagraph (C), by striking “determines” and inserting “and the Securities and Exchange Commission may jointly determine”;

(6) in paragraph (30) (as redesignated by paragraph (1)), by—

(A) redesignating subparagraph (E) as subparagraph (G);

(B) in subparagraph (D), by striking “and”; and

(C) inserting after subparagraph (D) the following:

“(E) a swap execution facility registered under section 5h;

“(F) a swap repository; and”;

(7) by adding after paragraph (36) (as redesignated by paragraph (3)) the following:

“(37) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”;

(8) by adding after paragraph (37) the following:

“(38) SECURITY-BASED SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and that—

“(i) is based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

“(ii) is based on a single security or loan, including any interest therein or based on the value thereof; or

“(iii) is based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

“(B) EXCLUSION.—The term ‘security-based swap’ does not include any agreement, contract, or transaction that meets the definition of security-based swap only because it

references or is based upon a government security.

“(C) MIXED SWAP.—The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of one or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

“(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).”;

(9) by adding after paragraph (38) the following:

“(39) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person engaged in the business of buying and selling swaps for such person’s own account, through a broker or otherwise.

“(B) EXCEPTION.—The term ‘swap dealer’ does not include a person that buys or sells swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.”;

(10) by adding after paragraph (39) the following:

“(40) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer and—

“(i) who maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing, or otherwise mitigating commercial risk; or

“(ii) whose outstanding swaps create substantial net counterparty exposure (current and potential future) that would expose counterparties to significant credit losses that could have a material adverse effect on capital of the counterparties.

“(B) DEFINITIONS.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term ‘substantial net position’ and ‘substantial net counterparty exposure’ at a threshold that the Commissions determine prudent for the effective monitoring of, management and oversight of the financial system. In the event the Commissions are unable to agree upon a level within 60 days of the commencement of such consultations, the Secretary of the Treasury shall make such determination, which shall be binding on and adopted by such Commissions.

“(41) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major security-based swap participant’ means any person who is not a swap dealer and—

“(i) who maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging,

reducing, or otherwise mitigating commercial risk; or

“(ii) whose outstanding security-based swaps create substantial net counterparty exposure (current and potential future) that would expose counterparties to significant credit losses that could have a material adverse effect on capital of the counterparties.

“(B) DEFINITIONS.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term ‘substantial net position’ and ‘substantial net counterparty exposure’ at a threshold that the Commissions determine prudent for the effective monitoring of, management and oversight of the financial system. In the event the Commissions are unable to agree upon a level within 60 days of the commencement of such consultations, the Secretary of the Treasury shall make such determination, which shall be binding on and adopted by such Commissions.”;

(11) by adding after paragraph (41) the following:

“(42) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).”;

(12) by adding after paragraph (42) the following:

“(43) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ means—

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a State-chartered bank that is a member of the Federal Reserve System; or

“(ii) a State-chartered branch or agency of a foreign bank;

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a national bank; or

“(ii) a federally chartered branch or agency of a foreign bank; and

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.”;

(13) by adding after paragraph (43) the following:

“(44) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person engaged in the business of buying and selling security-based swaps for such person’s own account, through a broker or otherwise.

“(B) EXCEPTION.—The term ‘security-based swap dealer’ does not include a person that buys or sells security-based swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.”;

(14) by adding after paragraph (44) the following:

“(45) GOVERNMENT SECURITY.—The term ‘government security’ has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).”;

(15) by adding after paragraph (45) the following:

“(46) FOREIGN EXCHANGE FORWARD.—The term ‘foreign exchange forward’ means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.”;

(16) by adding after paragraph (46) the following:

“(47) FOREIGN EXCHANGE SWAP.—The term ‘foreign exchange swap’ means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.”;

(17) by adding after paragraph (47) the following:

“(48) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10).”;

(18) by adding after paragraph (48) the following:

“(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term ‘person associated with a swap dealer or major swap participant’ or ‘associated person of a swap dealer or major swap participant’ means any partner, officer, director, or branch manager of such swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such swap dealer or major swap participant, or any employee of such swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 4s(b)(6).”;

(19) by adding after paragraph (49) the following:

“(50) SWAP REPOSITORY.—The term ‘swap repository’ means an entity that collects and maintains the records of the terms and conditions of swaps or security-based swaps entered into by third parties.

“(51) RESTRICTED OWNER.—The term ‘restricted owner’ means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, person associated with a swap dealer or major swap participant, or person associated with a security-based swap dealer or major security-based swap participant.”;

(b) JOINT RULEMAKING ON FURTHER DEFINITION OF TERMS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt a rule further defining the terms “swap”, “security-based swap”, “swap dealer”, “security-based swap dealer”, “major swap participant”, “major security-based swap participant”, and “eligible contract participant” no later than 180 days after the effective date of this title.

(2) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may prescribe rules defining the term “swap” or “security-based swap” to include transactions that have been structured to evade this title.

(c) JOINT RULEMAKING UNDER THIS TITLE.—

(1) UNIFORM RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be uniform.

(2) TREASURY DEPARTMENT.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe uniform rules and regulations under any provision of this title in a timely manner, the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, shall prescribe rules and regulations under such provision. A rule prescribed by the Secretary of the Treasury shall be enforced as if prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission and shall remain in effect until the Secretary rescinds the rule or until the effective date of a corresponding rule prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission in accordance with this section, whichever is later.

(3) DEADLINE.—The Secretary of the Treasury shall adopt rules and regulations under paragraph (2) within 180 days of the time that the Commodity Futures Trading Commission and the Securities and Exchange Commission failed to adopt uniform rules and regulations.

(4) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall prescribe requirements to treat functionally or economically similar products similarly.

(5) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this title shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

(6) JOINT INTERPRETATION.—Any interpretation of, or guidance regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

#### SEC. 3102. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—The first sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended—

(1) by striking “(C) and (D)” and inserting “(C), (D), and (G)”;

(2) by striking “subsections (c) through (i)” and inserting “subsections (c) and (f)”;

and

(3) by striking “involving contracts of sale” and inserting “involving swaps or contracts of sale”.

(b) NO LIMITATION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by inserting after subparagraph (F) the following:

“(G) Nothing contained in this paragraph shall supersede or limit the jurisdiction conferred on the Securities and Exchange Commission or other regulatory authority by, or otherwise restrict the authority of the Securities and Exchange Commission or other regulatory authority under, the Over-the-Counter Derivatives Markets Act of 2009, including with respect to a security-based swap as described in section 1a(38)(C) of this Act.”.

(c) ADDITIONS.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking “or” at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

“(i) a swap; or”.

#### SEC. 3103. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) Sections 2(d), 2(e), 2(g), and 2(h) of the Commodity Exchange Act (7 U.S.C. 2(d), 2(e), 2(g), and 2(h)) are repealed.

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

“(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (f), and (j), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 4u, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.

“(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on or subject to the rules of a board of trade designated as a contract market under section 5.”.

(3) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

“(j) CLEARING OF SWAPS.—

“(1) IN GENERAL.—

“(A) PRESUMPTION OF CLEARING.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing.

“(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

“(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and

“(ii) provide for non-discriminatory clearing of a swap executed on or through the rules of an unaffiliated designated contract market or swap execution facility.

“(2) COMMISSION APPROVAL.—

“(A) IN GENERAL.—A derivatives clearing organization shall submit to the Commission for prior approval each swap, or any group, category, type, or class of swaps, that it seeks to accept for clearing, which submission the Commission shall make available to the public.

“(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the derivatives clearing organization submitting the request agrees to an extension of the time limitation established under this subparagraph. A request on which the Com-

mission fails to take final action within the time limitation established under this subparagraph is deemed approved.

“(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with section 5b(c)(2).

“(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for a derivatives clearing organization’s submission for approval, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.

“(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2):

“(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

“(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with section 5b(c)(2); or

“(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

“(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization’s clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

“(4) PREVENTION OF EVASION.—The Commission and the Securities and Exchange Commission shall have authority to prescribe rules under this subsection, or issue interpretations of such rules, as necessary to prevent evasions of this Act provided that any such rules or interpretations must be issued jointly to be effective.

“(5) REQUIRED REPORTING.—

“(A) IN GENERAL.—All swap transactions that are not accepted for clearing by any derivatives clearing organization shall be reported to either a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

“(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties may agree which counterparty will report the swap transaction. In transactions where only 1 counterparty is a swap dealer, the swap dealer will report the transaction.

“(6) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

“(B) Swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than the later of—

“(i) 90 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(7) TRADE EXECUTION.—

“(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1) and where both counterparties are either swap dealers or major swap participants, such counterparties shall—

“(i) execute the transaction on a board of trade designated as a contract market under section 5; or

“(ii) execute the transaction on a swap execution facility registered with the Commission.

“(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade.

“(C) REQUIRED REPORTING.—If the exception of subparagraph (B) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

“(8) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements or transactions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.

“(9) EXCEPTIONS.—The requirements of paragraph (1) shall not apply to a swap if—

“(A) no derivatives clearing organization registered under this Act will accept the swap for clearing; or

“(B) one of the counterparties to the swap is not a swap dealer or major swap participant.

“(10) EXCLUSION.—Paragraph (1) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this paragraph.”.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) are amended to read as follows:

“(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization

described in section 1a(10) of this Act with respect to—

“(1) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

“(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

“(B) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

“(2) a swap.

“(b) VOLUNTARY REGISTRATION.—

“(1) DERIVATIVES CLEARING ORGANIZATIONS.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.

“(2) CLEARING AGENCIES.—A derivatives clearing organization may clear security-based swaps that are required to be cleared by a person who is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”

(2) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by adding at the end the following:

“(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is also a bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection and persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(i) CONSULTATION.—The Commission and the Securities and Exchange Commission shall consult with the appropriate Federal banking agencies prior to adopting rules under this section with respect to swaps.

“(j) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that such derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

“(k) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer—

“(A) shall report directly to the board or to the senior officer of the derivatives clearing organization;

“(B) shall—

“(i) review compliance with the core principles in section 5b(c)(2);

“(ii) in consultation with the board of the derivatives clearing organization, a body performing a function similar to that of a

board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

“(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(iv) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(C) shall establish procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, retesting, and closing of noncompliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.”

(3) Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) is amended to read as follows:

“(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in subparagraphs (B) through (N) this paragraph. The Commission may conform the core principles to reflect evolving United States and international standards.”

(4) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is further amended by adding after subsection (k), as added by paragraph (2), the following:

“(1) REPORTING.—

“(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission and any designated swap repository all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. A derivatives clearing organization that clears security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934) shall, upon request, make available to the Securities and Exchange Commission all information (including information on a real-time basis) relating to such security-based swap agreements. Subject to section 8, the Commission shall share such information, upon request, with the Board, the Securities and Exchange Commission (with respect to swaps other than security-based swap agreements), the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall

provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).”

(5) Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence by adding “central bank and ministries” after “department” each place it appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

“(a) EXCLUSION.—Except as provided in subsection (b) or (c), no provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall apply to, and the Commodity Futures Trading Commission and the Securities and Exchange Commission shall not exercise regulatory authority under the Commodity Exchange Act with respect to, an identified banking product.

“(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product or a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

“(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)); and

“(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(c) ADDITIONAL EXCEPTION.—The exclusion in subsection (a) shall not apply to an identified banking product that—

“(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

“(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

“(3) has become known to the trade as a swap or security-based swap, or has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”

SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding after subsection (i) the following:

“(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on

swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) **DESIGNEE OF THE COMMISSION.**—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

“(3) **SOURCES OF INFORMATION.**—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) derivatives clearing organizations pursuant to section 5b(k)(2);

“(B) swap repositories pursuant to section 21(c)(3); and

“(C) reports received by the Commission pursuant to section 4r.”.

#### **SEC. 3105. SWAP REPOSITORIES.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

##### **“SEC. 21. SWAP REPOSITORIES.**

“(a) **REGISTRATION REQUIREMENT.**—

“(1) **IN GENERAL.**—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

“(2) **INSPECTION AND EXAMINATION.**—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

“(b) **STANDARD SETTING.**—

“(1) **DATA IDENTIFICATION.**—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

“(2) **DATA COLLECTION AND MAINTENANCE.**—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

“(3) **COMPARABILITY.**—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

“(c) **DUTIES.**—A swap repository shall—

“(1) accept data prescribed by the Commission for each swap under subsection (b);

“(2) maintain such data in such form and manner and for such period as may be required by the Commission;

“(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

“(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(d) **REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.**—Any person that is required to be registered as a swap repository under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

“(e) **HARMONIZATION OF RULES.**—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of

2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

“(f) **EXEMPTIONS.**—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.”.

##### **SEC. 3106. REPORTING AND RECORDKEEPING.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

##### **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.**

“(a) **IN GENERAL.**—Any person who enters into a swap and—

“(1) did not clear the swap in accordance with section 2(j)(1); and

“(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including time frames) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

“(b) **REPORTS.**—Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

“(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) **IDENTICAL DATA.**—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.”.

##### **SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:

##### **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.**

“(a) **REGISTRATION.**—

“(1) It shall be unlawful for any person to act as a swap dealer unless such person is registered as a swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major swap participant unless such person shall have registered as a major swap participant with the Commission.

“(b) **REQUIREMENTS.**—

“(1) **IN GENERAL.**—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

“(2) **CONTENTS.**—The application shall be made in such form and manner as prescribed

by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

“(3) **EXPIRATION.**—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

“(4) **RULES.**—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

“(5) **TRANSITION.**—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants no later than one year after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

“(6) **STATUTORY DISQUALIFICATION.**—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of such swap dealer or major swap participant, if such swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

“(c) **DUAL REGISTRATION.**—

“(1) **SWAP DEALER.**—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Securities and Exchange Commission as a security-based swap dealer.

“(2) **MAJOR SWAP PARTICIPANT.**—Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Securities and Exchange Commission as a major security-based swap participant.

“(d) **JOINT RULES.**—

“(1) **IN GENERAL.**—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules for persons that are registered as swap dealers or major swap participants under this section and persons that are registered as security-based swap dealers or major security-based swap participants under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(2) **EXCEPTION FOR PRUDENTIAL REQUIREMENTS.**—The Commission and the Securities and Exchange Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on swap dealers, major swap participants, security-based swap dealers, or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission and the Securities and Exchange Commission to prescribe appropriate business conduct, reporting, and record-keeping requirements to protect investors.

“(e) **CAPITAL AND MARGIN REQUIREMENTS.**—

“(1) **IN GENERAL.**—

“(A) **BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.**—Each registered swap dealer

and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

“(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Commission and the Securities and Exchange Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

“(2) JOINT RULES.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants.

“(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no Prudential Regulator.

“(3) CAPITAL.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the Prudential Regulators shall impose:

“(i) a capital requirement that is greater than zero for swaps that are cleared by a derivatives clearing organization; and

“(ii) to offset the greater risk to the swap dealer or major swap participant and to the financial system arising from the use of swaps that are not centrally cleared, higher capital requirements for swaps that are not cleared by a registered derivatives clearing organization than for swaps that are centrally cleared.

“(B) EXCLUSION.—Subparagraph (A) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

“(C) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

“(D) BANK HOLDING COMPANIES.—Capital requirements set by the Board for swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

“(E) A futures commission merchant, introducing broker, broker or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which it is subject.

“(4) MARGIN.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—The Prudential Regulators

shall impose margin requirements under this subsection on all swaps that are not cleared by a registered derivatives clearing organization.

“(B) NON-SWAP DEALERS OR MAJOR SWAP PARTICIPANTS.—The Prudential Regulators may, but are not required to, impose margin requirements with respect to swaps in which one of the counterparties is neither a swap dealer, major swap participant, security-based swap dealer nor a major security-based swap participant. Any such margin requirements for swaps shall provide for the use of non-cash collateral.

“(C) EXCLUSION.—Subparagraph (B) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

“(D) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Margin requirements for swaps set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than margin requirements for swaps set by the Prudential Regulators.

“(F) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which—

“(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(C) shall keep such books and records open to inspection and examination by any representative of the Commission; and

“(D) shall keep any such books and records relating to transactions in swaps based on one or more securities open to inspection and examination by the Securities and Exchange Commission.

“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(G) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

“(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and

form as to be identifiable with each swap transaction.

“(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(H) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

“(B) diligent supervision of its business as a swap dealer;

“(C) adherence to all applicable position limits;

“(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant) of—

“(i) information about the material risks and characteristics of the swap;

“(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate clearinghouse and for non-cleared swaps, upon the request of the counterparty, the daily mark of the swap dealer or major swap participant; and

“(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(3) RULES.—The Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009.



“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(j) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

“(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the Prudential Regulator for such swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

“(B) swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to swaps; and

“(D) other information relevant to its trading in swaps.

“(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the Prudential Regulator for such swap dealer or major swap participant, as applicable, upon request.

“(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap dealer or major swap participant shall avoid—

“(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.

“(k) RULES.—The Commission, the Securities and Exchange Commission, and the Prudential Regulators shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.

“(l) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a

swap dealer or major swap participant from the prudential requirements of the Over-the-Counter Derivatives Markets Act of 2009 if the Commission finds that such swap dealer or major swap participant is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

“(m) EXEMPTIVE AUTHORITY.—

“(1) IN GENERAL.—The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, derivative, or transaction, or any class or classes of persons, derivatives, or transactions, from any provision of this Act that was added by an amendment in the Over-the-Counter Derivatives Markets Act of 2009, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the purposes of such Act.

“(2) PROCEDURES.—The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this subsection shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.”

#### **SEC. 3108. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4s the following:

#### **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.**

“(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer as variation or initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the variation or initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of, a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

“(b) BACK OFFICE AUDIT REPORTING.—If a swap dealer does not segregate funds at the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”

#### **SEC. 3109. CONFLICTS OF INTEREST.**

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

“(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

“(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(2) address such other issues as the Commission determines appropriate.”

#### **SEC. 3110. SWAP EXECUTION FACILITIES.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

#### **“SEC. 5h. SWAP EXECUTION FACILITIES.**

“(a) REGISTRATION.—

“(1) IN GENERAL.—

“(A) No person may operate a swap execution facility unless the facility is registered under this section.

“(B) The term ‘swap execution facility’ means an entity that facilitates the execution of swaps between two persons through any means of interstate commerce but which is not a designated contract market.

“(2) DUAL REGISTRATION.—Any person that is required to be registered as a swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a swap execution facility.

“(b) REQUIREMENTS FOR TRADING.—A swap execution facility that is registered under subsection (a) may trade any swap.

“(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

“(d) CRITERIA FOR REGISTRATION.—

“(1) IN GENERAL.—To be registered as a swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

“(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(A) obtain information necessary to perform the functions required under this section; or

“(B) use means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) TRADING PROCEDURES.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

“(e) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To maintain its registration as a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility.

“(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The swap execution facility shall monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

“(B) provide the information to the Commission upon request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

“(7) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

“(8) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution facility shall, upon request, make available to the Securities and Exchange Commission all information (including information on a real-time basis) relating to transactions in security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934). The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

“(9) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap execution facility.

“(10) CONFLICTS OF INTEREST.—

“(A) The swap execution facility shall establish and enforce rules to minimize conflicts of interest in its decision-making process, and establish a process for resolving any such conflicts of interest.

“(B) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

“(C) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.

“(11) DESIGNATION OF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

“(B) DUTIES.—The compliance officer shall—

“(i) report directly to the board or to the senior officer of the facility;

“(ii) shall—

“(I) review compliance with the core principles in this subsection;

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(iii) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

“(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-

Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly prescribe rules governing the regulation of swap execution facilities under this section and section 3B of the Securities Exchange Act of 1934 (15 U.S.C. 78c-2).”

#### SEC. 3111. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7 and 7a-3) are repealed.

#### SEC. 3112. DESIGNATED CONTRACT MARKETS.

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

“(9) EXECUTION OF TRANSACTIONS.—

“(A) The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade's centralized market.

“(B) The rules may authorize, for bona fide business purposes—

“(i) transfer trades or office trades;

“(ii) an exchange of—

“(I) futures in connection with a cash commodity transaction;

“(II) futures for cash commodities; or

“(III) futures for swaps; or

“(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.”

(b) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraph (15) and inserting the following:

“(15) CONFLICTS OF INTEREST.—

“(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

“(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

“(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.”

(c) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding after paragraph (18) the following:

“(19) FINANCIAL RESOURCES.—The board of trade shall demonstrate that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the board of trade's financial resources to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of one year, calculated on a rolling basis.

“(20) SYSTEM SAFEGUARDS.—The board of trade shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and

procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade’s responsibilities and obligations; and

“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.”.

#### SEC. 3113. POSITION LIMITS.

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting “(1)” after “(a)”;

(2) striking “on electronic trading facilities with respect to a significant price discovery contract” in the first sentence and inserting “swaps that perform or affect a significant price discovery function with respect to regulated markets”;

(3) inserting “, including any group or class of traders,” in the second sentence after “held by any person”;

(4) striking “on an electronic trading facility with respect to a significant price discovery contract,” in the second sentence and inserting “swaps that perform or affect a significant price discovery function with respect to regulated markets,”; and

(5) inserting at the end the following:

“(2) **AGGREGATE POSITION LIMITS.**—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;

“(B) contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

“(3) **SIGNIFICANT PRICE DISCOVERY FUNCTION.**—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

“(A) **PRICE LINKAGE.**—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

“(B) **ARBITRAGE.**—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

“(C) **MATERIAL PRICE REFERENCE.**—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap.

“(D) **MATERIAL LIQUIDITY.**—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

“(E) **OTHER MATERIAL FACTORS.**—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

“(4) **EXEMPTIONS.**—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.”.

(b) Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility or facilities”; and

(2) in paragraph (2), by striking “or derivatives transaction execution facility or electronic trading facility” and inserting “or swap execution facility”.

#### SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by striking “The board of trade shall have” and inserting “Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the board of trade shall have”.

(b) Section 5c(c) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)) is amended to read as follows:

“(c) **NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.**—

“(1) **IN GENERAL.**—Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

“(2) **PRIOR APPROVAL.**—

“(A) **IN GENERAL.**—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

“(B) **PRIOR APPROVAL REQUIRED.**—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval under subparagraph (A) each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and for which there is open interest.

“(C) **DEADLINE.**—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

“(3) **APPROVAL.**—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.”.

#### SEC. 3115. FOREIGN BOARDS OF TRADE.

(a) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended by striking “No rule or regulation” and inserting “Except as provided in paragraphs (1) and (2), no rule or regulation”.

(b) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by inserting before “The Commission” the following: “(1) The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, ‘direct access’ refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

“(2) It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

“(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

“(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

“(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

“(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

“(I) the information that the foreign board of trade will make publicly available;

“(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

“(3) Paragraphs (1) and (2) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

“(4).”

(c) **LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.**—

(1) Section 4(a) of the Commodity Exchange Act (7 U.S.C. 6(a)) is amended by inserting “or by subsection (f)” after “Unless exempted by the Commission pursuant to subsection (c)”; and

(2) Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is further amended by adding at the end the following:

“(f) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subsections (b)(1) and (b)(2).”

(d) **CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.**—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

“(5) **CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.**—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”

#### SEC. 3116. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

“(4) **CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.**—

“(A) No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to such hybrid instrument shall be entitled to rescind, or recover any

payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

“(B) No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth in section 1a or to be cleared pursuant to section 2(j)(1).”

#### SEC. 3117. MULTILATERAL CLEARING ORGANIZATIONS.

(a) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 442(2)(C)) is amended by striking “section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act” and inserting “section 2(c) or 2(f) of such Act”.

(b) Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 442) is further amended by inserting at the end the following:

“(4) The term ‘over-the-counter derivative instrument’ does not include a swap or a security-based swap as defined in sections 1a(35) and 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and 1a(38)).”

#### SEC. 3118. PRIMARY ENFORCEMENT AUTHORITY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding the following new section after section 4b:

##### “SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.

“(a) **CFTC.**—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the provisions of Subtitle A of the Over-the-Counter Derivatives Markets Act of 2009 with respect to any person.

“(b) **PRUDENTIAL REGULATORS.**—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

“(c) **REFERRAL.**—If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that such swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(d) **BACKSTOP ENFORCEMENT AUTHORITY.**—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a recommendation under subsection (c), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.”

#### SEC. 3119. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap.”

(b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by

striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap.”

(c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by inserting “or swap” before “if the transaction is used or may be used”.

(d) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by inserting “or of any swap,” before “or to corner”.

(e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by inserting “swap repository,” before “or futures association”.

(f) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended by inserting “swap repository,” before “or registered futures association” and by inserting “, or swaps,” before “on the basis”.

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and by inserting after paragraph (5) the following:

“(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository or swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential Regulator for purposes of the Over-the-Counter Derivatives Markets Act of 2009.”

#### SEC. 3120. RETAIL COMMODITY TRANSACTIONS.

Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking “(to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))” and inserting “, 5b, or 12(e)(2)(B))”; and

(2) in paragraph (2), by inserting after subparagraph (C) the following:

“(D) **RETAIL COMMODITY TRANSACTIONS.**—

“(i) This subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

“(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

“(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

“(ii) Clause (i) shall not apply to—

“(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

“(II) any security;

“(III) a contract of sale that—

“(aa) results in actual delivery within 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business;

“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

“(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products.

“(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.”.

#### SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4t (as added by section 3108) the following:

##### “SEC. 4t. LARGE SWAP TRADER REPORTING.

“(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to regulated markets if—

“(1) such person shall directly or indirectly enter into such swaps during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

“(2) such person shall directly or indirectly have or obtain a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, such person shall keep books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

“(b) Such books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

“(c) Such books and records shall be open at all times to inspection and examination by any representative of the Commission.

“(d) Any such books and records relating to transactions in security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934) shall be open at all times to inspection and examination by the Securities and Exchange Commission.

“(e) For the purpose of this section, the swaps, futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

“(f) In making a determination whether a swap performs or affects a significant price

discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).”.

#### SEC. 3122. AUTHORITY TO BAN ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of the such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.

#### SEC. 3123. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of swaps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Prudential Regulators (as defined in section 1a(43) of the Commodity Exchange Act), and the financial stability regulator, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors and swap counterparties.

#### SEC. 3124. AUTHORITY TO BAN ACCESS TO THE UNITED STATES FINANCIAL SYSTEM.

If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the U.S. financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.

#### SEC. 3125. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

#### SEC. 3126. ANTITRUST.

Nothing in the amendments made by this title shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term “antitrust laws” has the same meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

#### SEC. 3127. EFFECTIVE DATE.

This subtitle is effective 270 days after the date of enactment.

##### Subtitle B—Regulation of Security-Based Swap Markets

#### SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting “(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)” after “securities” in each place it appears;

(2) in paragraph (10) by inserting “security-based swaps” after “security future,”

(3) in paragraph (13), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(4) in paragraph (14), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(5) in paragraph (39)—

(A) by striking “or government securities dealer” and inserting “government securities dealer, security-based swap dealer or major security-based swap participant” in subparagraph (B)(i)(I);

(B) by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (B)(i)(II);

(C) by striking “or government securities dealer” and inserting “government securities dealer, security-based swap dealer or major security-based swap participant” in subparagraph (C); and

(D) by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (D); and

(6) by adding at the end the following:

“(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’ has the same meaning as in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).

“(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based swap participant’ has the same meaning as in section 1a(41) of the Commodity Exchange Act (7 U.S.C. 1a(41)).

“(68) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

“(69) SWAP.—The term ‘swap’ has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

“(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ has the same meaning as in section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(48)).

“(71) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).

“(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(73) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(74) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ has the same meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

“(75) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section 1a(39)

of the Commodity Exchange Act (7 U.S.C. 1a(39)).

“(76) SECURITY-BASED SWAP AGREEMENT.—

“(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term ‘security-based swap agreement’ means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

“(B) EXCLUSIONS.—The term ‘security-based swap agreement’ does not include any security-based swap.

“(77) RESTRICTED OWNER.—The term ‘restricted owner’ has the same meaning as in section 1a(51) of the Commodity Exchange Act.”.

**SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.**

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b-1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that such term appears.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting “(including security-based swaps)” after “securities”; and

(ii) by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”; and

(B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

(1) Section 3A (15 U.S.C. 78c-1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

“(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

“(4) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.”.

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(4) Section 10 (15 U.S.C. 78j) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking “, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),”; and

(B) in subparagraphs (B) and (C), by striking “agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears.

(6) Section 15(i) (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

(7) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking “(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))”;

(B) in subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears; and

(C) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(8) Section 20 (15 U.S.C. 78t) is amended—

(A) in subsection (d), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(B) in subsection (f), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(9) Section 21A (15 U.S.C. 78u-1) is amended—

(A) in subsection (a)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(B) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

**SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.**

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3A:

**“SEC. 3B. CLEARING OF SECURITY-BASED SWAPS.**

“(a) CLEARING REQUIREMENT.—

“(1) IN GENERAL.—

“(A) PRESUMPTION OF CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing;

“(B) OPEN ACCESS.—The rules of a clearing agency described in subparagraph (A) shall—

“(i) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are fungible and may be offset with each other; and

“(ii) provide for non-discriminatory clearing of a security-based swap executed on or through the rules of an unaffiliated exchange or alternative swap execution facility.

“(2) COMMISSION APPROVAL.—

“(A) IN GENERAL.—A clearing agency shall submit to the Commission for prior approval each security-based swap, or any group, category, type or class of security-based swaps, that it seeks to accept for clearing, which submission the Commission shall make available to the public.

“(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the clearing agency submitting the request agrees to an extension of the time limitation established under this subparagraph. A request on which the Commission fails to take final action within the time limitation established under this subparagraph shall be deemed approved.

“(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if it finds that the request is consistent with the core principles specified under subsection (1).

“(D) RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for a clearing agency’s submission for approval, pursuant to this paragraph, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.

“(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2)—

“(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

“(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—



“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with the securities laws; or

“(ii) determine that the clearing requirement of paragraph (1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

“(D) RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a clearing agency’s clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

“(4) PREVENTION OF EVASION.—The Commission and the Commodities Futures Trading Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this Act. Any such rules or interpretations of rules shall be prescribed and issued jointly by both Commissions.

“(5) REQUIRED REPORTING.—

“(A) IN GENERAL.—Any security-based swap that is not accepted for clearing by any clearing agency shall be reported to either a security-based swap repository described in section 13(n) or, if there is no repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule prescribe.

“(B) REPORTING BY SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—In transactions where only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the transaction. In transactions where neither counterparty is a security-based swap dealer or major security-based swap participant, only 1 counterparty shall be required to report the transaction and the counterparties shall determine the reporting party by contract or otherwise.

“(6) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of such Act.

“(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of—

“(i) 90 days after the effective date of such Act; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(7) EXCEPTION.—The requirements of paragraph (1) shall not apply to a security-based swap if—

“(A) no clearing agency registered under this Act will accept the security-based swap for clearing; or

“(B) one of the counterparties to the security-based swap is not a security-based swap dealer or major security-based swap participant.

“(8) EXCLUSION.—Paragraph (1) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 180-day period that begins with the effective date of this paragraph.

“(b) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.”.

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78a) is amended by adding at the end the following new subsections:

“(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.

“(h) VOLUNTARY REGISTRATION.—

“(1) CLEARING AGENCIES.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

“(2) DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may clear swaps that are required to be cleared by a person who is registered as a derivatives clearing organization under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

“(i) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a clearing agency under this section shall register with the Commission regardless of whether the person is also a bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

“(j) REPORTING.—

“(1) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission and any designated swap repository all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on swap execution facilities. The Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

“(k) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“(A) report directly to the board or to the senior officer of the clearing agency;

“(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;

“(C) be responsible for administering the policies and procedures required to be established pursuant to this section;

“(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(E) establish procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints which will establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(l) STANDARDS FOR CLEARING AGENCIES CLEARING SWAP TRANSACTIONS.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

“(m) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.

“(n) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered as derivatives clearing organizations for swaps under the Commodity Exchange Act (7 U.S.C. 1, et seq.) and persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.).”.

(c) EXECUTION OF SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 5 the following:

**“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**

“(a) TRADE EXECUTION.—

“(1) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of section 3B and where both counterparties are either security-based swap dealers or major security-based swap participants, such counterparties shall—



“(A) execute the transaction on a national securities exchange registered pursuant to section 6(a) (in which event such transaction shall be subject to regulation under this title as a transaction in a security); or

“(B) execute the transaction on a swap execution facility registered with the Commission.

“(2) EXCEPTION.—The requirements of subparagraphs (A) or (B) of paragraph (1) shall not apply if no board of trade or swap execution facility makes the swap available to trade.

“(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of section 3B and where both counterparties are either security-based swap dealers or major security-based swap participants.

“(b) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges or swap execution facilities, agreements or transactions that would be commodity swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.”

(d) SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3B (as added by subsection (a)) the following:

**“SEC. 3C. SWAP EXECUTION FACILITIES.**

“(a) REGISTRATION.—

“(1) IN GENERAL.—

“(A) No person may operate a swap execution facility unless such facility is registered under this section.

“(B) For purposes of this section, the term ‘swap execution facility’ means an entity that facilitates the execution of swaps between 2 persons through any means of interstate commerce but which is not a designated contract market.

“(2) DUAL REGISTRATION.—Any person that is required to be registered as a swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

“(b) REQUIREMENTS FOR TRADING.—A swap execution facility that is registered under subsection (a) may trade any security-based swap.

“(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.

“(d) CRITERIA FOR REGISTRATION.—

“(1) IN GENERAL.—To be registered as a swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

“(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(A) obtain information necessary to perform the functions required under this section; or

“(B) use means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) TRADING PROCEDURES.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps.

“(e) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To maintain its registration as a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation. Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the security-based swaps traded on or through the facility and any limitations on access to the facility.

“(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The swap execution facility shall monitor trading in security-based swaps to prevent manipulation and price distortion through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

“(B) provide the information to the Commission upon request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

“(7) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission.

“(8) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act

in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

“(9) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap execution facility.

“(10) CONFLICTS OF INTEREST.—

“(A) IN GENERAL.—The swap execution facility shall establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

“(B) BENEFICIAL OWNERSHIP BY A RESTRICTED OWNER.—The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

“(C) ASSOCIATION WITH A RESTRICTED OWNER.—The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.

“(11) DESIGNATION OF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

“(B) DUTIES.—The compliance officer—

“(i) shall report directly to the board or to the senior officer of the facility;

“(ii) shall—

“(I) review compliance with the core principles in section 3B(e);

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, retesting, and closing of noncompliant issues.

“(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

“(g) HARMONIZATION OF RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly prescribe rules governing the regulation of swap execution facilities under this section and section 5h of the Commodity Exchange Act (7 U.S.C. 7b-3).”

(e) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by subsection (b)) the following:

**“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.**

“(a) SEGREGATION.—At the request of a counterparty to a security-based swap who provides funds or other property to a swap dealer as variation or initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing agency, the swap dealer shall segregate the variation or initial margin or collateral for the benefit of the counterparty, and maintain the variation or initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a securities-based swap counterparty is a swap dealer or major securities-based swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of, a custodian, the custodian shall not be considered independent from the securities-based swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

“(b) BACK OFFICE AUDIT REPORTING.—If a security-based swap dealer does not segregate funds at the request of a security-based swap counterparty in accordance with subsection (a), the security-based swap dealer shall report to its counterparty on a quarterly basis that its back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”

(f) TRADING IN SECURITY-BASED SWAP AGREEMENTS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(1) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).”

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the

Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)-(3)) are amended to read as follows:

“(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; (B) any security futures product on the security; or (C) any security-based swap involving the security or the issuer of the security;

“(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or

“(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in (A) any such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security.”

(h) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY-BASED SWAP AGREEMENTS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

“(j) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap or any security-based swap agreement, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”

(i) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is further amended by inserting after section 10B (15 U.S.C. 78j-1) (as added by section 2003(a)) the following new section:

**“SEC. 10C. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.**

“(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap or security-based swap agreement that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

“(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any security-based swap agreement and any other instrument relating to such security or loan or group or index of securities or loans; or

“(2) any security-based swap and (A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.

“(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

“(c) SRO RULES.—

“(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

“(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

“(i) any member of such self-regulatory organization; or

“(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap or other security-based swap agreement; and

“(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subparagraph (A).

“(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in—

“(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any security-based swap agreement and any other instrument relating to such security or loan or group or index of securities or loans; or

“(B)(i) any security-based swap;

“(ii) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76); and

“(iii) any security-based swap and any other instrument relating to the same security or group or index of securities.

“(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or security-based swap agreement and any security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or security-based swap agreement and any security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a).”

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) clearing agencies pursuant to section 3A;

“(B) security-based swap repositories pursuant to subsection (n); and

“(C) reports received by the Commission pursuant to section 13A.

“(n) SECURITY-BASED SWAP REPOSITORIES.—

“(1) REGISTRATION REQUIREMENT.—

“(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

“(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

“(2) STANDARD SETTING.—

“(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

“(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

“(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

“(3) DUTIES.—A security-based swap repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

“(B) maintain such data in such form and manner and for such period as may be required by the Commission;

“(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

“(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that

is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

“(5) HARMONIZATION OF RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

“(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.”

#### **SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 15E (15 U.S.C. 78o-7) the following:

#### **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.**

“(a) REGISTRATION.—

“(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

“(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

“(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

“(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsections (c) and (e), the Commission may provide conditional or unconditional exemptions from rules prescribed under this section for security-based swap dealers and major security-based swap participants that are subject to substan-

tially similar requirements as brokers or dealers.

“(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

“(c) DUAL REGISTRATION.—

“(1) SECURITY-BASED SWAP DEALERS.—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a swap dealer.

“(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a major swap participant.

“(d) JOINT RULES.—

“(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act and persons that are registered as swap dealers or major swap participants under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Commodity Futures Trading Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission and the Commodity Futures Trading Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

“(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Commission and the Commodity Futures Trading Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

“(2) JOINT RULES.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in

consultation with the Commission and the Commodity Futures Trading Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants.

“(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.

“(3) CAPITAL.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the Prudential Regulators shall impose—

“(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

“(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of security-based swaps that are not centrally cleared, higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are centrally cleared.

“(B) EXCLUSION.—Subparagraph (A) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

“(C) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

“(D) BANK HOLDING COMPANIES.—Capital requirements set by the Board for security-based swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

“(4) MARGIN.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—The Prudential Regulators shall impose margin requirements under this subsection on all security-based swaps that are not cleared by a registered clearing agency.

“(B) NON-SWAP DEALERS AND MAJOR MARKET PARTICIPANTS.—The Prudential Regulators may, but are not required to, impose margin requirements with respect to security-based swaps in which one of the counterparties is not a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant. Margin requirements for swaps set by the Commission and the Commodity Futures Trading Commission shall provide for the use of non-cash assets as collateral.

“(C) EXCLUSION.—Subparagraph (B) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

“(D) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Margin requirements for security-based swaps set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than margin requirements for security-based swaps set by the Prudential Regulators.

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which—

“(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; or

“(ii) there is no Prudential Regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(C) shall keep such books and records open to inspection and examination by any representative of the Commission; and

“(D) shall keep any such books and records relating to transactions in swaps based on 1 or more securities open to inspection and examination by the Commission.

“(2) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

“(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

“(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily

trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

“(B) diligent supervision of its business as a security-based swap dealer;

“(C) adherence to all applicable position limits;

“(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and

“(E) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant) of—

“(i) information about the material risks and characteristics of the security-based swap;

“(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate clearinghouse and for non-cleared swaps, upon the request of the counterparty, the daily mark of the security-based swap dealer or major security-based swap participant; and

“(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

“(3) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely

and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

“(2) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(j) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

“(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

“(A) terms and conditions of its security-based swaps;

“(B) security-based swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to security-based swaps; and

“(D) other information relevant to its trading in security-based swaps.

“(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

“(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the Prudential Regulators shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.

“(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based

swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

“(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

“(1) PRIMARY ENFORCEMENT AUTHORITY.—

“(A) SEC.—Except as provided in subsection (b), the Commission shall have primary authority to enforce the provisions of the amendments made by subtitle B of the Over-the-Counter Derivatives Markets Act of 2009 with respect to any person.

“(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

“(C) REFERRAL.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the non-prudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(D) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90 day period beginning on the date on which the Commission receives a recommendation under subparagraph (C), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.

“(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(3) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(4) It shall be unlawful—

“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

“(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.

“(5) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap dealer or major security-based swap participant from the prudential requirements of the Over-the-Counter Derivatives Markets Act of 2009 if the Commission finds that such security-based swap dealer or major security-based swap participant is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

“(n) EXEMPTIVE AUTHORITY.—

“(1) IN GENERAL.—The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, derivative, or transaction, or any class or classes of persons, derivatives, or transactions, from any

provision of this Act that was added by an amendment in the Over-the-Counter Derivatives Markets Act of 2009, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the purposes of such Act.

“(2) PROCEDURES.—The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this subsection shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.”.

**SEC. 3205. NATIONAL SECURITY EXCHANGE REGISTRATION REQUIREMENTS.**

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:

“(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

“(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

“(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.”.

**SEC. 3206. REPORTING AND RECORDKEEPING.**

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

**“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.**

“(a) IN GENERAL.—Any person who enters into a security-based swap and—

“(1) did not clear the security-based swap in accordance with section 3A; and

“(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n),

shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

“(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under subsection (n).”.

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is

amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument as the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”.

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument, as the Commission may define by rule” after “subsection (d)(1) of this section”.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by striking “section 13(d)(1) of this title” and inserting “subsection (d)(1), or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument, as the Commission may define by rule,”.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and

(2) in subparagraph (F), by inserting “, or security-based swap dealer, or a major security-based swap participant” after “or dealer”.

(e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.”.

**SEC. 3207. STATE GAMING AND BUCKET SHOP LAWS.**

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any

person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ‘bucket shops’ or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except a security-based swap agreement and any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.”.

**SEC. 3208. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.**

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3) by adding at the end the following: “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”; and

(3) by adding at the end the following:

“(17) The terms ‘swap’ and ‘security-based swap’ have the same meanings as provided in sections 1a(35) and (38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and (38)).

“(18) The terms ‘purchase’ or ‘sale’ of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”.

(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

“(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Over-the-Counter Derivatives Markets Act of 2009. The Commission shall promulgate rules implementing this exemption.”.

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap

to any person who is not an eligible contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).”.

#### SEC. 3209. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

#### SEC. 3210. JURISDICTION.

Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

“(c) EXEMPTIVE AUTHORITY.—The Commission may use its authority under subsection (a) to exempt any person, security, or transaction, or any class of persons, securities, or transactions from any provision or provisions of this title or of any rule or regulation thereunder that applies to such person, security, or transaction solely because a security-based swap is a security, as such term is defined in section 3(a) of this title.”.

#### SEC. 3211. EFFECTIVE DATE.

This subtitle is effective 270 days after the date of enactment.

#### Subtitle C—Miscellaneous

#### SEC. 3301. STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.

(a) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(b) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

- (1) commercial users and traders of derivatives;
- (2) derivative clearing houses, exchanges and electronic trading platforms;
- (3) trade repositories and regulator investigations of market activities; and
- (4) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(c) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(d) REPORT.—Within 8 months after the date of the enactment of this title, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs

of the Senate a written report which contains the results of the study required by subsections (a) through (c).

#### SEC. 3302. STUDY OF DESIRABILITY AND FEASIBILITY OF ESTABLISHING SINGLE REGULATOR FOR ALL TRANSACTIONS INVOLVING FINANCIAL DERIVATIVES.

(a) IN GENERAL.—The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.

(b) REPORT TO THE CONGRESS.—Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by subsection (a).

#### SEC. 3303. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of enactment of this title, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3101 of this title) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

#### SEC. 3304. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support the clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term “Federal assistance” shall be defined as the use of public funds for the purposes of—

(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization or a subsidiary;

(2) purchasing assets of a derivatives clearing organization or a subsidiary;

(3) assuming or guaranteeing the obligations of a derivatives clearing organization or a subsidiary; or

(4) acquiring any type of equity interest or security of a derivatives clearing organization or a subsidiary.

#### TITLE IV—CONSUMER FINANCIAL PROTECTION AGENCY ACT

#### SEC. 4001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Agency Act of 2009”.

#### SEC. 4002. DEFINITIONS.

For the purposes of subtitles A through F of this title, the following definitions shall apply:

(1) AFFILIATE.—The term “affiliate” means any person that controls, is controlled by, or is under common control with another person.

(2) AGENCY.—The term “Agency” means—

(A) before the Agency conversion date, the Consumer Financial Protection Agency; and

(B) on and after the Agency conversion date, the commission established under section 4103.

(3) BANK HOLDING COMPANY.—The term “bank holding company” has the same meaning as in section 2(a) of the Bank Holding Company Act of 1956.

(4) BOARD.—Except when used in connection with the term “Board of Governors”, the term “Board” means the Consumer Financial Protection Oversight Board.

(5) BOARD OF GOVERNORS.—The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

(6) BUSINESS OF INSURANCE.—The term “business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(7) CONSUMER.—The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(8) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term “consumer financial product or service” means any financial product, other than a Federal tax return, or service to be used by a consumer primarily for personal, family, or household purposes.

(9) COVERED PERSON.—

(A) IN GENERAL.—The term “covered person” means any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service.

(B) EXCLUSION.—The term “covered person” shall not include the Secretary, the Department of the Treasury, any agency or bureau under the jurisdiction of the Secretary, or any person collecting Federal taxes for the United States to the extent such person is acting in such capacity.

(10) CREDIT.—The term “credit” means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(11) CREDIT UNION.—The term “credit union” means a Federal credit union or a State credit union as defined in section 101 of the Federal Credit Union Act.

(12) DEPOSIT.—The term “deposit”—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and



(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(13) **DEPOSIT-TAKING ACTIVITY.**—The term “deposit-taking activity” means—

(A) the acceptance of deposits, the maintenance of deposit accounts, or the provision of services related to the acceptance of deposits;

(B) the acceptance of money, the provision of other services related to the acceptance of money, or the maintenance of members’ share accounts by a credit union; or

(C) the receipt of money or its equivalent, as the Director may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

(14) **DESIGNATED TRANSFER DATE.**—The term “designated transfer date” has the meaning provided in section 4602.

(15) **DIRECTOR.**—The term “Director” means—

(A) before the Agency conversion date, the Director of the Agency; and

(B) on and after the Agency conversion date, the commission established under section 4103.

(16) **ENUMERATED CONSUMER LAWS.**—The term “enumerated consumer laws” means each of the following:

(A) The Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.).

(B) The Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.).

(C) The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of such Act.

(E) The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(F) Subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

(G) Sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.).

(H) The Homeowners Protection Act of 1998.

(I) The Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(J) The Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(K) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).

(L) The Truth in Lending Act (15 U.S.C. 1601 et seq.).

(M) The Truth in Savings Act (12 U.S.C. 4301 et seq.).

(17) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and the term “Federal banking agencies” means all of such agencies.

(18) **FAIR LENDING.**—The term “fair lending” means fair, equitable, and nondiscriminatory access to credit for both individuals and communities.

(19) **FINANCIAL ACTIVITY.**—

(A) **IN GENERAL.**—The term “financial activity” means any of the following activities:

(i) Deposit-taking activities.

(ii) Extending credit and servicing loans, including—

(I) acquiring, purchasing, selling, brokering, or servicing loans or other extensions of credit;

(II) engaging in any other activity usual in connection with extensions of credit or servicing loans, including performing appraisals of real estate and personal property.

(iii) Check cashing and check-guaranty services, including—

(I) authorizing a subscribing merchant to accept personal checks tendered by the merchant’s customers in payment for goods and services; and

(II) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored.

(iv) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower.

(v) Collection of debt related to any consumer financial product or service.

(vi) Providing real estate settlement services.

(vii) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Director.

(viii) Acting as an investment adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State).

(ix) Acting as financial adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State), including—

(I) providing financial and other related advisory services;

(II) providing educational courses, and instructional materials to consumers on individual financial management matters;

(III) providing credit counseling or tax planning services to any person (excluding the preparation of returns, or claims for refund, of tax imposed by the Internal Revenue Code or advice with respect to positions taken therein, or services regulated by the Secretary of the Treasury under section 330 of title 31, United States Code); or

(IV) providing services to assist a consumer with debt management or debt settlement, with modifying the terms of any extension of credit, or with avoiding foreclosure.

(x) For purposes of this title, the following shall not be considered acting as financial adviser:

(I) Publishing any bona fide newspaper, news magazine or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer.

(II) Providing advice, analyses, or reports that do not relate to any securities other

than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act.

(xi) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a “financial activity” if with respect to financial data processing the person—

(I) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(II) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(III) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

(xii) Money transmitting.

(xiii) Sale, provision or issuance of stored value, except that, in the case of a sale, only if the seller influences the terms or conditions of the stored value provided to the consumer.

(xiv) Acting as a money services business.

(xv) Acting as a custodian of money or any financial instrument.

(xvi)(I) Any other activity that the Director defines, by regulation, as a financial activity after finding that—

(aa) the activity is financial in nature or is otherwise a permissible activity for a bank or bank holding company, including a financial holding company, under any provision of Federal law or regulation applicable to a bank or bank holding company, including a financial holding company;

(bb) the activity is incidental or complementary to any other financial activity regulated by the Agency; or

(cc) the activity is entered into or conducted as a subterfuge or with a purpose to evade any requirement under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(II) For purposes of subclause (I)(bb), the following activities provided to a covered person shall not be “incidental or complementary”:

(aa) Providing information products or services to a covered person for identity authentication.

(bb) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(cc) Providing document retrieval or delivery services.

(dd) Providing public records information retrieval.

(ee) Providing information products or services for anti-money laundering activities.

(B) **EXCEPTIONS.**—The term “financial activity” shall not include the business of insurance or the provision of electronic data transmission, routing, intermediate or transient storage, or connections to a system or network, where the person providing such services does not select or modify the content of the electronic data, is not the sender

or the intended recipient of the data, and such person transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such data is undifferentiated from other types of data that such person transmits, routes, stores, or provides connections.

(20) **FINANCIAL PRODUCT OR SERVICE.**—The term “financial product or service” means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(21) **FOREIGN EXCHANGE.**—The term “foreign exchange” means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(22) **INSURED CREDIT UNION.**—The term “insured credit union” has the same meaning as in section 101 of the National Credit Union Act.

(23) **INSURED DEPOSITORY INSTITUTION.**—The term “insured depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(24) **MONEY SERVICES BUSINESS.**—The term “money services business” means a person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(25) **MONEY TRANSMITTING.**—The term “money transmitting” means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(26) **PAYMENT INSTRUMENT.**—The term “payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(27) **PERSON.**—The term “person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(28) **PERSON REGULATED BY A STATE INSURANCE REGULATOR.**—The term “person regulated by a State insurance regulator” means any person who is—

(A) engaged in the business of insurance, and

(B) subject to regulation by any State insurance regulator,

but only to the extent that such person acts in such capacity.

(29) **PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.**—The term “person regulated by the Commodity Futures Trading Commission” means any futures commission merchant, commodity trading adviser, commodity pool operator, introducing broker, boards of trade, derivatives clearing organizations, multilateral clearing organizations, retail foreign exchange dealer, or swap execution facility, to the extent that such person’s actions are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act and any agent, employee, or contractor acting on behalf of,

registered with, or providing services to such person but only to the extent the person, or the employee, agent, or contractor of such person, acts in a registered capacity.

(30) **PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.**—The term “person regulated by the Securities and Exchange Commission” means—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any municipal securities dealer that is registered with the Securities and Exchange Commission;

(H) any self-regulatory organization that is registered with the Securities and Exchange Commission;

(I) any national securities exchange or other entity that is required to be registered under the Securities Exchange Act of 1934; and

(J) the Municipal Securities Rulemaking Board,

and any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any such person, but only to the extent that the person, or the employee agent, or contractor of such person, acts in a registered capacity.

(31) **PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.**—The terms “provision of a consumer financial product or service” and “providing a consumer financial product or service” mean the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(32) **PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.**—The term “person that performs income tax preparation activities for consumers” means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary of the Treasury under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(33) **RELATED PERSON.**—

(A) **IN GENERAL.**—The term “related person”, when used in connection with a covered person that is not a bank holding company, credit union, depository institution, means—

(i) any director, officer, employee charged with managerial responsibility, or controlling stockholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or on a case-by-case basis) who materially partici-

pates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant), with respect to such covered person, who knowingly or recklessly participates in any—

(I) violation of any law or regulation; or

(II) breach of fiduciary duty.

(B) **TREATMENT OF A RELATED PERSON AS A COVERED PERSON.**—Any person who is a related person under subparagraph (A) shall be deemed to be a covered person for all purposes of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H.

(34) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(35) **SERVICE PROVIDER.**—

(A) **IN GENERAL.**—The term “service provider” means any person who provides a material service to a covered person in the provision of a consumer financial product or service, including a person who—

(i) facilitates the design of, or operations relating to the provision of, the consumer financial product or service;

(ii) has direct interaction with a consumer (whether in person or via telecommunication device or other similar technology) regarding the consumer financial product or service; or

(iii) processes transactions relating to the consumer financial product or service.

(B) **EXCEPTIONS.**—The term “service provider” shall not apply to a person solely by virtue of such person providing or selling to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service;

(ii) a service that does not materially affect the terms or conditions of the consumer financial product or service, its performance or operation, or the propensity of a consumer to obtain or use such product or service; or

(iii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(36) **STATE.**—The term “State” means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands.

(37) **STORED VALUE.**—The term “stored value”—

(A) means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically; and

(B) includes a prepaid debit card or product (other than a card or product used solely for telephone services) or any other similar product,

regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(38) **AGENCY CONVERSION DATE.**—The term “Agency conversion date” means the date that is two years after the designated transfer date.

#### Subtitle A—Establishment of the Agency

#### SEC. 4101. ESTABLISHMENT OF THE CONSUMER FINANCIAL PROTECTION AGENCY.

(a) **AGENCY ESTABLISHED.**—There is established the Consumer Financial Protection Agency as an independent agency to regulate the provision of consumer financial products or services under this title, the enumerated

consumer laws, and the authorities transferred under subtitles F and H.

(b) AGENCY STRUCTURE.—

(1) INITIAL STRUCTURE.—The Agency shall be led by a Director or Acting Director, established pursuant to section 4102, until the day before the Agency conversion date.

(2) SUBSEQUENT STRUCTURE.—On and after the Agency conversion date, the Agency shall consist of the commission established under section 4103.

(c) PRINCIPAL OFFICE.—The principal office of the Agency shall be located in the city of Washington, District of Columbia, at 1 or more sites.

**SEC. 4102. DIRECTOR.**

(a) ESTABLISHMENT OF POSITION.—

(1) IN GENERAL.—There is hereby established the position of the Director of the Agency who shall be the head of the Agency.

(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Director may prescribe such regulations and issue such orders in accordance with this title as the Director may determine to be necessary for carrying out this title and all other laws within the Director's jurisdiction and shall exercise any authorities granted under this title and all other laws within the Director's jurisdiction.

(b) APPOINTMENT; TERM.—

(1) NOMINATION.—Within 60 days after the date of enactment of this title, the President shall nominate the Director, from among individuals who—

(A) are citizens of the United States; and

(B) have strong competencies and experiences related to consumer financial protection.

(2) APPOINTMENT SUBJECT TO CONFIRMATION.—The Director nominated under paragraph (1) shall be appointed by and with the advice and consent of the Senate.

(3) ACTING DIRECTOR BEFORE SENATE CONFIRMATION.—The individual nominated pursuant to paragraph (1) shall serve as Acting Director with full authorities granted to the Director under this title until the Director is confirmed by the Senate.

(4) TERM.—The Director shall be appointed for a term that ends on the Agency conversion date.

(5) REMOVAL.—The Director may be removed before the end of a term only for cause.

(6) VACANCY.—

(A) IN GENERAL.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (2) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(B) ACTING DIRECTOR.—

(i) IN GENERAL.—In the event of a vacancy or during the absence of the Director (who has been confirmed by the Senate pursuant to paragraph (2)), an Acting Director shall be appointed in the manner provided in section 3345, of title 5, United States Code.

(ii) AUTHORITY OF ACTING DIRECTOR.—Any individual serving as Acting Director under this subparagraph shall be vested with all authority, duties, and privileges of the Director.

(7) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed and qualified.

(c) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any covered person.

(d) COMPENSATION.—The Director shall receive compensation at the rate prescribed for

Level I of the Executive Schedule under section 5313 of title 5, United States Code.

**SEC. 4103. ESTABLISHMENT AND COMPOSITION OF THE COMMISSION.**

(a) ESTABLISHMENT OF THE COMMISSION.—

(1) IN GENERAL.—On the Agency conversion date, there shall be established a commission (hereinafter in this section referred to as the "Commission") that shall by operation of law succeed to all of the authorities of the Director of the Agency granted under this title and any other law.

(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Commission may prescribe such regulations and issue such orders in accordance with this title as the Commission may determine to be necessary for carrying out this title and all other laws within the Commission's jurisdiction and shall exercise any authorities granted under this title and all other laws within the Commission's jurisdiction.

(b) COMPOSITION OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who—

(A) are citizens of the United States; and

(B) have strong competencies and experiences related to consumer financial protection.

(2) INITIAL APPOINTMENTS.—

(A) IN GENERAL.—The initial members of the Commission, other than the initial Chair, may be appointed by the President, by and with the advice and consent of the Senate, prior to the Agency conversion date, but may not serve in their positions until such date.

(B) STAGGERING.—Except as provided under subsection (d)(1), the members of the Commission shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 4, and 5 years, respectively.

(3) TERMS.—

(A) IN GENERAL.—Except as provided in subsection (d)(1), each member of the Commission, including the Chair, shall serve for a term of 5 years.

(B) REMOVAL FOR CAUSE.—The President may remove any member of the Commission only for inefficiency, neglect of duty, or malfeasance in office.

(C) VACANCIES.—Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term to which that member's predecessor was appointed (including the Chair) shall be appointed only for the remainder of the term.

(D) CONTINUATION OF SERVICE.—Each member of the Commission may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the President and confirmed by the Senate, except that a member may not continue to serve more than 1 year after the date on which that member's term would otherwise expire.

(E) OTHER EMPLOYMENT PROHIBITED.—No member of the Commission shall engage in any other business, vocation, or employment.

(c) AFFILIATION.—With respect to members appointed pursuant to subsection (b), not more than 3 shall be members of any one political party.

(d) CHAIR OF THE COMMISSION.—

(1) APPOINTMENT.—

(A) INITIAL CHAIR.—The first Chair of the Commission shall be the Director or Acting Director serving on the day before the Agency conversion date, and such individual shall

serve in the position of Chair for a period of 3 years.

(B) SUBSEQUENT CHAIRS.—Subsequent chairs shall be appointed by the President from among the members of the Commission to serve as the Chair.

(2) AUTHORITY.—The Chair shall be the principal executive officer of the Agency, and shall exercise all of the executive and administrative functions of the Agency, including with respect to—

(A) the appointment and supervision of personnel employed under the Agency (other than personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chair);

(B) the distribution of business among personnel appointed and supervised by the Chair and among administrative units of the Agency; and

(C) the use and expenditure of funds.

(3) LIMITATION.—In carrying out any of the Chair's functions under the provisions of this subsection the Chair shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) REQUESTS OR ESTIMATES RELATED TO APPROPRIATIONS.—Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chair without the prior approval of the commission.

(e) NO IMPAIRMENT BY REASON OF VACANCIES.—No vacancy in the members of the Commission shall impair the right of the remaining members of the Commission to exercise all the powers of the Commission. Three members of the Commission shall constitute a quorum for the transaction of business, except that if there are only 3 members serving on the Commission because of vacancies in the Commission, 2 members of the Commission shall constitute a quorum for the transaction of business. If there are only 2 members serving on the Commission because of vacancies in the Commission, 2 members shall constitute a quorum for the 6-month period beginning on the date of the vacancy which caused the number of Commission members to decline to 2.

(f) SEAL.—The Commission shall have an official seal.

(g) COMPENSATION.—

(1) CHAIR.—The Chair shall receive compensation at the rate prescribed for level I of the Executive Schedule under section 5313 of title 5, United States Code.

(E) OTHER MEMBERS OF THE COMMISSION.—The 4 other members of the Commission shall each receive compensation at the rate prescribed for level II of the Executive Schedule under section 5314 of title 5, United States Code.

(h) INITIAL QUORUM ESTABLISHED.—During any time period prior to the confirmation of at least two members of the Commission under subsection (b)(2), one member of the Commission shall constitute a quorum for the transaction of business. Following the confirmation of at least 2 additional commissioners, the quorum requirements of subsection (e) shall apply.

(i) DEFINITIONS.—Notwithstanding section 4002, for purposes of this section:

(1) AGENCY.—The term "Agency" means the Consumer Financial Protection Agency.

(2) DIRECTOR.—The term "Director" means the Director of the Agency.

**SEC. 4104. CONSUMER FINANCIAL PROTECTION OVERSIGHT BOARD.**

(a) ESTABLISHED.—There is hereby established the Consumer Financial Protection

Oversight Board as an instrumentality of the United States.

(b) DUTIES AND POWERS.—

(1) DUTY TO ADVISE DIRECTOR.—The Board shall advise the Director on—

(A) the consistency of a proposed regulation of the Director with prudential, market, or systemic objectives administered by the agencies that comprise the Board;

(B) the overall strategies and policies in carrying out the duties of the Director under this title; and

(C) actions the Director can take to enhance and ensure that all consumers are subject to robust financial protection.

(2) LIMITATION ON POWERS.—The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

(c) COMPOSITION.—The Board shall be comprised of 7 members as follows:

(1) The Chairman of the Board of Governors.

(2) The head of the agency responsible for chartering and regulating national banks.

(3) The Chairperson of the Federal Deposit Insurance Corporation.

(4) The Chairman of the National Credit Union Administration.

(5) The Chairman of the Federal Trade Commission.

(6) The Secretary of Housing and Urban Development.

(7) The Chairman of the liaison committee of representatives of State agencies to the Financial Institutions Examination Council.

(d) REPRESENTATIVE OF ADDITIONAL INTERESTS.—

(1) COMPOSITION.—Notwithstanding subsection (c), the President, by and with the advice and consent of the Senate, shall appoint 5 additional members of the Board from among experts in the fields of consumer protection, fair lending and civil rights, representatives of depository institutions that primarily serve underserved communities, or representatives of communities that have been significantly impacted by higher-priced mortgage loans, as such communities are identified by the Director through an analysis of data received by reason of the provisions of the Home Mortgage Disclosure Act of 1975 or other data on lending patterns.

(2) AFFILIATION.—With respect to members appointed pursuant to paragraph (1), not more than 3 shall be members of any one political party.

(e) MEETINGS.—

(1) IN GENERAL.—The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.

(2) SPECIAL MEETINGS.—Any member of the Board may, upon giving written notice to the Director, require a special meeting of the Board.

(f) PROHIBITION ON ADDITIONAL COMPENSATION.—Members of the Board may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(g) COMPLAINTS RELATED TO REQUIRED OFFERING OF SPECIFIC FINANCIAL PRODUCTS OR SERVICES.—The Board shall establish procedures to receive and analyze complaints from any person claiming that the Director is not in compliance with the requirements under section 4311.

**SEC. 4105. EXECUTIVE AND ADMINISTRATIVE POWERS.**

The Director may exercise all executive and administrative functions of the Agency, including to—

(1) establish regulations for conducting the Agency's general business in a manner not inconsistent with this title;

(2) bind the Agency and enter into contracts;

(3) direct the establishment of and maintain divisions or other offices within the Agency in order to fulfill the responsibilities of this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H, and to satisfy the requirements of other applicable law;

(4) coordinate and oversee the operation of all administrative, enforcement, and research activities of the Agency;

(5) adopt and use a seal;

(6) determine the character of and the necessity for the Agency's obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid;

(7) delegate authority, at the Director's discretion, to any officer or employee of the Agency to take action under any provision of this title or under other applicable law;

(8) to implement this title and the Agency's authorities under the enumerated consumer laws and under subtitles F and H through regulations, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(9) perform such other functions as may be authorized or required by law.

**SEC. 4106. ADMINISTRATION.**

(a) OFFICERS.—The Director shall appoint the following officials:

(1) A secretary, who shall be charged with maintaining the records of the Agency and performing such other activities as the Director directs.

(2) A general counsel, who shall be charged with overseeing the legal affairs of the Agency and performing such other activities as the Director directs.

(3) An inspector general, who shall have the authority and functions of an inspector general of a designated Federal entity under the Inspector General Act of 1978 (5 U.S.C. App. 3).

(4) An Ombudsperson, who shall—

(A) develop and maintain expertise in and understanding of the law relating to consumer financial products;

(B) at the request of a Federal agency or a State agency, and with the prior approval of the Director, advise such agency with respect to actions that may affect consumers;

(C) advise consumers who may have a legitimate potential or actual claim against a Federal agency involving the provision of consumer financial products regarding their rights under this title;

(D) identify Federal agency actions that have potential implications for consumers and, if appropriate, and with the prior approval of the Director, advise the relevant Federal agencies with respect to those implications;

(E) provide information to private citizens, civic groups, Federal agencies, State agencies, and other interested parties regarding the rights of those parties under this title;

(F) develop, maintain, and provide expertise designed to assist covered persons, especially smaller depository institutions and other smaller entities to comply with regulations and other requirements issued to implement the provisions of this title, and where such assistance for smaller depository institutions shall be provided jointly by the Agency and the appropriate Federal banking agency;

(G) develop procedures to assist covered persons, especially smaller depository institutions and other smaller entities, in re-

sponding to or challenging actions taken by the Director or the Agency to implement the provisions of this title and to ensure that safeguards exist to preserve the confidentiality of covered persons using those procedures; and

(H) perform such other duties as the Director may delegate to the Ombudsperson.

(b) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Agency.

(B) EXPEDITED HIRING.—The Director may appoint, without regard to the provisions of sections 3309 through 3318, of title 5, United States Code, candidates directly to positions for which public notice has been given.

(C) HIRING VETERANS.—In hiring employees of the Agency, the Director shall establish appropriate targets, including timetables, to hire veterans (as defined in paragraphs (1) and (2) of section 2108 of title 5, United States Code) as employees of the Agency. In establishing appropriate targets under this paragraph, the Director may consider, among other relevant factors, the proportion of veterans hired by Federal agencies with comparable functions or types of occupations and their experiences in hiring veterans.

(2) COMPENSATION.—

(A) PAY.—The Director shall fix, adjust, and administer the pay for all employees of the Agency without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(B) BENEFITS.—The Director may provide additional benefits to Agency employees if the same type of benefits are then being provided by the Board of Governors or, if not then being provided, could be provided by the Board of Governors under applicable provisions of law or regulations.

(C) MINIMUM STANDARD.—The Director shall at all times provide compensation and benefits to classes of employees that, at a minimum, are equivalent to the compensation and benefits provided by the Board of Governors for the corresponding class of employees in any fiscal year.

(c) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Agency shall establish a unit whose functions shall include—

(A) conducting research on consumer financial counseling and education, including—

(i) on the topics of debt, credit, savings, financial product usage, and financial planning;

(ii) exploring effective methods, tools, and approaches; and

(iii) identifying ways to incorporate new technology for the delivery and evaluation of financial counseling and education efforts;

(B) researching, analyzing, and reporting on—

(i) current and prospective developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates;

(ii) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(iii) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(iv) consumer behavior with respect to consumer financial products or services, including performance on mortgage loan; and

(v) experiences of traditionally underserved consumers, including un-banked and under-banked consumers, regarding consumer financial products or services;

(C) identifying priorities for consumer financial education efforts, based on consumer complaints, research or analysis conducted pursuant to subparagraph (A), or other information; and

(D) testing and identifying methods of educating consumers to determine which methods are most effective.

(2) **COMMUNITY AFFAIRS.**—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) **CONSUMER COMPLAINTS.**—

(A) **IN GENERAL.**—The Director shall establish a unit whose functions shall include establishing a central database, or utilizing an existing database, for collecting and tracking information on consumer complaints about consumer financial products or services and resolution of complaints.

(B) **COORDINATION.**—In performing the functions described in subparagraph (A), the Director shall coordinate with the Federal banking agencies, the Federal Trade Commission, other Federal agencies, and other regulatory agencies or enforcement authorities.

(C) **DATA SHARING REQUIRED.**—To the extent permitted by law and the regulations prescribed by the Director regarding the confidential treatment of information, the Director shall share data relating to consumer complaints with Federal banking agencies, other Federal agencies, and State regulators. To the extent permitted by law and the regulations prescribed by the Federal banking agencies and other Federal agencies regarding the confidential treatment of information, the Federal banking agencies and other Federal agencies, respectively, shall share data relating to consumer complaints with the Director and the Agency.

(4) **CONSUMER FINANCIAL EDUCATION.**—

(A) **IN GENERAL.**—The Agency shall establish a unit to be named the Office of Financial Literacy, whose functions shall include activities designed to facilitate the education of consumers on consumer financial products and services, including through the dissemination of materials to consumers on such topics.

(B) **DIRECTOR.**—The Office of Financial Literacy shall be headed by a director.

(C) **DUTIES.**—Such unit shall—

(i) develop goals for programs to be provided by persons that provide consumer financial education and counseling, including programs through which such persons—

(I) provide one-on-one financial counseling;

(II) help individuals understand basic banking and savings tools;

(III) help individuals understand their credit history and credit score;

(IV) assist individuals in efforts to plan for major purchases, reduce their debt, and improve their financial stability; and

(V) work with individuals to design plans for long-term savings;

(ii) develop recommendations regarding effective certification of persons providing programs, or performing the activities, described in clause (i), including recommendations regarding—

(I) certification processes and standards for certification;

(II) appropriate certifying bodies; and

(III) mechanisms for funding the certification processes;

(iii) develop a technology tool to collect data on financial education and counseling outcomes; and

(iv) conduct research to identify effective methods, tools, technology, and strategies to educate and counsel consumers about personal finance management, including on the topics of debt, credit, savings, financial product usage, and financial planning.

(D) **COORDINATION.**—Such unit shall coordinate with other units within the Agency in carrying out its functions, including—

(i) working with the unit established under paragraph (2) to—

(I) provide information and resources to community organizations, nonprofit organizations, and other entities to assist in helping educate consumers about consumer financial products and services; and

(II) develop a marketing strategy to promote financial education and one-on-one counseling; and

(ii) working with the unit established under paragraph (1) to conduct research related to consumer financial education and counseling.

(d) **SINGLE TOLL-FREE TELEPHONE NUMBER FOR CONSUMER COMPLAINTS AND INQUIRIES.**—

(1) **CALL INTAKE SYSTEM.**—The Consumer Financial Protection Agency shall establish a single, toll-free telephone number for consumer complaints and inquiries concerning institutions regulated by such agencies and a system for collecting and monitoring complaints and, as soon as practicable, a system for routing such calls to the Federal financial institution regulatory agency that primarily supervises the financial institution, or that is otherwise the appropriate Federal agency to address the subject of the complaint or inquiry.

(2) **ROUTING CALLS TO STATES.**—To the extent practicable, State agencies may receive appropriate call transfers from the system established under paragraph (1) if—

(A) the State agency's system has the functional capacity to receive calls routed by the system; and

(B) the State agency has satisfied any conditions of participation in the system that the Council, coordinating with State agencies through the chairperson of the State Liaison Committee, may establish.

(e) **REPORT TO THE CONGRESS.**—Before the end of the 6-month period beginning on the date of the enactment of this title, the Federal financial institution regulatory agencies shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the agencies' efforts to establish—

(1) a public interagency Web site for directing and referring Internet consumer complaints and inquiries concerning any financial institution to the Consumer Financial Protection Agency for purposes of collecting, monitoring, and responding to such complaints and, where appropriate, a system for referring complaints to the Federal financial institution regulatory agency, other Federal agency, or State agency that is otherwise the appropriate agency to address the subject of the complaint or inquiry; and

(2) a system to expedite the prompt and effective rerouting of any misdirected consumer complaint or inquiry documents between or among the agencies, with prompt referral of any complaint or inquiry to the appropriate Federal financial institution regulatory agency, and to participating State agencies.

(f) **OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.**—

(1) **ESTABLISHMENT.**—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall es-

tablish within the Agency the Office of Fair Lending and Equal Opportunity.

(2) **FUNCTIONS.**—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office which shall include the following functions:

(A) Providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Agency, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

(B) Coordinating fair lending enforcement efforts of the Agency with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient and effective enforcement of Federal fair lending laws.

(C) Working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education.

(D) Providing annual reports to the Congress on the Agency's efforts to fulfill its fair lending mandate.

(3) **ADMINISTRATION OF OFFICE.**—There is hereby established the position of Assistant Director of the Agency for Fair Lending and Equal Opportunity who—

(A) shall be appointed by the Director;

(B) shall carry out such duties as the Director may delegate to such Assistant Director; and

(C) shall serve as the Director of the Office of Fair Lending and Equal Opportunity.

(4) **PROHIBITIONS ON PARTICIPATION IN PROGRAMS WITH RESPECT TO CERTAIN INDICTED ORGANIZATIONS.**—

(A) **PROHIBITION.**—The Director of the Office of Fair Lending and Equal Opportunity may not allow a covered organization to participate in any program established by such Director.

(B) **COVERED ORGANIZATION.**—In this paragraph, the term "covered organization" means any of the following:

(i) Any organization that has been indicted for a violation under any Federal or State law governing the financing of a campaign for election for public office or any law governing the administration of an election for public office, including a law relating to voter registration.

(ii) Any organization that had its State corporate charter terminated due to its failure to comply with Federal or State lobbying disclosure requirements.

(iii) Any organization that has filed a fraudulent form with any Federal or State regulatory agency.

(iv) Any organization that—

(I) employs any applicable individual, in a permanent or temporary capacity;

(II) has under contract or retains any applicable individual; or

(III) has any applicable individual acting on the organization's behalf or with the express or apparent authority of the organization.

(C) **ADDITIONAL DEFINITIONS.**—In this paragraph:

(i) The term "organization" includes the Association of Community Organizations for Reform Now (in this paragraph referred to as "ACORN") and any ACORN-related affiliate.

(ii) The term "ACORN-related affiliate" means any of the following:

(I) Any State chapter of ACORN registered with the Secretary of State's office in that State.

(II) Any organization that shares directors, employees, or independent contractors with ACORN.

(III) Any organization that has a financial stake in ACORN.

(IV) Any organization whose finances, whether federally funded, donor-funded, or raised through organizational goods and services, are shared or controlled by ACORN.

(iii) The term “applicable individual” means an individual who has been indicted for a violation under Federal or State law relating to an election for Federal or State office.

(D) REVISION OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall be revised to carry out the provisions of this paragraph relating to contracts.

(E) SEVERABILITY.—If any provision of this section or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provision to any other person or circumstance shall not be affected.

#### SEC. 4107. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Director in the exercise of the functions of the Director and the Agency under this title, the enumerated consumer laws, and to provide information on emerging practices in the consumer financial products or services industry.

(b) MEMBERSHIP.—

(1) IN GENERAL.—In appointing the members of the Consumer Advisory Board, the Director shall seek—

(A) to assemble experts in financial services, community development, fair lending and civil rights, consumer protection, and consumer financial products or services; and  
(B) to represent the interests of covered persons and consumers.

(2) PROHIBITION ON MEMBERSHIP WITH RESPECT TO CERTAIN INDICTED ORGANIZATIONS.—The Director may not appoint an employee of a covered organization (as defined in section 4105(f)(4)(B)) to the Consumer Advisory Board.

(c) POLITICAL AFFILIATION.—Not more than 1 more than half of the members of the Consumer Advisory Board may be members of the same political party.

(d) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(e) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

#### SEC. 4108. COORDINATION.

(a) COORDINATION WITH OTHER FEDERAL AGENCIES AND STATE REGULATORS.—The Director shall coordinate with the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Secretary of the Treasury, the Federal Trade Commission and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of, and enforcement related to, consumer and investment products, services, and laws.

(b) COORDINATION OF CONSUMER EDUCATION INITIATIVES.—

(1) IN GENERAL.—The Director shall coordinate with each agency that is a member of

the Financial Literacy and Education Commission established by the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.) to assist each agency in enhancing its existing financial literacy and education initiatives to better achieve the goals in paragraph (2) and to ensure the consistency of such initiatives across Federal agencies.

(2) GOALS OF COORDINATION.—In coordinating with the agencies described in paragraph (1), the Director shall seek to improve efforts to educate consumers about financial matters generally, the management of their own financial affairs, and their judgments about the appropriateness of certain financial products.

(c) COORDINATION.—The Agency may coordinate investigations, compliance examinations, information sharing, and related activities in support of activities undertaken pursuant to the Fair Housing Act by other Federal agencies.

#### SEC. 4109. REPORTS TO THE CONGRESS.

(a) REPORTS REQUIRED.—The Director shall prepare and submit to the President and the appropriate committees of the Congress a report at the beginning of each regular session of the Congress, beginning with the session following the designated transfer date.

(b) CONTENTS.—The reports required by subsection (a) shall include—

(1) a list of the significant regulations and orders adopted by the Director, as well as other significant initiatives conducted by the Director, during the preceding year and the Director's plan for regulations, orders, or other initiatives to be undertaken during the upcoming period;

(2) an analysis of complaints about consumer financial products or services that the Agency has received and collected during the preceding year;

(3) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Agency is a party (including adjudication proceedings conducted under subtitle E) during the preceding year;

(4) the actions taken regarding regulations, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions, including descriptions of the types of such covered persons, financial activities, and consumer financial products or services affected by such regulations, orders, and supervisory actions;

(5) an appraisal of significant actions, including actions under Federal or State law, by State attorneys general or State regulators relating to this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws;

(6) an analysis of the Agency's efforts to fulfill the fair lending mission of the Agency; and

(7) an appraisal of the regulatory and legal difficulties encountered by the Agency in carrying out the mission and duties of the Agency with respect to consumer protection, including a description of—

(A) the difficulties and hardships encountered with respect to coordinating with other Federal and State government entities;

(B) the regulatory and enforcement limitations placed on the Agency by this title;

(C) the practices of persons, covered and uncovered under this title, that allow such persons to harm consumers and escape regulation or enforcement, including any trends identified; and

(D) legislative and administrative recommendations with respect to solving or alleviating identified difficulties.

(c) ANNUAL APPEARANCE BEFORE THE CONGRESS.—The Director shall appear before the House Committee on Financial Services and the House Committee on Energy and Commerce at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives and plans of the Agency; and

(2) discuss and answer questions concerning such report.

#### SEC. 4110. GAO SMALL BUSINESS STUDIES.

(a) STUDIES REQUIRED.—Not later than the end of the 3-year period beginning on the designated transfer date, and also 3 years thereafter, the Comptroller General of the United States shall carry out a study to examine the effects that regulations issued by the Agency have on small businesses.

(b) REPORT.—At the conclusion of each study required under subsection (a), the Comptroller General of the United States shall issue a report to the Congress containing the finding and determinations made by the Comptroller General in carrying out such study.

#### SEC. 4111. FUNDING; FEES AND ASSESSMENTS; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM THE BOARD OF GOVERNORS.—

(1) TRANSFER REQUIRED.—Each year, beginning on the designated transfer date, the Board of Governors shall transfer funds in an amount equaling 10 percent of the Federal Reserve System's total system expenses (as reported in the Budget Review of the Board of Governors most recent Annual Report to Congress) to the Director for the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and transferred under subtitles F and H.

(2) PROCEDURES.—The Board of Governors, in consultation with the Agency, shall make appropriate arrangements to transfer funds to the Director in accordance with this subsection.

(b) FEES AND ASSESSMENTS.—

(1) ASSESSMENT REQUIRED.—

(A) IN GENERAL.—Taking into account such other sums available to the Agency and subject to the provisions of this subsection and subsection (d), the Director shall assess fees on covered persons to meet the Agency's expenses for carrying out the duties and responsibilities of the Agency, including supervising such covered persons.

(B) BASIS FOR ASSESSMENT.—The Agency shall assess fees on covered persons pursuant to this subsection based on the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(2) REGULATIONS.—

(A) IN GENERAL.—The Director shall prescribe regulations to govern the imposition and collection of fees and assessments.

(B) FACTORS REQUIRED TO BE ADDRESSED.—Regulations prescribed by the Director under this subsection shall specify and define—

(i) the basis of fees or assessments (such as the outstanding number of consumer credit accounts, off-balance sheet receivables attributable to the covered person, total consolidated assets, total assets under management, or volume of consumer financial transactions or use of service providers);

(ii) the amount and frequency of fees or assessments; and

(iii) such other factors that the Director determines are appropriate, which shall include a covered person's compliance record

under the enumerated consumer laws, the authorities transferred under subtitles F and H, and this title.

(3) ASSESSMENTS ON DEPOSITORY INSTITUTION COVERED PERSONS.—

(A) DEPOSITORY INSTITUTION COVERED PERSON DEFINED.—For purposes of this section, the term “depository institution covered person” means a covered person that is an insured depository institution or credit union.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Director shall assess fees for supervision as are appropriate on depository institution covered persons, taking into account the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(ii) LIMITATION ON CERTAIN FEES.—The Agency shall not assess examination fees on an institution referred to in section 4203(a), or an institution whose examination responsibilities have been delegated to an appropriate agency, pursuant to section 4202(c)(11).

(iii) BASIS FOR FEE AMOUNTS.—Fees assessed by the Director under this subparagraph may be established at levels necessary to meet the Agency’s expenses for carrying out the duties and responsibilities of the Director and the Agency under this title with regard to depository institution covered persons.

(C) COORDINATION DURING IMPLEMENTATION PERIOD.—The Director and the agencies responsible for chartering and or supervising depository institution covered persons shall coordinate on the levels of fees assessed on depository institution covered persons under this paragraph, so that levels of assessments under this subparagraph combined with levels of assessments by agencies responsible for chartering and or supervising depository institution covered persons shall be no more than the assessments such depository institution covered person was required to pay for the 12-month period ending on December 31, 2009.

(D) MARGINAL ASSESSMENT RATE.—

(i) IN GENERAL.—In setting assessment rates for depository institution covered persons, the Director shall not impose assessments that result in higher marginal assessment rates for depository institution covered persons with assets of less than \$25,000,000,000 than the marginal rates for depository institutions covered persons with assets that exceed that amount.

(ii) RULE OF CONSTRUCTION.—Clause (i) shall not be construed as limiting or impairing the authority of the Director to set assessments that would result in higher marginal assessment rates on the larger depository institution covered persons.

(E) LIMITATIONS ON ASSESSMENTS.—

(i) ASSESSMENTS FOR ADMINISTRATIVE COSTS.—Notwithstanding any provision in this title, no depository institution covered person shall be charged an assessment to be used for the supervision, examination, enforcement or regulation by the Agency of nondepository covered persons.

(ii) AMOUNTS PAID FOR CONSUMER COMPLIANCE SUPERVISION.—Notwithstanding any provision in this title, no depository institution covered person shall pay more for consumer compliance supervision than it paid before the date of enactment of this title.

(4) ASSESSMENTS ON NONDEPOSITORY COVERED PERSONS.—

(A) NONDEPOSITORY COVERED PERSON DEFINED.—For purposes of this section, the term “nondepository covered person”—

(i) means a covered person that is not a credit union or insured depository institution; and

(ii) includes any bank holding company.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Director shall assess fees for registration, examination, and supervision of nondepository covered persons.

(ii) BASIS FOR FEE AMOUNTS.—Fees assessed by the Director under this subparagraph may be established at levels necessary to meet the Agency’s expenses for carrying out the duties and responsibilities of the Director and the Agency, including supervising such covered persons, taking into account such other sums available to the Agency.

(iii) REGISTRATION FEE MINIMUMS.—Registration fees imposed on a nondepository covered person under this paragraph shall, at a minimum, be imposed on such covered person at the time the person registers (or periodically renews any such registration) with the Agency, in accordance with regulations prescribed by the Director.

(C) NONDEPOSITORY COVERED PERSON ASSESSMENT NOT LESS THAN FOR DEPOSITORY COVERED PERSONS.—Assessment rates levied by the Director under this section on a nondepository institution covered persons shall be no less than assessments levied by the Agency under this section on a depository institution covered person with similar characteristics.

(D) OFFSETTING COLLECTIONS.—Fees assessed under this paragraph—

(i) shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts; and

(ii) shall be deposited and credited as offsetting collections to the account providing appropriations to the Agency.

(C) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and the laws and authorities transferred under subtitles F and H, there are authorized to be appropriated to the Director \$200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

(2) APPORTIONMENT.—Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

(3) OTHER AVAILABLE FUNDS TAKEN INTO ACCOUNT.—Sums appropriated under this subsection shall take into account such other sums available to the Agency under this section.

(4) CONSUMER FINANCIAL PROTECTION AGENCY DEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the “Consumer Financial Protection Agency Depository Institution Fund” (hereafter in this section referred to as the “CFPA Depository Fund”).

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Depository Fund shall not be used in the supervision and examination of nondepository institution covered persons.

(2) ALL TRANSFERRED FUNDS DEPOSITED.—All amounts transferred to the Agency under subsection (a) shall be deposited into the CFPA Depository Fund.

(3) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Director shall

deposit all amounts received from assessments under subsection (b)(3) in the CFPA Depository Fund.

(e) CONSUMER FINANCIAL PROTECTION AGENCY NONDEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund called the Consumer Financial Protection Agency Nondepository Institution Fund (hereafter in this section referred to as the “CFPA Nondepository Fund”).

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Nondepository Fund shall not be used for the supervision and examination of depository institution covered persons.

(2) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Director shall deposit all amounts received from assessments under subsection (b)(4) in the CFPA Nondepository Fund.

(f) GENERAL PROVISIONS RELATING TO FUNDS.—

(1) MAINTENANCE OF FUNDS.—

(A) AGENCY FUNDS MAINTAINED BY TREASURY.—The Consumer Financial Protection Agency Depository Institution Fund established under subsection (d) and the Consumer Financial Protection Agency Nondepository Institution Fund established under subsection (e) shall each be—

(i) maintained and administered by the Secretary; and

(ii) maintained separately and not commingled.

(B) AGENCY’S AUTHORITY.—Any provision of this title forbidding the commingling or use of the CFPA Depository Fund and the CFPA Nondepository Fund shall not be construed as limiting or impairing the authority of the Agency to use the same facilities and resources in the course of conducting supervisory and regulatory functions with respect to depository institutions and nondepository institutions, or to integrate such functions.

(C) ACCOUNTING REQUIREMENTS.—

(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Agency shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (B) and shall allocate, in the manner provided in subparagraph (D), any such costs and expenses incurred by the Agency—

(I) with respect to depository institution covered persons, to the CFPA Depository Fund; and

(II) with respect to nondepository covered persons, to the CFPA Nondepository fund.

(D) ALLOCATION OF ADMINISTRATIVE EXPENSES.—Any personnel, administrative, or other overhead expense of the Agency shall be allocated—

(i) fully to the CFPA Depository Fund if the expense was incurred directly as a result of the Agency’s responsibilities solely with respect to depository institution covered persons;

(ii) fully to the CFPA Nondepository Fund, if the expense was incurred directly as a result of the Agency’s responsibilities solely with respect to nondepository covered persons;

(iii) between the CFPA Depository Fund and the CFPA Nondepository Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of depository institution covered persons, and nondepository covered persons; and

(iv) if the Director is unable to make a complete allocation under clause (i), (ii), or



(iii), between the CFPD Depository Fund and the CFPD Nondepository Fund, in amounts reflecting the relative proportion that, as of the end of the preceding year—

(I) the aggregate assets of all depository institution covered persons bears to the aggregate assets of all covered persons; and

(II) the aggregate assets of all nondepository covered persons bears to the aggregate assets of all covered persons.

(E) AGENCY FUND.—The “Agency fund” means the Consumer Financial Protection Agency Depository Institution Fund established under subsection (d), and, the Consumer Financial Protection Agency Nondepository Institution Fund established under subsection (e), and the Consumer Financial Protection Agency Civil Penalty Fund established under subsection (g).

(2) INVESTMENT.—

(A) AMOUNTS IN FUNDS MAY BE INVESTED.—The Director may request the Secretary to invest the portion of any Agency fund that, in the Director’s judgment, is not required to meet the current needs of such fund.

(B) ELIGIBLE INVESTMENTS.—Investments pursuant to subparagraph (A) shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Agency fund involved, as determined by the Director.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the respective Agency Fund shall be credited to and form a part of the respective Agency Fund.

(3) USE OF FUNDS.—

(A) DEPOSITORY INSTITUTION FUND.—Funds obtained by, transferred to, or credited to the Consumer Financial Protection Agency Depository Institution Fund shall be immediately available to the Agency, and remain available until expended, to pay the expenses of the Agency in carrying out the duties and responsibilities of the Director and the Agency, including the payment of compensation of the Director and officers and employees of the Agency.

(B) NONDEPOSITORY INSTITUTION FUND.—Funds obtained by, transferred to, or credited to the Consumer Financial Protection Agency Nondepository Institution Fund shall be available to the Agency to the extent provided in advance in appropriation Acts, and may remain available until expended, to pay the expenses of the Agency in carrying out the duties and responsibilities of the Director and the Agency, including the payment of compensation of the Director and officers and employees of the Agency.

(g) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Treasury of the United States a fund to be known as the “Consumer Financial Protection Agency Civil Penalty Fund” (hereafter in this section referred to as the “Civil Penalty Fund”).

(2) DEPOSITS.—If the Agency obtains a civil penalty against any person in any judicial or administrative action under this title, any law or authority transferred under subtitles F and H, or any enumerated consumer law, the Agency shall deposit into the Civil Penalty Fund the amount of the penalty collected.

(3) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Director, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed

under this title, the law and authorities transferred under subtitles F and H, or any enumerated consumer law.

**SEC. 4112. AMENDMENTS RELATING TO OTHER ADMINISTRATIVE PROVISIONS.**

(a) ACT OF OCTOBER 28, 1974.—Section 111 of Public Law 93-495 (12 U.S.C. 250) is amended by inserting “the Consumer Financial Protection Agency,” after “Federal Deposit Insurance Corporation,”.

(b) PAPERWORK REDUCTION ACT.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) by inserting “the Consumer Financial Protection Agency,” after “the Securities and Exchange Commission,”.

**SEC. 4113. EFFECTIVE DATE.**

This subtitle shall take effect on the date of the enactment of this title.

**Subtitle B—General Powers of the Director and Agency**

**SEC. 4201. MANDATE AND OBJECTIVES.**

(a) MANDATE.—The Director shall seek to promote transparency, simplicity, fairness, accountability, and equal access in the market for consumer financial products or services.

(b) OBJECTIVES.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes of ensuring that, with respect to consumer financial products or services—

(1) consumers have and can use the information they need to make responsible decisions about consumer financial products or services;

(2) consumers are protected from abuse, unfairness, deception, and discrimination;

(3) markets for consumer financial products or services operate fairly and efficiently with ample room for sustainable growth and innovation; and

(4) traditionally underserved consumers and communities have equal access to responsible financial services.

**SEC. 4202. AUTHORITIES.**

(a) IN GENERAL.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer, enforce, and otherwise implement the provisions of this title, the authorities transferred in subtitles F and H, and the enumerated consumer laws.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Director may prescribe regulations and issue orders and guidance as may be necessary or appropriate to enable it to administer and carry out the purposes and objectives of this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws, and to prevent evasions of this title, any such authority, and any such law.

(2) STANDARDS FOR RULEMAKING.—In prescribing a regulation under this title or pursuant to the authorities transferred under subtitles F and H or the enumerated consumer laws, the Director shall—

(A) consider the potential benefits and costs to consumers and covered persons, including the potential reduction of consumers’ access to consumer financial products or services, resulting from such regulation; and

(B) consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Director, by regulation or order, may conditionally or unconditionally exempt any covered person, service provider, or any consumer financial product or service or any class of covered persons, class of service providers, or consumer financial products or services, from any provision of this title, any enumerated consumer law, or from any regulation under any such provision or law, as the Director deems necessary or appropriate to carry out the purposes and objectives of this title taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption by regulation or order as permitted in subparagraph (A), the Director shall as appropriate take into consideration the following:

(i) The total assets of the covered person.

(ii) The volume of transactions involving consumer financial products or services in which the covered person engages.

(iii) The extent to which the covered person engages in 1 or more financial activities.

(iv) Existing laws or regulations which are applicable to the consumer financial product or service and the extent to which such laws or regulations provide consumers with adequate protections.

(C) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, amending, or affecting any authority under sections 304(a), 304(i), 305(a), and 306(b) of the Home Mortgage Disclosure Act of 1975 and sections 703(a)(1), 703(a)(2), 703(a)(3), 705(f), and 705(g) of the Equal Credit Opportunity Act for determining whether a covered person should be provided an exemption.

(c) EXAMINATIONS AND REPORTS.—

(1) IN GENERAL.—Except as provided under section 4203, the Director may on a periodic basis examine a covered person or service provider, with respect to any consumer financial product or service, for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulations prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) EXAMINATION PROGRAM.—The Director shall exercise any authority of the Director under paragraph (1) in a manner designed to ensure that such authorities are exercised with respect to covered persons or service providers, without regard to charter or corporate form, based on the Director’s assessment of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable, the following factors:

(A) The asset size of the covered persons.

(B) The volume of transactions involving consumer financial products or services in which the covered persons engage.

(C) The risks to consumers created by the provision of such consumer financial products or services.

(D) In the case of State-chartered institutions, the extent to which such institutions are subject to oversight by State authorities for consumer protection.

(3) COORDINATION.—The Director shall coordinate the Agency’s supervisory activities with the supervisory activities conducted by the Federal banking agencies and the State bank supervisors, including establishing their respective schedules for examining covered persons and requirements regarding reports to be submitted by covered persons.

(4) REPORTS.—The Director may require reports from a covered person for purposes of ensuring compliance with the requirements

of this title, the enumerated consumers laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(5) **CONTENT OF REPORTS.**—The reports authorized in paragraph (4) may include such information as necessary to keep the Agency informed as to—

(A) the compliance systems or procedures of the covered person or any affiliate thereof, with applicable provisions of this title or any other law that the Agency has jurisdiction to enforce; and

(B) matters related to the provision of consumer financial products or services including the servicing or maintenance of accounts or extensions of credit.

(6) **USE OF EXISTING REPORTS.**—In general, the Agency shall, to the fullest extent possible, use—

(A) reports that a covered person, or any affiliate thereof, or any service provider to such covered person or affiliate, has provided or been required to provide to a Federal or State agency; and

(B) information that has been reported publicly.

(7) **ACCESS BY THE AGENCY TO REPORTS OF OTHER REGULATORS.**—

(A) **EXAMINATION AND FINANCIAL CONDITION REPORTS.**—Upon providing reasonable assurances of confidentiality, the Agency shall have access to any report of examination or financial condition, including a report containing data regarding consumer complaints, made by a Federal banking agency or other Federal agency having supervision of a covered person, or a service provider, (other than returns and return information described in section 6103 of the Internal Revenue Code of 1986) and to all revisions made to any such report.

(B) **PROVISION OF OTHER REPORTS TO AGENCY.**—In addition to the reports described in subparagraph (A), a Federal banking agency may, in its discretion, furnish to the Agency any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by such agency under authority of any Federal law.

(8) **ACCESS BY OTHER REGULATORS TO REPORTS OF THE AGENCY.**—

(A) **EXAMINATION REPORTS.**—Upon providing reasonable assurances of confidentiality, a Federal banking agency, a State regulator, or any other Federal agency having supervision of a covered person shall have access to any report of examination made by the Agency with respect to the covered person or service provider, and to all revisions made to any such report.

(B) **PROVISION OF OTHER REPORTS TO OTHER REGULATORS.**—In addition to the reports described in paragraph (A), the Agency may, in the discretion of the Agency, furnish to a Federal banking agency any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by the Agency under authority of any Federal law.

(9) **PRESERVATION OF AUTHORITY.**—No provision in paragraph (3) shall be construed as preventing the Agency from conducting an examination authorized by this title or under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law. No provision of this title shall be construed as limiting the authority of the Director to require reports from a covered person, as permitted under paragraph

(4), regarding information owned or under the control of the covered person, regardless of whether such information is maintained, stored, or processed by another person.

(10) **REPORTS OF TAX LAW NONCOMPLIANCE.**—The Director shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(11) **DELEGATION.**—

(A) **IN GENERAL.**—The Director may delegate the examination authorities of the Agency under this title to any appropriate agency, as defined in section 4203, for any insured depository institution or insured credit union that is not subject to section 4203 upon a petition by an appropriate agency.

(B) **STANDARD FOR DELEGATION.**—The Director shall provide such delegation if, in the Director's sole discretion, the Director determines that—

(i) the delegation is consistent with the public interest;

(ii) the appropriate agency is capable of enforcing compliance with this title, and with any regulation prescribed under this title; and

(iii) such capability is comparable to or superior to the capability of the Agency, in terms of expertise, demonstrated commitment, and overall effectiveness, in enforcing such compliance.

(C) **EFFECT OF DELEGATION.**—The insured depository institution or insured credit union shall be subject to the examination process described in section 4203(b).

(D) **NO EFFECT ON ENFORCEMENT.**—The Director's delegation authority under this paragraph shall not apply to the Director's enforcement responsibilities under subsection (e).

(d) **EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.**—Notwithstanding any other provision of Federal law other than section 4203 and subsections (f) and (h) of this section, to the extent that a Federal law authorizes the Director and another Federal agency to prescribe regulations, issue guidance, conduct examinations, or require reports under that law for purposes of assuring compliance with this title, any enumerated consumer law, the laws for which authorities were transferred under subtitles F and H, and any regulations prescribed under this title or pursuant to any such authority, the Director shall have the exclusive authority to prescribe regulations, issue guidance, conduct examinations, require reports, or issue exemptions with regard to any person subject to that law and with respect to any activity regulated under any enumerated consumer law.

(e) **PRIMARY ENFORCEMENT AUTHORITY.**—(1) **THE AGENCY TO HAVE PRIMARY ENFORCEMENT AUTHORITY.**—To the extent that a Federal law authorizes the Agency and another Federal agency to enforce a provision of a law, the Agency shall have primary enforcement authority to enforce the provision of that Federal law with respect to any person in accordance with this subsection.

(2) **COORDINATION WITH THE FEDERAL TRADE COMMISSION.**—

(A) **NOTICE.** If the Federal Trade Commission is authorized to enforce any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, either the Agency or the Federal Trade Commission shall serve written notice to the other of any enforcement action prior to initiating such an enforcement action, except that if the agency or commission filing the action determines that prior notice is not feasible, that agency or commission may

provide notice immediately upon initiating such enforcement action.

(B) **INTERVENTION BY EITHER ENTITY.**—Upon receiving any notice under subparagraph (A) with respect to an enforcement action, the Agency or Federal Trade Commission may intervene in such enforcement action, and upon intervening—

(i) be heard on all matters arising in such enforcement action; and

(ii) file petitions for appeal in such enforcement action.

(C) **PENDENCY OF ACTION.**—Whenever a civil action has been instituted by or on behalf of the Agency or the Federal Trade Commission for any violation of any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, the other entity may not, during the pendency of that action, institute a civil action under such law or regulation against any defendant named in the complaint in such pending action for any violation alleged in the complaint.

(D) **AGREEMENTS BETWEEN ENTITIES.**—

(i) **NEGOTIATIONS AUTHORIZED.**—The Agency and the Federal Trade Commission may negotiate an agreement to establish procedures to ensure that the enforcement actions of the 2 agencies are appropriately coordinated.

(ii) **SCORE OF NEGOTIATED AGREEMENT.**—The terms of any agreement negotiated pursuant to clause (i) may modify or supersede the provisions of subparagraphs (A), (B), and (C).

(3) **COORDINATION WITH OTHER FEDERAL AGENCY.**—

(A) **REFERRAL.**—Any Federal agency (other than the Federal Trade Commission) that is authorized to enforce a Federal law described in paragraph (1) may recommend in writing to the Director that the Agency initiate an enforcement proceeding to the extent the Agency is authorized by that Federal law or by this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) **BACKSTOP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.**—If the Agency does not, before the end of the 120-day period beginning on the date on which the Director receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the other agency referred to in subparagraph (A) may initiate an enforcement proceeding as permitted by that Federal law.

(4) **INSTITUTIONS SUBJECT TO SPECIAL EXAMINATION AND ENFORCEMENT PROCEDURES.**—This subsection shall not apply to institutions subject to section 4203.

(f) **PRESERVATION OF OTHER AUTHORITY.**—

(1) **ATTORNEY GENERAL.**—No provision of this title shall be construed as affecting any authority of the Attorney General.

(2) **SECRETARY OF THE TREASURY.**—No provision of this title shall be construed as affecting any authority of the Secretary of the Treasury, including with respect to prescribing regulations, initiating enforcement proceedings, or taking other actions with respect to a person providing tax planning or tax preparation services.

(3) **FAIR HOUSING ACT.**—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

(g) **EFFECT ON OTHER AUTHORITY.**—No provision of this section or section 4203 shall be construed as modifying or limiting the authority of any appropriate Federal banking agency or the Director or Agency to interpret, or take enforcement action under, any law or regulation the interpretation or enforcement of which is committed to the banking agency or the Director or Agency,

which shall include, in the case of the Director and the Agency, this title, the enumerated consumer laws, and the regulations prescribed under this title or such laws.

(h) **PRESERVATION OF FEDERAL TRADE COMMISSION AUTHORITY.**—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act or other laws other than the enumerated consumer laws.

(i) **PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.**—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

**SEC. 4203. EXAMINATION AND ENFORCEMENT FOR SMALL BANKS, THRIFTS, AND CREDIT UNIONS.**

(a) **SCOPE OF INSTITUTIONS SUBJECT TO THIS SECTION.**—

(1) **INSTITUTIONS COVERED.**—This section shall apply to—

(A) any insured depository institution with total assets of \$10,000,000,000 or less; or

(B) any insured credit union with total assets of \$1,500,000,000 or less.

(2) **APPROPRIATE AGENCY.**—For purposes of this title, the term “appropriate agency” means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency as such term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(b) **EXAMINATIONS.**—

(1) **IN GENERAL.**—The appropriate agency shall on a periodic basis examine, or require reports from, an institution referred to in subsection (a) for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) **AGENCY ROLE IN EXAMINATIONS.**—

(A) The appropriate agency shall provide all reports, records, and documentation related to the examination process to the Agency on a timely and ongoing basis.

(B) The Director and Agency may, at its discretion, include an examiner on any examination conducted under paragraph (1). The appropriate agency shall involve such Agency examiner in the entire examination process, including setting the scope of an examination, participating in the examination, and providing input on the examination report, matters requiring attention and examination ratings.

(c) **ENFORCEMENT.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this title other than this subsection, the appropriate agency shall have primary authority to enforce violations identified at institutions referred to in subsection (a) of any of the requirements of this title, the enumerated consumer laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H.

(2) **COORDINATION WITH APPROPRIATE AGENCY.**—

(A) **REFERRAL.**—

(i) **IN GENERAL.**—The Agency may recommend in writing to the appropriate agency that the appropriate agency initiate an enforcement proceeding to the extent the appropriate agency is authorized by that Federal law or by this title.

(ii) **EXPLANATION.**—Any recommendation under clause (i) shall be accompanied by a

written explanation of the concerns giving rise to the recommendation.

(B) **BACKSTOP ENFORCEMENT AUTHORITY OF AGENCY.**—If the appropriate agency does not, before the end of the 120-day period beginning on the date on which the appropriate agency receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the Agency may initiate an enforcement proceeding as permitted by Federal law.

(d) **ACTIONS ARISING OUT OF CONSUMER COMPLAINT SYSTEM.**—Notwithstanding any provision of this section, if through the consumer complaint system administered by the Agency under section 4105(c)(3), the Director has reasonable cause to believe that an institution referred to in subsection (a) demonstrates noncompliance with any provision of this title, the enumerated consumer laws, or any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, the Director may directly investigate such institution for such noncompliance and take any action permitted under subtitle E that the Director deems appropriate.

(e) **REMOVAL OF APPROPRIATE AGENCY FOR PARTICULAR INSTITUTION.**—

(1) **HEIGHTENED SUPERVISION.**—The Director—

(A) may provide notice to an appropriate agency that the Director is considering issuing a removal order under paragraph (2); and

(B) shall have an Agency examiner participate in the examination process under subsection (b) for at least 1 examination cycle.

(2) **REMOVAL BY ORDER.**—If, after the completion of at least 1 examination cycle following the provision of notice to an appropriate agency under paragraph (1), the Director determines in writing that the appropriate agency has failed to adequately conduct consumer compliance examinations or bring appropriate enforcement actions against an institution referred to in subsection (a), the Director may order the removal of the appropriate agency from its responsibilities under this section for such institution.

(3) **AGENCY AUTHORITY UPON REMOVAL.**—Upon removal pursuant to paragraph (2), the Agency shall examine and enforce against such institution as if the institution were subject to section 4202.

(4) **EFFECTIVE DATE.**—An order under paragraph (2) shall take effect 30 days after a determination by the Secretary of the Treasury pursuant to paragraphs (5) and (6).

(5) **AUTOMATIC APPEAL.**—An order issued by the Director pursuant to paragraph (2) shall be automatically appealed to the Secretary.

(6) **DECISION BY THE SECRETARY OF THE TREASURY.**—

(A) **DETERMINATION.**—The order issued pursuant to paragraph (2) shall be deemed affirmed unless the Secretary of the Treasury denies the determination of the Director within 120 days of the issuance of the order pursuant to paragraph (2).

(B) **RULE OF CONSTRUCTION.**—Nothing in subparagraph (A) shall be construed as prohibiting the Secretary of the Treasury from making a determination to either affirm or deny an order issued pursuant to paragraph (2) prior to the passage of the time period in subparagraph (A).

(7) **REGULATIONS.**—By the transfer date, the Secretary shall issue regulations that establish the standards the Director shall apply in making a determination to remove an appropriate agency and the process, procedures, and standards for an appeal. Such standards

shall require the Director to consider at least the following in issuing an order removing an appropriate agency for an institution referred to in subsection (a)(1):

(A) Reports of examination of such institution.

(B) Any enforcement actions taken by an appropriate agency against such institution and the results of those actions.

(C) Consumer complaints issued against such institution.

(D) Actions taken by State attorneys general and private rights of action against such institution.

(f) **POLICIES AND PROCEDURES.**—Within 180 days after the designated transfer date, the Agency and the appropriate agency shall develop policies and procedures for implementing this section.

(g) **ASSESSMENTS.**—

(1) **LIMITATION ON CERTAIN FEES.**—The Agency shall not assess examination fees on an institution referred to in subsection (a).

(2) **RULE OF CONSTRUCTION.**—No provision of this section shall be construed as preventing the appropriate agency from assessing fees on an institution referred to in paragraph (1) to meet the appropriate agency's expenses for carrying out such examination and supervision responsibilities pursuant to this section.

**SEC. 4204. SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.**

(a) **EXAMINATIONS.**—A Federal banking agency and the Agency shall, with respect to each insured depository institution, credit union, or other covered person supervised by the Federal banking agency and the Agency, respectively—

(1) coordinate the scheduling of examinations of the insured depository institution, and credit union, or other covered person;

(2) conduct simultaneous examinations of each insured depository institution, credit union or other covered person, unless such institution requests examinations to be conducted separately;

(3) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(4) prior to issuing a final report of examination or taking supervisory action, an agency shall take into consideration concerns, if any, raised in the comments made by the other agency.

(b) **COORDINATION WITH STATE BANK SUPERVISORS.**—The Agency shall pursue arrangements and agreements with State bank supervisors to coordinate examinations consistent with subsection (a).

(c) **RESOLUTION OF CONFLICT IN SUPERVISION.**—

(1) **REQUEST OF DEPOSITORY INSTITUTION.**—

(A) **IN GENERAL.**—If the proposed material supervisory determinations of the Agency and a Federal banking agency are conflicting, an insured depository institution, credit union, or other covered person may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) **LIMITATION.**—A request of an insured depository institution, credit union, or other covered person shall not be used to appeal a supervisory rating or determination by the Agency or a Federal banking agency.

(2) **JOINT STATEMENT.**—The agencies receiving a request from an insured depository institution, credit union, or covered person under paragraph (1) shall provide a joint

statement resolving the conflict under such subparagraph before the end of the 30-day period beginning on the date the agencies receive such request.

(d) APPEALS TO GOVERNING PANEL.—

(1) IN GENERAL.—If the agencies receiving a request from an insured depository institution, credit union, or covered person under subsection (c)(1) do not issue a joint statement under subsection (c)(2), or if either agency takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, the insured depository institution, credit union, or other covered person may institute an appeal to a governing panel under this subsection.

(2) TIMETABLE.—Any appeal under paragraph (1) with regard to a failure of agencies to issue a joint statement shall be filed before the end of the 30-day period beginning at the end of the 30-day period during which such joint statement was due under subsection (c)(2).

(e) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this section shall be composed of—

(1) 2 individuals—

(A) 1 of whom is a representative from the Agency;

(B) 1 of whom is a representative of the Federal banking agency which received the request to which the appeal relates; and

(C) neither of whom—

(i) have participated in the material supervisory determinations under appeal; and

(ii) report directly or indirectly to the individual who made the supervisory determinations under appeal; and

(2) 1 individual who is a representative from—

(A) the Federal banking agency that heads the Financial Institution Examination Council; or

(B) if the Financial Institutions Examination Council is headed by a Federal banking agency that is a party to the appeal, the Federal banking agency that is next scheduled to head the Financial Institutions Examination Council.

(f) CONDUCT OF APPEAL.—

(1) CONTENT OF FILING APPEAL.—The insured depository institution, credit union, or other covered person which institutes an appeal under subsection (d)(1) shall include in the filing of such appeal all the facts and legal arguments pertaining to the matter appealed.

(2) APPEARANCE.—The insured depository institution, credit union, or other covered person which institutes an appeal under this section may appear before the governing panel in person or by telephone, through counsel, employees, or representatives of, or for, such institution, credit union, or other covered person.

(3) REQUESTS FOR ADDITIONAL INFORMATION.—Any governing panel convened under this section may request the insured depository institution, credit union, or other covered person, the Agency, or the Federal banking agency to produce additional information relevant to the appeal.

(4) FINAL WRITTEN DETERMINATIONS.—Any governing panel convened under this section, by a majority vote of the members of the panel, shall provide a final determination, in writing, within 30 days of the filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, credit union, or other covered person may jointly agree.

(5) PUBLIC INFORMATION.—A redacted copy of any determination by a governing panel

convened under this section shall be made public upon the issuance of such determination.

(g) PROHIBITION AGAINST RETALIATION.—The Director and the Federal banking agencies shall prescribe regulations to provide safeguards from retaliation against any insured depository institution, credit union, or other covered person which institutes an appeal under this section, as well as against any officer or employee of any such institution, credit union, or other person.

(h) MATERIAL SUPERVISORY DETERMINATION DEFINED.—For purposes of this section, the term “material supervisory determination” —

(1) includes any action relating to any supervision or examinations; and

(2) does not include—

(A) a determination by any Federal banking agency to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act or section 212 of the Federal Credit Union Act, as the case may be; or

(B) any regulation or guidance, or order of general applicability.

**SEC. 4205. LIMITATIONS ON AUTHORITY OF AGENCY AND DIRECTOR.**

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant, retailer, or seller of nonfinancial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended.

(2) NO EXCLUSION FOR CERTAIN PRIVATE EDUCATION LOANS.—Paragraph (1) shall not apply to any private education loan (as defined in section 140(a) of the Truth in Lending Act) provided by a private educational lender (as defined in such section), including a covered educational institution (as defined in such section).

(3) EXCEPTION FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(4) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any other agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant, retailer, or seller of nonfinancial services to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant, retailer, or seller of nonfinancial services.

(5) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided, and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

(b) EXCLUSION FOR PERSONS REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State. The Director and Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Securities and Exchange Commission shall consult and coordinate with the Director with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Agency under this title or under any other law.

(c) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Director and the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Director with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Agency under this title or under any other law.

(d) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as provided in paragraphs (2) and (3), the Agency shall have no authority to exercise any power to enforce this title with respect to a

person regulated by any State insurance regulator.

(2) **DESCRIPTION OF ACTIVITIES.**—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) **PRESERVATION OF CERTAIN AUTHORITIES.**—Nothing in this title shall be construed as limiting the authority of the Director and the Agency from exercising powers under this title with respect to the provision by a covered person of a product or service, not otherwise subject to this title, for or on behalf of a person regulated by a State insurance regulator, in connection with a financial activity.

(e) **EXCLUSION FOR PERSONS REGULATED BY THE FEDERAL HOUSING FINANCE AGENCY.**—No provision of this title shall be construed as altering, amending, or affecting the authority of the Federal Housing Finance Agency to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Federal Housing Finance Agency. The Director and Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Federal Housing Agency. For purposes of this subsection, the term “person regulated by the Federal Housing Finance Agency” means any Federal home loan bank, and any joint office of 1 or more Federal home loan banks.

(f) **EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.**—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, institute enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Director and Agency shall have no authority to exercise any power to enforce this title, compel registration, or to order assessments with respect to a person regulated by the Farm Credit Administration. For purposes of this subsection, the term “person regulated by the Farm Credit Administration” means any Farm Credit System Institution.

(g) **EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.**—

(1) **AUTHORITY RETAINED BY OTHER AGENCIES.**—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) **ACTIVITIES NOT CONSTITUTING FINANCIAL ACTIVITIES.**—For the purposes of this title, a person shall not be treated as having engaged in a financial activity, as defined in section 4002(19), solely because such person is a specified plan or arrangement or is engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement.

(3) **REGULATORY COORDINATION.**—In the case of regulations promulgated under this title that address any financial activity specifically pertaining to the administration and maintenance of a specified plan or arrangement, the Director shall coordinate with the Secretary of Labor and the Secretary of Treasury, as appropriate.

(4) **SPECIFIED PLAN OR ARRANGEMENT.**—For purposes of this subsection, the term “specified plan or arrangement” means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974.

(h) **EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.**—

(1) **IN GENERAL.**—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph when such person is performing or offering to perform customary and usual accounting activities, including the provision of accounting, tax, advisory, other services that are subject to the regulatory authority of a state board of accountancy or a federal authority, or other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided by the person separately and apart from such customary and usual accounting activities and are not offered or provided to consumers who are not receiving such customary and usual accounting activities; or

(B) any person other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) **DESCRIPTION OF ACTIVITIES.**—Paragraph (1) shall not apply to—

(A) any person described in paragraph (1)(A) to the extent such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is a financial activity described in any subparagraph of section 4002(19);

(B) any person described in paragraph (1)(B) to the extent such person is engaged in any activity which is a financial activity described in any subparagraph of section 4002(19); or

(C) any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(i) **EXCLUSION FOR REAL ESTATE LICENSEES.**—

(1) **IN GENERAL.**—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is licensed or registered as a real estate broker, real estate agent, in accordance with State law, but only to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with pro-

viding financing with respect to any such transaction);

(D) engages in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; or

(E) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), (C), or (D).

(2) **DESCRIPTION OF ACTIVITIES.**—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(j) **EXCLUSION FOR AUTO DEALERS.**—

(1) **IN GENERAL.**—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement or any other authority, including authority to order assessments, over—

(A) a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both; or

(B) a person that—

(i) is controlled by, or is under common control with, one or more motor vehicle dealers; and

(ii) primarily engages in the extension of, or arranging for the extension of, retail credit or retail leases involving motor vehicles, where 90 percent of such extension, or arranging for such extension, is made with respect to customers of one or more motor vehicle dealers that control such person or with which such person is under common control.

(2) **CERTAIN FUNCTIONS EXCEPTED.**—The provisions of paragraph (1) shall not apply to any person to the extent that person—

(A) provides consumers with any services related to residential mortgages; or

(B) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(i) the extension of retail credit or retail leases is routinely provided directly to consumers; and

(ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third party finance or leasing source.

(3) **NO IMPACT ON PRIOR AUTHORITY.**—Nothing in this subsection shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day prior to the enactment of this title.

(4) **NO TRANSFER OF CERTAIN AUTHORITY.**—Notwithstanding subtitle F or any other provision of law under this title, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Agency to the extent such functions are with respect to a person described under paragraph (1).

(5) **DEFINITIONS.**—For purposes of this subsection:

(A) **MOTOR VEHICLE.**—The term “motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road.

(B) **MOTOR VEHICLE DEALER.**—The term “motor vehicle dealer” means any person resident in the United States or any territory of the United States, and licensed by a State, a territory of the United States, or

the District of Columbia to engage in the sale of motor vehicles.

(k) **NO AUTHORITY TO IMPOSE USURY LIMIT.**—No provision of this title shall be construed as conferring authority on the Director or the Agency to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(l) **EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.**—

(1) **IN GENERAL.**—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person to the extent such person—

(A) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(B) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(C) offers to engage in any activity described in subparagraphs (A) or (B).

(2) **DESCRIPTION OF ACTIVITIES.**—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) **DEFINITIONS.**—For purposes of this subsection:

(A) **MANUFACTURED HOME.**—The term “manufactured home” has the meaning given such term in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) **MODULAR HOME.**—The term “modular home” means a house built in a factory in two or more modules that meet the State or local building codes where the house will be located and where such modules are transported to the building site, installed on foundations, and completed.

(m) **EXCLUSION FOR PRACTICE OF LAW.**—

(1) **IN GENERAL.**—Except as provided under paragraph (2), nothing in this title shall apply with respect to an activity engaged in by an attorney, or engaged in under the direction of an attorney, as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) **RULE OF CONSTRUCTION.**—

(A) **IN GENERAL.**—Paragraph (1) shall not be construed to limit the exercise by the Director and the Agency of any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments, regarding any activity that is a financial activity described in any subparagraph of section 4002(19) and is not engaged in as—

(i) part of the practice of law; or

(ii) incidental to the practice of law, to the extent that such activity is provided exclusively within the scope of the attorney-client relationship and is not otherwise provided by or under the direction of the attorney to any consumer who is not receiving legal advice or services from the attorney in connection with such activity.

(B) **CONSTRUCTION.**—Paragraph (1) shall not be construed to limit the authority of the Director and the Agency with respect to any activity to the extent that such activity is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitles F or H.

(3) **EXCEPTION.**—Notwithstanding paragraph (1), an individual who provides legal

advice or services related to preventing a foreclosure shall be subject to this title unless such individual provides foreclosure prevention services in connection with—

(A) the preparation and filing of a bankruptcy petition; or

(B) court proceedings to avoid a foreclosure.

#### **SEC. 4206. COLLECTION OF INFORMATION; CONFIDENTIALITY REGULATIONS.**

(a) **COLLECTION OF INFORMATION.**—

(1) **IN GENERAL.**—In conducting research on the provision of consumer financial products or services, the Director shall have the power to gather information from time to time regarding the organization, business conduct, and practices of covered persons or service providers.

(2) **SPECIFIC AUTHORITY.**—In order to gather such information, the Director shall have the power—

(A) to gather and compile information;

(B) to require persons to file with the Agency, in such form and within such reasonable period of time as the Director may prescribe, by regulation or order, annual or special reports, or answers in writing to specific questions, furnishing information the Director may require; and

(C) to make public such information obtained by it under this section as is in the public interest in reports or otherwise in the manner best suited for public information and use.

(b) **CONFIDENTIALITY REGULATIONS.**—The Director shall prescribe regulations regarding the confidential treatment of information obtained from persons in connection with the exercise of any authority of the Agency or Director under this title and the enumerated consumer laws and the authorities transferred under subtitles F and H.

(c) **PRIVACY CONSIDERATIONS.**—In collecting information from any person, publicly releasing information held by the Agency, or requiring covered persons to publicly report information, the Director and the Agency shall take steps to ensure that proprietary, personal or confidential consumer information that are protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law are not made public under this title.

#### **SEC. 4207. MONITORING; ASSESSMENTS OF SIGNIFICANT REGULATIONS; REPORTS.**

(a) **MONITORING.**—

(1) **IN GENERAL.**—The Agency shall monitor for risks to consumers in the provision of consumer financial products or services, including developments in markets for such products or services.

(2) **MEANS OF MONITORING.**—Such monitoring may be conducted by examinations of covered persons or service providers, analysis of reports obtained from covered persons or service providers, assessment of consumer complaints, surveys and interviews of covered persons, service providers, and consumers, and review of available databases.

(3) **CONSIDERATIONS.**—In allocating the resources of the Agency to perform the monitoring required by this section, the Director may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) consumers' understanding of the risks of a type of consumer financial product or service;

(C) the state of the law that applies to the provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the provision of a consumer financial product or service;

(E) extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers, if any; or

(F) types, number, and other pertinent characteristics of covered persons that provide the product or service.

(4) **REPORTS.**—The Agency shall publish at least 1 report of significant findings of the monitoring required by paragraph (1) in each calendar year, beginning in the calendar year that is 1 year after the designated transfer date.

(b) **ASSESSMENT OF SIGNIFICANT REGULATIONS.**—

(1) **IN GENERAL.**—The Agency shall conduct an assessment of each significant regulation prescribed or order issued by the Director under this title, under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law that addresses, among other relevant factors, the effectiveness of the regulation in meeting the purposes and objectives of this title and the specific goals stated by the Director.

(2) **BASIS FOR ASSESSMENT.**—The assessment shall reflect available evidence and any data that the Agency reasonably may collect.

(3) **REPORTS.**—The Agency shall publish a report of an assessment under this subsection not later than 3 years after the effective date of the regulation or order, unless the Director determines that 3 years is not sufficient time to study or review the impact of the regulation, but in no event shall the Agency publish a report of such assessment more than 5 years after the effective date of the regulation or order.

(4) **PUBLIC COMMENTED REQUIRED.**—Before publishing a report of its assessment, the Agency shall invite, with sufficient time allotted, public comment on, and may hold public hearings on, recommendations for modifying, expanding, or eliminating the newly adopted significant regulation or order.

(c) **INFORMATION GATHERING.**—In conducting any monitoring or assessment required by this section, the Agency may gather information through a variety of methods, including by conducting surveys or interviews of consumers.

#### **SEC. 4208. AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.**

(a) **IN GENERAL.**—The Director, by regulation, may prohibit or impose conditions or limitations on the use of any agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties if the Director finds that such a prohibition or imposition of conditions or limitations are in the public interest and for the protection of consumers.

(b) **EFFECTIVE DATE.**—Notwithstanding any other provision of law, any regulation prescribed by the Director under subsection (a) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Director.

#### **SEC. 4209. REGISTRATION AND SUPERVISION OF NONDEPOSITORY COVERED PERSONS.**

(a) **RISK-BASED PROGRAMS.**—

(1) **IN GENERAL.**—The Agency shall develop risk-based programs to supervise covered persons that are not credit unions, depository institutions, or persons excluded under

section 4205 by prescribing registration requirements, reporting requirements, and examination standards and procedures.

(2) **BASIS FOR PROGRAMS.**—The risk-based supervisory programs established pursuant to paragraph (1) shall be based on—

(A) relevant registration and reporting information about such covered persons, as determined by the Agency; and

(B) the Agency's assessment of risks posed to consumers in the relevant geographic markets and markets for consumer financial products and services.

(b) **REGISTRATION.**—

(1) **IN GENERAL.**—The Director shall prescribe regulations regarding registration requirements for covered persons that are not credit unions or depository institutions.

(2) **CONSULTATION WITH STATE AGENCIES.**—In developing and implementing registration requirements under this subsection, the Agency shall consult with State agencies regarding requirements or systems for registration (including coordinated or combined systems), where appropriate.

(3) **EXCEPTION FOR RELATED PERSONS.**—The Agency shall not impose requirements regarding the registration of a related person.

(4) **REGISTRATION INFORMATION.**—Subject to regulations prescribed by the Director, the Agency shall publicly disclose the registration information about a covered person which is not a bank holding company, credit union, or depository institution for the purposes of facilitating the ability of consumers to identify the covered person as registered with the Agency.

(c) **REPORTING REQUIREMENTS.**—

(1) **IN GENERAL.**—The Agency may require reports from covered persons that are not credit unions or depository institutions, or service providers thereto, for the purposes of facilitating supervision of such covered persons or service providers.

(2) **CONSISTENCY OF REPORTING REQUIREMENTS AND RISK-BASED STANDARDS.**—The Agency shall impose reporting requirements under this subsection that are consistent with the risk-based standards developed and implemented under this section and the registration information pertaining to the relevant types or classes of covered persons.

(3) **CONTENTS OF REPORTS.**—Reporting requirements imposed under this paragraph may include information regarding—

(A) the nature of the covered person's business;

(B) the covered person's name, legal form, ownership and management structure, and related persons;

(C) the covered person's locations of operation;

(D) the covered person's types and number of consumer financial products and services provided by the covered person;

(E) compliance with any requirement imposed or enforced by the Agency, including any requirement relating to registration, licensing, fees, or assessments; and

(F) the financial condition of such covered person, including a related person, for the purpose of assessing the ability of such person to perform its obligation to consumers.

(4) **CONSULTATION WITH THE FEDERAL TRADE COMMISSION.**—In developing and implementing report requirements under this subsection, the Agency shall consult with the Federal Trade Commission, where appropriate.

(5) **EXCEPTION FOR RELATED PERSONS.**—Other than reports permitted under paragraph (3)(F) or in connection with a supervisory action or examination or pursuant to the powers granted in subtitle E, the Agency

shall not impose requirements regarding reports of any related person.

(d) **EXAMINATIONS.**—

(1) **EXAMINATIONS REQUIRED.**—The Agency shall conduct examinations of covered persons that are not credit unions or depository institutions as part of the programs implemented under paragraphs (2) and (3) of section 4202(c).

(2) **EXAMINATION STANDARDS AND PROCEDURES.**—The Director shall establish risk-based standards and procedures for conducting examinations of covered persons required to be examined under paragraph (1), including the frequency and scope of such examinations, except that the Agency shall conduct examinations of such covered persons that are determined to pose the highest risk to consumers based on factors determined by the Director, such as the operations, sales practices, or consumer financial products or services provided by such covered persons.

(e) **AUTHORITY TO COLLECT INFORMATION REGARDING FEES OR ASSESSMENTS.**—To the extent permitted by Federal law, the Agency may obtain from the Secretary of the Treasury information relating to a covered person which is not a bank holding company, credit union, or depository institution, including information regarding compliance with a reporting or registration requirement under the subchapter II of chapter 53 of title 31, United States Code, for the purposes of, and only to the extent necessary in, investigating, determining, or enforcing compliance with a requirement relating to any fee or assessment imposed by the Agency under this title.

**SEC. 4210. EFFECTIVE DATE.**

This subtitle shall take effect on the designated transfer date.

#### Subtitle C—Specific Authorities

**SEC. 4301. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.**

(a) **IN GENERAL.**—The Agency may take any action authorized under subtitle E to prevent a person from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) **REGULATIONS.**—

(1) **IN GENERAL.**—The Director may prescribe regulations identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service or the offering of a consumer financial product or service.

(2) **INCLUDES PREVENTION MEASURES.**—Regulations prescribed under this section may include requirements for the purpose of preventing such acts or practices.

(c) **UNFAIRNESS.**—

(1) **IN GENERAL.**—The Director and the Agency shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair unless the Agency has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) **ESTABLISHED PUBLIC POLICY AS FACTOR.**—In determining whether an act or prac-

tice is unfair, the Agency may consider established public policies as evidence to be considered with all other evidence.

(d) **CONSULTATION.**—In prescribing any regulation under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

**SEC. 4302. DISCLOSURES.**

(a) **IN GENERAL.**—The Director may prescribe regulations to ensure the timely, appropriate and effective disclosure to consumers of the costs, benefits, and risks associated with any consumer financial product or service.

(b) **COORDINATION WITH OTHER LAWS.**—In prescribing regulations under subsection (a), the Director shall take into account disclosure requirements under other laws in order to enhance consumer compliance and reduce regulatory burden.

(c) **COMPLIANCE.**—

(1) **MODEL DISCLOSURES.**—The Agency may provide model disclosures to facilitate compliance with the requirements of regulations prescribed under this section.

(2) **PER SE COMPLIANCE.**—Compliance by a covered person with the model disclosures issued by the Agency under this subsection shall per se constitute compliance with the disclosure requirements of this section.

(3) **ADDITIONAL GUIDANCE.**—The Agency may issue exemptions, no action letters, and other guidance to promote compliance with disclosures requirements of regulations prescribed under this section.

(d) **COMBINED MORTGAGE LOAN DISCLOSURE.**—Within 1 year after the designated transfer date, the Director shall propose for public comment regulations and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Director determines that any proposal issued by the Board of Governors and the Department of Housing and Urban Development carries out the same purpose.

**SEC. 4303. SALES PRACTICES.**

The Director may prescribe regulations and issue orders and guidance regarding the manner, settings, and circumstances for the provision of any consumer financial products or services to ensure that the risks, costs, and benefits of the products or services, both initially and over the term of the products or services, are fully and accurately represented to consumers.

**SEC. 4304. PILOT DISCLOSURES.**

(a) **PILOT DISCLOSURES.**—The Agency shall establish standards and procedures for approval of pilot disclosures to be provided or made available by a covered person to consumers in connection with the provision of a consumer financial product or service, or the offering of a consumer financial product or service.

(b) **STANDARDS.**—The procedures shall provide that a pilot disclosure must be limited in time and scope and reasonably designed to contribute materially to the understanding of consumer awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(c) **TRANSPARENCY.**—The procedures shall provide for public disclosure of pilots, but



the Agency may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

**SEC. 4305. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR, DECEPTIVE, OR ABUSIVE PRACTICES.**

(a) **AUTHORITY TO PRESCRIBE STANDARDS.**—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions or credit unions, or service providers, to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of ability to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; or

(5) procedures and operations relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) **AGENCY AUTHORITY TO PRESCRIBE STANDARDS.**—

(1) **IN GENERAL.**—The Director may prescribe regulations establishing minimum standards under this section for any class of covered persons other than covered persons which are subject to the jurisdiction of a Federal banking agency or a State bank supervisor, or for any service provider.

(2) **REGISTRATION AND LICENSING STANDARDS.**—In addition to prescribing standards for the purposes described in subsection (a), the Director may prescribe registration or licensing standards applicable to covered persons for the purposes of imposing fees or assessments in accordance with this title.

(3) **ENFORCEMENT OF STANDARDS.**—The Director may enforce under subtitle E compliance with standards adopted by the Director or a State pursuant to this section for covered persons or service providers operating in that State.

(c) **CONSULTATION.**—In prescribing minimum standards under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

**SEC. 4306. DUTIES.**

(a) **IN GENERAL.**—

(1) **REGULATIONS ENSURING FAIR DEALING WITH CONSUMERS.**—The Director shall prescribe regulations imposing duties on a covered person, or an employee of a covered person, or an agent or independent contractor for a covered person, who deals or communicates directly with consumers in the provision of a consumer financial product or service, as the Director deems appropriate or necessary to ensure fair dealing with consumers.

(2) **CONSIDERATIONS FOR DUTIES.**—In prescribing such regulations, the Director shall consider whether—

(A) the covered person, employee, agent, or independent contractor represents implicitly or explicitly that the person, employee, agent, or contractor is acting in the interest of the consumer with respect to any aspect of the transaction;

(B) the covered person, employee, agent, or independent contractor provides the consumer with advice with respect to any aspect of the transaction;

(C) the consumer's reliance on or use of any advice from the covered person, employee, agent, or independent contractor would be reasonable and justifiable under the circumstances;

(D) the benefits to consumers of imposing a particular duty would outweigh the costs; and

(E) any other factors as the Director considers appropriate.

(3) **DUTIES RELATING TO COMPENSATION PRACTICES.**—

(A) **IN GENERAL.**—The Director may prescribe regulations establishing duties regarding compensation practices applicable to a covered person, employee, agent, or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service for the purpose of promoting fair dealing with consumers.

(B) **NO COMPENSATION CAPS.**—The Director may not prescribe a limit on the total dollar amount of compensation paid to any person.

(C) **DISPARITY TREATMENT PROHIBITED.**—The Director may not prescribe regulations that directly or indirectly disparately treat, or are interpreted to disparately treat, or disparately impact any entity that employs covered persons.

(4) **REQUIREMENT TO INCLUDE DISCLAIMER ON PUBLIC STATEMENTS.**—The Director shall ensure that the Agency's website, and any statement made by the Director or the Agency to the public, includes a disclaimer stating that the Agency does not endorse any particular financial product or service and consumers are expected to exercise due diligence in deciding what financial products and services are appropriate for them.

(b) **ADMINISTRATIVE PROCEEDINGS.**—

(1) **IN GENERAL.**—Any regulation prescribed by the Director under this section shall be enforceable only by the Agency through an adjudication proceeding under subtitle E or by a State regulator through an appropriate administrative proceeding as permitted under State law.

(2) **EXCLUSIVITY OF REMEDY.**—No action may be commenced in any court to enforce any requirement of a regulation prescribed under this section, and no court may exercise supplemental jurisdiction over a claim asserted under a regulation prescribed under this section based on allegations or evidence of conduct that otherwise may be subject to such regulation.

(3) **RULE OF CONSTRUCTION.**—The Agency, the Attorney General, and any State attorney general or State regulator shall not be precluded from enforcing any other Federal or State law against a person with respect to conduct that may be subject to a regulation prescribed by the Director under this section.

(c) **EXCLUSIONS.**—This section shall not be construed as authorizing the Director to prescribe regulations applicable to—

(1) an attorney licensed to practice law and in compliance with the applicable rules and standards of professional conduct, but only to the extent that the consumer financial product or service provided is within the attorney-client relationship with the consumer; or

(2) any trustee, custodian, or other person that holds a fiduciary duty in connection with a trust, including a fiduciary duty to a grantor or beneficiary of a trust, that is subject to and in compliance with the applicable law relating to such trust.

**SEC. 4307. CONSUMER RIGHTS TO ACCESS INFORMATION.**

(a) **IN GENERAL.**—Subject to regulations prescribed by the Director, a covered person

shall make available to a consumer, in an electronic form usable by the consumer, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.

(b) **EXCEPTIONS.**—A covered person shall not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other law (including section 6103 of the Internal Revenue Code of 1986); or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) **NO DUTY TO MAINTAIN RECORDS.**—No provision of this section shall be construed as imposing any duty on a covered person to maintain or keep any information about a consumer.

(d) **STANDARDIZED FORMATS FOR DATA.**—The Director, by regulation, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) **CONSULTATION.**—The Director shall, when prescribing any regulation under this section, consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Commissioner of Internal Revenue to ensure that the regulations—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

**SEC. 4308. PROHIBITED ACTS.**

It shall be unlawful for any person—

(1) to advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee, or charge in connection with a consumer financial product or service that is not in conformity with this title or applicable regulation prescribed or order issued by the Director or to engage in any unfair, deceptive, or abusive act or practice, except that no person shall be held to have violated this subsection solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse to pay any fee or assessment imposed by the Agency under this title, to fail or refuse to permit access to or copying of records, to fail or refuse to establish or maintain records, or to fail or refuse to make reports or provide information to the Agency, as required by this title, an enumerated consumer law, or pursuant to the authorities transferred by subtitles F and H, or any regulation prescribed or order issued by the Director this title or pursuant to any such authority; or

(3) to knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 4301, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided. Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)).

#### SEC. 4309. TREATMENT OF REMITTANCE TRANSFERS.

##### (a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

(1) IN GENERAL.—Each remittance transfer provider shall make disclosures to consumers, as specified by this section and by regulation prescribed by the Director.

(2) SPECIFIC DISCLOSURES.—In addition to any other disclosures applicable under this title, a remittance transfer provider shall—

(A) disclose clearly and conspicuously, in writing and in a form that the consumer may keep, to each consumer who requests information regarding the fees or exchange rate for a remittance transfer, prior to the consumer making any payment in connection with the transfer—

(i) the total amount in United States dollars that will be required to be paid by the consumer in connection with the remittance transfer;

(ii) the amount of currency that the designated recipient of the remittance transfer will receive, using the values of the currency into which the funds will be exchanged;

(iii) the fee charged by the remittance transfer provider for the remittance transfer;

(iv) any exchange rate to be used by the remittance transfer provider for the remittance transfer, unless the exchange rate is not fixed on send;

(v) the amount of time for which the information specified in this subparagraph (A) will be in effect;

(vi) the expected time interval within which the funds being transferred will be made available to the recipient; and

(vii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;

(B) at the time at which the consumer makes payment in connection with the remittance transfer, a receipt in writing disclosing clearly and conspicuously—

(i) the information described in subparagraph (A);

(ii) the expected time interval within which the funds being transferred will be made available to the recipient, which shall be not more than ten days after the date the consumer makes payment in connection with the remittance transfer unless otherwise prohibited by applicable State or Federal law or the law of another country, or as may be specified by the consumer so long as the consumer has the choice to order that the funds be made available to the recipient not more than ten days after the consumer makes payment in connection with the remittance transfer;

(iii) the location where the funds being transferred will be made available to the re-

cipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;

(iv) the name and telephone number or address of the designated recipient, if provided to the remittance transfer provider by the consumer;

(v) information about the rights of the consumer under this section to cancel the remittance transfer, to resolve errors and to receive refunds;

(vi) appropriate contact information for the remittance transfer provider;

(vii) a transaction reference number unique to that remittance transfer; and

(viii) information as to when the exchange rate will be calculated (for example, when the funds are received by the recipient), if the customer has been notified that the exchange rate is not fixed on send;

(C) at the time at which the consumer initiates the remittance transfer, offer to provide in writing, prior to making any payment in connection with the transfer, the information listed in subparagraph (A); and

(D) in the case of an exchange rate not fixed on send, the remittance provider shall also disclose, at the time at which the consumer initiates the remittance transfer, the range, using the high and low rates, for the prior 30 day period, that the consumer would have received if a representative amount had been exchanged by the remittance transfer provider, as well as a clear and conspicuous notice that the actual exchange rate may vary.

If the actual rate used for the transfer is known to the remittance provider, either because such rate was set by the remittance provider itself or because the remittance provider receives confirmation of the actual exchange rate used, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient or the remittance transfer received, using the values of the currency into which the funds were exchanged. The Director shall within 2 years after the date of the enactment of the Consumer Financial Protection Agency Act of 2009 prescribe consumer disclosures for transfers with rates not fixed on send that are functionally equivalent to those applicable to remittances where the exchange rate is specified by the remittance transfer provider at the time the consumer initiates the remittance transfer. To the greatest extent possible, the Director shall ensure that functional equivalence will enable remittance transfer providers to comply with all requirements in this title and provide consumers with information sufficient to compare services providers, to time their use of the product, to discover errors in transmission and to seek remedies.

(3) EXEMPTION.—Notwithstanding requirements under paragraph (2)(A)(ii), (2)(A)(iv), or (2)(B)(i), no such disclosure is required—

(A) because of the requirements of another law, including the law of another country;

(B) because the transfer is being routed through the Director a México offered by the Federal reserve banks; or

(C) because of any other circumstance deemed permissible by regulation of the Director; If the actual rate used for the transfer is known to the remittance provider, the

remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged.

##### (4) PROVISION OF TOLL-FREE NUMBER AND WEB ACCESS.—

(A) In addition to providing the disclosures required by this section to a consumer at a remittance transfer provider location, a remittance transfer provider shall provide a toll-free telephone number or local number, and an Internet website that a consumer can access for which access no remittance transfer provider may assess a charge, to obtain the information required by paragraph (2)(A) for remittance transfers offered by that remittance transfer provider or information about the status of a remittance transfer for which a consumer has made payment.

(B) A remittance transfer provider that on an aggregate basis originates 30,000 or fewer transfers on a calendar year basis (or such other amount as may be prescribed by the Director) is not required to offer the web access prescribed in subparagraph (A), but is required to provide a toll-free telephone number or local number as prescribed in subparagraph (A).

##### (5) ALTERNATIVE METHODS OF DISCLOSURE.—

Subject to subsection (e)(2), a remittance transfer provider may—

(A) if the transaction is conducted entirely by telephone (which shall include, but not be limited to, a mobile telephone) satisfy the requirements of paragraph (2)(A) orally or, at the option of the consumer, electronically through a message sent to the consumer through any electronic means (including, but not limited to, an electronic mail address or a mobile telephone) as designated by the consumer;

(B) satisfy the requirements of paragraph (2)(A) electronically if the transfer is initiated by the consumer electronically through the remittance transfer provider's website or through any other electronic means; and

(C) satisfy the requirements of paragraph (2)(B) by mailing (or transmitting electronically if the transfer is initiated electronically by the consumer through the remittance transfer provider's website or the consumer otherwise consents in accordance with the provisions of section 101 of the Electronic Signatures in Global and National Commerce Act) the information required under such paragraph to the consumer not later than one business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone (or electronically) and the consumer requests a written receipt.

##### (b) WRITTEN FOREIGN LANGUAGE DISCLOSURES.—

(1) IN GENERAL.—The disclosures required under subsections (a)(2)(A) and (a)(2)(B)(i) shall be made in English and—

(A) at each remittance transfer provider location, shall be made in the same languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market its remittance transfers business, either orally or in writing, at that location, if other than English, provided that such languages are those for which the Director has issued model disclosures as provided in subsection (g); or

(B) on a remittance transfer provider's website, shall at a minimum be made in any other language for which the Director has

issued model disclosures as provided in subsection (g) if the remittance transfer provider, or any of its agents, advertises, solicits, or markets its remittance transfers business in such language.

(2) **DISPUTES CONCERNING TERMS.**—If a disclosure is required by this section to be in English and another language, the English version of the disclosure shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the remittance transfer provider or its agent and the remittance transfer provider or its agent shall be liable for any damages caused by these discrepancies.

(c) **REMITTANCE TRANSFER CANCELLATIONS, REFUNDS, AND ERRORS.**—

(1) **CANCELLATIONS.**—

(A) After receiving the receipt required under subsection (a)(2)(B), a consumer may cancel the currency transaction—

(i) before leaving the premises of the remittance transfer provider where the consumer received the receipt, and

(ii) not later than 30 minutes after the time the consumer initiated the remittance transfer with the remittance transfer provider.

(B) If a consumer cancels the transaction, the remittance transfer provider shall immediately refund to the consumer the fees paid and the currency to be transferred, and issue a receipt indicating that the transaction has been cancelled.

(C) A consumer may not cancel a remittance transfer after the remittance transfer provider has sent the funds to the recipient.

(D) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(2) **REFUNDS.**—

(A) If a remittance transfer provider receives written notice from the consumer within ten days of the promised date of delivery of a remittance transfer that no amount of the funds to be remitted was made available to the designated recipient in the foreign country, the remittance transfer provider shall—

(i) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with such remittance transfer;

(ii) promptly transmit the remittance transfer in accordance with the terms in the written receipt provided to the consumer pursuant to subsection (a)(2)(B);

(iii) provide such other remedy, as determined appropriate by rule of the Director for the protection of consumers; or

(iv) demonstrate to the consumer that the proceeds of the remittance transfer were made available to the recipient of the remittance transfer provider.

(B) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(3) **ERROR RESOLUTION.**—

(A) **IN GENERAL.**—If a remittance transfer provider receives written notice from the consumer within 60 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including that the full amount of the funds to be remitted was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this paragraph.

(B) **REMEDIES.**—Not later than 120 days after the date of receipt of a notice from the consumer pursuant to subparagraph (A), the remittance transfer provider shall—

(i) as applicable to the error and as designated by the consumer—

(I) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with the remittance transfer that was not properly transmitted;

(II) make available to the designated recipient, without additional cost to the designated recipient or to the consumer, the amount appropriate to resolve the error;

(III) provide such other remedy, as determined appropriate by regulation of the Director for the protection of consumers; or

(ii) demonstrate to the consumer that there was no error.

(4) **REGULATIONS.**—The Director, in order to protect consumers, shall establish, by regulation, clear and appropriate standards for remittance transfer providers with respect to error resolution, cancellation and refunds.

(d) **ENFORCEMENT AUTHORITY.**—The Director shall have the sole authority to enforce the provisions of this section, and any regulations established pursuant to this section.

(e) **APPLICABILITY OF OTHER PROVISIONS OF LAW.**—

(1) **APPLICABILITY OF TITLE 18 AND TITLE 31 PROVISIONS.**—A remittance transfer provider that is a money transmitting business as defined in section 5330 of title 31, United States Code, may provide remittance transfers only if such provider is in compliance with the requirements of section 5330 of title 31, United States Code, and section 1960 of title 18, United States Code, as applicable.

(2) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed—

(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act, or chapter 2 of title I of Public Law 91–508, or any regulations promulgated thereunder; or

(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (2) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulation prescribed under such subparagraph.

(f) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes a credit union.

(2) **NOT FIXED ON SEND.**—The term “not fixed on send” when referring to an exchange rate used in a remittance transfer means an exchange rate that is not set by the remittance transfer provider at the time the consumer initiates the remittance transfer.

(3) **REMITTANCE TRANSFER.**—The term “remittance transfer” means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act) transfer of funds at the request of a consumer located in any State to a person in another country that is initiated by a remittance transfer provider, whether or not the consumer is an account holder of the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903 of the Electronic Fund Transfer Act.

(4) **REMITTANCE TRANSFER PROVIDER.**—The term “remittance transfer provider” means any person or depository institution, or

agent thereof, that originates remittance transfers on behalf of consumers in the normal course of its business, whether or not the consumer is an account holder of that person or depository institution.

(g) **MODEL DISCLOSURES.**—

(1) **PUBLICATION.**—Notwithstanding any provisions of this title, the Director shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this section and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

(2) **LANGUAGES TO BE USED IN MODEL DISCLOSURES.**—The Director shall make these disclosures available within 1 year of the effective date of this title—

(A) in English, and

(B) the ten most frequently spoken languages in the United States, other than English, used by consumers initiating remittance transfers, as may be determined by the Director.

(3) **USE OF AUTOMATED EQUIPMENT.**—In establishing model forms under this subsection, the Director shall consider the use by lessors of data processing or similar automated equipment.

(4) **USE OPTIONAL.**—A remittance transfer provider may utilize a model disclosure form established by the Director under this subsection for purposes of compliance with this section, at the discretion of the remittance transfer provider.

(5) **EFFECT OF USE.**—Any remittance transfer provider that properly uses the material aspects of any model disclosure form established by the Director under this subsection shall be deemed to be in compliance with the disclosure requirements to which the form relates.

(h) **REGULATION AND EXEMPTION AUTHORITY.**—Notwithstanding any other provisions of this title, the Director, in the sole discretion of the Director, in consultation with relevant Federal and State government agencies may by regulation exempt from one or more requirements of this section, any category of remittance transfer provider if the Director determines that under applicable Federal or State law that such category of remittance transfer provider is subject to requirements substantially similar to those imposed under this section or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(i) **APPLICABILITY OF STATE LAW.**—

(1) This section does not annul, alter, affect, or exempt any person subject to the provisions of this section from complying with other applicable Federal law and the laws of any State relating to remittance transfers and remittance transfer providers, except to the extent that those laws are inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

(2) Notwithstanding any other provisions of this title, the Director may determine whether such inconsistencies exist. A State law is not inconsistent with this section if the protection such law affords any consumer is greater than the protection afforded by this section. If the Director determines that a State requirement is inconsistent, remittance transfer providers shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This section does not extend the applicability of any such law to any class

of persons or transactions to which it would not otherwise apply.

(3) This section does not annul, alter, or affect the laws of any State relating to the licensing or registration, supervision or examination of remittance transfer providers.

(4) Nothing in this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(j) **FEDERAL CREDIT UNION ACT AMENDMENT.**—Paragraph (12)(A) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)(A)) is amended by inserting “and remittance transfers, as defined in section 4309 of the Consumer Financial Protection Agency Act of 2009” after “and domestic electronic fund transfers”.

(k) **AUTOMATED CLEARINGHOUSE SYSTEM.**—

(1) **EXPANSION OF SYSTEM.**—The Board of Governors of the Federal Reserve System shall work with the Federal reserve banks to expand the use of the automated clearinghouse system for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the volume and dollar amount of remittance transfers to those countries;

(B) the significance of the volume of such transfers, relative to the external financial flows of the receiving country; and

(C) the feasibility of such an expansion.

(2) **REPORT TO THE CONGRESS.**—Before the end of the 180-day period beginning on the date of the enactment of this title, and on April 30 biennially thereafter, the Board of Governors of the Federal Reserve System shall submit a report to the Director, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this section.

(l) **REGULATORY GUIDANCE ON REMITTANCE TRANSFERS.**—

(1) **PROVISION OF GUIDELINES TO INSTITUTIONS.**—The Director shall provide guidelines to all remittance transfer providers regarding—

(A) the offering of low-cost remittance transfers;

(B) the availability of agency services to remittance transfer providers;

(C) compliance with the provisions of this title; and

(D) specific options that allow remittance transfer providers to take advantage of automated clearing systems, including the FedACH International Services offered by the Board of Governors of the Federal Reserve System and the Federal reserve banks, to transmit remittances at low cost.

(2) **CONTENT OF GUIDELINES.**—Guidelines provided to remittance transfer providers under this section shall include—

(A) information as to the methods of providing remittance transfer services;

(B) the potential economic opportunities in providing low-cost remittance transfers; and

(C) the potential value to depository institutions of broadening their financial bases to include persons that use remittance transfers.

(3) **ASSISTANCE TO FINANCIAL LITERACY COMMISSION.**—The Secretary of the Treasury and each agency referred to in subsection (a) shall, as part of their duties as members of the Financial Literacy and Education Commission, assist that Commission in improv-

ing the financial literacy and education of consumers who send remittances.

(m) **REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.**—Before the end of the 365-day period beginning on the date of the enactment of this title, the Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which a consumer's remittance history could be used to enhance a consumer's credit score;

(2) the current legal and business model barriers and impediments that impede the use of a consumer's remittance history to enhance the consumer's credit score; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this title may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged, as contained in section 919(a)(2)(D) and 919(a)(3) of the Electronic Fund Transfer Act (as amended by subsection (a)).

(n) **EFFECTIVE DATE.**—This section shall apply with respect to remittance transfers made after the end of the 180-day period beginning on the date of the enactment of this title.

#### SEC. 4310. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

#### SEC. 4311. NO AUTHORITY TO REQUIRE THE OFFERING OF FINANCIAL PRODUCTS OR SERVICES.

The Director may not prescribe any regulation, issue any order or guidance, or take any other action, including any enforcement action, the effect of which would be to require a covered person to offer to any consumer a specific financial product or service.

#### SEC. 4312. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) **PROMULGATION OF NEW REQUIREMENTS.**—The Director shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to promulgate appraisal independence requirements for residential loan purposes, and such Committee shall promulgate such requirements not later than the end of the 60-day period beginning on the date of the enactment of this title.

(b) **CERTAIN REGULATION REQUIREMENTS.**—Regulations promulgated by the Negotiated Rulemaking Committee under this section—

(1) shall not prohibit lenders, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation from accepting any appraisal report completed by an appraiser selected, retained, or compensated in any manner by a mortgage loan originator—

(A) licensed or registered in accordance with section 1501 et seq. of the SAFE Mortgage Licensing Act of 2008; and

(B) subject to State or Federal laws that make it unlawful for a mortgage loan originator to make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the

property, except that nothing in this section shall prohibit a person with an interest in a real estate transaction from asking an appraiser to—

(i) consider additional, appropriate property information;

(ii) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) correct errors in the appraisal report; and

(2) shall include a requirement that lenders and their agents compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

(c) **SUNSET.**—Effective on the date the appraisal independence requirements are promulgated pursuant to subsection (a), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

#### Subtitle D—Preservation of State Law

##### SEC. 4401. RELATION TO STATE LAW.

(a) **IN GENERAL.**—

(1) **RULE OF CONSTRUCTION.**—This title shall not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the laws, regulations, orders, or interpretations, in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this title and then only to the extent of the inconsistency.

(2) **GREATER PROTECTION UNDER STATE LAW.**—For the purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Agency on its own motion or in response to a non-frivolous petition initiated by any interested person.

(b) **RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.**—No provision of this title, except as provided in section 4803, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

##### SEC. 4402. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) **IN GENERAL.**—

(1) **ACTION BY STATE.**—Any State attorney general may bring a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any district court of the United States or State court having jurisdiction of the defendant, to secure monetary or equitable relief for violation of any provisions of this title or regulations issued thereunder.

(2) **RULE OF CONSTRUCTION.**—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) **CONSULTATION REQUIRED.**—

(1) **NOTICE.**—

(A) **IN GENERAL.**—Before initiating any action in a court or other administrative or regulatory proceeding against any covered

person to enforce any provision of this title, including any regulation prescribed by the Director under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Agency, or the Agency's designee.

(B) **EMERGENCY ACTION.**—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Agency immediately upon instituting the action or proceeding.

(C) **CONTENTS OF NOTICE.**—The notification required under this section shall, at a minimum, describe—

- (i) the identity of the parties;
- (ii) the alleged facts underlying the proceeding; and
- (iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Director or Agency or another Federal agency.

(2) **AGENCY RESPONSE.**—In any action described in paragraph (1), the Agency may—

- (A) intervene in the action as a party;
- (B) upon intervening—
  - (i) remove the action to the appropriate United States district court, if the action was not originally brought there; and
  - (ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment to the same extent as any other party in the proceeding may.

(c) **REGULATIONS.**—The Director shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) **PRESERVATION OF STATE AUTHORITY.**—

(1) **STATE CLAIMS.**—No provision of this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(2) **STATE SECURITIES REGULATORS.**—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) **STATE INSURANCE REGULATORS.**—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

#### **SEC. 4403. PRESERVATION OF EXISTING CONTRACTS.**

This title, and regulations, orders, guidance, and interpretations prescribed, issued, and established by the Agency, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of the enactment of this title, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by

the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

#### **SEC. 4404. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.**

(a) **IN GENERAL.**—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

##### **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.**

“(a) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

“(1) **NATIONAL BANK.**—The term ‘national bank’ includes—

- “(A) any bank organized under the laws of the United States; and
- “(B) any Federal branch established in accordance with the International Banking Act of 1978.

“(2) **STATE CONSUMER FINANCIAL LAWS.**—The term ‘State consumer financial law’ means a State law that does not directly or indirectly discriminate against national banks and that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

“(3) **OTHER DEFINITIONS.**—The terms ‘affiliate’, ‘subsidiary’, ‘includes’, and ‘including’ have the same meaning as in section 3 of the Federal Deposit Insurance Act.

“(b) **PREEMPTION STANDARD.**—

“(1) **IN GENERAL.**—National banks shall generally comply with State laws. State laws are preempted only if—

“(A) application of a State law would have a discriminatory effect on national banks in comparison with the effect of the law on a bank chartered by that State;

“(B) the Comptroller of the Currency determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as national bank to engage in the business of banking; or

“(C) the State law is preempted by Federal law other than this Act.

“(2) **SAVINGS CLAUSE.**—This Act does not preempt or alter the applicability of any State law to any national bank subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

“(3) **RULE OF CONSTRUCTION.**—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

“(4) **REVIEW OF PREEMPTION DECISIONS.**—A court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Comptroller of the Currency regarding the meaning or interpretation of the National Bank Act or other Federal laws.

“(c) **SUBSTANTIAL EVIDENCE.**—No regulation of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision

prevents or significantly interferes with the national bank's exercise of a power explicitly granted by the Congress.

“(d) **OTHER FEDERAL LAWS.**—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe regulation pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Consumer Financial Protection Agency, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a national bank, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

“(e) **PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.**—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall timely propose to continue, amend or rescind it, as may be appropriate, in accordance with the procedures set forth in subsections (a) and (b) of section 5244 (12 U.S.C. 43(a)–(b)).

“(f) **APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.**—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries clarified.”.

#### **SEC. 4405. VISITORIAL STANDARDS.**

Section 5136C of the Revised Statutes of the United States (as added by section 4404) is amended by adding at the end the following new subsections:

“(g) **VISITORIAL POWERS.**—

“(1) **RULE OF CONSTRUCTION.**—No provision of this title which relates to visitorial powers or otherwise limits or restricts the supervisory, examination, or regulatory authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

“(A) to require a national bank to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

“(B) to enforce any applicable Federal or State law, as authorized by such law; or

“(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

“(2) **CONSULTATION.**—The attorney general (or other chief law enforcement officer) of any State shall consult with the head of the agency responsible for chartering and regulating national banks before acting under paragraph (1).

“(h) ENFORCEMENT ACTIONS.—The ability of the head of the agency responsible for chartering and regulating national banks to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.”.

**SEC. 4406. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.**

Section 5136C of the Revised Statutes of the United States is amended by inserting after subsection (h) (as added by section 4405) the following new subsection:

“(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

“(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(B) NONDEPOSITORY INSTITUTION.—The term ‘nondepository institution’ means any entity that is not a depository institution.

“(2) IN GENERAL.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a national bank.”.

**SEC. 4407. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.**

(a) IN GENERAL.—The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

**“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.**

“(a) STATE CONSUMER FINANCIAL LAW DEFINED.—For purposes of this section, the term ‘State consumer financial law’ means a State law that does not directly or indirectly discriminate against Federal savings associations and that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for Federal savings associations to engage in), or any account related thereto, with respect to a consumer.

“(b) PREEMPTION STANDARD.—

“(1) IN GENERAL.—Federal savings associations shall generally comply with State laws. State laws are preempted only if—

“(A) application of a state law would have a discriminatory effect on Federal savings associations in comparison with the effect of the law on a bank chartered by that State;

“(B) the Director of the Office of Thrift Supervision determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as a Federal savings associations to engage in the business of banking; or

“(C) the State law is preempted by Federal law other than this Act.

“(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any Federal savings associations subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

“(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

“(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Director of the Office of Thrift Supervision regarding the meaning or interpretation of the National Bank Act or other Federal laws.

“(c) OTHER FEDERAL LAW.—Notwithstanding any other provision of law, the Director of the Office of Thrift Supervision may not prescribe any regulation pursuant to subsection (b)(1)(B) until such Director, after consultation with the Consumer Financial Protection Agency, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a Federal savings association, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

“(d) SUBSTANTIAL EVIDENCE.—No regulation prescribed by the Director of the Office of Thrift Supervision issued under subsection (b)(1)(B) shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a Federal savings association, the provision of the State consumer financial law unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision prevents or significantly interferes with the Federal savings association’s exercise of a power explicitly granted by the Congress.

“(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—The Director of the Office of Thrift Supervision shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall timely propose to continue, amend or rescind it, as may be appropriate, in accordance with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43(a)–(b)).

“(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this Act, a State consumer financial law shall apply to a subsidiary or affiliate of a Federal savings association to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law and consistent with Federal law.”.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations clarified.”.

**SEC. 4408. VISITORIAL STANDARDS.**

Section 6 of the Home Owners’ Loan Act (as added by section 4407 of this title) is amended by adding at the end the following new subsections:

“(g) VISITORIAL POWERS.—

“(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any

State to bring any action in any court of appropriate jurisdiction—

“(A) to require a Federal savings association to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

“(B) to enforce any applicable Federal or State law, as authorized by such law; or

“(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any Federal savings association.

“(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Director or any successor agency before acting under paragraph (1).

“(h) ENFORCEMENT ACTIONS.—The ability of the Director or any successor officer or agency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.”.

**SEC. 4409. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.**

Section 6 of the Home Owners’ Loan Act is amended by adding after subsection (h) (as added by section 4408) the following new subsection:

“(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—

“(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(B) NONDEPOSITORY INSTITUTION.—The term ‘nondepository institution’ means any entity that is not a depository institution.

“(2) IN GENERAL.—No provision of this title shall be construed as preempting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a Federal savings association.”.

**SEC. 4410. EFFECTIVE DATE.**

This subtitle shall take effect on the designated transfer date.

**Subtitle E—Enforcement Powers**

**SEC. 4501. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) AGENCY INVESTIGATION.—The term “Agency investigation” means any inquiry conducted by an Agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title or under the authorities transferred under subtitles F and H.

(2) AGENCY INVESTIGATOR.—The term “Agency investigator” means any attorney or investigator employed by the Agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any enumerated consumer law, the authorities transferred under subtitles F and H, or any regulation prescribed or order issued under this title or pursuant to any such authority by the Director.

(3) CUSTODIAN.—The term “custodian” means the custodian or any deputy custodian designated by the Agency.

(4) **DOCUMENTARY MATERIAL.**—The term “documentary material” includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, log, electronic file, or other data or data compilations stored in any medium.

(5) **VIOLATION.**—The term “violation” means any act or omission that, if proved, would constitute a violation of any provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or of any regulation prescribed or order issued by the Director under this title or pursuant to any such authority.

**SEC. 4502. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.**

(a) **JOINT INVESTIGATIONS.**—

(1) **IN GENERAL.**—The Agency or, where appropriate, an Agency representative may engage in joint investigations and requests for information.

(2) **FAIR LENDING.**—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations and requests for information with the Secretary of Housing and Urban Development, the Attorney General, or both.”

(b) **SUBPOENAS.**—

(1) **IN GENERAL.**—The Agency or an Agency investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) **FAILURE TO OBEY.**—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, an appropriate United States district court may upon application by the Agency or an Agency investigator and after notice to such person, issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

(c) **DEMANDS.**—

(1) **IN GENERAL.**—Whenever the Agency has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Agency may, before the institution of any proceedings under this title or under any enumerated consumer law or pursuant to the authorities transferred under subtitles F and H, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Agency;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) **REQUIREMENTS.**—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) **PRODUCTION OF DOCUMENTS.**—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time

within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) **PRODUCTION OF THINGS.**—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) **DEMAND FOR WRITTEN REPORTS OR ANSWERS.**—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) **ORAL TESTIMONY.**—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Agency investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) **SERVICE.**—

(A) Any civil investigative demand may be served by any Agency investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(8) **METHOD OF SERVICE.**—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at its principal office or place of business.

(9) **PROOF OF SERVICE.**—

(A) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) **PRODUCTION OF DOCUMENTARY MATERIAL.**—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) **SUBMISSION OF TANGIBLE THINGS.**—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) **SEPARATE ANSWERS.**—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) **TESTIMONY.**—

(A) **PROCEDURE.**—

(i) **OATH AND RECORDATION.**—The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

(ii) **TRANSCRIPTIONS.**—The testimony shall be taken stenographically and transcribed.

(iii) **COPY TO CUSTODIAN.**—After the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) **PARTIES PRESENT.**—Any Agency investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, the attorney for such person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Agency is engaged in a joint investigation, and any stenographer taking such testimony.

(C) **LOCATION.**—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed



upon by the Agency investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—The person summoned or the attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection.

(iv) REFUSAL TO ANSWER.—An objection may properly be made, received, and entered upon the record when it is claimed that the person summoned is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and shall not otherwise interrupt the oral examination, directly or through such person's attorney.

(v) PETITION FOR ORDER.—If such person refuses to answer any question, the Agency may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(vi) BASIS FOR COMPELLING TESTIMONY.—If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—

(i) RIGHT TO EXAMINE.—After the testimony of any witness is fully transcribed, the Agency investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(ii) READING THE TRANSCRIPT.—The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.

(iii) REQUEST FOR CHANGES.—Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Agency investigator with a statement of the reasons given by the witness for making such changes.

(iv) SIGNATURE.—The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(v) AGENCY ACTION IN LIEU OF SIGNATURE.—If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the officer or the Agency investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The officer shall certify on the transcript that the witness was duly sworn by the investigator and that the transcript is a true record of the testimony given by the witness, and the officer or the Agency investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Agency investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Agency may for good cause limit such witness to inspection of the official transcript of the testimony of such witness.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the Director.

(2) DISCLOSURE TO CONGRESS.—No regulation established by the Director regarding the confidentiality of materials submitted to, or otherwise obtained by, the Agency shall be intended to prevent disclosure to either House of the Congress or to an appropriate committee of the Congress, except that the Director may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the Agency and has designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Agency, through such officers or attorneys as the Director may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Agency investigator named in the demand, such person may file with the Agency a petition for an order by the Agency modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Agency, shall not run during the pendency of such petition at the Agency, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or con-

trol of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon such custodian by this section or regulation prescribed by the Director.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(2) APPEAL.—Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 4503. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Agency may conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any regulations prescribed by the Director under this title; and

(2) any other Federal law that the Agency is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Agency from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) NOTICE OF CHARGES.—If, in the opinion of the Agency, any covered person or service provider is engaging or has engaged in an activity that violates a law, regulation, or any condition imposed in writing on the person by the Agency, the Agency may issue and serve upon the person a notice of charges with respect to such violation.

(B) CONTENTS OF NOTICE.—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist therefrom should issue against the person.

(C) TIME OF HEARING.—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Agency at the request of any party so served.

(D) NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.—Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order.

(E) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the Agency shall find that any violation specified in the notice of charges has been established, the Agency may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(F) INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.—Such order may, by provisions which may be mandatory or otherwise, require the person to cease-and-desist from the

same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(2) **EFFECTIVENESS OF ORDER.**—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Agency or a reviewing court.

(3) **DECISION AND APPEAL.**—

(A) **PLACE OF AND PROCEDURES FOR HEARING.**—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(B) **TIME LIMIT FOR DECISION.**—After such hearing, and within 90 days after the Agency has notified the parties that the case has been submitted to it for final decision, the Agency shall—

(i) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(ii) serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection.

(C) **MODIFICATION OF ORDER GENERALLY.**—Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (4), and thereafter until the record in the proceeding has been filed as so provided, the Agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(D) **MODIFICATION OF ORDER AFTER FILING RECORD ON APPEAL.**—Upon such filing of the record, the Agency may modify, terminate, or set aside any such order with permission of the court.

(4) **APPEAL TO COURT OF APPEALS.**—

(A) **IN GENERAL.**—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Agency be modified, terminated, or set aside.

(B) **TRANSMITTAL OF COPY TO THE AGENCY.**—A copy of such petition shall be forthwith transmitted by the clerk of the court to the Agency, and thereupon the Agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code.

(C) **JURISDICTION OF COURT.**—Upon the filing of a petition under subparagraph (A), such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Agency.

(D) **SCOPE OF REVIEW.**—Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code.

(E) **FINALITY.**—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) **NO STAY.**—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Agency.

(C) **SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**—

(1) **ISSUANCE.**—

(A) **IN GENERAL.**—Whenever the Agency determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation of such violation, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Agency may issue a temporary order requiring the person to cease-and-desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings.

(B) **OTHER REQUIREMENTS.**—Any temporary order issued under this paragraph may include any requirement authorized under this subtitle.

(C) **EFFECT DATE OF ORDER.**—Any temporary order issued under this paragraph shall take effect upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) **APPEAL.**—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) **INCOMPLETE OR INACCURATE RECORDS.**—

(A) **TEMPORARY ORDER.**—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that a person's books and records are so incomplete or inaccurate that the Agency is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) **EFFECTIVE PERIOD.**—Any temporary order issued under subparagraph (A)—

(i) shall take effect upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph

(2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Agency determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(d) **SPECIAL RULES FOR ENFORCEMENT OF ORDERS.**—

(1) **IN GENERAL.**—The Agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) **EXCEPTION.**—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) **REGULATIONS.**—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

#### SEC. 4504. LITIGATION AUTHORITY.

(a) **IN GENERAL.**—If any person violates a provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority, the Agency may commence a civil action against such person to impose a civil penalty and to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) **REPRESENTATION.**—The Agency may act in its own name and through its own attorneys in enforcing any provision of this title, regulations under this title, or any other law or regulation, or in any action, suit, or proceeding to which the Agency is a party.

(c) **COMPROMISE OF ACTIONS.**—The Agency may compromise or settle any action if such compromise is approved by the court.

(d) **NOTICE TO THE ATTORNEY GENERAL.**—When commencing a civil action under this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation thereunder, the Agency shall notify the Attorney General.

(e) **APPEARANCE BEFORE THE SUPREME COURT.**—The Agency may represent itself in its own name before the Supreme Court of the United States, if—

(1) the Agency makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari; and

(2) the Attorney General concurs with such request or fails to take action within 60 days of the Agency's request.

(f) **FORUM.**—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority.

## (g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of the discovery of the violation to which an action relates.

## (2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) For purposes of this section, an action arising under this title shall not include claims arising solely under enumerated consumer laws.

(B) In any action arising solely under an enumerated consumer law, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(C) In any action arising solely under the laws for which authorities were transferred by subtitles F and H, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

**SEC. 4505. RELIEF AVAILABLE.**

## (a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or Agency, as the case may be) in an action or adjudication proceeding brought under this title, any enumerated consumer law, or any law for which authorities were transferred by subtitles F and H, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H, including a violation of a regulation prescribed or order issued under this title, any enumerated consumer law and any law for which authorities were transferred by subtitles F and H.

## (2) RELIEF.—Such relief may include—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties under subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Agency, a State attorney general, or a State bank supervisor to enforce any provision of this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority, the Agency, State attorney general, or State bank supervisor may recover the costs incurred by such Agency, attorney general, or supervisor in connection with prosecuting such action if the Agency, State attorney general, or State bank supervisors (as the case may be) is the prevailing party in the action.

## (c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) Any person that violates, through any act or omission, any provision of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title shall forfeit and pay a civil penalty pursuant to this subsection determined as follows:

(A) FIRST TIER.—For any violation of any law, regulation, final order or condition imposed in writing by the Agency, or for any failure to pay any fee or assessment imposed by the Agency (including any fee or assessment for which a related person may be liable), a civil penalty shall not exceed \$5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any violation of a regulation prescribed under section 4306 or for any person that recklessly engages in a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, relating to the provision of an alternative consumer financial product or service, a civil penalty shall not exceed \$25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, a civil penalty shall not exceed \$1,000,000 for each day during which such violation continues.

(2) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (1), the Agency or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(3) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (1). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(4) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director, unless—

(A) the Agency gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Agency.

**SEC. 4506. REFERRALS FOR CRIMINAL PROCEEDINGS.**

Whenever the Agency obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Agency shall transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. No provision of this section shall be construed as affecting any other authority of the Agency to disclose information.

**SEC. 4507. EMPLOYEE PROTECTION.**

(a) IN GENERAL.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized rep-

resentative of covered employees by reason of the fact that such employee or representative, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) has provided information to the Agency or to any other State, local, or Federal Government authority or law enforcement official information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this title or any other law that is subject to the jurisdiction of the Agency, or any regulation, order, standard, or prohibition prescribed by the Director;

(2) has testified or is about to testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other law that is subject to the jurisdiction of the Agency, or any regulation, order, standard, or prohibition prescribed by the Director;

(3) has filed or instituted, or has caused to be filed or instituted, any proceeding under any enumerated consumer law or any law for which authorities were transferred by subtitles F and H; or

(4) has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, regulation, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Agency.

(b) COVERED EMPLOYEE DEFINED.—For the purposes of this section, the term "covered employee" means any individual performing tasks related to the provision of a financial product or service to a consumer.

## (c) TIMETABLES.—

(1) FILING COMPLAINT.—Any individual who believes that such individual has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, before the end of the 180-day period beginning on the date on which such violation occurs, file (or have any person file on behalf of such individual) a complaint with the Secretary of Labor (hereafter in this subsection referred to as the "Secretary", notwithstanding section 4002(34)) alleging such discharge or discrimination and identifying the person responsible for such act.

(2) SECRETARY'S ACTION ON RECEIPT OF COMPLAINT.—Upon receipt of a complaint by any individual under paragraph (1), the Secretary shall notify, in writing, the person named in the complaint who is alleged to have committed the violation of—

(A) the filing of the complaint;

(B) the allegations contained in the complaint;

(C) the substance of the evidence supporting the complaint; and

(D) the opportunities that will be afforded to such person under paragraph (3).

## (3) INVESTIGATION, HEARING, AND ORDERS.—

(A) FINDINGS.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the individual filing the complaint and the person named in the complaint who is alleged to have committed the violation an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

(B) **PRELIMINARY ORDER.**—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B).

(C) **OBJECTIONS TO FINDINGS OR PRELIMINARY ORDER.**—Not later than 30 days after the date of notification of findings under subparagraph (A), the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record.

(D) **OBJECTIONS DO NOT CONSTITUTE A STAY.**—The filing of objections under subparagraph (C) shall not operate to stay any reinstatement remedy contained in the preliminary order.

(E) **EXPEDITIOUS HEARING.**—Any hearing requested under subparagraph (C) shall be conducted expeditiously.

(F) **FINALITY OF ORDER.**—If a hearing is not requested under subparagraph (C) with respect to any findings of the Secretary under subparagraph (A) within the 30-day period described in subparagraph (C), the preliminary order shall be deemed a final order that is not subject to judicial review.

(4) **STANDARDS FOR DETERMINATION.**—

(A) **PRIMA FACIE EVIDENCE OF CONTRIBUTION.**—The Secretary shall dismiss a complaint filed under paragraph (1) and shall not conduct an investigation otherwise required under paragraph (3)(A) unless the individual filing the complaint makes a prima facie showing that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) **PROHIBITION ON INVESTIGATION IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.**—Notwithstanding a finding by the Secretary that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (3) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) **CONTRIBUTING FACTOR REQUIREMENT.**—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) **PROHIBITION ON FINAL ORDER IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.**—Relief may not be ordered under paragraph (3) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(5) **FINAL ORDER.**—

(A) **IN GENERAL.**—Not later than 120 days after the date of conclusion of any hearing under paragraph (3), the Secretary shall issue a final order providing the relief prescribed by this subsection or denying the complaint.

(B) **SETTLEMENT AGREEMENT.**—At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(C) **CONTENTS OF ORDER.**—If, in response to a complaint filed under paragraph (1), the

Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to such individual's former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with such individual's employment; and

(iii) to provide compensatory damages to the complainant.

(D) **COSTS AND ATTORNEYS FEES.**—If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(E) **FRIVOLOUS OR BAD FAITH COMPLAINTS.**—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding \$1,000, to be paid by the complainant.

(6) **DE NOVO ACTION ON CLAIM.**—

(A) **ACTION AT LAW OR EQUITY.**—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant who filed such complaint may bring an action at law or equity for de novo review in the appropriate district court of the United States.

(B) **JURY TRIAL.**—At the request of either party to an action brought under subparagraph (A), such action shall be tried by the court with a jury.

(C) **STANDARDS FOR DETERMINATION.**—The standards for determination established under paragraph (4) shall apply in any action under this paragraph.

(D) **RELIEF.**—The court shall have jurisdiction to grant all relief, including injunctive relief and compensatory damages, that necessary to make the complainant who sought de novo review whole, including—

(i) reinstatement with the same seniority status that the complainant would have had, but for the discharge or discrimination;

(ii) the amount of back pay, with interest; and

(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(E) **NOT REVIEWABLE.**—The decision of the court shall be final without further review.

(7) **JUDICIAL REVIEW OF FINAL ORDER.**—

(A) **IN GENERAL.**—Unless a complainant brings a de novo action under paragraph (6), any person adversely affected or aggrieved by a final order issued under paragraph (5) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation.

(B) **STATUTE OF LIMITATION.**—Any petition for review of a final order under subsection shall be filed not later than 60 days after the date of the issuance of the final order by the Secretary.

(C) **STANDARDS FOR REVIEW.**—The standards for review established under chapter 7 of

title 5, United States Code, shall apply in any review of a final order under this paragraph.

(D) **EFFECT OF PROCEEDINGS AS STAY.**—The commencement of proceedings under this paragraph shall not operate as a stay of the final order of the Secretary under review, unless so ordered by the court.

(E) **LIMITATION ON EFFECT OF OTHER PROCEEDINGS.**—Except as provided in paragraph (6) and this paragraph, an order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(8) **ENFORCEMENT OF ORDERS BY SECRETARY.**—

(A) **IN GENERAL.**—Whenever any person has failed to comply with an order issued under paragraph (5), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order.

(B) **RELIEF.**—In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(9) **ENFORCEMENT OF ORDER BY AGGRIEVED PARTY.**—

(A) **IN GENERAL.**—A person on whose behalf an order was issued under paragraph (5) may commence a civil action against the person to whom such order was issued to require compliance with such order.

(B) **RELIEF.**—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(d) **ACTION IN NATURE OF MANDAMUS.**—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(e) **UNENFORCEABILITY OF CERTAIN AGREEMENTS.**—

(1) **NO WAIVER OF RIGHTS AND REMEDIES.**—Notwithstanding any law and except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) **PREDISPUTE ARBITRATION AGREEMENTS.**—Notwithstanding any law and except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable and to the extent the agreement requires arbitration of a dispute arising under this section.

(3) **EXCEPTION.**—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(2) unless the Director determines by regulation that such provision is inconsistent with the purposes of this title.

#### SEC. 4508. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

#### Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

##### SEC. 4601. TRANSFER OF CERTAIN FUNCTIONS.

(a) **IN GENERAL.**—Except as provided in subsection (b), consumer financial protection functions are transferred as follows:

(1) **BOARD OF GOVERNORS.**—

(A) **TRANSFER OF FUNCTIONS.**—All consumer financial protection functions of the Board of Governors are transferred to the Director.

(B) BOARD OF GOVERNORS' AUTHORITY.—The Director shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Director.

(B) COMPTROLLER'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Director.

(B) DIRECTOR'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Director.

(B) CORPORATION'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—Except as provided in subparagraph (C), the consumer financial protection functions of the Federal Trade Commission that are contained within the enumerated consumer laws are transferred to the Agency, except as provided in section 4202(e). This transfer shall not be subject to the provisions of Section 3503 of title 5, United States code.

(B) FEDERAL TRADE COMMISSION AUTHORITY.—The Agency shall have all powers and duties that were vested in the Federal Trade Commission that were contained within the enumerated statutes, except as provided in section 4202(e), on the day before the designated transfer date.

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Director.

(B) NATIONAL CREDIT UNION ADMINISTRATION'S AUTHORITY.—The Director shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 are transferred to the Director.

(B) SECRETARY OF HUD'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Secretary of Housing and Urban Development relating to the Real

Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, on the day before the designated transfer date

(b) TRANSFERS OF FUNCTIONS SUBJECT TO BACKSTOP ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (a) shall not affect the authority of the agencies identified in subsection (a) from initiating enforcement proceedings under the circumstances described in section 4202(e)(3).

(c) TERMINATION OF AUTHORITY OF TRANSFEROR AGENCIES TO COLLECT FEES FOR CONSUMER FINANCIAL PROTECTION PURPOSES.—Authorities of the agencies identified in subsection (a) to assess and collect fees to cover the cost of conducting consumer financial protection functions shall terminate on the day before the designated transfer date.

(d) CONSUMER FINANCIAL PROTECTION FUNCTIONS DEFINED.—For purposes of this subtitle, the term "consumer financial protection functions" means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services, including the authority to assess and collect fees for those purposes, except that such term shall not include any such function relating to an agency's responsibilities under the Community Reinvestment Act of 1977.

(e) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the designated transfer date.

#### SEC. 4602. DESIGNATED TRANSFER DATE.

The designated transfer date shall be 180 days after the date of enactment of this title.

#### SEC. 4603. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(1) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Director by this title, except that the Director shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(4) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or

against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Director by this title, except that the Director shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—Section 4601(a)(5) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(5) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(3) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Director by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(7) shall not affect the validity of any right, duty, or

obligation of the United States, the Secretary of Housing and Urban Development, the Department of Housing and Urban Development, or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of Housing and Urban Development under the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 transferred to the Director by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Secretary of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of Housing and Urban Development transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Secretary of Housing and Urban Development (or such Department) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, REGULATIONS, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and regulations that have been issued, made, prescribed, or allowed to become effective by the Board of Governors (or any Federal reserve bank), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, by any court of competent jurisdiction, or by operation of law.

(i) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the designated transfer date, the Director—

(1) shall, after consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Secretary of Housing and Urban Development identify the regulations continued under subsection (g) that will be enforced by the Director; and

(2) shall publish a list of such regulations in the Federal Register.

(j) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date but has not published as a final

regulation before that date, shall be deemed to be a proposed regulation of the Director.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date but which has not become effective before that date, shall take effect as a regulation of the Director according to its terms.

#### SEC. 4604. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Board of Governors shall—

(i) jointly determine the number of employees of the Board necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Agency in a manner that the Director and the Board of Governors, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Agency in a manner that the Director and the Board of Directors of the Corporation, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Agency in a manner that

the Director and the National Credit Union Administration Board, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(4) CERTAIN HUD EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Secretary of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer financial protection functions of the Secretary of Housing and Urban Development that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Agency in a manner that the Director and the Secretary of Housing and Urban Development, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(5) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Director of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant to such subparagraph) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of such employee's position assignment not later than 120 days after the effective date of the employee's transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, HUD, NCUA, OCC, AND OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Agency with the same status and



tenure as he or she held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of employees transferring to the Agency from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(C) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Agency shall not be subject to any additional certification requirements before being placed in a comparable examiner's position at the Agency examining the same types of institutions as the transferred examiners examined before such examiners were transferred.

(D) PERSONNEL ACTIONS LIMITED.—

(1) 5-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date shall not, during the 5-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside such transferred employee's local locality pay area as defined by the Director of the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Director to—

(A) separate an employee for cause or for unacceptable performance;

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) reassign a supervisory employee outside such employee's locality pay area as defined by the Director of the Office of Personnel Management when the Director determines that the reassignment is necessary for the efficient operation of the Agency.

(E) PAY.—

(1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 1-year period beginning on the designated transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Agency to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee's consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Agency.

(4) PAY INCREASES PERMITTED.—Paragraph (1) shall not be construed as limiting the authority of the Agency to increase a transferred employee's pay.

(F) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Agency determines, during the period beginning 1 year after the designated transfer date and ending 3 years after the designated transfer date, that a reorganization of the staff of the Agency is required—

(i) that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Director of the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Director of the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Director of the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Agency as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Agency determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Agency is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(C) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in such employee's existing retirement plan as long as the employee remains employed by the Agency.

(ii) EMPLOYER'S CONTRIBUTION.—The Director shall pay any employer contributions to the existing retirement plan of each transferred employee as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUB-

JECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before the date of the employee's transfer to the Agency may, during the period beginning 6 months after the designated transfer date and ending 1 year after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) AGENCY PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—A separate account in the Federal Reserve System retirement plan shall be established for Agency employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Director shall deposit into the account established under clause (i) the employer contributions that the Agency makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Director shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) EXISTING RETIREMENT PLAN.—The term "existing retirement plan" means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the employee was enrolled in on the day before the designated transfer date.

(ii) FEDERAL EMPLOYEE RETIREMENT PLAN.—The term "Federal employee retirement program" means the retirement program for Federal employees established by chapters 83 and 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long-term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Director shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee as required under that program or negotiated agreements.



(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Director decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Director's decision takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; and

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG-TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Director decides not to continue participation in any long-term care insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Director's decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in Part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE'S CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Director shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Director and the Director of the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a health benefits plan administered by the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors, the Secretary of Housing and Urban Development, or a Federal reserve bank, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Agency, without re-

gard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE'S CONTRIBUTION.—An individual enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Director shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Director and the Director of the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a life insurance plan administered by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or a Federal reserve bank immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Director shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Director—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees' status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time, for prior periods of service with any Federal agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Director shall work with the Director of the Office of Personnel Management and other entities with expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

#### SEC. 4605. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management

and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of the enactment of this title.

#### SEC. 4606. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Director under this subtitle until the appointment of the Director in accordance with section 4102.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury may provide administrative services necessary to support the Agency before the designated transfer date.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—For the purposes of carrying out the authorities granted in this section, there are appropriated to the Secretary of the Treasury such sums as are necessary. Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

#### Subtitle G—Regulatory Improvements

#### SEC. 4701. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers' addresses maintained pursuant to paragraph (1) shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers.

(iv) any other data deemed appropriate by the Director.

(B) PROTECTION OF IDENTITY.—In the publicly available data, any personally identifiable data element shall be removed so as to

protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency, or to a Federal banking agency, in accordance with regulations prescribed by the Director.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Director.

(d) AGENCY USE.—The Director—

(1) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(2) may use the data for any other purpose as permitted by law.

(e) REGULATIONS AND GUIDANCE.—

(1) IN GENERAL.—The Director shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) DATA COMPILATION REGULATIONS.—The Director shall prescribe regulations regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) AGENCY.—The term “Agency” means the Consumer Financial Protection Agency.

(2) CREDIT UNION.—The term “credit union” means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(3) DEPOSIT ACCOUNT.—The term “deposit account” includes any checking account, savings account, credit union share account, and other type of account as defined by the Director.

(4) DIRECTOR.—The term “Director” means the Director of the Agency.

(5) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the Board of Governors of the Federal Reserve System, the head of the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term “Federal banking agencies” means all of those agencies.

(6) FINANCIAL INSTITUTION.—The term “financial institution”—

(A) has the meaning given to the term “insured depository institution” in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

**SEC. 4702. SMALL BUSINESS DATA COLLECTION.**

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section:

**“§ 704B. Small business loan data collection**

“(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business

and community development needs and opportunities of women- and minority-owned small businesses.

“(b) IN GENERAL.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

“(1) inquire whether the business is a women- or minority-owned business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means and whether or not such application is in response to a solicitation by the financial institution; and

“(2) maintain a record of the responses to such inquiry separate from the application and accompanying information.

“(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

“(d) NO ACCESS BY UNDERWRITERS.—

“(1) IN GENERAL.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

“(2) EXCEPTION.—If a financial institution determines that loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution will provide notice to the applicant of the access of the underwriter to this information, along with notice that the financial institution may not discriminate on this basis of this information.

“(e) FORM AND MANNER OF INFORMATION.—

“(1) IN GENERAL.—Each financial institution shall compile and maintain, in accordance with regulations of the Agency, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

“(2) ITEMIZATION.—Information compiled and maintained under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:

“(A) The number of the application and the date the application was received.

“(B) The type and purpose of the loan or other credit being applied for.

“(C) The amount of the credit or credit limit applied for and the amount of the credit transaction or the credit limit approved for such applicant.

“(D) The type of action taken with respect to such application and the date of such action.

“(E) The census tract in which is located the principal place of business of the small business loan applicant.

“(F) The gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application.

“(G) The race, sex, and ethnicity of the principal owners of the business.

“(H) Any additional data the Agency determines would aid in fulfilling the purposes of this section.

“(3) INCLUSION OF PERSONALLY IDENTIFIABLE INFORMATION PROHIBITED.—In compiling and

maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, and any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

“(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Agency may, in the discretion of the Agency, delete or modify data collected under this section which is or will be available to the public if the Agency determines that the deletion or modification of the data would advance a compelling privacy interest.

“(f) AVAILABILITY OF INFORMATION.—

“(1) SUBMISSION TO AGENCY.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency.

“(2) AVAILABILITY OF INFORMATION.—

“(A) IN GENERAL.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Agency.

“(B) ANNUAL DISCLOSURE TO THE PUBLIC.—In addition to the availability by request under subparagraph (A) of data compiled and maintained under this section, the Agency shall annually provide such data to the public.

“(C) PROCEDURES.—The procedures for disclosing data compiled and maintained under this section to the public shall be determined by the Agency by regulation.

“(3) COMPILATION OF AGGREGATE DATA.—

“(A) IN GENERAL.—The Agency may, in the discretion of the Agency, compile for the Agency’s own use compilations of aggregate data.

“(B) PUBLIC AVAILABILITY OF AGGREGATE DATA.—The Agency may, in the discretion of the Agency, make public compilations of aggregate data in such manner as the Agency may determine to be appropriate.

“(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) FINANCIAL INSTITUTION.—The term ‘financial institution’ means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

“(2) MINORITY-OWNED BUSINESS.—The term ‘minority-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

“(3) WOMEN-OWNED BUSINESS.—The term ‘women-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

“(4) MINORITY.—The term ‘minority’ has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“(5) SMALL BUSINESS LOAN.—The term ‘small business loan’ shall be defined by the Agency, which may take into account—

“(A) the gross revenues of the borrower;

“(B) the total number of employees of the borrower;

“(C) the industry in which the borrower has its primary operations; and

“(D) the size of the loan.

“(h) AGENCY ACTION.—

“(1) IN GENERAL.—The Agency shall prescribe such regulations and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

“(2) EXCEPTIONS.—The Agency, by regulation or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of institutions from the requirements of this section as the Agency determines to be necessary or appropriate to carry out the purposes and objectives of this section.

“(3) GUIDANCE.—The Agency shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for the purposes of this section.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) by striking “or” after the semicolon at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting “; or”; and

(3) by inserting after paragraph (4), the following new paragraph:

“(5) to make an inquiry under section 704B in accordance with the requirements of such section.”.

(c) CLERICAL AMENDMENT.—The table of sections for the Equal Credit Opportunity Act is amended by inserting after the item relating to section 704A the following new item:

“704B. Small business loan data collection.”.

(d) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

#### SEC. 4703. ANNUAL FINANCIAL AUTOPSY.

(a) STUDY REQUIRED.—Not later than March 31 of each calendar year, the Director shall—

(1) conduct a scientific sampling of foreclosures and bankruptcies during the previous calendar year in each State or territory of the United States; and

(2) identify any underlying causes of such bankruptcies or foreclosures, including any specific financial products or services that have been the cause of substantial numbers of such bankruptcies or foreclosures.

(b) REPORT.—After the completion of each study required under subsection (a), the Director shall submit a report to the Congress containing—

(1) any conclusions made by the Director in carrying out such study;

(2) any specific financial products or services that the Director has identified to have caused a substantial number of bankruptcies or foreclosures, as well as which companies or individuals provided such financial products or services; and

(3) any recommendations the Director has for legislation that would reduce the underlying causes of bankruptcies and foreclosures identified in such study.

#### Subtitle H—Conforming Amendments

#### SEC. 4801. AMENDMENTS TO THE INSPECTOR GENERAL ACT OF 1978.

(a) ESTABLISHMENT.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting “the Consumer Financial Protection Agency,” before “the Consumer Product Safety Commission.”.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

#### SEC. 4802. AMENDMENTS TO THE PRIVACY ACT OF 1974.

(a) APPLICABILITY.—Section 552a of title 5, United States Code, is amended by adding at the end the following new subsection:

“(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as provided in the Consumer Financial Protection Agency Act of 2009, this section shall apply with respect to the Consumer Financial Protection Agency.”.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

#### SEC. 4803. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) SECTION 803(1).—Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3802(1)) is amended by striking paragraphs (B) and (C).

(b) SECTION 804(a).—Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803(a)) is amended—

(1) in paragraphs (1), (2), and (3), by inserting “on or before the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009” after “transactions made” each place such term appears;

(2) in paragraph (2), by striking “and” at the end;

(3) in paragraph (3), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following new paragraph:

“(4) with respect to transactions made after the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009, only in accordance with regulations governing alternative mortgage transactions as issued by the Consumer Financial Protection Agency for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Consumer Financial Protection Agency with regard to federally chartered housing creditors under laws other than this section.”.

(c) SECTION 804.—Section 804 of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

(1) by striking subsection (c) and inserting the following new subsection:

“(c) EFFECT OF STATE LAW.—

“(1) IN GENERAL.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State Constitution, law, or regulation that prohibits an alternative mortgage transaction.

“(2) RULE OF CONSTRUCTION.—For purposes of this subsection, a State Constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State Constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.”; and

(2) by adding at the end the following new subsection:

“(d) DUTIES OF CONSUMER FINANCIAL PROTECTION AGENCY.—The Consumer Financial Protection Agency shall—

“(1) review the regulations identified by the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision (as those regulations exist on the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency

Act of 2009) as applicable under paragraphs (1), (2), and (3) of subsection (a);

“(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of section 4201 of the Consumer Financial Protection Agency Act of 2009; and

“(3) prescribe regulations under subsection (a)(4) after the designated transfer date, as determined under such Act.”.

(d) EFFECTIVE DATE AND SCOPE OF APPLICATION.—

(1) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

(2) SCOPE OF APPLICATION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 which is entered into on or before the designated transfer date.

#### SEC. 4804. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

(a) TRUTH IN LENDING ACT.—

(1) SECTION 103.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by striking subsection (b) and inserting the following new subsection:

“(b) AGENCY DEFINITIONS.—

“(1) BOARD.—The term ‘Board’ means the ‘Board of Governors of the Federal Reserve System’.

“(2) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(2) UNIVERSAL AMENDMENT RELATING TO BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking “Board” each place such term appears, including in chapters 4 and 5 relating to credit billing and consumer leases, and inserting “Agency”.

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to sections 108(a) (as amended by paragraph (4)) and 140(d).

(3) SECTION 105.—Section 105(b) of the Truth in Lending Act (15 U.S.C. 1604(b)) is amended by striking the first sentence and inserting the following: “The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.”.

(4) SECTION 108.—Section 108 of the Truth in Lending Act (15 U.S.C. 1607) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

“(a) ENFORCING AGENCIES.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced as follows:

“(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

“(B) member banks of the Federal Reserve System (other than national banks),

branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

“(C) depository institution insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

“(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

“(2) Under subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.

“(3) Under the Federal Credit Union Act, by the head of the agency responsible for chartering and regulating Federal credit unions.

“(4) Under the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

“(5) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

“(6) Under the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.”; and

(B) by striking subsection (c) and inserting the following new subsection:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.”.

(5) UNIVERSAL AMENDMENT RELATING TO THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking “Federal Trade Commission” each place such term appears and inserting “Agency”.

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to sections 108(c) (as amended by paragraph (4)) and 129(m) (as amended by paragraph (7)).

(6) SECTION 127.—Subparagraph (C) of section 127(b)(11) of the Truth in Lending Act (15 U.S.C. 1637(b)(11)) is amended to read as follows:

“(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is en-

forced by the Agency, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: ‘Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5 percent minimum monthly payment on a balance of \$300 at an interest rate of 17 percent would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Consumer Financial Protection Agency at this toll-free number: [the blank space

to be filled in by the creditor].’ A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).”.

(7) SECTION 129.—Section 129(m) of the Truth in Lending Act (15 U.S.C. 1639(m)) is amended to read as follows:

“(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Agency pursuant to subsection (1)(2) of this section shall be treated as a violation of a regulation promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.”.

(b) FAIR CREDIT REPORTING ACT.—

(1) SECTION 603.—Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following new subsection:

“(w) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(2) UNIVERSAL AMENDMENTS RELATING TO THE FEDERAL TRADE COMMISSION.—Other than in connection with the amendment made by paragraph (7)(A), the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by striking “Federal Trade Commission” each place such term appears and inserting “Agency”;

(B) by striking “Commission” each place such term appears (other than in connection with the term amended in subparagraph (A)) and inserting “Agency”; and

(C) by striking “Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly” each place such term appears in sections 605(h)(2) and 623(a)(8)(A) and inserting “Agency shall”.

(3) SECTION 603.—Section 603(k)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2)) is amended by striking “Board of Governors of the Federal Reserve System” and inserting “Agency”.

(4) SECTION 604.—Subsection 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended—

(A) by striking subparagraph (C) of paragraph (3) and inserting the following new subparagraph:

“(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Agency (with respect to any covered person subject to the jurisdiction of such agency under paragraph (2) of section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).”; and

(B) by striking paragraph (5) and inserting the following new paragraph:

“(5) REGULATIONS REQUIRED.—The Agency may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.”.

(5) SECTION 611.—Section 611(e)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681i(e)(2)) is amended to read as follows:

“(2) EXCLUSION.—Complaints received or obtained by the Agency pursuant to its investigative authority under the Consumer Financial Protection Agency Act of 2009 shall not be subject to paragraph (1).”.

(6) SECTION 615.—Section 615(h)(6)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681m(h)(6)(A)) is amended to read as follows:

“(A) RULES REQUIRED.—The Agency shall prescribe rules.”.

(7) SECTION 621.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

“(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

“(1) IN GENERAL.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of such Act with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (subject to section 4202 of the Consumer Financial Protection Agency Act of 2009), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

“(2) CIVIL MONEY PENALTIES.—

“(A) IN GENERAL.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than \$2,500 per violation.

“(B) FACTORS IN DETERMINING AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(3) EXCEPTION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission or the Agency, as the case may be, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.”;

(B) by striking subsection (b) and inserting the following new subsection:

“(b) ENFORCEMENT BY OTHER AGENCIES.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) of section 615 shall be enforced as follows:

“(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System;

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

“(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

“(2) Under subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in the case of a covered person under that Act.

“(3) Under the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union.

“(4) Under subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board.

“(5) Under the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

“(6) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

“(7) Under the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission.

“(8) Under the Federal securities law and any other laws subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person subject to the jurisdiction of the Securities and Exchange Commission.

Any term used in paragraph (1) that is not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to such term in section 1(b) of the International Banking Act of 1978.”;

(C) by striking subsection (e) and inserting the following new subsection:

“(e) REGULATORY AUTHORITY.—The Agency shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to a covered person described in subsection (b).”;

(D) in the heading of subsection (g) by striking “FTC”.

(8) SECTION 623.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended—

(A) by amending subparagraph (a)(7)(D) to read as follows:

“(D) MODEL DISCLOSURE.—

“(i) DUTY OF AGENCY TO PREPARE.—The Agency shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

“(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Agency.

“(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Agency, or the financial institution uses any such model form and rearranges its format.”.

(B) by amending subsection (e) to read as follows:

“(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

“(1) GUIDELINES.—The Agency shall, with respect to the entities that are subject to its enforcement authority under section 621—

“(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

“(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures or implementing the guidelines established pursuant to subparagraph (A).

“(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Agency shall—

“(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

“(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

“(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

“(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.”

(c) EQUAL CREDIT OPPORTUNITY ACT.—

(1) SECTION 701.—Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by striking “Board” each place such term appears and inserting “Agency”.

(2) SECTION 702.—Section 702(c) of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended to read as follows:

“(c) The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(3) SECTION 703.—Section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b) is amended—

(A) by striking subsection (b);

(B) in subsection (a)—

(i) by striking “(1)”; and

(ii) by redesignating paragraphs (2), (3), (4), and (5) as subsections (b), (c), (d), and (e), respectively;

(C) in subsection (c) (as so redesignated)—

(i) by striking “paragraph (2)” and inserting “subsection (b)”; and

(ii) by striking “such paragraph” and inserting “such subsection”;

(D) in subsection (d) (as so redesignated)—

(i) by striking “subsection” and inserting “section”

(ii) by striking “Act” and inserting “title”; and

(iii) by striking “this paragraph” and inserting “this subsection”; and

(E) by striking “Board” each place such term appears in such section and inserting “Agency”.

(4) SECTION 704.—Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(ii) in paragraph (1)(A), by striking “Office of the Comptroller of the Currency” and inserting “head of the agency responsible for chartering and regulating national banks”;

(iii) in paragraph (1)(B), by striking “and” after the semicolon;

(iv) in paragraph (1)(C), by inserting “and” after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

“(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision.”; and

(vi) by amending paragraph (2) to read as follows:

“(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.”;

(B) by striking subsection (c) and inserting the following new subsection:

“(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements

imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any regulation prescribed by the Director under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”; and

(C) in subsection (d), by striking “Board” and inserting “Agency”.

(5) SECTION 704a.—Section 704A(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691c-1(a)(1)) is amended in by striking “Board” and inserting “Agency”.

(6) SECTION 705.—Section 705 of the Equal Credit Opportunity Act (15 U.S.C. 1691d) is amended—

(A) in subsection (f), by striking “Board” each place such term appears and inserting “Agency”; and

(B) in subsection (g), by striking “Board” and inserting “Agency”.

(7) SECTION 706.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended—

(A) in subsection (e)—

(i) by striking “Board” each place such term appears and inserting “Agency”; and

(ii) by striking “Federal Reserve System” and inserting “Consumer Financial Protection Agency”;

(B) in subsection (f), by striking “two years” each place such term appears and inserting “5 years”;

(C) in subsection (g)—

(i) by striking “The agencies having”, in the 1st sentence, and inserting “The Agency and the agencies having”

(ii) by striking “Each agency referred”, in the 2nd sentence, and inserting “The Agency and each agency referred”;

(iii) by striking “Each such agency”, in the 3rd sentence, and inserting “The Agency and each such agency”; and

(iv) by striking “whenever the agency” in the 3rd sentence, and inserting “whenever the Agency or an agency having responsibility for administrative enforcement under section 704”; and

(D) in subsection (k)—

(i) by striking “Whenever an agency” and inserting “Whenever the Agency or an agency”; and

(ii) by striking “the agency shall notify” and inserting “the Agency, or an agency referred to in any such paragraph, as the case may be, shall notify”.

(8) SECTION 707.—Section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f) is amended by striking “Board” each place such term appears and inserting “Agency”.

(d) FAIR DEBT COLLECTION PRACTICES ACT.—

(1) SECTION 803.—Section 803 of the Fair Debt Collection Practices Act (15 U.S.C. 1692a) is amended—

(A) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) as paragraphs (2), (3), (4), (5), (6), (7), (8), and (9), respectively; and

(B) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(2) SECTION 813.—Section 813(e) of the Fair Debt Collection Practices Act (15 U.S.C. 1692k(e)) is amended by striking “Commission” and inserting “Agency”.

(3) SECTION 814.—Section 814 of the Fair Debt Collection Practices Act (15 U.S.C. 1692l) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

“(a) FEDERAL TRADE COMMISSION.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”;

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by striking “Compliance” and inserting “ENFORCEMENT BY OTHER AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”.

(ii) in paragraph (1)(A), by striking “Office of the Comptroller of the Currency”; and inserting “head of the agency responsible for chartering and regulating national banks”;

(iii) in paragraph (1)(B), by striking “and” after the semicolon;

(iv) in paragraph (1)(C), by inserting “and” after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

“(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision”; and

(vi) by striking paragraph (2) and inserting the following new paragraph:

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency”; and

(C) by striking subsection (d) and inserting the following new subsection:

“(d) REGULATIONS.—The Agency may prescribe regulations with respect to the collection of debts by any debt collector.”.

(4) SECTION 815.—Section 815 (15 U.S.C. 1692m) is amended—

(A) in the section heading, by striking “Commission” and inserting “Agency”; and

(B) by striking “Commission” each place such term appears and inserting “Agency”.

(5) SECTION 817.—Section 817 (15 U.S.C. 1692o) is amended by striking “Commission” each place such term appears and inserting “Agency”.

(e) ELECTRONIC FUND TRANSFER ACT.—

(1) SECTION 903.—Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended—

(A) by striking paragraph (3) and inserting the following new paragraph:

“(3) the term ‘Agency’ means the Consumer Financial Protection Agency”; and

(B) in paragraph (6), by striking “Board” and inserting “Agency”.

(2) SECTION 904.—Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended by striking “Board” each place such term appears and inserting “Agency”.

(3) SECTION 905.—Section 905 of the Electronic Fund Transfer Act (15 U.S.C. 1693c) is amended by striking “Board” each place such term appears and inserting “Agency”.

(4) SECTION 906.—Section 906(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693d(b)) is amended by striking “Board” and inserting “Agency”.

(5) SECTION 907.—Section 907(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693e(b)) is amended by striking “Board” and inserting “Agency”.

(6) SECTION 908.—Section 908(f)(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693f(f)(7)) is amended by striking “Board” and inserting “Agency”.

(7) SECTION 910.—Section 910(a)(1)(E) of the Electronic Fund Transfer Act (15 U.S.C. 1693h(a)(1)(E)) is amended by striking “Board” and inserting “Agency”.

(8) SECTION 911.—Section 911(b)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693i(b)(3)) is amended by striking “Board” and inserting “Agency”.

(9) SECTION 915.—Section 915(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693m(d)) is amended—

(A) by striking “Board” each place such term appears and inserting “Agency”; and

(B) by striking “Federal Reserve System” and inserting “Consumer Financial Protection Agency”.

(10) SECTION 917.—Section 917 of the Electronic Fund Transfer Act (15 U.S.C. 1693o) is amended—

(A) in subsection (a)—

(i) by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(ii) in paragraph (1)(A), by striking “Office of the Comptroller of the Currency” and inserting “head of the agency responsible for chartering and regulating national banks”; and

(iii) by striking paragraph (2) and inserting:

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency”; and

(B) by striking subsection (c) and inserting the following new subsection:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is



engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.”.

(11) SECTION 918.—Section 918 of the Electronic Fund Transfer Act (15 U.S.C. 1693p) is amended by striking “Board” each place such term appears and inserting “Agency”.

(12) SECTION 919.—Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q) is amended by striking “Board” each place such term appears and inserting “Agency”.

(13) SECTION 920.—Section 920 of the Electronic Fund Transfer Act (15 U.S.C. 1693r) is amended by striking “Board” each place such term appears and inserting “Agency”.

(f) AMENDMENTS TO HOEPA RELATING TO THE TRUTH IN LENDING ACT.—Section 158 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 nt.) (relating to hearings on home equity lending) is amended—

(1) in subsection (a), by striking “Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board,” and inserting “Consumer Financial Protection Agency, in consultation with the Advisory Board to the Agency”; and

(2) in subsection (b), by striking “Board of Governors of the Federal Reserve System” and inserting “Consumer Financial Protection Agency”.

(g) AMENDMENT TO THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 RELATING TO THE FAIR CREDIT REPORTING ACT.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s-3 nt.) is amended by striking “The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and” and inserting “The Consumer Financial Protection Agency, with respect to a person subject to the enforcement authority of the Agency, the Commodity Futures Trading Commission, and”.

#### SEC. 4805. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) SECTION 605.—Section 605(f)(1) of the Expedited Funds Availability Act (12 U.S.C. 4004(f)(1)) is amended by inserting “, in consultation with the Director of the Consumer Financial Protection Agency,” after “Board”.

(b) SECTION 609.—Section 609(a) of the Expedited Funds Availability Act (12 U.S.C. 4008(a)) is amended by inserting “, in consultation with the Director of the Consumer Financial Protection Agency,” after “Board”.

#### SEC. 4806. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) SECTION 8.—Section 8(t) the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), as amended by section 1111(b)(2), is further amended by adding at the end the following new paragraph:

“(7) REFERRAL TO CONSUMER FINANCIAL PROTECTION COMMISSION.—Each appropriate Federal banking agency shall make a referral to the Consumer Financial Protection Agency when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in section 4202(e)(2) of the Consumer Financial Protection Agency Act of 2009, by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.”.

(b) SECTION 43.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) in subsection (c), by striking “Federal Trade Commission” and inserting “Agency”;

(2) in subsection (d), by striking “Federal Trade Commission” and inserting “Agency”;

(3) in subsection (e)—

(A) in paragraph (2)(B), by striking “Federal Trade Commission” and inserting “Agency”; and

(B) by adding at the end the following new paragraph:

“(5) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(c) SECTION 43(f).—Section 43(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(f)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

“(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Agency Act of 2009 by the Agency with respect to any person (and without regard to the provision of a consumer financial product or service).”; and

(2) in paragraph (2), by striking subparagraph (C) and inserting the following new subparagraph:

“(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Agency has instituted an enforcement action for a violation of this section, no appropriate State supervisory may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Agency for any violation of this section that is alleged in that complaint.”.

#### SEC. 4807. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

(a) SECTION 504.—Section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

(1) by striking “The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,” and inserting “The Consumer Financial Protection Agency and”; and

(2) by striking “, and the Federal Trade Commission”.

(b) SECTION 505.—

(1) Section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) is amended—

(A) in the matter preceding paragraph (1), by striking “This subtitle and the regulations prescribed thereunder shall be enforced by” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this subtitle and the regulations prescribed under this title shall be enforced by the Consumer Financial Protection Agency.”; and

(B) by inserting after paragraph (7) the following new paragraph:

“(8) Under the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency in the case of financial institutions and other covered persons and service providers subject to the jurisdiction of the Agency under that Act, but not with respect to the standards under section 501.”.

(2) Section 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(b)(1)) is amended by inserting “, other than the Consumer Financial Protection Agency,” after “described in subsection (a)”.

#### SEC. 4808. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

(a) SECTION 303.—Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), and (6) as paragraphs (2), (3), (4), (5), (6), and (7), respectively; and

(2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(b) UNIVERSAL AMENDMENT RELATING TO AGENCY.—Except as provided in subsections (c), (d), (e), and (f), the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–11) is amended by striking “Board” each place such term appears and inserting “Agency”.

(c) SECTION 304.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(1) in subsection (b)—

(A) by striking “and” after the semicolon at the end of paragraph (3);

(B) by striking “and gender” in paragraph (4), and inserting “age, and gender”;

(C) by striking the period at the end of paragraph (4) and inserting a semicolon; and

(D) by inserting after paragraph (4) the following new paragraphs:

“(5) the number and dollar amount of mortgage loans grouped according to the following measurements:

“(A) the total points and fees payable at origination in connection with the mortgage as determined by the Agency, taking into account section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4));

“(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

“(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

“(D) such other information as the Agency may require; and

“(6) the number and dollar amount of mortgage loans and completed applications grouped according to the following measurements:

“(A) the value of the real property pledged or proposed to be pledged as collateral;

“(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

“(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully-amortizing payments during any portion of the loan term;

“(D) the actual or proposed term in months of the mortgage loan;

“(E) the channel through which application was made, including retail, broker, and other relevant categories;

“(F) as the Agency may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

“(G) as the Agency may determine to be appropriate, a universal loan identifier;

“(H) as the Agency may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

“(I) the credit score of mortgage applicants and mortgagors in such form as the Agency may prescribe, except that the Agency shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

“(J) such other information as the Agency may require.”;

(2) by striking subsection (h) and inserting the following new subsection:



“(h) SUBMISSION TO AGENCIES.—

“(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Agency or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Agency. Institutions will not be required to report new data required under section 4808(c) before the first January 1 that occurs after the end of the 9-month period beginning on the date that regulations prescribed by the Agency are prescribed in final form.

“(2) REGULATIONS.—Notwithstanding the requirement of section 304(a)(2)(A) for disclosure by census tract, the Agency, in cooperation with other appropriate regulators, including—

“(A) the head of the agency responsible for chartering and regulating national banks for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

“(B) the Federal Deposit Insurance Corporation for depository institutions insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks;

“(C) the Director of the Office of Thrift Supervision for Federal savings associations and savings and loan holding companies;

“(D) the National Credit Union Administration Board for credit unions; and

“(E) the Secretary of Housing and Urban Development for other lending institutions not regulated by an agency referred to in subparagraphs (A), (B), (C), or (D), shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public.

“(3) REQUIRED DISCLOSURES.—The regulations prescribed under paragraph (2) shall require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans.

“(4) ADDITIONAL DATA OR EXPLANATIONS.—Any reporting institution may submit in writing to the Agency or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.”;

(3) in subsection (i), by striking “subsection (b)(4)” and inserting “paragraphs (4), (5), and (6) of subsection (b)”;

(4) in subsection (j)—

(A) by striking “(as)” where such term appears in paragraph (1) and inserting “(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise)”;

(B) by striking “in the format in which such information is maintained by the institution” where such term appears in paragraph (2)(A), and inserting “in such formats as the Agency may require”; and

(C) by striking paragraph (3) and inserting the following new paragraph:

“(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Agency may require.”; and

(5) by striking paragraph (2) of subsection (m) and inserting the following new paragraph:

“(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Agency may require.”.

(d) SECTION 305.—Section 305 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

“(b) POWERS OF CERTAIN OTHER AGENCIES.—Compliance with the requirements imposed under this title shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

“(C) depository institutions insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

“(D) Federal savings associations, and savings and loan holding companies, by the Director of the Office of Thrift Supervision;

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;

“(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

“(4) other lending institutions, by the Secretary of Housing and Urban Development. The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101). The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978.”; and

(2) by inserting at the end of section 305 the following new subsection:

“(d) OVERALL ENFORCEMENT AUTHORITY OF THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Agency may exercise its authorities under the Consumer Financial Protection Agency Act of 2009 to exercise principal authority to examine and enforce compliance by any person with the requirements under this title.”.

(e) SECTION 306.—Subsection 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is amended to read as follows:

“(b) The Agency may, by regulation, exempt from the requirements of this title any State chartered depository institution within any State or subdivision of any state if

the Agency determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the head of the agency responsible for chartering and regulating national banks under section 8 of the Federal Deposit Insurance Act in the case of national banks and savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation.”.

(f) SECTION 307.—Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806) is amended to read as follows:

“SEC. 307. RESEARCH AND IMPROVED METHODS.

“(a) ENHANCED COMPLIANCE IN ECONOMICAL MANNER.—

“(1) IN GENERAL.—The Director of the Consumer Financial Protection Agency, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Consumer Financial Protection Agency deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

“(2) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated such sums as may be necessary to carry out this subsection.

“(3) AUTHORITY OF AGENCY.—The Director of the Consumer Financial Protection Agency is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

“(b) RECOMMENDATIONS TO THE CONGRESS.—The Director of the Consumer Financial Protection Agency shall recommend to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate such additional legislation as the Director of the Consumer Financial Protection Agency deems appropriate to carry out the purpose of this title.”.

SEC. 4809. AMENDMENTS TO DIVISION D OF THE OMNIBUS APPROPRIATIONS ACT, 2009.

(a) Section 626(a) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended—

(1) by striking by paragraph (1) and inserting the following new paragraph: “(1) The Director of the Consumer Financial Protection Agency shall have authority to prescribe regulations with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a regulation prescribed under this subsection shall be treated as a violation of a regulation prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Agency Act of 2009.”;

(2) by striking paragraph (2);

(3) by striking paragraph (3); and

(4) by striking paragraph (4) and inserting the following new paragraph:

“(2) The Director of the Consumer Financial Protection Agency shall enforce the regulations issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Consumer Financial Protection Agency Act of 2009 were incorporated into and made part of this section.”

(b) Section 626(b) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended by striking “primary Federal regulator” each place it appears and inserting “Consumer Financial Protection Agency”.

#### SEC. 4810. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in the matter preceding paragraph (1) of subsection (a), by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(2) in subsection (a)(2), by striking “and” after the semicolon at the end;

(3) in subsection (a)(3), by striking the period at the end and inserting “; and”;

(4) by inserting after subsection (a)(3), the following new paragraph:

“(4) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency.”; and

(5) in subsection (b)(2), by inserting “, subject to section 4202 of the Consumer Financial Protection Agency Act of 2009” before the period at the end.

#### SEC. 4811. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) SECTION 3.—Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602) is amended—

(1) in paragraph (7), by striking “and” after the semicolon at the end;

(2) in paragraph (8), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following new paragraph

“(9) the term ‘Agency’ means the Consumer Financial Protection Agency.”

(b) SECTION 4.—Section 4 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603) is amended—

(1) in subsection (a), by striking the first sentence and inserting the following: “The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.”;

(2) by striking “Secretary” each place such term appears and inserting “Agency”; and

(3) by striking “form” each place such term appears and inserting “forms”.

(c) SECTION 5.—Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) by striking “Secretary” each place such term appears, and inserting “Agency”; and

(2) by striking the first sentence of subsection (a), and inserting “The Agency shall

prepare and distribute booklets jointly complying with the requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.”

(d) SECTION 6.—Section 6(j)(3) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(j)(3)) is amended—

(1) by striking “Secretary” and inserting “Director of the Agency”; and

(2) by striking “by regulations that shall take effect not later than April 20, 1991,” and inserting “by regulation.”

(e) SECTION 7.—Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amended by striking “Secretary” and inserting “the Director of the Agency”.

(f) SECTION 8.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended—

(1) in subsection (c)(5), by striking “prescribed by the Secretary” and inserting “prescribed by the Director of the Agency”; and

(2) in subsection (d)(4)—

(A) by striking “The Secretary,” and inserting “The Agency, the Secretary,”; and

(B) by adding at the end the following new sentence: “However, to the extent that a Federal law authorizes the Agency and other Federal and State agencies to enforce or administer the law, the Agency shall have primary authority to enforce or administer that Federal law in accordance with section 4202 of the Consumer Financial Protection Agency Act of 2009.”

(g) SECTION 10.—Section 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(d)) is amended by striking “Secretary” and inserting “Agency”.

(h) SECTION 16.—Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended by inserting “the Agency,” before “the Secretary”.

(i) SECTION 18.—Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2616) is amended by striking “Secretary” each place such term appears and inserting “Agency”.

(j) SECTION 19.—Section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617) is amended—

(1) in the section heading, by striking “SECRETARY” and inserting “AGENCY”; and

(2) by striking “Secretary” each place such term appears and inserting “Agency”.

#### SEC. 4812. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

(a) AMENDMENTS TO SECTION 1101.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

“(1) ‘financial institution’ means any bank, savings association, card issuer as defined in section 103(n) of the Truth in Lending Act, credit union, or consumer finance institution located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.”; and

(2) in paragraph (7), by inserting after subparagraph (A) the following new subparagraph:

“(B) the Consumer Financial Protection Agency.”

(b) AMENDMENTS TO SECTION 1112.—Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412) is amended by striking “and the Commodity Futures Trading Commission is permitted” and inserting “the

Commodity Futures Trading Commission, and the Consumer Financial Protection Agency is permitted”.

(c) AMENDMENTS TO SECTION 1113.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection—

“(r) DISCLOSURE TO THE CONSUMER FINANCIAL PROTECTION AGENCY.—Nothing in this chapter shall apply to the examination by or disclosure to the Consumer Financial Protection Agency of financial records or information in the exercise of its authority with respect to a financial institution.”.

#### SEC. 4813. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

(a) SECTION 1503.—Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102) is amended—

(1) by striking paragraph (9);

(2) by redesignating paragraph (1) as paragraph (4), and transferring paragraph (4) (as so redesignated) and inserting such paragraph after paragraph (3) (as added by paragraph (5));

(3) by redesignating paragraphs (3), (4), (5), (6), (7), (8), (10), (11), and (12) as paragraphs (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively;

(4) by inserting before paragraph (2) the following new paragraph:

“(1) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”; and

(5) by inserting after paragraph (2) the following new paragraph:

“(3) DIRECTOR.—The term ‘Director’ means the Director of the Agency.”.

(b) UNIVERSAL AMENDMENTS RELATING TO AGENCY.—The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking “Federal banking agencies” each place such term appears (other than in subsection (a)(4) (as so redesignated by subsection (a), relating to the definition of Federal banking agencies) or in connection with a reference that is specifically amended by another provision of this section) and inserting “Agency”; and

(2) by striking “Secretary” each place such term appears (other than in connection with a reference that is specifically amended by another provision of this section) and inserting “Director”.

(c) SECTION 1507.—Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5106) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following new paragraph:

“(1) IN GENERAL.—The Agency shall develop and maintain a system for registering employees of any depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before July 30, 2010.”; and

(B) by striking “appropriate Federal banking agency and the Farm Credit Administration” in paragraph (2) and inserting “Agency”; and

(2) in subsection (b), by striking “Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration” each place such term appears and inserting “Agency”.

(d) SECTION 1508.—

(1) IN GENERAL.—Section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5107) is amended by adding at the end the following new subsection—

“(f) REGULATIONS.—

“(1) IN GENERAL.—The Agency may prescribe regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

“(2) FACTORS TAKEN INTO ACCOUNT.—Such regulations shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans as well as the need to ensure a competitive origination market that maximizes consumers’ access to affordable and sustainable mortgage loans.”.

(2) CLERICAL AMENDMENT.—The heading for section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 is amended by striking “**SECRETARY OF HOUSING AND URBAN DEVELOPMENT**” and inserting “**CONSUMER FINANCIAL PROTECTION AGENCY**”.

(e) SECTION 1510.—Section 1510 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5109) is amended to read as follows:

“**SEC. 1510. FEES.**

“The Agency and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.”.

(f) SECTION 1513.—Section 1513 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is amended to read as follows:

“**SEC. 1513. LIABILITY PROVISIONS.**

“The Agency, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.”.

(g) SECTION 1514.—The heading for section 1514 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5113) is amended by striking “**UNDER HUD BACKUP LICENSING SYSTEM**” and inserting “**BY THE AGENCY**”.

**SEC. 4814. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

(a) SECTION 263.—Section 263 of the Truth in Savings Act (12 U.S.C. 4302) is amended in subsection (b) by striking “Board” each place such term appears and inserting “Agency”.

(b) SECTION 265.—Section 265 of the Truth in Savings Act (12 U.S.C. 4304) is amended by striking “Board” each place such term appears and inserting “Agency”.

(c) SECTION 266.—Section 266(e) of the Truth in Savings Act is amended (12 U.S.C. 4305) by striking “Board” and inserting “Agency”.

(d) SECTION 269.—Section 269 of the Truth in Savings Act (12 U.S.C. 4308) is amended by

striking “Board” each place such term appears and inserting “Agency”.

(e) SECTION 270.—Section 270 of the Truth in Savings Act (12 U.S.C. 4309) is amended—

(1) in subsection (a)—

(A) by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(B) by striking subparagraph (A) of paragraph (1) and inserting the following new subparagraph:

“(A) by the head of the agency responsible for chartering and regulating national banks for national banks, and Federal branches and Federal agencies of foreign banks;”; and

(C) by adding at the end, the following new paragraph:

“(3) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.”; and

(2) in subsection (c)—

(A) in the subsection heading, by striking “BOARD” and insert “AGENCY”; and

(B) by striking “Board” and inserting “Agency”.

(f) SECTION 272.—Section 272 of the Truth in Savings Act (12 U.S.C. 4311) is amended—

(1) in subsection (a), by striking “Board” and inserting “Agency”; and

(2) in subsection (b), by striking “regulation prescribed by the Board” each place such term appears and inserting “regulation prescribed by the Agency”.

(g) SECTION 273.—Section 273 of the Truth in Savings Act (12 U.S.C. 4312) is amended in the last sentence by striking “Board” and inserting “Agency”.

(h) SECTION 274.—Section 274 of the Truth in Savings Act (12 U.S.C. 4313) is amended—

(1) in paragraph (2) by striking “Board” and inserting “Agency”; and

(2) by striking paragraph (4) and inserting the following new paragraph:

“(4) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”.

**SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.**

(a) SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b), by inserting after the 2nd sentence “In prescribing a regulation under this Act that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Agency Act, including any enumerated consumer law thereunder, the Commission shall consult with the Consumer Financial Protection Agency regarding the consistency of a proposed regulation with standards, purposes, or objectives administered by the Consumer Financial Protection Agency.”; and

(2) in subsection (c), by adding at the end “Any violation of any regulation prescribed under subsection (a) committed by a person subject to the Consumer Financial Protection Agency Act shall be treated as a violation of a regulation under section 4301 of the Consumer Financial Protection Agency Act regarding unfair, deceptive, or abusive acts or practices.”.

(b) AMENDMENTS TO SECTION 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended—

(1) in the subsection heading, by inserting after “COMMISSION” the following: “OR THE CONSUMER FINANCIAL PROTECTION AGENCY”; and

(2) by inserting after “Commission” each place such term appears “or the Consumer Financial Protection Agency”.

(c) AMENDMENTS TO SECTION 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is amended by inserting after “Commission” each place such term appears “or the Consumer Financial Protection Agency”.

(d) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following new subsection:

“(d) ENFORCEMENT BY CONSUMER FINANCIAL PROTECTION AGENCY.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, this Act shall be enforced by the Consumer Financial Protection Agency under subtitle E of the Consumer Financial Protection Agency Act.”.

**SEC. 4816. MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.**

Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(1) in subparagraph (B), by striking “and” at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

“(C) the Director of the Consumer Financial Protection Agency; and”.

**SEC. 4817. EFFECTIVE DATE.**

The amendments made by sections 4803 through 4815 shall take effect on the designated transfer date.

#### Subtitle I—Improvements to the Federal Trade Commission Act

**SEC. 4901. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.**

(a) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is amended—

(1) by inserting “this Act or” after “violates” the first place such term appears; and

(2) by inserting “a violation of this Act or is” before “prohibited”.

(b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

“(c) UNLAWFUL ASSISTANCE.—It is unlawful for any person, knowingly or recklessly, to provide substantial assistance to another in violating any provision of this Act or of any other Act enforceable by the Commission that relates to unfair or deceptive acts or practices. Any such violation shall constitute an unfair or deceptive act or practice described in section 5(a)(1) of this Act. Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)).”.

(c) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a(b)) is amended—

(1) by amending subsection (b) to read as follows:

“(b) PROCEDURE APPLICABLE.—When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of Title 5;

(2)(A) in subsection (d), by striking all that precedes paragraph (3);

(B) by striking subsections (c), (f), (i), and (j); and

(C) by redesignating subsections (e), (g) and (h) as subsections (d), (e) and (f);

(3) by redesignating paragraph (3) of subsection (d) as subsection (c);

(4) in subsection (c) (as redesignated), by inserting “prescribed” after “rule”; and

(5) in subsection (d) (as redesignated)—  
(A) in paragraph (1)(A) by striking “pro-mulgated” and inserting “prescribed”;

(B) in paragraph (1)(B), by striking “the transcript required by subsection (c)(5),”;

(C) in paragraph (3), by striking “error)” all that follows and inserting “error).”;

(D) in paragraph (5), by striking subparagraph (C).

(d) Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D), by striking “; or” and inserting a semicolon; and

(2) by inserting after subparagraph (E) the following:

“(F) to obtain a civil penalty authorized under any provision of law enforced by the Commission.”.

(e) Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) is amended in the first sentence by inserting “the Commission or” after “brought by”.

## TITLE V—CAPITAL MARKETS

### Subtitle A—Private Fund Investment Advisers Registration Act

#### SEC. 5001. SHORT TITLE.

This subtitle may be cited as the “Private Fund Investment Advisers Registration Act of 2009”.

#### SEC. 5002. DEFINITIONS.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following new paragraphs:

“(29) PRIVATE FUND.—The term ‘private fund’ means an issuer that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act.

“(30) FOREIGN PRIVATE FUND ADVISER.—The term ‘foreign private fund adviser’ means an investment adviser who—

“(A) has no place of business in the United States;

“(B) during the preceding 12 months has had—

“(i) fewer than 15 clients in the United States; and

“(ii) assets under management attributable to clients in the United States of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in the public interest or for the protection of investors; and

“(C) neither holds itself out generally to the public in the United States as an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53) and has not withdrawn such election.”.

#### SEC. 5003. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE FUND ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

(1) in paragraph (1), by inserting “, except an investment adviser who acts as an investment adviser to any private fund,” after “any investment adviser”;

(2) by amending paragraph (3) to read as follows:

“(3) any investment adviser that is a foreign private fund adviser;”;

(3) in paragraph (5), by striking “or” at the end;

(4) in paragraph (6)—

(A) in subparagraph (A), by striking “or”;

(B) in subparagraph (B), by striking the period at the end and adding “; or”;

(C) by adding at the end the following new subparagraph:

“(C) a private fund; or”;

(5) by adding at the end the following:

“(7) any investment adviser who solely advises—

“(A) small business investment companies licensed under the Small Business Investment Act of 1958;

“(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked; or

“(C) applicants, related to one or more licensed small business investment companies covered in subparagraph (A), that have applied for another license, which application remains pending.”.

#### SEC. 5004. COLLECTION OF SYSTEMIC RISK DATA.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection:

“(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

“(1) IN GENERAL.—The Commission is authorized to require any investment adviser registered under this Act to maintain such records of and file with the Commission such reports regarding private funds advised by the investment adviser as are necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk as the Commission determines in consultation with the Board of Governors of the Federal Reserve System. The Commission is authorized to provide or make available to the Board of Governors of the Federal Reserve System, and to any other entity that the Commission identifies as having systemic risk responsibility, those reports or records or the information contained therein. The records and reports of any private fund, to which any such investment adviser provides investment advice, maintained or filed by an investment adviser registered under this Act, shall be deemed to be the records and reports of the investment adviser.

“(2) REQUIRED INFORMATION.—The records and reports required to be maintained or filed with the Commission under this subsection shall include, for each private fund advised by the investment adviser—

“(A) the amount of assets under management;

“(B) the use of leverage (including off-balance sheet leverage);

“(C) counterparty credit risk exposures;

“(D) trading and investment positions;

“(E) trading practices; and

“(F) such other information as the Commission, in consultation with the Board of Governors of the Federal Reserve System, determines necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

“(3) OPTIONAL INFORMATION.—The Commission may require the reporting of such additional information from private fund advisers as the Commission determines necessary. In making such determination, the Commission, taking into account the public interest and potential to contribute to systemic risk, may set different reporting requirements for different classes of private fund advisers, based on the particular types or sizes of private funds advised by such advisers.

“(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this Act is required to maintain and keep such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

“(5) EXAMINATION OF RECORDS.—

“(A) PERIODIC AND SPECIAL EXAMINATIONS.—All records of a private fund maintained by an investment adviser registered under this Act shall be subject at any time and from time to time to such periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

“(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this Act shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

“(6) INFORMATION SHARING.—The Commission shall make available to the Board of Governors of the Federal Reserve System, and to any other entity that the Commission identifies as having systemic risk responsibility, copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Board, or such other entity, may consider necessary for the purpose of assessing the systemic risk of a private fund. All such reports, documents, records, and information obtained by the Board, or such other entity, from the Commission under this subsection shall be kept confidential in a manner consistent with confidentiality established by the Commission pursuant to paragraph (8).

“(7) DISCLOSURES OF CERTAIN PRIVATE FUND INFORMATION.—An investment adviser registered under this Act shall provide such reports, records, and other documents to investors, prospective investors, counterparties, and creditors, of any private fund advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

“(8) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.”.

#### SEC. 5005. ELIMINATION OF DISCLOSURE PROVISION.

Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by striking subsection (c).

#### SEC. 5006. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended by adding at the end the following new subsection:

“(1) EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.—The Commission shall identify and define the term ‘venture capital fund’ and shall provide an adviser to such a fund an exemption from the registration requirements under this section (excluding any such fund whose adviser is exempt from registration pursuant to paragraph (7) of subsection (b)). The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.”.

**SEC. 5007. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.**

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3), as amended by section 5006, is further amended by adding at the end the following new subsections:

“(m) EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.—

“(1) IN GENERAL.—The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such private funds has assets under management in the United States of less than \$150,000,000.

“(2) REPORTING.—The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

“(n) REGISTRATION AND EXAMINATION OF MID-SIZED PRIVATE FUND ADVISERS.—In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.”.

**SEC. 5008. CLARIFICATION OF RULEMAKING AUTHORITY.**

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended—

(1) by amending subsection (a) to read as follows:

“(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this title, including rules and regulations defining technical, trade, and other terms used in this title. For the purposes of its rules and regulations, the Commission may—

“(1) classify persons and matters within its jurisdiction based upon, but not limited to—

- “(A) size;
- “(B) scope;
- “(C) business model;
- “(D) compensation scheme; or
- “(E) potential to create or increase systemic risk;

“(2) prescribe different requirements for different classes of persons or matters; and

“(3) ascribe different meanings to terms (including the term ‘client’, except the Commission shall not ascribe a meaning to the term ‘client’ that would include an investor in a private fund managed by an investment adviser, where such private fund has entered

into an advisory contract with such adviser) used in different sections of this title as the Commission determines necessary to effect the purposes of this title.”; and

(2) by adding at the end the following new subsection:

“(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under sections 203(1) and 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) and the Commodity Exchange Act (7 U.S.C. 1 et seq.).”.

**SEC. 5009. GAO STUDY.**

(a) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to assess the annual costs on industry members and their investors due to the registration requirements and ongoing reporting requirements under this subtitle and the amendments made by this subtitle.

(b) REPORT TO THE CONGRESS.—Not later than the end of the 2-year period beginning on the date of the enactment of this title, the Comptroller General of the United States shall submit a report to the Congress containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a).

**SEC. 5010. EFFECTIVE DATE; TRANSITION PERIOD.**

(a) EFFECTIVE DATE.—This subtitle, and the amendments made by this subtitle, shall take effect with respect to investment advisers after the end of the 1-year period beginning on the date of the enactment of this title.

(b) TRANSITION PERIOD.—The Securities and Exchange Commission shall prescribe rules and regulations to permit an investment adviser who will be required to register with the Securities and Exchange Commission by reason of this subtitle with the option of registering with the Securities and Exchange Commission before the date described under subsection (a).

**SEC. 5011. QUALIFIED CLIENT STANDARD.**

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the end the following: “With respect to any factor used by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, not later than one year after the date of the enactment of the Private Fund Investment Advisers Registration Act of 2009, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$1,000 shall be rounded to the nearest multiple of \$1,000.”.

**Subtitle B—Accountability and Transparency in Rating Agencies Act**

**SEC. 6001. SHORT TITLE.**

This subtitle may be cited as the “Accountability and Transparency in Rating Agencies Act of 2009”.

**SEC. 6002. ENHANCED REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.**

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A), by striking “furnish to” and inserting “file with”;

(B) in paragraph (2)(A), by striking “furnished to” and inserting “filed with”; and

(C) in paragraph (2)(B)(i)(II), by striking “furnished to” and inserting “filed with”;

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking “furnished” and inserting “filed” and by striking “furnishing” and inserting “filing”;

(B) in paragraph (1)(B), by striking “furnishing” and inserting “filing”; and

(C) in the first sentence of paragraph (2), by striking “furnish to” and inserting “file with”;

(3) in subsection (c)—

(A) paragraph (2)—

(i) in the second sentence by inserting “including the requirements of this section,” after “Notwithstanding any other provision of law,”; and

(ii) by inserting before the period at the end of the last sentence “, provided that this paragraph does not afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provision of the securities laws”;

(B) by adding at the end the following new paragraph:

“(3) REVIEW OF INTERNAL PROCESSES FOR DETERMINING CREDIT RATINGS.—

“(A) IN GENERAL.—The Commission shall examine credit ratings issued by, and the policies, procedures, and methodologies employed by, each nationally recognized statistical rating organization to review whether—

“(i) the nationally recognized statistical rating organization has established and documented a system of internal controls, due diligence and implementation of methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe by rule;

“(ii) the nationally recognized statistical rating organization adheres to such system; and

“(iii) the public disclosures of the nationally recognized statistical rating organization required under this section about its credit ratings, methodologies, and procedures are consistent with such system.

“(B) MANNER AND FREQUENCY.—The Commission shall conduct reviews required by this paragraph no less frequently than annually in a manner to be determined by the Commission.

“(4) PROVISION OF INFORMATION TO THE COMMISSION.—Each nationally recognized statistical rating organization shall make available and maintain such records and information, for such a period of time, as the Commission may prescribe, by rule, as necessary for the Commission to conduct the reviews under paragraph (3).

“(5) DISCLOSURES WITH RESPECT TO STRUCTURED SECURITIES.—

“(A) REGULATIONS REQUIRED.—The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized statistical rating organizations shall, with respect to the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings for structured securities—

“(i) specify the information required to be disclosed to such rating organizations by the sponsor, issuers, and underwriters of such structured securities on the collateral underlying such structured securities; and

“(ii) establish and implement procedures to collect and disclose information about the processes used by such sponsor, issuers, and underwriters to assess the accuracy and integrity of their data and fraud detection.

“(B) DEFINITION.—For purposes of this paragraph, the Commission shall, by rule or regulation, define the term ‘structured securities’ as appropriate in the public interest and for the protection of investors.

“(6) HISTORICAL DEFAULT RATE DISCLOSURES.—The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized statistical rating organizations shall require each nationally recognized statistical rating organization to establish and maintain, on a publicly accessible Internet site, a facility to disclose, in a central database, the historical default rates of all classes of financial products rated by such organization.”

(4) in subsection (d)—

(A) in the heading, by inserting “FINE,” after “CENSURE,”;

(B) by striking “shall censure” and all that follows through “revocation” and inserting the following: “shall censure, fine in accordance with section 21B(a), place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization (or with respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, fine in accordance with section 21B(a), place limitations on the activities or functions of such person, suspend for a period not exceeding 12 months, or bar such person from being associated with a nationally recognized statistical rating organization), if the Commission finds, on the record after notice and opportunity for hearing, that such censure, fine, placing of limitations, bar, suspension, or revocation”;

(C) in paragraph (2), by striking “furnished to” and inserting “filed with”;

(D) in paragraph (4)—

(i) by striking “furnish” and inserting “file”;

(ii) by striking “or” at the end;

(E) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

“(6) has failed reasonably to supervise another person who commits a violation of the securities laws, the rules or regulations thereunder, or any rules of the Municipal Securities Rulemaking Board if such other person is subject to his or her supervision, except that no person shall be deemed to have failed reasonably to supervise any other person under this paragraph, if—

“(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

“(B) such person has reasonably discharged the duties and obligations incumbent upon him or her by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or

“(7) fails to conduct sufficient surveillance to ensure that credit ratings remain current and reliable, as applicable.”;

(5) in subsection (e)—

(A) by striking paragraph (1); and

(B) in paragraph (2), by striking “(2) COMMISSION AUTHORITY.—” and moving the text of such paragraph to follow the heading of subsection (e);

(6) by amending subsection (h) to read as follows:

“(h) CORPORATE GOVERNANCE, ORGANIZATION, AND MANAGEMENT OF CONFLICTS OF INTEREST.—

“(1) BOARD OF DIRECTORS.—

“(A) IN GENERAL.—Each nationally recognized statistical rating organization or its ultimate holding company shall have a board of directors.

“(B) INDEPENDENT DIRECTORS.—At least ⅓ of such board, but no less than 2 of the members of the board of directors, shall be independent directors. In order to be considered independent for purposes of this subsection, a director of a nationally recognized statistical rating organization may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

“(i) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

“(ii) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof.

“(C) COMPENSATION AND TERM.—The compensation of the independent directors shall not be linked to the business performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period not exceeding 5 years and shall not be renewable.

“(D) DUTIES.—In addition to the overall responsibility of the board of directors, the board shall oversee—

“(i) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

“(ii) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

“(iii) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

“(iv) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

“(2) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of the nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address, manage, and disclose any conflicts of interest that can arise from such business.

“(3) COMMISSION RULES.—The Commission shall issue rules to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including rules regarding—

“(A) conflicts of interest relating to the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

“(B) conflicts of interest relating to business relationships, ownership interests, and affiliations of nationally recognized statistical rating organization board members with obligors, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

“(C) conflicts of interest relating to any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person who underwrites securities, money market instruments, or other instruments that are the subject of a credit rating;

“(D) a requirement that each nationally recognized statistical rating organization disclose on such organization’s website a consolidated report at the end of each fiscal year that shows—

“(i) the percent of net revenue earned by the nationally recognized statistical rating organization or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, to the extent determined appropriate by the Commission, for that fiscal year for providing services and products other than credit rating services to each person who paid for a credit rating; and

“(ii) the relative standing of each person who paid for a credit rating that was outstanding as of the end of the fiscal year in terms of the amount of net revenue earned by the nationally recognized statistical rating organization attributable to each such person and classified by the highest 5, 10, 25, and 50 percentiles and lowest 50 and 25 percentiles;

“(E) the establishment of a system of payment for credit ratings issued by each nationally recognized statistical rating organization that requires that payments are structured in a manner designed to ensure that the nationally recognized statistical rating organization conducts accurate and reliable surveillance of credit ratings over time, as applicable, and that incentives for reliable credit ratings are in place;

“(F) a requirement that a nationally recognized statistical rating organization disclose with the publication of a credit rating the type and number of credit ratings it has provided to the person being rated or affiliates of such person, the fees it has billed for the credit rating, and the aggregate amount of net revenue earned by the nationally recognized statistical rating organization in the preceding 2 fiscal years attributable to the person being rated and its affiliates; and

“(G) any other potential conflict of interest, as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

“(4) LOOK-BACK REQUIREMENT.—

“(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

“(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

“(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

“(B) REVIEW BY COMMISSION.—

“(i) IN GENERAL.—The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

“(ii) TIMING OF REVIEWS.—The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

“(I) not less frequently than annually; and

“(II) whenever such policies are materially modified or amended.

“(5) REPORT TO COMMISSION ON CERTAIN EMPLOYMENT TRANSITIONS.—

“(A) REPORT REQUIRED.—Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

“(i) was a senior officer of such organization;

“(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

“(iii) supervised an employee described in clause (ii).

“(B) PUBLIC DISCLOSURE.—Upon receiving such a report, the Commission shall make such information publicly available.”;

(7) by amending subsection (j) to read as follows:

“(j) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each nationally recognized statistical rating organization shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“(A) report directly to the board of the nationally recognized statistical rating organization;

“(B) review compliance with policies and procedures to manage conflicts of interest and assess the risk that the compliance (or lack of such compliance) may compromise the integrity of the credit rating process;

“(C) review compliance with the internal control system with respect to the procedures and methodologies for determining credit ratings, including qualitative methodologies and quantitative inputs used in the rating process, and assess the risk that such internal control system is reasonably designed to ensure the integrity and quality of the credit rating process;

“(D) in consultation with the board of the nationally recognized statistical rating organization, resolve any conflicts of interest that may arise;

“(E) be responsible for administering the policies and procedures required to be established pursuant to this section;

“(F) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(G) establish procedures—

“(i) for the receipt, retention, and treatment of complaints regarding credit ratings, models, methodologies, and compliance with

the securities laws and the policies and procedures required under this section;

“(ii) for the receipt, retention, and treatment of confidential, anonymous complaints by employees, obligors, issuers, and investors;

“(iii) for the remediation of non-compliance issues found during compliance office reviews, the reviews required under paragraph (7), internal or external audit findings, self-reported errors, or through validated complaints; and

“(iv) designed so that ratings that the nationally recognized statistical rating organization disseminates reflect consideration of all information in a manner generally consistent with the nationally recognized statistical rating organization's published rating methodology, including information which is provided, received, or otherwise obtained from obligor, issuer and non-issuer sources, such as investors, the media, and other interested or informed parties.

“(3) LIMITATIONS.—The compliance officer shall not, while serving in that capacity—

“(A) determine credit ratings;

“(B) participate in the establishment of the procedures and methodologies or the qualitative methodologies and quantitative inputs used to determine credit ratings;

“(C) perform marketing or sales functions; or

“(D) participate in establishing compensation levels, other than for employees working for the compliance officer.

“(4) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the nationally recognized statistical rating organization with the securities laws and such organization's internal policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the nationally recognized statistical rating organization that are required to be filed with the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(5) COMPENSATION.—The compensation of the compliance officer shall not be linked to the business performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer's judgment.”;

(8) in subsection (k)—

(A) by striking “, on a confidential basis,”;

(B) by striking “furnish to” and inserting “file with”;

(C) by striking “Each nationally” and inserting the following:

“(1) IN GENERAL.—Each nationally”; and

(D) by adding at the end the following new paragraph:

“(2) EXCEPTION.—The Commission may treat as confidential any information provided by a nationally recognized statistical rating organization under this section consistent with applicable Federal laws or Commission rules.”;

(9) in subsection (1)(2)(A)(i), by striking “furnished” and inserting “filed”;

(10) by amending subsection (p) to read as follows:

“(p) ESTABLISHMENT OF SEC OFFICE.—

“(1) IN GENERAL.—The Commission shall establish an office that administers the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations.

“(2) STAFFING.—The office of the Commission established under this subsection shall

be staffed sufficiently to carry out fully the requirements of this section.

“(3) RULEMAKING AUTHORITY.—The Commission shall—

“(A) establish, by rule, fines and other penalties for any nationally recognized statistical rating organization that violates the applicable requirements of this title; and

“(B) issue such rules as may be necessary to carry out this section with respect to nationally recognized statistical rating organizations.”; and

(11) by adding after subsection (p) the following new subsections:

“(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

“(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require each nationally recognized statistical rating organization to publicly disclose information on initial ratings and subsequent changes to such ratings for the purpose of providing a gauge of the performance of ratings and allowing investors to compare performance of ratings by different nationally recognized statistical rating organizations.

“(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

“(A) are comparable among nationally recognized statistical rating organizations, so that investors can compare rating performance across rating organizations;

“(B) are clear and informative for a wide range of investor sophistication;

“(C) include performance information over a range of years and for a variety of classes of credit ratings, as determined by the Commission;

“(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website and in written form when requested by investors; and

“(E) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.

“(r) CREDIT RATINGS METHODOLOGIES.—

“(1) IN GENERAL.—The Commission shall prescribe rules, in the public interest and for the protection of investors, that require each nationally recognized statistical rating organization to establish, maintain, and enforce written procedures and methodologies and an internal control system with respect to such procedures and methodologies that are reasonably designed to—

“(A) ensure that credit ratings are determined using procedures and methodologies, including qualitative methodologies and quantitative inputs that are determined in accordance with the policies and procedures of the nationally recognized statistical rating organization for developing and modifying credit rating procedures and methodologies;

“(B) ensure that when major changes to credit rating procedures and methodologies, including to qualitative methodologies and quantitative inputs, are made, that the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is publicly disclosed;



“(C) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, of the procedure or methodology, including qualitative methodologies and quantitative inputs, used with respect to a particular credit rating;

“(D) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, when a change is made to a procedure or methodology, including to qualitative methodologies and quantitative inputs, or an error is identified in a procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in current credit ratings being subject to rating actions; and

“(E) use credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors.

“(2) RATING CLARITY AND CONSISTENCY.—

“(A) COMMISSION OBLIGATION.—Subject to subparagraphs (B) and (C), the Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures reasonably designed—

“(i) with respect to credit ratings of securities and money market instruments, to assess the risk that investors in securities and money market instruments may not receive payment in accordance with the terms of such securities and instruments;

“(ii) to define clearly any credit rating symbol used by that organization; and

“(iii) to apply such credit rating symbol in a consistent manner for all types of securities and money market instruments.

“(B) ADDITIONAL CREDIT FACTORS.—Nothing in subparagraph (A)—

“(i) prohibits a nationally recognized statistical rating organization from using additional credit factors that are documented and disclosed by the organization and that have a demonstrated impact on the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance;

“(ii) prohibits a nationally recognized statistical rating organization from considering credit factors that are unique to municipal securities; or

“(iii) prohibits a nationally recognized statistical rating organization from using an additional symbol with respect to the ratings described in subparagraph (A)(i) for the purpose of distinguishing the ratings of a certain type of security or money market instrument from ratings of any other types of securities or money market instruments.

“(C) COMPLEMENTARY RATINGS.—The Commission shall not impose any requirement under subparagraph (A) that prevents nationally recognized statistical rating organizations from establishing ratings that are complementary to the ratings described in subparagraph (A)(i) and that are created to measure a discrete aspect of the security's or instrument's risk.

“(S) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

“(1) IN GENERAL.—The Commission shall require, by rule, a nationally recognized statistical rating organization to include with the publication of each credit rating regardless of whether the credit rating is made readily accessible for free or a reasonable fee

a form that discloses information about the assumptions underlying the procedures and methodologies used, and the data relied on, to determine the credit rating in the format prescribed in paragraph (2) and containing the information described in paragraph (3).

“(2) FORMAT.—The Commission shall prescribe a form for use under paragraph (1) that—

“(A) is designed in a user-friendly and helpful manner for investors to understand the information contained in the report;

“(B) requires the nationally recognized statistical rating organization to provide the content, as required by paragraph (3), in a manner that is directly comparable across securities; and

“(C) the nationally recognized statistical rating organization certifies the information on the form as true and accurate.

“(3) CONTENT.—The Commission shall prescribe a form that requires a nationally recognized statistical rating organization to disclose—

“(A) the main assumptions included in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating certain structured products;

“(B) the potential shortcomings of the credit ratings, and the types of risks not measured in the credit ratings that the nationally recognized statistical rating organization is not commenting on, such as liquidity, market, and other risks;

“(C) information on the certainty of the rating, including information on the reliability, accuracy, and quality of the data relied on in determining the ultimate credit rating and a statement on the extent to which key data inputs for the credit rating were reliable or limited, including any limits on the reach of historical data, limits in accessibility to certain documents or other forms of information that would have better informed the credit rating, and the completeness of certain information considered;

“(D) whether and to what extent third party due diligence services have been utilized, and a description of the information that such third party reviewed in conducting due diligence services;

“(E) a description of relevant data about any obligor, issuer, security, or money market instrument that was used and relied on for the purpose of determining the credit rating;

“(F) a statement containing an overall assessment of the quality of information available and considered in producing a credit rating for a security in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar obligors, securities, or money market instruments;

“(G) an explanation or measure of the potential volatility for the credit rating, including any factors that might lead to a change in the credit rating, and the extent of the change that might be anticipated under different conditions;

“(H) information on the content of the credit rating, including—

“(i) the expected default probability; and

“(ii) the loss given default;

“(I) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

“(i) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact

on a rating if such assumptions were proven false or inaccurate; and

“(ii) an analysis, using concrete examples, on how each of the 5 assumptions identified under clause (i) impacts a rating.

“(J) where applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

“(K) such additional information as may be required by the Commission.

“(4) DUE DILIGENCE SERVICES.—

“(A) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization or an issuer, underwriter, or sponsor in connection with the issuance of a credit rating, the firm providing the due diligence services shall provide to the nationally recognized statistical rating organization written certification of such due diligence, which shall be subject to review by the Commission, and the issuer, underwriter, or sponsor shall provide any reports issued by the provider of such due diligence services to the nationally recognized statistical rating organization.

“(B) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for written certifications required under subparagraph (A) to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide a reliable rating.

“(C) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization to disclose to persons who have access to the credit ratings of the nationally recognized statistical rating organization regardless of whether they are made readily accessible for free or a reasonable fee the certification described in subparagraph (A) with the publication of the applicable credit rating in a manner that may permit the persons to determine the adequacy and level of due diligence services provided by the third party.

“(t) PROHIBITED ACTIVITIES.—Beginning 180 days from the date of enactment of the Accountability, Reliability, and Transparency in Rating Agencies Act, it shall be unlawful for a nationally recognized statistical rating organization, or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, that provides a credit rating for an issuer, underwriter, or placement agent of a security to provide any non-rating service, including—

“(1) risk management advisory services;

“(2) advice or consultation relating to any merger, sales, or disposition of assets of the issuer;

“(3) ancillary assistance, advice, or consulting services unrelated to any specific credit rating issuance; and

“(4) such further activities or services as the Commission may determine as necessary or appropriate in the public interest or for the protection of investors.”

**SEC. 6003. STANDARDS FOR PRIVATE ACTIONS.**

(a) IN GENERAL.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended by inserting before the period at the end of the following: “, and in the case of an action brought under this title for money damages against a nationally recognized statistical rating organization, it shall be sufficient for purposes of pleading

any required state of mind for purposes of such action that the complaint shall state with particularity facts giving rise to a strong inference that the nationally recognized statistical rating organization knowingly or recklessly violated the securities laws”.

(b) **PLEADING STANDARD.**—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) amended to read as follows:

“(m) **APPLICATION OF ENFORCEMENT PROVISIONS; PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.**—Statements made by nationally recognized statistical rating organizations shall not be deemed forward looking statements for purposes of section 21E. In any private right of action commenced against a nationally recognized statistical rating organization under this title, the same pleading standards with respect to knowledge and recklessness shall apply to the nationally recognized statistical rating organization as would apply to any other person in the same or a similar private right of action against such person.”.

#### **SEC. 6004. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.**

The Securities and Exchange Commission shall adopt rules under authority of the Securities Act of 1933 (15 U.S.C. 77a, et seq.) to require issuers to disclose preliminary credit ratings received from nationally recognized statistical rating agencies on structured products and all forms of corporate debt.

#### **SEC. 6005. CHANGE TO DESIGNATION.**

The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking “nationally recognized statistical rating” each place it appears and inserting “nationally registered statistical rating”.

#### **SEC. 6006. TIMELINE FOR REGULATIONS.**

Unless otherwise specified in this subtitle, the Securities and Exchange Commission shall adopt rules and regulations, as required by the amendments made by this subtitle, not later than 365 days after the date of enactment.

#### **SEC. 6007. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.**

Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

#### **SEC. 6008. ADVISORY BOARD.**

(a) **ESTABLISHMENT.**—Not later than 90 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall establish an advisory board to be known as the Credit Ratings Agency Advisory Board (in this section referred to as “the Board”).

(b) **APPOINTMENT AND TERMS OF SERVICE.**—The Board shall consist of 7 members appointed by the Commission, no more than 2 of whom may be former employees of a credit rating agency. Members of the Board shall be prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the role that credit ratings play to a broad range of investors. Terms of service shall be staggered as determined by the Commission.

(c) **DUTIES.**—The Board shall—

(1) advise the Commission concerning the rules and regulations required by the amendments made by this subtitle;

(2) ensure that the Commission properly and fully executes its oversight functions

and responsibilities with the respect to nationally recognized statistical rating organizations and individual participants; and

(3) issue an annual report to Congress detailing its work and recommending any additional Congressional actions necessary to aid the Commission and such additional reports from time to time as appropriate when it feels that the Commission is not properly executing its oversight functions.

#### **SEC. 6009. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.**

(a) **FEDERAL DEPOSIT INSURANCE ACT.**—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 28(d)—

(A) in the subsection heading, by striking “NOT OF INVESTMENT GRADE”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(C) in paragraph (2), by striking “not of investment grade”;

(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(E) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(ii) in subparagraph (B) (as so redesignated), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(2) in section 28(e)—

(A) in the subsection heading, by striking “NOT OF INVESTMENT GRADE”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”; and

(C) in paragraphs (2) and (3), by striking “not of investment grade” each place that it appears and inserting “that does not meet standards of credit-worthiness established by the Corporation”; and

(3) in section 7(b)(1)(E)(i), by striking “credit rating entities, and other private economic” and insert “private economic, credit.”.

(b) **FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.**—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended—

(1) in the section heading, by striking “**BY RATING ORGANIZATION**”; and

(2) by striking “that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934.”.

(c) **INVESTMENT COMPANY ACT OF 1940.**—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking “is rated investment grade by not less than 1 nationally recognized statistical rating organization” and inserting “meets such standards of credit-worthiness that the Commission shall adopt”.

(d) **REVISED STATUTES.**—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”;

(2) in the heading for subsection (a)(3) by striking “**RATING OR COMPARABLE REQUIREMENT**” and inserting “**REQUIREMENT**”; and

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

“(A) **IN GENERAL.**—A national bank meets the requirements of this paragraph if the

bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.”.

(4) in the heading for subsection (f), by striking “**MAINTAIN PUBLIC RATING OR**” and inserting “**MEET STANDARDS OF CREDIT-WORTHINESS**”; and

(5) in subsection (f)(1), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”.

(e) **SECURITIES EXCHANGE ACT OF 1934.**—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking “is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as defined by the Commission”; and

(2) in paragraph (53)(A), by striking “is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as defined by the Commission”.

(f) **WORLD BANK DISCUSSIONS.**—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286h(a)(6)), is amended by striking “rating” and inserting “worthiness”.

(g) **EFFECTIVE DATE.**—The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this subtitle.

#### **SEC. 6010. REVIEW OF RELIANCE ON RATINGS.**

(a) **AGENCY REVIEW.**—

(1) **REVIEW.**—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency listed in paragraph (4) shall, to the extent applicable, review—

(A) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(B) any references to or requirements in such regulations regarding credit ratings.

(2) **MODIFICATIONS REQUIRED.**—Each such agency shall modify any such regulations identified by the review conducted under paragraph (1) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(3) **REPORT.**—Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to paragraph (2).

(4) **APPLICABLE AGENCIES.**—The agencies required to conduct the review and report required by this subsection are—

(A) the Securities and Exchange Commission;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of Thrift Supervision;  
(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve;

(F) the National Credit Union Administration; and

(G) the Federal Housing Finance Agency.

(b) GAO REVIEW OF OTHER AGENCIES.—

(1) REVIEW.—The Comptroller General shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(3), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and practices of each agency with respect to credit ratings.

(2) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General shall transmit to Congress a report on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.

#### SEC. 6011. PUBLICATION OF RATING HISTORIES ON THE EDGAR SYSTEM.

Not later than 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall revise its rules in section 240.17g-2(a) and (d) of title 17, Code of Federal Regulations, to require that the random sample of ratings histories of credit ratings required under such rules to be disclosed on the website of a nationally recognized statistical rating organization also be provided to the Commission in a format consistent with publication by the Commission on the EDGAR system.

#### SEC. 6012. EFFECT OF RULE 436(G).

Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

#### SEC. 6013. STUDIES.

(a) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of—

(A) the implementation of this subtitle and the amendments made by this subtitle by the Securities and Exchange Commission;

(B) the appropriateness of relying on ratings for use in Federal, State, and local securities and banking regulations, including for determining capital requirements; and

(C) the effect of liability in private actions arising under the Securities Exchange Act of 1934;

(D) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, statutory changes would be required to permit or facilitate the use of such alternative means of compensation; and

(E) alternative methodologies to assess credit risk, including market-based measures.

(2) REPORT.—Not later than 30 months after the date of enactment of this subtitle, the Comptroller General shall submit to Congress and the Securities Exchange Commission, a report containing the findings under the study required by subsection (a).

(b) SEC STUDY ON ASSIGNING CREDIT RATING AGENCIES ON A ROTATING BASIS.—The Securities and Exchange Commission shall undertake a study on creating a system whereby nationally recognized statistical rating organizations are assigned on a rotating basis to issuers and obligors seeking a credit rating. Not later than 1 year after the date of enactment of this subtitle, the Securities

and Exchange Commission shall transmit to Congress a report containing the findings of the study.

(c) SEC STUDY ON EFFECT OF NEW REQUIREMENTS ON NRSRO REGISTRATION.—The Securities and Exchange Commission shall conduct a study on the effect of the amendments made by section 2 on credit rating agencies seeking to register as nationally recognized statistical rating organizations, including whether the new requirements in such amendments deter credit rating agencies from registering as nationally recognized statistical rating organizations. Not later than 1 year after the date of enactment of this subtitle, the Commission shall transmit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the findings of such study.

#### (d) STUDY OF CREDIT RATINGS OF DIFFERENT CLASSES OF BONDS.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study of the treatment of different classes of bonds (municipal versus corporate) by the nationally recognized statistical rating organizations. Such study shall examine—

(A) whether there are fundamental differences in the treatment of different classes of bonds by such rating organizations that cause some classes of bonds to suffer from undue discrimination;

(B) if there are such differences, what are the causes of such differences and how can they be alleviated;

(C) whether there are factors other than risk of loss that are appropriate for the credit ratings agencies to consider when rating bonds, and do those factors vary across different sectors

(D) the types of financing arrangement used by municipal issuers

(E) the differing legal and regulatory regimes governing disclosures for corporate bonds and municipal bonds;

(F) the extent to which retail investors could be disadvantaged by a single ratings scale; and

(G) practices, policies, and methodologies by the nationally recognized statistical rating organizations with respect to rating municipal bonds.

(2) REPORT.—Within 6 months after the date of enactment of this subtitle, the Securities and Exchange Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Development of the Senate. Such report shall include as assessment of each of the issues and subjects described in subparagraphs (A) through (G) of paragraph (1).

#### (e) SEC STUDY ON MEANINGFUL MULTI DIGIT RATING SYMBOLS.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study on the feasibility and desirability of implementing a standardized rating system whereby ratings symbols contain multiple characters, each representing a range of default probabilities and loss expectations under standardized and increasingly severe levels of market stress. The study shall optimize the definitions of the symbols to maximize their overall usefulness for users of credit ratings.

(2) INITIAL EXAMPLE FOR GUIDANCE.—An example to provide initial guidance for the study is a ratings symbol consisting of three digits, each of which corresponds to default probabilities under different levels of market stress as follows:

(A) The first digit represents the default probability under “normal” market stress, characterized by normal economic fluctuations in addition to a 5 percent decline in asset value and 2 percent increase in unemployment.

(B) The second digit represents the default probability under more severe market stress, characterized a 20 percent decline in asset value and 5 percent increase in unemployment.

(C) The third digit represents the default probability under extreme market stress, characterized by a 50 percent decline in asset value and 10 percent increase in unemployment.

(3) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Commission shall transmit to Congress a report of the study conducted pursuant to paragraph (1), including recommendations on whether the system similar to that described in paragraph (2) should be implemented and, if so, any necessary legislation required to implement such a system.

#### (f) SEC STUDY ON RATINGS STANDARDIZATION.—

(1) IN GENERAL.—The Securities and Exchange Commission shall undertake a study on the feasibility and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings shall correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this subtitle, the Securities and Exchange Commission shall transmit to Congress a report containing the findings of the study and the recommendations of the Commission.

#### Subtitle C—Investor Protection Act

#### SEC. 7001. SHORT TITLE.

This subtitle may be cited as the “Investor Protection Act of 2009”.

#### PART 1—DISCLOSURE

#### SEC. 7101. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 4C the following new section:

#### “SEC. 4D. INVESTOR ADVISORY COMMITTEE.

“(a) ESTABLISHMENT AND PURPOSE.—There is established an Investor Advisory Committee (in this section referred to as the ‘Committee’) to advise and consult with the Commission on—

“(1) regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;

“(2) initiatives to protect investor interest; and

“(3) initiatives to promote investor confidence in the integrity of the marketplace.

“(b) MEMBERSHIP.—

“(1) APPOINTMENT.—The Chairman of the Commission shall appoint the members of the Committee, which members shall—

“(A) represent the interests of individual investors;

“(B) represent the interests of institutional investors; and

“(C) use a wide range of investment approaches.

“(2) MEMBERS NOT COMMISSION EMPLOYEES.—Members shall not be considered employees or agents of the Commission solely because of membership on the Committee.

“(c) MEETINGS.—The Committee shall meet from time to time at the call of the Commission, but, at a minimum, shall meet at least twice each year.

“(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Committee who are not full-time employees of the United States shall—

“(1) be entitled to receive compensation at a rate fixed by the Commission while attending meetings of the Committee, including travel time; and

“(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

“(e) COMMITTEE FINDINGS.—Nothing in this section requires the Commission to accept, agree, or act upon the findings or recommendations of the Committee.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary for the activities of the Committee.”.

**SEC. 7102. CLARIFICATION OF THE COMMISSION'S AUTHORITY TO ENGAGE IN CONSUMER TESTING.**

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following new subsection:

“(e) For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

(b) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and inserting after subsection (a) the following:

“(b) For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

(c) AMENDMENT TO INVESTMENT COMPANY ACT OF 1940.—Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-38) is amended by adding at the end the following new subsection:

“(d) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to

its staff some or all of the authority conferred by this subsection.”.

(d) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) (as amended by section 5008(2)) is further amended by adding at the end the following new subsection:

“(f) For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

**SEC. 7103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS, AND HARMONIZATION OF REGULATION.**

(a) IN GENERAL.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) (as amended by section 1951(c)) is further amended by adding at the end the following new subsections:

“(m) STANDARD OF CONDUCT.—

“(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission shall promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer.

“(2) DISCLOSURE OF RANGE OF PRODUCTS OFFERED.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission shall by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

“(3) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term ‘retail customer’ means a natural person, or the legal representative of such natural person, who—

“(A) receives personalized investment advice about securities from a broker or dealer; and

“(B) uses such advice primarily for personal, family, or household purposes.

“(n) OTHER MATTERS.—The Commission shall—

“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

“(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.”.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by section 7102(d), is further amended by adding at the end the following new subsections:

“(g) STANDARD OF CONDUCT.—

“(1) IN GENERAL.—The Commission shall promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term ‘customer’ that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

“(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term ‘retail customer’ means a natural person, or the legal representative of such natural person, who—

“(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

“(B) uses such advice primarily for personal, family, or household purposes.

“(h) OTHER MATTERS.—The Commission shall—

“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

“(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.”.

(b) HARMONIZATION OF ENFORCEMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (a)(1), is further amended by adding at the end the following new subsection:

“(o) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

“(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

“(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to

same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.”.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by subsection (a)(2), is further amended by adding at the end the following new subsection:

“(i) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

“(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

“(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment advisor under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.”.

**SEC. 7104. COMMISSION STUDY ON DISCLOSURE TO RETAIL CUSTOMERS BEFORE PURCHASE OF PRODUCTS OR SERVICES.**

(a) STUDY REQUIRED.—Prior to proposing any rules or regulations pursuant to subsection (b)(1) regarding the manner in which investment products or services are sold or provided in the United States to retail customers or the information that must be provided to retail customers prior to the purchase of such products or services, and within 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall publish a study that examines—

(1) the nature of a “retail customer”, taking into consideration the definition in section 15(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 7103 of this subtitle;

(2) the range of products and services sold or provided to retail customers, and the sellers or providers of such products and services, that are within the Commission’s jurisdiction;

(3) how such products and services are sold or provided to retail customers, the fees charged for such products and services, and the conflicts of interest that may arise during the sales process or provision of services;

(4) information that retail customers should receive prior to purchasing each product or service, and the appropriate person or entity to provide such information; and

(5) ways to ensure that, where possible, reasonably similar products and services are subject to similar regulatory treatment, including with respect to information that must be provided to retail customers prior to the purchase of such products or services and how such information is provided.

(b) RULEMAKING.—

(1) Notwithstanding any other provision of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), following completion of the study required by subsection (a), the Commission is authorized to promulgate rules to require that the appropriate persons

or entities provide designated documents or information to retail customers prior to the purchase of identified investment products or services. Any such rules shall—

(A) take into account the findings of the study conducted pursuant to subsection (a);

(B) take into consideration, to the extent possible, the need for such documents and information to be consistent and comparable across investment products or services sold or provided to retail customers; and

(C) reduce, to the extent possible, disruptions to the purchase process for investment products and services sold or provided to retail customers, by means such as permitting required disclosures to be made via the Internet.

(2) Notwithstanding paragraph (1), the Commission is authorized to promulgate rules in connection with—

(A) the implementation of section 7103; and

(B) disclosure to retail customers other than in connection with the purchase of investment products or services.

**SEC. 7105. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.**

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after “within ten days after such acquisition” the following: “or within such shorter time as the Commission may establish by rule”; and

(B) by striking “send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and”;

(2) in subsection (d)(2)—

(A) by striking “in the statements to the issuer and the exchange, and”; and

(B) by striking “shall be transmitted to the issuer and the exchange and”;

(3) in subsection (g)(1), by striking “shall send to the issuer of the security and”;

(4) in subsection (g)(2)—

(A) by striking “sent to the issuer and”;

(B) by striking “shall be transmitted to the issuer and”.

(b) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) in paragraph (1), by striking “(and, if such security is registered on a national securities exchange, also with the exchange)”; and

(2) in paragraph (2)(B), by inserting after “officer” the following: “, or within such shorter time as the Commission may establish by rule”.

**SEC. 7106. REVISION TO RECORDKEEPING RULES.**

(a) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(1) in subsection (a)(1), by adding at the end the following: “Each person with custody or use of a registered investment company’s securities, deposits, or credits shall maintain and preserve all records that relate to the person’s custody or use of the registered investment company’s securities, deposits, or credits for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors.”; and

(2) in subsection (b), by adding at the end the following new paragraph:

“(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), records of persons with custody or

use of a registered investment company’s securities, deposits, or credits, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Persons subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing the Commission with a detailed listing, in writing, of the registered investment company’s securities, deposits, or credits within such person’s custody or use.”.

(b) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended by adding at the end the following new subsection:

“(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(1) IN GENERAL.—Records of persons with custody or use of a client’s securities, deposits, or credits, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Persons subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the client’s securities, deposits, or credits within such person’s custody or use.”.

**SEC. 7107. STUDY ON ENHANCING INVESTMENT ADVISOR EXAMINATIONS.**

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle;

(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission’s efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle, and shall use such

findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

**SEC. 7108. GAO STUDY OF FINANCIAL PLANNING.**

(a) **STUDY REQUIRED.**—The Comptroller General of the United States shall conduct a study on the regulation and oversight of financial planning. The study shall consider—

(1) the unique role of financial planners in providing comprehensive advice in investment planning, income tax planning, education planning, retirement planning, estate planning, risk management, and other areas with respect to the management of financial resources; and

(2) any gaps in the regulation of financial planners given existing State and Federal regulation of financial planning activities and the need to provide related consumer protections for such financial planning activities.

(b) **REPORT.**—Not later than the end of the 180-day period beginning on the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Congress a report containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including recommendations for the appropriate regulation of, or standards for, financial planners as a profession and how such regulations or standards should be established.

**PART 2—ENFORCEMENT AND REMEDIES**

**SEC. 7201. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.**

(a) **AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.**—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 7103, is further amended by adding at the end the following new subsection:

“(p) **AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.**—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

(b) **AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.**—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended by adding at the end the following new subsection:

“(f) **AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.**—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

**SEC. 7202. COMPTROLLER GENERAL STUDY TO REVIEW SECURITIES ARBITRATION SYSTEM.**

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study to review—

(1) the costs to parties of an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission as compared to litigation;

(2) the percentage of recovery of the total amount of a claim in an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission; and

(3) other additional issues as may be raised during the course of the study conducted under this subsection.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a), including in such report recommendations for improvements to the arbitration system referenced in such subsection.

**SEC. 7203. WHISTLEBLOWER PROTECTION.**

(a) **IN GENERAL.**—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 21E the following new section:

**“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.**

“(a) **IN GENERAL.**—In any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding \$1,000,000, the Commission, under regulations prescribed by the Commission and subject to subsection (b), may pay an award or awards not exceeding an amount equal to 30 percent, in total, of the monetary sanctions imposed in the action or related actions to one or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the action. Any amount payable under the preceding sentence shall be paid from the fund described in subsection (f).

“(b) **DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.**—

“(1) **DETERMINATION OF AMOUNT OF AWARD.**—The determination of the amount of an award, within the limit specified in subsection (a), shall be in the sole discretion of the Commission. The Commission may take into account the significance of the whistleblower’s information to the success of the judicial or administrative action described in subsection (a), the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in such action, the Commission’s programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws, and such additional factors as the Commission may establish by rules or regulations.

“(2) **DENIAL OF AWARD.**—No award under subsection (a) shall be made—

“(A) to any whistleblower who is, or was at the time he or she acquired the original information submitted to the Commission, a member, officer, or employee of any appropriate regulatory agency, the Department of Justice, the Public Company Accounting Oversight Board, or a self-regulatory organization;

“(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or

“(C) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

“(c) **REPRESENTATION.**—

“(1) **PERMITTED REPRESENTATION.**—Any whistleblower who makes a claim for an award under subsection (a) may be represented by counsel.

“(2) **REQUIRED REPRESENTATION.**—Any whistleblower who makes a claim for an award under subsection (a) must be represented by counsel if the whistleblower submits the information upon which the claim is based anonymously. Prior to the payment of an award, the whistleblower must disclose his or her identity and provide such other information as the Commission may require.

“(d) **NO CONTRACT NECESSARY.**—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (a), unless the Commission, by rule or regulation, so requires.

“(e) **APPEALS.**—Any determinations under this section, including whether, to whom, or in what amounts to make awards, shall be in the sole discretion of the Commission, and any such determinations shall be final and not subject to judicial review.

“(f) **INVESTOR PROTECTION FUND.**—

“(1) **FUND ESTABLISHED.**—There is established in the Treasury of the United States a fund to be known as the ‘Securities and Exchange Commission Investor Protection Fund’ (referred to in this section as the ‘Fund’).

“(2) **USE OF FUND.**—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for the following purposes:

“(A) Paying awards to whistleblowers as provided in subsection (a).

“(B) Funding investor education initiatives designed to help investors protect themselves against securities fraud or other violations of the securities laws, or the rules and regulations thereunder.

“(3) **DEPOSITS AND CREDITS.**—There shall be deposited into or credited to the Fund—

“(A) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds \$100,000,000;

“(B) any monetary sanction added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 that is not distributed to the victims for whom the disgorgement fund or other fund was established, unless the balance of the Fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds \$100,000,000; and

“(C) all income from investments made under paragraph (4).

“(4) **INVESTMENTS.**—

“(A) **AMOUNTS IN FUND MAY BE INVESTED.**—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission’s judgment, required to meet the current needs of the Fund.

“(B) **ELIGIBLE INVESTMENTS.**—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal



and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

“(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

“(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

“(A) the Commission’s whistleblower award program under this section, including a description of the number of awards that were granted and the types of cases in which awards were granted during the preceding fiscal year;

“(B) investor education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

“(C) the balance of the Fund at the beginning of the preceding fiscal year;

“(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

“(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

“(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (a);

“(G) the amount paid from the Fund during the preceding fiscal year for investor education initiatives described in paragraph (1)(B);

“(H) the balance of the Fund at the end of the preceding fiscal year; and

“(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

“(g) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee, contractor, or agent in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent in providing information to the Commission in accordance with subsection (a), or in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

“(B) ENFORCEMENT.—

“(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

“(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

“(iii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 6 years after the date on which the violation of subparagraph (A) occurred, or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A), but in no event after 10 years after the date on which the violation occurs.

“(C) RELIEF.—An employee, contractor, or agent prevailing in any action brought under subparagraph (B) shall be entitled to all relief necessary to make that employee, con-

tractor, or agent whole, including reinstatement with the same seniority status that the employee, contractor, or agent would have had, but for the discrimination, 2 times the amount of back pay, with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys’ fees.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), all information provided to the Commission by a whistleblower shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552), or otherwise, unless and until required to be disclosed to a defendant or respondent in connection with a proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552. Nothing herein is intended to limit the Attorney General’s ability to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

“(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—

“(i) the Attorney General of the United States,

“(ii) an appropriate regulatory authority,

“(iii) a self-regulatory organization,

“(iv) the Public Company Accounting Oversight Board,

“(v) State attorneys general in connection with any criminal investigation, and

“(vi) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged, in accordance with the requirements in subparagraph (A).

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(h) PROVISION OF FALSE INFORMATION.—Any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section.

“(i) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section.

“(j) DEFINITIONS.—For purposes of this section, the following terms have the following meanings:

“(1) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

“(A) is based on the direct and independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source, unless the whistleblower is the initial source of the information; and

“(C) is not based on allegations in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the initial source of the information that resulted in the judicial or administrative hearing, governmental report, hearing, audit, or investigation, or the news media’s report on the allegations.

“(2) MONETARY SANCTIONS.—The term ‘monetary sanctions’, when used with respect to any judicial or administrative action, means any monies, including but not limited to penalties, disgorgement, and interest, ordered to be paid, and any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

“(3) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subsection (g)(2)(B) that is based upon the same original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

“(4) WHISTLEBLOWER.—The term ‘whistleblower’ means an individual, or two or more individuals acting jointly, who submit information to the Commission as provided in this section.”

(b) ADMINISTRATION AND ENFORCEMENT.—The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934, as added by subsection (a). Such office shall report annually to Congress on its activities, whistleblower complaints, and the response of the Commission to such complaints.

#### SEC. 7204. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Each of the following provisions is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”:

(1) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(2) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(e)(3)(A)).

(3) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(e)(3)(A)).

(b) SECURITIES EXCHANGE ACT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 21(d)(3)(C)(i) (15 U.S.C. 78u(d)(3)(C)(i)), by inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”;

(2) in section 21A(d)(1) (15 U.S.C. 78u-1(d)(1))—

(A) by striking “(subject to subsection (e))”; and

(B) by inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”; and

(3) in section 21A, by striking subsection (e) and redesignating subsections (f) and (g) as subsection (e) and (f), respectively.

#### SEC. 7205. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTIONS.

(a) IMPLEMENTING RULES.—The Securities and Exchange Commission shall issue final



regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, no later than 270 days after the date of enactment of this subtitle.

(b) **ORIGINAL INFORMATION.**—Information submitted to the Commission by a whistleblower in accordance with regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, shall not lose its status as original information, as defined in subsection (i)(1) of such section, solely because the whistleblower submitted such information prior to the effective date of such regulations, provided such information was submitted after the date of enactment of this subtitle, or related to insider trading violations for which a bounty could have been paid at the time such information was submitted.

(c) **AWARDS.**—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this part, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of this subtitle.

#### **SEC. 7206. COLLATERAL BARS.**

(a) **SECTION 15 OF THE SECURITIES EXCHANGE ACT OF 1934.**—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking “12 months, or bar such person from being associated with a broker or dealer,” and inserting “12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization.”.

(b) **SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934.**—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(4)) is amended by striking “twelve months or bar any such person from being associated with a municipal securities dealer,” and inserting “12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization.”.

(c) **SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934.**—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(4)(C)) is amended by striking “twelve months or bar any such person from being associated with the transfer agent,” and inserting “12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, or nationally recognized statistical rating organization.”.

(d) **SECTION 203 OF THE INVESTMENT ADVISERS ACT OF 1940.**—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking “twelve months or bar any such person from being associated with an investment adviser,” and inserting “12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization.”.

#### **SEC. 7207. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.**

(a) **UNDER THE SECURITIES ACT OF 1933.**—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(1) by striking “Every person who” and inserting “(a) **CONTROLLING PERSONS.**—Every person who”; and

(2) by adding at the end the following:

“(b) **PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.**—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

(c) **UNDER THE INVESTMENT COMPANY ACT OF 1940.**—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a-48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

“(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

#### **SEC. 7208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.**

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9) is amended by inserting at the end the following new subsections:

“(f) **AIDING AND ABETTING.**—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.

“(g) **ENFORCEMENT BY NATIONAL SECURITIES ASSOCIATIONS.**—The Commission may permit or require a national securities association registered under the Securities Exchange Act of 1934 to enforce compliance by its members and persons associated with its members with the provisions of this Act, the rules and regulations thereunder, and to adopt such rules (subject to any rule or order of the Commission pursuant to the Securities Exchange Act of 1934) as the association may deem necessary and in the public interest to further the purposes of this Act.”.

#### **SEC. 7209. DEADLINE FOR COMPLETING EXAMINATIONS, INSPECTIONS AND ENFORCEMENT ACTIONS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4D (as added by section 7101) the following new section:

#### **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.**

“(a) **ENFORCEMENT INVESTIGATIONS.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

“(2) **EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.**—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the

deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the head of any division or office within the Commission or his designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

“(b) **COMPLIANCE EXAMINATIONS AND INSPECTIONS.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded without findings or that the staff requests the entity undertake corrective action.

“(2) **EXCEPTION FOR CERTAIN COMPLEX ACTIONS.**—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection or regarding the staff requests the entity undertake corrective action cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.”.

#### **SEC. 7210. NATIONWIDE SERVICE OF SUBPOENAS.**

(a) **SECURITIES ACT OF 1933.**—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.”.

(b) **SECURITIES EXCHANGE ACT OF 1934.**—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aaa) is amended by inserting after the third sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.”.

(c) **INVESTMENT COMPANY ACT OF 1940.**—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a-43) is amended by inserting after the fourth sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended by inserting after the third sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.”.

**SEC. 7211. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.**

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h-1) is amended by adding at the end the following new subsection:

“(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

“(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

“(A) such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

“(B) such penalty is in the public interest.

“(2) MAXIMUM AMOUNT OF PENALTY.—

“(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$7,500 for a natural person or \$75,000 for any other person.

“(B) SECOND TIER.—Notwithstanding paragraph (A), the maximum amount of penalty for each such act or omission shall be \$75,000 for a natural person or \$375,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

“(C) THIRD TIER.—Notwithstanding paragraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$150,000 for a natural person or \$725,000 for any other person if—

“(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

“(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.”.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Subsection (a) of section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended—

(1) by striking “(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—In any proceeding” and inserting the following:

“(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—

“(1) IN GENERAL.—In any proceeding”;

(2) by redesignating paragraphs (1) through (4) of such subsection as subparagraphs (A) through (D), respectively, and moving such redesignated subparagraphs and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such subsection the following new paragraph:

“(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to section 21C of this title against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(A) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amended—

(1) by striking “(1) AUTHORITY OF COMMISSION.—In any proceeding” and inserting the following:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively, and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Paragraph (1) of section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—

(1) by striking “(1) AUTHORITY OF COMMISSION.—In any proceeding” and inserting the following:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

(2) by redesignating subparagraphs (A) through (D) of such paragraph as clauses (i) through (iv), respectively, and moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

**SEC. 7212. FORMERLY ASSOCIATED PERSONS.**

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Sec-

tion 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(8)) is amended by striking “any member or employee” and inserting “any person who is, or at the time of the alleged misconduct was, a member or employee”.

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended—

(1) in subsection (c)(1)(C), by striking “or seeking to become associated,” and inserting “seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated”;

(2) in subsection (c)(2)(A), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”; and

(3) in subsection (c)(2)(B), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”.

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting “, or, as to any act or practice, or omission to act, while associated with a member, formerly associated” after “member or a person associated”.

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting “or, as to any act or practice, or omission to act, while a participant, was a participant,” after “in which such person is a participant,”.

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking “any officer or director” and inserting “any person who is, or at the time of the alleged misconduct was, an officer or director”; and

(2) by striking “such officer or director” and inserting “such person”.

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-35(a)) is amended—

(1) by striking “a person serving or acting” and inserting “a person who is, or at the time of the alleged misconduct was, serving or acting”; and

(2) by striking “such person so serves or acts” and inserting “such person so serves or acts, or at the time of the alleged misconduct, so served or acted”.

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:

“(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

“(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person

was associated or seeking to become associated with a registered public accounting firm; and

“(ii) the authority to commence a proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

“(I) the basis of conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

“(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.”.

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking “or a person associated with such a firm” and inserting “, a person associated with such a firm, or, as to any act, practice, or omission to act while associated with such firm, a person formerly associated with such a firm”.

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking “the supervisory personnel” and inserting “any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person”; and

(2) in subparagraph (B)—

(A) by striking “No associated person” and inserting “No current or former supervisory person”; and

(B) by striking “any other person” and inserting “any associated person”.

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking “any member” and inserting “any person who is, or at the time of the alleged misconduct was, a member”.

#### SEC. 7213. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.

Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(2) in subsection (e), as redesignated, by striking “as provided in subsection (e)” and inserting “as provided in subsection (f)”;

(3) by inserting after subsection (c) the following new subsection:

“(d) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

“(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

“(A) any agency (as defined in section 6 of title 18, United States Code);

“(B) any foreign securities authority;

“(C) the Public Company Accounting Oversight Board;

“(D) any self-regulatory organization;

“(E) any foreign law enforcement authority; or

“(F) any State securities or law enforcement authority.

“(2) NON-DISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—Except as provided in subsection (f), the Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law

enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

“(3) NON-WAIVER OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—

“(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

“(B) EXCEPTION WITH RESPECT TO CERTAIN ACTIONS.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

“(4) DEFINITIONS.—For purposes of this subsection:

“(A) The term ‘privilege’ includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, foreign, or State law.

“(B) The term ‘foreign law enforcement authority’ means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law.

“(C) The term ‘State securities or law enforcement authority’ means the authority of any State or territory that is empowered under State or territory law to detect, investigate or prosecute potential violations of law.”.

#### SEC. 7214. EXPANDED ACCESS TO GRAND JURY INFORMATION.

Subsection (b) of section 3322 of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “matters occurring before a grand jury” and inserting “grand jury information obtained”;

(2) by redesignating paragraph (2) as paragraph (3);

(3) in paragraph (3) (as so redesignated), by inserting “or (2)” after “(1)”; and

(4) by inserting after paragraph (1), the following new paragraph:

“(2) Upon motion of an attorney for the government, a court may direct disclosure of grand jury information obtained during an investigation of a securities law violation to identified personnel of the Securities and Exchange Commission—

“(A) for use in relation to any matter within the jurisdiction of the Commission; or

“(B) to assist an attorney for the government to whom matters have been disclosed under subsection (a).”.

#### SEC. 7215. AIDING AND ABETTING STANDARD OF KNOWLEDGE SATISFIED BY RECKLESSNESS.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly” after “knowingly”.

#### SEC. 7216. EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

“(c) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory described under subsection (a) includes violations of section 17(a), and all suits in equity and actions at law under that section, involving—

“(1) conduct within the United States that constitutes significant steps in furtherance

of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(1) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(2) by inserting at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States described under subsection (a) includes violations of the antifraud provisions of this title, and all suits in equity and actions at law under those provisions, involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(c) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended—

(1) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(2) by inserting at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States described under subsection (a) includes violations of section 206, and all suits in equity and actions at law under that section, involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

#### SEC. 7217. FIDELITY BONDING.

Section 17(g) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(g)) is amended to read as follows:

“(g) FIDELITY BONDING.—

“(1) IN GENERAL.—The Commission is authorized to require that a registered management company provide and maintain a fidelity bond against loss as to any officer or employee who has access to securities or funds of the company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank), in such form and amount as the Commission may prescribe by rule, regulation, or order for the protection of investors.

“(2) DEFINITIONS.—For purposes of this subsection:

“(A) MANAGEMENT COMPANY.—The term ‘management company’ has the meaning given such term under section 4 of the Investment Company Act of 1940.

“(B) OFFICER OR EMPLOYEE.—The term ‘officer or employee’ means—

“(i) any officer or employee of the management company; and;

“(ii) any officer or employee of any investment adviser to the management company, or of any affiliated company of any such investment adviser, as the Commission may prescribe by rule, regulation, or order for the protection of investors.

“(C) OTHER DEFINITIONS.—The terms ‘affiliated company’ and ‘investment adviser’ shall have the meaning given such terms under section 2 of the Investment Company Act of 1940.”.

#### **SEC. 7218. ENHANCED SEC AUTHORITY TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.**

(a) SECURITIES EXCHANGE ACT OF 1934 AMENDMENTS.—Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by adding at the end the following new paragraph:

“(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”.

(b) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(b)), as amended by section 7106(a)(2), is further amended by adding at the end the following new paragraph:

“(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in paragraph (1) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”.

(c) INVESTMENT ADVISERS ACT OF 1940 AMENDMENTS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4), as amended by section 7106(b), is further amended by adding at the end the following new subsection:

“(e) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”.

#### **SEC. 7219. INVESTMENT COMPANY EXAMINATIONS.**

Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended to read as follows:

“(1) IN GENERAL.—All records of each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall be subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.”.

#### **SEC. 7220. CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT.**

Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after “controlled person is liable,” the following: “including to the Commission in any action brought under paragraph (1) or (3) of section 21(d),”.

#### **SEC. 7221. ENHANCED APPLICATION OF ANTI-FRAUD PROVISIONS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9—

(A) by striking “registered on a national securities exchange” each place it appears and inserting “other than a government security”;

(B) in subsection (b), by striking “by use of any facility of a national securities exchange,”; and

(C) in subsection (c), by inserting after “unlawful for any” the following: “broker, dealer, or”;

(2) in section 10(a)(1), by striking “registered on a national securities exchange” and inserting “other than a government security”;

(3) in section 15(c)(1)(A), by striking “otherwise than on a national securities exchange of which it is a member”.

#### **SEC. 7222. SEC AUTHORITY TO ISSUE RULES ON PROXY ACCESS.**

Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by adding at the end the following:

“(2) The authority of the Commission to prescribe rules and regulations under paragraph (1) includes rules and regulations that require the inclusion and set procedures relating to the inclusion, in a solicitation of a proxy or consent or authorization by or on behalf of an issuer, of a nominee or nominees submitted by shareholders to serve on the issuer’s board of directors.”.

#### **PART 3—COMMISSION FUNDING AND ORGANIZATION**

#### **SEC. 7301. AUTHORIZATION OF APPROPRIATIONS.**

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

#### **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

“In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

“(1) for fiscal year 2010, \$1,115,000,000;

“(2) for fiscal year 2011, \$1,300,000,000;

“(3) for fiscal year 2012, \$1,500,000,000;

“(4) for fiscal year 2013, \$1,750,000,000;

“(5) for fiscal year 2014, \$2,000,000,000; and

“(6) for fiscal year 2015, \$2,250,000,000.”.

#### **SEC. 7302. INVESTMENT ADVISER REGULATION FUNDING.**

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) (as amended by sections 5006 and 5007) is further amended by adding at the end the following new subsection:

“(o) ANNUAL ASSESSMENT.—

“(1) IN GENERAL.—The Commission shall, in accordance with this subsection, promulgate rules pursuant to which it may collect from investment advisers required to register with the Commission under this title, fees designed to help recover the cost of inspections and examinations of registered investment advisers conducted by the Commission pursuant to this title.

“(2) FEE PAYMENT REQUIRED.—An investment adviser shall, at the time of registration with the Commission, and each fiscal

year thereafter during which such adviser is so registered, pay to the Commission a fair and reasonable fee determined by the Commission. In determining such fee, the Commission shall consider objective factors such as—

“(A) the investment adviser’s size;

“(B) the number of clients of the investment adviser;

“(C) the types of clients of the investment adviser; and

“(D) such other relevant factors as the Commission determines to be appropriate.

“(3) AMOUNT AND USE OF FEES.—

“(A) MINIMUM AGGREGATE AMOUNT.—The aggregate amount of fees determined by the Commission under this subsection for any fiscal year shall be greater than the amount the Commission spent on inspections and examinations of registered investment advisers during the 2009 fiscal year.

“(B) EXCESS FEES.—The Commission may retain any excess fees collected under this subsection during a fiscal year for application towards the costs of inspections and examinations of investment advisers in future fiscal years.

“(4) REVIEW AND ADJUSTMENT OF FEES.—The Commission may review fee rates established pursuant to this section before the end of any fiscal year and make any appropriate adjustments prior to collecting any such fee in the following fiscal year.

“(5) PENALTY FEE.—The Commission shall prescribe by rule or regulation an additional fee to be assessed as a penalty for late payment of fees required by this subsection.

“(6) JUDICIAL REVIEW.—Increases or decreases in fees made pursuant to this section shall not be subject to judicial review.”.

#### **SEC. 7303. AMENDMENTS TO SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934.**

Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) in subsection (e)(2), by striking “September 30” and inserting “September 25”;

(2) in subsection (g), by striking “April 30” and inserting “August 31”; and

(3) in subsection (j)(2)—

(A) by striking “5 months” and inserting “4 months”; and

(B) by striking “(including fees collected during such 5-month period and assessments collected under subsection (d))” and inserting “(including fees estimated to be collected under subsections (b) and (c) prior to the effective date of the uniform adjusted rate and assessments estimated to be collected under subsection (d))”.

#### **SEC. 7304. COMMISSION ORGANIZATIONAL STUDY AND REFORM.**

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than the end of the 90-day period beginning on the date of the enactment of this subtitle, the Securities and Exchange Commission (hereinafter in this section referred to as the “SEC”) shall hire an independent consultant of high caliber and with expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC’s relationship with the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC’s oversight.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the SEC;

(B) improving communications between SEC offices and divisions;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC's hiring authorities, workplace policies, and personal practices, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC's mission of investor protection; and

(iv) the application of civil service laws by the SEC;

(F) whether the SEC's oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC's reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) **CONSULTANT REPORT.**—Not later than the end of the 150-day period after being retained, the independent consultant hired pursuant to subsection (a)(1) shall issue a report to the SEC and the Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1);

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines appropriate to enable the SEC and other entities on which it reports to perform their statutorily or otherwise mandated missions.

(c) **SEC REPORT.**—Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the SEC's implementation of the regulatory and administrative recommendations contained in the consultant's report.

#### **SEC. 7305. CAPITAL MARKETS SAFETY BOARD.**

There is established within the Securities and Exchange Commission an office to be known as the Capital Markets Safety Board whose purpose shall be to conduct investigations, at the direction of the Commission, of failed institutions registered with the Commission, to determine what caused such institutions to fail. Upon the conclusion of an investigation, the Board shall make available on the Commission's website a report of its findings, including recommendations regarding how others can avoid similar mistakes. No information that may compromise an ongoing Federal investigation shall be made available in any such report.

#### **SEC. 7306. REPORT ON IMPLEMENTATION OF "POST-MADOFF REFORMS".**

(a) **IN GENERAL.**—Not later than 6 months after the date of the enactment of this subtitle, the Securities and Exchange Commission shall provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing,

and Urban Affairs of the Senate a report describing the implementation of reforms outlined by the Commission in the wake of the discovery of fraud by Bernie Madoff.

(b) **CONTENTS OF REPORT.**—The report required by subsection (a) shall include an analysis of—

(1) how many of the post-Madoff reforms have been implemented and to what extent; and

(2) whether there is overlap between any of the Commission's reform proposals and those recommended by the Inspector General of the Commission.

(c) **PUBLICATION OF REPORT.**—The Commission and the Committees referred to in subsection (a) shall publish the report required by such subsection on their Web sites.

#### **SEC. 7307. JOINT ADVISORY COMMITTEE.**

The Securities and Exchange Commission and the Commodities Futures Trading Commission may jointly form and operate a joint advisory committee composed of members of each Commission and industry experts and participants. The purposes of such an advisory committee include—

(1) considering and developing solutions to emerging and ongoing issues of common interest in the futures and securities markets;

(2) identifying emerging regulatory risks and assess and quantify their implications for investors and other market participants, and provide recommendations for solutions;

(3) serving as a vehicle for discussion and communication on regulatory issues of mutual concerns affecting each Commission, the regulated markets, and the industry generally; and

(4) reporting regularly to each Commission and to Congress on its activities.

### **PART 4—ADDITIONAL COMMISSION REFORMS**

#### **SEC. 7401. REGULATION OF SECURITIES LENDING.**

Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following new subsection:

“(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(2) Nothing in paragraph (1) shall be construed to limit the authority of an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency identified under law as having a systemic risk responsibility from prescribing rules or regulations to impose restrictions on transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.”

#### **SEC. 7402. LOST AND STOLEN SECURITIES.**

Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(1) in subparagraph (A), by striking “missing, lost, counterfeit, or stolen securities” and inserting “securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe”; and

(2) in subparagraph (B), by striking “or stolen” and inserting “stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe”.

#### **SEC. 7403. FINGERPRINTING.**

Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) by striking “and registered clearing agency,” and inserting “registered clearing agency, registered securities information processor, national securities exchange, and national securities association”; and

(2) by striking “or clearing agency,” and inserting “clearing agency, securities information processor, national securities exchange, or national securities association.”.

#### **SEC. 7404. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.**

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking “an exchange required thereby” and inserting “a self-regulatory organization.”.

#### **SEC. 7405. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.**

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(a)) is amended—

(1) by striking “, unless exempt from registration pursuant to section 203(b),” and inserting “registered or required to be registered with the Commission”; and

(2) by striking “make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to”; and

(3) by striking “to” after “in any way”.

#### **SEC. 7406. CONFORMING AMENDMENTS FOR THE REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

(a) **SECURITIES EXCHANGE ACT OF 1934.**—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking “the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),”; and

(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

“(7) **DEFINITION.**—For purposes of this subsection, the term ‘emergency’ means—

“(A) a major market disturbance characterized by or constituting—

“(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

“(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

“(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

“(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

“(ii) the transmission or processing of securities transactions.”.

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking “section 18(c) of the Public Utility Holding Company Act of 1935.”.

(b) **TRUST INDENTURE ACT OF 1939.**—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by amending paragraph (17) to read as follows:

“(17) The terms ‘Securities Act of 1933’ and ‘Securities Exchange Act of 1934’ shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.”;

(2) in section 308 (15 U.S.C. 77hhh), by striking “Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935” each place it appears and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”; and

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk) by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935” and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”; and

(6) in section 326 (15 U.S.C. 77zzz), by striking “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,” and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a-2(a)(44)), by striking “Public Utility Holding Company Act of 1935.”;

(2) in section 3(c) (15 U.S.C. 80a-3(c)), by amending paragraph (8) to read as follows:

“(8) [Repealed]”;

(3) in section 38(b) (15 U.S.C. 80a-37(b)), by striking “the Public Utility Holding Company Act of 1935.”; and

(4) in section 50 (15 U.S.C. 80a-49), by striking “the Public Utility Holding Company Act of 1935.”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(21) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(21)) is amended by striking “Public Utility Holding Company Act of 1935.”.

#### SEC. 7407. PROMOTING TRANSPARENCY IN FINANCIAL REPORTING.

(a) FINDINGS.—Congress finds the following:

(1) Transparent and clear financial reporting is integral to the continued growth and strength of our capital markets and the confidence of investors.

(2) The increasing detail and volume of accounting, auditing, and reporting guidance pose a major challenge.

(3) The complexity of accounting and auditing standards in the United States has added to the costs and effort involved in financial reporting.

(b) TESTIMONY REQUIRED ON REDUCING COMPLEXITY IN FINANCIAL REPORTING.—The Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933 shall annually provide oral testimony by their respective Chairpersons or a designee of the Chairperson, beginning in 2010, and for 5 years thereafter, to the Committee on Financial Services of the House of Representatives on their efforts to reduce the complexity in financial reporting to provide more accurate and clear financial information to investors, including—

(1) reassessing complex and outdated accounting standards;

(2) improving the understandability, consistency, and overall usability of the existing accounting and auditing literature;

(3) developing principles-based accounting standards;

(4) encouraging the use and acceptance of interactive data; and

(5) promoting disclosures in “plain English”.

#### SEC. 7408. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “; and” and inserting “; or”.

#### SEC. 7409. PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 17(i) of the Securities Exchange Act of 1934 (as amended by section 1314(2)) is amended to read as follows:

“(i) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination, surveillance, or risk assessment of a person subject to or described in this section, or the financial or operational condition of such persons, or any information supplied to the Commission by any domestic or foreign regulatory agency or self-regulatory organization that relates to the financial or operational condition of such persons, of any associated person of such persons, or any affiliate of an investment bank holding company.

“(2) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, the Public Company Accounting Oversight Board, or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination, surveillance, or risk assessment of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(3) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.

“(4) CERTAIN INFORMATION TO BE CONFIDENTIAL.—In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(3) as confidential information for purposes of section 24(b)(2) of this title.”.

(b) INVESTMENT COMPANY ACT OF 1940.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-30(b)), as amended by sections 7106(a)(2) and 7218(b)(4), is further amended by adding at the end the following new paragraph:

“(6) CONFIDENTIALITY.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination, surveillance, or risk assessment of a person subject to or described in this section.

“(B) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, or the Public Company Accounting Oversight Board requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(C) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.”.

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4), as amended by sections 7106(b) and 7218(c), is further amended by adding at the end the following new subsection:

“(f) CONFIDENTIALITY.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination of a person subject to or described in this section.

“(2) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, the Public Company Accounting Oversight Board, or a self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(3) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.”.

#### SEC. 7410. TECHNICAL CORRECTIONS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking “individual;” and inserting “individual,”;

(2) in the matter following paragraph (5) of section 11(a), by striking “earning statement” and inserting “earnings statement”.

(3) in section 18(b)(1)(C) (15 U.S.C. 77r(b)(1)(C)), by striking “is a security” and inserting “a security”;

(4) in section 18(c)(2)(B)(i) (15 U.S.C. 77r(c)(2)(B)(i)), by striking “State, or” and inserting “State or”;

(5) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking “in paragraph (1) of (3)” and inserting “in paragraph (1) or (3)”;

and

(6) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-2(c)(1)(B)(ii)), by striking “business entity;” and inserting “business entity.”.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 21(a) (15 U.S.C. 78b(1)(a)), by striking “affected” and inserting “effected”;

(2) in section 3(a)(55)(A) (15 U.S.C. 78c(a)(55)(A)), by striking “section 3(a)(12) of the Securities Exchange Act of 1934” and inserting “section 3(a)(12) of this Act”;

(3) in section 3(g) (15 U.S.C. 78c(g)), by striking “company, account person, or entity” and inserting “company, account, person, or entity”;

(4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j-1(i)(1)(B)(i)), by striking “nonaudit” and inserting “non-audit”;



(5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking “earning statement” and inserting “earnings statement”;

(6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—  
(A) by striking the sentence beginning “The order granting” and ending “from such membership.” in subparagraph (B); and

(B) by inserting such sentence in the matter following such subparagraph after “are satisfied.”;

(7) in section 15C(a)(2) (15 U.S.C. 78o-5(a)(2))—

(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

(B) by striking the sentence beginning “The order granting” and ending “from such membership.” in such subparagraph (B), as redesignated; and

(C) by inserting such sentence in the matter following such redesignated subparagraph after “are satisfied.”;

(8) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking “15A(k) gives” and inserting “15A(k), give”;

(9) in section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)), by striking “paragraph (1) subsection” and inserting “Paragraph (1)”.

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking “section 2 of such Act” and inserting “section 2(a) of such Act”;

(2) in section 313(a)(4) (15 U.S.C. 77mmm(a)(4)) by striking “subsection (b) of section 311” and inserting “section 311(b)”;

(3) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) is amended—

(1) in section 2(a)(19)(B) (15 U.S.C. 80a-2(a)(19)(B)) by striking “clause (vi)” both places it appears in the last two sentences and inserting “clause (vii)”;

(2) in section 9(b)(4)(B) (15 U.S.C. 80a-9(b)(4)(B)), by inserting “or” after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a-12(d)(1)(J)), by striking “any provision of this subsection” and inserting “any provision of this paragraph”;

(4) in section 13(a)(3) (15 U.S.C. 80a-13(a)(3)), by inserting “or” after the semicolon at the end;

(5) in section 17(f)(4) (15 U.S.C. 80a-17(f)(4)), by striking “No such member” and inserting “No member of a national securities exchange”;

(6) in section 17(f)(6) (15 U.S.C. 80a-17(f)(6)), by striking “company may serve” and inserting “company, may serve”; and

(7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a-60(a)(3)(B)(iii))—

(A) by striking “paragraph (1) of section 205” and inserting “section 205(a)(1)”;

(B) by striking “clause (A) or (B) of that section” and inserting “section 205(b)(1) or (2)”.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended—

(1) in each of the following sections, by striking “principal business office” or “principal place of business” (whichever and wherever it appears) and inserting “principal office and place of business”: sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b), and 222(c) (15 U.S.C. 80b-3(c)(1)(A), 80b-3(k)(4)(B), 80b-13(a), 80b-18a(b), and 80b-18a(c)); and

(2) in section 206(3) (15 U.S.C. 80b-6(3)), by inserting “or” after the semicolon at the end.

#### SEC. 7411. MUNICIPAL SECURITIES.

Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) COMPOSITION OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Not later than October 1, 2010, the Municipal Securities Rulemaking Board (hereinafter in this section referred to as the ‘Board’), shall be composed of members which shall perform the duties set forth in this section and shall consist of—

“(A) a majority of independent public representatives, at least one of whom shall be representative of investors in municipal securities and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as ‘public representatives’);

“(B) at least one individual who is representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘broker-dealer representatives’); and

“(C) at least one individual who is representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘bank representatives’).”;

(2) by amending paragraph (2)(B) to read as follows:

“(B) Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules—

“(i) shall establish requirements regarding the independence of public representatives;

“(ii) shall provide that the number of public representatives of the Board shall at all times exceed the total number of broker-dealer representatives and bank representatives;

“(iii) shall establish minimum knowledge, experience, and other appropriate qualifications for individuals to serve as public representatives, which may include, among other things, prior work experience in the securities, municipal finance, or municipal securities industries;

“(iv) shall specify the term members shall serve; and

“(v) may increase or decrease the number of members which shall constitute the whole Board, but in no case may such number be an even number.”.

#### SEC. 7412. INTERESTED PERSON DEFINITION.

Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

(1) by striking clauses (v) and (vi);

(2) by inserting after clause (iv) the following new clause:

“(v) any natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of—

“(I) a material business or professional relationship with such company or any affiliated person of such company; or

“(II) a close familial relationship with any natural person who is an affiliated person of such company.”;

(3) by redesignating clause (vii) as clause (vi); and

(4) in clause (vi), as redesignated, by striking “two completed fiscal years” and inserting “five completed fiscal years”.

#### SEC. 7413. RULEMAKING AUTHORITY TO PROTECT REDEEMING INVESTORS.

Section 22(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-22(e)) is amended by adding at the end the following: “The Commission may, by rules and regulations, limit the extent to which a registered open-end investment company may own, hold, or invest in illiquid securities or other illiquid property.”.

#### SEC. 7414. STUDY ON SEC REVOLVING DOOR.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the United States shall conduct a study that will—

(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

(4) review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

(5) determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions have engaged in information sharing or assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and

(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).

#### SEC. 7415. STUDY ON INTERNAL CONTROL EVALUATION AND REPORTING COST BURDENS ON SMALLER ISSUERS.

(a) STUDY REQUIRED.—The Government Accountability Office and the Securities and Exchange Commission shall each conduct a study evaluating the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7262(b)) on issuers who are not accelerated or large accelerated filers as defined by Commission Rule 12b-2. The study shall—



(1) include recommendations, administrative reforms, and legislative proposals on implementation steps that could be taken to reduce compliance burdens on these issuers; and

(2) determine the efficacy of the Securities and Exchange Commission's measures to limit the cost of compliance on smaller issuers.

(b) **REPORTS REQUIRED.**—On or before June 1, 2010, the Government Accountability Office and the Securities and Exchange Commission shall submit separate reports to Congress containing the findings and conclusions of the studies required under subsection (a), together with such recommendations for regulatory, legislative, or administrative action as may be appropriate.

(c) **EFFECTIVE DATE CONTINGENT ON REPORTS.**—Requirements under section 404(b) of the Sarbanes-Oxley Act of 2002 on issuers described under subsection (a) shall not become effective until the results of the report are delivered, but in no case before June 1, 2011.

#### **SECTION 7416. ANALYSIS OF RULE REGARDING SMALLER REPORTING COMPANIES.**

(a) **FINDINGS.**—Congress finds the following:

(1) Many small businesses in cutting-edge technology sectors require significant capital investment to develop new technologies related to clean energy, drug treatments for terminal diseases and food production in hunger-stricken areas of the World.

(2) Many technology companies conducting research do not meet the definition of "smaller reporting company" under the Securities and Exchange Commission's Rule 12b-2 due to unusually high public floats despite low or zero revenue.

(3) The Final Report of the Advisory Committee on Smaller Public Companies to the Securities and Exchange Commission recommended that a company with a market capitalization of less than about \$787,000,000 be considered a smallcap company and that the Commission provide exemptions from section 404(b) of the Sarbanes-Oxley Act to companies with less than \$250,000,000 in annual revenues.

(b) **STUDY OF USING REVENUE AS CRITERIA TO DEFINE SMALLER REPORTING COMPANY.**—The Securities and Exchange Commission shall conduct a study of the inclusion of revenue as a criteria used in defining smaller reporting company as defined under the Commission's Rule 12b-2 to account for smaller public companies with public floats less than \$700,000,000 and revenues less than \$250,000,000. Not later than 180 days after the date of enactment of this subtitle, the Commission shall provide the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a report of the findings of the study.

#### **SEC. 7417. FINANCIAL REPORTING FORUM.**

(a) **ESTABLISHMENT.**—There is hereby established a Financial Reporting Forum (hereinafter referred to as the "Forum"), which shall consist of—

(1) the Chairman of the Securities Exchange Commission (hereinafter referred to as the "SEC");

(2) the head of the Financial Accounting Standards Board;

(3) the Chairman of the Public Company Accounting Oversight Board;

(4) the head of each appropriate Federal banking agency, as such term is defined under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

(5) the Administrator of the National Credit Union Administration;

(6) the Secretary of the Treasury;

(7) a representative of a non-financial institution, appointed by the SEC;

(8) a representative of a financial institution, appointed by the SEC;

(9) a representative of auditors, appointed by the SEC; and

(10) a representative of investors, appointed by the SEC.

(b) **MEETINGS.**—The Forum shall meet no less often than quarterly.

(c) **DUTIES.**—The Forum shall meet to discuss immediate and long-term issues critical to financial reporting.

(d) **REPORTING.**—The Forum shall issue an annual report to the Congress detailing any determinations or findings made by the Forum during the previous year, including any legislative recommendations the Forum may have related to financial reporting matters.

#### **SEC. 7418. INVESTMENT ADVISERS SUBJECT TO STATE AUTHORITIES.**

Section 203A(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) **TREATMENT OF CERTAIN MID-SIZED INVESTMENT ADVISERS.**—Notwithstanding paragraph (1), an investment adviser that—

"(A) is regulated and examined, or required to be regulated and examined, by a State; and

"(B) has assets under management between—

"(i) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph, and

"(ii) \$100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title,

shall register with, and be subject to examination by, such State. The Commission shall publish a list of the States that regulate and examine, or require regulation and examination of, investment advisers to which the requirements of this paragraph apply."

#### **SEC. 7419. CUSTODIAL REQUIREMENTS.**

Not later than 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of such Act for an investment adviser registered under the Act to have custody of funds or securities of a client the value of which exceeds \$10,000,000, subject to such exception the Commission determines in such rule are in the public interest and consistent with the protection of investors, unless—

(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client's name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

#### **SEC. 7420. OMBUDSMAN.**

(a) **APPOINTMENT.**—Not later than 180 days after the date of the enactment of this subtitle, the Chairman of the Securities and Exchange Commission shall appoint an Ombudsman who shall report directly to the Chairman.

(b) **DUTIES.**—The Ombudsman appointed under subsection (a) shall—

(1) act as a liaison between the Commission and any affected person with respect to any problem such person may have in dealing with the Commission resulting from the regulatory activities of the Commission;

(2) review and make recommendations regarding Commission policies and procedures to encourage persons to present questions to the Commission regarding compliance with Federal securities laws; and

(3) maintain confidentiality of communications between such persons and the Ombudsman.

(c) **LIMITATION.**—In carrying out the duties under subsection (b), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this section shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office in any other agency.

(d) **REPORT.**—Each year, the Ombudsman shall submit a report to the Commission for inclusion in the annual report that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. In that report, the Ombudsman shall include solicited comments and evaluations from registrants in regards to the effectiveness of the Ombudsman.

#### **PART 5—SECURITIES INVESTOR PROTECTION ACT AMENDMENTS**

##### **SEC. 7501. INCREASING THE MINIMUM ASSESSMENT PAID BY SIPC MEMBERS.**

Section 4(d)(1)(C) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended by striking "\$150 per annum" and inserting the following: "0.02 percent of the gross revenues from the securities business of such member of SIPC".

##### **SEC. 7502. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.**

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended by striking "of not to exceed \$1,000,000,000" and inserting "the lesser of \$2,500,000,000 or the target amount of the SIPC Fund specified in the bylaws of SIPC".

##### **SEC. 7503. INCREASING THE CASH LIMIT OF PROTECTION.**

Section 9 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff-3) is amended—

(1) in subsection (a)(1), by striking "\$100,000 for each such customer" and inserting "the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)"; and

(2) by adding the following new subsections:

"(d) **STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.**—For purposes of this section, the term 'standard maximum cash advance amount' means \$250,000, as such amount may be adjusted after March 31, 2010, as provided under subsection (e).

"(e) **INFLATION ADJUSTMENT.**—

"(1) **IN GENERAL.**—No later than April 1, 2010, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

"(A) \$250,000 multiplied by,

"(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding

the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted. The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

“(2) **ROUNDING.**—If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

“(3) **PUBLICATION AND REPORT TO THE CONGRESS.**—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

“(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

“(B) the Board of Directors of SIPC shall submit a report to the Congress containing stating the standard maximum cash advance amount.

“(4) **IMPLEMENTATION PERIOD.**—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

“(5) **INFLATION ADJUSTMENT CONSIDERATIONS.**—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

“(A) the overall state of the fund and the economic conditions affecting members of SIPC;

“(B) the potential problems affecting members of SIPC; and

“(C) such other factors as the Board of Directors of SIPC may determine appropriate.”.

#### **SEC. 7504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PROCEEDINGS.**

Section 5(b)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(3)) is amended—

(1) by striking “SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than \$750,000 and that”; and

(2) by striking “five hundred” and inserting “five thousand”.

#### **SEC. 7505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.**

Section 9(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff-3(a)(4)) is amended by inserting “an insider,” after “or net profits of the debtor.”.

#### **SEC. 7506. ELIGIBILITY FOR DIRECT PAYMENT PROCEDURE.**

Section 10(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff-4(a)(4)) is amended by striking “\$250,000” and inserting “\$850,000”.

#### **SEC. 7507. INCREASING THE FINE FOR PROHIBITED ACTS UNDER SIPA.**

Section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

(1) in paragraph (1), by striking “\$50,000” and inserting “\$250,000”; and

(2) in paragraph (2), by striking “\$50,000” and inserting “\$250,000”.

#### **SEC. 7508. PENALTY FOR MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.**

Section 14 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj) is amended by adding at the end the following new subsection:

“(d) **MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.**—

“(1) **IN GENERAL.**—Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this Act or by SIPC, shall be liable for any damages caused thereby and shall be fined not more than \$250,000 or imprisoned for not more than five years.

“(2) **INTERNET SERVICE PROVIDERS.**—Any Internet service provider that, on or through a system or network controlled or operated by the Internet service provider, transmits, routes, provides connections for, or stores any material containing any misrepresentation of the kind prohibited in paragraph (1) shall be liable for any damages caused thereby, including damages suffered by SIPC, if the Internet service provider—

“(A) has actual knowledge that the material contains a misrepresentation of the kind prohibited in paragraph (1), or

“(B) in the absence of actual knowledge, is aware of facts or circumstances from which it is apparent that the material contains a misrepresentation of the kind prohibited in paragraph (1), and

upon obtaining such knowledge or awareness, fails to act expeditiously to remove, or disable access to, the material.

“(3) **INJUNCTIONS.**—Any court having jurisdiction of a civil action arising under this Act may grant temporary injunctions and final injunctions on such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1) or (2). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk’s office.”.

#### **SEC. 7509. FUTURES HELD IN A PORTFOLIO MARGINING SECURITIES ACCOUNT PROTECTION.**

(a) **SIPC ADVANCES.**—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff-3(a)(1)) is amended by inserting “or options on futures contracts” after “claim for securities”.

(b) **DEFINITIONS.**—Section 16 of such Act (15 U.S.C. 78lll) is amended—

(1) by amending paragraph (2) to read as follows:

“(2) **CUSTOMER.**—

“(A) **IN GENERAL.**—The term ‘customer’ of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer. The term ‘customer’ includes any person who has a claim against the debtor arising out of sales or conversions of such securities.

“(B) **INCLUDED PERSONS.**—The term ‘customer’ includes—

“(i) any person who has deposited cash with the debtor for the purpose of purchasing securities; and

“(ii) any person who has a claim against the debtor for, or a claim against the debtor arising out of sales or conversions of, cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission.

“(C) **EXCLUDED PERSONS.**—The term ‘customer’ does not include—

“(i) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC;

“(ii) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor; or

“(iii) any person to the extent such person has a claim relating to any open repurchase or open reverse repurchase agreement.

For purposes of this paragraph, the term ‘repurchase agreement’ means the sale of a security at a specified price with a simultaneous agreement or obligation to repurchase the security at a specified price on a specified future date.”.

(2) in paragraph (4), by inserting after the first sentence the following new sentence: “In the case of portfolio margining accounts of customers that are carried as securities accounts pursuant to a portfolio margining program approved by the Commission, such term shall also include futures contracts and options on futures contracts received, acquired, or held by or for the account of a debtor from or for such accounts, and the proceeds thereof.”.

(3) in paragraph (9), by inserting before “Such term” in the matter following subparagraph (L) the following: “The term includes revenues earned by a broker or dealer in connection with transactions in customers’ portfolio margining accounts carried as securities accounts pursuant to a portfolio margining program approved by the Commission.”; and

(4) in paragraph (11)—

(A) by amending subparagraph (A) to read as follows:

“(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

“(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

“(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; minus”; and

(B) by inserting before “In determining” in the matter following subparagraph (C) the following: “A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission, or a claim for a security futures contract, shall be deemed to be a claim for the mark-to-market (variation) payments due with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash.”.

**SEC. 7510. STUDY AND REPORT ON THE FEASIBILITY OF RISK-BASED ASSESSMENTS FOR SIPC MEMBERS.**

(a) **STUDY REQUIRED.**—The Comptroller General of the United States shall conduct a study on whether the Securities Investor Protection Corporation (hereafter in this section referred to as “SIPC”) should be required to impose assessments, on its member brokers and dealers, based on risk for the purpose of adequately maintaining the SIPC Fund.

(b) **CONTENT.**—The Comptroller General in conducting this study shall—

(1) identify and examine available approaches, including modeling, to measure broker and dealer operational risk;

(2) analyze whether the available approaches to measure broker and dealer operational risk can be used in managing the aggregate risk to the SIPC Fund;

(3) explore whether objective measures like the volume of assets of the SIPC member, previous enforcement and compliance actions taken by regulatory bodies against the SIPC member, or the number of years the SIPC member has been in operation, among other factors, can be used to assess the probability the fund will incur a loss with respect to the SIPC member;

(4) examine the impact that risk-based assessments could have on large and small brokers and dealers; and

(5) examine the impact that risk-based assessments could have on institutional and retail brokers and dealers.

(c) **CONSULTATION.**—The Comptroller General in planning and conducting this study shall consult with the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, SIPC, the Financial Industry Regulatory Authority, and any other public or private sector organization that the Comptroller General considers appropriate.

(d) **REPORT REQUIRED.**—Not later than one year after the date of enactment of this subtitle, the Comptroller general shall submit a report of the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

**PART 6—SARBANES-OXLEY ACT AMENDMENTS**

**SEC. 7601. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OVERSIGHT OF AUDITORS OF BROKERS AND DEALERS.**

(a) **DEFINITIONS.**—(1) Title I of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following new section:

**“SEC. 110. DEFINITIONS.**

“For the purposes of this title, and notwithstanding section 2:

“(1) **AUDIT.**—The term ‘audit’ means an examination of the financial statements, reports, documents, procedures or controls, or notices, of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such financial statements, reports, documents, procedures or controls, or notices.

“(2) **AUDIT REPORT.**—The term ‘audit report’ means a document, report, notice, or other record—

“(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

“(B) in which a public accounting firm either—

“(i) sets forth the opinion of that firm regarding a financial statement, report, notice, other document, procedures, or controls; or

“(ii) asserts that no such opinion can be expressed.

“(3) **PROFESSIONAL STANDARDS.**—The term ‘professional standards’ means—

“(A) accounting principles that are—

“(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

“(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

“(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

“(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

“(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

“(4) **BROKER.**—The term ‘broker’ means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(5) **DEALER.**—The term ‘dealer’ means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(6) **SELF-REGULATORY ORGANIZATION.**—The term ‘self-regulatory organization’ has the same meaning as in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)).”

(2) The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 109 the following new item:

“Sec. 110. Definitions.”

(b) **ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.**—Section 101 of such Act is amended—

(1) by striking “issuers” each place it appears and inserting “issuers, brokers, and dealers”; and

(2) in subsection (a), by striking “public companies” and inserting “companies”; and

(3) in subsection (a), by striking “for companies the securities of which are sold to, and held by and for, public investors”.

(c) **REGISTRATION WITH THE BOARD.**—Section 102 of such Act is amended—

(1) in subsection (a), by striking “Beginning 180 days after the date of the determination of the Commission under section 101(d), it” and inserting “It”;

(2) in subsections (a) and (b)(2)(G), by striking “issuer” each place it appears and inserting “issuer, broker, or dealer”; and

(3) in subsection (b)(2)(A), by striking “issuers” and inserting “issuers, brokers, and dealers”.

(d) **AUDITING AND INDEPENDENCE.**—Section 103(a) of such Act is amended—

(1) in paragraph (1), by striking “and such ethics standards” and inserting “such ethics standards, and such independence standards”; and

(2) in paragraph (2)(A)(iii), by striking “describe in each audit report” and inserting “in each audit report for an issuer, describe”; and

(3) in paragraph (2)(B)(i), by striking “issuers” and inserting “issuers, brokers, and dealers”.

(e) **INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.**—Section 104 of such Act is amended—

(1) in subsection (a), by striking “issuers” and inserting “issuers, brokers, and dealers”; and

(2) in subsection (b)(1)(A)—  
(A) by striking “audit reports” and inserting “audit reports on annual financial statements”; and

(B) by striking “and”; and

(3) in subsection (b)(1)(B)—

(A) by striking “audit reports” and inserting “audit reports on annual financial statements”; and

(B) by striking the period at the end and inserting “; and”; and

(4) by adding at the end of subsection (b)(1) the following new subparagraph:

“(C) with respect to each registered public accounting firm that regularly provides audit reports and is not described under subparagraph (A) or (B), on a basis to be determined by the Board, by rule, consistent with the public interest and protection of investors.”

(f) **INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.**—Section 105(c)(7)(B) of such Act is amended—

(1) in the subparagraph heading, by inserting “, BROKER, OR DEALER” after “ISSUER”; and

(2) by striking “any issuer” each place it appears and inserting “any issuer, broker, or dealer”; and

(3) by striking “an issuer under this subsection” and inserting “a registered public accounting firm under this subsection”.

(g) **FOREIGN PUBLIC ACCOUNTING FIRMS.**—Section 106 of such Act is amended—

(1) in subsection (a)(1), by striking “issuer” and inserting “issuer, broker, or dealer”; and

(2) in subsection (a)(2), by striking “issuers” and inserting “issuers, brokers, or dealers”.

(h) **FUNDING.**—Section 109 of such Act is amended—

(1) in subsection (c)(2), by striking “subsection (i)” and inserting “subsection (j)”;

(2) in subsection (d)(2), by striking “allowing for differentiation among classes of issuers, as appropriate” and inserting “and among brokers and dealers in accordance with subsection (h), and allowing for differentiation among classes of issuers and brokers and dealers, as appropriate”; and

(3) in subsection (d), by inserting at the end the following new paragraph:

“(3) **BROKERS AND DEALERS.**—The rules of the Board under paragraph (1) shall provide that the allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1) with respect to brokers and dealers shall not begin until the first day of the first full fiscal year beginning after the date of the enactment of this paragraph.”;

(4) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(5) by inserting after subsection (g) the following new subsection:

“(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

“(1) IN GENERAL.—Any amount due from brokers and dealers (or a particular class of such brokers and dealers) under this section to fund the budget of the Board shall be allocated among and payable by such brokers and dealers (or such brokers and dealers in a particular class, as applicable). A broker or dealer’s allocation shall be in proportion to the broker or dealer’s net capital compared to the total net capital of all brokers and dealer, in accordance with the rules of the Board.

“(2) OBLIGATION TO PAY.—Every broker or dealer shall pay the share of a reasonable annual accounting support fee or fees allocated to such broker or dealer under this section.”.

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following new clause:

“(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization;”.

(j) USE OF DOCUMENTS RELATED TO AN INSPECTION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of such Act is amended—

(1) in subclause (III), by striking “and”;;

(2) in subclause (IV), by striking the comma and inserting “; and”; and

(3) by inserting after subclause (IV) the following new subclause:

“(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization.”.

#### SEC. 7602. FOREIGN REGULATORY INFORMATION SHARING.

(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by inserting after paragraph (16) the following:

“(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term ‘foreign auditor oversight authority’ means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.”.

(b) AVAILABILITY TO SHARE INFORMATION.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

“(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—When in the Board’s discretion it is necessary to accomplish the purposes of this Act or to protect investors, and without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm within the inspection authority, or other regulatory or law enforcement jurisdiction, of a foreign auditor oversight authority may be made available to the foreign auditor oversight authority if the foreign auditor oversight authority provides such assurances of confidentiality as the Board determines appropriate.”.

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002

(15 U.S.C. 7215(b)(5)(A)) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”.

#### SEC. 7603. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED WITH FOREIGN COUNTERPARTS.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by amending subsection (b) to read as follows:

“(b) PRODUCTION OF DOCUMENTS.—

“(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm issues an audit report, performs audit work, conducts interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall produce its audit work papers and all other documents related to any such audit work or interim review to the Commission or the Board when requested by the Commission or the Board and the foreign public accounting firm shall be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request of such documents.

“(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

“(A) produce the foreign public accounting firm’s audit work papers and all other documents related to any such work in response to a request for production by the Commission or the Board; and

“(B) secure the agreement of any foreign public accounting firm to such production, as a condition of its reliance on the work of that foreign public accounting firm.”;

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following new subsections:

“(d) SERVICE OF REQUESTS OR PROCESS.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic firm a written irrevocable consent and power of attorney that designates the domestic firm as an agent upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section. Any foreign public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, shall designate to the Commission or the Board an agent in the United States upon whom may be served any process, pleading, or other papers in any action brought to enforce this section or any request by the Commission or the Board under this section.

“(e) SANCTIONS.—A willful refusal to comply, in whole or in part, with any request by the Commission or the Board under this section, shall be a violation of this Act.

“(f) MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provision of this section, the staff of the Commission or Board may allow foreign public accounting firms subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or Board.”.

#### SEC. 7604. CONFORMING AMENDMENT RELATED TO REGISTRATION.

Section 102(b)(3)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S. Code 7212(b)(3)(A)) is

amended by striking “by the Board” and inserting “by the Commission or the Board”.

#### SEC. 7605. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

(1) by amending subsection (a) to read as follows:

“(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commission obtains a civil penalty against any person for a violation of such laws or the rules and regulations thereunder, or such person agrees in settlement of any such action to such civil penalty, the amount of such civil penalty or settlement shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.”;

(2) in subsection (b), by—

(A) striking “for a disgorgement fund described in subsection (a)” and inserting “for a disgorgement fund or other fund described in subsection (a)”;

(B) striking “in the disgorgement fund” and inserting “in such fund”; and

(3) by striking subsection (e).

#### SEC. 7606. EXEMPTION FOR NONACCELERATED FILERS.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

“(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is not an accelerated filer within the meaning Rule 12b-2 of the Commission (17 C.F.R. 240.12b-2).”.

(b) STUDY.—The Securities and Exchange Commission and the Comptroller General shall jointly conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between \$75,000,000 and \$250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 180 days after the date of the enactment of this subtitle, the Commission and the Comptroller General shall transmit a report of such study to Congress.

#### SEC. 7607. WHISTLEBLOWER PROTECTION AGAINST RETALIATION BY A SUBSIDIARY OF AN ISSUER.

Section 1514A(a) of title 18, United States Code, is amended by inserting “including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company,” after “(15 U.S.C. 78o(d)).”.

#### SEC. 7608. CONGRESSIONAL ACCESS TO INFORMATION.

Section 101 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

“(i) CONGRESSIONAL ACCESS TO INFORMATION.—Nothing in this section shall—

“(1) affect the Boards obligations, if any, to provide access to records under the Right to Financial Privacy Act; or

“(2) authorize the Board to withhold information from Congress or prevent the Board

from complying with an order of a court of the United States in an action commenced by the United States or the Board.”.

#### **SEC. 7609. CREATION OF OMBUDSMAN FOR THE PCAOB.**

(a) OMBUDSMAN.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.), as amended by section 7601(a)(1), is further amended by adding at the end the following new section:

##### **“SEC. 111. OMBUDSMAN.**

“(a) ESTABLISHMENT REQUIRED.—Not later than 180 days after the date of enactment of the Investor Protection Act, the Board shall appoint an ombudsman for the Board. The Ombudsman shall report directly to the Chairman.

“(b) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subsection (a) for the Board shall—

“(1) act as a liaison between the Board and—

“(A) any registered public accounting firm or issuer with respect to issues or disputes concerning the preparation or issuance of any audit report with respect to that issuer; and

“(B) any affected registered public accounting firm or issuer with respect to—

“(i) any problem such firm or issuer may have in dealing with the Board resulting from the regulatory activities of the Board, particularly with regard to the implementation of section 404; and

“(ii) issues caused by the relationships of registered public accounting firms and issuers generally; and

“(2) assure that safeguards exist to encourage complainants to come forward and to preserve confidentiality; and

“(3) carry out such activities, and any other activities assigned by the Board, in accordance with guidelines prescribed by the Board.”.

(b) CONFORMING AMENDMENT.—The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 110 (as added by section 601(a)(2)) the following new item:

“Sec. 111. Ombudsman.”.

#### **SEC. 7610. AUDITING OVERSIGHT BOARD.**

The Sarbanes-Oxley Act of 2002 is amended—

(1) in section 2(a)(5), by striking “Public Company Accounting Oversight Board” and inserting “Auditing Oversight Board”;

(2) in section 101(a), by striking “Public Company Accounting Oversight Board” and inserting “Auditing Oversight Board”;

(3) in the heading of title I, by striking “PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD” and inserting “AUDITING OVERSIGHT BOARD”.

#### **PART 7—SENIOR INVESTMENT PROTECTION**

##### **SEC. 7701. FINDINGS.**

Congress finds that—

(1) many seniors are targeted by salespersons and advisers using misleading certifications and professional designations;

(2) many certifications and professional designations used by salespersons and advisers represent limited training or expertise, and may in fact be of no value with respect to advising seniors on financial and estate planning matters, and far too often, such designations are obtained simply by attending a weekend seminar and passing an open book, multiple choice test;

(3) many seniors have lost their life savings because salespersons and advisers holding a misleading designation have steered them toward products that were unsuitable

for them, given their retirement needs and life expectancies;

(4) seniors have a right to clearly know whether they are working with a qualified adviser who understands the products and is working in their best interest or a self-interested salesperson or adviser advocating particular products; and

(5) many existing State laws and enforcement measures addressing the use of certifications, professional designations, and suitability standards in selling financial products to seniors are inadequate to protect senior investors from salespersons and advisers using such designations.

##### **SEC. 7702. DEFINITIONS.**

For purposes of this part:

(1) MISLEADING DESIGNATION.—The term “misleading designation”—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) it has been offered by an academic institution having regional accreditation; or

(ii) it meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this part referred to as the “NASAA”) Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto, or it was issued by or obtained from any State.

(2) FINANCIAL PRODUCT.—The term “financial product” means securities, insurance products (including insurance products which pay a return, whether fixed or variable), and bank and loan products.

(3) MISLEADING OR FRAUDULENT MARKETING.—The term “misleading or fraudulent marketing” means the use of a misleading designation when selling to or advising a senior about the sale of a financial product.

(4) SENIOR.—The term “senior” means any individual who has attained the age of 62 years or more.

(5) STATE.—The term “State” means each of the 50 States, the District of Columbia, and the unincorporated territories of Puerto Rico and the U.S. Virgin Islands.

##### **SEC. 7703. GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLED BY FALSE DESIGNATIONS.**

(a) GRANT PROGRAM.—The Securities and Exchange Commission (in this part referred to as the “Commission”)—

(1) shall establish a program in accordance with this part to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or

(B) to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this part as the Commission determines are necessary to carry out and assess the effectiveness of the program under this part.

(b) USE OF GRANT AMOUNTS.—A grant under this part may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations; and

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors.

##### **(c) GRANT REQUIREMENTS.—**

(1) MAXIMUM.—The amount of a grant under this part may not exceed \$500,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to \$100,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto.

(3) SUITABILITY RULES FOR SECURITIES.—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements imposed by self-regulatory organization rules under the securities laws (as defined in section 3 of the Securities Exchange Act of 1934).

(4) STANDARD DESIGNATION RULES FOR INSURANCE PRODUCTS.—A State shall have adopted standard rules on the appropriate use of designations in the sale of insurance products, which shall, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the date of the enactment of this subtitle, or any successor thereto.

(5) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—

(A) IN GENERAL.—A State shall have adopted rules governing insurer supervision of, suitability of, and insurer and insurance producer conduct relating to, the sale of annuity products, including fixed and index annuities.

(B) ANNUITY PRODUCTS CRITERIA.—The rules required by subparagraph (A) shall, to the extent practicable, provide—

(i) that insurers, and insurance producers are responsible for, and liable for penalties for, the suitability of each recommended annuity transaction;

(ii) that insurers and insurance producers are required to apply a standard for determining the suitability of each recommended annuity transaction, including fixed and index annuities, that is at least as protective of the interests of the consumer as rule 2821(b) of the Financial Industry Regulatory Authority (in this paragraph referred to as “FINRA”), as in effect on the date of the enactment of this subtitle, or any successor to such rule;

(iii) that insurers and insurance producers are required to maintain a process for review of the suitability, and approval or disapproval, of each recommended annuity transaction that is at least as protective of the interests of the consumer as the principal review required under rule 2821(c) of FINRA, as in effect on the date of the enactment of this subtitle, or any successor to such rule;

(iv) that insurers and insurance producers are required to maintain processes for the supervision of direct annuity sales and insurance producer-recommended annuity sales (including procedures for the insurer to obtain and confirm consumer suitability information and for the insurer to confirm consumer understanding of the annuity transaction) that are at least as protective of the interests of the consumer as member broker and dealer supervision requirements of FINRA, as in effect on the date of the enactment of this subtitle, or any successor to such requirements;

(v) that insurers are required to verify that each insurance producer successfully completes, and each insurance producer is required to receive, training designed to ensure that the insurance producer is competent to recommend each class of annuity;

(vi) that insurers are required to verify that insurance producers receive, and insurance producers are required to receive, training regarding the features of each offered annuity product, to an extent that is at least as protective of the interests of the consumer as the FINRA firm element training requirements, as in effect on the date of the enactment of this subtitle, or any successor to such requirements;

(vii) for coordination of such rules with the rules of FINRA governing member brokers, dealers, and security representatives, to the extent appropriate, consistent with protecting the interests of consumers, for State insurance regulators to rely on, or to avoid duplication of FINRA rules; and

(viii) for exemption from such rules only if such exemption is consistent with the protection of consumers.

#### SEC. 7704. APPLICATIONS.

To be eligible for a grant under this part, the State or appropriate State agency shall submit to the Commission a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying senior victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of mis-

leading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.

#### SEC. 7705. LENGTH OF PARTICIPATION.

A State receiving a grant under this part shall be provided assistance funds for a period of 3 years, after which the State may re-apply for additional funding.

#### SEC. 7706. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part, \$8,000,000 for each of the fiscal years 2011 through 2015.

### PART 8—REGISTRATION OF MUNICIPAL FINANCIAL ADVISORS

#### SEC. 7801. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (as amended by section 3204) is amended by inserting after section 15F (15 U.S.C. 78o-7) the following new section:

#### “SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

“(a)(1)(A) It shall be unlawful for any person to make use of the mails or any means or instrumentality of interstate commerce to act as a municipal financial adviser unless such person is registered as a municipal financial adviser in accordance with subsection (b).

“(B) Subparagraph (A) shall not apply to a natural person associated with a municipal financial adviser, as long as such adviser is registered in accordance with subsection (b) and is not a natural person.

“(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this section any municipal financial adviser or class of municipal financial advisers specified in such rule or order.

“(b)(1) A municipal financial adviser may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal financial adviser and any persons associated with such municipal financial adviser as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

“(A) by order grant registration, or

“(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4).

“(2) An application for registration of a municipal financial adviser to be formed or organized may be made by a municipal fi-

nancial adviser to which the municipal financial adviser to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the 45th day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

“(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal financial adviser or any person acting on behalf of such a municipal financial adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

“(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any municipal financial adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such municipal financial adviser, whether prior or subsequent to becoming such, or any person associated with such municipal financial adviser, whether prior or subsequent to becoming so associated—

“(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein;

“(B) has been convicted within 10 years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

“(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

“(ii) arises out of the conduct of the business of a municipal financial adviser, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above,

or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

“(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

“(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of a substantially equivalent foreign statute;

“(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as a municipal financial adviser, investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

“(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or is unable to comply with any such provision;

“(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph, no person shall be deemed to have failed reasonably to supervise any other person, if—

“(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

“(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

“(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a municipal financial adviser;

“(G) has been found by a foreign financial regulatory authority to have—

“(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regu-

latory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

“(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

“(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

“(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

“(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

“(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

“(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal financial adviser may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal financial adviser is no longer in existence or has ceased to do business as a municipal financial adviser, the Commission, by order, shall cancel the registration of such municipal financial adviser.

“(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a municipal financial adviser, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a municipal financial adviser, if the Commission

finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;

“(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

“(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

“(B) It shall be unlawful—

“(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a municipal financial adviser in contravention of such order; or

“(ii) for any municipal financial adviser to permit such a person, without the consent of the Commission, to become or remain, a person associated with the municipal financial adviser in contravention of such order, or in the exercise of reasonable care should have known, of such order.

“(7) No registered municipal financial adviser shall act as such unless it meets such standards of operational capability and such municipal financial adviser and all natural persons associated with such municipal financial adviser meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

“(A) specify that all or any portion of such standards shall be applicable to any class of municipal financial advisers and persons associated with municipal financial advisers;

“(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations) engaged in the management of the municipal financial adviser, include questions relating to bookkeeping, accounting, supervision of employees, maintenance of records, and other appropriate matters; and

“(C) provide that persons in any such class other than municipal financial advisers and partners, officers, and supervisory employees of municipal financial advisers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction.

“(c)(1)(A) No municipal financial adviser shall make use of the mails or any means or instrumentality of interstate commerce in connection with which such municipal financial adviser engages in any fraudulent, deceptive, or manipulative act or practice or violates such rules and regulations regarding conflicts of interest or fair practices, including but not limited to rules and regulations related to political contributions, as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets.



“(B) The Commission shall, for the purposes of this paragraph as the Commission finds necessary or appropriate in the public interest or for the protection of investors, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

“(2) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

“(d) Every registered municipal financial adviser shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such municipal financial adviser's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such municipal financial adviser or any person associated with such municipal financial adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

“(e) A municipal financial adviser and any person associated with such municipal financial adviser shall be deemed to have a fiduciary duty to any municipal securities issuer for whom such municipal financial adviser acts as a municipal financial adviser. A municipal financial adviser may not engage in any act, practice, or course of business which is not consistent with a municipal financial adviser's fiduciary duty. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are not consistent with a municipal financial adviser's fiduciary duty to its clients.”

(b) **DEFINITION.**—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by section 3201(6)) is amended by adding at the end the following new paragraphs:

“(78) **MUNICIPAL FINANCIAL ADVISER.**—

“(A) The term ‘municipal financial adviser’ means a person who, for compensation, engages in the business of—

“(i) providing advice to a municipal securities issuer with respect to—

“(I) the issuance or proposed issuance of securities, including any remarketing of municipal securities directly or indirectly by or on behalf of a municipal securities issuer;

“(II) the investment of proceeds from securities issued by such municipal securities issuer;

“(III) the hedging of any risks associated with subclauses (I) or (II), including advice as to swap agreements (as defined in section 206A of the Gramm-Leach-Bliley Act regardless of whether the counterparties constitute eligible contract participants); or

“(IV) preparation of disclosure documents in connection with the issuance, proposed

issuance, or previous issuance of securities issued by a municipal securities issuer, including, without limitation, official statements and documents prepared in connection with a written agreement or contract for the benefit of holders of such securities described in section 240.15c2-12 of title 17, Code of Federal Regulations;

“(ii) assisting a municipal securities issuer in selecting or negotiating guaranteed investment contracts or other investment products; or

“(iii) assisting any municipal securities issuer in the primary offering of securities not involving a public offering.

“(B) Such term does not include—

“(i) an attorney, if the attorney is offering advice or providing services that are of a traditional legal nature;

“(ii) a nationally recognized statistical rating organization to the extent it is involved in the process of developing credit ratings;

“(iii) a registered broker-dealer when acting as an underwriter, as such term is defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. section 77b(a)(11)); or

“(iv) a State or any political subdivision thereof.

“(79) **MUNICIPAL SECURITIES ISSUER.**—The term ‘municipal securities issuer’ means—

“(A) any entity that has the ability to issue a security the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1986 and the regulations thereunder; or

“(B) any person who receives the proceeds generated from the issuance of municipal securities.

“(80) **PERSON ASSOCIATED WITH A MUNICIPAL FINANCIAL ADVISER; ASSOCIATED PERSON OF A MUNICIPAL FINANCIAL ADVISER.**—The term ‘person associated with a municipal financial adviser’ or ‘associated person of a municipal financial adviser’ means any partner, officer, director, or branch manager of such municipal financial adviser (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such municipal financial adviser, or any employee of such municipal financial adviser, except that any person associated with a municipal financial adviser whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15G(b) (other than paragraph (6) thereof).”

**SEC. 7802. CONFORMING AMENDMENTS.**

(a) **SECURITIES EXCHANGE ACT OF 1934.**—The Securities Exchange Act of 1934 is amended—

(1) in section 15(b)(4)(B)(ii) (15 U.S.C. 78o(b)(4)(B)(ii)), by inserting “municipal finance adviser,” after “nationally recognized statistical rating organization,”;

(2) in section 15(b)(4)(C) (15 U.S.C. 78o(b)(4)(C)), by inserting “municipal finance adviser,” after “nationally recognized statistical rating organization,”; and

(3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)), by inserting “registered municipal financial adviser,” after “nationally recognized statistical rating organization.”

(b) **INVESTMENT COMPANY ACT OF 1940.**—The Investment Company Act of 1940 is amended—

(1) in section 2(a) (15 U.S.C. 80a-2(a)), by inserting at the end the following new paragraph:

“(54) The term ‘municipal finance adviser’ has the same meaning as in section 3 of the Securities Exchange Act of 1934.”;

(2) in section 9(a)(1) (15 U.S.C. 80a-9(a)(1)), by inserting “municipal finance adviser,” after “credit rating agency,”; and

(3) in section 9(a)(2) (15 U.S.C. 80a-9(a)(2)), by inserting “municipal finance adviser,” after “credit rating agency.”

(c) **INVESTMENT ADVISERS ACT OF 1940.**—The Investment Advisers Act of 1940 is amended—

(1) in section 202(a) (15 U.S.C. 80b-2(a)), by inserting at the end the following new paragraph:

“(31) The term ‘municipal finance adviser’

has the same meaning as in section 3 of the Securities Exchange Act of 1934.”;

(2) in section 203(e)(2)(B) (15 U.S.C. 80b-3(e)(2)(B)), by inserting “municipal finance adviser,” after “credit rating agency,”; and

(3) in section 203(e)(4) (15 U.S.C. 80b-3(e)(4)) is amended by inserting “municipal finance adviser,” after “credit rating agency.”

**SEC. 7803. EFFECTIVE DATES.**

(a) **IN GENERAL.**—The amendments made by this part shall take effect 30 days after the date of the enactment of this subtitle.

(b) **EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.**—Notwithstanding subsection (a), the Securities and Exchange Commission shall, within 120 days after the date of the enactment of this subtitle, publish for notice and public comment such regulations as are initially required to implement this part, and shall take final action with respect to such regulations not later than 270 days after the date of enactment of this subtitle.

(c) **REGISTRATION DATE.**—No person may continue to act as a municipal financial adviser, as such term is defined in section 3(a)(65) of the Securities Exchange Act of 1934 (as added by this part), after 30 days after the date the regulations described in subsection (b) become effective unless such person has been registered as required by the amendment made by section 7701 of this part.

## TITLE VI—FEDERAL INSURANCE OFFICE

### SEC. 8001. SHORT TITLE.

This title may be cited as the “Federal Insurance Office Act of 2009”.

### SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.

(a) **ESTABLISHMENT OF OFFICE.**—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312 after section 313;

(2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

#### “SEC. 313. FEDERAL INSURANCE OFFICE.

“(a) **ESTABLISHMENT OF OFFICE.**—There is established the Federal Insurance Office as an office in the Department of the Treasury.

“(b) **LEADERSHIP.**—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

“(c) **FUNCTIONS.**—

“(1) **AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.**—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

“(A) To monitor the insurance industry to gain expertise.

“(B) To identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system.

“(C) To recommend to the Financial Services Oversight Council that it designate an insurer, including its affiliates, as an entity subject to stricter standards.

“(D) To assist the Secretary in administering the Terrorism Insurance Program

established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

“(E) To coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors or any successor organization and assisting the Secretary in negotiating covered agreements.

“(F) To determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements.

“(G) To consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance.

“(H) To perform such other related duties and authorities as may be assigned to it by the Secretary.

“(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

“(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

“(e) GATHERING OF INFORMATION.—

“(1) GENERAL.—In carrying out its functions under subsection (c), the Office may request, receive, and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

“(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3) and subject to paragraph (4), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c). Notwithstanding subsection (p) and for the purposes of this paragraph only, the term ‘insurer’ means any entity that is authorized to write insurance or reinsure risks and issue contracts or policies in one or more States.

“(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that may be established by the Office by order or rule. Such threshold shall be appropriate to the particular request and need for the data or information.

“(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, or may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, or may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or

information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act) in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

“(5) CONFIDENTIALITY.—

“(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(B) Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

“(C) Any data or information obtained by the Office may be made available to State insurance regulators individually or collectively through an information sharing agreement that shall comply with applicable Federal law and that shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(D) Section 552 of title 5, United States Code, shall apply to any data or information submitted by an insurer or affiliate of an insurer.

“(f) PREEMPTION OF STATE INSURANCE MEASURES.—

“(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

“(A) directly results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State; and

“(B) is inconsistent with a covered agreement that is entered into on a date after the date of the enactment of this Act.

“(2) DETERMINATION.—

“(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination of inconsistency, the Director shall—

“(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

“(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

“(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

“(iv) provide interested parties a reasonable opportunity to submit written comments to the Office;

“(v) consider the effect of preemption on—  
“(I) the protection of policyholders and policy claimants;

“(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

“(III) ensuring the integrity and stability of the United States financial system; and

“(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

“(vi) consider any comments received.

The Director shall provide the notifications required under clauses (i), (ii), and (iii) contemporaneously.

“(B) SCOPE OF REVIEW.—For purposes of this section, the Director’s determination of State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the covered agreement involved.

“(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination of inconsistency, the Director shall—

“(i) notify the appropriate State of the determination and the extent of the inconsistency;

“(ii) establish a reasonable period of time, which shall not be shorter than 90 days, before the determination shall become effective; and

“(iii) notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the inconsistency.

“(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

“(A) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

“(B) notify the appropriate State.

“(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

“(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.—Determinations of inconsistency pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

“(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

“(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually and collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

“(j) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) preempt any State insurance measure that governs any insurer’s rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

“(2) preempt any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State

insurance measure directly results in less favorable treatment of a non-United States insurer than a United States insurer;

“(3) be construed to alter, amend, or limit the responsibility of the Consumer Financial Protection Agency;

“(4) preempt any State insurance measure because of inconsistency with any agreement that is not a covered agreement (as such term is defined in subsection (p)); or

“(5) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

“(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish a general supervisory or regulatory authority of the Office or the Department of the Treasury over the business of insurance.

“(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multi-national regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

“(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

“(n) REPORTS TO CONGRESS.—

“(1) ANNUAL REPORT.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on the insurance industry, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

“(2) OTHER REPORTS.—The Director shall submit to the President and the Committees referred to in paragraph (1) any other information or reports as deemed relevant by the Director or as requested by the Chairman or Ranking Member of any of such Committees.

“(o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

“(p) DEFINITIONS.—For purposes of this section and section 314, the following definitions shall apply:

“(1) AFFILIATE.—The term ‘affiliate’ means, with respect to an insurer, any person that controls, is controlled by, or is under common control with the insurer.

“(2) COVERED AGREEMENT.—The term ‘covered agreement’ means a written bilateral or multilateral recognition agreement that—

“(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

“(B) provides for recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance

consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

“(3) DETERMINATION OF INCONSISTENCY.—The term ‘determination of inconsistency’ means a determination that a State insurance measure is preempted under subsection (f).

“(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term ‘Federal financial regulatory agency’ means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

“(5) INSURER.—The term ‘insurer’ means any person engaged in the business of insurance, including reinsurance.

“(6) NON-UNITED STATES INSURER.—The term ‘non-United States insurer’ means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

“(7) OFFICE.—The term ‘Office’ means the Federal Insurance Office established by this section.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(9) STATE.—The term ‘State’ means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

“(10) STATE INSURANCE MEASURE.—The term ‘State insurance measure’ means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

“(11) STATE INSURANCE REGULATOR.—The term ‘State insurance regulator’ means any State regulatory authority responsible for the supervision of insurers.

“(12) UNITED STATES INSURER.—The term ‘United States insurer’ means—

“(A) an insurer that is organized under the laws of a State; or

“(B) a United States branch of a non-United States insurer.

“(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office such sums as may be necessary for each fiscal year.

#### “SEC. 314. COVERED AGREEMENTS.

“(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

“(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

“(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

“(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

“(A) the nature of the agreement;

“(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

“(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

“(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

“(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

“(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.”

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking “and” at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.”

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Federal Insurance Office.

“Sec. 314. Covered agreements.

“Sec. 315. Continuing in office.”

#### SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.

Not later than September 30, 2011, the Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States.

#### SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT OF INSURANCE REGULATION IN THE UNITED STATES.

(a) STUDY.—The Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall conduct a study on how to modernize and improve the system of insurance regulation in the United States. Such study shall include consideration of the following:

(1) Effective systemic risk regulation with respect to insurance.

(2) Strong capital standards and an appropriate match between capital allocation and liabilities for all risk.

(3) Meaningful and consistent consumer protection for insurance products and practices.

(4) Increased national uniformity through either a Federal charter or effective action by the States.

(5) Improved and broadened regulation of insurance companies and affiliates on a consolidated basis, including affiliates outside of the traditional insurance business.

(6) International coordination.

(b) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) the results of the study conducted under subsection (a); and

(2) any legislative, administrative, or regulatory recommendations that the Director considers appropriate to modernize and improve the system of insurance regulation in the United States.

(c) **CONSULTATION.**—In carrying out subsections (a) and (b), the Director shall consult with State insurance commissioners, consumer organizations, representatives of the insurance industry, policyholders, and other persons, as the Director considers appropriate.

## **TITLE VII—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT**

### **SEC. 9000. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.**

(a) **SHORT TITLE.**—This title may be cited as the “Mortgage Reform and Anti-Predatory Lending Act”.

(b) **DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE CONSUMER FINANCIAL PROTECTION AGENCY.**—Subtitles A, B, C, and E and sections 9501, 9502, and 9506, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 4002(16), and come under the purview of the Consumer Financial Protection Agency for purposes of title IV, including the transfer of functions and personnel under subtitle F of title IV and the savings provisions of such subtitle.

### **Subtitle A—Residential Mortgage Loan Origination Standards**

#### **SEC. 9001. DEFINITIONS.**

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

“(cc) **DEFINITIONS RELATING TO MORTGAGE ORIGINATOR AND RESIDENTIAL MORTGAGE LOANS.**—

“(1) **COMMISSION.**—Unless otherwise specified, the term ‘Commission’ means the Federal Trade Commission.

“(2) **FEDERAL BANKING AGENCIES.**—The term ‘Federal banking agencies’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board. All rule writing by the ‘Federal banking agencies’ as designated by the Mortgage Reform and Anti-Predatory Lending Act will be coordinated through the Financial Institutions Examination Council in consultation with the Chairman of the State Liaison Committee.

“(3) **MORTGAGE ORIGINATOR.**—The term ‘mortgage originator’—

“(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

“(i) takes a residential mortgage loan application;

“(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

“(iii) offers or negotiates terms of a residential mortgage loan;

“(B) includes any person who represents to the public, through advertising or other means of communicating or providing infor-

mation (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

“(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);

“(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated for performing such brokerage activities by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

“(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 1 property in any 36-month period, provided that such loan—

“(i) is fully amortizing;

“(ii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

“(iii) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

“(iv) meets any other criteria the Federal banking agencies may prescribe; and

“(F) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

“(4) **NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.**—The term ‘Nationwide Mortgage Licensing System and Registry’ has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

“(5) **OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.**—For purposes of this subsection, a person ‘assists a consumer in obtaining or applying to obtain a residential mortgage loan’ by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

“(6) **RESIDENTIAL MORTGAGE LOAN.**—The term ‘residential mortgage loan’ means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), and (18), and 128(f) and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

“(7) **SECRETARY.**—The term ‘Secretary’, when used in connection with any trans-

action or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

“(8) **SECURITIZATION VEHICLE.**—The term ‘securitization vehicle’ means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

“(A) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

“(B) holds such loans.

“(9) **SECURITIZER.**—The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, residential mortgage loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans solely for the benefit of the securitization vehicle.

“(10) **SERVICER.**—The term ‘servicer’ has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.”.

### **SEC. 9002. RESIDENTIAL MORTGAGE LOAN ORIGINATOR.**

(a) **IN GENERAL.**—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129A the following new section:

#### **“§ 129B. Residential mortgage loan origination**

“(a) **FINDING AND PURPOSE.**—

“(1) **FINDING.**—The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

“(2) **PURPOSE.**—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

“(b) **DUTY OF CARE.**—

“(1) **STANDARD.**—Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

“(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

“(B) with respect to each consumer seeking or inquiring about a residential mortgage loan, diligently work to present the consumer with a range of residential mortgage loan products for which the consumer likely qualifies and which are appropriate to the consumer’s existing circumstances, based on information known by, or obtained in good faith by, the originator;

“(C) make full, complete, and timely disclosure to each such consumer in writing, the receipt and understanding of which shall be acknowledged by the signature of the mortgage originator and the consumer, of—

“(i) the comparative costs and benefits of each residential mortgage loan product offered, discussed, or referred to by the originator (and such comparative costs and benefits for each such product shall be presented side by side and the disclosures for each such product shall have equal prominence);

“(ii) the nature of the originator’s relationship to the consumer (including the cost of the services to be provided by the originator and a statement that the mortgage originator is or is not acting as an agent for the consumer, as the case may be); and

“(iii) any relevant conflicts of interest between the originator and the consumer;

“(D) certify to the creditor, with respect to any transaction involving a residential mortgage loan, that the mortgage originator has fulfilled all requirements applicable to the originator under this section with respect to the transaction; and

“(E) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

“(2) CLARIFICATION OF EXTENT OF DUTY TO PRESENT RANGE OF PRODUCTS AND APPROPRIATE PRODUCTS.—

“(A) NO DUTY TO OFFER PRODUCTS FOR WHICH ORIGINATOR IS NOT AUTHORIZED TO TAKE AN APPLICATION.—Paragraph (1)(B) shall not be construed as requiring—

“(i) a mortgage originator to present to any consumer any specific residential mortgage loan product that is offered by a creditor which does not accept consumer referrals from, or consumer applications submitted by or through, such originator; or

“(ii) a creditor to offer products that the creditor does not offer to the general public.

“(B) APPROPRIATE LOAN PRODUCT.—For purposes of paragraph (1)(B), a residential mortgage loan shall be presumed to be appropriate for a consumer if—

“(i) the mortgage originator determines in good faith, based on then existing information and without undergoing a full underwriting process, that the consumer has a reasonable ability to repay and, in the case of a refinancing of an existing residential mortgage loan, receives a net tangible benefit, as determined in accordance with regulations prescribed under subsections (a) and (b) of section 129C; and

“(ii) the loan does not have predatory characteristics or effects (such as equity stripping and excessive fees and abusive terms) as determined in accordance with regulations prescribed under paragraph (4).

“(3) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

“(A) creating an agency or fiduciary relationship between a mortgage originator and a consumer if the originator does not hold himself or herself out as such an agent or fiduciary; or

“(B) restricting a mortgage originator from holding himself or herself out as an agent or fiduciary of a consumer subject to any additional duty, requirement, or limitation applicable to agents or fiduciaries under any Federal or State law.

“(4) REGULATIONS.—

“(A) IN GENERAL.—The Federal banking agencies, in consultation with the Secretary, and the Commission, shall jointly prescribe regulations to—

“(i) further define the duty established under paragraph (1);

“(ii) implement the requirements of this subsection;

“(iii) establish the time period within which any disclosure required under paragraph (1) shall be made to the consumer; and

“(iv) establish such other requirements for any mortgage originator as such regulatory agencies may determine to be appropriate to meet the purposes of this subsection.

“(B) COMPLEMENTARY AND NONDUPLICATIVE DISCLOSURES.—The agencies referred to in subparagraph (A) shall endeavor to make the

required disclosures to consumers under this subsection complementary and nonduplicative with other disclosures for mortgage consumers to the extent such efforts—

“(i) are practicable; and

“(ii) do not reduce the value of any such disclosure to recipients of such disclosures.

“(5) COMPLIANCE PROCEDURES REQUIRED.—The Federal banking agencies shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129 the following new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.

“129B. Residential mortgage loan origination.”.

#### SEC. 9003. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added by section 102(a)) is amended by inserting after subsection (b) the following new subsection:

“(c) PROHIBITION ON STEERING INCENTIVES.—

“(1) IN GENERAL.—For any mortgage loan, the total amount of direct and indirect compensation from all sources permitted to a mortgage originator may not vary based on the terms of the loan (other than the amount of the principal).

“(2) RESTRUCTURING OF FINANCING ORIGINATION FEE.—

“(A) IN GENERAL.—For any mortgage loan, a mortgage originator may not arrange for a consumer to finance through rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor or mortgage originator.

“(B) EXCEPTION.—Notwithstanding paragraph subparagraph (A), a mortgage originator may arrange for a consumer to finance through rate an origination fee or cost if—

“(i) the mortgage originator does not receive any other compensation from the consumer except the compensation that is financed through rate; and

“(ii) the mortgage is a qualified mortgage.

“(3) REGULATIONS.—The Federal banking agencies, in consultation with the Secretary and the Commission, shall jointly prescribe regulations to prohibit—

“(A) mortgage originators from steering any consumer to a residential mortgage loan that—

“(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a));

“(ii) in the case of a refinancing of a residential mortgage loan, does not provide the consumer with a net tangible benefit (in accordance with regulations prescribed under section 129C(b)); or

“(iii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

“(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(c)(3)) to a residential mortgage loan that is not a qualified mortgage;

“(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age;

“(D) mortgage originators from assessing excessive points and fees (as such term is described under section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4))) to a consumer for the origination of a residential mortgage loan based on such consumer’s decision to finance all or part of the payment through the rate for such points and fees; and

“(E) mortgage originators from—

“(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

“(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

“(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a home mortgage loan secured by a consumer’s principal dwelling from another mortgage originator.

“(4) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

“(A) permitting yield spread premiums or other similar incentive compensation;

“(B) affecting the mechanism for providing the total amount of direct and indirect compensation permitted to a mortgage originator;

“(C) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

“(D) restricting a consumer’s ability to finance, including through principal, any origination fees or costs permitted under this subsection, or the mortgage originator’s ability to receive such fees or costs (including compensation) from any person, so long as such fees or costs were fully and clearly disclosed to the consumer earlier in the application process as required by 129B(b)(1)(C)(i) and do not vary based on the terms of the loan (other than the amount of the principal) or the consumer’s decision about whether to finance such fees or costs; or

“(E) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.”.

#### SEC. 9004. LIABILITY.

Section 129B of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 103) the following new subsection:

“(d) LIABILITY FOR VIOLATIONS.—

“(1) IN GENERAL.—For purposes of providing a cause of action for any failure by a mortgage originator to comply with any requirement imposed under this section and any regulation prescribed under this section, subsections (a) and (b) of section 130 shall be applied with respect to any such failure by substituting ‘mortgage originator’ for ‘creditor’ each place such term appears in each such subsection.

“(2) MAXIMUM.—The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved

in the violation, plus the costs to the consumer of the action, including a reasonable attorney's fee."

#### SEC. 9005. REGULATIONS.

(a) DISCRETIONARY REGULATORY AUTHORITY.—Section 129B of the Truth in Lending Act is amended by inserting after subsection (d) (as added by section 104) the following new subsection:

"(e) DISCRETIONARY REGULATORY AUTHORITY.—

"(1) IN GENERAL.—The Federal banking agencies shall, by regulations issued jointly, prohibit or condition terms, acts or practices relating to residential mortgage loans that the agencies find to be abusive, unfair, deceptive, predatory, inconsistent with reasonable underwriting standards, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 129B, necessary or proper to effectuate the purposes of this section and section 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

"(2) APPLICATION.—The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105.

"(f) Section 129B and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code."

(b) EFFECTIVE DATE.—The regulations required or authorized to be prescribed under this subtitle or the amendments made by this subtitle—

(1) shall be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act; and

(2) shall take effect not later than 18 months after the date of the enactment of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 129(1)(2) of the Truth in Lending Act (15 U.S.C. 1639(1)(2)) is amended by inserting "referred to in section 103(aa)" after "loans" each place such term appears.

#### SEC. 9006. STUDY OF SHARED APPRECIATION MORTGAGES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities for affordable homeownership, and enable homeowners at-risk of foreclosure to refinance or modify their mortgages.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit a report to the Congress on the results of the study, which shall include recommendations for the regulatory and legislative requirements referred to in subsection (a).

#### Subtitle B—Minimum Standards For Mortgages

#### SEC. 9101. ABILITY TO REPAY.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129B (as added by section 102(a)) the following new section:

#### "§ 129C. Minimum standards for residential mortgage loans

"(a) ABILITY TO REPAY.—

"(1) IN GENERAL.—In accordance with regulations prescribed jointly by the Federal banking agencies, in consultation with the Commission, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance, and assessments.

"(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance, and assessments.

"(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan.

"(4) INCOME VERIFICATION.—In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

"(A) Internal Revenue Service transcripts of tax returns provided by a third party; or

"(B) such other similar method that quickly and effectively verifies income documentation by a third party as the Federal banking agencies may jointly prescribe.

"(5) NONSTANDARD LOANS.—

"(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

"(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

"(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

"(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

"(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

"(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in

which case the calculation shall be made (I) in accordance with regulations prescribed by the Federal banking agencies, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

"(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

"(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which the sole net-tangible benefit to the mortgagor would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

"(i) consider the mortgagor's good standing on the existing mortgage;

"(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

"(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

"(6) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term 'fully indexed rate' means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

"(7) REVERSE MORTGAGES.—This subsection shall not apply with respect to any reverse mortgage."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B (as added by section 102(b)) the following new item:

"129C. Minimum standards for residential mortgage loans."

#### SEC. 9102. NET TANGIBLE BENEFIT FOR REFINANCING OF RESIDENTIAL MORTGAGE LOANS.

Section 129C of the Truth in Lending Act (as added by section 9101(a)) is amended by inserting after subsection (a) the following new subsection:

"(b) NET TANGIBLE BENEFIT FOR REFINANCING OF RESIDENTIAL MORTGAGE LOANS.—

"(1) IN GENERAL.—In accordance with regulations prescribed under paragraph (3), no creditor may extend credit in connection with any residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or obtained in good faith by the creditor, that the refinanced loan will provide a net tangible benefit to the consumer.

"(2) CERTAIN LOANS PROVIDING NO NET TANGIBLE BENEFIT.—A residential mortgage loan

that involves a refinancing of a prior existing residential mortgage loan shall not be considered to provide a net tangible benefit to the consumer if the costs of the refinanced loan, including points, fees and other charges, exceed the amount of any newly advanced principal without any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer.

“(3) **NET TANGIBLE BENEFIT.**—The Federal banking agencies shall jointly prescribe regulations defining the term ‘net tangible benefit’ for purposes of this subsection.”.

**SEC. 9103. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

Section 129C of the Truth in Lending Act is amended by inserting after subsection (b) (as added by section 9102) the following new subsection:

“(C) **PRESUMPTION OF ABILITY TO REPAY AND NET TANGIBLE BENEFIT.**—

“(1) **IN GENERAL.**—Any creditor with respect to any residential mortgage loan, and any assignee or securitizer of such loan, may presume that the loan has met the requirements of subsections (a) and (b), if the loan is a qualified mortgage.

“(2) **DEFINITIONS.**—For purposes of this subsection, the following definitions shall apply:

“(A) **QUALIFIED MORTGAGE.**—The term ‘qualified mortgage’ means any residential mortgage loan—

“(i) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a ‘non-traditional mortgage’ under guidance, advisories, or regulations prescribed by the Federal Banking Agencies;

“(ii) that does not provide for a repayment schedule that results in negative amortization at any time;

“(iii) for which the terms are fully amortizing and which does not result in a balloon payment, where a ‘balloon payment’ is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

“(iv) which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

“(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

“(v) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

“(vi) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

“(vii) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first seven years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

“(viii) that does not cause the consumer’s total monthly debts, including amounts under the loan, to exceed a percentage established by regulation of the consumer’s monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (4), and such rules shall also take into consideration the consumer’s income available to pay regular expenses after payment of all installment and revolving debt;

“(ix) for which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where ‘points and fees’ means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)); and

“(x) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (4).

“(B) **AVERAGE PRIME OFFER RATE.**—The term ‘average prime offer rate’ means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low risk pricing characteristics.

“(C) **REVERSE MORTGAGES.**—For purposes of this subsection, the term ‘qualified mortgage’ includes any reverse mortgage that complies with the condition established in subparagraph (A)(iv).

“(3) **PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.**—The Board—

“(A) shall publish, and update at least weekly, average prime offer rates;

“(B) may publish multiple rates based on varying types of mortgage transactions; and

“(C) shall adjust the thresholds of 1.50 percentage points in paragraph (2)(A)(iv)(I), 2.50 percentage points in paragraph (2)(A)(iv)(II), and 3.50 percentage points in paragraph (2)(A)(v)(III), as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

“(4) **REGULATIONS.**—

“(A) **IN GENERAL.**—The Federal banking agencies shall jointly prescribe regulations to carry out the purposes of this subsection.

“(B) **REVISION OF SAFE HARBOR CRITERIA.**—

“(i) **IN GENERAL.**—The Federal banking agencies may jointly prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

“(ii) **LOAN DEFINITION.**—The following agencies shall, in consultation with the Federal banking agencies, prescribe rules defining the types of loans they insure, guarantee or administer, as the case may be, that are Qualified Mortgages for purposes of subsection (c)(1)(A) upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections—

“(I) The Department of Housing and Urban Development, with regard to mortgages in-

sured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

“(II) The Secretary of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs;

“(III) The Secretary of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h);

“(IV) The Federal Housing Finance Agency, with regard to loans meeting the conforming loan standards of the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation; and

“(V) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.”.

**SEC. 9104. LIABILITY.**

Section 129C of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 9103) the following new subsection:

“(d) **LIABILITY FOR VIOLATIONS.**—

“(1) **IN GENERAL.**—

“(A) **RESCISSIION.**—In addition to any other liability under this title for a violation by a creditor of subsection (a) or (b) (for example under section 130) and subject to the statute of limitations in paragraph (9), a civil action may be maintained against a creditor for a violation of subsection (a) or (b) with respect to a residential mortgage loan for the rescission of the loan, and such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney’s fee.

“(B) **CURE.**—A creditor shall not be liable for rescission under subparagraph (A) with respect to a residential mortgage loan if, no later than 90 days after the receipt of notification from the consumer that the loan violates subsection (a) or (b), the creditor, acting in good faith, a cure.

“(2) **LIMITED ASSIGNEE AND SECURITIZER LIABILITY.**—Notwithstanding sections 125(e) and 131 and except as provided in paragraph (3), a civil action which may be maintained against a creditor with respect to a residential mortgage loan for a violation of subsection (a) or (b) may be maintained against any assignee or securitizer of such residential mortgage loan, who has acted in good faith, for the following liabilities only:

“(A) **Rescission of the loan.**

“(B) Such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney’s fee.

“(3) **ASSIGNEE AND SECURITIZER EXEMPTION.**—No assignee or securitizer of a residential mortgage loan that has exercised reasonable due diligence in complying with the requirements of subsections (a) and (b), consistent with reasonable due diligence practices prescribed by the Federal banking agencies, shall be liable under paragraph (2) with respect to such loan if, no later than 90 days after the receipt of notification from the consumer that the loan violates subsection (a) or (b), the assignee or securitizer provides a cure so that the loan satisfies the requirements of subsections (a) and (b).

“(4) **ABSENT PARTIES.**—

“(A) **ABSENT CREDITOR.**—Notwithstanding the exemption provided in paragraph (3), if the creditor with respect to a residential mortgage loan made in violation of subsection (a) or (b) has ceased to exist as a matter of law or has filed for bankruptcy protection under title 11, United States Code, or has had a receiver, conservator, or liquidating agent appointed, a consumer may maintain a civil action against an assignee



to cure the residential mortgage loan, plus the costs and reasonable attorney's fees incurred in obtaining such remedy.

“(B) ABSENT CREDITOR AND ASSIGNEE.—Notwithstanding the exemption provided in paragraph (3), if the creditor with respect to a residential mortgage loan made in violation of subsection (a) or (b) and each assignee of such loan have ceased to exist as a matter of law or have filed for bankruptcy protection under title 11, United States Code, or have had receivers, conservators, or liquidating agents appointed, the consumer may maintain the civil action referred to in subparagraph (A) against the securitizer.

“(5) CURE DEFINED.—For purposes of this subsection, the term ‘cure’ means, with respect to a residential mortgage loan that violates subsection (a) or (b), the modification or refinancing, at no cost to the consumer, of the loan to provide terms that satisfy the requirements of subsections (a) and (b) and the payment of such additional costs as the obligor may have incurred in connection with obtaining a cure of the loan, including a reasonable attorney's fee.

“(6) DISAGREEMENT OVER CURE.—If any creditor, assignee, or securitizer and a consumer fail to reach agreement on a cure with respect to a residential mortgage loan that violates subsection (a) or (b), or the consumer fails to accept a cure proffered by a creditor, assignee, or securitizer—

“(A) the creditor, assignee, or securitizer may provide the cure; and

“(B) the consumer may challenge the adequacy of the cure during the 6-month period beginning when the cure is provided.

If the consumer's challenge, under this paragraph, of a cure is successful, the creditor, assignee, or securitizer shall be liable to the consumer for rescission of the loan and such additional costs under paragraph (2).

“(7) INABILITY TO PROVIDE OR OBTAIN RESCISSION.—If a creditor, assignee, or securitizer cannot provide, or a consumer cannot obtain, rescission under paragraph (1) or (2), the liability of such creditor, assignee, or securitizer shall be met by providing the financial equivalent of a rescission, together with such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney's fee.

“(8) NO CLASS ACTIONS AGAINST ASSIGNEE OR SECURITIZER UNDER PARAGRAPH (2).—Only individual actions may be brought against an assignee or securitizer of a residential mortgage loan for a violation of subsection (a) or (b).

“(9) STATUTE OF LIMITATIONS.—The liability of a creditor, assignee, or securitizer under this subsection shall apply in any original action against a creditor under paragraph (1) or an assignee or securitizer under paragraph (2) which is brought before—

“(A) in the case of any residential mortgage loan other than a loan to which subparagraph (B) applies, the end of the 3-year period beginning on the date the loan is consummated; or

“(B) in the case of a residential mortgage loan that provides for a fixed interest rate for an introductory period and then resets or adjusts to a variable rate or that provides for a nonamortizing payment schedule and then converts to an amortizing payment schedule, the earlier of—

“(i) the end of the 1-year period beginning on the date of such reset, adjustment, or conversion; or

“(ii) the end of the 6-year period beginning on the date the loan is consummated.

“(10) TRUSTEES, POOLS, AND INVESTORS IN POOLS EXCLUDED.—In the case of residential mortgage loans acquired or aggregated for the purpose of including such loans in a pool of assets held for the purpose of issuing or selling instruments representing interests in such pools including through a securitization vehicle, the terms ‘assignee’ and ‘securitizer’, as used in this section, do not include the securitization vehicle, any trustee that holds such loans solely for the benefit of the securitization vehicle, the pools of such loans or any original or subsequent purchaser of any interest in the securitization vehicle or any instrument representing a direct or indirect interest in such pool.

“(e) OBLIGATION OF SECURITIZERS, AND PRESERVATION OF BORROWER REMEDIES.—

“(1) OBLIGATION TO RETAIN ACCESS.—Any securitizer of a residential mortgage loan sold or to be sold as part of a securitization vehicle shall, in any document or contract providing for the transfer, conveyance, or the establishment of such securitization vehicle, reserve the right and preserve the ability—

“(A) to identify and obtain access to any such loan;

“(B) to acquire any such loan in the event of a violation of subsection (a) or (b) of this section; and

“(C) to provide to the consumer any and all remedies provided for under this title for any violation of this title.

“(2) ADDITIONAL DAMAGES.—Any creditor, assignee, or securitizer of a residential mortgage loan that is subject to a remedy under subsection (d) and has failed to comply with paragraph (1) shall be subject to additional exemplary or punitive damages not to exceed the original principal balance of such loan.

“(3) CONTACT INFORMATION NOTICE.—The servicer with respect to a residential mortgage loan shall provide a written notice to a consumer identifying the name and contact information of the creditor or any assignee or securitizer who should be contacted by the consumer for any reason concerning the consumer's rights with respect to the loan. Such notice shall be provided—

“(A) upon request of the consumer;

“(B) whenever there is a change in ownership of a residential mortgage loan; or

“(C) on a regular basis, not less than annually.

“(f) RULES TO ESTABLISH PROCESS.—The Board shall promulgate rules to govern the rescission process established for violations of subsections (a) and (b) of this section. Such rules shall provide that notice given to a servicer or holder is sufficient notice regardless of the identity of the party or the parties liable under this title.”.

#### SEC. 9105. DEFENSE TO FORECLOSURE.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (f) (as added by section 9104) the following new subsections:

“(g) DEFENSE TO FORECLOSURE.—Notwithstanding any other provision of law—

“(1) when the holder of a residential mortgage loan or anyone acting for such holder initiates a judicial or nonjudicial foreclosure—

“(A) a consumer who has the right to rescind under this section with respect to such loan against the creditor or any assignee or securitizer may assert such right as a defense to foreclosure or counterclaim to such foreclosure against the holder, or

“(B) if the foreclosure proceeding begins after the end of the period during which a

consumer may bring an action for rescission under subsection (d) and the consumer would have had a valid basis for such an action if it had been brought before the end of such period, the consumer may seek actual damages incurred by reason of the violation which gave rise to the right of rescission, together with costs of the action, including a reasonable attorney's fee against the creditor or any assignee or securitizer; and

“(2) such holder or anyone acting for such holder or any other applicable third party may sell, transfer, convey, or assign a residential mortgage loan to a creditor, any assignee, or any securitizer, or their designees, subject to the rights of the consumer described in this subsection, to effect a rescission or cure.”.

#### SEC. 9106. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) IN GENERAL.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (g) (as added by section 9105) the following new subsections:

“(h) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

“(1) PROHIBITED ON CERTAIN LOANS.—A residential mortgage loan that is not a ‘qualified mortgage’ may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated. For purposes of this subsection, a ‘qualified mortgage’ may not include a residential mortgage loan that has an adjustable rate.

“(2) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (c)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

“(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

“(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

“(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

“(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

“(3) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

“(i) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), any credit life, credit disability, credit unemployment or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

“(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

“(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

“(j) ARBITRATION.—

“(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, other than a reverse mortgage, may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

“(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor, any assignee, or any securitizer to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

“(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

“(k) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

“(1) the creditor provides the consumer with a statement that—

“(A) the pending transaction will or may, as the case may be, result in negative amortization;

“(B) describes negative amortization in such manner as the Federal banking agencies shall prescribe;

“(C) negative amortization increases the outstanding principal balance of the account; and

“(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

“(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors cer-

tified by the Secretary of Housing and Urban Development as competent to provide such counseling.”.

(b) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended by inserting after paragraph (6) the following new paragraph:

“(7) sections 21B and 21C of the Securities Exchange Act of 1934, in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.”.

(c) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (k) (as added by subsection (a) of this section) the following new subsection (and designated succeeding subsections accordingly):

“(1) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

“(1) DEFINITION.—For purposes of this subsection, the term ‘anti-deficiency law’ means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

“(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

“(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.”.

(d) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (l) (as added by subsection (c)) the following new subsection:

“(m) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

“(1) the creditor's policy regarding the acceptance of partial payments; and

“(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.”.

SEC. 9107. RULE OF CONSTRUCTION.

Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act (as added by this subtitle), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or

remedy of any person under any other provision of the Truth in Lending Act or any other provision of Federal or State law.

SEC. 9108. EFFECT ON STATE LAWS.

(a) IN GENERAL.—Except as provided in subsection (b), section 129C(d) of the Truth in Lending Act (as added by section 9104) shall supersede any State law to the extent that it provides additional remedies against any assignee, securitizer, or securitization vehicle for a violation of subsection (a) or (b) of section 129C of such Act or any other State law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act, and the remedies described in section 129C(d) shall constitute the sole remedies against any assignee, securitizer, or securitization vehicle for such violations.

(b) RULES OF CONSTRUCTION.—No provision of this section shall be construed as limiting—

(1) the application of any State law, or the availability of remedies under such law, against a creditor for a particular residential mortgage loan regardless of whether such creditor also acts as an assignee, securitizer, or securitization vehicle for such loan;

(2) the application of any State law, or the availability of remedies under such law, against an assignee, securitizer, or securitization vehicle under State law, other than a provision of such law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act;

(3)(A) the application of any State law, or the availability of remedies under such law, against an assignee, securitizer or securitization vehicle for its participation in or direction of the credit or underwriting decisions of a creditor relating to the making of a residential mortgage loan; or

(B) the ability of a consumer to assert any rights against or obtain any remedies from an assignee, securitizer or securitization vehicle with respect to a residential mortgage loan as a defense to foreclosure under section 129C(g);

(4) the availability of any equitable remedies, including injunctive relief, under State law; or

(5) notwithstanding paragraph (2), the availability of any remedies under State law against any assignee, securitizer or securitization vehicle that—

(A) are in addition to those remedies provided for in section 129C; and

(B) were in effect on the date of enactment of this Act.

SEC. 9109. REGULATIONS.

Regulations required or authorized to be prescribed under this subtitle or the amendments made by this subtitle—

(1) shall be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act; and

(2) shall take effect not later than 18 months after the date of the enactment of this Act.

SEC. 9110. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

(a) INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.—Section 130(a)(2) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is amended—

(1) by striking “\$100” and inserting “\$200”;

(2) by striking “\$1,000” and inserting “\$2,000”; and

(3) by striking “\$500,000” and inserting “\$1,000,000”.

(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.—Section 130(e) of

the Truth in Lending Act (15 U.S.C. 1640(e)) is amended—

(1) in the first sentence, by striking “Any action” and inserting “Except as provided in the subsequent sentence, any action”; and

(2) by inserting after the first sentence the following new sentence: “Any action under this section with respect to any violation of section 129 may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.”.

**SEC. 9111. LENDER RIGHTS IN THE CONTEXT OF BORROWER DECEPTION.**

Section 130 of the Truth in Lending Act is amended by adding at the end the following new subsection:

“(k) **EXEMPTION FROM LIABILITY AND RESCISSION IN CASE OF BORROWER FRAUD OR DECEPTION.**—In addition to any other remedy available by law or contract, no creditor, assignee, or securitizer shall be liable to an obligor under this section, nor shall it be subject to the right of rescission of any obligor under 129B, if such obligor, or co-obligor, knowingly, or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining such residential mortgage loan.”.

**SEC. 9112. SIX-MONTH NOTICE REQUIRED BEFORE RESET OF HYBRID ADJUSTABLE RATE MORTGAGES.**

(a) **IN GENERAL.**—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 128 the following new section:

**“§ 128A. Reset of hybrid adjustable rate mortgages**

“(a) **HYBRID ADJUSTABLE RATE MORTGAGES DEFINED.**—For purposes of this section, the term ‘hybrid adjustable rate mortgage’ means a consumer credit transaction secured by the consumer’s principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

“(b) **NOTICE OF RESET AND ALTERNATIVES.**—During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

“(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

“(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

“(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

“(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

“(A) refinancing;

“(B) renegotiation of loan terms;

“(C) payment forbearances; and

“(D) pre-foreclosure sales.

“(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 128 the following new item:

“128A. Reset of hybrid adjustable rate mortgages.”.

**SEC. 9113. REQUIRED DISCLOSURES.**

Section 128(a) of Truth in Lending Act (15 U.S.C. 1638(a)) is amended by adding at the end the following new paragraphs:

“(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

“(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

“(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

“(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

“(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

“(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.”.

**SEC. 9114. DISCLOSURES REQUIRED IN MONTHLY STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.**

Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following new subsection:

“(f) **PERIODIC STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.**—

“(1) **IN GENERAL.**—The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

“(A) The amount of the principal obligation under the mortgage.

“(B) The current interest rate in effect for the loan.

“(C) The date on which the interest rate may next reset or adjust.

“(D) The amount of any prepayment fee to be charged, if any.

“(E) A description of any late payment fees.

“(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

“(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(H) Such other information as the Board may prescribe in regulations.

“(2) **DEVELOPMENT AND USE OF STANDARD FORM.**—The Federal banking agencies shall jointly develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.”.

**SEC. 9115. LEGAL ASSISTANCE FOR FORECLOSURE-RELATED ISSUES.**

(a) **ESTABLISHMENT.**—The Secretary of Housing and Urban Development (hereafter in this section referred to as the “Secretary”) shall establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(b) **COMPETITIVE ALLOCATION.**—The Secretary shall allocate amounts made available for grants under this section to State and local legal organizations on the basis of a competitive process. For purposes of this subsection “State and local legal organizations” are those State and local organizations whose primary business or mission is to provide legal assistance.

(c) **PRIORITY TO CERTAIN AREAS.**—In allocating amounts in accordance with subsection (b), the Secretary shall give priority consideration to State and local legal organizations that are operating in the 100 metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

(d) **LEGAL ASSISTANCE.**—

(1) **IN GENERAL.**—Any State or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist—

(A) homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure; and

(B) tenants at risk of or subject to eviction as a result of foreclosure of the property in which such tenant resides.

(2) **COMMENCE USE WITHIN 90 DAYS.**—Any State or local legal organization that receives financial assistance pursuant to this section shall begin using any financial assistance received under this section within 90 days after receipt of the assistance.

(3) **PROHIBITION ON CLASS ACTIONS.**—No funds provided to a State or local legal organization under this section may be used to support any class action litigation.

(4) **LIMITATION ON LEGAL ASSISTANCE.**—Legal assistance funded with amounts provided under this section shall be limited to mortgage-related default, eviction, or foreclosure proceedings, without regard to whether such foreclosure is judicial or non-judicial.

(5) **EFFECTIVE DATE.**—Notwithstanding section 9116, this subsection shall take effect on the date of the enactment of this Act.

(e) **LIMITATION ON DISTRIBUTION OF ASSISTANCE.**—

(1) **IN GENERAL.**—None of the amounts made available under this section shall be distributed to—

(A) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(B) any organization which employs applicable individuals.

(2) **DEFINITION OF APPLICABLE INDIVIDUALS.**—In this subsection, the term “applicable individual” means an individual who—

(A) is—

(i) employed by the organization in a permanent or temporary capacity;

(ii) contracted or retained by the organization; or

(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

(B) has been convicted for a violation under Federal law relating to an election for Federal office.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary \$35,000,000 for each of fiscal years 2009 through 2012 for grants under this section.

#### SEC. 9116. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to transactions consummated on or after the effective date of the regulations specified in section 9109.

#### SEC. 9117. REPORT BY THE GAO.

(a) **REPORT REQUIRED.**—The Comptroller General shall conduct a study to determine the effects the enactment of this Act will have on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending, including the effect—

(1) on the mortgage market for mortgages that are not within the safe harbor provided in the amendments made by this subtitle;

(2) on the ability of prospective homebuyers to obtain financing;

(3) on the ability of homeowners facing resets or adjustments to refinancing—for example, do they have fewer refinancing options due to the unavailability of certain loan products that were available before the enactment of this Act;

(4) on minorities' ability to access affordable credit compared with other prospective borrowers;

(5) on home sales and construction;

(6) of extending the rescission right, if any, on adjustable rate loans and its impact on litigation;

(7) of State foreclosure laws and, if any, an investor's ability to transfer a property after foreclosure;

(8) of expanding the existing provisions of the Home Ownership and Equity Protection Act of 1994;

(9) of prohibiting prepayment penalties on high-cost mortgages; and

(10) of establishing counseling services under the Department of Housing and Urban Development and offered through the Office of Housing Counseling.

(b) **REPORT.**—Before the end of the 1-year period beginning on the date of the enact-

ment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (a).

(c) **EXAMINATION RELATED TO CERTAIN CREDIT RISK RETENTION PROVISIONS.**—The report required by subsection (b) shall also include an analysis by the Comptroller General of the effect on the capital reserves and funding of lenders of credit risk retention provisions for non-qualified mortgages, including an analysis of the exceptions and adjustments authorized in section 129C(1)(3)(A) of the Truth in Lending Act and a recommendation on whether a uniform standard is needed.

(d) **ANALYSIS OF CREDIT RISK RETENTION PROVISIONS.**—The report required by subsection (b) shall also include—

(1) an analysis by the Comptroller General of whether the credit risk retention provisions have significantly reduced risks to the larger credit market of the repackaging and selling of securitized loans on a secondary market; and

(2) recommendations to the Congress on adjustments that should be made, or additional measures that should be undertaken.

#### SEC. 9118. STATE ATTORNEY GENERAL ENFORCEMENT AUTHORITY.

Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by striking “section 129 may also” and inserting “section 129, 129B, or 129C of this Act may also”.

#### Subtitle C—High-Cost Mortgages

#### SEC. 9201. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

(a) **HIGH-COST MORTGAGE DEFINED.**—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by striking all that precedes paragraph (2) and inserting the following:

“(aa) **HIGH-COST MORTGAGE.**—

“(1) **DEFINITION.**—

“(A) **IN GENERAL.**—The term ‘high-cost mortgage’, and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if—

“(i) in the case of a credit transaction secured—

“(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction; or

“(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction;

“(ii) the total points and fees payable in connection with the transaction exceed—

“(I) in the case of a transaction for \$20,000 or more, 5 percent of the total transaction amount; or

“(II) in the case of a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

“(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

“(B) **INTRODUCTORY RATES TAKEN INTO ACCOUNT.**—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

“(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

“(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the transaction agreement.

“(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the transaction.”.

(b) **ADJUSTMENT OF PERCENTAGE POINTS.**—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

“(B) An increase or decrease under subparagraph (A)—

“(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

“(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.”.

(c) **POINTS AND FEES DEFINED.**—

(1) **IN GENERAL.**—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(A) by striking subparagraph (B) and inserting the following:

“(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that originates a loan in the name of the creditor in a table-funded transaction;”;

(B) in subparagraph (C)(ii), by inserting “except where applied to the charges set forth in section 106(e)(1) where a creditor may receive indirect compensation solely as a result of obtaining distributions of profits from an affiliated entity based on its ownership interest in compliance with section 8(c)(4) of the Real Estate Settlement Procedures Act of 1974” before the semicolon at the end;

(C) in subparagraph (C)(iii), by striking “; and” and inserting “, except as provided for in clause (ii);”;

(D) by redesignating subparagraph (D) as subparagraph (G); and

(E) by inserting after subparagraph (C) the following new subparagraphs:

“(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

“(E) except as provided in subsection (cc), the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

“(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and”.

(2) **CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.**—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph:

“(5) **CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.**—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.”.

(d) **BONA FIDE DISCOUNT LOAN DISCOUNT POINTS.**—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by inserting after subsection (cc) (as added by section 101) the following new subsection:

“(dd) **BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.**—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

“(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point—

“(A) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; or

“(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points—

“(A) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; or

“(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(3) For purposes of paragraph (1), the term ‘bona fide discount points’ means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

“(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the

interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.”.

#### **SEC. 9202. AMENDMENTS TO EXISTING REQUIREMENTS FOR CERTAIN MORTGAGES.**

(a) **PREPAYMENT PENALTY PROVISIONS.**—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.

(b) **NO BALLOON PAYMENTS.**—Section 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e)) is amended to read as follows:

“(e) **NO BALLOON PAYMENTS.**—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer or in the case of a balance due under the customary terms of a reverse mortgage.”.

#### **SEC. 9203. ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.**

(a) **ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.**—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by redesignating subsections (j), (k) and (l) as subsections (n), (o) and (p) respectively; and

(2) by inserting after subsection (i) the following new subsections:

“(j) **RECOMMENDED DEFAULT.**—No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

“(k) **LATE FEES.**—

“(1) **IN GENERAL.**—No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

“(A) in an amount in excess of 4 percent of the amount of the payment past due;

“(B) unless the loan documents specifically authorize the charge or fee;

“(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

“(D) more than once with respect to a single late payment.

“(2) **COORDINATION WITH SUBSEQUENT LATE FEES.**—If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

“(3) **FAILURE TO MAKE INSTALLMENT PAYMENT.**—If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

“(1) **ACCELERATION OF DEBT.**—No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

“(m) **RESTRICTION ON FINANCING POINTS AND FEES.**—No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

“(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

“(2) Any points or fees.”.

(b) **PROHIBITIONS ON EVASIONS.**—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (p) (as so redesignated by subsection (a)(1)) the following new subsection:

“(q) **PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.**—A creditor may not take any action in connection with a high-cost mortgage—

“(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or

“(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this title.”.

(c) **MODIFICATION OR DEFERRAL FEES.**—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (q) (as added by subsection (b) of this section) the following new subsection:

“(r) **MODIFICATION AND DEFERRAL FEES PROHIBITED.**—

“(1) **CREDITORS.**—A creditor may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage, unless the modification, renewal, extension or amendment results in a lower annual percentage rate on the mortgage for the consumer and then only if the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer's principal dwelling and are not high-cost mortgages.

“(2) **THIRD PARTIES.**—A third-party may not charge a consumer any fee to—

“(A) modify, renew, extend, or amend a high-cost mortgage, or defer any payment due under the terms of such mortgage;

“(B) negotiate with a creditor on behalf of a consumer, the modification, renewal, extension, or amendment of a high-cost mortgage; or

“(C) negotiate with a creditor on behalf of a consumer, the deferral of any payment due under the terms of such mortgage,

unless the modification renewal, extension or amendment results in a significantly lower annual percentage rate on the mortgage, or a significant reduction in the amount of the outstanding principal on the mortgage, for the consumer and then only if the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer's principal dwelling and are not high-cost mortgages.

“(3) **ENFORCEMENT.**—Section 130 shall be applied for purposes of paragraph (2) by—

“(A) substituting ‘third party’ for ‘creditor’ each place such term appears; and

“(B) substituting ‘any fee charged by a third party’ for ‘finance charge’ each place such term appears.”.

(d) **PAYOFF STATEMENT.**—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (r) (as added by subsection (c) of this section) the following new subsection:

“(s) **PAYOFF STATEMENT.**—

“(1) **FEES.**—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

“(B) TRANSACTION FEE.—When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

“(C) FEE DISCLOSURE.—Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

“(D) MULTIPLE REQUESTS.—If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

“(2) PROMPT DELIVERY.—Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.

“(3) SERVICES CONSIDERED ASSIGNEE.—For the purposes of this subsection, a servicer shall be considered an assignee under the Truth in Lending Act.”.

(e) PRE-LOAN COUNSELING REQUIRED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (s) (as added by subsection (d) of this section) the following new subsection:

“(t) PRE-LOAN COUNSELING.—

“(1) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

“(2) DISCLOSURES REQUIRED PRIOR TO COUNSELING.—No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 with respect to the transaction.

“(3) REGULATIONS.—The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).”.

(f) FLIPPING PROHIBITED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (t) (as added by subsection (e)) the following new subsection:

“(u) FLIPPING.—

“(1) IN GENERAL.—No creditor may knowingly or intentionally engage in the unfair act or practice of flipping in connection with a high-cost mortgage.

“(2) FLIPPING DEFINED.—For purposes of this subsection, the term ‘flipping’ means

the making of a loan or extension of credit in the form a high-cost mortgage to a consumer which refinances an existing mortgage when the new loan or extension of credit does not have reasonable, net tangible benefit (as determined in accordance with regulations prescribed under section 129C(b)) to the consumer considering all of the circumstances, including the terms of both the new and the refinanced loans or credit, the cost of the new loan or credit, and the consumer's circumstances.

“(v) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.—A creditor or assignee in a high cost loan who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

“(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or

“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

“(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error as described in subsection (c) and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or

“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.”.

#### SEC. 9204. REGULATIONS.

(a) IN GENERAL.—The Board of Governors of the Federal Reserve System shall publish regulations implementing this subtitle and the amendments made by this subtitle in final form before the end of the 6-month period beginning on the date of the enactment of this Act.

(b) CONSUMER MORTGAGE EDUCATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System may prescribe regulations requiring or encouraging creditors to provide consumer mortgage education to prospective customers or direct such customers to qualified consumer mortgage education or counseling programs in the vicinity of the residence of the consumer.

(2) COORDINATION WITH STATE LAW.—No requirement established by the Board of Governors of the Federal Reserve System pursuant to paragraph (1) shall be construed as affecting or superseding any requirement under the law of any State with respect to consumer mortgage counseling or education.

#### SEC. 9205. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the end of the 6-month period beginning on the date of the enactment of this Act and shall apply to mortgages referred to in section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) for which an application is received by the creditor after the end of such period.

#### Subtitle D—Office of Housing Counseling

##### SEC. 9301. SHORT TITLE.

This subtitle may be cited as the “Expand and Preserve Home Ownership Through Counseling Act”.

##### SEC. 9302. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

“(g) OFFICE OF HOUSING COUNSELING.—

“(1) ESTABLISHMENT.—There is established, in the Department, the Office of Housing Counseling.

“(2) DIRECTOR.—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by, and shall report to, the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

“(3) FUNCTIONS.—

“(A) IN GENERAL.—The Director shall have primary responsibility within the Department for all activities and matters relating to homeownership counseling and rental housing counseling, including—

“(i) research, grant administration, public outreach, and policy development relating to such counseling; and

“(ii) establishment, coordination, and administration of all regulations, requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling.

“(B) SPECIFIC FUNCTIONS.—The Director shall carry out the functions assigned to the Director and the Office under this section and any other provisions of law. Such functions shall include establishing rules necessary for—

“(i) the counseling procedures under section 106(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(1));

“(ii) carrying out all other functions of the Secretary under section 106(g) of the Housing and Urban Development Act of 1968, including the establishment, operation, and publication of the availability of the toll-free telephone number under paragraph (2) of such section;

“(iii) contributing to the preparation and distribution of home buying information booklets pursuant to section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604);

“(iv) carrying out the certification program under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e));

“(v) carrying out the assistance program under section 106(a)(4) of the Housing and Urban Development Act of 1968, including criteria for selection of applications to receive assistance;

“(vi) carrying out any functions regarding abusive, deceptive, or unscrupulous lending practices relating to residential mortgage loans that the Secretary considers appropriate, which shall include conducting the study under section 6 of the Expand and Preserve Home Ownership Through Counseling Act;

“(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;



“(viii) collaborating with community-based organizations with expertise in the field of housing counseling; and

“(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing.

“(4) ADVISORY COMMITTEE.—

“(A) IN GENERAL.—The Secretary shall appoint an advisory committee to provide advice regarding the carrying out of the functions of the Director.

“(B) MEMBERS.—Such advisory committee shall consist of not more than 12 individuals, and the membership of the committee shall equally represent the mortgage and real estate industry, including consumers and housing counseling agencies certified by the Secretary.

“(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

“(D) TERMS OF INITIAL APPOINTEES.—As designated by the Secretary at the time of appointment, of the members first appointed to the advisory committee, 4 shall be appointed for a term of 1 year and 4 shall be appointed for a term of 2 years.

“(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

“(F) ADVISORY ROLE ONLY.—The advisory committee shall have no role in reviewing or awarding housing counseling grants.

“(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home.”

**SEC. 9303. COUNSELING PROCEDURES.**

(a) IN GENERAL.—Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following new subsection:

“(g) PROCEDURES AND ACTIVITIES.—

“(1) COUNSELING PROCEDURES.—

“(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

“(B) HOMEOWNERSHIP COUNSELING.—For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term ‘homeownership counseling’ means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));

“(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

“(III) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

“(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

“(V) section 32(e)(4) (42 U.S.C. 1437z-4(e)(4));

“(VI) section 33(d)(2)(B) (42 U.S.C. 1437z-5(d)(2)(B));

“(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa-1(b)(6), 1437aaa-2(b)(7)); and

“(VIII) section 304(c)(4) (42 U.S.C. 1437aaa-3(c)(4));

“(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

“(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));

“(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));

“(vi) section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4110(d)(2)(G));

“(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));

“(viii) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

“(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

“(x) in the National Housing Act—

“(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

“(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z-2); and

“(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z-20);

“(xi) section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B));

“(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-7); and

“(xiii) section 106 of the Energy Policy Act of 1992 (42 U.S.C. 12712 note).

“(C) RENTAL HOUSING COUNSELING.—For purposes of this subsection, the term ‘rental housing counseling’ means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));

“(II) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

“(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

“(IV) section 32(e)(4) (42 U.S.C. 1437z-4(e)(4));

“(V) section 33(d)(2)(B) (42 U.S.C. 1437z-5(d)(2)(B)); and

“(VI) section 302(b)(6) (42 U.S.C. 1437aaa-1(b)(6));

“(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

“(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

“(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));

“(vi) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

“(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

“(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

“(2) STANDARDS FOR MATERIALS.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

“(3) MORTGAGE SOFTWARE SYSTEMS.—

“(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

“(i) the consumer’s financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

“(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

“(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.

If the Secretary determines that available existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development by private sector software companies of new mortgage software systems that meet the Secretary’s specifications.

“(B) USE AND INITIAL AVAILABILITY.—Such certified computer software programs shall be used to supplement, not replace, housing counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

“(C) AVAILABILITY.—After a period of initial availability under subparagraph (B) as the Secretary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

“(D) BUDGET COMPLIANCE.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.



“(4) NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

“(A) IN GENERAL.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

“(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed \$3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

“(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

“(i) IN GENERAL.—Ten percent of any funds appropriated pursuant to the authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

“(I) tips on avoiding foreclosure rescue scams;

“(II) tips on avoiding predatory lending mortgage agreements;

“(III) tips on avoiding for-profit foreclosure counseling services; and

“(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

“(ii) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.

“(iii) TERMS DEFINED.—For purposes of this subparagraph:

“(I) HIGH DENSITY OF FORECLOSURES.—An area has a ‘high density of foreclosures’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

“(II) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a ‘high percentage of retirement communities’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

“(III) HIGH PERCENTAGE OF LOW-INCOME MINORITY COMMUNITIES.—An area has a ‘high

percentage of low-income minority communities’ if such area contains a higher-than-normal percentage of residents who are both minorities and low-income, as defined by the Director of Housing Counseling.

“(5) EDUCATION PROGRAMS.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.”

(b) CONFORMING AMENDMENTS TO GRANT PROGRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—

(1) in subclause (III), by striking “and” at the end;

(2) in subclause (IV) by striking the period at the end and inserting “; and”; and

(3) by inserting after subclause (IV) the following new subclause:

“(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).”

**SEC. 9304. GRANTS FOR HOUSING COUNSELING ASSISTANCE.**

Section 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended by adding at the end the following new paragraph:

“(4) HOMEOWNERSHIP AND RENTAL COUNSELING ASSISTANCE.—

“(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

“(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and nonprofit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

“(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

“(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

“(i) IN GENERAL.—None of the amounts made available under this paragraph shall be distributed to—

“(I) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

“(II) any organization which employs applicable individuals.

“(ii) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subparagraph, the term ‘applicable individual’ means an individual who—

“(I) is—

“(aa) employed by the organization in a permanent or temporary capacity;

“(bb) contracted or retained by the organization; or

“(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

“(II) has been convicted for a violation under Federal law relating to an election for Federal office.

“(E) GRANTMAKING PROCESS.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

“(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$45,000,000 for each of fiscal years 2009 through 2012 for—

“(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

“(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

“(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.”

**SEC. 9305. REQUIREMENTS TO USE HUD-CERTIFIED COUNSELORS UNDER HUD PROGRAMS.**

Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

“(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.”

(2) in paragraph (2)—

(A) by inserting “and for certifying organizations” before the period at the end of the first sentence; and

(B) in the second sentence by striking “for certification” and inserting “, for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual.”

(3) in paragraph (3), by inserting “organizations and” before “individuals”;

(4) by redesignating paragraph (3) as paragraph (5); and

(5) by inserting after paragraph (2) the following new paragraphs:

“(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.

“(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).”

**SEC. 9306. STUDY OF DEFAULTS AND FORECLOSURES.**

The Secretary of Housing and Urban Development shall conduct an extensive study of

the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures, and the role of computer registries of mortgages, including those used for trading mortgage loans. Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to identify populations that need counseling the most.

#### SEC. 9307. DEFAULT AND FORECLOSURE DATABASE.

(a) **ESTABLISHMENT.**—The Secretary of Housing and Urban Development, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available.

(b) **CENSUS TRACT DATA.**—Information in the database shall be collected, aggregated, and made available on a census tract basis.

(c) **REQUIREMENTS.**—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary considers appropriate.

#### SEC. 9308. DEFINITIONS FOR COUNSELING-RELATED PROGRAMS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new subsection:

“(h) **DEFINITIONS.**—For purposes of this section:

“(1) **NONPROFIT ORGANIZATION.**—The term ‘nonprofit organization’ has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for purposes of this section.

“(2) **STATE.**—The term ‘State’ means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

“(3) **UNIT OF GENERAL LOCAL GOVERNMENT.**—The term ‘unit of general local government’ means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

“(4) **HUD-APPROVED COUNSELING AGENCY.**—The term ‘HUD-approved counseling agency’ means a private or public nonprofit organization that is—

“(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

“(B) certified by the Secretary to provide housing counseling services.

“(5) **STATE HOUSING FINANCE AGENCY.**—The term ‘State housing finance agency’ means any public body, agency, or instrumentality specifically created under State statute that is authorized to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.”.

#### SEC. 9309. ACCOUNTABILITY AND TRANSPARENCY FOR GRANT RECIPIENTS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following:

“(i) **ACCOUNTABILITY FOR RECIPIENTS OF COVERED ASSISTANCE.**—

“(1) **TRACKING OF FUNDS.**—The Secretary shall—

“(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 9115, as applicable, and any requirements or conditions under which such amounts were provided; and

“(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

“(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization or entity to ensure compliance with the limitations and requirements of this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations under this section or such section 9115, as applicable, and any requirements or conditions under which such amounts were provided; and

“(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

“(2) **MISUSE OF FUNDS.**—If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 9115, as applicable, or any requirements or conditions under which such assistance was provided—

“(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts and return to the Secretary any such amounts that remain unused or uncommitted for use; and

“(B) such organization or entity shall be ineligible, at any time after such determination, to apply for or receive any further covered assistance.

The remedies under this paragraph are in addition to any other remedies that may be available under law.

“(3) **COVERED ASSISTANCE.**—For purposes of this subsection, the term ‘covered assistance’ means any grant or other financial assistance provided under—

“(A) this section; or

“(B) section 9115 of the Mortgage Reform and Anti-Predatory Lending Act.”.

#### SEC. 9310. UPDATING AND SIMPLIFICATION OF MORTGAGE INFORMATION BOOKLET.

Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) in the section heading, by striking “SPECIAL” and inserting “HOME BUYING”;

(2) by striking subsections (a) and (b) and inserting the following new subsections:

“(a) **PREPARATION AND DISTRIBUTION.**—The Director of the Consumer Financial Protection Agency (hereafter in this section referred to as the ‘Director’) shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

“(b) **CONTENTS.**—Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

“(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

“(A) balloon payments;

“(B) prepayment penalties;

“(C) the advantages of prepayment; and

“(D) the trade-off between closing costs and the interest rate over the life of the loan.

“(2) An explanation and sample of the uniform settlement statement required by section 4.

“(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

“(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

“(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

“(6) A brief explanation of the nature of a variable rate mortgage and a reference to

the booklet entitled 'Consumer Handbook on Adjustable Rate Mortgages', published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

“(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

“(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

“(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

“(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

“(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

“(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

“(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.”;

(3) in subsection (c), by inserting at the end the following new sentence: “Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.”; and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: “The lender shall provide the HUD-issued booklet in the version that is most appropriate for the person receiving it.”.

#### **SEC. 9311. HOME INSPECTION COUNSELING.**

(a) PUBLIC OUTREACH.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564-CN entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(C) development and publication of a HUD booklet entitled “For Your Protection—Get a Home Inspection” that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled “Ten Important Questions To Ask Your Home Inspector”, in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.

(b) REQUIREMENT FOR FHA-APPROVED LENDERS.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) REQUIREMENTS FOR HUD-APPROVED COUNSELING AGENCIES.—Each counseling agency certified pursuant by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) TRAINING.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;

(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

#### **SEC. 9312. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.**

(a) ASSISTANCE TO NRC.—Notwithstanding any other provision of law, of any amounts made available for any fiscal year pursuant to section 106(a)(4)(F) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)(F)) (as added by section 9304 of this title), 10 percent shall be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.

(b) NOTICE.—The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, shall use the amounts provided pursuant to subsection (a) to carry out activities to inform borrowers under residential mortgage loans—

(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;

(4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department's website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development websites for housing counseling and for tips for avoiding foreclosure.

#### **Subtitle E—Mortgage Servicing**

#### **SEC. 9401. ESCROW AND IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.**

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 9101) the following new section:

#### **“SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.**

“(a) IN GENERAL.—Except as provided in subsection (b), (c), or (d), a creditor, in connection with the formation or consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

“(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

“(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

“(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

“(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

“(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 1.5 or more percentage points; or

“(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence

of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 2.5 or more percentage points; or

“(4) so required pursuant to regulation.

“(c) DURATION OF MANDATORY ESCROW OR IMPOUND ACCOUNT.—An escrow or impound account established pursuant to subsection (b), shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, and until such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance, or such other period as may be provided in regulations to address situations such as borrower delinquency, unless the underlying mortgage establishing the account is terminated.

“(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY SHARES IN A COOPERATIVE AND FOR CERTAIN CONDOMINIUM UNITS.—Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

“(e) CLARIFICATION ON ESCROW ACCOUNTS FOR LOANS NOT MEETING STATUTORY TEST.—For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

“(1) on terms mutually agreeable to the parties to the loan;

“(2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or

“(3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973.

“(f) ADMINISTRATION OF MANDATORY ESCROW OR IMPOUND ACCOUNTS.—

“(1) IN GENERAL.—Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution.

“(2) ADMINISTRATION.—Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

“(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

“(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

“(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

“(3) APPLICABILITY OF PAYMENT OF INTEREST.—If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

“(4) PENALTY COORDINATION WITH RESPA.—Any action or omission on the part of any

person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

“(g) DISCLOSURES RELATING TO MANDATORY ESCROW OR IMPOUND ACCOUNT.—In the case of any impound, trust, or escrow account that is subject to this section, the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

“(1) The fact that an escrow or impound account will be established at consummation of the transaction.

“(2) The amount required at closing to initially fund the escrow or impound account.

“(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

“(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

“(5) The fact that, if the consumer chooses to terminate the account at the appropriate time in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

“(6) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.

“(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) FLOOD INSURANCE.—The term ‘flood insurance’ means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968.

“(2) HAZARD INSURANCE.—The term ‘hazard insurance’ shall have the same meaning as provided for ‘hazard insurance’, ‘casualty insurance’, ‘homeowner’s insurance’, or other similar term under the law of the State where the real property securing the consumer credit transaction is located.”.

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, (hereafter in this title referred to as the “Federal banking agencies”) and the Federal Trade Commission shall prescribe, in final form, such regulations as determined to be necessary to implement the amendments made by subsection (a) before the end of the 180-day period beginning on the date of the enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made by subsection (a) shall only apply to covered mortgage loans consummated after the end of the 1-year period beginning on the date of the publication of final regulations in the Federal Register.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129C (as added by section 9101) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit transactions.”.

#### SEC. 9402. DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.

(a) IN GENERAL.—Section 129D of the Truth in Lending Act (as added by section 9401) is amended by adding at the end the following new subsection:

“(i) DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.—

“(1) IN GENERAL.—If—

“(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

“(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account,

the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

“(2) DISCLOSURE REQUIREMENTS.—Any disclosure provided to a consumer under paragraph (1) shall include the following:

“(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

“(B) A clear and prominent notice that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

“(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

“(D) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.”.

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Federal banking agencies and the Federal Trade Commission shall prescribe, in final form, such regulations as such agencies determine to be necessary to implement the amendments made by subsection (a) before the end of the 180-day period beginning on the date of the enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made by subsection (a) shall only apply in accordance with the regulations established in paragraph (1) and beginning on the date

occurring 180-days after the date of the publication of final regulations in the Federal Register.

**SEC. 9403. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENTS.**

(a) **SERVICER PROHIBITIONS.**—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsections:

“(k) **SERVICER PROHIBITIONS.**—

“(1) **IN GENERAL.**—A servicer of a federally related mortgage shall not—

“(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

“(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Secretary shall prescribe) under this section;

“(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

“(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner assignee of the loan; or

“(E) fail to comply with any other obligation found by the Secretary, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

“(2) **FORCE-PLACED INSURANCE DEFINED.**—For purposes of this subsection and subsections (l) and (m), the term ‘force-placed insurance’ means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

“(1) **REQUIREMENTS FOR FORCE-PLACED INSURANCE.**—A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

“(1) **WRITTEN NOTICES TO BORROWER.**—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

“(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

“(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

“(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

“(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

“(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

“(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

“(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period be-

ginning on the date the notice under subparagraph (B) was sent by the servicer.

“(2) **SUFFICIENCY OF DEMONSTRATION.**—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.

“(3) **TERMINATION OF FORCE-PLACED INSURANCE.**—Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall—

“(A) terminate the force-placed insurance; and

“(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

“(4) **CLARIFICATION WITH RESPECT TO FLOOD DISASTER PROTECTION ACT.**—No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

“(m) **LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.**—All charges for force-placed insurance premiums shall be bona fide and reasonable in amount.”.

(b) **INCREASE IN PENALTY AMOUNTS.**—Section 6(f) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(f)) is amended—

(1) in paragraphs (1)(B) and (2)(B), by striking “\$1,000” each place such term appears and inserting “\$2,000”; and

(2) in paragraph (2)(B)(i), by striking “\$500,000” and inserting “\$1,000,000”.

(c) **DECREASE IN RESPONSE TIMES.**—Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(e)) is amended—

(1) in paragraph (1)(A), by striking “20 days” and inserting “5 days”;;

(2) in paragraph (2), by striking “60 days” and inserting “30 days”; and

(3) by adding at the end the following new paragraph:

“(4) **LIMITED EXTENSION OF RESPONSE TIME.**—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.”.

(d) **PROMPT REFUND OF ESCROW ACCOUNTS UPON PAYOFF.**—Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: “Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.”.

**SEC. 9404. TRUTH IN LENDING ACT AMENDMENTS.**

(a) **REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.**—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129E (as added by section 9502) the following new section (and by amending the table of contents accordingly):

**“SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.**

“(a) **IN GENERAL.**—In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

“(b) **EXCEPTION.**—If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.”.

(b) **REQUESTS FOR PAYOFF AMOUNTS.**—Chapter 2 of such Act is further amended by inserting after section 129F (as added by subsection (a)) the following new section (and by amending the table of contents accordingly):

**“SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME LOAN.**

“A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.”.

**SEC. 9405. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

“(4) **REPAYMENT ANALYSIS REQUIRED TO INCLUDE ESCROW PAYMENTS.**—

“(A) **IN GENERAL.**—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974.

“(B) **ASSESSMENT VALUE.**—The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.”.

**Subtitle F—Appraisal Activities**

**SEC. 9501. PROPERTY APPRAISAL REQUIREMENTS.**

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129G (as added by section 9404(b)) the following new section:

**"SEC. 129H. PROPERTY APPRAISAL REQUIREMENTS.**

"(a) IN GENERAL.—A creditor may not extend credit in the form of a subprime mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

"(b) APPRAISAL REQUIREMENTS.—

"(1) PHYSICAL PROPERTY VISIT.—An appraisal of property to be secured by a subprime mortgage does not meet the requirement of this section unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

"(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

"(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

"(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

"(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term 'qualified appraiser' means a person who—

"(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

"(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

"(c) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

"(d) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at their own expense.

"(e) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of \$2,000.

"(f) SUBPRIME MORTGAGE DEFINED.—For purposes of this section, the term 'subprime mortgage' means a residential mortgage loan secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

"(1) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to

the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

"(2) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

"(3) by 3.5 or more percentage points for a subordinate lien residential mortgage loan."

**SEC. 9502. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.**

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129D (as added by section 9401(a)) the following new section:

**"SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.**

"(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

"(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), unfair and deceptive practices shall include—

"(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

"(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

"(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

"(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered.

"(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to provide 1 or more of the following services:

"(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

"(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

"(3) Correct errors in the appraisal report.

"(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal

in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

"(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

"(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

"(g) RULEMAKING PROCEEDINGS.—The Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission—

"(1) shall, for purposes of this section, jointly prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no later than 1 year after the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations; and

"(2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

"(h) PENALTIES.—

"(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than \$10,000 for each day any such violation continues.

"(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting '\$20,000' for '\$10,000' with respect to all subsequent violations.

"(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the

item relating to section 129D (as added by section 9401(c)) the following new item:

“129E. Unfair and deceptive practices and acts relating to certain consumer credit transactions.”.

**SEC. 9503. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.**

(a) CONSUMER PROTECTION MISSION.—

(1) PURPOSES.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331) is amended by inserting “and to provide the Appraisal Subcommittee with a consumer protection mandate” before the period at the end.

(2) FUNCTIONS OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—

(A) by striking “and” at the end of paragraph (3); and

(B) by amending paragraph (4) to read as follows:

“(4) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer’s principal dwelling; and”.

(3) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: “, and that such threshold level provides reasonable protection for consumers who purchase 1-4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing”.

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

“(5) transmit an annual report to the Congress not later than January 31 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.”.

(c) OPEN MEETINGS.—Section 1104(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3333(b)) is amended by inserting “in public session after notice in the Federal Register” after “shall meet”.

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting “prescribe regulations after notice and opportunity for comment,” after “hold hearings”; and

(2) at the end by inserting “Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, and government agencies, and hold meetings as necessary to support the development of regulations.”.

(e) APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(1) by striking “In determining” and inserting “(a) IN GENERAL.—In determining”;

(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: “, where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical”; and

(3) by adding at the end the following new subsection:

“(b) APPRAISALS AND APPRAISAL REVIEWS.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All appraisal reviews, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.”.

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is further amended—

(A) by amending paragraph (1) to read as follows:

“(1) monitor the requirements established by States—

“(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

“(B) for the registration and supervision of the operations and activities of an appraisal management company;”;

(B) by adding at the end the following new paragraph:

“(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.”.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

**“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.**

“(a) IN GENERAL.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish minimum qualifications to be applied by a State in the registration of appraisal management companies. Such qualifications shall include a requirement that such companies—

“(1) register with and be subject to supervision by a State appraiser certifying and li-

censing agency in each State in which such company operates;

“(2) verify that only licensed or certified appraisers are used for federally related transactions;

“(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

“(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(b) EXCEPTION FOR FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency. In such case, the appropriate federal financial institutions regulatory agency shall, at a minimum, develop regulations affecting the operations of the appraisal management company to—

“(1) verify that only licensed or certified appraisers are used for federally related transactions;

“(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

“(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(c) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

“(d) REGULATIONS.—The Appraisal Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to the State appraiser certifying and licensing agencies. The Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

“(e) EFFECTIVE DATE.—

“(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

“(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal



management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.”.

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: “The duties of such agency may additionally include the registration and supervision of appraisal management companies.”.

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

“(11) APPRAISAL MANAGEMENT COMPANY.—The term ‘appraisal management company’ means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

“(A) to recruit, select, and retain appraisers;

“(B) to contract with licensed and certified appraisers to perform appraisal assignments;

“(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

“(D) to review and verify the work of appraisers.”.

(g) STATE AGENCY REPORTING REQUIREMENT.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking “and” after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

“(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

“(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and”.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 9503(g)) to read as follows:

“(4) collect—

“(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

“(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

“(i) in the case of such a company that has been in existence for more than a year, \$25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee’s functions under this title; and

“(ii) in the case of such a company that has not been in existence for more than a year, \$25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee’s functions under this title.”; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

“Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of \$80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.”.

(2) INCREMENTAL REVENUES.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the “Appraisal Subcommittee Account”.

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by striking “and” after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

“(5) to make grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with this title, including—

“(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

“(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

“(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.”.

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the “Appraisal Subcommittee Account” pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting “whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers” before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

“(e) MINIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for individuals in the position of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’ shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.”.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

“(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

“(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

“(2) processes complaints and completes investigations in a reasonable time period;

“(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

“(4) maintains an effective regulatory program; and

“(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints

against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.”.

(2) in subsection (b)(2), by inserting after “authority” the following: “or sufficient funding”.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

“(b) RECIPROCITY.—A State appraiser certifying or licensing agency shall issue a reciprocal certification or license for an individual from another State when—

“(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

“(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.”.

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking “shall not exclude” and all that follows through the end of the subsection and inserting the following: “may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.”.

(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following new subsection:

“(g) APPRAISER INDEPENDENCE MONITORING.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency’s policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.”.

(o) APPRAISER EDUCATION.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

“(h) APPROVED EDUCATION.—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board’s Course Approval Program.”.

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is further amended by adding at the end the following new subsection:

“(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—If, 1 year after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence stand-

ards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.”.

(q) AUTOMATED VALUATION MODELS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

**“SEC. 1125. AUTOMATED VALUATION MODELS USED TO VALUE CERTAIN MORTGAGES.**

“(a) IN GENERAL.—Automated valuation models shall adhere to quality control standards designed to—

“(1) ensure a high level of confidence in the estimates produced by automated valuation models;

“(2) protect against the manipulation of data;

“(3) seek to avoid conflicts of interest; and

“(4) require random sample testing and reviews, where such testing and reviews are performed by an appraiser who is licensed or certified in the State where the testing and reviews take place.

“(b) ADOPTION OF REGULATIONS.—The Appraisal Subcommittee and its member agencies, in consultation with the Appraisal Standards Board of the Appraisal Foundation and other interested parties, shall promulgate regulations to implement the quality control standards required under this section.

“(c) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

“(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

“(2) with respect to other persons, the Appraisal Subcommittee.

“(d) AUTOMATED VALUATION MODEL DEFINED.—For purposes of this section, the term ‘automated valuation model’ means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer’s principal dwelling.”.

(r) BROKER PRICE OPINIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

**“SEC. 1126. BROKER PRICE OPINIONS.**

“(a) GENERAL PROHIBITION.—In conjunction with the purchase of a consumer’s principal

dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

“(b) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term ‘broker price opinion’ means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property’s condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).”.

(s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: “and the Federal Housing Finance Agency”; and

(2) by inserting at the end the following: “At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.”.

(t) TECHNICAL CORRECTIONS.—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking “council,” and inserting “Council.”.

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking “Corporations,” and inserting “Corporation.”.

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking “council” and inserting “Council”.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking “Federal Financial Institutions Examination Council” and inserting “Financial Institutions Examination Council”; and

(ii) by striking “the council’s functions” and inserting “the Council’s functions”.

**SEC. 9504. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.**

(a) STUDY.—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal Subcommittee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of

appraisals provided through different distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last 10 years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) **REPORT.**—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

(c) **ADDITIONAL STUDY REQUIRED.**—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—

- (1) quality and costs of appraisals;
- (2) length of time for obtaining appraisals;
- (3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;
- (4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and
- (5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) **ADDITIONAL REPORT.**—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (c). Such additional report shall take into consideration the Small Business Administration's views on how small businesses are affected by the Home Valuation Code of Conduct.

#### **SEC. 9505. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

Subsection (e) of section 701 of the Equal Credit Opportunity Act ( U.S.C. 1691) is amended to read as follows:

“(e) **COPIES FURNISHED TO APPLICANTS.**—

“(1) **IN GENERAL.**—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

“(2) **WAIVER.**—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

“(3) **REIMBURSEMENT.**—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

“(4) **FREE COPY.**—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

“(5) **NOTIFICATION TO APPLICANTS.**—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

“(6) **REGULATIONS.**—The Board shall prescribe regulations to implement this subsection within 1 year of the date of the enactment of this subsection.

“(7) **VALUATION DEFINED.**—For purposes of this subsection, the term ‘valuation’ shall include any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.”.

#### **SEC. 9506. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.**

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

“(c) The standard form described in subsection (a) shall include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

- “(1) the fee paid directly to the appraiser by such company; and
- “(2) the administration fee charged by such company.”.

#### **Subtitle G—Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform**

#### **SEC. 9601. SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT-SPONSORED ENTERPRISES REFORM TO ENHANCE THE PROTECTION, LIMITATION, AND REGULATION OF THE TERMS OF RESIDENTIAL MORTGAGE CREDIT.**

(a) **FINDINGS.**—The Congress finds as follows:

(1) The Government-sponsored enterprises, Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), were chartered by Congress to ensure a reliable and affordable supply of mortgage funding, but enjoy a dual legal status as privately owned corporations with Government mandated affordable housing goals.

(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae's and Freddie Mac's mortgage financing should go to borrowers with income levels below the median for a given area.

(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be “special affordable” loans made to borrowers with incomes less than 60 percent of an area's median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Housing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased \$175,000,000,000 in subprime mortgage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately \$1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae's acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury Department subsequently agreeing to purchase at least \$200,000,000,000 of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9 percent of each enterprise's common stock.

(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of \$5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) **SENSE OF THE CONGRESS.**—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.

#### **Subtitle H—Reports**

#### **SEC. 9701. GAO STUDY REPORT ON GOVERNMENT EFFORTS TO COMBAT MORTGAGE FORECLOSURE RESCUE SCAMS AND LOAN MODIFICATION FRAUD.**

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study of the current inter-agency efforts of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

(b) **REPORT.**—

(1) **IN GENERAL.**—The Comptroller General shall submit a report to the Congress on the

study conducted under subsection (a) containing such recommendations for legislative and administrative actions as the Comptroller General may determine to be appropriate in addition to the recommendations required under paragraph (2).

(2) **SPECIFIC TOPICS.**—The report made under paragraph (1) shall include—

(A) an evaluation of the effectiveness of the inter-agency task force current efforts to combat mortgage foreclosure rescue scams and loan modification fraud scams;

(B) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and

(C) the adequacy of financial resources that the Federal Government is allocating to—

(i) crackdown on loan modification and foreclosure rescue scams; and

(ii) the education of homeowners about fraudulent scams relating to loan modification and foreclosure rescues.

**Subtitle I—Multifamily Mortgage Resolution**  
**SEC. 9801. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.**

(a) **ESTABLISHMENT.**—The Secretary of Housing and Urban Development shall develop a program under this subsection to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible, based on criteria that may include—

(1) creating sustainable financing of such properties, that may take into consideration such factors as—

(A) the rental income generated by such properties; and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of the enactment of this Act;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.

(b) **COORDINATION.**—The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

(c) **DEFINITION.**—For purposes of this section, the term “multifamily properties” means a residential structure that consists of 5 or more dwelling units.

**Subtitle J—Study of Effect of Drywall Presence on Foreclosures**

**SEC. 9901. STUDY OF EFFECT OF DRYWALL PRESENCE ON FORECLOSURES.**

(a) **STUDY.**—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury, shall conduct a study of the effect on residential mortgage loan foreclosures of—

(1) the presence in residential structures subject to such mortgage loans of drywall that was imported from China during the period beginning with 2004 and ending at the end of 2007; and

(2) the availability of property insurance for residential structures in which such drywall is present.

(b) **REPORT.**—Not later than the expiration of the 120-day period beginning on the date of

the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report on the study conducted under subsection (a) containing its findings, conclusions, and recommendations.

The Acting CHAIR. No further amendment to the bill, as amended, shall be in order except those printed in House Report 111-370 and amendments en bloc described in section 3 of House Resolution 964. Each amendment printed in the report shall be considered only in the order printed in the report, except as specified in section 4 of that resolution, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It shall be in order at any time for the Chair of the Committee on Financial Services or his designee to offer amendments en bloc consisting of amendments printed in the report not earlier disposed of. Amendments en bloc pursuant to this section shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the Chair and ranking minority member of the Committee on Financial Services or their designees, shall not be subject to amendment, and shall not be subject to demand for division of the question. The original proponent of an amendment included in such amendments en bloc may insert a statement in the CONGRESSIONAL RECORD immediately before the disposition of the amendments en bloc.

The Chair of the Committee of the Whole may recognize for consideration of any amendment printed in the report out of the order printed, but no sooner than 30 minutes after the Chair of the Committee on Financial Services or his designee announces from the floor a request to that effect.

AMENDMENT NO. 1 OFFERED BY MR. FRANK OF MASSACHUSETTS

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in House Report 111-370.

Mr. FRANK of Massachusetts. Madam Chair, I rise to offer amendment No. 1.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. FRANK of Massachusetts:

Page 1, line 4, strike “The” before “Wall Street”.

Page 13, line 6, insert “(hereafter in this title referred to as a ‘foreign financial parent’) after” after “United States”.

Page 13, beginning on line 14, strike “of a company” and all that follows through “United States” on line 16.

Page 15, after line 11, insert the following new clause (and redesignate subsequent clauses appropriately):

(iv) after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners’ Loan Act) and any subsidiary (as such term is defined in the Bank Holding Company Act of 1956) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph, to the extent that the subsidiary is engaged in an activity described in such subparagraph;

Page 15, line 25, strike “a” and insert “any”.

Page 17, after line 6, insert the following new clause (and redesignate subsequent clauses appropriately):

(v) a securities-based swap execution facility that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);”

Page 21, line 11, strike “to pursuant” and insert “pursuant”.

Page 21, after line 21, insert the following new subparagraph:

(J) The head of the Consumer Financial Protection Agency.

Page 21, after line 23, insert the following (and redesignate succeeding paragraphs accordingly):

(A) The Director of the Federal Insurance Office.

Page 23, line 4, strike “plans” and insert “strategies”.

Page 23, line 5, strike “plans” and insert “strategies”.

Page 23, line 6, insert after the period the following new sentence: “In doing so, the Council shall collaborate with participants in the financial sector, financial sector coordinating councils, and any other parties the Council determines to be appropriate.”.

Page 24, beginning on line 23, strike “another dispute mechanism specifically has been provided under Federal law” and insert “a dispute mechanism specifically has been provided under section 4204 or title III”.

Page 28, line 24, strike “plans” and insert “strategies”.

Page 29, line 2, strike “plans” and insert “strategies”.

Page 32, strike line 22 and all that follows through page 33, line 7.

Page 34, after line 22, insert the following new paragraph:

(3) **MITIGATION REQUIREMENTS IN CASE OF FOREIGN FINANCIAL PARENTS.**—Before requiring the submission of reports from a company that is a foreign financial parent, the Council or the Board shall, to the extent appropriate, coordinate with any appropriate foreign regulator of such company and any appropriate multilateral organization and, whenever possible, rely on information already being collected by such foreign regulator or multilateral organizational with English translation.

Page 35, line 1, insert after “entities” the following: “(including the Federal Insurance Office)”.

Page 37, line 12, insert “; **AGENCY AUTHORITY**” before the period.

Page 37, strike lines 17 and 18, and insert the following:

(b) **AGENCY AUTHORITY TO IMPLEMENT STANDARDS.**—

(1) **IN GENERAL.**—A Federal financial regulatory agency specifically

Page 37, line 19, strike “is authorized to” and insert “may, in response to a Council recommendation under this section or otherwise,”.

Page 38, after line 4, insert the following new paragraph:

(2) APPLYING STANDARDS TO FOREIGN FINANCIAL PARENTS.—In applying standards under paragraph (1) to any foreign financial parent, or to any branch of, subsidiary of, or other operating entity related to such foreign financial parent that operates within the United States, the Federal financial regulatory agency shall—

(A) give due regard to the principles of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial parent is subject to comparable standards on a consolidated basis in the home country of such foreign financial parent that are administered by a comparable foreign supervisory authority.

Page 38, line 22, after “such company,” insert the following: “and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office.”

Page 39, strike line 11 and all that follows through line 15 (and redesignate subsequent paragraphs accordingly).

Page 39, after line 25, insert the following new paragraphs (and redesignate subsequent paragraphs accordingly):

(5) The company's importance as a source of credit for low-income, minority, or underserved communities and the impact the failure of such company would have on the availability of credit in such communities.

(6) The extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse.

Page 40, line 5, insert before the period the following: “or, in the case of a foreign financial parent, the extent to which such foreign parent is subject to prudential standards on a consolidated basis in the home country of such financial parent that are administered and enforced by a comparable foreign supervisory authority”.

Page 40, after line 5, insert the following new paragraphs (and redesignate the subsequent paragraph accordingly):

(8) The amount and nature of the company's financial assets.

(9) The amount and nature of the company's liabilities, including the degree of reliance on short-term funding.

Page 41, strike line 10 and all that follows through line 19 (and redesignate subsequent subsections accordingly).

Page 42, strike line 9 and all that follows through page 44, line 10, and insert the following new paragraphs:

(1) APPLICATION OF FEDERAL LAWS.—

(A) APPLICATION OF BANK HOLDING COMPANY ACT AND FEDERAL DEPOSIT INSURANCE ACT.—A financial company subject to stricter standards that does not own a bank (as defined in section 2 of the Bank Holding Company Act of 1956) and that is not a foreign bank or company that is treated as a bank holding company under section 8 of the International Banking Act of 1978 shall be subject to section 4, subsections (b), (c), (d), (e), (f), and (g) of section 5, and section 8 of the Bank Holding Company Act of 1956, and section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(B) BOARD AUTHORITY.—For purposes of administering and enforcing the provisions of this title, the Board may take any action with respect to a financial holding company subject to stricter standards described in subparagraph (A) or its subsidiaries under the authorities described in subparagraph (A) as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(2) APPLICATION OF ACTIVITY RESTRICTIONS AND SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C)—

(i) a financial holding company subject to stricter standards that conducts activities that do not comply with section 4 of the Bank Holding Company Act shall be required to establish or designate a section 6 holding company in accordance with section 6 of the Bank Holding Company Act of 1956 through which it conducts activities of the company that are determined to be financial in nature or incidental thereto under section 4(k) of the such Act; and

(ii) such section 6 holding company shall be the financial holding company subject to stricter standards for purposes of this title.

(B) EXCEPTIONS FROM SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(i) GENERAL REQUIREMENT FOR BOARD TO CONSIDER EXCEPTIONS.—Before such time as a financial holding company subject to stricter standards is required to establish or designate a section 6 holding company under section 6 of the Bank Holding Company Act, and in consultation with the financial holding company subject to stricter standards and any appropriate Federal or State financial regulators (and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office)—

(I) the Board shall consider whether to grant any of the exemptions from the requirements applicable to section 6 holding companies under section 6(a)(6)(A) of the Bank Holding Company Act of 1956, in accordance with that provision; and

(II) the Board, at the request of a financial holding company subject to stricter standards that is predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, shall consider whether to exempt the financial holding company subject to stricter standards from the requirement to establish a section 6 holding company, taking into consideration paragraph (2)(D), and the extent to which the exemption would: facilitate the extension of credit to individuals, households and businesses; improve efficiency or customer service or result in other public benefits; potentially threaten the safety and soundness of the financial holding company or any of its subsidiaries; potentially increase systemic risk or threaten the stability of the overall financial system; potentially result in unfair competition; and potentially have anticompetitive effects that would not be outweighed by public benefits.

(ii) BOARD DETERMINATION NOT TO EXEMPT.—

(I) IN GENERAL.—If the Board determines not to exempt the financial holding company

subject to stricter standards from the requirement to establish a section 6 holding company, the financial holding company subject to stricter standards shall establish a section 6 holding company within 90 days after the Board's determination.

(II) EXTENSION OF PERIOD.—The Board may extend the time by which the financial holding company subject to stricter standards is required to establish a section 6 holding company for an additional reasonable period of time, not to exceed 180 days.

(iii) BOARD DETERMINATION TO EXEMPT.—

(I) IN GENERAL.—If the Board grants the requested exemption from the requirement to establish a section 6 holding company, the financial holding company subject to stricter standards shall at all times remain predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, and shall be the financial holding company subject to stricter standards for purposes of this title.

(II) SUBSEQUENT LOSS OF EXEMPTION.—Upon a determination by the Board, in consultation with any relevant Federal or State regulators of the financial holding company subject to stricter standards, and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office, that the financial holding company subject to stricter standards fails to comply with this subsection, the financial holding company subject to stricter standards shall lose the exemption from the section 6 holding company requirement and shall establish a section 6 holding company within the time periods described in clause (ii)(I).

(C) ACTIVITIES CONDUCTED ABROAD.—Section 4 of the Bank Holding Company Act of 1956 shall not apply to any activities that a foreign financial holding company subject to stricter standards conducts solely outside the United States if such activities are conducted solely by a company or other entity that is located outside the United States.

(D) FLEXIBLE APPLICATION.—In applying the activity restrictions and ownership limitations of section 4 of the Bank Holding Company Act of 1956 to financial holding companies subject to stricter standards described in paragraph (1)(A), the Board shall flexibly adapt such requirements taking into account the usual and customary practices in the business sector of the financial company subject to stricter standards so as to avoid unnecessary burden and expense.

Page 45, line 5, insert “, as agent of the Council,” after “Board”.

Page 45, beginning on line 18, strike “heightened” and insert “stricter”.

Page 45, strike lines 21 and 22 and insert the following new clause (and redesignate subsequent clauses accordingly):

(i) risk-based capital requirements and leverage limits, unless the Board determines that such requirements are not appropriate for a financial holding company subject to stricter standards because of such company's activities (such as investment company activities or assets under management) or structure, in which case the Board shall apply other standards that result in appropriately stringent controls.

Page 46, line 4, insert “and” after the semicolon.

Page 46, line 6, strike “; and” and insert a period.

Page 46, strike line 7 and all that follows through line 9.

Page 46, line 12, insert “short-term debt limits prescribed in accordance with subsection (d) and” after “include”.

Page 46, line 17, after “AGENCIES” insert the following: “AND THE FEDERAL INSURANCE OFFICE”.

Page 47, line 2, after the period insert the following: “With respect to a financial holding company subject to stricter standards that is an insurance company or any insurance company subsidiary of such a financial holding company subject to stricter standards, the Board shall also consult with the Federal Insurance Office.”.

Page 47, strike line 3 and all that follows through line 5 and insert the following:

(3) APPLICATION OF REQUIRED STANDARDS.—In imposing prudential standards under this section, the Board—

(A) may differentiate among financial

Page 47, line 11, strike the period and insert “; and”.

Page 47, after line 11, insert the following new subparagraph:

(B) shall take into consideration whether and to what extent a financial holding company subject to stricter standards that is not a bank holding company or treated as a bank holding company owns or controls a depository institution and shall adapt the prudential standards applied to such company as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which capital requirements are not appropriate.

Page 47, beginning on line 20, strike “financial companies” and all that follows through “own or control” on line 22, and insert “a foreign financial parent and to”.

Page 47, beginning on line 23, strike “that is a” and all that follows through “principle” on line 25 and insert “that is owned or controlled by a foreign financial parent, giving due regard to principles”.

Page 48, beginning on line 2, strike “such companies are subject” and insert “the foreign financial parent is subject on a consolidated basis”.

Page 50, line 22, strike “, as such entities are” and insert “as”.

Page 51, line 13, before the period insert the following: “and, with respect to an insurance company, the Federal Insurance Office”.

Page 54, line 14, insert before the period the following: “except as specifically provided in this title”.

Page 54, line 19, insert before the period the following: “except as specifically provided in this title”.

Page 55, line 14, strike “shall” and insert “may”.

Page 55, line 19, strike “The” and insert “Any”.

Page 56, strike line 20 and all that follows through line 25.

Page 68, line 17, insert “The Board, in determining whether to impose any requirement under this subparagraph that is likely to have a significant effect on a functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary of a financial holding company subject to stricter standards, shall consult with the primary financial regulatory agency for such subsidiary. In the case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office.” after the period.

Page 76, line 9, insert “, after consultation with the primary financial regulatory agency for any functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary that is likely to be significantly affected by such actions. In the

case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office” before the period.

Page 86, line 1, after “standards” insert the following: “(and, if the financial holding company subject to stricter standards is an insurance company, the Federal Insurance Office)”.

Page 87, after line 5, insert the following new subsections:

(j) RULE OF CONSTRUCTION REGARDING CONSUMER PROTECTION STANDARDS.—The prudential standards imposed or recommended by the Board or the Council under this section shall not be construed as superseding—

(1) any consumer protection standards promulgated under a State or Federal consumer protection law, including the Consumer Financial Protection Agency Act and the Federal Trade Commission Act; or

(2) any investor protection standard that protects consumers (including public reporting requirements) imposed under State or Federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisors Act of 1940.

(k) RULEMAKING AUTHORITY.—The Board may prescribe such regulations and issue such orders as the Board, in consultation with the Council, determines to be necessary to carry out the provisions of this subtitle.

Page 87, line 24, strike “financial company subjected to stricter prudential” and insert “financial holding company subject to stricter”.

Page 88, line 2, insert after the period the following: “With respect to any requirements under this section that is likely to have a significant effect on an insurance company, the Council shall consult with the Federal Insurance Office.”.

Page 89, line 8, insert “stricter” after “modifying”.

Page 90, line 14, insert “holding” after “financial”.

Page 90, line 15, strike “prudential”.

Page 90 line 16, strike “financial company” and insert “financial holding company subject to stricter standards”.

Page 90, line 22, strike “company subject to stricter prudential” and insert “holding company subject to stricter”.

Page 92, line 20, strike “subsection (e)(5)” and insert “this section”.

Page 93, line 1, strike “(e)(5)” and insert “(e)(2)”.

Page 96, line 18, insert “, as agent of the Council,” after “Board”.

Page 97, line 4, insert after the period the following: “With respect to any standard that is likely to have a significant effect on insurance companies, the Board also shall consult with the Federal Insurance Office.”.

Page 97, after line 16, insert the following new paragraph:

(3) EXCEPTION.—The standards recommended by the Board and adopted by a primary financial regulatory agency pursuant to this section shall not apply to activities that a foreign financial parent conducts solely outside the United States if such activities are conducted solely by a company or other operating entity that is located outside the United States.

Page 119, line 7, insert “, after notice and opportunity for comment,” after “may”.

Page 119, line 13, strike “agency” and insert “Board”.

Page 119, line 14, strike “agency” and insert “Board”.

Page 122, line 18, strike “The authorities” and insert the following:

(a) CONSTRUCTION.—The authorities

Page 123, after line 2, insert the following new subsection:

(b) AGENT RESPONSIBILITIES.—For purposes of this subtitle, the term “agent” means the Board acting under section 1103(c) and coordinating with the Council in exercising authority under sections 1104 and 1107.

Page 129, line 17, insert “, and who shall coordinate with the Office of Thrift Supervision pursuant to section 1211” before the period at the end.

Page 131, after line 5, insert the following new subsection:

(f) EFFECTIVE DATE.—Subsection (b) shall take effect on the date of the enactment of this Act.

Page 132, after line 15, insert the following new paragraph:

(4) FUNCTIONS RELATING TO SUPERVISION OF SAVINGS AND LOAN HOLDING COMPANIES.—

(A) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of Savings and Loan Holding Companies are transferred to the Board.

(B) BOARD AUTHORITY.—The Board shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners’ Loan Act, on the day before the transfer date, relating to the supervision and regulation of Savings and Loan Holding Companies.

Page 132, after line 24, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(2) in paragraph (2)(E), by striking “and” at the end;

Page 133, after line 2, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(4) after paragraph (2)(F), by inserting the following new subparagraph:

“(G) any savings and loan holding company and any subsidiary of a savings and loan holding company (other than a savings association); and”;

Page 147, line 21, insert “and” after the semicolon.

Page 147, line 25, strike “; and” and insert a period.

Page 148, strike line 1 and all that follows through line 3.

Page 162, after line 6, insert the following new paragraphs (and redesignate succeeding paragraphs accordingly):

(1) In subsection (a)—

(A) in paragraph (1)(A), by striking “Director” and inserting “Board”;

(B) in paragraph (1)(D), by striking clause (i) and inserting: “(i) In general.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘savings and loan holding company’ means any company that directly or indirectly controls a savings association or that controls any company that is a savings and loan holding company, and that is either—

“(I) a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986; or

“(II) a company that is, together with all of its affiliates on a consolidated basis, predominantly engaged in the business of insurance.”;

(C) in paragraph (1)(F), by striking “Director” and inserting “Board”;

(D) in paragraph (1), by inserting at the end the following new subparagraph:

“(K) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”.



(E) in paragraph (2)(D), by striking “Director” and inserting “Board”;

(F) in paragraph (3)(A), by striking “Director” and inserting “Board”; and

(G) in paragraph (4), by striking “Director” and inserting “Board”.

(2) In subsection (b), by striking “Director” each place it appears and inserting “Board”.

(3) In subsection (c)—

(A) in paragraph (2)(F)(i)—

(i) by striking “of Governors of the Federal Reserve System”; and

(ii) by striking “Director” and inserting “Board”;

(B) in paragraph (2)(G), by striking “Director” and inserting “Board”;

(C) in paragraph (4)(A), by striking “Director” and inserting “Board”;

(D) in paragraph (4)(B)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “the Director shall” and inserting “the Board shall”;

(E) in paragraph (4)(C)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “the Director may” and inserting “the Board may”;

(F) in paragraph (5), by striking “Director” and inserting “Board”;

(G) in paragraph (6)(D)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “Director” each place it appears and inserting “Board”;

(H) in paragraph (9)(A)(ii), by inserting “, but only if the conditions for engaging in expanded financial activities set forth in section 4(1) of the Bank Holding Company Act of 1956 have been met” after “1956”; and

(I) in paragraph (9)(E), by striking “Director” each place it appears and inserting “Board”.

(4) In subsection (e)—

(A) in paragraph (1)(A)—

(i) in clause (i), by striking “Director” and inserting “Board”;

(ii) in clause (ii), by striking “Director” and inserting “Board”;

(iii) in clause (iii), by striking “Director” each place it appears and inserting “Board”; and

(iv) in clause (iv), by striking “Director” each place it appears and inserting “Board”;

(B) in paragraph (1)(B), by striking “Director” each place it appears and inserting “Board”;

(C) in paragraph (2), by striking “Director” each place it appears and inserting “Board”;

(D) in paragraph (3), by striking “Director” and inserting “Board”;

(E) in paragraph (4)(A), by striking “Director” and inserting “Board”; and

(F) in paragraph (5), by striking “Director” each place it appears and inserting “Board”.

(5) In subsection (f), by striking “Director” each place it appears and inserting “Board”.

(6) In subsection (g), by striking “Director” each place it appears and inserting “Board”.

(7) In subsection (h)—

(A) in paragraph (2), by striking “Director” and inserting “Board”; and

(B) in paragraph (3), by striking “Director” and inserting “Board”.

(8) In subsection (i)—

(A) in paragraph (1)(A), by striking “Director” and inserting “Board”;

(B) in paragraph (2)(B), by striking “Director” and inserting “Board”;

(C) in paragraph (2)(F), by striking “Director” and inserting “Board”;

(D) in paragraph (3)(B), by striking “Director” and inserting “Board”;

(E) in paragraph (3)(F), by striking “Director” and inserting “Board”;

(F) in paragraph (4), by striking “Director” and inserting “Board”; and

(G) in paragraph (5), by striking “Director” and inserting “Board”.

(9) In subsection (j), by striking “Director” each place it appears and inserting “Board”.

(10) In subsection (l)—

(A) in paragraph (1), by striking “Director” and inserting “Board, in consultation with the Comptroller of the Currency.”; and

(B) in paragraph (2), by striking “Director” and inserting “Board, in consultation with the Comptroller of the Currency.”.

Page 166, after line 18 insert the following:

(13) In subsections (p), (q), (r), and (s), by striking “Director” each place it appears and inserting “Board”.

Page 169, strike lines 1 through 4 and insert the following:

“(7) VALUATION.—

“(A) IN GENERAL.—The Board shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

“(B) EXCEPTION.—In the case of a savings association which has reorganized into a mutual thrift holding company under section 10(b) of the Home Owners’ Loan Act and has issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association prior to December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.”.

Page 204, line 14, strike “may decrease” and insert “decreases”.

Page 204, beginning on line 23, strike “, on a consolidated basis,” and insert “a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,”.

Page 205, beginning on line 4, strike “, on a consolidated basis,” and insert “a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,”.

Page 205, after line 13, insert the following new section:

#### SEC. 1257. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, the amendments made by sections 1221 through section 1253 and 1256 and subsections (a), (b), and (c)(1) of section 1254 shall take effect on the transfer date.

Page 207, line 6, strike “, on a consolidated basis,” and insert “a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,”.

Page 207, strike line 9, and insert the following:

(B) in subparagraph (F)(i), by inserting before the semicolon the following: “, including issuing credit cards and other credit devices (including virtual or intangible devices) that function as credit cards”;

(C) in subparagraph (F)(v), by inserting before the semicolon the following: “, other than loans that otherwise meet the requirements of this subparagraph and are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations”;

(D) by striking subparagraph (H) and inserting the following:

“(H) An industrial loan company, industrial bank, or other similar institution which—

“(i) is an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State’s legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act;

“(ii) either—

“(I) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

“(II) has total assets of less than \$100,000,000; or

“(III) the control of which is not acquired by any company after August 10, 1987;

“(iii) predominantly provides financial products and services to current and former members of the military and their families; and

“(iv) is controlled by a savings and loan holding company, as defined in section 10(a) of the Home Owners’ Loan Act.

This subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution’s account at a Federal Reserve bank, on behalf of an affiliate, if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate, or that is otherwise permissible for a bank controlled by a company described in section 1843(f)(1) of this title.”; and

Page 208, strike line 10 and all that follows through page 209, line 7, and insert the following:

“(ii) conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

“(I) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least two-thirds of the assets or two-thirds of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

“(II) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.”; and

Page 209, strike line 15 and all that follows through page 210, line 14 and insert the following:

“(i) on the date of enactment of the Financial Stability Improvement Act of 2009, a unitary savings and loan holding company that continues to control not fewer than one savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date,



and that became a bank for purposes of the Bank Holding Company Act as a result of the enactment of section 1301(a)(3) of the Financial Stability Improvement Act 2009; or”.

Page 210, line 19, strike “1301(a)(3)(B)” and insert “1301(a)(4)(B)”.

Page 220, after line 25, insert the following:

“(8) UNITARY SAVINGS AND LOAN HOLDING COMPANY DEFINED.—For purposes of this subsection, the term ‘unitary savings and loan holding company’ means a company that was a savings and loan holding company on May 4, 1999 (as then defined), or that became a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and—

“(A) that controls—

“(i) only 1 savings association; or

“(ii) more than 1 savings association, if all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company pursuant to a supervisory transaction under section 1823(c), 1823(i), or 1823(k) of this title, or section 408(m) of the National Housing Act (12 U.S.C. 1730a(m));

“(B) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under section 10 of the Home Owners’ Loan Act); and

“(C) that continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date.”.

Page 220, after line 25, insert the following:

(8) UNITARY SAVINGS AND LOAN HOLDING COMPANY DEFINED.—Solely for purposes of this subsection, the term “unitary savings and loan holding company” means a company that was a savings and loan holding company on May 4, 1999 (as then defined), or that became a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and—

(A) that controls—

(i) only 1 savings association; or

(ii) more than 1 savings association, if all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company pursuant to a supervisory transaction under section 1823(c), 1823(i), or 1823(k) of this title, or section 408(m) of the National Housing Act (12 U.S.C. 1730a(m));

(B) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under section 10 of the Home Owners’ Loan Act); and

(C) that continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date.

Page 222, line 18, strike “subtitle B” and insert “section 1103”.

Page 223, strike line 15 and all that follows through page 224, line 11 and insert the following:

(B) A company that is required to form a section 6 holding company shall conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

(i) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the

year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least ¾ of the assets or ¾ of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

(ii) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section 6 holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.

Page 225, beginning on line 22, strike “, as a bank holding company”.

Page 226, line 2, strike “subtitle B” and insert “section 1103”.

Page 226, strike lines 7 and 8 and insert the following:

“(ii) subject to the provisions of this Act and other Federal law as provided in section 1103(g) of the Financial Stability Improvement Act of 2009; and”.

Page 227, line 5, strike “subtitle A” and insert “section 1103”.

Page 228, line 6, after “section 6(a)(2)(B)” insert the following: “and financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company”.

Page 236, strike lines 17-25.

Page 237, line 12, strike “sections 4(p) and 6” and insert “section 1301 of the Financial Stability Improvement Act of 2009”.

Page 237, line 13, insert “, other than a section 6 holding company,” after “company”.

Page 250, beginning on line 19, strike “after subsection (y) (as added by section 1408)” and insert “at the end”.

Page 250, line 21, strike “(z)” and insert “(y)”.

Page 252, line 16, insert “holding” after “financial”.

Page 252, beginning on line 16, strike “prudential”.

Page 252, line 19, strike “greater” and insert “great”.

Page 253, line 23, strike “8(c)(5)” and insert “18(c)(5)”.

Page 255, after line 2, insert the following new section (and conform the table of contents accordingly):

#### **SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE ACQUISITIONS.**

(a) AMENDMENTS TO BANK HOLDING COMPANY ACT OF 1956.—

(1) CONCENTRATION LIMIT FOR BANK HOLDING COMPANIES.—Section 3(d)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1842(d)(2)(A)) is amended by striking “paragraph (1)(A)” and inserting “subsection (a)”.

(2) TECHNICAL CORRECTION RELATING TO CERTAIN SAVINGS BANKS.—Section 4 of the Bank Holding Company Act is amended by striking subsection (i) and inserting the following new subsection:

“(i) [Repealed]”.

(b) AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended—

(A) by redesignating paragraph (12) as paragraph (13); and

(B) by inserting after paragraph (11) the following new paragraph:

“(12) NATIONWIDE DEPOSIT CAP.—The responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.”.

(2) PARALLEL REQUIREMENT.—Subparagraph (A) of section 44(b)(2) of the Federal Deposit Insurance Act 1831u(b)(2)(A)) is amended to read as follows:

“(A) NATIONWIDE CONCENTRATION LIMITS.—The responsible agency may not approve an application for an interstate merger transaction involving 2 or more insured depository institutions if the resulting insured depository institution (including all insured depository institutions which are affiliates of such institution), upon consummation of the transaction would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States”.

(c) AMENDMENTS TO HOME OWNERS’ LOAN ACT.—Section 10(e)(2) of the Home Owners’ Loan Act 1467a(e)(2)) is amended—

(1) by striking “or at the end of subparagraph (C)”;

(2) by striking the period at the end of subparagraph (D) and inserting “; or”; and

(3) by inserting after subparagraph (D), the following new subparagraph:

“(E) in the case of an application involving an interstate acquisition, if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.”.

Page 257, line 10, strike “assessment period” and insert “assessment period, minus additional deductions or adjustments necessary to establish assessments consistent with the definition under section 7(b)(1)(C) of the Federal Deposit Insurance Act for custodial banks (as defined by the Corporation based on factors including percentage of total revenues generated by custodial businesses and the level of assets under custody) or a bankers’ bank (as referred to in section 5136 of the Revised Statutes of the United States)”.

Page 275, line 15, insert “if the financial company is an insurance company or” after “section 1603”.

Page 277, line 11, insert “activities” after “or”.

Page 277, line 22, strike the period and insert “; and”.

Page 277, after line 22, insert the following new subparagraph:

(C) that is not a Federal home loan bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

Page 278, beginning on line 2, strike “includes” and all that follows through line 3 and insert “means any entity covered by a State law designed specifically to deal with the rehabilitation, liquidation, or insolvency of an insurance company.”.

Page 278, strike line 22 and all that follows through page 279, line 13, and insert the following new paragraph:

(1) VOTE REQUIRED.—

(A) IN GENERAL.—At the request of the Secretary, the Chairman of the Federal Reserve

Board, or the appropriate regulatory agency, the Board and the appropriate regulatory agency shall, or on their own initiative the Board and the appropriate regulatory agency may, consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company.

(B) 2/3 AGREEMENT.—Any recommendation under subparagraph (A) shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and not less than two thirds of any members of the board or commission then serving of the appropriate regulatory agency, as applicable.

Page 280, beginning on line 7, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 280, beginning on line 12, strike “the board of directors or commission of”.

Page 280, line 19, strike “resolution” and insert “dissolution”.

Page 282, beginning on line 8, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 282, beginning on line 20, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 2, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 5, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 9, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 15, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283 beginning on line 18, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, line 22, strike “**RESOLUTION**” and insert “**DISSOLUTION**” (and conform the table of contents accordingly).

Page 284, after line 7, insert the following new paragraphs:

(3) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (2) may be extended by the Secretary for up to 1 additional year if—

(A) the Corporation has not completed the dissolution of the company within the time provided in paragraph (2); and

(B) the Secretary certifies in writing that continuation of the receivership is necessary—

(i) to protect the best interests of the taxpayers of the United States; and

(ii) to protect the stability of the financial system and the economy of the United States.

(4) FURTHER EXTENSION.—The time limit, as extended in paragraph (3), may be extended for up to 1 additional year if—

(A) the conditions of paragraph (3) are met; and

(B) the Corporation submits a report to the Congress, no later than 60 days before the receivership will expire under the extended limit under paragraph (3), that describes in detail—

(i) the basis for the determination by the Corporation that a second extension is necessary; and

(ii) the specific plan of the Corporation for concluding the receivership before the end of the proposed additional year.

Page 284, line 8, strike “**RESOLUTION**” and insert “**DISSOLUTION**”.

Page 284, line 10, strike “resolved” and insert “dissolved”.

Page 284, line 11, strike “resolution” and insert “dissolution”.

Page 284, line 18, strike “resolution” and insert “dissolution”.

Page 285, line 6, strike “resolution” and insert “dissolution”.

Page 285, line 11, strike “resolution” and insert “dissolution”.

Page 285, line 16, strike “1602(9)(B)(iv)” and insert “1602(9)(B)(v)”.

Page 285, line 18, strike “resolution” and insert “dissolution”.

Page 287, beginning on line 1, strike “CERTAIN INSURANCE SUBSIDIARIES” and insert “INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES”.

Page 287, strike line 4 and all that follows through line 9, and insert “(a), if an insurance company covered by a State law designed specifically to deal with the rehabilitation, liquidation or insolvency of an insurance company is a covered financial company or a subsidiary of a covered financial company, resolution of such insurance company, and any subsidiary of such company, will be conducted as provided under such State law.”.

Page 287, line 13, insert before the period the following: “, that is not itself an insurance company”.

Page 287, line 22, strike “resolution” and insert “dissolution”.

Page 288, line 2, strike “resolution” and insert “dissolution”.

Page 289, line 11, strike “**RESOLUTION**” and insert “**DISSOLUTION**”.

Page 289, line 21, insert “in accordance with section 1604” before the comma after “is appointed”.

Page 299, line 11, strike “resolution” and insert “dissolution”.

Page 305, line 19, strike “resolution” and insert “dissolution”.

Page 327, line 2, strike “resolving” and insert “dissolving”.

Page 327, line 8, strike “resolution” and insert “dissolution”.

Page 370, line 15, strike “resolution” and insert “dissolution”.

Page 401, line 10, strike “\$10,000,000,000” and insert “\$50,000,000,000”.

Page 401, line 11, insert a comma after “inflection”.

Page 411, line 10, insert “,subject to the requirements of section 1604(g),” after “Fund”.

Page 413, line 11, strike “resolution” and insert “dissolution”.

Page 413, line 12, strike “resolution” and insert “dissolution”.

Page 425, line 8, strike “Resolution” and insert “Dissolution”.

Page 425, line 14, strike “**RESOLUTION**” and insert “**DISSOLUTION**” (and conform the table of contents accordingly).

Page 425, line 21, strike “Resolution” and insert “Dissolution”.

Page 426, line 2, strike “Resolution” and insert “Dissolution”.

Page 426, line 7, strike “Resolution” and insert “Dissolution”.

Page 426, line 8, strike “Resolution” and insert “Dissolution”.

Page 432, line 1, strike “Resolution” and insert “Dissolution”.

Page 433, line 4, strike “Resolution” and insert “Dissolution”.

Page 455, line 5, before the comma insert “(as such terms are defined in subsection (c) (1))”.

Page 461, strike lines 8 through 15 and insert the following:

(J) the Consumer Financial Protection Agency,

(K) the Federal Insurance Office,

Page 461, after line 19, insert the following new section:

## SEC. 1802. FEDERAL HOUSING FINANCE AGENCY ADVISORY ROLE IN FIEC.

After section 1007 of the Federal Financial Institutions Examination Council Act of 1987 (12 U.S.C. 3306) insert the following new section:

## “SEC. 1007A. FEDERAL HOUSING FINANCE AGENCY ADVISORY ROLE.

“Whenever the Council takes any actions with respect to issues that relate to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal home loan banks, the Federal Housing Finance Agency shall participate in the Council’s proceedings in an advisory role.”.

Page 462, beginning on line 20, strike “(as” and all that follows through line 22 and insert a comma.

Page 463, beginning on line 15, strike “(as” and all that follows through line 17 and insert a comma.

Page 464, strike lines 11 and 12 and insert “States, the”.

Page 465, after line 2, insert the following new subtitle:

### Subtitle L—Securities Holding Companies

## SEC. 1961. SECURITIES HOLDING COMPANIES.

(a) SUPERVISION OF A SECURITIES HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

(1) IN GENERAL.—A securities holding company that is required by a foreign regulator or foreign law to be subject to comprehensive consolidated supervision and that is not—

(A) a financial holding company subject to stricter standards,

(B) an affiliate of an insured bank (other than an institution described in subparagraphs (D) or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956) or a savings association,

(C) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978,

(D) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), or

(E) subject to comprehensive consolidated supervision by a foreign regulator,

may register with the Board to become supervised, pursuant to paragraph (2). Any securities holding company filing such a registration shall be supervised in accordance with this section and comply with the rules and orders prescribed by the Board applicable to supervised securities holding companies.

(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—A securities holding company described in paragraph (1) shall register by filing with the Board such information and documents concerning such securities holding company as the Board, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Such supervision shall become effective 45 days after the date of receipt of such registration by the Board or within such shorter time period as the Board, by rule or order, may determine.

(b) SUPERVISION OF SECURITIES HOLDING COMPANIES.—

### (1) RECORDKEEPING AND REPORTING.—

(A) IN GENERAL.—Every supervised securities holding company and each affiliate of such company shall make and keep for prescribed periods such records, furnish copies of records, and make such reports, as the Board determines to be necessary or appropriate for the Board to carry out the purposes of this section, prevent evasions, and

monitor compliance by the company or affiliate with applicable provisions of law.

(B) **FORM AND CONTENTS.**—Such records and reports shall be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board may require and shall be provided promptly at any time upon request by the Board. Such records and reports may include—

(i) a balance sheet and income statement;

(ii) an assessment of the consolidated capital of the supervised securities holding company;

(iii) an independent auditor's report attesting to the supervised securities holding company's compliance with its internal risk management and internal control objectives; and

(iv) reports concerning the extent to which the company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) **USE OF EXISTING REPORTS.**—

(A) **IN GENERAL.**—The Board shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised securities holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

(B) **AVAILABILITY.**—A supervised securities holding company or an affiliate of such company shall provide to the Board, at the request of the Board, any report referred to in subparagraph (A), as permitted by law.

(3) **EXAMINATION AUTHORITY.**—

(A) **FOCUS OF EXAMINATION AUTHORITY.**—The Board may make examinations of any supervised securities holding company and any affiliate of such company to carry out the purposes of this subsection, prevent evasions thereof, and monitor compliance by the company or affiliate with applicable provisions of law.

(B) **DEFERENCE TO OTHER EXAMINATIONS.**—For purposes of this subparagraph, the Board shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary, as defined under section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)), or an institution described in subparagraphs (D) or (G) of section 1841(c)(2).

(C) **CAPITAL AND RISK MANAGEMENT.**—

(1) The Board shall, by regulation or order, prescribe capital adequacy and other risk management standards for a supervised securities holding company appropriate to protect the safety and soundness of the company and address the risks posed to financial stability by a supervised securities holding company. Standards imposed under this subparagraph shall take account of differences among types of business activities and—

(A) the amount and nature of the company's financial assets;

(B) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(C) the extent and nature of the company's off-balance sheet exposures;

(D) the extent and nature of the company's transactions and relationships with other financial companies;

(E) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system; and

(F) the nature, scope, and mix of the company's activities.

(2) In imposing standards under this subsection, the Board may differentiate among supervised securities holding companies on an individual basis or by category, taking into consideration the criteria specified above.

(3) Any capital requirements imposed under this subsection shall not take effect until the expiration of 180 days after a supervised securities holding company is provided notice of such requirement.

(d) **OTHER PROVISIONS.**—

(1) Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act shall apply to any supervised securities holding company, and to any subsidiary (other than a bank) of a supervised securities holding company, in the same manner as they apply to a bank holding company. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank) of a supervised securities holding company, the Board shall be considered the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Except as the Board may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent that bank holding companies are subject to such provisions, except that any such supervised securities holding company shall not by reason of this subparagraph be deemed a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956.

(e) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **SECURITIES HOLDING COMPANY.**—The term “securities holding company” means—

(A) any person other than a natural person that owns or controls one or more brokers or dealers as defined in section 3 of the Securities Exchange Act; and

(B) the associated persons of the securities holding company.

(2) **SUPERVISED SECURITIES HOLDING COMPANY.**—The term “supervised securities holding company” means any securities holding company that is supervised by the Board pursuant to this section.

(3) **OTHER BANKING TERMS.**—The terms “affiliate”, “bank”, “bank holding company”, “company”, “control”, “savings association”, and “subsidiary” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(4) **INSURED BANK.**—The term “insured bank” has the same meaning as in section 13 of the Federal Deposit Insurance Act.

(5) **FOREIGN BANK.**—The term “foreign bank” has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.

(6) **ASSOCIATED PERSONS.**—The terms “person associated with a securities holding company” and “associated person of a securities holding company” mean any person directly or indirectly controlling, controlled by, or under common control with, a securities holding company.

Page 480, line 12, strike “2009” and insert “2008”.

Page 668, strike lines 4 and 5 and insert the following:

(13) **DEPOSIT-TAKING, MONEY ACCEPTANCE, OR MONEY MOVEMENT ACTIVITY.**—The term “deposit-taking, money acceptance, or money movement activities” means—

Page 669, line 15, insert “(b),” after “Subsections”.

Page 669, line 20, insert “except for section 505 as it applies to section 501(b)” before the period.

Page 670, after line 9, insert the following:

(N) Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(O) The Unlawful Internet Gambling Enforcement Act of 2006.

Page 670, line 23, after “taking” insert “, money acceptance, or money movement”.

Page 672, line 3, insert “, except that furnishing a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer's residential or tenant history shall not be considered a financial activity” before the period at the end.

Page 673, line 2, insert “a person regulated as an investment adviser by” after “or” the 1st place such term appears.

Page 675, strike line 10 and all that follows through page 676, line 9, and insert the following:

(ix) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a “financial activity” with respect to financial data processing—

(I) to the extent the person is providing interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230); or

(II) if the person—

(aa) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(bb) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(cc) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

Page 678, line 10, as modified by the amendment MWB\_05, before “data is undifferentiated” insert “financial”.

Page 679, line 2, insert “and shall include any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank” before the period at the end.

Page 679, beginning on line 17, strike “covered”.

Page 681, strike line 18 and all that follows through line 20 and insert the following new subparagraph:

(C) an investment company that—

(i) is required to be registered under the Investment Company Act of 1940; or

(ii) is excepted from the definition of investment company under section 3(c) of such Act, or any successor provision.

Page 682, line 21, strike “the person” and insert “any person described in any subparagraph of this paragraph”.

Page 682, line 23, insert “, or, with respect to a person described in subparagraph (C)(ii), any employee, agent, or contractor acting on behalf of, or providing services to any such person, but only to the extent that such person, or the employee, agent, or contractor of such person acts in such exempt capacity” before the period at the end.

Page 686, line 19, insert “or any federally recognized Indian tribe as defined by the

Secretary of Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1(a))" before the period.

Page 693, line 13, before the semicolon insert the following: ", except that the Director shall not exercise any authorities that are granted to State insurance authorities under section 505(a)(6) of the Gramm-Leach-Bliley Act".

Page 693, line 14, insert ", except that Director shall not exercise any authorities that are granted to State insurance authorities under Section 505(a)(6) of the Gramm-Leach-Bliley Act" before the semicolon.

Page 696, strike line 14 and all that follows through page 697, line 9, and insert the following:

(1) APPOINTMENT.—The Director may fix the number of, and appoint and direct, all employees of the Agency.

Page 701, line 1, insert "the Federal Trade Commission," after "banking agencies,".

Page 714, strike lines 11 through 14, and insert the following:

(2) an analysis of the major problems consumers of financial products and services were confronted with during the preceding year, including a description of the nature of such problems, and recommendations for such administrative and legislative action as may be appropriate to resolve such problems;

Page 715, after line 7, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(6) an analysis of the Agency's efforts to increase workforce and contracting diversity consistent with subtitle I of title I of this Act;

Page 717, beginning on line 17, strike "and complexity of the covered person," and insert ", complexity of, risk posed by,".

Page 719, beginning on line 10, strike "and complexity of the covered person," and insert ", complexity of, risk posed by,".

Page 720, line 16, insert "in the each of the first 3 years following the date of enactment of this Act" after "persons".

Page 720, beginning on line 18, strike "the 12-month period ending on December 31, 2009" and insert "the calendar year immediately preceding the designated transfer date".

Page 720, line 24, insert ", on a risk-adjusted basis," after "that".

Page 721, line 11, insert "or to set assessments that would result in higher marginal assessments on the depository institution covered persons with assets of less than \$25,000,000.000 if based on the compliance record of or higher risks posed by such covered persons" before the period.

Page 721, line 18, strike "enforcement or regulation" and insert "or enforcement activities".

Page 722, line 1, insert "so that levels of assessments under this subparagraph combined with levels of assessments by an agency responsible for chartering and or supervising the depository institution covered person shall be no more" before "than it paid".

Page 725, line 6, insert "or the CFPA Non-depository Fund, at the discretion of the Agency" before the period at the end.

Page 728, beginning on line 12, strike "as a result of the" and insert "that are reasonably related as a general matter to".

Page 743, line 3, insert "a provision of" after "reports under".

Page 743, line 4, insert "a provision of" after "title,".

Page 743, line 5, insert "any provision of" after "law,".

Page 743, line 8, insert "under that provision of law" after "exclusive authority".

Page 748, line 6, strike "\$1,500,000,000" and insert "\$10,000,000,000".

Page 760, strike line 19 and all that follows through page 762, line 22, and insert the following:

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial goods or services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase such goods or services directly from the merchant, retailer, or seller of nonfinancial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended.

In the application of this paragraph, the extension of credit and the collection of debt described in subparagraphs (A) and (B), respectively, shall not be considered a consumer financial product or service.

(2) EXCEPTION FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any agency other than the Agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant or retailer.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided; and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

Page 762, line 14, strike "or".

Page 762, line 22, strike the period and insert "; or".

Page 762, after line 22, insert the following new subparagraph:

(C) any credit transaction involving a person who operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, if—

(i) the extension of retail credit or retail leases is provided directly to consumers; and

(ii) the contracts governing such extension of retail credit or retail leases are not assigned to a third party finance or leasing source, except on a de minimis basis.

Page 764, after line 24, insert the following new subsection and redesignate subsequent subsections accordingly):

(d) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (m), the Director and the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in any financial activity described in any subparagraph of section 101(19) or is otherwise subject to any enumerated consumer law or any law or authority transferred under subtitle F or H.

Page 765, strike line 20 and all that follows through page 766, line 3, and insert the following new paragraph:

(3) PRESERVATION OF CERTAIN AUTHORITIES.—No provision of this title shall be construed as limiting the authority of the Director and the Agency from exercising powers under this Act with respect to a person, other than a person regulated by a State insurance regulator, who provides a product or service for or on behalf of a person regulated by a State insurance regulator in connection with a financial activity.

Page 766, line 13, insert "Finance" after "Housing".

Page 770, after line 4, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(3) CERTAIN ACTIVITIES NOT EXCLUDED.—

(A) IN GENERAL.—In no event shall paragraph (1) apply to any activity which involves the sale of securities or extension of credit which is provided by a person described in paragraph (1)(A).

(B) DEFINITION.—For purposes of subparagraph (A), the term "extension of credit" shall not include an ordinary account receivable.

Page 772, beginning on line 15, strike "order assessments, over" and all that follows through page 773, line 7, and insert "order assessments, over a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.".

Page 776, after line 19, insert the following new subsections:

(1) EXCLUSION FOR PAWNBROKERS.—

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments, under this title with respect to any pawnbroker licensed by a State or political subdivision thereof, a territory of the United States, or the District of Columbia, but only to the extent that such person acts in such capacity and provides either—

(A) non-recourse credit secured by a possessory security interest in tangible goods physically delivered by the consumer to the pawnbroker for which the consumer does not provide a written or electronic promise, order or authorization to pay, or in any other manner authorize a debit of a deposit account, prior to or contemporaneously with the disbursement of the original proceeds; or

(B) credit or any other financial activity issued directly by a pawnbroker to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase goods or services directly from the pawnbroker.

(2) RULE OF CONSTRUCTION.—

(A) FTC AUTHORITY PRESERVED.—Except as provided in subparagraph (B), no provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission with respect to the activities described under paragraph (1).

(B) EXERCISE OF RULEMAKING AUTHORITY.—The Director may exercise any rulemaking authority regarding the activities described in paragraph (1) only as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(m) EXCLUSION FOR CERTAIN CONSUMER REPORTING AGENCIES.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is a consumer reporting agency, as such term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), but only to the extent that such consumer reporting agency furnishes a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer's residential or tenant history.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(n) LIMITED AUTHORITY OF THE AGENCY TO OBTAIN INFORMATION.—Notwithstanding subsections (a), (f), (g), (h), (i), and (k), the Director may request or require information from any person subject to or described in any such subsection in order to carry out the responsibilities and functions of the Agency and in accordance with section 4206, 4501, or 4502.

Page 781, line 22, after the period insert the following: "This authority shall not prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen."

Page 787, strike line 17 and all that follows through page 788, line 10, and insert the following new subsection:

(c) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES DEFINED.—

(1) UNFAIR ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is unfair shall be consistent with the standard set forth under section 5 of the Federal Trade Commission Act and with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated December 17, 1980.

(2) DECEPTIVE ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is deceptive shall be consistent with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated October 14, 1983.

(3) ABUSIVE ACTS OR PRACTICES.—The Director and the Agency may determine that an

act or practice is abusive only if the Director finds that—

(A) the act or practice is reasonably likely to result in a consumer's inability to understand the terms and conditions of a financial product or service or to protect their own interests in selecting or using a financial product or service; and

(B) the widespread use of the act or practice is reasonably likely to contribute to instability and greater risk in the financial system.

Page 795, line 23, insert "(other than by the Agency, or by a State regulator, as may be necessary to enforce an administrative order under this section)" before the comma at the end.

Page 799, line 24, after "and" insert ", notwithstanding any other provision of this title."

Page 815, line 11, insert "to be effected or used primarily for personal, family, or household purposes" after "funds".

Page 845, after line 13, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(4) COVERED EMPLOYEE.—The term "covered employee" means any individual performing tasks related to the provision of a financial product or service to a consumer.

Page 878, beginning on line 5, strike "for any violation of a regulation prescribed under section 4306 or".

Page 880, strike line 16 through page 893, line 8 and insert the following:

**SEC. 4507. EMPLOYEE PROTECTION.**

(a) No covered person shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee) has—

(1) provided information to the Agency or to any other state, local, federal, or tribal government entity, filed, instituted or caused to be filed or instituted any proceeding under this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title; or

(2) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, or regulation, or to be unfair, deceptive, or abusive and likely to cause specific and substantial injury to one or more consumers.

(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant

and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory damages to the complainant. If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding \$ 1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5)(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require com-

pliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d)(1) Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(e) Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under paragraph (a)(2) of this section unless the Agency determines by rule that such provision is inconsistent with the purposes of this Act.

(f) Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

Page 881, line 1, strike "provided information to" and insert "provided, caused to be provided, or is about to provide or cause to be provided information to the employer."

Page 893, line 6, strike "(a)(2)" and insert "(a)(4)".

Page 893, after line 8 insert the following new section (and redesignate succeeding sections accordingly):

**SEC. 4508. NO PRIVATE RIGHT OF ACTION.**

Nothing in this title shall be construed to create a private right of action, but this section shall not be construed or interpreted to deny any private right of action arising under the enumerated consumer laws or the authorities transferred under subtitle F or H.

Page 897, beginning on line 21, strike "BACKSTOP".

Page 898, line 2, strike "4202(e)(3)" and insert "paragraph (2) or (3) of section 4202(e)".

Page 898, line 8, insert "transferred under subsection (a)" after "functions".

Page 922, beginning on line 1, strike "a Federal home loan bank, a joint office of the Federal home loan banks,".

Page 922, line 5, strike "or".

Page 922, line 6, insert " , or the Federal Home Loan Bank Board or any successor to such Board" before "shall be".

Page 922, beginning on line 23, strike "a Federal home loan bank, a joint office of the Federal home loan banks,".

Page 923, line 2, strike "or".

Page 923, line 3, insert " , or the Federal Home Loan Bank Board or any successor to such Board" before "shall be".

Page 933, line 4, insert "the Federal Home Loan Bank Board or any successor to such Board," after "Federal reserve bank".

Page 933, line 21, insert "the Federal Home Loan Bank Board or any successor to such Board," after "reserve bank".

Page 934, line 24, strike "before the designated transfer date" and insert "during the 24-month period beginning on the date of the enactment of this title".

Page 954, line 2, insert "and shall not apply to the term 'Board' when used in reference to

the Federal Deposit Insurance Corporation or the National Credit Union Administration" before the period.

Page 955, line 16, strike "25(a)" and insert "25A".

Page 957, line 3, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 957, line 20, insert "(and except for any insertion of 'Federal Trade Commission' made by this subtitle)" after "subparagraph (B)".

Page 958, line 2, strike "and 129(m) (as amended by paragraph (7))" and insert "129(m) (as amended by paragraph (7)), 140A, or 149 (as amended by paragraph (8)).".

Page 959, after line 13, insert the following:

(8) SECTION 149.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) is amended by inserting "the Federal Trade Commission," after "in consultation with".

Page 960, beginning on line 1, strike "paragraph (7)(A)" and insert " paragraphs (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection (and except for any insertion of 'Federal Trade Commission' made by this subtitle)".

Page 961, after line 21, insert the following:

(5) SECTION 609.—Section 609(d)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1)) is amended by inserting "the Federal Trade Commission," after "in consultation with".

Page 961, line 22, strike "(5)" and insert "(6)".

Page 961, line 22, strike "611(e)(2)" and insert "611(e)".

Page 961, line 23, strike "15 U.S.C.1681i(e)(2)" and insert "15 U.S.C. 1681i(e)".

Page 961, line 24, strike "amended to read as follows:" and insert "amended—", and after such line insert the following:

(A) by amending paragraph (2) to read as follows:

Page 962, line 5, strike the period following the quotation marks and insert " ; and " and after such line insert the following:

(B) in the heading of paragraph (3) by inserting "CONSUMER REPORTING" before "AGENCY".

Page 962, strike lines 6 through 8 and insert the following:

(8) SECTION 615.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(A) in subsection (d)(2)(B), by inserting "the Federal Trade Commission," after "in consultation with";

(B) in subsection (e)(1), by striking "and the Commission" and inserting "the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission"; and

(C) by striking subparagraph (A) of subsection (h)(6) and inserting the following:

Page 962, line 11, strike "(7)" and insert "(8)".

Page 963, line 2, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 968, after line 7, insert the following (and redesignate succeeding subparagraphs accordingly):

(C) in paragraph (2) of subsection (c)—

(i) by inserting "the Agency and" before "the Federal Trade Commission" in the first sentence;

(ii) by inserting "Agency and the Federal Trade" after "provide the"; and

(iii) by inserting "Agency," before "Federal Trade Commission" in the second sentence;

(D) in paragraph (4) of subsection (c)—

(i) by inserting "Agency," before "the Federal Trade Commission"; and

(ii) inserting “Agency, the Federal Trade” after “complaint of the”;

(E) in paragraph (2) of subsection (f), by inserting “the Federal Trade Commission” after “in consultation with”;

Page 968, beginning on line 12, strike “with respect to a covered person described in subsection (b)” and insert “, except that, with respect to sections 615(e) and 628 of this title, the agencies identified in subsections (a) and (b) of this section shall prescribe such regulations as necessary to carry out the purposes of such sections with respect to entities within their enforcement authority under such subsections”.

Page 968, line 14, strike “(D)” and insert “(G)”.

Page 973, strike lines 8 and 9 and insert the following:

(iii) in paragraph (1)(B)—

(I) by inserting “of Governors of the Federal Reserve System” after “Board”; and

(II) by striking “and” after the semicolon; Page 974, line 2, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 978, line 4, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 982, line 21, strike “and” and after such line insert the following:

(iii) in paragraph (1)(B), by inserting “of Governors of the Federal Reserve System” after “Board”;

Page 982, line 22, strike “(iii)” and insert “(iv)”.

Page 983, line 7, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 988, after line 7, insert the following (and redesignate succeeding subsections accordingly):

(a) SECTION 501.—Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by inserting “(other than the Consumer Financial Protection Agency)” after “title”.

(b) SECTION 502.—Section 502(e)(5) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by inserting “the Consumer Financial Protection Agency,” after “(including)”.

(c) SECTION 503.—Section 503(e)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

(1) by inserting “Consumer Financial Protection Agency in consultation with the other” before “agencies”; and

(2) by striking “jointly”.

Page 988, line 13, strike “and” at the end.

Page 988, line 15, strike the period and insert “; and” and after such line insert the following:

(3) by inserting “the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Federal Trade Commission, and” before “representatives of State insurance authorities”.

Page 989, after line 15, insert the following:

(f) SECTION 507.—Subsection 507(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by striking “Federal Trade Commission” and inserting “Consumer Financial Protection Agency, or in the case of a rule under section 501(b), the Federal Trade Commission or the Securities and Exchange Commission”.

Page 997, line 6, strike “25(a)” and insert “25A”.

Page 1016, strike line 7 through page 1018, line 5, and insert the following:

#### SEC. 4815. AMENDMENTS TO THE TELEMARKEETING AND CONSUMER FRAUD ABUSE AND PREVENTION ACT.

(a) Section 4 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b)—

(A) by inserting “and the Consumer Financial Protection Agency with respect to a person subject to the authority of that Agency under the Consumer Financial Protection Agency Act” after “Commission” each of the first 2 places it appears; and

(B) by inserting “or the Consumer Financial Protection Agency” after “Commission” the last place it appears; and

(2) in subsection (d), by inserting “or the Consumer Financial Protection Agency” after “Commission” each place such term appears.

(b) Section 5 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b)—

(A) by inserting “and the Consumer Financial Protection Agency with respect to a person subject to the authority of that Agency under the Consumer Financial Protection Agency Act” after “Commission” each of the first 2 places it appears; and

(B) by inserting “or the Consumer Financial Protection Agency” after “Commission” the last place it appears; and

(2) in subsection (c), by inserting “or the Consumer Financial Protection Agency” after “Commission” each place such term appears.

(c) Section 6 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

“(c) ENFORCEMENT BY THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this Act shall be enforced by the Consumer Financial Protection Agency, under subtitle E of that Act, with respect to a person subject to the authority of that Agency under that Act. For the purpose of the exercise by the Consumer Financial Protection Agency of its powers under subtitle E, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under the Consumer Financial Protection Agency Act. In addition to its powers under subtitle E of that Act, the Agency may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.”.

Page 1019, line 8, strike “and” and after such line insert the following:

(2) by inserting a comma after “under this Act”;

(3) by inserting a comma after “subsection (a)(1)”;

Page 1019, line 9, strike “(2)” and insert “(4)”.

Page 1019, line 15, insert “partnership, or corporation” after “person,”.

Page 1020, after line 20, insert the following new subtitle:

#### Subtitle J—Miscellaneous

#### SEC. 4951. REQUIREMENTS FOR STATE-LICENSED LOAN ORIGINATORS.

Paragraph (2) of section 1505 (b) of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5104(b)(2)) is amended by inserting after and below subparagraph (B), the following:

“Notwithstanding the preceding sentence, a State loan originator supervisory authority may provide for review of applicants and for granting exceptions, on a case-by-case basis, to the minimum standard under subparagraph (B), but only to the extent that any such exception otherwise complies with the purposes of this title.”.

Page 1021, strike lines 24 and 25 and insert the following:

“(i) in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser; and”.

Page 1022, strike lines 1 and 2 and insert the following:

“(ii) aggregate assets under management attributable to clients and investors in the United States in private funds advised by the investment adviser of”.

Page 1022, line 20, strike “Section” and insert the following:

(a) EXEMPTION.—Section

Page 1024, after line 3, insert the following:

(b) CONSIDERATION OF RISK.—Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)) is amended by adding at the end the following:

“(3) The Commission shall take into account the relative risk profile of different classes of private funds as it establishes, by rule or regulation, the registration requirements for private funds.”.

Page 1024, line 4, strike “SYSTEMIC RISK”.

Page 1024, beginning on line 23, strike “, and to any other entity that the Commission identifies as having systemic risk responsibility” and insert “and to the Financial Services Oversight Council”.

Page 1027, beginning on line 12, strike “, and to any other entity that the Commission identifies as having systemic risk responsibility” and insert “and to the Financial Services Oversight Council”.

Page 1027, line 17, strike “such other entity” and insert “the Financial Services Oversight Council”.

Page 1028, strike line 11 and all that follows through page 1029, line 2, and insert the following:

“(8) NON-DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION AND CONFIDENTIALITY OF REPORTS.—Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this section 204(b) shall be subject to the same limitations on public disclosure as any facts ascertained during an examination as provided by section 210(b) of this title. The Commission may not compel the private fund to disclose such proprietary information to counterparties and creditors. For purposes of this section, proprietary information shall include sensitive, non-public information regarding the investment adviser’s investment or trading strategies, analytical or research methodologies, trading data, computer hardware or software containing intellectual property, and any additional information that the Commission determines to be proprietary. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or to prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.”.



Page 1030, line 12, strike “private funds” the second place it appears and insert “investment adviser acts solely as an adviser to private funds and”.

Page 1032, line 23, insert “, 203(m),” after “203(l)”.

Page 1033, line 23, insert “to the extent necessary” after “regulations”.

Page 1034, line 7, insert “in any rule or regulation” after “any factor used”.

Page 1034, line 11, insert “by order,” after “Commission shall.”.

Page 1034, line 15, strike “\$1,000” and insert “\$100,000”.

Page 1034, line 16, strike “\$1,000” and insert “\$100,000”.

Page 1038, line 2, insert “disclosure of” after “with respect to”.

Page 1041, beginning on line 13, strike “and reliable”.

Page 1042, beginning on line 2, strike “or its ultimate holding company”.

Page 1059, line 2, strike “; and” and insert a period.

Page 1059, strike lines 3 through 8 and insert the following:

(2) **SYMBOLS.**—The Commission may prescribe rules that require nationally recognized statistical rating organizations to establish credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors, provided such rules do not prevent public pension funds or other State regulated entities from investing in rated products.

Page 1059, line 9, strike “(2)” and insert “(3)”.

Page 1066, line 7, insert “certify that they” after “diligence services”.

Page 1067, line 10, strike “service,” and insert “service to that issuer, underwriter, or placement agent in determining a credit rating.”.

Page 1068, line 17, strike “this title” and insert “the securities laws”.

Page 1068, line 21, strike “or a similar”.

Page 1090, line 14, insert “section 211 of” after “under”.

Page 1090, line 18, insert after the period the following: “Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.”.

Page 1092, line 1, strike “(3)” and insert “(2)”.

Page 1096, line 4, insert “**AND RULE-MAKING**” after “**STUDY**”.

Page 1096, beginning on line 9, strike “manner in which” and all that follows through “products or services” on line 12 and insert “provision of documents or information to retail customers prior to the purchase of investment products or services”.

Page 1098, line 19, strike “in connection with” and insert “rules that require the provision of documents or information to retail customers prior to”.

Page 1103, strike “**ADVISOR**” and insert “**ADVISER**”.

Page 1109, line 11, insert “law enforcement agency,” after the comma.

Page 1109, line 17, strike “or” and after such line insert the following:

(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws; or

Page 1109, line 18 strike “(C)” and insert “(D)”.

Page 1116, strike lines 11 through page 1118, line 13, and insert the following:

“(2) **CONFIDENTIALITY.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(B) **AVAILABILITY TO GOVERNMENT AGENCIES.**—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—

“(i) the Attorney General of the United States,

“(ii) an appropriate regulatory authority,

“(iii) a self-regulatory organization,

“(iv) State attorneys general in connection with any criminal investigation, and

“(v) any appropriate State regulatory authority,

“each of which shall not disclose such information in accordance with subparagraph (A).”.

Page 1123, line 13, insert “municipal financial adviser,” after “transfer agent,”.

Page 1123, line 22, insert “municipal financial adviser,” after “transfer agent,”.

Page 1124, line 6, insert “municipal financial adviser,” after “municipal securities dealer,”.

Page 1124, line 15, insert “municipal financial adviser,” after “transfer agent,”.

Page 1127, beginning on line 18, strike “head of any division or office within the Commission or his designee” and insert “Director of the Division of Enforcement of the Commission or the Director’s designee”.

Page 1127, beginning on line 24, strike “head of any division or office within the Commission or his designee” and insert “Director of the Division of Enforcement of the Commission or the Director’s designee”.

Page 1128, beginning on line 3, strike “head of any division or office within the Commission or his designee” and insert “Director of the Division of Enforcement of the Commission or the Director’s designee”.

Page 1128, beginning on line 9, strike “head of any division or office within the Commission or his designee” and insert “Director of the Division of Enforcement of the Commission or the Director’s designee”.

Page 1128, line 24, strike “without findings” and insert “, has concluded without findings.”.

Page 1129, line 3, insert “responsible for compliance examinations and inspections” after “Commission”.

Page 1129, line 7, insert a comma after “inspection”.

Page 1129, line 8, insert a comma after “action”.

Page 1129, line 11, insert “responsible for compliance examinations and inspections” after “Commission”.

Page 1129, strike line 16 through page 1131, line 2, and insert the following:

(a) **SECURITIES ACT OF 1933.**—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

(b) **SECURITIES EXCHANGE ACT OF 1934.**—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

(c) **INVESTMENT COMPANY ACT OF 1940.**—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a-43) is amended by inserting after the fourth sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

(d) **INVESTMENT ADVISERS ACT OF 1940.**—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended by inserting after the third sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

Page 1131, line 9, strike “**MONEY**” and insert “**MONEY**”.

Page 1133, line 21, strike “**TO ASSESS MONEY**” and insert “**TO ASSESS MONETARY**”.

Page 1143, beginning on line 2, strike “Except as provided in subsection (f), the” and insert “The”.

Page 1146, beginning on line 8, strike “The jurisdiction” and all that follows through line 11 and insert “With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction includes violations of section 17(a) of this title, and all”.

Page 1147, beginning on line 4, strike “The jurisdiction” and all that follows through “subsection (a)” and insert “With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction”.

Page 1148, beginning on line 3, strike “The jurisdiction” and all that follows through “subsection (a)” and insert “With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction”.

Page 1149, line 18, strike the semicolon at the end.

Page 1158, line 7, insert “and” after “with”.

Page 1190, line 13, strike “that—” and insert the following: “that is not exempt from registration under section 203 and—”.

Page 1190, beginning on line 15, strike “by a State” and insert “in the State where it maintains its principal office and place of business”.

Page 1191, line 8, insert after the first period the following: “If no State in which an investment adviser described in subparagraph (B) is registered conducts such an examination, the investment adviser must register with the Commission. If, pursuant to this paragraph, an investment adviser would be required to register with 5 or more States, then the adviser may maintain its registration with the Commission.”.

Page 1191, strike line 10 and all that follows through page 1192, line 3, and insert the following:

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this title, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of that Act for an investment adviser registered under such Act to have custody of funds or securities of a client the value of which exceeds \$10,000,000, unless—

(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client's name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

(b) **EXCEPTIONS.**—The rule adopted under subsection (a) shall include such exceptions as the Commission determine in the public interest and consistent with the protection of investors. Any exemption granted under this subsection shall ensure that at least once per year, a client described in subsection (a) shall receive a report from an independent entity with a fiduciary responsibility to the client to verify that the assets in the client's account are in accord with those stated on the client's account statement.

(c) **NO LIMITS ON OTHER ACTIONS.**—Nothing in this section shall be construed to limit other actions the Securities and Exchange Commission may take under this Act to require the protection of client assets.

Page 1192, line 21, strike “maintain” and insert “assure that safeguards exist to maintain”.

Page 1193, line 9, strike “regards” and insert “regard”.

Page 1193, after line 10, insert the following new sections:

#### **SEC. 7421. NOTICE TO MISSING SECURITY HOLDERS.**

Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following new subsection:

“(g) **DUE DILIGENCE FOR THE DELIVERY OF DIVIDENDS, INTEREST, AND OTHER VALUABLE PROPERTY RIGHTS.**—

“(1) **REVISION OF RULES REQUIRED.**—The Commission shall revise its regulations in section 240.17Ad-17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

“(A) A requirement that the paying agent provide a single written notification to each

missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

“(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than \$25.

“(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

“(D) For purposes of such revised regulations—

“(i) a security holder shall be considered a ‘missing security holder’ if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

“(ii) the term ‘paying agent’ includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.

“(2) **RULEMAKING.**—The Commission shall adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after the date of enactment of this subsection. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.”.

#### **SEC. 7422. SHORT SALE REFORMS.**

(a) **SHORT SALE DISCLOSURE.**—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively, and inserting after paragraph (1) the following:

“(2)(A) Every institutional investment manager that effects a short sale of an equity security shall also file a report on a daily basis with the Commission in such form as the Commission, by rule, may prescribe. Such report shall include, as applicable, the name of the institution, the name of the institutional investment manager and the title, class, CUSIP number, number of shares or principal amount, aggregate fair market value of each security, and any additional information requested by the Commission. For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section. The information contained in reports of an institutional investment manager filed with the Commission pursuant to this section, shall be subject to the same non-disclosure and confidentiality protection provided under section 240(b)(8) of the Investment Advisers Act of 1940.

“(B) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.”.

(b) **SHORT SELLING ENFORCEMENT.**—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

(1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (e), (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (c), the following new subsection:

“(d) **TRANSACTIONS RELATING TO SHORT SALES OF SECURITIES.**—It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.”.

(c) **INVESTOR NOTIFICATION.**—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (d) the following new subsection:

“(e) **NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.**—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.”.

#### **SEC. 7423. STREAMLINING OF SEC FILING PROCEDURES.**

(a) **APPROVAL PROCESS.**—Section 19(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2)) is amended to read as follows:

“(2) **FILING PROCEDURES.**—

“(A) **IN GENERAL.**—Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

“(i) by order approve such proposed rule change; or

“(ii) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

“(B) **PROCEEDINGS.**—Proceedings to determine whether the proposed rule change should be disapproved shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 200 days from the date of receipt of a proper filing. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents. The Commission shall approve

a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding."

(b) RULES.—Not later than 12 months after the date of enactment of this Act, the Commission shall issue rules implementing a disapproval process for filings submitted on or after the effective date of such rules.

Page 1196, line 5, strike "containing".

Page 1198, strike line 22 through page 1199, line 16.

Page 1199, line 17, strike "(3)" and insert "(2)".

Page 1199, line 21, strike "or (2)".

Page 1206, strike lines 15, through 23.

Page 1211 strike line 24 through page 1212, line 21, and insert the following:

(e) INSPECTIONS BY REGISTERED ACCOUNTING FIRMS.—Subsection (a) of Section 104 of such Act is amended—

(1) by striking "(a) IN GENERAL.—The Board shall" and inserting the following:

"(a) IN GENERAL.—

"(1) The Board shall"; and

(2) by adding at the end of such subsection the following:

"(2) INSPECTIONS OF AUDIT REPORT FOR BROKERS AND DEALERS.—

"(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (a)(1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

"(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

"(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

"(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (a)(2)(A) of this section.

"(3) CONFORMING AMENDMENT.—Section 17 (e)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(e)(1)(A)) is amended by striking 'registered public accounting firm' and inserting 'independent public accounting firm or by a registered public accounting firm if registration is required under the Sarbanes-Oxley Act of 2002 as amended.'."

Page 1215, line 1, strike "dealer" and insert "dealers".

Page 1219, beginning on line 10, strike "domestic" and insert "domestically".

Page 1223, lines 5, strike "shall—" and all that follows through line 13 and insert "shall prevent the Board from responding to requests for reports from the Committees specified under subsection (h) about the activities or programs of the Board, provided that any confidential information contained therein shall be subject to the provisions of section 105(b)(5)."

Page 1228, line 14, strike "MISLEAD" and insert "MISLED".

Page 1231, after line 15, insert the following:

(4) APPLICATION OF FIDUCIARY DUTY FOR PERSONALIZED INVESTMENT ADVICE ABOUT SECURITIES.—Nothing in this section shall diminish in any manner nor supersede the standard of conduct applicable to all brokers, dealers and investment advisers providing personalized investment advice about securities as set forth in section 7103 of this Act.

Page 1231, line 16, strike "(4)" and insert "(5)".

Page 1231, beginning on line 19, strike ", to the extent practicable, conform to the" and insert "meet or exceed".

Page 1232, strike lines 3 through page 1235, line 5, and insert the following:

(6) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—A State shall have adopted rules that govern suitability requirements in the sale of annuities which shall meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation in effect on the date of the enactment of this Act, or any successor thereto.

Page 1235, line 18, strike "senior" and insert "seniors who are".

Page 1238, line 13, insert a comma after "finding".

Page 1242, line 7, insert "United States Code," after "title 18,".

Page 1243, line 9, insert "or the rules of the Municipal Securities Rulemaking Board," after "statutes,".

Page 1243, line 17, insert "or the rules of the Municipal Securities Rulemaking Board," after "statutes,".

Page 1247, line 18, insert "broker, dealer, investment adviser, municipal securities dealer, transfer agent, nationally recognized statistical rating organization, or".

Page 1248, line 1, strike "or (E)" and insert "(E), (G), or (H)".

Page 1254, line 22, strike "or".

Page 1254, line 24, strike the period at the end and insert "; or" and after such line insert the following:

(v) the independent accountant that audits the financial statements of the municipal securities issuer.

Page 1259, after line 24, insert the following new subparagraph and redesignate subsequent subparagraphs accordingly):

"(C) To monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in 24 section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance."

Page 1261, after line 6, insert the following new paragraph:

"(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve in an advisory capacity on the Financial Services Oversight Council established under the Financial Stability Improvement Act of 2009."

Page 1261, line 9, after "Secretary" insert "in coordination with the Secretary of the Department of Health and Human Services".

Page 1261, line 14, after "data" insert ", including financial data,".

Page 1262, beginning on line 2, strike "is authorized to write" and insert "writes".

Page 1262, line 3, strike "reinsure" and insert "reinsures".

Page 1262, line 4, strike "issue" and insert "issues".

Page 1278, line 13, strike "and broadened".

Page 1279, line 1, insert "Federal or State" after "any".

Page 1279, line 3, insert "with respect to such study" before "to modernize".

Page 17 of title VII of the bill, as added by the amendment TITLE7\_02, strike lines 14 and 15 and insert the following:

"(A) permitting any yield spread premium or other similar compensation that would, for any mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);"

Page 17 of title VII of the bill, as added by the amendment TITLE7\_02, line 25, strike "including through principal" and insert "at the option of the consumer, including through principal or rate".

Page 18 of title VII of the bill, as added by the amendment TITLE7\_02, line 5, after "costs were" insert "limited by agreement with the consumer and were".

Page 33 of title VII of the bill, as added by the amendment TITLE7\_02, line 24, after "that" insert "is insured by the Federal Housing Administration or".

Page 153 of title VII of the bill, as added by the amendment TITLE7\_02, line 11, after "loan" insert ", other than a reverse mortgage loan insured by the Federal Housing Administration,".

Add at the end of the bill the following:

#### TITLE VIII—FORECLOSURE AVOIDANCE AND AFFORDABLE HOUSING

##### SEC. 10001. EMERGENCY MORTGAGE RELIEF.

(a) USE OF TARP FUNDS.—Using the authority available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development \$3,000,000,000, and the Secretary of Housing and Urban Development shall credit such amount to the Emergency Homeowners' Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act.

(b) REAUTHORIZATION OF EMERGENCY MORTGAGE RELIEF PROGRAM.—Title I of the Emergency Housing Act of 1975 is amended—

(1) in section 103 (12 U.S.C. 2702)—

(A) in paragraph (2)—

(i) by striking "have indicated" and all that follows through "regulation of the holder" and insert "have certified";

(ii) by striking "(such as the volume of delinquent loans in its portfolio)"; and

(iii) by striking ", except that such statement" and all that follows through "purposes of this title"; and

(B) in paragraph (4), by inserting "or medical conditions" after "adverse economic conditions";

(2) in section 104 (12 U.S.C. 2703)—

(A) in subsection (b), by striking ", but such assistance" and all that follows through the period at the end and inserting the following: ". The amount of assistance provided to a homeowner under this title

shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed \$50,000.”;

(B) in subsection (d), by striking “interest on a loan or advance” and all that follows through the end of the subsection and inserting the following: “(1) the rate of interest on any loan or advance of credit insured under this title shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this title. In establishing rates, terms and conditions for loans or advances of credit made under this title, the Secretary shall take into account a homeowner’s ability to repay such loan or advance of credit.”; and

(C) in subsection (e), by inserting after the period at the end of the first sentence the following: “Any eligible homeowner who receives a grant or an advance of credit under this title may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable.”;

(3) in section 105 (12 U.S.C. 2704)—

(A) by striking subsection (b);

(B) in subsection (e)—

(i) by inserting “and emergency mortgage relief payments made under section 106” after “insured under this section”; and

(ii) by striking “\$1,500,000,000 at any one time” and inserting “\$3,000,000,000”;

(C) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(D) by adding at the end the following new subsection:

“(e) The Secretary shall establish underwriting guidelines or procedures to allocate amounts made available for loans and advances insured under this section and for emergency relief payments made under section 106 based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 103(5).”;

(4) in section 107—

(A) by striking “(a)”;

(B) by striking subsection (b);

(5) in section 108 (12 U.S.C. 2707), by adding at the end the following new subsection:

“(d) COVERAGE OF EXISTING PROGRAMS.—The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this title.”;

(6) in section 109 (12 U.S.C. 2708)—

(A) in the section heading, by striking “AUTHORIZATION AND”;

(B) by striking subsection (a);

(C) by striking “(b)”;

(D) by striking “1977” and inserting “2011”;

(7) by striking sections 110, 111, and 113 (12 U.S.C. 2709, 2710, 2712); and

(8) by redesignating section 112 (12 U.S.C. 2711) as section 110.

#### SEC. 10002. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD STABILIZATION PROGRAM.

Using the authority made available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development \$1,000,000,000, and the Secretary of Housing and Urban Development shall use such amounts for assistance to States and units of general local government for the redevelopment of abandoned and foreclosed homes, in accordance with the same provisions applicable under the second undesignated paragraph under the heading “Community Planning and Development—Community Development Fund” in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 217) to amounts made available under such second undesignated paragraph, except as follows:

(1) Notwithstanding the matter of such second undesignated paragraph that precedes the first proviso, amounts made available by this section shall remain available until expended.

(2) The 3rd, 4th, 5th, 6th, 7th, and 15th provisos of such second undesignated paragraph shall not apply to amounts made available by this section.

(3) Amounts made available by this section shall be allocated based on a funding formula for such amounts established by the Secretary in accordance with section 2301(b) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301 note), except that—

(A) notwithstanding paragraph (2) of such section 2301(b), the formula shall be established not later than 30 days after the date of the enactment of this Act;

(B) the Secretary may not establish any minimum grant amount or size for grants to States;

(C) the Secretary may establish a minimum grant amount for direct allocations to units of general local government located within a State, which shall not exceed \$1,000,000; and

(D) each State and local government receiving grant amounts shall establish procedures to create preferences for the development of affordable rental housing for properties assisted with amounts made available by this section.

(4) Paragraph (1) of section 2301(c) of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(5) Section 2302 of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(6) The fourth proviso from the end of such second undesignated paragraph shall be applied to amounts made available by this section by substituting “2013” for “2012”.

(7) Notwithstanding section 2301(a) of the Housing and Economic Recovery Act of 2008, the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and other territory or possession of the United States for purposes of this section and title III of division B of such Act, as applied to amounts made available by this section.

(8)(A) None of the amounts made available by this section shall be distributed to—

(i) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(ii) any organization which employs applicable individuals.

(B) In this paragraph, the term “applicable individual” means an individual who—

(i) is—

(I) employed by the organization in a permanent or temporary capacity;

(II) contracted or retained by the organization; or

(III) acting on behalf of, or with the express or apparent authority of, the organization; and

(ii) has been convicted for a violation under Federal law relating to an election for Federal office.

Page 204, line 14, strike “may decrease” and insert “decreases”.

Page 826, after line 20, insert the following new subsection:

(C) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Agency shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Agency.

(2) AGENCY CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Agency shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Agency—

(A) shall include a discussion of the considerations required in subsection (b) in the Federal Register notice of a final regulation prescribed pursuant to this section; and

(B) whenever the Agency determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this section shall be construed as limiting or restricting the authority of the Agency to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this section shall be construed as exempt the Agency from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this section, the term “consumer protection regulation” means a regulation that the Agency is authorized to prescribe under this title, the enumerated consumer laws, or any law or authority transferred under subtitle F or H.

Page 827, line 4, after “defendant,” strike the rest of line 4 through line 6 and insert, “to enforce and secure remedies under provisions of this title or regulations issued thereunder, or otherwise provided under other law.”.

Page 831, line 23, after “that” insert “directly and specifically”.

Page 832, beginning on line 8, strike “National banks” and all that follows through “State laws.” on line 9.

Page 832, line 9, strike “State laws are” and insert “State consumer financial laws are”.

Page 832, line 11, strike “state” and insert “State consumer financial”.

Page 832, strike lines 15 through 20, and insert the following:

“(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a national bank to engage in the business of banking. Any preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency in accordance with applicable law, on a case-by-case basis. Any such determination by a court shall comply with the standards set forth in subsection (d) of this section, with the court making the subsection (d) finding de novo; or

Page 832, line 21, insert “consumer financial” after “State”.

Page 832, strike line 23 and all that follows through page 833, line 2 and insert the following:

“(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any subsidiary or affiliate of a national bank (other than an institution chartered as a national bank) that is not a depository institution.

Page 833, strike lines 3 through 17 and insert the following:

“(3) CASE-BY-CASE DETERMINATION.—

“(A) DEFINITION.—The term ‘case-by-case determination pursuant to this section’ means a determination made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

“(B) CONSULTATION.—When making case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Consumer Financial Protection Agency and shall take such Agency’s views into account when making the determination.

“(4) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law.

“(5) STANDARDS OF REVIEW.—

“(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this Act shall assess the validity of such determinations depending upon the thoroughness evident in the agency’s consideration, the validity of the agency’s reasoning, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

“(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

“(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order or determination made by the Comptroller of the Currency under subsection (b)(1)(B) shall be made by the Comptroller and shall not be

delegable to another officer or employee of the Comptroller of the Currency.

Page 833, line 18, after “regulation” insert “or order”.

Page 833, strike line 25 and all that follows through page 834, line 2, and insert the following: “prevents, significantly interferes with, or materially impairs the ability of a national bank to engage in the business of banking.”.

Page 834, line 5, after “prescribe” insert “a”, after “regulation” insert “or order”.

Page 835, after line 9, insert new subsections as follows:

“(g) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory or district where the bank is located, including with respect to the meaning of ‘interest’ under such provision.

“(h) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

Page 835, on lines 21 and 22 strike “supervisory, examination, or regulatory” and insert “visitorial”.

Page 836, strike lines 4 through 7 and renumber subsequent sections accordingly.

Page 836, line 12, after “or” delete the rest of line 12 through line 15 and insert, “nonpreempted State law against a national bank, as authorized by such law, or to seek relief as authorized by such law”.

Page 838, line 13, after “that” and insert “directly and specifically”.

Page 838, beginning line 19, strike “Federal savings association” and all that follows through “State laws.”

Page 838, beginning on line 20, strike “State laws are” and insert “State consumer financial laws are”.

Page 838, line 22, strike “state” and insert “State consumer financial”.

Page 839, strike lines 1 through 7, and insert the following:

“(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a Federal savings association to engage in the business of banking. Any preemption determination under this subparagraph may be made by a court or by regulation or order of the Director of the Office of Thrift Supervision in accordance with applicable law, on a case-by-case basis. Any such determination by a court shall comply with the standards set forth in subsection (d) of this section, with the court making the subsection (d) finding de novo; or

Page 839, line 8, insert “consumer financial” after “State”.

Page 839, strike lines 10 through 14 and insert the following:

“(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any subsidiary or affiliate of a Federal savings association (other than an institution chartered as a Federal savings association) that is not a depository institution.

Page 839, strike line 15 and all that follows through page 840, line 4 and insert the following:

“(3) CASE-BY-CASE DETERMINATION.—

“(A) DEFINITION.—The term ‘case-by-case determination pursuant to this section’ means a determination made by the Director concerning the impact of a particular State consumer financial law on any Federal savings association that is subject to that law, or the law of any other State with substantively equivalent terms.

“(B) CONSULTATION.—When making case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Director of the Office of Thrift Supervision is preempting, the Director shall first consult with the Consumer Financial Protection Agency and shall take such Agency’s views into account when making the determination.

“(4) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law.

“(5) STANDARDS OF REVIEW.—

“(A) PREEMPTION.—A court reviewing any determinations made by the Director regarding preemption of a State law by this Act shall assess the validity of such determinations depending upon the thoroughness evident in the agency’s consideration, the validity of the agency’s reasoning, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

“(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Director in making determinations regarding the meaning or interpretation of the Home Owners’ Loan Act or other Federal laws.

“(6) OTS DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Director of the Office of Thrift Supervision under subsection (b)(1)(B) shall be made by the Director and shall not be delegable to another officer or employee of the Director of the Office of Thrift Supervision.

Page 840, line 7, after “regulation” insert “or order”.

Page 840, line 15, after “regulation” insert “or order”.

Page 840, strike lines 22 through 24 and insert the following: “finding that the provision prevents, significantly interferes with, or materially impairs the ability of a Federal savings association to engage in the business of banking.”.

Page 841, after line 23, insert new subsections as follows and renumber subsequent sections accordingly:

“(g) PRESERVATION OF POWERS RELATED TO CHARGING OF INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 4(g) of the Home Owners’ Loan Act (12 U.S.C. 1463(g)) for the charging of interest by a Federal savings association at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of ‘interest’ under such provision.

“(h) TRANSPARENCY OF OTS PREEMPTION DETERMINATIONS.—The Director of the Office of Thrift Supervision shall publish and update no less frequently than quarterly, a list of preemption determinations by such Director then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

Page 842, strike lines 13 through 16 and renumber subsequent sections accordingly.

Page 842, line 22, after “law,” delete the rest of line 22 through page 843, line 2 and insert, “or to seek relief as authorized by such law”.

Page 30, after line 21, insert the following new subsection:

(e) **STUDY OF EFFECTS CONSUMER FINANCIAL PROTECTION AGENCY REGULATIONS AND STANDARDS.**—

(1) **STUDY REQUIRED.**—The Council shall conduct a study of the effects that regulations and standards of the Consumer Financial Protection Agency will have on all covered persons (as such term is defined in section 4002(9)), including nondepository institution covered persons. The Director of the Consumer Financial Protection Agency shall take the findings of the study into account when issuing regulations.

(2) **VALUE OF NONBANK PRODUCTS.**—The study shall include an evaluation and assessment of the appropriateness of using “APR” as a true measure of the value of all nonbank products.

(3) **SUBMISSION.**—Not later than 240 days after the date of the enactment of this Act, the Director of the Consumer Financial Protection Agency shall submit the study to Congress and include any recommendations the Director may have for changes in law and regulations to improve consumer protections and maintain access to credit.

Page 734, strike lines 8 through 12, and insert the following:

(A) consider the potential benefits and costs to consumers, covered persons, and the Federal Government, including the potential reduction of consumers’ access to consumer financial products or services, resulting from such regulation; and

Page 734, line 20, insert before the period the following: “and whether such regulation will have an inconsistent effect on nondepository institution covered persons and depository institution covered persons”.

Page 747, after line 21, add the following new subsections:

(i) **NO ONE SIZE FITS ALL REGULATION OF NONBANK PRODUCTS.**—The Director shall be required to issue only product specific rules and regulations for each of the non-bank products under the jurisdiction of the Agency.

(j) **NONBANK REGULATORY APPEAL RIGHTS.**—  
(1) **ADMINISTRATIVE.**—The Agency shall establish a procedure through which a nonbank financial company that has been given contradictory or conflicting supervisory determinations or directives from the Agency and their prudential supervisors will be able to appeal the decisions to a disinterested governing panel.

(2) **JUDICIAL REVIEW.**—Any nonbank financial company which has been subjected to contradictory or conflicting supervisory determinations or directives may seek judicial review by filing a petition for such review in the United States Court of Appeals for the District of Columbia.

Page 731, after line 24, insert the following new subsection:

(h) **ASSESSMENTS FOR CERTAIN NONDEPOSITORY INSTITUTION COVERED PERSONS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this Act, a nondepository institution covered person shall not be subject to assessments by the Agency if—

(A) the assets that are financial activities of that nondepository covered person represent less than a substantial portion of its total assets; and

(B) the gross revenues derived from financial activities of that nondepository covered person are less than a substantial portion of its gross revenues.

(2) **EXTENSIVE CONSUMER FINANCIAL PRODUCTS OR SERVICES OPERATIONS.**—Paragraph (1) shall not apply to nondepository institution

covered person that the Director determines has a level of assets or revenues derived from financial activities, a number of transactions in consumer financial products or services, or a number of accounts relating to consumer financial products or services that the Director determines represents an extensive consumer financial products or services operation.

Page 1068, line 7, strike “knowingly or recklessly violated” and insert “was grossly negligent in violating”.

Page 1068, beginning on line 18, strike “knowledge and recklessness” and insert “gross negligence”.

Page 1019, line 22, strike “57a(b)” and insert “57a”.

Page 1019, after line 22, insert the following:

(1) in subsection (a)(1), by striking “(h)” and inserting “(f)”;

Page 1019, line 23, strike “(1)” and insert “(2)”.

Page 1020, strike lines 6 through 13 and insert the following:

(3) by striking subsection (c);

(4) in subsection (d), by striking “(d)(1) The Commission’s” and all that follows through the end of paragraph (2) and by redesignating paragraph (3) of such subsection as subsection (c);

(5) In such subsection (c) (as so redesignated), by inserting “prescribed” after “any rule”;

(6) by striking subsections (f), (i), and (j) and redesignating subsections (e), (g), and (h) as subsections (d), (e), and (f), respectively;

Page 1020, line 14, strike “(4)” and insert “(7)”.

Page 1020, after line 14, insert the following:

(A) in paragraph (1)(A), by striking “promulgated” and inserting “prescribed”;

Page 1020, line 15, strike “(A)” and insert “(B)”.

Page 1020, strike lines 17 through 20 and insert the following:

(C) in paragraph (3), by striking “The court shall hold unlawful” and all that follows through the end of the paragraph; and

(D) by striking paragraphs (4) and (5) and inserting the following:

“(4) The procedure set forth in this subsection for judicial review of a rule prescribed under subsection (a)(1)(B) is the exclusive means for such review, other than in an enforcement proceeding.”; and

(7) in subsection (e)(2) (as so redesignated), by striking “class or persons” and inserting “class of persons”.

Page 754, after line 1, add the following new subsection at the end of section 4203:

(h) **ASSISTIVE DIVISION FOR COMMUNITY FINANCIAL INSTITUTIONS.**—

(1) **ESTABLISHMENT; PURPOSE.**—There is established in the Agency an office to be known as the “Assistive Division for Community Financial Institutions” to advise the Director on the impact of Agency policies and regulations on community financial institutions and to help ensure that the policies and regulations of the Agency do not unduly burden community financial institutions.

(2) **ADDITIONAL DUTIES.**—The Assistive Division for Community Financial Institutions shall also—

(A) provide assistance to and respond to inquiries from community financial institutions regarding policies of the Agency and the effects of such policies on community financial institutions;

(B) provide educational materials, training aides, and support to community financial

institutions with respect to any new regulatory obligations the Agency establishes during the initial rule-making period;

(C) establish and maintain a toll-free telephone number, to be available at least 8 hours a day and 7 days a week, at which community financial institution may make inquiries and receive assistance under subparagraph (A); and

(D) perform other duties and exercise such other powers set by the Director.

Page 949, after line 2, add the following new section (and update the table of contents appropriately):

#### **SEC. 4704. REPORTING OF MORTGAGE DATA BY STATE.**

(a) **IN GENERAL.**—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111-22) is amended—

(1) in paragraph (2), by striking “resulting” and inserting “in each State that result”;

(2) in paragraph (3), by inserting “each State for” after “modifications in”; and

(3) in paragraph (4), by inserting “in each State” after “total number of loans”.

(b) **CONFORMING AMENDMENT.**—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: “Not later than 60 days after the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.”.

In subtitle H of title VII (relating to mortgage reform) insert “**and Data Collection**” after “**Reports**”.

At the end of title VII (relating to mortgage reform), add the following new section (and update the table of contents appropriately):

#### **SEC. 9702. REPORTING OF MORTGAGE DATA BY STATE.**

(a) **IN GENERAL.**—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111-22) is amended—

(1) in paragraph (2), by striking “resulting” and inserting “in each State that result”;

(2) in paragraph (3), by inserting “each State for” after “modifications in”; and

(3) in paragraph (4), by inserting “in each State” after “total number of loans”.

(b) **CONFORMING AMENDMENT.**—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: “Not later than 60 days after the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.”.

Page 119, strike lines 12 to 13 and insert the following new paragraph:

(1) the Board determines that a specified financial company fails to meet prudential standards established by the Board; or

Page 1035, line 4, strike “Section” and insert “(a) **IN GENERAL.**—Section”.

Page 1035, strike lines 7 and 8 and insert the following:

(A) by amending paragraph (1)(A) to read as follows:

“(A) **IN GENERAL.**—Each credit rating agency shall register as a nationally recognized statistical rating organization for the purposes of this title (in this section referred to as the ‘applicant’), and shall file with the Commission an application for registration,

in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B)."

Page 1035, line 10, strike "and".

Page 1035, line 12, insert "and" after the semicolon and after such line insert the following:

(D) by adding at the end of paragraph (1) the following:

"(F) EXEMPTIONS.—The registration requirement in subparagraph (A) shall not apply to—

"(i) a credit rating agency if the credit rating agency—

"(I) does not engage in the provision of credit ratings to issuers of securities for a fee; and

"(II) issues credit ratings only in any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

"(ii) such other persons as the Commission may designate by rules and regulations or order when in the public interest and for the protection of investors."

Page 1067, after line 20, insert the following:

(b) CONFORMING AMENDMENT.—Section 3(a)(62) of the Securities Exchange Act of 1934 is amended by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

Page 731, after line 24, insert the following:

(4) FINANCIAL EDUCATION AND COUNSELING PROGRAM.—

(A) IN GENERAL.—To the extent such victims cannot be located or such payments are otherwise not practicable, 5 percent of the Victims Relief Fund shall be transferred, up to \$10,000,000 on an annual basis, to the Secretary of the Treasury so that the Secretary may carry out the Financial Education and Counseling Grant Program established under section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701).

(B) MEMORANDUM OF UNDERSTANDING.—Not later than 12 months after the date of enactment of this subtitle, the Director shall enter into a memorandum of understanding with the Secretary of the Treasury to coordinate the release of Civil Penalty Fund amounts under subparagraph (A).

(C) ASSISTANCE FOR INDIVIDUALS AT FINANCIAL RISK.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701) is amended—

(i) in subsection (a), by striking "prospective homebuyers" each place that term appears and inserting "individuals at financial risk";

(ii) in subsection (b)—

(I) in paragraph (1), by striking "prospective homebuyers" and inserting "individuals at financial risk"; and

(II) by adding at the end the following:

"(3) DETERMINATION OF FINANCIAL RISK.—

For purposes of this section, the Director of the Consumer Financial Protection Agency shall establish the criteria used to determine whether an individual is at financial risk, and the Secretary shall use such criteria when selecting organizations under paragraph (2)."; and

(iii) in subsection (c)(1)—

(I) in subparagraph (A), by striking "or";

(II) in subparagraph (B), by striking the period and inserting "; or"; and

(III) by adding at the end the following:

"(C) a nonprofit corporation that—

"(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

"(ii) specializes or has expertise in working with individuals at financial risk."

Page 1278, after line 17 insert the following:

(7) Geographic disparities in access to and cost of insurance products.

Page 35, line 25, insert "compelled to waive and shall not be" after "be".

Page 26, line 22, strike "DEPARTMENT OF THE TREASURY" and insert "VOTING MEMBERS OF THE COUNCIL".

Page 26, line 23, insert "and all other voting members of the Council may, with the approval of the Council," after "shall".

Page 27, line 10, strike "Secretary of the Treasury" and insert "Council".

Page 33, after line 10, insert the following new section (and conform the table of contents accordingly):

**SEC. 1100. FEDERAL RESERVE BOARD AUTHORITY THAT OF AGENT ACTING ON BEHALF OF COUNCIL.**

For purposes of this subtitle, the Board of Governors of the Federal Reserve System shall act in the capacity of agent for the Council, acting on behalf of the Council.

Page 1028, after line 10, insert the following new paragraph (and redesignate the subsequent paragraph):

"(8) APPLICABLE PRIVILEGES NOT WAIVED.—An investment advisor, and investment advisor to a private fund, a private fund, foreign private fund advisor, a foreign private fund, an advisor to a venture capital fund, a venture capital fund, or other person shall not be compelled to waive and shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

"(A) the Financial Services Oversight Council;

"(B) the Commission;

"(C) any Federal financial regulator or State financial regulator, in any capacity; or

"(D) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code)."

Page 701, after line 9, insert the following:

(D) CONSUMER COMPLAINT WEBSITE.—The Director shall establish an Internet website for consumer complaints and inquiries concerning institutions regulated by the Agency. The website shall be interoperable with the database established under subparagraph (A).

Page 825, after line 12, insert the following:

**SEC. 4313. OVERDRAFT PROTECTION NOTICE REQUIREMENTS.**

Not later than 180 days after the date of the enactment of this Act, the Director shall promulgate a new rule that requires banks to prominently place in each consumer branch office information regarding the fees and charges associated with enrollment in the bank's overdraft protection program.

Page 1230, line 15, strike "\$500,000" and insert "1,000,000".

Page 1230, line 18, strike "\$100,000" and insert "250,000".

Page 1236, line 13, strike "\$8,000,000" and insert "16,000,000".

Page 93, line 8, insert "pursuant to subsection (e)(5)" after "action".

Page 93, beginning line 12, insert the following new subsection:

(i) RULE OF CONSTRUCTION.—Nothing in subsection (h) shall be construed as limiting the authority of a Federal financial regulatory agency to take action with respect to a financial company subject to the jurisdiction of such agency pursuant to applicable law other than this section.

Page 22, after line 12, insert the following new subparagraph:

(C) A State securities commissioner (or an officer performing like functions), to be des-

ignated by a selection process determined by such State securities commissioners, provided that the term for which a State securities commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.

Page 253, after line 21, insert the following new paragraph:

(3) Section 4(j) of the Bank Holding Company Act of 1956 is amended by inserting after paragraph (4) the following new paragraph (and redesignating succeeding paragraphs accordingly):

"(5) FINANCIAL STABILITY.—

"(A) IN GENERAL.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation may pose risk to the stability of the United States financial system or the economy of the United States, including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature.

"(B) STANDARDS FOR APPROVAL.—The Board may, in the sole discretion of the Board, disapprove any acquisition, merger, or consolidation of, or by, a financial holding company subject to stricter standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a great threat to financial stability during times of severe economic distress."

Page 255, after line 2, insert the following new section:

**SEC. 1316. MUTUAL NATIONAL BANKS AND FEDERAL MUTUAL BANK HOLDING COMPANIES AUTHORIZED.**

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5133 the following new sections:

**"SEC. 5133A. MUTUAL NATIONAL BANKS.**

"(a) IN GENERAL.—Notwithstanding the section designated the 'Third' of section 5134, in order to provide mutual institutions for the deposit of funds, the extension of credit, and provision of other services, the Comptroller of the Currency may charter mutual national banks either de novo or through a conversion of any insured depository institution or any State mutual bank or credit union, subject to regulations prescribed by the Comptroller of the Currency in accordance with this section. The powers conferred by this section are intended to provide for the creation and maintenance of mutual national banks as bodies corporate existing in perpetuity for the benefit of their depositors and the communities in which they operate.

"(b) REGULATIONS.—

"(1) REGULATIONS OF THE COMPTROLLER.—The Comptroller of the Currency is authorized to prescribe appropriate regulations for the organization, incorporation, examination, operation, and regulation of mutual national banks. Except to the extent that such existing regulations conflict with sections 5133A and 5133B, mutual national banks shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, including parts 543, 544, 546, 563b, and 563c of chapter V of title 12, Code of Federal Regulations (as in effect on that date), for up to 3 years beginning on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009.

"(2) APPLICABILITY OF CAPITAL STOCK REQUIREMENTS.—The Comptroller of the Currency shall prescribe regulations regarding



the manner in which requirements of this title with respect to capital stock, and limitations imposed on national banks under this title based on capital stock, shall apply to mutual national banks.

“(c) CONVERSIONS.—

“(1) CONVERSION OF A MUTUAL DEPOSITORY TO A MUTUAL NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors' rights and for any other purpose the Comptroller of the Currency may consider appropriate, any mutual depository may convert to a mutual national bank by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual depository shall be converted to a mutual national bank charter on the date specified in the notice.

“(2) CONVERSION TO STOCK NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors' rights and for any other purpose the Comptroller of the Currency may consider appropriate, any national bank that is organized in the mutual form under subsection (a) may reorganize as a stock national bank.

“(3) CONVERSION TO STATE BANKS.—Any national mutual bank may convert to a State bank charter in accordance with regulations prescribed by the Comptroller of the Currency and applicable State law.

“(d) TERMINATING MUTUALITY.—If a mutual national bank elects to terminate mutuality, it must do so by—

“(1) liquidating; or

“(2) converting to a national banking association operating in stock form.

“(e) STATUS AND RIGHTS OF MEMBERS.—

“(1) In general, the status of a member is primarily that of a depositor and secondarily that of a holder of a contingent right to participate in the equity of a mutual national bank upon a liquidation or conversion.

“(2) Each member of a mutual national bank shall have the following rights:

“(A) Such rights as may be agreed upon, by contract, between the member and the mutual national bank.

“(B) The right to vote for members of the board of directors of the mutual national bank.

“(C) The right to attend any meeting of members properly called by the board of directors of a mutual national bank.

“(D) In the event the board of directors, in its sole discretion, determines a conversion of a mutual national bank to a national banking association operating in stock form is in the best interests of the community in which the bank operates and the members approve the conversion through a special proxy, then the members as of a record date set by the board of directors shall have the first right to subscribe for and purchase stock in the converted bank.

“(E) In the event the board of directors, in its sole discretion, determines a liquidation of the mutual national bank is in the best interests of the community in which the bank operates and the members approve the liquidation, or if for any other reason the bank is liquidated by operation of law, then the members as of the date of liquidation shall have the right to have credited to their accounts, on a pro rata basis, any residual assets left after the liquidation of the mutual national bank.

“(3) In the consideration of all questions requiring action by the members of a national mutual bank, the bank may provide in

its charter that each member shall be permitted (i) one vote per member, or (ii) to cast one vote for each \$100, or fraction thereof, of the withdrawal value of the member's account, but not more than 1,000 votes per member.

“(f) PROXIES.—

“(1) A member may give, in writing or electronically, a perpetual proxy to a committee of the board of directors of a mutual depository, provided that the member may revoke such a proxy in writing or electronically, with such revocation to take effect after six business days.

“(2) Such proxies may be used to vote on any issue requiring approval of the members, including the conversion of a mutual depository into a mutual national bank and the reorganization of a mutual national bank into a Federal mutual bank holding company, except that, without a prior finding by the regulator of the mutual national bank that such action is needed to avoid loss to the Federal Deposit Insurance Corporation's deposit insurance fund or to protect the stability of the United States financial system, such proxies may not be used to vote in favor of—

“(A) terminating mutuality for a mutual national bank or a Federal mutual bank holding company;

“(B) permitting the modification of a Federal mutual bank holding company; or

“(C) issuing mutual capital certificates (except when used to found a mutual national bank or a Federal mutual bank holding company de novo).

“(3) Proxies given by a member, in writing or electronically, to management of, or to a committee of the board of directors of, a mutual depository shall not be deemed to have been revoked solely because of, and shall continue to exist following, a conversion to a mutual national bank and any concurrent or subsequent reorganization to a Federal mutual bank holding company.

“(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) INSURED DEPOSITORY INSTITUTION.—The term ‘insured depository institution’ has the same meaning as in section 3 of the Federal Deposit Insurance Act.

“(2) MUTUAL NATIONAL BANK.—The term ‘mutual national bank’ means a national banking association that operates in mutual form and is chartered by the Comptroller of the Currency under this section.

“(3) MUTUAL DEPOSITORY.—The term ‘mutual depository’ means a depository institution that is organized in non-stock form, including a Federal non-stock depository and any form of non-stock depository provided for under State law, the deposits of which are insured by an instrumentality of the Federal Government.

“(4) MUTUALITY.—The term ‘mutuality’ means the quality of being an insured depository institution organized under a Federal or State law providing for the organization of non-stock depository institutions, or a holding company organized under a Federal or State law providing for the organization of non-stock entities that control one or more depository institutions.

“(5) MEMBER.—The term ‘member’ means each tax-liable depositor in a mutual depository's savings, demand, or other authorized depository accounts and each tax-liable depositor in such an account in a depository subsidiary of a Federal mutual bank holding company.

“(6) TAX LIABLE DEPOSITOR.—The term ‘tax liable depositor’ means the single person responsible for paying any Federal taxes due on any interest paid on any deposits held

within any savings, demand, or other authorized depository account or accounts with any mutual depository.

“(7) MEMBERSHIP RIGHTS.—The term ‘membership rights’ means the rights of each member under this section.

“(h) CONFORMING REFERENCES.—Unless otherwise provided by the Comptroller of the Currency—

“(1) any reference in any Federal law to a national bank operating in stock form, including a reference to the term ‘national banking association’, ‘member bank’, ‘national bank’, ‘national association’, ‘bank’, ‘insured bank’, ‘insured depository institution’, or ‘depository institution’, shall be deemed to refer also to a mutual national bank;

“(2) any reference in any Federal law to the term ‘board of directors’, ‘director’, or ‘directors’ of a national bank operating in stock form shall be deemed to refer also to the board of a mutual national bank; and

“(3) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms ‘stock’, ‘shares’, ‘shares of stock’, ‘capital stock’, ‘common stock’, ‘stock certificate’, ‘stock certificates’, ‘certificates representing shares of stock’, ‘stock dividend’, ‘transferable stock’, ‘each class of stock’, ‘cumulate such shares’, ‘par value’, ‘preferred stock’ shall not apply to a mutual national bank, unless the Comptroller of the Currency determines that the context requires otherwise.

**“SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.**

“(a) REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.—

“(1) IN GENERAL.—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting a reorganization plan to the appropriate bank holding company regulator.

“(2) PLAN APPROVAL.—Upon the approval of the reorganization plan by the appropriate bank holding company regulator and the issuance of the appropriate charters—

“(A) the substantial part of the mutual national bank's assets and liabilities, including all of the bank's insured liabilities, shall be transferred to a national banking association, a majority of the shares of voting stock of which is owned, directly or indirectly, by the mutual national bank that is to become a Federal mutual bank holding company; and

“(B) the mutual national bank shall become a Federal mutual bank holding company.

“(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—This subsection does not authorize a reorganization unless—

“(1) a majority of the mutual national bank's board of directors has approved the plan providing for such reorganization; and

“(2) a majority of members has approved the plan at a meeting held at the call of the directors under the procedures prescribed by the bank's charter and bylaws.

“(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—To avoid terminating mutuality, a Federal mutual bank holding company must own, directly or indirectly, a majority of the shares of voting stock of each of its depository subsidiaries.

“(d) NO TERMINATION OF MUTUALITY.—Neither a reorganization of a mutual depository nor a modification of a Federal mutual bank holding company shall cause a termination of mutuality.

“(e) RETENTION OF CAPITAL.—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the approval of the appropriate bank holding company regulator, retain capital at the holding company level to the extent that the capital retained at the holding company level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller of the Currency for national banking associations.

“(f) TERMINATING MUTUALITY.—If a Federal mutual bank holding company elects to terminate mutuality, it must do so by either liquidating or converting to a bank holding company operating in stock form.

“(g) MEMBERSHIP RIGHTS.—Holders of savings, demand, or other authorized depository accounts in a depository subsidiary of a Federal mutual bank holding company shall have the same membership rights with respect to the Federal mutual bank holding company as those holders would have had if the depository subsidiary of the Federal mutual bank holding company had been a mutual national bank.

“(h) REGULATION.—A Federal mutual bank holding company shall be—

“(1) chartered by the appropriate bank holding company regulator and shall be subject to such regulations as the appropriate bank holding company regulator shall prescribe; and

“(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

“(i) CAPITAL IMPROVEMENT.—

“(1) PLEDGE OF STOCK OF NATIONAL BANK SUBSIDIARY.—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of the national banking association chartered as part of a transaction described in subsection (a) to raise capital for such national banking association.

“(2) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares or less than 50 percent of the voting shares of such bank to any person other than the Federal mutual bank holding company.

“(j) INSOLVENCY AND LIQUIDATION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the appropriate bank holding company regulator may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

“(A) the default of any national bank—

“(i) the stock of which is owned by the Federal mutual bank holding company; and

“(ii) that was chartered in a transaction described in subsection (a); or

“(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (i)(1).

“(2) DISTRIBUTION OF NET PROCEEDS.—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall be transferred to persons who hold membership interests in such Federal mutual bank holding company.

“(3) RECOVERY BY FDIC.—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph

(1), the Federal Deposit Insurance Corporation shall succeed to the interests of the depositors of the bank as members in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation's loss.

“(k) DEFINITIONS.—

“(1) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term ‘Federal mutual bank holding company’ means a holding company that is organized in mutual form and owns, directly or indirectly, a majority of the shares of voting stock of one or more depository subsidiaries of a Federal mutual bank holding company.

“(2) DEPOSITORY SUBSIDIARY OF A FEDERAL MUTUAL BANK HOLDING COMPANY.—The term ‘depository subsidiary of a Federal mutual bank holding company’ means a depository institution organized in stock form that is insured by the Federal Deposit Insurance Corporation, the majority of the shares of voting stock of which are owned by the Federal mutual bank holding company or its wholly owned subsidiaries and none of the shares of stock of which are pledged or otherwise subjected to lien except as permitted in subsection (i).

“(3) REORGANIZATION OF A MUTUAL DEPOSITORY.—The term ‘reorganization of a mutual depository’ means the conversion of a mutual depository into a depository subsidiary of a Federal mutual bank holding company.

“(4) MODIFICATION OF A FEDERAL MUTUAL BANK HOLDING COMPANY.—The term ‘modification of a Federal mutual bank holding company’ means either (A) the sale of shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company to any party other than the subsidiary's parent Federal mutual bank holding company or a wholly owned subsidiary of that parent, or (B) the voluntary grant of a lien on shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company.

“(5) DEFAULT.—With respect to a national bank, the term ‘default’ means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller of the Currency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.

“(1) CONFORMING REFERENCES.—Unless otherwise provided by the appropriate bank holding company regulator—

“(1) any reference in any Federal law to a bank holding company operating in stock form shall be deemed to refer also to a Federal mutual bank holding company;

“(2) any reference in any Federal law to the term ‘board of directors’, ‘director’, or ‘directors’ of a national bank operating in stock form shall be deemed to refer also to the board of a Federal mutual bank holding company; and

“(3) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms ‘stock’, ‘shares’, ‘shares of stock’, ‘capital stock’, ‘common stock’, ‘stock certificate’, ‘stock certificates’, ‘certificates representing shares of stock’, ‘stock dividend’, ‘transferable stock’, ‘each class of stock’, ‘cumulate such shares’, ‘par value’, ‘preferred stock’ shall not apply to a Federal mutual bank holding company, unless the appropriate bank holding company regulator determines that the context requires otherwise.”

(b) LIMITATION ON FEDERAL REGULATION OF STATE BANKS.—Except as otherwise provided in Federal law, the Comptroller of the Currency, the Board of Governors of the Federal

Reserve System, and the Federal Deposit Insurance Corporation may not adopt or enforce any regulation that contravenes the corporate governance rules prescribed by State law or regulation for State banks unless the Director, Board, or Corporation finds that the Federal regulation is necessary to assure the safety and soundness of the State banks.

(c) TECHNICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq) is amended by inserting after the item relating to section 5133 the following new items:

“5133A. Mutual national banks

“5133B. Federal mutual bank holding companies”

(d) APPROPRIATE FEDERAL BANKING AGENCY FOR FEDERAL MUTUAL BANK HOLDING COMPANIES.—Section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)) is amended by inserting after subparagraph (F) the following new subparagraph:

“(G) supervisory or regulatory proceedings arising from the authority given to the appropriate bank holding company regulator under section 5133B of the Revised Statutes of the United States.”

(e) MUTUAL HOLDING COMPANY CONVERSION.—

(1) IN GENERAL.—Any mutual holding company, including any form of mutual depository holding company provided for under State law, may convert to a Federal mutual bank holding company by filing with the appropriate bank holding company regulator a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual holding company shall be converted to a Federal mutual holding company charter on the date specified in the notice.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term ‘Federal mutual bank holding company’ has the same meaning as in section 5133B of the Revised Statutes of the United States (as added by this section); and

(B) MUTUAL HOLDING COMPANY.—The term ‘mutual holding company’ has the same meaning as in section 10(o)(10)(A) of the Home Owners Loan Act as in effect on the day before the date of enactment of this Act.

(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

Page 255, after line 2, insert the following new section (and conform the table of contents accordingly):

#### SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE ACQUISITIONS.

(a) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—

(1) CONCENTRATION LIMIT FOR BANK HOLDING COMPANIES.—Section 3(d)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1842(d)(2)(A)) is amended by striking “paragraph (1)(A)” and inserting “subsection (a) of this section”.

(2) REMOVAL OF NONBANK SAVINGS ASSOCIATION PROVISION IN LIGHT OF BEING DEFINED AS A BANK.—Section 4 of the Bank Holding Company Act is amended by striking subsection (i) and insert the following new subsection:

“(i) [Repealed.]”

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18(e) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended—

(A) by redesignating paragraph (12) as paragraph (13); and

(B) by inserting after paragraph (11), the following new paragraph:

“(12) NATIONWIDE DEPOSIT CAP.—The responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of, the total amount of deposits of insured depository institutions in the United States.”.

(2) PARALLEL REQUIREMENT.—Section 44(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(2)(A)) is amended to read as follows:

“(A) NATIONWIDE CONCENTRATION LIMITS.—The responsible agency may not approve an application for an interstate merger transaction involving two or more insured depository institutions if the resulting insured depository institution (including all insured depository institutions which are affiliates of such institution), upon consummation of the transaction would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.”.

(C) AMENDMENTS TO THE HOME OWNERS’ LOAN ACT.—Section 10(e)(2) of the Home Owners’ Loan Act (12 U.S.C. 467a(e)(2)) is amended—

(1) by striking “or” at the end of subparagraph (C); and

(2) by striking the period at the end of subparagraph (D), the following new subparagraph:

“(E) in the case of an application involving an interstate acquisition, if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.”.

Page 763, beginning online 11, strike “authority to exercise” and all that follows through “this title” and insert “rulemaking, supervisory, enforcement or other authority, including the authority to order assessments, under this title”.

Page 436, after line 11, insert the following new section:

#### SEC. 1615. TREASURY STUDY.

(a) STUDY REQUIRED.—The Secretary shall carry out a study analyzing how the resolution authority provided under this subtitle should be funded. Such study shall consider the following factors:

(1) The consequences of any assessments on the overall recovery of the economy of the United States.

(2) Any immediate or continuing consequences of assessments on other aspects of the economy of the United States, including job creation, public and private investments, small business loans, and general credit availability.

(3) The consequences of any assessments on individual sectors of the financial services industry.

(4) The consequences of any assessments on the financial integrity on individual firms within each sector of the financial services industry.

(5) The appropriateness and effect of assessments on firms that are subject to separate assessments under existing State or Federal depositor, policyholder, or investor protection mechanisms and the con-

sequences of any such assessments on these mechanisms themselves.

(6) The implications of assessments on all relevant stakeholders, including taxpayers, depositors, insurance policyholders, investors, counterparties, and creditors.

(7) Evaluation of the appropriate assessment base, including but not limited to factors such as assets and liabilities, assets under management, policyholder reserves, other reserves, statutory and regulatory capital requirements, trustee assets, and deposits and inflationary factors.

(b) REPORT.—Not later than the end of the 6-month period beginning on the date of the enactment of this subtitle, the Secretary shall issue a report to the Congress containing all determinations and conclusions made by the Secretary in carrying out the study required under subsection (a).

Page 894, after line 4, add at the end of section 4601(a)(1) the following new subparagraph:

(C) RETENTION OF CONSUMER ADVISORY COUNCIL.—

(i) RETENTION AND CONTINUATION.—Notwithstanding the transfer of functions under subparagraph (A), the Consumer Advisory Council established by the Board of Governors pursuant to section 703(b) of Public Law 90–321 (15 U.S.C. 1691b(b)) shall continue as an entity within the Federal Reserve System.

(ii) ADDITIONAL FUNCTIONS.—In addition to the functions performed by the Consumer Advisory Council as of the designated transfer date, the Consumer Advisory Council shall—

(I) submit to the Director (and make available to the public) an annual set of recommendations for consumer protection regulations and meet with the Director to discuss the annual recommendations;

(II) meet with the Board of Governors of the Federal Reserve System at least once a year and provide oral or written representations concerning matters within the jurisdiction of the Board; and

(III) call for information and make recommendations in regard to consumer protection regulations.

(iii) RESPONSE TO RECOMMENDATIONS.—When the Chair of the Federal Reserve testifies before Congress, the Chair shall also testify about the recommendations of the Consumer Advisory Council under clause (ii)(II) and its recommendations for consumer protection regulations.

Page 216, line 21, strike “or”.

Page 216, after line 21, insert the following new subparagraphs:

“(II) a change of control of an industrial bank, its section 6 holding company, or any entity that directly or indirectly controls the industrial bank, in a transaction other than a merger described in subclause (I), by an acquiring company that is predominately engaged in activities not permissible for a financial holding company pursuant to subsection (k), if—

“(aa) the transaction is approved by the appropriate Federal banking agency and the Board; and

“(bb) the industrial bank does not thereafter establish a domestic branch as defined in section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)).

“(III) an inadvertent acquisition of control, as determined by the Board, if such inadvertent acquisition of control is reversed or rectified within 180 days of its discovery, or”.

Page 216, line 22, strike “(II)” and insert “(IV)”.

Page 669, line 15, insert “(b),” after “Subsections”.

Page 669, line 20, insert “except for section 505 as it applies to section 501(b)” before the period.

Page 670, after line 9, insert the following: (N) Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(O) The Unlawful Internet Gambling Enforcement Act of 2006.

Page 701, line 1, insert “the Federal Trade Commission,” after “banking agencies,”.

Page 714, line 13, strike “received and collected” and insert “identified”.

Page 743, line 3, insert “a provision of” after “reports under”.

Page 743, line 4, insert “a provision of” after “title,”.

Page 743, line 5, insert “any provision of” after “law,”.

Page 743, line 8, insert “under that provision of law” after “exclusive authority”.

Page 897, beginning on line 21, strike “BACKSTOP”.

Page 898, line 2, strike “4202(e)(3)” and insert “paragraph (2) or (3) of section 4202(e)”.

Page 898, line 8, insert “transferred under subsection (a)” after “functions”.

Page 954, line 2, insert “and shall not apply to the term ‘Board’ when used in reference to the Federal Deposit Insurance Corporation or the National Credit Union Administration” before the period.

Page 957, line 3, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 957, line 20, insert “(and except for any insertion of ‘Federal Trade Commission’ made by this subtitle)” after “subparagraph (B)”.

Page 958, line 2, strike “and 129(m) (as amended by paragraph (7))” and insert “129(m) (as amended by paragraph (7)), 140A, or 149 (as amended by paragraph (8)).”.

Page 959, after line 13, insert the following:

(8) SECTION 149.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) is amended by inserting “the Federal Trade Commission,” after “in consultation with”.

Page 960, beginning on line 1, strike “paragraph (7)(A)” and insert “paragraphs (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection (and except for any insertion of ‘Federal Trade Commission’ made by this subtitle)”.

Page 961, after line 21, insert the following:

(5) SECTION 609.—Section 609(d)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1)) is amended by inserting “the Federal Trade Commission,” after “in consultation with”.

Page 961, line 22, strike “(5)” and insert “(6)”.

Page 961, line 22, strike “611(e)(2)” and insert “611(e)”.

Page 961, line 23, strike “15 U.S.C.1681i(e)(2)” and insert “15 U.S.C. 1681i(e)”.

Page 961, line 24, strike “amended to read as follows:” and insert “amended—”, and after such line insert the following:

(A) by amending paragraph (2) to read as follows:

Page 962, line 5, strike the period following the quotation marks and insert “; and” and after such line insert the following:

(B) in the heading of paragraph (3) by inserting “CONSUMER REPORTING” before “AGENCY”.

Page 962, strike lines 6 through 8 and insert the following:

(7) SECTION 615.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(A) in subsection (d)(2)(B), by inserting “the Federal Trade Commission,” after “in consultation with”;

(B) in subsection (e)(1), by striking “and the Commission” and inserting “the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission”; and

(C) by striking subparagraph (A) of subsection (h)(6) and inserting the following:  
Page 962, line 11, strike “(7)” and insert “(8)”.

Page 963, line 2, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 968, after line 7 insert the following:

(C) in paragraph (2) of subsection (c)—

(i) by inserting “the Agency and” before “the Federal Trade Commission” in the first sentence;

(ii) by inserting “Agency and the Federal Trade” after “provide the”; and

(iii) by inserting “Agency,” before “Federal Trade Commission” in the second sentence;

(D) in paragraph (4) of subsection (c)—

(i) by inserting “Agency,” before “the Federal Trade Commission”; and

(ii) inserting “Agency, the Federal Trade” after “complaint of the”;

(E) in paragraph (2) of subsection (f), by inserting “the Federal Trade Commission” after “in consultation with”;

Page 968, line 8, strike “(C)” and insert “(F)”.

Page 968, beginning on line 12, strike “with respect to a covered person described in subsection (b)” and insert “, except that, with respect to sections 615(e) and 628 of this title, the agencies identified in subsections (a) and (b) of this section shall prescribe such regulations as necessary to carry out the purposes of such sections with respect to entities within their enforcement authority under such subsections”.

Page 968, line 14, strike “(D)” and insert “(G)”.

Page 973, strike lines 8 and 9 and insert the following:

(iii) in paragraph (1)(B)—

(I) by inserting “of Governors of the Federal Reserve System” after “Board”; and

(II) by striking “and” after the semicolon;

Page 974, line 2, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 978, line 4, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 982, line 21, strike “and” and after such line insert the following:

(iii) in paragraph (1)(B), by inserting “of Governors of the Federal Reserve System” after “Board”;

Page 982, line 22, strike “(iii)” and insert “(iv)”.

Page 983, line 7, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 988, after line 7, insert the following (and redesignate succeeding subsections accordingly):

(a) SECTION 501.—Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by inserting “(other than the Consumer Financial Protection Agency)” after “title”.

(b) SECTION 502.—Section 502(e)(5) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by inserting “the Consumer Financial Protection Agency,” after “(including)”.

(c) SECTION 503.—Section 503(e)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

(1) by inserting “Consumer Financial Protection Agency in consultation with the other” before “agencies”; and

(2) by striking “jointly”.

Page 988, line 13, strike “and” at the end.

Page 988, line 15, strike the period and insert “; and” and after such line insert the following:

(3) by inserting “the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Federal Trade Commission, and” before “representatives of State insurance authorities”.

Page 989, after line 15, insert the following:

(f) SECTION 507.—Subsection 507(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by striking “Federal Trade Commission” and inserting “Consumer Financial Protection Agency, or in the case of a rule under section 501(b), the Federal Trade Commission or the Securities and Exchange Commission”.

Page 1019, line 8, strike “and” and after such line insert the following:

(2) by inserting a comma after “under this Act”;

(3) by inserting a comma after “subsection (a)(1)”;

Page 1019, line 9, strike “(2)” and insert “(4)”.

Page 1019, line 15, insert “partnership, or corporation” after “person”.

Page 825, after line 12, insert the following:

#### SEC. 4313. REVIEW, REPORT, AND PROGRAM WITH RESPECT TO EXCHANGE FACILITATORS.

(a) REVIEW.—The Director shall review all Federal laws and regulations relating to the protection of persons who utilize exchange facilitators.

(b) REPORT.—Not later than 180 days after the effective date of this subtitle, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of persons who utilize exchange facilitators;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such persons; and

(3) recommendations for Agency regulations to ensure the appropriate protection of such persons.

(c) PROGRAM.—Not later than 180 days after the date of the submission of the report under subsection (b), the Director shall establish and carry out a program, utilizing the authorities of the Agency, to protect persons who utilize exchange facilitators.

(d) EXCHANGE FACILITATOR DEFINED.—In this section, the term “exchange facilitator” means a person that—

(1) facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property and transfers a replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)-1(g)(4)) or enters into an agreement with the taxpayer to take title to a property as an exchange accommodation titleholder (within the meaning of Revenue Procedure 2000-37) or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder (within the meaning of Treasury Regulations section 1.1031(k)-1(g)(3));

(2) maintains an office for the purpose of soliciting business as an exchange facilitator; or

(3) purports to be an exchange facilitator by advertising any of the services listed in paragraph (1) or soliciting clients in printed publications, direct mail, television or radio

advertisements, telephone calls, facsimile transmissions, or other electronic communications directed to the general public for purposes of providing any such services.

Page 255, after line 2, insert the following new section:

#### SEC. 1316. DE NOVO BRANCHING INTO STATES.

(a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

“(A) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the national bank were a state bank chartered by such State”.

(b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

“(i) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State”.

Page 277, line 22, strike the period and insert “; and”.

Page 277, after line 22, insert the following:

(C) is not an insured depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act), a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act), or a government-sponsored enterprise (as such term is defined in section 1004(f) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1811 note)).

Page 305, beginning on line 25, strike “(that became a legally enforceable or perfected security interest after the date of the enactment of this clause) other than a legally enforceable or perfected security interest of the Federal Government,” and insert “in assets of the covered financial company arising under a qualified financial contract (as defined under subsection (c)(8)(D)(i)) with an original term of 30 days or less (except that, for a contract for a term linked to a calendar month, the original term must be less than one calendar month), secured by collateral other than securities issued by the United States Treasury, the Board of Governors of the Federal Reserve System, any agency of the United States, any Federal Reserve bank, or any Government Sponsored Enterprise, that became a legally enforceable or perfected security interest after the date of the enactment of this clause, and that is not a security interest of the Federal Government”.

Page 306, beginning on line 7, strike “the amount of up to 20 percent” and insert “in the amount specified under clause (v)”.

Page 306, line 13, insert after the period the following sentence: “This clause shall not apply with respect to debt obligations secured by real property. This clause may only be implemented with respect to secured creditors if, as a result of the dissolution of the covered financial company, no funds are available to satisfy, in whole or in part, any claims of unsecured creditors or shareholders.”.

Page 306, after line 13, insert the following:

(v) AMOUNT SPECIFIED.—For purposes of clause (iv), the amount specified under this clause, in the case of a secured creditor, is the amount of up to 10 percent.

Page 318, after line 11, insert the following subparagraphs (and redesignate subparagraphs (B) through (E) as subparagraphs (J) through (M), respectively):

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property that—

(i) was made to or for the benefit of a creditor;

(ii) was made for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) was made while the covered financial company was insolvent;

(iv) was made—

(I) on or within 90 days before the date on which the Corporation was appointed receiver; or

(II) between 90 days and one year before the date that the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider, as that term is defined in section 101(31) of title 11, United States Code; and

(v) enables such creditor to receive more than such creditor would receive in the liquidation of the covered financial company if—

(I) the transfer had not been made; and

(II) such creditor received payment of such debt to the extent provided by the provisions of this subtitle.

(C) **POST-RECEIVERSHIP TRANSACTIONS.**—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this title.

(D) **RIGHT OF RECOVERY.**—To the extent that a transfer is avoided under subparagraphs (A), (B) or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property from—

(i) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) **RIGHTS OF TRANSFEREE OR OBLIGEE.**—The Corporation may not recover under subparagraph (D)(ii)—

(i) from a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the violability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) **DEFENSES.**—A transferee or obligee from whom the Corporation seeks to recover a transfer or avoid an obligation under subparagraphs (A), (B) or (C) shall have the same affirmative defenses and rights to liens on the property transferred to the extent they would be available to a transferee or obligee from whom a trustee under title 11 seeks to recover a transfer under sections 547, 548, and 549 of title 11, United States Code.

(G) **LIMITATIONS ON AVOIDING POWERS.**—The rights of the Corporation under subparagraphs (A), (B) or (C) are restricted to the same extent as the rights of a trustee in bankruptcy under section 546(b)(1) of the Bankruptcy Code.

(H) **PRESUMPTION OF INSOLVENCY.**—For purposes of subparagraph (B), the covered financial company is presumed to have been insolvent on and during the 90 days immediately preceding the date on which the Corporation is appointed as receiver.

(I) **RIGHTS UNDER THIS SUBSECTION.**—The rights of the Corporation as receiver for a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency of a Federal Home Loan Bank) under title 11, United States Code.

Page 31, line 24, strike “control of the Council; and” and insert “control of or used by the Council;”.

Page 32, line 5, strike the period and insert “; and” and after such line insert the following:

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the agent's or representative's activities on behalf of the Council) at such reasonable times as the Comptroller General may request.

Page 32, after line 12, insert the following:

(3) **COPIES.**—Comptroller General may make and retain copies of such books, accounts, and other records access to which is granted under this provision as the Comptroller General considers appropriate.

Page 732, after line 10, insert the following:

#### **SEC. 4111. OVERSIGHT BY GAO.**

(a) **AUTHORITY.**—The Comptroller General may audit the programs, activities, receipts, expenditures, and financial transactions of the Agency and of any agents and representatives of the Agency as related to the agent's or representative's activities on behalf of or under authority of the Agency.

(b) **ACCESS.**—Notwithstanding any other provision of law, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the Agency, or any vehicles established by the Agency under this Act, and to the directors, officers, employees, independent public accountants, financial advisors, staff, working groups, and agents and representatives of the Agency (as related to the agent's or representative's activities on behalf of the Agency) or any vehicle established by the Agency at such reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

Page 732, line 11, strike “4111” and insert “4112”.

Page 1077, line 23, strike “1 year” and insert “18 months”.

Page 1079, after line 24, insert the following:

(3) **ACCESS.**—

(A) **IN GENERAL.**—For purposes of conducting the study described in paragraph (1), the Comptroller General shall have access, upon request and with the consent of the Securities and Exchange Commission, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by each nationally recognized statistical rating organization, and to the officers, directors, employees, independent public accountants, financial advisors, staff and agents and representatives of the organization (as related to the agent's or representative's activities on behalf of the organization) at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records as the Comptroller General deems appropriate.

(B) **CONFIDENTIALITY.**—The Comptroller General may not disclose reasonably designated proprietary, trade secret or business confidential information obtained from the organization except that such information shall be disclosed by the Comptroller General—

(i) to other Federal Government departments, agencies, and officials for official use upon request;

(ii) to committees of Congress upon request; and

(iii) to a court in any judicial proceeding under court order.

Nothing in this provision shall be construed to limit the requirements imposed by section 1905 of title 18, United States Code.

Page 1186, beginning on line 8, strike “and the Securities and Exchange Commission shall each” and insert “shall”.

Page 1186, line 17, strike “and”.

Page 1186, line 20, strike the period and insert a semicolon and after such line insert the following:

(3) determine how to reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is less than \$250,000,000 for the relevant reporting period while maintaining investor protections for such companies; and

(4) determine whether various methods of reducing the compliance burden or a complete exemption for such companies (whose market capitalization is less than \$250,000,000 for the relevant reporting period) from such compliance would encourage companies to list on exchanges in the United States in their initial public offerings.

Page 1186, beginning on line 21, strike “On or before June 1, 2010” and insert “Not later than 9 months after the date of the enactment of this subtitle”.

Page 1186, beginning on line 22, strike “and the Securities and Exchange Commission shall submit separate reports” and insert “shall submit a report”.

Page 1222, line 4, strike “and the Comptroller General shall jointly” and insert “shall”.

Page 1222, line 15, strike “180 days” and insert “9 months”.

Page 1222, beginning on line 16, strike “and the Comptroller General”.

Page 706, after line 7, insert the following new paragraph:

(3) **OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.**—

(A) **ESTABLISHMENT.**—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency the Office of Financial Protection for Older Americans, whose functions shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this paragraph, referred to as “seniors”) on protection from unfair and deceptive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(B) **DIRECTOR.**—The Office of Financial Protection for Older Americans shall be headed by a director.

(C) **DUTIES.**—Such unit shall perform the following duties:

(i) Develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(I) help seniors recognize warning signs of unfair and deceptive practices, protect themselves from such practices;

(II) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(III) provide personal consumer credit advocacy to respond to consumer problems caused by unfair and deceptive practices.

(ii) Monitor certifications or designations of financial advisors who advise seniors and

alert the Securities and Exchange Commission and State regulators of certifications or designations that are identified as unfair or deceptive.

(iii) Not later than 18 months after the date of the establishment of the Office of Financial Protection for Older Americans, submit to Congress and the Securities and Exchange Commission recommendations of the best practices for any legislative and regulatory—

(I) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(II) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and

(III) methods in which a senior can verify a financial advisor's credentials.

(iv) Conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(I) protecting themselves from unfair and deceptive practices;

(II) long-term savings; and

(III) planning for retirement and long-term care.

(v) Coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement.

(vi) Work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

Page 760, strike line 19 and all that follows through page 762, line 22, and insert the following:

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial goods or services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase such goods or services directly from the merchant, retailer, or seller of financial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended. In the application of this paragraph, the extension of credit and the collection of debt described in subparagraphs (A) and (B), respectively, shall not be considered a consumer financial product or service.

(2) EXCEPTIONS FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any agency other than the Agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant

or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant or retailer.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided; and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

Page 675, strike line 10 and all that follows through page 676, line 9, and insert the following:

(xi) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a financial activity with respect to financial data processing—

(I) to the extent the person is providing interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230); or

(II) if the person—

(aa) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(bb) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(cc) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

Page 1205, line 2, insert before the period at the end the following: “and to provide additional levels of coverage on an optional basis”.

Page 1205, line 22, strike “and” after the semicolon.

Page 1205, line 25, strike the period at the end and insert “; and”.

Page 1205, after line 25, insert the following:

(6) examine the feasibility of SIPC providing additional levels of coverage on an optional basis, what those additional levels of coverage should be, and the appropriate risk-based premium for providing additional coverage.

Page 1018, after line 25, insert the following:

#### SEC. 4818. AMENDMENTS TO TRUTH IN LENDING ACT.

(a) IN GENERAL.—Section 128(e) of the Truth in Lending Act is amended—

(1) by striking paragraph (3) and inserting the following new paragraph (3):

“(3) INSTITUTIONAL CERTIFICATION REQUIRED.—(A) Except as provided in subparagraph (B), before a creditor may issue any funds with respect to an extension of credit described in paragraph (1), the creditor shall obtain from the relevant institution of higher education such institution's certification—

“(i) of the enrollment status of the borrower;

“(ii) of the borrower's cost of attendance at the institution as determined by the institution under part F of title IV of the Higher Education Act of 1965;

“(iii) of the difference between the borrower's cost of attendance and the borrower's estimated financial assistance received under title IV of the Higher Education Act of 1965 and other assistance known to the institution, as applicable; and

“(iv) that the institution has—

“(I) informed the borrower—

“(aa) about the availability of, and the borrower's potential eligibility for, Federal financial assistance under this title, including disclosing the terms, conditions, and interest rates of Federal student loans;

“(bb) of the borrower's ability to select a private educational lender of the borrower's choice;

“(cc) about the impact of a proposed private education loan on the borrowers' potential eligibility for other financial assistance, including Federal financial assistance under the Higher Education Act of 1965; and

“(dd) about a borrower's right to accept or reject a private education loan within the 30-day period following a private educational lender's approval of a borrower's application and about a borrower's 3-day right to cancel altogether;

“(II) determined whether the borrower has applied for and exhausted the Federal financial assistance available to the borrower under the Higher Education Act of 1965 and informed the borrower accordingly; and

“(III) counseled the borrower on the borrower's financial aid options.

“(B) A creditor may issue funds with respect to an extension of credit described in paragraph (1) without obtaining from the relevant institution of higher education such institution's certification if such institution fails to provide such certification within 21 calendar days or 15 business days, whichever comes first, of the creditor's request for such certification.”.

(2) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(3) by inserting after paragraph (8) the following new paragraph (9):

“(9) PROVISION OF INFORMATION.—On or before the date a creditor issues any funds with respect to an extension of credit described in paragraph (1), the creditor shall notify the relevant institution of higher education, in writing, of the amount of the extension of credit and the student on whose behalf credit is extended. The form of such written notification shall be subject to the regulations of the Agency.”.

(b) REGULATIONS.—

(1) DEADLINE FOR REGULATIONS.—Not later than 365 days after the date of enactment of this Act, the Agency shall issue regulations in final form to implement paragraphs (3) and (9) of section 128(e) of the Truth in Lending Act, as amended by subsection (a). Such regulations shall become effective not later than 6 months after their date of issuance.

(2) EFFECTIVE DATE.—The regulations in effect pursuant to section 128(e) of the Truth in Lending Act as of the date of the enactment of this Act shall remain in effect until the effective date of the regulations issued under paragraph (1).

(c) STUDY AND REPORT ON PRIVATE EDUCATION LOANS AND PRIVATE EDUCATIONAL LENDERS.—

(1) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the

Federal Trade Commission, and the Attorney General, shall submit a report to the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Health Education, Labor, and Pensions of the Senate on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(2) **CONTENT.**—The report required by this subsection shall examine, at a minimum, the following:

(A) the growth and changes of the private education loan market in the United States;

(B) factors influencing such growth and changes;

(C) the extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers;

(D) the characteristics of private education loan borrowers, including the types of institutions of higher education they attend, socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender), what other forms of financing borrowers use to pay for education, whether they exhaust their federal loan options before taking out a private loan, whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students, whether such borrowers are students enrolled in a program leading to a certificate, license or credential other than a degree, an associates degree, a baccalaureate degree, or a graduate or professional degree and, if practicable, employment and repayment behaviors;

(E) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(F) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(G) the terms, conditions, and pricing of private education loans;

(H) the consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers' awareness and understanding about terms and conditions of various financial products;

(I) whether federal regulators and the public have access to information sufficient to provide them with assurances that private education loans are provided in accord with the Nation's fair lending laws and that allows public officials to determine lenders' compliance with fair lending laws; and

(J) any statutory or legislative recommendations necessary to improve consumer protections for private education loan borrowers and to better enable federal regulators and the public to ascertain private educational lender compliance with fair lending laws.

(d) **REPORT.**—Not later than 18 months after the issuance of regulations under subsection (b)(1), the Consumer Financial Protection Agency and the Secretary of Education shall jointly submit to Congress a report on the compliance of institutions and private educational lenders with the amendments made by this section. The report shall include the degree to which specific institu-

tions utilize certifications in effectively encouraging the exhaustion of Federal student loan eligibility and lowering student debt.

Page 198, after line 15, insert the following new subtitle:

**Subtitle K—Home Affordable Modification Program**

**SEC. 9911. HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES.**

(a) **NET PRESENT VALUE INPUT DATA.**—The Secretary of the Treasury (in this section referred to as the “Secretary”) shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) **WEB-BASED SITE FOR NPV CALCULATOR AND APPLICATION.**—

(1) **NPV CALCULATOR.**—In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary's methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) **DISCLOSURE.**—Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) **APPLICATION.**—The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) **PUBLIC AVAILABILITY OF NPV METHODOLOGY, COMPUTER MODEL, AND VARIABLES.**—The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary's methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all variables used in such net present value analysis.

Page 1068, after line 22, insert the following:

(c) **REQUIREMENTS FOR LIABILITY.**—Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

“(c) **REQUIREMENTS FOR LIABILITY.**—A purchaser of a security given a rating by a nationally recognized statistical rating organization shall have the right to recover for damages if the process of determining the credit rating was—

“(1) grossly negligent, based on the facts and circumstances at the time the rating was issued; and

“(2) a substantial factor in the economic loss suffered by the investor.”

No action shall be maintained to enforce any liability created under this subsection unless brought within 2 years after the discovery of the facts constituting the violation and within 3 years after the initial issuance of the rating.”

Strike section 1109 and insert the following new section:

**SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.**

(a) **IN GENERAL.**—Upon the written determination of the Council that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of the Council then serving) and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), the Corporation may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by guaranteeing obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof), if necessary to prevent systemic financial instability during times of severe economic distress, except that a guarantee of obligations under this section may not include provision of equity in any form.

(b) **POLICIES AND PROCEDURES.**—Prior to exercising any authority under this section, the Corporation shall establish policies and procedures governing the issuance of guarantees. The terms and conditions of any guarantees issued shall be established by the Corporation with the approval of the Secretary of the Treasury and the Financial Stability Oversight Council. Such terms and conditions may include the Corporation requiring collateral as a condition of any such guarantee.

(c) **CAP FOR GUARANTEED AMOUNT.**—

(1) **IN GENERAL.**—In connection with any program established pursuant to subsection (a) and subject to paragraph (2), the Corporation may not have guaranteed debt outstanding at any time of more than \$500,000,000,000 (as indexed to reflect growth in assets of insured depository institutions and depository institution holding companies as determined by the Corporation).

(2) **ADDITIONAL DEBT GUARANTEE AUTHORITY.**—If the Corporation, with the concurrence of the Council and the Secretary (in consultation with the President), determines that the Corporation must guarantee debt in excess of \$500,000,000,000 (as indexed pursuant to paragraph (1)) to prevent systemic financial instability, the Corporation may transmit to the Congress a request for authority to guarantee debt in excess of \$500,000,000,000 (as indexed pursuant to paragraph (1)). Such request shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

(d) **FUNDING.**—

(1) **ADMINISTRATIVE EXPENSES AND COST OF GUARANTEES.**—A program established pursuant to this section shall require funding only for the purposes of paying administrative expenses and for paying a guarantee in the event that a guaranteed loan defaults.

(2) **FEES AND OTHER CHARGES.**—The Corporation shall charge fees or other charges



to all participants in such program established pursuant to this section to offset projected losses and administrative expenses. To the extent that a program established pursuant to this section has expenses or losses, the program will be funded entirely through fees or other charges assessed on participants in such program.

(3) **EXCESS FUNDS.**—If at the conclusion of such program there are any excess funds collected from the fees associated with such program, the funds will be deposited into the Systemic Dissolution Fund established pursuant to section 1609(n).

(4) **AUTHORITY OF CORPORATION.**—For purposes of conducting a program established pursuant to this section, the Corporation—

(A) may borrow funds from the Secretary of the Treasury, which shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraph (2), and there shall be available to the Corporation amounts in the Treasury not otherwise appropriated, including for the payment of reasonable administrative expenses;

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act; and

(C) may not borrow funds from the Systemic Dissolution Fund established pursuant to section 1609(n).

(5) **BACK-UP SPECIAL ASSESSMENT.**—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses (including monies borrowed pursuant to paragraph (4)) arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program.

(e) **PLAN FOR MAINTENANCE OR INCREASE OF LENDING.**—In connection with any application or request to participate in such program authorized pursuant to this section, a solvent entity seeking to participate in such program shall be required to submit to the Corporation a plan detailing how the use of such guaranteed funds will facilitate the increase or maintenance of such solvent company's level of lending to consumers or small businesses.

(f) **SUNSET OF CORPORATION'S AUTHORITY.**—The Corporation's authority under subsections (a) and (d) and the authority to borrow funds from the Treasury under section 1609(o) shall expire on December 31, 2013.

(g) **RULE OF CONSTRUCTION.**—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

(h) **DEFINITIONS.**—For purposes of this section, the following definitions apply:

(1) **CORPORATION.**—The term "Corporation" means the Federal Deposit Insurance Corporation.

(2) **DEPOSITORY INSTITUTION HOLDING COMPANY.**—The term "depository institution holding company" has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) **INSURED DEPOSITORY INSTITUTION.**—The term "insured depository institution" has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(4) **SOLVENT.**—The term "solvent" means assets are more than the obligations to creditors.

Page 110, after line 7, insert the following new section (and redesignate the subsequent sections accordingly):

#### SEC. 1110. ADDITIONAL RELATED AMENDMENTS.

(a) **FEDERAL DEPOSIT INSURANCE ACT RELATED AMENDMENTS.**—

(1) **SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.**—Effective upon the date of the enactment of this section through December 31, 2013, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely-available debt guarantee program for which section 1109 would provide authority.

(2) **FEDERAL DEPOSIT INSURANCE ACT AUTHORITY PRESERVED.**—Effective December 31, 2013, the Corporation shall have the same authority pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act as the Corporation had prior to the date of enactment of this Act.

(b) **EFFECT OF DEFAULT ON AN FDIC GUARANTEE.**—If an insured depository institution or depository institution holding company participating in a program under section 1109 or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation may—

(1) appoint itself as receiver for the insured depository institution that defaults;

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require consideration of whether a determination shall be made as provided in section 1603 to resolve the company under subtitle G; and

(B) if the Corporation is not appointed receiver pursuant to subtitle G within 30 days of the date of default, require the company to file a petition for bankruptcy under section 301 of title 11, United States Code, or file a petition for bankruptcy against the company under section 303 of title 11, United States Code.

(c) **AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.**—Section 303 of title 11, United States Code, is amended by adding at the end the following:

"(m) Notwithstanding subsections (a) and (b), an involuntary case may be commenced by the Federal Deposit Insurance Corporation against a depository institution holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or other company participating in a guarantee program established by the Corporation on the ground that the company has defaulted on a debt or obligation guaranteed by the Corporation."

(d) **BANKRUPTCY PRIORITY FOR DEFAULTS ON DEBT GUARANTEED PURSUANT TO SECTION 1109.**—Section 507(a)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: "and allowed unsecured claims based upon any debt to the Federal Deposit Insurance Corporation that arose prior to the commencement of the case under this title, as a result of the debtor's default on a guarantee provided by the Corporation pursuant to section 1109 of the Financial Stability Improvement Act of 2009 or the Federal Deposit Insurance Act, under a program established by the Corporation after the date of enactment of the Financial Stability Improvement Act of 2009".

Page 110, line 8, strike "**MUST**" and insert "**MAY**".

Page 110, strike line 10 and all that follows through line 18 and insert the following:

(a) **IN GENERAL.**—In connection with any payment, credit extension, or guarantee or

any commitment under section 1109 or 1604, the Corporation may obtain from the insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company, as the case may be—

Page 110, line 19, strike "financial company" and insert "insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company".

Page 111, line 3, strike "financial company" and insert "insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company".

Strike section 1614 and insert the following new section:

#### SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION LIMITATIONS.

At any time that the Corporation has borrowed from the Treasury pursuant to section 1609(o) to resolve a covered financial company, the Corporation shall apply the executive compensation limits under section 111 of the Emergency Economic Stabilization Act of 2008 to such company for so long as such company is in receivership.

Page 436, after line 11, insert the following new section:

#### SEC. 1615. PRIORITY OF CLAIMS IN FEDERAL DEPOSIT INSURANCE ACT.

Section 11(d)(11)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(11)(A)) is amended—

(1) by redesignating clauses (iii) through (v) as clauses (iv) through (vi), respectively; and

(2) by inserting after clause (ii) the following new clause (iii):

"(iii) Any obligation of the institution owed to the Corporation as a result of the institution's default on a Corporation-guaranteed debt."

Page 825, after line 12, insert the following new section:

#### SEC. 4313. REGULATION OF PERSON-TO-PERSON LENDING.

(a) **SCOPE OF EXEMPTION FROM FEDERAL SECURITIES REGULATION.**—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following new paragraph:

"(15) **PERSON-TO-PERSON LENDING.**—

"(A) **IN GENERAL.**—Any consumer loan, and any note representing a whole or fractional interest in any such loan, funded or sold through a person-to-person lending platform.

"(B) **DEFINITIONS.**— For purposes of this paragraph:

"(i) **CONSUMER LOAN.**—The term 'consumer loan' means a loan made to a natural person, the proceeds of which are intended primarily for personal, family, educational, household, or business use.

"(ii) **PERSON-TO-PERSON LENDING PLATFORM.**—

"(I) **IN GENERAL.**—The term 'person-to-person lending platform' means an Internet website, the primary purpose of which is to provide a transaction platform for the funding or sale of individual consumer loans, or the sale of notes representing whole or fractional interests in individual consumer loans, by matching natural persons who wish to obtain such loans with persons who wish to fund them, or by matching persons who wish to sell such loans or notes with persons who wish to purchase them.

"(II) **PROHIBITION ON MULTIPLE LOANS IN A SINGLE TRANSACTION.**—The term 'person-to-person lending platform' does not include any platform on which multiple loans may be funded or sold in a single transaction, or

on which a note representing an interest in multiple loans or other debt obligations may be sold.”.

(b) REGULATION BY THE AGENCY.—

(1) IN GENERAL.—Primary jurisdiction for the regulation of the lending activities of person-to-person lending and person-to-person lending platforms is hereby vested in the Agency.

(2) INTERIM REQUIREMENTS.—Until the Director issues and adopts disclosure requirements with respect to the sale of consumer loans, or notes representing whole or fractional interests therein, on person-to-person lending platforms, a person-to-person lending platform that registers the offer and sale of any such notes under the Securities Act of 1933 shall, with respect to such registered offer and sale, provide the disclosure required under the Securities Act of 1933 to be contained in the registration statement and prospectus and provide such disclosure required in any periodic reports required to be filed by such person-to-person lender pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934.

(3) DEFINITIONS.—For purposes of this subsection, the terms “consumer loan”, “person-to-person lending platform”, “prospectus”, and “registration statement” shall have the meaning given such term under the Securities Act of 1933.

(c) RULEMAKING.—The Director may prescribe such regulations and issue such orders as the Director considers necessary or appropriate to implement the provisions of this section and to provide borrower protection, lender protection, consumer choice, and expanded consumer access to fair and reasonable credit choices.

(d) EFFECTIVE DATE.—Notwithstanding section 4310, this section shall take effect on the date of the enactment of this title.

Page 699, line 13, strike “and”.

Page 699, line 17, insert “and” after “services”.

Page 699, after line 17, insert the following:

(vi) the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers;

Page 788, after line 10, insert the following:

(3) CONSIDER AS UNFAIR CERTAIN PRACTICES WITH REGARD TO THE PROVISION OF CREDIT SCORES.—Subject to regulations prescribed by the Director, it shall be considered unfair for any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)) to make available for purchase by creditors any credit score for a consumer that is not also available for purchase by that consumer at the same price as other credit scores sold to consumers by such agency.

Page 699, line 17, insert “, and the impact of Federal policies, including resource limits in means-tested Federal benefit programs (as defined in section 318 of the Higher Education Act of 1965; 20 U.S.C. 1059e), on such consumers in influencing banking behavior” after “financial products or services”.

In section 4109(f) (as modified pursuant to the rule providing for the consideration of the bill and contained in the amendment designated MWB\_05), strike paragraph (3) and insert the following:

(3) EXCEPTION.—Notwithstanding paragraph (1), an attorney’s activities related to

assisting another person in preventing a foreclosure shall be subject to this title except to the extent such activities constitute, or are incidental to, the provision of legal services to a client of the attorney.

Page 776, after line 19, insert the following new subsection:

(1) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments or penalties, over any activities related to the solicitation or making of voluntary contributions to or through a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer or representative of such organizations to the extent the organization, agent, volunteer or representative thereof is soliciting or providing advice, information, education or instruction to donor(s) or potential donor(s) relating to a contribution to or through the organization.

(2) This exclusion shall not apply to other activities not described in the paragraph above and are financial activities as described in any subparagraph of section 4002(19), or otherwise subject to any of the enumerated consumer laws, or the authorities transferred under subtitle F or H.

In the last section title I of the bill (as added pursuant to the rule providing for the consideration of the bill and contained in the amendment designated “TARP—001”), strike “\$22,059,000,000,” and insert “\$23,625,000,000”.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 15 minutes.

The Chair now recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chair, I yield 30 seconds to my colleague from Massachusetts (Ms. TSONGAS).

Ms. TSONGAS. Madam Chair, I urge adoption of Mr. FRANK’s amendment, which includes my amendments to guarantee that consumers have the same access to their credit scores that lenders now have.

I have heard from a number of my constituents, like Carla Welsh from Concord, Massachusetts, that “it seems unthinkable to me that . . . consumers would be placed in the dark in regard to their creditworthiness.”

I’m proud to say that the manager’s amendment levels the playing field for consumers. I urge my colleagues to support the manager’s amendment and the underlying bill.

Mr. FRANK of Massachusetts. I will now yield 2½ minutes to the gentleman from New York (Mrs. MCCARTHY).

□ 1730

Mrs. MCCARTHY of New York. I would like to ask the gentleman from Massachusetts, the distinguished chairman, to engage in a short colloquy.

I would like to clarify how the analysis of systemic risk and assessment factors would be applied by the Financial Services Oversight Council and for dissolution fund assessments.

Is it the chairman’s intention that the factors used for identifying companies subject to stricter standards should be applied in light of the more detailed and balanced risk matrix set out in the dissolution fund section of the bill?

Mr. FRANK of Massachusetts. If the gentlewoman will yield, as the gentlewoman knows, there was a clerical glitch at the last minute so that we missed by a very narrow margin a submission time for the Rules Committee. And what I am glad to have the chance to do now is to agree with the gentlewoman, who has been working diligently on this, that this language will go if we have anything to say about it, as we will, into the conference report.

So the answer is yes.

Mrs. MCCARTHY of New York. I thank the chairman and look forward to working with him as the process moves forward.

Mr. FRANK of Massachusetts. Madam Chair, I reserve the balance of my time.

Mr. BACHUS. Madam Chair, I rise to claim the time in opposition to the amendment.

The Acting CHAIR. The gentleman from Alabama is recognized for 15 minutes.

Mr. BACHUS. Madam Chair, I yield 1½ minutes to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT. Madam Chair, it’s not surprising that this legislation, like much of the legislation, might have an unintended consequence. And one of my constituents pointed out just such in this legislation.

I took the problem to the chairman, and he very graciously has fixed it in his manager’s amendment.

I yield to him so that he can explain.

Mr. FRANK of Massachusetts. I thank the gentleman for yielding.

We are trying here to prevent fraud in the various programs. In the subprime mortgage bill, which we are reenacting here, which the House voted on, we put in some very strict restrictions against people who had a pattern or a history of fraud. But the gentleman from Maryland pointed out quite correctly that it was overly rigid, that it excluded, in the case of someone he knew, someone who many, many years ago had been involved in an unrelated situation where culpability was uncertain, there was a criminal conviction, and what this does is to provide some needed flexibility for minor offenses that were long ago.

I thank the gentleman for calling it to our attention. We were pleased to be able to make this change.

Mr. BARTLETT. I want to thank the chairman very much for helping to solve this problem.

Mr. FRANK of Massachusetts. Madam Chair, I yield 2½ minutes to the gentleman from North Carolina (Mr. MILLER), who is an important author of much of this bill.

Mr. MILLER of North Carolina. I will include in my revised and extended remarks the verbatim colloquy on the point, but Mr. FRANK had asked that I simply explain one committee amendment offered by Mr. MOORE and by me and explain the revisions briefly here tonight on the floor.

The committee amendment and the revised amendment in the manager's amendment was originally a suggestion of Sheila Bair of the FDIC to get at one of the most infuriating episodes in the entire financial crisis. And the best example was the collapse and the rescue of AIG, which was not really about AIG but the counterparties to AIG. We have now heard that the counterparties, Morgan Stanley, Goldman Sachs, Societe Generale, Deutsche Bank, refused to take anything less than 100 cents on the dollar on what AIG owed them. According to the Special Inspector General for the TARP program's report, they did that in part because they had grabbed collateral for their debts in the last days of AIG's collapse so that they knew they could get paid in full even if AIG went into bankruptcy.

The FDIC believes it is better to take into resolution companies that are failing sooner rather than later so they don't arrive and find that every asset of the company has been pledged as collateral, which leads to a more expensive resolution, a less equitable resolution, and a resolution that inevitably is more disruptive of the economy.

It gets at two problems: One, the collateral grabs by taking a concept from bankruptcy, avoidable preference, where the company was insolvent and pledged collateral for existing debts in the last 90 days before the resolution, the FDIC can disregard it altogether, disregard the security altogether.

Then, second, the short-term collateralized lending without any market discipline, based entirely upon collateral, without any regard to the actual condition of the borrower of the company. The amendment gets at that by allowing some portion of that to be set aside, 10 percent to be disregarded, and then in limited circumstances, only short-term credit, 1 month or less, where the security is not a Treasury or other government-secured debt. It will impose some market discipline.

Mr. BACHUS. Madam Chairman, I yield 3 minutes to the gentlelady from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Madam Chair, I would like to speak in opposition to the bill, but I would like to talk about the manager's amendment as well.

But before I get into the manager's amendment, I would like to reinforce my opposition to the bill in its entirety because of the permanent bailout fund that is created, the continuation of bailouts, the implied government guarantee in the financial marketplace, and the way that taxpayers are placed on

the hook potentially for billions, if not trillions, of dollars to bail out failed nonbanks.

But specifically I would like to talk about the two parts of the manager's amendment that were added without specific discussion by the committee, to my knowledge, and it also goes to a larger point. We've labeled this bill TARP II. This goes back to TARP I and using TARP funds to fund things that the TARP money was not intended to go for. I voted against the TARP funding in the first place. And now in the manager's amendment we have another \$4 billion in existing TARP funds going to unproven foreclosure relief programs; \$3 billion to reinstate a 1975 program, the Emergency Homeowners' Relief Act, to provide emergency mortgage relief.

We just had a hearing in our committee this week on the Making Homes Affordable plan, the administration's plan, that in our opinion, I think, across the board in a bipartisan way is a bust. It has not met with much success, and it has murky, if uncertain, guidelines attached to it. So I think in this case strapping an unemployed homeowner with more debt is not the answer. Congress needs to support policies that create jobs and do not perpetuate any more bailouts.

The other part of this amendment adds another \$1 billion for the Neighborhood Stabilization Program. This program is a costly bailout for lenders and speculators. This program also could have the unintended consequences of making foreclosure a more attractive option for lenders, thereby compounding the problem.

We've already committed in two separate times \$6 billion to the Neighborhood Stabilization Program, and this adds another billion. I think we also need to consider that this program of the \$4 billion allocated to it in 2008, only 25 percent of the funds are even out the door. What is adding another billion dollars going to do and when can those funds actually get out the door? And of the \$1.9 billion allocated in January of 2009, not one dollar has made it through HUD's cumbersome bureaucracy.

I object to the fact that this was added onto the manager's amendment on a very complicated, thousand-page bill, but it also adds two additions on here that I believe were part of the reason that the bill has been held up through this week and part of the reason it was held up yesterday; it was to satisfy certain interests in this House, and I think we need to have them discussed in front of the whole committee and discussed in front of the whole House.

□ 1740

Mr. FRANK of Massachusetts. Madam Chair, I yield 2½ minutes to the gentleman from North Carolina

(Mr. WATT), a major shaper of the best parts of this bill.

Mr. WATT. It is an inconvenient fact that the Constitution reserves certain rights to the States and allows the Federal Government to have certain rights. And it sometimes gets inconvenient for those people who profess to believe in States' rights that we have to accommodate them.

One of the most difficult parts of making the appropriate accommodation has been finding the right preemption of State law standards to put into this bill. I am deeply indebted to all of the members of the committee, particularly Ms. BEAN, who has been very active on this issue.

We worked out 10 different things on Federal preemption, some reserved to the States, some reserved to the Federal Government. And as I said at the very outset of the discussions about this, we knew we would find the right place to be on preemption if the consumer groups were unhappy and if the industry was unhappy. And we have succeeded in making both of them unhappy. And they are equally unhappy, so I think we have found the right balance on preemption.

That is about all I can say because I don't have time to go through the 10 things that we were able to agree on. Nobody is jumping up and down and threatening to shoot any of us, but I can tell you that everybody is kind of equally unhappy.

I appreciate the chairman giving me the opportunity to explain that. And I am sure nobody understands it, but that's okay.

Mr. BACHUS. Madam Chair, I recognize the gentleman from Texas (Mr. NEUGEBAUER) for 3 minutes.

Mr. NEUGEBAUER. There are a number of provisions in the manager's amendment that make this bill less bad. And really, we've come a long way from the bill that was originally introduced to the one that's on the floor now. We went through a very lengthy markup process. In many cases, sometimes during those markups we were able to make the bill better. In this manager's amendment, there are some changes that in fact do make this bill a little less egregious to me.

But the problem is, fundamentally, the bill still does what it originally started out to do, and that is to perpetuate bailouts in this country. One of the things that my colleagues and I have said from the very beginning is the American people are tired of bailouts. Unfortunately, this bill perpetuates bailouts in this country. We continue to reward bad behavior and punish good behavior, and this bill perpetuates that.

One of the things that also concerns me about this bill is that even with some improvements, it still becomes a job killer. For example, one of the provisions in this bill would give secured

creditors a haircut. In other words, here is somebody that took collateral to make a loan, thought they were securitized, thought they were collateralized, and now at the end, arbitrarily they can be given a 20 percent haircut for their collateral. That is going to cause huge implications in the credit markets because these people, a small businessman, is going out to borrow money for his plant or equipment or other things, lenders making what they think are secured loans, and all of a sudden the lender finds himself at some point in time where their security is going to be shared with someone else.

The other piece of this is that this bill does something that I feel very strongly about, and that is, it limits the choices for consumers. I still believe that the American people are pretty smart people. I think it's their money, it's their credit, and they ought to have a lot more to say about the types of credit, the types of loans that they take out. They don't need the Federal Government telling them that this is the kind of loan we think is appropriate for you, this is the kind of student loan you should use to send your child to college, or this is the kind of car loan you should use. Or small businessman—this is the loan that we give small businesses, take it or leave it.

The other part of it is that this bill does something that I think is very egregious, and I think the American people ought to be outraged about. Here we are, Secretary Geithner gave the Democrats an early Christmas present. He said, you know what? That slush fund that we've got, we're going to keep it until next October. Man, a day doesn't go by and here we go, we're going to put our hand in the cookie jar here. In this bill, \$4 billion out of the TARP money that was not represented to be used for these kinds of purposes, it was an emergency to stabilize the markets, but we're going to put our hand in the cookie jar and take \$4 billion. By the way, it's \$4 billion we didn't have to begin with; we had to go borrow that \$4 billion.

Instead of taking the TARP money, the Treasury Secretary recently told us, he said, I think the financial markets are basically stabilized.

This is a bad bill, we should defeat it.

Mr. FRANK of Massachusetts. Madam Chair, I now yield 2½ minutes to one of the strongest advocates of fairness and equity, and critics of lack of action to stop the foreclosure process, the gentlewoman from California, the Chair of the Housing Subcommittee, Ms. WATERS.

Ms. WATERS. Madam Chair, I rise in strong support of the manager's amendment to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, and the underlying bill.

This bill will finally reform and rein in Wall Street and our financial system, triggered by greed and risk that caused this country to almost collapse. This bill addresses all of the elements of that collapse by allowing the government to wind down "too big to fail" institutions before their failure threatens the entire global economy, regulating risky over-the-counter derivatives, and requiring credit rating agencies to avoid the conflicts of interest that cause them to inflate the value of tax and assets.

Perhaps the most important part of this bill is the creation of a new Consumer Financial Protection Agency. This new agency's role will be to spot the next subprime crisis before it starts and prevent the next predatory product from stripping consumers of their homes and their wealth.

I would especially like to thank Financial Services Committee Chairman BARNEY FRANK for including a provision at the request of the members of the Congressional Black Caucus to use \$3 billion in Troubled Asset Relief, TARP, dollars to provide low-interest loans to unemployed homeowners that are having difficulty making their mortgage payments. We also thank BARNEY FRANK for including another \$1 billion to strengthen the Neighborhood Stabilization Program that will rehab foreclosed housing and also create jobs. This funding is needed because our current foreclosure prevention programs address the initial cause of our foreclosure crisis, subprime and predatory lending, and not the current cause, unemployment, which is at 10 percent nationally, and in minority communities 13 to 15 percent plus.

We know that these kinds of loans can work. Since 1983, Pennsylvania has run a very successful loan program—just ask Mr. CHAKA FATTAH—that has saved 42,700 unemployed homeowners from foreclosure.

Madam Chair, foreclosures and unemployment present a systemic risk to our economy. Therefore, I strongly urge my colleagues to vote "yes" on the manager's amendment and on H.R. 4173. This is a very important piece of legislation.

Mr. BACHUS. Madam Chair, I yield myself such time as I may consume.

I rise in strong opposition to the manager's amendment. I think the manager's amendment illustrates the contradictions between the statements we've heard from the other side and the actual substance of the legislation. I just want to point out three or four conflicts between what it says and what they say it says.

The changes in the majority's \$150 billion permanent bailout fund actually contradict the will of the majority of the Financial Services Committee by undermining the orderly and expedient resolution of failed firms. The body will recall, members of the Finan-

cial Services Committee, that we adopted an amendment in the committee that eliminated the conservatorship authority and limited the receivership to 1 year. Chairman FRANK has basically said this is going to be a death panel; we're going to put these companies to death. And in committee, they were going to be given 1 year, but the manager's amendment comes back and extends the term limit for doing this to 3 years, 3 years in which these failed companies or counterparties or creditors won't be put to death, as the chairman said, but they will be subsidized out of this, I guess, \$150 billion fund, or what could actually turn into another \$50 billion if the Treasury asks the Congress to fund it with taxpayer money and adds an additional \$50 billion.

□ 1750

This is another example of why we need the Republican substitute. Instead of picking which politically important firms we are going to let survive and which less connected firms we are going to let disappear and fail, in the Republican substitute, we utilize a fair, transparent, rules-based bankruptcy process to resolve and to liquidate these failed financial firms, not to keep them going at the expense of what could be billions of dollars. We think that the Republican alternative is the only real option for eliminating taxpayer bailouts.

The chairman of the Financial Services Committee is also fond of saying that this legislation puts an end to the too-big-to-fail policy, which led to the bailout of our GSEs, of AIG and of other financial firms. Despite this claim, the reality is quite different.

If you will look at page 45 of the manager's amendment, it specifically excludes Fannie Mae and Freddie Mac from the dissolution provisions of the underlying bill. In other words, if they fail, they are excluded. We don't wind them down. Why?

Well, these two companies were at the center of the subprime lending problems that caused the financial market meltdown. Taxpayers have already pumped more than \$100 billion into these failed GSEs, and they are likely to lose \$300 billion more. It is unconscionable that we are going to exempt these two firms—our GSEs—from this dissolution authority.

Finally, the last aspect I will mention—and this probably is as disturbing as anything—we are raiding this TARP program, rather than ending it, for another \$4 billion. The manager's amendment diverts \$4 billion from TARP to a number of other programs that the law was never intended to support. TARP was intended to be a temporary plan to restore the health of the credit markets and to protect the economy from systemic risk caused by the collapse of firms that the government, really, allowed to become too big to fail.

We heard promises all last fall that the money would go back to the taxpayers. Instead, now we are talking about surpluses. We are talking about money that hasn't been used. It is almost like this is a "walking around" fund, and we're just going to take money out of it and use it on this pet project or on that pet project or on this good idea or on that good idea. Here is the first of those things, and it is \$4 billion. Again, we are not giving it back to the taxpayers, and those promises made last September are now being broken.

The President himself has said that he is extending TARP until October 10 of this year. What he is doing is turning it into a permanent bailout agency, into a kind of petty cash drawer for politically favored interests. Here we see the first one of those things—\$4 billion. Part of it is \$4 billion to help move this legislation across the finish line.

Let me close by saying we need to end TARP. That's the solution. We need to end it now. We need to require all repayments to go directly towards paying down the debt. That's the bottom line. End TARP right now. Require that all payments be used to pay down the debt. There is no surplus. There are only deficits and debts.

Madam Chair, I urge my colleagues to oppose this irresponsible breach of trust and this attack on our promises that we made last year.

I reserve the balance of my time.

Mr. FRANK of Massachusetts. What is the time remaining on both sides, please, Madam Chair?

The Acting CHAIR. The gentleman from Massachusetts has 6½ minutes remaining. The gentleman from Alabama has 2½ minutes remaining. The gentleman from Alabama has the right to close.

Mr. FRANK of Massachusetts. I yield 2 minutes to the gentleman from Colorado (Mr. PERLMUTTER), who hasn't had enough floor time this week.

Mr. PERLMUTTER. Thank you, Mr. Chairman.

The ranking member of the committee said that the Republican approach was to liquidate failed institutions. It is just the opposite, which is to let them linger and reorganize. That was the proposition made to us in Financial Services.

Madam Chair, my point here is to enter into a colloquy with the chairman.

Mr. Chairman, I had submitted an amount to exempt certain smaller banks and credit unions, which was not approved in the Rules Committee. It is my understanding that the legislation would give the new CFPA the authority to delegate the authority to conduct examinations and to enforce consumer protection provisions to the functional regulator for financial institutions that fall above the \$10 billion asset threshold.

Would it be fair to say that the intent here is not to increase burdens on those institutions that have been good actors?

For example, if an institution has an onsite examination or audit team from their functional regulator, it would seem that adding a CFPA team to work with those already there would not be as big of a burden. However, if an institution's functional regulator has deemed that its consumer compliance record is strong and that the institution's regulator is doing an effective job, it would seem that subjecting them to CFPA examinations and enforcement would increase the regulatory burden on the institution.

Is this a situation where the chairman would envision the CFPA's delegating that authority back to the functional regulator under the authorities given in this legislation?

Mr. FRANK of Massachusetts. If the gentleman would yield, with regard to the permanent audit team, they may be the largest institutions, and that is a somewhat separate question, but for those who don't have a permanent audit team, not only would it be better for the regulated entity, it would be better for the CFPA. As any agency, they will have limited resources. If you have a bank that has \$13-, \$14-, \$17 billion in assets and has had a good record, as most of those banks have had in consumer affairs, it would be a great waste of regulatory resources to be doing that when they would have the option, instead, of simply sending a CFPA member to join the other team.

So, yes, I would hope that the CFPA would take full advantage of this authority with those banks.

Mr. BACHUS. Madam Chair, I continue to reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Chair, I yield myself just 10 seconds to say that one of the Members whose business experience and general good judgment has been a very major asset for us is that of the gentlewoman from Illinois (Ms. BEAN). She has had a very significant and positive impact on this bill.

I will now yield her 2 minutes.

Ms. BEAN. I thank Chairman FRANK for yielding. I want to commend him and the committee for their hard work on this Financial Services regulatory reform bill we are considering today.

Madam Chair, Chairman FRANK's leadership and determination is the reason we are here on the verge of passing the most historic and comprehensive regulatory modernization of our financial system since the Great Depression.

Mr. Chairman, I rise in support of the manager's amendment and in support for H.R. 4173, the Wall Street Reform and Consumer Protection Act.

Included in the manager's amendment is compromise language I nego-

tiated with the majority leader and with the administration to preserve the century-old precedent of national banks and Federal savings associations, which are chartered nationally, to operate, in some cases, under a uniform national set of rules.

The manager's amendment addresses key concerns many of my colleagues and I had with the underlying text, which included changes to existing law in preemption standard and judicial deference. The compromise allows for the national bank regulator to make case-by-case preemption determinations on an individual State's consumer financial laws and then apply that determination to categories of State consumer financial laws that have equivalent terms.

In addition, the amendment allows States to formally petition the CFPA to improve the Federal consumer protection standards. If a majority of States petition the CFPA by passing resolutions in their respective legislatures, they can require the CFPA to conduct rulemaking.

□ 1800

In regard to the underlying bill before us, I want to express my strong support. Reforming our financial system is vitally important to creating a functional and sustainable system that American families and businesses can count on.

Last September when we were at the precipice of financial collapse, we promised the American people that we would enact just such comprehensive reforms. This bill lives up to that promise. Passing it will reduce the severity of future downturns or the likelihood of the type of crisis and subsequent bailout that we experienced last year from everything happening again.

While there is much to be proud of, I want to emphasize the dissolution authority, which removes any implicit government guarantee or bailout.

The Acting CHAIR. The time of the gentlewoman has expired.

Mr. FRANK of Massachusetts. I yield the gentlewoman an additional 15 seconds.

Ms. BEAN. This is the antibailout. That means when your company fails, you are fired. There will be consequences for your executives and your shareholders.

I urge my colleagues to support the manager's amendment and the underlying bill.

Mr. FRANK of Massachusetts. I will yield myself my remaining time.

How much is that?

The Acting CHAIR. The gentleman from Massachusetts has 2 minutes remaining.

Mr. FRANK of Massachusetts. I sympathize with the loss my Republican colleagues feel that we don't give a bailout for them, but this bill clearly repudiates it. First, they just today, as

they did yesterday, made an issue out of the fact that we do include some bankruptcy, but their whole issue was bankruptcy. As the gentleman from Colorado said, there is nothing in their bill that prevents this from being extended ad infinitum under bankruptcy. Technically, we do have some time limitations, but that's part of bankruptcy.

Here is what we do say. If, in fact, the FDIC would decide with a failed institution to keep it going, it would do it without any funds. On page 397, there is established a separate fund to facilitate and provide for the orderly and complete dissolution of any failed financial company that poses a taxpayer threat.

Page 399, the fund shall be available to cover the costs incurred by the corporation as a receiver, repay such funds, cover the cost of systematic stabilization actions, not for the entity.

Then in 288, the corporation, such action—they shall only get involved if they think it's—they can only spend the money if it is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company. Yes, we are saying that in some cases, in a very complex institution, you may not be able to wipe it out in a year. That's what was pointed it to us. If you wiped it out prematurely, you may find yourself costing more money, not to the institution, in severance pay and other things for employees. This is very clear.

By the way, as to the permanence of this, the authority to borrow here is sunsetted in 2013. Yes, there will be a fund of assessment from private financial institutions. I know the Republicans do not want us to discommode the major financial institutions for this.

We levy on them for money that can be used. If a major institution fails, then the money can be used to manage that failure in a reasonable way. The biggest difference is that we try to stop the failure and they do nothing to try to stop it.

Mr. BACHUS. I yield myself the balance of the time.

The Acting CHAIR (Ms. EDWARDS of Maryland). The gentleman has 2½ minutes remaining.

Mr. BACHUS. Let me say with AIG, the counterparties and creditors of the largest financial institutions were paid off dollar for dollar. I think we have all read that in the paper.

What this legislation does, it allows, in quote, resolving this, it allows once again the creditors and the counterparties to be paid off. That is a bailout.

In AIG, it was a bailout of creditors and counterparties. That's what is provided for here.

I yield the balance of my time to the gentleman from Texas (Mr. HENSARLING).

#### PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Parliamentary inquiry.

The Acting CHAIR. Would the gentleman please state his inquiry.

Mr. FRANK of Massachusetts. Well, when a Member says he is reserving his time to close, is it permissible to split it? I just, for the future of the bill, want to know that. I had assumed the gentleman was closing, and I thought only one Member closes.

The Acting CHAIR. The gentleman still may yield.

Mr. FRANK of Massachusetts. Thank you, Madam Chair.

Mr. HENSARLING. Madam Chair, regardless of any particular inquiries, the inquiry the American people want to know is: Where are the jobs? Now, what we have seen from the Democrats, our friends on the other side of the aisle, is an attempt to spend our way into jobs, an attempt to borrow our way into jobs and now an attempt to bail out our way into jobs. And what is the result? The result is the highest unemployment rate in a generation, the first trillion dollar deficit in our Nation's history, and a tripling of the national debt in the next 10 years.

Bailouts do not work. The Democratic bill enshrines us as a bailout Nation. It still allows people to privatize their profits and socialize their losses.

Section 1609(n) of the underlying bill creates a permanent bailout fund. Now, maybe some aspect of it is sunset, but nowhere else do you find a permanent bailout fund is going to be sunset. I assume you create the bailout fund for bailouts. This is what will happen.

If the American people believe that we can bail out our way into more jobs and that somehow we will have less systemic risk, they ought to support it. If they are tired of the bailouts, they need to support the Republican bill that ends the bailout. Ultimately, under their plan, you will have more taxpayer bailouts.

Now, they told us, the Speaker told us, if we would pass TARP, that she would make sure the taxpayers were repaid. What do we have? We have another TARP grab here by the chairman of the committee for yet another taxpayer-funded foreclosure mitigation plan, when every single other taxpayer-funded foreclosure mitigation plan has failed. The only one that will work is a job. That's what we need—jobs, not bailouts.

Mr. MILLER of North Carolina. Madam Chair, I offer this statement for the RECORD to clarify the intent of the portion of this amendment regarding haircuts for secured creditors to help establish a clear legislative record for its implementation, and to clarify Mr. MOORE's and my intent regarding the extension of secured credit to systemically important financial institutions under the dissolution section of the legislation.

It is our intent to bring a degree of responsibility to the extension of collateralized credit to

covered entities that may fail and fall within the resolution process this legislation creates. However we understand the importance of secured credit to a vital financial system and want to be clear on exactly what is and what is not covered by this amendment.

Only secured credit with terms of 30 days or shorter will be subject to the discretionary authority provided in the provisions of this section. FDIC's authority to apply up to a 10 percent haircut on secured credit positions is discretionary, but it may be applied only in the context of qualified financial contracts and then only if and when unsecured creditors and shareholders are wiped out. Further the authority does not apply to security interests in securities or debt issued, secured, or guaranteed by the Treasury, a federal agency, the Federal Reserve, or a Government Sponsored Enterprise.

Further this amendment makes clear that insured depository institutions, credit unions, and GSEs are not within the definition of a "financial company" for purposes of Subtitle G of this legislation. These institutions have a resolution process that is already firmly established in law.

Mr. FRANK of Massachusetts. Madam Chair, I offer this statement to indicate that I agree with the interpretation of the Gentleman from North Carolina regarding his interpretation of the secured creditor haircut portion of the Manager's Amendment. Apparently, there are some people who feel that, even with the improvements to this provision in the Manager's Amendment, there are some who might interpret this incorrectly, and I would agree with the Gentleman that very explicit language reaffirming this interpretation could usefully be added at conference time.

Ms. FUDGE. Madam Chair, today this Congress and President Obama are taking critical steps in bringing our economy back from the brink of disaster. Reforming our financial system is one major part of restoring our economy's health.

I rise in support of an amendment Chairman BARNEY FRANK and I have offered requiring credit rating agencies to register with the Securities and Exchange Commission.

Credit rating agencies provide a valuable service by issuing opinions on the creditworthiness of a company or debt. Investors and creditors rely on these ratings to determine if their investment and contractual decisions are sound. However, credit agencies' registration and oversight is entirely voluntary.

Why should agencies as important as credit rating agencies be permitted to opt out of regulatory oversight? There is no valid reason. Large, established rating agencies should not be able to avoid regulation designed to protect the financial system, consumers, investors, and taxpayers. Under our provision, for the first time, the Securities and Exchange Commission will have an office dedicated to broad oversight of credit rating agencies.

Registering these entities will provide greater accountability and transparency. This amendment will truly enhance oversight of credit rating agencies and protect investors, and I urge my colleagues to vote in favor of this amendment.

I commend Chairman FRANK for his tireless efforts to protect the American economy and taxpayers.



Mr. WAXMAN. Madam Chair, I want to commend Chairman FRANK for his diligent work on the issue of financial reform. He has listened to members, and the manager's amendment and the bill before us today contain several provisions that were drafted in negotiation and cooperation with the Energy and Commerce Committee. In particular, the Manager's amendment makes a number of technical changes that are essential to preserving the intent of the legislation with regard to Federal Trade Commission (FTC) enforcement of consumer laws.

While I am pleased that these technical changes were included, I want to note my concerns with a few of its provisions.

First, the amendment creates new definitions for "unfair," "deceptive," and "abusive" that I believe could restrict the ability of the new Consumer Financial Products Agency (CFPA) to protect consumers. This new definition of both "unfair" and "deceptive" would require CFPA to abide by 30 year-old Federal Trade Commission policy statements that are not even legally binding on FTC. Perhaps the intent of this new language is to have CFPA use the same definitional terms used by FTC, but this language does not achieve that goal. Instead, it could slow rulemaking and limit the flexibility of the new agency.

The new definition of "abusive" is similarly problematic. CFPA's authority to pursue abusive practices helps ensure that the agency can address payday lending and other practices that can result in pyramiding debt for low income families. Under the new definition of "abusive," however, CFPA would be required to prove that a practice has an impact on the entire country's financial system, a restriction that could prevent the new agency from issuing important and long overdue rules.

Second, I am concerned about new language that exempts some activities of consumer reporting agencies, known as CRAs, from CFPA oversight. I believe that these changes could split enforcement of the Fair Credit Reporting Act in a problematic manner and may lead to holes in regulation, oversight, and enforcement.

Third, the exclusion for auto dealers included in the bill and modified in this amendment is inappropriate. A key mission of CFPA is to protect consumers as they secure credit and finance purchases. For many Americans, the car is the second largest purchase they will ever make. In a hearing this March, the Subcommittee on Commerce, Trade, and Consumer Protection heard about numerous abuses in the used and subprime car market. Witnesses testified about excessive dealership mark-ups that are hidden from consumers, financing deals that consumers are forced to renegotiate days or even weeks after they drive off the car lot, and hidden fees that can be added to loan amounts.

There is a clear federal government role in strengthening consumer protection in the car financing area. The CFPA should have full authority to prescribe rules and enforce against fraud in this area. In addition to my general concerns about the exclusion, I am further concerned that the exclusion is so broad that it would allow virtually any activities by auto dealers to be excluded from oversight and enforcement by CFPA. Under this provision, an

auto dealer could open a payday loan operation, develop financial fraud scams, or form other businesses under the umbrella of the dealership and remain entirely outside of CFPA's reach. If this provision becomes law, I expect that the Energy and Commerce Committee will ask the Federal Trade Commission to take a close look at the practices of auto dealers and to issue rules and conduct enforcement as necessary.

Fourth, I remain concerned about the number of exclusions in the legislation and am troubled to find more in the Manager's amendment. For example, I believe that the exclusion for non-profit fundraising, while well-intentioned, would be ripe for abuse. As Chairman of the Oversight Committee, I held two hearings on abuses by fundraisers for veterans' charities. We found questionable charities and telemarketers who abused the public trust and took money from unsuspecting people. We found for-profit mailers and fundraisers creating charities in order to create work for themselves. A broad exclusion from CFPA authority could allow these fraudulent organizations to proliferate.

Fifth, language in the Manager's amendment would add additional burdens to CFPA's rulemaking. We want CFPA to be strong and nimble. Yet, under this provision, CFPA would not be allowed to issue a "one-size-fits-all regulation of nonbank products." Instead, it would be allowed only to issue "product specific rules." This sounds innocuous and these terms are not defined but I anticipate that they could tie up any rulemaking proceedings. For example, if CFPA were to issue a rule governing disclosures for loans, some could argue that this provision would require the agency to issue separate, duplicative rules for each type of entity making loans. This provision could slow CFPA from prescribing important consumer protection rules that apply uniformly to all nondepository institutions.

Mr. Chair, again, I want to thank Chairman FRANK for working with me, and I look forward to continuing to work on this legislation. I am hopeful that, together, we can work through these issues as this bill moves through the legislative process.

Ms. WATERS. Madam Chair, I rise in strong support of the Manager's Amendment to H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009" and the underlying bill.

This bill will reform Wall Street and our financial system by ensuring that another financial collapse never happens again. The bill addresses all of the elements of that collapse by allowing the government to wind down "too big to fail" institutions before their failure threatens the entire global economy, regulating risky over-the-counter derivatives, and requiring credit rating agencies to avoid the conflicts of interest that caused them to inflate the value of toxic assets.

Perhaps the most important part of this bill is the creation of a new Consumer Financial Protection Agency. This new agency's role will be to spot the next subprime crisis before it starts, and prevent the next predatory product from stripping consumers of their homes and their wealth.

I would especially like to thank Financial Services Committee Chairman BARNEY FRANK for including a provision, at the request of the

Congressional Black Caucus (CBC), to use \$3 billion in Troubled Asset Relief Program (TARP) dollars to provide low-interest loans to unemployed homeowners that are having difficulty making their mortgage payments.

This funding is needed because our current foreclosure prevention programs address the initial cause of our foreclosure crisis—subprime and predatory lending—and not the current cause, unemployment, which is at 10 percent nationally.

We know that these kinds of loans can work. Since 1983, Pennsylvania has run a very successful loan program that has saved 42,700 unemployed homeowners from foreclosure.

Madam Chair, foreclosures and unemployment present a systemic risk to our economy. Therefore, I strongly urge my colleagues to vote "yes" on the Manager's Amendment and on H.R. 4173.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Massachusetts (Mr. FRANK).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. BACHUS. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Massachusetts will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. SESSIONS

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 111-370.

Mr. SESSIONS. Madam Chair, I have an amendment at the desk, amendment No. 2.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. SESSIONS: Page 1068, strike lines 8 through 22.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Texas (Mr. SESSIONS) and a Member opposed each will control 5 minutes.

The Chair now recognizes the gentleman from Texas.

Mr. SESSIONS. Madam Chair, since 2002, Congress has significantly built upon the budget, the payroll, and the authorities of the Securities and Exchange Commission to provide proper investor and consumer protections. Among the SEC's many responsibilities is handling regulatory disputes, which they were engaged in on a day-to-day basis.

The bill we are considering today once again increases the Securities and Exchange Commission budget by doubling their multibillion dollar budget, by doubling their multibillion dollar budget. My Democratic colleagues claim that the additional monies will provide additional protection for consumers and investors. However, instead of allowing the Securities and Exchange Commission to use these new



resources assigned in this legislation to enhance enforcement, my friends on the other side of the aisle, in this bill, assign new private rights of actions to allow trial lawyers to run wild with enforcement capacities.

Madam Chair, I know that my friends, the Democrats, want both bigger government and an open house for trial lawyers. If they double the SEC's budget to ensure the necessary protections, then why would they also open this up to trial lawyers as well?

For these reasons, I have introduced amendment No. 2, which strikes the provisions creating a new private right of action against credit rating agencies. Despite the fact that the SEC is already handling regulatory disputes with no backlog, this new provision allows trial lawyers to take regulatory enforcement into their own hands in the form of frivolous, unnecessary lawsuits. When it comes to a case of fraud, investors already have the right to sue credit rating agencies.

This provision is completely unnecessary, and I encourage all of my colleagues to support my amendment to allow the SEC to do their job.

I yield the balance of my time to the gentleman, my friend from New Jersey (Mr. GARRETT) to control.

□ 1810

Mr. GARRETT of New Jersey. I thank the Chair. How much time do we have?

The Acting CHAIR. The gentleman has 3 minutes remaining.

Mr. GARRETT of New Jersey. I'll yield myself 2 minutes.

The American public has stated, and I said so on the floor the other night, that it's looking for Congress to do three things: first, make sure that we have no more bailouts; secondly, make sure that whatever legislation we do does not create anymore impediments to job creation; and thirdly, let's make sure that we don't lead to a bigger, more expensive, more expansive government.

Well, we have seen over the past several days now that the legislation before us would do the wrong thing on each point. It'll create more bailouts. It will hurt job creation. And it will create larger government. Now, to the underlying portion of this bill here dealing with credit rating agencies, we all know that it was bipartisan action taken by this Congress back in 2006 when we passed the bipartisan Credit Rating Agency Reform Act. And what did that do? That formalized the registration process of credit rating agencies to become nationally recognized statistical rating organizations.

What are we about to do here? Throw that out the window before it's fully implemented, before we fully have had the opportunity to see it roll out and be played out as Congress intended it to in a bipartisan manner. We're about to throw that out. To what end?

Well, as the gentleman from Texas just pointed out, to the end that you will allow for less competition in the CRAs, credit rating agencies, with, furthermore, unintended consequences that will be detrimental to the market and investors. What does that mean to people back at home? That means that it will be harder for them to make the evaluations that are necessary for the industry. That means it will be harder for credit to be obtained in the marketplaces, and what that means for businesses, of course, harder for them to get the credit they need to expand and create jobs.

This amendment here is necessary to counter all the aspects of this bill so that we can work hard to make sure that we create jobs in this country, make sure that businesses that need credit can get the credit they need, make sure that businesses that need to be able and want to expand are able to expand.

This amendment is a positive amendment. I support this amendment.

I reserve my time.

Mr. SHERMAN. Madam Chair, I rise to claim the time in opposition.

The Acting CHAIR. The gentleman from California is recognized for 5 minutes.

Mr. SHERMAN. I now yield to the gentleman from Pennsylvania (Mr. KANJORSKI), the Chair of the relevant subcommittee, for 1 minute.

Mr. KANJORSKI. Madam Chairman, I rise in opposition to this amendment.

During the argument, my good friend, the ranking member of my subcommittee from New Jersey, made a point. Now I understand why we're at loggerheads here. His comment was that we were enacting this piece of legislation to prevent any further bailouts. I only want to call your attention to the promise I made to the American people that we have no more financial crises. The bailouts follow the crises. We won't have to have bailouts if we don't have crises.

And if we had responsible activity by rating agencies we wouldn't have had the tremendous failure last year of so many securitized operations that our friends around the world and most of the American people felt they were outright cheated by the American government, because there were agencies out there that had gave them 3-plus ratings to securities that didn't deserve it.

Now, what we're doing here is saying a simple thing. You want to make those bad ratings? You don't want to follow the decorum of your own plans? If you want to put at risk investors, you will suffer the consequences and pay for your gross negligence. This is an integral part of this amendment and absolutely essential.

Mr. GARRETT of New Jersey. I still reserve.

Mr. SHERMAN. Does the gentleman from New Jersey have only one more

speaker? Then at this point I'll yield 2 minutes to the gentleman from Massachusetts (Mr. CAPUANO).

Mr. CAPUANO. Ladies and gentlemen, this amendment is actually quite simple. As Mr. KANJORSKI said, it's absolutely essential to this bill. Without this particular amendment, credit rating agencies will not be held accountable for anything they do. Simply put, the SEC has failed to do anything, and any limited action is limited by the First Amendment. They have got a decision in the courts of law that their provisions, that their expenditures have been protected by the First Amendment. You cannot sue them.

All this does—and it's a very high standard—it holds them to the same standards—and we'll read it—the same standards with respect to knowledge and recklessness as everybody else. If they know what they're saying is bad, or they know it is wrong, they should be held accountable. If they are reckless by not looking at an accounting report, they should be held accountable. That's all this does. It's actually a pretty high standard. I would actually like it a little lower because I have a lot of trial attorneys that need the work.

But more importantly, what Mr. KANJORSKI said is 100 percent right. All this does is protect the American economy, a minor little thing. And we have to go back many, many years. Tell me the last time a credit rating agency was held accountable for giving a AAA rating to a piece of junk. Enron, junk bonds, credit default swaps, credit default options squared; they're never held accountable. All this says is they have to actually look at the books, they have to use anything they know, and they cannot be reckless about it. That's all it says.

It doesn't say they're held accountable if they're wrong, nor should they be. A legitimate error is fine. All this says is they have to be held accountable to the American public when they basically don't do their job.

Mr. SHERMAN. I reserve the right to close.

Mr. GARRETT of New Jersey. I believe that it's our right to close. It's our amendment.

The Acting CHAIR. The gentleman from California has the right to close.

Mr. GARRETT of New Jersey. Then I will yield to the gentleman from Texas (Mr. SESSIONS) my remaining time.

Mr. SESSIONS. Madam Chairman, my friends who are arguing on behalf of trial lawyers usually argue on behalf of government, and now we're hearing about how government's really not empowered and really not going to do their job. But, at the same time, we look at a lower standard in this bill where we take it from knowingly or recklessly or grossly negligent to just gross negligence, a lower standard. This lower standard is there to help the

trial lawyers. Trial lawyers do not build value in this country. They diminish the value.

We need to give the SEC the authority, the responsibility. We're already giving them the money. The SEC will double in size of the amount of money that they get as a result of this bill. We're empowering the SEC to do their job. We should not lower the standard and then allow the trial bar to come after what should be an enforcement action. An enforcement action is what this statute should be all about with the credit rating agencies.

I'll support my amendment.

Mr. SHERMAN. First, let's set the record straight. Republicans are coming to this floor calling this a bailout bill. They're quoting my statement that the original draft of the bill was TARP on steroids. The fact is this bill now reins in executive branch bailout authority, and the Republican substitute is the thing to vote for if you want to be a bailout nation.

Second, I want to thank the Chair of the committee for including my revisions of section 1109 in the manager's amendment. Now as to this amendment. The bill's language is designed to hold credit rating agencies accountable. These are the agencies that gave AAA to Alt-A; that is to say, they gave the highest ratings to bad mortgage bonds, and nothing did more to put us in this recession than the trillions of dollars that investors bet on these bad mortgages, only to see the whole thing unwind.

Now we provide that they will be held accountable. The SEC has taken no enforcement action. All of the incentives in the present system push in the wrong direction. The way a credit rating agency gets business is to get a reputation for being a liberal grader, so that one issuer after another will hire them to give the high rating to their bad bonds. It's like the umpire being selected by the home team. Instead, we need to put pressure on the other side and say that if you are grossly negligent in assigning a high rating to bad bonds that hurt investors and also hurt the entire economy, you will be held accountable.

Now is the time to change the system, to make sure that the economic pressures on credit rating agencies are not all on the side of a liberal rating. We need to make it clear to credit rating agencies if you give AAA to Alt-A, you'll pay.

□ 1820

The Acting CHAIR. The question is on the amendment offered by the gentleman from Texas (Mr. SESSIONS).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. SESSIONS. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further pro-

ceedings on the amendment offered by the gentleman from Texas will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. PETERSON

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in House Report 111-370.

Mr. PETERSON. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. PETERSON: Page 481, strike line 8 and all that follows through page 665, line 6, and insert the following:

**TITLE III—DERIVATIVE MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT**

**SEC. 3001. SHORT TITLE.**

This title may be cited as the "Derivative Markets Transparency and Accountability Act of 2009".

**SEC. 3002. REVIEW OF REGULATORY AUTHORITY.**

(a) CONSULTATION.—

(1) CFTC.—Before commencing any rule-making or issuing an order regarding swaps, swap dealers, major swap participants, swap repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult with the Securities and Exchange Commission and the Prudential Regulators.

(2) SEC.—Before commencing any rule-making or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap repositories, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult with the Commodity Futures Trading Commission and the Prudential Regulators.

(3) In developing and promulgating rules or orders pursuant to this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consider each other's views and the views of the Prudential Regulators.

(4) In adopting a rule or order described in paragraph (1) or (2), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities similarly.

(5) Paragraph (4) shall not be construed to require the Commodity Futures Trading Commission or the Securities Exchange Commission to adopt a rule or order that treats functionally or economically similar products or entities identically.

(b) LIMITATION.—

(1) CFTC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to their activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap repositories;

(iv) persons associated with a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities.

(2) SEC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Securities and Exchange Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or

(B) with regard to their activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap repositories;

(iv) persons associated with a swap dealer or major swap participant;

(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—If either Commission referred to in this section believes that a final rule, regulation, or order of the other such Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review thereof in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside. Any such proceeding shall be expedited by the Court of Appeals.

(2) TRANSMITTAL OF PETITION AND RECORD.—

A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the Secretary of the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the rule, regulation, or order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) STANDARD OF REVIEW.—The court, giving deference to the views of neither Commission, shall determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court, as to whether the rule, regulation, or order is in conflict with subsection (a)(4) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order, until the date on which the determination of the court is final (including any appeal of the determination).

(d) DEFINITIONS.—In this section, the terms "Prudential Regulators", "swap", "swap dealer", "major swap participant", "swap repository", "person associated with a swap dealer or major swap participant", "eligible contract participant", "swap execution facility", "security-based swap", "security-based swap dealer", "major security-based swap participant", "security-based swap repository", and "person associated with a security-based swap dealer or major security-based swap participant" shall have the meanings provided, respectively, in the Commodity Exchange Act, including any modification of the meanings under section 3101(b) of this Act.

(e)(1) Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities Exchange Commission shall jointly adopt rules to—

(A) define the terms “security-based swap agreement” in section 3(a)(76) of the Securities Exchange Act of 1934 and “swap” in section 1a(35)(A)(v) of the Commodity Exchange Act;

(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and

(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.

(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Services Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.

#### SEC. 3003. INTERNATIONAL HARMONIZATION.

(a) In order to promote effective and consistent global regulation of contracts of sale of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators (as defined in section 1a(42) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of swaps and security-based swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.

#### SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act or a clearing agency described in the Securities Exchange Act of 1934, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term “Federal assistance” means the use of public funds for the purposes of—

(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(2) purchasing assets of a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(3) assuming or guaranteeing the obligations of a derivatives clearing organization, a clearing agency, or a subsidiary of either; or

(4) acquiring any type of equity interest or security of a derivatives clearing organization, a clearing agency, or a subsidiary of either.

#### SEC. 3005. STUDIES.

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) STUDY.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

(A) commercial users and traders of derivatives;

(B) derivative clearing houses, exchanges and electronic trading platforms;

(C) trade repositories and regulator investigations of market activities; and

(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implemen-

tations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) STUDY OF DESIRABILITY AND FEASIBILITY OF ESTABLISHING SINGLE REGULATOR FOR ALL TRANSACTIONS INVOLVING FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.

(2) REPORT TO THE CONGRESS.—Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by paragraph (1).

#### SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3111 of this Act) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are

both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

#### SEC. 3007. ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.

#### SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.

If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.

#### SEC. 3009. MEMORANDUM.

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest,

(B) resolving conflicts concerning overlapping jurisdiction between the two agencies, and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

#### Subtitle A—Regulation of Swap Markets

#### SEC. 3101. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (12)(A)—

(A) in clause (vii)(III), by striking “\$25,000,000” and inserting “\$50,000,000”; and

(B) in clause (xi), by striking “total assets in an amount” and inserting “amounts invested on a discretionary basis”;

(2) in paragraph (29)—

(A) in subparagraph (D), by striking “and”;

(B) by redesignating subparagraph (E) as subparagraph (G); and

(C) by inserting after subparagraph (D) the following:

“(E) a swap execution facility registered under section 5h;

“(F) a swap repository; and”;

(3) by adding at the end the following:

“(35) SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction that—

“(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, and includes any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

“(iv) is, or in the future becomes, commonly known to the trade as a swap;

“(v) meets the definition of ‘swap agreement’ as defined in section 206A of the Gramm-Leach-Bliley Act of which a material term of which is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

“(vi) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

“(B) EXCLUSIONS.—The term ‘swap’ does not include—

“(i) any contract of sale of a commodity for future delivery (or any option on such a contract) or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

“(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

“(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of the security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital-raising;

“(ix) any foreign exchange forward;

“(x) any foreign exchange swap;

“(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government or an agency of the United States government that is expressly backed by the full faith and credit of the United States; and

“(xii) any security-based swap.

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).

“(D) FOREIGN EXCHANGE SWAPS AND FORWARDS EXCEPTION.—

“(i) IN GENERAL.—Notwithstanding clauses (ix) and (x) of subparagraph (B), foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph if the Commission makes a determination that either foreign exchange swaps or foreign exchange forwards or both should be regulated as swaps under this Act and the Secretary concurs with such determination.

“(ii) SCOPE OF AUTHORITY.—

“(I) The Commission and the Secretary shall jointly determine which of the authorities under this Act regarding swaps the Commission shall exercise over foreign exchange swaps and foreign exchange forwards. Such authorities shall subsequently be exercised solely by the Commission. The Commission and the Secretary may jointly amend any

previously made determination under this subclause.

“(II) Notwithstanding clause (i), the Commission and the Secretary of the Treasury may determine that either foreign exchange swaps or foreign exchange forwards or both should not be regulated as swaps under this Act if such determination is jointly made.

“(iii) REPORTING.—Notwithstanding clauses (ix) and (x) of subparagraph (B) and subparagraph (D)(ii), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap repository, or, if there is no swap repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

“(iv) SECRETARY.—For purposes of this subparagraph only, the term ‘Secretary’ means the Secretary of the Treasury.

“(36) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(37) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the same meaning as in section 3(a)(68) of the Securities and Exchange Act of 1934.

“(38) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person who—

- “(i) holds itself out as a dealer in swaps;
- “(ii) makes a market in swaps;
- “(iii) regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business; or
- “(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

“(B) A person may be designated a swap dealer for a single type or single class or category of swap and considered not a swap dealer for other types, classes, or categories of swaps.

“(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a swap dealer an entity that engages in a de minimus amount of swap dealing in connection with transactions with or on the behalf of its customers.

“(39) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

- “(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or
- “(ii) whose outstanding swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the terms ‘substantial net position’, ‘substantial net counterparty exposure’, and ‘significant credit losses’ at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps.

“(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.

“(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based swap

participant’ has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934.

“(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(42) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ means—

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- “(i) a State-chartered bank that is a member of the Federal Reserve System; or
- “(ii) a State-chartered branch or agency of a foreign bank;

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- “(i) a national bank; or
- “(ii) a federally chartered branch or agency of a foreign bank; and

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.

“(43) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934.

“(44) FOREIGN EXCHANGE FORWARD.—The term ‘foreign exchange forward’ means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.

“(45) FOREIGN EXCHANGE SWAP.—The term ‘foreign exchange swap’ means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.

“(46) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934.

“(47) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term ‘person associated with a swap dealer or major swap participant’ or ‘associated person of a swap dealer or major swap participant’ means any partner, officer, director, or branch manager of a swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a swap dealer or major swap participant, or any employee of a swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of the term other than for purposes of section 4s(b)(6).

“(48) SWAP REPOSITORY.—The term ‘swap repository’ means any person that collects, calculates, prepares or maintains information or records with respect to transactions

or positions in or the terms and conditions of swaps entered into by third parties.

“(49) SWAP EXECUTION FACILITY.—The term ‘swap execution facility’ means a person or entity that facilitates the execution or trading of swaps between two persons through any means of interstate commerce, but which is not a designated contract market, including any electronic trade execution or voice brokerage facility.

“(50) DERIVATIVE.—The term ‘derivative’ means—

“(A) a contract of sale of a commodity for future delivery; or

“(B) a swap.”

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Commodity Futures Trading Commission shall adopt a rule further defining the terms “swap”, “swap dealer”, “major swap participant”, and “eligible contract participant” for the purpose of including transactions and entities that have been structured to evade this title.

(c) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: “The Commission shall not have the authority to grant exemptions from the provisions of sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109, 3110, 3113, 3115, 3120, and 3121 of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act. Notwithstanding the preceding sentence, the Commodity Futures Trading Commission may exempt from any provision of the Commodity Exchange Act, pursuant to this subsection, an agreement, contract, or transaction that is entered into pursuant to a tariff approved by the Federal Energy Regulatory Commission, if the Commodity Futures Trading Commission determines that the exemption would be consistent with the public interest, and shall consider and not unreasonably deny any request made by the Federal Energy Regulatory Commission for such an exemption.”

#### SEC. 3102. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended—

(1) in the 1st sentence of subparagraph (A)—

(A) by striking “(c) through (i)” and inserting “(c) and (f)”;

(B) by inserting “swaps, or” before “contracts of sale”;

(C) by striking “derivatives transaction execution facility” and inserting “swap execution facility”; and

(D) by striking “5a” and inserting “5h”; and

(2) by adding at the end the following:

“(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Derivative Markets Transparency and Accountability Act of 2009 with regard to security-based swap agreements as defined pursuant to section 3002(e) of such Act, and security-based swaps.

“(ii) In addition to the authority of the Securities Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

“(H)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission with respect to an agreement, contract, or transaction that is—

“(I) not executed, traded, or cleared on a registered entity or trading facility; and

“(II) entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission.

“(ii) In addition to the authority of the Federal Energy Regulatory Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).”.

(b) ADDITIONS.—Section 2(c)(2)(A) of such Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i) by striking “or” at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

“(ii) a swap; or”.

(c) Section 12(e) of such Act (7 U.S.C. 16(e)) is amended—

(1) in paragraph (1)(B), by inserting “or (3)” after “paragraph (2)”;

(2) in paragraph (2), by striking subparagraphs (A) and (B) and inserting the following:

“(A) a swap; and

“(B) an agreement, contract, or transaction that is excluded from this Act under section 2(c) or 2(f) of this Act or title IV of the Commodity Futures Modernization Act of 2000 or exempted under section 4(c) of this Act (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act).”; and

(3) by adding at the end the following:

“(3) A swap may not be regulated as an insurance contract under State law.

“(4) The provisions of this Act relating to swaps that were enacted by the Derivative Markets Transparency and Accountability Act of 2009, including any rule or regulation thereunder, shall not apply to activities outside the United States unless those activities—

“(A) have a direct and significant connection with activities in or effect on United States commerce; or

“(B) contravene such rules or regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Derivative Markets Transparency and Accountability Act of 2009.”.

(d) Nothing in the Derivative Markets Transparency and Accountability Act of 2009 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act that existed prior to the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

#### SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.

(a) CLEARING AND EXECUTION TRANSPARENCY REQUIREMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking subsections (d), (e), (g), and (h).

(2)(A) Prior to the first effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act.

(B) The Commodity Futures Trading Commission shall consider any petition submitted under subparagraph (A) in a prompt manner and may allow a person to continue operating subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act for up to one year after the effective date of this subtitle.

(3) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

“(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j), and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.

“(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on or subject to the rules of a board of trade designated as a contract market under section 5.”.

(4) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

“(j) CLEARING REQUIREMENT.—

“(1) IN GENERAL.—

“(A) STANDARD FOR CLEARING.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) that the swap is required to be cleared.

“(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

“(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

“(ii) provide for non-discriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

“(2) COMMISSION REVIEW.—

“(A) COMMISSION-INITIATED REVIEW.—

“(i) The Commission shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

“(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

“(B) SWAP SUBMISSIONS.—

“(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

“(ii) The Commission shall—

“(I) make available to the public any submission received under clause (i);

“(II) review each submission made under clause (i), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

“(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

“(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(ii) not later than 90 days after receiving a submission made under subparagraph (B)(i), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

“(D) DETERMINATION.—

“(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2),

“(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

“(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

“(IV) The effect on competition, including appropriate fees and charges applied to clearing.

“(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

“(iii) In making a determination under subparagraph (B)(ii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(E) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.

“(3) STAY OF CLEARING REQUIREMENT.—

“(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.

“(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

“(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.

“(D) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability



Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.

“(4) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this subsection.

“(5) REQUIRED REPORTING.—

“(A) IN GENERAL.—All swaps that are not accepted for clearing by any derivatives clearing organization shall be reported either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe. Counterparties to a swap may agree which counterparty will report the swap as required by this paragraph.

“(B) SWAP DEALER DESIGNATION.—With regard to swaps where only 1 counterparty is a swap dealer, the swap dealer shall report the swap as required by this paragraph.

“(6) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of this subsection; and

“(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of—

“(i) 90 days after such effective date; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(7) CLEARING TRANSITION RULES.—

“(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(A).

“(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(B).

“(8) EXCEPTIONS.—

“(A) IN GENERAL.—The requirements of paragraph (1) shall not apply to a swap if one of the counterparties to the swap—

“(i) is not a swap dealer or major swap participant;

“(ii) is using swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

“(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

“(B) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.

“(C) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

“(k) EXECUTION TRANSPARENCY.—

“(1) REQUIREMENT.—A swap that is subject to the clearing requirement of subsection (j) shall not be traded except on or through a board of trade designated as a contract market under section 5, or on or through a swap

execution facility registered under section 5h, that makes the swap available for trading.

“(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a swap if no designated contract market or swap execution facility makes the swap available for trading.

“(3) AGRICULTURAL SWAPS.—No person shall offer to enter into, enter into or confirm the execution of, any swap in an agricultural commodity (as defined by the Commission) that is subject to paragraphs (1) and (2) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

“(4) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

“(5) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements, or transactions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.”.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of such Act (7 U.S.C. 7a-1) are amended to read as follows:

“(a) REGISTRATION REQUIREMENT.—

“(1) IN GENERAL.—It shall be unlawful for any entity, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(10) of this Act with respect to—

“(A) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

“(i) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

“(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

“(B) a swap.

“(2) EXISTING BANKS AND CLEARING AGENCIES.—A bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that the bank cleared swaps, as defined in this Act, as a multilateral clearing organization or the clearing agency cleared swaps, as defined in this Act, before the enactment of this subsection. A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(b) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared

under this Act may register with the Commission as a derivatives clearing organization.”.

(2) Section 5b of such Act (7 U.S.C. 7a-1) is amended by adding at the end the following:

“(g) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection.

“(h) EXEMPTIONS.—

“(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

“(2) A person that is required to be registered as a derivatives clearing organization under this section, whose principal business is clearing securities and options on securities and which is a clearing agency registered with the Securities Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing swaps, unless the Commission finds that the clearing agency is not subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission.

“(i) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer—

“(A) shall report directly to the board or to the senior officer of the derivatives clearing organization; and

“(B) shall—

“(i) review compliance with the core principles in section 5b(c)(2).

“(ii) in consultation with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

“(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(iv) ensure compliance with this Act and the rules and regulations issued under this Act; and

“(C) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. The procedures shall establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with this Act and the policies and procedures of the derivatives clearing organization, including the code of ethics and conflict of interest policies of the derivatives clearing organization, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant



to this section and shall include a certification that, under penalty of law, the report is accurate and complete.”.

(3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-1(c)(2)) is amended to read as follows:

“(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

“(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which the organization complies with the core principles.

“(B) FINANCIAL RESOURCES.—

“(i) The derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge the responsibilities of the organization.

“(ii) The financial resources of the derivatives clearing organization shall at a minimum exceed the total amount that would—

“(I) enable the organization to meet the financial obligations of the organization to the members of, and participants in, the organization, notwithstanding a default by the member or participant creating the largest financial exposure for the organization in extreme but plausible market conditions; and

“(II) enable the organization to cover the operating costs of the organization for a period of 1 year, calculated on a rolling basis.

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

“(i) The derivatives clearing organization shall establish—

“(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the organization) for members of and participants in the organization; and

“(II) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the organization for clearing.

“(ii) The derivatives clearing organization shall have procedures in place to verify that participation and membership requirements are met on an ongoing basis.

“(iii) The participation and membership requirements of the derivatives clearing organization shall be objective, publicly disclosed, and permit fair and open access.

“(D) RISK MANAGEMENT.—

“(i) The derivatives clearing organization shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

“(ii) The derivatives clearing organization shall measure the credit exposures of the organization to the members of, and participants in, the organization at least once each business day and shall monitor the exposures throughout the business day.

“(iii) Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit the exposures of the organization to potential losses from defaults by the members of, and participants in, the organization so that the operations of the organization would not be disrupted and non-defaulting members or participants would not be exposed to losses that they cannot anticipate or control.

“(iv) Margin required from all members and participants shall be sufficient to cover

potential exposures in normal market conditions.

“(v) The models and parameters used in setting margin requirements shall be risk-based and reviewed regularly.

“(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization shall—

“(i) complete money settlements on a timely basis, and not less than once each business day;

“(ii) employ money settlement arrangements that eliminate or strictly limit the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

“(iii) ensure money settlements are final when effected;

“(iv) maintain an accurate record of the flow of funds associated with each money settlement;

“(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations; and

“(vi) for physical settlements, establish rules that clearly state the obligations of the organization with respect to physical deliveries, including how risks from these obligations shall be identified and managed.

“(F) TREATMENT OF FUNDS.—

“(i) The derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.

“(ii) The derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the access of the organization to the assets and funds is minimized.

“(iii) Assets and funds invested by the derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

“(G) DEFAULT RULES AND PROCEDURES.—

“(i) The derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the organization.

“(ii) The default procedures of the derivatives clearing organization shall be clearly stated, and they shall ensure that the organization can take timely action to contain losses and liquidity pressures and to continue meeting the obligations of the organization.

“(iii) The default procedures shall be publicly available.

“(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

“(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the organization and for resolution of disputes; and

“(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant for violations of rules of the organization.

“(I) SYSTEM SAFEGUARDS.—The derivatives clearing organization shall—

“(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and

the fulfillment of the responsibilities and obligations of the organization; and

“(iii) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(J) REPORTING.—The derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct oversight of the organization.

“(K) RECORDKEEPING.—The derivatives clearing organization shall maintain records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

“(L) PUBLIC INFORMATION.—

“(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization.

“(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants.

“(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning—

“(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization;

“(II) clearing and other fees that the organization charges the members of, and participants in, the organization;

“(III) the margin-setting methodology and the size and composition of the financial resource package of the organization;

“(IV) other information relevant to participation in the settlement and clearing activities of the organization; and

“(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by the organization.

“(M) INFORMATION-SHARING.—The derivatives clearing organization shall—

“(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

“(ii) use relevant information obtained from the agreements in carrying out the risk management program of the organization.

“(N) ANTI-TRUST CONSIDERATIONS.—The derivatives clearing organization shall avoid—

“(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

“(ii) imposing any material anticompetitive burden.

“(O) GOVERNANCE FITNESS STANDARDS.—

“(i) The derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of the owners of, and participants in, the organization.

“(ii) The derivatives clearing organization shall establish and enforce appropriate fitness standards for the directors, members of any disciplinary committee, and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this subparagraph.

“(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the

organization and establish a process for resolving the conflicts of interest.

“(Q) COMPOSITION OF THE BOARDS.—The derivatives clearing organization shall ensure that the composition of the governing board or committee includes market participants.

“(R) LEGAL RISK.—The derivatives clearing organization shall have a well founded, transparent, and enforceable legal framework for each aspect of its activities.”.

(4) Section 5b of such Act (7 U.S.C. 7a-1) is further amended by adding after subsection (i), as added by this section, the following:

“(j) REPORTING.—

“(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission all information determined by the Commission to be necessary to perform the responsibilities of the Commission under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. The Commission shall share the information, upon request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries that comply with the provisions of section 8.

“(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).

“(3) A derivatives clearing organization shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”.

(5) Section 8(e) of such Act (7 U.S.C. 12(e)) is amended in the last sentence by inserting “central bank and ministries” after “department” each place it appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

**“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

“(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

“(1) the Commodity Exchange Act shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under such Act with respect to, an identified banking product; and

“(2) the definitions of ‘security-based swap’ in section 3(a)(68) of the Securities Exchange Act of 1934 and ‘security-based swap agreement’ in section 3(a)(76) of the Securities Exchange Act of 1934 do not include any identified banking product.

“(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusions in subsection (a) if the agency determines, in

consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

“(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

“(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified banking product that—

“(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

“(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

“(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

**SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding at the end the following:

“(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) derivatives clearing organizations pursuant to section 5b(j)(2);

“(B) swap repositories pursuant to section 21(c)(3); and

“(C) reports received by the Commission pursuant to section 4r.”.

**SEC. 3105. SWAP REPOSITORIES.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

**“SEC. 21. SWAP REPOSITORIES.**

“(a) REGISTRATION REQUIREMENT.—

“(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

“(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

“(b) STANDARD SETTING.—

“(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

“(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

“(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

“(c) DUTIES.—A swap repository shall—

“(1) accept data prescribed by the Commission for each swap under subsection (b);

“(2) maintain the data in such form and manner and for such period as may be required by the Commission;

“(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

“(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(d) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.

“(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that the swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.”.

**SEC. 3106. REPORTING AND RECORDKEEPING.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

**“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.**

“(a) IN GENERAL.—Any person who enters into a swap and—

“(1) did not have the swap cleared in accordance with section 2(j)(1); and

“(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

“(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by

any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.”.

**SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:

**“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.**

“(a) REGISTRATION.—

“(1) It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

“(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. The person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to the person's business as the Commission may require.

“(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

“(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants. Except with regard to subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for swap dealers and major swap participants.

“(5) TRANSITION.—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.

“(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

“(c) RULES.—

“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission shall not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(d) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that:

“(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

“(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

“(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

“(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

“(2) RULES.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant for which there is a Prudential Regulator.

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no Prudential Regulator.

“(3) AUTHORITY.—Nothing in this section shall limit the authority of the Commission to set capital requirements for a registered futures commission merchant or introducing broker in accordance with section 4f.

“(e) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of the person;

“(B) for which—

“(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator, shall keep books and records in such form

and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(C) shall keep the books and records open to inspection and examination by any representative of the Commission; and

“(D) shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

“(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

“(f) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

“(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

“(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

“(g) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

“(B) diligent supervision of its business as a swap dealer;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer or major swap participant) of—

“(i) information about the material risks and characteristics of the swap;

“(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization, and for non-cleared swaps, upon request of the counterparty, the daily mark of the swap dealer or major swap participant; and

“(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants no later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009.

“(h) DOCUMENTATION STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing the standards described in paragraph (1) for swap dealers and major swap participants.

“(i) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

“(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

“(B) swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to swaps; and

“(D) other information relevant to its trading in swaps.

“(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, upon request.

“(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(5) ANTITRUST CONSIDERATIONS.—The swap dealer or major swap participant shall avoid—

“(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.”

#### SEC. 3108. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

“(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

“(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(2) address such other issues as the Commission determines appropriate.”

#### SEC. 3109. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

##### “SEC. 5h. SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—A person may not operate a swap execution facility unless the facility is registered under this section or is registered with the Commission as a designated contract market under section 5 or a swap execution facility under section 5.

“(b) REQUIREMENTS FOR TRADING.—

“(1) A swap execution facility that is registered under subsection (a) may make available for trading any swap.

“(2) RULES FOR TRADING THROUGH THE FACILITY.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a swap to be traded through the facilities of a designated contract market or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a swap, notwithstanding section 2(k), if the swap is executed, reported, recorded, or confirmed in accordance with the rules of the designated contract market or swap execution facility.

“(3) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

“(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

“(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation

pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

“(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

“(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

“(B) provide the information to the Commission upon request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of its contracts made available for trading on the trading facility, where necessary and appropriate, position limitations or position accountability for speculators who establish positions in the contract.

“(B) For any contract of a swap execution facility that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility—

“(i) may set a position limitation at a level that is lower than the Commission limitation; and

“(ii) shall monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

“(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

“(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide

for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

“(9) **TIMELY PUBLICATION OF TRADING INFORMATION.**—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.

“(10) **RECORDKEEPING AND REPORTING.**—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution facility shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

“(11) **ANTITRUST CONSIDERATIONS.**—The swap execution facility shall avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap execution facility.

“(12) **CONFLICTS OF INTEREST.**—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(13) **FINANCIAL RESOURCES.**—

“(A) The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities.

“(B) The financial resources of the swap execution facility shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of 1 year, calculated on a rolling basis.

“(14) **SYSTEM SAFEGUARDS.**—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility's responsibilities and obligation; and

“(C) periodically conduct tests to verify that backup resources are sufficient to en-

sure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(15) **DESIGNATION OF COMPLIANCE OFFICER.**—

“(A) **IN GENERAL.**—Each swap execution facility shall designate an individual to serve as a compliance officer.

“(B) **DUTIES.**—The compliance officer—

“(i) shall report directly to the board or to the senior officer of the facility;

“(ii) shall—

“(I) review compliance with the core principles in this subsection;

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

“(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints, and for the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(C) **ANNUAL REPORTS REQUIRED.**—The compliance officer shall annually prepare and sign a report on the compliance of the facility with this Act and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(e) **EXEMPTIONS.**—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

“(f) **RULES.**—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.”.

#### **SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.**

(a) Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1 et seq.) are repealed.

(b)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

#### **SEC. 3111. DESIGNATED CONTRACT MARKETS.**

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) **IN GENERAL.**—To be designated as, and to maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

“(2) **COMPLIANCE WITH RULES.**—

“(A) The board of trade shall monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded on the contract market and the contract market's abusive trade practice prohibitions.

“(B) The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to, any person or entity that violates the rules.

“(C) The rules shall provide the board of trade with the ability and authority to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.”.

(b) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraphs (4) and (5) and inserting the following:

“(4) **PREVENTION OF MARKET DISRUPTION.**—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) **POSITION LIMITATIONS OR ACCOUNTABILITY.**—

“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

“(B) For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set its position limitation at a level no higher than the Commission-established limitation.”.

(c) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (7) and inserting the following:

“(7) **AVAILABILITY OF GENERAL INFORMATION.**—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

“(A) the terms and conditions of the contracts of the contract market; and

“(B) the rules, regulations and mechanisms for executing transactions on or through the facilities of the contract market, and the rules and specifications describing the operation of the board of trade's electronic matching platform or other trade execution facility.”.

(d) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

**“(9) EXECUTION OF TRANSACTIONS.—**

“(A) The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade’s centralized market.

“(B) The rules may authorize, for bona fide business purposes—

“(i) transfer trades or office trades;

“(ii) an exchange of—

“(I) futures in connection with a cash commodity transaction;

“(II) futures for cash commodities; or

“(III) futures for swaps; or

“(iii) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.”.

(e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17)) is amended by adding at the end the following: “The board of trade shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”.

(f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by adding at the end the following:

“(19) **FINANCIAL RESOURCES.**—The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the financial resources of a board of trade to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.

“(20) **SYSTEM SAFEGUARDS.**—The board of trade shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade’s responsibilities and obligations; and

“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(21) **DIVERSITY OF BOARDS OF DIRECTORS.**—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

“(22) **DISCIPLINARY PROCEDURES.**—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.”.

(g) Section 5 of such Act (7 U.S.C. 7) is amended by striking subsection (b).

**SEC. 3112. MARGIN.**

(a) Section 8a(7)(C) of the Commodity Exchange Act (7 U.S.C. 12a(7)(C)) is amended by striking “, excepting the setting of levels of margin”.

(b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is amended by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively, and inserting after subparagraph (C) the following:

“(D) margin requirements, provided that such rules, regulations, or orders shall—

“(i) be limited to protecting the financial integrity of the derivatives clearing organization;

“(ii) be designed for risk management purposes in order to protect the financial integrity of transactions; and

“(iii) not set specific margin amounts.”.

**SEC. 3113. POSITION LIMITS.**

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting “(1)” after “(a)”;

(2) striking “on electronic trading facilities with respect to a significant price discovery contract” in the first sentence and inserting “swaps that perform or affect a significant price discovery function with respect to registered entities”;

(3) inserting “, including any group or class of traders,” in the second sentence after “held by any person”;

(4) striking “on an electronic trading facility with respect to a significant price discovery contract,” in the second sentence and inserting “swaps that perform or affect a significant price discovery function with respect to registered entities,”; and

(5) inserting at the end the following:

“(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

“(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.

“(ii) For agricultural commodities, the limits shall be established within 270 days after the date of the enactment of this paragraph.

“(C) In establishing the limits, the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

“(3) In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

“(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

“(B) to the maximum extent practicable, in its discretion—

“(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

“(ii) to deter and prevent market manipulation, squeezes, and corners;

“(iii) to ensure sufficient market liquidity for bona fide hedgers; and

“(iv) to ensure that the price discovery function of the underlying market is not disrupted.

“(4)(A) Not later than 150 days after the establishment of position limits pursuant to paragraph (2), and biannually thereafter, the Commission shall hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).

“(B) Each public hearing held pursuant to subparagraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from—

“(i) 7 predominantly commercial short hedgers of the actual physical commodity for future delivery;

“(ii) 7 predominantly commercial long hedgers of the actual physical commodity for future delivery;

“(iii) 4 non-commercial participants in markets for commodities for future delivery; and

“(iv) each designated contract market upon which a contract in the commodity for future delivery is traded.

“(C) Within 60 days after each public hearing held pursuant to subparagraph (A), the Commission shall publish in the Federal Register its response to the recommendations regarding position limits heard at the hearing.

“(5) **SIGNIFICANT PRICE DISCOVERY FUNCTION.**—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

“(A) **PRICE LINKAGE.**—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position;

“(B) **ARBITRAGE.**—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis;

“(C) **MATERIAL PRICE REFERENCE.**—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap;

“(D) **MATERIAL LIQUIDITY.**—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market; and

“(E) **OTHER MATERIAL FACTORS.**—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

“(6) **ECONOMICALLY EQUIVALENT CONTRACTS.**—

“(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect

to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

“(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

“(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

“(ii) establish the limits simultaneously with limits established under paragraph (2).

“(7) **AGGREGATE POSITION LIMITS.**—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;

“(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

“(8) **EXEMPTIONS.**—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.”

(b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility or facilities”; and

(2) in paragraph (2), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility”.

(c) Section 4a(c) of such Act is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding after and below the end the following:

“(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

“(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

“(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

“(iii) arises from the potential change in the value of—

“(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

“(II) liabilities that a person owns or anticipates incurring; or

“(III) services that a person provides, purchases, or anticipates providing or purchasing; or

“(B) reduces risks attendant to a position resulting from a swap that—

“(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

“(ii) meets the requirements of subparagraph (A).”

(d) This section shall become effective on the date of its enactment.

#### **SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.**

(a) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended—

(1) in paragraph (1), by striking “5a(d) and 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

(2) in paragraph (2), by striking “shall not” and inserting “may”.

(b) Section 5c(b) of such Act (7 U.S.C. 7a–2(b)) is amended in each of paragraphs (1), (2), and (3) by inserting “or swap execution facility” after “contract market” each place it appears.

(c) Section 5c(c)(1) of such Act (7 U.S.C. 7a–2(c)(1)) is amended—

(1) by inserting “(A)” after “IN GENERAL.—”; and

(2) by adding at the end the following:

“(B) The new rule or rule amendment shall become effective, pursuant to the registered entity’s certification and notice of such certification to its members (in a manner to be determined by the Commission), 10 business days after the Commission’s receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

“(C)(i) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of the notification.

“(ii) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in clause (i), whenever it reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.”

(d) Section 5c(d) of such Act (7 U.S.C. 7a–2(d)) is repealed.

#### **SEC. 3115. FOREIGN BOARDS OF TRADE.**

(a) **IN GENERAL.**—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended by adding at the end the following:

“(e) **FOREIGN BOARDS OF TRADE.**—

“(1) **IN GENERAL.**—The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

“(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is

comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

“(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable, taking into consideration the relative sizes of the respective markets, to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

“(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

“(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

“(I) the information that the foreign board of trade will make publicly available;

“(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to the reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

“(2) **EXISTING FOREIGN BOARDS OF TRADE.**—Paragraph (1) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

“(3) **PERSONS LOCATED IN THE UNITED STATES.**—

(b) **LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.**—

(1) Section 4(a) of such Act (7 U.S.C. 6(a)) is amended by inserting “or by subsection (f)” after “Unless exempted by the Commission pursuant to subsection (c)”; and

(2) Section 4 of such Act (7 U.S.C. 6) is further amended by adding at the end the following:



“(f)(1) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

“(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

“(i) legally organized under the laws of a foreign country;

“(ii) authorized to act as a board of trade by a foreign futures authority; and

“(iii) subject to regulation by the foreign futures authority; and

“(B) has not been determined by the Commission to be operating in violation of subsection (a).

“(2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).”.

(c) **CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.**—Section 22(a) of such Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

“(5) **CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.**—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”.

#### **SEC. 3116. LEGAL CERTAINTY FOR SWAPS.**

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

“(4) **CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.**—

“(A) A hybrid instrument sold to any investor shall not be void, voidable, or unenforceable, and a party to such a hybrid instrument shall not be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission; and

“(B) An agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall not be void, voidable, or unenforceable, and a party thereto shall not be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth in section 1a, be traded in the manner set forth in section 2(k)(1), or be cleared pursuant to 2(j)(1) or regulations of the Commission pursuant thereto.”.

#### **SEC. 3117. FDICIA AMENDMENTS.**

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421 and 4422) are repealed.

#### **SEC. 3118. ENFORCEMENT AUTHORITY.**

(a) The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4b the following:

#### **“SEC. 4b-1. ENFORCEMENT AUTHORITY.**

“(a) CFTC.—Except as provided in subsection (b), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

“(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

“(c) REFERRAL.—(1) If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(2) If the Commission has cause to believe that a swap dealer or major swap participant that has a Prudential Regulator may have engaged in conduct that constitutes a violation of the prudential requirements of section 4s or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns given rise to the recommendation.”.

(b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

“(3) **DISRUPTIVE PRACTICES.**—It shall be unlawful for any person to engage in any trading or practice on or subject to the rules of a registered entity that—

“(A) violates bids and offers (intentionally bidding at a price higher than the lowest offer, or offering at a price lower than the highest bid);

“(B) is, is of the character of, or is commonly known to the trade as ‘marking the close’ (bidding or offering during or near the market’s closing period with the intent to influence the settlement price);

“(C) is, is of the character of, or is commonly known to the trade as ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution); or

“(D) constitutes uneconomic trading (trading that has no legitimate economic purpose but for the effect on price).

“(4) The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit any other trading practice that is disruptive of fair and equitable trading.”.

(2) The amendment made by paragraph (1) shall become effective upon enactment.

#### **SEC. 3119. ENFORCEMENT.**

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap.”.

(b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is amended by striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap.”.

(c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by inserting “or swap” before “if the transaction is used or may be used”.

(d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2)) is amended by inserting “or of any swap,” before “or to corner”.

(e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4)) is amended by inserting “swap repository,” before “or futures association”.

(f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1)) is amended by inserting “swap repository,” before “or registered futures association” and by inserting “, or swaps,” before “on the basis”.

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and inserting after paragraph (5) the following:

“(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository, security-based swap repository, or swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential Regulator for purposes of the Derivative Markets Transparency and Accountability Act of 2009.”.

#### **SEC. 3120. RETAIL COMMODITY TRANSACTIONS.**

(a) Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking “(other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))” and inserting “(other than section 5b or 12(e)(2)(B))”; and

(2) in paragraph (2), by inserting after subparagraph (C) the following:

“(D) **RETAIL COMMODITY TRANSACTIONS.**—

“(i) This subparagraph shall apply to, and the Commission shall have jurisdiction over, any agreement, contract, or transaction in any commodity that is—

“(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

“(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

“(ii) Clause (i) shall not apply to—

“(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

“(II) any security;

“(III) a contract of sale that—

“(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

“(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded

from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery;

“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;

“(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.”.

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this section.

#### SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 3107 of this Act) the following:

##### “SEC. 4t. LARGE SWAP TRADER REPORTING.

“(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to registered entities if—

“(1) the person directly or indirectly enters into such swaps during any 1 day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

“(2) such person directly or indirectly has or obtains a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

“(b) The books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

“(c) The books and records shall be open at all times to inspection and examination by any representative of the Commission.

“(d) For the purpose of this subsection, the swaps, futures and cash or spot transactions and positions of any person shall include the transactions and positions of any persons directly or indirectly controlled by the person.

“(e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).”.

#### SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4t the following:

##### “SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

“(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

“(b) FURTHER AUDIT REPORTING.—If a swap dealer does not segregate funds pursuant to the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”.

##### SEC. 3123. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

##### SEC. 3124. ANTITRUST.

Nothing in the amendments made by this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term “antitrust laws” has the same meaning given the term in subsection (a) of the first section of the Clayton Act, except that the term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

##### SEC. 3125. REVIEW OF PRIOR ACTIONS.

Notwithstanding any other provision of the Commodity Exchange Act, the Commodity Futures Trading Commission shall review, as appropriate, all regulations, rules, exemptions, exclusions, guidance, no action letters, orders, other actions taken by or on behalf of the Commission, and any action taken pursuant to the Commodity Exchange Act by an exchange, self-regulatory organization, or any other registered entity, that are currently in effect, to ensure that such prior actions are in compliance with the provisions of this title.

##### SEC. 3126. EXPEDITED PROCESS.

The Commodity Futures Trading Commission may use emergency and expedited procedures (including any administrative or other procedure as appropriate) to carry out this title if, in its discretion, it deems it necessary to do so.

##### SEC. 3127. EFFECTIVE DATE.

(a) Unless otherwise provided, the provisions of this subtitle shall become effective

the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Commodity Futures Trading Commission from any rulemaking required or directed under this subtitle to implement the provisions of this subtitle.

#### Subtitle B—Regulation of Security-Based Swap Markets

##### SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting “(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)” after the word “securities” in each place it appears;

(2) in paragraph (10), by inserting “security-based swap,” after “security future,”;

(3) in paragraph (13), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(4) in paragraph (14), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(5) in paragraph (39)—

(A) by striking “or government securities dealer” and adding “government securities dealer, security-based swap dealer or major security-based swap participant” in its place in subparagraph (B)(i)(I);

(B) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (B)(i)(II);

(C) by striking “or government securities dealer” and adding “government securities dealer, security-based swap dealer or major security-based swap participant” in its place in subparagraph (C); and

(D) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (D); and

(6) by adding at the end the following:

“(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’ has the same meaning as in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).

“(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major security-based swap participant’ means any person who is not a security-based swap dealer, and—

“(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

“(ii) whose outstanding security-based swaps create substantial net counterparty

exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

“(B) DEFINITION OF ‘SUBSTANTIAL NET POSITION’.—The Commission shall define by rule or regulation the terms ‘substantial net position’, ‘substantial net counterparty exposure’, and ‘significant credit losses’ at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps.

“(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

“(68) SECURITY-BASED SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under section 1a(35) of the Commodity Exchange Act, and that—

“(i) is primarily based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

“(ii) is primarily based on a single security or loan, including any interest therein or based on the value thereof; or

“(iii) is primarily based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

“(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

“(C) EXCLUSION.—The term ‘security-based swap’ does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because it references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

“(69) SWAP.—The term ‘swap’ has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

“(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘person

associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2).

“(71) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person that—

“(i) holds itself out as a dealer in security-based swaps;

“(ii) makes a market in security-based swaps;

“(iii) regularly engages in the purchase of security-based swaps and their resale to customers in the ordinary course of a business; or

“(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

“(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated a security-based swap dealer for a single type or single class or category of security-based swap and considered not a security-based swap dealer for other types, classes, or categories of security-based swaps.

“(C) DE MINIMIS EXCEPTION.—The Commission shall make a determination to exempt from designation as a security-based swap dealer an entity that engages in a de minimis amount of security-based swap dealing in connection with transactions with or on the behalf of its customers.

“(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(73) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(74) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ means—

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a State-chartered bank that is a member of the Federal Reserve System; or

“(ii) a State-chartered branch or agency of a foreign bank;

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a national bank; or

“(ii) a federally chartered branch or agency of a foreign bank; and

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.

“(75) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

“(76) SECURITY-BASED SWAP AGREEMENT.—

“(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term ‘security-based swap agreement’ means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

“(B) EXCLUSIONS.—The term ‘security-based swap agreement’ does not include any security-based swap.

“(76) SECURITY-BASED SWAP REPOSITORY.—The term ‘security-based swap repository’ means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.

“(77) SWAP EXECUTION FACILITY.—The term ‘swap execution facility’ means a person or entity that facilitates the execution or trading of security-based swaps between two persons through any means of interstate commerce, but which is not a national securities exchange, including any electronic trade execution or voice brokerage facility.”

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Securities and Exchange Commission may adopt a rule further defining the terms “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “eligible contract participant” with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this title.

#### SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b-1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that such term appears.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting “(including security-based swaps)” after “securities”; and

(ii) by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”; and

(B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

(1) Section 3A (15 U.S.C. 78c-1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

“(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of

such security, for the purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

“(4) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.”

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(4) Section 10 (15 U.S.C. 78j) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking “, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),”; and

(B) in subparagraphs (B) and (C), by striking “agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears.

(6) Section 15(i) (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

(7) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking “(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))”;

(B) in subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears; and

(C) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(8) Section 20 (15 U.S.C. 78t) is amended—

(A) in subsection (d), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(B) in subsection (f), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(9) Section 21A (15 U.S.C. 78u-1) is amended—

(A) in subsection (a)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(B) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

#### SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3A:

#### “SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

“(a) IN GENERAL.—

“(1) STANDARD FOR CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) of subsection (b) that the security-based swap is required to be cleared.

“(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

“(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

“(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility.

“(b) COMMISSION REVIEW.—

“(1) COMMISSION-INITIATED REVIEW.—

“(A) The Commission shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.

“(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

“(2) SWAP SUBMISSIONS.—

“(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

“(B) The Commission shall—

“(i) make available to the public any submission received under subparagraph (A);

“(ii) review each submission made under subparagraph (A), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

“(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

“(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(B) not later than 90 days after receiving a submission made under paragraph (2)(A), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

“(4) DETERMINATION.—

“(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 5b(c)(2).

“(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

“(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

“(iv) The effect on competition, including appropriate fees and charges applied to clearing.

“(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

“(C) In making a determination under paragraph (2)(B) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.

“(c) STAY OF CLEARING REQUIREMENT.—

“(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

“(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

“(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

“(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be

cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

“(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

“(4) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

“(d) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this section.

“(e) REQUIRED REPORTING.—

“(1) IN GENERAL.—All security-based swaps that are not accepted for clearing by any clearing agency shall be reported either to a security-based swap repository described in subsection 13(n) or, if there is no security-based swap repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule or regulation prescribe. Counterparties to a security-based swap may agree which counterparty will report the security-based swap as required by this paragraph.

“(2) SWAP DEALER DESIGNATION.—With regard to security-based swaps where only 1 counterparty is a security-based swap dealer, the security-based swap dealer shall report the security-based swap as required by this subsection.

“(f) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of this section; and

“(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of—

“(A) 90 days after such effective date; or

“(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

“(g) CLEARING TRANSITION RULES.—

“(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (f)(1).

“(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (f)(2).

“(h) EXCEPTIONS.—

“(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if one of the counterparties to the security-based swap—

“(A) is not a security-based swap dealer or major security-based swap participant; and

“(B) is using security-based swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

“(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associ-

ated with entering into non-cleared security-based swaps.

“(2) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in paragraph (1) by security-based swap dealers and major security-based swap participants.

“(3) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).”.

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:

“(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.

“(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

“(i) EXISTING BANKS AND DERIVATIVES CLEARING ORGANIZATIONS.—A bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act required to be a registered as a clearing agency under this title, solely because it clears security-based swaps, is deemed to be a registered clearing agency under this title solely for the purpose of clearing security-based swaps to the extent that the bank cleared security-based swaps, as defined in this Act, as a multilateral clearing organization or the derivatives clearing organization cleared security-based swaps, as defined in this title pursuant to an exemption from registration as a clearing agency, before the enactment of this section. A bank or derivative clearing organization to which this subsection applies shall continue to comply with the requirements in section 17A(b)(3) of this title. A bank to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of such bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(j) REPORTING.—

“(1) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on swap execution facilities. Subject to section 24, the Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

“(k) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“(A) report directly to the board or to the senior officer of the clearing agency;

“(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;

“(C) be responsible for administering the policies and procedures required to be established pursuant to this section;

“(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(E) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(l) STANDARDS FOR CLEARING AGENCIES CLEARING SWAP TRANSACTIONS.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

“(m) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this Act.

“(n) EXEMPTIONS.—

“(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission finds that such clearing agency is subject to comparable, comprehensive supervision and regulation on

a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator, or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

“(2) A person that is required to be registered as clearing agency under this section, whose principal business is clearing commodity futures and options on commodity futures transactions and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1, et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission.”.

(c) EXECUTION OF SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 5 the following:

**“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**

“(a) EXECUTION TRANSPARENCY.—

“(1) REQUIREMENT.—A security-based swap that is subject to the clearing requirement of section 3B shall not be traded except on or through a national securities exchange or on or through an swap execution facility registered under section 5h, that makes the security-based swap available for trading.

“(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a security-based swap if no national securities exchange or swap execution facility makes the security-based swap available for trading.

“(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no national securities exchange or swap execution facility that makes the security-based swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of paragraph (1).

“(b) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges of contracts, agreements, or transactions that would be swaps but for the trading of such contracts, agreements or transactions on such a national securities exchange.”.

(d) SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding after section 3B (as added by subsection (a)) the following:

**“SEC. 3C. SWAP EXECUTION FACILITIES.**

“(a) REGISTRATION.—No person may operate a facility for the trading of security-based swaps unless the facility is registered as a swap execution facility under this section.

“(b) REQUIREMENTS FOR TRADING.—

“(1) IN GENERAL.—A swap execution facility that is registered under subsection (a) may list for trading any security-based swap.

“(2) RULES FOR TRADING THROUGH THE FACILITY.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a security-based swap to be traded through the facilities of an exchange or a swap execution facility. Such rules shall permit an intermediary, acting as principal or

agent, to enter into or execute a security-based swap, notwithstanding section 3B(b), if the security-based swap is reported, recorded, or confirmed in accordance with the rules of the exchange or swap execution facility.

“(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.

“(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

“(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

“(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

“(B) provide the information to the Commission upon request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps pursuant to section 3B.

“(7) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide

for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

“(8) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.

“(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

“(10) CONFLICTS OF INTEREST.—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(11) FINANCIAL RESOURCES.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities. Such financial resources shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of one year, calculated on a rolling basis.

“(12) SYSTEM SAFEGUARDS.—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility's responsibilities and obligation; and

“(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(13) DESIGNATION OF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

“(B) DUTIES.—The compliance officer—

“(i) shall report directly to the board or to the senior officer of the facility; and

“(ii) shall—

“(I) review compliance with the core principles in section 3B(e).

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints and to establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

“(f) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.”

(e) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by subsection (b) the following:

**“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.**

“(a) OVER-THE-COUNTER SWAPS.—At the request of a counterparty to a security-based swap who provides funds or other property to a security-based swap dealer as initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the counterparty and the security-based swap dealer that is not submitted for clearing to a derivatives clearing agency, the security-based swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a security-based swap counterparty is a security-based swap dealer or major security-based swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a

custodian, the custodian shall not be considered independent from the security-based swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

“(b) FURTHER AUDIT REPORTING.—If a security-based swap dealer does not segregate funds pursuant to the request of a security-based swap counterparty in accordance with subsection (a), the security-based swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”

(f) TRADING IN SECURITY-BASED SWAPS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(1) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).”

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

“(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; (B) any security futures product on the security; or (C) any security-based swap involving the security or the issuer of the security; or

“(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or

“(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security.”

(h) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

“(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”

(i) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following new section:

**“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.**

“(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

“(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or

“(2) any security-based swap and (A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.

“(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

“(c) SRO RULES.—

“(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

“(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

“(i) any member of such self-regulatory organization; or

“(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

“(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subsection (c)(1)(A).

“(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in—

“(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or

“(B)(i) any security-based swap; and

“(ii) any security-based swap and any other instrument relating to the same security or group or index of securities.



“(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans and any other instrument relating to such security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.”.

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) clearing agencies pursuant to section 3A;

“(B) security-based swap repositories pursuant to subsection (n); and

“(C) reports received by the Commission pursuant to section 13A.

“(n) SECURITY-BASED SWAP REPOSITORIES.—

“(1) REGISTRATION REQUIREMENT.—

“(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

“(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

“(2) STANDARD SETTING.—

“(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

“(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

“(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

“(3) DUTIES.—A security-based swap repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

“(B) maintain such data in such form and manner and for such period as may be required by the Commission;

“(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

“(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(4) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.

“(5) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.”.

#### SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 15E (15 U.S.C. 78o-7) the following:

#### “SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

“(a) REGISTRATION.—

“(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

“(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

“(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

“(4) RULES.—Except as provided in subsections (c) and (d), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for security-based swap dealers and major security-based swap participants.

“(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.

“(c) RULES.—

“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act.

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission shall not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(d) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that—

“(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

“(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

“(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

“(ii) are appropriate for the risk associated with the non-cleared swaps held as the swap dealer or major swap participant.

“(2) RULES.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-

based swap participants, with respect to their activities as a security-based swap dealer or major security-based swap participant for which there is a Prudential Regulator.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.

“(3) AUTHORITY.—Nothing in this section shall limit the authority of the Commission to set capital requirements for a broker or dealer registered in accordance with section 15 of this Act.

“(e) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which—

“(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

“(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

“(f) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

“(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

“(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability

Act of 2009, the Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

“(g) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

“(B) diligent supervision of its business as a security-based swap dealer;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a security-based swap dealer or major security-based swap participant) of:

“(i) information about the material risks and characteristics of the security-based swap;

“(ii) for cleared security-based swaps, upon the request of the counterparty, the daily mark from the appropriate clearing agency, and for non-cleared security-based swaps, upon request of the counterparty, the daily mark of the security-based swap dealer or major security-based swap participant; and

“(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

“(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

“(h) DOCUMENTATION STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

“(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission and the appropriate Federal banking agencies, shall adopt rules governing the standards described in paragraph (1) for security-based swap dealers and major security-based swap participants.

“(i) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major

security-based swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

“(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

“(A) terms and conditions of its security-based swaps;

“(B) security-based swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to security-based swaps; and

“(D) other information relevant to its trading in security-based swaps.

“(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

“(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(j) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

“(k) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

“(1) PRIMARY ENFORCEMENT AUTHORITY.—

“(A) SEC.—Except as provided in subparagraph (B), the Commission shall have exclusive authority to enforce the amendments made by subtitle B of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

“(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(d) and other prudential requirements of this Act with respect to banks, and branches

or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

**“(C) REFERRAL.—**

**“(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—**If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

**“(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—**If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a Prudential Regulator may have engaged in conduct that constitute a violation of the prudential requirements of section 15F(e) or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

**“(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—**The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

**“(3) ASSOCIATED PERSONS.—**With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting secu-

rity-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

**“(4) UNLAWFUL CONDUCT.—**It shall be unlawful—

“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

“(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.”

**SEC. 3205. REPORTING AND RECORDKEEPING.**

(a) The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

**“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.**

**“(a) IN GENERAL.—**Any person who enters into a security-based swap and—

“(1) did not clear the security-based swap in accordance with section 3A; and

“(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n), shall meet the requirements in subsection (b).

**“(b) REPORTS.—**Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

“(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Com-

mission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

**“(c) IDENTICAL DATA.—**In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under subsection (n).”

**(b) BENEFICIAL OWNERSHIP REPORTING.—**

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”; and

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule” after “subsection (d)(1) of this section”.

**(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—**Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule,” after “subsection (d)(1) of this section”.

**(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—**Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and

(2) in subparagraph (F), by adding “, or security-based swap dealer, or a major security-based swap participant” after “or dealer”.

**(e) DERIVATIVES BENEFICIAL OWNERSHIP.—**Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

**“(o) BENEFICIAL OWNERSHIP.—**For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.”

**SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.**

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ‘bucket shops’ or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under State law.”.

**SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.**

(a) **DEFINITIONS.**—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3) by adding at the end the following: “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”; and

(3) by adding at the end the following:

“(17) The terms ‘swap’ and ‘security-based swap’ have the same meanings as provided in sections 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) and section 3(a)(68) of the Securities Exchange Act of 1934.

“(18) The terms ‘purchase’ or ‘sale’ of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”.

(b) **EXEMPTION FROM REGISTRATION.**—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

“(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Derivative

Markets Transparency and Accountability Act of 2009. The Commission shall promulgate rules implementing this exemption.”.

(c) **REGISTRATION OF SECURITY-BASED SWAPS.**—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).”.

**SEC. 3208. OTHER AUTHORITY.**

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

**SEC. 3209. JURISDICTION.**

(a) Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

“(c) **DERIVATIVES.**—The Commission shall not grant exemptions from the security-based swap provisions of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act.”.

(b) Section 30 of the Securities Exchange Act of 1934 is amended by adding at the end the following:

“(c) No provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009 or any rule or regulation thereunder shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this Act as in effect prior to enactment of the Derivative Markets Transparency and Accountability Act of 2009.”.

**SEC. 3210. EFFECTIVE DATE.**

(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Securities Exchange Commission from any rulemaking required to implement the provisions of this subtitle.

**Subtitle C—Improved Financial and Commodity Markets Oversight and Accountability**

**SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL TO APPOINTMENT PURSUANT TO SECTION 3 OF THE INSPECTOR GENERAL ACT OF 1978.**

(a) **INCLUSION IN CERTAIN DEFINITIONS.**—Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking “or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;” and inserting “the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission; the Chairman of the National Credit Union Administration; the Director of the Pension Benefit Guaranty Corporation; the Chairman of the Securities and Exchange Commission; or the Director of the Consumer Financial Protection Agency;”;

(2) in paragraph (2), by striking “or the Commissions established under section 15301 of title 40, United States Code,” and inserting “the Commissions established under section 15301 of title 40, United States Code, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, or the Director of the Consumer Financial Protection Agency.”.

(b) **EXCLUSION FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.**—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by striking “the Board of Governors of the Federal Reserve System,”;

(2) by striking “the Commodity Futures Trading Commission,”;

(3) by striking “the National Credit Union Administration,”; and

(4) by striking “the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission,”.

**SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO PERSONNEL.**

(a) **IN GENERAL.**—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8L the following:

**“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ESTABLISHMENTS.**

“(a) **DEFINITION.**—For purposes of this section, the term ‘covered establishment’ means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission.

“(b) **PROVISIONS RELATING TO ALL COVERED ESTABLISHMENTS.**—

“(1) **PROVISIONS RELATING TO INSPECTORS GENERAL.**—In the case of the Inspector General of a covered establishment, subsections (b) and (c) of section 4 of the Inspector General Reform Act of 2008 (Public Law 110-409) shall apply in the same manner as if such covered establishment were a designated Federal entity under section 8G. An Inspector General who is subject to the preceding sentence shall not be subject to section 3(e).

“(2) **PROVISIONS RELATING TO OTHER PERSONNEL.**—Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of a covered establishment may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General of such establishment and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within such establishment.

“(c) PROVISION RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—The provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.”.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 8G(g) of the Inspector General Act of 1978 (5 U.S.C. App.) is repealed.

**SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CERTAIN ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY INSPECTORS GENERAL.**

The Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Commodity Futures Trading Commission, the Chairman of the National Credit Union Administration, the Director of the Pension Benefit Guaranty Corporation, and the Chairman of the Securities and Exchange Commission shall each—

(1) take action to address deficiencies identified by a report or investigation of the Inspector General of the establishment concerned; or

(2) certify to both Houses of Congress that no action is necessary or appropriate in connection with a deficiency described in paragraph (1).

**SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.**

(a) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect 30 days after the date of the enactment of this subtitle.

(b) TRANSITION RULE.—An individual serving as Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission on the effective date of this subtitle pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, consistent with the amendments made by section 301; and

(2) shall, while serving under paragraph (1), remain subject to the provisions of section 8G of such Act which, immediately before the effective date of this subtitle, applied with respect to the Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, and suffer no reduction in pay.

Page 694, beginning on line 19, strike “a designated Federal entity” and insert “an establishment”.

In the table of contents, strike the items relating to title III, subtitles A, B, and C of title III, and sections 3001 through 3304 and insert the following:

**TITLE III—DERIVATIVE MARKETS  
TRANSPARENCY AND ACCOUNT-  
ABILITY ACT**

Sec. 3001. Short title.  
Sec. 3002. Review of regulatory authority.  
Sec. 3003. International harmonization.  
Sec. 3004. Prohibition against government assistance.

Sec. 3005. Studies.  
Sec. 3006. Recommendations for changes to insolvency laws.

Sec. 3007. Abusive swaps.  
Sec. 3008. Authority to prohibit participation in swap activities.

Sec. 3009. Memorandum.

**Subtitle A—Regulation of Swap Markets**

Sec. 3101. Definitions.  
Sec. 3102. Jurisdiction.  
Sec. 3103. Clearing and execution transparency.

Sec. 3104. Public reporting of aggregate swap data.

Sec. 3105. Swap repositories.  
Sec. 3106. Reporting and recordkeeping.

Sec. 3107. Registration and regulation of swap dealers and major swap participants.

Sec. 3108. Conflicts of interest.  
Sec. 3109. Swap execution facilities.

Sec. 3110. Derivatives transaction execution facilities and exempt boards of trade.

Sec. 3111. Designated contract markets.

Sec. 3112. Margin.

Sec. 3113. Position limits.

Sec. 3114. Enhanced authority over registered entities.

Sec. 3115. Foreign boards of trade.

Sec. 3116. Legal certainty for swaps.

Sec. 3117. FDICIA amendments.

Sec. 3118. Enforcement authority.

Sec. 3119. Enforcement.

Sec. 3120. Retail commodity transactions.

Sec. 3121. Large swap trader reporting.

Sec. 3122. Segregation of assets held as collateral in swap transactions.

Sec. 3123. Other authority.

Sec. 3124. Antitrust.

Sec. 3125. Review of prior actions.

Sec. 3126. Expedited process.

Sec. 3127. Effective date.

**Subtitle B—Regulation of Security-Based Swap Markets**

Sec. 3201. Definitions under the Securities Exchange Act of 1934.

Sec. 3202. Repeal of prohibition on regulation of security-based swaps.

Sec. 3203. Amendments to the Securities Exchange Act of 1934.

Sec. 3204. Registration and regulation of swap dealers and major swap participants.

Sec. 3205. Reporting and recordkeeping.

Sec. 3206. State gaming and bucket shop laws.

Sec. 3207. Amendments to the Securities Act of 1933; treatment of security-based swaps.

Sec. 3208. Other authority.

Sec. 3209. Jurisdiction.

Sec. 3210. Effective date.

**Subtitle C—Improved Financial and Commodity Markets Oversight and Accountability**

Sec. 3301. Elevation of certain Inspectors General to appointment pursuant to section 3 of the Inspector General Act of 1978.

Sec. 3302. Continuation of provisions relating to personnel.

Sec. 3303. Corrective responses by heads of certain establishments to deficiencies identified by Inspectors General.

Sec. 3304. Effective date; transition rule.

The Acting CHAIR. Pursuant to House Resolution 964 the gentleman from Minnesota (Mr. PETERSON) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Minnesota.

Mr. PETERSON. Madam Chair, I yield myself such time as I may consume.

I rise today in support of the Peterson-Frank amendment to H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009.

Madam Chair, while much of the attention of this financial reform package is focused on the mortgage and credit crisis of last year, this amendment is the product of years of public debate about the regulation of derivatives markets in the United States.

It began with the price volatility we saw in energy futures markets, first with natural gas, then for crude oil. We examined in our committee the influx of new kinds of traders in these markets, like hedge funds and index funds. We looked at the relationship between what was occurring on the regulated markets and the even larger unregulated, over-the-counter market. More aptly, this probably should have been called the under-the-counter market because trillions of dollars in transactions affecting commodity prices were being conducted out of sight and out of reach of market regulators.

Last year, the House of Representatives responded, approving bipartisan legislation to give the Commodity Futures Trading Commission greater authority over these “dark markets” in an attempt to restore the price discovery and hedging utility of unregulated markets. Unfortunately, it was only after the House passed this bill that we learned the real consequences of what can happen in unregulated markets with the near collapse of our financial system.

As Warren Buffett correctly pointed out in his 2003 annual letter to shareholders, the large amount of credit risk concentrated in the hands of the relatively few meant that “the troubles of one could quickly infect the others.” Last year’s collapse proved him right.

Madam Chair, the House Agriculture Committee acted very early on this year to get a handle on these swaps and minimize the very real systemic risk to the economy that they posed. A key part of that legislation was a requirement that swap contracts be cleared.

The clearing requirement has served the futures market well for decades. It increases transparency and effectively manages risk, not just for the public, but for all participants in the market.

Equally important, Madam Chair, our committee said that exemptions to the clearing requirement should be available because not every swap is appropriate for clearing and not every market participant should have to bear the burdens of clearing.

These two key principles of required clearing and exemptions are carried over from that previous work from our committee and are expanded upon in the Peterson-Frank amendment.

Madam Chair, our target for greater regulation and oversight is not the end user but their swap dealer or major swap participant counterparty. End users did not get a bailout of billions of dollars. End users are not responsible for what happened in the markets last year.

Under this amendment, swaps will be centrally cleared if a clearinghouse will accept the transaction and when regulators determine clearing is necessary. Cleared, listed swaps must be traded on an exchange or registered swap execution facility. And all swap trades must be reported, with counterparties adhering to recordkeeping and reporting requirements.

This amendment will hold swap dealers like large financial institutions accountable to new standards for capital, margin, business conduct and other requirements to reduce their ability to again place our financial system in such dire straits.

In addition, Madam Chair, this amendment contains many strong provisions regarding market transparency and makes progress solving some of the jurisdictional issues that have plagued financial regulation in the past. The amendment strengthens confidence in trader position limits on physically deliverable commodities as a way to prevent excessive speculation trading. And it will call for international harmonization by requiring foreign boards of trade to share trading data and adopt speculative position limits on contracts that trade U.S. commodities similar to U.S.-regulated exchanges.

Madam Chair, we have come a long way to get here. The situation I described earlier with AIG might make you wonder if we could have ever allowed such a reckless trading environment to have existed and that those involved would have learned their lesson. But believe it or not, the big banks on Wall Street don't think that they did anything wrong. In fact, they'd like to keep doing what they've been doing. They already got their bailout, and they wouldn't mind topping it off by avoiding any new regulation or oversight. To me, that is an unacceptable outcome.

I urge my colleagues to approve the Peterson-Frank amendment to finally bring real accountability and oversight to the over-the-counter derivatives market.

Could I ask how much time I have remaining?

The Acting CHAIR. The gentleman has 11½ minutes remaining.

Mr. PETERSON. I reserve the balance of my time.

Mr. GARRETT of New Jersey. I claim the time in opposition.

The Acting CHAIR. The gentleman is recognized for 15 minutes.

Mr. GARRETT of New Jersey. I yield myself 2 minutes.

Madam Chair, if there is anything that the last few months have taught us, it is the American people telling us that we don't need more government to overreach in big government solutions when targeted reforms are more appropriate and effective.

When thinking about how to draft a legislative response to the recent financial crisis in regards to this issue of derivatives, we must ask ourselves one seminal question: What are we actually trying to resolve here. The vast majority of the OTC derivative marketplace had absolutely nothing to do with the crisis. It provides critically important risk management tools for virtually all large companies and many small- and medium-sized companies as well.

When you think about the AIG situation, even the problem there with the derivatives had much more to do with the extremely bad bets on the housing market along with failed prudential regulators who were supposed to be overseeing them than they had anything specifically to do with the derivatives themselves.

So quite honestly, Madam Chair, we don't think it's appropriate to set up a truly cumbersome and Byzantine dual regulatory regime that would require the CFTC and the SEC, two entities that have not shown the ability to co-operate in the past, that they have two very different missions and reasons for being to approach very different marketplaces and derivatives and to do so now in the same manner.

The Democrats' underlying bill sets these two entities up to perform as prudential regulators, setting capital requirements, margins, and other prudential requirements when they were never envisioned to play this role. When you think about this, also, the SEC has failed miserably as a prudential regulator when it tried to do the consolidated regulator for investment banks.

The proposal contains in the underlying bill an overly broad definition, new capital and margin requirements and broad authority for regulators to determine which transactions are standardized and subject to mandatory clearing and exchange trading.

These are unnecessary government burdens that could impair the usefulness of derivatives as an innovative risk management tool, thereby increasing the exposure to the marketplace and the participants in them, which all gets to the last point.

The Acting CHAIR. The time of the gentleman has expired.

Mr. GARRETT of New Jersey. I will yield myself 15 more seconds to make the final point.

All of these points in the underlying bill will lead to one thing: a loss of

credit and therefore a loss of jobs in America today and in the future as well. The American people have spoken loud and strong: Do not pass any legislation that is going to create hardships for the creation of jobs in this country, and this underlying legislation with its language on derivatives would do just that.

With that, I yield such time as he may consume to the gentleman from Oklahoma (Mr. LUCAS).

□ 1830

Mr. LUCAS. I thank the gentleman.

Madam Chairwoman, I rise in support of the Peterson-Frank amendment. It represents a year-long attempt to balance the needs for stronger regulation and a need to manage legitimate financial risk.

Under this amendment, end users will not be regulated as though they were a major financial house residing on Wall Street. They are not systematically risky, they did not cause the financial collapse, and they should not be regulated as if they did.

Not all concerns, however, have been resolved. And I would have preferred language that would have made clear only those that can cause a significant, adverse impact on the U.S. financial system to be regulated as major swap participants.

For that purpose, I am supporting Congressman MURPHY's amendment that we will see shortly to cure that deficiency.

Similarly, I don't understand why market makers that only deal in cleared products need to have additional capital and margin requirements imposed on them by the Federal Government.

Instead, this amendment allows the appropriate financial regulator to more closely monitor the markets and those that may accumulate or generate too much risk for a healthy and robust financial system. It then gives the regulators the appropriate tools to reduce the risk before it can negatively affect our economy.

I have other concerns about this amendment. I am sure we would all do things differently if we could. This amendment isn't perfect, but it is a marked improvement over other legislative efforts either proposed or considered. This amendment is worthy of our support.

Now I will also admit, unfortunately, all of the hard work that went into the creation of this amendment may very well be overwhelmed by the massive overreach of the rest of the bill, but we should vote for and support this amendment.

The Acting CHAIR. As a reminder from the Chair, the gentleman from Minnesota has 10½ minutes remaining.

Mr. PETERSON. Madam Chair, I'm now pleased to recognize the gentleman from Iowa, the chairman of the



General Farm Commodities and Risk Management Subcommittee that deals with this issue and is a leader on this issue for us on the Agriculture Committee, Mr. BOSWELL, for 3 minutes.

Mr. BOSWELL. I first have to say on opening to Mr. GARRETT, my friend across the aisle, you often say that we don't need more government. Well, maybe so, if under the previous administration and our friends, that you would have done the job that we have to try to do cleanup on now.

I would like to personally thank Chairman PETERSON for his leadership in bringing oversight to the over-the-counter derivatives markets.

For too long, regulators did not have the tools necessary to police these markets. As a consequence, large financial institutions like Bear Stearns, Lehman Brothers, and AIG got into trouble before anyone knew it. Had these provisions been in place, the government would not have had to spend billions to rescue AIG to prevent its collapse from sending shock waves throughout the financial system.

The compromise which the Agriculture and Financial Services Committees reached will bring greater transparency and oversight to the over-the-counter derivatives markets. We must provide necessary oversight of these markets without hindering legitimate consumers from operating within them.

This compromise strikes a careful balance that protects the use of derivatives by so-called "end users" who utilize these markets to hedge the cost of their operations. Whether dealing with grain, energy, steel, or financing, American companies use derivatives to lock in prices to effectively plan for the future.

When the Agriculture Committee first considered the regulation of over-the-counter derivatives markets, I offered an amendment to require mandatory clearing. And I'm pleased to see that this compromise, which the chairman will be offering today, maintains this concept.

Clearing exposes and mutualizes the counterparty credit risk which, up until now, has been hidden behind closed doors. While every derivative does not need to be cleared, the compromise will ensure that regulators look at all derivatives to identify what classes should require clearance.

The notional value of the over-the-counter derivatives markets ranges from \$400 to \$600 trillion. To allow something this massive that impacts every American to continue to operate unregulated is simply not acceptable. This legislation will strike a good balance of consumer protection without obstructing individuals and companies from conducting their business and managing their risk.

I urge support for this amendment.

Mr. GARRETT of New Jersey. I yield myself 3 minutes.

I appreciate the underlying amendment that we're discussing here right now. Let me just point out that the Republicans have submitted a substitute to address this overall issue. Republicans, however, have done so in a targeted approach addressing actual problems, and it's really the more sensible approach to the whole derivative reform issue.

The centerpiece of the Republican alternative is something also found in the chairman's bill, which is a trade repository where all OTC trades would be required to be reported to. The repository then will provide valuable transparency, something we are all trying to achieve, to the entire OTC marketplace and will give the regulators the ability to analyze the appropriate data for their purposes as well as provide aggregated data to the broader marketplace.

We don't set up a Byzantine regulatory regime over the many market participants. While we don't do that because we don't preassume, without any relevant supporting data, that these entities needed to be micromanaged in this manner, we do require that the regulators review the data and regularly report back to Congress if an entity who is not already regulated by a prudential regulator, whether they should be more heavily regulated due to its size or its scope or its activities in the OTC marketplace.

So the Republican substitute does not have broad requirements for mandatory clearing, but it does codify the commitments that the private sector has already made. And they have done so working responsibly and cooperatively with the appropriate regulators, and they do so to engage in an ever more and greater amounts of central clearing now and into the future as well.

But when you think about it, these changes all take time. And they need to be done in a responsible manner. If you were going to force central clearing through some sort of central counterparties and have adequate counterparties for risk they are unfamiliar with, it could exacerbate the systemic risk.

So central clearing should be opened up over time to as many participants as possible, again, in a responsible manner so as not to do more harm than good, which is what we are all trying to achieve at the end of the day with the amendments and otherwise.

We also require margin requirements between dealers and major market participants, and that would address a major issue with the AIG-related problems that I discussed earlier.

In regards to the capital requirements, prudential regulators—look at them for a moment. Prudential regulators are really required by our substitute to take the swap activities of supervised entities into account when setting capital requirements for those

entities. Let me step back for a minute and say that again.

What you're basically saying here in the AIG situation is what we should have had occur there is prudential regulators should have been looking at those swap requirements when they set the capital requirements over at AIG or other like situations. But again, it is not appropriate to set these bank-like cap requirements on nonfinancial entities, so our Republican substitute would not do so.

Finally, we generally agree with the overall chairman's regard to segregating—

The Acting CHAIR. The time of the gentleman has expired.

Mr. GARRETT of New Jersey. I yield myself 30 additional seconds.

Finally, we agree with the chairman in regards to segregating margin for OTC swaps, although we exempt various margining for segregation requirements based on input from both the buy and the sell side.

Margins should be treated as such, especially if a dealer's counterparty wishes it to be so, and should not be commingled with the dealer's funds. Many of the problems associated with the Lehman bankruptcy, I am told and I understand, are related to this very issue. And so requiring margin segregation, we believe, would be an appropriate response to that issue and that problem and would solve it for the future.

I reserve the balance of my time.

Mr. PETERSON. Madam Chair, I'm pleased to yield 2 minutes to the gentlewoman from Illinois (Ms. BEAN).

Ms. BEAN. I want to thank Chairmen FRANK and PETERSON of both committees and the committees for their diligent efforts on derivatives reform and appreciate the conciliatory and open nature in which we have worked on this piece of legislation.

I have the honor to serve as the vice Chair of the New Dem Coalition and co-Chair of the New Dem Financial Services Task Force, and derivatives reform is an area where New Dems have worked diligently with both committees of jurisdiction.

I want to specifically recognize the hard work of MIKE MCMAHON, who drafted the New Dem derivatives bill in July, and recognize JIM HIMES and SCOTT MURPHY, whose private sector experience and perspective was so constructive. The New Dems, our caucus and our country, have benefited greatly from their thoughtful and knowledgeable insights.

Lacking and lagging regulation of OTC derivatives was a major contributing factor to last year's crisis, including the highly leveraged credit default swaps at AIG that prompted government intervention. For the first time, we are going to regulate the over-the-counter derivatives market, which is a multitrillion dollar unregulated market.



This amendment brings necessary transparency by requiring that all derivatives will be exchanged, traded, cleared, or reported, and it gives regulators the tools they need to effectively oversee this industry.

□ 1840

This amendment and underlying bill attempts to strike the right balance that will bring transparency and accountability to the derivatives market while preserving the ability of end user businesses to legitimately hedge their risk in order to protect their businesses.

We are taking an important step today in moving forward with strong regulatory reform legislation that will better protect our financial system, our economy, and the American taxpayers.

To my colleague across the aisle who suggested that the underlying bill would create a loss of credit or jobs, I would question whether he's been paying attention to the loss of jobs and credit following the financial crisis last year.

I urge my colleagues on both sides of the aisle to support this amendment and the underlying bill.

Mr. PETERSON. Madam Chair, I yield 3 minutes to the gentleman from Connecticut (Mr. HIMES).

Mr. HIMES. I thank Chairman PETERSON for his leadership on the bill and Chairman FRANK for his good work on this terribly important work that we now do to try to restore a sense of faith and trust in the financial system, which American companies and families rely on for the credit that allows them to create jobs and offer employment.

One of the least understood portions of this bill, Madam Chair, but one of the most important is the work that has been done on derivatives, instruments that allow our farmers to get rid of the risk of future soybean prices if they don't want to bear those risks, that allow our exporters to get rid of currency risk that they don't want to bear, but instruments that, despite the comments of my good friend from New Jersey, were very, very much at the core of the financial meltdown that we have seen and are now living through.

My friend seems to forget three letters: AIG. He forgets that that great enemy of American capitalism, that wild-eyed critic of markets, Warren Buffett, called credit default swaps "weapons of financial mass destruction." And in reviewing some of these, he said these must have been contracts that were devised by madmen. This is Warren Buffett.

The Democratic amendment would do several market-friendly things. One, it would say that these contracts will trade in the light of day, that they will clear in clearinghouses. This is an idea that is thousands of years old, Econom-

ics 101. Markets are healthier if we know who is selling what to whom and for what price, if we can see who is taking on what risk, something that if the market had known in the AIG experience, we might have been saved the awful spectacle of taxpayer dollars being injected into private companies. The Democratic amendment says it will trade in the light of day. That is not a radical, heavy-handed, Byzantine, or cumbersome idea; it's plain good market economics.

The Democratic amendment would say that if you take big bets, we're going to make sure you've got the capital to make good on those bets. Again not a terribly radical idea. But if you are going to insure somebody, we will make sure you've got the capital to make good on the insurance that you have sold.

Lastly and importantly, a derivative contract always involves somebody getting rid of risk, that farmer, that company. We protect those end users and say you will not be subject to regulation. But the people who buy that risk, the financial entities that brought us to this place, will be subject to oversight.

So, my colleagues, this is a good, smart, market-friendly amendment, and I urge its passage and support.

Mr. PETERSON. Madam Chair, our committee has spent a lot of time on this, and I want to thank all the Members for the many, many hours that they put in working on this, also the members of the banking committee. I also want to especially thank my ranking member, Mr. LUCAS, and his staff, Kevin Kramp, Bill O'Conner, and Josh Mathis, for engaging with us in a cooperative process to bring this together.

I want to thank Chairman FRANK and his staff, Peter Roberson and Luranne Stewart, for working with us in a spirit of compromise that allowed us to reach an agreement in a relatively short amount of time. And I want to thank Ranking Member BACHUS and his staff, Kevin Edgar and Jason Spence, who, despite their concerns with the legislation, were willing to thoughtfully contribute to our discussions. So we appreciate that.

Finally, I want to thank my own staff, Andy Baker, Rebekah Solem, Matt Forbes, and Clark Ogilvie, for their hard work and long hours to bring this amendment to fruition.

This is a good amendment and I encourage Members to adopt it.

Madam Chair, I yield back the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I yield myself 30 seconds.

I rise once again to point out that the underlying legislation was misdirected by setting up a Byzantine process and addressed a problem that really was not the underlying cause of the financial situation we have today.

I will also point out before I yield to the ranking member that the amendment that's before us today, it does one thing that's better than the underlying bill, which is to say that there should not be a margin requirement on end users, which is better in the sense that they will not have to post those, which will maybe address the issue of overall job creation in the future.

But I will close on this point: The underlying bill is still problematical to the larger issue of saying that if you create a system like this and address a problem of the OTC market in such a Byzantine manner and create additional burdens on it than are unnecessary, we will create fewer jobs in the future.

Madam Chair, I yield the balance of my time to the gentleman from Alabama (Mr. BACHUS), the ranking member.

Mr. BACHUS. Madam Chair, although I'm not opposed to the amendment as such, I am opposed to what the underlying bill does.

Chairman PETERSON and I think most on our side have a disagreement with that underlying regulation. Unfortunately, the amendment is a step in the right direction, but we feel like even with the amendment substituting the original language that we still have our objections, and it's those objections I wish to speak on. Although we don't, or at least I don't personally, plan to oppose the amendment itself, as the gentleman from Oklahoma said, we do believe that it is some improvement.

But the regulation of the derivatives market created in the underlying legislation we think creates unnecessarily burdensome requirements on thousands of American companies that have used derivatives to manage price fluctuations and hedge against business risk, and they've done that successfully and safely.

The underlying legislation, even with this amendment in it, is going to empower our government regulators to institute what appears to be a fairly complex and sweeping new regulatory regime to govern, as I said, a sector of the marketplace that has functioned well and I think helped most American companies and has not contributed to the financial crisis but actually helped moderate it. And I think the derivatives market has allowed companies in many cases to insulate themselves from uncertain market conditions.

Several in the majority have alluded to the failure of Lehman Brothers as a reason for the needed reform of the over-the-counter derivatives market. And we do propose some reform, and I'm going to discuss those in a minute. The gentleman from New Jersey also discussed them. So there are some points on which we do agree with Chairman PETERSON and even Chairman FRANK.

□ 1850

But Lehman, I don't believe, can be used as an excuse to inject the government into a derivatives market that is used primarily by thousands of small and medium size and even large companies to hedge against business risk, and as I've said, have done that safely.

The reality is that Lehman's portfolio, including its derivatives positions, without any government assistance was unwound with relative ease. It was unwound. The real problem with Lehman's derivative business was the lack of segregation of collateral, a problem that is addressed by our Republican substitute.

The comprehensive Republican substitute we plan to offer provides a commonsense approach to oversight of the over-the-counter derivatives marketplace without what we consider an excessive overreach by the Federal Government and its regulators into the capital market, a theme that, unfortunately, we think is being repeated many times in this legislation.

The substitute promotes strong transparency of over-the-counter derivatives activities conducted by all market participants. It also addresses the two derivative problems identified by the majority and the administration, and that was AIG and Lehman. The isolated behavior of these two large corporations and a few others like them was, as I said, an isolated behavior, and that type of behavior would be detected under the Republican substitute, the trading activity and positions they took.

The Republican substitute also holds dealers accountable to improve operational inefficiencies with the over-the-counter derivatives marketplace, provides vital transactional information to regulators on a real-time basis, and ensures the Treasury Department cannot become a de facto regulator. Additionally, our substitute does not punish those Main Street end users of derivatives.

Finally, in conclusion, our substitute addresses another need in the derivative marketplace, which is to provide timely and accurate information to market participants and regulators in order to ensure market transparency.

Madam Chair, we have to curb abuses of the past and promote responsible approaches to oversee the use of over-the-counter derivatives. We all agree on that. However, we believe the underlying bill, even with this amendment, is fundamentally the wrong approach and is a very expensive way to address the problem.

So I urge my colleagues, even though we don't oppose this amendment, to oppose the underlying legislation. And this is just one more reason, and that is that we increase the cost of any end user of derivatives. As we said last night, John Deere said it would cost them about \$1 billion. Cargill said that

they probably wouldn't complete a new facility in Kansas City if we impose these costs.

The Acting CHAIR. The gentleman's time has expired.

The question is on the amendment offered by the gentleman from Minnesota (Mr. PETERSON).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MR. PETERSON

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in House Report 111-370.

Mr. PETERSON. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. PETERSON:  
At the end of title III, insert the following new section:

**SEC. \_\_\_\_ . AUTHORITY OF THE COMMODITY FUTURES TRADING COMMISSION TO DEFINE "COMMERCIAL RISK", "OPERATING RISK", AND "BALANCE SHEET RISK".**

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a), as amended by the preceding provisions of this Act, is amended by adding at the end the following:

“(51) COMMERCIAL RISK; OPERATING RISK; BALANCE SHEET RISK.—The terms ‘commercial risk’, ‘operating risk’, and ‘balance sheet risk’ shall have such meanings as the Commission may prescribe.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in subtitle A.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Minnesota (Mr. PETERSON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Minnesota.

Mr. PETERSON. Madam Chair, I yield myself such time as I may consume.

This amendment puts forth a process where we can obtain some clarity regarding limited exception to clearing requirements. Specifically, it requires the CFTC to define the terms “commercial risk,” “operating risk,” and “balance sheet risk,” which are used in the statute to define what types of risk a company may hedge and remain eligible for limited exception to clearing.

I understand how some could be concerned that balance sheet risk could be interpreted more broadly to encompass financial risk, but not commercial risk. That is why I introduced this amendment directing the regulator to define these terms.

By providing for the agency to define these terms, the burden will be placed upon them to ensure the companies seeking the limited exception to the clearing requirement do not abuse that exception. And if we think the CFTC gets it wrong, between the Agriculture Committee and the Agriculture appropriations subcommittee, we have lots of opportunities to haul them up here and show them the error of their ways.

This amendment is supported by the Commodity Markets Oversight Coalition and many other groups. I urge my colleagues to adopt the amendment.

Madam Chair, I reserve the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I rise to claim time in opposition, although I am not opposed to the amendment.

The Acting CHAIR. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. GARRETT of New Jersey. I yield myself such time as I may consume.

I appreciate the work of the chairman with regard to clarifying some of the definitions here. I think this goes to the overall issue of the complexity of the issues that are before the House tonight on this matter and on the broader matter of the derivative regulations that we are discussing with the previous amendment and this amendment as well. It goes to the point that I raised just a moment ago in my previous remarks, that if we are going to try to answer to the American public to the three most important questions that they are asking of Congress—no more bailouts, no more legislation that destroys jobs, and no more expansive, larger and spending government—we have to look to what we're doing in the derivative area as well.

In the derivative area that we see in the underlying legislation, what we have done is create a Byzantine piece of regulation combining the two, working with two entities that have never worked together in the past before, setting in the underlying legislation margin requirements that potentially end users—although I recognize the previous amendment just addressed that point—margin requirements on them which basically, at the end of the day, if we think about it in basically simple terms, means it will be more costly in this country to do business. It will be more difficult for entities to hedge their risk. And if businesses can't hedge their risk, the other fundamental purpose of this legislation that we hear from the other side to end the idea of systemic risk will be thwarted as well.

So think about that. We will be thwarting one of the basic functions that they say is the underlying legislation to end systemic risk because we cause hardship on companies to hedge their risk on the one end, and not addressing one of the major problems this country is faced with today, high unemployment. We must do a better job than that.

As I stated before, Republicans have offered a better solution to all of those issues. We have offered a solution with regard to the bailouts, to end taxpayer-funded bailouts. We have offered a solution to end the prospects of less jobs

in this country. And we offered a solution respectively to the whole derivative market, as I set forth before. The centerpiece of that solution is something that was actually found in the chairman's bill, and that was the repository idea. We can get all the transparency that we need right now through a trade repository where the OTC trades are reported. We can get the accountability and the transparency that the American public looks for as well through the initiatives that are in the Republican substitute. But we can do so in a manner, therefore, that will not impose additional risk or cumbersomeness or a Byzantine structure, and therefore not affect the hedging abilities or the cost of doing business of companies in this country. We can do so in a manner that will not hurt the creation of jobs.

When you think about it, we will have probably discussed three different areas, three different titles of this bill that actually will be hurting jobs. What are they? We haven't talked about the first one too much, CFPA, the Consumer Financial Products Agency. It has already been documented that that will cost literally a million jobs. The wind-down authority, we have already talked about that previously, that will also cost jobs. And here, if you do not handle the derivative situation correctly, that potentially can cause job loss in this country as well. We suggest that the Republican substitute should be considered in this area as in other areas as well.

With that, I reserve the balance of my time and commend the gentleman for his work on the underlying amendment that we have here before us today.

□ 1900

Mr. PETERSON. Madam Chair, I yield 1 minute to the distinguished chairman of the Financial Services Committee, the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Chair, working with the chairman of the Agriculture Committee has been very constructive, and we have enjoyed that working relationship, and I am very proud that our committees have avoided the kind of jurisdictional disputes that too often plague this place.

We have a couple of issues here: One, should there be an end user exemption, et cetera? Two, whether you agree or not, it certainly shouldn't be one that could be manipulated. So this is to make sure that this is there.

Finally, I do want to respond to the gentleman from New Jersey. Apparently, they discovered that jobs are being lost. In fact, the reason that jobs are being lost now and were being lost at an even greater rate last year is the economic disaster that came from a lack of regulation. So the argument

that by putting in place regulations that will prevent the enormous economic disaster, which officially began with the recession in 2007, will somehow cause job loss is bizarre-o-world. Job loss was brought about by the lack of regulation, which we are trying to correct.

It is true that the Republican position is: Leave business alone. Let them continue to do whatever they think is right. Don't have any regulation.

That's how we got into this mess.

Mr. PETERSON. Madam Chair, I have no further speakers, so I yield back the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I yield myself 1½ minutes, the balance of my time.

The American public, quite honestly, if they watch what goes on tonight and have watched in the days before and after, really are not looking for anyone to be pointing fingers of blame at this administration or at the last administration. This should not be a partisan issue. The other side always wants to point back several years to the Bush administration.

We could point back that it was the Democrat majority for 2007, 2008 and now 2009 that has been running this House and that, during that time, we have seen the catastrophe in the financial markets, and that it was during their tenure that we saw the catastrophe of unemployment soaring through the roof. Yet pointing fingers at the Democrats and at the fact that they have done the job that they have done and that we have seen the results of their legislation over the last 3 years will not solve the problem.

What we need to do, however, is pass legislation that will end the pattern of elimination of jobs, that will end the pattern of the bailout mentality, that will end the pattern of expansive government. That's why we come here tonight to offer Republican solutions to a lot of these things, and it's why we ask the majority party to consider some of those proposals as we go forward.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Minnesota (Mr. PETERSON).

The amendment was agreed to.

AMENDMENT NO. 5 OFFERED BY MR. LYNCH

The Acting CHAIR. It is now in order to consider amendment No. 5 printed in House Report 111-370.

Mr. LYNCH. Good evening, Madam Chair. I believe I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. LYNCH:

At the end of title III, insert the following new section:

**SEC. \_\_\_\_ . CONFLICTS OF INTEREST IN CLEARING ORGANIZATIONS.**

(a) COMMODITY EXCHANGE ACT.—

(1) DEFINITION OF RESTRICTED OWNER.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(51) RESTRICTED OWNER.—The term ‘restricted owner’ means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant, that is an identified financial holding company as defined in Section 1000(b)(5) of the Financial Stability Improvement Act of 2009, or a person associated with a swap dealer or a major swap participant that is an identified financial holding company, or a person associated with a security-based swap dealer or major security-based swap participant that is an identified financial holding company.”.

(2) CONFLICTS OF INTEREST.—

(A) Subparagraph (P) of section 5b(c)(2) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end of such subparagraph the following: “The rules of the derivatives clearing organization that clears swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the organization or in persons with a controlling interest in the organization, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the derivatives clearing organization shall provide that a majority of the directors of the organization shall not be associated with a restricted owner. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational derivatives clearing organization acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.”.

(B) Section 4s(g)(1) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended—

(i) by striking “and” at the end of subparagraph (C); and

(ii) by redesignating subparagraph (D) as subparagraph (E) and insert after subparagraph (C) the following:

“(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and”.

(C) Paragraph (12) of section 5h(d) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end the following new subparagraph:

“(C) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of

votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(D) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.”.

(D) Section 5(d) of the Commodity Exchange Act (as amended by the preceding provisions of this Act) is further amended by striking paragraph (15) and inserting the following:

“(15) CONFLICTS OF INTEREST.—

“(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

“(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational board of trade acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.

“(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.”.

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) DEFINITION OF RESTRICTED OWNER.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(78) RESTRICTED OWNER.—The term ‘restricted owner’ has the same meaning as in section 1a(51) of the Commodity Exchange Act.”.

(2) CONFLICTS OF INTEREST.—

(A) Paragraph (10) of section 3C(d) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended by adding after subparagraph (B) the following:

“The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to

be cast on any matter by the holders of the ownership interests. The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.”.

(B) Section 15F(g)(1) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended—

(i) in subparagraph (C), strike “and”; and

(ii) insert after subparagraph (C) the following (and redesignate the succeeding subparagraph accordingly):

“(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and”.

(C) Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:

“(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

“(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

“(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational exchange acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.”.

(D) Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new subparagraphs:

“(J) The rules of a clearing agency that clears security-based swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the agency or in persons with a controlling interest in the agency, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on

any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational clearing agency acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(K) The rules of the clearing agency shall provide that a majority of the directors of the agency shall not be associated with a restricted owner.”.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Massachusetts (Mr. LYNCH) and a Member opposed each will control 5 minutes.

The Chair now recognizes the gentleman from Massachusetts.

Mr. LYNCH. I yield myself such time as I may consume.

Madam Chair, firstly, I would like to thank Chairman FRANK, Chairman PETERSON and also Chairman WAXMAN for their great work on this bill, and I want to thank those three chairmen for supporting this amendment.

My amendment addresses a fundamental problem in the derivatives industry, and it seeks to close a gap in the underlying legislation.

Madam Chair, what many Members of Congress and the public don't realize is that the U.S. derivatives market is about \$605 trillion, which is more than five times the value of the stocks traded on the New York Stock Exchange.

More important than simply the scale of the derivatives industry is the fact that, according to the Comptroller of the Currency, a total of 97 percent of the derivatives trading in this country is controlled by just five banks. So it's a near monopoly. Four of those five banks were top recipients. During their recent financial meltdown, these same banks engaged in very risky behavior involving complex derivatives, which endangered the entire financial system. They had to be bailed out by the taxpayers. As a result of all of these banks—Citigroup, Bank of America, Goldman Sachs, JPMorgan, and Morgan Stanley—as well as major swap participants, such as AIG, they received \$200 billion in taxpayer money.

The Wall Street Reform and Consumer Protection Act attempts to prevent that from happening again. The bill would require over-the-counter trading to be conducted through clearinghouses, which are set up to police derivatives trading and to make sure there is sufficient protection from the reckless behavior that these “too big to fail” banks have engaged in. Clearinghouses are a good idea. Think of them as financial police stations. That's the function they are intended to serve. Some describe them as a blast wall that will prevent the failure of a

derivatives deal from impacting the real economy.

However, the problem is—and in my view, this is a huge problem with the bill—the bill would allow these same big banks to purchase the clearinghouses that are being created to police the big banks in their derivatives trading. The big banks would be allowed to own and control the clearinghouses and to set the rules for how their own derivatives deals are handled.

My amendment would prevent those big banks and major swap participants, like AIG, from taking over the police station—these new clearinghouses. It would do so by limiting to a 20 percent voting stake the ownership interest in those banks and the governance of the clearing and trading facilities. Essentially, by providing entry to the market, it would introduce competing commercial interests to bring competition and transparency to the derivatives industry and to keep those banks honest.

At this time, I reserve the balance of my time.

Mr. GARRETT of New Jersey. I rise and seek to claim the time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. GARRETT of New Jersey. Madam Chair, I yield 2 minutes to the gentleman from New York (Mr. MCMAHON).

Mr. MCMAHON. I thank the gentleman from New Jersey.

Madam Chair, I rise in opposition to this amendment and in support of the underlying legislation. I commend the work of Chairman FRANK, of Chairman PETERSON, and of all involved, and I commend also the work of the gentleman from Massachusetts, who is a great friend and colleague, although I disagree with him on this amendment.

This legislation is trying to minimize systemic risk, but the amendment will increase it, so I speak in opposition to it.

By limiting to 20 percent the total combined, collective ownership of clearinghouses, exchanges and execution facilities, it will limit what facilities can ultimately clear trades. Less choice. Not more choice.

The way to deal with concerns about conflicts of interest are through changes in governance, not through restricting ownership and investments. By concentrating the derivative trading market share in the hands of a very few inevitably large institutions, we are more likely to be creating systemic risk than we are to be mitigating it. Virtually all clearinghouses and exchanges are jointly owned, in which their vast majority of investors are swap participants.

The underlying bill grants regulators the strongest authority to police the markets and to enforce capital standards. Support the strong standards in

this bill. Support the regulations and transparency in this bill. Oppose this business grab through legislative fiat.

The amendment is strongly opposed by the New York Stock Exchange, by the Depository Trust and Clearing Corporation, by LCH Clearnet, and by almost every single exchange and clearinghouse. It will cost jobs in New York in my district.

This bill should be about improving transparency and enforcement, and about bringing fair and prudent regulation to the derivatives market while minimizing systemic risk. Instead, the proponents of this amendment are using the legislative process to promote one marketplace over the others, and it will cost jobs and capital formation from other exchanges.

We are here today to reform American financial services and our regulatory structure, not to drive companies out of business, costing American exchanges jobs and money. The amendment will give an unfair advantage to one exchange, and it just isn't practical.

I urge my colleagues to vote "no" on this amendment.

Mr. LYNCH. Madam Chair, I yield 1 minute to the chairman of the Financial Services Committee, my friend, the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Chair, I disagree with the premise that the large financial investment houses and large financial institutions have earned the degree of trust that our voting against this amendment would require.

We were fairly careful, and there were many who were critical because we were too willing to separate out end users, legitimate end users, and not sweep them all in; but for that to be justified, there has to be integrity in the administration of the process. That is what the last amendment by the gentleman of Minnesota did, and that is what this amendment does.

If you let people who have a financial interest in there not being clearing be in charge of clearing, it would take an extraordinarily selfless group of people not to give in to temptation.

□ 1910

While people on Wall Street have been giving varying descriptions, some good and some bad, no one has yet compared any of them to Mother Teresa. The fact is that if you reject this amendment, you are giving people who have an incentive to make these things not work well control over them.

Mr. GARRETT of New Jersey. At this time I would like to yield 1½ minutes to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. I thank my friend from New Jersey for his leadership on this issue and trying to bring focus to really the underlying nature of

this bill, which is the underlying nature of this amendment as well, and that is that government knows best how to define what the market ought to look like and not the market. Madam Chair, as you well know, that's one of the things that got us into these significant problems in the first place.

I know that there is one group that supports this. There are all sorts of folks who don't support this, the people who know about the issue of trading in this area. The ABA Securities Association, one of the largest securities associations, opposes this amendment because they believe that it would significantly limit competition and undermine the ultimate goal that all of us ought to have, and that is to make certain that the market is, in fact, able to work for more individuals across this land. More choices, not fewer choices.

New York Stock Exchange, Euronext, Securities Industry and Financial Markets Association, on and on and on, folks who, in fact, oppose this amendment because they believe strongly that it will decrease the choices available to the American people.

Over-the-counter trades, hundreds of trillions of dollars literally in trades, will be markedly limited again, decreasing the ability of the American people to have the choices available to them.

What this amendment does, Madam Chair, is what really what the underlying bill does. It says government knows best, that we ought to limit the ability of creative thinking and jobs to be formed out there across this land, because government knows best. We are going to limit the choices available to the American people.

Vote "no" on the Lynch amendment.

Mr. LYNCH. The gentleman should perhaps read the amendment. This does not interpose government into the clearinghouses.

Ironically, this is very light regulation. The people who are against this amendment are the five banks, the five big banks. They are the ones that are against this.

What this does, instead of inserting the government in here, what we are doing is allowing competitive commercial interests to balance out, rather than allow these five banks. These five banks control 97 percent of the market here; 97 percent. And the gentleman is complaining that it might reduce competition? It's a monopoly now. We are trying to break it open and allow more companies in and lower the costs of operating.

Look, this is a pretty simple issue. The "too big to fail" banks caused huge damage to the taxpayer, the way they operated this derivatives market.

We are creating a clearinghouse. They are trying to buy the clearinghouse.

The Acting CHAIR. The time of the gentleman has expired.

The Chair recognizes the gentleman from New Jersey.

Mr. GARRETT of New Jersey. I presume I am to close?

The Acting CHAIR. The gentleman has the right to close. The gentleman has 1½ minutes remaining.

Mr. GARRETT of New Jersey. I thank the Chair.

The gentleman from Massachusetts says the government is not interposing or getting involved here. Of course they are, and that's what the whole fundamental purpose of the underlying bill is, is to set up this whole Byzantine arrangement of new regulations specifically in this area. Yes, I have read the amendment; and, yes, I recall it coming through committee and the problems that were raised there. When you centralize risk and clearing entities, as made mandatory by the underlying bill, it's important that we ensure that there is some independence in the clearinghouses from the dealers who play such a large role, like he says. But that's why in committee I offered an amendment that would have required that the majority of the directors of the derivatives of the clearing organization must not be associated with swap dealers. This goes much further than what's already on the books right now.

The SEC has a current policy of limiting a position of 20 percent ownership of a single broker dealer in an existing exchange. This amendment goes way farther than that, saying that that 20 percent applies in the aggregate. Yes, I read the amendment.

You have to remember that dealers are among the most likely sources of investment capital to establish these new clearinghouses. If you are going to come up tonight now with a really overly restrictive limit on ownership, as we have in this amendment, you are going to have potentially some negative consequences. Some of those will be in competition.

At the end of the day, what will you have? The amendment could very well exacerbate risk by forcing more derivative transactions that are out there, and who knows how many will be out there after this legislation passes, to fewer and to fewer and to fewer clearinghouses, basically concentrating risk and doing the opposite of what the American public wants, to avoid risk burdens and additional bailouts.

Ms. WATERS. Madam Chair, I rise in strong support of the amendment offered by the gentleman from Massachusetts. H.R. 4173 is designed to address the lack of regulation in the over-the-counter derivatives market that allowed AIG to write billions of dollars in risky credit default swaps. H.R. 4173 fixes this by subjecting over-the-counter derivatives to a comprehensive regulatory structure and requiring derivatives to be traded through clearinghouses.

However, the derivatives market is currently dominated by a handful of large institutions. And these institutions will simply buy the clearinghouses to make sure that they once again control this market. If this happens, these institutions will be in the conflicted position of "clearing" their own derivative deals. The result will be more AIGs. Mr. LYNCH's amendment would prevent this by preventing any institution from controlling more than 20 percent of a clearinghouse.

If we don't close this loophole, the over-the-counter derivatives market will continue to be unregulated. Therefore, I strongly urge a "yes" vote on this amendment.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentleman from Massachusetts (Mr. LYNCH).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. MCMAHON. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Massachusetts will be postponed.

#### AMENDMENT NO. 6 OFFERED BY MR. MURPHY OF NEW YORK

The Acting CHAIR. It is now in order to consider amendment No. 6 printed in House Report 111-370.

Mr. MURPHY of New York. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. MURPHY of New York:

At the end of title III, insert the following new section:

#### SEC. \_\_\_\_\_. DEFINITIONS OF MAJOR SWAP PARTICIPANT AND MAJOR SECURITY-BASED SWAP PARTICIPANT.

(a) MAJOR SWAP PARTICIPANT.—Section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a), as added by the preceding provisions of this Act, is amended to read as follows:

“(39) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

“(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

“(ii) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the term ‘substantial net position’ at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.

“(C) A person may be designated a major swap participant for 1 or more individual

types of swaps without being classified as a major swap participant for all classes of swaps.”.

(b) MAJOR SECURITY-BASED SWAP PARTICIPANT.—Section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding provisions of this Act, is amended to read as follows:

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major security-based swap participant’ means any person who is not a security-based swap dealer, and—

“(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

“(ii) whose outstanding security-based swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the term ‘substantial net position’ at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps.

“(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.”.

(c) EFFECTIVE DATES.—

(1) MAJOR SWAP PARTICIPANT.—The amendment made by subsection (a)(1) shall take effect as if included in subtitle A.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The amendment made by subsection (a)(2) shall take effect as if included in subtitle B.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from New York (Mr. MURPHY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New York.

Mr. MURPHY of New York. I yield myself 1 minute.

This amendment would substitute the definition of a major swap participant that is in the current draft back to the language that was in the draft that came out of the Agriculture Committee.

Chairman PETERSON and Ranking Member LUCAS worked with the whole committee to develop the definition that was used in the Ag Committee, and it's different from the version that is on the floor now in two ways: It's more restrictive in terms of allowing financial companies to be exempt from being classified as a major swap participant. So more companies would be held to a higher regulatory standard. And it is a little bit less restrictive with respect to manufacturing companies being classified as a major swap participant. I think that's very important because we want people who are



systemically risky to be held to a higher standard of accountability, but we don't want to capture our manufacturing companies, the kind that are represented by the National Association of Manufacturers, the kind that are supporting this amendment, to be captured in that regulation.

We want them to be able to do their business and use derivatives to hedge their actual risk. That's why there was such broad bipartisan support for this when it was in the Agriculture Committee, and that's why we want to support it now.

Mr. FRANK of Massachusetts. Madam Chair, I rise to take the time in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. FRANK of Massachusetts. The gentleman from New York has fairly laid this out. Here is the difference: We have agreed that end users should have an exemption from these requirements, but there is an exemption to the exemption.

If an end user is engaged in an activity that can cause financial problems, then we want them not to be exempt from regulation, but here is the difference. The bill that is in there now, and it differs from the Agriculture bill, says if the end user is causing financial losses and problems at a particular counterparty, then you should not have the exemption.

The alternative is to say no, let's not step in if this or that or many counterparties are in problems until it could become a systemic risk. We don't want to wait for systemic risk. I don't want to wait until people are at the edge of the cliff to start to pull them back.

It is clear to many of us that a lack of regulation of derivatives was the problem. I support an end user exemption. But when an end user is employing that exemption in a way that puts counterparties at risk, I don't want to have to wait until a cataclysm impends. I would like there to be the ability to step in and stop it at that point.

For the end user, it is very simple. They can avoid this regulation by being careful about what they do with the counterparties. This does not take it away; it simply says to the end user, please be careful and use some prudence before you engage in a transaction with a counterparty who will be at risk and could begin the kind of chain that we hope would not happen.

I reserve the balance of my time.

□ 1920

Mr. MURPHY of New York. Madam Chairman, I'd like to yield 1 minute to the gentleman from New York (Mr. McMAHON).

Mr. McMAHON. Madam Chairwoman, I urge all of you to support the Murphy-McMahon-Kratovil amendment, which would protect end users and to be sure we better regulate the big investors as major swap participants.

Although the regulation of derivatives is complex, the issue is extremely important to the proper functioning of our capital markets and to almost every business in America, and we need to get this right.

Because derivatives are financial instruments that help all of us, they help keep our energy costs low and stable, if they're overregulated, it will cost my constituents back home more money for their electricity. They help insurance companies keep premiums low. They help companies complete construction projects on time and under budget. And despite the negative press and lack of understanding of the derivatives market, for the most part, the market works well. We cannot throw the baby out with the bathwater.

We must work to protect the end users, good American businesses that are just trying to manage their cash flows and hedge against uncertain risks beyond their control in a cost-effective manner. To do otherwise would cripple American industries and jobs in this country.

Mr. FRANK of Massachusetts. Madam Chairman, I have only one more speaker, and I have the right to close, so I reserve.

Mr. MURPHY of New York. I yield 1 minute to the gentleman from Maryland (Mr. KRATOVIL).

Mr. KRATOVIL. Madam Chairman, I rise in support of the Murphy-McMahon-Kratovil amendment to H.R. 4173.

As we improve stability and transparency in the derivatives market and attempt to address the true underlying issues causing the financial crisis, we must also ensure that we are not limiting the ability of responsible companies to access the over-the-counter derivatives they need to keep their businesses up and running.

These derivatives are not just used by the larger broker and dealer banks who do, in fact, present a systemic threat to the market, but also by smaller companies who use them to manage the risk associated with running an effective business. The fact of the matter is the legislation needs to distinguish between the two.

Without this amendment, H.R. 4173 could subject some end users to burdensome costs and penalties that were primarily aimed at companies whose activities do, in fact, present a real risk to the stability of the financial system. Our amendment clarifies that end users do not pose a systemic risk and should not be designated as "major swap participants" and incur the unintended costs.

Mr. FRANK of Massachusetts. Madam Chairman, I apologize to the body. I do have an additional speaker, so I now yield 2 minutes to the gentleman from Minnesota (Mr. PETERSON).

Mr. PETERSON. Madam Chairman, I rise in opposition to this amendment,

and I do so reluctantly because what the gentleman from New York is trying to accomplish is simply restore one piece of the bill to the way that it came out of the House Agriculture Committee.

Defining the term "major swap participant" has been one of the most significant challenges since Treasury first coined the term in its own derivatives reform proposal last August. We were trying to define it in ways that would generally exempt end users while ensuring we are capturing the financial players to whom we believe the new rules and regulations should apply.

We often heard from some in the end user community who wanted an absolute, guaranteed exemption that they never would be considered a major swap participant. We wouldn't do that because we don't know what the future will bring and because one of these end users could, one day, get so large with regard to their swap activity so as to have an impact on the financial system.

So, through painstaking work, we crafted the definition that is now in the Peterson-Frank amendment. Now, most end users feel that definition is adequate because they are supporting that amendment, but they would be more comfortable with the definition we had in the Ag Committee reported bill. I believe the new definition we crafted accomplishes our goal of protecting end users.

And so while I thank the gentleman for his appreciation for our work product in the Agriculture Committee, I most reluctantly oppose this amendment.

Mr. MURPHY of New York. Madam Chairman, I'd like to yield 1 minute to the gentleman from Oklahoma (Mr. LUCAS).

Mr. LUCAS. Madam Chairman, I rise in support of the Murphy amendment which would, indeed, insert into the bill the House Agriculture Committee passed definition of "major swap participant" and "major security-based swap participant."

Like the definition of the same term in the Frank-Peterson amendment, the definition in this amendment excludes those positions held primarily for hedging, reducing, or otherwise mitigating commercial risk. Unlike the Peterson-Frank amendment, this definition in this amendment focuses the regulation on swap positions that could have a serious adverse effect on the financial stability of the United States banking system or financial markets.

In other words, Mr. MURPHY's definition focuses on the big boys, the big guys, those market participants that the regulatory enhancements in this bill are aimed at. It excludes the commercial users that are using over-the-counter markets to risk management, not to try and create wealth.

Once again, though, I have to note, the good effect of this amendment may



well be lost in the massive overreach of the entire bill.

Mr. FRANK of Massachusetts. Now I am going to close. I reserve.

Mr. MURPHY of New York. In closing, I just want to say that I think that what we have here is an amendment that will take us back to the common-sense solution that we found on a bipartisan basis in the Ag Committee. It's a solution that does get at the root of the problem.

We've got large financial institutions who need to have additional accountability and regulation. That's what we're trying to do with our major swap participants. But it carves out our manufacturers and our energy companies that use derivatives to hedge their risk. That's why we've got support for this amendment from the American Wind Energy Association, the National Association of Manufacturers, the National Rural Electric Cooperatives.

Our businesses that are using derivatives to hedge risks need not be subjected to the same rules and requirements as the large guys and the dealers. We need to make sure our end users are protected so they can use derivatives successfully to hedge their risk and stabilize their business. That's what's going to protect jobs. That's what we need to get our economy moving. That's why people need to support this amendment.

I yield back my time.

Mr. FRANK of Massachusetts. Madam Chairman, how much time have I remaining?

The SPEAKER pro tempore. The gentleman has 2 minutes remaining.

Mr. FRANK of Massachusetts. I'm afraid my friend from New York has greatly overstated the case. There is no debate here—there is elsewhere—about whether or not there should be an end user exemption.

As he knows, our bill gives an end user exemption. The gentleman from Minnesota and I worked hard to do that, and we are not trying to take it away. In fact, both versions of this say that an end user exemption can be forfeited for certain economic circumstances.

So the question is not whether there should be an end user exemption. Yes, there should be. It is what should trigger that not to be there. The amendment says a systemic risk. We say, given the volatility of this instrument, derivatives, given the uncertainty, that waits too long to say no. That allows caution to be absent for too long a time. We should not wait until the car's about to go over the cliff to test the brakes. We say let's stop a good ways back. And it's entirely within the control of the end user.

What this says is, if you are an end user, do not impose on your counterparty the likelihood of significant loss, because a loss here and a loss there and a loss in another place cumu-

lates to a problem. And if they say, well, it's too hard to tell, that's exactly our point. Don't make it hard to tell. Know who you're dealing with. Don't engage in transactions with counterparties when you aren't in a position to gauge their financial responsibility. Don't use the exemption you have from our regulation that applies to the financial speculators to engage in imprudent transactions, not just imprudent for you, but imprudent for the other guy, because what we've learned is it is important these are mutual events, and that's precisely the issue. Yes, there should be an end user exemption, but end users who disregard prudence and engage in transactions with people who don't have the money to back that up are potentially inflicting a harm on the system.

Now, the proponents of the amendment agree that we should take away that exemption if the system is harmed, but they wait too late to avert disaster.

□ 1930

The Acting CHAIR. The gentleman's time has expired.

The question is on the amendment offered by the gentleman from New York (Mr. MURPHY).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. MURPHY of New York. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New York will be postponed.

AMENDMENT NO. 7 OFFERED BY MR. FRANK OF MASSACHUSETTS

The Acting CHAIR. It is now in order to consider amendment No. 7 printed in House Report 111-370.

Mr. FRANK of Massachusetts. I offer amendment No. 7.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. FRANK of Massachusetts:

At the end of title III, add the following new section:

**SEC. —. AUTHORITY TO SET MARGIN OR COLLATERAL REQUIREMENT FOR SWAPS AND SECURITY-BASED SWAPS INVOLVING END USERS.**

(a) IN GENERAL.—Subject to subsection (b):  
(1) PRUDENTIAL REGULATORS.—A Prudential Regulator may impose a margin or collateral requirement with respect to a swap or security-based swap a counterparty to which is an end user which is a bank or bank holding company subject to regulation by the Prudential Regulator.

(2) COMMODITY FUTURES TRADING COMMISSION.—The Commodity Futures Trading Commission may impose a margin or collateral requirement with respect to a swap a counterparty to which is an end user (other than an end user described in paragraph (1)), and the other counterparty to which is a swap dealer or major swap participant for which there is no Prudential Regulator.

(3) SECURITIES AND EXCHANGE COMMISSION.—The Securities and Exchange Commission may impose a margin or collateral requirement with respect to a security-based swap a counterparty to which is an end user (other than an end user described in paragraph (1)), and the other counterparty to which is a security-based swap dealer or major security-based swap participant for which there is no Prudential Regulator.

(b) REQUIREMENTS.—Any margin or collateral requirement imposed under subsection (a) with respect to a transaction shall be commensurate with the risk involved in the transaction, and allow for the use of non-cash collateral.

(c) LIMITATION ON APPLICABILITY.—This section shall not apply to a swap or security-based swap entered into before the end of the 90-day period that begins with the effective date of this section.

(d) DEFINITIONS.—In this section:

(1) END USER.—The term “end user” means a person who is not a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant.

(2) OTHER TERMS.—The other terms shall have the meanings given the terms in section 1a of the Commodity Exchange Act.

(e) EFFECTIVE DATE.—

(1) PRUDENTIAL REGULATORS.—Subsection (a)(1) shall take effect—

(A) with respect to swaps, as if included in subtitle A; and

(B) with respect to security-based swaps, as if included in subtitle B.

(2) COMMODITY FUTURES TRADING COMMISSION.—Subsection (a)(2) shall take effect as if included in subtitle A.

(3) SECURITIES AND EXCHANGE COMMISSION.—Subsection (a)(3) shall take effect as if included in subtitle B.

The Acting CLERK. Pursuant to House Resolution 964, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chair, this amendment was something that was requested very much by the regulators who administer this approach, and it would allow them, but not mandate, that margin or collateral requirements be set.

Once again, we have accepted here an exemption for end users over the objection of many who think we have gone too far. But we are dealing here with an inexact science, and we would have the regulators be able—under this amendment, not required, but able—to set margin requirements. It would allow them to be set, margin or collateral requirements, in noncash. That's very important. It would not require people who are using this to hedge commercial risks to sell things to come up with the cash. And if, in fact, they were doing this in a prudent way and they posted noncash collateral, there would be no great problem because this noncash collateral could be still used for its other purposes.

So the question is should we say that the regulators, the CFTC and the SEC, should be denied what they have asked for, which is the right to impose the margin or collateral requirements in

those cases of lighter regulation where they think this is important to avoid the kind of imbalances we had before.

The purpose is, of course, to prevent again the situation where one party or the other makes commitments it is unable to live up to. And this is a requirement—this is an empowerment of the regulators to act where they think there's a problem to prevent this from happening.

I reserve the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I claim time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minute.

Mr. GARRETT of New Jersey. I yield myself 1 minute.

This probably is the most critical amendment that we will consider today that addresses the derivative portion of the legislation to the chairman's question of whether we should say "yes" or "no" to the claim for more power to these entities.

I would say we should tell them "no," and the reason is because neither the administration nor the majority nor the chairman has provided any substantial evidence whatsoever of any specific OTC derivatives, how they cause a financial crisis.

Derivatives are something that the companies use to try to hedge the risk. Clearly, we must make sure there's transparency and accountability—and I have already spoken about that—and we can do so in a way, however, that will not hamper their ability to control costs, not to manage risks, compete in the global marketplace. This would all hurt that.

And when you talk about the end users in this and what they're doing, remember it was the end users, large and small, the public and private American businesses, they, they were the victims, not the cause, of the financial crisis.

Derivative dealers and their customers, the end users, they're in the best position to determine what are the appropriate margin requirements, not giving more authority to the SEC or the CFTC or any other financial regulators.

I reserve my time.

Mr. FRANK of Massachusetts. I will yield myself 1 minute to say I'll accept the way the gentleman from New Jersey put it. Should we give the regulators more power? That is the constant theme dividing us.

We look, many of us, at what happened over the past 15 years and say there was too little regulatory action, partly because some regulators who had the power wouldn't use it, like Mr. Greenspan at the Federal Reserve and some in the SEC, but partly because there was not sufficient regulatory powers. This is discretionary with the CFTC and SEC.

Every trade has to be margined. It does say that to assume that no trade

has to be margined is a mistake, and it is, therefore, a discretionary grant of authority to the regulators.

And yes, if you think that what we should do is to continue a relatively wholly unregulated regime, and if you distrust the notion of regulation to the point where you would not give them discretionary authority—again, they have no authority under this to take away the end user exemption. We have decided that regulators, CFTC, the current incumbent, didn't like that. We have accepted the legitimacy of the end user exemption. But to say that never should there be a margin requirement we think is a grave error, and that's why I support this amendment.

I reserve the balance of my time.

Mr. GARRETT of New Jersey. I now yield 2 minutes to the gentleman who also distrusts regulations as we have seen and the SEC and their handling of the SEC situation and the OTS and the regulation of the AIG situation, the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Madam Chairman, the end users of derivatives are the ones that utilize these derivatives. And these weren't large, national companies. They were small businesses. They set the collateral requirements. They set the margin requirements, and they did so safely. They didn't cause the financial meltdown. They were the victims of that meltdown. And they established those collateral requirements and the margins. They did so in an appropriate way. In fact, you know, what the chairman said, the SEC and the CFTC ought to do this. You know, actually, they didn't act in a very responsible manner leading up to this meltdown last September.

Let me simply say this: Requiring greater margin and capital requirements on companies that never got in trouble leads to fewer jobs. It's going to lead to greater volatility in food and energy prices, and a loss of capital investments.

I'm just going to give you two pieces of testimony before our committee.

Steve Holmes of Deere and Company said, "We have a number of contracts that extend well into the future. If these existing contracts are not permitted an exemption from clearing and collateral requirements, we would have to terminate the transactions at a significant cost." That would cost John Deere workers their jobs.

John Hixson of Cargill, Inc., said, "For us, we've estimated it (collateral requirements) would cost approximately \$1 billion depending on market conditions—an additional amount of money we'd have to borrow. We've built a brand new oil seed facility. Our largest in the U.S. is in Kansas City. So we have to choose: whether you put the money in margin, or do you continue and build that plant? That's the type of thing we'd have to decide," marginal requirements or jobs.

Mr. FRANK of Massachusetts. Again, the question is whether we should decide now that there will never be such a requirement. As to it costing a lot of money, the amendment specifically says that they should be allowed to use noncash collateral. That means they could pledge certain of their own assets, which could mean no cost.

It also says that the regulators shall impose the requirements commensurate with the risk involved in the transaction. Once again, we give incentives here for people to minimize risk, and I think that's the appropriate market approach.

We are, as I said, mandating these to be imposed. We are allowing them to be a noncash collateral, and we said they should be commensurate with risk.

The opposition argument is never. There will never be such a thing. There are no imprudent end users. There is no need ever to have them. The failure of trades in an individual case can be a problem for an individual company. They can cumulate. And that is the question: Do we say that we are willing to go forward with this issue with no power in any regulator to say that particular trades are being conducted in an imprudent fashion?

□ 1940

Because if they are conducted in an imprudent fashion, there is no power here because any margin requirement must be commensurate with risk. We have stricken the notion. The gentleman from Minnesota raised that point. There was at some point some language that we had that said it had to be greater than zero. We said, no, it does not have to be greater than zero, it is commensurate with risk.

And that is the issue. We are being asked to say we have complete confidence that there will never be the kind of imprudent trades that could begin to cause trouble in the system, and therefore, we will deny the regulators the power even to consider this.

I yield back the balance of my time.

Mr. GARRETT of New Jersey. I yield the balance of my time to the gentleman from Minnesota (Mr. PETERSON).

The Acting CHAIR. The gentleman from Minnesota is recognized for 2 minutes.

Mr. PETERSON. I thank the gentleman.

I rise in opposition to this amendment. This issue of authority for regulators to set margin requirements for end users was one issue that we could not agree upon during our negotiations, so I think it's appropriate that we resolve it here.

First, I want to remind Members that in the underlying Peterson-Frank amendment that we've adopted with regard to swap dealers and major swap participants and their security-based swap counterparties, regulators will

have full authority to set margin requirements appropriate for the uncleared swaps that they hold. So that authority will be in place with regard to the banks.

Because swap dealers and major swap participants are so heavily involved in the swap market and are interconnected with potentially hundreds of different counterparties, we believe it's important that we regulate their margins for the protection of their end-user customers and the financial system as a whole.

However, I don't think that we need the regulators putting margin requirements on end users in order to protect the swap dealers and major swap participants. I think they can look out for themselves.

The so-called end user community of energy companies, manufacturers and on and on, did not, as has been said, cause the problem. They are concerned about potential impact of this amendment, and so I urge my colleagues to oppose the amendment.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Massachusetts (Mr. FRANK).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. GARRETT of New Jersey. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Massachusetts will be postponed.

AMENDMENT NO. 8 OFFERED BY MR. STUPAK

The Acting CHAIR. It is now in order to consider amendment No. 8 printed in House Report 111-370.

Mr. STUPAK. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. STUPAK:

At the end of title III, insert the following new section:

**SEC. \_\_\_\_ . ADDITIONAL RULES REGARDING EXECUTION AND CLEARING OF SWAPS AND SECURITY-BASED SWAPS.**

(a) SWAPS.—Section 2(j)(7) of the Commodity Exchange Act (7 U.S.C. 2), as added by the preceding provisions of this Act, is amended—

(1) in subparagraph (A), by striking “and where both counterparties are either swap dealers or major swap participants, such counterparties” and inserting “, the parties”; and

(2) by redesignating subparagraph (C) as subparagraph (D) and inserting after subparagraph (B) the following:

“(C) CERTAIN SWAPS NOT REQUIRED TO BE CLEARED.—

“(i) IN GENERAL.—A swap that qualifies for the exception of paragraph (8)(A)(i) shall not be executed, except on or through a swap execution facility registered with the Commission.

“(ii) ADDITIONAL EXCEPTIONS.—Clause (i) shall not apply to a swap if no swap execution facility makes the swap available to trade or execute.

“(iii) RULE OF INTERPRETATION.—This subparagraph shall not be interpreted to require any swap to be cleared.”.

(b) SECURITY-BASED SWAPS.—Section 5A(a) of the Securities Exchange Act of 1934, as added by the preceding provisions of this Act, is amended—

(1) in paragraph (1), by striking “section 3B and where both counterparties are either swap dealers or major swap participants, such counterparties” and inserting “section 3B(a)(1), the parties”; and

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

“(3) CERTAIN SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED.—

“(A) IN GENERAL.—A security-based swap that qualifies for the exception of section 3B(h)(1)(A) shall not be executed except on a swap execution facility registered with the Commission.

“(B) ADDITIONAL EXCEPTIONS.—Subparagraph (A) shall not apply to a security-based swap if no swap execution facility makes the security-based swap available to trade or execute.

“(C) RULE OF INTERPRETATION.—This paragraph shall not be interpreted to require any security-based swap to be cleared.”.

(c) EFFECTIVE DATE.—

(1) SWAPS.—The amendments made by subsection (a) shall take effect as if included in subtitle A.

(2) SECURITY-BASED SWAPS.—The amendments made by subsection (b) shall take effect as if included in subtitle B.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Michigan (Mr. STUPAK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. STUPAK. Madam Chair, Chairman FRANK and Chairman PETERSON have provided the framework for regulation of the swaps markets in H.R. 4173, but I believe Congress can improve this bill by requiring additional transparency. We could pass the most comprehensive and thorough regulation of the financial sector imaginable, but it would be meaningless if we continue to leave loopholes in place to evade regulation. As we saw in the oil markets of 2008, leaving loopholes in place for speculators costs consumers more of their hard-earned money.

Swaps are financial contracts that allow a company to lock in prices on everything from currency to oil to pork bellies. In 2008, roughly \$80 trillion was traded on regulated exchanges worldwide. And as astonishing as that figure is, it pales in comparison to the more than \$600 trillion traded over-the-counter, or in unregulated dark markets. This is seven-and-a-half times what was traded on regulated markets. To put that into perspective, the total gross domestic product of the United States is \$14.4 trillion or 41 times smaller than the unregulated swaps market. These unregulated markets

create a systemic risk across the financial system and helped bring Lehman Brothers, Bear Stearns and AIG into bankruptcy and our economy to the verge of disaster.

The best way to address this problem is to require Wall Street financial houses to post collateral and clear their swaps contracts on regulated exchanges. If we can't guarantee that Wall Street will post collateral, have some skin in the game, we should at least require that these trades be made in the open, transparent markets.

My amendment establishes a simple requirement: Swaps by end dealers that could clear will remain exempt from clearing because one of the parties in that contract is a bona fide hedger. However, the swaps still should be reported on an exchange. Much of the concern over the dark swaps markets is the lack of information that ensure a competitive, transparent market. By adopting this amendment, the marketplace will become more open, and end users and other important swap users can accurately determine fair prices.

Nothing, and let me repeat, nothing in this amendment requires a new clearing requirement. It's all about transparency and nothing more. Our amendment specifically includes a provision stating that the amendment “shall not be interpreted as requiring any swap to be cleared.”

CFPC Chairman Gary Gensler originally proposed the concept for required reporting on specific swaps, and supports our amendment that requires transparency in swaps markets. I would like to submit his letter of support in the RECORD.

As Chairman Gensler told the House Energy and Commerce Committee last week, “Economists have for decades recognized transparency benefits the marketplace” and that “lack of regulation in these markets has created significant information deficits.”

There are a number of groups who support this legislation and this amendment, including Americans for Financial Reform, which includes United Food and Commercial Workers, AFL-CIO, a number of groups.

Without our amendment, a significant portion of the swaps market will remain in the dark, and unscrupulous traders will remain out of reach of regulators.

I urge Members to adopt this amendment and bring these swap contracts out of the dark markets.

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Washington, DC, December 10, 2009.

Hon. BART STUPAK,  
House of Representatives,  
Washington, DC.

Hon. CHRIS VAN HOLLEN,  
House of Representatives,  
Washington, DC.

DEAR CONGRESSMEN STUPAK AND VAN HOLLEN: I am writing in support of your amendment to H.R. 4173, the Wall Street Reform

and Consumer Protection Act of 2009, which would require transparency in swaps contracts by requiring all standardized non-cleared swaps be executed on a registered swap execution facility. This requirement would apply only to those contracts listed for trading while still fully allowing hedgers to enter into customized transactions off-exchange. In addition, the amendment explicitly states that it "shall not be interpreted to require any swap to be cleared." Your amendment would be an important addition to a very strong bill.

In the past few months, Congress has taken historic steps to bring comprehensive regulation to the over-the-counter derivatives markets. H.R. 4173 fully regulates swap dealers and requires that all standardized trades between these Wall Street swap dealers be brought into clearinghouses and transparent trading facilities. Your amendment strengthens the bill by broadening the transparency requirement to include all standardized derivatives transactions. Under H.R. 4173, while big Wall Street banks would be subject to the requirement when trading with each other, those same Wall Street banks would be exempt when trading with many of their customers. Your amendment would close this exemption and increase the amount of information available to the public and market participants.

Economists have for decades recognized that market transparency benefits the public by lowering costs. If derivatives users knew what others were paying to enter into similar contracts, they would receive better pricing on their transactions. A municipality could better decide whether or not to hedge an interest rate risk based upon the reported pricing from the broader market. As a nation, we do not stand for this lack of transparency in other markets. For example, one would not purchase 100 shares of his or her favorite stock without knowing the last price at which those shares sold. Similarly, one would not buy an apple at the supermarket if the price was kept private. Transparency in the over-the-counter derivatives marketplace would shift the information advantage from Wall Street to the businesses, municipalities and nonprofit organizations that you represent in Congress. This would lower the cost of hedging and thus the costs to customers and promote economic growth in every sector of the economy.

Your amendment accomplishes the critical goal of promoting transparency without imposing any additional costs on business as it does not require these end-user trades to be cleared by central counterparties. Your amendment separates mandatory trading on transparent trading venues from a central clearing requirement that would require businesses to post margin. The two should not be confused. Transparency can be required while leaving the clearing decision up to the parties involved in particular transactions.

I commend you for your efforts to bring greater transparency to the currently opaque over-the-counter derivatives marketplace.

Sincerely,

GARY GENSLER,  
Chairman.

I reserve the balance of my time.

Mr. LUCAS. Madam Chairman, I rise to claim the time in opposition.

The Acting CHAIR. The gentleman from Oklahoma is recognized for 5 minutes.

Mr. LUCAS. Madam Chairman, I yield myself 2 minutes.

This amendment is just another solution in search of a problem. What risk is this amendment looking to eliminate? Both the House Agriculture Committee passed language and the Peterson-Frank amendment, which this seeks to amend, recognize that there are swaps that need not go through the cost and formality of the executed on an exchange or swap execution facility.

As long as the regulator can see the swap and has the appropriate tools to mitigate risk to the U.S. financial system, what more does the exchange execution require add?

This amendment requires unique agreements of no consequence to anyone but the parties involved to be regulated as if it were a credit default swap transacted between systemically risky counterparties. These swaps serve no price discovery function, they aren't conducted between systemically risky parties, and most are unique for an exchange or SEF to appropriately rate the risk.

Forcing these swaps to be executed on an exchange or SEF will only artificially increase the cost of managing risk or discourage legitimate risk management activity altogether. Neither should be the purpose of this legislation.

I urge the defeat of the amendment and reserve the balance of my time, Madam Chairman.

Mr. STUPAK. Madam Chair, I yield 2 minutes to the co-author of this amendment, Mr. VAN HOLLEN from Maryland, who is a champion on this issue.

Mr. VAN HOLLEN. Madam Chair, I'm very pleased to join with my colleague, Mr. STUPAK, in offering this amendment. I want to commend Chairman FRANK and Chairman PETERSON for bringing a strong bill to the floor.

It's time to finally hold Wall Street and the big banks accountable and never allow them again to hold the American economy hostage and leave the American taxpayer holding the bag. We cannot ask the taxpayers to pay for bad bets made by Wall Street bankers.

This amendment strengthens what is already a good bill. And as my colleague, Mr. STUPAK, has said, what it calls for is simply greater transparency in transactions. Transparency in the over-the-counter derivatives market will shift the information advantage to a small group of Wall Street bankers to businesses, municipalities, nonprofit organizations and to the taxpayer. Why are we afraid of a little sunshine? That is what this amendment is about.

I want to read to the Members a letter that we received, Mr. STUPAK and I, from Gary Gensler, the chairman of the CFTC, and it was addressed to us. It says, "Your amendment accomplishes the critical goal of promoting transparency without imposing any additional costs on business as it does not

require these end-user trades to be cleared by central counterparties."

I want to emphasize that point because there are certain trades obviously in this legislation that do need to be cleared through central counterparties and clearinghouses. But this is for the remainder. We are saying what is left over should at least be transparent. We should know about it. The taxpayer should know about it. People who want to look at the market and make decisions should know about it.

He goes on to say, "Your amendment separates mandatory trading on transparent trading venues from a central clearing requirement that would require businesses to post margin. The two should not be confused."

□ 1950

This does not require anyone to put up a margin. We're saying these transactions have to be transparent.

Finally, he makes the point that "transparency can be required while leaving the clearing decision up to the parties involved in particular transactions."

Let's vote for transparency. Let's vote for sunshine. Let's vote for this amendment.

Mr. LUCAS. Madam Chair, I yield 2 minutes the gentleman from Minnesota (Mr. PETERSON), the chairman of the Agriculture Committee.

Mr. PETERSON. I thank the gentleman for yielding.

Madam Chair, I rise in opposition to this amendment, and I do so reluctantly because I know the concept of what the gentleman is trying to accomplish has been endorsed by CFTC Chairman Gensler.

First, let me explain what's already in the Peterson-Frank amendment. If clearing mandate applies to a swap or class of swaps, then the swap dealers and major swap participants not only have to clear such trades but also have to execute them on or through a futures or securities exchange or a swap execution facility. Now, banks hate this because it will expose their trades among themselves to the light of day. It will provide greater price transparency and will narrow their spreads and cost them money, all to the benefit of the end user. For the end users, we provide an exemption from the clearing mandate and, consequently, from the execution mandate.

Mr. STUPAK's amendment would preserve the clearing exemption but impose an execution mandate on end users, the idea being that the more swaps that can go through a swap execution facility, the greater price transparency you receive, the better deal an end user can make.

In theory, this all makes sense; however, the end user community doesn't buy it. They question whether the price information that will come out of the swap execution facility will actually be beneficial to them, and they

also know that there will be costs to bear because the facilities won't perform this service for nothing. End users don't know whether the benefits will outweigh the costs. I have a real problem telling people that are in the business what's good for them when they don't believe it.

So I have here a letter from various groups who like the Peterson-Frank approach. Among them are the American Gas Association, the Public Gas Association, Public Power Association, Wind Energy, Edison Electric, Electric Power Supply Association, Independent Petroleum Association, Natural Gas Supply Association, NRECA, the Chamber of Commerce, 3M, Cargill, John Deere, Caterpillar, Medtronic, Zimmer, Ecolab, and others.

So I ask my colleagues to oppose the amendment.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. STUPAK).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. LUCAS. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

#### AMENDMENT NO. 9 OFFERED BY MR. STUPAK

The Acting CHAIR. It is now in order to consider amendment No. 9 printed in House Report 111-370.

Mr. STUPAK. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mr. STUPAK:

At the end of title III, insert the following new sections:

#### SEC. \_\_\_\_\_. **AUTHORITY TO BAN ABUSIVE SWAPS.**

The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly, by rule or order, prohibit transactions in any swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of such Act) which the Commodity Futures Trading Commission and the Securities Exchange Commission find would be detrimental to the stability of a financial market or of participants in a financial market.

#### SEC. \_\_\_\_\_. **ELIMINATION OF CONSIDERATION OF BALANCE SHEET RISK IN DETERMINING THE COMMERCIAL RISK OF BONA FIDE HEDGING END USERS.**

(a) Section 1a(39)(A)(i) of the Commodity Exchange Act (7 U.S.C. 1a), as added by the preceding provisions of this Act, is amended by striking "and balance sheet".

(b) Section 2(j)(8)(A)(ii) of the Commodity Exchange Act (7 U.S.C. 2), as added by the preceding provisions of this Act, is amended by striking "or balance sheet".

(c) Section 3(a)(67)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding provisions of this Act, is amended by striking "and balance sheet".

(d) Section 3B(h)(1)(B) of the Securities Exchange Act of 1934, as added by the preceding provisions of this Act, is amended by striking "and balance sheet".

(e)(1) The amendments made by subsections (a) and (b) shall take effect as if included in subtitle A.

(2) The amendments made by subsections (c) and (d) shall take effect as if included in subtitle B.

#### SEC. \_\_\_\_\_. **LEGAL CERTAINTY OF CERTAIN SWAP CONTRACTS.**

(a) IN GENERAL.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)), as amended by the preceding provisions of this Act, is amended—

(1) in paragraph (4)(A), by inserting "and entered into before the effective date of this paragraph," after "investor";

(2) in paragraph (4)(B), by inserting "and entered into before the effective date of this paragraph," after "between eligible contract participants"; and

(3) in paragraph (5), by inserting "and entered into before the effective date of this paragraph," after "United States".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in subtitle A.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Michigan (Mr. STUPAK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. STUPAK. Madam Chair, this amendment was crafted with the help of Representatives DeLauro, Larson, and Van Hollen. We worked and reached an agreement with Chairman FRANK and Chairman PETERSON to enhance regulation of the over-the-counter derivatives market. I want to thank my colleagues and both chairmen for their work.

Our amendment provides additional assurances that the swaps market will be policed and prevents speculative financial companies from evading regulations or otherwise ignoring the law. Under this amendment, the CFTC and the SEC will be granted authority to prohibit swap transactions that pose a risk to the financial marketplace. Certain swaps, such as naked credit default swaps, are pure speculative bets that a company will fail and should be banned. As we learned in 2008, credit default swaps and other swap transactions pose a systemic risk to our economy and accelerated the economic collapse.

This amendment also narrows the definition of determining which companies are and are not bona fide hedging end users. Commercial companies that use commodities and securities to lock in prices and hedge the risk of their products, such as airlines, trucking companies, and electric utilities, did not create the current financial crisis. H.R. 4173 reflects this reality, but its exception for clearing swaps on an exchange is written so broadly that financial speculators and private pools of capital can be treated as bona fide hedgers.

To maintain strong standards for financial companies, we must ensure illegal swap transactions do not remain a valid contract in a court of law. Our amendment prevents a company that enters into a swap contract to remain liable for payment under the swap contract if the counterparty has acted illegally in creating, executing, or reporting the swap.

This amendment is the result of hard work between Chairman FRANK, Chairman PETERSON, and my colleagues and me to reach an agreement. This amendment will preserve the ability of bona fide end users to hedge commercial risk with strong standards for Wall Street financial companies.

I urge adoption of this amendment.

DECEMBER 8, 2009.

Re support H.R. 4173, "Wall Street Reform and Consumer Protection Act of 2009".

HOUSE OF REPRESENTATIVES,  
Washington, DC.

DEAR REPRESENTATIVE: The undersigned organizations strongly urge you to support H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009," when it comes to the House floor this week. We write individually and also on behalf of Americans for Financial Reform, a coalition of more than 200 national, state and local consumer, labor, retiree, investor, community, business and civil rights organizations who are campaigning for real reform in our nation's financial system.

The need for this legislation could not be more obvious. Years of deregulation have produced a financial system that is a threat to our economy. Rampant abuses in consumer lending practices, combined with a casino mentality on Wall Street and the willful blindness of federal regulators, have plunged our economy into its worst economic crisis since the Great Depression—and it is clear that Wall Street has not learned its lessons. While H.R. 4173 needs to be strengthened, it contains vital reforms for our country and must be passed.

A number of amendments will be offered which will fundamentally affect the shape of this legislation. In order to ensure meaningful financial reform, we strongly urge you to:

Oppose the Minnick amendment to eliminate a new Consumer Financial Protection Agency (CFPA) from the bill. It would leave enforcement of consumer protection and civil rights laws in the hands of the same existing regulatory bodies that resoundingly failed to use them.

Support the Stupak/DeLauro/Larson/Van Hollen amendment on derivatives. Regulators must have the authority to ban abusive derivatives instruments rather than simply reporting them to Congress, transactions which violate the law should be considered invalid, and loopholes which leave too many trades to continue in the shadows must be closed.

At the same time, we believe that as the legislative process moves forward, H.R. 4173 must be improved in important respects including:

The bill provides systemic regulatory authority to the Board of Governors of the Federal Reserve without reforming the Federal Reserve System to remove the banks themselves from a role in overseeing the Federal Reserve's regulatory staff. We need a fully public systemic risk regulator, either in the form of a separate agency as detailed in Chairman Dodd's proposal, or a reformed Federal Reserve.

The proposed CFPA needs to have jurisdiction over the Community Reinvestment Act (CRA), as it does in Chairman Dodd's proposal. The CRA is vital to fighting discriminatory, deceptive, and unsustainable lending practices in minority communities. But as is the case with other consumer protection and civil rights laws, CRA enforcement in recent years has been extremely weak, allowing a wide range of under-regulated, non-bank—and often predatory—lenders to fill the void.

The legislation should also be changed to give the SEC authority to make the exemption from registration under the 1940 Act for private investment funds contingent upon such funds fulfilling requirements established by the SEC.

Despite the need for these improvements, passage of H.R. 4173 would represent dramatic progress towards a financial system that works for all Americans. By voting for it, you will send an important message to the American public that you intend to change the way that Wall Street works for the better.

Thank you for your consideration of our views. If you have any questions, please contact Rob Randhava, Leadership Conference on Civil Rights, and Lisa Donner, Americans for Financial Reform.

Sincerely,

AMERICANS FOR FINANCIAL REFORM.

Following are the partners of Americans for Financial Reform. All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

A New Way Forward; AARP; ACORN; Adler and Colvin; AFL-CIO; AFSCME; Alliance For Justice; Americans for Democratic Action, Inc.; American Income Life Insurance; Americans for Fairness in Lending; Americans United for Change; Calvert Asset Management Company, Inc.; Campaign for America's Future; Campaign Money; Center for Digital Democracy; Center for Economic and Policy Research; Center for Economic Progress; Center for Responsible Lending; Center for Justice and Democracy; Center of Concern; Change to Win; Clean Yield Asset Management; Coastal Enterprises Inc.; Color of Change; and Common Cause.

Communications Workers of America; Community Development Transportation Lending Services; Consumer Action; Consumer Association Council; Consumers for Auto Safety and Reliability; Consumer Federation of America; Consumer Watchdog; Consumers Union; Corporation for Enterprise Development; CREDO Mobile; CTW Investment Group; Demos; Economic Policy Institute; Essential Action; Greenlining Institute; Good Business International; HNMA Funding Company; Home Actions; Housing Counseling Services; Information Press; Institute for Global Communications; Institute for Policy Studies; Global Economy Project; International Brotherhood of Teamsters; Institute of Women's Policy Research; and Krull & Company.

Laborers' International Union of North America; Lake Research Partners; Lawyers' Committee for Civil Rights Under Law; Leadership Conference on Civil Rights; Move On; NASCAT; National Association of Consumer Advocates; National Association of Neighborhoods; National Coalition for Asian Pacific American Community Development; National Community Reinvestment Coalition; National Consumer Law Center (on behalf of its low-income clients); National Con-

sumers League; National Council of La Raza; National Fair Housing Alliance; National Federation of Community Development Credit Unions; National Housing Institute; National Housing Trust; National Housing Trust Community Development Fund; National NeighborWorks Association; National Training and Information Center/National People's Action; National Council of Women's Organizations; Next Step; OMB Watch; Opportunity Finance Network; and Partners for the Common Good.

PICO; Progress Now Action; Progressive States Network; Poverty and Race Research Action Council; Public Citizen; Sargent Shriver Center on Poverty Law; SEIU; State Voices; Taxpayer's for Common Sense; The Association for Housing and Neighborhood Development; the Fuel Savers Club; The Seminal; U.S. Public Interest Research Group; Union Plus; United Food and Commercial Workers; United States Student Association; USAction; Veris Wealth Partners; Veterans Chamber of Commerce; Western States Center; We the People Now; Woodstock Institute; World Privacy Forum; UNET; Union Plus; and Unitarian Universalist for a Just Economic Community.

#### PARTIAL LIST OF STATE AND LOCAL SIGNERS

Alaska PIRG; Arizona PIRG; Arizona Advocacy Network; Arizonans For Responsible Lending; Association for Neighborhood and Housing Development NY; Audubon Partnership for Economic Development LDC, New York NY; BAC Funding Consortium Inc., Miami FL; Beech Capital Venture Corporation, Philadelphia PA; California PIRG; California Reinvestment Coalition; Century Housing Corporation, Culver City CA; Center of Concern; Center for Media and Democracy; CHANGER NY; Chautauqua Home Rehabilitation and Improvement Corporation (NY); Chicago Community Loan Fund, Chicago IL; Chicago Community Ventures, Chicago IL; Chicago Consumer Coalition; Citizen Potawatomi CDC, Shawnee OK; Colorado PIRG; Coalition on Homeless Housing in Ohio; Community Capital Fund, Bridgeport CT; Community Capital of Maryland, Baltimore MD; Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ; and Community Redevelopment Loan and Investment Fund, Atlanta GA.

Community Reinvestment Association of North Carolina; Community Resource Group, Fayetteville A; Connecticut PIRG; Connecticut Association for Human Services; Consumer Assistance Council; Cooper Square Committee (NYC); Cooperative Fund of New England, Wilmington NC; Corporacion de Desarrollo Economico de Ceiba, Ceiba PR; Delta Foundation, Inc., Greenville MS; Economic Opportunity Fund (EOF), Philadelphia PA; Empire Justice Center NY; Enterprises, Inc., Berea KY; Fair Housing Contact Service OH; Federation of Appalachian Housing; Fitness and Praise Youth Development, Inc., Baton Rouge LA; Forward Community Investment (Madison, WI); Florida Consumer Action Network; Florida PIRG; Funding Partners for Housing Solutions, Ft. Collins CO; Georgia PIRG; Green America; Grow Iowa Foundation, Greenfield IA; Homewise, Inc., Santa Fe NM; Idaho Nevada CDFI, Pocatello ID; and Idaho Chapter, National Association of Social Workers.

Idaho Community Action Network; Illinois PIRG; Impact Capital, Seattle WA; Information Press CA; Indiana PIRG; Iowa PIRG; Iowa Citizens for Community Improvement; JobStart Chautauqua, Inc., Mayville NY; Keystone Research Center; La Casa Federal Credit Union, Newark NJ; Low Income Investment Fund, San Francisco CA; Long Is-

land Housing Services NY; MaineStream Finance, Bangor ME; Maryland PIRG; Massachusetts Consumers' Coalition; MASSPIRG; Massachusetts Fair Housing Center; Michigan PIRG; Midland Community Development Corporation, Midland TX; Midwest Minnesota Community Development Corporation, Detroit Lakes MN; Mile High Community Loan Fund, Denver CO; Missouri PIRG; Mortgage Recovery Service Center of L.A.; Montana Community Development Corporation, Missoula MT; and Montana PIRG.

National Housing Institute; Neighborhood Economic Development Advocacy Project; New Hampshire PIRG; New Jersey Community Capital, Trenton NJ; New Jersey Citizen Action; New Jersey PIRG; New Mexico PIRG; New York PIRG; New York City Aids Housing Network; Next Step MN; NOAH Community Development Fund, Inc., Boston MA; Nonprofit Finance Fund, New York NY; Nonprofits Assistance Fund, Minneapolis MN; Northern Community Investment Corporation (St. Johnsbury, VT); North Carolina Association of Community Development Corporations; North Carolina PIRG; Northside Community Development Fund, Pittsburgh PA; Ohio Capital Corporation for Housing, Columbus OH; Ohio PIRG; Oregon State PIRG; Our Oregon; PennPIRG; Piedmont Housing Alliance, Charlottesville VA; Rocky Mountain Peace and Justice Center, CO; Rhode Island PIRG; Rural Community Assistance Corporation, West Sacramento CA; and Rural Organizing Project OR.

San Francisco Municipal Transportation Authority; Seattle Economic Development Fund; Siouxiand Economic Development Corporation (Sioux City, IA); Southern Bancorp (Arkadelphia AR); Community Capital Development; TexPIRG; The Association for Housing and Neighborhood Development; The Fair Housing Council of Central New York; The Help Network; The Loan Fund, Albuquerque NM; Third Reconstruction Institute NC; Vermont PIRG; Village Capital Corporation, Cleveland OH; Virginia Citizens Consumer Council; Virginia Poverty Law Center; War on Poverty—Florida; WashPIRG; Westchester Residential Opportunities Inc.; Wigamui Owners Loan Fund, Inc., Lac du Flambeau WI; and WISPIRG.

DECEMBER 10, 2009.

HOUSE OF REPRESENTATIVES,  
U.S. Capitol Building,  
Washington, DC.

DEAR REPRESENTATIVE: The undersigned members of the Commodity Markets Oversight Coalition would like to extend its gratitude to Representative Collin Peterson of Minnesota, Chairman of the House Agriculture Committee, and members of his committee, for the hard work and efforts necessary to bring the over-the-counter (OTC) derivatives legislation, which is a part of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, to the House floor this week.

Both Chairman Peterson and House Financial Services Chairman Barney Frank and the members of their committees are to be commended on their efforts towards meaningful reform of the commodities futures/swaps markets. As members of Congress are well aware, our coalition has since early 2007 advocated for legislation to bring about greater transparency, oversight and accountability in these markets and to empower federal regulators with the authority and resources to protect against fraud, manipulation and excessive speculation.

In light of this, we urge your support for the following floor amendments to H.R. 4173 that will help to strengthen this legislation:



No. 47 (Rep. Stupak)—Would require transparency in swaps contracts by requiring all non-cleared swaps be executed on a registered swap execution facility.

No. 48 (Reps. Stupak, DeLauro, Larson, Van Hollen)—Would give the Commodity Futures Trading Commission and the Securities and Exchange Commission the authority to ban abusive swaps, amends any proposed commercial risk definition to disregard balance sheet risk, and maintains any illegal swap entered into after enactment of this Act will not be valid.

No. 114 (Rep. Peterson)—Would provide for the CFTC to define the terms “commercial risk,” “operating risk,” and “balance sheet risk” for purposes of the Commodity Exchange Act.

No. 115 (Reps. Peterson and Frank)—Would provide for position limits for physical commodities, clearing of over-the-counter transactions, increased transparency, reporting, and recordkeeping, and transparency of off-shore trading. It also addresses jurisdictional issues in the context of swaps by providing for CFTC jurisdiction over swaps and SEC jurisdiction over swaps that are primarily based on securities (or narrow-based security indexes). These two agencies are required to consult with each other and with banking regulators before regulating.

No. 135 (Rep. Lynch)—Prohibits swaps dealers from controlling more than 20% of an exchange. Provides rules toward the equitable governance of clearing houses and swap exchange facilities.

We are hopeful you will send the Senate strong, pragmatic legislation that will bring light to opaque, unregulated or under-regulated markets and market activity, close the door on potential fraud and manipulation, and give federal regulators the tools they need to prevent financial speculation from driving food and energy prices.

Such action is essential to rebuilding confidence in these markets as price discovery and risk management tools for bona-fide physical hedgers, to reducing systemic risk and market volatility, and helping to prevent further destabilization of our nation's economic recovery.

Sincerely,

Agricultural Retailers Association; Air Transport Association; American Feed Industry Association; American Cotton Shippers Association; Arkansas Oil Marketers Association; Colorado/Wyoming Petroleum Marketers Association; Columbian Center for Advocacy and Outreach; California Independent Oil Marketers Association; Florida Petroleum Marketers Association; Food & Water Watch; Friends of the Earth; Fuel Merchants Association of New Jersey; Gasoline and Automotive Service Dealers of America; Independent Connecticut Petroleum Association; Institute for Agriculture and Trade Policy; Illinois Petroleum Marketers Association; Illinois Association of Convenience Stores; Louisiana Oil Marketers & Convenience Store Association; Maine Energy Marketers Association; Maryknoll Office for Global Concerns; Massachusetts Oilheat Council; Mid-Atlantic Petroleum Distributors' Association; Missionary Oblates—Justice, Peace & Integrity of Creation; Montana Petroleum Marketers & Convenience Store Association; National Association of Oilheating Service Managers; National Association of Truck Stop Operators; and National Family Farm Coalition.

National Farmers Union; National Grange; Nebraska Petroleum Marketers & Convenience Store Association; New England Fuel Institute; New Jersey Citizen Action Oil Group; New Mexico Petroleum Marketers Association; New York Oil Heating Association; North Dakota Petroleum Marketers Association; Ohio Petroleum Marketers & Convenience Store Association; Oil Heat Council of New Hampshire; Oil Heat Institute of Long Island; Oil Heat Institute of Rhode Island; Organization for Competitive Markets; Petroleum Marketers Association of America; Petroleum Marketers & Convenience Stores of Iowa; Petroleum Marketers & Convenience Store Association of Kansas; Propane Gas Association of New England; Public Citizen; R-CALF USA; South Dakota Petroleum & Propane Marketers Association; Tennessee Oil Marketers Association; United Egg Producers; Utah Petroleum Marketers & Retailers Association; Vermont Fuel Dealers Association; Western Peanut Growers; and West Virginia Oil Marketers & Grocers Association.

Madam Chair, I reserve the balance of my time.

Mr. LUCAS. Madam Chair, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman from Oklahoma is recognized for 5 minutes.

Mr. LUCAS. Madam Chair, I yield myself 2½ minutes.

This amendment strikes the term “balance sheet” risk from the definition of major swap participant, the result of which prevents corporations from hedging pension of funds costs.

Pension funds are a liability on a corporation's balance sheet. That liability carries risk and that risk needs to be managed. If corporations can't manage pension fund risk, their employees will realize smaller benefits or fewer employees will enjoy pension benefits altogether. Some companies may be forced to join the ranks of employers who have terminated company-based retirement plans.

Another part of the amendment allows a party to a swap to walk away from a swap for failure to comply with the clearing requirement or the execution transparency requirement created in this title. It sounds like a good idea, but let's take a closer look.

The only time a party to a swap will want to walk away from a transaction is when they're losing money. This provision will encourage a swap participant to call his or her attorney when the deal goes sour to find a way to walk away from the liability created by the transaction. This contractual uncertainty will push companies away from risk mitigation, leading to higher operating costs and higher prices to consumers. In addition, this amendment is not needed to punish a counterparty for lack of compliance. If there's noncompliance with the clearing or execution transparency requirements, the CFTC can stop and catch the malefactors.

I urge my colleagues to oppose this amendment.

Madam Chair, I reserve the balance of my time.

Mr. STUPAK. Madam Chair, I yield 2 minutes to the gentlewoman from Connecticut (Ms. DELAURO), the co-author of this amendment.

Ms. DELAURO. I am pleased to join Mr. STUPAK, Mr. VAN HOLLEN, and Mr. LARSON in support of this amendment.

The amendment does three things: It grants the CFTC and the SEC the authority to prohibit specific swaps, including the abuse of naked credit default swaps that distorted the derivatives market. It narrows the bona fide end user exemption in the bill to prevent loopholes that might allow major financial players to evade the requirements of this bill while ensuring that legitimate end users still have access to this financial tool. It ensures that no illegal swap transaction will remain a valid contract in a court of law. We should not countenance predatory behavior in any way, and we should make sure market players are not financially benefiting from the abusive and corrupt practices that helped to initiate this debilitating recession.

With credit default swaps, companies took bets that others would fail without facing any risk themselves in the case of default. Other institutions took those bets even though they could not pay out if the unthinkable happened. It was a casino culture where traders played with taxpayers' dollars and made sure they won either way, always at the expense of regular people.

□ 2000

And when the defaults started to mount up, the whole house of cards came tumbling down.

Why did the credit default swaps, once just a financial tool to hedge risk, become the province of rampant and reckless speculation? Because they remained unregulated. The bill before us is a good step toward repairing this oversight and regulating markets, but we need to do more. Taken together, the changes in this amendment will strengthen regulation over these once useful financial tools and will help ensure that the entire Nation does not get taken for another ride on account of bad behavior in the derivatives market.

I urge my colleagues to support this amendment.

Mr. LUCAS. Madam Speaker, I would note to my colleagues that I have one remaining speaker, and I would turn to him to close when the time is appropriate.

Mr. STUPAK. I yield the balance of my time to the co-author of this amendment, Mr. VAN HOLLEN.

Mr. VAN HOLLEN. I want to thank my colleague, Mr. STUPAK. I am pleased to join with him and Ms. DELAURO and Mr. LARSON in offering this amendment.



I think we should make one thing clear: We all know that, when used properly within an appropriate regulatory framework, derivatives can be valuable tools for hedging commercial risk and provide important consumer benefits. That being said, we have learned all too painfully over the last year that derivatives used improperly and outside of an appropriate regulatory framework can become what Warren Buffett has described as “financial weapons of mass destruction.” When that speculation is permitted to spin out of control on unregulated dark markets, it can create a magnitude of systemic risk sufficient to threaten the entire economy. That’s what we saw with AIG and others.

This amendment that we are offering today will provide important additional oversight to that market by giving regulators the explicit authority to ban abusive swaps, prevent abuse of the end user exemption, and ensure that victims of illegal transactions cannot be held liable for payment to their predatory counterparties in a court of law.

I urge adoption of the amendment and thank Chairmen FRANK and PETERSON for their support of this amendment.

Mr. LUCAS. Madam Chair, I yield my remaining time to close to my colleague and friend, the chairman of the Agriculture Committee, Mr. PETERSON of Minnesota.

Mr. PETERSON. I thank the gentleman.

I rise in opposition to the amendment, and I do so reluctantly because I know the sponsors of this amendment are sincere in their attempt to address potential problems that they fear could arise with the underlying bill. But I have to say that we have looked at these issues in great depth in the committee, and it is not that we haven’t considered them.

In the first issue, banning of financial products, our concern there is that we believe that if we ban these products, they will simply move overseas and outside of our ability to regulate them. And if they are dangerous products and if they are something that shouldn’t be done, I don’t know if it makes any sense if we are just going to transfer that over to a foreign country. Our committee went to Europe. We recognize that most of the companies that do business in the United States also do business in Europe, and that is how we came down on that issue.

Another provision strikes the term “balance sheet risk.” We had considerable discussion about this. We think we have got the right terminology to get at the issue that some of the end users had. They felt that without that term, they might limit some of their transactions. And for those of us in agriculture, these things are very important to us because we are actually

hedging physical risk. That is why I introduced an amendment directing the regulators to define the terms in explicit terms so that we would be clear about this. But as I said during that debate, the Agriculture Committee will definitely haul them up and straighten them out if they don’t get the right answer to that.

Finally, the amendment limits the applicability of legal certainty of swaps. This amendment asks the question why illegal swaps should be enforceable. The answer is that otherwise you will encourage illegal behavior. If a swap dealer or an end user finds itself in a money-losing swap, it would be easy to engage in some illegal behavior to negate the swap and escape its financial liability.

The standard of illegality is not very high. You wouldn’t have to commit fraud to invalidate a swap; you just don’t have to follow the regulations. So do we really want businesses making the calculation between the costs associated with paying a fine to regulators for failing to dot the i’s or cross the t’s versus the costs associated with honoring their swap obligation? If the end user is harmed by the fraudulent action of its swap counterparty, the CFTC has the tools to seek restitution for the end user from the counterparty. Ending legal certainty causes more problems than it solves, in our opinion.

I know the sponsors of this amendment have good intentions, but I think that the amendment goes a little too far to address problems that it seeks to correct, and I would urge my colleagues to oppose the amendment.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. STUPAK).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. FRANK of Massachusetts. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 10 OFFERED BY MS. MATSUI

The Acting CHAIR. It is now in order to consider amendment No. 10 printed in House Report 111-370.

Ms. MATSUI. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Ms. MATSUI: Page 465, after line 2, insert the following new subtitle:

**Subtitle L—Making Home Affordable Program**

**SEC. 9911. PUBLIC AVAILABILITY OF INFORMATION.**

(a) REVISIONS TO PROGRAM GUIDELINES.—The Secretary of the Treasury (in this sec-

tion referred to as the “Secretary”) shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) PUBLIC AVAILABILITY.—Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall include the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

(2) Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant’s name and identification number.

The Acting CHAIR. Pursuant to House Resolution 964, the gentlewoman from California (Ms. MATSUI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from California.

Ms. MATSUI. Madam Chair, I yield myself such time as I may consume.

Madam Chair, I rise today to offer an amendment, along with Representatives KATHY CASTOR and BETTY SUTTON, that calls on the mortgage industry to help place more responsible homeowners into more affordable terms under the Making Home Affordable program.

Sadly, after more than 2 years since the beginning of the foreclosure crisis, much needs to be done to help Americans facing the threat of foreclosure. Leading economists expect another uptick in foreclosures, estimating nearly 5 million homeowners could face foreclosure over the next 2 years.

Madam Chair, my home district of Sacramento has been devastated by this crisis. I have been to foreclosure workshops over and over again. I have seen the hardships and the looks of desperation. The Making Home Affordable

Housing program offers a host of financial incentives to the mortgage industry to help homeowners modify their loans to more affordable terms. It is expected to help nearly 4 million homeowners. Unfortunately, to date, the mortgage industry has yet to demonstrate its commitment to help homeowners. In fact, since the inception of the program nearly 1 year ago, the mortgage industry has placed only 31,000 homeowners into a permanent, affordable loan modification.

Madam Chair, no one here is looking for a bailout, but families need honest assistance. The amendment my colleagues and I are offering today requires mortgage industry participants in the Making Home Affordable program to report basic information on a monthly basis.

Under the amendment, mortgage industry participants would have to report the number of loan modification requests received, the number being processed, the number that have been approved, and the number that have been denied. It would also make that information available to the public through the Treasury Department's Web site.

Madam Chair, it is clear that greater transparency is needed to ensure that all parties are working toward the common goal of helping homeowners. I strongly urge my colleagues to join me in supporting this amendment.

I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Chair, pursuant to section 4 of House Resolution 964, I request that amendment No. 11 be considered out of order. If I may elaborate, it is for the purpose of en blocing some amendments.

Mrs. CAPITO. Madam Chair, I rise to claim time in opposition, although I am not entirely opposed to the gentlelady's amendment.

The Acting CHAIR. Without objection, the gentlewoman from West Virginia is recognized for 5 minutes.

There was no objection.

Mrs. CAPITO. Madam Chair, the gentlelady's amendment deals with the Making Home Affordable program, which has been in effect for most of 2009. I think it is important to note that the Department of the Treasury is already collecting some of this data. But I would like to take this opportunity to express my continued concern, as the gentlelady expressed hers, with the loan modification programs in general.

Earlier this week, the House Financial Services Committee held a hearing in which there was bipartisan frustration with these programs. Rolled out under heralded proclamations that they would help 7 million to 9 million struggling homeowners, to date the loan modifications have helped only a fraction of that.

□ 2010

I have serious concerns that the administration has overpromised on these programs and has unfairly raised borrowers' expectations. Furthermore, we have learned that many of the trial modifications are not being processed with complete documentation. Lack of documentation was one of the main contributors to the foreclosure problem in the first place.

JPMorgan Chase recently disclosed that in November close to 25 percent of their trial modifications failed to make the first payment, and that nearly 50 percent of the borrowers failed to make all three of the first three payments. Furthermore, the Federal Reserve Bank of Boston cites that 30 to 45 percent of borrowers who receive modifications end up in default within 6 months.

Clearly, we need more transparency in this program. We also need to find a way to make the goals of the program work to help those who are having difficulty—who are suffering from unemployment or from the real estate collapse in their areas or who are unable to meet their obligations. All of us hear from constituents every single day who are struggling, but this program, Making Home Affordable, obviously has great lapses and great challenges.

With that, I reserve the balance of my time.

Ms. MATSUI. Madam Chair, I yield 1 minute to my colleague on the Energy and Commerce Committee, the gentlewoman from Florida (Ms. CASTOR).

Ms. CASTOR of Florida. I thank my colleague from California (Ms. MATSUI).

I rise in support of the Matsui amendment.

Madam Chair, all across America, families are doing everything right. They are paying their mortgages. They want to stay in their homes, but loan servicers and the banks have been slow to respond to reasonable requests for modifications.

Like many Democratic Members, I've held a number of foreclosure prevention workshops. What I hear from families is that these banks and the lenders and the servicers will not answer the phones to complete a modification and that, once they get the paperwork, they are not completing these modifications as they should.

Now, while President Obama's Making Home Affordable program has been positive in Florida and while we have over 83,000 modifications underway, we do not have the information necessary to tell where it is working, who it is working for, and which banks and servicers are not helping. So this amendment gets tough on those lenders and servicers.

It says that they have to demonstrate that they are following through with their responsibilities to

modify mortgages for qualified families. It will keep the lenders honest by requiring up-to-date information about modifications, and that information will be made public. No more excuses for these lenders and servicers that have not been holding up their end of the bargain for America's families.

Mrs. CAPITO. Madam Chair, I continue to reserve the balance of my time.

Ms. MATSUI. Madam Chair, I yield 1 minute to my other colleague on the Energy and Commerce Committee, the gentlewoman from Ohio (Ms. SUTTON).

Ms. SUTTON. Madam Chair, I rise today, along with my colleagues Representative MATSUI and Representative CASTOR, in support of the Matsui amendment.

Before Wall Street collapsed, before anyone ever heard of "credit default swaps" and before AIG became a four letter word, homeowners across this country—and especially in Ohio—were already hurting. Responsible Americans were sold mortgages with indecipherable terms, with smoke-and-mirror provisions and with "gotcha" fees. Some lost their jobs and were unable to make payments, and some homeowners are still suffering. Last month, one in every 417 homes in this country received a foreclosure filing. The Making Home Affordable program has helped some homeowners but not enough, and it is time we saw some numbers.

This amendment requires Treasury to post on their Web site important data on mortgage servicer and lender participation in the program so we can hold mortgage servicers and lenders accountable, and so we can ask them "why." Why are you not helping homeowners out of this mess that you created?

This is an important step toward helping Americans stay in their homes. I urge a "yes" vote.

Mrs. CAPITO. Madam Chair, I yield 2 minutes to my colleague on the Financial Services Committee, the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING. I thank the gentlewoman for yielding.

Madam Chair, I could not agree more with the speakers whom I heard or with the intention of the gentlewoman who offered the amendment that we certainly need greater transparency in these taxpayer-funded housing programs.

I would also like to see that we include, maybe, HOPE for Homeowners, for which \$300 billion has been authorized, but on the last date that it's available, which is dating back to July, only 1,000 applications and 50 loans closed. Yet \$300 billion was authorized.

In the HAMP program, there was \$75 billion of taxpayer money for 650,000, apparently, temporary loan modifications on a program that was supposed to help 4 million homeowners.

HARP, the Home Affordable Refinance Program, was supposedly going

to help 4 to 5 million, and instead, there were only 116,000 loans.

Now let's look at what those who actually own the loans have done. There have been 4.7 million workouts that have happened in the competitive marketplace without any interference by government with no taxpayer money expended.

I mean, Madam Chair, this is the kind of transparency that we need. All of these taxpayer-funded foreclosure mitigation programs of this administration and of this Congress have been absolute abject failures. The only loan modification program, foreclosure mitigation program, that is going to work is a job, and we know what the record of this administration and of this Congress is: the highest unemployment rate in a generation and a double-digit unemployment rate.

Until you get rid of the looming storm clouds of Obamanomics, the debt, the spending, and the bailouts, you won't get the jobs. If you don't get the jobs, people can't keep their homes. So I am happy that we will shine a little bit more transparency into this.

Ms. MATSUI. Madam Chair, how much time do I have remaining?

The Acting CHAIR. Both sides have 1 minute remaining.

Ms. MATSUI. Madam Chair, I yield the balance of my time to the chairman of the Financial Services Committee, the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. I support the amendment, but I do have to comment on this job issue.

Once again, it is clear that January 21, 2009, saw a mass disease outbreak—prolonged, profound Republican amnesia. The gentleman from Texas says, under this administration, we've lost jobs. Yes. The Obama recovery from the Bush recession has been slower than we had hoped, but it has begun.

According to the official National Bureau of Economic Research, the Bush recession began in 2007. Large job losses happened under the Bush administration and as a continuation of the Bush policies. We have finally begun to slow down the job loss.

The notion that it is because our economic recovery plan was passed that job loss has continued is, of course, economic illiteracy of the highest sort. The problem is that you do not immediately turn things around. Most economic analysts agree that the economic recovery program has slowed down the rate of job loss, and we have begun to turn it around.

When the gentleman from Texas and other Republicans blame Obama for the Bush mistakes, it's not going to be allowed to go un rebutted.

Mrs. CAPITO. Madam Chair, I would like to say facts are facts. We are, unfortunately, suffering some of the highest unemployment in a generation. These are real people who are losing

real jobs, and we want to help them in their housing issues. I support the gentlewoman's amendment.

I would like to say that, in our hearing, we learned that the servicers and the banks were having some lapses, but we found also that the borrowers were having some lapses as well in terms of providing full documentation, in terms of responding to the lenders and to the servicers.

So I would encourage the gentlewoman, as we move through this process, to maybe expand the transparency of the information so that we can see the full program not just from the servicer's side or from the bank's side but also from the borrower's side, too, and see where their lapses may be as well.

With that, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from California (Ms. MATSUI).

The amendment was agreed to.

□ 2020

AMENDMENT NO. 12 OFFERED BY MR. KANJORSKI

The Acting CHAIR. It is now in order to consider amendment No. 12 printed in House Report 111-370.

Mr. KANJORSKI. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. KANJORSKI:

Page 11, in the item relating to section 7606, strike "Exemption for Nonaccelerated Filers" and insert "Study on methods to reduce the burden of compliance on small companies".

Page 1221, line 19, strike "**EXEMPTION FOR NONACCELERATED FILERS**" and insert "**STUDY ON METHODS TO REDUCE THE BURDEN OF COMPLIANCE ON SMALL COMPANIES**".

Page 1221, strike lines 20 through 25.

Page 1222, strike lines 1 through 2.

Page 1222, on line 3, strike "(b) STUDY.—" and adjust the indentation appropriately.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Pennsylvania (Mr. KANJORSKI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. KANJORSKI. Madam Chairman, I yield 1 minute to the son of one of the original authors of the Sarbanes-Oxley bill, Representative SARBANES of Maryland.

Mr. SARBANES. I thank the gentleman for yielding. I strongly support the Kanjorski-Frank-Sarbanes-Cohen amendment to the bill. This would restore critical investor protections for those who invest in publicly traded companies. And what are those? Number one, that the management establish internal controls with respect to the financial operations of the com-

pany; and, number two, that they get an outside audit to validate the soundness of those controls.

Now, those who oppose this say that the smaller publicly traded companies can't handle the burden of compliance. The costs have come way down, particularly because the SEC has been careful to work with these smaller companies to make sure that that burden is not too heavy.

The fact of the matter is that if you are an investor, it doesn't matter to you whether you are investing in a smaller company or a larger company. What you want to know is that that company is not cooking the books.

If we don't pass this amendment, then almost half of the publicly traded companies in this country will be exempt from these basic transparency requirements. That's why I urge support of it.

Mr. GARRETT of New Jersey. Madam Chair, I rise to claim the time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. GARRETT of New Jersey. Madam Chair, I yield myself 2 minutes.

I would like to begin by commending my colleague from South Jersey, Congressman JOHN ADLER, for his hard work on this very important issue. As all of our colleagues know in New Jersey and around the country, our Nation is in tough economic times right now and these tough times are compounded if you are a small business. And the last thing we need to do is put more burdens on them by imposing costly regulations.

I think we all agree that our Nation's small businesses are not the cause of our current financial situation, but they are the ones who are going to get us out of it. The language in the bill that would permanently exempt small businesses with a market capitalization of \$75 million or less from section 404(b) of Sarbanes-Oxley was added during committee consideration by myself and Mr. ADLER and was adopted by a broad bipartisan vote, with the backing of the White House as well.

Unlike some would like to have you believe, this exemption does not exempt institutions from all auditing requirements. As the Independent Community Bankers Association notes in a letter on this matter, they say, "The regulatory burden will be in addition to their other annual auditing fees, their regular safety and soundness and compliance examinations conducted by the banking agencies, and complying with other numerous Federal and State banking laws and regulations. It will also be in addition to complying with Sarbanes-Oxley section 404(a) which requires management to render an opinion concerning an issuer's internal controls."

Basically all that means is there is a plethora of other regulations providing for transparency for these companies.

Let me give you a quick example about one company in my district, and that is Dewey Electronics. They are located in Oakland, New Jersey, a small company, 35 employees, capitalized \$3.6 million, hardly a company that's going to cause panic in this country if they fail. The CEO, the CFO and other management, they are all located in the same hallway, in the same building. There is constant communication between all the board of directors. They are a perfect example of a small business in which the government should not force new and now highly expensive regulatory requirements in order to have them check off some boxes on some form.

Think about it. The hundreds of thousands of dollars that it will cost them to comply with section 404(b) would be much better spent in developing new and more efficient generators, which is what the company does to support our troops overseas to be used on the battlefield or to be used to hire new employees, which is what we talked about a number of times before on this floor, to make sure that we can provide more jobs as we see the joblessness rate rise.

I reserve the balance of my time.

Mr. KANJORSKI. Madam Chair, I yield 1 minute to the gentleman from Tennessee (Mr. COHEN).

Mr. COHEN. Madam Chair, I want to thank the people I have worked with on this amendment, Mr. KANJORSKI, Mr. FRANK, Mr. SARBANES.

The fact is that Sarbanes-Oxley section 404 is one of the more important pieces that we have in our portfolio to protect consumers against corporate fraud and corporate corruption. When it was passed it was passed by an overwhelming majority, almost unanimous, in this House.

Over the years it hasn't been implemented completely, but now it needs to be implemented, for small companies, \$75 million or less, as well as the large companies where it has already been implemented. As Mr. SARBANES said, the loss to investors from small companies is just as important and potent to them as the loss from large companies. We have so many investors that will be at risk if there are not proper accounting procedures and safeguards for the American public.

As Arthur Levitt, the former chairman of the SEC said, Overturning the most pro-investor legislation in the past 25 years is deeply disturbing. Those who vote against investor protections in Sarbanes-Oxley will bear the investors' mark of Cain. Take it if you choose it.

I submit you should support the amendment.

Mr. GARRETT of New Jersey. Madam Chair, I now yield 1½ minutes to my friend and colleague from South Jersey, Congressman ADLER.

Mr. ADLER of New Jersey. I thank the gentleman from New Jersey.

Much of the legislation we are discussing the last couple of days and tomorrow when we vote is about the failure of this Congress to regulate sufficiently. I mean, it's one instance we have facts, we have data, we have clear evidence of our overregulation. Sarbanes-Oxley has done some very good things, and unfortunately the section 404(b) has chased companies out of the United States of America. We know companies that are doing IPOs, not in New York, but in London. They have said so. We know other companies that have been unable to aggregate capital to go from small to big, to create jobs, the sorts of jobs the President talked about at the Brookings Institution just a couple of days ago. Small companies sometimes become great companies and employ thousands and thousands of people.

Most of this bill we are talking about today and tomorrow will do some very good things to add enough regulation. This one instance, we have to do what Mr. GARRETT and I tried to do, what a bipartisan group in the Financial Services Committee did, which is restore the right balance so small companies aren't crushed from their aspiration of going public, of selling stock to the public, of growing and creating the next Microsoft, IBM, General Electric, the next great companies. We are missing a chance here if we pass this amendment.

The committee did the right thing on a bipartisan basis to grow our economy. Let's not turn our backs on the many Americans who want to have good, decent jobs in this country now.

Mr. KANJORSKI. Madam Chairman, I yield 1 minute to the chairman of the full committee, Mr. FRANK.

Mr. FRANK of Massachusetts. Madam Chair, the SEC has recognized the potential problems for people under \$75 million. They are not now subjected to this. The question is not whether they should be immediately put under this, but whether they should be given a permanent exemption without giving us a chance to have the SEC continue its development of more appropriate rules. The notion that no such requirement should apply, there is an absolutism here that seems to me in error.

Yes, the SEC should treat companies at \$75 million and below differently than people that are at a billion dollars and above, et cetera. But they are in the process of doing this. This is an exemption that is unnecessary at this time. If and when the SEC decides that it is ready to cover them and Members here think that they haven't done an adequate job of providing for it, a motion like this might be in order.

I understand the desire of people to help smaller businesses. But at this point it is a license for people who might want to be abusive by guaranteeing them that they will never be audited despite any effort to make an appropriate audit.

Mr. GARRETT of New Jersey. We should be closing. Are there speakers on the other side?

I will reserve the balance of my time.

Mr. KANJORSKI. As I understand, we are down to our last speaker on the other side; is that correct?

Mr. GARRETT of New Jersey. I am going to close, yes.

Mr. KANJORSKI. I will take the remaining time on our side.

The Acting CHAIR. The gentleman from Pennsylvania is recognized for 2 minutes.

□ 2030

Mr. KANJORSKI. Madam Chairman, this was a very close vote in the committee and a highly contested issue, and I understand that there are hard and good feelings on both sides.

I think the proponents of the amendment that carried in the committee, which now this amendment is trying to reverse here on the floor, were trying to say that government is hurting, in some way, small companies, about 5,000 of them, if we continue to impose 404(b). That's not correct.

First and foremost, 404(b), to the companies that are less than \$75 million in capitalization are not presently compelled to follow any of the existing Sarbanes-Oxley proposals. As a matter of fact, in the underlying bill, it won't be until 2011 that there will be an imposition of that, and only after a study that has already been ordered is made, which, as the chairman of the full committee recognized in his presentation, is that we will have plenty of time, that if that study comes back and says we should make adjustments to 404(b), we'll be able to do that.

The problem of our friends like Mr. Levitt, Mr. Volcker, and many other leading economists in the country and people of high position in economics, they know that for 20 years there has been a fight in this country to try and protect investors from unscrupulous activity. We saw, 7 years ago, Enron and WorldCom, and that's the genesis of where this rule came from. To now summarily reverse this rule because it's not very nice to have companies spend money to protect their shareholders is very appealing. I haven't any doubt that it will appeal.

But we're not talking about—when our adversaries on this particular proposition talk about small business, this isn't small business. These are companies that are registered public companies on the stock exchange and have up to \$75 million in capitalization. That's a pretty large company in most places. It certainly doesn't classify itself, under governmentspeak, to be a small business.

Mr. GARRETT of New Jersey. And now, I shall yield my remaining 1½ minutes to my friend and colleague from the State of Texas.

Mr. HENSARLING. As I listen carefully to this debate, I'm struck by the

fact that this United States Congress doesn't seem to get it. The number one job of this Congress ought to be jobs. Again, I know some on the other side of the aisle take umbrage at the facts, and the facts are, we have double-digit unemployment, the highest unemployment in a generation. 3.6 million have lost their jobs since President Obama became President.

Now, I was informed by the distinguished chairman of the Financial Services Committee that perhaps some, like myself, on this side of the aisle have amnesia because the problem really started in 2007, which conveniently coincides with the year that the Democrats took control of Congress. So apparently, amnesia does not know partisan bounds, Madam Chairman.

So what we have here in front of us is an amendment to put even greater burdens on small business, the job engine of America. How many more regulations, how much more cost do you have to put on small businesses as they're struggling to meet their payrolls, as they're struggling to try to keep their businesses afloat? How many more jobs have to be lost, Madam Chairman? I hope no more. And we should reject this amendment.

Mr. GARRETT of New Jersey. Madam Chair, I would enter into the RECORD at this time just the letters of support of the Adler-Garrett amendment from the New York Stock Exchange Euronext, Property Casualty Insurers, ICBA, Biotechnology, and the Center for Investors and Entrepreneurs.

NYSE EURONEXT,  
DECEMBER 8, 2009.

Hon. JOHN ADLER,  
*House of Representatives,*  
*Washington, DC.*

Hon. SCOTT GARRETT,  
*House of Representatives,*  
*Washington, DC.*

DEAR REPRESENTATIVES ADLER AND GARRETT: NYSE Euronext supports your provision in the Investor Protection Act that would permanently exempt smaller public companies, with a market capitalization of less than \$75 million, from Section 404(b) of the Sarbanes Oxley Act of 2002.

We urge Congress to retain this provision in H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009.

This provision will help promote the ability of smaller companies to compete and create jobs without sacrificing the important benefits of strong auditor oversight and robust financial reporting requirements. The SEC's current exemption for companies with less than \$75 million in market value represents a measured approach to balancing investor protection and SME competitiveness, as these companies continue to be audited and subject to SEC rules regarding financial reporting and disclosure requirements.

NYSE Euronext looks forward to continuing to work with the Congress to strengthen the growth, competitiveness and job-creation of U.S. public companies.

Sincerely,

CLARKE D. CAMPER,  
*Senior Vice President, Head of*  
*Government Affairs and Public Advocacy.*

PROPERTY CASUALTY INSURERS  
ASSOCIATION OF AMERICA,  
*Washington, DC, December 10, 2009.*

Hon. JOHN H. ADLER,  
*House of Representatives,*  
*Washington, DC.*

Hon. SCOTT GARRETT,  
*House of Representatives,*  
*Washington, DC.*

DEAR CONGRESSMAN ADLER AND CONGRESSMAN GARRETT: The Property Casualty Insurers Association of America (PCI) supports your provision in the Investor Protection Act that would permanently exempt smaller public companies, with a market capitalization of less than \$75 million, from Section 404(b) of the Sarbanes Oxley Act of 2002. We strongly urge the Congress to include this language in the final version of H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009.

PCI supports strong corporate governance for all corporations. However, since the Sarbanes-Oxley Act became law, it has become clear that the implementation of Section 404(b) was too broad. It has been a competitive disadvantage for many U.S. corporations. We believe that the costs of compliance with Section 404(b) must continue to be reduced for all publicly-traded insurance companies, in particular for the small-to-medium sized insurers to which your provision applies.

PCI applauds you for your continued leadership on this important issue, and we look forward to working with you to lessen the burden of Section 404(b) compliance for smaller public businesses.

PCI represents the broadest cross-section of insurers of any national property/casualty trade association, with over 1000 members writing over \$180 billion in direct written premium annually, over 37 percent of the nation's property/casualty insurance.

Sincerely,

BENJAMIN J. MCKAY, III,  
*Senior Vice President,*  
*Federal Government Relations.*

INDEPENDENT COMMUNITY  
BANKERS OF AMERICA,  
*Washington, DC, December 8, 2009.*

Hon. LOUISE MCINTOSH SLAUGHTER,  
*Chairwoman, Rules Committee, House of Representatives,*  
*Washington, DC. 20515*

Hon. DAVID DREIER,  
*Ranking Member, Rules Committee, House of Representatives,*  
*Washington, DC.*

DEAR CHAIRWOMAN SLAUGHTER AND RANKING MEMBER DREIER: The Independent Community Bankers of America (ICBA) wishes to commend members of the House Financial Services Committee for including an amendment to the Investor Protection Act of 2009 sponsored by Representatives Scott Garrett and John Adler (which is Section 606 of that Act) that would exclude small publicly held companies including many community banks from the costly regulatory burden of complying with Section 404(b) of the Sarbanes-Oxley Act of 2002 (SOX). As the Rules Committee considers amendments to the overall financial reform package, H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, ICBA would like to voice our opposition to an amendment being offered by Representative Paul Kanjorski that would strip this provision from the Investor Protection Act.

Without the Garrett/Adler exclusion included in the Investor Protection Act, beginning next year, many small, publicly held companies including several hundred community banks would be required to retain

outside auditors to render costly attestations of their internal controls. In the case of community banks, this regulatory burden will be in addition to their other annual auditing fees, their regular safety and soundness and compliance examinations conducted by the banking agencies, and complying with numerous other federal and state banking laws and regulations. It also will be in addition to complying with SOX Section 404(a) which requires management to render an opinion concerning an issuer's internal controls.

For the hundreds of community banks that would be impacted by SOX Section 404(b), this exclusion will allow them to significantly reduce their regulatory expenses, conserve their capital, allowing them to make needed loans in their communities. This exclusion is particularly critical for those publicly held community banks located in areas of the country that have been hard hit by the economic downturn. These banks will be able to use this additional revenue to lend money to small businesses and consumers, encouraging job creation and aiding in the economic recovery. Importantly, this exclusion will also protect the FDIC's Deposit Insurance Fund by helping these community banks weather the economic crisis.

As you consider amendments to the regulatory reform package this week, ICBA urges you to retain the Garrett/Adler language that would exclude many community banks from the costly requirements of SOX Section 404(b) and oppose the Kanjorski amendment that would strip the bill of these needed provisions.

Sincerely,

STEPHEN VERDIER,  
*Executive Vice President,*  
*Director of Congressional Relations.*

BIOTECHNOLOGY  
INDUSTRY ORGANIZATION,  
*Washington, DC. December 10, 2009.*

Hon. NANCY PELOSI,  
*Speaker of the House,*  
*House of Representatives.*

Hon. STENY HOYER,  
*Majority Leader,*  
*House of Representatives.*

Hon. JAMES CLYBURN,  
*Majority Whip,*  
*House of Representatives.*

Hon. JOHN BOEHNER,  
*Republican Leader,*  
*House of Representatives.*

Hon. ERIC CANTOR,  
*Republican Whip,*  
*House of Representatives.*

DEAR SPEAKER PELOSI, LEADERS HOYER AND BOEHNER, WHIPS CLYBURN AND CANTOR: On behalf of the Biotechnology Industry Organization (BIO) and our more than 1,200 member companies and research organizations, I am writing to express support for a provision included in H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, that will provide a permanent exemption from Section 404(b) of the Sarbanes-Oxley Act for smaller reporting companies (those with less than \$75 million in market capitalization), and to ask that you oppose an amendment by Rep. Kanjorski to remove this provision from the bill. The provision in the bill would provide much-needed relief to smaller public biotechnology companies on the cutting edge of research and development. Additionally, the language in H.R. 4173 would require the SEC and GAO to conduct a study within 180 days of enactment to determine how the SEC could reduce the burdens of compliance with Section 404(b) for those companies whose

market capitalization is between \$75 million and \$250 million.

Over the past thirty years, the U.S. biotech industry has helped America build an innovation-based economy and created high-value, high-wage U.S. jobs. These jobs pay, on average, 68 percent more than private sector jobs in general. However, small biotechnology companies face great difficulties raising capital to finance the research and development of new and promising therapies, especially in the wake of the financial crisis. For example, in 2008 capital raised from initial public offerings fell 97 percent compared to 2007, and secondary offerings fell 56 percent. Total capital raised by the biotechnology industry in 2008 fell by 55 percent compared to 2007. There have only been 3 successful IPOs in 2009. I am concerned that adoption of Kanjorski Amendment #51 would contribute to the continuation of this troubling trend.

Without a permanent exemption from Section 404(b), the smallest biotech companies will be forced to absorb outsized audit and compliance costs—diverting revenue that could otherwise be reinvested in employees developing life-saving therapies. Currently, 41% of active publicly traded biotech companies fall under \$75 million in market capitalization. This provision would both provide relief to small biotech companies as well as ensure that these companies can continue to focus their cash resources on developing the next generation of therapies to treat diseases affecting tens of millions of Americans.

Please support reasonable regulatory relief for small businesses and oppose Kanjorski amendment #51. I appreciate your leadership and look forward to working with you on this important issue.

Sincerely,

JAMES C. GREENWOOD,  
President and CEO,  
Biotechnology Industry Organization.

THE CENTER FOR INVESTORS  
AND ENTREPRENEURS,  
DECEMBER 10, 2009.

SUPPORT SMALL ENTREPRENEURS AND INVESTORS—KEEP OBAMA-BACKED ADLER-GARRETT SARBOS RELIEF PROVISION IN FINANCIAL REFORM BILL

OPPOSE KANJORSKI-SARBANES AMENDMENT TO REMOVE ADLER-GARRETT PROVISION FROM BILL  
DEAR DEFENDER OF AMERICAN ENTREPRENEURS AND INVESTORS: As early as today, the U.S. House of Representatives will debate amendments to the Wall Street Reform and Consumer Protection Act of 2009. As an advocate of small entrepreneurs and informed retail investors, we urge you to oppose any amendments to section 7606 of the bill that would remove a measure vital for growing small businesses to raise capital.

The Center for Investors and Entrepreneurs strongly supports the bipartisan provision—added to the bill by John Adler (D-N.J.) and Scott Garrett (R-N.J.) and backed by President Barack Obama—to extend the exemption for small public companies from the most onerous requirements of Sarbanes-Oxley. This will free the resources of these innovative firms for the creation of new products, new technologies, and new jobs—rather than accounting minutiae.

Expressing support for the Adler-Garrett provision, the Obama administration has said, “Our focus must be on addressing the threats posed to investors and consumers by large, interconnected companies, rather than placing an undue burden on small businesses.” (Wall Street Journal, <http://blogs.wsj.com/washwire/2009/11/03/sarbanes->

[oxley-critics-declare-a-victory-at-least-for-now/](http://blogs.wsj.com/washwire/2009/11/03/sarbanes-oxley-critics-declare-a-victory-at-least-for-now/))

For several years, in fact, Democrats and Republicans have noted that Sarbanes-Oxley's unexpectedly high costs to entrepreneurs, and hence to shareholder return, exceed whatever benefits it may have provided to investors. House Speaker Nancy Pelosi told CNBC in 2006 that the law had “unintended consequences,” and while, “You need the transparency. . . . I don't think you need the whole package.” And Sen. John Kerry (D-Mass.) has called for a “task force” to “make it easier for small businesses to comply with the Sarbanes-Oxley by reducing their regulatory burden in the future.” (Kerry press release, <http://kerry.senate.gov/v3/cfm/record.cfm?id=264068&>)

University of Minnesota economics professor Ivy Zhang has calculated that Sarbanes-Oxley has cost the U.S. economy a whopping \$1.4 trillion and provided few if any quantifiable benefits to investors (Zhang paper, [http://w4.stern.nyu.edu/accounting/docs/speaker-papers/spring2005/Zhang-Ivy Economic-Consequences-of-S-O.pdf](http://w4.stern.nyu.edu/accounting/docs/speaker-papers/spring2005/Zhang-Ivy%20Economic-Consequences-of-S-O.pdf)). Direct costs for the average public company to comply with just one section of Sarbanes-Oxley—the onerous section 404 that Adler-Garrett targets—exceed \$2.3 million per year, more than 25 times the original SEC estimate of \$91,000 in annual costs. As a result, there is a dearth of small and midsize companies attracting capital by going public, leading the Wall Street Journal to report that “even though financial markets have rebounded this year, initial public offerings in the United States are on track to fall below even the levels of the dot-com bust of 2001–2003.” (Wall Street Journal, <http://online.wsj.com/article/SB10001424052748703558004574584241362784198.html>)

When companies can't raise capital by issuing equity in shares to the public, they are more dependent on debt markets. And when both debt and equity markets are effectively closed off, growth opportunities are limited, as are prospects for the growth of new jobs.

The Adler-Garrett provision does not exempt smaller companies from numerous anti-fraud statutes or indeed from most of Sarbanes-Oxley. It simply says that they need not comply with the requirement of Section 404 (b) that “internal controls” over financial statements be subject to full-blown audits. In practice, accountants have interpreted “internal controls” under the law to mean everything from the possession of office keys to the number of letters in an employee password, auditing items that have little relevance to accurate statements for shareholders. And these internal control rules were did no good against the mortgage shenanigans of companies like Countrywide Financial, which actually won an award from its internal control compliance in 2007 from the Institute of Internal Auditors.

Ironically, The accounting firms intended to be reined in by Sarbanes-Oxley have made a bundle due to the ballooning audit costs that have resulted, leading some to call the law “The Accountants Full Employment Act.” Thus, it should not be surprising that some of the letters you may receive in support of an amendment removing that small company exemption come from accountant associations arguing the self-interests of their members.

One other important consideration is that major portions of Sarbanes-Oxley may be declared unconstitutional in the next few months by the Supreme Court. Reporting on

a constitutional challenge to the law that the Court heard this Monday, the Bloomberg states that “U.S. Supreme Court justices questioned the constitutionality” of much of the law. (Bloomberg, <http://www.bloomberg.com/apps/news?pid = 20601103&sid=acK3iq5xklI4#>) Yet, with the current exemption for smaller public companies set to expire this spring, these firms now face no choice but to set aside numerous resources now to plan for expensive audits—resources that could be used to make more products and hire more people—even if the law is eventually declared unconstitutional. At the very least, smaller firms should not be subject to the most onerous rules from Sarbanes-Oxley while its constitutionality is in doubt.

But the floor amendment introduced by Reps. Frank, Kanjorski, Cohen, and Sarbanes would remove the bill's protection for smaller firms from onerous and possibly unconstitutional Sarbanes-Oxley rules. We urge you to stand with the Obama administration and the Democrats and Republicans supporting the Adler-Garrett provision by OPPOSING this amendment and any other measure to remove this provision that is so valuable for investors and entrepreneurs from the bill.

Please do not hesitate to contact me with any questions.

Sincerely,

JOHN BERLAU, Director,  
Center for Investors and Entrepreneurs,  
Competitive Enterprise Institute.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. GARRETT of New Jersey. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Pennsylvania will be postponed.

It is now in order to consider amendment No. 13 printed in House Report 111–370.

PARLIAMENTARY INQUIRIES

Mr. FRANK of Massachusetts. Parliamentary inquiry, Madam Chairman.

Is it not in order for the gentleman from California to offer his amendment now?

The Acting CHAIR. It is now in order to consider amendment No. 14 printed in House Report 111–370.

Mr. PRICE of Georgia. Madam Chairman, parliamentary inquiry.

The Acting CHAIR. The gentleman will state his inquiry.

Mr. PRICE of Georgia. I believe the Chair stated that amendment No. 13 was in order. Is the majority party skipping number 13?

The Acting CHAIR. Amendment No. 13 was not offered.

Mr. FRANK of Massachusetts. If the gentleman would yield, that was also in the manager's amendment, so it will not be offered. It's in the manager's amendment.

Mr. PRICE of Georgia. I thank the Chair.



AMENDMENT NO. 14 OFFERED BY MR. MCCARTHY  
OF CALIFORNIA

The Acting CHAIR. It is now in order to consider amendment No. 14 printed in House Report 111-370.

Mr. MCCARTHY of California. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. MCCARTHY of California:

Strike section 6012 (relating to "Effect of Rule 436(G)").

The CHAIR. Pursuant to House Resolution 964, the gentleman from California (Mr. MCCARTHY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. MCCARTHY of California. Madam Chairman, I yield myself as much time as I may consume.

Madam Chairman, this amendment would strike section 6012 from the bill, which changes the liability standards for credit rating agencies that are Nationally Recognized Statistical Rating Organizations, or NRSROs, when they include their ratings on the new securities offerings.

First, I'm not here to defend credit rating agencies. I am supportive of other credit rating agency reforms that the committee passed, including removing references to credit rating from Federal statutes. I think the government and the private sector should use credit ratings for what they are—predictive opinions about inherently uncertain futures.

To cut through the technical discussion about section 7 and section 11 liability related to this issue, let me just make three points. Structure dictates behavior. Increased liability may lead to agencies being hesitant to even allow their ratings on security offerings, thereby providing potential investors with less information.

This also reminds me of the health care debate and our discussion of defensive medicine. Costs go up when doctors must practice defensive medicine to protect themselves from reckless lawsuits. In the same way, if rating agencies must practice defensive ratings for fear of being sued, this would ultimately increase costs and restrict credit. Opening NRSROs to unlimited civil liability will not guarantee more accurate credit ratings. Litigating an industry to death does not solve any problems.

Additionally, the SEC is currently seeking feedback on whether to rescind Rule 436(g), with comments due December 15. I am a critic of the SEC, and I do not always agree with their actions. However, I do think making this change, which will significantly affect security offerings, should be done thoughtfully and with an eye to the

impact seemingly small changes will have on information investors receive as part of new securities offerings.

The SEC has asked for comments on a variety of issues, including whether rescinding 436(g) will disrupt access to capital, make it more difficult for smaller companies to obtain a credit rating, or would have negative consequences for smaller NRSROs. These are good issues to examine at any time. They are vital issues to examine in our current economy. We should be very careful about seemingly small changes that have huge consequences.

Madam Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Chairman, I claim the time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. FRANK of Massachusetts. I yield 2 minutes to the gentlewoman from Ohio (Ms. KILROY), a very diligent member of the committee.

Ms. KILROY. Madam Chairman, NRSROs, the credit rating agencies, have played a huge role in the collapse of our markets a year ago. In fact, they bragged that they could rate anything, even a cow. And they continue to play a critical role in millions of financial transactions as pension funds, mutual fund managers, and others rely on the ratings from Moody's, Standard & Poor's, and Fitch as they make their investment decisions. The Wall Street Reform and Consumer Protection Act, H.R. 4173, will provide for greater scrutiny and more responsibility from the credit rating agencies protecting these investors.

□ 2040

But the amendment from the gentleman from California would weaken credit rating agency reforms. It would continue an exemption under SEC rule 436(g) that the agency should not retain.

At the core of the Securities Act of 1933 is the idea that a company should provide investors with basic information about the securities it is issuing. It requires the issuer to publicly disclose significant information about themselves and terms of the securities. Those who make material misstatements of fact or omissions in a registration statement can be held accountable under section 11 of the Act.

This provision now covers many experts in the financial world, such as accountants, lawyers, investment bankers, directors, officers, and executives of the issuers. Rating agencies that are not NRSROs fall under it, and there are about a hundred of those. And formerly the NRSROs were held liable under previous rulings of the SEC.

Amazingly enough, though, today, Moody's, Standard and Poor's, and other NRSROs are exempt from section 11 liability by SEC rule. It is a very un-

even playing field. H.R. 4173 in its current form would correct that.

This reform should remain in the bill, and the amendment should be rejected. The highest standard of accountability is the central recommendation of the July 2009 report.

The Acting CHAIR. The time of the gentlewoman has expired.

Mr. FRANK of Massachusetts. I yield the gentlewoman an additional 30 seconds.

Ms. KILROY. This is a central recommendation of the July 2009 report of the Investors Working Group, an independent task force chaired by former SEC Chair Arthur Levitt, who was appointed by President Clinton, and co-chaired by President Bush's appointee, William Donaldson. As they stated, this change would make rating agencies more diligent about the ratings process and ultimately more accountable for its sloppy performance.

Unfortunately, Mr. MCCARTHY's amendment would remove this much-needed accountability for credit rating agencies, and I strongly urge its defeat.

Mr. MCCARTHY of California. Madam Chair, may I inquire of the time remaining?

The Acting CHAIRMAN. Both sides have 2½ minutes remaining.

Mr. MCCARTHY of California. At this time, I'd like to yield 1 minute to my friend, the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I thank the gentleman.

What the gentleman from California is trying to do is trying to help investors and help the markets by providing this amendment. The SEC is currently examining this whole issue in studying this, and we should basically allow the SEC to continue with its evaluation and then come back to address the issue. Because what we're dealing with here is the fact that there's an exemption, and eliminating that exemption would be punishing not the CRAs, but punishing investors.

What it will do is create an environment that will lead to more volatile and less accurate ratings. Something that none of us should be supporting.

Right now there is an exemption for the NRSROs if they have the ratings included in the registration statements filed under the Act. This removes that. What would be the end consequence of that if this were to go through and this amendment were not to pass?

Well, you would increase dramatically the time and cost involved with raising capital and thus make it more difficult for its issuers to do so. Moreover, some SROs may refuse to consent entirely, and what would that do? That would mean we would have even less information available to investors as they try to evaluate securities in the registration statement.

At the end of the day without this amendment, this underlying bill will

see to it that we have a higher cost of credit, a higher cost to do business and less jobs in the country.

Mr. FRANK of Massachusetts. I yield 1 minute to the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Madam Chairman, I think I heard the gentleman from New Jersey on the other side indicate that we should leave this up to the Securities and Exchange Commission and let them proceed under normal order. That's a unique statement tonight. I don't think I heard that argument all night. Suddenly, the Securities and Exchange Commission can be relied upon to act promptly. I'm happy to hear the other side is willing to assume that.

What we're trying to do with this amendment is to get uniformity. We should not have one standard of lawsuit and another standard not allowed. Everyone recognizes, including the Securities and Exchange Commission, that this needs reform. They have a role pending. There is no question about that. But we can fix this problem, and the great lady from Ohio took it upon herself to do so at the committee. And I urge my colleagues to support her thoughtful amendment—or the opposition to this amendment by supporting the underlying bill and making uniformity a call of the day.

Mr. MCCARTHY of California. At this time, I will yield the remaining time to my good friend from Texas, Mr. JEB HENSARLING.

Mr. HENSARLING. I thank the gentleman for yielding the time.

This, in some respects, may be one of the few areas of agreement on both sides of the aisle that the rating agencies played a critical role in the economic turmoil that has been foisted upon our economy. We may differ on the remedy, though.

What is needed here is more competition, not more lawsuits. And what happens is when you lower the bar for a lawsuit, you raise the bar, barriers to entry, and make it more difficult. We know that for all intents and purposes that the government created a rating agency oligopoly that prevented the market from enjoying more competition, and we had all of this AAA-rated paper, and we know what has happened.

In many respects, Madam Chair, what we have seen now is the Democrats have tried to spin their way into more jobs than we have—our Nation's first trillion-dollar deficit; they have tried to borrow their way into more jobs—we're now borrowing 43 cents on the dollar and sending the IOUs to our children and grandchildren.

The bill that is brought to the floor today creates a permanent bailout authority for Wall Street. They have tried to bail out their way to more jobs, and this particular amendment says maybe we can sue our way into more jobs. That is not the way it is done, Madam Chair. We need more competition, not more lawsuits.

I urge the adoption of the amendment from the gentleman from California.

Mr. FRANK of Massachusetts. Madam Chair, I know the gentleman from Texas likes to blame everything bad that happened starting on January 21; there was no Bush recession; there was no deterioration in the war in Afghanistan; there was no TARP under Bush, but he's particularly trying to do it now because here's what he's doing: He's trying to defend an amendment that would give legal immunity to the rating agencies. I cannot think of a more counterintuitive and counterproductive thing to do.

The gentleman from California—I thought I heard him say—we don't want them practicing defensive ratings. Yeah, we do, because they have been practicing very offensive ratings. Here are the rating agencies that everybody agrees have been a major cause of the problems, and what do the Republicans want to do? Protect the poor dears from people suing them by a standard of gross negligence so that an investor who relies on their judgment has no remedy whatsoever.

Yes, we want the rating agencies to be a lot more careful. We want the rating agencies to fear that if they overestimate—here's the problem: We have a business model where the rating agencies are paid by the people they rate. I wish we could encourage people on the buy side to do that. We've certainly encouraged them in any way we can.

But as long as you have rating agencies paid by the people they rate—and the only people who would sue them now are the people who they rate. So they can only be sued if people thought they were too low. There's nobody who has the right to sue them if they thought they were too high—and of course we have done that in this bill.

But here's what it comes down to. If you want to protect the rating agencies from being legally liable for their gross negligence to hurt investors, vote for this amendment.

The Acting CHAIR. The question is on the amendment offered by the gentleman from California (Mr. MCCARTHY).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. MCCARTHY of California. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California will be postponed.

□ 2050

Mr. FRANK of Massachusetts. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SERRANO) having assumed the chair, Ms. EDWARDS of Maryland, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, had come to no resolution thereon.

#### PERMISSION TO CONSIDER CERTAIN AMENDMENTS AS MODIFIED DURING FURTHER CONSIDERATION OF H.R. 4173

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent that, during further consideration of H.R. 4173 pursuant to House Resolution 964, the amendments numbered 1 and 36 may be considered as modified by the respective forms at the desk.

The SPEAKER pro tempore. The Clerk will report the modifications.

The Clerk read as follows:

Modification to amendment No. 1 offered by Mr. FRANK of Massachusetts:

On page 152 of the Amendment: strike the instruction referring to page 747 and the following text through page 153, line 8.

Modification to amendment No. 36 offered by Mr. BACHUS:

At the end of title I, add the following new section:

#### SEC. 1012. GAO AUDIT OF THE FEDERAL RESERVE.

Section 714 of title 31, United States Code, is amended—

(1) in subsection (b), by striking all after “has consented in writing,” and inserting the following: “Audits of the Federal Reserve Board and Federal reserve banks shall not include unreleased transcripts or minutes of meetings of the Board of Governors or of the Federal Open Market Committee. To the extent that an audit deals with individual market actions, records related to such actions shall only be released by the Comptroller General after 180 days have elapsed following the effective date of such actions.”;

(2) in subsection (c)(1), in the first sentence, by striking “subsection,” and inserting “subsection or in the audits or audit reports referring or relating to the Federal Reserve Board or Reserve Banks.”; and

(3) by adding at the end the following:

“(f) AUDIT AND REPORT OF THE FEDERAL RESERVE SYSTEM.—

“(1) IN GENERAL.—An audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) shall be completed within 12 months of the enactment of the Consumer and Taxpayer Protection Act of 2009.

“(2) REPORT.—

“(A) REQUIRED.—A report on the audit referred to in paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to—

“(i) the Speaker of the House of Representatives;

“(ii) the majority and minority leaders of the House of Representatives;

“(iii) the majority and minority leaders of the Senate;

“(iv) the Chairman and Ranking Member of the committee and each subcommittee of jurisdiction in the House of Representatives and the Senate; and

“(v) any other Member of Congress who requests it.

“(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report.

“(3) CONSTRUCTION.—Nothing in this subsection shall be construed—

“(A) as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office; or

“(B) to limit the ability of the Government Accountability Office to perform additional audits of the Board of Governors of the Federal Reserve System or of the Federal reserve banks.”.

Mr. FRANK of Massachusetts (during the reading). Mr. Speaker, I ask unanimous consent that the reading be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request?

Without objection, the amendments are modified.

There was no objection.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 964 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the further consideration of the bill, H.R. 4173.

□ 2052

#### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, with Ms. EDWARDS of Maryland (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose earlier today, a request for a recorded vote on amendment No. 14 printed in House Report 111-370 by the gentleman from California (Mr. MCCARTHY) had been postponed.

#### ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 111-370 on

which further proceedings were postponed, in the following order:

Amendment No. 1, as modified, by Mr. FRANK of Massachusetts.

Amendment No. 2 by Mr. SESSIONS of Texas.

Amendment No. 5 by Mr. LYNCH of Massachusetts.

Amendment No. 6 by Mr. MURPHY of New York.

Amendment No. 7 by Mr. FRANK of Massachusetts.

Amendment No. 8 by Mr. STUPAK of Michigan.

Amendment No. 9 by Mr. STUPAK of Michigan.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

#### AMENDMENT NO. 1, AS MODIFIED, OFFERED BY MR. FRANK OF MASSACHUSETTS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Massachusetts (Mr. FRANK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

#### RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 240, noes 182, not voting 18, as follows:

[Roll No. 953]

AYES—240

Abercrombie  
Ackerman  
Altmire  
Andrews  
Arcuri  
Baca  
Baird  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Bishop (GA)  
Bishop (NY)  
Bishop (UT)  
Blumenauer  
Boccheri  
Boswell  
Boucher  
Boyd  
Brady (PA)  
Braley (IA)  
Brown, Corrine  
Butterfield  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Castor (FL)  
Chandler  
Childers  
Christensen  
Chu  
Clay  
Cleaver  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper

Costa  
Costello  
Courtney  
Crowley  
Cueellar  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
DeGette  
DeLauro  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Driehaus  
Edwards (MD)  
Edwards (TX)  
Ellison  
Ellsworth  
Engel  
Eshoo  
Etheridge  
Faleomavaega  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Fudge  
Garamendi  
Giffords  
Gonzalez  
Gordon (TN)  
Grayson  
Dreen, Al  
Green, Gene  
Grijalva

Gutierrez  
Hall (NY)  
Hare  
Harman  
Hastings (FL)  
Heinrich  
Herseth Sandlin  
Higgins  
Hill  
Himes  
Hinchey  
Hinojosa  
Hirono  
Holden  
Holt  
Honda  
Inslee  
Israel  
Jackson (IL)  
Jackson-Lee (TX)  
Johnson, E. B.  
Kagen  
Kanjorski  
Kennedy  
Kildee  
Kirkpatrick (MI)  
Kilroy  
Kind  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)  
Kosmas  
Kratovil  
Kucinich  
Langevin  
Larsen (WA)  
Larson (CT)  
Lee (CA)  
Levin  
Lewis (GA)  
Lipinski

Loeb sack  
Lowey  
Lujan  
Lynch  
Maffei  
Maloney  
Markey (CO)  
Markey (MA)  
Marshall  
Matheson  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McIntyre  
McMahon  
McNerney  
Meeks (NY)  
Melancon  
Michaud  
Miller (NC)  
Miller, George  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Norton  
Nye  
Oberstar  
Obey  
Olver

Ortiz  
Owens  
Pallone  
Pascarelli  
Pastor (AZ)  
Payne  
Perlmuter  
Perriello  
Peters  
Peterson  
Pierluisi  
Pingree (ME)  
Polis (CO)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Rodriguez  
Ross  
Rothman (NJ)  
Ruppersberger  
Rush  
Ryan (OH)  
Sablan  
Salazar  
Sanchez, Linda  
T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schiff  
Schrader  
Schwartz  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter

Sherman  
Shuler  
Sires  
Skelton  
Smith (WA)  
Snyder  
Space  
Speier  
Spratt  
Stark  
Stupak  
Sutton  
Tanner  
Taylor  
Teague  
Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

NOES—182

Aderholt  
Adler (NJ)  
Akin  
Alexander  
Austria  
Bachmann  
Bachus  
Bartlett  
Barton (TX)  
Berry  
Biggart  
Billbray  
Bilirakis  
Blackburn  
Blunt  
Boehner  
Bonner  
Bono Mack  
Boozman  
Boren  
Boustany  
Brady (TX)  
Bright  
Broun (GA)  
Brown (SC)  
Brown-Waite,  
Ginny  
Buchanan  
Burgess  
Burton (IN)  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Carter  
Cassidy  
Castle  
Chaffetz  
Coble  
Coffman (CO)  
Cole  
Conaway  
Crenshaw  
Culberson  
Davis (KY)  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dreier  
Duncan  
Ehlers

Emerson  
Fallin  
Flake  
Fleming  
Forbes  
Fortenberry  
Foxy  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Gingrey (GA)  
Gohmert  
Goodlatte  
Granger  
Graves  
Griffith  
Guthrie  
Hall (TX)  
Halvorson  
Harper  
Hastings (WA)  
Heller  
Hensarling  
Herger  
Hodes  
Hoekstra  
Hunter  
Inglis  
Issa  
Jenkins  
Johnson (IL)  
Johnson, Sam  
Jones  
Jordan (OH)  
Kaptur  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kline (MN)  
Lamborn  
Lance  
Latham  
LaTourette  
Latta  
Lee (NY)  
Lewis (CA)  
Linder  
LoBiondo  
Lucas  
Luetkemeyer  
Lummis

Lungren, Daniel  
E.  
Mack  
Manzullo  
Marchant  
Massa  
McCarthy (CA)  
McCaul  
McClintock  
McCotter  
McKeon  
McMorris  
Rodgers  
Meek (FL)  
Mica  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Moran (KS)  
Murphy, Tim  
Myrick  
Neugebauer  
Nunes  
Olson  
Paul  
Paulsen  
Pence  
Petri  
Pitts  
Platts  
Poe (TX)  
Posey  
Price (GA)  
Putnam  
Rehberg  
Reichert  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Royce  
Ryan (WI)  
Scalise  
Schmidt  
Schock  
Sensenbrenner  
Sessions  
Shadegg  
Shimkus  
Shuster

Simpson  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Souder  
Stearns  
Sullivan  
Terry

Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Turner  
Upton  
Walden  
Wamp

Westmoreland  
Whitfield  
Wilson (SC)  
Wittman  
Wolf  
Young (AK)  
Young (FL)

Jones  
Jordan (OH)  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kline (MN)  
Lamborn  
Lance  
Latham  
LaTourette  
Latta  
Paulsen  
Pence  
Petri  
Pitts  
Platts  
Poe (TX)  
Posey  
Price (GA)  
Putnam  
Rehberg  
Reichert  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rooney  
Ros-Lehtinen  
Roskam  
Royce  
Ryan (WI)  
Scalise  
Schmidt

Miller (FL)  
Miller (MI)  
Miller, Gary  
Moran (KS)  
Murphy, Tim  
Myrick  
Neugebauer  
Nunes  
Nye  
Olson  
Paul  
Paulsen  
Pence  
Petri  
Pitts  
Platts  
Poe (TX)  
Posey  
Price (GA)  
Putnam  
Rehberg  
Reichert  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rooney  
Ros-Lehtinen  
Roskam  
Royce  
Ryan (WI)  
Scalise  
Schmidt

Schock  
Schrader  
Sensenbrenner  
Sessions  
Shadegg  
Shimkus  
Shuster  
Simpson  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Souder  
Stearns  
Sullivan  
Teague  
Terry  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Turner  
Upton  
Walden  
Wamp  
Westmoreland  
Whitfield  
Wilson (SC)  
Wittman  
Wolf  
Young (AK)  
Young (FL)

Ortiz  
Owens  
Pallone  
Pascarelli  
Pastor (AZ)  
Payne  
Perlmutter  
Perriello  
Peters  
Peterson  
Pierluisi  
Pingree (ME)  
Polis (CO)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Rodriguez  
Rohrabacher  
Ross  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)

Sablan  
Salazar  
Sánchez, Linda  
T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schwartz  
Scott (GA)  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Shuler  
Sires  
Skelton  
Smith (WA)  
Snyder  
Space  
Speier  
Spratt  
Stark  
Stupak  
Sutton

Tanner  
Taylor  
Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

## NOT VOTING—18

Baldwin  
Barrett (SC)  
Bordallo  
Clarke  
Deal (GA)  
DeFazio

Hoyer  
Johnson (GA)  
Lofgren, Zoe  
McHenry  
Moran (VA)  
Murtha

Radanovich  
Richardson  
Roybal-Allard  
Schauer  
Scott (GA)  
Slaughter

□ 2118

Messrs. CAMPBELL and SHUSTER changed their vote from “aye” to “no.”

Mr. VISCLOSKEY changed his vote from “no” to “aye.”

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Ms. CLARKE. Madam Chair, on rollcall No. 953 for the Frank of Massachusetts Amendment as modified, had I been present, I would have voted “aye.”

Mr. SCOTT of Georgia. Madam Chair, on rollcall No. 953, the Frank of Massachusetts Amendment as modified, I was unable to vote. Had I been present, I would have voted “aye.”

## AMENDMENT NO. 2 OFFERED BY MR. SESSIONS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. SESSIONS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

## RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 172, noes 257, not voting 11, as follows:

[Roll No. 954]

## AYES—172

Aderholt  
Akin  
Alexander  
Austria  
Bachmann  
Bachus  
Bartlett  
Barton (TX)  
Biggert  
Bilbray  
Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehner  
Bonner  
Bono Mack  
Boozman  
Boustany  
Brady (TX)  
Broun (GA)  
Brown (SC)  
Brown-Waite,  
Ginny  
Buchanan  
Burgess

Burton (IN)  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Carter  
Cassidy  
Castle  
Chaffetz  
Coble  
Coffman (CO)  
Cole  
Conaway  
Crenshaw  
Culberson  
Davis (KY)  
Dent  
Dreier  
Duncan  
Ehlers  
Emerson  
Fallin  
Flake

Fleming  
Forbes  
Fortenberry  
Foxy  
Franks (AZ)  
Frelinghuysen  
Galleghy  
Garrett (NJ)  
Gerlach  
Gingrey (GA)  
Goodlatte  
Granger  
Graves  
Guthrie  
Hall (TX)  
Harper  
Hastings (WA)  
Heller  
Hensarling  
Herger  
Hoekstra  
Hunter  
Inglis  
Issa  
Jenkins  
Johnson, Sam

Abercrombie  
Ackerman  
Adler (NJ)  
Altmire  
Andrews  
Arcuri  
Baca  
Baird  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Berry  
Bishop (GA)  
Bishop (NY)  
Blumenauer  
Boccheri  
Boren  
Boswell  
Boucher  
Boyd  
Brady (PA)  
Braley (IA)  
Bright  
Brown, Corrine  
Butterfield  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Castor (FL)  
Chandler  
Childers  
Christensen  
Chu  
Clarke  
Clay  
Clever  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crowley  
Cuellar  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt

## NOES—257

DeLauro  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Driehaus  
Edwards (MD)  
Edwards (TX)  
Ellison  
Ellsworth  
Engel  
Eshoo  
Etheridge  
Faleomavaega  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Fudge  
Garamendi  
Giffords  
Gohmert  
Gonzalez  
Gordon (TN)  
Grayson  
Green, Al  
Green, Gene  
Griffith  
Grijalva  
Gutierrez  
Hall (NY)  
Halvorson  
Hare  
Harman  
Hastings (FL)  
Heinrich  
Herseth Sandlin  
Higgins  
Hill  
Himes  
Hinchey  
Hinojosa  
Hirono  
Hodes  
Holden  
Holt  
Honda  
Hoyer  
Insee  
Israel  
Jackson (IL)  
Jackson-Lee  
Norton  
Johnson (GA)  
Johnson (IL)  
Johnson, E. B.

Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)  
Kosmas  
Kratovil  
Kucinich  
Langevin  
Larsen (WA)  
Larsen (CT)  
Lee (CA)  
Levin  
Lewis (GA)  
Lipinski  
Loebach  
Lowey  
Lujan  
Lynch  
Maffei  
Maloney  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McIntyre  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Michaud  
Miller (NC)  
Miller, George  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Norton  
Oberstar  
Obey  
Oliver

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining.

□ 2125

So the amendment was rejected.

The result of the vote was announced as above recorded.

## AMENDMENT NO. 5 OFFERED BY MR. LYNCH

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Massachusetts (Mr. LYNCH) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

## RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 228, noes 202, not voting 10, as follows:

[Roll No. 955]

## AYES—228

Abercrombie  
Ackerman  
Andrews  
Arcuri  
Baca  
Baird  
Barrow  
Barton (TX)  
Becerra  
Berkley  
Berman  
Berry  
Bilbray  
Bilirakis  
Bishop (GA)  
Bishop (NY)  
Blumenauer  
Boccheri  
Boren  
Boswell  
Boucher

Brady (PA)  
Braley (IA)  
Brown, Corrine  
Butterfield  
Capito  
Capps  
Capuano  
Carnahan  
Carney  
Carson (IN)  
Castle  
Castor (FL)  
Chandler  
Childers  
Christensen  
Chu  
Clarke  
Clay  
Clever  
Clyburn  
Cohen

Conyers  
Costello  
Courtney  
Cuellar  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dent  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Driehaus  
Duncan

Edwards (MD) Kucinich  
 Edwards (TX) Langevin  
 Ellison Larson (CT)  
 Ellsworth Lee (CA)  
 Emerson Levin  
 Engel Lewis (GA)  
 Eshoo Lipinski  
 Faleomavaega Loeb sack  
 Farr Lowey  
 Fattah Lujan  
 Filner Lynch  
 Fortenberry Markey (CO)  
 Frank (MA) Markey (MA)  
 Fudge Marshall  
 Garamendi Massa  
 Gerlach Matsui  
 Giffords McCollum  
 Gohmert McCotter  
 Gonzalez McDermott  
 Grayson McGovern  
 Green, Al McIntyre  
 Green, Gene McNerney  
 Grijalva Meeks (NY)  
 Hall (NY) Melancon  
 Hare Michaud  
 Harman Miller (NC)  
 Harper Miller, George  
 Hastings (FL) Minnick  
 Heinrich Mollohan  
 Herseth Sandlin Moore (WI)  
 Higgins Murphy (CT)  
 Hinchey Murphy, Patrick  
 Hinojosa Nadler (NY)  
 Hirono Napolitano  
 Hodes Neal (MA)  
 Holden Norton  
 Holt Oberstar  
 Honda Obey  
 Hoyer Oliver  
 Inglis Ortiz  
 Inslee Owens  
 Israel Pallone  
 Jackson (IL) Pascrell  
 Jackson-Lee Pastor (AZ)  
 (TX) Payne  
 Johnson (GA) Perriello  
 Johnson, E. B. Peterson  
 Jones Pierluisi  
 Kagen Pingree (ME)  
 Kanjorski Platts  
 Kaptur Pomeroy  
 Kennedy Price (NC)  
 Kildee Quigley  
 Kilpatrick (MI) Rahall  
 Kilroy Rangel  
 Kissell Reyes

## NOES—202

Aderholt Cassidy  
 Adler (NJ) Chaffetz  
 Akin Coble  
 Alexander Coffman (CO)  
 Altmire Cole  
 Austria Conaway  
 Bachmann Connolly (VA)  
 Bachus Cooper  
 Bartlett Costa  
 Bean Crenshaw  
 Biggert Crowley  
 Bishop (UT) Culberson  
 Blackburn Davis (KY)  
 Blunt Davis (TN)  
 Boehner Diaz-Balart, L.  
 Bonner Diaz-Balart, M.  
 Bono Mack Dreier  
 Boozman Ehlers  
 Boustany Etheridge  
 Boyd Fallon  
 Brady (TX) Flake  
 Bright Fleming  
 Broun (GA) Forbes  
 Brown (SC) Foster  
 Brown-Waite, Ginny Foss  
 Buchanan Frelinghuysen  
 Burgess Gallegly  
 Burton (IN) Garrett (NJ)  
 Buyer Gingrey (GA)  
 Calvert Goodlatte  
 Camp Gordon (TN)  
 Campbell Granger  
 Cantor Graves  
 Cao Griffith  
 Cardoza Guthrie  
 Carter Gutierrez

Ross  
 Rothman (NJ)  
 Roybal-Allard  
 Ruppertsberger  
 Rush  
 Ryan (OH)  
 Sablan  
 Salazar  
 Sánchez, Linda  
 T.  
 Sanchez, Loretta  
 Sarbanes  
 Schakowsky  
 Schauer  
 Schiff  
 Schwartz  
 Scott (GA)  
 Scott (VA)  
 Serrano  
 Sestak  
 Shea-Porter  
 Sherman  
 Shuler  
 Sires  
 Skelton  
 Space  
 Speier  
 Spratt  
 Stark  
 Stearns  
 Stupak  
 Sutton  
 Taylor  
 Thompson (CA)  
 Thompson (MS)  
 Tierney  
 Tonko  
 Towns  
 Tsongas  
 Upton  
 Van Hollen  
 Velázquez  
 Visclosky  
 Walz  
 Wasserman  
 Schultz  
 Waters  
 Watson  
 Watt  
 Waxman  
 Welch  
 Wexler  
 Wilson (OH)  
 Woolsey  
 Wu  
 Yarmuth

Hall (TX)  
 Halvorson  
 Hastings (WA)  
 Heller  
 Hensarling  
 Herger  
 Hill  
 Himes  
 Hoekstra  
 Hunter  
 Issa  
 Jenkins  
 Johnson (IL)  
 Johnson, Sam  
 Jordan (OH)  
 Kind  
 King (IA)  
 King (NY)  
 Kingston  
 Kirk  
 Kirkpatrick (AZ)  
 Klein (FL)  
 Kline (MN)  
 Kosmas  
 Kratovil  
 Lamborn  
 Lance  
 Larsen (WA)  
 Latham  
 LaTourette  
 Latta  
 Lee (NY)  
 Lewis (CA)  
 Linder  
 LoBiondo  
 Lucas  
 Luetkemeyer

Lummis  
 Lungren, Daniel  
 E.  
 Mack  
 Maffei  
 Maloney  
 Manzullo  
 Marchant  
 Matheson  
 McCarthy (CA)  
 McCarthy (NY)  
 McCaul  
 McClintock  
 McHenry  
 McKeon  
 McMahon  
 McMorris  
 Rodgers  
 Meek (FL)  
 Mica  
 Miller (FL)  
 Miller (MI)  
 Miller, Gary  
 Mitchell  
 Moore (KS)  
 Moran (KS)  
 Murphy (NY)  
 Murphy, Tim  
 Myrick  
 Neugebauer  
 Nunes  
 Nye

Baldwin  
 Barrett (SC)  
 Bernaldo  
 Deal (GA)

Olson  
 Paul  
 Paulsen  
 Pence  
 Perlmutter  
 Peters  
 Petri  
 Pitts  
 Poe (TX)  
 Polis (CO)  
 Posey  
 Price (GA)  
 Putnam  
 Rehberg  
 Reichert  
 Rodriguez  
 Roe (TN)  
 Rogers (AL)  
 Rogers (KY)  
 Rogers (MI)  
 Rohrabacher  
 Rooney  
 Ros-Lehtinen  
 Roskam  
 Royce  
 Ryan (WI)  
 Scalise  
 Schmidt  
 Schock  
 Schrader  
 Sensenbrenner  
 Sessions

## NOT VOTING—10

Lofgren, Zoe  
 Moran (VA)  
 Murtha  
 Radanovich

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote).  
 There are 2 minutes remaining in this vote.

□ 2133

So the amendment was agreed to.

The result of the vote was announced  
 as above recorded.

AMENDMENT NO. 6 OFFERED BY MR. MURPHY OF  
NEW YORK

The Acting CHAIR. The unfinished  
 business is the demand for a recorded  
 vote on the amendment offered by the  
 gentleman from New York (Mr. MUR-  
 PHY) on which further proceedings were  
 postponed and on which the noes pre-  
 vailed by voice vote.

The Clerk will redesignate the  
 amendment.

The Clerk redesignated the amend-  
 ment.

## RECORDED VOTE

The Acting CHAIR. A recorded vote  
 has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-  
 minute vote.

The vote was taken by electronic de-  
 vice, and there were—ayes 304, noes 124,  
 not voting 12, as follows:

[Roll No. 956]

## AYES—304

Aderholt  
 Adler (NJ)  
 Akin  
 Alexander  
 Altmire  
 Arcuri  
 Austria  
 Baca  
 Bachmann  
 Bachus  
 Baird  
 Barrow  
 Bartlett

Barton (TX)  
 Bean  
 Berkley  
 Berry  
 Biggert  
 Bilbray  
 Bilirakis  
 Bishop (GA)  
 Bishop (UT)  
 Blackburn  
 Blumenauer  
 Blunt  
 Bocieri

Boehner  
 Bonner  
 Bono Mack  
 Boozman  
 Boren  
 Boswell  
 Boucher  
 Boustany  
 Boyd  
 Brady (TX)  
 Bright  
 Broun (GA)  
 Brown (SC)

Shadegg  
 Shimkus  
 Shuster  
 Simpson  
 Smith (NE)  
 Smith (NJ)  
 Smith (TX)  
 Smith (WA)  
 Snyder  
 Souder  
 Sullivan  
 Tanner  
 Teague  
 Terry  
 Thompson (PA)  
 Thornberry  
 Tiahrt  
 Tiberi  
 Titus  
 Turner  
 Walden  
 Wamp  
 Weiner  
 Westmoreland  
 Whitfield  
 Wilson (SC)  
 Wittman  
 Wolf  
 Young (AK)  
 Young (FL)

Brown, Corrine  
 Brown-Waite,  
 Ginny  
 Buchanan  
 Burgess  
 Burton (IN)  
 Butterfield  
 Buyer  
 Calvert  
 Camp  
 Campbell  
 Cantor  
 Cao  
 Capito  
 Cardoza  
 Carnahan  
 Carney  
 Carter  
 Cassidy  
 Castle  
 Chaffetz  
 Chandler  
 Childers  
 Christensen  
 Coble  
 Coffman (CO)  
 Cole  
 Conaway  
 Connolly (VA)  
 Cooper  
 Costa  
 Crenshaw  
 Crowley  
 Cuellar  
 Culberson  
 Cummings  
 Davis (AL)  
 Davis (CA)  
 Davis (IL)  
 Davis (KY)  
 Davis (TN)  
 DeFazio  
 Dent  
 Diaz-Balart, L.  
 Diaz-Balart, M.  
 Dicks  
 Donnelly (IN)  
 Dreier  
 Driehaus  
 Duncan  
 Edwards (TX)  
 Ehlers  
 Ellison  
 Emerson  
 Engel  
 Etheridge  
 Fallon  
 Flake  
 Fleming  
 Forbes  
 Fortenberry  
 Foster  
 Foss  
 Franks (AZ)  
 Frelinghuysen  
 Gallegly  
 Garrett (NJ)  
 Gerlach  
 Giffords  
 Gingrey (GA)  
 Gohmert  
 Gonzalez  
 Goodlatte  
 Gordon (TN)  
 Granger  
 Graves  
 Green, Gene  
 Griffith  
 Guthrie  
 Hall (NY)  
 Hall (TX)  
 Halvorson  
 Harman  
 Harper  
 Hastings (WA)  
 Heinrich  
 Heller  
 Hensarling  
 Herger  
 Herseth Sandlin

Higgins  
 Hill  
 Himes  
 Hodes  
 Hoekstra  
 Holden  
 Hoyer  
 Hunter  
 Inglis  
 Inslee  
 Issa  
 Jenkins  
 Johnson (IL)  
 Johnson, Sam  
 Jones  
 Jordan (OH)  
 Kagen  
 Kind  
 King (IA)  
 King (NY)  
 Kingston  
 Kirk  
 Kirkpatrick (AZ)  
 Kissell  
 Coble  
 Kline (MN)  
 Kosmas  
 Kratovil  
 Lamborn  
 Lance  
 Larsen (WA)  
 Latham  
 LaTourette  
 Latta  
 Lee (NY)  
 Levin  
 Lewis (CA)  
 Lewis (GA)  
 Linder  
 Lipinski  
 LoBiondo  
 Lucas  
 Luetkemeyer  
 Lujan  
 Lummis  
 Lungren, Daniel  
 E.  
 Mack  
 Maffei  
 Maloney  
 Manzullo  
 Marchant  
 Markey (CO)  
 Marshall  
 Massa  
 Matheson  
 Matsui  
 McCarthy (CA)  
 McCarthy (NY)  
 McCaul  
 McClintock  
 McCotter  
 McHenry  
 McIntyre  
 McKeon  
 McMahon  
 McMorris  
 Rodgers  
 McNerney  
 Meek (FL)  
 Meeks (NY)  
 Melancon  
 Mica  
 Michaud  
 Miller (FL)  
 Miller (MI)  
 Miller, Gary  
 Minnick  
 Mitchell  
 Mollohan  
 Moore (KS)  
 Moran (KS)  
 Murphy (CT)  
 Murphy (NY)  
 Murphy, Patrick  
 Murphy, Tim  
 Myrick  
 Neal (MA)  
 Neugebauer  
 Nunes

## NOES—124

Abercrombie  
 Ackerman  
 Andrews

Becerra  
 Berman  
 Bishop (NY)

Nye  
 Olson  
 Ortiz  
 Owens  
 Paul  
 Paulsen  
 Pence  
 Perlmutter  
 Peters  
 Petri  
 Pitts  
 Platts  
 Poe (TX)  
 Polis (CO)  
 Pomeroy  
 Posey  
 Price (GA)  
 Putnam  
 Rahall  
 Rangel  
 Rehberg  
 Reichert  
 Rodriguez  
 Roe (TN)  
 Rogers (AL)  
 Rogers (KY)  
 Rogers (MI)  
 Rohrabacher  
 Rooney  
 Ros-Lehtinen  
 Roskam  
 Ross  
 Royce  
 Ruppertsberger  
 Rush  
 Ryan (WI)  
 Salazar  
 Scalise  
 Schauer  
 Schmidt  
 Schock  
 Schrader  
 Schwartz  
 Scott (GA)  
 Sensenbrenner  
 Sessions  
 Shadegg  
 Shea-Porter  
 Shimkus  
 Shuler  
 Shuster  
 Simpson  
 Skelton  
 Smith (NE)  
 Smith (NJ)  
 Smith (TX)  
 Smith (WA)  
 Snyder  
 Souder  
 Space  
 Spratt  
 Stearns  
 Tanner  
 Taylor  
 Teague  
 Terry  
 Thompson (CA)  
 Thompson (MS)  
 Thompson (PA)  
 Thornberry  
 Tiahrt  
 Tiberi  
 Towns  
 Turner  
 Upton  
 Walden  
 Walz  
 Wamp  
 Wasserman  
 Schultz  
 Westmoreland  
 Whitfield  
 Wilson (OH)  
 Wilson (SC)  
 Wittman  
 Wolf  
 Yarmuth  
 Young (AK)  
 Young (FL)

Brady (PA)  
 Braley (IA)  
 Capps

Capuano	Israel	Pingree (ME)	Capps	Holt	Rangel	King (IA)	Melancon	Ruppersberger
Carson (IN)	Jackson (IL)	Price (NC)	Capuano	Honda	Reyes	King (NY)	Mica	Ryan (WI)
Castor (FL)	Jackson-Lee	Quigley	Carnahan	Israel	Rothman (NJ)	Kingston	Miller (FL)	Salazar
Chu	(TX)	Reyes	Carson (IN)	Jackson (IL)	Roybal-Allard	Kirk	Miller (MI)	Scalise
Clarke	Johnson (GA)	Rothman (NJ)	Castor (FL)	Johnson (GA)	Rush	Kirkpatrick (AZ)	Miller, Gary	Schauer
Clay	Johnson, E. B.	Roybal-Allard	Christensen	Kanjorski	Ryan (OH)	Kissell	Minnick	Schmidt
Cleaver	Kanjorski	Ryan (OH)	Chu	Kaptur	Sablan	Klein (FL)	Mitchell	Schock
Clyburn	Kaptur	Sablan	Clarke	Kennedy	Sánchez, Linda	Kline (MN)	Mollohan	Schwartz
Cohen	Kennedy	Sánchez, Linda	Clay	Kildee	T.	Kosmas	Moran (KS)	Scott (GA)
Conyers	Kildee	T.	Cleaver	Kilpatrick (MI)	Sanchez, Loretta	Kratovil	Murphy (CT)	Sensenbrenner
Courtney	Kilroy	Sanchez, Loretta	Clyburn	Kilroy	Sarbanes	Lamborn	Murphy (NY)	Sessions
Dahlkemper	Kucinich	Sarbanes	Cohen	Kucinich	Schakowsky	Lance	Murphy, Patrick	Shadegg
DeGette	Langevin	Schakowsky	Conyers	Langevin	Schiff	Larsen (WA)	Murphy, Tim	Shimkus
Delahunt	Larson (CT)	Schiff	Costello	Larson (CT)	Schrader	Latham	Myrick	Shuler
DeLauro	Lee (CA)	Scott (VA)	Courtney	Lee (CA)	Scott (VA)	LaTourette	Neugebauer	Shuster
Dingell	Loesack	Serrano	Cummings	Levin	Serrano	Latta	Nunes	Simpson
Doggett	Lowey	Sherman	Davis (IL)	Lewis (GA)	Sestak	Lee (NY)	Olson	Nye
Doyle	Lynch	Sires	Davis (KY)	Lowey	Shea-Porter	Lewis (CA)	Ortiz	Skeltan
Edwards (MD)	Markey (MA)	Speier	DeFazio	Luján	Sherman	Linder	Owens	Smith (NE)
Ellsworth	McCollum	Stark	DeGette	Lynch	Speier	Lipinski	Paul	Smith (NJ)
Eshoo	McDermott	Stupak	Delahunt	Maloney	Spratt	LoBiondo	Paulsen	Smith (TX)
Faleomavaega	McGovern	Sutton	Dicks	Matsui	Stark	Loesack	Pence	Smith (WA)
Farr	Miller (NC)	Tierney	Dingell	McCollum	Stupak	Lucas	Perlmutter	Snyder
Fattah	Miller, George	Titus	Doggett	McDermott	Sutton	Luetkemeyer	Peters	Souder
Filner	Moore (WI)	Tonko	Doyle	McGovern	Thompson (CA)	Lummis	Peterson	Space
Frank (MA)	Nadler (NY)	Tsongas	Drieaus	Michaud	Thompson (MS)	Lungren, Daniel	Petri	Stearns
Fudge	Napolitano	Van Hollen	Edwards (MD)	Miller (NC)	Tierney	E.	Pitts	Sullivan
Garamendi	Norton	Velázquez	Ellison	Moore (KS)	Titus	Mack	Platts	Tanner
Grayson	Oberstar	Visclosky	Engel	Moore (WI)	Tonko	Maffei	Poe (TX)	Taylor
Green, Al	Obey	Waters	Eshoo	Nadler (NY)	Tsongas	Manzullo	Polis (CO)	Teague
Grijalva	Oliver	Watson	Faleomavaega	Napolitano	Van Hollen	Marchant	Terry	Terry
Gutierrez	Pallone	Watt	Farr	Neal (MA)	Velázquez	Markey (CO)	Pomeroy	Thompson (PA)
Hare	Pascarell	Waxman	Fattah	Norton	Visclosky	Marshall	Posey	Thornberry
Hastings (FL)	Pastor (AZ)	Weiner	Filner	Oberstar	Wasserman	Massa	Price (GA)	Tiahrt
Hinche	Payne	Welch	Frank (MA)	Fudge	Schultz	Matheson	Putnam	Tiberi
Hinojosa	Perriello	Wexler	Fudge	Garamendi	Obey	McCarthy (CA)	Rahall	Towns
Hirono	Peterson	Woolsey	Garamendi	Grayson	Oliver	McCarthy (NY)	Rehberg	Turner
Holt	Pierluisi	Wu	Grayson	Green, Al	Pallone	McCaul	Reichert	Upton
Honda			Green, Al	Grijalva	Pascarell	McClintock	Rodriguez	Walden
			Hall (NY)	Hall (NY)	Pastor (AZ)	McCotter	Roe (TN)	Walz
			Hare	Hare	Payne	McHenry	Rogers (AL)	Wamp
			Hastings (FL)	Hastings (FL)	Perriello	McIntyre	Rogers (KY)	Weiner
			Hinche	Hinche	Pierluisi	McKeon	Rogers (MI)	Westmoreland
			Hinojosa	Hinojosa	Pingree (ME)	McMahon	Rohrabacher	Whitfield
			Hirono	Hirono	Price (NC)	McMorris	Rohrabacher	Whitfield
					Quigley	McMorris	Rooney	Wilson (SC)
						Rodgers	Ros-Lehtinen	Wittman
						McNerney	Roskam	Wolf
						Meek (FL)	Ross	Young (AK)
						Meeks (NY)	Royce	Young (FL)

## NOT VOTING—12

Baldwin	Deal (GA)	Radanovich
Barrett (SC)	Lofgren, Zoe	Richardson
Bordallo	Moran (VA)	Slaughter
Costello	Murtha	Sullivan

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote).  
There are 2 minutes remaining in this vote.

□ 2139

Mr. SPRATT changed his vote from “no” to “aye.”

So the amendment was agreed to.

The result of the vote was announced as above recorded.

## AMENDMENT NO. 7 OFFERED BY MR. FRANK OF MASSACHUSETTS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Massachusetts (Mr. FRANK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

## RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 150, noes 280, not voting 10, as follows:

[Roll No. 957]

AYES—150

Abercrombie	Berkley	Brady (PA)
Ackerman	Berman	Braley (IA)
Andrews	Bishop (NY)	Brown, Corrine
Becerra	Blumenauer	Butterfield

Aderholt	Cantor	Gallegly
Adler (NJ)	Cao	Garrett (NJ)
Akin	Capito	Gerlach
Alexander	Cardoza	Giffords
Altmire	Carney	Gingrey (GA)
Arcuri	Carter	Gohmert
Austria	Cassidy	Gonzalez
Baca	Castle	Goodlatte
Bachmann	Chaffetz	Gordon (TN)
Bachus	Chandler	Granger
Baird	Childers	Graves
Barrow	Coble	Green, Gene
Bartlett	Coffman (CO)	Griffith
Barton (TX)	Cole	Guthrie
Bean	Conaway	Gutierrez
Berry	Connolly (VA)	Hall (TX)
Biggett	Cooper	Halvorson
Bilbray	Costa	Harman
Bilirakis	Crenshaw	Harper
Bishop (GA)	Crowley	Hastings (WA)
Bishop (UT)	Cuellar	Heinrich
Blackburn	Culberson	Heller
Blunt	Dahlkemper	Hensarling
Boccieri	Davis (AL)	Herger
Boehner	Davis (CA)	Herseth Sandlin
Bonner	Davis (TN)	Higgins
Bono Mack	Dent	Hill
Boozman	Diaz-Balart, L.	Himes
Boren	Diaz-Balart, M.	Hodes
Boswell	Donnelly (IN)	Hoekstra
Boucher	Dreier	Holden
Boustany	Duncan	Hoyer
Boyd	Edwards (TX)	Hunter
Brady (TX)	Ehlers	Inglis
Bright	Ellsworth	Inslee
Broun (GA)	Emerson	Issa
Brown (SC)	Etheridge	Jackson-Lee
Brown-Waite,	Fallin	(TX)
Ginny	Flake	Jenkins
Buchanan	Fleming	Johnson (IL)
Burgess	Forbes	Johnson, E. B.
Burton (IN)	Fortenberry	Johnson, Sam
Buyer	Foster	Jones
Calvert	Fox	Jordan (OH)
Camp	Franks (AZ)	Kagen
Campbell	Frelinghuysen	Kind

## NOES—280

## NOT VOTING—10

Baldwin	Lofgren, Zoe	Richardson
Barrett (SC)	Moran (VA)	Slaughter
Bordallo	Murtha	
Deal (GA)	Radanovich	

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote).  
There are 2 minutes remaining in this vote.

□ 2147

Mr. BACA and Ms. JACKSON-LEE of Texas changed their vote from “aye” to “no.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. DAVIS of Kentucky. Madam Chair, on rollcall No. 957 I inadvertently voted “aye” when I intended to vote “no.”

## AMENDMENT NO. 8 OFFERED BY MR. STUPAK

The Acting CHAIR (Mr. SABLAN). The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. STUPAK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

## RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.



A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 98, noes 330, not voting 12, as follows:

[Roll No. 958]

#### AYES—98

Abercrombie	Grayson	Perriello
Andrews	Grijalva	Pierluisi
Barton (TX)	Hare	Pingree (ME)
Becerra	Heinrich	Rothman (NJ)
Berman	Hinchev	Roybal-Allard
Blumenauer	Hirono	Ryan (OH)
Braley (IA)	Honda	Sánchez, Linda
Brown-Waite,	Israel	T.
Ginny	Kaptur	Sanchez, Loretta
Capps	Kennedy	Sarbanes
Castor (FL)	Kildee	Schakowsky
Chandler	Kucinich	Schiff
Christensen	Langevin	Serrano
Chu	Larson (CT)	Shea-Porter
Clarke	Lee (CA)	Sherman
Clyburn	Lipinski	Sires
Cohen	Loeback	Stark
Conyers	Lowey	Stearns
Courtney	Luján	Stupak
Cummings	Lynch	Sutton
DeFazio	Markey (MA)	Tierney
DeGette	McDermott	Titus
DeLauro	McGovern	Tonko
Dingell	Michaud	Tsongas
Doggett	Miller, George	Van Hollen
Donnelly (IN)	Murphy (CT)	Visclosky
Doyle	Murphy, Patrick	Watson
Edwards (MD)	Nadler (NY)	Waxman
Ellison	Obey	Welch
Eshoo	Oliver	Woolsey
Faleomavaega	Pallone	Wu
Farr	Pascarell	Yarmuth
Filner	Pastor (AZ)	
Garamendi	Payne	

#### NOES—330

Ackerman	Campbell	Fattah
Aderholt	Cantor	Flake
Adler (NJ)	Cao	Fleming
Akin	Capito	Forbes
Alexander	Capuano	Fortenberry
Altmire	Cardoza	Foster
Arcuri	Carnahan	Fox
Austria	Carney	Frank (MA)
Baca	Carson (IN)	Franks (AZ)
Bachmann	Carter	Frelinghuysen
Bachus	Cassidy	Fudge
Baird	Castle	Galleghy
Barrow	Chaffetz	Garrett (NJ)
Bartlett	Childers	Gerlach
Bean	Clay	Giffords
Berkley	Cleaver	Gingrey (GA)
Berry	Coble	Gohmert
Biggart	Coffman (CO)	Gonzalez
Billray	Cole	Goodlatte
Bilirakis	Conaway	Gordon (TN)
Bishop (GA)	Connolly (VA)	Granger
Bishop (NY)	Cooper	Graves
Bishop (UT)	Costa	Green, Al
Blackburn	Costello	Green, Gene
Blunt	Crenshaw	Griffith
Boccheri	Crowley	Guthrie
Boehner	Cuellar	Hall (NY)
Bonner	Culberson	Hall (TX)
Bono Mack	Dahlkemper	Halvorson
Boozman	Davis (AL)	Harman
Boren	Davis (CA)	Harper
Boswell	Davis (IL)	Hastings (FL)
Boucher	Davis (KY)	Hastings (WA)
Boustany	Davis (TN)	Heller
Boyd	Delahunt	Hensarling
Brady (PA)	Dent	Heger
Brady (TX)	Diaz-Balart, L.	Herseth Sandlin
Bright	Dicks	Higgins
Broun (GA)	Dreier	Hill
Brown (SC)	Driehaus	Himes
Brown, Corrine	Duncan	Hinojosa
Buchanan	Edwards (TX)	Hodes
Burgess	Ehlers	Hoekstra
Burton (IN)	Ellsworth	Holden
Butterfield	Emerson	Holt
Buyer	Engel	Hoyer
Calvert	Etheridge	Hunter
Camp	Fallin	Inglis

Inslee	McMorris	Rush
Issa	Rodgers	Ryan (WI)
Jackson (IL)	McNerney	Sablan
Jackson-Lee	Meek (FL)	Salazar
(TX)	Meeks (NY)	Scalise
Jenkins	Melancon	Schauer
Johnson (GA)	Mica	Schmidt
Johnson (IL)	Miller (FL)	Schock
Johnson, E. B.	Miller (MI)	Schrader
Johnson, Sam	Miller (NC)	Schwartz
Jones	Miller, Gary	Scott (GA)
Jordan (OH)	Minnick	Scott (VA)
Kagen	Mitchell	Sensenbrenner
Kanjorski	Mollohan	Sessions
Kirkpatrick (MI)	Moore (KS)	Sestak
Kilroy	Moore (WI)	Shadegg
Kind	Moran (KS)	Shimkus
King (IA)	Murphy (NY)	Shuler
King (NY)	Murphy, Tim	Shuster
Kingston	Myrick	Simpson
Kirk	Napolitano	Skelton
Kirkpatrick (AZ)	Neal (MA)	Smith (NE)
Kissell	Neugebauer	Smith (NJ)
Klein (FL)	Norton	Smith (TX)
Kline (MN)	Nunes	Smith (WA)
Kosmas	Nye	Snyder
Kratovil	Oberstar	Souder
Lamborn	Olson	Space
Lance	Ortiz	Speier
Larsen (WA)	Owens	Spratt
Latham	Paul	Sullivan
LaTourette	Paulsen	Tanner
Latta	Pence	Taylor
Lee (NY)	Perlmutter	Teague
Levin	Peters	Terry
Lewis (CA)	Peterson	Thompson (CA)
Lewis (GA)	Petri	Thompson (MS)
Linder	Pitts	Thompson (PA)
LoBiondo	Platts	Thornberry
Lucas	Poe (TX)	Tiahrt
Luetkemeyer	Polis (CO)	Tiberi
Lummis	Pomeroy	Towns
Lungren, Daniel	Posey	Turner
E.	Price (GA)	Upton
Mack	Price (NC)	Vélazquez
Maffei	Putnam	Walden
Maloney	Quigley	Walz
Manzullo	Rahall	Wamp
Marchant	Rangel	Wasserman
Markey (CO)	Rehberg	Schultz
Marshall	Reichert	Waters
Massa	Reyes	Watt
Matheson	Rodriguez	Weiner
Matsui	Roe (TN)	Westmoreland
McCarthy (CA)	Rogers (AL)	Wexler
McCarthy (NY)	Rogers (KY)	Whitfield
McCaul	Rogers (MI)	Wilson (OH)
McClintock	Rohrabacher	Wilson (SC)
McColum	Rooney	Wittman
McCotter	Ros-Lehtinen	Wolf
McHenry	Roskam	Young (AK)
McIntyre	Ross	Young (FL)
McKeon	Royce	
McMahon	Ruppersberger	

#### NOT VOTING—12

Baldwin	Diaz-Balart, M.	Murtha
Barrett (SC)	Gutierrez	Radanovich
Bordallo	Lofgren, Zoe	Richardson
Deal (GA)	Moran (VA)	Slaughter

#### ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote).  
There are 2 minutes remaining on this vote.

□ 2154

Messrs. SABLÁN and RUSH changed their vote from “aye” to “no.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

#### AMENDMENT NO. 9 OFFERED BY MR. STUPAK

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. STUPAK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

#### RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 150, noes 279, not voting 11, as follows:

[Roll No. 959]

#### AYES—150

Abercrombie	Green, Gene	Pascarell
Ackerman	Gutierrez	Pastor (AZ)
Andrews	Hall (TX)	Payne
Becerra	Hare	Perlmutter
Berkley	Hastings (FL)	Perriello
Berman	Hinchev	Petri
Bishop (NY)	Hinojosa	Pierluisi
Blumenauer	Hirono	Pingree (ME)
Brady (PA)	Hodes	Price (NC)
Braley (IA)	Holt	Rahall
Butterfield	Honda	Rangel
Capps	Inslee	Reyes
Capuano	Israel	Rothman (NJ)
Carney	Jackson (IL)	Roybal-Allard
Carson (IN)	Johnson (GA)	Ryan (OH)
Cassidy	Kanjorski	Sablan
Castor (FL)	Kaptur	Sánchez, Linda
Chandler	Kennedy	T.
Christensen	Kildee	Sarbanes
Chu	Kilpatrick (MI)	Schakowsky
Clarke	Kilroy	Schiff
Clay	Klein (FL)	Scott (VA)
Cleaver	Kucinich	Sensenbrenner
Clyburn	Langevin	Serrano
Cohen	Larson (CT)	Sestak
Courtney	Lee (CA)	Shea-Porter
Davis (IL)	Levin	Sherman
DeFazio	Lewis (GA)	Sires
DeGette	Lipinski	Stark
Delahunt	Loeback	Stupak
DeLauro	Lowey	Sutton
Dicks	Luján	Thompson (CA)
Dingell	Lynch	Tierney
Doggett	Markey (MA)	Titus
Donnelly (IN)	Matsui	Tonko
Doyle	McCollum	Tsongas
Driehaus	McDermott	Van Hollen
Edwards (MD)	McGovern	Vélazquez
Ellison	Michaud	Visclosky
Engel	Miller (NC)	Waters
Eshoo	Miller, George	Watson
Faleomavaega	Moore (WI)	Watt
Farr	Murphy (CT)	Waxman
Fattah	Murphy, Patrick	Weiner
Filner	Nadler (NY)	Wilson
Frank (MA)	Napolitano	Wittman
Fudge	Neal (MA)	Wolf
Garamendi	Norton	Young (AK)
Gohmert	Obey	Young (FL)
Grayson	Oliver	
Green, Al	Pallone	

#### NOES—279

Aderholt	Blunt	Calvert
Adler (NJ)	Boccheri	Camp
Akin	Boehner	Campbell
Alexander	Bonner	Cantor
Altmire	Bono Mack	Cao
Arcuri	Boozman	Capito
Austria	Boren	Cardoza
Baca	Boswell	Carnahan
Bachmann	Boucher	Carter
Bachus	Boustany	Castle
Baird	Boyd	Chaffetz
Barrow	Brady (TX)	Childers
Bartlett	Bright	Coble
Barton (TX)	Broun (GA)	Coffman (CO)
Bean	Brown (SC)	Cole
Berry	Brown, Corrine	Conaway
Biggart	Brown-Waite,	Connolly (VA)
Billray	Ginny	Conyers
Bilirakis	Buchanan	Cooper
Bishop (GA)	Burgess	Costa
Bishop (UT)	Burton (IN)	Costello
Blackburn	Buyer	Crenshaw

Crowley  
Cuellar  
Culberson  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (KY)  
Davis (TN)  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dreier  
Duncan  
Edwards (TX)  
Ehlers  
Ellsworth  
Emerson  
Etheridge  
Fallin  
Flake  
Fleming  
Forbes  
Fortenberry  
Foster  
Foxy  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Giffords  
Gingrey (GA)  
Gonzalez  
Goodlatte  
Gordon (TN)  
Granger  
Graves  
Griffith  
Guthrie  
Hall (NY)  
Halvorson  
Harman  
Harper  
Hastings (WA)  
Heinrich  
Heller  
Hensarling  
Herger  
Herseth Sandlin  
Higgins  
Hill  
Himes  
Hoekstra  
Holden  
Hoyer  
Hunter  
Inglis  
Issa  
Jackson-Lee  
(TX)  
Jenkins  
Johnson (IL)  
Johnson, E. B.  
Johnson, Sam  
Jones  
Jordan (OH)  
Kagen  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk

Kirkpatrick (AZ)  
Kissell  
Kline (MN)  
Kosmas  
Kratovil  
Lamborn  
Lance  
Larsen (WA)  
Latham  
LaTourette  
Latta  
Lee (NY)  
Lewis (CA)  
Linder  
LoBiondo  
Lucas  
Luetkemeyer  
Lummis  
Lungren, Daniel  
E.  
Mack  
Maffei  
Maloney  
Manzullo  
Marchant  
Markey (CO)  
Marshall  
Massa  
Matheson  
McCarthy (CA)  
McCarthy (NY)  
McCaul  
McClintock  
McCotter  
McHenry  
McIntyre  
McKeon  
McMahon  
McMorris  
Rodgers  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Mica  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moran (KS)  
Murphy (NY)  
Murphy, Tim  
Myrick  
Neugebauer  
Nunes  
Nye  
Oberstar  
Olson  
Ortiz  
Owens  
Paul  
Paulsen  
Pence  
Peters  
Peterson  
Pitts  
Platts  
Poe (TX)  
Polis (CO)  
Pomeroy

Posey  
Price (GA)  
Putnam  
Quigley  
Rehberg  
Reichert  
Rodriguez  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Ross  
Royce  
Ruppersberger  
Rush  
Ryan (WI)  
Salazar  
Sanchez, Loretta  
Scalise  
Schauer  
Schmidt  
Schock  
Schrader  
Schwartz  
Scott (GA)  
Sessions  
Shadegg  
Shimkus  
Shuler  
Shuster  
Simpson  
Skelton  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Space  
Speier  
Spratt  
Stearns  
Sullivan  
Tanner  
Taylor  
Teague  
Terry  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Towns  
Turner  
Upton  
Walden  
Walz  
Wamp  
Wasserman  
Schultz  
Westmoreland  
Whitfield  
Wilson (OH)  
Wilson (SC)  
Wittman  
Wolf  
Young (AK)  
Young (FL)

## NOT VOTING—11

Baldwin  
Barrett (SC)  
Bordallo  
Deal (GA)

Grijalva  
Lofgren, Zoe  
Moran (VA)  
Murtha

Radanovich  
Richardson  
Slaughter

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining in this vote.

□ 2201

Ms. SPEIER changed her vote from “aye” to “no.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

## AMENDMENTS EN BLOC OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Mr. Chairman, pursuant to the authority granted to me under the rule, I offer amendments en bloc.

The Acting CHAIR. The Clerk will designate the amendments en bloc.

Amendments en bloc offered by Mr. FRANK of Massachusetts consisting of amendments numbered 11, 20, 21, 22, 23, 24, 27, 28, 34 and 25 printed in House Report 111-370.

## AMENDMENT NO. 11 OFFERED BY MR. PAULSEN

The text of the amendment is as follows:

Page 21, line 23, insert “and shall not be excluded from any of the Council’s proceedings, meetings, discussions and deliberations” after “advisory capacity”.

## AMENDMENT NO. 20 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 22, beginning on line 19, strike “orderliness”.

## AMENDMENT NO. 21 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 92, line 16, insert the following: “The aforementioned amounts shall be indexed to inflation.”

## AMENDMENT NO. 22 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 58, line 4, insert after the period the following new sentence: “The Board shall define by rule or regulation the term ‘significantly undercapitalized’ at a threshold the Board determines to be prudent for the effective monitoring, management and oversight of the financial system.”.

## AMENDMENT NO. 23 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 20, line 1, insert after “possible” the following: “, but no later than two (2) years.”.

## AMENDMENT NO. 24 OFFERED BY MR. BURGESS

The text of the amendment is as follows:

Page 1185, beginning on line 10, strike “have engaged in information sharing or”.

## AMENDMENT NO. 27 OFFERED BY MR. DENT

The text of the amendment is as follows:

At the end of the bill, insert the following new section:

**SEC. \_\_\_\_ SENSE OF CONGRESS REGARDING SIMPLIFIED MORTGAGE CONTRACT SUMMARIES.**

It is the sense of Congress that mortgage lenders should provide loan applicants with a simplified summary of their loan contracts, including an easy-to-read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information.

## AMENDMENT NO. 28 OFFERED BY MR. MOORE OF KANSAS

The text of the amendment is as follows:

Add at the end the following new title (and update the table of contents accordingly):

**TITLE VIII—NONADMITTED AND REINSURANCE REFORM ACT**

## SECTION 10001. SHORT TITLE.

This title may be cited as the “Non-admitted and Reinsurance Reform Act of 2009”.

## SEC. 10002. EFFECTIVE DATE.

Except as otherwise specifically provided in this title, this title shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this Act.

## Subtitle A—Nonadmitted Insurance

## SEC. 10101. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE’S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured’s home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this Act, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured’s home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured’s home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks or exposures located in each State. The filing of a non-admitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

## SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY INSURED’S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured’s home State.

(b) BROKER LICENSING.—No State other than an insured’s home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 10101 and subsections (a) and (b) of

this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) **WORKERS' COMPENSATION EXCEPTION.**—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

**SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER DATABASE.**

After the expiration of the 2-year period beginning on the date of the enactment of this Act, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

**SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.**

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 10101(b) of this title that include alternative nationwide uniform eligibility requirements; and

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

**SEC. 10105. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.**

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

**SEC. 10106. GAO STUDY OF NONADMITTED INSURANCE MARKET.**

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this subtitle on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) **CONTENTS.**—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this Act;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) **CONSULTATION WITH NAIC.**—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) **REPORT.**—The Comptroller General shall complete the study under this section and submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the findings of the study not later than 30 months after the effective date of this Act.

**SEC. 10107. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) **ADMITTED INSURER.**—The term “admitted insurer” means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) **AFFILIATE.**—The term “affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) **AFFILIATED GROUP.**—The term “affiliated group” means any group of entities that are all affiliated.

(4) **CONTROL.**—An entity has “control” over another entity if—

(A) the entity directly or indirectly or acting through one or more other persons owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) **EXEMPT COMMERCIAL PURCHASER.**—The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least one of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full time or full time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(i) Effective on the fifth January 1 occurring after the date of the enactment of this Act and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) **HOME STATE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) **AFFILIATED GROUPS.**—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) **INDEPENDENTLY PROCURED INSURANCE.**—The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

(8) **NAIC.**—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(9) **NONADMITTED INSURANCE.**—The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) **NON-ADMITTED INSURANCE MODEL ACT.**—The term “Non-Admitted Insurance Model Act” means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) **NONADMITTED INSURER.**—The term “nonadmitted insurer” means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State.

(12) **QUALIFIED RISK MANAGER.**—The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i) has a bachelor's degree or higher from an accredited college or university in risk

management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has one of the following designations:

- (AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

- (BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

- (CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

- (DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

- (EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any one of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(13) **PREMIUM TAX.**—The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(14) **SURPLUS LINES BROKER.**—The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(15) **STATE.**—The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

#### Subtitle B—Reinsurance

#### SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) **CREDIT FOR REINSURANCE.**—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance

for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) **ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.**—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

- (1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

- (2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

- (3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this subtitle; or

- (4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

#### SEC. 10202. REGULATION OF REINSURER SOLVENCY.

(a) **DOMICILIARY STATE REGULATION.**—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) **NONDOMICILIARY STATES.**—

- (1) **LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.**—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

- (2) **RECEIPT OF INFORMATION.**—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

#### SEC. 10203. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

- (1) **CEDING INSURER.**—The term "ceding insurer" means an insurer that purchases reinsurance.

- (2) **DOMICILIARY STATE.**—The terms "State of domicile" and "domiciliary State" means, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

- (3) **REINSURANCE.**—The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

- (4) **REINSURER.**—

- (A) **IN GENERAL.**—The term "reinsurer" means an insurer to the extent that the insurer—

- (i) is principally engaged in the business of reinsurance;

- (ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

- (iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

- (B) **DETERMINATION.**—A determination of whether an insurer is a reinsurer shall be

made under the laws of the State of domicile in accordance with this paragraph.

(5) **STATE.**—The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

#### Subtitle C—Rule of Construction

#### SEC. 10301. RULE OF CONSTRUCTION.

Nothing in this title or amendments to this title shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this title and any amendments to this title and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

#### SEC. 10302. SEVERABILITY.

If any section or subsection of this title, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this title, and the application of the provision to any other person or circumstance, shall not be affected.

AMENDMENT NO. 34 OFFERED BY MR. MURPHY OF NEW YORK

The text of the amendment is as follows:

Page 176, strike lines 12 through 14 (and redesignate remaining paragraphs accordingly).

Add at the end of the bill the following:

#### TITLE VII—INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED

#### SEC. 9001. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED.

(a) **REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON DEMAND DEPOSITS.**—

- (1) **FEDERAL RESERVE ACT.**—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended to read as follows:

"(i) [Repealed]".

- (2) **HOME OWNERS' LOAN ACT.**—The first sentence of section 5(b)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking "savings association may not—" and all that follows through "(ii) permit any" and inserting "savings association may not permit any".

- (3) **FEDERAL DEPOSIT INSURANCE ACT.**—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows:

"(g) [Repealed]".

- (b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

AMENDMENT NO. 25 OFFERED BY MS. HERSETH SANDLIN

The text of the amendment is as follows:

Page 1022, line 20, strike "Section" and insert the following:

(a) **EXEMPTION.**—Section

Page 1024, line 3, strike the period at the end and insert "; and".

Page 1024, after line 3, insert the following:

- (b) **CONSIDERATION OF RISK.**—Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)) is amended by adding at the end the following:

"(3) The Commission shall take into account the relative risk profile of different classes of private funds as it establishes, by rule or regulation, the registration requirements for private funds."

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Massachusetts and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, these are 10 amendments that raise in merit from wonderful to at least acceptable, and I will be reserving the balance of my time; and I will yield time, or they can get their own time, to any one of the offerers who wishes to explain his or her amendment.

I reserve the balance of my time.

Mr. BURGESS. I will claim the time in opposition, even though I am not opposed.

The Acting CHAIR. Without objection, the gentleman from Texas is recognized for 10 minutes.

There was no objection.

Mr. BURGESS. Mr. Speaker, I yield myself such time as I may consume to speak on the five amendments that I offered in the Rules Committee that were made in order under the rule.

The first, Burgess amendment No. 20, to strike the word "orderliness" on the list of descriptors of title I's definitions of the duties of the Council. In the language of the underlying bill, there is no explanation for what "orderliness" means in financial parlance. Without that word, this section still has power, and what this amendment would do is remove a word that seems nebulous without a common understanding.

The second amendment, No. 21, index Systemic Dissolution Fund amounts to inflation. In the language of the underlying bill, the section creating the Systemic Dissolution Fund indexes the amount to inflation whereas any mitigatory action imposed by the Council involving the sale, divestiture or transfer of more than \$10 billion in total assets by a financial holding company subject to a stricter set of standards does not. This amendment would index those amounts.

Burgess Amendment No. 22. The metrics of what determines "significantly undercapitalized" will be determined by rule or regulation. In the language of the underlying bill, title I purports to elaborate on what "significantly undercapitalized" means, but in its definition, it neither gives a fixed dollar amount, a ratio or even a formula. Without a specific metric, this definition is left too much to individual interpretation, just like on page 494 of the bill where "substantial net position" requires a specific definition by rulemaking, "significantly undercapitalized" should be defined in rule or regulation.

I would further point out that the very next section of the bill gives the term "significantly critically undercapitalized," and under "critically undercapitalized," there is, in fact, reference to at least a ratio at another part of the bill. "Significantly undercapitalized" is never adequately defined, and I am concerned about the effect of unintended consequences if we do not provide that definition.

Burgess No. 23, the outer limit of 2 years on the amount of time the Federal Reserve has to do their audit. During the Financial Services markup, Representative PAUL offered an amendment which was accepted 43-26. This amendment is generally reflected in title I, section 1000A, which allows for the auditing of the Federal Reserve, and it shall be completed as expeditiously as possible. My amendment seeks to put an outer time limit on the amount of time which can pass or otherwise be defined as "expeditiously as possible." An audit by the IRS for an individual usually does not take very long. In fact, the IRS has 3 years to audit an individual if there is not a substantial omission or if there is no tax fraud. In those cases, it would take 6 years, but the IRS is given so much time to do an audit because there are 143 million individual returns to examine.

The Federal Reserve is different. Presumably, as a government agency, while they wouldn't be as easy to audit as an individual, because the government is supposed to have greater transparency, checking the Federal Reserve balance sheet of over \$70 billion of assets should not take more than 2 years, simply for two reasons: we know who to audit and we know what to audit.

While I note the historic nature of even getting an audit of the Federal Reserve is in place, we cannot let the audit go on interminably, especially in times of financial crisis. We need to know what they have and where they have it. I applaud Representative PAUL for his laser-like dedicated focus to this issue, but this amendment would add an outer limit of 2 years on the amount of time that the Federal Reserve has to obtain that audit.

Finally, Burgess No. 24 strikes the phrase "have engaged in information sharing or" from the SEC "revolving door" study. In the language of the underlying bill, the definition of what or what is not information is not sufficiently evidenced so that if an employee of the SEC shares information as basic as the date of a meeting on a calendar, they would be considered a part of the SEC "revolving door."

This amendment proposes to get to the heart of the issue, which is to find those who have circumvented Federal rules and regulations without bringing in those who have basic and non-essential information. I liken this to the innocent spouse provision in the IRS statutes. If someone just simply shares a page from an Outlook calendar, that does not make them or should not make them part of the "revolving door" which we attempt to contain and restrain with the underlying language of the bill.

With that, Mr. Chairman, I will reserve the balance of my time.

Mr. FRANK of Massachusetts. I yield 2 minutes to the gentleman from New

York (Mr. MURPHY), the author of one of the amendments.

Mr. MURPHY of New York. My amendment very simply gets rid of an anachronistic law from 1933. Right now, it's illegal for banks to pay interest to business checking accounts. This adversely affects our small businesses and keeps them from building their business.

Now, as we are fixing some of the issues we have with our regulatory system, is the right time to get rid of that. So my amendment would make it legal for banks to pay interest to business checking accounts. It wouldn't require it, but it would make it legal. This is the kind of commonsense approach that's going to move us forward and help our small businesses get this economy going again.

Mr. FRANK of Massachusetts. I reserve the balance of my time.

Mr. BURGESS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I would just take this opportunity to announce if there are any Members here who think we are going to do any further business, that we're not. We will resume tomorrow morning. I will inform the Members as a result of what we have been able to do with some of the manager's amendments and this en blocing, and I appreciate the cooperation of the gentleman from Texas and others, we have, I believe, 11 amendments left to be offered tomorrow.

□ 2210

Two of them will take a longer time, one on the CFPA, the Consumer Financial Protection Agency; one on the Republican substitute; and then there will be a recommit. So we should be, obviously, finishing this bill sometime early tomorrow afternoon. We will come back in tomorrow and resume the debate, and I wanted Members to know that.

Mr. PAULSEN. Mr. Chair, the bill before us establishes a Financial Stability Oversight Council that includes the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and Federal banking and securities regulators.

The bill also includes non-voting members, a State insurance commissioner, a State Securities commissioner, the head of the new Federal Insurance Office and a State banking supervisor, who would serve on the Council in an advisory capacity.

My amendment ensures that the non-voting regulators are not excluded from any proceedings, meetings, discussions, and deliberations.

I believe that is important to ensure that the Federal insurance office and other state regulators will have a seat at the table for any deliberations that impact the consumers they protect and institutions they regulate.

If these institutions are going to be responsible for paying into the bailout fund, it is only fair that their concerns are represented.

I urge adoption of my amendment.

Mr. DENT. Mr. Chair, my amendment is simple—It expresses the sense of Congress that mortgage lending institutions should provide loan applicants with a simplified summary of their loan contracts, including an easy to read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information.

I ask that a sample template of this one page summary document be inserted into the CONGRESSIONAL RECORD.

H.R. 4173 is a 1,200 plus page bill that purports to protect consumers from abusive financial products by creating a new government bureaucracy—the Consumer Finance Protection Agency.

We see in the complicated mortgage contract process that more bureaucracy and more requirements doesn't guarantee more protection. How many homebuyers understand the voluminous and complex documents they shuffle through when closing on a new home? The process is no less cumbersome for the lender. Less can be more.

Having gone through this process as a homebuyer and after speaking to numerous bankers and lenders, I believe we must work to simplify the process, while ensuring borrowers are protected from abusive contractual agreements and providing lenders with the tools to safely and soundly alleviate some of the administrative costs—costs ultimately passed along to the consumer.

Several months ago I learned that Mr. David Lobach and Mr. Elmer Gates of Embassy Bank—a community bank in the 15th District of Pennsylvania—developed a simplified mortgage contract summary for borrowers who take out a mortgage with their institution. Embassy is bolstering consumer protection for their customers by ensuring that he or she knows exactly what they are agreeing to upon their signature—not only providing greater transparency for the borrower but also promoting efficiency for the mortgagee.

The statutes in place today, including the Truth in Lending Act and the Real Estate Settlement Procedures Act, intended to protect borrowers and lenders alike, have created this complex closing process that leaves some homebuyers confused and uninformed.

I believe that Congress should review and revisit the current statutes and consider meaningful reforms that make the mortgage process more understandable for borrowers and more efficient for lenders. The adoption of this amendment is an important first step in encouraging financial institutions engaged in mortgage lending to provide their borrowers with a simplified summary of the loan terms so that every new homeowner will walk away from the table understanding their obligations—in simple terms and in fewer pages.

I've held a number of mortgage foreclosure seminars across my district—the 15th District of Pennsylvania. After listening to the experiences of my constituents, I truly believe some of the foreclosures our country has seen in the past 2 years would not have taken place if homeowners had been aware of the actual terms and conditions of their loan.

My amendment is a common-sense approach to promote consumer protection by en-

suring families in pursuit of the American dream fulfill that dream under terms they completely and fully understand.

Borrower: Mary Borrower, 10 Test Avenue, Test City, PA 18000.

Lender: Any Bank, PO Box 2020, Any Town, PA 11111.

#### BASIC LOAN TERMS

The amount you borrowed: \$100,000

Your interest rate: 4.99%

Can your interest rate change? ☐ [X] No

The collateral for your loan: Borrower is giving a security interest in 10 Test Avenue, Test City, PA 18000. In addition, Lender has also reserved a contractual right of setoff in Borrower's deposit accounts.

#### PAYMENT INFORMATION

Your payment amount: \$790.28

How often you will make payments: Monthly

Your loan term: 180 payments

When your payments are due: Monthly, beginning November 15, 2009

How late payment charges are calculated: 5.00% of the regularly scheduled payment or \$5.00, whichever is greater.

#### PAYMENTS & BALLOONS

Does your loan have a prepayment penalty? ☐ [X] No

Does your loan have a balloon payment? ☐ [X] No

Loan maturity date: October 15, 2024

#### ESCROW

Do we require you to have an escrow account for your loan? ☐ [X] No

Important Note: In the event of default on this loan, we will exercise all legal means to recover our money. This document is intended for informational purposes only and does not constitute your contract with Any Bank. Please refer to the complete set of loan documents for exact details regarding your loan terms and conditions.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendments en bloc offered by the gentleman from Massachusetts (Mr. FRANK).

The amendments en bloc were agreed to.

Mr. FRANK of Massachusetts. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Ms. KILROY) having assumed the chair, Mr. SABLON, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, had come to no resolution thereon.

#### COMMUNICATION FROM THE REPUBLICAN LEADER

The SPEAKER pro tempore laid before the House the following commu-

nication from the Honorable JOHN A. BOEHNER, Republican Leader:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, December 10, 2009.

Hon. NANCY PELOSI,  
Speaker, H-232, U.S. Capitol,  
Washington, DC.

DEAR SPEAKER PELOSI: Pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, (22 U.S.C. 7002) amended by Division P of the Consolidated Appropriations Resolution, 2003 (22 U.S.C. 6901), I am pleased to reappoint Mr. Peter T. R. Brookes of Virginia and Mr. Daniel M. Slane of Ohio to the United States-China Economic and Security Review Commission, effective January 1, 2010.

Both Mr. Brookes and Mr. Slane have expressed interest in serving in this capacity and I am pleased to fulfill their requests.

Sincerely,

JOHN A. BOEHNER,  
Republican Leader.

#### JOBS AND THE ECONOMY

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute.)

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise today to reinforce the call to action by the American people.

As we have watched the recovery grow and Wall Street thrive, the American people need an answer to unemployment. I will be introducing legislation that will provide for 1-year training. For those individuals out of work, they will be allowed to keep their unemployment, but they will receive a stipend for training in many varied disciplines.

I also believe as a member of the new Jobs Caucus that is led by dynamic members from Chicago and from Ohio and members from around the Nation that we need to expand our domestic energy resources by exploring natural gas.

I also believe it is important to address those individuals who have been chronically unemployed, which the legislation that I offer will.

In addition, I support the Durbin-Hoyer relief to automobile dealers, but I want to ensure that mediation and arbitration is not so expensive that they cannot participate. Automobile dealers equal jobs, 40,000 jobs in the State of Texas alone.

It is important to create an opportunity for Americans to work. They have me as a partner along with hundreds of members of this caucus, the Democratic Caucus, who know that real jobs equal a great America.

#### OBAMA'S RISKY-SEX CZAR

(Mr. BURGESS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURGESS. Mr. Speaker, the silence of the administration and, indeed, the House of Representatives on

the subject of a senior presidential appointee to the Department of Education is astonishing. Kevin Jennings needs to be replaced. He needs to be replaced today. The so-called Safe Schools czar appointed by the Obama administration to the Department of Education is dangerous for our school children.

An editorial in yesterday's Washington Times titled "Obama's risky-sex czar"—now, I don't know that I've ever seen an editorial in a major newspaper that came with a bolded warning, just like a new FDA drug: This editorial includes discussion of topics that are sexually graphic. Under usual circumstances, we would never entertain these subjects or the language involved. In this case, however, a very unusual exception must be made because the issues are central to the background of a senior presidential appointee in the United States Department of Education who is in a position to influence how and what our children are taught in our Nation's schools. Please do not read any further if you will be offended by the sexually graphic language.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, December 9, 2009.

Re Kevin Jennings.

President BARACK OBAMA,  
*The White House,*  
Washington, DC.  
Secretary ARNE DUNCAN,  
*Department of Education,*  
Washington, DC.

DEAR PRESIDENT OBAMA AND SECRETARY DUNCAN: Enclosed for your reference is an editorial written in today's The Washington Times. The individual who is the subject of this article is someone with whom you are familiar, as he is a presidential appointee to the U.S. Department of Education.

On at least one prior occasion, my fellow Members and I have written to you regarding the type of behavior that Mr. Jennings has been promoting to our school-age children; however, the premise of the enclosed The Washington Times editorial heightens the complete lack of regard this Administration has followed regarding sexual relationships between adults and children.

Must I remind you that such behavior is never "okay"—and is illegal.

The fact that this Administration stands by quietly while Mr. Jennings goes out into the public, under the cloak of protection of a presidential appointment, and informs our schoolchildren on behavior which is not only unspeakable, it is criminal.

This letter is about a grown man. Kevin Jennings, teaching school children as young as 14 years-of-age, that it is okay for them to have sex with grown adults. Mr. President, this is never okay. The callousness of this type of instruction is further evidenced by his relationship, and subsequent endorsement, of an individual who has an organization whose sole purpose is to advocate sexual relationships between grown men and adolescents. This activity is not one, and can never be one, in which the U.S. Department of Education promotes either by omission, through action or commission through silence.

The silence of this Administration with regards to Kevin Jennings cannot stand. He must be fired and must be fired today.

There are plenty of knowledgeable, honorable, respected and forceful advocates of your policies who could ably fill this job. Kevin Jennings is not that person, has never been that person and must not stay that person.

I respectfully request you remove him today and then submit an appropriate nomination to the U.S. Senate for his replacement.

With kinds regards,

MICHAEL C. BURGESS.

[From the Washington Times, Dec. 9, 2009]

OBAMA'S RISKY-SEX CZAR

Warning: This editorial includes discussion of topics that are sexually graphic. Under usual circumstances, we would never entertain these subjects or the rancid language involved. In this case, however, a very unusual exception must be made because the issues are central to the background of a senior presidential appointee at the U.S. Department of Education who is in a position to influence how and what our children are taught in our nation's schools. Thus far, out of fear or squeamishness, there has been public hesitance to examine closely the beliefs of this individual because many are afraid even to touch the risky content. Our scruples cannot be used against us when traditional moral precepts need to be defended. Simply, the deep level of depravity involved in this subject cannot be portrayed without providing a couple of examples to illustrate the inappropriate content. Please do not read any further if you will be offended by sexually graphic language.

The Obama administration is stonewalling serious inquiries about sexual filth propagated by a senior presidential appointee who is responsible for promoting and implementing federal education policy. Democrats clearly are terrified of ruffling the feathers of their activist homosexual supporters, who are an influential part of the Democratic party's base. This scandal, however, is not merely about homosexual behavior; it is about promoting sex between children and adults—and it's time for President Obama to make clear that abetting such illegal perversion has no place in his administration.

It is curious why White House officials and Education Secretary Arne Duncan believe it's worth it politically to continue taking arrows for defending Kevin Jennings, who is Mr. Obama's controversial "safe schools czar." The evidence suggesting he is unfit to serve as a senior presidential appointee is startling and plentiful. It was revealed this week that Mr. Jennings was involved in promoting a reading list for children 13 years old or older that made the most explicit sex between children and adults seem normal and acceptable. This brought up anew Mr. Jennings' past controversies, such as his seeming encouragement of sex between one of his high school students and a much older man as well as his praise for Harry Hay, a notorious supporter of the North American Man Boy Love Association.

But there is more. There are shocking new revelations this week of tape recordings from a youth conference involving 14-year-old students. The conference, billed as a forum to encourage tolerance of homosexuality, was sponsored by Mr. Jennings' organization and was held at Tufts University in March 2000. Mr. Jennings was executive director of the Gay, Lesbian and Straight Education Network (GLSEN) from its founding in 1995 until August 2008. The conference sessions appear to have had less to do with promoting tolerance and more to do with teaching children how to engage in sex.

Andrew Breitbart's Biggovernment.com provides tapes of some of the sessions. Describing the subject matter as smut would be putting it lightly. The conference discussions were very graphic and cannot be relayed in full detail in a family newspaper. A few examples are sufficient to describe the depravity of the subject matter. During one session about oral sex, a presenter asked the 14-year-old students: "Spit or swallow? Is it rude?" In another session, the 14-year-olds are taught about a gross practice called "fisting," in which "the man leading the discussion position[ed] his hand and show[ed] 14-year-olds how to insert their entire hand into the rectum of their sex partner."

Teaching children sexual techniques is simply not appropriate. Unfortunately, it is part of a consistent pattern by some homosexual activists to promote underage homosexuality while pretending that their mission is simply to promote tolerance for so-called alternative lifestyles. It is outrageous that someone involved in this scandal is being paid by the taxpayers to serve in a high-powered position at the Education Department, of all places. At some point, Mr. Duncan, Mr. Jennings, Obama administration spokesmen and the president himself are going to have to start answering questions about all this. Refusing to do so won't make the issue go away.

#### SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

#### THE WAR POWERS ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. KUCINICH) is recognized for 5 minutes.

Mr. KUCINICH. Madam Speaker, yesterday I began circulating to Members of Congress a letter that would enable Members to be able to sign on to legislation that will be introduced when we return in January that would be aimed at creating a vote in this House on whether or not we keep our troops in Afghanistan and continue operations in Pakistan. This action is being done pursuant to the War Powers Act.

The War Powers Act was passed in 1973, and the intention of it was to claim Congress's constitutional authority under article I, section 8 to be able to take this Nation into war, commit our troops to war, or to continue to stay at war.

Congress cannot remain on the sidelines in this matter. We have the lives of our troops at stake. We have trillions of dollars at stake. Congress must engage in this debate over whether or not to stay at war in Afghanistan and to continue operations in Pakistan.

It's comforting to let the President do everything, but we can't do that, because whether we agree with the President or not, we have a responsibility, a constitutional responsibility, to make a decision on these wars.



□ 2220

Now, some will say the authorization for use of military force dispensed with that. Oh, no, it didn't. A reading of that authorization makes it very clear that it does not supersede the War Powers Act.

And so when I put this resolution to the Congress in January, it will be an automatic mandatory referral to the International Relations Committee. They will have 15 days to report it back to the House, where we can expect a debate. When the bill is introduced, it will be introduced with broad bipartisan support because this is not a Democrat or Republican issue.

We have learned recently that U.S. contractors are paying the Taliban to ensure safe shipment of U.S. goods to U.S. soldiers, who then use those supplies to strengthen their war with the Taliban. We have learned that Blackwater is involved in "black ops" in Pakistan working as independent contractors for the purposes of assassination. We cannot let these things happen without Congress being directly involved and taking direct responsibility.

All across this country people are worried about their jobs, their homes, their health care, their investments, their retirement security. Why is it that war becomes the centerpiece of our national experience? Some can say, well, it makes us safer. Oh, has it? Did the invasion of Iraq make us safer? Over 1 million innocent people perished in a war based on a lie; let us never forget that.

The policies of unilateralism preempted at first strike were a dead-end. And for those who say war is inevitable, I say you're dead wrong. Peace is inevitable if you tell the truth. Peace is inevitable if you're ready to confront the difficulties of diplomacy.

We have a right to defend ourselves, and I stand upon that right. I voted for this country to defend itself in those days in September of 2001. But we can never mistake defense for offense. We can never claim the right to aggress against another nation in the name of trying to make us safer because all we do is create more enemies. Occupations fuel insurgencies. If you want peace, you work for peace. If you want war, you create war, but we can never claim that war is peace. It's not. It often is a path to more war.

The Constitution, when it was written, our Founders were very clear they didn't want an imperial government, they wanted to make sure the dog of war was chained. And the way to do it, they put that decision in the hands of the Congress. This is about our Constitution, our Constitution, which I always carry a copy of. This Constitution requires us to take a stand and to have a vote. And in January, we will have a vote whether to remain in Afghanistan and continue operations in Pakistan.

#### AMERICA NEEDS REAL BANKING REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Madam Speaker, maybe someday real banking reform will be considered by this Congress. Real reform means breaking up the big banks. Real reform means empowering community banks and local capital accumulation. Real reform means separating speculation and investment. Real reform means restoring prudent lending. Real reform means restructuring troubled housing mortgages. Real reform means rewarding institutions that play by the rules and don't over-leverage. Real reform means prosecuting financial white-collar criminals and keeping them out of finance permanently.

Real reform means directly connecting executive pay and bonuses to the performance of the company and recouping the \$145 billion in unwarranted bonuses for the American taxpayer. Real reform means regulating all derivatives openly and clearly. Real reform means limiting interconnectedness between large financial institutions. Real reform means independent supervisory and regulatory agencies that do their job—*independent supervisory and regulatory agencies*.

The bill that will be considered tomorrow, as it was today, merely bunts at wrestling casino capitalism to the ground. This bill, like so many before it, will simply lead to more abuse, more risky behavior, and more reward for the most hazardous and imprudent characters.

Wall Street needs our help in rescuing them from their own bad behavior, not because Wall Street deserves it or is worthy; they need to be disciplined because our natural interest is more important than Wall Street.

Let's dissect America's economic predicament and what Congress has passed to fix it. In the fall of 2008, Congress passed the "Wall Street bailout." It told America that the TARP would work to steady the housing market. It not only didn't steady the housing market, but its purpose was totally changed by Secretary of Treasury Paulson, who gave the money to the biggest banks in our country whose risky behavior caused the meltdown. And Congress, it just looked the other way.

Now the housing foreclosure crisis has worsened coast to coast; 2 million Americans have lost their homes, and another 6 to 12 million are projected to lose their homes. Meanwhile, the biggest perpetrators of this disaster—the Bank of America, JPMorgan Chase, Citigroup, Wells Fargo and Goldman Sachs—have gone from controlling 30 percent of all deposits in this country when this mess began to 40 percent now.

The big 5 are just eating us up and taking bigger bonuses too. It is estimated they will reward themselves with that \$145 billion in bonuses this year. Credit remains frozen across our country until today, seizing up economic recovery, and this bill calls itself the "Wall Street Reform Bill."

This bill, like those before it, will not meet the serious challenges crippling our financial system and it surely will not give a good signal to the future. Congress said the TARP bailout would save us from depression, but TARP passed, and the American people went into depression. Only the big banks were saved.

The bills passed by Congress today protect Wall Street and their shareholders. Main Street pays the price. Is this bill a reform bill? No. It will not break up the big banks. It will not create a strong, independent financial institution regulatory agency. It will not separate speculation from investment activity. It will not require loan workouts to stem rising foreclosures. It will not recoup undeserved Wall Street bonuses to help pay for this economic mess and put America back to work. In fact, the bill merely asks for non-binding votes of shareholders.

It will not rein in nonbanking firms, but instead provide them with a golden sandbox. It will not rein in the power of the Federal Reserve. It will not regulate all over-the-counter derivatives. It will not provide the requisite number of FBI agents and prosecutors to put behind bars the financial world's white-collar criminals whose fraudulent behavior caused this mess. It will not bring to justice the wrongdoers at Fannie Mae and Freddie Mac. There are bills in this House to do that; they're not included in this bill.

And it places the Treasury Department, a politically appointed superstructure, so much a part of the problem, in charge of the Finance Services Oversight Council. Importantly, it fails to institute and strengthen independent financial regulatory and supervisory agencies. The political appointees on this oversight council are surely clapping in the wings. This bill gives more power to the opaque Federal Reserve.

You know, you would think that after all the damage that has been done in the Republic, this Congress would have the guts for real reform. This bill isn't it, and I urge my colleagues to vote "no" on final passage.

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. BALDWIN (at the request of Mr. HOYER) for today on account of illness.

Ms. SLAUGHTER (at the request of Mr. HOYER) for today after 7 p.m. and the balance of the week on account of official business.

Mr. MICA (at the request of Mr. BOEHNER) for today until 6 p.m. on account of attending the funeral of former Senator Paula Hawkins.

#### SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SABLON) to revise and extend their remarks and include extraneous material:)

Mr. MCGOVERN, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. LANGEVIN, for 5 minutes, today.

Mr. MURPHY of Connecticut, for 5 minutes, today.

Mrs. DAHLKEMPER, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. SABLON, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. STUPAK, for 5 minutes, today.

(The following Members (at the request of Mr. DANIEL E. LUNGREN of California) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, December 17.

Mr. JONES, for 5 minutes, December 17.

Mr. BURTON of Indiana, for 5 minutes, December 14, 15, 16 and 17.

Mr. PAUL, for 5 minutes, December 15, 16 and 17.

(The following Member (at his request) to revise and extend his remarks and include extraneous material:)

Mr. KUCINICH, for 5 minutes, today.

#### ADJOURNMENT

Mr. KUCINICH. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10:30 p.m.), the House adjourned until tomorrow, Friday, December 11, 2009, at 9 a.m.

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4979. A letter from the Under Secretary, Department of Defense, transmitting a report entitled "Report on Civilian Health Professions Scholarship Program (HPSP) for Mental Health Providers"; to the Committee on Armed Services.

4980. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Promoting Diversification of Ownership in the Broadcasting Services [MB Docket No.: 07-294] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4981. A letter from the Chief of Staff, Media Bureau, Federal Communications Commis-

sion, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Crandon, Wisconsin) [MD Docket No.: 08-62] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4982. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (McNary, Arizona) [MB Docket No.: 09-7] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4983. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Cut Bank, Montana) [MB Docket No.: 09-50] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4984. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations. (Lexington, Kentucky) [MB Docket No.: 09-163] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4985. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations. (Opelika, Alabama) [MB Docket No.: 09-162] received November 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

4986. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 104-09, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad, pursuant to section 36(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4987. A letter from the Assistant Secretary, Department of State, transmitting Transmittal No. DDTC 125-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4988. A letter from the Assistant Secretary, Department of State, transmitting Transmittal No. DDTC 127-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4989. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 123-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4990. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 124-09, certification of a proposed amendment to a manufacturing license agreement for the

manufacture of significant military equipment abroad, pursuant to section 36(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4991. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 132-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4992. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 128-09, certification of a proposed technical assistance agreement to include the export of technical data, and defense services, pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

4993. A letter from the Deputy Assistant Administrator, Bureau of Legislative and Public Affairs, United States Agency International Development, transmitting a letter in response to the GAO report entitled "Information Technology: Federal Agencies Need to Strengthen Investment Board Oversight of Poorly Planned and Performing Projects"; to the Committee on Oversight and Government Reform.

4994. A letter from the Director, Department of the Interior, transmitting the Department's second report entitled, "Estimates of Natural Gas and Oil Reserves, Reserves Growth, and Undiscovered Resources in Federal and State Water off the Coasts of Texas, Louisiana, Mississippi, and Alabama"; pursuant to Public Law 109-58, section 965(c); to the Committee on Natural Resources.

4995. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule—Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments [Docket No.: 30697; Amdt. No. 3348] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4996. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments [Docket No.: 30698; Amdt. No. 3349] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4997. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule—Amendment of Class D and Class E Airspace; New Orleans NAS, LA [Docket No. FAA-2009-0405; Airspace Docket No. 09-ASW-12] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4998. A letter from the Division Chief, Division of Legislation and Regulation, Department of Transportation, transmitting the Department's final rule — Capital Construction Fund [Docket No.: MARAD-2008-0075] (RIN: 2133-AB71) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4999. A letter from the Attorney, Department of Transportation, transmitting the Department's final rule — Adjustment of Monetary Threshold for Reporting Rail

Equipment Accidents/Incidents for Calendar Year 2008 [FRA-2007-0018] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5000. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Amendment of Class E Airspace; Mankato, MN [Docket No.: FAA-2009-0677; Airspace Docket No. 09-AGL-17] received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5001. A letter from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting the Department's final rule — Technical Amendments to List of User Fee Airports: Removal of User Fee Status for Roswell Industrial Air Center, Roswell, New Mexico and March Inland Port Airport, Riverside, California and Name Change for Capital City Airport, Lansing, Michigan [CBP Dec. 09-41] received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5002. A letter from the Chief, Trade and Commercial Regulations Branch, Department of Homeland Security, transmitting the Department's final rule — Electronic Payment and Refund of Quarterly Harbor Maintenance Fees [Docket No.: USCBP 2007-0111] (RIN: 1505-AB97) received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5003. A letter from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting the Department's final rule — Technical Amendment to List of User Fee Airports: Termination of User Fee Status of Santa Maria Public Airport, Santa Maria, California received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5004. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Information Reporting Requirements Under Internal Revenue Code Section 6039 [TD 9470] (RIN 1545-BH69) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5005. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Further Extension of Effective Date of Normal Retirement Age Regulations for Governmental Plans [Notice: 209-86] received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. PERLMUTTER: Committee on Rules. House Resolution 964. Resolution providing for further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes (Rept. 111-370). Referred to the House Calendar.

Ms. ZOE LOFGREN of California: Committee on Standards of Official Conduct. In the matter of Marc Goldberg (Rept. 111-371). Referred to the House Calendar.

Mr. BRADY of Pennsylvania: Committee on House Administration. H.R. 2843. A bill to provide for the joint appointment of the Architect of the Capitol by the Speaker of the House of Representatives, the President pro tempore of the Senate, the Majority and Minority Leaders of the House of Representatives and Senate, and the chairs and ranking minority members of the committees of Congress with jurisdiction over the Office of the Architect of the Capitol, and for other purposes (Rept. 111-372, Pt. 1). Referred to the Committee of the Whole House on the State of the Union and ordered to be printed.

#### DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XIII the Committee on Transportation and Infrastructure discharged from further consideration. H.R. 2843 referred to the Committee of the Whole House on the State of the Union.

#### PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. POLIS:

H.R. 4259. A bill to facilitate foreign investment by permanently reauthorizing the EB-5 regional center program, and for other purposes; to the Committee on the Judiciary.

By Mr. GENE GREEN of Texas (for himself, Ms. DEGETTE, Ms. BALDWIN, and Mr. ENGEL):

H.R. 4260. A bill to provide adjusted Federal medical assistance percentage rates during a transitional assistance period; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. THORNBERRY:

H.R. 4261. A bill to amend the National Security Act of 1947 to provide additional procedures for congressional oversight; to the Committee on Intelligence (Permanent Select), and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCALISE (for himself, Mr. LAMBORN, Mr. POSEY, Mr. THOMPSON of Pennsylvania, Mr. AKIN, Mr. WAMP, Mr. BROWN of Georgia, Mr. HUNTER, Ms. FALLIN, Mr. LEE of New York, Mr. GINGREY of Georgia, Mr. PITTS, Mr. MARCHANT, Mr. SHADEGG, Mr. ALEXANDER, Mr. FRANKS of Arizona, Mr. CONAWAY, Mr. COLE, Mr. KING of Iowa, Mr. GOHMERT, Mr. HALL of Texas, Mr. ROE of Tennessee, Mr. BARTLETT, Mr. BISHOP of Utah, Mr. CHAFFETZ, Mr. FLEMING, Mr. BOUTSTANY, Mr. PAULSEN, Mr. MORAN of Kansas, Mr. CARTER, Mr. GRAVES, Mr. ROONEY, Mr. SHIMKUS, Mrs. BLACKBURN, Mr. BARTON of Texas, Mr. BRADY of Texas, Mr. SOUDER, Mr. PAUL, Mr. CRENSHAW, Mr. WILSON of South Carolina, Mr. KINGSTON, Mr. JONES, Mr. LUETKEMEYER, Mrs. CAPITO, Mr. INGLIS, Mr. BLUNT, Mr. DAVIS of Kentucky, Mr. JORDAN of Ohio, Mr. HENSARLING, Mr. CULBERSON, and Mr. HELLER):

H.R. 4262. A bill to amend the Congressional Budget Act of 1974 to require a two-

thirds recorded vote in the House of Representatives and in the Senate to increase the statutory limit on the public debt, and for other purposes; to the Committee on Rules, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. BALDWIN (for herself, Mr. GENE GREEN of Texas, Ms. DEGETTE, Ms. SCHAKOWSKY, Mr. BLUMENAUER, Mr. GRIJALVA, Mr. MCGOVERN, Ms. PINGREE of Maine, and Mr. PIERLUISI):

H.R. 4263. A bill to amend the American Recovery and Reinvestment Act of 2009 to extend for 1 year the period of temporary increase in the Medicaid FMAP; to the Committee on Energy and Commerce.

By Ms. DELAURO (for herself and Ms. ESHOO):

H.R. 4264. A bill to provide for resolution of certain discrimination claims against the Department of Agriculture, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Agriculture, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. YARMUTH:

H.R. 4265. A bill to direct the Administrator of the Small Business Administration to establish and carry out a direct lending program for small business concerns, and for other purposes; to the Committee on Small Business, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. JACKSON-LEE of Texas (for herself, Mr. EDWARDS of Texas, Mr. GONZALEZ, Mr. AL GREEN of Texas, Mr. HALL of Texas, Mr. HINOJOSA, Mr. CUELLAR, Mr. DOGGETT, Mr. GENE GREEN of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. REYES, Mr. ORTIZ, and Mr. RODRIGUEZ):

H.R. 4266. A bill to designate the facility of the United States Postal Service located at 4110 Alameda Road in Houston, Texas, as the "George Thomas 'Mickey' Leland Post Office Building"; to the Committee on Oversight and Government Reform.

By Mr. CARTER (for himself, Mr. ROGERS of Kentucky, Mr. WILSON of South Carolina, Mrs. SCHMIDT, Mr. OLSON, Mr. CULBERSON, Ms. GRANGER, Mr. MCCAUL, and Mr. ADERHOLT):

H.R. 4267. A bill to amend title 10, United States Code, to extend whistleblower protections to a member of the Armed Forces who alerts Department of Defense investigation or law enforcement organizations, a person or organization in the member's chain of command, and certain other persons or entities about the potentially dangerous ideologically based threats or actions of another member against United States interests or security; to the Committee on Armed Services.

By Mr. ELLISON (for himself, Ms. CHU, Mr. CONYERS, Ms. MOORE of Wisconsin, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HARE, Ms. KILPATRICK of Michigan, Ms. FUDGE, Mr. HASTINGS of Florida, Mr. DAVIS of Illinois, Mr. CLEAVER, Mr. JACKSON of Illinois, Mr. SCOTT of Georgia, Ms. LEE

of California, Mr. TOWNS, Mr. COSTA, Mr. COHEN, Mr. DELAHUNT, Mr. THOMPSON of Mississippi, Ms. CLARKE, Mr. LEWIS of Georgia, Mr. PAYNE, Mr. WATT, Mr. PRICE of North Carolina, Mr. GRIJALVA, Mr. KENNEDY, Mr. CUMMINGS, Mr. GUTIERREZ, Ms. WATERS, Ms. KAPTUR, Mr. KUCINICH, Ms. EDWARDS of Maryland, Mr. BACA, Mr. SIRES, Ms. SCHAKOWSKY, Mr. HONDA, Mr. RAHALL, Mr. LOEBACK, Ms. JACKSON-LEE of Texas, and Mr. CLAY):

H.R. 4268. A bill to direct the Secretary of Labor to make grants to States, units of general local government, and Indian tribes for the purpose of creating employment opportunities for unemployed and underemployed residents in distressed communities; to the Committee on Education and Labor.

By Mr. FILNER (for himself, Mr. OBERSTAR, Mr. HINCHEY, Mr. ANDREWS, Mr. MORAN of Virginia, Mr. JOHNSON of Georgia, Mr. STARK, Mr. FARR, Ms. KAPTUR, Mr. DICKS, Mr. PETERS, Mr. GUTIERREZ, Mr. ROTHMAN of New Jersey, and Mr. GRIJALVA):

H.R. 4269. A bill to amend title 10, United States Code, to require the Secretary of Defense to use only human-based methods for training members of the Armed Forces in the treatment of severe combat and chemical and biological injuries; to the Committee on Armed Services.

By Mr. FRELINGHUYSEN:

H.R. 4270. A bill to amend the Internal Revenue Code of 1986 to make permanent certain temporary provisions, including the sales tax deduction, the child credit, the repeal of the estate tax, the deduction for higher education expenses, and extending the current capital gains and dividend tax rates; to the Committee on Ways and Means.

By Mr. GUTHRIE (for himself, Mr. McKEON, Mr. KLINE of Minnesota, Mr. SOUDER, Mr. WILSON of South Carolina, Mr. HUNTER, and Mr. ROE of Tennessee):

H.R. 4271. A bill to reform and strengthen the workforce investment system of the Nation to put Americans back to work and make the United States more competitive in the 21st Century; to the Committee on Education and Labor.

By Mr. HODES:

H.R. 4272. A bill to require the public tracking of undisbursed balances in expired grant accounts; to the Committee on Oversight and Government Reform.

By Ms. KILPATRICK of Michigan (for herself, Mr. GRIJALVA, and Mr. WILSON of Ohio):

H.R. 4273. A bill to establish and carry out a pediatric specialty loan repayment program; to the Committee on Energy and Commerce.

By Mr. LARSEN of Washington (for himself and Mrs. EMERSON):

H.R. 4274. A bill to amend section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) to permit certain service institutions in all States to provide year-round services; to the Committee on Education and Labor.

By Mr. LEWIS of Georgia (for himself, Mr. JOHNSON of Georgia, Mr. SCOTT of Georgia, Mr. BISHOP of Georgia, Mr. MARSHALL, Mr. BARROW, Mr. DEAL of Georgia, Mr. WESTMORELAND, Mr. GINGREY of Georgia, Mr. PRICE of Georgia, Mr. BROUN of Georgia, Mr. KINGSTON, and Mr. LINDER):

H.R. 4275. A bill to designate the annex building under construction for the Elbert P.

Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the "John C. Godbold United States Judicial Administration Building"; to the Committee on Transportation and Infrastructure.

By Mr. LUJAN (for himself and Mr. HEINRICH):

H.R. 4276. A bill to authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo; to the Committee on Natural Resources.

By Mr. MELANCON (for himself, Mr. BOUSTANY, Mr. CAO, and Mr. ALEXANDER):

H.R. 4277. A bill to authorize the Secretary of Education to continue to waive certain requirements in order to ease fiscal burdens in States affected by Hurricane Katrina or Hurricane Rita; to the Committee on Education and Labor.

By Mr. NEAL of Massachusetts (for himself, Mr. BRADY of Texas, Mr. BLUMENAUER, Mr. HERGER, Mr. DEFAZIO, Mr. REHBERG, Mr. LYNCH, and Mr. DENT):

H.R. 4278. A bill to amend the Internal Revenue Code of 1986 to provide a reduced rate of excise tax on beer produced domestically by certain small producers; to the Committee on Ways and Means.

By Mr. QUIGLEY:

H.R. 4279. A bill to amend titles 38 and 10, United States Code, to authorize accelerated payments of educational assistance to certain veterans and members of the reserve components of the Armed Forces; to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. VISCLOSKEY:

H.R. 4280. A bill to prohibit business enterprises that lay off a greater percentage of their United States workers than workers in other countries from receiving any Federal assistance, and for other purposes; to the Committee on Oversight and Government Reform.

By Mr. VISCLOSKEY:

H.R. 4281. A bill to amend the Employee Retirement Income Security Act of 1974 and title 11, United States Code, to provide necessary reforms for employee pension benefit plans; to the Committee on Education and Labor, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WELCH:

H.R. 4282. A bill to amend title XII of the Social Security Act to extend the provision waiving certain interest payments on advances made to States from the Federal unemployment account in the Unemployment Trust Fund; to the Committee on Ways and Means.

By Mr. SCHRADER:

H. Con. Res. 220. Concurrent resolution encouraging the Secretaries of the military departments to maximize opportunities for space-available travel for members of the Armed Forces in a leave or pass status who are traveling between December 18, 2009, and January 3, 2010; to the Committee on Armed Services.

## MEMORIALS

Under clause 4 of Rule XXII, memorials were presented and referred as follows:

224. The SPEAKER presented a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 90 memorializing Congress to require that the forms for the 2010 census include a statement of citizenship; to the Committee on Oversight and Government Reform.

225. Also, a memorial of the House of Representatives of the State of Tennessee, relative to House Joint Resolution No. 108 affirming Tennessee's sovereignty under the Tenth Amendment; to the Committee on the Judiciary.

226. Also, a memorial of the House of Representatives of the State of California, relative to House Resolution No. 16 thanking the Congress for its support of the Local Law Enforcement Hate Crimes Prevention Act and calling for the Senate to pass the Matthew Shepard Hate Crimes Prevention Act; to the Committee on the Judiciary.

## ADDITIONAL SPONSORS TO PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Ms. JACKSON-LEE of Texas.  
H.R. 39: Ms. DEGETTE.  
H.R. 208: Mr. RODRIGUEZ and Mrs. DAHLKEMPER.  
H.R. 272: Mr. WAMP and Mr. SHIMKUS.  
H.R. 413: Mr. PIERLUISI, Mr. SCHOCK, and Mr. BUCHANAN.  
H.R. 482: Mr. WITTMAN.  
H.R. 537: Mr. SABLAN.  
H.R. 644: Ms. DEGETTE and Mr. LIPINSKI.  
H.R. 731: Mrs. DAVIS of California.  
H.R. 836: Mr. CRENSHAW, Ms. RICHARDSON, Mr. SMITH of Nebraska, and Mr. GINGREY of Georgia.  
H.R. 930: Mr. SCHRADER.  
H.R. 1030: Mr. KISSELL.  
H.R. 1132: Ms. FUDGE.  
H.R. 1238: Mr. GOHMERT and Mr. KING of Iowa.  
H.R. 1250: Mr. ROTHMAN of New Jersey and Mr. SCHOCK.  
H.R. 1265: Ms. BALDWIN.  
H.R. 1283: Mr. GARAMENDI.  
H.R. 1351: Mr. JOHNSON of Georgia.  
H.R. 1362: Mr. HALL of New York.  
H.R. 1389: Mr. HALL of New York.  
H.R. 1526: Ms. WATERS, Mr. JOHNSON of Georgia, Mr. JACKSON of Illinois, Mr. ROGERS of Michigan, Mr. ALEXANDER, Mr. SPRATT, and Mr. LINCOLN DIAZ-BALART of Florida.  
H.R. 1625: Mr. COURTNEY.  
H.R. 1806: Mr. BOSWELL.  
H.R. 1826: Mr. CASTLE.  
H.R. 1844: Ms. WOOLSEY and Mr. HIGGINS.  
H.R. 1944: Ms. LINDA T. SANCHEZ of California.  
H.R. 1964: Mr. DAVIS of Alabama, Ms. KILPATRICK of Michigan, Mr. CLEAVER, and Mrs. MALONEY.  
H.R. 2006: Ms. LEE of California.  
H.R. 2024: Mr. SCHAUER.  
H.R. 2112: Ms. SCHWARTZ, Mr. WOLF, and Mr. MICHAUD.  
H.R. 2135: Mr. SHUSTER.  
H.R. 2142: Mr. CARNEY, Mr. CHILDERS, Mr. DONNELLY of Indiana, Mr. ELLSWORTH, Ms. GIFFORDS, Mr. MARSHALL, Mr. MICHAUD, Mr. SALAZAR, Mr. SCHRADER, and Mr. SPACE.  
H.R. 2149: Mr. HEINRICH.  
H.R. 2159: Mr. CROWLEY.  
H.R. 2190: Ms. BERKLEY.  
H.R. 2277: Mr. GERLACH.  
H.R. 2429: Mr. BISHOP of Georgia.  
H.R. 2502: Mr. MURPHY of New York.  
H.R. 2528: Mr. NUNES.

H.R. 2567: Mr. DAVIS of Illinois.  
 H.R. 2584: Mr. COHEN, Mr. BLUNT, Ms. WASSERMAN SCHULTZ, and Mr. ROONEY.  
 H.R. 2590: Mr. BRALEY of Iowa.  
 H.R. 2698: Mr. CASTLE.  
 H.R. 2699: Mr. MOORE of Kansas.  
 H.R. 2748: Mr. PAUL.  
 H.R. 2766: Ms. BALDWIN.  
 H.R. 2777: Mr. CARNAHAN.  
 H.R. 2882: Mr. DAVIS of Illinois.  
 H.R. 3101: Mr. CAPUANO.  
 H.R. 3105: Mr. HUNTER.  
 H.R. 3171: Mr. CLAY.  
 H.R. 3212: Ms. DEGETTE.  
 H.R. 3227: Mr. LARSEN of Washington.  
 H.R. 3259: Mr. CASTLE.  
 H.R. 3339: Mr. BLUMENAUER.  
 H.R. 3343: Ms. CORRINE BROWN of Florida, Mr. MEEKS of New York, and Mr. McGovern.  
 H.R. 3401: Mr. BISHOP of Georgia.  
 H.R. 3427: Mr. DAVIS of Illinois.  
 H.R. 3448: Mr. INGLIS.  
 H.R. 3464: Mr. ELLSWORTH and Mr. PETERSON.  
 H.R. 3560: Mr. JOHNSON of Georgia.  
 H.R. 3586: Mr. PETERS.  
 H.R. 3668: Mr. ARCURI, Mr. LUJÁN, Mr. DRIEHAUS, Mr. WU, Mr. HINCHEY, Mr. NEAL of Massachusetts, Mr. ABERCROMBIE, Mr. HEINRICH, Ms. RICHARDSON, Ms. HERSETH SANDLIN, and Mr. MASSA.  
 H.R. 3695: Ms. FUDGE.  
 H.R. 3734: Mr. SABLAN.  
 H.R. 3758: Mr. SHIMKUS and Mr. SENSENBRENNER.  
 H.R. 3764: Mr. ELLISON and Ms. CHU.  
 H.R. 3790: Mr. GRIJALVA, Mr. BROWN of South Carolina, Mr. LANGEVIN, Mr. HEINRICH, Ms. PINGREE of Maine, and Ms. CORRINE BROWN of Florida.  
 H.R. 3852: Mr. RUPPERSBERGER.  
 H.R. 3855: Ms. LINDA T. SANCHEZ of California.  
 H.R. 3905: Mr. BARTON of Texas.  
 H.R. 3918: Mr. INSLEE.  
 H.R. 3936: Mr. ROSKAM, Mr. LINDER, and Mr. LEWIS of Georgia.  
 H.R. 3943: Mrs. LOWEY, Mrs. CAPPS, Mr. MEEKS of New York, Mr. BARROW, Ms. RICHARDSON, Mr. MCINTYRE, and Mr. DAVIS of Illinois.  
 H.R. 3982: Mr. ELLISON.  
 H.R. 4036: Ms. NORTON and Mr. CLAY.

H.R. 4058: Mr. MURPHY of New York.  
 H.R. 4079: Mr. SKELTON.  
 H.R. 4085: Mr. LEE of New York, Ms. TITUS, Mr. LEVIN, and Mr. MCNERNEY.  
 H.R. 4091: Mr. SALAZAR.  
 H.R. 4100: Mr. KLINE of Minnesota, Mr. DREIER, Mr. MCCLINTOCK, Mr. YOUNG of Alaska, Mr. PENCE, Mr. BONNER, and Mr. FLEMING.  
 H.R. 4111: Mr. MICA, Mrs. MYRICK, Mr. SIMPSON, and Mr. ADERHOLT.  
 H.R. 4112: Mr. BOREN, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. LATTA, and Mr. UPTON.  
 H.R. 4127: Mr. MCCOTTER.  
 H.R. 4130: Ms. SPEIER.  
 H.R. 4138: Mr. MILLER of Florida and Mr. FRANKS of Arizona.  
 H.R. 4140: Mr. CUMMINGS, Ms. FUDGE, Ms. BALDWIN, Mr. MEEK of Florida, and Ms. DEGETTE.  
 H.R. 4149: Mr. CROWLEY.  
 H.R. 4177: Mr. THOMPSON of Mississippi and Mr. GRIFFITH.  
 H.R. 4179: Ms. JACKSON-LEE of Texas.  
 H.R. 4180: Mr. PASTOR of Arizona, Mr. HONDA, Mr. COURTNEY, Mr. JACKSON of Illinois, and Mr. SCOTT of Virginia.  
 H.R. 4188: Ms. DEGETTE.  
 H.R. 4204: Mr. DRIEHAUS.  
 H.R. 4216: Mr. BOUSTANY.  
 H.R. 4219: Ms. JENKINS and Mr. BROWN of South Carolina.  
 H.R. 4255: Mr. BARROW, Mr. ARCURI, Mr. GRIFFITH, Mr. MOORE of Kansas, Mr. LOEBSACK, Mr. SHIMKUS, Mr. CUELLAR, Mr. ALEXANDER, Mr. COBLE, Mr. BURGESS, and Mr. MASSA.  
 H. Con. Res. 158: Ms. KOSMAS.  
 H. Con. Res. 198: Mr. JACKSON of Illinois, Mr. FORBES, and Ms. TITUS.  
 H. Con. Res. 201: Mrs. CAPITO.  
 H. Res. 111: Mr. LIPINSKI.  
 H. Res. 200: Mr. HOEKSTRA.  
 H. Res. 278: Mr. FRANK of Massachusetts.  
 H. Res. 859: Mr. CONYERS, Mr. MILLER of North Carolina, and Ms. JACKSON-LEE of Texas.  
 H. Res. 864: Ms. BERKLEY, Mr. ADLER of New Jersey, Mr. CARNEY, Ms. DELAURO, Mr. FOSTER, Mr. MINNICK, Mr. PATRICK J. MURPHY of Pennsylvania, and Mr. SESTAK.  
 H. Res. 873: Mr. FALEOMAVAEGA and Mr. WILSON of South Carolina.

H. Res. 888: Mr. COLE, Mr. POE of Texas, and Mr. HOLT.  
 H. Res. 898: Mr. MASSA.  
 H. Res. 911: Mr. ROGERS of Michigan, Mr. MCCOTTER, Mr. WITTMAN, Mr. SMITH of New Jersey, and Mr. GOODLATTE.  
 H. Res. 943: Ms. MARKEY of Colorado.  
 H. Res. 946: Mr. BACA, Mr. HINCHEY, Mr. CARDOZA, Mrs. DAHLKEMPER, and Mr. FILNER.  
 H. Res. 951: Mr. WILSON of South Carolina, Mr. WHITFIELD, Mrs. CAPITO, Mr. OLSON, Mr. TIBERI, Mr. PRICE of Georgia, Mr. KING of Iowa, Mr. LATHAM, Mr. PENCE, Mr. BUCHANAN, Mr. CRENSHAW, Mr. ROGERS of Michigan, Mrs. LUMMIS, Mr. BURGESS, and Mr. WOLF.  
 H. Res. 954: Mr. POSEY, Mr. MARIO DIAZ-BALART of Florida, and Mr. BACHUS.  
 H. Res. 958: Mr. MCGOVERN, Mr. DOYLE, Mr. CAO, and Mr. ROTHMAN of New Jersey.

#### DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H. Res. 951: Mr. DAVIS of Illinois.

#### PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

90. The SPEAKER presented a petition of Jefferson County Board of Legislators, New York, relative to Resolution No. 255 urging the Congress to direct further stimulus programs focus on rural economies of the state and the nation; to the Committee on Agriculture.

91. Also, a petition of the President of the Republic of the Philippines, relative to Expressing the deep appreciation of the Filipino people to the United States House of Representatives for their concern over the loss of lives and destruction caused by Typhoons "Ketsana" and "Parma"; to the Committee on Foreign Affairs.

## EXTENSIONS OF REMARKS

### TRIBUTE TO SAM SIMMERMAKER

#### HON. MIKE PENCE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. PENCE. Madam Speaker, I rise today to celebrate the long and distinguished career of one of my heroes in broadcasting, Sam Simmermaker.

For fifty years, Sam Simmermaker has been a fixture on the airwaves of WCSI/WKKG in my hometown of Columbus, Indiana. As the "Voice of High School Sports", Sam has amassed an extraordinary career over the last half century that deserves to be commemorated on the floor of the People's House.

Both graduates of Indiana University in Bloomington, Sam and his beloved wife Fran came to Columbus in December of 1959 for what they thought would be a brief stop on their way to St. Louis. Sam was and still is a diehard Cardinals fan and it was his dream to become the radio voice of that baseball team.

Thankfully, the Simmermakers never left our community in Eastern Indiana and on January 1, 2010, Sam will celebrate fifty years in broadcasting on WCSI.

The list of awards and recognitions that Sam Simmermaker has received is long and distinguished. In 1976 and 1997, Sam was chosen as the National Sportscasters and Sportswriters "Sportscaster of the Year."

He was inducted into the Indiana Sportswriters and Sportscasters Hall of Fame in 1998 and the Indiana Broadcast Association Hall of Fame a decade later.

One of the biggest awards that Sam Simmermaker received was his induction into the Indiana Basketball Hall of Fame. In 2006, he joined the long list of legendary Hoosier basketball players and coaches as a St. Vincent Silver Medal Award winner.

Columbus High School basketball fans know him as the familiar voice of the Bull Dogs who for decades has brought a unique yet consistent style to a game that has evolved tremendously during his decades of service.

Listeners and fans alike can identify Sam by his trademark call—"Holy Cow!"—during his play-by-play call of local high school basketball, football and baseball games.

Aside from his professional role, Sam continues to be an active citizen in the community. He serves as a board member of the Columbus Fire Department's Cheer Fund and is a member of the First Christian Church.

Still an athlete, Sam can still be found playing first base in the Columbus Parks and Recreation Department's Old-Timer Slow Pitch Softball League.

Sam's long career has spanned many games over the last fifty years, but more importantly, it is a testament to his dedication to his community, friends and family.

Sam Simmermaker has become an icon in Columbus, Indiana and across its airwaves.

To me, he will forever be a dear friend and mentor.

### HONORING MR. EDGAR H. LANCASTER, JR.

#### HON. RODNEY ALEXANDER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. ALEXANDER. Madam Speaker, I rise today in honor and remembrance of the life and achievements of Edgar H. Lancaster, Jr., who died on October 12, 2009, at the age of 91.

Lancaster was a graduate of Tallulah High School, Louisiana Tech University, and Louisiana State University School of Law. He proudly served his country in the U.S. Army during World War II. Following his discharge, he returned to Louisiana to pursue his law degree, in which he actively practiced from 1948 until the time of his death.

Lancaster served in the Louisiana House of Representatives from 1952 to 1968, where he continued his service to his community and state. In this capacity, he also served as Chairman of the House Judiciary Committee and Speaker Pro Tempore.

Among his impressive list of endeavors, Lancaster also was an organizer of Southern National Bank at Tallulah, where he served on its Board of Directors, in addition to working as the bank's attorney.

For his remarkable life's work, Lancaster received numerous awards and distinctions. In 1986, the Louisiana Bar Foundation named him Attorney of the Year, and he was inducted into the LSU Law School Hall of Fame in 1987. He was appointed by the Louisiana Supreme Court as the 6th Judicial District Judge Pro Tempore from 1992 to 1993, and served on the Louisiana Law Institute for over 50 years, also acting as past president and chairman emeritus of the Institute. Moreover, Lancaster was very involved in the Louisiana State Bar Association, where he served on both the Board of Governors and the Attorney Ethics Commission.

A devoted husband and father, Lancaster is survived by his lovely wife of sixty-five years, Beverly Vedros Lancaster, and their three children. They are also the proud grandparents to three grandsons.

A man of many dimensions, Lancaster was an avid golfer and an unofficial historian in his spare time.

It is my pleasure to honor the late Edgar H. Lancaster, a man who served the people of Madison Parish as well as the state of Louisiana for many years. His commitment, hard work and leadership warrant this laudable recognition.

### RECOGNIZING THE BLUEWATER ELEMENTARY SCHOOL FOR RECEIVING THE BLUE RIBBON AWARD

#### HON. HARRY TEAGUE

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. TEAGUE. Madam Speaker, I want to congratulate Bluewater Elementary School in Bluewater, New Mexico, for receiving the Blue Ribbon School Award awarded by the U.S. Department of Education for demonstrating academic excellence and dramatic gains in student achievement levels.

The Blue Ribbon Schools award was created in 1982 to recognize schools where students attain and maintain high academic standards and are pushed to improve themselves and further their dedication to scholastic achievement. This award shows that Bluewater Elementary School is serving its students well and helping them make strides forward in their academic careers.

Schools like Bluewater Elementary achieve such great distinctions because of the hard work and dedication of the teachers, staff, and administration. Their students also deserve to be commended for fully taking advantage of all of the opportunities provided to them by their exceptional staff. Bluewater Elementary School is a model for the progress other schools throughout the nation should strive to achieve.

I am honored to have Blue Ribbon Schools like Bluewater Elementary School in my district. I commend their achievement and wish them luck in the continuing their academic achievement.

### HONORING MIKE NURY

#### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate Mike Nury upon being honored with the "Lifetime Achievement Award" at the 2009 San Joaquin Winegrowers Association 7th Annual San Joaquin Valley Wine & Grape Industry Forum. The luncheon will be held in Fresno, California on Friday, November 20, 2009.

Mr. Mike Nury came to the United States in November 1945 to attend American International University in Springfield, Massachusetts. In 1946 he was drafted into the United States Army and served during the Korean War. Upon completion of his military career, he arrived in California and attended the University of California, Berkeley. He later transferred to the University of California, Davis

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

where he earned a bachelor of science and master of science degree in food science in 1952. In 1953, Mr. Nury started his career with Vie-Del Company, a Fresno, California based winery, as a research chemist. His role at the winery had a tremendous impact on the company, as well as the industry as a whole. He played a major role in developing an improved method of concentrating grape flavors by adjusting the temperature and time used to concentrate the grapes. The outcomes were significant. The new concentrate had no ethanol, which was important for those unable to metabolize ethanol, thus eliminating ethanol taxes on the original concentrate. It also weighed less, reducing shipping costs, and the new concentrate made it possible to add wine flavor to more products.

In 1972, Mr. Nury was named President of the Vie-Del, and in 1990 the Nury family purchased the controlling interest in Vie-Del from Joseph E. Seagram & Sons. Since then, the company has continued to grow, producing millions of gallons of concentrate per year. Mr. Nury has served as president and owner, and after his semi-retirement, he served as chairman of the board. His family has also taken an interest in the wine industry. Two of his three daughters, Dianne and Roxanne, have spent many years with the company and his brother, Fred, taught Enology at California State University, Fresno and later worked for Seagram in the Bay Area. Mr. Nury is only one of three winemakers to have served as president of the Wine Institute and the American Society of Enology and Viticulture. He has also played an active role with the Fresno Rotary for over thirty-five years, served as a member of the Fresno Community Hospital Foundation Board and Chairman of the Finance Committee.

Madam Speaker, I rise today to commend and congratulate Mike Nury upon being honored with the "Lifetime Achievement Award." I invite my colleagues to join me in wishing Mr. Nury many years of continued success.

#### OPPOSITION TO THE STUPAK AMENDMENT

#### HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. SLAUGHTER. Madam Speaker, I have witnessed the horror of the choice between a back alley abortion and a forced marriage to avoid disgrace. These were the realities women faced prior to 1973. My fear is that if this harmful Stupak/Pitts language is signed into law, we will revert back to those dark times.

Until now, for over 30 years we lived in this House in peaceful coexistence, the pros and the cons getting together on the fact that the Hyde amendment said no federal money can be spent. We on our side simply had the law.

Critical to this debate is to break down the facts. The opposition claims that the Stupak/Pitts Amendment codifies current law. This is grossly incorrect.

Stupak-Pitts goes far beyond current law by placing unprecedented restrictions on individ-

uals' use of their own private dollars. The Hyde Amendment does not apply to private funding nor does it apply to administrative costs. It has only placed limits on direct federal appropriations being used to fund abortion benefits. The Stupak Amendment expands the Hyde prohibitions on the use of Federal funds for an abortion benefit to include "any part of the costs of any health plan that includes coverage of abortion."

The Hyde Amendment does not include similar, far-reaching language. Seventeen States currently provide abortion coverage in Medicaid with separate State funding.

The opposition claims that this amendment will not change current insurance plans for women. This is blatantly wrong.

A report by health policy experts at the George Washington University School of Public Health concludes that the Stupak Amendment "will have an industry-wide effect, eliminating coverage of medically indicated abortions over time for all women, not only those whose coverage is derived through a health insurance exchange."

The opposition claims that the segregation of funding under the House bill is an accounting sham. This is blatantly false.

In the Capps Amendment, the segregation of funding piece is based on the current model the Federal Government uses to pay for abortions currently permitted in Medicaid. States are permitted to use their own funding to provide additional abortion coverage under Medicaid.

For me, and for many of my colleagues, it means 30 or 40 years of our life is being cancelled out with this amendment.

I am afraid that we are driving young women, poor women, all women of child-bearing age back to the back alley, and I dread to see that day.

COMMENDING RAPIDES PARISH SCHOOL SUPERINTENDENT, GARY JONES

#### HON. RODNEY ALEXANDER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. ALEXANDER. Madam Speaker, I rise today with pride to commend Rapides Parish School District Superintendent, Gary Jones, for his contributions to local education, specifically his plans to launch Aiken cyberacademy this spring, which will revolutionize learning options available to our students.

This virtual academy is modeled similarly to an online charter school in that it will be interactive and self-paced. Since students will be registered in the district system, Aiken will differ from online charter schools since students will be able to take other courses, as well as join extracurricular activities by attending a regular school.

As our nation's educators continue to look for ways to improve and strengthen education in our country, I believe this is an innovative alternative for students who have not thrived in the traditional classroom. In addition, this plan will provide more choices for home-schooled children.

To keep our communities on the cutting edge of educational advancements, I am proud of Gary Jones for ensuring such a creative option is available to help prepare our students. Please join me in honoring him for his work on behalf of our young students.

#### PROTECT REPRODUCTIVE RIGHTS IN HEALTH CARE REFORM

#### HON. DIANA DeGETTE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. DeGETTE. Madam Speaker, we came to work this year to deliver affordable, high-quality health care to all Americans. Instead of offering the possibility of health care to all Americans, some want to deny essential health care—reproductive health care—to women.

For politicians to intrude on a woman or couple's most personal and painful decisions is cynical and wrong. Nobody in America has the right to use government to impose their religious beliefs on someone else. Yet the Stupak-Pitts amendment would do just that.

The Stupak-Pitts amendment adopted by this House does not—does not—preserve the status quo on abortion. The Stupak-Pitts amendment tells millions of middle-class Americans that they cannot use their own money to purchase private health insurance to cover legal medical procedures. This is an unprecedented and dramatic departure from current law.

Not long ago, Supreme Court Justice Ruth Bader Ginsburg observed that reproductive rights "center on a woman's autonomy to determine her life's course." Trading away those rights for limited access to health care is a devil's bargain that we will not make.

I urge my colleagues to act—to support women's access to a full range of reproductive health services, and to bring health care to all Americans.

#### HONORING JOSEPH TORCHIA

#### HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. GRAVES. Madam Speaker, I proudly pause to recognize Joseph Torchia, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

Joseph has been very active with his troop participating in many scout activities. Over the many years Joseph has been involved with scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Madam Speaker, I proudly ask you to join me in commending Joseph Torchia for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.



CONGRATULATING PRESIDENT  
AND MRS. GORDON MOULTON ON  
THE OCCASION OF THE NAMING  
OF THE USA BELL TOWER IN  
THEIR HONOR

### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. BONNER. Madam Speaker, I am pleased to offer congratulations to University of South Alabama President Gordon Moulton and his wife, Geri, whose efforts in support of the University are being permanently heralded by the naming of the new campus bell tower in their honor.

On September 18, 2009, the University of South Alabama Board of Trustees officially announced that the school's new bell tower will be dedicated "in honor of 'the exceptional service' of President Gordon Moulton and his wife, Geri."

When the 135-foot structure is completed in December, it will be the "premier landmark and the enduring symbol of spirit of the University of South Alabama," the board said. The impressive tower with four large bronze bells will also serve as a monument honoring alumni who are providing support for the project.

Madam Speaker, Gordon and Geri are deserving of such a lasting recognition. President Moulton has not only been the helmsman of the University since 1998—overseeing milestones in student enrollment and graduation, enhancement of campus life, and greater involvement of faculty and students in the community—he has also had a direct role in the establishment of the Mitchell Cancer Institute.

The University of South Alabama has also seen the benefit of his support of the University's Technology and Research Park and the Children's and Women's Hospital, to name a few.

President and Mrs. Moulton are well known for their advocacy of local causes important to the community. Geri was also honored in 2009 with the dedication of the Geri Moulton Children's Park.

I wish to extend my congratulations and appreciation to both President and Mrs. Moulton and look forward to their continued beneficial leadership of the University of South Alabama.

MAKE NO COMMITMENTS AT  
COPENHAGEN

### HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. WHITFIELD. Madam Speaker, I rise today in response to President Obama's expected commitment to the world at the Copenhagen climate change discussion for the United States to reduce carbon emissions by 17 percent by 2020.

It is simply ludicrous to think that we can reduce carbon emissions by 17 percent by 2020 without wrecking our economy. I am also concerned about the Administration's so-called

endangerment finding to regulate carbon emissions under the Clean Air Act. This is a disastrous move forward to regulate carbon under a law that was clearly not intended to regulate carbon emissions. In many cases, it is not required under this law to take into consideration the impact on the economy, which poses enormous problems. Going further on the science of climate change, in light of the emails that show that scientists have been suppressing information about the scientific proof of climate change, I believe that it is even more important that we take a step back and ensure that we understand the impact of carbon emissions.

The trick that scientists have been using to make the data work has been reported as being called, "trick and hide." It seems, Madam Speaker, that not only are the scientists "tricking and hiding" the American people on the science of climate changes, but the Democratic Majority is "tricking and hiding" the truth about the cap and trade bill. The truth about the cap and trade bill is that this bill will increase electricity rates in some states, like Kentucky, as much as 40 percent. Additionally, the cap and trade bill is nothing more than a hidden tax on the American people. I might add that I am not against reducing carbon emissions as I have cosponsored and helped move the Carbon Capture and Sequestration legislation that was sponsored by Congressman BOUCHER and others.

It is important that we develop this technology before enacting any regulatory regime to dramatically reduce carbon emissions. These efforts are essential in keeping electricity rates low. However, I am against the President making a commitment that we cannot meet and that China and India will not match. I am also against the Administration's movement to regulate carbon through the Clean Air Act.

We must take a step back and study the science on this issue to make certain we get this right and I call on the Administration to do just that. I call on my colleagues to speak up about negative impacts of the "trick and hide" bill and urge the Administration not to make any commitments at Copenhagen.

HONORING VFW POST 8946 IN  
WOODCLIFF LAKE, NEW JERSEY

### HON. SCOTT GARRETT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. GARRETT of New Jersey. Madam Speaker, today I rise to honor the work of VFW Post 8946 in Woodcliff Lake, New Jersey for their selfless and inspiring deeds towards their fellow citizens. For the past few years this group of extraordinary individuals has been traveling to the Walter Reed Medical Center in Washington DC as well as the Walter Reed National Military Medical Center in Bethesda, Maryland. During their trips the members of the Post have spent time with wounded veterans and their families. They have brought items such as clothing, CD players, electric shavers and even a large TV for the Recreation Room.

After one of their more recent visits to Walter Reed Medical Center in Washington, William Huston, a member of the Post, told a local reporter that, "these young men have a remarkable attitude, we cannot properly express the admiration we have for them." It is this sense of genuine commitment towards helping those who have given so much to our nation that makes this Post unique in many ways.

As I reflect on the deeds they have done I cannot help but be reminded of the enduring words from President Abraham Lincoln's second inaugural address. Lincoln challenged his fellow Americans to "care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." The men of this Post are a living testament to these words.

I want to once again thank this group of exceptional men for their service towards their fellow citizens. I am proud to represent such a fine group of people in the United States House of Representatives and I would like to recognize individually: William Huston, Gerard DeCicco, Joseph M. Poggi, Faust Faustini, Ray Johns, Peter Mauro, James Horris, Edward Powers, Sergei Leoniuk, Edward Halvey, George Kritzer, Fredrick Singer, and Robery Schmitt.

RECOGNIZING MORRILL WORCESTER  
FOR HIS WORK IN HONORING  
OUR NATION'S FALLEN

### HON. DUNCAN HUNTER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. HUNTER. Madam Speaker, today I rise in recognition of Mr. Morrill Worcester of Harrington, Maine. Morrill is President of the Worcester Wreath Company, and he and his company have provided Christmas wreaths for Arlington National Cemetery since 1992.

Morrill Worcester's story begins in 1962 when at the age of 12 he won a trip to Washington, DC, from his local paper. After visiting Arlington National Cemetery, he was awestruck by the enormity of the cemetery and its perfectly aligned rows of headstones representing the thousands who have died in service to this country. The powerful imagery of Arlington left a lasting impression on Morrill, one that would stay with him long after he began his business selling Christmas wreaths.

In 1992, the Worcester Wreath Company had an overstock of Christmas wreaths. Unwilling to simply throw the extra wreaths away, and with the image of Arlington still a treasured memory, Morrill was inspired. With the help of volunteers, he spent 6 hours in the rain placing a wreath at each headstone. For 18 years, Morrill has taken time out of his busiest season to deliver handmade wreaths to Arlington National Cemetery and lead volunteers in laying them on the headstones.

When word of his efforts spread around the Internet, hundreds more Americans from across the country began to ask how they could get involved and show their respect for our fallen. Morrill soon expanded the project

into Wreaths Across America, allowing anyone to donate a wreath to honor the fallen. As a result, Wreaths Across America have laid over 100,000 wreaths at numerous national cemeteries. Congress has recognized his work by declaring December 13, 2008 as "Wreaths Across America Day."

Madam Speaker, this gentleman's dedication and actions directly reflect his selfless resolve to honor and remember our Nation's fallen. Individuals like Morrill and the volunteers of Wreaths Across America embody the great respect that we as a nation have for those who have died defending our freedom. On the second Saturday of December this year, and hopefully for many more Decembers to come, Morrill will be at Arlington National Cemetery in solemn remembrance to lay more wreaths.

Mr. Morrill Worcester, thank you for remembering those who have given so much for our freedom, and thank you for sharing your passion to honor these brave men and women with the American people.

#### HONORING NORWICH UNIVERSITY AND ITS INAUGURAL DAY OF SERVICE

##### HON. PETER WELCH

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. WELCH. Madam Speaker, I rise today to acknowledge Norwich University and its inaugural Day of Service.

Located in the foothills of the Green Mountains in Northfield, Vermont, Norwich University is the oldest private military college in the Nation. The university's founder, Captain Alden Partridge, believed in the importance of service and experiential learning. On November 7, 2009, over 150 alumni, undergraduate and graduate students, staff, and friends of Norwich University exemplified these principles by joining together in the university's inaugural Day of Service. The date was chosen specifically to coincide with Veterans Day, with most of the volunteer opportunities focused on supporting our Nation's veterans and active duty military.

Here in the DC area, dozens of alumni and friends volunteered at Walter Reed Army Medical Center's Fisher Houses, which are non-profit homes where family members of injured soldiers can stay while their soldier recuperates from injury. Meanwhile, in Philadelphia, Norwich alumni visited with veterans at the local Veterans' Community Living Center and sponsored an afternoon of pizza and bingo. Norwich community volunteers in Massachusetts, New York, and Florida collected hundreds of toys and books to be distributed through the Armed Forces Foundation and Operation Paperback. Elsewhere around the country volunteers assembled care packages that will be sent to Norwich University alumni currently serving in Iraq. In North Carolina, alumni rallied to support Wakefield High School's anti-drunk driving efforts, and in San Antonio over 20 alumni and friends spent the morning volunteering in the fruit and vegetable gardens of the San Antonio Food Bank. In my home State of Vermont, over 50 students and

alumni helped with local river cleanup, volunteered at the Vermont Food Bank and Habitat for Humanity, and provided logistical support for the White River Junction Mobile Vet Center.

At a time when so many of the men and women of our armed forces are serving around the globe, the Norwich Day of Service is a praiseworthy example of how those of us at home can volunteer our time to thank our servicemembers and veterans for their sacrifice.

#### HONORING THE SERVICE OF HUGH S. BRANYON UPON HIS RETIRE- MENT

##### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. BONNER. Madam Speaker, I rise to honor the exemplary public service of Mr. Hugh S. Branyon who is retiring on December 11, 2009, after 35 years as superintendent of Gulf State Park on Alabama's Gulf Coast.

A native of Fayette in northwest Alabama, Mr. Branyon first came to Baldwin County in 1957 to work at Gulf State Park. His experience along the gulf sparked such a love of the outdoors that he devoted not only his career, but indeed, his life to the service of Alabama's state parks.

Mr. Branyon's labors have spanned a half century and the length of Alabama. After his first job at Gulf State Park, Mr. Branyon traveled upstate to Lake Guntersville State Park, where he rose to acting manager. Over the ensuing years, he traversed the state, heading back for a brief stint at Gulf State Park before being appointed ranger at Auburn's Chewacla State Park. In 1967, he was called to the State capital to become Chief of Operation in Maintenance to all Alabama state parks and fishing lakes. In 1972, Mr. Branyon returned to Baldwin County where he eventually became Superintendent of Gulf State Park and has since served continuously.

Mr. Branyon has always preferred to call his job a way of life. It was his dedication to the mission of preserving our outdoors that led Mr. Branyon to also assume the role of Southwest District Superintendent over five other south Alabama parks: Bladon Springs, Frank Jackson, Chickasaw, Florala and Meaher.

He has shepherded Gulf State Park through 13 named tropical storms and hurricanes. He oversaw the original construction of Gulf State Park's much-used fishing pier in 1967 and its reconstruction, nearly doubling its length. Under his supervision, Gulf State Park has steadily grown to become one of Alabama's most popular state parks.

No stranger to volunteer service in his community and across the state, he has also been active in many local civic clubs and organizations. His selfless service has led to his receipt of the highest awards from Rotary and Lions clubs international.

Mr. Branyon has been more than a park superintendent, but rather a friend, to so many of his employees and those who crossed his path over the decades in Alabama's parks. His

devotion to preserving the treasures of Alabama's outdoors will be hard to match. All those who have enjoyed the beauty and splendor of our pristine parks owe Hugh Branyon a debt of thanks.

Mr. Branyon and his wife, Carol Wenzel Branyon, have two daughters and five grandchildren. Upon retirement, Mr. Branyon plans to devote even more time to his beloved outdoors, including fishing with his grandchildren.

I join thousands of Alabamians in wishing Hugh Branyon the best as he enters his well-deserved retirement.

#### TRIBUTE TO BROTHER BOB BEVINGTON

##### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. DUNCAN. Madam Speaker, today I wish to pay tribute to a beloved pastor from my District who was one of the most tireless servants of the Lord I have ever known.

I knew Rev. Bob Bevington—affectionately called Brother Bob by all—from the time I was a small boy. He was the advisor to the Christian Student Organization when I was in High School, and I had tremendous admiration and respect for him.

Most especially, I admired his unwavering faith during the passing of both of his sons. The pain of losing two children is unimaginable, but Brother Bob relied on his creator during those dark days and showed us all that God can help us even through terrible and tragic times.

Brother Bob's impact on my District is incalculable. He started the Knoxville Baptist Tabernacle Church in 1951, and his calling to preach the Word had no limits. The Church continued to grow, and in 1971 Brother Bob launched the Knoxville Baptist Christian School, which is still going strong today.

Knowing that there were more people who needed to hear his message than his pews could hold, Brother Bob also published many newsletters and newspaper columns and launched a radio ministry called the Revival of the Air in 1948. Broadcasts continued right up until his passing.

While eulogizing Brother Bob, the current Pastor of Knoxville Baptist Tabernacle Church, Brother Tony Greene, spoke of Brother Bob's legacy, saying "From this church have gone hundreds of soul winners, preachers, and missionaries. At this church have preached the mighty voices of the 20th century."

He continued, "Just hours before his Homegoing, the Lord allowed Brother Bob the strength to do one final radio broadcast. What a testimony of faithfulness to the end! A life well-lived, to the finish. 'Well done, thou good and faithful servant.'"

In a recent tribute to Brother Bob, a commentator in the Knoxville News Sentinel appropriately wrote, "Maybe the words 'good and decent' don't tell the whole story. Brother Bob, you were one exceptional man."

Madam Speaker, the passing of Brother Bob Bevington is a tremendous loss for my District, his wife Mary Lou, daughter and son-

in-law Marilyn and Bob Russell, his grandchildren and great-grandchildren, many other family and friends and the thousands of people devoted to his message of loving the Lord. I want to call his service and faith in God to the attention of my Colleagues and other readers of the RECORD and thank him for showing us all the way to a better life.

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HONORING BOB MCINTURF

**HON. GEORGE RADANOVICH**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate Bob McInturf upon being honored with the "Lifetime Achievement Award" at the 2009 San Joaquin Winegrowers Association 7th Annual San Joaquin Valley Wine & Grape Industry Forum. The luncheon will be held in Fresno, California on Friday, November 20, 2009.

Mr. Bob McInturf began farming in Madera and Fresno counties in 1946. For approximately fifty years he has been an integral member of the farming community; promoting farmers and small business owners, and working closely with vineyards around the San Joaquin Valley. Mr. McInturf was one of the original incorporators of Allied Grape Growers and served as President from 1956 through 1987. He has also served on the board of directors for Sun Maid Raisin Growers, the Agricultural Council of California, the National Council of Farm Cooperatives, the California Association of Winegrape Growers and the San Joaquin Valley Winegrowers Association. Mr. McInturf is the past chairman of the Agricultural Advisory Committee for the University of California.

Mr. McInturf has worked on many boards and committees representing the grape and agricultural industry on the local, state, national and international arenas. For many years he was involved with the marketing order of grapes for crushing and served as chairman of the Specialty Crop Committee for Trade Negotiations with the European Community Market.

Mr. McInturf and his wife, Rosalie, had lived in Fresno most of their lives. After Mr. McInturf retired they moved to Roseville, California. They have two children, Cindy and Stan. Mr. McInturf has been involved with his church and many church activities throughout his life.

Madam Speaker, I rise today to commend and congratulate Bob McInturf upon being honored with the "Lifetime Achievement Award." I invite my colleagues to join me in wishing Mr. McInturf many years of continued success.

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TRIBUTE TO FORMER ALABAMA  
STATE SENATOR PIERRE PELHAM

**HON. JO BONNER**

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. BONNER. Madam Speaker, last week, Alabama lost one of its luminaries—a gifted

public servant who will be remembered not only for his articulate and persuasive oratory, but also for his many contributions to our region.

Former State Senator Pierre Pelham of Mobile passed away on December 3, 2009, at the age of 80.

A native of Chatom, Alabama, Pierre Pelham was a scholar, a patriot, and an astute and skilled politician who was admired by many.

Senator Pelham distinguished himself early in life as a Phi Beta Kappa graduate of the University of Alabama and went on to graduate cum laude from Harvard University Law School.

He served his country during the Korean War, rising to the rank of Lieutenant in the Army. During his military service, he earned the Combat Infantryman and the Expert Infantryman badges.

Back home in Alabama, he developed a passion for public service. He was a delegate to the Democratic National Conventions in 1960 and 1964, laying the groundwork for later public office. From 1966 to 1974, he represented Mobile in the Alabama State Senate. He attained the position of president pro tempore of the Alabama Senate while only in his second term.

During his political career, Senator Pelham is credited with helping to establish the College of Medicine at the University of South Alabama in Mobile. Today, the USA College of Medicine plays a leading role in education and research to save the lives of thousands of Alabamians and others along the Gulf Coast.

A Fellow of Harvard University's Kennedy Institute of Politics, Senator Pelham was widely known for his command of the political craft and the spoken word. He was formidable in his ability to persuade his colleagues during debate.

Senator Pelham was also known for his deep, abiding faith and his lifelong membership and support of the Chatom United Methodist Church.

I rise to extend my condolences to his wife, Eva, and four children, Joseph, Marc, Pier, and Patrice Pelham, and 12 grandchildren.

May his family know that they are in our thoughts and prayers at this difficult time.

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IN OPPOSITION TO THE STUPAK  
AMENDMENT

**HON. BARBARA LEE**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Ms. LEE of California. Madam Speaker, I rise to join my colleagues in opposition to further restrictions on the constitutionally guaranteed right to abortion.

Last night the other body wisely defeated an amendment mirrored on the Stupak language that would have gone far and away beyond the current Hyde Amendment restrictions on abortion law.

That amendment, like the Stupak amendment we adopted in the House represented a blatant attack on women.

It attempts to dictate how individual Americans can spend their own money. That is simply outrageous.

The federal government has no place inserting itself between the medical decisions that a woman makes with her doctor.

This is a democracy, not a theocracy. The religious views of some should not dictate public policy for all.

We've got to follow the Senate's lead and strip the Stupak language from the final health reform bill and ensure that woman can exercise their right to seek an abortion.

We cannot and should not compromise away the rights of women to win votes.

We have already compromised far too much.

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IN RECOGNITION OF ROBERT K.  
MCCLARY

**HON. JOHN GARAMENDI**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. GARAMENDI. Madam Speaker, Representatives GEORGE MILLER, Representative JERRY MCNEARNEY and I rise today in honor of Robert McCleary, who has served as the Executive Director for the Contra Costa Transportation Authority for the last 20 years. As his colleagues, friends and family gather together to celebrate the next chapter of his life, we ask all of our colleagues to join us in saluting this outstanding public servant.

Bob McCleary's visionary efforts and hard work have benefited this generation and will benefit many more generations in the years to come. Transportation projects such as the BART extension to Pittsburg/BayPoint, the widening of Routes 4, 242 and 680, the Richmond Parkway, the intermodal stations at Richmond and Martinez, along with numerous other local transportation improvements have all been constructed under Bob McCleary's stay at the Contra Costa Transportation Authority and serve as a true testament to his judicious hard work and dedication.

Bob McCleary was faced with the daunting task of implementing Contra Costa's first transportation sales tax—Measure C—passed by the voters in 1988. Bob McCleary has worked diligently to ensure that the transportation sales tax program has been executed in an efficient, effective and equitable manner, consistent with the voters' intent. He recently played an integral role in establishing the necessary consensus building efforts leading to the successful passage in 2004, of Measure J—the successor transportation sales tax to Measure C. His legacy will live on in this Measure and in a series of transportation projects that are instrumental and essential to the communities they serve.

Prior to serving as the executive director for the Contra Costa Transportation Authority, Bob McCleary was also involved in other regional programs such as the Santa Clara County Traffic Authority where he served as the Deputy Director for Project Management. During Bob's stay at the Santa Clara County Traffic Authority he helped establish the new authority and manage the day to day project implementation of a \$1 billion dollar local sales tax program. This program would fund three State highways, the first of its kind in California and relied heavily on a partnership with

Caltrans, local government, and the private sector for success. Bob McCleary made sure it became a success.

Madam Speaker, we are truly honored to pay tribute to our friend and dedicated public servant. We ask all of our colleagues to join with us in thanking Robert McCleary for his long and dedicated service to the citizens of California and wishing him continued success and happiness in all of his future endeavors along with a happy retirement.

#### PERSONAL EXPLANATION

### HON. JOHN BARROW

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. BARROW. Madam Speaker, due to the death of a family member, I was absent from the House for the week of November 30 and thus not recorded for any votes that week. Had I been present, I would have voted in the following way on bills considered by the House:

On rollcall vote No. 911, on H.R. 3029, I would have voted "yea";

On rollcall vote No. 912, on H.R. 727, I would have voted "yea";

On rollcall vote No. 913, on H.R. 3667, I would have voted "yea";

On rollcall vote No. 914, on H. Res. 494, I would have voted "yea";

On rollcall vote No. 915, on H. Con. Res. 129, I would have voted "yea";

On rollcall vote No. 916, on H. Res. 861, I would have voted "yea";

On rollcall vote No. 917, on H. Res. 897, I would have voted "yea";

On rollcall vote No. 918, on H.R. 3634, I would have voted "yea";

On rollcall vote No. 919, on H.R. 515, I would have voted "yea";

On rollcall vote No. 920, on H. Con. Res. 197, I would have voted "yea";

On rollcall vote No. 921, on H.R. 1242, I would have voted "yea";

On rollcall vote No. 922, on H.R. 3980, I would have voted "yea";

On rollcall vote No. 923, on the Motion on Ordering the Previous Question on the Rule for H.R. 4154, I would have voted "yea";

On rollcall vote No. 924, on H. Res. 941, I would have voted "yea";

On rollcall vote No. 925, on approving the Journal, I would have voted "yea";

On rollcall vote No. 926, on H. Res. 28, I would have voted "yea";

On rollcall vote No. 927, on the Motion to Table the Appeal of the Ruling of the Chair, I would have voted "yea";

On rollcall vote No. 928, on the Motion to Recommit H.R. 4154, I would have voted "nay";

On rollcall vote No. 929, on H.R. 4154, I would have voted "yea";

On rollcall vote No. 930, on H.R. 3570, I would have voted "yea".

#### PERSONAL EXPLANATION

### HON. CHARLES A. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. GONZALEZ. Madam Speaker, a personal matter prevented my presence in the House this past Thursday, December 03, 2009. Had I been present, I would have voted "yea" on final passage of the Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009 (H.R. 4154).

#### PERSONAL EXPLANATION

### HON. ADAM SMITH

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. SMITH of Washington. Madam Speaker, on Tuesday, December 8, 2009, I was unable to be present for recorded votes because I was attending the memorial service held in Tacoma, Washington for the four police officers of the Lakewood Police Department who were killed last week in the line of duty.

Had I been present, I would have voted: "yes" on rollcall vote No. 931 (on the motion to instruct conferees on H.R. 3288); "yes" on rollcall vote No. 932 (on the motion to suspend the rules and agree to H. Con. Res. 199, as amended); "yes" on rollcall vote No. 933 (on the motion to suspend the rules and agree to H. Con. Res. 206, as amended); "yes" on rollcall vote No. 934 (on the motion to suspend the rules and agree to H. Res. 940); "yes" on rollcall vote No. 935 (on the motion to suspend the rules and agree to H. Res. 845, as amended); "yes" on rollcall vote No. 936 (on the motion to suspend the rules and pass H.R. 2278, as amended); "yes" on rollcall vote No. 937 (on the motion to suspend the rules and agree to H. Res. 915); "yes" on rollcall vote No. 938 (on the motion to suspend the rules and agree to H. Res. 907).

#### HONORING WORLD WAR II VETERAN MAURICE GLENN BELL, SURVIVOR OF THE USS "INDIANAPOLIS"

### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. BONNER. Madam Speaker, I rise to honor the memory of World War II veteran Maurice Glenn Bell of Mobile, Alabama, who passed away on December 4, 2009, at the age of 84.

Mr. Bell proudly embodied the qualities that our nation has associated with the "Greatest Generation"—those Americans who were called to give everything for the defense of our freedom and the liberation of millions overseas. Mr. Bell was absolutely committed to serving his country in wartime, and after the war, he was a role model of character and courage in civilian life.

In 1943, when he was summoned to serve in the Second World War, Mr. Bell was already working as an electrician's helper in the Mobile shipyards. He joined the Navy and saw engagements in places we know well from our history books—including the allied invasions of Tarawa, Saipan, and the battle of the Philippine Sea.

But the World War II experience for which Mr. Bell is best remembered is uniquely linked to the vessel upon which he served—the historic USS *Indianapolis*. It was the *Indianapolis* that delivered the first atomic bomb to be dropped on Japan. And after the heavy cruiser was struck by two Japanese torpedoes in the middle of the night on July 30, 1945, Mr. Bell was among the 900 crew members who were able to get into the water in an attempt to save themselves.

Mr. Bell and his comrades spent four days in the unforgiving ocean awaiting rescue—an ordeal that subjected them to near constant shark attack and dehydration. Of the 1,196 men on board the *Indianapolis* before she went down, only 316 survived—including Maurice Bell.

Like many *Indianapolis* veterans, he had remained mostly silent about his experiences on those four fateful days in 1945. However, 62 years later, he was given a chance to tell his story before a national audience as part of the PBS World War II documentary, "The War." The Ken Burns film interviewed a number of Mobile area veterans, including Mr. Bell.

Mr. Bell also captivated local audiences who would hear his stories about those long days and nights adrift in a seemingly dark and bottomless sea. He urged them never to give up.

It is ironic that this veteran of the war in the Pacific was buried on December 7, 2009—the 68th anniversary of the Japanese attack on Pearl Harbor.

Alabama is fortunate to have so many veterans like Maurice Bell who love their country and answered its call in time of need. We will always owe them a deep debt of gratitude.

I join this House in offering condolences to his wonderful wife of 65 years, Lois Bell, and their three children, Beverly Gros, Bonnie Hall and David Bell, and six grandchildren and 24 great grandchildren.

May they be comforted in knowing that they remain in our prayers during their time of loss.

#### RECOGNIZING ARIZONA'S GIFT OF THE 2009 CAPITOL CHRISTMAS TREE

### HON. HARRY E. MITCHELL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. MITCHELL. Madam Speaker, I rise today to commemorate the State of Arizona's gift to the U.S. Capitol and to the American people. The Capitol Christmas Tree has been a tradition at the United States Capitol since 1964. This is the first time that Arizona has gifted the Capitol Christmas tree, and it is also the tallest ever.

On December 8th, 2009, this majestic 85-foot Blue spruce, originally harvested from the Apache-Sitgreaves National Forests in Eastern

Arizona, was unveiled on the west lawn of the United States Capitol. The Capitol Christmas Tree, also known as "The People's Tree," is decorated with more than 6,000 holiday ornaments made by Arizona's school children. These ornaments were made from recycled materials and were made specially to survive the winter elements of this colder Washington climate.

The tree's journey to the United States Capitol began when it was cut down on November 7th, and embarked on a 10-day tour of Arizona, during which the tree stopped in 28 of our communities. The tree eventually travelled over 4,600 miles before arriving at its final destination in Washington, D.C., but before arriving, it stopped at cities across the nation so that thousands of Americans could marvel at the seven-story, 9,000-pound spruce. Moving such a large tree for so great a distance was a challenge, and was successful due to the efforts of Harry Baker and his crew from Southwest Industrial Rigging.

Madam Speaker, please join me in thanking the U.S. Forest Service, and especially the employees of the Apache-Sitgreaves National Forests, for their devotion to this wonderful project. These employees gave up their Thanksgiving holiday with their families to assist with the transportation of the tree to Washington, D.C. I would especially like to thank Rick Davalos, the District Manager of the Apache-Sitgreaves National Forests, and Jim Payne, the Forest Service's Public Affairs Officer, who headed up this extensive project. And lastly, I would like to commend the Steering Committee of the Capitol Christmas Tree 2009 Project, and the project's many volunteers, for their time and hard work.

#### TRIBUTE TO TERESEANN LYNCH

### HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. LATHAM. Madam Speaker, I would like to take a moment to remember a woman from Iowa who personified the courage and spirit of a working mother and Member of the United States Military. TereseAnn Lynch was killed on November 11, 2009, due to an act of domestic violence. TereseAnn, 30, was a mother of an 8-month-old son. As a member of the Iowa Air National Guard for more than a decade, she served tours of duty in Iraq, Kuwait, and Saudi Arabia working as a weapons specialist. Most recently, TereseAnn served her country with honor providing aid in the Iraq War as a technical sergeant. She was also an active and committed employee at the Department of Human Services in Iowa where she provided help to young children and mothers trying to recover lost child support payments.

On behalf of my family, and the United States Congress, I would like to extend my condolences to her family, friends, and loved ones. TereseAnn embodied the character and values of a servicewoman and loving mother.

A tragedy like this is a painful reminder of the frequency of domestic violence cases. Domestic violence is a willful act of abuse that results in many reactions such as fear, anger,

depression, and even death. In the U.S., an estimated 1.3 million women are victims of physical assault by an intimate partner each year. In Iowa over the past decade, domestic violence has affected nearly 6,000 women annually and 1,200 men. Structured to fight the battle against domestic violence, the Iowa Coalition Against Domestic Violence (ICADV) is an organization established to reach out and help Iowans with domestic violence issues. With 28 direct service programs across the state, the coalition offers counseling and community outreach. The ICADV institutes a 24-hour statewide hotline for those needing help. The phone number is 1-800-942-0333.

Domestic violence is a horrific act that no one should have to deal with, and it is my hope that the resources and help available will offer guidance and aid to those affected.

#### EARMARK DECLARATION

### HON. ROBERT B. ADERHOLT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. ADERHOLT. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding earmarks I received as part of HR 3288, the Consolidated Appropriations Act, Fiscal Year 2010:

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, COPS Tech

Legal Name of Requesting Entity: City of Hartselle, AL

Address of Requesting Entity: 200 Sparkman St. N.W. Hartselle, AL 35640

Description of Request: Wireless Area Network \$250,000

The funding would be used to purchase a Wireless Area Network. This funding will greatly improve the telecommunication access in the area.

The full amount of these funds will be used to purchase equipment.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP—Byrne

Legal Name of Requesting Entity: Alabama Department of Public Safety, Montgomery, AL  
Address of Requesting Entity: P.O. Box 1511, Montgomery, AL 36102-1511

Description of Request: "ADPS Child Sexual Predator Project, \$150,000"

The funding would be used for Project targets arrest and prosecution of Child Sexual Predators in AL. ADPS received 2008 start-up funding from COPS Child Sexual Predator Program. ADPS needs federal assistance to maintain the current level of effective operation. This program continues efforts initiated nationwide under the ADAM WALSH ACT.

These funds will be used for the following areas: \$50,000 equipment; \$10,000 access to background data base repositories to locate absconded sex offenders; \$70,000 salaries and benefits; and \$20,000 enhancement of the department's ability to accept electronically transmitted sex offender information.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP—Byrne

Legal Name of Requesting Entity: The University of Alabama, Tuscaloosa, AL

Address of Requesting Entity: Box 870117, Tuscaloosa, AL 35487

Description of Request: Domestic Violence Law Clinic, \$300,000

The funding would be used to provide free civil legal services to victims of domestic violence, stalking, and assault in the seven west Alabama counties of Bibb, Greene, Hale, Fayette, Pickens, Lamar and Tuscaloosa. The services provided by the DV Law Clinic further the national goal of crime prevention and victim assistance and support the important services set forth in the Violence Against Women Act and other federal laws.

These funds will be used for the following areas: \$219,000 for salaries and benefits; and \$81,000 will be used for facilities and administrative costs associated with the Clinic.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP—Byrne

Legal Name of Requesting Entity: Alabama District Attorneys Association, Montgomery, AL

Address of Requesting Entity: 515 South Perry Street Montgomery, Alabama 36104

Description of Request: Zerometh Drug Prevention Campaign, \$1,000,000

The funding would be used by Zerometh to expose meth and its deadly consequences to teens and young adults. The goal is to stop a potential first-time user from ever trying the drug, while encouraging everyone to look for the warning signs and support treatment. Methamphetamine is a national epidemic and efforts to educate youth on its dangers and hopefully prevent the initial use of meth are needed.

\$30,000 would be used for Program Administration, Project Evaluation, and Compliance, while \$970,000 would be used for a year of demand reduction programs across the State of Alabama.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account: DOJ, OJP—JJ

Legal Name of Requesting Entity: Alabama Institute for Deaf and Blind, Talladega, AL

Address of Requesting Entity: 205 E. South St, P.O. Box 698, Talladega, Alabama 35161

Description of Request: Overcoming Communication Barriers for AIDB At-Risk Youth, \$15,000

The funding would be used to expand a preventive education program for at-risk disabled children impacted by communication barriers, increased incidence of dysfunctional families and a lack of appropriately trained personnel in rural areas and school systems. One in 10 US children is born with a disability, adding emotional and financial stress to families and rural school systems. Disabled teens are more likely to face abuse, pregnancy or suicide due to communication and other barriers, and this funding helps address this.

\$110,000 for program development, \$29,000 for parent education and training, \$11,000 for program materials, supplies and support.

Requesting Member: ADERHOLT

Bill Number: HR 3288

Account or Provision: NASA, Cross Agency Support

Legal Name of Requesting Entity: The University of Alabama in Huntsville  
 Address of Requesting Entity: 301 Sparkman Avenue, Huntsville, AL 38152  
 Description of Request: Virtual Environment Simulation Laboratory \$500,000.

The funding would be used for purchasing of equipment which provides UAH a new capability to support Marshall Space Flight Center (MSFC) missions by developing engineering and science applications of virtual environment simulation as well as enhancing student involvement in virtual environments. This would benefit NASA MSFC uses of the facility relevant to MSFC missions, including virtual examination of rocket engines while firing, virtual participation in spacecraft manufacturing and maintenance processes and virtual presence on the surface of the moon.

The full amount of these funds will be used to purchase equipment.

Requesting Member: ADERHOLT  
 Bill Number: HR 3288  
 Account: NASA, Cross Agency Support  
 Legal Name of Requesting Entity: Southern Research Institute

Address of Requesting Entity: 757 Tom Martin Drive, Birmingham, AL 35211

Description of Request: Development of characterization techniques for advanced high temperature materials in space launch, \$1,000,000.

The funding of \$1 million for the "Development of Characterization Techniques for Advanced High Temperature Materials in Space Launch Applications" will enable research and developments of advanced modeling, testing and characterization techniques for advanced composite materials in extreme environments. SRI has identified several gaps in current NASA technology that if filled, will greatly assist analysts and designers to successfully utilize composites in advanced structural and thermal protection system applications and reduce overall program risk.

\$350,000 to be spent on equipment and material purchases, \$400,000 to be spent on materials research and analysis, \$200,000 to be spent on testing, and \$50,000 to be spent on program management.

Requesting Member: ADERHOLT  
 Bill Number: HR 3288  
 Account or Provision: NASA, Cross Agency Support

Legal Name of Requesting Entity: B.G. Smith & Associates, Inc.

Address of Requesting Entity: 555 Sparkman Drive, Suite 810, Huntsville, AL 35816

Description of Request: Product life-cycle management and advanced modeling and simulation methods, \$1,000,000.

The program seeks to create an integrated and interoperable Product Lifecycle environment as it relates to engineering and manufacturing capabilities and to perform focused critical analyses on flight vehicle performance issues. To move MSFC in the direction leading to modernizing its systems, streamline operations, increase traceability, decrease costs, gain better insight, and increased aerospace manufacturing expertise.

The funding would be used for about 6 full time employees, to purchase some hardware and cost associated with PLM software.

HONORING DR. LAWRENCE B. SCHOOK

**HON. TIMOTHY V. JOHNSON**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. JOHNSON of Illinois. Madam Speaker, I rise today to honor the achievements of Dr. Lawrence B. Schook, who recently led an international team in the sequencing of the swine genome. Dr. Schook is a distinguished Gutsell Professor and Director of the Division of Biomedical Sciences at the University of Illinois at Urbana-Champaign where he has spent the past nine years researching genetic resistance to disease, regenerative medicine, and using genomics to create animal models for biomedical research.

The draft sequence will allow researchers to pinpoint genes that are useful to pork production or are involved in immunity or other important physiological processes in the pig. It will enhance breeding practices, offer insight into diseases that afflict pigs (and, sometimes, also humans) and will assist in efforts to preserve the global heritage of rare, endangered and wild pigs. It also will be important for the study of human health because pigs are very similar to humans in their physiology, behavior and nutritional needs.

With the growth of our world's population and subsequent rise in interaction between both domesticated and wild animals it is imperative that we continue to fund researchers such as Dr. Schook. The recent outbreak of H1N1 is a great reminder that the work of Dr. Schook and his colleagues is of upmost importance, not only to our world's food supply, but to our health as well.

I would ask that my colleagues join me in congratulating Dr. Schook, the University of Illinois at Urbana-Champaign, and all of the team members under Dr. Schook who made this discovery possible.

HONORING SCOTTS BLUFF NATIONAL MONUMENT ON ITS 90TH BIRTHDAY

**HON. ADRIAN SMITH**

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. SMITH of Nebraska. Madam Speaker, I rise today to join in honoring the Scotts Bluff National Monument—which will be celebrating its 90th anniversary this Saturday.

On December 12th, 1919, President Woodrow Wilson signed a Presidential Proclamation, officially establishing Scotts Bluff National Monument on approximately 2,000 acres.

One of the highest points in Nebraska, Scotts Bluff played an important role in our country's westward expansion. A natural landmark, the formation served as a point of reference for travelers on the Oregon, California, Mormon, and Pony Express Trails.

Today, visitors to the monument can hike the Saddle Rock Trail, see a magnificent view from the summit, visit the Oregon Trail Museum and Visitor Center, and even relive life

on the Oregon Trail during special "Living History" programs during the summer. The north face of the monument shows more geological history than any other formation in Nebraska, spanning a time period extending millions of years.

Having grown up in the shadow of the monument, I know full well just how important this monument has been for our country, for Nebraska, and for the local economy. It is with great pleasure I join with all Nebraskans to celebrate the 90th birthday of such an icon.

RECOGNIZING MR. ROY FOSTER AS  
 A 2009 TOP 10 CNN HERO

**HON. ALCEE L. HASTINGS**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to honor a courageous veteran turned social activist, Mr. Roy Foster. Mr. Foster is the founder of Stand Down House, an organization in South Florida that has been providing veterans with life-changing assistance since 2000. His hard work and dedication has earned him the esteemed distinction of 2009 Top 10 CNN Hero. CNN Heroes is an annual awards ceremony that recognizes "everyday people changing the world." Mr. Foster was one of ten CNN Heroes chosen by a blue-ribbon panel of distinguished leaders and humanitarians, including Retired General Colin Powell, Whoopi Goldberg, and Sir Elton John, from an initial pool of more than 9,000 viewer nominations.

Mr. Foster knows all too well how hard it is to find programs that help veterans deal with addiction and homelessness because he used to be one of them. Born in rural Georgia, Mr. Foster joined the Army right after high school. Throughout his six years in the military, he drank alcohol and experimented with drugs. By the time he left the Army in 1980, Mr. Foster was an alcoholic and his drug use had begun to escalate as he struggled to deal with life after the Army. Like many people dealing with addiction, Mr. Foster spent nights sleeping on the streets as he battled his disease for many years.

After starting a life of sobriety in the early 1990s, Mr. Foster used his experiences to become an effective substance abuse counselor. Acknowledging the problems that veterans dealing with substance abuse face, Mr. Foster and another veteran, the late Don Reed, established the non-profit Faith\*Hope\*Love\*Charity, Inc. so that veterans would no longer fall through the cracks of an imperfect system.

After six years of work, Mr. Foster founded Stand Down House to help fellow veterans who are struggling and have lost their homes, dignity, and the ability to lead productive lives. Through referral by the Veterans Administration (VA) and with help from their funding, Stand Down House provides transitional housing and support services to 45 veterans in different stages of recovery. This support includes housing, clothing, counseling, life skills classes for up to two years, and transportation to the VA hospital for medical and mental

health care. The goal is to not only assist veterans in their recovery process, but give them the tools to find employment or attend school after their recovery process is over.

At Stand Down House, veterans realize that they are not alone in their struggles after returning home, which allows for veterans of all ages to become a support system for one another. This often leads to veterans becoming informal counselors to each other and making sure that one another stay on track. Many graduates of the program find the bond of friendship and support so beneficial that they return as volunteers to give back to others in need, especially with many veterans now returning home from Afghanistan and Iraq.

Madam Speaker, I truly admire the work that Mr. Roy Foster has done, and continues to do, for our nation's veterans each and every single day. After serving our country so valiantly, no veteran should ever have to face the future alone.

#### TRIBUTE TO DR. JAMES JOHNSON

### HON. MARY FALLIN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Ms. FALLIN. Madam Speaker, I am saddened to rise today to note the passing of Dr. James Johnson, an adoring husband, cherished father, and respected physician in my home state of Oklahoma.

A lifelong hemophiliac, Dr. J, as he was known to so many of his patients, dedicated his life to healing others. During his more than 25 years practicing medicine, Dr. J treated thousands of patients, and worked with researchers and insurance companies on finding new ways to treat and hopefully one day cure hemophilia.

Dr. J was particularly fond of reminding students to continually challenge their minds—because while their bodies may someday fail them, they could always count on their knowledge. No one lived this out better than he did. During his months in the hospital, I am told, he would consult on his own case and instruct med students performing basic procedures on him. Always gracious and ever the educator, Dr. J would kindly suggest, “You know, son, if you do it this way, you won’t hurt your patient so much.”

Dr. J owned his own practice for many years, and was most recently medical director for a company that performs house calls for the elderly and homebound. Over the years, he worked as an ER doctor, a prison doctor, and a primary care doctor. When off the job, Dr. J was also a die-hard Sooners fan, a Thunder season-ticket holder, an amateur pilot, and an active member of his local church. But the roles he cherished most were those of husband and father.

Dr. J was laid to rest Monday in Edmond. While we take comfort in knowing that he is at peace, the State of Oklahoma and particularly who know Dr. J grieve this loss. I believe I speak for the whole House when I say our thoughts and prayers go out to Dr. J’s wife of 26 years, Becky, their daughter, Ashley, and the hundreds of family, friends, colleagues,

and patients who knew and love him so dearly.

#### HONORING CORPORAL SYLVESTER WATTS (RETIRED)

### HON. CORRINE BROWN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Ms. CORRINE BROWN of Florida. Madam Speaker, this communication is forwarded on behalf of the constituents of Congressional District Three and myself as we pay tribute to the life of Corporal Sylvester Watts (Retired). We are all saddened that Sylvester is gone, but joyful that he has gone to be with his Heavenly Father.

Sylvester Watts was born October 8, 1947 in Chicago, Illinois to the late Pastor Van B. and Missionary Ruby Watts. He was the youngest of 11 children; his parents, three brothers and one sister, Rufus, Reverend Roosevelt, John and Otha, made their transition from life-mortal ahead of him. He transitioned to await the resurrection on November 29, 2009 at his home in Chicago, Illinois.

Sylvester accepted Christ as his personal Savior at an early age under the pastorate of his father at Greater Progressive Baptist Church, Chicago, Illinois where he served as an usher and a member of the Youth Choir.

Sylvester joined the United States Marine Corps May 1, 1967, was temporarily retired April 16, 1969 and honorably discharged on September 30, 1974. He served his country with dignity and honor and attained the rank of Corporal. During his Military Service, he earned the National Defense Service Medal, Viet Nam Service Medal, Good Conduct Medal, Viet Nam Campaign Medal with device and Marksman Rifle Badge.

Having been reared in a Christian home where the Word of God, the love and support of family were the guiding principles, Sylvester learned early in life that “if a man doesn’t work, he doesn’t eat”, so in spite of the emotional and psychological issues he faced as a result of his tenure in Viet Nam, he was determined to survive.

Sylvester attended Elmhurst College where he majored in Business Administration. He was gainfully employed with Gerber Products Company, Watts Side Grocery (family owned) the Deputy Sheriffs Office, Strategic Services Unit, Daley Center, Chicago, Illinois, Sodexo Marriott, Trajo Enterprises and Rich Cake Enterprises.

Sylvester leaves to cherish precious memories: Missionary Janet Watts-DuPart, Reverend Lucille Watts-Watson, Reverend Van Watts, Jr. (Ruth), Benny Watts, Reverend Frank Watts, Evangelist Shirley Watts Kyles Green; Nephews: Calvin Andre, Van Blair, Vincent, Victor, Vaughn, Joseph Preston, Joseph B., Anthony, Troy, Torrence, Ivyl, Michael, Steven, Anthony; Nieces: Barbetta, Janet, Loretta, Christiana, Angie, Janet, Jacqueline, Tina L., Cheryl Lynn, Donna Michelle, Lori Alva, Rubi and Kora; a special nephew, Pastor Alfonzo Cleveland and a special friend, Reverend Jeanne L. Edwards, who

engaged him in intellectual spiritual conversations at the dinner table whenever family gathered.

We, the Watts family, continue to strive to keep ourselves in the love of God, looking for the mercy of our Lord Jesus Christ unto eternal life. He alone is able to keep us from falling and to present us faultless before the presence of his glory with exceeding joy. Jude v 21&24.

#### HONORING BEVERLY SCOTT

### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. RADANOVICH. Madam Speaker, I rise today to congratulate Beverly Scott as the outgoing President of the Yosemite Gateway Association of Realtors. Ms. Scott will be recognized at the annual installation luncheon for the Yosemite Gateway Association of Realtors on November 20, 2009 in Oakhurst, California.

The Yosemite Gateway Association of Realtors (YGAOR) first began as the Mountain Co-Op in 1998 with a group of eight volunteers. Today, the group has a paid professional staff and ownership of the Association’s building. YGAOR was responsible for developing one of the first computerized Multiple Listing Systems, which continues to operate today with the latest technology. They work very closely with the California Association of Realtors by providing leadership at both the statewide and regional levels. YGAOR provides educational opportunities for its members, as well as fundraising activities that benefit local non-profit organizations and scholarship programs.

Ms. Beverly Scott is a fifth-generation native of Eastern Madera County. After graduating from Yosemite High School, she attended Bakersfield City College and earned her Bachelor’s degree from California State University, Bakersfield. Ms. Scott has a very diverse history, including service in the United States Army, working as an editor, a photojournalist, a medical instructor, a realtor, a volunteer and a mother to four children: Skyler, Heavenly, Sierra and Raylynn. She is a true entrepreneur; the manager of Oakhurst Real Estate, and the general manager of National Computer Software, Inc.

With Ms. Scott’s role at YGAOR, she has been a strong leader and provided a voice of optimism for local real estate. The 2009 Board Members worked closely with past Board Members to create a new strategic plan and to provide guidelines for defining a strategy, making decisions and allocating YGAOR resources. The new strategic plan brought an updated mission statement: “The Yosemite Gateway Association of Realtors is committed to professional excellence for the success of its members in all aspects of the real estate industry.” With this mission statement in mind, the 2009 Board, with the leadership of Ms. Scott, established four goals: Advocacy, Communication, Education and Organizational Excellence.

Ms. Scott is a leader in the real estate industry, as well as in the Oakhurst community. She has been a member of YGAOR since



2004, and has served on various committees over the past five years. Ms. Scott has been a member of the Board of Trustees for the Bass Lake Joint Union Elementary School District since 2006, serving as Vice President in 2009; the Eastern Madera County/Oakhurst Area Chamber of Commerce since 2001, serving as President in 2004, the Wild Wonderful King Vintage Museum since 2004, serving as an Officer and a Board Member, Local Water and Sewer Committees since 2002 and is a Charter Member of the New Community United Methodist Church. She is a past-president of the Oakhurst Sierra Sunrise Rotary, past-president of the California State Society of American Medical Technologists, past-board member of the Madera County Workforce Investment Board, past-member of the Boys and Girls Club, and past-Chaplain for the Oakhurst Elks Lodge. For her service to the community, Ms. Scott was the Golden Apple Award Recipient for 2005/2006 and was named "Oakhurst Town Mother" in 2004 by Angels Among Us, Woman of the Year.

Madam Speaker, I rise today to commend and congratulate Beverly Scott on her achievements. I invite my colleagues to join me in wishing Ms. Scott and the Yosemite Gateway Association of Realtors many years of continued success.

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RECOGNIZING THE HARRISON VALLEY VIEW ELEMENTARY SCHOOL FOR RECEIVING THE BLUE RIBBON AWARD

**HON. HARRY TEAGUE**

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. TEAGUE. Madam Speaker, I want to congratulate Valley View Elementary School in Las Cruces, New Mexico, for receiving the Blue Ribbon School Award awarded by the U.S. Department of Education for demonstrating academic excellence and dramatic gains in student achievement levels.

The Blue Ribbon Schools award was created in 1982 to recognize schools where students attain and maintain high academic standards and are pushed to improve themselves and further their dedication to scholastic achievement. This award shows that Valley View Elementary School is working with its students to improving its academic standing and educational excellence.

Schools like Valley View Elementary earn the Blue Ribbon Schools Award because of the hard work and the tireless work of its educators and families. The students also worked hard to improve themselves and make sure that their hard work paid off. Valley View Elementary School exemplifies what it means for a school to help its students strive towards academic excellence.

I am honored to have Blue Ribbon Schools like Valley View Elementary School in my district. I commend their achievement and wish them luck in continuing their academic achievement.

MARIE HARRIS

**HON. HOWARD L. BERMAN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. BERMAN. Madam Speaker, I rise today to pay respects to the passing of my friend Marie Harris. Let this congressional insert serve as a tribute to her memory and celebration of her meaningful life.

Marie Harris came to Pacoima in 1960 from Detroit where she successfully co-owned the Elite Boulevard House of Fashions and captured the "Formal Award" in a nationwide competition from the National Association of Fashion and Accessory Designers, Inc. Her professional success continued as she transferred her membership with this organization to the Los Angeles Chapter and served as Fashion Coordinator, spearheading the unforgettable Designers Showcase at the Beverly Hilton in 1963 and 1964. She began tireless efforts producing a series of Designers Showcase Fashion Shows to help raise funds to build a new edifice and educational unit of the Parks Chapel AME Church in Pacoima, and continued her work in the fashion world by becoming a columnist for the North East Valley Post writing two columns weekly, "Fashions LTD" and "Kaleidoscope" society scoop.

Marie was known for her spirit of volunteerism and unwavering dedication to public service. In 1980, Marie was appointed to the Mayor's Committee on the city's Bicentennial Celebration in the Sepulveda Basin, which motivated her to produce the Back to Pacoima Expo at the Hansen Dam Amphitheater to honor Pacoima's trailblazers. One of the major results of Marie's work in Pacoima was the naming of "Plaza of the Stars," a major shopping center located at Glenoaks and Van Nuys Boulevards.

Marie has a history of community involvement and her invaluable service has made an indelible mark on the San Fernando Valley. She was on the Board of Directors for the Economic Alliance of the San Fernando Valley Vision 2020 and the Commissioner for the Children's Museum and Commission for the San Fernando Valley Fair. She was aptly recognized as Woman of the Year by Assemblyman Richard Katz, and later appointed as an Honorary Mayor of Pacoima by former City of Los Angeles Councilman Ermani Bernardi.

Marie was a devoted mother, and wife for the past fifty years to Alvin Harris, deceased in January 2001. She is survived by her three children Sidney Alvin, Rolene Marie, Alton Keith and five grandchildren.

I ask my colleagues to join me in celebrating the life of Marie Harris.

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HONORING DOUG CARROLL

**HON. LOIS CAPPS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mrs. CAPPS. Madam Speaker, today I rise to honor Doug Carroll of San Luis Obispo, CA. He is a valued member of the Central Coast

Community and a valiant champion for all those living with Multiple Sclerosis. Since being diagnosed, "Pastor Doug" has maintained an active schedule, traveling to Sacramento and Washington, DC to lobby on behalf of all those affected by this horrible disease.

Back on the Central Coast, Pastor Doug managed to fit in MS fundraising and awareness events between a busy social calendar, multiple doctor and physical therapy appointments and his famous cooking classes at Spencer Market. He is a friend and inspiration to all who know him.

Though his health has deteriorated, his desire to educate others about MS has not. Countless people in my community have learned of the horrible effects this degenerative disease can have on an individual. Pastor Doug has handled these challenges with grace, good humor and humility. He is an example to us all and I am proud to represent him in Congress.

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RECOGNIZING MELVIN FRIERSON ON HIS RETIREMENT AS A STAFF MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES

**HON. JERRY F. COSTELLO**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. COSTELLO. Madam Speaker, I rise today to ask my colleagues to join me in recognizing Melvin Frierson as he retires after 23 years of service to the U.S. House of Representatives.

Mel began his federal career as a staff member for Congressman Mel Price, in 1986. When Congressman Price passed away in 1988 and I was elected to fill the vacant seat, Mel remained as one of my senior staff members and he has served loyally and with distinction ever since.

In addition to his work as a member of my Congressional staff, Mel has long been involved in local politics and was a precinct committeeman in East St. Louis for over 30 years. Mel is a 33d degree Mason and has been involved in Freemasonry for 40 years. He was the Grand Master of the Most Worshipful Prince Hall Grand Lodge Free and Accepted Masons of the State of Illinois for 2 terms, from 1985 to 1986 and is currently Deputy of the Orient for the Scottish Rite, Masonry, Prince Hall Affiliation in the State of Illinois.

Mel's community and charitable involvement has been extensive. For years, he has delivered food to needy families during the holidays, often covering the cost himself. He has also participated in the Toys for Tots campaign as well as the Relay for Life which supports the American Cancer Society.

Mel's family and his family have always been his cornerstones. He is a long-time member of the Mount Zion Missionary Baptist Church, in East St. Louis. Mel's family, including daughters, Ingrid and Kimberly, son Brett and grandchildren have been a source of great pride and will no doubt see a good deal more of their father and grandfather now that he is retiring.

Madam Speaker, I ask my colleagues to join me in an expression of recognition and appreciation for a loyal staff member and good friend.

HONORING MR. TIMOTHY WILL  
FOR HIS SERVICE TO THE PEOPLE  
OF WESTERN NORTH CAROLINA

### HON. HEATH SHULER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. SHULER. Madam Speaker, I rise today to honor Mr. Timothy Will of Rutherfordton, North Carolina, for his exemplary service to the people of Western North Carolina. Mr. Will recently received the \$100,000 Purpose Prize for two local projects he has dedicated his time, energy and resources toward.

Mr. Will created FarmersFreshMarket.org, a Web site that connects local small farmers to chefs and consumers in metropolitan areas. Many of these farmers were previously unemployed after textile and furniture factory closings in the area. FarmersFreshMarket.org opens farmers to a new, lucrative market and helps those in urban areas take part in the local food movement and reconnect to the farm to serve local, fresh, and seasonal fare in their homes and restaurants.

Mr. Will also helped create the Foothills Connect Business and Technology Center to support local entrepreneurs and provide community Internet access to an area with few public computer terminals, and limited home and business access. With the help of grants, Foothills Connect wired Rutherford County's public schools with fiber optic connections. Foothills Connect also trained teachers how to use the technology, and instructed area residents on how to refurbish old computers to donate to low-income families.

By creating new business opportunities and providing vital community services to an area hit hard by unemployment, Mr. Will is a testament to the spirit of entrepreneurship and community giving. I am proud to honor Mr. Will today, and want to thank him for his invaluable contributions to Western North Carolina.

### INTRODUCING THE FREE COMPETITION IN CURRENCY ACT

### HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. PAUL. Madam Speaker, I rise to introduce the Free Competition in Currency Act of 2009. Currency, or money, is what allows civilization to flourish. In the absence of money, barter is the name of the game; if the farmer needs shoes, he must trade his eggs and milk to the cobbler and hope that the cobbler needs eggs and milk. Money makes the transaction process far easier. Rather than having to search for someone with reciprocal wants, the farmer can exchange his milk and eggs for

an agreed-upon medium of exchange with which he can then purchase shoes.

This medium of exchange should satisfy certain properties: it should be durable, that is to say, it does not wear out easily; it should be portable, that is, easily carried; it should be divisible into units usable for everyday transactions; it should be recognizable and uniform, so that one unit of money has the same properties as every other unit; it should be scarce, in the economic sense, so that the extant supply does not satisfy the wants of everyone demanding it; it should be stable, so that the value of its purchasing power does not fluctuate wildly; and it should be reproducible, so that enough units of money can be created to satisfy the needs of exchange.

Over millennia of human history, gold and silver have been the two metals that have most often satisfied these conditions, survived the market process, and gained the trust of billions of people. Gold and silver are difficult to counterfeit, a property which ensures they will always be accepted in commerce. It is precisely for this reason that gold and silver are anathema to governments. A supply of gold and silver that is limited in supply by nature cannot be inflated, and thus serves as a check on the growth of government. Without the ability to inflate the currency, governments find themselves constrained in their actions, unable to carry on wars of aggression or to appease their overtaxed citizens with bread and circuses.

At this country's founding, there was no government controlled national currency. While the Constitution established the congressional power of minting coins, it was not until 1792 that the U.S. Mint was formally established. In the meantime, Americans made do with foreign silver and gold coins. Even after the Mint's operations got underway, foreign coins continued to circulate within the United States, and did so for several decades.

On the desk in my office I have a sign that says: "Don't steal—the government hates competition." Indeed, any power a government arrogates to itself, it is loathe to give back to the people. Just as we have gone from a constitutionally instituted national defense consisting of a limited army and navy bolstered by militias and letters of marque and reprisal, we have moved from a system of competing currencies to a government-instituted banking cartel that monopolizes the issuance of currency. In order to reintroduce a system of competing currencies, there are three steps that must be taken to produce a legal climate favorable to competition.

The first step consists of eliminating legal tender laws. Article I Section 10 of the Constitution forbids the States from making anything but gold and silver a legal tender in payment of debts. States are not required to enact legal tender laws, but should they choose to, the only acceptable legal tender is gold and silver, the two precious metals that individuals throughout history and across cultures have used as currency. However, there is nothing in the Constitution that grants the Congress the power to enact legal tender laws. We, the Congress, have the power to coin money, regulate the value thereof, and of foreign coin, but not to declare a legal tender. Yet, there is a section of U.S. Code, 31 U.S.C.

5103, that purports to establish U.S. coins and currency, including Federal Reserve notes, as legal tender.

Historically, legal tender laws have been used by governments to force their citizens to accept debased and devalued currency. Gresham's Law describes this phenomenon, which can be summed up in one phrase: bad money drives out good money. An emperor, a king, or a dictator might mint coins with half an ounce of gold and force merchants, under pain of death, to accept them as though they contained one ounce of gold. Each ounce of the king's gold could now be minted into two coins instead of one, so the king now had twice as much "money" to spend on building castles and raising armies. As these legally overvalued coins circulated, the coins containing the full ounce of gold would be pulled out of circulation and hoarded. We saw this same phenomenon happen in the mid-1960s when the U.S. government began to mint subsidiary coinage out of copper and nickel rather than silver. The copper and nickel coins were legally overvalued, the silver coins undervalued in relation, and silver coins vanished from circulation.

These actions also give rise to the most pernicious effects of inflation. Most of the merchants and peasants who received this devalued currency felt the full effects of inflation, the rise in prices and the lowered standard of living, before they received any of the new currency. By the time they received the new currency, prices had long since doubled, and the new currency they received would give them no benefit.

In the absence of legal tender laws, Gresham's Law no longer holds. If people are free to reject debased currency, and instead demand sound money, sound money will gradually return to use in society. Merchants would have been free to reject the king's coin and accept only coins containing full metal weight.

The second step to reestablishing competing currencies is to eliminate laws that prohibit the operation of private mints. One private enterprise which attempted to popularize the use of precious metal coins was Liberty Services, the creators of the Liberty Dollar. Evidently the government felt threatened, as Liberty Dollars had all their precious metal coins seized by the FBI and Secret Service in November of 2007. Of course, not all of these coins were owned by Liberty Services, as many were held in trust as backing for silver and gold certificates which Liberty Services issued. None of this matters, of course, to the government, which hates competition. The responsibility to protect contracts is of no interest to the government.

The sections of U.S. Code which Liberty Services is accused of violating are erroneously considered to be anti-counterfeiting statutes, when in fact their purpose was to shut down private mints that had been operating in California. California was awash in gold in the aftermath of the 1849 gold rush, yet had no U.S. Mint to mint coinage. There was not enough foreign coinage circulating in California either, so private mints stepped into the breach to provide their own coins. As was to become the case in other industries during the Progressive era, the private mints were eventually accused of circulating debased

(substandard) coinage, and with the supposed aim of providing government-sanctioned regulation and a government guarantee of purity, the 1864 Coinage Act was passed, which banned private mints from producing their own coins for circulation as currency.

The final step to ensuring competing currencies is to eliminate capital gains and sales taxes on gold and silver coins. Under current federal law, coins are considered collectibles, and are liable for capital gains taxes. Short-term capital gains rates are at income tax levels, up to 35 percent, while long-term capital gains taxes are assessed at the collectibles rate of 28 percent. Furthermore, these taxes actually tax monetary debasement. As the dollar weakens, the nominal dollar value of gold increases. The purchasing power of gold may remain relatively constant, but as the nominal dollar value increases, the Federal Government considers this an increase in wealth, and taxes accordingly. Thus, the more the dollar is debased, the more capital gains taxes must be paid on holdings of gold and other metals.

Just as pernicious are the sales and use taxes which are assessed on gold and silver at the state level in many States. Imagine having to pay sales tax at the bank every time you change a \$10 bill for a roll of quarters to do laundry. Inflation is a pernicious tax on the value of money, but even the official numbers, which are massaged downwards, are only on the order of 4 percent per year. Sales taxes in many states can take away 8 percent or more on every single transaction in which consumers wish to convert their Federal Reserve Notes into gold or silver.

In conclusion, Madam Speaker, allowing for competing currencies will allow market participants to choose a currency that suits their needs, rather than the needs of the government. The prospect of American citizens turning away from the dollar towards alternate currencies will provide the necessary impetus to the U.S. Government to regain control of the dollar and halt its downward spiral. Restoring soundness to the dollar will remove the government's ability and incentive to inflate the currency, and keep us from launching unconstitutional wars that burden our economy to excess. With a sound currency, everyone is better off, not just those who control the monetary system. I urge my colleagues to consider the redevelopment of a system of competing currencies and cosponsor the Free Competition in Currency Act.

#### OPPOSITION TO THE STUPAK AMENDMENT

#### HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. SLAUGHTER. Madam Speaker, I have witnessed the horror of the choice between a back alley abortion and a forced marriage to avoid disgrace.

These were the realities women faced prior to 1973. My fear is that if this harmful Stupak/Pitts language is signed into law, we will revert back to those dark times.

Critical to this debate is to break down the facts. The opposition claims that the Stupak/

Pitts amendment codifies current law. This is grossly incorrect.

Stupak-Pitts goes far beyond current law by placing unprecedented restrictions on individuals' use of their own private dollars. The Hyde amendment does not apply to private funding nor does it apply to administrative costs. It has only placed limits on direct Federal appropriations being used to fund abortion benefits. The Stupak amendment expands the Hyde prohibitions on the use of federal funds for an abortion benefit to include "any part of the costs of any health plan that includes coverage of abortion."

The opposition claims that this amendment will not change current insurance plans for women. This is blatantly wrong.

A report by health policy experts at the George Washington University School of Public Health concludes that the Stupak amendment "will have an industry-wide effect, eliminating coverage of medically indicated abortions over time for all women, not only those whose coverage is derived through a health insurance exchange."

The opposition claims that the segregation of funding under the House bill is an accounting sham. This is blatantly false.

In the Capps amendment, the segregation of funding piece is based on the current model the Federal Government uses to pay for abortions permitted in Medicaid.

I am afraid that we are driving young women, poor women, back to the dark alley, and I dread to see that day.

#### EXPRESSING CONGRATULATIONS TO GLENVILLE HIGH SCHOOL FOOTBALL TEAM ON HISTORIC 2009 SEASON

#### HON. MARCIA L. FUDGE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Ms. FUDGE. Madam Speaker, I rise to congratulate the Glenville High School football team on its historic season. This Division I team became the first Cleveland Public School to compete for the state championship last Saturday.

While track icon Jesse Owens and the creators of Superman were products of Glenville, it has never had a state football champion.

This year's players are champions in every sense of the word. They play football at Glenville High School for the structure that football provides and the mentorship of their coach, Ted Ginn, Sr.

More than 100 of Ginn's players have earned athletic scholarships. Five play in the NFL.

Glenville played valiantly in the state championship, but lost by one point.

Again, I congratulate the Glenville High football team, students, Coach Ginn, his assistant coaches, our supportive community, and Glenville Principal Jacqueline Bell on an amazing season. Next year they will bring home the trophy!

#### OUR UNCONSCIONABLE NATIONAL DEBT

#### HON. MIKE COFFMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. COFFMAN of Colorado. Madam Speaker, today our national debt is \$12,091,292,877,094.86. We have increased the national debt \$5,120,762,726.63 since just yesterday.

On January 6, 2009, the start of the 111th Congress, the national debt was \$10,638,425,746,293.80.

This means the national debt has increased by \$1,452,867,130,801.06 so far this year.

According to the nonpartisan Congressional Budget Office, the forecast deficit for this year is \$1.6 trillion. That means that so far this year, we borrowed and spent \$4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

#### EARMARK DECLARATION

#### HON. KEVIN BRADY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BRADY of Texas. Madam Speaker, pursuant to the Republican leadership standards on earmarks, I am submitting the following information regarding earmarks my district received as part of H.R. 3288—Consolidated Appropriations Act, 2010.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: 1-69 Texas Environmental Studies, TX

Account: Interstate Maintenance Discretionary, Federal Highway Administration

Requesting Entity: Alliance for I-69 Texas, Texas Department of Transportation

Address of Requesting Entity: 1200 Smith, Suite 700, Houston, TX 77002

The original I-69 project began in 1991 and involves long-planned upgrades of US 59, 277 and 281 to interstate standards to increase motorist safety and mobility in the Houston and East Texas region. It is, thankfully, no longer included in the ill-fated Trans Texas Corridor. The original project enjoys the support of a broad collaboration of mayors, county judges, economic development groups, chambers of commerce and transportation officials from dozens of Texas communities, including several in the Eighth Congressional District. The \$500,000 I requested on behalf of the Texas leaders of the I-69 coalition will provide the Texas Department of Transportation funding to complete the necessary environmental studies to begin construction on these much needed upgrades.

This bill also credits me, four of my colleagues in the House and our two distinguished Senators as requesting an additional \$1.5 million under the Interstate Maintenance Discretionary and the Surface Transportation

Priorities accounts. I appreciate the support of my colleagues and the Committee for this important project. I know the additional funds are greatly needed. However, in all honesty, the other members deserve credit for these funds since I submitted only the original \$500,000 funding for the environmental studies.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: The District Capital Cost of Contracting, Montgomery County, TX

Account: Buses and Bus Facilities, Federal Transit Administration

Requesting Entity: The Brazos Transit District (The District)

Address of Requesting Entity: 1759 N. Earl Rudder Freeway, Bryan, Texas 77803

This request helps provide an important transportation service to over 700,000 Montgomery County commuters each year through four Park-and-Ride facilities. It also helps provide regular van service for East Texas veterans to VA facilities in the region. Through these services, the funding also helps reduce congestion along Interstate 45 and helps the region meet its clear air goals.

The \$1,000,000 included in this bill reduces the equipment costs of providing these transportation services.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: Pulmonary Hypertension Awareness Program

Account: Department of Health and Human Services, Centers for Disease Control and Prevention

Requesting Entity: Pulmonary Hypertension Association

Address of Requesting Entity: 801 Roeder Rd., Suite 400, Silver Spring, MD 20910

I have supported strengthening Pulmonary Hypertension (PH) education for over ten years; and for this reason and for the third year in a row, I have requested funding to strengthen and continue a successful partnership between the non-profit Pulmonary Hypertension Association and the Centers for Disease Control. PH is a serious and often fatal condition where the blood pressure in the lungs rises to dangerously high levels. In PH patients the walls of the arteries that take blood from the right side of the heart to the lungs thicken and constrict. As a result, the right side of the heart has to pump harder to move blood into the lungs, causing it to enlarge and ultimately fail.

This request will allow the partners to continue to develop a pulmonary hypertension awareness program to better educate the medical community and the public about the disease, and lead to earlier diagnosis and longer life spans.

The \$250,000 included in this bill for this project will be allocated to continue two components in the fight against pulmonary hypertension: the PHA Online University, a curriculum-based website for medical professionals, and a significant expansion of PHAware, a grassroots media campaign.

I also appreciate the Committee's support through report language encouraging further

collaboration and research efforts on pulmonary hypertension within government agencies. The efforts of these organizations on issues including lung transplantation, the establishment of a PH Clinical Research Network and the increase in pulmonary hypertension diagnoses related to the abuse of methamphetamine will further our understanding of this disease.

Requesting Member: Congressman KEVIN BRADY, Texas 8th Congressional District

Bill Number: H.R. 3288—Consolidated Appropriations Act, 2010

Project: SHSU Regional Crime Lab

Account: Office of Justice Programs, Byrne Discretionary Grants

Requesting Entity: Sam Houston State University

Address of Requesting Entity: 1803 Avenue I, Huntsville, TX 77341

Law enforcement agencies in rural communities experience long waits and backlogs when requesting services from major cities like Houston. This request allows Sam Houston State University—one of the nation's foremost criminal justice universities—to use its expertise in forensic science to begin operations of the Regional Crime Laboratory started with funding I previously secured. This lab will provide important forensics services to local law enforcement such as identification of controlled substances, toxicology screening and fingerprint matching. The lab will be able to service communities in a 75-mile wide area.

The \$1,000,000 included in this bill for this project will be allocated to staff the SHSU Regional Crime Lab and make it operational for serving regional law enforcement agencies. Specific budget items include: capital outlays (54%); salaries and benefits for laboratory staff (37%); lab supplies (8%); and sub-contracts for staff training (1%).

#### EARMARK DECLARATION

#### HON. ANDER CRENSHAW

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. CRENSHAW. Madam Speaker, I rise today to submit documentation consistent with the Republican earmark standards.

Requesting Member: Congressman ANDER CRENSHAW

Bill Number: H.R. 3288—Consolidated Appropriations Act of 2010

Account: Employment and Training Administration (ETA)—Training and Employment Services

Legal Name of Receiving Entity: Florida Manufacturing Extension Partnership (Florida MEP)

Address of Receiving Entity: 1180 Celebration Blvd., Suite 103, Celebration, FL 34747

Description of Request: I have secured \$100,000 in funding in H.R. 3228, in the Employment and Training Administration (ETA)—Training and Employment Services account for Florida Manufacturing Extension Partnership in Celebration, FL.

The purpose of this funding is to deploy the proven Mobile Outreach Skills Training (M.O.S.T.) program in Florida. The program is

a three-phase rapid training and job placement initiative in which nearly 100 percent of trainees who successfully complete the 2-week Phase I receive job offers from the participating manufacturers.

This is a valuable use of taxpayer funding because the program provides skills to veterans, the disadvantaged, and TANF families that lead to jobs and medical coverage, a capability that does not exist in current training programs.

There are no matching funds required or allowed for this project.

Requesting Member: Congressman ANDER CRENSHAW

Bill Number: H.R. 3288—Consolidated Appropriations Act of 2010

Account: HRSA—Health Facilities Construction and Equipment

Legal Name of Receiving Entity: Shands HealthCare

Address of Receiving Entity: 720 SW 2nd Avenue, Suite 360A, Gainesville, FL 32601

Description of Request: I have secured \$100,000 in funding in H.R. 3228, in the Health Facilities Construction and Equipment account for the purchase of equipment.

The purpose of this funding is to purchase a biplane angiography system at Shands Jacksonville to continue to maintain the expert quality of care for its Level One trauma center and its JCAHO Accredited Stroke Service. This biplane angiography system will improve patient care, enhance operational efficiency, and replace outdated equipment.

This is a valuable use of taxpayer funding because funding will help purchase a biplane angiography system that will allow physicians to accurately visualize clots or other vascular abnormalities. This will reduce diagnostic and procedure time while helping to avoid more invasive procedures.

There are no matching funds required or allowed for this project.

#### HONORING ROBERT G. KIGGANS

#### HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 9, 2009

Mr. BARRETT of South Carolina. Madam Speaker, I rise today to recognize Robert G. Kiggans of Mt. Pleasant, South Carolina, and fellow alumnus of the Citadel, for a lifetime of distinguished leadership and service to the citizens of our State and our country. From his early days as a cadet at the Citadel to his current position as chief operating officer and president of the South Carolina Research Authority's, SCRA, Federal Sector, Bob has led an exemplary life and maintained a steadfast work ethic. His contributions to South Carolina and the United States in the fields of advanced computer and data technologies, program and technical management, manufacturing technologies, and command and control systems is recognized internationally. He is the embodiment of what makes America strong.

After receiving his undergraduate degree from the Citadel—where he excelled in both academics and athletics, achieving All-Time

Lettermen status as a member of the men's basketball team—Bob earned his master's degree from the Air Force Institute of Technology. Upon graduation, Bob served his country as a navigator on B-52 model aircraft with the United States Air Force, operating from bases in Southeast Asia. He also directed advanced computer technology programs for the Air Force Strategic Command, SAC, including the development of a multi-million dollar automated executive information system, as well as other assignments. Having served his country with distinction, Bob retired from the Air Force as a lieutenant colonel. After his military experience, Bob served as the deputy director of the Information Science and Technology Office at the Defense Advanced Research Projects Agency, DARPA, assistant for program integration with the Department of Defense Joint Program Management Office. In addition to the foregoing achievements, Bob was appointed by the Department of Commerce to serve as head of the U.S. Delegation to the international Intelligent Manufacturing Systems Steering Committee and worked as a research fellow with the National Institute of Standards and Technology.

After serving his country in both a uniform and civilian capacity, Bob entered the private sector where he has worked for a variety of companies and nonprofit corporations including Cincinnati Electronics and the first president of the Advanced Technology Institute, ATI, a world leader in distributed technology management and affiliate of his current employer, the South Carolina Research Authority. Since its establishment in 1983, SCRA has fostered entrepreneurial development, introduced technological advancements, and supported countless industry leaders and small businesses throughout South Carolina and the Nation.

Through hard work and dedication, Bob has made significant contributions to our country's information technology and manufacturing technologies. His distinguished leadership and service has been invaluable, and for this I applaud him. His dedication to his family, friends, and colleagues should stand as an example of what we should all hope to be. I join Bob's colleagues at the South Carolina Research Authority, the citizens of our State, and his wife, Penny, his daughters and grandchildren in commending Robert G. Kiggins for his lifetime of service to South Carolina and this great Nation. May God bless them all.

EXPRESSING CONDOLENCES TO  
FAMILIES OF VICTIMS OF  
SOWELL MURDERS AND DECRY-  
ING VIOLENCE AGAINST WOMEN

**HON. MARCIA L. FUDGE**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Ms. FUDGE. Madam Speaker, Anthony Sowell raped and murdered 11 women in my own Congressional District. I offer condolences to the families of these women, whose names are: Tonia Carmichael, Nancy Cobbs, Tishana Culver, Crystal Dozier, Telacia

Fortson, Amelda Hunter, Leshanda Long, Michelle Mason, Kim Yvette Smith, Diane Turner, and Janice Webb.

In honor of the women he victimized, we must address the underlying issue of violence against women.

Consider that 1 in every 4 American women will experience domestic violence in her lifetime. However, only about half of domestic violence incidents are reported to police. Even though African-American women are more likely than others to report their victimization to police, intimate partner homicide is the leading cause of death for African-American women ages 15–45.

A report issued in 2000 found that 17.6 percent of women in the United States have survived rape or attempted rape. Of these, 21.6 percent were younger than age 12 when they were first raped, and 32.4 percent were between the ages of 12 and 17. About half of all rape victims are in the lowest third of our national income distribution.

In 2010, the Violence Against Women Act is scheduled for reauthorization. Since its enactment, this Act has saved the lives of numerous women by providing funding for life-saving shelters and services, and educating the public about the cycle of violence. Congress has a unique opportunity to strengthen these programs and raise the profile of violence against women. Our Nation's current response is insufficient.

As we move forward, we must act with outrage about how our nation responds to violence against women and girls. Education and prevention is the key to break this cycle of violence.

COMMEMORATING THE LIFE AND  
ACHIEVEMENTS OF ISIAH "IKE"  
JESSE WILLIAMS III

**HON. ALCEE L. HASTINGS**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to commemorate the life and achievements of my lifelong friend and widely respected community leader, Isiah "Ike" Jesse Williams III, who died on November 25, 2009, in Jacksonville, Florida, at the age of 78. Ike had been diagnosed with Alzheimer's disease 6 years prior to his death, and my thoughts and prayers go out to his wife, Marilyn Wilkerson-Williams; daughter, Helen Rogers; sons, Rodney Williams, Ira Marche, Isiah Williams IV, and Mark Benson; and the rest of his family and friends at this most difficult time. Ike was a community activist, scholar, lawyer, publisher, journalist, historian, and union organizer. Above all, however, he was a true inspiration to everyone who knew him.

Ike was born to Helen and Isiah Williams in Jacksonville on September 27, 1931. He attended Fessenden Academy, a small private school in Ocala, Florida, and graduated in 1949. A truly brilliant man, Ike went on to earn numerous degrees, including an associate's degree from Edward Waters College, a bachelor's Degree from Florida Memorial College, a Juris Doctor from Florida A & M University,

and a master's degree from Brooklyn Law School in New York. He also studied at the New School for Social Research and Xavier Institute of Labor Relation in New York City. During his studies, Ike pledged Psi Beta Sigma, of which he was a dedicated member for more than 50 years.

A man of courage and excellence, Ike served with distinction in the U.S. Army and was a proud veteran of the Korean war. After his service, he moved to New York and successfully practiced law for 10 years. It was during those historic years of the civil rights movement that Ike was an attorney for the Black Panthers and became friends with powerful leaders such as Adam Clayton Powell and Malcolm X.

Back in his home State of Florida, Ike continued his fight for civil equality in the community. He was a true champion of the people and came to be known as a respected community leader in Jacksonville through the many important organizations where he held positions. Ike was a lifetime member of the National Association for the Advancement of Colored People (NAACP), a Mason, a founding member of the National Business League, and the founder of the Jacksonville Advocate, which was published weekly for 30 years. Furthermore, Ike also served as Publisher Emeritus of the People's Advocate. Both newspapers featured articles that highlighted accomplishments in the African American community. An early member of the Jacksonville Historic Landmarks Commission, Ike was a fitting keeper for the preservation of the history of the African American community and organized the Joseph E. Lee Library-Museum. In addition, he also helped form the Brotherhood of Black Firefighters.

Ike's hard work and dedication on behalf of all those who have been denied a voice earned him many awards. In 2005, he was awarded with the Onyx Award for Communications, a state honor that he dearly cherished. Most recently, he received the National Whitney M. Young Lifetime Achievement award presented by the Jacksonville Urban League.

Madam Speaker, Ike's legacy will live on for generations to come in the lives he has touched, and continues to touch. He was my dear friend and I am proud and fortunate to have known him.

HONORING VINCENT PETRUCCI

**HON. GEORGE RADANOVICH**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate Vincent Petrucci upon being honored with the "Lifetime Achievement Award" at the 2009 San Joaquin Winegrowers Association 7th Annual San Joaquin Valley Wine & Grape Industry Forum. The luncheon will be held in Fresno, California, on Friday, November 20, 2009.

Mr. Vincent Petrucci was born on July 13, 1913, in California. He attended the University of California, Davis where he earned his bachelor's of science degree in pomology in 1947 and his masters of science degree in horticulture in 1948. Upon completion of his masters, he was hired by Fresno State College,

now California State University Fresno, as a faculty member with the task of organizing and developing the curriculum and facilities of the viticulture and enology program. Mr. Petrucci played an instrumental role in developing the Viticulture and Enology Research Center which opened in 1985 where he has served as director and is currently director emeritus. He taught classes in grape and wine production, raisin production and processing and numerous other classes encompassing the field of viticulture. After 45 years, Mr. Petrucci retired in 1993 from California State University, Fresno and was awarded an honorary doctorate of science degree on May 28, 1994.

Over the years, Mr. Petrucci has served as a consultant, offering advice to many European and South American countries as well as China and Australia. He has been active in several organizations including the International Office of Wine and Vine, the American Society of Horticulture Science, the California Grape Growers Coalition, the University of California Grape Research Committee, the American Vineyard Foundation, and the American Society for Enology and Viticulture. He has also published numerous papers, journal articles and written books on the subject of wine and grape growing. Mr. Petrucci's involvement has resulted in the international recognition of the viticulture program at CSU Fresno. For his accomplishments, Mr. Petrucci received the CSU Fresno "Outstanding Professor Award" in 1971, was named Wine and Vines "Man of the Year" in 1981, received the "Founder Award" for Enology in 1985, CSU Fresno "Meritorious Performance and Professional Promise Award" in 1986, the University of California, Davis "Distinguished Achievement Award" in 1995 and the American Vineyard "Outstanding Service Award" in 1996.

Madam Speaker, I rise today to commend and congratulate Vincent Petrucci upon being honored with the "Lifetime Achievement Award." I invite my colleagues to join me in wishing Mr. Petrucci many years of continued success.

**RECOGNIZING THE HARRISON SCHMITT ELEMENTARY SCHOOL FOR RECEIVING THE BLUE RIBBON AWARD**

**HON. HARRY TEAGUE**

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. TEAGUE. Madam Speaker, I want to congratulate Harrison Schmitt Elementary School in Silver City, New Mexico, for receiving the Blue Ribbon School Award awarded by the U.S. Department of Education for demonstrating academic excellence and dramatic gains in student achievement levels.

The Blue Ribbon Schools award was created in 1982 to recognize schools where the students attain and maintain high academic standards and are pushed to improve themselves and further their dedication to scholastic achievement. This award shows that Harrison Schmitt Elementary School is striving to close the achievement gap.

Schools like Harrison Schmitt Elementary achieve such great distinctions because of the

hard work and its dedicated educators and families. The students also deserve to be recognized for making the most of the opportunities afforded to them by the excellent staff. Harrison Schmitt Elementary School is a prime example for the academic progress other schools throughout the nation should strive to achieve.

I am honored to have Blue Ribbon Schools like Harrison Schmitt Elementary School in my district. I commend their achievement and wish them luck in the continuing their academic achievement.

**HONORING BAYSHORE ELEMENTARY SCHOOL**

**HON. TED POE**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. POE of Texas. Madam Speaker, the people of the Second District of Texas are proud to recognize the students, faculty, and staff of Bayshore Elementary School in La Porte, Texas. Bayshore Elementary has earned the prestigious rating of "Exemplary" from the Texas Education Agency. This honor is especially meaningful for the students, teachers, and administrators of Bayshore Elementary because of the challenges they faced in the aftermath of Hurricane Ike.

Despite being dispersed to five other neighboring campuses, the students of Bayshore still performed at the "Exemplary" level on the Texas Assessment of Knowledge and Skills test. In the tradition of the Americans and Texans that have gone before them, the students and staff of Bayshore Elementary were able to rise above a difficult situation and achieve excellence in the face of adversity. This award not only recognizes their resilience but their determination to overcome difficulty and that is extremely honorable.

The Second District of Texas is proud of Bayshore Elementary school and commends them for their "Exemplary" award.

**CELEBRATING THE 60TH ANNIVERSARY OF THE VOICE OF AMERICA'S UKRAINIAN SERVICE**

**HON. MARCY KAPTUR**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Ms. KAPTUR. Madam Speaker, I rise today on the special occasion of the 60th anniversary of the Voice of America's first Ukrainian-language broadcast. As Co-chair of the Ukrainian Caucus, it is my honor to recognize this day. In the darkest hours of the cold war, Ukrainians behind the Iron Curtain have received VOA broadcasts of accurate, balanced and comprehensive news and information. The VOA reports that Ukrainian dissidents imprisoned in Siberian camps and human rights activists who worked clandestinely to avoid arrest say they drew strength from its broadcasts.

As the Communist system began to fissure, VOA notes it continued to provide Ukrainians

with the news and information that their own censored, government-controlled media would not provide. Through the decades VOA was there to tell Ukrainians stories about the Hungarian Revolution in 1956, the Prague Spring of 1968, the rise of the Solidarity movement in Poland in the 1980s, the cover up of the Chernobyl nuclear power plant explosion in 1986, the fall of the Berlin Wall in 1989, and the Ukrainian independence and democracy movement which played a key role in the collapse of the U.S.S.R. in 1991. Through Ukraine's struggles with independency, VOA was a vital source of accurate news and responsible commentary.

Today, VOA continues to reach millions of Ukrainians each week. The radio broadcasts that began in the early cold war period have been replaced with daily television broadcasts and reporting on VOA's web site. Ukrainians still look to VOA not only to hear about the Washington perspective on what is happening in Ukraine, but also to comprehend America's story—its foreign policy objectives, national politics, social challenges, culture, arts, educational opportunities, business successes and achievements in science, technology, and medicine. The United States continues to serve as an important example for Ukrainians on maintaining a vibrant, prosperous, pluralistic society. Through its strict adherence to journalistic excellence over the past 60 years, the Voice of America's Ukrainian Service has been a key institution in U.S. public diplomacy. Today, its mission remains critical as ever, and we proudly mark this milestone anniversary.

**IN RECOGNITION OF DANE NOWELS**

**HON. DOUG LAMBORN**

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. LAMBORN. Madam Speaker, I rise today to recognize Dane Nowels, an American patriot who passed away on December 1, 2009. As a resident of Colorado Springs and Colorado, Nowels was a true servant to his nation and community. I rise today to honor his contribution to our community and country.

Born in Oakland California on October 18, 1947, Nowels graduated from The Ohio State University in 1969 with a degree in agricultural economics. As an agricultural enthusiast, Nowel was a four time National Champion in Tractor Pulling using the tractors that he built himself.

After service in the Army and a career as a commodities broker, Nowels moved to Colorado Springs, Colorado to provide heavy equipment to farmers and ranchers throughout southern Colorado for Ellen Equipment Company.

Nowels was a natural leader, and he used his talents to serve others in the El Paso County community. As President of the Pikes Peak Firearms Coalition and Vice-Chairman of the El Paso County Republican Party, Nowels accomplished much in El Paso County in defense of liberty. Nowels encouraged minorities, youth, young adults, and businesspeople to

rally behind local and state candidates who exhibit support for a strong national defense and limited government. He was an advocate for traditional American values based upon the U.S. Constitution and the Bill of Rights, especially the Second Amendment right to bear arms. In addition, Nowels was an active member of the Pikes Peak Economics Forum, often speaking to and debating area high school and college students about the free market system and the Constitutional rights of life, liberty, and the pursuit of happiness.

Throughout his life, Nowels was committed to serving this great country, whether in the Army or defending liberty in his community. I mourn his passing, and today ask that we honor the life of a true American hero.

#### REIT ENERGY GRANTS

### HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Ms. LINDA T. SÁNCHEZ of California. Madam Speaker, I rise today to introduce the "Sustainable Property Grants Act of 2009," legislation that would allow real estate investment trusts (REITs) to fully benefit from the energy grants included in the American Recovery and Reinvestment Act of 2009 (the Recovery Act).

Congress created REITs in 1960 to enable investors from all walks of life to own professionally managed, income-producing real estate. REITs combine the capital of many investors to benefit from a diversified portfolio of income-producing real estate, including apartments, health care facilities, hotels, offices and warehouses. REITs are required to distribute at least 90 percent of their taxable income. Most distribute their entire taxable income.

Buildings represent about 40 percent of all energy use and approximately 70 percent of all electricity consumption in the United States, but REITs, which own 6 billion square feet of commercial real estate, cannot currently access tax incentives designed to reduce their energy use. Providing incentives for REITs to engage in energy efficiency projects could significantly contribute to achieving our energy reduction goals.

That is why I am introducing legislation today to amend the Recovery Act to allow REITs to participate fully in the energy grants in lieu of tax credits program.

Section 1603 of the Recovery Act provides Energy Grants to companies that invest in qualifying renewable energy projects. These grants are intended to encourage qualifying investments by taxpayers whose tax liability is not sufficient to benefit from existing energy credits. In fact, the Recovery Act Energy Grants were designed as a substitute for energy credits during the current economic downturn since many taxpayers have inadequate tax liability to use the credits. Despite being designed for this purpose, the Energy Grants provision in the Recovery Act have been interpreted to benefit a REIT only to the extent it retains taxable income, which most do not.

This legislation would further existing Congressional policy and promote the greatest

possible participation in efforts to increase the use of renewable energy. REITs would be afforded the same economic incentives as other property owners to make investments in renewable energy projects. With enough critical mass, these types of investments should help fuel the U.S. economy's growth, create additional jobs and, over time, reduce American reliance on foreign oil.

I hope that you will join me in supporting this legislation.

#### CONGRATULATING DAVID COHEN

### HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. ISRAEL. Madam Speaker, I rise today to offer my sincere congratulations to my constituent, David Cohen, upon being awarded the Dick Steinberg Good Guy Award. This honor is given to a Jewish individual who best demonstrates the good aspects of sportsmanship.

Like the award's namesake, David has earned the distinction in the sport of football. Dick Steinberg was the Vice-President and General Manager of the New York Jets for six years. He was widely regarded and was one of the most respected men in football. As Head Coach of the football team at Hofstra University, he has exemplified the behavior and character that the National Jewish Sports Hall of Fame and Museum believes deserves to be recognized.

I hope that he continues to act as a leader in our community and carry on the legacy of Dick Steinberg. Congratulations to David upon this receiving this great honor.

#### HONORING HENRY R. MUÑOZ III

### HON. CHARLES A. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. GONZALEZ. Madam Speaker, I rise today to honor Henry R. Muñoz III, a public servant who has dedicated his professional career and philanthropic efforts to serving others, on the special occasion of his 50th birthday.

Born in San Antonio on December 14, 1959, Henry Muñoz has honored us with his vision and leadership for decades, benefiting our cities, state and country. As a longtime friend, I know firsthand his track record of service to this nation and especially to the great State of Texas.

Throughout his life, Mr. Muñoz has engaged in a number of different professions: entrepreneur, artist, philanthropist, and activist. From his appointments to the Texas Department of Transportation, VIA Transit, Smithsonian National Board, John F. Kennedy Center for the Performing Arts, Cooper Hewitt National Design Museum, and many more, Mr. Muñoz has dedicated his passion and efforts to raising funds for these prestigious organizations. Mr. Muñoz has also raised over \$5 mil-

lion in student scholarships, allowing young leaders in our communities pursue their dreams through higher education.

Madam Speaker, I ask my colleagues to join me in honoring Henry Muñoz III as we celebrate his 50th birthday, a life highlighted by decades of community service, philanthropy, and leadership.

#### TRIBUTE TO MR. R. STEPHEN BEST

### HON. J. RANDY FORBES

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

Mr. FORBES. Madam Speaker, I rise today to pay tribute to Mr. Steve Best, on the occasion of his retirement as Fire Chief of the Chesapeake Fire Department.

Chief Best's contributions to the safety and health of the City of Chesapeake's citizens cannot be overstated. Chief Best modernized and diversified Chesapeake's fire and emergency personnel services to meet the wide-ranging challenges of modern life.

Chief Best began his fire fighting career as a sixteen-year-old volunteer with the Deep Creek Volunteer Fire Department. That experience led to professional firefighting with the Chesapeake Fire Department upon graduating from high school in 1974.

Working his way up through the ranks, Best worked as Fire Inspector and Fire Marshal for Chesapeake. He was promoted to Assistant Fire Chief, then Deputy Fire Chief until April 1998 when he became Chesapeake's Fire Chief and Emergency Services Coordinator.

Chief Best has ensured the Chesapeake Fire Department is able to respond to specialized situations involving hazardous materials, technical rescues, marine incidents, and foam firefighting. He greatly assisted in equipping every Chesapeake fire engine and ambulance with Advanced Life Support Equipment to save precious time in beginning life saving procedures. Best's fire department embodies a sense of community by offering programs such as child safety seat installations, fire station tours, and fire extinguisher training.

During his professional career, Chief Best continued to pursue educational opportunities. In addition to an Associate's Degree in Fire Science, a Bachelor of Science Degree in Governmental Administration, and a Master's Degree in Business Administration, Chief Best graduated with a Juris Doctor Degree from the Regent University School of Law in May 2008.

At home, Chief Best and his wife Sheree reside in Chesapeake. They are the proud parents of two sons. Chief Best teaches Sunday School at Deep Creek United Methodist Church and has served in many leadership roles on the Church Council. He has also served as a board member of the Boys and Girls Club of Southeast Virginia, Chesapeake Division, the Chesapeake Public School Foundation, and the YMCA Board of Management.

Chief Best deserves the gratitude of all of Chesapeake's residents for his innumerable accomplishments that have improved the quality of life here. Madam Speaker, please join me and the citizens of Chesapeake in offering



our sincere congratulations to Chief Best on his exemplary service and a retirement well deserved.

#### EARMARK DECLARATION

### HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. EHLERS. Madam Speaker, pursuant to Republican Leadership standards, I am submitting the following information regarding projects I received funding for as part of as part of the conference report to the Consolidated Appropriations Act (H.R. 3288), which were not included in House-passed appropriations bills:

Requesting Member: Congressman VERNON J. EHLERS

Bill Number: H.R. 3288

Agency: Department of Health & Human Services

Account: Health Resources and Services Administration (HRSA)—Health Facilities and Services.

Legal Name of Requesting Entity: Cherry Street Health Services

Address of Requesting Entity: 550 Cherry St., SE., Grand Rapids, MI 49503

Description of Request: The bill provides \$400,000 for Cherry Street Health Services for facilities and equipment. Cherry Street (community health center), Touchstone Innovare (mental health services) and ProAction (substance abuse/mental health treatment) are developing an integrated care system in which patients in need of both mental health and physical health care will be involved in an integrated plan of treatment in which both medical and mental health professionals from different agencies work together in the same office space to complete a plan of treatment, a valuable use of taxpayer funds. In order to provide services to an increased number of patients, the three agencies are building a 92,000 sq. ft. building that will house the operations of the three organizations. The medical, dental and vision care equipment requested will be used in the operation of a federally qualified health center for the treatment of low-income patients most of whom would otherwise not have access to primary health care services.

Requesting Member: Congressman VERNON J. EHLERS

Bill Number: H.R. 3288

Agency: Federal Transit Administration

Account: Buses and Bus Facilities

Legal Name of Requesting Entity: The Rapid

Address of Requesting Entity: 300 Ellsworth Ave., SW., Grand Rapids, Michigan, 49503

Description of Request: The bill provides \$1,948,000 for the Rapid's Wealthy Operations Center Expansion in Grand Rapids, Michigan. The funding was requested by the Rapid. This project is a valuable use of taxpayer funds because it will allow the Rapid, the region's largest public transportation service, to expand to accommodate growth needs over the next 30 years.

HONORING MS. EDNA FRADY FOR HER DECADES OF SERVICE TO THE CITY OF FALLS CHURCH, VIRGINIA

### HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. MORAN of Virginia. Madam Speaker, I rise today to honor Ms. Edna Frady for her decades of service to the City of Falls Church, Virginia and its people. Moving to Falls Church at an early age, Edna has spent virtually her entire life in the community she has known and loved for over six decades. Through her charitable work and civic involvement, Edna, or "Boss" as she is known by many, has left an indelible mark on the City.

A tireless community activist, leader, friend, and role model, Edna Frady has made a lifelong commitment to improving the lives of others. The list of organizations she has served over the years is extensive. The Citizens for a Better City, Village Preservation and Improvement Society, League of Women Voters, Women's Club of Falls Church, Falls Church Lions Club, Falls Church Education Foundation, Falls Church Arts Council, and Falls Church Cable Access, have all benefitted from her membership and constant support. Ms. Frady was also an active member of the Falls Church Chamber of Commerce, where she served as a member of the Executive Committee, and in 2000, was awarded the Chamber's "Pillar of the Community" award. In recognition of her lifetime of achievement, the Mayor and City Council of Falls Church are planning to proclaim December 14, 2009, "Edna Frady Day."

As heavily involved as Ms. Frady was with non-profit community service organizations, she matched that effort as a stalwart force in the Democratic Party. For two decades, she helped lead the Falls Church Democratic Committee, serving on both the 8th Congressional District Committee, and the Democratic State Central Committee. In honor of her commitment, Ms. Frady received the Democratic State Central Committee's "Grass Roots Award." In 2006, she was awarded the Falls Church Democratic Committee's "Marian Driver Award for Outstanding Service."

It's a true honor to recognize someone who so selflessly worked for the betterment of her community and fellow citizens. I know that even in retirement, Edna will continue to find ever more fulfilling challenges to assist those around her.

#### TRIBUTE TO STEVEN AND JULIE KARBER

### HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. LATHAM. Madam Speaker, I rise today to recognize and congratulate Steven and Julie Karber of Jefferson, Iowa, on being named the winners of the "Gary Wergin Good Farm Neighbor Award." This award recog-

nizes Iowa livestock farmers who dedicate themselves not only to their professions and their community, but also to caring for the environment.

The state of Iowa is celebrating the Karber's achievements, but I feel that we in the U.S. House of Representatives should also recognize and commend the valuable professional and social contributions of Iowa's livestock farmers. Steve and Julie raise sheep in the Jefferson area of my district, but Steve is also an M.D. with an active practice. When the Karbers aren't promoting the sheep industry or handling the day to day demands of being a physician, they are actively supporting the local 4-H and are involved in other community organizations.

I commend Steve and Julie for their many years of loyalty and service to Iowa and to our country. It is an immense honor to represent them in Congress, and I know they will continue to serve as role models of the values of community service in this Country.

#### EARMARK DECLARATION

### HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. ROGERS of Kentucky. Madam Speaker, pursuant to the House Republican standards on congressionally-directed funding, I am submitting the following information regarding funding included in H.R. 3288, the Consolidated Appropriations Act of 2010.

Requesting Member: Congressman HAROLD ROGERS

Bill Number: H.R. 3288

Account: Housing and Urban Development—Economic Development Initiatives (EDI)

Legal Name of Recipient: Appalachia Service Project

Address of Recipient: 216 Green Hill Drive, Chavies, KY 41727

Description of Request: Provides directed funding of \$460,000 to the Appalachia Service Project (ASP) in Chavies, Ky. ASP is a volunteer-based organization that works to build and repair homes for underprivileged people in the Appalachian region. In rural counties of Kentucky, significant poverty often prevents families from maintaining access to basic services like water and sewer and performing regular home maintenance. Since 1969, ASP has provided critical repairs to 13,000 homes in Central Appalachia and life-changing volunteer experiences to over 240,000 people. In 2008, the economic impact of ASP's activities across Kentucky was \$3.15 million, and ASP will combine this FY10 funding with private contributions to provide emergency home repairs for disadvantaged families in rural Kentucky.

#### CONGRATULATING ALIVIANE, INC.'S 40TH ANNIVERSARY

### HON. SILVESTRE REYES

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. REYES. Madam Speaker, I rise today to congratulate Aliviane, Inc., as they celebrate

their 40th anniversary. Based in my congressional district of El Paso, Texas, Aliviane is the largest and oldest drug abuse prevention, intervention, and treatment provider in the West Texas region.

Established in 1969, Aliviane provides a critical service to our community. Over the past 40 years, the organization has grown and now operates several licensed facilities that assist clients and their families with intensive residential treatment and supportive outpatient services. Aliviane's use of cutting-edge services and techniques has allowed the organization to meet the unique needs of its clients. Today, in large part because of Aliviane's pioneering efforts and commitment, behavioral health has become an essential part of primary health care in our country.

Aliviane has developed programs that have become national and international models and have been used to further advance the behavioral health field. In the 1980s, Aliviane created the first nationally recognized program designed to keep a mother and her child together during treatment. This program has been recognized as a national model by the Office of National Drug Control Policy. In addition, Aliviane has developed the only behavioral health trauma unit in West Texas.

I commend Aliviane for their continued leadership in the behavioral health field and their dedication to further improving the national and international standards for behavioral health care. The hard working employees of Aliviane provide invaluable services within our community and it is with deep gratitude that I applaud their accomplishments.

#### RECOGNIZING LOUISE JOHNSON

#### HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. LATHAM. Madam Speaker, I rise today to celebrate and congratulate Louise Johnson on the occasion of her 100th birthday on December 24th, 2009.

Louise was born in Esmund, South Dakota in 1909. While growing up in South Dakota, she met and married Lars Vierson Teigland, and the two moved to Iowa in 1939, happily raising two sons, Lowell and Owen, who later served in the U.S. Army. After Lars passed away she married Haakin Johnson, who she also spent many happy years with.

Louise has lived on and managed the family farm in Emmetsburg, Iowa for forty-four years until November of this year when she moved to Lakeside Nursing Home. She's enjoyed being a member of the Emmetsburg flower club, collecting dolls, making corn husk dolls and being passionate about politics.

There have been many changes that have occurred during the past one hundred years. Since Louise's birth we have revolutionized air travel and walked on the moon. We have invented the television and the Internet. We have fought in wars overseas, seen the rise and fall of Soviet communism and the birth of new democracies. Louise has also seen the leadership of eighteen United States Presidents and twenty-three Governors of Iowa. In

her lifetime the population of the United States has more than tripled.

I congratulate Louise Johnson for reaching this milestone of a birthday. I am extremely honored to represent Louise in Congress and I wish her happiness and health in her future years.

#### EARMARK DECLARATION

#### HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. CASTLE. Madam Speaker, pursuant to the House Republican standards on earmarks, I am submitting the following information regarding funding for Delaware included as part of the Consolidated Appropriations Act, 2010, H.R. 3288.

DIVISION A—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Name of Project: C & D Canal Trail Improvements

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Federal Lands (Public Lands Highways)

Legal Name of Requesting Entity: U.S. Army Corps of Engineers

Address of Requesting Entity: Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107

Description of Request: \$1,000,000 to transform over 13 miles of existing Army Corps service road on the north side of the Chesapeake and Delaware Canal—from Delaware City to Chesapeake City—into a multi-purpose recreation trail with associated amenities (trail heads, signage, and self-composting restroom facilities, and security). Creating a multi-purpose recreation trail on the existing service road would ensure a safer area for the residents of Delaware City (one of the fastest growing areas in the state of Delaware), Chesapeake City, and everywhere in between, to continue to enjoy the Canal.

Name of Project: Turnpike Improvement Project: SR-1 & I-95

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Interstate Maintenance Discretionary

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: \$2,018,000 to improve the safety and efficiency of two major routes along the Northeast Corridor. It consists of three phases designed to improve the movement and safety of interstate, regional and local traffic through this heavily traveled intersection. The three phases include: a redesign of the I-95/SR-1 interchange, adding a fifth lane to I-95, and reconfiguring the I-95 toll plaza in Newark, DE, to incorporate Highway Speed E-ZPass toll lanes. This project is anticipated to reduce traffic congestion and improve overall safety.

Name of Project: Indian River Inlet Bridge

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: \$779,200 for the construction of a new bridge along State Route 1 over the Indian River Inlet. The replacement bridge will alleviate the safety risk caused by the present scour conditions at the foundations. The new structure will completely span the inlet with all foundation members constructed on dry land. The proposed alignment will be west of the existing bridge at a critical evacuation route in the event of natural disasters.

Name of Project: 40' Fixed Route Transit Buses

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Buses & Bus Facilities

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: \$974,000 to replace fixed route transit coaches which were purchased in 1996. This is part of a comprehensive bus replacement schedule to ensure safe and efficient transportation equipment is used for fixed route services. The project will enable the Delaware Transit Corporation to continue to provide a high level of service to Delaware residents. DTC provides 10 million passenger trips annually with 14.9 million service miles and serves all three counties.

Name of Project: Automotive-Based Fuel Cell Hybrid Bus Program

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Buses & Bus Facilities

Legal Name of Requesting Entity: University of Delaware

Address of Requesting Entity: Hullahen Hall, Newark, DE 19716

Description of Request: \$487,000 for a program to research, build and demonstrate fuel cell hybrid buses on the UD campus and in the state of Delaware. The objective is for the project's efficient and uniquely low-cost design of fuel cell transit buses to spur commercialization of this technology which will help reduce our nation's dependence on foreign oil and enable the U.S. to meet its goal of greenhouse gases reductions.

Name of Project: Wilmington to Newark Commuter Rail Improvement Program

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Capital Investment Grants

Legal Name of Requesting Entity: State of Delaware Department of Transportation

Address of Requesting Entity: 800 Bay Road, P.O. Box 778, Dover, DE 19903

Description of Request: \$3,000,000 to install a third commuter rail track along the northeast corridor, build a new Newark Rail Station, and purchase four commuter rail cars. This program expands capacity to permit expansion of commuter rail services and increases reliability of intercity and commuter rail services. It will also assist in significantly reducing traffic congestion along the northeast corridor.

Name of Project: Remediation and Reuse of Reclaimed Port Land

Requesting Member: MICHAEL N. CASTLE  
 Bill Number: H.R. 3288  
 Account: Surface Transportation Priorities  
 Legal Name of Requesting Entity: Diamond State Port Corporation

Address of Requesting Entity: 1 Hausel Rd, Wilmington, DE 19801

Description of Request: \$730,500 for the excavation and removal of decaying organic material and other debris left by a previous industrial activity, backfilling, surcharging and paving this 5 acre site for future cargo operations. Approximately 5 acres of Port land in close proximity to the wharf area is currently unavailable for cargo operations as a result of unstable substrate conditions that preclude working with heavy marine cargo in this area.

Name of Project: Delaware Children's Museum

Requesting Member: MICHAEL N. CASTLE  
 Bill Number: H.R. 3288  
 Account: Economic Development Initiatives  
 Legal Name of Requesting Entity: The Delaware Children's Museum, Inc.

Address of Requesting Entity: 110 South Poplar Street, Suite 103, Wilmington, DE 19801

Description of Request: \$194,800 for renovations to the existing buildings in Wilmington and the construction of exhibits to create Delaware's first children's museum. This will assist in revitalizing the Christina Riverfront area.

Name of Project: First Steps Primeros Pasos

Requesting Member: MICHAEL N. CASTLE  
 Bill Number: H.R. 3288  
 Account: Economic Development Initiatives  
 Legal Name of Requesting Entity: First Steps Primeros Pasos

Address of Requesting Entity: P.O. Box 1003, Georgetown, DE 19947

Description of Request: \$194,800 to support the construction and start-up costs for a bilingual early care facility designed to help children of non-English speaking families develop the language and skills needed to be successful when they reach kindergarten. This will benefit Georgetown, Delaware, and its growing Hispanic community. Upon opening, the center will serve 60 children.

Name of Project: Ministry of Caring  
 Requesting Member: MICHAEL N. CASTLE  
 Bill Number: H.R. 3288  
 Account: Economic Development Initiatives  
 Legal Name of Requesting Entity: Ministry of Caring

Address of Requesting Entity: 506 N. Church Street, Wilmington, DE 19801

Description of Request: \$194,800 to renovate the Josephine Bakhita House to serve as residence for young adults committed to social responsibility and giving back to the community through one or two years of volunteer service of working within the Ministry of Caring's network of 18 programs to serve the poor and the homeless. This is an invaluable way to gain job experience. This project not only promotes volunteerism, but will also assist those in need in Delaware.

Name of Project: Food Bank of Delaware  
 Requesting Member: MICHAEL N. CASTLE  
 Bill Number: H.R. 3288

Account: Economic Development Initiatives  
 Legal Name of Requesting Entity: Food Bank of Delaware

Address of Requesting Entity: 14 Garfield Way, Newark, DE 19713

Description of Request: \$194,800 to expand the Milford facility to meet the needs of Kent and Sussex Counties. Expansion will include a full service kitchen to serve hot meals to those in need, a volunteer room for recruiting and meetings, a culinary school to provide job training for the unemployed, and more office space so that more jobs can be created.

DIVISION B—COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES

Name of Project: Carvel State Building Video Surveillance Project

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288  
 Account: DOJ—COPS Technology  
 Legal Name of Requesting Entity: Delaware Capitol Police

Address of Requesting Entity: 150 William Penn Street, Dover, DE 19901

Description of Request: \$75,000 to purchase and install digital video cameras and head end capturing and recording equipment at the Carvel State Building that houses the Governor's office, Lt. Governor's office, General Assembly offices, Supreme Court, Attorney General's office and numerous other state agencies. The purpose of this project is to enhance the Capitol Police ability to monitor, capture and retrieve video surveillance of the state facility to protect its occupants.

Name of Project: Chesapeake Bay Interpretive Buoy System

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288  
 Account: NOAA—National Weather Service Operations, Research and Facilities

Legal Name of Requesting Entity: National Oceanic and Atmospheric Administration (NOAA) Chesapeake Bay Office

Address of Requesting Entity: 410 Severn Avenue, Annapolis, MD 21403

Description of Request: \$500,000 to be used by NOAA to purchase, deploy, and operate a buoy and sensors on the Nanticoke River in Delaware, which is the largest Chesapeake Bay tributary on the Delmarva Peninsula, and is identified by NOAA as a priority location for the Chesapeake Bay Interpretive Buoy System (CBIBS). The purpose of this project is to provide real-time data and interpretation to further protect, restore, and manage the Chesapeake Bay.

Name of Project: Delaware River Enhanced Flood Warning System

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288  
 Account: NOAA—National Weather Service Operations, Research and Facilities

Legal Name of Requesting Entity: Delaware River Basin Commission

Address of Requesting Entity: 125 State Police Drive, Trenton, NJ 08628

Description of Request: \$200,000 for enhancements to the Delaware River Basin's flood warning system, including: (1) upgrades to the existing precipitation and stream gage network, (2) improvement of flash flood forecasting capabilities, (3) flood warning education and outreach, and (4) support of flood coordination. Following three Delaware River

main stem floods, the continued development of an enhanced basinwide flood warning system is critical for ensuring that the existing flood warning system is adequately maintained and that technological advancements are continued.

Name of Project: Functional Family Therapy for At-Risk Youth (DE Girls Wraparound)

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288  
 Account: DOJ—OJP—Juvenile Justice  
 Legal Name of Requesting Entity: Children and Families First Delaware

Address of Requesting Entity: 2005 Baynard Blvd., Wilmington, DE 19802

Description of Request: \$350,000 for supplies and salaries needed to provide intensive community-based counseling and case management to youth ages 10–18 and their families in all three counties in Delaware. The purpose of the project is to improve family relationships, increases parent engagement, improves school attendance, and reduces involvement in the juvenile justice system and recidivism so that youth succeed.

Name of Project: In-Car Camera System for Delaware State Policy Patrol Cars

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288  
 Account: DOJ—COPS Technology  
 Legal Name of Requesting Entity: Delaware State Police

Address of Requesting Entity: 1441 N. DuPont Highway Dover, DE 19903

Description of Request: \$1,500,000 to purchase 350 digital in-car cameras for patrol fleet and centralized digital storage devices. The purpose of this project is to provide valuable evidentiary information in both criminal and civil processes.

Name of Project: Jobs for Delaware Graduates, Expand Available Services

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288  
 Account: DOJ—OJP—Juvenile Justice  
 Legal Name of Requesting Entity: Jobs for Delaware's Graduates, Inc.

Address of Requesting Entity: 381 W. North Street Dover, DE 19904

Description of Request: \$1,000,000 to expand Jobs for Delaware Graduates (JDG) programs to 1,320 additional "at-risk" students in Middle School and High School for the purpose of increasing school graduation rates.

Name of Project: Mentoring Initiatives for At-Risk Children and Youth

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288  
 Account: DOJ—OJP—Juvenile Justice  
 Legal Name of Requesting Entity: Delaware Mentoring Council

Address of Requesting Entity: Delaware Mentoring Council, University of Delaware, Newark, DE 19716

Description of Request: \$750,000 to create stable mentoring programs in at least four school districts and ten schools throughout Delaware, with at least five schools in the city of Wilmington. The purpose of the project is to provide stability in the lives of at-risk youth, those living in poverty, and those facing substance abuse in their family, incarcerated parents, or even homelessness.

Name of Project: New Castle County Courthouse Capitol Police Command Center and Lobby Surveillance Project

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—COPS Technology

Legal Name of Requesting Entity: State of Delaware Capitol Police

Address of Requesting Entity: 150 William Penn Street, Dover, DE 19901

Description of Request: \$130,000 to be used to upgrade surveillance and purchase a system to coordinate dispatch operations within the Capitol Police Command Center of the New Castle County Courthouse to protect the 1 million people per year that pass through the courthouse.

Name of Project: Police Weapons Range Improvements

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—COPS Technology

Legal Name of Requesting Entity: Wilmington Department of Police

Address of Requesting Entity: 300 N. Walnut Street, Wilmington, DE 19801–3973

Description of Request: \$400,000 for mandatory improvements to the weapons range due to safety and environmental concerns, so that it can continue to be utilized for firearms training by multiple local, state, and federal agencies.

Name of Project: Survival Equipment for Delaware State Police

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: DOJ—COPS Technology

Legal Name of Requesting Entity: Delaware State Police

Address of Requesting Entity: 1441 N. DuPont Highway Dover, DE 19903

Description of Request: \$125,000 to purchase equipment (30 shotguns, 30 handguns, and 150 vests) for the purpose of ensuring the safety and effectiveness of the officers providing law enforcement and the citizens they protect.

**DIVISION C—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2010**

Name of Project: University of Delaware, Newark, DE, for the Delaware Small Business and Technology Development Center

Requesting Member: Congressman MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Small Business Administration—Salaries and Expenses

Legal Name of Requesting Entity: University of Delaware

Address of Requesting Entity: University of Delaware, Hullen Hall, Newark, DE 19716

Description of Request: \$350,000 to be used for training and consulting at the Delaware Small Business Development Center to enhance technology-based economic development in Delaware.

Name of Project: World Trade Center Institute Delaware, for the export assistance webinar series for business education, Wilmington, DE

Requesting Member: Congressman MICHAEL N. CASTLE—

Bill Number: H.R. 3288

Account: Small Business Administration—Salaries and Expenses

Legal Name of Requesting Entity: World Trade Center Institute of Delaware

Address of Requesting Entity: 702 West Street Wilmington, DE 19801

Description of Request: \$50,000 to produce webinars, or live web streaming of business seminars, at the World Trade Center Institute of Delaware. The purpose of the project is to make the information available to broad ranges of businesses and individuals.

**DIVISION D—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010**

Name of Project: Beebe Medical Center, Lewes, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE—

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Beebe Medical Center

Address of Requesting Entity: 424 Savannah Rd., Lewes, DE 19958

Description of Request: \$100,000 to construct a new 2-story School of Nursing building. The purpose of the project is to double Beebe's nursing enrollment to 120 students and train an additional 60 nurses to care for patients in Delaware and Delmarva.

Name of Project: Delaware Department of Education, Dover, DE for a school leadership initiative

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Delaware Department of Education

Address of Requesting Entity: 401 Federal Street, Suite 2, Dover, DE 19901

Description of Request: \$250,000 to train, mentor, and coach superintendents, principals, and other leaders within the Vision 2015 Network to sharpen their focus on data and realign their time and resources to maximize student achievement.

Name of Project: Delaware Department of Technology and Information, Dover, DE to improve Internet access to Delaware schools, including the purchase of equipment

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Delaware Department of Technology and Information

Address of Requesting Entity: Department of Technology and Information

Description of Request: \$100,000 for the purchase of equipment as well as the purchase of ancillary devices needed for computing operations in nearly 200 public school buildings throughout Delaware.

Name of Project: East Side Community Learning Center Foundation, Wilmington, DE, to support supplemental education and enrichment programs for high-need students

Requesting Member: MICHAEL N. CASTLE—

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: EastSide Community Learning Center Foundation

Address of Requesting Entity: 3000 N. Claymont Street, Wilmington, DE 19806

Description of Request: \$100,000 for supplemental educational and enrichment programs at East Side Charter School to ensure their students succeed in school, work, and society.

Name of Project: FAME, Inc., Wilmington, DE, to prepare minority students for college and encourage them to pursue careers in science, engineering, and math

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Forum to Advance Minorities in Engineering, Inc. (FAME, Inc.)

Address of Requesting Entity: 100 W. 10th Street, Suite 409, Wilmington, DE 19801

Description of Request: \$125,000 to prepare minority students for college—concentrating in STEM and business education.

Name of Project: Nanticoke Senior Center, Seaford, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE—

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Nanticoke Senior Center

Address of Requesting Entity: 301 N. Virginia Avenue, Seaford, DE 19973

Description of Request: \$100,000 for the construction of new, 11,053 square foot Senior Services Center in the heart of Seaford, Delaware. The purpose of this project is to help provide a new approach to serving older adults through the expansion of services.

Name of Project: Nemours/Alfred I. duPont Hospital for Children, Wilmington, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE—

Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Nemours/Alfred I. duPont Hospital for Children

Address of Requesting Entity: 1600 Rockland Road, P.O. Box 269, Wilmington, DE 19899

Description of Request: \$350,000 for capital improvements by Nemours/Alfred I. duPont Hospital for Children. The purpose of this project is to upgrade and expand the only children's hospital in Delaware, which also serves children from all over the U.S. and world who seek highly specialized services, in order to strengthen its ability to continue providing outstanding patient care.

Name of Project: Rodel Foundation of Delaware, Wilmington, DE, for the Delaware Parent Leadership Institute

Requesting Member: MICHAEL N. CASTLE

Bill Number: H.R. 3288

Account: Department of Education Elementary & Secondary Education

Legal Name of Requesting Entity: Rodel Foundation of Delaware

Address of Requesting Entity: 100 W. 10th Street, Suite 704, Wilmington, DE 19801

Description of Request: \$150,000 to expand leadership training for parents of Delaware public school students on how to advocate effectively for their children's education and partner effectively with their children's schools.

Name of Project: St. Francis Hospital Foundation, Wilmington, DE, for facilities and equipment

Requesting Member: MICHAEL N. CASTLE  
Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: St. Francis Hospital Foundation

Address of Requesting Entity: 701 North Clayton Street, Wilmington, DE 19805

Description of Request: \$175,000 to make urgently needed capital infrastructure improvements to St. Francis Hospital. The purpose of this project is to help St. Francis in its continued care of the community's uninsured.

Name of Project: Wesley College, Dover, DE, for renovation and equipping of the nursing school

Requesting Member: MICHAEL N. CASTLE  
Bill Number: H.R. 3288

Account: Department of Health & Human Services, HRSA, Health Facilities and Services

Legal Name of Requesting Entity: Wesley College

Address of Requesting Entity: 120 North State Street, Dover, DE 19901

Description of Request: \$200,000 to construct a 22,000 square-foot nursing facility or renovate an existing building. The purpose of this project is to enable Wesley College to increase the number of qualified nursing graduates to address the national, regional and statewide shortage of nurses.

DIVISION E—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Name of Project: C-5 Cargo Aircraft Maintenance Training Facility, Phase 1

Requesting Member: MICHAEL N. CASTLE  
Bill Number: H.R. 3288

Account: Air Force

Legal Name of Requesting Entity: Dover Air Force Base

Address of Requesting Entity: Dover, DE

Description of Request: \$5,300,000 to provide new training facility with tools and classrooms to furnish specialized hands-on instruction for C-17 and C-5M engine maintenance.

Name of Project: Consolidated Communications Facility

Requesting Member: MICHAEL N. CASTLE  
Bill Number: H.R. 3288

Account: Air Force

Legal Name of Requesting Entity: Dover Air Force Base

Address of Requesting Entity: Dover, DE

Description of Request: \$12,100,000 to construct a consolidated communications facility at Dover AFB. Currently, a comprehensive, integrated communications system is impeded by the fragmented location of related communications functions. Consolidating these functions into one hardened facility will improve manpower efficiency by approximately 25 percent. Consolidation and demolition of the old facilities will result in approximately \$17,000 in annual energy savings.

Name of Project: Chapel Center

Requesting Member: MICHAEL N. CASTLE  
Bill Number: H.R. 3288

Account: Air Force

Legal Name of Requesting Entity: Dover Air Force Base

Address of Requesting Entity: Dover, DE

Description of Request: \$7,500,000 to construct a new chapel center at Dover AFB. The current Dover AFB chapel center is an undersized, structurally substandard facility. A chapel is needed in proximity of dormitory residents because many single Airmen do not own transportation and the other base chapel is 20 minutes from the main base by foot. Airmen who work at the Port Mortuary would also utilize the new facility. An improved chapel is required to host families who come to the base to receive our fallen heroes. A new chapel center is needed to meet diverse worship, fellowship, and counseling needs of Dover AFB.

### SUPPORT OUR BORDER COMMUNITIES

#### HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. FILNER. Madam Speaker, I rise today to introduce H.R. 4251, legislation to include certain Department of Homeland Security facilities, such as ports of entry, under the Payments in Lieu of Taxes (PILT) program.

Since 1976, communities have received payments from the Interior Department's PILT program to help offset losses in property taxes due to nontaxable Federal lands administered by the BLM, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest service.

However, all along our Border, communities are not reimbursed for land that the Department of Homeland Security uses for ports of entry. The community often provides resources and services to these facilities without reimbursement from the government. My bill, H.R. 4251 provides support for these communities.

H.R. 4251 amends existing law to include certain Department of Homeland Security facilities, such as ports of entry, under the PILT program. Providing access to these payments will help these communities with the important work they provide along our borders.

### EARMARK DECLARATION

#### HON. CHARLES W. DENT

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. DENT. Madam Speaker, pursuant to the House Republican Leadership standards on earmarks, I am submitting the following information regarding projects that are listed in H.R. 3288, the Consolidated Appropriations Act, FY2010:

Bill Number: H.R. 3288, the Consolidated Appropriations Act, FY2010

Account: Division B—Commerce, Justice, Science and Related Agencies—NASA, CAS

Title: Nanomaterials Research

Legal Name of Requesting Entity: Lehigh University

Address of Requesting Entity: 5 East Packer Avenue, Bethlehem, PA 18015

Description of Request: This funding will be used to advance the partnership between Lehigh University, the NASA Goddard Space Flight Center (GSFC), U.S. Army ARDEC, and industry partners in Pennsylvania, Maryland, New Jersey, and Delaware. The purpose of the partnership is the development, characterization, and application of engineered nanomaterials and devices for NASA space missions and aeronautical applications.

Bill Number: H.R. 3288, the Consolidated Appropriations Act, FY2010

Account: Division D—Departments of Labor, Health and Human Services, and Education, and Related Agencies—Department of Education, Higher Education (FIPSE)

Title: Civic Engagement and Service Learning Program

Legal Name of Requesting Entity: Muhlenberg College

Address of Requesting Entity: 2400 W. Chew Street, Allentown, PA 18104

Description of Request: This funding will be used to expand civic engagement and undergraduate service learning by leveraging Muhlenberg College resources to address issues related to health, housing, economic development and urban education to serve approximately 700 local residents.

### EARMARK DECLARATION

#### HON. J. RANDY FORBES

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. FORBES. Madam Speaker, I am submitting the following information regarding an earmark I received as part of H.R. 3288, Consolidated Appropriations Act, 2010.

Requesting Member: J. RANDY FORBES

Bill Number: H.R. 3288

Account: Commerce—Justice—Science

Legal Name of Requesting Entity: City of Suffolk Police Department

Address of Requesting Entity: 120 Henley Place, Suffolk, VA 23434

Description of Request: Provides \$70,000 for the Suffolk Police Department Technology Enhancement Initiative within the COPS Technology Program.

### HONORING THE FIRST UNITED METHODIST CHURCH OF PEORIA

#### HON. AARON SCHOCK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. SCHOCK. Madam Speaker, I rise today to honor the First United Methodist Church of Peoria. For 17 years First United Methodist has partnered with Irving Primary School to present a variety of services to students from low income families. Bear Buddy Ministry volunteers provide reading and tutoring services

to Irving 250 students in second, third, fourth and fifth grade. Bear Buddy Ministry volunteers visit Irving weekly and serve over half of the 353 students who attend Irving.

First United Methodist sponsors a Fine Arts Ministry which partners Irving students with artists from Bradley University and the Peoria Art Guild so Irving students can have a chance to participate in artistic opportunities using visual arts, pottery, writing and photography resources.

The Community Ministry also supports a children's choir which has grown to 52 members in recent years. First United Methodist transports the young vocalists to all of their concerts and civic engagements, including performances at Peoria City Council meetings.

First United Methodist proudly backs a soccer program in Morton, Illinois for Irving students which lasts six to eight weeks. The soccer program gives students proper exercise and shows them the importance of teamwork. First United Methodist members have also built two Habitat for Humanity homes for families of Irving School students. These successes have led First United Methodist to explore future partnerships with Lincoln Middle School and the Peoria Alternative High School. The First United Methodist Church-Irving Primary School partnership is a model relationship which works together to provide a better future for the children of Peoria District 150. I congratulate First United Methodist Church of Peoria for 17 years of quality ministry to the students and families of Irving Primary School. I look forward to many more years of this great partnership which furthers the education of our students. Thank you and I yield back the balance of my time.

#### A TRIBUTE TO GRETCHEN PUSCH

### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. TOWNS. Madam Speaker, I rise today in recognition of Gretchen Pusch.

Flutist Gretchen Pusch made her Carnegie Recital Hall debut as winner of the Artist International Competition. She has appeared frequently in recitals and as concerto soloist in North America, Europe and Asia. A member of the Dorian Wind Quintet, she has also collaborated in chamber music concerts with Peter Schickele, Anthony Newman, Maxence Larrieu and Paula Robison, among others. Ms. Pusch has performed with the American Symphony, American Composers Orchestra, Brooklyn Philharmonic, New Jersey Symphony and Philharmonia Virtuosi.

Ms. Pusch has been heard on radio, television and recordings for Composers Recording Inc., Panasonic, Summit, Innova, Mode and Windham Hill. Formerly on the faculty of Rutgers University, Ms. Pusch currently serves on the flute faculty of the Juilliard School's Music Advancement Program and the International Festival Institute at Round Top and is a teaching artist for The Academy (a joint program of Carnegie Hall, the Juilliard School and the Weill Music Institute). She is a graduate of Boston University and studied with Julius

Baker, James Pappoutsakis and Keith Underwood.

Madam Speaker, I urge my colleagues to join me in recognizing Gretchen Pusch.

#### IN MEMORY OF LT. COL. GEORGE WITHERS STIER

### HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. SKELTON. Madam Speaker, it is with sadness that I inform the House of the death of my dear friend Lieutenant Colonel George Withers Stier of Lexington, Missouri.

Stier was born in December of 1919 to Earle Taggart Stier and Grace King Stier. After graduating from Wentworth Military Academy with ROTC training, he volunteered for the Army Reserves and applied for Active Duty in 1941.

During World War II, Stier showed his unyielding courage and love of country while flying the B-17 Flying Fortress. During the last of his 16 bombing missions over Germany, he and his crew were shot down and became prisoners of war at Stalag Luft III. Surviving a 50-mile forced march, Stier and his fellow airmen spent over a year as prisoners of war. On April 20, 1945, he was liberated by General George Patton and his 3rd Army's 14th Tank Battalion.

In 1948, Stier married his lovely wife Kathleen Miller Trumbull. The two returned to his hometown of Lexington, Missouri, where they operated Stier's Clothing Store, a family operation since 1906. A dedicated public servant, he served on the City Council and was president of the local Chamber of Commerce. He maintained his connection to Wentworth Military Academy by teaching business courses to our future servicemen and women.

Preceded in death by his wife Kathleen who sadly passed away in 2004, he is survived by his children, Sheila and George.

Madam Speaker, Lt. Col. George Stier was a courageous airman, a loving husband and father, and a dear friend. I trust that my fellow Members of the House will join me in extending their heartfelt condolences to his two children, family, and friends.

#### IN HONOR OF MAURICE A. SCHWARTZ

### HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Ms. WOOLSEY. Madam Speaker, I rise today to honor Maurice A. Schwartz of Stinson Beach, California, who will be retiring next month as Executive Director of the Audubon Canyon Ranch (ACR). Skip Schwartz—everyone calls him Skip—a man known for his rare combination of a strong work ethic, empathy, kindness and humor, has been at the helm of ACR for thirty-four years, a time of great growth and accomplishments for the ranch.

Audubon Canyon Ranch was founded in 1962 to preserve a thickly wooded nesting

place for great blue herons and great egrets on the shores of Bolinas Lagoon. Skip first saw the ranch as a visitor in the early 70s and later he and his wife became docents. In 1975 he so impressed the ACR's trustees that they hired him as Executive Director. With his commitment, boundless enthusiasm and practical know-how, Skip tackled the tough problems of a young non-profit and succeeded far beyond anyone's expectations.

Today ACR is a financially solid organization with 24 employees and 800 volunteers with exciting environmental education and research programs and preserve holdings in two counties totaling over 2,000 acres, and will be a beneficiary of a gift of another 1,700 acres in the future. ACR now includes the 1,000 acre Bolinas Lagoon Preserve near Stinson Beach; the 535-acre Bouverie Preserve near Glen Ellen in Sonoma County, the Cypress Grove Research Center on Tomales Bay and several other properties in West Marin. Recently an access agreement was signed with Jim and Shirley Modini, whose 1,725-acre Modoni Ranch in Sonoma County has been willed to ACR.

Due largely to Skip's democratic leadership skills, ACR was named this year by the North Bay Business Journal as one of the five best places to work in the North Bay. Employees—whose average length of employment is 11 years—gave Audubon Canyon Ranch the highest marks of the five firms honored. Employees cited ACR's family focus and its commitment to "walking the talk" by making every effort to make the workplace green, including establishing mileage reimbursement for bicycle use during work hours.

Under Skip's leadership, ACR scientific contributions also literally helped put Bolinas Lagoon on the map as a United Nations RAMSAR site of international significance. ACR's conservation science programs have grown to include a Research and Habitat Preservation and Restoration component.

Skip has overseen the creation of a nationally recognized elementary school environmental education program that serves schools throughout the Bay Area at no charge to them or their students. Each year, between 6,000 and 7,000 students from ethnically and economically diverse neighborhoods in four counties participate in ACR's "hands on" environmental education program.

Skip Schwartz, who has been the public face of Audubon Canyon Ranch for over three decades, will step down as Executive Director in January, but he will continue to work part time as a consultant with the organization. It appears that the Directors of Audubon Canyon Ranch know just how big Skip's shoes will be to fill. He leaves a legacy of accomplishment, but at least for some time ACR's Directors, staff and many friends will continue to benefit from his knowledge, enjoy his humor and kindness, and be inspired by his practical idealism.

THE APPROPRIATIONS PACKAGE  
AND AMTRAK

**HON. BENNIE G. THOMPSON**

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. THOMPSON of Mississippi. Madam Speaker, today, the House will consider the end of year appropriations package. In that package, is a one-page provision that risk undermining nearly a decade of rail security efforts by Amtrak. It requires Amtrak to allow passengers at stations that accept checked baggage to check their guns.

There are those who argue that this is a reasonable provision which would simply grant rail travelers the same opportunities as aviation travelers. These people fundamentally miss the point.

The challenges of securing rail are very different than securing aviation. Airports are controlled environments with screeners, checkpoints and multiple law enforcement agencies, rail stations are not. Airline passengers are watch listed, rail passengers are not. Guns that are checked on planes are stored away from passengers. Under this provision, guns could be "checked" in the same car as the passenger. This provision is bad security of policy and puts Amtrak passengers and staff and anyone else in rail stations at risk.

A TRIBUTE TO REDLANDS CITY  
CLERK LORRIE POYZER FOR 33  
YEARS OF PUBLIC SERVICE

**HON. JERRY LEWIS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. LEWIS of California. Madam Speaker, I would like to pay tribute to Redlands City Clerk Lorrie Poyzer, who over the past three decades has established herself as the institutional memory of this Southern California city.

A true native of this San Bernardino County city, Lorrie Poyzer is a Redlands High School graduate and the daughter of Marion H. Poyzer, who was the city's elected Treasurer from 1960 to 1975. Her grandfather and his sister were the first recorded twins born in the city around 1900.

After graduation from Redlands High School and then San Bernardino Valley College, Louie Poyzer worked for seven years as office manager for the Redlands Teachers Association, and seven more as the assistant manager's secretary of the Bank of America Redlands branch.

She went to work in the City Clerk's office in February 1976, shortly after her father retired as city Treasurer. In those days before computers, she had to retype minutes of the City Council meetings three or four times as changes were made. She was appointed deputy clerk within a year.

Her expertise and years of service led to the City Council appointing Lorrie Poyzer acting City Clerk in January 1983, and she was elected to the first of seven consecutive terms in November 2003.

Madam Speaker, as with many growing cities, Redlands has seen its share of changes in leadership. Ms. Poyzer has served with 10 mayors, 29 City Council members and 11 City Managers. She has overseen the accurate recording of minutes for more than 1,000 council meetings.

Under her leadership, Redlands has become known for its incredibly accurate record-keeping. The office has ensured that all former paper records have been transferred to computers, and she is proud to say that her office can find any document—even dating back to the city founding in 1888—within 10 minutes.

As City Clerk, Ms. Poyzer has overseen numerous municipal elections and has a long-established reputation for fair and impartial handling of candidates. Her duties have ranged from administering oaths and affirmations to helping organize the city's Centennial celebration in 1988. She has even taken charge of selling tickets to the annual Fourth of July celebration at the University of Redlands.

Over the years, Lorrie Poyzer has become known as the person who knows everything about the city and community of Redlands. She handles all requests for help and information cheerfully and efficiently.

Madam Speaker, after serving as the elected city clerk for 26 years, Lorrie Poyzer is retiring this month. We will all miss her vast knowledge of our city and its history, but we wish her success and happiness on her retirement. Please join me in commending her for a fabulous life of public service.

A TRIBUTE TO DAWN MONIQUE  
ADAMS-FULTON

**HON. EDOLPHUS TOWNS**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. TOWNS. Madam Speaker, I rise today in recognition of Dawn Monique Adams-Fulton.

Mrs. Adams-Fulton is a Rehabilitation Counselor for New York City Health and Hospitals Corporation. She presently provided services to the chemical dependency population at Cumberland Diagnostic and Treatment Center. She has provided this population with support and guidance for the last ten years. She has demonstrated a high level of dedication to the clients she services by ensuring that they have the tools they need to become and remain productive members of society.

She has been employed at Steinway Child & Family Services for 14 years as a Director Child Care worker. In this role, she is responsible for assisting children with problem solving, life skills and conflict resolution.

Prior to joining the New York City Health and Hospitals Corporation, Mrs. Adams-Fulton worked in the foster care system for eight years through a host agency, the Richard Allen Center on Life and Sheltering Arms Foster Care Agency. In both positions she was dedicated to making and ensuring children were protected and provided with a happy and safe beginning.

Her leadership, dedication and communication skills have been recognized through receiving many certificates of appreciation.

She obtained her Bachelor's of Science Degree from College of Human Services (presently known as Metropolitan College). Mrs. Adams-Fulton continued her education by attending Long Island University and received her Master's of Science Degree in Counseling and Family Education. Mrs. Adams-Fulton also possesses her certification in the field of addiction (CASAC) and has a License in Mental Health Counseling (LMHC). In addition to her education, she has a credential in Family Development from Cornell University.

She is also a member of Dewitt Headstart Parent Involvement Committee. In this role she is responsible for encouraging and supporting parents and promoting their involvement in their children's education and future.

Mrs. Adams-Fulton enjoys spending her free time with her family and her circle of friends. Her role models are her grandmothers, Marion L. Adams and Emma Campbell. They instilled in her the importance of family and being responsible. In addition, she has a host of leaders that have provided guidance and encouragement in her professional growth.

Madam Speaker, I urge my colleagues to join me in recognizing Dawn Monique Adams-Fulton.

REMEMBERING SENATOR PAULA  
HAWKINS

**HON. DEBBIE WASSERMAN SCHULTZ**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Ms. WASSERMAN SCHULTZ. Madam Speaker, I rise today to remember an historic figure in Florida politics, United States Senator Paula Hawkins, who died at the age of 82 on Friday, December 4, 2009.

Senator Hawkins was the first woman from any State elected to a full U.S. Senate term who was not the wife or daughter of a politician.

Senator Hawkins was a champion of children's issues and issues relating to single women.

She was instrumental in passing The Missing Children's Act of 1982, which established a national clearinghouse for information about missing children.

Senator Hawkins fought to help women enter the job market after divorce or widowhood, for equalizing pension benefits for women by taking into account their years spent at home raising children, for day care for the children of Senate employees and for tax breaks on child care expenses.

But probably her most courageous act took place in 1984 when she publicly disclosed that she was sexually molested as a child.

We should all be grateful to Senator Hawkins, Madam Speaker, for opening the door for so many others.

EARMARK DECLARATION

**HON. ZACH WAMP**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. WAMP. Madam Speaker, as a leader on earmark reform among House Republicans, I



am committed to honoring House Republican rules that provide for greater transparency. H.R. 3288, the Fiscal Year 2010 Consolidated Appropriations Act, contains the following funding that I requested:

Requesting Member: Rep. ZACH WAMP

Account: Army

Legal Name Requesting Entity: Fort Campbell, Kentucky

Address: 39 Normandy Avenue, Fort Campbell, Kentucky 42223

Description of Request: There is inadequate chapel space at Ft. Campbell. The current facilities are scattered across the entire installation in several substandard World War II buildings that are in disrepair. The construction of a chapel complex will provide every Fort Campbell soldier, their family members and retirees a quality facility in which to worship and practice their religious faith. As overseas deployments remain high, an increasing number of soldiers and families will rely on the chapel to support their spiritual needs. The local Clarksville Chamber of Commerce has strongly advocated for a new chapel on Ft. Campbell. Fort Campbell receives \$14.4 million for this project.

Distribution of funding:

Chapel 72%

Antiterrorism/Force Protection Measures 1%

Infrastructure (electric, water) 11%

Supervision, Inspection & Overhead 16%

Requesting Member: Rep. ZACH WAMP

Account: Defense Wide

Legal Name Requesting Entity: Fort Campbell, Kentucky

Address: 39 Normandy Avenue, Fort Campbell, Kentucky 42223

Description of Request: Proficiency of foreign language skills is needed to maintain unit and individual soldier readiness. Each Special Forces soldier is required to practice linguistic skills two-hours per day to maintain skill level. Currently, students conduct language training in a World War II-era facility. The space is inadequate for the number of special operation soldiers receiving language training especially during periods of high attendance. An average student load of 212 students is anticipated. Fort Campbell receives \$6.8 million for this project.

Distribution of funding:

Special Ops Language Training Facility 70%

Antiterrorism/Force Protection Measures 1%

Infrastructure (electric, water) 16%

Supervision, Inspection & Overhead 13%

Requesting Member: Rep. ZACH WAMP

Account: Surface Transportation Priorities

Legal Name Requesting Entity: City of Chattanooga's Enterprise Center

Address: 1250 Market Street, Suite 3020, Chattanooga, TN 37402

Description of Request: The City of Chattanooga's Enterprise Center requested funding to complete a feasibility study approved by Congress for a high speed maglev train between Atlanta, Chattanooga and Nashville. Atlanta's Hartsfield-Jackson Airport is the nation's busiest airport. A maglev train will relieve tremendous congestion in the Atlanta metro area and serve as part of a long needed "intermodal mass transit system" for the United States. Federal funding is needed for additional engineering work and development of a detailed financial plan, to include the

number of riders and expected profits. The corridor is recommended by the State of Georgia's Joint Study Committee on Transportation Funding. The City of Chattanooga's Enterprise Center receives \$750,000 to complete this study.

Distribution of funding:

Salaries, wages, benefits and taxes 23.85%

Professional Fee/Contractors 56%

Office Supplies and maintenance 4.65%

Travel/Conferences and Meetings 9.07%

Indirect Costs 6.43%

Requesting Member: Rep. ZACH WAMP

Account: Interstate Maintenance Discretionary

Legal Name Requesting Entity: City of Cleveland

Address: 190 Church Street NE, Cleveland, TN 37311

Description of Request: The Cleveland Mayor and City Council requested funding to redesign and construct Exit 20 on Interstate 75 to eliminate a dangerous bottleneck of traffic and widen a narrow bridge. This exit is the gateway to the Tri-State Exhibition Center, the Ocoee Recreation Region and the Cherokee National Forest, and is often excessively congested and unsafe for vehicles. A new exit and widened bridge will improve safety for travelers, truck drivers and community residents. The redesign will also facilitate new industrial and commercial growth in the area. The Mayor and City of Cleveland receives \$1.2 million for this project.

Distribution of funding:

Right of way and utilities 100%

Requesting Member: Rep. ZACH WAMP

Account: Transportation Planning, Research and Development

Legal Name Requesting Entity: Oak Ridge National Laboratory

Address: 2360 Cherahala Boulevard, Knoxville, TN 37932

Description of Request: The National Transportation Research Center at Oak Ridge National Laboratory requested funding to examine how cutting edge technologies can be used to define real world driving conditions for advanced power train systems research. Building on past investments by the Oak Ridge National Laboratory and the University of Tennessee, this study will support existing research to increase automobile efficiency and safety and introduce new capabilities for advanced transportation for universities, the government and industry. Using these cutting edge technologies to test various combinations of engine components before building a prototype vehicle will save time and money in developing our nation's next generation of trucks, buses, military vehicles and passenger cars. Oak Ridge National Laboratory's National Transportation Research Center receives \$250,000 for this research.

Distribution of funding:

Data Analysis 50%

Model Development and Use 40%

Program Management & Reporting 10%

Requesting Member: Rep. ZACH WAMP

Account: Economic Development Initiative

Legal Name Requesting Entity: Claiborne County Industrial Development Board

Address: 1732 Main Street, Suite 1, Tazewell, TN 37879

Description of Request: The Claiborne County Center for Higher Education provides

educational growth opportunities not available in Claiborne, Hancock, Grainger, and Union counties. Rural counties need access to advanced education. Career skills are necessary for the jobs of the future. The Claiborne County Industrial Development Board purchased an unused facility to provide job training for residents in this underserved area. The Claiborne County Industrial Development Board receives \$189,000 for renovations to the building.

Distribution of funding:

Fire Alarm 30.2%

ADA Compliance 31.8%

Window Replacement 33.8%

Architectural Design 4.2%

Requesting Member: Rep. ZACH WAMP

Account: Department of Education—Fund for the Improvement of Postsecondary Education (FIPSE)

Legal Name Requesting Entity: University of Tennessee at Chattanooga

Address: 615 McCallie Avenue, Chattanooga, Tennessee 37403

Description of Request: The University of Tennessee at Chattanooga requested funding to create a Center for Leadership in Science, Technology, Engineering and Mathematics (STEM) Education. Federal funding is needed to help establish the Center and assist in teacher recruitment, training and support. As the competition for technical innovations increases, improved education in these fields is critical to maintaining economic competitiveness in the region. The University of Tennessee at Chattanooga receives \$770,000 to establish its STEM center.

Distribution of funding:

Center Implementation & Capacity Building 25%

Teacher Recruitment and Preparation 25%

Educator STEM Training & Support 25%

STEM Career Training for Adult Learners 25%

Requesting Member: Rep. ZACH WAMP

Account: Small Business Administration—Salaries and Expenses

Legal Name Requesting Entity: University of Memphis

Address: 303 FedEx Institute, Memphis, Tennessee 38152

Description of Request: The University of Memphis requested funding for an entrepreneurial training program to promote new business growth targeting science and technology-based and minority-owned businesses. Federal funding is needed for University of Memphis experts and students to develop business plans, evaluate new technologies and provide legal expertise to small businesses and entrepreneurs. The program will have a significant impact on the economy and encourage investment and jobs in the Memphis metropolitan area and the mid-south region. The University of Memphis receives \$685,000 for the entrepreneurial training program.

Distribution of funding:

Salaries and Center Administration 20%

Equipment 13%

Business and Legal Services and Training 47%

Education and Conferences 20%

Requesting Member: Rep. ZACH WAMP

Account: COPS-Methamphetamine Enforcement and Clean-up Grants

Legal Name Requesting Entity: Tennessee Bureau of Investigation-Tennessee Methamphetamine Task Force

Address: 901 R.S. Gass Blvd., Nashville, TN 37216-2369 c/o 1110 Market Street, Suite 332, Chattanooga, TN 37402

Description of Request: The Tennessee Bureau of Investigation and the Tennessee Methamphetamine Task Force requested funding to train and equip local law enforcement officers throughout the State of Tennessee in a cooperative effort to combat the manufacture, distribution and use of methamphetamine, both domestic and foreign, in Tennessee. Twenty-four hour response will be provided to state and local law enforcement agencies fighting the epidemic. The Tennessee Bureau of Investigations and the Tennessee Meth Task Force receives \$2 million to supplement the lack of funding for preventing illegal methamphetamine use.

Distribution of funding:

Personnel 8%

Benefits 3%

Travel 8%

Equipment 16%

Supplies 25%

Contract law enforcement officers 31%

Training 9%

Requesting Member: Rep. ZACH WAMP

Account: Department of Justice Byrne Discretionary Grant Program

Legal Name Requesting Entity: City of Chattanooga

Address: 101 East 11th Street, Chattanooga, TN 37402

Description of Request: The Mayor and City Council of Chattanooga have requested funding to move and equip a law enforcement firing range. In 2003, President Bush signed legislation establishing the Moccasin Bend National Archeological District at the location where the current range has been used for police training for decades. The formation of the national park and the planned visitor center requires that the firing range be moved to another site. The Mayor and City of Chattanooga receives \$500,000 to offset part of the expense associated with the relocation.

Distribution of funding:

Facility renovation 30%

Equipment 50%

Technology 20%

#### A TRIBUTE TO DAVID CALLAWAY

### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of David Callaway, a clarinetist who has been described as nothing short of exhilarating. Mr. Callaway has captivated audiences throughout the U.S., England, France, Germany, Luxembourg, Switzerland, and Taiwan with this masterful virtuosity, expressiveness and musical inventiveness.

As an active educator, Mr. Callaway believes in the nurturing of young musicians, and has inspired future generations of music students through his teaching and mentoring. He is a former Fulbright Scholar to Taiwan, and specializes in the traditional Beiguan music of Taiwan.

Mr. Callaway has appeared with the Atlanta Opera Orchestra, Orlando Symphony, New

York Philomusica, New Jersey Philharmonic, New Haven Opera, Sinfonia Celestis, Manhattan Virtuosi, Conductor's Institute Orchestra, and various ensembles at the Spoleto festival in Charleston, South Carolina. He has performed under the batons of such conductors as Kurt Masur, Jerzy Semkow, William Schuman, Julius Rudel, William Fred Scott, Zdenek Macal and David Gilbert. In addition, Mr. Callaway has worked with prominent composers John Corigliano, Donald Martino, Jacob Druckman, Ned Rorem and Karel Husa.

Equally accomplished as a recitalist and chamber musician, Mr. Callaway has performed at Weill Recital Hall at Carnegie Hall, Alice Tully Hall, Merkin Concert Hall, Miller Theater at Columbia University and the Great Hall at Cooper Union. He is also an avid proponent of new music, and has performed the music of John Corigliano, Elloitt Carter, Edison Denisov, Luciano Berio, Steve Reich, Donald Martino, Joan Tower, Chou Wen-chung and Huang-Long Pan.

As a recipient of the William J. Fulbright Scholarship award, David Callaway traveled to Taiwan to research the traditional Beiguan Music of Taiwan and genealogy of the double-reed suona. He served on the Fulbright Committee, was a frequent advisor and mentor to Taiwanese Fulbright grantees, and appeared on the Central Broadcasting Station's radio show "Life Unusual".

David Callaway has most recently served on the clarinet faculty of the Juilliard School's Music Advancement Program in New York City, and has taught at Vassar and Bard Colleges, the Manhattan School of Music, and as guest teacher at Emory University.

He received his Doctor of Music Arts and Master of Music degrees from the Manhattan School of Music, and his Bachelor of Music degree from the University of South Carolina. His major teachers have included Ricardo Morales, David Krakauer, Doug Graham and Laura Ardan.

Madam Speaker, I urge my colleagues to join me in recognizing David Callaway.

#### 60TH ANNIVERSARY OF VOICE OF AMERICA'S SERVICE TO UKRAINE

### HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. LEVIN. Madam Speaker, I rise today to recognize the 60th anniversary of Voice of America's service to Ukraine.

Created in the early days of the Cold War, Voice of America provides comprehensive, uncensored information to Ukrainians about world events and reinforces the importance of free speech, expression, and a free press. As the Soviet Union fell and Ukraine struggled to shake off the reins of communism, Voice of America continued to serve as a trustworthy, pro-democratic source of news. Its commentary and analysis were highly valued during the Orange Revolution of 2004, and remain so as the country prepares for its first presidential election since ushering in a new era of democratic governance.

Today, Voice of America reaches almost five million viewers across Ukraine each week

with its television programming and maintains a Ukrainian-language website with up-to-date news reports. Ukrainians continue to rely on these services for accurate information about national and international events, as well as to learn more about American politics and culture.

Madam Speaker, Voice of America will celebrate its many contributions to Ukraine on December 11, 2009. I ask my colleagues to join me in congratulating Voice of America, and its dedicated staff, for its six decades of service to Ukraine.

#### IN HONOR OF DOUGLAS J. FOLEY

### HON. JOHN H. ADLER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. ADLER of New Jersey. Madam Speaker, I am pleased to have this opportunity to express my gratitude to Mr. Douglas J. Foley for his dedicated and tireless service with the East Dover Fire Company in Toms River, NJ.

Mr. Foley has selflessly and bravely served the people of Toms River throughout his career and is retiring in January after a lifetime of service. After serving as vice-president of the company for the past eight years, he has made important improvements to the Fire Company and the safety of the town and its people.

I would like to thank Mr. Foley for his exemplary service. Thank you for all you have done and I wish you a Happy Retirement.

#### HONORING GRIFFIN HOSPITAL AS IT CELEBRATES ITS CENTENNIAL ANNIVERSARY

### HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Ms. DeLAURO. Madam Speaker, it gives me great pleasure to rise today to join all of those gathered to celebrate the centennial anniversary of Griffin Hospital. On December 9, 1909, Ralph Colonna, a worker at Ansonia Brass was the first patient admitted to Griffin Hospital and thus began its distinguished history of providing quality health services to the communities of the Lower Naugatuck Valley.

When Griffin Hospital first opened its doors, it held just twenty-four beds. Today, Griffin Hospital has grown into one of the most respected health institutions in the country. Its facilities cover hundreds of thousands of square feet and include the Griffin Imaging and Diagnostics Center, the Hewitt Ambulatory Pavilion, the Center for Cancer Care, the Yale Griffin Prevention Research Center, Childbirth Center, as well as the only hospital based hospice service in Connecticut. From Charles E. Clark, the hospital's first president, to today's President and Chief Executive Officer, Patrick Charnel, the unique vision of its strong leadership has allowed Griffin to expand its services to meet the changing needs of its patients and the community. In fact, in 2005,

much in part because of Griffin's growing industry leadership position, Pat was appointed by the U.S. Secretary of Health and Human Services to the National Advisory Council for the Agency for Healthcare Research and Quality.

Perhaps most important is the culture of care that surrounds Griffin Hospital. In 1992, Griffin adopted the Planetree patient-centered care philosophy—promoting the development and implementation of innovative models of healthcare that focus on health and nurturing body, mind, and soul. Just last year, Griffin became a "Designated Planetree Patient-Centered Hospital" which is the formal recognition of the hospital's achievement and innovation in fostering an organizational culture that prioritizes patient comfort, dignity, empowerment, and well-being. In following this patient-centered care philosophy, Griffin has also created an extraordinary work environment for all Griffin employees—reflected in its recent celebration of its tenth consecutive year on FORTUNE Magazine's "100 Best Companies to Work For" list.

Griffin Hospital not only provides outstanding care to its patients but also devotes programs and resources to benefit the greater community as well. The Valley Parish Nurse Program, which today serves thirty-five churches throughout the Lower Naugatuck Valley, provides health education, screening and referral services to a total of thirty-five thousand parishioners with a primary focus on outreach efforts to the underserved, minority, and low-income populations. Griffin also founded and sponsored the Healthy Valley project—the goal of which is to make the Valley a better place in which to live, work, raise a family, and enjoy life by measurably improving the quality of life and health of the community and its residents. Healthy Valley also focused on enhancing regional economic development by making the community a better place for businesses to relocate and expand as well as for their employees to live.

An industry leader in providing quality patient-centered care and understanding that their involvement is fundamental to the continued growth and prosperity of its surrounding communities, there are innumerable ways in which Griffin Hospital has made a difference. I am proud to stand today to congratulate the Board of Directors, administrators, and staff alike as they celebrate this very special occasion. Today, as they mark their centennial anniversary, they not only celebrate their past accomplishments but, as they have for the last one hundred years, they look to the future—to ensure that they continue to provide the best possible care to their patients and meet the ever-changing needs of our community. I wish them all the best for another century of success.

#### HONORING JOHN HARRIS

#### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. RADANOVICH. Madam Speaker, I rise today to commend and congratulate John Har-

ris upon being awarded the "Distinguished Citizen Award" by the Sequoia Council, Boy Scouts of America. Mr. Harris will be honored on Tuesday, November 24, 2009 at a special luncheon at Harris Ranch.

Mr. John Harris was born and raised in Coalinga, California in the heart of the San Joaquin Valley. Mr. Harris attended and graduated from the University of California, Davis in 1965 with a Bachelors of Science degree in Agricultural Production/Agricultural Economics. While attending UC Davis, he was commissioned into the United States Army through the ROTC program.

Upon returning to the San Joaquin Valley, Mr. Harris began working on the family farm and ranch, Harris Farms. Harris Farms was founded in 1937 by Mr. Harris' parents, Jack and Teresa Harris. Over the years, the family business has grown to become one of the largest integrated farming operations in the Central San Joaquin Valley. The company produces over a dozen crops including almonds, citrus, tomatoes, lettuce, wine grapes and pistachios. The farm has also expanded to include Harris Ranch Beef Company, which is one of California's largest fed cattle processors, producing nearly two million pounds of beef per year.

In 1966, Mr. Harris and his father decided to devote a substantial part of the Harris Ranch farming and cattle operation to raising and training of Thoroughbred racehorses. The company provides six hundred acres to the Thoroughbreds and has bred and raced several of California's championship horses. In addition to the farm, the cattle ranch and the Thoroughbred Division, the Harris Company also has multiple restaurants and an inn. Today, with Mr. Harris serving as the Chairman of the Board for Harris Farms, the companies in total employ over fifteen hundred people and have gross sales exceeding three hundred million dollars.

Outside of operating Harris Farms, Mr. Harris is involved with numerous organizations. He is a member of the board for the Water Growers Association and serves as Chair of the Water Committee. Mr. Harris also serves on the Board of Trustees of the Pacific Legal Foundation and is currently serving as Chair of Cattle PAC for the board of California Cattlemen's Association. He has been involved with the California Horse Racing Board since 2001 and is currently serving as Chairman of the board. Mr. Harris also serves on the boards of several agricultural related companies; including Sunny Cove Citrus, Los Gatos Tomato Products, Harris Woolf Almonds and California Thoroughbred Breeders Association.

Mr. Harris has worked with the Sequoia Council, Boy Scouts of America for almost twenty years, hosting an annual luncheon to benefit the chapter. The lunch supports the Scouting programs in western Fresno County and Kings County. His concern and dedication to the youth of our area and his love of Scouting has kept him working with the Sequoia Council, Boy Scouts of America and the growth of Scouting here in the San Joaquin Valley.

Madam Speaker, I rise today to commend and congratulate John Harris upon being awarded the "Distinguished Citizen Award." I

invite my colleagues to join me in wishing Mr. Harris many years of continued success.

#### PERSONAL EXPLANATION

#### HON. JOHN R. CARTER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. CARTER. Madam Speaker, on December 9, 2009, I was unable to be present for several rollcall votes. If present, I would have voted accordingly on the following rollcall votes:

Roll No. 942—"nay."

Roll No. 943—"nay."

Roll No. 944—"yea."

#### A TRIBUTE TO WESTON SPROTT

#### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Mr. Weston Sprott who was appointed second trombone of the Metropolitan Opera Orchestra in the Spring of 2005.

Mr. Sprott attended Indiana University before completing his Bachelor of Music degree at The Curtis Institute of Music in Philadelphia. While a student at Curtis, Mr. Sprott held the positions of principal trombone in the Pennsylvania Ballet Orchestra (Philadelphia) and the Delaware Symphony Orchestra. He was the founding member of the Texas Trombone Octet, a group that won the Emory Remington competition and was featured in concert at the International Trombone Festival in Helsinki, Finland.

Mr. Sprott has worked under the baton of many of the world's great conductors including Sir Simon Rattle, James Levine, Kurt Masur, Lorin Maazel, Christoph Eschenbach, Andre Previn and numerous others. Mr. Sprott was recently featured in the documentary film "A Wayfarer's Journey: Listening to Mahler" with actor Richard Dreyfuss and actress Kathleen Chalfant. He was also a performer in the film "Rittenhouse Square," a documentary under the direction of Robert Downey that played in major film festivals throughout the United States to critical acclaim. In September 2007, Mr. Sprott made his Carnegie Hall solo debut performing Lars Erik-Larsson's concertino in Weill Recital Hall at the invitation of the Bulgarian Consulate. Other engagements have led to performances with gospel and jazz artists such as Branford Marsalis, Take 6 and Donnie McClurkin. Mr. Sprott's performances and interviews have been seen and heard on various TV and radio shows such as: PBS' Great Performances, NPR's Performance Today, and Sirius Satellite Radio.

In demand as a soloist and master class clinician, Mr. Sprott has been a featured guest artist at several of America's leading conservatories and universities. He is currently on the faculty at the Purchase College Conservatory and Juilliard's Music Advancement Program, and he previously served on the faculty of The

New School University, a division of the Mannes School of Music in New York City. Weston Sprott is an artist/clinician for the Edwards Instrument Company and Music. He performs exclusively on Edwards's trombones and Greg Black mouthpieces.

Madam Speaker, I urge my colleagues to join me in recognizing Mr. Weston Sprott.

#### PERSONAL EXPLANATION

### HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BARRETT of South Carolina. Madam Speaker, unfortunately, I missed the following recorded votes on the House floor on Tuesday, December 1, 2009 and Wednesday, December 2, 2009.

For Tuesday, December 1, 2009, had I been present I would have voted "aye" on rollcall vote No. 911, on motion to suspend the rules and agree to H.R. 3029; "aye" on rollcall vote No. 912, on motion to suspend the rules and agree to H. Res. 727; "no" on rollcall vote No. 913, on motion to suspend the rules and agree to H.R. 3667.

For Wednesday, December 2, 2009, had I been present I would have voted "aye" on rollcall vote No. 914, on motion to suspend the rules and agree to H. Res. 494; "aye" on rollcall vote No. 915, on motion to suspend the rules and agree to H. Con. Res. 129; "aye" on rollcall vote No. 916, on motion to suspend the rules and agree to H. Res. 861; "aye" on rollcall vote No. 917, on motion to suspend the rules and agree to H. Res. 897; "aye" on rollcall vote No. 918, on motion to suspend the rules and agree to H.R. 3634; "no" on rollcall vote No. 919, on motion to suspend the rules and agree to H.R. 515; "aye" on rollcall vote No. 920, on motion to suspend the rules and agree to H. Con. Res. 197; "aye" on rollcall vote No. 921, on motion to suspend the rules and agree to H.R. 1242; "aye" on rollcall vote No. 922, on motion to suspend the rules and agree to H.R. 3980.

#### 20TH ANNIVERSARY OF THE CONGRESSIONAL SPORTSMEN CAUCUS AND CONGRESSIONAL SPORTSMEN FOUNDATION

### HON. DAN BOREN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BOREN. Madam Speaker, as House Co-Chair of the Congressional Sportsmen's Caucus and lifelong sportsman, I hereby recognize the 20th Anniversary of the founding of the Congressional Sportsmen's Caucus and the Congressional Sportsmen's Foundation. The Foundation was officially incorporated 20 years ago this week on December 7, 1989.

On behalf of the Congressional Sportsmen's Caucus and the millions of hunters and anglers across the country, congratulations to the Congressional Sportsmen's Foundation on 20 years of successfully supporting the Cau-

cus in advancing pro-sportsmen hunting, fishing, and conservation issues in the United States Congress.

The Congressional Sportsmen's Foundation is the most trusted organization focused on issues of importance to this nation's sporting heritage and serves as the most critical link between sportsmen and women and the Congressional Sportsmen's Caucus. The sportsmen and women of America can be proud of the long standing partnership between the Caucus and Foundation in accomplishing many legislative victories on their behalf.

Since its inception, the bipartisan Congressional Sportsmen's Caucus has grown into one of the largest and most effective caucuses in the United States Congress with nearly 300 members representing almost all 50 states. With bipartisan leadership in both the House and the Senate, the Caucus is the sportsmen's ally and first line of defense in Washington promoting and protecting the rights of hunters, trappers and anglers.

With the success of the CSC/CSF partnership, the Congressional Sportsmen's Foundation created a network of state legislative sportsmen's caucuses modeled after the Congressional Sportsmen's Caucus in 2004, launching the National Assembly of Sportsmen's Caucuses (NASC). Currently with 38 state legislative sportsmen's caucuses and nearly 2,000 legislators, the NASC facilitates the interaction and idea exchange among state caucus leaders and the outdoor community.

Earlier this year the Congressional Sportsmen's Foundation launched the Governors Sportsmen's Caucus to facilitate communication and information exchange among a bipartisan team of state chief executives in support of legislation and regulations that promote and protect hunting and fishing. Guided by a bipartisan leadership team of governors and staffed through the Congressional Sportsmen's Foundation, the GSC further enhances the Congressional Sportsmen's Caucus and the National Assembly of Sportsmen's Caucuses.

The combination of the Congressional Sportsmen's Caucus, the National Assembly of Sportsmen's Caucuses, and the Governor's Sportsmen's Caucus, working side-by-side with the Congressional Sportsmen's Foundation, serves as an unprecedented network of pro-sportsmen elected officials that promote and protect the agenda of America's hunters and anglers.

The Congressional Sportsmen's Caucus and Congressional Sportsmen's Foundation looks back fondly on the accomplishments of the last 20 years and now looks forward to continuing the work of protecting America's hunters and anglers in the future.

#### HONORING DR. FLOYD E. "JACK" BOWLING

### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. DUNCAN. Madam Speaker, today I wish to pay tribute and celebrate the long and successful life of one of my District's most devoted community leaders and academics.

Dr. Floyd E. "Jack" Bowling recently passed away at the age of 98. Dr. Bowling was beloved in Athens, Tennessee, one of the finest communities in the State. For the past 50 years, he called Athens home and fullheartedly devoted his time to bettering his beloved Tennessee Wesleyan College.

Dr. Bowling served Tennessee Wesleyan College not only as a teacher and administrator but also as its most important fundraiser and benefactor.

His impact on the college is evident as one strolls its beautiful campus. He had a special passion for athletics, and through Dr. Bowling's own donations and fundraising, he was almost solely responsible for Tennessee Wesleyan College's new baseball field and stadium, which rightfully bears his name.

He was also greatly responsible for the school's tennis complex and gym bleachers and used his own money to create the college's first computer lab.

Everyone had the deepest admiration and respect for Dr. Bowling. Great communities and institutions of higher education around the Nation are made so only by selfless and devoted persons like Dr. Bowling.

The current President of Tennessee Wesleyan College, Steve Condon, recently told the Daily Post Athenian Newspaper, "Virtually everything he touched, every person he engaged, every project he attempted and every colleague and student he mentored was better off because of his light. He was a gift from God to all of us."

We can all only strive to be remembered in such a way.

Dr. Bowling's service was not confined to Tennessee Wesleyan College's campus. He has long been a supporter of the McMinn Living Heritage Museum and United Way of McMinn and Meigs Counties. He also served as president of the Kiwanis Club, where he was a longtime member.

Madam Speaker, the passing of Dr. Floyd E. "Jack" Bowling is a tremendous loss for the Athens community, Tennessee Wesleyan College, his family and many friends, and the multiple causes he has championed over the years. I call his service to the attention of my colleagues and other readers of the RECORD and thank him for being an example to us all.

#### A TRIBUTE TO GILLEYAN J. HARGROVE

### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Gilleyan J. Hargrove.

Gilleyan was born and raised in Brooklyn, NY. She received her early education at the public schools of Brooklyn, New York. Her education continued at Syracuse University, where she received a Bachelor of Arts in Sociology and African American Studies in 1989. Gilleyan then attended graduate school at Binghamton University of New York, receiving a Master's of Science in Education in 1991. She received her administration and supervision license from the College of Saint Rose in 2002.

Gilleyan has always had a love for school and learning new things. She has been an educator for 18 years beginning her work as an elementary school teacher at Community School 21 in Brooklyn and then as an assistant principal at the Program for Pregnant Students in Brooklyn. Gilleyan currently serves as principal at the Granville T. Woods Middle School for Science and Technology in Crown Heights, Brooklyn, where providing students with access to a quality education and a safe environment remains a priority. Gilleyan believes as an educator she has a charge to keep and a God to glorify.

Gilleyan also is a proud lifetime member of Delta Sigma Theta Sorority, Inc. She is married to Eric M. Hargrove and they have two children, a daughter, Brianne Ashley and son, Tyler Robert.

Following in the spiritual foundation set before her by her late grandmother Mary Rose Blowe Couch and mother, Elaine Couch Hinds, Gilleyan has served God for 30 years as a member of Wayside Baptist Church, where her spiritual father and mentor, the late Pastor Joe L. Parker, taught her how to love the Lord. Currently, Gilleyan is a member of Bethlehem Baptist Church where her Pastor is Reverend Larry W. Camp.

Madam Speaker, I urge my colleagues to join me in recognizing Gilleyan J. Hargrove.

#### EARMARK DECLARATION

#### HON. MICHAEL K. SIMPSON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. SIMPSON. Madam Speaker, in accordance with the policies and standards put forth by the House Appropriations Committee and the GOP Leadership, I place in the RECORD a listing of the congressionally-directed projects I requested in my home State of Idaho that are contained in the Conference Report accompanying H.R. 3288, the FY2010 Consolidated Appropriations Act.

#### DIVISION A—FY2010 TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT

Project Name: Buses and Bus Facilities, Idaho Transit Coalition

Amount Received: \$1,000,000

Account: FTA/Buses and Bus Facilities

Recipient: Community Transportation Association of Idaho

Recipient's Street Address: 10480 Garverdale Court, Bldg. 4, Ste. 804A, Boise, ID 83704

Description: Funding for this project will be used to support essential transit systems in rural and urban areas of the State of Idaho. This project meets the criteria of the FTA's Section 5209 Capital Program and has been funded by the Committee since FY 2002.

Project Name: Custer County Economic Development Initiative in Custer County, ID

Amount Received: \$500,000

Account: HUD/EDI

Recipient: Custer County, ID

Recipient's Street Address: 802 Main Street, Challis, ID 83226

Description: At almost 5,000 square miles, Custer County is larger than three states, and

it has just over 4,000 people. Unfortunately, it is burdened with a high proportion of public lands with over 95 percent of the county's 3.4 million acres administered by federal agencies. The county's tax base, or more specifically the lack thereof, is inadequate to support the services required for such an expansive county. This grossly disproportionate public ownership causes a severe strain on their resources. Funding would be used to construct a community center which would serve a number of purposes for the county.

Project Name: I-84, Broadway to Gowen Road Widening, Boise, ID

Amount Received: \$400,000

Account: FHWA/Interstate Maintenance Discretionary

Recipient: Idaho Transportation Department  
Recipient's Street Address: 3311 West State Street, Boise, ID 83707

Description: This project will add a third east and westbound lane to I-84 between Broadway Avenue and Gowen Road on I-84. The FY10 earmark will fund the design of this project. The project will be ready for construction in FY11 in conjunction with the Connecting Idaho—GARVEE, bonding—projects in this area. This project is required to alleviate congestion and safety issues caused by the continued fast growth in the Treasure Valley. This project is included in the I-84 Boise Corridor Study adopted by the Idaho Transportation and Community Planning Association of Southwest Idaho, COMPASS, Boards in October of 2001 and part of the COMPASS Regional 2030 Long Range Transportation Plan, approved in 2006.

Project Name: Trail Creek Highway/Forest Highway 66 Reconstruction, Mackay, ID

Amount Received: \$3,750,000

Account: FHWA/Public Lands Highways

Recipient: Lost River Highway District

Recipient's Street Address: 213 South McCaleb, Mackay, ID 83251

Description: Trail Creek Highway/Forest Highway 66 runs through the Salmon-Challis National Forest from U.S. Highway 93 west to Sun Valley, Idaho. The road is maintained entirely by the Lost River Highway District and includes 17 miles of unpaved road that is used extensively for commerce and recreational purposes by tourists and homeowners. The high traffic volume—500 cars per day and expected to grow—and poor road conditions cause safety concerns for those traveling along the highway. Funds would be used to complete study and design work and upgrade the road by paving 5.5 miles of gravel road from the end of existing pavement near the West Bartlett Point Road—MP 11.750—to the Copper Basin Turn-off, MP 17.250.

#### DIVISION B—FY2010 COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES

Project Name: Boise Center Aerospace Laboratory, BCAL, Watershed Modeling Utilizing LiDAR at Idaho State University

Amount Requested: \$500,000

Account: Department of Commerce NOAA

Recipient: Idaho State University

Recipient's Street Address: 921 South 8th Avenue Stop 8007, Pocatello, Idaho 83209

Description: ISU's Department of Geosciences has developed free spatial analysis tools available to the public for remote sensing and geographic information sciences, GIS.

The remote sensing tools include a downloadable toolbox for analyzing light detection and ranging, LiDAR, data. LiDAR is an imaging method using a laser mounted on an aircraft to determine precise vertical information, topography, of the earth's surface—15 cm precision. Commonly, this information is translated into high-resolution digital elevation models, DEMs. LiDAR can provide both a bare earth surface and the vegetated—or built—surface. LiDAR can also provide topographic data below water. Specifically to the concern of NOAA and the State of Idaho, LiDAR can provide up to date and precise flood plain maps for rivers with built environments—such as the Boise River—to guide decisions on flood insurance coverage and land use restrictions. These predictive maps can also aid in evacuation of people and livestock during an impending flood. This project will leverage existing infrastructure and expertise at ISU to develop state-of-the-art watershed modeling tools for NOAA and other federal agencies. These tools will enable better management of watersheds through improved topographic analyses for prediction of runoff, floods, and water storage capacity. Hyperspectral analysis—soils and vegetation—will be coupled with the LiDAR data for a full characterization, spectrally and spatially of the landscape. These analyses will allow for studies of vegetation structure, dependence of vegetation, soils, and earth processes, e.g. fire, erosion, on topology—slope and aspect, drainages, surface roughness. The goal of this research and its resulting algorithms and tools is to significantly benefit NOAA in its ability to convert LiDAR data into usable derivative datasets for environmental and safety applications in Idaho and elsewhere.

Project Name: Idaho Meth Project

Amount Requested: \$1,000,000

Account: Department of Justice COPS Meth

Recipient: Idaho Meth Project

Recipient's Street Address: 304 N. 8th Street, Room 446, Boise, Idaho 83702

Description: Methamphetamine trafficking and abuse in Idaho has been on the rise over the past few years and, as a result, meth is having a devastating impact in many communities throughout Idaho. Meth is the number one illegal drug of choice in Idaho and the State's leading drug problem. The financial and social consequences of meth abuse in Idaho are devastating. It is a contributing cause for much of the crime in Idaho, costs millions of dollars in productivity, contributes to the ever increasing prison populations and adversely impacts families. The Idaho Meth Project is a large-scale, statewide prevention and public awareness program designed to reduce the prevalence of first-time methamphetamine abuse in Idaho by influencing attitudes through high-impact advertising. The Idaho Meth Project is focused solely upon prevention and, to achieve this goal, is active in three areas: public service messaging, community action and public policy. This includes a pervasive media campaign reaching the target population through TV, radio, billboards, print, and the Internet.

Project Name: Idaho State Police to participate in the Criminal Information Sharing Affiliates Network, CISAnet

Amount Requested: \$500,000

Account: Department of Justice COPS Law Enforcement Technology

Recipient: Idaho State Police

Recipient's Street Address: 700 South Stratford, Meridian, Idaho 83642

Description: In 2006, the Idaho State Police, ISP, developed and deployed, on a limited basis, a web-based Case Investigative System, CIS. This tool allows investigators to collect, use and share critical law enforcement information across the state. CISAnet provides a bi-directional information-sharing network within and between state and local law enforcement agencies. CISAnet provides ISP and law enforcement across Idaho with real time access to criminal intelligence information shared by law enforcement partner agencies within the states of Alabama, Arizona, California, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma and Texas. This ten state area is regarded as one of the most vulnerable to our Nation's security—a "soft spot" through which illegal Mexican immigrants filter, illegal drug trafficking passes and terrorists move freely. It is believed that securing this porous border with Mexico is an effective way to protect American citizens. The CISAnet system provides an effective means for law enforcement agencies to share information across state lines on known or suspected criminal activity. Together, access to CISAnet, Idaho's Fusion Center and remote access to CIS will ensure that Idaho state and local law enforcement officers have the best information available in a timely manner. In today's environment, these systems are an effective way to monitor illegal drug and terrorist activity and identify, target and locate potential terrorists. These systems are important components of an overall prevention strategy and are crucial to protecting the citizens of Idaho and the United States' homeland security. The Criminal Information Sharing Alliance network, CISAnet, FY2010 federal funding will be used to continue the integration of CIS into the CISAnet infrastructure, to expand its capabilities by adding a Geo coding module and by integrating CIS, RMS and CISAnet into Idaho's Criminal Intelligence Center.

Project Name: NCOMS Medical and Mental Health Sharing Software Development

Amount Requested: \$500,000

Account: Department of Justice Byrne Discretionary Grants

Recipient: Idaho Department of Corrections  
Recipient's Street Address: 1299 North Orchard, Suite 110, Boise, Idaho 83706.

Description: States are legally mandated to provide appropriate medical care to incarcerated individuals. These funds will be used to create, modularize and implement the medical/mental health module for the National Consortium of Offender Management Systems, NCOMS. This technology will allow public safety organizations that house offenders to track and record the medical information to ensure that offenders receive proper medical treatment.

DIVISION C—FY2010 FINANCIAL SERVICES AND GENERAL GOVERNMENT

Project Name: Proof of Concept Center

Amount Received: \$285,000

Account: Small Business Administration Salaries and Expenses

Recipient: Idaho TechConnect Inc.

Recipient's Street Address: 5465 E. Terra Linda Way, Nampa, ID 83687

Description: Idaho TechConnect was created as a state-wide private-public cooperation that would bridge the gaps in the state's innovation pipeline. The Idaho TechConnect Proof of Concept Center will manage innovations from early stage projects to the launch of a viable start-up business or to license the product or service to an existing business. The Proof of Concept Center will work with new and existing businesses as well as the state's colleges and universities and the INL to create new commercial products, goods and services. Concepts will be vetted to ensure significant and efficient marketability and commercialization. These concepts will then be relegated to teams/existing businesses to build or expand successful and profitable businesses. The Center will provide assistance with business models, intellectual property strategy, and access to capital, resulting in more ideas becoming products, creating jobs and companies. During these challenging economic times, this funding will assist businesses and public entities in their efforts to mature their innovative ideas into market-ready products and services to strengthen the economy of Idaho and the region.

Project Name: Research and Economic Development and Entrepreneurial Initiative

Amount Received: \$400,000

Account: Small Business Administration Salaries and Expenses

Recipient: Boise State University

Recipient's Street Address: 1910 University Drive, Boise, ID 83725-1135.

Description: Boise State University will establish research partnerships with business and governmental agencies to aid and assist businesses in an effort to preserve free market enterprise and to maintain and strengthen the local and regional economy. The federal funds being requested will be used to match private and public sector dollars and in-kind contributions to conduct collaborative research that spurs intellectual innovation, creates jobs, and ultimately leads to the benefit and growth of the business community. The funds will also be used to develop the necessary infrastructure to mine, protect, and assess the commercialization potential of the intellectual property that is developed as a result of these efforts. A healthy businesses climate is critical to the economic strength of the state of Idaho, the region and the nation. The innovation and entrepreneurial spirit that originates from this sector will help the United States compete in today's global marketplace.

DIVISION D—FY 2010 LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES

Project Name: Bear Lake Memorial Hospital Addition and Remodel

Amount Received: \$300,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Bear Lake Memorial Hospital

Recipient's Address: 164 South 5th Street, Montpelier, Idaho 83254

Description: The Bear Lake Memorial Hospital is a key service provider to all individuals and plays a vital role in the community, as well as provides services to the popular Bear Lake recreation area. The current Emergency Department lacks sufficient space for a waiting

room for emergency room patrons. It also fails to meet HIPPA compliance because of a lack of privacy for patients due to a high-use public hallway dissecting the two emergency room locations. In addition, the current diagnostic imaging facilities are scattered throughout the hospital, which makes it more difficult to provide timely and efficient care. By consolidating the services into one wing, the hospital will be able to provide improved patient care and increase overall staff efficiency. Funding provided would be used for the design and construction of a new addition as well as a renovation of the existing facilities in the Emergency Department and Diagnostic Imaging Department.

Project Name: College of Southern Idaho's Pro-Tech Training Program

Amount Received: \$200,000

Account: Department of Education Higher Education

Recipient: College of Southern Idaho

Recipient's Address: 315 Falls Avenue, Twin Falls, ID 83303-1238

Description: This program will enable the College to partner with other agencies to identify training needs and to identify potential candidates for employment. Data provided by Region IV of the State of Idaho Economic Development Agency indicate that manufacturing will be a leading employment area in the Magic Valley and the state of Idaho with over 250 new jobs expected over the next two years. Current trends in manufacturing development necessitate the need for in-depth training in the technological aspects of the design, fabrication, and manufacturing phases of production. CSI is participating in a joint educational venture with Twin Falls High School and local industry that creates a pre-engineering academy at the high school and a Computerized Numeric Controls, CNC/Industrial Networking Program at the college campus. The Pro-Tech program involves students from grade levels 10-14, and allows the students to move from high school into a two-year program at CSI or into an engineering program at one of Idaho's four-year institutions. At the secondary school level, students learn the basics of computer-assisted design, design physics, and fabrication, with each course offering aligned to the program at CSI through either tech prep or dual credit affiliation. At the post-secondary level students will receive industry-standard training in CNC, automated logic, and industrial networking. This program will train students to meet the educational requirements needed to enable them to enter the high demand fields of the hi-tech manufacturing and engineering sectors.

Project Name: Custer County Purchase of Medical Equipment

Amount Received: \$400,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Custer County

Recipient's Address: 801 East Main Avenue, Challis, ID 83226

Description: At almost 5,000 square miles, Custer County is larger than three states yet has just over 4,000 people. Unfortunately, it is burdened with a high proportion of public lands with over 95 percent of the county's 3.4 million acres administered by federal agencies. The county's tax base, or more specifically the lack thereof, is inadequate to support

the services required for such an expansive county. This grossly disproportionate public ownership causes a severe strain on their resources, including their ability to provide access to health services. The influx of tourism and visitors due to the nearby U.S. Forest Service, BLM, recreation and wilderness areas leads to an increased rate of trauma and accidents, placing a large burden on the county. The EMT services and health clinics in the County are in need of renovation and modernization of equipment. This funding would be used to purchase the much needed equipment and technology for the clinics and EMT services in Custer County.

Project Name: Idaho Caring Foundation for Children for dental services for low-income children

Amount Received: \$300,000

Account: Health Resources and Services Administration Health Facilities and Services  
Recipient: Idaho Caring Foundation for Children

Recipient's Address: 1211 W. Myrtle, Suite 110, Boise, ID 83702

Description: According to the 2000 U.S. Surgeon General's report, "Oral Health in America", tooth decay is the single most common chronic childhood disease. As a dentist, I understand the importance of proper dental hygiene at a very young age. Poor oral health can affect a child's self-esteem, ability to eat, appearance and ability to communicate. School attendance can also be negatively impacted. Over 35 percent of Idaho children lack dental insurance, which serves as a major deterrent in accessing and receiving needed dental care. According to Idaho Department of Health and Welfare 2005 Smile Survey, 27 percent of Idaho children in grades K-6 had untreated decay. Low-income, uninsured children suffer the greatest incidence of dental decay because their families lack the financial resources to receive regular dental care. The Idaho Caring Foundation will provide access to needed dental services for 600 low-income, uninsured Idaho children. These services will be provided by our network of 140 Idaho dentists from across the state. Eligible children will be identified by working in partnership with Idaho schools, Head Start programs, and other children's programs, such as the YMCA and the Boys & Girls Clubs.

Project Name: Idaho Early Literacy Project

Amount Received: \$350,000

Account: Department of Education Elementary and Secondary Education

Recipient: Lee Pesky Learning Center

Recipient's Address: 3324 Elder Street, Boise, ID 83705.

Description: The aim of the Idaho Early Literacy Project is to ensure that all children in Idaho are ready to read when they enter school. Stage III includes utilization of the research-based booklets, "Every Child Ready to Read and Every Child Ready for Math", an integrated approach to reading and mathematical literacy, the training of child care providers statewide, both live and on-line, and a direct intervention with parents and children. The training of child care providers includes a face-to-face approach in larger population centers and an on-line approach for remote rural locations. Stage III builds on early literacy training models implemented in 2008-2010 by

unifying reading and mathematical literacy and by strengthening the intervention with parents and children. As such, the project assures that pre-school children will receive direct literacy education from child care providers and in special workshops with their parents, creating the "language rich" upbringing necessary to success in school.

Project Name: Idaho SySTEMic Solution

Amount Received: \$400,000

Account: Department of Education Elementary and Secondary Education

Recipient: Boise State University

Recipient's Address: 1910 University Drive, Boise, ID 83725-1135

Description: Idaho SySTEMic Solution is a nationally relevant, hands-on, project-based STEM learning system (science, technology, engineering, & math) designed to spur achievement and confidence among elementary-age learners and their teachers. Proven methods show that long-term student achievement and interest in STEM can be dramatically improved by introducing systemic, contiguous, and engaging hands-on activities at an elementary level before children develop misconceptions, gender bias, math anxiety, or become distracted by cultural influences prevalent at puberty. In 2010 the project will extend into middle school grades where the need for hands-on activities is even greater. Key project components include a comprehensive, continuing teacher training model that includes a one-week summer institute and ongoing site-based follow-up training to boost the ability and confidence of elementary and middle school teachers; implementation into demographically diverse schools of curriculum-aligned learning lab systems that have been shown to improve student scores in math, science, and technology; and research and evaluation of results in accordance with Idaho and national assessment standards.

Project Name: Madison County Memorial Hospital Renovation

Amount Received: \$350,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Madison County Memorial Hospital

Recipient's Address: 450 East Main, Rexburg, ID 83440

Description: Madison Memorial Hospital will initiate the implementation of the Electronic Medical Record, EMR, System into Physician Clinics that feed into Madison Memorial Hospital. Information from the EMR helps the clinician make informed decisions. As the patient status is entered into this EMR, the information increases staff efficiencies through faster transcription times, nursing notes, lab results, radiology and other electronic sources. This system will make it easier for physicians and clinicians to comply with all regulations by enabling them to keep their records up to date. Patient safety will be increased by developing a paperless electronic medical record environment where clinical information can be readily shared via electronic transactions with all entities within the Madison Memorial Hospital network.

Project Name: Purchase of Biochemistry and Microbiology Laboratory Equipment

Amount Received: \$400,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: Idaho State University

Recipient's Address: 921 South 8th Avenue, Stop 8007, Pocatello, ID 83209-8007

Description: Modern instrumentation is essential to improving both the Biochemistry and Microbiology programs at Idaho State University, ISU. This request will enable the purchase of the required instrumentation needed for courses in biochemistry courses, chemistry laboratories, and microbiology and biology courses. More than 400 students per year would gain access to state of the art instrumentation through this request, improving both the quality of their educational experience and the quality of research in these scientific fields that can be pursued.

Project Name: St. Luke's Regional Medical Center's Children Health Services Expansion

Amount Received: \$350,000

Account: Health Resources and Services Administration Health Facilities and Services

Recipient: St. Luke's Regional Medical Center Ltd

Recipient's Address: 190 E. Bannock Street, Boise, ID 83712

Description: St. Luke's Health System is home to the only Children's Hospital in Idaho, providing unique full-service tertiary pediatric services between Salt Lake City, Utah, and Portland, Oregon, both more than 350 miles from Boise, Idaho. St. Luke's delivers over 25 percent of the babies born in the State. The Children's Health Services Expansion project provides an essential increase in capacity for Pediatric Medical/Surgical, Pediatric Intensive Care, Neonatal Intensive Care, Pediatric Oncology, and Pediatric Surgical Suites and support area, to meet the needs of the rapidly growing population in the hospital's service area. Prior to the beginning of this multi-year project, each area was frequently full, requiring children to be placed in adult units or diverted to other and often very distant hospitals. The federal funding provided for the expansion project has resulted in expanding all units with state-of-the-art facilities and equipment. Funding received will assist with the purchase of equipment, including electronic medical record hardware and software programs and patient monitor technology for patient support and EMR connectivity to be used in the Medical/Surgical Pediatrics, Pediatric and Neonatal Intensive Care, Oncology, Surgical Suites and support areas. The hospital is spending millions on the expansion and federal funds will represent only a small portion of the project's total costs.

Project Name: Twin Falls Library Modernization Project

Amount Received: \$100,000

Account: Museums and Libraries in the Institute of Museums and Library Services

Recipient: City of Twin Falls

Recipient's Address: 201 Fourth Avenue East, Twin Falls, ID 83301

Description: The Twin Falls Public Library seeks to obtain a fully searchable database for its local historical newspapers. The Library has on 709 reels of microfilm of local newspapers from 1904 to the present. It is difficult to use the microfilm because of its deteriorating physical condition and outdated format. There is no index; if an exact date is not known, patrons must browse through the microfilm by hand, which is very inefficient. These funds will be



used to digitize and index 709 reels of microfilm of the local newspaper dating from 1904 through 2008. The searchable database will replace the deteriorating microfilm with a searchable format allowing patrons to search articles, pictures, and advertisements by keyword; view information in its historical context; preserve the look and feel of the original format; and print or email articles, photos, or ads of interest. The reference staff will be able to serve the community more effectively, both on-site and remotely, by digitizing and indexing the microfilm. This newspaper database will be an historical asset to library patrons and will provide an accessible and unique service to the community.

DIVISION E—FY2010 MILITARY CONSTRUCTION AND VETERANS AFFAIRS

Project Name: Civil Engineer Maintenance Complex at Mountain Home Air Force Base  
Amount Received: \$690,000  
Account: Air Force Military Construction Account

Recipient: 366th Wing, Mountain Home Air Force Base, Idaho

Recipient's Street Address: 366 Gunfighter Avenue, Ste 107, Mountain Home Air Force Base, Idaho 83648

Description: The civil engineer functions are currently dispersed among 10 WWII-era wood-frame and Korean War-era facilities. Wood frame facilities have a RAC 2 due to failing roof structures and cracked and spreading concrete foundations that have contributed to failing floors and trusses, presenting risk to squadron members who work in the facilities. Currently, employees must evacuate during heavy snowfall or high winds. The fire safety deficiencies are endemic to all buildings, the patchwork electric wiring is maxed out, which increases fire risk, and the HVAC systems can't keep buildings heated and cooled. The dispersed locations and failing conditions of existing facilities adversely affects all daily Civil Engineering operations and negatively impacts the Wing's mission. This funding will be used for planning and design.

Project Name: Logistics Readiness Center  
Amount Received: \$20,000,000  
Account: Air Force Military Construction Account

Recipient: 366th Wing, Mountain Home Air Force Base, Idaho

Recipient's Street Address: 366 Gunfighter Avenue, Ste 107, Mountain Home Air Force Base, Idaho 83648

Description: The existing Logistics Supply is a condemned 53-year-old wooden structure beyond economical repair. The roof is held up with temporary structural supports. The building is evacuated and now 60 percent of base supply functions operate from temporary spaces across base, creating significant delays in troop/equipment mobilization. This negatively impacts the Wing's ability to demolish and relocate from other substandard facilities on base. When funded, the Logistics Readiness Center will provide command and control for all materials in-bound and out-bound, including freight processing, packing, crating, pallet buildup shop, and provide bulk and bin storage. The facility will also support secure storage, an armory, and have administrative areas.

I appreciate the opportunity to provide a list of congressionally-directed projects in my dis-

trict that have received funding in the Conference Report accompanying H.R. 3288, the FY2010 Consolidated Appropriations Act and provide an explanation of my support for them.

#### COMMEMORATING THE 60TH ANNIVERSARY OF VOICE OF AMERICA IN UKRAINE

#### HON. ROBERT WEXLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. WEXLER. Madam Speaker, I rise today to recognize the 60th anniversary of Voice of America's Ukrainian Service, which is on December 11, 2009.

As members of Congress know, Voice of America is the largest U.S. international broadcaster and plays a critically important role globally, broadcasting 1,500 hours a week of programming through various media forms spanning news, information, and educational and cultural topics, and reaching an audience of over 130 million people worldwide. Since 1942, Voice of America has filled a critical gap in regions of the world where freedom of the press is limited or does not exist.

Today, Voice of America facilitates the free-flow of information globally. It is particularly important in Ukraine, where Voice of America will be celebrating its 60 years of service.

Voice of America has been essential to advancing democratic freedoms through the free-flow of information and supporting the development of democratic institutions in Eastern Europe, including Ukraine. On the front lines of international broadcasting, VOA has provided a critical outlet for the dissemination of free, uncensored news and information throughout Ukraine in multiple languages and formats. Today close to five million Ukrainians access Voice of America's services each week. VOA's Ukrainian broadcasts have also provided valuable information to the Ukrainian people as they continue their political, economic, and democratic reform efforts and build a stronger civil society.

Today there are still many countries that do not enjoy freedom of the Press, which is an essential component of a functioning and successful democracy. Unconscionably there are governments that continue to deny their populations this basic liberty, creating conditions in which media and members of the press face censorship, intimidation, persecution, or far worse.

Voice of America is essential to American and international efforts to change the dynamics of press freedom and human rights. To that end, I want to praise VOA and its dedicated staff that have worked diligently in Ukraine, and around the globe, to promote and facilitate the free and unfettered flow of information, opinions, and ideas.

Once again, I commend Voice of America on its 60 years of promoting freedom of information in Ukraine. I also want to congratulate VOA Ukrainian Service for its efforts and leadership in successfully fulfilling VOA's core mission to "promote freedom and democracy and to enhance understanding through multimedia communication of accurate, objective, bal-

anced news, information, and other programming about America and the world to audiences overseas."

#### A TRIBUTE TO HERO K. TAMAKLOE

#### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. TOWNS. Madam Speaker, I rise today in recognition of Hero K. Tamakloe who emigrated from Togo in 1988. Mr. Tamakloe has held many jobs in New York. He's worked as a cab driver, and interned with Woodhull Hospital after working on behalf of the Togo Embassy at the United Nations. Finally, after attending York College, majoring in economics, Mr. Tamakloe decided to apply for work as a teacher with the Department of Education.

Tamakloe was assigned to P.S. 95 Q in Hollis as a substitute teacher, where he worked for two years before taking over YMCA of Greater New York's "Virtual Y" program which serves over 300 students in an after school program. Currently, Mr. Tamakloe is a YMCA of Greater New York employee and is assigned to DYCD (Department of Youth & Community Development) at New York City Housing Authority Beacon Satellite at Bushwick-Hylan and Sumner Community centers in the North Brooklyn area.

Mr. Tamakloe is regarded as one of the strongest off-site YMCA after school Directors in New York City, a reputation complimented by the awards he received. Mr. Tamakloe credits the staff, parents, teachers, mentors and volunteers who helped him to keep the After School and Beacon Programs running smoothly.

Madam Speaker, I urge my colleagues to join me in recognizing the aptly named Hero K. Tamakloe.

#### IN PRAISE OF THE TRANS-ATLANTIC LEGISLATORS' DIALOGUE MEETINGS HELD LAST WEEKEND IN NEW YORK CITY

#### HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. BERMAN. Madam Speaker, I would like to call the attention of my colleagues in the Congress to a successful meeting of the Transatlantic Legislators' Dialogue, TLD, in New York City from December 4-7, 2009. Chairwoman SHELLEY BERKLEY led a strong bipartisan delegation, which included Vice-Chairman CLIFF STEARNS, Vice-Chairman JIM COSTA, GARY ACKERMAN, XAVIER BECERRA, DENNIS CARDOZA, JOHN DUNCAN, Jr., ELIOT ENGEL, VIRGINIA FOXX, BART GORDON, JAY INSLEE, SHEILA JACKSON-LEE, RON KLEIN and LORETTA SANCHEZ. I wish to recognize these members for their thoughtful contributions to an informed and productive exchange of views with Members of the European Parliament.

The Transatlantic Legislators' Dialogue serves as the formal response of the European Parliament and the U.S. Congress to the

commitment in the New Transatlantic Agenda of 1995 to enhance legislative ties between the European Union and the United States. The TLD involves biannual meetings between American and European legislators in order to foster transatlantic discourse and exchange views on topics of mutual interest. Given the recent adoption of the Lisbon Treaty and the additional powers it provides to the European Parliament, it is even more important that legislators engage in this dialogue in order to seek joint solutions to the pressing issues facing citizens on both sides of the Atlantic.

Participants at the New York meeting held extensive discussions about the financial crisis and international trade. The debate was informed by presentations from the Obama administration, including Michael Froman, Deputy National Security Adviser for International Economic Affairs, and Mark Sobel, Acting Assistant Secretary for International Affairs at Treasury. The TLD emphasized the need for a strong and coordinated transatlantic policy response, while reiterating the importance of the Transatlantic Economic Council, TEC, as a framework for cooperation.

Considerable attention was paid to foreign policy issues. TLD participants engaged in vigorous debate about the Middle East, hearing the administration's perspective from Jeffrey Feltman, Assistant Secretary for Near Eastern Affairs. Other foreign policy debates focused on Afghanistan and Pakistan, the Iranian nuclear threat, relations with Russia, and the Balkans. These deliberations were further enhanced by the delegation's meetings on the final day of the TLD at the United Nations with Ambassador Susan Rice and Under-Secretary-General for Political Affairs B. Lynn Pascoe.

In addition, the delegates talked about the challenge of climate change and energy security with Jon Wellinghoff, Chairman of the Federal Energy Regulatory Commission. They also discussed a range of civil liberties issues, including American travel regulations and President Obama's efforts to close Guantanamo.

In conclusion, I submit the joint statement that was agreed upon by American and European legislators at the 67th TLD meeting held in New York. This document emphasizes the importance of continued transatlantic dialogue and cooperation in jointly addressing current financial and foreign policy challenges

TRANSATLANTIC LEGISLATORS' DIALOGUE, 67TH MEETING OF DELEGATIONS FROM THE EUROPEAN PARLIAMENT AND THE UNITED STATES CONGRESS, JOINT STATEMENT

(By Shelley Berkley, Cliff Stearns, Jim Costa, Elmar Brok, Sarah Ludford, and Niki Tzavela)

We, the Members of the European Parliament and the United States House of Representatives, held our 67th Interparliamentary meeting (Transatlantic Legislators' Dialogue) in New York City, from 4-7 December 2009.

Building on the joint statement issued following our last meeting in Prague on 18-20 April 2009, we reasserted the importance of regular dialogue on the pressing political, social and economic challenges that affect citizens on both sides of the Atlantic. We agreed to report back to our parent bodies on the content and outcome of our discussions in New York, with an emphasis on the areas

where joint efforts are likely to produce positive outcomes.

The Transatlantic Legislators' Dialogue appreciated the Lisbon treaty's entry into force, with its enhancement of the powers and competences of the European Parliament in areas such as International Trade and Justice and Home Affairs, as well as the appointment of an EU President and High Representative. We expressed our desire to continue building on the political momentum created by the election of new administrations in Europe and the United States in order to further strengthen the transatlantic relationship.

We called for continued collaboration between legislators in the U.S. Congress and the European Parliament on legislation and issues of common concern, formalising lines of communication and information-sharing between EU and U.S. legislators to promote compatible legislation reflecting transatlantic cooperation through the work of the committees, in full respect for each side's sovereignty.

We discussed a wide array of international political questions such as the situations in the Middle East, Afghanistan/Pakistan, the Balkans, Russia and Iran's nuclear programme.

We also examined a wide array of issues of common interest, including global concerns relating to Energy and Climate Change, Financial Services and International Trade. We examined how the United States and the European Union could best cooperate in matters of Civil Liberties and Justice and Home Affairs.

Our conclusions are as follows:

#### INTERNATIONAL POLITICAL ISSUES

(a) Peace in the Middle East requires a durable ceasefire, an immediate and unconditional end to terrorist attacks on Israel, a functioning and effective government in the Palestinian Territories and the resumption of the obligations under the roadmap, including an end to incitement and a solution for the question of settlements. The goal is a secure Jewish state of Israel and a viable Palestinian state, living side by side.

(b) We held a strong debate exchanging a wide array of views between and within the delegations on the strategy for Afghanistan/Pakistan announced by President Obama on 1 December 2009, which provided a new impetus for renewed international commitment to confronting the ongoing challenges of security, terrorism, governance, corruption and socio-economic reconstruction. We look forward to the international conference on Afghanistan that will be held on 28 January 2010 under the auspices of the UN. The EU and the U.S. should enhance their cooperation and support, foster burden-sharing, work to improve the coordination and effectiveness of Provincial Reconstruction Teams (PRTs), and seek to help build critical infrastructure across Afghanistan. Maintaining the stability and cooperation of Pakistan is equally important as well.

(c) On Iran, the dialogue noted the recent, troubling moves by the Iranian Government regarding its nuclear programme, affirmed that a nuclear armed Iran is unacceptable and expressed its concern about the human rights situation in the country. We urge the leaders on both sides of the Atlantic to develop a common policy and unite the international community to meet this threat, including strong sanctions, if it continues to fail to comply with its international obligations in the nuclear area.

(d) Relations with Russia should involve constructive cooperation on challenges and

threats, including security matters, disarmament and non-proliferation, along with respect for democratic principles including human rights standards, and adherence to international law. The dialogue expressed concerns about Russia's continued failure to comply with the 2008 ceasefire agreements with Georgia negotiated by French President Sarkozy, as well as the potential for another energy dispute with Ukraine this winter. We also cited the need to enhance mutual trust between the transatlantic partners and Russia. We welcome the ongoing U.S.-Russia negotiations on arms reduction and look forward to Russia's membership in the WTO, once those negotiations are satisfactorily completed, with all its legal obligations.

(e) Challenges remain in our efforts to integrate the Western Balkans into a united Europe. Cooperation between the United States and the European Union remains the most effective way to encourage political and economic development in Kosovo as well as to facilitate constitutional reform in Bosnia, and ensure respect for the rule of law, including cooperation with the International Criminal Tribunal for Yugoslavia, throughout the region.

#### ENERGY AND CLIMATE CHANGE

We agreed that the Copenhagen Conference is one of the biggest challenges for international cooperation. We welcomed the announcement of President Obama's personal involvement in the COP-15 Summit in Copenhagen.

We discussed the common goal to provide the necessary stimulus for sustainable economic growth, promoting green technologies and creating new jobs.

We discussed how the EU and the U.S. could work together to reach an international agreement to reduce greenhouse gas emissions by setting ambitious reduction targets for industrialised countries and identifiable actions by developing countries. We discussed cap-and-trade systems and the need to avoid incompatible emission trading systems to pave the way to a transatlantic, and ultimately a global carbon market. We noted the link between tackling climate change and addressing energy security and economic growth, recognizing that the fight against climate change could also be an opportunity to create new jobs and sustain economic growth.

We welcomed the creation of a new EU-U.S. Energy Council at the last EU-U.S. Summit in order to strengthen the dialogue on strategic energy issues of mutual interest, foster cooperation on energy policies and further improve research collaboration on sustainable and clean energy technologies. We look forward to the Energy Council deliberations feeding the TEC process and we consider this as another area where the TLD can develop further.

#### FINANCIAL CRISIS

We examined the consequences of the global economic and financial turmoil. We agreed that the crisis requires a strong and coordinated policy response by the U.S. and the EU. Recovery plans currently being adopted are critical in mitigating the effects of the crisis: approaches chosen should be compatible, strengthen financial supervision to ensure confidence in the system, avoid protectionist measures, and avoid distortions of competition in the transatlantic marketplace.

We discussed the role of international cooperation in financial regulation and supervision, including better crisis prevention and management, and agreed that the EU and

U.S. should cooperate on the reform of international financial institutions.

We are pleased that the G-20 leaders have decided to give the emerging countries, within the International Monetary Fund, a position commensurate with their weight in today's global economy so as to ensure support for the developing world and to achieve the Millennium Development Goals.

#### CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

We welcomed the "Washington Declaration" on 28 October 2009 on enhancing transatlantic cooperation in the area of Justice, Freedom and Security within a context of respect for human rights and civil liberties. We expressed the hope that it will provide a framework to replace the ad hoc approach of the last decade on data collection and sharing arrangements (PNR, SWIFT, MoUs linked to visa waiver, etc.) with a more strategic approach of law enforcement and judicial cooperation through the Mutual Legal Assistance and Extradition Agreements and through developing an agreement on data protection.

We discussed President Obama's desire to close the Guantanamo detention facility within a year, taking note of the offer by several European countries to accept Guantanamo inmates and encouraging the U.S. and the EU to continue seeking joint solutions to combat terrorism.

The dialogue also discussed the EU-U.S. negotiations to extend the Visa Waiver Programme to the remaining EU member states. We hope that the U.S. visa waiver programme will be extended to all EU citizens as soon as possible, when the criteria have been met. An exchange of views took place on the recent adoption of the U.S. Travel Promotion Act.

In light of the concerns about the Safe Port Act raised by port operators and the trade community, in particular with respect to the cost/benefit ratio of the scanning requirement's possible negative effects on competitiveness and on transatlantic trade flows, we were of the view that the U.S. Administration should re-examine this legislation.

#### INTERNATIONAL TRADE AND WTO NEGOTIATIONS

We agreed that trade is as central to the EU-U.S. relationship as it is to world recovery. We call upon the European Commission and the United States to redouble their efforts to bring the Doha Round of world trade talks to a successful conclusion.

We believe that international trade can make a contribution to the restoration of world economic growth and that work to integrate and harmonise EU and U.S. trade practices will lead to a global improvement in living standards and will help secure quality jobs in both the European Union and in the United States.

We believe that participation by Congress and the European Parliament in the Parliamentary Conference of the WTO and in its Steering Committee would enhance cooperation at a global level. We, therefore, call on the leadership of both bodies to take appropriate steps in order to allow us to collaborate in this context.

#### DEVELOPMENT OF TRANSATLANTIC ECONOMIC COUNCIL

We reiterated our commitment to the Transatlantic Economic Council (TEC), stressing its utility as a framework to achieve a barrier-free market and for macro-economic cooperation between both partners. We welcomed the results of the meeting held on 27 October, particularly the extended dialogue between the Administrations with

legislators that identified past challenges and future opportunities. We discussed progress made over the past year in promoting transatlantic economic integration, including investment, accounting standards, regulatory issues, the safety of imported products, and the enforcement of intellectual property rights.

As we told our Administrations during the recent TEC meeting, transatlantic economic cooperation must be more accountable and transparent. In order to help achieve this objective, the schedules of TEC meetings, agendas, roadmaps and progress reports should be agreed upon between the core stakeholders as early as possible and then made public. Such measures are crucial to developing a clear and transparent process for setting the agenda of the TEC, extending the TEC to new sectors, and establishing a roadmap. We continued to encourage the EU and U.S. executive branches to facilitate more active participation by members of the U.S. Congress and the European Parliament in the TEC process, in particular via the TLD, especially for a pre-legislative dialogue between the respective committees of Congress and the European Parliament. TLD members should be full partners in the Transatlantic Economic and Energy Councils.

We note that on the European side, responsibility for coordinating the TEC will pass from the European Commission's Directorate-General for Enterprise and Industry to its Directorate-General for Trade. We believe that this can provide a new impetus toward removing barriers to trade and investment and on fostering competitiveness in the transatlantic market.

#### STRENGTHENING THE TLD

We agreed that a working group should come up as soon as possible with a list of concrete proposals for the further work of the TLD. We noted the recent document written by the Atlantic Council of the United States along with several other policy think tanks, entitled "Shoulder to Shoulder: Forging a Strategic U.S.-EU Partnership." We supported several of the recommendations in the document and will use them as a starting point. For example:

U.S. Members of the TLD should be drawn from both House and Senate. U.S. House members should be appointed by the Speaker of the House.

The U.S. Congress should open an office in Brussels. The office would service the TLD and monitor legislation affecting U.S. interests. We noted the European Parliament is opening an office in Washington in January 2010.

The TLD should convene a joint consultative committee on the extraterritorial implications of domestic legislation; and focus regular exchanges on upstream regulatory legislation.

The TLD should hold joint hearings and conduct joint study tours to areas of common concern, for instance to the Middle East.

The U.S. Congress and the European Parliament should ensure regular contacts between appropriate staff, not simply in foreign affairs-related work but across the board in key areas of mutual engagement.

The TLD should spearhead a new generation of internships in Congressional and European Parliament offices. Each Congressional office should offer to host one intern from the EU; each European Parliament office should offer to host one intern from the United States.

In conclusion, we reaffirmed our commitment to strengthening the transatlantic re-

lationship and working in partnership to solve common challenges. We pledged to continue improving the effectiveness of our dialogue in order to realize the full potential of our invaluable interparliamentary relationship, as well as to ensure the relevance of the TLD's work to the European Parliament and the United States Congress.

#### RECOGNIZING BETTY SALTER FOR RECEIVING THE HABITAT FOR HUMANITY INTERNATIONAL LIFETIME ACHIEVEMENT AWARD

#### HON. JEFF MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. MILLER of Florida. Madam Speaker, I rise today to recognize Betty Salter upon being awarded the Habitat for Humanity International Lifetime Achievement Award. Betty has dedicated her life to serving others, and I am proud to honor her service and commitment to the community.

Betty Salter is one of the founders of the Pensacola Habitat for Humanity and has served on the Board of Directors for 28 years. In the early years of the Pensacola affiliate, Betty served as chairman of the Family Selection Committee. In the late 1980's, when the affiliate could not afford to hire a director, she answered the call and volunteered as the Executive Director of Pensacola Habitat. Twenty years later, Betty remains the volunteer Executive Director. She and her husband James, also a volunteer, work six days a week building houses for low income families.

When Betty took over as Executive Director, the Pensacola Habitat for Humanity had built a total of four homes. Five years later, under Betty's leadership, house production jumped to twenty per year. Today, the affiliate builds between 55 and 60 homes each year. Betty's enthusiasm, energy, and generosity have motivated thousands of volunteers in our community to donate their time and their money in support of Habitat for Humanity. In 2004 and 2005, Betty helped lead the Pensacola affiliate through Hurricanes Ivan and Dennis, making sure projects continued as scheduled.

In addition to her service with Habitat for Humanity, Betty has been dedicated to all forms of housing assistance over the years. She served on the Board of Directors for Methodist Homes of Alabama and West Florida. She also served on the Board of the Children's Services Center for over twenty years. Betty has been awarded numerous honors over the years from many charity organizations. This year, Habitat for Humanity chose Betty as one of only four volunteers to award the first Habitat for Humanity International Lifetime Achievement Award.

Madam Speaker, on behalf of the United States Congress, I am honored to recognize Betty Salter for her service to the people of Northwest Florida. She is a dedicated community servant who has sacrificed so much for others in need. My wife Vicki and I wish all the best for continued success to Betty and her husband James, children Gail and Jane, grandchildren, great-grandchildren, and entire extended family.

TRIBUTE TO LOVELY HILL  
BAPTIST ASSOCIATION

**HON. JAMES E. CLYBURN**

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. CLYBURN. Madam Speaker, I rise today to pay tribute to the Lovely Hill Baptist Association in recognition and celebration of its rich history and tremendous impact in South Carolina. On December 12, 2009 this 108-year-old organization will celebrate Founders' Day for the very first time.

This organization held its first meeting in 1901 at Lovely Hill Baptist Church in Smoaks, South Carolina. Three years later, they were chartered under the name of Lovely Hill Baptist Educational Congress to reflect their mission to provide for the education of African American youth who weren't allowed to attend public schools. In 1918 the group purchased more than 34 acres to build the first school for black children in the St. George area. Once public schools were integrated, the land was used for the county fair.

In 1932, the organization's mission had grown, and to broaden its scope, officially became known as the Lovely Hill Baptist Association. Sixty years later, Lovely Hill Baptist Association was incorporated, and today, 22 churches are members. In 1999, the association broke ground for the construction of a new conference center on the site of the original school. Construction was completed in 2005, and today the facility provides a much needed center for community activities in St. George and surrounding areas.

The association has several auxiliaries including the Sunday School Congress of Christian Education, the Lovely Hill Women's Auxiliary/Young Women's Auxiliary, the Ushers' Convention, the Brotherhood Convention, and the Youth Convention.

Over the years, a number of moderators have served the Association faithfully—Reverends Cogger H. Haygood, J.M. Marshall, S.D. Rickenbacker, and T.E. Sanders. The current moderator of the Association is my good friend, Reverend Dr. S.B. Marshall, who is ably assisted by the 1st vice-moderator, Reverend McKinley Ravenel, and 2nd vice-moderator, Reverend Floyd Wright.

Madam Speaker, I ask you and my colleagues to join me today in recognizing this organization that has contributed so much to the faith community in South Carolina. For more than a century, the Lovely Hill Baptist Association has provided excellent spiritual leadership and Christian education to the citizens of my congressional district. I applaud their rich history and significant contributions to countless numbers of my constituents. And I congratulate them on their inaugural Founders' Day and wish them Godspeed!

TRIBUTE TO DR. A. ZACHARY  
YAMBA

**HON. DONALD M. PAYNE**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. PAYNE. Madam Speaker, I would like to ask my colleagues here in the United States House of Representatives to join me as I rise to honor and congratulate Dr. A. Zachary Yamba on his retirement from Essex County College. He is the longest serving college president in the State of New Jersey, and the longest sitting President of a predominantly black serving institution of higher education in the nation.

After serving 29 years as President, Dr. Yamba will retire December 4, 2009. Under Dr. Yamba's leadership, Essex County College has experienced unprecedented stability and growth. Enrollment at the College has increased from 7,500 students in 1980 to a record 25,000 students in 2009.

Within a year of his appointment, Essex County College was awarded full accreditation for a 10 year period, a status that was reaffirmed in 1991 and 2001. Over the next 29 years Dr. Yamba demonstrated a commitment to providing quality education to under-represented populations, and ultimately redefined the role of urban higher education in the State of New Jersey and the nation.

Dr. Yamba has positioned Essex County College to be one of the major factors in the movement to grant students of color greater access to higher education. Through his efforts, Essex County College stands in the top 1% of the nation for awarding African American Associate degrees. In addition, Essex County College is the number one Community College in New Jersey for awarding African American Associate degrees and is the number one institution in New Jersey for educating African American students.

Dr. Yamba's inter-generational influence has made an indelible mark on the educational tapestry of the City of Newark, and the State New Jersey. Dr. Yamba became a beacon of hope, accountability and excellence for the mission of urban community colleges. Without his contribution, it is clear that Essex County College and urban community colleges everywhere, would not be as dynamic or academically sound as they are today. He is Regent Emeritus on the Board of Regents of Seton Hall University, was inducted into its Athletic Hall of Fame (Soccer) and has also been awarded an honorary doctorate degree. Additionally, he holds honorary degrees from Rutgers University and the University for Development Students in Ghana.

Madam Speaker, I know my colleagues agree that Dr. Yamba has made a significant impact on the educational system in New Jersey, and the nation. He will leave a lasting impression on those who were fortunate enough to benefit from his guidance. I am honored to have worked with him for a number of years, and I wish him a wonderful retirement.

CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE FOR H.R. 3963

**HON. BENNIE G. THOMPSON**

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. THOMPSON of Mississippi. Madam Speaker, in accordance with the House Report 111–345, I submit the Congressional Budget Office Cost Estimate for H.R. 3963.

DECEMBER 1, 2009.

Hon. BENNIE G. THOMPSON,  
*Chairman, Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3963, the Criminal Investigative Training Restoration Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 3963—Criminal Investigative Training Restoration Act*

H.R. 3963 would direct the Federal Air Marshal Service (FAMS) to require newly hired marshals to complete a training program in criminal investigative techniques. The bill would authorize the appropriation of at least \$3 million in each of fiscal years 2010 and 2011 for that purpose.

Based on information from DHS about the anticipated number of new employees and costs to train them, CBO estimates that \$6 million would be sufficient to establish and operate the proposed training program. Assuming appropriation of the necessary amounts, CBO estimates that fully funding H.R. 3963 would cost \$2 million in 2010 and \$6 million over the 2010–2014 period. Enacting the bill would not affect direct spending or revenues.

H.R. 3963 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

A TRIBUTE TO MR. FRANK G.  
FORGIONE, SR.

**HON. STENY H. HOYER**

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. HOYER. Madam Speaker, I rise today to pay tribute to a longtime constituent of mine, Frank G. Forgione, Sr., for his outstanding dedication to music, service, and country.

From his earliest days, Frank—the son of two musicians—demonstrated an appreciation and recognition of the power of music. At age 11 he began studying music with Frank Holt, a percussionist for noted bandmaster and composer John Philip Sousa. At the encouragement of his instructors, he auditioned and was accepted into the Navy School of Music here in Washington in 1938.

In December 1941, Frank was stationed at Pearl Harbor aboard the USS *Oglala*. During the attack of December 7, the *Oglala* fell victim to the Japanese attack and sank. Fortunately, Frank was able to make it to a dock. He often said that every day he lived after that was a gift.

In 1951, he became head of the percussion department at his alma mater, the Navy School of Music. Just 10 years later, he founded and led the U.S. Navy Special Show Band—the first Navy Show Band—on a tour in South America. Called the Navy's Goodwill Ambassadors, the band toured through South America during a period of unrest.

When the band encountered anti-American sentiment or threats at their shows, Frank directed the band to perform, believing that the universality of music would be enough to win over the crowd. More often than not, his instincts proved correct. The band went on to make several more tours throughout South America and the rest of the world.

Frank Forgione's service did not go unnoticed. He became the first musician since John Philip Sousa to receive the Secretary of the Navy's Commendation Medal.

In 1972, Frank retired with the rank of Chief Warrant Officer. Retirement did not ebb his desire to serve. Inspired by his tours in South America, Frank dedicated himself to relieving the poverty he witnessed while on the continent. For the next 16 years, he enlisted many national corporations to donate food, educational materials, medicine, and other essential supplies to help improve the living conditions for those less fortunate.

In addition, Frank continued fulfilling his love of music. He created the Fort Washington Continentals, an award-winning youth drum corps located in Prince Georges County. The corps was selected to lead Washington's Bicentennial Parade.

At age 70, Frank became bandmaster for the New York Military Academy in Cornwall-on-Hudson, touring extensively throughout the United States, Europe, and Australia. While there he was given the honorary rank of Army Colonel. He retired again in 2005 at the age of 87. Though Frank passed away on July 27, 2009, it is undeniable that his spirit and appreciation for music have remained with those he touched throughout his life.

Madam Speaker, Frank G. Forgione, Sr. was blessed with the gift of music and committed to serving others. He helped to make the U.S. Navy, the State of Maryland, and communities throughout the world a better place. I urge my colleagues to join with me in paying tribute to this extraordinary individual for a life well lived and in offering sincerest condolences to his friends and family on their loss.

HONORING DALE E. HANINGTON

**HON. MICHAEL H. MICHAUD**

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. MICHAUD. Madam Speaker, I rise today to recognize the accomplishments of Dale Hanington of Benton, ME.

Dale Hanington has served the trucking industry for the past two decades, with the last 17 as the president and CEO of the Maine Motor Transport Association, MMTA. During his long and distinguished career, Dale has admirably represented the transportation industry by promoting highway safety and tirelessly advocating for sound public policy affecting members of the MMTA.

Dale's insistence on integrity and the honest sincerity of his approach has gained him the respect of those who have worked with him, both in the trucking industry and during his career with the Maine State Police. It is his unwavering character and consistent advocacy for highway safety that led to his nomination by the Governor to serve on every Maine's Motor Carrier Review Board since its inception. Dale has never taken this responsibility lightly, and has always dedicated his time and expertise to the group's role of reviewing the records of motor carriers with significant and repeated violations and ensuring that proper steps are taken to mitigate safety risks.

His many accomplishments while at the MMTA include increasing the association's strength to over 1,200 companies, as well as adding valuable services for the benefit of the membership. On a personal note, Dale has been a long time and trusted adviser of mine when it comes to the issue of truck weights in Maine. He has worked tirelessly with me and the entire Maine congressional delegation to advocate for a fix to the problem. We are getting closer to a permanent solution and we have Dale and his advocacy to thank for it.

Prior to his leadership at the MMTA, Dale graduated from the Northwestern Traffic Institute and served for 20 years with the Maine State Police, achieving the rank of lieutenant by the end of his career. He is actively involved in community and fraternal organizations such as the Freemasons, the Order of the Eastern Star, the Order of the Amaranth and he spent many years as a Scout Master for the Boy Scouts. Dale and his wife Jean are also very active in the First Baptist Church of Fairfield.

Madam Speaker, please join me in honoring Dale Hanington for his life of dedication and service to his community and his country.

HONORING THE LIFE OF JOHN  
WARREN COOKE

**HON. FRANK R. WOLF**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. WOLF. Madam Speaker, I rise to share with our colleagues the recent passing of John Warren Cooke, former speaker of the Virginia House of Delegates. He died on November 28, 2009, at the age of 94.

Born on February 28, 1915, in Mathews, Virginia, Speaker Cooke had a long history of service to Virginia, spending almost 4 decades in the House of Delegates from 1942 to 1980. After serving as the Democratic majority leader for 12 years, he became Speaker in 1968. He was well regarded on both sides of the aisle and considered a true gentleman.

After retiring from the Virginia House of Delegates, Speaker Cooke returned to his home-

town to continue serving as the publisher of the Gloucester-Mathews Gazette Journal, as he had done since 1954.

Speaker Cooke's father, Major Giles B. Cooke, served on the general staff of General Robert E. Lee during the Civil War. As a 26-year-old, Major Cooke was on Lee's staff at Appomattox.

As the ninth generation of his family to serve in the Virginia General Assembly and one of the last living Americans with a father in the Civil War, Speaker Cooke will surely be missed by the people of the Commonwealth of Virginia.

I submit an obituary for Speaker Cooke published in The Washington Post on December 2.

[From the Washington Post, Dec. 2, 2009]

COURTLY, POWERFUL SPEAKER OF VA. HOUSE  
FOR 12 YEARS

(By Matt Schudel)

John Warren Cooke, 94, who served 12 years as the quietly influential speaker of the Virginia House of Delegates, died Nov. 28 at his home in the Mathews County town of Gloucester. The cause of death could not be learned.

Mr. Cooke, the last member of the Virginia legislature who was the son of a Confederate veteran, was the Democratic majority leader in the House of Delegates for 12 years before becoming speaker in 1968. He exercised his authority with a courtly demeanor and a gentle hand but was, as described in a 1979 Washington Post article, "one of the state's most powerful but little-noticed officials."

He served in the House of Delegates from 1942 to 1980, when Virginia was struggling with integration and changing from its Democratic, rural roots to a more urban and Republican-leaning state. Among other achievements, Mr. Cooke helped bring a new bipartisan spirit to Richmond by appointing Republicans to key committees for the first time in the legislature's history.

Until 1969, Virginia's legislators had no offices and conducted their business from their desks and briefcases. As speaker, Mr. Cooke had absolute authority to appoint the 100 members of the House to committees as he saw fit. His committee choices, usually based on seniority, could affect the direction and tone of legislation and whether it reached the full House for a vote.

Mr. Cooke, known as "John Warren," was well liked and was praised by his colleagues as "the soul of fairness."

A 1970 Post story said Mr. Cooke's "geniality" and "quick dry wit" served him well in politics: "He guides smoothly and skillfully, he is courteous, he is a gentleman down to his toes—and he is very, very popular."

Mr. Cooke was considered a possible gubernatorial candidate in 1969 and 1973, but he bowed out of the races to remain in the House, representing a Tidewater district north of Williamsburg.

In 1972, as the Democratic speaker, he helped arrange a compromise between contentious factions of the Democratic-controlled legislature and Republican governor Linwood Holton to institute a sweeping reorganization of the state government.

John Warren Cooke was born Feb. 28, 1915, in Mathews, Va. His father, who was 76 when his son was born, was an Episcopal priest who had served on Gen. Robert E. Lee's staff during the Civil War.

Mr. Cooke attended the Virginia Military Institute and returned to his home town to

work for the Gloucester-Mathews Gazette-Journal. He was publisher of the weekly newspaper from 1954 until March of this year and was president of the old Tidewater Baseball League.

Survivors include his wife of 62 years, Anne Brown Rawn Cooke of Mathews; and two children, Giles Buckner Cooke III of Williamsburg and Elsa VanNess Verbyla of Mathews.

**HONORING THE 25TH ANNIVERSARY OF THE UNIVERSITY OF MIAMI'S HISPANIC-AMERICAN CULTURAL INSTITUTE**

**HON. ILEANA ROS-LEHTINEN**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Ms. ROS-LEHTINEN. Madam Speaker, I would like to congratulate the Hispanic-American Cultural Institute of the Koubek Center of the University of Miami on their 25th anniversary.

The Hispanic-American Cultural Institute is part of the University of Miami's Division of Continuing and International Education, which was founded in 1984 by Mr. Pablo Chao.

The Institute's primary mission is to offer cultural and academic services to elderly professionals who wish to remain active. The good work done by the Institute has helped countless individuals in our South Florida community. The Institute has offered conferences in various academic disciplines, which have been hosted by recognized educators, writers and leaders of the Hispanic community.

I congratulate the extraordinary leadership of the center's president for the past 10 years, Mr. Manuel I. Muñiz, and Director Chao on the Institute's 25th anniversary. The Hispanic-American Cultural Institute is a valued part of our community. I am sure that the Institute will continue to allow individuals to pursue their academic dreams regardless of age, as well as be a forum where the brightest minds of the Hispanic community can shine.

**RECOGNIZING THE RETIREMENT OF JERRY EUBANKS**

**HON. JEFF MILLER**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. MILLER of Florida. Madam Speaker, I rise today to recognize Mr. Jerry Eubanks upon his retirement from the United States National Park Service. Jerry has been a lifelong public servant, and I am humbled to honor his service and commitment.

A native of McCool, Mississippi, Jerry joined the National Park Service in 1960 after graduating from Mississippi State University with a degree in Civil Engineering. Since joining the Park Service, he has worked across the country from Missouri to California to Virginia to preserve and protect America's national parks. In 1976, Jerry became Assistant Superintendent of the Great Smoky Mountains National Park, Tennessee and North Carolina.

Jerry moved to the Gulf Coast in 1984 to serve as Superintendent of the Gulf Islands National Seashore, where he has remained ever since.

As Superintendent of the Gulf Islands National Seashore, Jerry has worked tirelessly to ensure the protection and viability of our area's natural resources and beauty. Over the past 25 years, he has led the park through numerous organizational and operational changes, resulting in substantial natural, cultural, and recreational program improvements. Among his many successes, Jerry helped lead recovery efforts during several damaging hurricanes including Hurricane Ivan in 2004 and Hurricane Katrina in 2005. He was able to bring operations back online quickly after the storms, ensuring the repair and protection of damaged resources and the restoration of major infrastructure. For his efforts over the course of his career, Jerry has received numerous awards for exemplary service including the Department of the Interior Meritorious Service Award in 2000.

Madam Speaker, on behalf of the United States Congress, I am honored to recognize Jerry Eubanks for his service to Northwest Florida. He is a dedicated community leader who will be sorely missed after his retirement. My wife Vicki and I wish all the best for continued success to Jerry and his wife Anne, his children, grandchildren, and entire extended family.

**CONGRATULATING DENNIS K. BURKE ON HIS INVESTITURE AS THE UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA**

**HON. HARRY E. MITCHELL**

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. MITCHELL. Madam Speaker, I rise today to congratulate Dennis K. Burke on his investiture as the United States Attorney for the District of Arizona.

I have had the honor of knowing and working with Dennis for many years on numerous issues. I have supreme confidence that his long and distinguished law enforcement career and record of public service will serve Arizona's 8 million residents extremely well as he faces his newest and most important challenge.

Most recently, Dennis held one of the most important behind-the-scenes roles in Arizona state government as Chief of Staff for Governor Janet Napolitano. He also assisted Napolitano in her transition to Secretary of Homeland Security, serving as a senior advisor. He also worked in the Arizona Attorney General's Office and as an Assistant U.S. Attorney in the District of Arizona, where he prosecuted drug trafficking cases and organized crime. In addition, Dennis has served in the Department of Justice, as a staff member on the Senate Judiciary Committee and at the White House.

Because of this truly impressive record of accomplishment and service, I was elated when President Barack Obama nominated Dennis earlier this year. Madame Speaker,

please join me in congratulating Dennis Burke and wishing him well as he takes on the challenge of leading the District of Arizona as its newest U.S. Attorney.

**HONORING TROUSDALE COUNTY HIGH SCHOOL YELLOW JACKETS ON WINNING THE 2009 TSSAA CLASS 2A FOOTBALL STATE CHAMPIONSHIP**

**HON. BART GORDON**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. GORDON of Tennessee. Madam Speaker, I rise today to recognize the 2009 Trousdale County High School Yellow Jackets for winning the TSSAA Class 2A State Football Championship.

I congratulate these young men for their hard work and dedication. It takes teamwork and sacrifice from each individual for a team to succeed. The Yellow Jackets 12-1 season ended with them defeating the Buccaneers 13-7 in the Blue Cross Bowl on Saturday.

I commend Trousdale County High School Head Coach Kevin Creasy and Assistant Coaches Jackie Dillehay, Jason Dobbs, Brandon Eden, Hal Hailey, Ben Johnson, Adam Keeton, Steve McClain, and Ronnie White.

I congratulate each player of the 2009 Class 2A State Champion Yellow Jacket Football Team: T.J. Seay, Jordan Harper, Tacola Seay, Hunter Murphree, Craig Brown, Dre Crenshaw, Brent Ford, Dillon Young, Joe Sanders, Devon Turczyn, Seth Calhoun, Josh Payne, Mack Sanders, Tyler Edwards, Marcelly Smith, Joey Cox, Garrett Crafton, Dakota Stovall, Demarius Smith, Kale Satterfield, Victor Hardwick, Spencer Minor, Alex Gregory, Kyle Gregory, Austin Bode, Chase Roberson, Zach Scruggs, Joseph Phillips, Kyle Satterfield, Mitch Merryman, Cody Belcher, Baylor DeLeusomme, Marty Bottom, Shawn Melton, Hunter Kelley, Michael Harper, David Minor, Jordan Holder, Ned Dias, Koryay Smith, and Ben Stadter.

**HONORING JOHN WARREN COOKE**

**HON. ROBERT J. WITTMAN**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. WITTMAN. Madam Speaker, I rise to share with our colleagues the recent passing of John Warren Cooke, former speaker of the Virginia House of Delegates.

On November 28, 2009, I and many others around the Commonwealth were saddened to hear of the passing of former Speaker of the House of Delegates, John Warren Cooke.

Speaker Cooke served in the House of Delegates, representing much of the Middle Peninsula from 1942-79 and was its Speaker from 1968 until his retirement.

His dedication and service touched countless citizens of the Commonwealth not only through his work in the General Assembly, but also as publisher of the Gloucester-Mathews Gazette-Journal.



Our thoughts and prayers are with Speaker Cooke's family as we all mourn his passing.

HONORING TEXAS ATTORNEY  
DAVID GROVE

**HON. TED POE**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. POE of Texas. Madam Speaker, today the Second District of Texas recognizes attorney David Grove for being awarded the Mickey F. Mehaffy Award from the Jefferson County Bar Association, given each year to honor an attorney for their exceptional pro bono work. He has worked tirelessly to help less fortunate citizens find representation in the court of law.

David was born in Midland and attended the Baylor University School of Law. In 1978, after spending a summer as a law clerk in Beaumont, he returned to Jefferson County as an Assistant District Attorney. He joined a private firm 6 years later and started his solo practice in 1999.

David always donated his time and attention to pro bono work, however, he saw the need for it escalate after the double shot of Hurricane Rita in 2005 and Hurricane Ike in 2008. Both of these hurricanes caused immense damage across Southeast Texas and Southwest Louisiana. This left many residents with damage claims against insurance companies who could not afford representation.

David is a leading advocate for the indigent, making sure they are treated fairly. He also donates a large amount of time to helping families through divorces or child custody cases. He realizes that some people do not have the resources available to defend themselves, their family, or their home, and he makes sure they have equal representation.

Madam Speaker, on behalf of the Second Congressional District and all of Southeast Texas, I want to congratulate David Grove for this wonderful accomplishment. Through his diligent efforts and dedication he has given a voice to many who thought they had none.

EARMARK DECLARATION

**HON. SPENCER BACHUS**

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. BACHUS. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding funding that I requested as part of the H.R. 3288, the Consolidated Appropriations Act, 2010.

Requesting Member: Congressman SPENCER BACHUS

Bill Number: H.R. 3288—the Consolidated Appropriations Act, 2010

Account: Department of Justice, Office of Justice Programs, Juvenile Justice

Legal Name of Requesting Entity: Alabama Department of Public Safety

Address of Requesting Entity: Post Office Box 1511 Montgomery AL, 36102-1511

Description of Request: Provide \$150,000 for efforts to target the investigation, arrest, and prosecution of child sexual predators in the State of Alabama. Funding will be used for additional personnel and equipment. These funds will allow the investigation and prosecution of child sexual exploitation. The FY 1998 Justice Appropriations Act directed DOJ to create a national network of state and local law enforcement cyber units to investigate cases of child sexual exploitation; this funding will help the State of Alabama to fulfill that mission. The project's total budget is \$500,000. Specifically within the budget, \$225,000 will go toward permanent personnel salaries, \$110,600 for fringe benefits, \$75,000 for travel and training and \$25,000 for equipment. This request is consistent with the intended and authorized purpose of the Department of Justice, Office of Justice Programs—Juvenile Justice Account. The Alabama Department of Public Safety will meet or exceed all statutory requirements for matching funds where applicable.

Requesting Member: Congressman SPENCER BACHUS

Bill Number: H.R. 3288—the Consolidated Appropriations Act, 2010

Account: Department of Justice, Department of Justice, OJP—Byrne Discretionary Grants

Legal Name of Requesting Entity: Alabama Department of Public Safety

Address of Requesting Entity: Post Office Box 1511 Montgomery AL, 36102-1511

Description of Request: Provide \$1,000,000 for the Alabama Department of Public Safety/Alabama Bureau of Investigation Cyber Crimes Unit, Alabama Fusion Center and the University of Alabama at Birmingham will partner with Alabama District Attorneys Association in a multi-pronged approach to investigate and prosecute financial cyber crimes within Alabama. Staff will be hired to conduct computer research and monitor the phishing sites, train law enforcement agencies in analysis and investigative techniques as related to phishing, and conduct analysis and investigation into leads generated by the UAB Computer Forensics Department. This project will protect citizens from predatory actions such as cyber scams. Not only will more criminals be brought to justice but the victims will have a better chance of recovering losses. This will help protect financial institutions against fraud and lessen potential demands on the FDIC fund. The project's total budget is \$3,215,585. Specifically within the budget, for the Alabama District Attorney's Association \$225,000 will go toward personnel, \$154,334 for fringe benefits, \$60,000 for travel, \$75,000 for supplies, \$237,100 for equipment and \$150,000 for other expenses; for the University of Alabama at Birmingham Association \$364,639 will go toward personnel, \$65,659 for fringe benefits, \$50,000 for travel, \$51,000 for tuition and health insurance, \$210,000 for equipment and \$289,997 indirect costs; and for the Alabama Department of Public Safety \$238,968 will go toward personnel, \$103,981 for fringe benefits, \$60,907 for travel, \$50,000 for supplies, \$200,000 for equipment and \$80,000 for other expenses. This request is consistent with the intended and authorized purpose of the Department of Justice, Office of Justice Programs—Ju Byrne Discretionary Grants. The

Alabama Department of Public Safety will meet or exceed all statutory requirements for matching funds where applicable.

Requesting Member: Congressman SPENCER BACHUS

Bill Number: H.R. 3288—the Consolidated Appropriations Act, 2010

Account: Department of Justice, Department of Justice, COPS-Meth

Legal Name of Requesting Entity: Alabama District Attorney's Association—Office of Prosecution Services

Address of Requesting Entity: 515 South Perry Street Montgomery AL, 36104

Description of Request: Zerometh is Alabama's reaction to the destructive force of today's meth epidemic. Its purpose is to expose meth and its deadly consequences to teens and young adults (12-24). The goal is to stop a potential first-time user from ever trying the drug, while encouraging everyone to look for the warning signs and support treatment. The funding will be used to purchase media and develop presentations. Meth use is a national epidemic that requires attention at all levels, but education will be the critical step to slowing down the rate of addiction to the powerful job. Zerometh has a distinctly federal goal in its mission to educate young people as to the dangers of Meth and the impact it can have on their life. The project's total budget is \$1,000,000. Specifically within the budget, \$830,000 will go toward advertising and media expenses, \$50,000 for meth education presentations, \$55,000 for administration and training and \$65,000 for equipment, supplies and printing. This request is consistent with the intended and authorized purpose of the Department of Justice, COPS-Meth Account. The Alabama District Attorney's Association—Office of Prosecution Services will meet or exceed all statutory requirements for matching funds where applicable.

EARMARK DECLARATION

**HON. JO ANN EMERSON**

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mrs. EMERSON. Madam Speaker, pursuant to the House Republican standards on earmarks, I am submitting the following information in regards to H.R. 3288.

Requesting Member: Rep. JO ANN EMERSON

Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102-0270

Description of Request: Provide an earmark of \$650,000 for an environmental study, engineering design work, and construction work on Route 25 in Jackson, Missouri. The funds will be used to alleviate traffic and dangerous conditions on Route 25 between Jackson Trail and the city limits of Jackson, Missouri. The State of Missouri will provide 20% match. All federal funds received will be spent on Route 25 in Jackson, Missouri and will not be transferred to another project.



Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102-0270

Description of Request: Provide an earmark of \$500,000 for the expansion of four-lane highway south of Poplar Bluff, Missouri to south of Route 160. The funds would also be used to rehabilitate dangerous intersections on Route 67 at U.S. 160, as well as Missouri Highway 158. The State of Missouri will provide 20% match. All federal funds received will be spent on this project and will not be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102-0270

Description of Request: Provide an earmark of \$500,000 to rehabilitate the Chester Bridge which transverses the Mississippi River from Perry County, Missouri to Randolph County, Illinois. The bridge is vital to the region's transportation needs. The State of Missouri will provide 20% to match the federal contribution. All federal funds received will be spent on rehabilitation of the Chester Bridge and will not be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: Economic Development Initiatives

Requesting Entity: Washington County, Missouri

Address of Requesting Entity: 102 N. Missouri Street, Potosi, MO 63664

Description of Request: Provide an earmark of \$300,000 for renovations to make the Washington County, Missouri building accessible to individuals with disabilities. The Washington County building is outdated; many sections are inaccessible to individuals in wheelchairs. The federal funds would provide the means for Washington County to bring the building in compliance with the Americans with Disabilities Act.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: Surface Transportation Priorities

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102-0270

Description of Request: Provide an earmark of \$500,000 for right of way improvements and engineering design to the narrow portion of Route 63 in Phelps and Maries Counties. This project will improve the overall safety of the roadway. The State of Missouri will provide 20% to match the federal contribution. All federal funds received will be spent on right of way improvements and engineering design. None of these funds will be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: Transportation & Community & System Preservation

Requesting Entity: Missouri Department of Transportation

Address of Requesting Entity: 105 West Capitol, P.O. Box 270, Jefferson City, MO 65102-0270

Description of Request: Provide an earmark of \$500,000 to improve shoulders, as well as widen and straighten curves along Route 34 in Cape Girardeau and Bollinger Counties. This segment of Route 34 is heavily traveled by commuters and there are serious safety concerns with the roadway. The State of Missouri will provide 20% to match the federal contribution. All federal funds received will be spent on improving Route 34. None of these funds will be transferred to another project.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: OJP-Byrne

Requesting Entity: Southeast Missouri Network Against Sexual Violence

Address of Requesting Entity: #69 Doctors' Park, Suite C, Cape Girardeau, MO 63703

Description of Request: To provide an earmark of \$200,000 to the Southeast Missouri Network Against Sexual Violence (SEMO NASV) to equip and staff an office in the Bootheel of Missouri to assist victims of domestic and sexual violence, as well as support local law enforcement investigations. SEMO NASV provides services to over 700 adult and child victims of sexual and physical abuse. The organization serves a 10-county region in Southeastern Missouri. It plays a vital role in the process of convicting sex offenders and provides counseling and other services to victims. The funds will be spent as follows: \$126,000 for personnel, \$59,000 for equipment, \$12,000 for office space, and \$3,000 for training and travel.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: COPS-Meth

Requesting Entity: Southeast Missouri Drug Task Force

Address of Requesting Entity: P.O. Box 1763, Sikeston, Missouri 63801

Description of Request: Provide an earmark of \$200,000 to supplement and support operations of the Southeast Missouri Drug Task Force (SEMO DTF). SEMO DTF is a multi-jurisdictional drug task force unit that serves a 10-county area of Southeast Missouri. The unit conducts both covert and overt investigations into the possession, manufacture, and distribution of controlled substances. The funds will be spent as follows: \$32,000 for personnel, \$89,000 for overtime compensation, \$66,000 for equipment, \$4,500 for telecommunication services, \$6,000 for supplies, and \$2,500 for personnel expenses.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: COPS-Meth

Requesting Entity: Mineral Area Drug Task Force/City of Leadington, Missouri

Address of Requesting Entity: P.O. Box 349, Farmington, MO 63640

Description of Request: Provide an earmark of \$200,000 to assist with funding Mineral Area Drug Task Force's enforcement efforts in locating, dismantling, and reducing the number of methamphetamine laboratories within the area of their operation. Approximately \$124,000 is for the purchase of equipment to

assist officers in their investigations, \$36,000 is for overtime for officers assigned to methamphetamine investigations, \$16,000 is for office and field supplies to assist officers in the preparation of reports and to provide supplies to facilitate the processing of clandestine labs, and \$24,000 is for travel and training to equip officers with the knowledge to efficiently perform their duties.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: COPS-Meth

Requesting Entity: Howell County, Missouri

Address of Requesting Entity: 1106 Missouri Avenue, West Plains, Missouri 65775

Description of Request: Provide an earmark of \$250,000 for the South Central Drug Task Force to enhance drug enforcement in project area. South Central Drug Task Force is a multi-jurisdictional drug enforcement task force, and an existing HIDTA initiative within Midwest HIDTA, comprised of federal, state, and local law enforcement officers including nine Sheriff's Departments, Municipal Police Departments, Missouri State Highway Patrol, United States Forest Service, and United States Park Service. Approximately \$50,000 in overtime funding for existing narcotics officers; \$122,500 for technical surveillance and reporting equipment; \$65,000 for civilian personnel/Intel analyst; and \$12,500 for consumable supplies.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: COPS-Law Enforcement Technology

Requesting Entity: St. Francois County, Missouri

Address of Requesting Entity: 102 Industrial Drive, Park Hills, MO 63601

Description of Request: Provide an earmark for the Southeast Missouri Law Enforcement District for \$697,000 project for the following counties of the 8th Congressional District to acquire and greatly benefit from availability of a Law Enforcement Visual Tool: Iron, Washington, and Bollinger. Federal, state, and local agencies will have a common tool to jointly manage emergencies. The project enhances public safety, officer safety, by placing sophisticated geospatial intelligence information in the hands of emergency responders. The funding would be used as follows: \$12,000 for project administration, \$675,000 for image libraries, and \$10,000 for equipment.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: HRSA

Legal Name of Requesting Entity: Ozarks Medical Center

Address of Requesting Entity: P.O. Box 1100, West Plains, MO 65775

Description of Request: Provide an earmark of \$500,000 for equipment in a new and expanded Emergency Department.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: HRSA

Legal Name of Requesting Entity: Southeast Missouri State University

Address of Requesting Entity: One University Plaza, MS 1900, Cape Girardeau, MO 63701

Description of Request: Provide an earmark of \$205,000 for the Southeast Health on

Wheels (SHOW) Mobile Program. The SHOW Mobile initiative is a health literacy, health promotional and disease prevention and primary health and dental care program designed to serve Southeast Missouri. The program is administered by the College of Health and Human Services of Southeast Missouri State University.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: Higher Education FIPSE

Legal Name of Requesting Entity: Southeast Missouri State University

Address of Requesting Entity: One University Plaza, Cape Girardeau, MO 63701

Description of Request: Provide an earmark of \$500,000 to expand the services of Kent Library into a modern Information Commons concept and to link the same technical and support services that this renovation will provide to the students, faculty, and staff on the main campus, to the students and faculty on the River Campus, four regional campuses and the community within the University's service region.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: Higher Education FIPSE

Legal Name of Requesting Entity: Three Rivers Community College

Address of Requesting Entity: 2080 Three Rivers Boulevard, Poplar Bluff, MO 63901

Description of Request: Provide an earmark of \$215,000 to upgrade the delivery and management of on-line learning system. This enhancement will make it possible to rapidly expand education/training programs, and the initiation of on-line degree programs.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: HHS, Social Services

Legal Name of Requesting Entity: Susanna Wesley Family Learning Center, Inc.

Address of Requesting Entity: 207 N. Washington St., Box 249, East Prairie, MO 63845

Description of Request: Provide an earmark of \$250,000 for the Susanna Wesley Family Learning Center's Positive Alternative System Strategies to Work, or "Pass to Work," which will provide families with activities designed to emphasize good academic and healthy physical performance for at-risk children. In addition, this program will offer employment training, career counseling, and health behavior advice.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: HRSA

Legal Name of Requesting Entity: Missouri State University

Address of Requesting Entity: 901 S. National, Springfield, MO 65897

Description of Request: Provide an earmark of \$250,000 for nursing and allied technology enhancements, specifically to create nursing clinical simulation laboratories at the West Plains campus to support their nursing and allied health programs.

Requesting Member: Rep. JO ANN EMERSON  
Bill Number: H.R. 3288

Account: SBA—Salaries and Expenses

Legal Name of Requesting Entity: University of Missouri System, Columbia, MO

Address of Requesting Entity: University Hall, 1100 Carrie Francke Drive, Columbia MO, 65211

Description of Request: \$249,000 is provided for the University of Missouri's Extension Community Economic and Entrepreneurial Development (ExCEED) program. The funding will be used to promote economic development in the Mississippi River Hills Region and the Ozark Heritage Region. Over a three year period, funding will be utilized to expand the current part-time Executive Director position in the Mississippi River Hills Region to full-time, as well as establishing a part-time youth entrepreneurship coordinator and equipment in this rural area. Additionally, over three years this funding will allow their Ozark Heritage Region to expand the entrepreneurship education and business counseling.

Requesting Member: JO ANN EMERSON  
Bill Number: H.R. 3288

Account: SBA—Salaries and Expenses

Legal Name of Requesting Entity: Downton West Plains, Inc., West Plains, MO

Address of Requesting Entity: 401 Jefferson Ave., West Plains, MO 65775

Description of Request: \$500,000 is provided for Downton West Plains, Inc., a 501(c)(3) corporation, to complete the exterior and interior renovation of a 100-year-old building which will house a Small Business Incubator. These funds will be matched with \$1,144,000 in local, state, and other federal funds. The Ozarks Small Business Incubator, when completed, will provide personalized assistance to small business entrepreneurs by supporting their efforts with business related education, financial guidance, business plan development, mentoring, and access to tangible resources such as building space, shipping dock, and shared office equipment.

Requesting Member: JO ANN EMERSON  
Bill Number: H.R. 3288

Account: SBA—Salaries and Expenses

Legal Name of Requesting Entity: Girl Scouts of the USA, New York, NY

Address of Requesting Entity: 420 Fifth Avenue, New York, NY 10018

Description of Request: \$305,875 is provided to the Girl Scouts of the USA for a national program to improve financial literacy. Federal funds would help launch the first phase of the Improving Girls' Financial Literacy project—a comprehensive, effective and universal financial literacy curriculum for delivery to 2.6 million Girl Scouts of all ages, and corresponding materials for their 900,000 adult volunteers. Funds would support planning; research to ensure that the program is age-appropriate, effective and evidence based; development and creation of materials for the six levels of Girl Scouting; corresponding facilitator guides to help the volunteers and other activities to ensure that this program is successful.

THE UNIVERSAL DECLARATION OF  
HUMAN RIGHTS HAS NO RESET  
BUTTON

**HON. JAMES P. McGOVERN**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 10, 2009

Mr. McGOVERN. Madam Speaker, I rise today to commemorate the adoption of the

Universal Declaration of Human Rights exactly 61 years ago. This document was born on the ashes of a global war which saw the murder of over six million Jewish people during the Holocaust and the deaths of over 60 million people around the world.

Just when it seemed that humanity was irrevocably lost in the global devastation of this conflict, some of the greatest leaders of their time, such as Eleanor Roosevelt, came together at the United Nations to enshrine a common human bond of individual dreams and aspirations protected by defined rights in the Universal Declaration of Human Rights. While formally a resolution, not a treaty, its provisions are part of every legally binding international instrument which sets out to protect human rights.

Today, 61 years after its adoption, the catalog of defined rights has withstood the test of time, but the full implementation of those rights is as elusive as ever. The language and the context in which we discuss these rights today may have changed, but the urgency and importance to protect them globally has not. Terms such as internet freedom, global war on terror, environmental devastation, water-boarding, Guantanamo, corporate social responsibility, food security, women's rights and the Responsibility to Protect are just a few of those modern terms which put in sharp focus the relevance of those rights set forth in this document 61 years ago.

During that period, the United States was a leader among nations in defining and defending those rights and spearheaded international consensus and agreements. More recently, however, we seem to have either forgotten the hard-won lessons of that period or at least have misapplied them.

Instead of holding on tighter to our beliefs and commitments after the 9/11 attacks, we were willing to consider these sacred values impediments to our national sovereignty and infringements on our right to defend our country. Instead of heeding the admonition of one of the greatest American Presidents—another Roosevelt—who led this nation through the Great Depression and defeated the most evil regime in human history, that “the only thing we have to fear is fear itself,” we abandoned our human rights commitments at home. Faced with an unknown and secretive enemy, fear drove us to suspend important legal protections, to re-define the meaning of torture, to engage in extraordinary renditions of individuals utilizing poor human rights records of other countries, and we created with Abu Ghraib and Guantanamo monuments to that failed policy that still serve as recruiting tools for extremists all over the world. All the while we harshly criticized friends and foes alike if they disagreed with us, and set on an international course of democracy promotion, which was of the “either you are with us, or you are against us” nature.

To regain our international standing and reputation, and in recognition of the fact that we can only defeat terrorism with the support of the relevant local populations, we have recently undertaken significant diplomatic efforts to repair our international relationships. We have announced the closure of Guantanamo, and have ruled out enhanced interrogation techniques, have passed hate crimes legislation at home and have joined the Human

Rights Council. While important parts of these objectives have yet to be achieved, the American public and the international community have rightfully applauded these important and difficult initiatives.

But while we have made domestic human rights gains, we now stand to lose our human rights bearings abroad. With ambiguous statements and actions the United States has sent signals to repressive regimes that human rights may no longer feature prominently in our foreign relations and that there is the possibility of a "fresh start," which can be triggered by a magical "reset button." While I strongly support the direct engagement of repressive regimes around the globe, I am equally convinced that past human rights records cannot be "reset," or glossed over. The Universal Declaration does not provide for a "reset button" for gross human rights violations, nor do any of the international human rights treaties. Repressive regimes will only seriously engage the United States and the international community on important human rights issues if we take a principled stand, both in public and in private, which is based on accountability. We owe justice to human rights victims, be that in Sudan, Burma, China, North Korea, Russia or anywhere else in the world.

#### PERSONAL EXPLANATION

#### HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Ms. WOOLSEY. Madam Speaker, on December 9, 2009, I was unavoidably detained and was unable to record my vote for rollcall No. 945 and rollcall No. 946. Had I been present I would have voted:

Rollcall No. 945: "yes"—Providing for consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives, markets, and for other purposes

Rollcall No. 946: "yes"—To eliminate an unused lighthouse reservation, provide management consistency by bringing the rocks and small islands along the coast of Orange County, California, and meet the original congressional intent of preserving Orange County's rocks and small islands, and for other purposes

#### INTRODUCING THE COMMON SENSE TAX RELIEF ACT OF 2009

#### HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. FRELINGHUYSEN. Madam Speaker, I rise today to offer legislation to address the needs of Americans across the country who have been unnecessarily burdened by taxes, entitled "The Common Sense Tax Relief Act of 2009."

As you all are well aware, Americans are extremely concerned with the current state of the economy and they are looking to their government to foster an economic environment that promotes growth.

At a time when Congress is considering health care and energy bills that will significantly raise taxes on all Americans, we must be cognizant of the fact that overall tax bills keep rising.

Over the past year, unprecedented spending on government programs through the so-called "stimulus bill" and the bloated Omnibus Appropriations Act of 2009 has produced, at best, modest signs of recovery.

Americans have felt a great deal of uncertainty as their jobs remain in jeopardy and they are unsure as to what additional financial burden will be levied upon them by the federal government.

I represent a state that currently has the highest tax burden in the nation, and to add insult to injury, New Jersey receives the least amount of federal dollars back from Washington per taxpayer.

Every weekend that I am back in my district, I hear from constituents who have had enough with being taxed by a government that has made no effort to follow these constituents lead in getting their financial houses in order.

For this reason, I have offered the Common Sense Tax Relief Act of 2009. This legislation seeks to make permanent several widely supported tax credits that will directly benefit families and small businesses seeking relief, clarity and certainly in their financial planning.

To assist families, this bill will make permanent the child tax credit and the marriage penalty relief tax credit. To assist in the advancement of education, this bill will make permanent the teacher tax deduction, and the tuition deduction. And to assist small business and families seeking to plan their financial futures, the bill makes permanent the current capital gains and dividends tax rates and eliminates the "death tax."

Madam Speaker, I urge the immediate consideration of this important legislation that will help propel our economy forward and provide significant relief to all of our constituents.

#### EARMARK DECLARATION

#### HON. GREGG HARPER

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. HARPER. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding earmarks I received as part of H.R. 3288—Consolidated Appropriations Act, 2010.

MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Monticello Readiness Center

Project Amount: \$14,350,000

Agency: Army National Guard

Account: MILCON

Recipient and Address: 74 Old Highway 27, Monticello, MS 39654

Description of Request: The Headquarters and Headquarters Company of the 106th Brigade Support Battalion is located in a completely inadequate facility in Monticello, MS. This facility can no longer adequately accommodate a National Guard unit due to its lack of space and the outdated utilities. The existing facility is 55 years old and has been determined to be structurally unsound and infeasible for rehabilitation. Overall, the numerous current deficiencies affect the training of this unit in an adverse manner, in that essential mobilization training cannot be accomplished in a satisfactory manner. FY10 Funds will be used to replace the armory.

TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Jackson-Evers International Airport airfield improvements

Project Amount: \$2,375,000

Agency: Federal Aviation Administration

Account: Airport Improvement Program

Recipient and Address: Jackson-Evers International Airport, 100 International Drive, Jackson, MS 39298

Description of Request: Jackson-Evers International Airport is in need of essential airfield infrastructure improvements that involve rehabilitation and replacement of security systems and airfield erosion and drainage systems.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: East Metropolitan Corridor, MS

Project Amount: \$2,750,000

Agency: Federal Highway Administration

Account: Surface Transportation Priorities

Recipient and Address: City of Flowood, P.O. Box 320069, Flowood, MS 39232

Description of Request: Funds will be used to finish pre-construction activities. The East Metropolitan Corridor is 5 miles in length and links Interstate 20, at the Crossgates Interchange in Brandon, MS with Lakeland Drive at its intersection with Old Fannin Road in Flowood, MS.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Lake Harbour Drive, MS

Project Amount: \$1,500,000

Agency: Federal Highway Administration

Account: Surface Transportation Priorities

Recipient and Address: City of Ridgeland, P.O. Box 217, Ridgeland, MS 39158

Description of Request: Construction of the Lake Harbour Drive extension will provide a major east-west corridor through the City of Ridgeland that will traverse the significant physical barriers that now bisect the City and impede safe and efficient access, emergency service, economic development and commercial activity.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: MSU for community planning and development

Project Amount: \$500,000

Agency: Housing and Urban Development

Account: Neighborhood Initiatives  
 Recipient and Address: Mississippi State University, P.O. Box 6301, Mississippi State, MS 39762

Description of Request: FY 10 funds will continue an aggressive program of basic infrastructure improvements on the Mississippi State University main campus in Starkville, Mississippi.

COMMERCE, JUSTICE, SCIENCE AND RELATED AGENCIES, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Expansion of the Research, Technology and Economic Development Park  
 Project Amount: \$6,000,000

Agency: Department of Commerce

Account: National Institute of Standards and Technology

Recipient and Address: Mississippi State University, P.O. Box 6363, Mississippi State, MS 39762

Description of Request: Mississippi State University proposes construction of Phase II of the Research,

Technology and Economic Development Park. This will provide high quality infrastructure together with office and laboratory space for small high technology companies to locate in close proximity to Mississippi State University.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: NOAA Northern Gulf Institute  
 Project Amount: \$4,500,000

Agency: Department of Commerce

Account: NOAA-ORF

Recipient and Address: Mississippi State University, P.O. Box 9627, Mississippi State, MS 39762

Description of Request: The NGI defines the Northern Gulf of Mexico region as the upland and watershed, coastal zone, and coastal ocean areas from the Sabine River, LA in the west to the Suwannee River, FL in the east. The Northern Gulf is a rich and interdependent natural environment of great complexity and is important to the region and the nation. The riverine-dominated Northern Gulf ecosystems are under pressure from increasing population and coastal development, impacts from severe storms and climate variability, inland watershed and coastal wetlands degradation, and many other factors. NGI has chosen an approach to Northern Gulf Region issues, problems and opportunities that is closely aligned with NOAA's strategic and research priorities and its user-community. This approach is science driven, regionally focused, and coordinated with other Gulf of Mexico Basin activities, and seeks whenever appropriate to promote the application of its results to support decision makers and policy development.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: MSU Cyber Crime Initiative and National Consortium for Digital Forensics Training

Project Amount: \$1,500,000

Agency: Department of Justice

Account: OJP-Byrne

Recipient and Address: Mississippi State University, P.O. Box 9637, Mississippi State, MS 39762

Description of Request: The National Forensics Training Center (FTC) provides needed no cost digital forensics investigation training to state and local law enforcement officials nation-wide. Law enforcement students are provided lodging, meals, and training at no cost. The FTC maintains a highly trained instructor staff, two classrooms, and a mobile lab for training purposes. A Full suite of digital forensics short course classes are offered which expose law enforcement and judicial officials to technical techniques in digital investigations and current search and seizure laws applicable to electronic evidence. The project also supports the State of Mississippi Cyber Crime Fusion Center managed by the State Attorney General, a one of a kind Federal/State/Local cooperative effort, addressing cyber crime. Other partners in this effort have included Jackson State University and the University of Mississippi's National Center for Justice and Rule of Law. Since the FTC began operation in late 2005, more than 2100 law enforcement students have participated in its training from 22 states. The demand for this training is increasing every year.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Mississippi State University, Mississippi State, MS, for the development of an early childhood teacher education delivery system

Project Amount: \$750,000

Agency: Department of Education

Account: Elementary and Secondary Education

Recipient and Address: Mississippi State University, Early Childhood Institute, P.O. Box 6013, Mississippi State, MS 39762

Description of Request: Funding would be used to create and pilot a new early childhood teacher delivery system to improve the quality of instruction and prevent attrition of teachers in early care and education centers.

Requesting Member: Congressman GREGG HARPER

Bill Number: H.R. 3288

Project Name: Mississippi Museum of Natural Science Foundation, Jackson, MS for educational outreach programs

Project Amount: \$220,000

Agency: Institute of Museum and Library Services

Account: Museums and Libraries

Recipient and Address: Mississippi Museum of Natural Science Foundation, 2148 Riverside Drive, Jackson, MS 39202

Description of Request: Funding would be used for the acquisition of education outreach vans and equipment so the museum's science literacy programs can reach approximately 120,000 students throughout the state; and for biological database services to assist land managers and economic developers to improve their efficiency and effectiveness by providing tools to streamline planning and permitting processes.

## INTRODUCTION OF SMALL BREWERS' EXCISE TAX BILL

**HON. RICHARD E. NEAL**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. NEAL of Massachusetts. Madam Speaker, I rise today to introduce legislation to promote American jobs. Over 30 years ago, Congress worried that a few industry giants would dominate the domestic beer industry, squeezing out local and regional brewers. In response, Congress reduced the tax rate on beer produced by small brewers. That differential has led to the creation of thousands of craft brewers, who are small business owners and employers in our communities. However, the consolidation at the top of the market has continued.

Today, the two top players in the beer market, which are global companies, control more than 90% of American beer production. Clearly, we need to do more to foster and promote growth for these small, independent American brewers. That is why I am filing legislation today, along with my Committee colleague and friend from Texas, Mr. BRADY, to provide a more graduated rate of excise tax on beer produced domestically by small brewers. Our bill provides two benefits to small brewers. First, for those who produce less than 60,000 barrels per year, the current excise tax rate is cut in half to \$3.50 per barrel. Second, for those who produce more than 60,000 but less than 6 million barrels, still well short of the industry giants, they will enjoy the same tax break on the first 60,000 barrels but will pay a tax rate of \$16 per barrel rather than the current \$18 per barrel on the amount over 60,000 and less than 2 million. Any barrel over that threshold will continue to be taxed at the current \$18 rate.

This legislation has the support of the Brewers Association, representing more than 1,500 small and independent brewers in America, including 85 regional breweries that produce between 15,000 and 2 million barrels per year, 470 microbreweries that produce less than 15,000 barrels per year, and 961 brewpubs that sell 25% or more of their beer on site. These small brewers employ more than 100,000 workers, generating more than \$3 billion in wages. Their dedication to craft brewing has led to a renaissance in flavorful beer here in America and more respect for American brewers abroad. However, they still lack the economies of scale in marketing, advertising, production, promotion and distribution that the giants of the industry enjoy.

As the landscape of the beer market continues to change, we should revisit these tax provisions to provide for further growth of these smaller brewers. We should continue the effort we started more than 30 years ago to nurture a diverse and competitive market and promote small domestic producers to keep this American industry thriving. These are good jobs in our local communities that protect American craftsmanship. I urge our colleagues to join us in this effort.

## EARMARK DECLARATION

**HON. CONNIE MACK**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. MACK. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding earmarks I received as part of H.R. 3288—Consolidated Appropriations Act, FY 2010.

Project Name: Interstate 75/Collier Boulevard/SR 84 Interchange Improvements

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: Federal Highway Administration

Legal Name of Requesting Entity: Florida Department of Transportation

Address of Requesting Entity: 605 Suwannee Street, Tallahassee, Florida 32399

Description of Request/Justification of Federal Funding: \$800,000: The current interchange serves the east Naples area, Golden Gate City, and Marco Island, and is the closest interchange from the east to the City of Naples. The funding will be utilized for capacity improvements at the Interstate 75/Collier Boulevard/SR 84 Interchange and will improve traffic flow in the region.

Project Name: FGCU Impact of Freshwater Flow into Coastal Waters—FGCU Coastal Watershed Institute

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: Higher Education (includes FIPSE)

Legal Name of Requesting Entity: Florida Gulf Coast University

Address of Requesting Entity: 10501 FGCU Blvd., South, Fort Myers, FL 33965

Description of Request/Justification of Federal Funding: \$350,000; Florida's coast is a principal economic driver, attracting millions of tourists and thousands of residents to the coastal communities of Southwest Florida. Proper management of the freshwater that the coastal environment receives is critical to preventing toxic algal blooms and negative impacts on recreational and commercial fisheries. FGCU is requesting federal funding for their Coastal Watershed Institute to address the impacts associated with changes in the freshwater flows into the area. This project is geared to students learning about future management of our fragile ecosystems.

Project Name: Emergency Services Technology, Collier County, Florida

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: DOJ/COPS

Legal Name of Requesting Entity: Collier County, FL

Address of Requesting Entity: 3301 East Tamiami Trail, Naples, Florida 34112

Description of Request/Justification of Federal Funding: \$800,000 will be utilized for the acquisition of public safety technology equipment for the Collier County Emergency Serv-

ices Center. The funding is important because it will help to better equip Collier County's emergency service providers to respond to events that could endanger the safety and citizens of Collier County, Florida.

Project Name: FGCU Law Enforcement and Public Safety

Requesting Member: Congressman CONNIE MACK

Bill Number: H.R. 3288—Consolidated Appropriations Act, FY 2010

Account: DOJ/OJP-Byrne Discretionary Grants

Legal Name of Requesting Entity: Florida Gulf Coast University

Address of Requesting Entity: 10501 FGCU Blvd, South, Fort Myers, Florida 33965

Description of Request/Justification of Federal Funding: \$200,000 will be utilized for the development of tools for training and processing crime scenes for use by law enforcement and public safety officials. This work will be done at the Florida Gulf Coast University in its Law Enforcement and Public Safety Department.

HONORING THE SERVICE AND SACRIFICE OF MARTIN COUNTY, NORTH CAROLINA SHERIFF'S DEPUTY CHARLES DOUGLAS BROWN, JR.

**HON. G.K. BUTTERFIELD**

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. BUTTERFIELD. Madam Speaker, it is with deep sadness that I report that a law officer was killed in the line of duty in my Congressional District on Tuesday, December 8, 2009. Thirty-eight-year-old Martin County Sheriff's Deputy Charles "Charlie" Douglas Brown, Jr. was killed in an exchange of gunfire while on duty.

Funeral services will be held on Saturday, December 12, 2009 as the entire community mourns his untimely death. He is survived by his wife, Cindy, and their two daughters, Morgen and Charlie. He was a member of Maple Grove Christian Church.

Sheriff's Deputy Brown was a U.S. Marine veteran having served in Desert Storm. He served as a member of the U.S. Marines Honor Guard and was recognized with the Elegance Medal. He also assisted with the Katrina disaster in New Orleans, Louisiana and the Tsunami Disaster in Thailand. He was a K9 officer serving with his faithful dog H2.

He had a great love of fishing and hunting, and he was well liked by his fellow officers and throughout the community.

As a nation, we have lost more than 20,000 officers in the line of duty over the course of our history. Mr. Brown was the 115th law officer killed in the line duty this year, and the seventh officer killed in the line of duty in North Carolina.

Despite the constant threats of harm and danger, day after day, and year after year, dedicated professionals, like Mr. Brown, make the sacrifices for their communities, without asking for thanks or praise.

Sheriff's Deputy Brown unwaveringly upheld the values that make this country great—duty

honor, sacrifice. Those values and their sacrifice are a somber reminder that the freedoms that we share do not come without a cost.

He and his fellow officers who will carry on this essential work deserve our strong support and our thankful recognition. Madam Speaker, I ask that my colleagues join me in recognizing Mr. Brown's extraordinary service and sacrifice.

CELEBRATING THE 20TH ANNIVERSARY OF THE FRIENDS OF YALE-NEW HAVEN CHILDREN'S HOSPITAL

**HON. ROSA L. DeLAURO**

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Ms. DeLAURO. Madam Speaker, I rise to honor the wonderful work done by the Friends of Yale-New Haven Children's Hospital, who are celebrating their 20th anniversary this month.

In 1989, a dear friend of mine, the late Dr. Joseph Warshaw, brought together a diverse group of community volunteers in and around Yale-New Haven Children's Hospital to address issues related to children's health, safety, and well-being. In the two decades since, these dedicated volunteers have continued their important work on behalf of the kids and families of Connecticut, contributing thousands of hours of volunteer time and having raised over \$1 million for Yale-New Haven Children's Hospital and the Department of Pediatrics at the Yale School of Medicine.

Through telethons, fundraisers, sports tournaments and other community outreach events, the Friends have worked to raise awareness of and financial support for the important pediatric work done by Yale-New Haven. In addition, they have gone to great lengths to support Yale-New Haven's Emergency Department, the only Level 1 Trauma Center for children in Connecticut, and have fashioned a Pediatric Allocation Committee to distribute funds to worthy projects in the hospital.

The Friends have also helped to fund several very worthwhile programs for the broader community, including We're Special Too!, designed for the siblings of children with chronic illness, and Reach Out & Read (ROR), a literacy program which distributes free books to the children who seek treatment at Yale-New Haven. And for many years I have joined the Friends on Christmas morning, as they have distributed gifts to the kids at Yale-New Haven and helped to ensure that even Connecticut's sick and injured children do not miss out on the joys of the day.

For twenty years, in ways both great and small, the Friends have worked to brighten the lives of children and families in New Haven. On this anniversary, I applaud their efforts and their decades of service, and I look forward to celebrating more anniversaries with them in the years to come.

*December 10, 2009*

EXTENSIONS OF REMARKS, Vol. 155, Pt. 23

**31359**

IN HONOR OF JAMES P.  
MERCREADY

**HON. JOHN H. ADLER**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 10, 2009*

Mr. ADLER of New Jersey. Madam Speaker, I am pleased to have this opportunity to

express my gratitude to Mr. James Mercready for his dedicated and tireless service with the East Dover Fire Company in Toms River, NJ.

Mr. Mercready has selflessly and bravely served the people of Toms River throughout his career and is retiring in January after a lifetime of service. After serving as president of the company for the past six years, he has made important improvements to the Fire

Company and the safety of the town and its people.

I would like to thank Mr. Mercready for his exemplary service. Thank you for all you have done and I wish you a Happy Retirement.

## HOUSE OF REPRESENTATIVES—Friday, December 11, 2009

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Ms. EDWARDS of Maryland).

### DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
December 11, 2009.

I hereby appoint the Honorable DONNA F. EDWARDS to act as Speaker pro tempore on this day.

NANCY PELOSI,  
*Speaker of the House of Representatives.*

### PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer: I waited, I waited for You, Lord, and You stooped down to me.

You heard my cry and drew me from the deadly pit from this miry clay.

You set my feet upon solid rock and helped me make my first steps into the light of a new day.

You put a new song into my mouth and from the depths, O Lord God, I offer You praise.

Amen.

### THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. KLEIN of Florida. Madam Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. KLEIN of Florida. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

### PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from New Jersey (Mr.

LANCE) come forward and lead the House in the Pledge of Allegiance.

Mr. LANCE led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to five requests for 1-minute speeches on each side of the aisle.

### IN PURSUIT OF PEACE

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. Madam Speaker, yesterday our President mused about the inevitability built of war, war's instrumentality in the pursuit of peace, and just wars.

It is important for us to reflect on his words, because once we believe in the inevitability of war, war becomes a self-fulfilling prophecy. Once we are committed to war's instrumentality in pursuit of peace, we begin the Orwellian journey to the semantic netherworld where war is peace, where the momentum of war overwhelms hopes for peace.

And once we wrap doctrines perpetuating war in the arms of justice, we can easily legitimate the wholesale slaughter of innocents. The war against Iraq was based on lies, the wars in Afghanistan and Pakistan based on flawed doctrines of counterinsurgency. War is often not just; sometimes it is just war. And our ability to rethink the terms of our existence, to explore the possibility of peace without war, may well determine whether we end war or war ends us.

### CONGRATULATING SUMMIT HILLTOPPERS

(Mr. LANCE asked and was given permission to address the House for 1 minute.)

Mr. LANCE. Madam Speaker, I rise today to congratulate the Summit Hilltoppers who captured the New Jersey Group 2 North 2 State sectional football title on December 3 at Giants Stadium.

Coached by John Liberato, the Hilltoppers won a 28-19 victory over the Orange Tornadoes. On offense, the

Hilltoppers were led by quarterback Joe Jaskolski and running back Matt Rea. For the game, Jaskolski ran 17 times for 119 yards while completing six pass attempts for 134 yards. Rea finished with 167 yards on the ground and two touchdowns on 16 carries.

The Summit defense was anchored by Pat Birosak, Michael Steinberg, Mike Watts, Ryan O'Malley, Kevin McNany and Danny Feeney, holding Orange to just 19 points.

I ask all of my colleagues to join me in congratulating Coach Liberato and the entire Summit Hilltoppers football team for their victory over Orange to win the State sectional title.

### STOP RECKLESS SPENDING

(Mr. GINGREY of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY of Georgia. Madam Speaker, yesterday this House voted on a 2,500-page spending bill with a price tag of almost a half trillion dollars that we will have to borrow. The majority in this House just doesn't seem to get it. We are in the midst of a recession, with 10 percent unemployment, 15.4 million people out of work. Our Federal deficit is over \$12 trillion, and the Democrats will vote next week to raise that another \$1.8 trillion.

Yet this half-trillion-dollar spending bill, which combines six into one, represents a 12.5 percent spending increase over 2009 and a 24 percent increase over 2008; 24 percent over 2008. I ask, How much of this is real needs of our citizens versus just wants of spendthrift politicians?

Madam Speaker, the Democrats must stop this reckless spending spree. We need to have the ability to make tough choices to get our economy back on track and pass legislation that helps American families looking to make ends meet in these tough times.

### ANTIBIOTICS IN ANIMAL AGRICULTURE

(Mr. BOSWELL asked and was given permission to address the House for 1 minute.)

Mr. BOSWELL. Madam Speaker, the United States has the safest, most plentiful, and most affordable food supply in the world. This abundant food supply didn't happen by accident. The United States has put policies and production practices in place which allows us to continue to feed the world at affordable prices.



However, animal agriculture and those production practices are under attack. Some in Congress would ban the use of antibiotics in animal agriculture. As a lifelong farmer still managing a cow-calf operation in Iowa and former chairman of the Livestock Subcommittee, the use of antibiotics in animal agriculture is an issue I have personally been involved in.

As a livestock producer, I can attest that the industry is committed to using antibiotics responsibly and has developed responsible use guidelines. Producers didn't develop these guidelines because Congress told them to do so. They developed the guidelines because it was the right thing to do for their animals and their consumers.

Those in Congress who would ban the use of antibiotics for nontreatment purposes have a noble goal—improving human health. However, scientific evidence does not exist that this ban would reduce antibiotic resistance in humans. They are looking to penalize an industry without appropriate data to back up their claim.

A 2006 report from the Institute of Food Technologists said “eliminating antibiotic drugs from food animal production may have little positive effect on resistant bacteria that threaten human health.” In fact, eliminating animal antibiotics may be detrimental to public health.

I believe that a ban on non-therapeutic antibiotics in animal agriculture will have detrimental effects, not only on our farmers who feed the world safe and wholesome meat and meat products, but also on public health.

#### UNSUSTAINABLE DEBTS

(Mrs. SCHMIDT asked and was given permission to address the House for 1 minute.)

Mrs. SCHMIDT. Madam Speaker, I rise yet again another day to remind ourselves that this Nation's AAA credit rating is about to be downgraded if we don't stop the spending and continue these unsustainable deficits.

We ran a \$1.4 trillion deficit last year, and we are on the track to do the same this year. Yesterday, this House passed six appropriations bills in an omnibus package with an almost half-a-trillion-dollar price tag. This is 13 percent more than the spending levels of the prior year; 13 percent more, following a bloated trillion-dollar stimulus spending package.

We all want to return our Nation to economic prosperity, but we can't do it and simultaneously run our Nation into a ditch of fiscal financial irresponsibility.

My 1-year-old grandson, Michael, and his generation will never be able to afford the mountains of debt we are accumulating. Moody's Investment Service has warned us to stop it now or lose

our AAA credit rating by 2013. This Congress must get the message. Get the message now. Stop the unnecessary spending.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT

(Mr. HIMES asked and was given permission to address the House for 1 minute.)

Mr. HIMES. Madam Speaker, today when this House passes the Wall Street Reform and Consumer Protection Act, it will take a huge step to the protection of the American citizen, the American taxpayer, and American business. Never again will Wall Street take massive risks with the expectation that they will be bailed out when they fail. Never again will mortgage brokers sell mortgages that they know can't possibly be repaid. Never again will the credit card companies make billions from sowing confusion amongst American consumers.

I have been struck in this debate by how closely what we are doing today mirrors what happened in the 1930s when this Congress created a regulatory structure. The opposition said this would be the end of capitalism, the end of markets. And instead, that reform led to 60 or 70 years of the most intense prosperity the human race has ever seen. Word for word, those charges have been repeated.

They were wrong then, and they are wrong now. What this House does today will be a tremendous step forward for the American people and the American economy.

#### WHERE ARE THE JOBS?

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Madam Speaker, this week I stood with my colleagues to introduce a bill to audit stimulus funds. It is time for Congress to demand answers on behalf of the hardworking taxpayers that we represent.

The misnamed stimulus is one of the largest spending bills in our Nation's history, and it is critical that American taxpayers know the facts. This is the people's money, not the government's money. It is wrong that a well-connected Democrat polster received \$6 million to preserve just three jobs when we could provide jobs for dozens of families. I urge Speaker PELOSI to consider our legislation to ensure full accountability of every dollar spent.

I first sent a letter to the President asking him to implement the recovery panel that the stimulus bill provides. The request went unanswered. Therefore, I introduced a national commission to investigate how many jobs have actually been saved or created. Taxpayers should know, Where's the jobs?

In conclusion, God bless our troops, and we will never forget September the 11th in the global war on terrorism.

#### JOB CREATION

(Mr. KLEIN of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLEIN of Florida. Mr. Speaker, creating jobs in south Florida is one of my top priorities in these challenging economic times. We must find ways to create good jobs in our community and ensure that our small businesses are growing and expanding in order to provide opportunities for work in our local neighborhoods.

There are great success stories that we can build on. One example is TBC Corporation, which is located in my district in Palm Beach Gardens, Florida.

After working closely with the Business Development Board of Palm Beach County, TBC, a leading national supplier and retailer of auto tires, will expand their headquarters and data center to create 50 new, high-quality jobs in our community.

Congratulations to the management of TBC. These are the business models we must support and encourage, and I look forward to working with other local businesses to continue to create good jobs in south Florida.

□ 0915

#### RECOGNIZING CAPTAIN SEAN WELCH, USMC

(Mr. WITTMAN asked and was given permission to address the House for 1 minute.)

Mr. WITTMAN. Mr. Speaker, I rise today to recognize those men and women who give so freely to serve this great Nation, men such as Captain Sean Welch, United States Marine Corps.

In November, America celebrated 234 years of having a United States Marine Corps that defends our precious freedoms at home and serves as the world's 911 force around the globe. We are fortunate to have men and women who are willing to answer the call of duty, time and again, especially in the midst of two wars.

This year I had the pleasure of having one of America's finest serve in my office as a Congressional Military Fellow, Captain Sean Welch. It has been a privilege and an honor to work beside Captain Welch, who lives in Quantico, Virginia, part of Virginia's First Congressional District.

As Thucydides once said, “The society that separates its scholars from its warriors will have its thinking done by cowards and its fighting done by fools.” Fortunately, with men like Captain Sean Welch serving in our Marine Corps, we don't have to worry

about that distinction. He flawlessly balances his operational experience with a heavy intellectual rigor and enthusiasm that was clearly apparent during his year on Capitol Hill. Captain Welch serves as a role model and superb example for society and the marines he leads.

So today, I thank Captain Sean Welch for his leadership, his perpetual service to our Nation, and his exceptional service this year as a Congressional Fellow on Capitol Hill.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The SPEAKER pro tempore (Mr. HIMES). Pursuant to House Resolution 964 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4173.

□ 0916

#### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, with Ms. EDWARDS of Maryland in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose on Thursday, December 10, 2009, amendments en bloc offered by the gentleman from Massachusetts (Mr. FRANK) had been disposed of.

#### AMENDMENT NO. 15 OFFERED BY MR. COHEN

The Acting CHAIR. It is now in order to consider amendment No. 15 printed in House Report 111-370.

Mr. COHEN. Madam Chair, I rise to offer the amendment to the body that is at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Mr. COHEN:  
Page 1126, line 6, strike "subsections" and insert "subsection".  
Page 1126, strike lines 15 through 25.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Tennessee (Mr. COHEN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Tennessee.

Mr. COHEN. I yield myself as much time as I may consume.

I want to thank Chairman FRANK for working with me to include this language in the Wall Street Reform and Consumer Protection Act of 2009.

This amendment would strip a provision permitting the Securities and Ex-

change Commission to delegate regulation of investment advisers to the Financial Industry Regulatory Authority.

In its present form, the bill would give FINRA sweeping rule-making authority over investment advisers which has been under the sole domain of the governmental regulatory agencies. This far-reaching provision would extend FINRA's jurisdiction to Federally registered investment advisory firms that manage almost 80 percent of all advisory firms' assets under management.

FINRA does not have the necessary expertise or experience with investment advisers or the Investment Advisers Act to do the job, and the SEC is best positioned to oversee the investment advisers under the Investment Advisers Act.

There is inherent conflict of interest in having a self-regulatory group that funds this agency and has always been on the side of broker dealers. We cannot afford to outsource key regulating functions to self-regulating organizations that act solely in the best interest of their clients.

In a speech earlier this year, SEC Commissioner Luis Aguilar noted his opposition to establishing a self-regulatory organization for investment advisers because the "SEC should not outsource its mission" and because the SEC "is the only securities regulator with the necessary experience in dealing with a principles-based regime."

I'm concerned that the high level of investor protection provided under the Advisers Act fiduciary duty would be diminished if FINRA were to obtain the additional authority. We should not expend the authority of FINRA to the investment advisory profession.

Again, I urge the passage of this amendment which would keep the SEC as the proper, independent regulator of investment advisers.

I reserve the balance of my time.

Mr. BACHUS. I rise to claim the time in opposition.

The Acting CHAIR. The gentleman from Alabama is recognized for 5 minutes.

Mr. BACHUS. Let me say to the gentleman from Tennessee, let me explain the purpose behind the provision which your amendment seeks to strike. And I say that I would be glad to work with the chairman and with the Member at this time, striking the provision that I inserted in the committee that you objected to, and won't ask for a recorded vote.

So let me explain the background behind this amendment, and I think if we can all work together, I think we can make investors safer and make a better system.

If the body will recall, and the chairman, on December 12 of last year, about a year ago, Bernie Madoff was arrested for committing the largest fi-

nancial fraud in the history of the country. It was a tremendous scam—a \$65 million Ponzi scheme which defrauded nonprofits, universities, and pension funds, and wiped out the savings of literally tens of thousands of families and citizens.

Now, to do this, Bernie Madoff operated two separate entities: one was a broker dealer and one was an investment adviser. The fraud occurred with the investor adviser. That is where the fraud occurred.

The investment adviser was registered with the SEC. The investment adviser, Madoff's investor adviser, was subject to examination by the SEC, but I would point out to the chairman of the full committee and the gentleman from Tennessee they never examined the investor adviser. They never examined it.

Madoff operated a broker-dealer in the same premises and under the same name. And it was examined, was subject to examination by the SEC and by FINRA. I was saying let FINRA go ahead and examine the investment advisers, these dual operations where you have both. FINRA inspected the broker-dealer at least every other year, but the fraud didn't occur there; it occurred in the investment adviser.

FINRA lacked the authority to go in and examine the investor adviser. They couldn't examine it. And my provision I put in the committee said let them be able to, as they examine the broker-dealer, let them go in and look at the books of the investment adviser if you're operating a dual operation. Had they had the right, they would have gone in and they would have discovered this fraud. The SEC, which had the right, never did it.

Now, as I said earlier, maybe there's another solution. The SEC has said we don't want FINRA taking over our jurisdiction. What I'd like to say is, let's make sure the SEC starts doing their job. Let's make sure that they start examining these investment advisers. Someone needs to. The average investment adviser is only examined once every 10 years. Bernie Madoff's investment adviser was never examined. It's the kind of gap in regulation that causes disasters. It causes scams, it causes Bernie Madoffs of the world to get along for decades.

That is why I introduced this amendment, the provision, which we're now striking.

Now, going forward, we at least need to look at this. We need to know that there are 500 or 600 of these investment advisers and broker-dealers, dual operations. And we need to make clear that the SEC, somewhere, that they have the authority to examine both investment advisers and broker-dealers. If they want to perform that mission—and I know one thing the chairman has done; he has added more money for the SEC. I think that is part of the answer,

but I think this committee, the Congress, as we go forward, needs to make sure they do their job. And there was a monumental failure of the SEC, and if they don't do their job or we find they don't and they have the resources, let's give it to someone else.

I yield back the remainder of my time.

Mr. COHEN. I want to thank the gentleman for working with us on the amendment, and I'd like to yield as much time as he needs to the chairman of the full committee, the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. I thank both of my colleagues. And the ranking member is exactly right in the concerns he has expressed, and that is why at the committee, the chairman of the subcommittee—Mr. KANJORSKI and I tentatively agreed to this—we later heard some questions raised, in particular, someone I think for whom we all had an amount of respect, Denise Floyd Crawford, who's the longtime Texas securities administrator who really goes back four or five Texas administrations in a bipartisan way. And on behalf of the North American Securities Administration Association, she raised some concerns. And they were worried that this might, at some point, be too much of a delegation and therefore—and I appreciate the gentleman's comments—we agree with him that we do want to—our goal is to buff up investor protection.

Clearly, there's a role for FINRA. I think we may have gone a little too far in what we accepted in committee. But we're not talking about getting rid of it altogether. So I appreciate the reasonableness of what the gentleman from Alabama has said. It will be our role next year, if this bill passes, to monitor the SEC. I look forward to oversight hearings to make sure they're using their authority. And particularly, how best to allow the SEC to draw on the resources of FINRA will be high on our agenda.

Mr. BACHUS. Will the gentleman yield?

Mr. FRANK. Yes.

Mr. BACHUS. I appreciate that, and I think that is a logical solution to that. And at this time I will support the gentleman's amendment to strike the provision. And as I said when I brought this provision up, I wanted to highlight the fact that this is how Bernie Madoff, you know, he got away with operating these two operations on the same premises, and we need to do the—the regulators need to do a better job, someone, of being able to look across those operations.

Mr. COHEN. I would just like to thank again the gentleman from Alabama. I know it's difficult for him to work with us on this because he is the champion of the SEC, the Crimson Tide of Alabama.

With that, I would like to urge passage of the amendment.

I yield back the remainder of the time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Tennessee (Mr. COHEN).

The amendment was agreed to.

AMENDMENT NO. 16 OFFERED BY MR. PETERS

The Acting CHAIR. It is now in order to consider amendment No. 16 printed in House Report 111-370.

Mr. PETERS. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 16 offered by Mr. PETERS: Page 402, after line 18, insert the following subparagraph:

(E) ADDITIONAL AUTHORIZED ASSESSMENTS.—The Corporation is authorized to conduct risk-based assessments on financial companies in such amount and manner and subject to terms and conditions that the Corporation determines, with the concurrence of the Secretary of the Treasury and the Federal Reserve Board, are necessary to pay any shortfall in the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 that would add to the deficit or national debt, as identified by the Director of the Office of Management and Budget, in consultation with the Director of the Congressional Budget Office pursuant to section 134 of such Act (12 U.S.C. § 5239).

The Acting CHAIRMAN. Pursuant to House Resolution 964, the gentleman from Michigan (Mr. PETERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. PETERS. I yield myself such time as I may consume.

Today we are debating legislation that will end the "too big to fail" doctrine and provide a mechanism for ensuring that in the future, taxpayers will not be asked to foot the bill to clean up Wall Street's mistakes. My amendment improves this legislation by ensuring that taxpayers are not asked to foot the bill for Wall Street's past mistakes as well.

My amendment will firmly establish that the financial industry—not taxpayers—will be responsible for making up any TARP shortfalls, and the TARP program will not add to our deficits or our national debt.

□ 0930

Section 134 of the Emergency Economic Stabilization Act of 2008 requires the President to identify a mechanism for recovering any shortfalls in TARP funds after 5 years so as not to increase the budget deficit or national debt. However, the mechanism for recouping any shortfall is not identified.

H.R. 4173 already empowers the FDIC to make risk-based assessments on the Nation's largest and most systemically risky financial institutions that will be used to create a Systemic Dissolution

Fund used to seize and unwind any failed nonbank financial institution in the future, ensuring that there will be no more ad hoc bailouts of too-big-to-fail institutions.

My amendment would give the FDIC authority to make additional assessments to these same large firms, whose excessive risk-taking caused the current financial crisis, and use those assessments to pay off any TARP shortfalls and ensure that the taxpayers are made whole.

My amendment gives the American taxpayer certainty that all TARP funds will be recouped from the large financial companies that caused this financial crisis. It will allow Congress to show that we have a plan in place for the recoupment of any shortfall, consistent with the promises made during the debate over the Emergency Economic Stabilization Act. It will also ensure that the American public understands that we are not turning the page on TARP, but instead we have a clear and decisive plan for making sure that taxpayers are made whole.

Madam Chair, I reserve the balance of my time.

Mr. HENSARLING. I rise to claim time in opposition.

The Acting CHAIR. The gentleman from Texas is recognized for 5 minutes.

Mr. HENSARLING. I yield myself as much time as I may consume. I rise in opposition to the gentleman's amendment.

If this body really cares about protecting the taxpayer against losses in TARP, they will have an opportunity to show it later today, and that is, vote to end the TARP program. Now we could have a debate about what TARP was, but the more relevant debate is what TARP is. And today, TARP is nothing more than \$700 billion of walking-around money for the administration. It's a \$700 billion revolving bailout fund to advance the administration's political, social and economic agenda.

And if you're concerned about protecting the taxpayer, why would you have a provision that further raids TARP for yet more taxpayer-funded foreclosure mitigation programs which have proven to be abject failures? You spend more taxpayer money on these programs, and foreclosure rates continue to climb and climb and climb. So if you're really serious about protecting taxpayers, put your vote where your sentiment is and vote later today to simply end the TARP program and end the bailouts. But given that the whole reason for being for this bill is a perpetual Wall Street bailout, I suspect, unfortunately, that will not occur.

The second point I would make, Madam Chair, is some of the companies that received funds under the capital purchase program have now repaid them back with interest. So now we

are in the position to tax companies that have proven successful and paid back their funds, tax them for failing companies that didn't pay back theirs. Chrysler and GM received funds under TARP and Ford didn't. So under this, I suppose that we could assess Ford a tax to pay for losses the taxpayers will incur on GM and Chrysler. And we know that GM and Chrysler were defined as "financial institutions" under the TARP statute; therefore, Ford could be taxed under the gentleman's amendment. Is that smart? Is that fair? The answer is no.

This is yet another tax to go on capital. You can't have capitalism without capital. And so we have a \$150 billion tax for the revolving bailout fund; we have an unlimited tax by the new czar to ban and ration consumer credit products that could touch small businesses throughout our Nation. Every time you increase the cost of taxes on capital, you get less lending, you get less credit, more expensive credit. And less credit is fewer jobs.

I would think at a time when our Nation has the highest unemployment rate in a generation that this is an institution that would be trying to create more jobs, trying to create more capital, trying to have small businesses access pools of capital, and all we do is see more legislation and more amendments to make capital less available and more expensive to our small businesses.

This amendment must be rejected.

I reserve the balance of my time.

Mr. PETERS. Madam Chair, I would like to yield 1½ minutes to the gentleman from Michigan (Mr. SCHAUER).

Mr. SCHAUER. Madam Chair, I rise in strong support of the Peters of Michigan amendment and the underlying legislation to reform our financial regulatory system.

For many years, we were told that what is good for Wall Street is good for Main Street, that the benefits are somehow supposed to trickle down. But the only thing the people of Michigan have seen is their hopes and dreams trickle out of reach. Wall Street's collapse has left my State with a 15 percent unemployment rate.

Last fall, Wall Street said they needed to borrow \$700 billion from taxpayers to paper over their losses. Michiganders were forced to open up their wallets to support big Wall Street banks. Unfortunately, these big banks have decided to stop lending to Michigan homeowners and Michigan businesses. Employers can't get loans they need to bring people back to work.

This week, the Treasury said that TARP has performed better than expected, but they still expect to lose taxpayer dollars. We still do not have a guarantee that the bailed-out financial industry will actually repay taxpayers for their loans.

Mr. PETERS has offered an excellent amendment to ensure American tax-

payers will get their money back and that those that created this mess will pick up the tab. This amendment enables the FDIC to make additional assessments on the Nation's largest, most systemically risky financial institutions to pay back this TARP money. This amendment finally puts in place a plan for Wall Street to pay back its loan. This is common sense. Those institutions responsible for the collapse should at least be forced to repay their loans.

Mr. HENSARLING. I continue to reserve my time.

Mr. PETERS. Madam Chair, I would like to yield 1½ minutes to the gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY of Virginia. Madam Chair, with today's action, the House will enact the most significant reform of our Nation's financial system since the Great Depression. These are not decisions we take lightly, but the prolonged recession and the near collapse of the financial market in the fall of 2008 have compelled us to respond.

It will also end the era of taxpayer-funded bailouts. Madam Chairwoman, this amendment offered by my friend and colleague, Mr. PETERS of Michigan, seeks to build on this legislation and will authorize the FDIC to make further assessments on the financial industry to ensure every penny of the TARP loans made to the banks is repaid and help reduce our Nation's debt and burden on the taxpayers.

I urge adoption of the amendment, Madam Chairwoman.

Mr. HENSARLING. I continue to reserve.

The Acting CHAIR. The gentleman from Michigan has 30 seconds remaining.

Mr. PETERS. Madam Chair, the amendment before us is a common-sense attempt to make sure that we recoup to the taxpayers the money that has been loaned to the financial industry. The gentleman from Texas mentions we should just end TARP, but that doesn't relieve us of the fact that we've got \$140 billion that needs to be paid back so that it's not a liability on the taxpayers.

This is a way in which we can recoup the money from the financial institutions, the very institutions that were responsible for bringing this financial meltdown to our country and the problems that have impacted my State and States all across this country. This is a commonsense approach, and I urge adoption.

The Acting CHAIR. The time of the gentleman has expired.

Mr. HENSARLING. Madam Chair, what is common sense is to terminate TARP—stop it before it can spend again. And I hear all this wonderful rhetoric about, well, somehow we are going to tax Wall Street for all of this. But look at the TARP program. Look at the taxpayer-funded foreclosure

mitigation plans, all of which have been abject failures, where the taxpayer receives zero—zero—of his money back.

And so this, again, is just one more way to assess a greater tax, a greater cost on capital when small businesses have seen their credit lines shrunk, withdrawn. Jobs are being lost all over the Nation. And so here is one more idea to, frankly, keep TARP going. And, again, if people want to put their vote where their sentiment is, they will have an opportunity to do it later today. It's a fundamental difference between the two approaches; and that is, our friends on the other side of the aisle still want a perpetual bailout.

As I have said earlier, if there was truth in advertising, the bill before us would be named the "Permanent Wall Street Bailout and Increase Job Losses Through Credit Rationing Act of 2009."

The best way to protect the taxpayer is to end TARP and stop the grab for other programs, not to increase taxes, yet again, on capital that is vitally needed for our small businesses in order to create more jobs.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentleman from Michigan (Mr. PETERS).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. HENSARLING. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 17 OFFERED BY MR. WATT

The Acting CHAIR. It is now in order to consider amendment No. 17 printed in House Report 111-370.

Mr. WATT. I rise to offer the amendment.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 17 offered by Mr. WATT:

Page 772, strike line 12 and all that follows through page 773, line 22, and insert the following:

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments, over a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(2) CERTAIN ACTIVITIES EXCEPTED.—Paragraph (1) shall not apply to—

(A) any motor vehicle dealer to the extent that such motor vehicle dealer engages in any financial activity other than extending credit or leasing exclusively for the purpose of enabling a consumer to purchase, lease, rent, repair, refurbish, maintain, or service a motor vehicle from that motor vehicle dealer; or

(B) any credit transaction involving a person who operates a line of business that involves the extension of retail credit or retail

leases involving motor vehicles, and in which—

- (i) the extension of retail credit or retail leases is provided directly to consumers; and
- (ii) the contracts governing such extensions of retail credit or retail leases are not assigned to a third party finance or leasing source, except on a de minimis basis.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. WATT. Madam Chair, I yield myself 3½ minutes.

Madam Chair, let me say at the outset it is my intention at the end of a short discussion to ask unanimous consent to withdraw the amendment, but I thought it would be enlightening to colleagues and to whoever else might be listening at this time in the morning to talk about some of the practical problems that you have even when there's broad agreement on an issue.

And I will describe the process. Both Mr. CAMPBELL, who is a member of the committee, and I agree that automobile dealers ought to be exempt in their primary duties from the CFPA, the Consumer Financial Protection Agency supervision and what have you. There was broad bipartisan and philosophical agreement on that general proposition in the committee when Mr. CAMPBELL offered his amendment, and there was broad agreement that there were some practical problems with the way the amendment was written; and the chairman delegated to me and to Mr. CAMPBELL the responsibility to try to find the right language. We set about trying to do that, and we have been diligently trying to do that.

Then the practical problems intervened. Other people get their fingers in the pot and suggest different issues that need to be resolved. Mr. CAMPBELL and I, on a Friday night, with him in California and me in North Carolina on our cell phones, have a conversation, and we are right at the verge of reaching an agreement, we think, and we are quibbling about words. Then he gets called away to the USC football game the next day, and I get called away the following day to the Carolina Panthers football game. And then we are right up against the deadline.

Then we find out that the chairman has offered a manager's amendment that deals with part of the problem, but not all of it. We both submitted amendments to the Rules Committee. Mr. CAMPBELL withdraws his amendment, mine is still standing, and we are still talking about the amendment.

And then the automobile dealers, because they don't like my amendment, decide that they need to lobby against it and make it sound as if I'm opposed to what I was in favor of all along.

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So we've been at this for a long time.

And finally, yesterday, Mr. CAMPBELL and I sat down and talked again and decided that we should not allow the perfect to be the enemy of the good. What we have in the bill with the manager's amendment substantially advances the process. We are not the end of the process anyway. The Senate is going to have to deal with this. And both of us are still intent on the philosophy that automobile dealers ought to be exempt from CFPA. We agree on that. And so here we are, and we thought it would be helpful to have this dialogue.

With that, I reserve the balance of my time.

Mr. CAMPBELL. Madam Chair, I rise to claim the time in opposition.

The Acting CHAIR. The gentleman from California is recognized for 5 minutes.

Mr. CAMPBELL. I yield myself such time as I may consume.

You know, maybe I shouldn't have gone to that USC football game because they lost, and so that was rather depressing. I don't know how the Carolina Panthers did, but—

Mr. WATT. They lost, too.

Mr. CAMPBELL. They lost, too. All right. Well, then, both of us didn't have a particularly good weekend.

But as the gentleman from North Carolina (Mr. WATT) described, we've had discussions on this thing, and he has been very helpful and worked very constructively on this. In fact, the language that is in the bill now reflects a number of suggestions that the gentleman from North Carolina made which clarified some things that were, frankly, confusing and conflicting in the bill. So I appreciate Mr. WATT's constructive work on this and all that he has done with this.

And yes, he's right, sometimes these things get very complicated and you sit down and you try and figure out, well, what exactly does this say and are we saying the right thing? But I think we now have reached agreement that what is in the bill is the right thing.

There is broad agreement, as the gentleman from North Carolina suggested, with myself, with him, and broad agreement in this House that automobile dealers, in the normal course of their business, do not lend money and are not financial institutions and should not be subject to the additional regulation of the CFPA. If, however, they do lend money and act like financial institutions, then they will be subject. That is what this bill says. It is the right thing to say, and I think we have reached a good conclusion on this.

I thank the gentleman from North Carolina very much for his very good and constructive work on this.

Madam Chair, I reserve the balance of my time.

Mr. WATT. Madam Chair, I yield 1 minute to the Chair of the committee.

Mr. FRANK of Massachusetts. Madam Chair, I am very appreciative that two of the most constructive members of the committee, the gentleman from North Carolina and the gentleman from California, have been working together on this.

We have a mix here of policy difference, but then also some technical questions. Clearly, there was a difference on whether or not auto dealers should get some kind of exemption. The majority of the committee felt that the auto dealer situation was such—I would think particularly because of the stresses they have unfairly been recently subjected to by the chaos of the auto industry—that they did deserve some.

Once that question was resolved—I was in the minority on that, but it was resolved that they did—there were then technical issues about how to work it out. I am very pleased that two of our most thoughtful members are continuing a collaboration on this.

The manager's amendment had some improvement in this situation that was mutually agreed to, and there is room, I believe, for further conversation and refinement. And so I just want to express, first, my appreciation, and secondly, my willingness, to the extent my role as Chair of the committee would be relevant, to try to effectuate what they work out.

Mr. CAMPBELL. Madam Chair, I continue to reserve.

Mr. WATT. Madam Chair, I will just say in closing that one of the other wonderful things that has come out of this is that prior to this, Mr. CAMPBELL and I had never really had an opportunity to roll up our sleeves and work on issues together. It has been a joy to work with him, and he has been very constructive.

I want to just reserve myself enough time to ask unanimous consent to withdraw the amendment, but I don't want to do that before he has the last word.

Mr. CAMPBELL. And I have enjoyed working with you as well. I am glad that we are able to be where we are on this and look forward to working in the future as the bill moves forward.

Madam Chair, I yield back the balance of my time.

Mr. WATT. Madam Chair, I ask unanimous consent to withdraw the amendment.

The Acting CHAIR. Without objection, the amendment is withdrawn.

There was no objection.

AMENDMENT NO. 18 OFFERED BY MR. KANJORSKI

The Acting CHAIR. It is now in order to consider amendment No. 18 printed in House Report 111-370.

Mr. KANJORSKI. I have an amendment at the desk as the designee of the gentleman from Massachusetts.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 18 offered by Mr. KANJORSKI:

Strike section 6005 and redesignate the subsequent sections in subtitle B of title V and conform the table of contents in section 2 accordingly.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Pennsylvania (Mr. KANJORSKI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. KANJORSKI. Madam Chair, I rise in support of this amendment.

Nationally Recognized Statistical Rating Organizations are those credit rating agencies that are registered with the Securities and Exchange Commission and, therefore, regulated. Most often, the phrase is shortened to its initials, NRSRO; however, in formal contracts and statutes, the words are spelled out and each word matters. Unfortunately, an amendment to change one of these words was inadvertently accepted during the markup. We switched out the word "recognized" for the word "registered." If enacted into law, such a change would put thousands of contracts in default and upset numerous Federal and State laws, rules, and regulations.

Although well intended, such a seemingly minuscule change could have disastrous unintended consequences. We must not put contracts in default or undermine other laws and regulations. Therefore, I urge my colleagues to support this amendment and reinstate the correct word in this important legislation.

I reserve the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I rise to claim time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. GARRETT of New Jersey. I yield myself 4 minutes.

I thank the gentleman from Pennsylvania for his amendment, but more than that, I should say I thank the gentleman for addressing this larger issue of CRAs for a number of months. I have claimed time in opposition just on the amendment because I think we can probably work this out in a different way.

The gentleman and I worked for a long time trying to address the issue of the credit rating agencies because both of us realize that when you lay out the reasons why we are in this financial mess that we're in right now, we may disagree on this point or that point as to exactly how we got here, but both of us, I believe, came to the conclusion that CRAs played a huge, huge part to bring us to where we are today with this financial mess. And the reason it did was because so many people failed to exercise what we would call proper market discipline when they made their investments, whether that was a small investor, a middle-size investor,

or even the so-called "knowledgeable" investors on Wall Street failed to use what, in normal times, they would inherently have inside of them to say, What is the proper decisionmaking that I should make before I make this investment or that investment? What risks should I take here or there? And why was that, though, is the question.

Well, we looked at a whole bunch of things and we tried to come up with changes to the regulations of CRAs, the credit rating agencies, and we made a lot of changes that were improvements. But I think we came down to one point, that there was too much reliance upon credit rating agencies. Just because a CRA came out and said that on this particular security or this particular financial product that was rated AAA, regardless of what was actually in the package, regardless of the fact that maybe it was just a compilation of subprime mortgages with no likelihood whatsoever that they would ever be paid off, they got the AAA's seal of approval, and people invested in it. And, of course, the rest is history.

We look at it, one of the reasons why we think they got the seal of approval and then why investors looked at that and said that was okay was because they had the seal of approval from the Federal Government. The CRAs were listed as NRSROs, Nationally Recognized Statistical Rating Organizations. So the investor, large or small, sophisticated or not, said, Well, if the Federal Government is going to put its imprimatur on these organizations, on these CRAs by saying they are nationally recognized, if the Federal Government is going to put its stamp of approval, let's say their Good Housekeeping Seal of Approval on these entities, then they must be okay and the decisions they are making must be okay. So that is what led to their decisions.

That is why, in committee, Ranking Member BACHUS proposed a change to this. He changed it from "nationally recognized" to "nationally registered," merely that these entities were registered. No seal of approval, no stamp of the Good Housekeeping Seal of Approval, just that they had gone through the motions and had simply registered with the government as being a nationally registered statistical rating organization. That is why I think it made good sense to take away that seal of approval, and that is why I also believe that this legislation, this amendment in committee passed in a bipartisan manner out of committee.

Now, I recognize that I am actually on the floor now, oddly enough, defending the actions of the committee here to a change. And I understand the potential problems, but I would suggest that perhaps other things could be done other than just stripping this out and going back to the way it was before. I would suggest that we leave it as "nationally registered statistical

rating organizations," and as we go forward through the process, if we find—maybe it's minutia, maybe it's not, as far as some States' regulations or other Federal regulations that refer to this. I bet you there is a better, simpler way to just correspond this back for existing contracts and what have you, and I would look forward to working with the chairman and the other committee's chairman to solve those problems in the future.

Mr. KANJORSKI. Madam Chair, I yield such time as he may require to the chairman.

Mr. FRANK of Massachusetts. First, I would say to my friend from New Jersey, I very much agree with what he said about credit rating agencies. For the record, I would like to make an assertion I know he agrees with, that when he talks about our agreement on the CRAs and the role of the CRAs, we are talking about the credit rating agencies, not the Community Reinvestment Act, the other CRA with which we deal. Sometimes people don't pay full attention, so I don't want to get anybody too agitated.

Yes, he is exactly right. He and I, in fact, collaborated on the legislation to remove the statutory assertion. And I think he is also correct, we fully agree—I think there is virtually unanimity on it—with the purpose he articulated, tell the average investor to pay attention on your own, don't rely on the rating agencies, don't subcontract your judgment to them.

Frankly, I am frustrated. I would hope that people out in the economy would take advantage of the full legal rights they have to create some buy side rating agencies. I think that would be very helpful. We checked. There are no obstacles to doing it. I had some frustration that we weren't able to do more. I think we have done as much as anybody could think of. I've seen some newspaper articles that said, Why didn't you do more? But they were, not surprisingly, absent of any suggestion. So, yes, I think it would be better if we had buy side rating agencies. In the interim, we have at least told people, use your own judgment.

But as the gentleman acknowledged—and I think we can work this out—going forward, the problem we got was from a number of States and private institutions that have imbedded in their statutes the old language. And I am pleased the gentleman said let's work together. I think it would mean meeting with various State agencies and the pension funds to see if there is some legislative fix we could adopt short of going back to the old name, because I agree with him as to the purpose of changing the name so that we can alleviate this problem there.

So with that, I would be willing to say there is no need for the amendment, given that we have an agreement. We will ask our hardworking and



very creative staffs that can often work very well together to meet with those who have raised this issue to see if there is something else we could do that would meet their concern so they wouldn't have to all amend their statutes, et cetera. And with that, I think we have come to a conceptual agreement. And as is often the case, we, the Members, will come to a conceptual agreement and the staff will do all the hard work of making it a reality.

Mr. KANJORSKI. Madam Chair, I reserve the balance of my time.

The Acting CHAIR. The gentleman from New Jersey has 1 minute remaining.

Mr. GARRETT of New Jersey. I appreciate the chairman's comments and look forward to seeing how this can be dealt with if this bill eventually does pass and goes over to the Senate and into the conference.

Mr. FRANK of Massachusetts. Would the gentleman yield?

Mr. GARRETT of New Jersey. Yes.

Mr. FRANK of Massachusetts. I would just say no one can dictate to anyone, but if there were to be a "no" on the voice vote, I think that would be a reasonable end to this particular discussion and we could then continue on the level we talked about.

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Mr. GARRETT of New Jersey. There is that comment, and also there is the understanding that we are not talking about the other CRA. Although, if we could make a UC, and if we could put that as being a cause—no, I guess we can't do that. That's a bridge too far.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI).

The amendment was rejected.

AMENDMENT NO. 19 OFFERED BY MR. MARSHALL

The Acting CHAIR. It is now in order to consider amendment No. 19 printed in House Report 111-370.

Mr. MARSHALL. I rise as the designee of the gentleman from Michigan (Mr. CONYERS).

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 19 offered by Mr. MARSHALL:

At the end of the bill, insert the following (and make such technical and conforming changes as may be appropriate):

## **TITLE VII—PREVENTION OF MORTGAGE FORECLOSURES**

### **Subtitle A—Modification of Residential Mortgages**

#### **SEC. 9001. DEFINITION.**

Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following (and make such technical and conforming changes as may be appropriate):

"(43A) The term 'qualified loan modification' means a loan modification agreement made in accordance with the guidelines of

the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, that—

"(A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

"(B) requires no fees or charges to be paid by the debtor in order to obtain such modification; and

"(C) permits the debtor to continue to make payments under the modification agreement notwithstanding the filing of a case under this title, as if such case had not been filed."

#### **SEC. 9002. ELIGIBILITY FOR RELIEF.**

Section 109 of title 11, United States Code, is amended—

(1) by adding at the end of subsection (e) the following: "For purposes of this subsection, the computation of debts shall not include the secured or unsecured portions of—

"(1) debts secured by the debtor's principal residence if the value of such residence as of the date of the order for relief under chapter 13 is less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection; or

"(2) debts secured or formerly secured by what was the debtor's principal residence that was sold in foreclosure or that the debtor surrendered to the creditor if the value of such real property as of the date of the order for relief under chapter 13 was less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection." and

(2) by adding at the end of subsection (h) the following:

"(5) Notwithstanding the 180-day period specified in paragraph (1), with respect to a debtor in a case under chapter 13 who submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure on the debtor's principal residence, the requirements of paragraph (1) shall be considered to be satisfied if the debtor satisfies such requirements not later than the expiration of the 30-day period beginning on the date of the filing of the petition."

#### **SEC. 9003. PROHIBITING CLAIMS ARISING FROM VIOLATIONS OF THE TRUTH IN LENDING ACT.**

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking "or" at the end,

(2) in paragraph (9) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(10) the claim for a loan secured by a security interest in the debtor's principal residence is subject to a remedy for rescission under the Truth in Lending Act notwithstanding the prior entry of a foreclosure judgment, except that nothing in this paragraph shall be construed to modify, impair, or supersede any other right of the debtor."

#### **SEC. 9004. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

Section 1322 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) by redesignating paragraph (11) as paragraph (12),

(B) in paragraph (10) by striking "and" at the end, and

(C) by inserting after paragraph (10) the following:

"(11) notwithstanding paragraph (2), with respect to a claim for a loan originated before the effective date of this paragraph and secured by a security interest in the debtor's principal residence that is the subject of a notice that a foreclosure may be commenced with respect to such loan, modify the rights of the holder of such claim (and the rights of the holder of any claim secured by a subordinate security interest in such residence)—

"(A) by providing for payment of the amount of the allowed secured claim as determined under section 506(a)(1);

"(B) if any applicable rate of interest is adjustable under the terms of such loan by prohibiting, reducing, or delaying adjustments to such rate of interest applicable on and after the date of filing of the plan;

"(C) by modifying the terms and conditions of such loan—

"(i) to extend the repayment period for a period that is no longer than the longer of 40 years (reduced by the period for which such loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under this chapter; and

"(ii) to provide for the payment of interest accruing after the date of the order for relief under this chapter at a fixed annual rate equal to the currently applicable average prime offer rate as of the date of the order for relief under this chapter, corresponding to the repayment term determined under the preceding paragraph, as published by the Federal Financial Institutions Examination Council in its table entitled 'Average Prime Offer Rates—Fixed', plus a reasonable premium for risk; and

"(D) by providing for payments of such modified loan directly to the holder of the claim or, at the discretion of the court, through the trustee during the term of the plan; and", and

(2) by adding at the end the following:

"(g) A claim may be reduced under subsection (b)(11)(A) only on the condition that if the debtor sells the principal residence securing such claim, before completing all payments under the plan (or, if applicable, before receiving a discharge under section 1328(b)) and receives net proceeds from the sale of such residence, then the debtor agrees to pay to such holder not later than 15 days after receiving such proceeds—

"(1) if such residence is sold in the 1st year occurring after the effective date of the plan, 90 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(2) if such residence is sold in the 2d year occurring after the effective date of the plan, 70 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(3) if such residence is sold in the 3d year occurring after the effective date of the plan, 50 percent of the amount of the difference between the sales price and the amount of such



claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

“(4) if such residence is sold in the 4th year occurring after the effective date of the plan, 30 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection; and

“(5) if such residence is sold in the 5th year occurring after the effective date of the plan, 10 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.

“(h) With respect to a claim of the kind described in subsection (b)(11), the plan may not contain a modification under the authority of subsection (b)(11)—

“(1) in a case commenced under this chapter after the expiration of the 30-day period beginning on the effective date of this subsection, unless—

“(A) the debtor certifies that the debtor—

“(i) not less than 30 days before the commencement of the case, contacted the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim;

“(ii) provided the holder of the claim (or the entity collecting payments on behalf of such holder) a written statement of the debtor's current income, expenses, and debt substantially conforming with the schedules required under section 521(a) or such other form as is promulgated by the Judicial Conference of the United States for such purpose; and

“(iii) considered any qualified loan modification offered to the debtor by the holder of the claim (or the entity collecting payments on behalf of such holder); or

“(B) a foreclosure sale is scheduled to occur on a date in the 30-day period beginning on the date the case is commenced;

“(2) in any other case pending under this chapter, unless the debtor certifies that the debtor attempted to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim, before—

“(A) filing a plan under section 1321 that contains a modification under the authority of subsection (b)(11); or

“(B) modifying a plan under section 1323 or 1329 to contain a modification under the authority of subsection (b)(11).

“(i) In determining the holder's allowed secured claim under section 506(a)(1) for purposes of subsection (b)(11)(A), the value of the debtor's principal residence shall be the fair market value of such residence on the date such value is determined and, if the issue of value is contested, the court shall determine such value in accordance with the appraisal rules used by the Federal Housing Administration.”.

#### SEC. 9005. COMBATING EXCESSIVE FEES.

Section 1322(c) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking “and” at the end,

(2) in paragraph (2) by striking the period at the end and inserting a semicolon, and

(3) by adding at the end the following:

“(3) the debtor, the debtor's property, and property of the estate are not liable for a fee, cost, or charge that is incurred while the case is pending and arises from a debt that is secured by the debtor's principal residence except to the extent that—

“(A) the holder of the claim for such debt files with the court and serves on the trustee, the debtor, and the debtor's attorney (annually or, in order to permit filing consistent with clause (ii), at such more frequent periodicity as the court determines necessary) notice of such fee, cost, or charge before the earlier of—

“(i) 1 year after such fee, cost, or charge is incurred; or

“(ii) 60 days before the closing of the case; and

“(B) such fee, cost, or charge—

“(i) is lawful under applicable nonbankruptcy law, reasonable, and provided for in the applicable security agreement; and

“(ii) is secured by property the value of which is greater than the amount of such claim, including such fee, cost, or charge;

“(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a violation of section 524(a)(2) or, if the violation occurs before the date of discharge, of section 362(a); and

“(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the debtor's principal residence.”.

#### SEC. 9006. CONFIRMATION OF PLAN.

(a) Section 1325(a) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) strike “subsection (b)” and insert “subsections (b) and (d)”.

(2) in paragraph (5)—

(A) by inserting “except as otherwise provided in section 1322(b)(11),” after “(5)”, and

(B) in subparagraph (B)(iii)(I) by inserting “(including payments of a claim modified under section 1322(b)(11))” after “payments” the 1st place it appears,

(3) in paragraph (8) by striking “and” at the end,

(4) in paragraph (9) by striking the period at the end and inserting a semicolon, and

(5) by inserting after paragraph (9) the following:

“(10) notwithstanding subclause (I) of paragraph (5)(B)(i), whenever the plan modifies a claim in accordance with section 1322(b)(11), the holder of a claim whose rights are modified pursuant to section 1322(b)(11) shall retain the lien until the later of—

“(A) the payment of such holder's allowed secured claim; or

“(B) completion of all payments under the plan (or, if applicable, receipt of a discharge under section 1328(b)); and

“(11) whenever the plan modifies a claim in accordance with section 1322(b)(11), the court finds that such modification is in good faith (Lack of good faith exists if the debtor has no need for relief under this paragraph because the debtor can pay all of his or her debts and any future payment increases on such debts without difficulty for the foreseeable future, including the positive amortization of mortgage debt. In determining whether a reduction of the principal amount of the loan resulting from a modification made under the authority of section 1322(b)(11) is made in good faith, the court

shall consider whether the holder of such claim (or the entity collecting payments on behalf of such holder) has offered to the debtor a qualified loan modification that would enable the debtor to pay such debts and such loan without reducing such principal amount.) and does not find that the debtor has been convicted of obtaining by actual fraud the extension, renewal, or refinancing of credit that gives rise to a modified claim.”.

(b) Section 1325 of title 11, United States Code, is amended by adding at the end the following (and make such technical and conforming changes as may be appropriate):

“(d) Notwithstanding section 1322(b)(11)(C)(ii), the court, on request of the debtor or the holder of a claim secured by a senior security interest in the debtor's principal residence, may confirm a plan proposing a reduction in the interest rate on the loan secured by such security interest and that does not reduce the principal, provided the total monthly mortgage payment is reduced to a percentage of the debtor's income in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, if, taking into account the debtor's financial situation, after allowance of expenses that would be permitted for a debtor under this chapter subject to paragraph (3) of subsection (b), regardless of whether the debtor is otherwise subject to such paragraph, and taking into account additional debts and fees that are to be paid in this chapter and thereafter, the debtor would be able to prevent foreclosure and pay a fully amortizing 30-year loan at such reduced interest rate without such reduction in principal.”.

#### SEC. 9007. DISCHARGE.

Section 1328(a) of title 11, United States Code, is amended—

(1) by inserting “(other than payments to holders of claims whose rights are modified under section 1322(b)(11))” after “paid”, and

(2) in paragraph (1) by inserting “or, to the extent of the unpaid portion of an allowed secured claim, provided for in section 1322(b)(11)” after “1322(b)(5)”.

#### SEC. 9008. STANDING TRUSTEE FEES.

(a) AMENDMENT TO TITLE 28.—Section 586(e)(1)(B)(i) of title 28, United States Code, is amended—

(1) by inserting “(I) except as provided in subparagraph (II)” after “(i)”,

(2) by striking “or” at the end and inserting “and”, and

(3) by adding at the end the following:

“(II) 4 percent with respect to payments received under section 1322(b)(11) of title 11 by the individual as a result of the operation of section 1322(b)(11)(D) of title 11, unless the bankruptcy court waives all fees with respect to such payments based on a determination that such individual has income less than 150 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and payment of such fees would render the debtor's plan infeasible.”.

(b) CONFORMING PROVISION.—The amendments made by this section shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3121) apply.

**SEC. 9009. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) **EFFECTIVE DATE.**—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) **APPLICATION OF AMENDMENTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this subtitle shall apply with respect to cases commenced under title 11 of the United States Code before, on, or after the date of the enactment of this Act.

(2) **LIMITATION.**—Paragraph (1) shall not apply with respect to cases closed under title 11 of the United States Code as of the date of the enactment of this Act that are neither pending on appeal in, nor appealable to, any court of the United States.

**SEC. 9010. GAO STUDY.**

The Comptroller General shall carry out a study, and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than 2 years after the date of the enactment of this Act a report containing—

(1) the results of such study of—

(A) the number of debtors who filed, during the 1-year period beginning on the date of the enactment of this Act, cases under chapter 13 of title 11 of the United States Code for the purpose of restructuring their principal residence mortgages,

(B) the number of mortgages restructured under the amendments made by this subtitle that subsequently resulted in default and foreclosure,

(C) a comparison between the effectiveness of mortgages restructured under non-judicial voluntary mortgage modification programs and mortgages restructured under the amendments made by this subtitle,

(D) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were appealed,

(E) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were overturned on appeal, and

(F) the number of bankruptcy judges disciplined as a result of actions taken to restructure mortgages under the amendments made by this subtitle, and

(2) a recommendation as to whether such amendments should be amended to include a sunset clause.

**SEC. 9011. REPORT TO CONGRESS.**

Not later than 18 months after the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Housing Administration, shall submit to the Congress, a report containing—

(1) a comprehensive review of the effects of the amendments made by this subtitle on bankruptcy courts,

(2) a survey of whether the program should limit the types of homeowners eligible for the program, and

(3) a recommendation on whether such amendments should remain in effect.

**Subtitle B—Related Mortgage Modification Provisions****SEC. 9021. ADJUSTMENTS AS A RESULT OF MODIFICATION IN BANKRUPTCY OF HOUSING LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.**

(a) **IN GENERAL.**—Section 3732 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraph (2) as subparagraph (A) of paragraph (2), and

(2) by inserting after subparagraph (A) the following new subparagraph:

“(B) In the event that a housing loan guaranteed under this chapter is modified under the authority provided under section 1322(b) of title 11, United States Code, the Secretary may pay the holder of the obligation the unpaid balance of the obligation due as of the date of the filing of the petition under title 11, United States Code, plus accrued interest, but only upon the assignment, transfer, and delivery to the Secretary (in a form and manner satisfactory to the Secretary) of all rights, interest, claims, evidence, and records with respect to the housing loan.”.

(b) **MATURITY OF HOUSING LOANS.**—Paragraph (1) of section (d) of section 3703 of title 38, United States Code, is amended by inserting “at the time of origination” after “loan”.

(c) **IMPLEMENTATION.**—The Secretary of Veterans Affairs may implement the amendments made by this section through notice, procedure notice, or administrative notice.

**SEC. 9022. PAYMENT OF FHA MORTGAGE INSURANCE BENEFITS.**

(a) **IN GENERAL.**—Subsection (a) of section 204 of the National Housing Act (12 U.S.C. 1710(a)) is amended—

(1) in paragraph (1), by adding at the end the following new subparagraph:

“(E) **MODIFICATION OF MORTGAGE IN BANKRUPTCY.**—

“(i) **AUTHORITY.**—If an order is entered under the authority provided under section 1322(b) of title 11, United States Code, that (a) determines the amount of an allowed secured claim under a mortgage in accordance with section 506(a)(1) of title 11, United States Code, and the amount of such allowed secured claim is less than the amount due under the mortgage as of the date of the filing of the petition under title 11, United States Code, or (b) reduces the interest to be paid under a mortgage in accordance with section 1325 of such title, the Secretary may pay insurance benefits for the mortgage as follows:

“(I) **FULL PAYMENT AND ASSIGNMENT.**—The Secretary may pay the insurance benefits for the mortgage, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A). The insurance benefits shall be paid in the amount equal to the original principal obligation of the mortgage (with such additions and deductions as the Secretary determines are appropriate) which was unpaid upon the date of the filing of by the mortgagor of the petition under title 11 of the United States Code. Nothing in this Act may be construed to prevent the Secretary from providing insurance under this title for a mortgage that has previously been assigned to the Secretary under this subclause. The decision of whether to utilize the authority under this subclause for payment and assignment shall be at the election of the mortgagee, subject to such terms and conditions as the Secretary may establish.

“(II) **ASSIGNMENT OF UNSECURED CLAIM.**—The Secretary may make a partial payment of the insurance benefits for any unsecured claim under the mortgage, but only upon the assignment to the Secretary of any unsecured claim of the mortgagee against the mortgagor or others arising out of such order. Such assignment shall be deemed valid irrespective of whether such claim has been or will be discharged under title 11 of the United States Code. The insurance benefits shall be paid in the amount specified in

subclause (I) of this clause, as such amount is reduced by the amount of the allowed secured claim. Such allowed secured claim shall continue to be insured under section 203.

“(III) **INTEREST PAYMENTS.**—The Secretary may make periodic payments, or a one-time payment, of insurance benefits for interest payments that are reduced pursuant to such order, as determined by the Secretary, but only upon assignment to the Secretary of all rights and interest related to such payments.

“(ii) **DELIVERY OF EVIDENCE OF ENTRY OF ORDER.**—Notwithstanding any other provision of this paragraph, no insurance benefits may be paid pursuant to this subparagraph for a mortgage before delivery to the Secretary of evidence of the entry of the order issued pursuant to title 11, United States Code, in a form satisfactory to the Secretary.”.

(2) in paragraph (5), in the matter preceding subparagraph (A), by inserting after “section 520, and” the following: “, except as provided in paragraph (1)(E).”; and

(3) by adding at the end the following new paragraph:

“(10) **LOAN MODIFICATION PROGRAM.**—

“(A) **AUTHORITY.**—The Secretary may carry out a program solely to encourage loan modifications for eligible delinquent mortgages through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

“(B) **PAYMENT OF BENEFITS AND ASSIGNMENT.**—Under the program under this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with paragraph (5)(A), without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A).

“(C) **DISPOSITION.**—After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this title for the mortgage. The Secretary may subsequently—

“(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

“(ii) act as a Government National Mortgage Association issuer, or contract with an entity for such purpose, in order to pool the mortgage into a Government National Mortgage Association security; or

“(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this title, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

“(D) **LOAN SERVICING.**—In carrying out the program under this section, the Secretary may require the existing servicer of a mortgage assigned to the Secretary under the program to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage. If the mortgage is resold pursuant to subparagraph (C)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.”.

(b) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—Paragraph (1) of section 230(b) of the National Housing Act (12 U.S.C. 1715u(b)(1)) is amended by striking “12 of the monthly mortgage payments” and inserting “30 percent of the unpaid principal balance of the mortgage”.

(c) IMPLEMENTATION.—The Secretary of Housing and Urban Development may implement the amendments made by this section through notice or mortgagee letter.

**SEC. 9023. ADJUSTMENTS AS RESULT OF MODIFICATION OF RURAL SINGLE FAMILY HOUSING LOANS IN BANKRUPTCY.**

(a) GUARANTEED RURAL HOUSING LOANS.—Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended—

(1) in paragraph (7)—

(A) in subparagraph (A), by inserting before the period at the end the following: “, unless the maturity date of the loan is modified in a bankruptcy proceeding or at the discretion of the Secretary”; and

(B) in subparagraph (B), by inserting before the semicolon the following: “, unless such rate is modified in a bankruptcy proceeding”;

(2) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(3) by inserting after paragraph (12) the following new paragraph:

“(13) PAYMENT OF GUARANTEE.—In addition to all other authorities to pay a guarantee claim, the Secretary may also pay the guaranteed portion of any losses incurred by the holder of a note or the servicer resulting from a modification of a note by a bankruptcy proceeding.”.

(b) INSURED RURAL HOUSING LOANS.—Subsection (j) of section 517 of the Housing Act of 1949 (42 U.S.C. 1487(j)) is amended—

(1) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

“(2) to pay for losses incurred by holders or servicers in the event of a modification pursuant to a bankruptcy proceeding.”.

(c) IMPLEMENTATION.—The Secretary of Agriculture may implement the amendments made by this section through notice, procedure notice, or administrative notice.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Georgia (Mr. MARSHALL) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. MARSHALL. Madam Chair, this is an amendment which is identical to a bill passed by the House earlier this year, in March. The bill permits what is referred to as “cramdown” in chapter 13 with regard to private home mortgages. It is intended to address this foreclosure crisis without taxpayers having to put money into the deal. It essentially forces the parties to deal with their problems without having vacancies and foreclosures in our neighborhoods.

In that sense, it helps all lenders with real estate portfolios. It helps the individuals whose homes might be foreclosed upon. It actually helps the creditors, who are forced into the chapter 13 process because, in almost every instance, their portfolios are improved

by not having as many houses in foreclosure, and in almost every instance, they get better deals in the chapter 13 process than they would in the normal foreclosure process.

We should have done this long ago. It would have helped the housing crisis and, consequently, the economy of the country.

I compliment Mr. MILLER from North Carolina. This was originally his bill. He has been pushing this for several years. I also compliment Ms. ZOE LOFGREN from California, who couldn't be here today because of family matters, because she has been a real stalwart in moving this forward.

I reserve the balance of my time.

Mr. GOODLATTE. I rise to claim time in opposition.

The Acting CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Madam Chair, I yield 1 minute to the gentleman from Texas (Mr. SMITH), the ranking member of the Judiciary Committee.

Mr. SMITH of Texas. I thank the gentleman from Virginia (Mr. GOODLATTE), the deputy ranking member of the Judiciary Committee, for yielding me time.

Madam Chairwoman, those who confront mortgage foreclosures are understandably in difficult situations, but this bankruptcy amendment will only lead to a worse situation for everyone.

The number one cause of foreclosures today is job loss. The number two cause is homes which are mortgaged for more than they are worth. Sending homeowners with these problems into chapter 13 bankruptcy is no solution at all. The jobless do not have the steady incomes that are required to file for a chapter 13 bankruptcy, and those who bet wrong on a rising housing market should honor the mortgages for which they have freely contracted.

Allowing bankruptcy courts to cram down mortgage principal will only lead to higher interest rates and tougher mortgage terms for all future homeowners.

Why should those who have done nothing wrong have to pay that price?

Mr. MARSHALL. I yield myself such time as I may consume.

Madam Chair, let me just make a couple of observations. If, in fact, you are jobless and don't have income, you are not eligible for chapter 13. Consequently, you won't be able to cram down. It is those who do have jobs and who do have income who could survive if they had the opportunity to restructure their debt. They would be eligible. It's only those folks.

As far as increasing the cost of credit is concerned, this bill provides that it is retroactive. It doesn't apply to future credit. Many, many experts have looked at this and have concluded that it will not increase the cost of future credit.

I reserve the balance of my time.

Mr. GOODLATTE. Madam Chair, I recognize myself for 2 minutes.

First, I will say that the gentleman from Georgia may assert that this will benefit creditors, but I know a few creditors who extend home mortgage loans who favor this legislation.

Our country has fallen into a serious economic recession, a recession that has been worsened by the foreclosure crisis. Until we address the rising number of foreclosures, it will be difficult for the economy to recover. Unfortunately, this bankruptcy amendment, which I don't think belongs in this legislation to begin with, not only fails to solve the foreclosure crisis, but it also will make the crisis deeper, longer, and wider.

Allowing bankruptcy courts to modify home mortgages will have adverse consequences for all while providing little real relief to distressed borrowers. Bankruptcy cramdowns will invariably lead to higher interest rates and to less generous borrowing terms for future borrowers. The gentleman may claim that it won't affect future borrowers, but the fact of the matter is, if this can be done now for this purpose, the advocates of this legislation will likely, in the future, see this made a permanent provision in our bankruptcy laws. It will have the effect of causing interest rates to go up and of causing credit to be less available.

Unemployment has been a driving factor behind most foreclosures, but because individuals without regular incomes may not file for bankruptcy under chapter 13, cramdown will do nothing for those most in need of relief—the unemployed. Additionally, many borrowers walk away from their homes, not because they can't afford their monthly payments, but because their homes are mortgaged for more than they are worth. These borrowers should live with the responsibility of their decisions and not receive bailouts from bankruptcy courts.

Furthermore, we must not forget that cramdown will not only impact lenders but investors as well. These investors often include pension funds, which represent the retirement savings of millions. We should not pass the cost of irresponsible borrowing and lending off on current and future retirees.

The Acting CHAIR. The time of the gentleman has expired.

Mr. GOODLATTE. I yield myself an additional 30 seconds.

Madam Chair, there is no reason to allow mortgage cramdown, with its attendant high cost, considering it will produce only modest results at best.

If we pass this amendment, what message does it send to the 90 percent of homeowners who are making their payments on time? How can we ask them to foot the bill for their neighbors' mortgages? What do homeowners think when they pay back the full

amount of the principal they owe while others receive a government reduction in principal?

We do need to do everything we can to help solve the foreclosure crisis, but we must avoid measures like cramdown, which punishes the successful, taxes the responsible, and holds no one accountable.

I reserve the balance of my time.

Mr. MARSHALL. I yield myself such time as I may consume.

Madam Chair, to other homeowners, we should say that your home values won't decline as rapidly, because there won't be as many vacancies. We are not asking you to put a dime into the deal. No taxpayer dollars go into the deal at all. To those who cannot afford chapter 13, obviously, some other remedy is called for than this; but for those who can afford a chapter 13, you are helping everybody by filing a chapter 13.

Having spent years in this business, creditors will not be harmed, and the cost of credit will not go up. That is particularly true because, in this bill, it only applies to existing mortgages. It doesn't apply to future mortgages, so it is widely conceded that the cost of credit will not go up. This is truly a win-win.

I was originally opposed. I've been in this business for a long time. I had a change of heart. The change of heart focuses on the crisis that we are in right now. You can go to my Web site. On the front page of the Web site, those who are interested will find a detailed explanation of why this is absolutely the right thing to do.

With that, it seems to me I've responded to everything that the gentleman from Virginia has said.

I reserve the balance of my time.

The Acting CHAIR. The gentleman from Virginia has 1½ minutes remaining.

Mr. GOODLATTE. Madam Chair, I yield 1½ minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), a member of the committee.

Mr. DANIEL E. LUNGREN of California. Madam Chair, this is a prime example of good intentions resulting in bad policy.

My area is one of the areas hit as badly as any with respect to foreclosures. We have not cleared the market yet. We are in deep, deep shape. The last thing we need is to increase the level of uncertainty within the mortgage market, and that's what it does. It may be limited by its terms, but if we do it now, we can do it again.

Some people ask, Why would we not allow cramdown for residential housing?

Looking at this with a case in previous years, Supreme Court Justice Stevens said, The favorable treatment of residential mortgages was intended to encourage the flow of capital into the home lending market.

That is why this exists in the bankruptcy code today, precisely because it

allows more people access to purchasing homes, and premiums are not as high as they otherwise would be precisely because you cannot allow cramdown in bankruptcy proceedings now. That's the sole substance of the reason we have this.

We are going to reverse this as a matter of public policy. It is going to create greater uncertainty and thereby increase the premiums in the future for everybody else, and it will deny access to the housing market for those we seek to help.

Mr. MARSHALL. I yield myself such time as I may consume.

Madam Chair, I will simply repeat:

Since this is only applicable to existing mortgages, it will have no effect on the cost of future mortgages. The beauty of it is we will have fewer foreclosures.

So, to the gentleman from California and to those in California who are in neighborhoods which are really struggling with this phenomenon of housing prices collapsing because of all of the vacancies, all of those folks will be helped by this without putting a single dime of taxpayer dollars in the deal. It seems to me that is a complete justification for doing this. We should have done it long ago.

I reserve the balance of my time.

The Acting CHAIR. The gentleman from Virginia has no time remaining, and the gentleman from Georgia has 1½ minutes remaining.

Mr. MARSHALL. Madam Chair, there is a thing called the "tragedy of the commons." It is a theoretical concept that applies in this particular case. It refers to the opening of common areas for grazing. Then those who have sheep come in and overgraze that area, and the effect is not that everybody gets wealthier; it's that everybody gets poorer.

As an individual creditor, I am not interested in having somebody fool around with me in bankruptcy court or something like that. Yet, combined, creditors are advantaged by having fewer foreclosures on the market in a situation like this. Having represented an awful lot of banks, having spent an awful lot of my life as a bankruptcy lawyer, law professor, and commercial litigator, I am absolutely convinced that I was wrong to initially reject this concept. We should have done it a couple of years ago.

If we apply it now, we will catch what appears to be an ongoing wave of foreclosures. It will help the individuals who can rescue their homes. It will lessen the number of foreclosures, consequently helping all other homeowners. No taxpayer dollars are involved, and creditors are assisted by this with no threat whatsoever to an increase in mortgage prices.

We passed this before. We should pass it again. It is appropriate to this particular piece of legislation because the

work we are doing right now is prompted as a result of the credit crisis that was caused initially by housing issues. So housing should be addressed as part of fixing the overall financial situation.

Mr. LUCAS. Madam Chair, this amendment will most certainly not help those who it is designed to help. It will drive up the cost of loans, limit the number of loans that can be made, raise interest rates, and increase opportunities for abuse in the bankruptcy system.

I want to focus the House on another important problem that has not been discussed: how the bankruptcy laws and the accounting rules and treatments combine to do potentially substantial and lasting damage to the financial system.

Under existing accounting rules, any bankruptcy loss may be considered an indication of impairment. The term that is used by accountants is "other than temporarily impaired," or "OTTI." I want to make sure that the House understands the consequences of this problem in the real world. Even if a company took a small bankruptcy loss on one of the residential mortgage-backed securities, RMBS, that it owns, the amount of loss that would be recognized in that company's income statement is a full writedown to deeply depressed market values, not just the amount deemed to be a bankruptcy. Any loss of principal, current or future, requires this treatment no matter what term is used to describe the loss. If a judge can adjust principal, then a significant detrimental impact to the company will automatically follow.

The House must clearly understand that the losses which would be recognized by financial institutions in this situation are far greater than the amount of the bankruptcy losses. Any RMBS holder will have to record these losses in the same manner, and so the threat of bankruptcy "cramdowns" casts a huge shadow across the entire financial services industry. For example, if a company owns \$5 million in RMBS with a current market value of \$2,500,000, and there is a bankruptcy loss per the judge of \$50,000 economic loss to the preferred RMBS tranch, the required financial statement loss under existing accounting rules would be \$2,500,000. In this example, accounting rules require booking the financial statement loss at 50 times the actual economic loss.

This is a stark, but true, statement of the horrific impact that existing accounting rules are likely to have on the financial services industry in the event this legislation becomes law. It would only take a few of these kinds of losses to destroy the current year operating positions of any company and greatly impact its overall capital position.

This means that the cramdown amendment the House considers today carries with it a virus that threatens to consume significant parts of the financial services industry, particularly any company that is a significant holder of RMBS. The majority either does not understand, or has chosen not to deal with, this significant and looming problem. Likewise, there is a lack of understanding about the major role that accounting rules and treatments play in it. I earnestly hope that our colleagues in the other body will address this issue squarely,

and understand that cramdown without accounting reform and strict limitations on the discretion of bankruptcy judges has the potential to create significant and unanticipated collateral damage to our financial system, as well as loss of credibility with financial services industry customers and widespread negative ratings from all rating agencies.

Ms. FUDGE. Madam Chair, one in seven mortgages in the United States is now either delinquent or in foreclosure. This is an all time high. By the close of this year, there will be nearly 3 million homes lost to foreclosure.

This amendment gives homeowners a chance to save their homes. It would allow bankruptcy courts to extend repayment timelines, lower excessive interest rates, and modify mortgages.

It will protect hard-working and honest Americans struggling to keep their homes. As I've witnessed firsthand in my own district, the relentless tide of foreclosures has a crippling and destabilizing effect on the community.

I urge my colleagues to support this amendment.

Mr. ROYCE. Madam Chair, I rise in opposition to this amendment.

Let me briefly read a quote on this issue from Supreme Court Justice John Paul Stevens—who tends to be a left-leaning member of the Court. In 1993, Justice Stevens said:

At first blush it seems somewhat strange that the Bankruptcy Code should provide less protection to an individual's interest in retaining possession of his or her home than of other assets . . . [but] favorable treatment of residential mortgages was intended to encourage the flow of capital into the home lending market.

As Justice Stevens indicates—there is a reason why the bankruptcy code does not treat residential mortgages like it treats credit cards or auto loans. We want to ensure investment certainty and encourage the flow of capital into this market.

The government makes up the secondary mortgage market right now—there is no private market.

As our housing market continues to struggle through one of the worst shocks in our nation's history, certainty and investment security is essential to a recovery. This amendment prevents that.

I encourage my colleagues to oppose the amendment.

Mr. CONYERS. Madam Chair, I rise in support of this commonsense amendment to give struggling homeowners a fair chance to keep their homes when it makes economic sense.

I am joined today by a diverse bipartisan group of cosponsors, including MIKE TURNER, ZOE LOFGREN, JIM MARSHALL, MAXINE WATERS, STEVE COHEN, BRAD MILLER, BILL DELAHUNT, JERRY NADLER, and MARCIA FUDGE.

This is the same provision the House approved in March as a key component of H.R. 1106, the "Helping Families Save Their Homes Act."

As the House considers financial regulatory reform legislation today, we should not forget the problem that started it all—the cataclysm of home mortgage foreclosures.

These foreclosures have pulled the rug out from under our economy, devastating families, neighborhoods, and local governments. And unfortunately, the end to this toxic cycle is nowhere in sight.

In Wayne County, Michigan, which includes Detroit, there are almost 200 foreclosure-related actions every day, even worse than the 138 foreclosures a day back in July.

According to recent data, 14 percent of American homeowners were in foreclosure or had fallen behind in their mortgage payments—up from 10 percent in 2008.

This Wednesday, the Congressional Oversight Panel for TARP released a report in which it projected that there could be up to 13 million foreclosures over the next 5 years.

We have not seen foreclosure numbers like these since the Great Depression.

This amendment will help provide meaningful relief to struggling homeowners, by giving bankruptcy courts the authority to make fair modifications to mortgages, giving families a decent chance to come to terms with their lender on workable payment terms.

The amendment would allow the courts to extend repayment periods, reduce excessive interest rates and fees, and adjust the principal balance of the mortgage to a home's present-day market value.

The amendment also grants authority to the Department of Veterans Affairs, the Federal Housing Administration, and the Rural Housing Service to support fair modification of mortgages, by continuing to honor Federal guarantees for them after they are modified.

This is imminently fair to mortgage lenders. They will still get everything they could reasonably hope to obtain if the home is foreclosed on and sold—more, in fact—and without forcing the family out of house and home.

True, the lenders will not get every dime they might theoretically get on the mortgage paper they now hold. But that is a dangerous pipe dream. And the prospect of rational modification in the courts should serve as a reality check, and help create a healthy incentive for more meaningful voluntary modifications to be done outside of court.

As it is now, lenders and servicers simply do not have enough of an incentive to modify mortgages in a meaningful and realistic way. It is too easy for them to hide their heads in the sand until the damage is done. Voluntary mortgage modification programs, by themselves, simply haven't worked.

There is also a matter of basic equity here. Mortgages on second and third homes and investment properties can all be modified in the courts, as can virtually any other secured claim, including claims secured by yachts, private jets, and commercial real estate worth many millions of dollars.

It is unfathomable to me that a working family does not have the same opportunity to save its home.

I thank the chairman of the Financial Services Committee, BARNEY FRANK, for his support on this important issue.

I also want to thank all of my cosponsors on this amendment—MIKE TURNER, ZOE LOFGREN, JIM MARSHALL, MAXINE WATERS, STEVE COHEN, BRAD MILLER, BILL DELAHUNT, JERRY NADLER, and MARCIA FUDGE.

In the midst of our response to the widespread damage large Wall Street financial institutions caused by their recklessness—including the drain of hundreds of billions of taxpayer dollars to bail them out—we also have a moral obligation to help average working

families who are struggling to save their homes.

Mr. NADLER of New York. Madam Chair, I rise in strong support of this amendment to H.R. 4173, which I sponsored along with Congressman MARSHALL, Judiciary Committee Chairman CONYERS, and many other of my distinguished colleagues.

This amendment would help millions of Americans across the Nation and correct a glaring anomaly in our current law. If you are a family farmer, if you are a real estate speculator, or if you own 5 or 20 or 50 homes, for example, you are allowed to use bankruptcy to modify your mortgage. The only exception is the family home. Our amendment would change that and allow bankruptcy judges to modify mortgages for people facing imminent foreclosure.

Millions of Americans have lost their homes due to foreclosure and millions more are at risk of doing so. In fact, there were 937,840 foreclosure filings in the third quarter of 2009. This was up 23 percent from one year ago. It is time we helped these families, just as we have helped large banks and other financial institutions.

Now, in the past we have heard from lenders that this kind of change will increase borrowing costs for everyone else. Of course, this is the same industry that in 2005 told us that making bankruptcy more onerous would reduce people's interest costs by \$400 per year on their credit cards. Nothing of the sort happened.

And we tried an alternative—the voluntary modification route. Unfortunately, it has not helped the vast majority of distressed homeowners.

As of November 30, only 4 percent of struggling homeowners in the Treasury Department's Home Affordable Modification Program received permanent loan modifications—31,382 out of 728,000. This week, the Financial Services Committee heard testimony that this program is "destined to fail" because it does not address negative equity.

The Congressional Budget Office estimates that one million households could benefit from this measure, with no additional cost to taxpayers.

So, it is time to take the next step. It is time to give homeowners the same rights as everyone else, and let them modify their mortgages in bankruptcy. It is time to help average citizens stay in their homes, just like we have helped big financial institutions.

I strongly urge all Members to support this amendment.

The Acting CHAIR. The gentleman's time has expired.

The question is on the amendment offered by the gentleman from Georgia (Mr. MARSHALL).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. GOODLATTE. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Georgia will be postponed.

□ 1015

AMENDMENT NO. 26 OFFERED BY MR. GARRETT  
OF NEW JERSEY

The Acting CHAIR. It is now in order to consider amendment No. 26 printed in House Report 111-370.

Mr. GARRETT of New Jersey. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 26 offered by Mr. GARRETT of New Jersey:

Page 1041, beginning on line 15, strike paragraph (5) and insert the following:

(5) in subsection (e), by striking paragraph (1) and inserting the following new paragraph (1):

“(1) VOLUNTARY WITHDRAWAL.—A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission, provided that such nationally recognized statistical rating organization certifies that it received less than \$250,000,000 during its last full fiscal year in net revenue for providing credit ratings on securities and money market instruments issued in the United States.”;

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from New Jersey (Mr. GARRETT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New Jersey.

Mr. GARRETT of New Jersey. Madam Chair, I was just at the microphone a moment ago and speaking about the recognition that I think we have from both sides of the aisle that the CRAs, credit rating agencies, were part and parcel to the causes of the financial situation that we find ourselves in right now.

During the time, I raised two out of probably three significant points on this and what we try to need to do when it comes to reform. I mentioned the fact that we need to reduce investors' reliance upon rating agencies. I mentioned, also, that we need to encourage investor due diligence, which sort of goes with it, if you are going to reduce reliance and they have to be more due diligent.

The third point I didn't raise was that we need to have increased competition between the credit rating agencies. Unfortunately, if you look at the bill before us, actually, title V of the bill includes a number of provisions that will basically exacerbate the current problems within the industry and, as I said on the floor yesterday, that actually make it harder, make it more difficult for investors to actually get the information that they need in order to make those decisions that they have to before they invest.

If you go back a couple of years, actually, if you go back 3 years, we

passed the credit rating agency reform legislation—and it was about 3 years ago. The main focus of that reform back then was to do what? It was to try to increase competition between the various rating agencies. There are only about three major ones, but we were going to try to make smaller ones to get into the market with more competition. Maybe we could eliminate some of the problems I have already stated.

That was just 3 years ago, and the reason then that I voted just a short time ago this year against the legislation that came out of committee, that was going to try to reform the CRAs, was because it did the exact opposite. It would basically decrease the competition in the industry. I think we need more competition.

The reason that the legislation that came out of the committee, I thought, would decrease competition is because, well, it would have imposed a whole bunch of new liability on the CRAs, and it would just basically discourage them to get into the industry at all. That's maybe one of the reasons why in the committee's language there was a provision in it that says we are not going to let you out. Once you are an NRSRO, once you are registered, or recognized I should say, we are not going to let you out of it. They realize with all of this additional registration, with all this additional liability, no one would want to be a CRA anymore.

The amendment that we have before us recognizes that problem, that we want to have competition, but if you have all of these additional rules, regulations, and liabilities on them, they are all going to flee. We believe that we can come to a proverbial middle ground on this. That is to say, allow those CRAs, credit rating agencies that are of the smaller size, that is net revenues of \$250 million or less in a year, to be able to retain the ability to deregister. That's what the legislation does before us.

With that, I will reserve the balance of my time.

Mr. KANJORSKI. I claim the time in opposition.

The Acting CHAIR. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. KANJORSKI. Madam Chairman, under current law, credit rating agencies operate under a voluntary system of registration with the United States Securities and Exchange Commission. We changed that with a provision in the manager's amendment that would require all rating agencies with appropriate exemptions to register with the Commission.

The gentleman from New Jersey's amendment inserts a voluntary withdrawal from registration with the Commission for those rating agencies who earn less than \$250 million of net revenue. This amendment would have the

effect of allowing the smallest of rating agencies, now registered as Nationally Recognized Statistical Rating Organizations, to opt out of the system at some time in the future.

The proposal would also maintain the close supervision of the largest rating agencies, the ones most likely to issue the ratings used by investors.

Based on that, Madam Chairman, I have no opposition to this amendment.

I yield back the balance of my time.

Mr. GARRETT of New Jersey. I will just close by saying that I thank the gentleman for his support of the legislation, or no opposition to the amendment. I appreciate the very many, many months of working together on this issue and other issues as well.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from New Jersey (Mr. GARRETT).

The amendment was agreed to.

The Acting CHAIR. The Chair understands that amendments 29, 30, and 31 will not be offered.

AMENDMENT NO. 32 OFFERED BY MS.

SCHAKOWSKY

The Acting CHAIR. It is now in order to consider amendment No. 32 printed in House Report 111-370.

Ms. SCHAKOWSKY. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 32 offered by Ms. SCHAKOWSKY:

Page 825, after line 12, insert the following new section:

**SEC. 4413. TREATMENT OF REVERSE MORTGAGES.**

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for—

(A) the purpose of preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction; and

(B) the purpose of providing timely, appropriate, and effective disclosure to consumers in connection with a reverse mortgage transaction that are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(2) with respect to the requirements under paragraph (1), be consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title; and

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the Truth in Lending



Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 255 of the National Housing Act.

(c) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection (a) not later than 12 months after the date of the enactment of this Act.

The Acting CHAIR. Pursuant to House Resolution 964, the gentlewoman from Illinois (Ms. SCHAKOWSKY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Illinois.

Ms. SCHAKOWSKY. Madam Chairman, I yield myself as much time as I may consume.

I want to thank Representative TITUS for joining me in offering this important amendment to make sure that the new Consumer Financial Protection Agency has authority to regulate reverse mortgages. It is a proposal that is supported by the AARP.

Reverse mortgages are unique mortgage products that allow homeowners over age 62 to borrow against their homes to receive either cash or a line of credit. The loan is paid back when the homeowner dies or sells the home. In the past 3 years, more than 335,000 federally insured reverse mortgages have been issued to seniors.

Unfortunately, all is not well in the reverse mortgage market. An October report by the National Consumer Law Center found many of the abusive practices that were common in the subprime lending market before its collapse are also common in reverse mortgage transactions. Those practices include high fees, incentives for brokers that are harmful to borrowers, and lenders steering consumers to products that are more costly than necessary. Also, securitization, as in the subprime market, is becoming more common for reverse mortgages.

Unfortunately, the complexity of the loans and the age of the typical borrower have made the reverse mortgage market ripe for scam artists. We have to make sure that seniors who use reverse mortgages are protected against unlawful and unfair practices.

The amendment I am offering seeks to correct an oversight in the CFPA provisions of the bill. The bill, as written, gives the CFPA authority over a number of consumer statutes, but a

majority of reverse mortgages today are FHA insured home equity conversion mortgages, which are primarily regulated by HUD under the National Housing Act statute. Therefore, as currently written, reverse mortgages may not clearly fall within the CFPA's authority.

My amendment would clarify that the CFPA director has oversight and regulatory authority over lenders and brokers that issue reverse mortgages and directs the agency to consult with HUD as it develops regulations.

My amendment would also require CFPA to begin a rulemaking within 1 year of the bill's enactment in order to develop regulations that will make sure that reverse mortgage transactions are not unfair, deceptive, or abusive.

I urge my colleagues to support this amendment.

I reserve the balance of my time.

Mr. GARRETT of New Jersey. I claim time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. GARRETT of New Jersey. I yield myself 3 minutes.

Madam Chair, I guess here is an example of the old saying, "Here we go again." The CFPA, an entity that we have already discussed both today and yesterday, is an idea of contracting consumer choice, putting limitations on the consumers' ability to buy products that they need and want, and all the time, but at the same time, causing a cost to the overall system of credit and jobs in this country.

The additional cost to the CFPA has already been examined by outside organizations and has been seen to have a negative impact for this country to grow ourselves out of the economic morass that we find ourselves in today.

Experts have said, and we have yet to hear anyone from the other side of the aisle refute these studies, nor, for that matter, when we asked the other side of the aisle earlier, from the gentleman from North Carolina, I believe, do they have any studies to refute these or to present the case that actually would go in the opposite direction, they said no or had no answer.

Experts have shown that the CFPA alone would add a cost of credit to the system between 1.25 or 1.4 to 1.6, as I always say, about 1.5 percentage points to the cost of credit in this country. What does that mean? Even in the case of reverse mortgages, I guess it would apply that you would say that the cost of your credit, if you have a 6 percent loan now would go up to around 7, 7.5 percent. Just the act of borrowing will be made harder by the cost of the underlying bill.

Now we see here with this amendment, if the CFPA was not omnipotent enough with their power to reach in basically every single corner of the economy of this country, now we are going

to let them go even a little bit further.

Now I say all that with the understanding that reverse mortgages sometimes in the past have a history in certain cases—not all, certainly—of causing problems for our seniors, and that is certainly something that regulators need to and have the ability to take a look at. But this certainly is not the answer. This is crafted in such a way that would broaden the CFPA powers and hurt credit.

One other point on this as well. When you are hurting the credit markets of this country, you are also hurting the opportunity to grow this economy with regard to jobs. I think that same study, as well, gave us a number around 4.3 percent reduction in the increase of jobs. What does that mean to you and me? Well, with unemployment around 10 percent, that means that we could be looking at an additional million people in this country who will not be able to get jobs.

How does that help seniors? Seniors who may be working or not working, seniors who have people or other people in their families that are working, how does it help any senior or help anyone in this country if we are going to put more impediments and roadblocks in the way to this country growing again, to getting credit down again and getting unemployment back down from the 10 percent that we find ourselves in today?

I stand opposed to this amendment and opposed to putting additional powers in the Federal Government and the CFPA and within the authorities that they have already.

I reserve the balance of my time.

Ms. SCHAKOWSKY. May I inquire how many minutes I have left?

The Acting CHAIR. The gentlewoman from Illinois has 2½ minutes remaining.

Ms. SCHAKOWSKY. At this time I would like to yield 1 minute to the chairman of the committee, BARNEY FRANK.

Mr. FRANK of Massachusetts. Madam Chair, we keep hearing about these studies. They were commissioned by organizations ideologically opposed to this. Surprise, surprise, they got back the answers they wanted. I haven't seen them. No one has produced them. They are not worth anything. They are simply quantifications of ideology which are entitled to no weight.

I understand that there are people who do not like consumer regulation. What we learn is that in its absence, abuses can proliferate that become systemic problems, but it's especially relevant when we are dealing with the elderly.

We know there are people who preyed on older people. There are people eligible for this program in their eighties who had lives of hard work that did not



include sophisticated involvement with financial instruments. There have been problems of abuse.

We, in fact, adopted, I think, without any opposition, a piece of legislation that said you cannot be the one that sells somebody a reverse mortgage and then becomes his or her investment adviser, because of abuses. Protecting the elderly against abuse shouldn't be controversial.

Mr. GARRETT of New Jersey. Does the gentlewoman have other speakers?

Ms. SCHAKOWSKY. I do.

Mr. GARRETT of New Jersey. I reserve the balance of my time.

Ms. SCHAKOWSKY. Madam Chairman, I yield now to the gentlewoman from Nevada (Ms. TITUS) for the balance of my time.

Ms. TITUS. Madam Chairman, every day seniors are targeted by lending agencies through mailings, phone calls, and TV ads offering reverse mortgages with promises of free money to finance trips, new cars, and gifts in their golden years. While a reverse mortgage may be an appropriate product for some seniors, it's a complex financial instrument which is being aggressively marketed to our most vulnerable in society.

Accordingly, many seniors today find themselves in financial hardship due to unfair and unclear agreements, along with excessive fees that come as a result of reverse mortgages. They have learned the hard way that the reality of a reverse mortgage is not always as advertised, and now they face severe financial consequences in what is supposed to be their golden years.

The amendment that we are offering today provides needed safeguards for our Nation's seniors by requiring that the new Consumer Financial Protection Agency oversee the reverse mortgage industry to ensure seniors are not exposed to unfair and deceptive practices.

Protecting our seniors from unfair and unclear financial products is long overdue. Reverse mortgages need to be clearly and closely monitored and regulated in an effort to ensure seniors don't lose their home and equity that they have built up through a lifetime of hard work.

I am confident that the amendment, which has the endorsement of AARP, will offer appropriate flexibility and protections for our seniors.

I want to thank my colleague, Representative SCHAKOWSKY, and also the chairman of the committee, for working with me on this important issue.

I urge my colleagues to support the amendment.

□ 1030

Mr. GARRETT of New Jersey. Madam Chair, I yield myself just 20 seconds.

To the chairman's comment with regard to our study, which, as he said, is

simply a quantification of ideology, whenever he has an issue like that, I just think that that is an abandonment of originality because any time that we have a study or what have you, he just refers back to ideology.

We would always ask the other side of the aisle, ideological or otherwise, we would be happy to see any study to support anything that is in this bill that will actually not harm our economy nor create hardships for the creation of jobs nor create hardships for creating increases to credit. We would like it, ideological or otherwise.

Madam Speaker, I yield the balance of my time to the gentleman from Texas (Mr. HENSARLING), a man not of ideology alone but a man of facts and figures, a man on the right side of the issue.

Mr. HENSARLING. I thank the gentleman for yielding.

Simply because you are a senior, you shouldn't have to give up your freedom. You shouldn't have to give up your economic liberty.

There are so many reasons to oppose the underlying legislation. It creates a permanent Wall Street bailout authority. At a time where the economic policies of this Congress, of this administration have produced the highest unemployment rate in a generation, they propose legislation that will make credit more expensive, less available, and crush jobs. But now we have an amendment that goes to increase the power of the unelected czar to ban, to ban and ration credit.

You know, ultimately, the American people in the land of the free ought to be able to be free to choose the financial products that they think are best for them. The way to best protect American citizens is with competitive markets that are vigorously enforced for force and fraud but not to take away their essential freedom.

Quit protecting Americans from themselves. Quit assaulting the economic liberties of Americans, especially seniors, in tough economic times who need the money to survive.

We should reject this amendment, reject the job loss, reject the bailout, reject the assault on liberty.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. HENSARLING. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Illinois will be postponed.

AMENDMENT NO. 33 OFFERED BY MS. KILROY

The Acting CHAIR. It is now in order to consider amendment No. 33 printed in House Report 111-370.

Ms. KILROY. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 33 offered by Ms. KILROY:

Page 289, line 10, insert "only" after "Fund".

The Acting CHAIR. Pursuant to House Resolution 964, the gentlewoman from Ohio (Ms. KILROY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Ohio.

Ms. KILROY. Madam Chair, I yield myself such time as I may consume.

It's been a little over a year since the weight of predatory lending, credit default swaps, murky accounting, and risky bets finally gave way and the American taxpayer was forced to bail out Wall Street and the same financial institutions that set our Nation's economy into the worst crisis since the Depression.

The greed and recklessness of Wall Street has cost Main Street dearly. Millions of jobs, hard-earned life savings were lost, and today American families are still recovering.

We know that we need to take action so that American taxpayers are not put in that position again. And over the past year, Chairman FRANK has held countless hearings, markups, and meetings to help bring to the floor today the most sweeping reform of our Nation's financial regulatory system since the New Deal, and he has done so in a transparent and equitable manner.

H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, will restore and strengthen our Nation's financial system and provide Americans the confidence that there are rules in place that work for them and protect them, not protect the big banks and hedge funds and mortgage industry, that there will be the oversight, the regulation that should keep this kind of crisis from happening again, that should see an end to the risky practices that led to the taxpayer bailout of Wall Street.

But it will also end the "too big to fail" problem by implementing a mechanism for the orderly and controlled liquidation of a failed financial institution. And it's very clear that this is going to be funded by the financial institutions themselves. Not by another bailout, not by the taxpayers, no more TARP.

But sometimes increased clarity and added emphasis is called for. By adding one word only to the language regarding the use of assessments, we promise and we reassure our taxpayers that they will not be bailing out Wall Street again. The dissolution fund will only be funded by those financial institutions and their assessments, not our hard-working taxpayers from our cities and towns and farms.

I urge passage of this amendment.

Madam Chair, I reserve the balance of my time.

Mr. HENSARLING. Madam Chair, I rise to claim the time in opposition to the amendment.

The Acting CHAIR. The gentleman from Texas is recognized for 5 minutes.

Mr. HENSARLING. Madam Chair, I yield myself such time as I may consume.

I was very heartened to hear the gentlewoman from Ohio say, quote, "no more TARP." She'll have an opportunity to vote that way later this afternoon. I hope that many of her colleagues on that side of the aisle will follow her example and put their votes where their sentiment is because, indeed, the motion to recommit today will be to end the TARP program. So I look forward to having great support on the other side of the aisle for that motion to recommit.

The particular amendment before us, though, is one that continues to try to perpetuate the myth that somehow taxpayers will not be called upon for a bailout.

Why do you have a bailout fund? You have a bailout fund to bail somebody out. And if for some reason you actually thought that taxpayers were not going to be on the hook, well, \$150 billion imposed upon those who form capital, capital intermediaries, are going to make capital more expensive, less available, choke off more credit to small businesses, and increase the double-digit unemployment rate that the Nation now has under this administration in this Congress's economic policies.

How many more jobs have to be lost? We need to open up credit, not close credit.

Second of all, the people who are telling us, oh, don't worry Mr. Taxpayer, Mrs. Taxpayer, you're never going to be called upon to come and bail out these institutions yet again; we've solved that problem.

Madam Chair, these are the very same people who told us that the taxpayer would never be called upon to bail out the government-sponsored enterprises. Yet a trillion dollars of taxpayer exposure liability later, they were wrong. They've told us that about Social Security—going bankrupt; Medicare—going bankrupt; National Flood Insurance Program, never going to need taxpayer money—insolvent. And the list goes on and on and on.

Now, Madam Chair, I know they mean well. I know they believe it when they say it. But with history as my guide, it is not a credible statement for those on the other side of the aisle to make.

So what are we left with? We are left with a perpetual Wall Street bailout bill. We are left with a bill that will crush job creation at a time when our Nation needs to be creating jobs. We

have a bill that assaults the fundamental economic liberties of every American citizen, who now has to receive the permission of their government before they can put a credit card in their wallet or get a mortgage for their home.

The best way to end TARP is to end TARP. And every Member of this body will have the opportunity to do it later this afternoon.

Madam Chair, I reserve the balance of my time.

Ms. KILROY. Madam Chair, I yield 2 minutes to the gentleman from Massachusetts (Mr. FRANK), chairman of our committee.

Mr. FRANK of Massachusetts. The gentleman from Texas really doesn't have anything to say against this amendment, but his instinct overcomes that, so he has to say negative things. Among them, though, the most outlandish is his continued effort to blame unemployment on President Obama.

President Obama inherited from President Bush a very serious recession. It turns out now the worst since the Great Depression. And it was begun officially by those who certified, the nonpartisan entities that do that, in December of 2007, after many years of Republican rule both in the House and the Senate and in the White House. Unemployment is decreasing now, and you don't go from very bad to perfect. But this effort to evade responsibility for the Republican policies that caused this recession is, as I said, one of the great examples of blame shifting.

I have to say again we suffered a great disease outbreak on January 21, 2009. Mass amnesia hit the Republican Party. The huge deficit, the lack of regulation that had brought about our financial collapse, the millions of jobs lost. The administration with the worst job record recently is the Bush administration. And the Obama recovery is slower than I wish it would be, but it is clearly on the upswing.

Secondly, the gentleman, to win his partisan points, will lash out at anything. Social Security, he announces now, is going bankrupt. Social Security, credited with all the money paid in, is sound for another 25 years or more. Frightening older people by the false claim that Social Security is going bankrupt is an example of partisanship run riot.

What we also have is this reluctance to accept the fact that we have language that says nothing here can go to perpetuate these institutions. He's right. Fannie Mae and Freddie Mac, which the Republican Party—

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. KILROY. I yield 30 seconds to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. In the 12 years of congressional Republican rule, they didn't do a thing about Fannie and Freddie. We did pass the

bill the Bush administration asked us for in 2007. It was too late. But learning from that, we have language here that did not previously exist that bans the use of taxpayer funds, that bans the use of any funds to keep an institution going.

So, yes, unlike the Republicans, who did nothing about Fannie and Freddie in that 12 years, never passed a piece of legislation, we passed a piece of legislation and it was too late, but we've learned from it. And there is binding language here that directly contradicts everything the gentleman from Texas says, but he is not easily fazed by that language.

Mr. HENSARLING. Madam Chair, well, if mass amnesia has affected this side of the aisle, apparently it infected that side of the aisle, too.

I might kindly remind the distinguished chairman of the Financial Services Committee, since he points out 2007 is the year that the financial crisis started, it happens to coincide with the year that the Democrats took control of the United States Congress as well.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. HENSARLING. I would be happy to yield to the distinguished chairman.

Mr. FRANK of Massachusetts. Is the gentleman seriously advancing the argument that it was because the Democrats took over in 2007 that that was why we had a recession?

Mr. HENSARLING. Reclaiming my time, I'm simply pointing out if the gentleman is trying to make associations, there may be an association to be made there as well.

What I am asserting is that the economic policies either enacted or threatened by this Congress and this administration are keeping a recovery from happening. This is an economy that, through any historic standard whatsoever, should have already recovered.

But first we have the stimulus program, which we were told would keep us at 8 percent unemployment. Now we know we have double-digit unemployment, 3.6 million jobs lost since the stimulus program was passed.

□ 1045

We have the \$600 billion energy tax passed in the House hanging over the economy. We have the over \$1 trillion nationalization of our health care system hanging over the economy. And now this is the fourth leg of the stool, and that is a perpetual Wall Street bailout and a further job loss through credit contraction act of 2009. It is the fourth leg of the economic policies that are preventing jobs from being created.

What do we have to show for the economic policies of this administration? That is the first trillion-dollar deficit in our Nation's history. We have an economic plan that will triple the national debt. Nothing would do more to

create jobs than to defeat this bill, let TARP expire, and show the Nation that we will pay off this unconscionable debt.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentlewoman from Ohio (Ms. KILROY).

The amendment was agreed to.

The Acting CHAIR. The Committee will rise informally.

The Speaker pro tempore (Mr. DRIEHAUS) assumed the chair.

#### MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed without amendment bills of the House of the following titles:

H.R. 4165. An act to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

H.R. 4218. An act to amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators.

The SPEAKER pro tempore. The Committee will resume its sitting.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The Committee resumed its sitting.

##### ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 111-370 on which further proceedings were postponed, in the following order:

Amendment No. 12 by Mr. KANJORSKI of Pennsylvania.

Amendment No. 14 by Mr. MCCARTHY of California.

Amendment No. 16 by Mr. PETERS of Michigan.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

##### AMENDMENT NO. 12 OFFERED BY MR. KANJORSKI

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. KANJORSKI:

Page 11, in the item relating to section 7606, strike "Exemption for Nonaccelerated Filers" and insert "Study on methods to reduce the burden of compliance on small companies".

Page 1221, line 19, strike "EXEMPTION FOR NONACCELERATED FILERS" and insert "STUDY ON METHODS TO REDUCE THE BURDEN OF COMPLIANCE ON SMALL COMPANIES".

Page 1221, strike lines 20 through 25.

Page 1222, strike lines 1 through 2.

Page 1222, on line 3, strike "(b) STUDY.—" and adjust the indentation appropriately.

##### RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 153, noes 271, not voting 16, as follows:

[Roll No. 960]

AYES—153

Abercrombie  
Ackerman  
Andrews  
Becerra  
Berkley  
Berman  
Bishop (NY)  
Blumenauer  
Boswell  
Brady (PA)  
Braley (IA)  
Brown, Corrine  
Butterfield  
Capps  
Capuano  
Carson (IN)  
Castor (FL)  
Christensen  
Chu  
Clarke  
Clay  
Cleaver  
Clyburn  
Cohen  
Conaway  
Conyers  
Courtney  
Crowley  
Cummings  
Dahlkemper  
Davis (CA)  
Davis (IL)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dingell  
Doggett  
Doyle  
Edwards (MD)  
Ellison  
Engel  
Eshoo  
Farr  
Fattah  
Frank (MA)  
Fudge  
Garamendi  
Giffords  
Gonzalez  
Grayson  
Green, Al

Green, Gene  
Grijalva  
Gutierrez  
Hare  
Harman  
Hastings (FL)  
Higgins  
Himes  
Hinchey  
Hirono  
Hodes  
Holt  
Hoyer  
Israel  
Jackson (IL)  
Jackson-Lee  
(TX)  
Johnson (GA)  
Johnson, E. B.  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Klein (FL)  
Kratovil  
Kucinich  
Langevin  
Larson (CT)  
Lee (CA)  
Levin  
Lewis (GA)  
Lipinski  
Loebbeck  
Lowey  
Lynch  
Maloney  
Markey (MA)  
Massa  
Matsui  
McDermott  
McGovern  
Meek (FL)  
Michaud  
Miller (NC)  
Miller, George  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy, Patrick  
Nadler (NY)

NOES—271

Adler (NJ)  
Akin  
Alexander  
Altmire  
Arcuri  
Austria  
Baca  
Bachus  
Baird  
Barrow  
Bartlett  
Barton (TX)

Bean  
Berry  
Biggert  
Billbray  
Bilirakis  
Bishop (GA)  
Bishop (UT)  
Blackburn  
Blunt  
Bocieri  
Boehner  
Bonner

Napolitano  
Norton  
Oberstar  
Obey  
Oliver  
Pallone  
Pascarella  
Pastor (AZ)  
Payne  
Perlmutter  
Pingree (ME)  
Price (NC)  
Rahall  
Rangel  
Reyes  
Rodriguez  
Rothman (NJ)  
Roybal-Allard  
Sánchez, Linda  
T.  
Sarbanes  
Schakowsky  
Schiff  
Scott (GA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Sires  
Speier  
Stark  
Sutton  
Taylor  
Thompson (CA)  
Thompson (MS)  
Tierney  
Tonko  
Towns  
Tsongas  
Van Hollen  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

Buchanan  
Burgess  
Burton (IN)  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Cardoza  
Carnahan  
Carney  
Carter  
Cassidy  
Castle  
Chaffetz  
Chandler  
Childers  
Coble  
Coffman (CO)  
Cole  
Connolly (VA)  
Cooper  
Costa  
Costello  
Crenshaw  
Cuellar  
Culberson  
Davis (AL)  
Davis (KY)  
Davis (TN)  
Deal (GA)  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dicks  
Donnelly (IN)  
Dreier  
Driehaus  
Duncan  
Edwards (TX)  
Ehlers  
Ellsworth  
Emerson  
Etheridge  
Fallin  
Flake  
Fleming  
Forbes  
Fortenberry  
Foster  
Fox  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Gingrey (GA)  
Gohmert  
Goodlatte  
Gordon (TN)  
Granger  
Graves  
Griffith  
Guthrie  
Hall (NY)  
Hall (TX)  
Halvorson  
Harper  
Hastings (WA)  
Heinrich  
Heller  
Hensarling  
Herger  
Herseth Sandlin  
Hill  
Hinojosa  
Hoekstra  
Holden

Honda  
Hunter  
Inglis  
Inslee  
Issa  
Jenkins  
Johnson (IL)  
Johnson, Sam  
Jones  
Jordan (OH)  
Kagen  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kirkpatrick (AZ)  
Kissell  
Kline (MN)  
Kosmas  
Lamborn  
Lance  
Larsen (WA)  
Latham  
LaTourette  
Latta  
Lee (NY)  
Lewis (CA)  
Linder  
LoBiondo  
Lucas  
Luetkemeyer  
Luján  
Lummis  
Lungren, Daniel  
E.  
Mack  
Maffei  
Manzullo  
Marchant  
Markey (CO)  
Marshall  
Matheson  
McCarthy (CA)  
McCarthy (NY)  
McCaul  
McClintock  
McCollum  
McCotter  
McHenry  
McIntyre  
McKeon  
McMahon  
McMorris  
Rodgers  
McNerney  
Meeks (NY)  
Melancon  
Mica  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Minnick  
Mitchell  
Mollohan  
Moran (KS)  
Murphy (NY)  
Murphy, Tim  
Myrick  
Neal (MA)  
Neugebauer  
Nunes  
Nye  
Olson  
Ortiz  
Owens  
Paul  
Paulsen  
Pence  
Perriello

Peters  
Peterson  
Petri  
Pitts  
Platts  
Poe (TX)  
Polis (CO)  
Pomeroy  
Posey  
Price (GA)  
Putnam  
Quigley  
Rehberg  
Reichert  
Richardson  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Ross  
Royce  
Ruppersberger  
Rush  
Ryan (OH)  
Ryan (WI)  
Sablan  
Salazar  
Sanchez, Loretta  
Scalise  
Schauer  
Schmidt  
Schock  
Schrader  
Schwartz  
Scott (VA)  
Sensenbrenner  
Shadegg  
Shimkus  
Shuler  
Shuster  
Simpson  
Skelton  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Space  
Spratt  
Stearns  
Stupak  
Sullivan  
Tanner  
Teague  
Terry  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Titus  
Turner  
Upton  
Velázquez  
Visclosky  
Walden  
Walz  
Wamp  
Westmoreland  
Whitfield  
Wilson (SC)  
Wittman  
Wolf  
Young (FL)

NOT VOTING—16

Aderholt  
Bachmann  
Baldwin  
Barrett (SC)  
Bordallo  
Faleomavaega

Filner  
Lofgren, Zoe  
Moran (VA)  
Murtha  
Pierluisi  
Radanovich

Sessions  
Slaughter  
Wexler  
Young (AK)

□ 1114

Mr. OWENS, Ms. LORETTA T. SANCHEZ of California, Messrs. DICKS, KAGEN, NEAL of Massachusetts, Ms. RICHARDSON, Messrs. HINOJOSA,

MEEKS of New York, BACA, INSLEE, and HONDA changed their vote from “aye” to “no.”

Messrs. KRATOVIL, RANGEL, LARSON of Connecticut, and BERMAN changed their vote from “no” to “aye.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

#### PERSONAL EXPLANATION

Mr. FILNER. Madam Speaker, on rollcall 960, I was away from the Capitol. Had I been present, I would have voted “aye.”

#### AMENDMENT NO. 14 OFFERED BY MR. MCCARTHY OF CALIFORNIA

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. MCCARTHY) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. MCCARTHY:

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. MCCARTHY of California.

Strike section 6012 (relating to “Effect of Rule 436(G)”).

#### RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 166, noes 259, not voting 15, as follows:

Roll No. 961

AYES—166

Aderholt	Cohen	Johnson, Sam
Akin	Cole	Jordan (OH)
Alexander	Conaway	King (IA)
Austria	Crenshaw	King (NY)
Bachmann	Culberson	Kingston
Bachus	Davis (KY)	Kline (MN)
Bartlett	Deal (GA)	Lamborn
Barton (TX)	Dent	Lance
Biggert	Dreier	Latham
Bilbray	Duncan	LaTourette
Billirakis	Ehlers	Latta
Bishop (UT)	Emerson	Lee (NY)
Blackburn	Fallin	Lewis (CA)
Blunt	Flake	Linder
Boehner	Fleming	LoBiondo
Bonner	Forbes	Lucas
Bono Mack	Foxx	Luetkemeyer
Boozman	Franks (AZ)	Lummis
Boustany	Frelinghuysen	Lungren, Daniel
Brady (TX)	Galleghy	E.
Broun (GA)	Garrett (NJ)	Mack
Brown (SC)	Gerlach	Manzullo
Buchanan	Gingrey (GA)	Marchant
Burgess	Goodlatte	McCarthy (CA)
Burton (IN)	Granger	McCaul
Buyer	Graves	McClintock
Calvert	Guthrie	McCotter
Camp	Hall (TX)	McHenry
Campbell	Harper	McKeon
Cantor	Hastings (WA)	McMahon
Cao	Heller	McMorris
Capito	Hensarling	Rodgers
Carter	Herger	Mica
Cassidy	Hoekstra	Miller (FL)
Castle	Hunter	Miller (MI)
Chaffetz	Inglis	Miller, Gary
Coble	Issa	Moran (KS)
Coffman (CO)	Jenkins	Murphy, Tim

Myrick	Rogers (KY)
Neugebauer	Rogers (MI)
Nunes	Rohrabacher
Olson	Rooney
Paul	Ros-Lehtinen
Paulsen	Roskam
Pence	Royce
Petri	Ryan (WI)
Pitts	Scalise
Platts	Schmidt
Poe (TX)	Schock
Posey	Sensenbrenner
Price (GA)	Shadegg
Putnam	Shimkus
Rehberg	Shuler
Reichert	Shuster
Roe (TN)	Simpson
Rogers (AL)	Smith (NE)

#### NOES—259

Abercrombie	Eshoo
Ackerman	Etheridge
Adler (NJ)	Farr
Altmire	Fattah
Andrews	Filner
Arcuri	Fortenberry
Baca	Poster
Baird	Frank (MA)
Barrow	Fudge
Bean	Garamendi
Becerra	Giffords
Berkley	Gohmert
Berman	Gonzalez
Berry	Gordon (TN)
Bishop (GA)	Grayson
Bishop (NY)	Green, Al
Blumenauer	Green, Gene
Boccieri	Griffith
Boren	Grijalva
Boswell	Gutierrez
Boucher	Hall (NY)
Boyd	Halvorson
Brady (PA)	Hare
Braley (IA)	Harman
Bright	Hastings (FL)
Brown, Corrine	Heinrich
Brown-Waite,	Hereth Sandlin
Ginny	Hill
Butterfield	Himes
Capps	Hinche
Capuano	Hinojosa
Cardoza	Hirono
Carnahan	Hodes
Carney	Holden
Carson (IN)	Holt
Castor (FL)	Honda
Chandler	Hoyer
Childers	Inslee
Christensen	Israel
Chu	Jackson (IL)
Clarke	Jackson-Lee
Clay	(TX)
Cleaver	Johnson (GA)
Clyburn	Johnson (IL)
Connolly (VA)	Johnson, E. B.
Conyers	Jones
Cooper	Kagen
Costa	Kanjorski
Costello	Kaptur
Courtney	Kennedy
Crowley	Kildee
Cuellar	Kilpatrick (MI)
Cummings	Kilroy
Dahlkemper	Kind
Davis (AL)	Kirkpatrick (AZ)
Davis (CA)	Kissell
Davis (IL)	Klein (FL)
Davis (TN)	Kosmas
DeFazio	Kratovil
DeGette	Kucinich
DeLahun	Langevin
DeLauro	Larsen (WA)
Diaz-Balart, L.	Larson (CT)
Diaz-Balart, M.	Lee (CA)
Dicks	Levin
Dingell	Lewis (GA)
Doggett	Lipinski
Donnelly (IN)	Loebach
Doyle	Lowe
Driehaus	Lujan
Edwards (MD)	Lynch
Edwards (TX)	Maffei
Ellison	Mallory
Ellsworth	Markey (CO)
Engel	Markey (MA)

Smith (NJ)
Smith (TX)
Speier
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf

Sires
Skelton
Smith (WA)
Snyder
Souder
Space
Spratt
Stark
Stearns
Stupak
Sutton
Tanner
Taylor

Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz

Wasserman
Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wilson (OH)
Woolsey
Wu
Yarmuth
Young (FL)

#### NOT VOTING—15

Baldwin	Kirk	Radanovich
Barrett (SC)	Lofgren, Zoe	Sessions
Bordallo	Moran (VA)	Slaughter
Faleomavaega	Murtha	Wexler
Higgins	Pierluisi	Young (AK)

#### ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining on this vote.

□ 1121

Mr. LARSON of Connecticut changed his vote from “aye” to “no.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. KIRK. Madam Chair, on rollcall No. 961 I was unavoidably detained. Had I been present, I would have voted “no.”

Ms. SPEIER. Madam Chair, during rollcall vote No. 961 on H.R. 4173, I mistakenly recorded my vote as “aye” when I should have voted “no.”

#### AMENDMENT NO. 16 OFFERED BY MR. PETERS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. PETERS) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

#### RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 228, noes 198, not voting 14, as follows:

[Roll No. 962]

AYES—228

Abercrombie	Bright	Costello
Ackerman	Brown, Corrine	Courtney
Adler (NJ)	Butterfield	Crowley
Altmire	Capps	Cuellar
Andrews	Capuano	Cummings
Baca	Carnahan	Dahlkemper
Baird	Carney	Davis (AL)
Bean	Carson (IN)	Davis (CA)
Becerra	Castor (FL)	Davis (IL)
Berkley	Chandler	DeFazio
Berman	Childers	DeGette
Bishop (GA)	Christensen	DeLahun
Bishop (NY)	Chu	DeLauro
Blumenauer	Clarke	Dicks
Bocieri	Clay	Dingell
Boswell	Cleaver	Doggett
Boucher	Clyburn	Donnelly (IN)
Boyd	Cohen	Doyle
Brady (PA)	Connolly (VA)	Driehaus
Braley (IA)	Conyers	Edwards (MD)

Edwards (TX) Larson (CT)  
 Ellison Lee (CA)  
 Ellsworth Rothman (NJ)  
 Engel Lewis (GA)  
 Eshoo Lipinski  
 Farr Loebsock  
 Fattah Lowey  
 Filner Lujan  
 Foster Lynch  
 Frank (MA) Maloney  
 Fudge Markey (CO)  
 Garamendi Markey (MA)  
 Giffords Marshall  
 Gonzalez Massa  
 Grayson Matheson  
 Green, Gene Matsui  
 Grijalva McCarthy (NY)  
 Gutierrez McCollum  
 Hall (NY) McDermott  
 Halvorson McGovern  
 Hare McIntyre  
 Harman McNerney  
 Hastings (FL) Meek (FL)  
 Heinrich Meeks (NY)  
 Herseht Sandlin Melancon  
 Higgins Michaud  
 Hill Miller (NC)  
 Himes Miller, George  
 Hinchey Minnick  
 Hinojosa Mitchell  
 Hirono Mollohan  
 Hodes Moore (KS)  
 Holden Murphy (CT)  
 Holt Murphy, Patrick  
 Honda Nadler (NY)  
 Hoyer Napolitano  
 Inslee Neal (MA)  
 Israel Norton  
 Jackson (IL) Oberstar  
 Jackson-Lee (TX) Obey  
 Johnson (GA) Ortiz  
 Johnson, E.B. Owens  
 Kagen Pallone  
 Kanjorski Pascrell  
 Kaptur Pastor (AZ)  
 Kennedy Payne  
 Kildee Perlmutter  
 Kilpatrick (MI) Perriello  
 Kilroy Peters  
 Kirkpatrick (AZ) Pingree (ME)  
 Kissell Pomeroy  
 Klein (FL) Price (NC)  
 Kosmas Quigley  
 Kucinich Rahall  
 Langevin Rangel  
 Larsen (WA) Reyes

## NOES—198

Aderholt Cao  
 Akin Capito  
 Alexander Cardoza  
 Arcuri Carter  
 Austria Cassidy  
 Bachmann Castle  
 Bachus Chaffetz  
 Barrow Coble  
 Bartlett Coffman (CO)  
 Barton (TX) Cole  
 Berry Conaway  
 Biggert Cooper  
 Bilbray Costa  
 Bilirakis Crenshaw  
 Bishop (UT) Culberson  
 Blackburn Davis (KY)  
 Blunt Davis (TN)  
 Boehner Deal (GA)  
 Bonner Dent  
 Bono Mack Diaz-Balart, L.  
 Boozman Diaz-Balart, M.  
 Boren Dreier  
 Boustany Duncan  
 Brady (TX) Ehlers  
 Broun (GA) Emerson  
 Brown (SC) Etheridge  
 Brown-Waite, Ginny  
 Buchanan Fleming  
 Burgess Forbes  
 Burton (IN) Fortenberry  
 Buyer Foss  
 Calvert Franks (AZ)  
 Camp Frelinghuysen  
 Campbell Gallegly  
 Cantor Garrett (NJ)

Richardson  
 Rodriguez  
 Levin  
 Roybal-Allard  
 Ruppersberger  
 Rush  
 Ryan (OH)  
 Sablan  
 Salazar  
 Sanchez, Linda  
 T.  
 Sanchez, Loretta  
 Sarbanes  
 Schakowsky  
 Schauer  
 Schiff  
 Schrader  
 Schwartz  
 Scott (GA)  
 Scott (VA)  
 Serrano  
 Sestak  
 Shea-Porter  
 Sherman  
 Shuler  
 Sires  
 Skelton  
 Snyder  
 Space  
 Speier  
 Stark  
 Stupak  
 Sutton  
 Tanner  
 Teague  
 Thompson (CA)  
 Thompson (MS)  
 Tierney  
 Titus  
 Tonko  
 Towns  
 Tsongas  
 Van Hollen  
 Velázquez  
 Walz  
 Wasserman  
 Schultz  
 Waters  
 Watson  
 Watt  
 Waxman  
 Weiner  
 Welch  
 Wilson (OH)  
 Woolsey  
 Wu  
 Yarmuth

Lee (NY)  
 Lewis (CA)  
 Linder  
 LoBiondo  
 Lucas  
 Luetkemeyer  
 Lummis  
 Lungren, Daniel  
 E.  
 Mack  
 Maffei  
 Manzullo  
 Marchant  
 McCarthy (CA)  
 McCaul  
 McClintock  
 McCotter  
 McHenry  
 McKeon  
 McMahon  
 McMorris  
 Rodgers  
 Mica  
 Miller (FL)  
 Miller (MI)  
 Miller, Gary  
 Moore (WI)  
 Moran (KS)  
 Murphy (NY)  
 Murphy, Tim  
 Myrick

Neugebauer  
 Nunes  
 Nye  
 Olson  
 Paul  
 Paulsen  
 Pence  
 Peterson  
 Petri  
 Pitts  
 Platts  
 Poe (TX)  
 Polis (CO)  
 Posey  
 Price (GA)  
 Putnam  
 Rehberg  
 Reichert  
 Roe (TN)  
 Rogers (AL)  
 Rogers (KY)  
 Rogers (MI)  
 Rohrabacher  
 Rooney  
 Ros-Lehtinen  
 Roskam  
 Ross  
 Royce  
 Ryan (WI)  
 Scalise  
 Schmidt

Schock  
 Sensenbrenner  
 Shadegg  
 Shimkus  
 Shuster  
 Simpson  
 Smith (NE)  
 Smith (NJ)  
 Smith (TX)  
 Smith (WA)  
 Souder  
 Spratt  
 Stearns  
 Sullivan  
 Taylor  
 Terry  
 Thompson (PA)  
 Thornberry  
 Tiahrt  
 Tiberi  
 Turner  
 Upton  
 Visclosky  
 Walden  
 Wamp  
 Westmoreland  
 Whitfield  
 Wilson (SC)  
 Wittman  
 Wolf  
 Young (FL)

## NOT VOTING—14

Baldwin  
 Barrett (SC)  
 Bordallo  
 Faleomavaega  
 Green, Al  
 Lofgren, Zoe  
 Moran (VA)  
 Murtha  
 Pierluisi  
 Radanovich  
 Sessions  
 Slaughter  
 Wexler  
 Young (AK)

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote).  
 There are 2 minutes remaining on this vote.

□ 1129

So the amendment was agreed to.  
 The result of the vote was announced as above recorded.

AMENDMENT NO. 35 OFFERED BY MR. MINNICK  
 The Acting CHAIR. It is now in order to consider amendment No. 35 printed in House Report 111-370.

Mr. MINNICK. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 35 offered by Mr. MINNICK:  
 Strike title IV and insert the following:

## TITLE IV—CONSUMER FINANCIAL PROTECTION ACT

## SECTION 4001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Act of 2009”.

## SEC. 4002. CONSUMER FINANCIAL PROTECTION COUNCIL.

(a) ESTABLISHMENT.—There is hereby established the Consumer Financial Protection Council (hereinafter in this title referred to as the “Council”) as an independent establishment of the executive branch, which shall consist of—

- (1) the Chairman of the Board of Governors of the Federal Reserve System;
- (2) the Comptroller of the Currency;
- (3) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;
- (4) the Director of the Office of Thrift Supervision;
- (5) the Administrator of the National Credit Union Administration;
- (6) the Secretary of the Department of Housing and Urban Development;
- (7) the Secretary of the Treasury;

(8) the Chairman of the Securities and Exchange Commission;

(9) the Chairman of the Commodities Futures Trading Commission;

(10) the Chairman of the Federal Trade Commission; and

(11) one individual selected by the State Advisory Committee established under section 4005.

(b) STAFFING.—The Secretary of the Treasury shall provide appropriate staffing for the Council.

## SEC. 4003. CONSUMER FINANCIAL PROTECTION SUBCOMMITTEE.

(a) ESTABLISHMENT.—There is hereby established within the Council the Consumer Financial Protection Subcommittee (hereinafter in this title referred to as the “CFPS”), which shall consist of the members of the Council.

(b) PURPOSE.—The purpose of the CFPS is to ensure that all providers of a financial product or service to consumers are subject to meaningful and uniform consumer protection requirements, and that functionally equivalent products are subject to equivalent consumer protection standards.

## (c) CHAIRMANSHIP.—

(1) INITIAL CHAIRMAN.—The Chairman of the Federal Trade Commission shall serve as the Chairman of the CFPS for the 2-year period beginning on the date of the enactment of this title.

(2) SUBSEQUENT SELECTION.—After the 2-year period described under paragraph (1), the President shall appoint the Chairman of the CFPS from among the members of the CFPS. The term of the Chairmanship shall be 2 years.

(d) VOTING.—Decisions of the CFPS shall be made by a majority vote of the members of the CFPS.

(e) DUTIES.—The CFPS shall review existing consumer protection regulations and issue new or revised regulations where needed to prevent unfair or deceptive practices.

## (f) PROCEDURES FOR PROPOSING AND ISSUING REGULATIONS.—

(1) PROPOSAL.—Any member of the CFPS may propose that the CFPS consider the need for the modification of an existing regulation or for the issuing of a new regulation with respect to a particular consumer financial product or service. After such proposal is made, the CFPS shall develop an analysis of the proposal and prepare a report that either—

(A) recommends that no action be taken; or

(B) recommends the modification of existing regulations or the issuing of new regulations.

(2) PUBLICATION.—With respect to a report prepared under paragraph (1)—

(A) if the CFPS recommends that no action be taken, the CFPS shall make a copy of the report publicly available; and

(B) if the CFPS recommends the modification of existing regulations or the issuing of new regulations, the CFPS shall publish such report in the Federal Register and solicit public comments on such recommendation, pursuant to the Administrative Procedure Act.

(3) MODIFICATION OR ACCEPTANCE.—With respect to each recommendation described under paragraph (2)(B) for the modification of existing regulations or the issuing of new regulations, after the CFPS has considered the public comments on such recommendation, the CFPS shall vote on whether such recommendations should be withdrawn, modified, or published as a final regulation.

(4) REGULATIONS ISSUED BY CFPS CONTROL.—Notwithstanding any other provision of law,

to the extent that any other regulation conflicts with a regulation issued by the CFPS under this subsection, such other regulation shall have no force or effect to the extent of such conflict.

**(5) PROPOSALS BY STATE ADVISORY COMMITTEE.—**

(A) IN GENERAL.—Any proposal made under paragraph (1) by the member of the CFPS selected by the State Advisory Committee shall be accompanied by a certification from such member stating that more than half of the States support such proposal.

(B) METHOD OF DETERMINATION.—For purposes of this paragraph, the State Advisory Committee shall determine the method for determining if a State supports a proposal.

(6) REPORT ON APPROVAL OR OPPOSITION.—Each member of the CFPS shall issue an annual report to the Congress containing a detailed explanation, for each proposal made under paragraph (1), why such member supported or opposed such proposal.

(7) PROCEDURES TO BE APPLIED TO ALL RULEMAKINGS.—The procedures under this subsection shall be used by the CFPS when issuing any regulation under the authority of this title.

(g) CONSUMER FINANCIAL PRODUCTS OR SERVICES EXPRESSLY PERMITTED BY STATE OR FEDERAL LAW.—

(1) VOTING REQUIREMENTS.—Any votes taken by the CFPS to prevent the offering of any consumer financial product or service that is expressly permitted by State or Federal law shall only be agreed to by a two-thirds vote.

(2) RECOMMENDATIONS TO THE CONGRESS.—If the CFPS determines a need to prevent the offering of any consumer financial product or service expressly permitted by State or Federal law, the CFPS shall issue a report to the Congress containing such determination and including—

(A) a description of the specific financial product or service that the CFPS is recommending the Congress should prevent from being offered;

(B) an estimate of the amount of credit provided by and the number of consumers using any such financial product or service;

(C) a list of any States which have expressly permitted any such financial product or service;

(D) the identities of persons known by the CFPS to be offering any such financial product or service;

(E) an analysis of whether there are ample other alternative reasonably priced financial products or services available to meet consumers' credit needs, and a description of such alternative financial products or services; and

(F) the basis and reasoning on which the CFPS has based its recommendation.

(3) DEFINITION.—For purposes of this subsection, the term "prevent the offering of any consumer financial product or service" shall mean taking any action that could reasonably result in the direct or indirect prohibition of, or materially interfere with the ability of any person to offer, any consumer financial product or service.

**SEC. 4004. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.**

Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended by inserting after "established" the following: "as a subcommittee within the Consumer Financial Protection Council".

**SEC. 4005. STATE ADVISORY COMMITTEE.**

There is hereby established within the Council the State Advisory Committee,

which shall consist of one representative from each of the following:

(1) The Conference of State Bank Supervisors.

(2) The American Council of State Savings Supervisors.

(3) The National Association of State Credit Union Supervisors.

**SEC. 4006. EQUALITY OF CONSUMER PROTECTION ENFORCEMENT RESPONSIBILITIES.**

With respect to each consumer protection agency, the enforcement of the provisions of the consumer protection laws under such agency's jurisdiction shall be of equal importance to such agency as the enforcement of the provisions of other laws under such agency's jurisdiction.

**SEC. 4007. DIRECTOR OF THE CONSUMER FINANCIAL PROTECTION DIVISION.**

(a) ESTABLISHMENT.—There is hereby established within each consumer protection agency a position of Director of the Consumer Financial Protection Division.

(b) COMPENSATION.—With respect to a consumer protection agency, the Director of the Consumer Financial Protection Division shall be compensated in an amount no less than the amount of compensation provided to the head of other subdivisions of such agency of a comparable size.

(c) DIRECT REPORTING.—Each Director of the Consumer Financial Protection Division established under subsection (a) shall report directly to the head of the agency within which such Director is located.

(d) ANNUAL REPORT TO THE CONGRESS.—Each consumer protection agency shall issue an annual report to the Congress detailing the activities of the Director of the Consumer Financial Protection Division and how such activities advanced the agency's consumer protection functions.

**SEC. 4008. PROHIBITING UNFAIR OR DECEPTIVE ACTS OR PRACTICES.**

(a) IN GENERAL.—Each consumer protection agency may prevent a person from committing or engaging in an unfair or deceptive act or practice in connection with any transaction with a consumer for a consumer financial product or service under such agency's jurisdiction.

(b) RULEMAKING.—Each consumer protection agency may prescribe regulations identifying as unlawful, unfair, or deceptive acts or practices in connection with any transaction with a consumer for a consumer financial product or service under such agency's jurisdiction.

(c) REFERRAL TO CFPS.—With respect to each regulation issued pursuant to subsection (b), the consumer protection agency issuing such regulation shall propose such regulation to the CFPS under section 4003(f), unless the CFPS already has a substantially similar proposal under consideration.

(d) UNFAIRNESS.—

(1) IN GENERAL.—A consumer protection agency shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service to be unlawful on the grounds that such act or practice is unfair unless such agency has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) EXISTING PUBLISHED GUIDELINES AS FACTOR.—In determining whether an act or practice is unfair, a consumer protection agency

shall consider established public policies and regulations, interpretations, guidance, and staff commentaries issued by the consumer protection agencies under the consumer protection laws they enforce.

(e) DEFINITIONS.—For purposes of this section, the terms "unfair" and "deceptive" shall have the meanings given such terms under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

**SEC. 4009. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR OR DECEPTIVE PRACTICES.**

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The consumer protection agencies shall prescribe standards applicable to covered persons to deter and detect unfair or deceptive acts or practices in the provision of consumer financial products or services under such agency's jurisdiction, including standards for—

(1) background checks for principals, officers, directors, or key personnel of the covered person;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of the ability of the covered person to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; and

(5) procedures and operations of the covered person relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) CFPS AUTHORITY TO ISSUE REGULATIONS.—The CFPS may issue regulations establishing minimum standards under this section for any class of covered persons.

(c) EXCEPTION FOR ENFORCEMENT OF GRAMM-LEACH-BLILEY PRIVACY LAWS AGAINST INSURERS.—Neither the consumer protection agencies nor the CFPS shall have authority to issue or enforce regulations with respect to authorities that are granted to State insurance regulators under section 505(a)(6) of the Gramm-Leach-Bliley Act.

**SEC. 4010. PRESUMPTION OF ABILITY TO REPAY.**

(a) PROHIBITION ON RESIDENTIAL MORTGAGE LOANS THAT WON'T REASONABLY BE REPAYED.—

(1) IN GENERAL.—No creditor shall make a residential mortgage loan unless it has a reasonable basis for determining that the consumer can repay the loan.

(2) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan.

(b) EXEMPTION FOR CERTAIN MODEL TERMS AND CONDITIONS.—Subsection (a) shall not apply to residential mortgage loans containing the model terms and conditions contained in regulations issued by the Council under subsection (c).

(c) PROCEDURE FOR ADOPTING MODEL TERMS AND CONDITIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this title, the Council shall issue regulations containing model terms and conditions for residential mortgage loans, for purposes of subsection (b).

(2) VOTING.—The Council may only issue a regulation under paragraph (1)—

(A) by a majority vote of the Council's members; and

(B) in a vote where each member of the Council casts a vote.

(3) **REVISION OF MODEL TERMS AND CONDITIONS.**—The Council shall update regulations issued under this subsection from time to time as appropriate.

(4) **RULEMAKING PROCEDURES.**—In issuing any regulation under this subsection, the Council shall, to the extent practicable, follow the procedures set forth under section 4003(f) for the consideration of proposals by the CFPS.

(d) **ENFORCEMENT.**—The prohibition under subsection (a) shall be enforced by each member of the Council with jurisdiction over the provision of residential mortgage loans.

**SEC. 4011. EXAMINATIONS BY CONSUMER PROTECTION AGENCIES.**

(a) **IN GENERAL.**—Each consumer protection agency shall carry out regular examinations of covered persons regulated by such agency.

(b) **SCOPE OF EXAMINATIONS.**—Examinations carried out pursuant to subsection (a) shall be comparable to those examinations carried out by the Federal banking agencies of insured depository institutions.

**SEC. 4012. CONSUMER RIGHTS TO ACCESS INFORMATION.**

(a) **IN GENERAL.**—Subject to regulations prescribed by the consumer protection agencies, a covered person shall make available to a consumer, in an electronic form usable by the consumer, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account, including charges and usage data.

(b) **EXCEPTIONS.**—A covered person shall not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) **NO DUTY TO MAINTAIN RECORDS.**—No provision of this section shall be construed as imposing any duty on a covered person to maintain or keep any information about a consumer.

(d) **STANDARDIZED FORMATS FOR DATA.**—The consumer protection agencies, by regulation, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

**SEC. 4013. PROHIBITED ACTS.**

It shall be unlawful for any person to—

(1) advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee or charge in connection with a consumer financial product or service that is not in conformity with this title and applicable regulation prescribed or order issued by the consumer protection agencies, the CFPS, or the Council;

(2) fail or refuse to permit access to or copying of records, or fail or refuse to estab-

lish or maintain records, or fail or refuse to make reports or provide information to a consumer protection agency, the CFPS, or the Council, as required by this title, a consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority; or

(3) knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 4008, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

**SEC. 4014. STATE ATTORNEYS GENERAL RIGHT TO SUE.**

No provision of this title shall be construed to limit the applicability or the effect of the decision of the Supreme Court in *Cuomo v. Clearing House Assn., L.L.C.*, 557 U.S. \_\_\_\_ (2009).

**SEC. 4015. ENFORCEMENT.**

(a) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **CIVIL INVESTIGATIVE DEMAND AND DEMAND.**—The terms “civil investigative demand” and “demand” mean any demand issued by a consumer protection agency.

(2) **CONSUMER PROTECTION AGENCY.**—The term “consumer protection agency” means—

(A) the appropriate Federal banking agency (as such term is defined in section 3(q) of the Federal Deposit Insurance Act), with respect to entities regulated by the appropriate Federal banking agencies;

(B) the National Credit Union Administration, with respect to a credit union;

(C) the Securities and Exchange Commission, with respect to an entity regulated by such Commission;

(D) the Commodity Futures Trading Commission, with respect to an entity regulated by such Commission; and

(E) the Federal Trade Commission, with respect to any entity not regulated by the appropriate Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission.

(3) **CONSUMER PROTECTION AGENCY INVESTIGATION.**—The term “consumer protection agency investigation” means any inquiry conducted by a consumer protection agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any consumer protection law, or any regulation prescribed or order issued by the consumer protection agencies, the CFPS, or the Council under this title.

(4) **CONSUMER PROTECTION AGENCY INVESTIGATOR.**—The term “consumer protection agency investigator” means any attorney or investigator employed by a consumer protection agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any consumer protection law, or any regulation prescribed or order issued under this title or pursuant to any such authority by the consumer protection agency, the CFPS, or the Council.

(5) **CUSTODIAN.**—The term “custodian” means the custodian or any deputy custodian designated by a consumer protection agency.

(6) **DOCUMENTARY MATERIAL.**—The term “documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(7) **VIOLATION.**—The term “violation” means any act or omission that, if proved,

would constitute a violation of any provision of this title, any consumer protection law, or of any regulation prescribed or order issued by a consumer protection agency, the CFPS, of the Council under this title or pursuant to any such authority.

(b) **INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.**—

(1) **SUBPOENAS.**—

(A) **IN GENERAL.**—A consumer protection agency or a consumer protection agency investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(B) **FAILURE TO OBEY.**—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by a consumer protection agency or a consumer protection agency investigator and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

(C) **CONTEMPT.**—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(2) **DEMANDS.**—

(A) **IN GENERAL.**—Whenever a consumer protection agency has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, a consumer protection agency may, before the institution of any proceedings under this title or under any consumer protection law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(i) produce such documentary material for inspection and copying or reproduction;

(ii) submit such tangible things;

(iii) file written reports or answers to questions;

(iv) give oral testimony concerning documentary material or other information; or

(v) furnish any combination of such material, answers, or testimony.

(B) **REQUIREMENTS.**—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(C) **PRODUCTION OF DOCUMENTS.**—Each civil investigative demand for the production of documentary material shall—

(i) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(iii) identify the custodian to whom such material shall be made available.

(D) **PRODUCTION OF THINGS.**—Each civil investigative demand for the submission of tangible things shall—

(i) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(ii) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and



(iii) identify the custodian to whom such things shall be submitted.

(E) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(i) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(ii) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(iii) identify the custodian to whom such reports or answers shall be submitted.

(F) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

(ii) identify a consumer protection agency investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(G) SERVICE.—

(i) Any civil investigative demand may be served by any consumer protection agency investigator at any place within the territorial jurisdiction of any court of the United States.

(ii) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(iii) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(H) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(i) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(ii) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(iii) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at its principal office or place of business.

(I) PROOF OF SERVICE.—

(i) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(ii) In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(J) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certi-

cate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(K) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(L) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(M) TESTIMONY.—

(i) PROCEDURE.—

(I) OATH AND RECORDATION.—Any consumer protection agency investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness.

(II) TRANSCRIPTIONS.—The testimony shall be taken stenographically and transcribed.

(III) COPY TO CUSTODIAN.—After the testimony is fully transcribed, the consumer protection agency investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(ii) PARTIES PRESENT.—Any consumer protection agency investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his or her attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(iii) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the consumer protection agency investigator before whom the oral testimony of such person is to be taken and such person.

(iv) ATTORNEY REPRESENTATION.—

(I) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(II) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in con-

fidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(III) OBJECTIONS.—The person summoned or the attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection.

(IV) REFUSAL TO ANSWER.—An objection may properly be made, received, and entered upon the record when it is claimed that the person summoned is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and shall not otherwise interrupt the oral examination, directly or through such person's attorney.

(V) PETITION FOR ORDER.—If such person refuses to answer any question, a consumer protection agency may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(VI) BASIS FOR COMPELLING TESTIMONY.—If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(v) TRANSCRIPTS.—

(I) RIGHT TO EXAMINE.—After the testimony of any witness is fully transcribed, the consumer protection agency investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(II) READING THE TRANSCRIPT.—The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.

(III) REQUEST FOR CHANGES.—Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the consumer protection agency investigator with a statement of the reasons given by the witness for making such changes.

(IV) SIGNATURE.—The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(V) CONSUMER PROTECTION AGENCY ACTION IN LIEU OF SIGNATURE.—If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the consumer protection agency investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(vi) CERTIFICATION BY INVESTIGATOR.—The consumer protection agency investigator shall certify on the transcript that the witness was duly sworn by the investigator and that the transcript is a true record of the testimony given by the witness, and the consumer protection agency investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(vii) COPY OF TRANSCRIPT.—The consumer protection agency investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the consumer protection agency may for good cause limit such witness to inspection of the official transcript of his testimony.

(viii) **WITNESS FEES.**—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(3) **CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.**—

(A) **IN GENERAL.**—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the consumer protection agency.

(B) **DISCLOSURE TO CONGRESS.**—No regulation established by a consumer protection agency regarding the confidentiality of materials submitted to, or otherwise obtained by, the consumer protection agency shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the consumer protection agency may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the consumer protection agency and has designated such material as confidential.

(4) **PETITION FOR ENFORCEMENT.**—

(A) **IN GENERAL.**—Whenever any person fails to comply with any civil investigative demand duly served upon such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the consumer protection agency, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(B) **SERVICE OF PROCESS.**—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(5) **PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.**—

(A) **IN GENERAL.**—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any consumer protection agency investigator named in the demand, such person may file with the consumer protection agency a petition for an order by the consumer protection agency modifying or setting aside the demand.

(B) **COMPLIANCE DURING PENDENCY.**—The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the consumer protection agency, shall not run during the pendency of such petition at the consumer protection agency, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(C) **SPECIFIC GROUNDS.**—Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(6) **CUSTODIAL CONTROL.**—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any

person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon such custodian by this section or regulation prescribed by the consumer protection agency.

(7) **JURISDICTION OF COURT.**—

(A) **IN GENERAL.**—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(B) **APPEAL.**—Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

(C) **HEARINGS AND ADJUDICATION PROCEEDINGS.**—

(1) **IN GENERAL.**—A consumer protection agency may conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(A) the provisions of this title, including any regulations prescribed by the consumer protection agency under this title; and

(B) any other Federal law that the consumer protection agency is authorized to enforce, including a consumer protection law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the consumer protection agency from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(2) **SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.**—

(A) **ISSUANCE.**—

(i) **NOTICE OF CHARGES.**—If, in the opinion of a consumer protection agency, any covered person is engaging or has engaged in an activity that violates a law, regulation, or any condition imposed in writing on the person by the consumer protection agency, the consumer protection agency may issue and serve upon the person a notice of charges with respect to such violation.

(ii) **CONTENTS OF NOTICE.**—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist there from should issue against the person.

(iii) **TIME OF HEARING.**—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the consumer protection agency at the request of any party so served.

(iv) **NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.**—Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order.

(v) **ISSUANCE OF ORDER.**—In the event of such consent, or if upon the record made at any such hearing, the consumer protection agency shall find that any violation specified in the notice of charges has been established, the consumer protection agency may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(vi) **INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.**—Such order may, by provisions

which may be mandatory or otherwise, require the person to cease-and-desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(B) **EFFECTIVENESS OF ORDER.**—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the consumer protection agency or a reviewing court.

(C) **DECISION AND APPEAL.**—

(i) **PLACE OF AND PROCEDURES FOR HEARING.**—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(ii) **TIME LIMIT FOR DECISION.**—After such hearing, and within 90 days after the consumer protection agency has notified the parties that the case has been submitted to it for final decision, the consumer protection agency shall—

(I) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(II) serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection.

(iii) **MODIFICATION OF ORDER GENERALLY.**—Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (D), and thereafter until the record in the proceeding has been filed as so provided, the consumer protection agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(iv) **MODIFICATION OF ORDER AFTER FILING RECORD ON APPEAL.**—Upon such filing of the record, the consumer protection agency may modify, terminate, or set aside any such order with permission of the court.

(D) **APPEAL TO COURT OF APPEALS.**—

(i) **IN GENERAL.**—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the consumer protection agency be modified, terminated, or set aside.

(ii) **TRANSMITTAL OF COPY TO THE CONSUMER PROTECTION AGENCY.**—A copy of such petition shall be forthwith transmitted by the clerk of the court to the consumer protection agency, and thereupon the consumer protection agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(iii) **JURISDICTION OF COURT.**—Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as otherwise provided be exclusive, to affirm, modify, terminate, or

set aside, in whole or in part, the order of the consumer protection agency.

(iv) **SCOPE OF REVIEW.**—Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code.

(v) **FINALITY.**—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(E) **NO STAY.**—The commencement of proceedings for judicial review under subparagraph (D) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(3) **SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**—

(A) **ISSUANCE.**—

(i) **IN GENERAL.**—Whenever the consumer protection agency determines that the violation specified in the notice of charges served upon a person pursuant to paragraph (2), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to paragraph (2), the consumer protection agency may issue a temporary order requiring the covered person to cease-and-desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings.

(ii) **OTHER REQUIREMENTS.**—Any temporary order issued under this paragraph may include any requirement authorized under this section.

(iii) **EFFECT DATE OF ORDER.**—Any temporary order issued under this paragraph shall take effect upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the consumer protection agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(B) **APPEAL.**—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the covered person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under paragraph (2), and such court shall have jurisdiction to issue such injunction.

(C) **INCOMPLETE OR INACCURATE RECORDS.**—

(i) **TEMPORARY ORDER.**—If a notice of charges served under paragraph (2) specifies, on the basis of particular facts and circumstances, that a person's books and records are so incomplete or inaccurate that the consumer protection agency is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the consumer protection agency may issue a temporary order requiring—

(I) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(II) affirmative action to restore such books or records to a complete and accurate

state, until the completion of the proceedings under paragraph (2)(A).

(ii) **EFFECTIVE PERIOD.**—Any temporary order issued under clause (i)—

(I) shall take effect upon service; and

(II) unless set aside, limited, or suspended by a court in proceedings under subparagraph (B), shall remain in effect and enforceable until the earlier of—

(aa) the completion of the proceeding initiated under paragraph (2) in connection with the notice of charges; or

(bb) the date the consumer protection agency determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(4) **SPECIAL RULES FOR ENFORCEMENT OF ORDERS.**—

(A) **IN GENERAL.**—The consumer protection agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the covered person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(B) **EXCEPTION.**—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(5) **REGULATIONS.**—The consumer protection agencies shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

(d) **LITIGATION AUTHORITY.**—

(1) **IN GENERAL.**—If any person violates a provision of this title, any consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority, a consumer protection agency may commence a civil action against such person to impose a civil penalty or to seek all appropriate legal or equitable relief including a permanent or temporary injunction as permitted by law.

(2) **REPRESENTATION.**—A consumer protection agency may act in its own name and through its own attorneys in enforcing any provision of this title, regulations under this title, or any other law or regulation, or in any action, suit, or proceeding to which the consumer protection agency is a party.

(3) **COMPROMISE OF ACTIONS.**—A consumer protection agency may compromise or settle any action if such compromise is approved by the court.

(4) **NOTICE TO THE ATTORNEY GENERAL.**—When commencing a civil action under this title, any consumer protection law or any regulation thereunder, a consumer protection agency shall notify the Attorney General.

(5) **FORUM.**—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a State in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority.

(6) **TIME FOR BRINGING ACTION.**—

(A) **IN GENERAL.**—Except as otherwise permitted by law, no action may be brought under this title more than 3 years after the violation to which an action relates.

(B) **LIMITATIONS UNDER OTHER FEDERAL LAWS.**—

(i) For purposes of this subsection, an action arising under this title shall not include claims arising solely under consumer protection laws.

(ii) In any action arising solely under a consumer protection law, a consumer protection agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(e) **RELIEF AVAILABLE.**—

(1) **ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.**—

(A) **JURISDICTION.**—The court (or consumer protection agency, as the case may be) in an action or adjudication proceeding brought under this title or any consumer protection law shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title or any consumer protection law, including a violation of a regulation prescribed or order issued under this title or any consumer protection law.

(B) **RELIEF.**—Such relief may include—

(i) rescission or reformation of contracts;

(ii) refund of moneys or return of real property;

(iii) restitution;

(iv) compensation for unjust enrichment;

(v) payment of damages;

(vi) public notification regarding the violation, including the costs of notification;

(vii) limits on the activities or functions of the person; and

(viii) civil money penalties, as set forth more fully in paragraph (4).

(C) **NO EXEMPLARY OR PUNITIVE DAMAGES.**—Nothing in this paragraph shall be construed as authorizing the imposition of exemplary or punitive damages.

(2) **RECOVERY OF COSTS.**—In any action brought by a consumer protection agency to enforce any provision of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority, a consumer protection agency may recover its costs in connection with prosecuting such action if the consumer protection agency is the prevailing party in the action.

(3) **CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.**—

(A) Any person that violates any provision of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title shall forfeit and pay a civil penalty pursuant to this paragraph determined as follows:

(i) **FIRST TIER.**—For any violation of a final order or condition imposed in writing by a consumer protection agency, a civil penalty shall not exceed \$5,000 for each day during which such violation continues.

(ii) **SECOND TIER.**—Notwithstanding clause (i), for any person that knowingly violates this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title, a civil penalty shall not exceed \$1,000,000 for each day during which such violation continues.

(B) **MITIGATING FACTORS.**—In determining the amount of any penalty assessed under subparagraph (A), the consumer protection agency or the court shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the person charged;

(ii) the gravity of the violation;

(iii) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(iv) the history of previous violations; and  
(v) such other matters as justice may require.

(C) **AUTHORITY TO MODIFY OR REMIT PENALTY.**—The consumer protection agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under subparagraph (A). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(D) **NOTICE AND HEARING.**—No civil penalty may be assessed with respect to a violation of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council, unless—

(i) the consumer protection agency gives notice and an opportunity for a hearing to the person accused of the violation; or

(ii) the appropriate court has ordered such assessment and entered judgment in favor of the consumer protection agency.

(f) **REFERRALS FOR CRIMINAL PROCEEDINGS.**—Whenever a consumer protection agency obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the consumer protection agency shall have the power to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the consumer protection agency to disclose information.

(g) **EMPLOYEE PROTECTION.**—

(1) **IN GENERAL.**—No person shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a consumer protection agency, the CFPS, or the Council, filed, instituted or caused to be filed or instituted any proceeding under this title, any consumer protection law, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title.

(2) **CONSUMER PROTECTION AGENCY REVIEW OF TERMINATION.**—

(A) **APPLICATION FOR REVIEW.**—Any employee or representative of employees who believes that he has been terminated or otherwise discriminated against by any person in violation of paragraph (1) may, within 45 days after such alleged violation occurs, apply to a consumer protection agency for review of such termination or alleged discrimination.

(B) **COPY TO RESPONDENT.**—A copy of the application shall be sent to the person who is alleged to have terminated or otherwise discriminated against an employee, and such person shall be the respondent.

(C) **INVESTIGATION.**—Upon receipt of such application, the consumer protection agency shall cause such investigation to be made as the consumer protection agency deems appropriate.

(D) **HEARING.**—Any investigation under this paragraph shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation.

(E) **NOTICE OF TIME AND PLACE FOR HEARING.**—The parties shall be given written notice of the time and place of the hearing at least 5 days prior to the hearing.

(F) **PROCEDURE.**—Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5, United States Code.

(G) **DETERMINATION.**—

(i) **IN GENERAL.**—Upon receiving the report of such investigation, the consumer protection agency shall make findings of fact.

(ii) **ISSUANCE OF DECISION.**—If the consumer protection agency finds that there is sufficient evidence in the record to conclude that such a violation did occur, the consumer protection agency shall issue a decision, incorporating an order therein and the consumer protection agency's findings, requiring the party committing such violation to take such affirmative action to abate the violation as the consumer protection agency deems appropriate, including reinstating or rehiring the employee or representative of employees to the former position with compensation.

(iii) **DENIAL OF APPLICATION.**—If the consumer protection agency finds insufficient evidence to support the allegations made in the application, the consumer protection agency shall deny the application.

(H) **JUDICIAL REVIEW.**—An order issued by the consumer protection agency under this paragraph (2) shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this title or any consumer protection law.

(3) **COSTS AND EXPENSES.**—Whenever an order is issued under this subsection to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) determined by the consumer protection agency to have been reasonably incurred by the applicant for, or in connection with, the application and prosecution of such proceedings shall be assessed against the person committing such violation.

(4) **EXCEPTION.**—This subsection shall not apply to any employee who acting without discretion from the employer of such employee (or the employer's agent) deliberately violates any requirement of this title or any consumer protection law.

(h) **EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.**—

(1) **IN GENERAL.**—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as provided in paragraphs (2) and (3), the Council and the CFPS shall have no authority to exercise any power to enforce this title with respect to a person regulated by any State insurance regulator.

(2) **DESCRIPTION OF ACTIVITIES.**—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4018(15) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under section 4018(6).

(3) **PRESERVATION OF CERTAIN AUTHORITIES.**—Nothing in this title shall be construed as limiting the authority of the Council or the CFPS from exercising powers under this Act with respect to a person, other than a person regulated by a State insurance regulator, who provides a product or service for or on behalf of a person regulated

by a State insurance regulator in connection with a financial activity.

## **SEC. 4016. COLLECTION OF DEPOSIT ACCOUNT DATA.**

(a) **PURPOSE.**—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) **IN GENERAL.**—

(1) **RECORDS REQUIRED.**—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) **GEO-CODED ADDRESSES OF DEPOSITORS.**—The customers' addresses maintained pursuant to paragraph (1) shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) **IDENTIFICATION OF DEPOSITOR TYPE.**—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) **PUBLIC AVAILABILITY.**—

(A) **IN GENERAL.**—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers.

(B) **PROTECTION OF IDENTITY.**—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) **AVAILABILITY OF INFORMATION.**—

(1) **SUBMISSION TO AGENCIES.**—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Federal banking agency, in accordance with rules prescribed by the Federal banking agencies.

(2) **AVAILABILITY OF INFORMATION.**—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under rules prescribed by the Federal banking agencies.

(d) **FEDERAL BANKING AGENCY USE.**—The Federal banking agencies—

(1) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(2) may use the data for any other purpose as permitted by law.

(e) **REGULATIONS AND GUIDANCE.**—

(1) **IN GENERAL.**—The Federal banking agencies shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) **DATA COMPILATION REGULATIONS.**—The Federal banking agencies shall prescribe regulations regarding the provision of data compiled under this section to such agencies to carry out the purposes of this section and

shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

(f) **DEFINITIONS.**—For purposes of this section, and notwithstanding section 4018, the following definitions shall apply:

(1) **CREDIT UNION.**—The term “credit union” means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(2) **DEPOSIT ACCOUNT.**—The term “deposit account” includes any checking account, savings account, credit union share account, and other type of account as defined by the consumer protection agencies.

(3) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” means the Board of Governors of the Federal Reserve System, the head of the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term “Federal banking agencies” means all of those agencies.

(4) **FINANCIAL INSTITUTION.**—The term “financial institution”—

(A) has the meaning given to the term “insured depository institution” in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

#### SEC. 4017. CONFIDENTIALITY.

The Council, the Financial Institutions Examination Council, the CFPS, and the consumer protection agencies shall each issue regulations regarding the confidential treatment of information obtained from persons in connection with the exercise of such entity's authorities under this title. Such regulations shall, to the extent practicable, mirror the provisions provided for the confidential treatment of financial records under the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401).

#### SEC. 4018. DEFINITIONS.

For purposes of this title:

(1) **AFFILIATE.**—The term “affiliate” means any person that controls, is controlled by, or is under common control with another person.

(2) **BOARD OF GOVERNORS.**—The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

(3) **CFPS.**—The term “CFPS” means the Consumer Financial Protection Subcommittee established under section 4003.

(4) **CONSUMER.**—The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) **CONSUMER FINANCIAL PRODUCT OR SERVICE.**—The term “consumer financial product or service” means any financial product or service to be used by a consumer primarily for personal, family, or household purposes.

(6) **CONSUMER PROTECTION LAWS.**—The term “consumer protection laws” means each of the following:

(A) The Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.).

(B) The Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.).

(C) The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e), 624, and 628.

(E) The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(F) Subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

(G) Sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.).

(H) The Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(I) The Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(J) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).

(K) The Truth in Lending Act (15 U.S.C. 1601 et seq.).

(L) The Truth in Savings Act (12 U.S.C. 4301 et seq.).

(7) **CONSUMER PROTECTION AGENCY.**—Except as provided in section 4015, the term “consumer protection agency” means—

(A) the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Trade Commission;

(F) the National Credit Union Administration;

(G) the Department of the Treasury;

(H) the Department of Housing and Urban Development;

(I) the Securities and Exchange Commission; and

(J) the Commodity Futures Trading Commission.

(8) **COUNCIL.**—The term “council” means the Consumer Financial Protection Council established under section 2.

(9) **COVERED PERSON.**—

(A) **IN GENERAL.**—The term “covered person” means—

(i) any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service; or

(ii) any person who, in connection with the provision of a consumer financial product or service, provides a material service to, or processes a transaction on behalf of, a person described in subparagraph (A).

(B) **EXCEPTION.**—The term “covered person” does not include a person regulated by a State insurance regulator.

(10) **CREDIT.**—The term “credit” means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(11) **CREDIT UNION.**—The term “credit union” means a Federal credit union, State credit union, or State-chartered credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(12) **DEPOSIT.**—The term “deposit”—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and

(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(13) **DEPOSIT-TAKING ACTIVITY.**—The term “deposit-taking activity” means—

(A) the acceptance of deposits, the provision of other services related to the acceptance of deposits, or the maintenance of deposit accounts;

(B) the acceptance of money, the provision of other services related to the acceptance of money, or the maintenance of members' share accounts by a credit union; or

(C) the receipt of money or its equivalent, as a consumer protection agency may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

For the purposes of this title, the consumer protection agencies may determine that the term “deposit-taking activity” includes the receipt of money or its equivalent in connection with the sale or issuance of any payment instrument or stored value product or service.

(14) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and the term “Federal banking agencies” means all of those agencies.

(15) **FINANCIAL ACTIVITY.**—The term “financial activity” means any of the following activities:

(A) Deposit-taking activities.

(B) Extending credit and servicing loans, including—

(i) acquiring, brokering, or servicing loans or other extensions of credit;

(ii) engaging in any other activity usual in connection with extending credit or servicing loans, including performing appraisals of real estate and personal property and selling or servicing credit insurance or mortgage insurance.

(C) Check-guaranty services, including—

(i) authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services; and

(ii) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored.

(D) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower.

(E) Collection of debt related to any consumer financial product or service.

(F) Providing real estate settlement services, including providing title insurance.

(G) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(i) the lease is on a non-operating basis;

(ii) the initial term of the lease is at least 90 days; and

(iii) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the consumer protection agencies.

(H) Acting as an investment adviser to any person (not subject to regulation by or required to register with the Commodity Futures Trading Commission or the Securities and Exchange Commission).

(I) Acting as financial adviser to any person, including—

(i) providing financial and other related advisory services;

(ii) providing educational courses, and instructional materials to consumers on individual financial management matters; or

(iii) providing credit counseling, tax-planning or tax-preparation services to any person.

(J) Financial data processing, including providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or databases by any technological means, if—

(i) the data to be processed or furnished are financial, banking, or economic; and

(ii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(K) Money transmitting.

(L) Sale or issuance of stored value.

(M) Acting as a money services business.

(N) Acting as a custodian of money or any financial instrument.

(O) Any other activity that the consumer protection agencies define, by regulation, as a financial activity for the purposes of this title.

(P) Except that the term "financial activity" shall not include the business of insurance.

(16) **FINANCIAL PRODUCT OR SERVICE.**—The term "financial product or service" means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(17) **FOREIGN EXCHANGE.**—The term "foreign exchange" means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(18) **INSURED DEPOSITORY INSTITUTION.**—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(19) **MONEY SERVICES BUSINESS.**—The term "money services business" means a covered person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(20) **MONEY TRANSMITTING.**—The term "money transmitting" means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(21) **PAYMENT INSTRUMENT.**—The term "payment instrument" means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(22) **PERSON.**—The term "person" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(23) **PERSON REGULATED BY A STATE INSURANCE REGULATOR.**—The term "person regulated by a State insurance regulator" means any person who is—

(A) engaged in the business of insurance; and

(B) subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(24) **PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.**—The term "person regulated by the Commodity Futures Trading Commission" means any futures commission merchant, commodity

trading adviser, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, but only to the extent that the person acts in such capacity.

(25) **PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.**—The term "person regulated by the Securities and Exchange Commission" means—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is required to be registered under the Investment Advisers Act of 1940; or

(C) an investment company that is required to be registered under the Investment Company Act of 1940—

but only to the extent that the person acts in a registered capacity.

(26) **PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.**—The term "provision of (or providing) a consumer financial product or service" means the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(27) **RESIDENTIAL MORTGAGE LOAN.**—The term "residential mortgage loan" shall have the meaning given such term in section 1503(8) of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(28) **SECRETARY.**—The term "Secretary" means the Secretary of the Treasury.

(29) **STATE.**—The term "State" means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands.

(30) **STORED VALUE.**—The term "stored value" means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

#### SEC. 4019. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated such sums as may be necessary to carry out this title.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Idaho (Mr. MINNICK) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Idaho.

Mr. MINNICK. Madam Chair, we all support the goal of stronger, more uniform consumer protection regulation, but you don't achieve that by splitting the responsibility between two regulators, in many cases thousands of miles apart, each with half the responsibility. And you compound that mistake by creating exemptions to the new regulation which create gaps and inconsistency.

Every regulation has some impact on both the solvency of a financial institution and on its customers. To split the responsibility between two inherently feuding regulators will lead to conflict, inaction, failure, and frustration.

My amendment is much superior. It creates a strong mandate for consumer protection in all of the existing regulators. Every regulator must have a division in charge of consumer protection reporting to a person with coequal responsibility for safety and soundness. The regulations themselves will be set by all of the major regulators, a council including regulators from the Secretary of the Treasury to the Federal Reserve to State Attorneys General. The staff for this council will be in the Treasury, and it will have rulemaking authority, but the existing regulators will have the responsibility for administration and enforcement.

Before I yield, I would like to thank the gentleman from Illinois, Congressman SCHOCK, and his legislative director, Mark Roman, for their leadership in forging a bipartisan coalition that yields this commonsense solution to this increasingly important problem.

Madam Chair, I yield 2 minutes to the gentleman from Oklahoma (Mr. BOREN).

Mr. BOREN. I thank the gentleman from Idaho for yielding.

I rise today in support of the Minnick-Schock-Boren-Bright-Childers-Shuler amendment.

Madam Chair, most everyone in this body agrees that following a period in American history where the Dow Jones Industrial Average lost almost 60 percent of its value, three of America's five major investment banks went broke, and the U.S. saw the largest number of commercial bank failures in four generations that the need to reform the way America's banking and financial regulatory system works is important. The question, though, is: Just how many new government agencies are necessary to accomplish this task? If we create a new Federal agency to regulate consumer credit, will it improve the current regulatory framework or will it end up costing American jobs? I think we need to be cautious in our approach, so today I rise in an effort to streamline this piece of legislation.

The amendment currently before this House will do a few simple things:

First, it will change the framework of the legislation by locating a newly created Consumer Financial Protection Council within the Department of the Treasury rather than creating an entirely new Federal agency to oversee the financial system.

Second, it will amend the legislation to take the power of regulating trillions of dollars of financial transactions out of the hands of one politically appointed administrator and instead create a Consumer Financial Protection Council charged with promoting consumer protection for users of financial products and services. By consolidating the expansion of government created by this regulatory bill, we can properly get the financial and

banking system back on its feet without creating another new Federal agency designed to solve America's problems.

In the interest of good government, this legislation must be focused and directed at what caused the problem and not about settling old scores over business practices.

I urge my colleagues to support this bipartisan amendment.

Mr. FRANK of Massachusetts. Madam Chair, I rise to claim the time in opposition.

The Acting CHAIR. The gentleman from Massachusetts is recognized for 10 minutes.

Mr. FRANK of Massachusetts. I now yield 2 minutes to one of the most thoughtful members of the Financial Services Committee, whom we will greatly miss when he retires, the gentleman from Kansas (Mr. MOORE).

Mr. MOORE of Kansas. Madam Chair, I rise today to oppose the amendment offered by my colleague, Mr. MINNICK. I know my friend and colleague offers this alternative to the Consumer Financial Protection Agency in the spirit of wanting to do all we can to better protect consumers. I certainly share that view, but I don't support this proposed Consumer Financial Protection Council as the best way to accomplish that objective.

This amendment effectively eliminates 4 days of thoughtful markup for CFPA and nearly 50 amendments offered by Republicans and Democrats to improve the bill. I am concerned the amendment before us may be unconstitutional, empowering a three-member State panel to decide how States will take a position that affects their consumer protections. This amendment creates a bureaucratic nightmare. In committee, we worked to focus CFPA on the bad actors that created the financial crisis, not the responsible community banks and credit unions that were lending responsibly and doing what they were asked.

The exceptions for merchants and nonfinancial institutions makes sense as well. CFPA, as currently drafted, will help level the playing field for all community banks and credit unions. The new Consumer Protection Agency will instead be focused on the big banks and nonbanks, like mortgage brokers, that evaded strong supervision and gave us the subprime mortgage crisis that led to the broader financial crisis.

It's time to put an end to those greedy enough to lie, cheat, and steal to the detriment of their competitors, their customers, and our economy. Like our parents and grandparents who gave us Federal Deposit Insurance following the Great Depression, now is the time to give our children and grandchildren strong consumer protections and create the CFPA.

I urge my colleagues to vote "no" on the Minnick amendment and vote "yes" on the underlying bill.

Mr. MINNICK. May I inquire as to how much time I have remaining?

The Acting CHAIR. The gentleman from Idaho has 6 minutes remaining.

Mr. MINNICK. I yield 2 minutes to the gentleman from Illinois (Mr. SCHOCK).

Mr. SCHOCK. Madam Chair, first, I wish to thank the thoughtful gentleman from Idaho for his work on this important amendment. Clearly, the fact that we are debating this amendment towards the end of this piece of legislation speaks to the support for it, and I truly hope that a majority of our colleagues join together in supporting this amendment.

A couple of thoughts. Last week, the President hosted a job summit here. We go back home every weekend and the prevailing concern on the minds of our voters and our constituents is jobs. They're concerned about double-digit employment, they're upset with the greed and the lack of oversight that has been provided. And so, rightfully so, this body has tried to rein in some of that lack of regulation and tried to put forward a thoughtful program.

I know that the chairman of this committee is doing what he believes is best. But the fact of the matter is we need to look to those who are hurting. We need to look to those who are the job creators in this economy and ask: How will this affect them in their effort to employ people? Well, the fact of the matter is this is going to hurt our economy. This is going to lead to fewer jobs.

The goal of this CFPA is to lead to improvement in the marketplace for the American people. However, consolidating the power into one bureaucratic appointee, creating a \$1 billion dollar agency, adding to our national debt, increasing taxes, restricting lending, and costing small businesses to shed millions of jobs hardly justifies itself.

This agency would make it more difficult for lenders to offer services and products that are important to small businesses. At a time when the economy is still struggling to recover, the last thing Congress ought to consider is an additional layer of regulation that will discourage new job creation.

The University of Chicago just this week released a study that they suggest the CFPA, as it stands, would increase consumer interest rates by more than 1.6 percentage points, consumer borrowing would be reduced by at least 2.1 percent, and net new job creation would fall 4 percent.

Mr. FRANK of Massachusetts. Madam Chair, I now recognize a strong advocate of a responsible policy towards the business community, the gentlewoman from Illinois (Ms. BEAN) for 2 minutes.

Ms. BEAN. Madam Chair, I rise in opposition to the amendment and in support of the underlying bill.

While I am opposed to the gentleman from Idaho's amendment, I want to

commend him on his leadership on comprehensive financial regulatory reform. We have worked closely on many issues in committee, and I appreciate the expertise he brings to these complicated issues before us.

Reforming our financial system is vitally important to creating a functional, sustainable financial system that American families and businesses can count on. We must not fail to enact adequate safeguards so that the mistakes of the past do not reoccur. Topping our to-do list should be the enactment of strong consumer financial protections that will keep our constituents safe as they rehabilitate their trust in our ability to effectively monitor America's financial health.

In order to accomplish this goal, we need an independent agency whose sole purpose is to protect and empower consumers to make informed financial decisions. The new CFPA, or Consumer Financial Protection Agency, would go a long way towards that end, restoring vital protections that were absent and duly needed during the buildup to America's recent financial fallout.

Since CFPA was introduced in July, the committee has made significant improvements to this bill. One of the initial concerns we heard was that companies who do not engage in consumer financial business would be regulated by the CFPA. We fixed that. Merchants, retailers, doctors, Realtors, and others—some suggested the butcher, the baker, the candlestick maker—let's be clear, they're exempt from CFPA as was intended and as they should be.

We address concerns we heard from banks and credit unions. Small and mid-size banks and credit unions under \$10 billion in assets will not be subject to direct CFPA examination. Instead, there is a requirement now for coordination with the CFPA and the prudential regulator for those who are subject to direct CFPA examination.

After the manager's agreement reached this week, the ability of national banks and Federal savings associations to operate under a uniform national standard of rules, where appropriate, is preserved. But functional regulators failed to prioritize consumer protections and protect our constituents.

The Acting CHAIR. The gentleman's time has expired.

Mr. FRANK of Massachusetts. I yield the gentlewoman an additional 30 seconds.

Ms. BEAN. The CFPA will create a centralized and independent framework, reducing inefficiencies and bureaucracy across multiple agencies. They will have the expertise, resources, and mission to update consumer financial protection laws and protect our constituents from abusive and unfair financial products and services. Mr. MINNICK's amendment takes a different



approach. What our consumers need is best-in-class protections for investors, and Americans deserve no less.

I urge my colleagues to oppose this amendment and support this historic underlying legislation and the CFPA it creates.

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Mr. MINNICK. I yield 1½ minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. I thank the gentleman from Idaho for yielding.

Madam Chair, I rise in very strong support of this bipartisan amendment to create a Consumer Financial Protection Council which, of course, I am pleased to cosponsor. This amendment strikes the right balance in promoting strong consumer protections while ensuring the safety and soundness of our Nation's financial system.

I am convinced that the current language in the bill threatens to expand the reach of the Federal Government, to limit innovation, to restrict choices of financial products, and to interfere with day-to-day activities of small business. Utilizing a council of existing regulators is a cost-effective and responsible approach to achieving the same goals as intended by the Consumer Financial Protection Agency.

Our amendment establishes a council of existing regulators, which we know as the Treasury, Fed, OCC, FDIC, et cetera, instead of an entirely new agency and bureaucracy with all of the costs and attendant bureaucracy that would be involved with that. Utilizing a council balances power instead of using a single politically appointed administrator.

I would hope that everybody in the Chamber would support this change by the gentleman from Idaho. I think the underlying legislation has some problems. There are some cost issues, and there are probably some job issues and other things we have to worry about, but I think this particular change which is in this amendment is key to progressing in a way that would protect consumers but that would make sure that we are not distracting from the world of business in terms of commerce and banking in the United States of America.

Mr. FRANK of Massachusetts. I yield myself 4½ minutes.

Madam Chair, the author of the amendment, I thought, began—or it was one of the speakers. Maybe it was the gentleman from Oklahoma who said we don't need a new agency. Well, he apparently didn't get too far into the bill.

On lines 7 through 10 of page 1, There is hereby established the Consumer Financial Protection Council as an independent establishment of the executive branch.

So it creates a new agency—a monstrous one. It is a 12-headed council

which will have its own staff assigned under this amendment by Treasury. Then within each of the 12 agencies, a new position is created—a director of consumer affairs. So you will have 12 new positions staffed by the Treasury, with no limitations on how that's done, and this new council. It is also unwieldy.

One of the responsibilities of the consumer agency will be to issue rules to prevent the kind of abuse of mortgages that had such a contributing role to our crisis. This bill says, yes, there will be such rules. They will be adopted by the 12-member council. They will vote on those. The chairman of the Commodities Future Trading Commission will have a vote on setting mortgage rates. The chairman of the Securities and Exchange Commission will help set mortgage rates. Other agencies without any particular involvement there will help set mortgage rates.

Now, the 12 agencies that make up this bureaucratic version of the Christmas song will include the agency that has more responsibility for consumer regulation today than any other—the Federal Reserve system. Those who have said, We don't like what the Federal Reserve does, should understand that the largest single loser of authority, by far, in the bill that the committee has brought forward is the Federal Reserve. The Federal Reserve has been the primary consumer regulator under this bill. It still will be under this amendment. The Federal Reserve will retain all of its powers because you have the council, but you also will have much of this done by the independent regulator.

So, if you think the Federal Reserve has done a good job as a consumer regulator and if you don't want to diminish its powers, then you ought to vote for this bill.

Our bill also doesn't just deal with the Federal powers. Frankly, we were respectful of the role of the community banks, which you have not heard from in large opposition over this. In fact, the independent community banks, until we get to bankruptcy, are going to be supportive of this bill. I understand they have a problem with that.

Much of the problem we have today is with the nonbanks—with the mortgages issued outside of banks, with the payday lenders, with the check cashers, with the people who do remittances. Many of them are honorable, but it's a largely unregulated operation. We give specific authority to regulate. What this says is the status quo is fine with regard to that. Arguably, the FTC has some jurisdiction over it. It hasn't been exercised very well.

So, if you want to do something about payday lenders and check cashers and remittances, then you'll want to vote for the committee version and not for this 12-member amend-

ment. Maybe some of the new consumer directors in each of the 12 agencies will work this out, but you'll have to wait for this 12-member body to vote on these things.

I do want to address one particular issue, which is: Well, what about safety and soundness? The notion that adequate consumer protection somehow detracts from safety and soundness is at the heart of some of our disagreement. In effect, what they are saying is, you know, we're going to have to water down consumer protection. If you get somebody who takes it seriously, it might impinge on safety and soundness. In fact, it has been the absence of consumer protection that has caused safety and soundness problems.

It was the refusal of the Federal Reserve, whose authority is preserved in the amendment of the gentleman from Idaho—they were given authority by this Congress in 1994 to regulate mortgages with the Homeowners Equity Protection Act. They flatly refused to use it. Because they would not do consumer protection, safety and soundness suffered. It didn't thrive.

There are other examples. The failure to adequately protect people in the credit card area contributes to problems. It does not diminish them. So the argument is very, very clear.

Now, it is true, by the way, that the Federal Reserve began to do some consumer protection recently, which was only after we started talking about this bill. This is explicitly what is in the bill. Implicitly what they are saying is: Keep consumer protection subordinated to bank regulation, and you will perpetuate the current problem.

Mr. MINNICK. Madam Chair, how much time do I have remaining?

The Acting CHAIR. The gentleman has 2½ minutes remaining.

Mr. MINNICK. I yield 30 seconds to the gentleman from California (Mr. CAMPBELL).

Mr. CAMPBELL. Madam Chair, we need to change some things so we don't face financial collapse. We can change those things without creating an entirely new agency—spending billions of new dollars, hiring thousands of new bureaucrats, housing them in a new building, and creating a conflict between the safety and soundness of banks and consumer protection.

The underlying bill creates all of those problems. This amendment accomplishes consumer protection without all of that. Support this amendment.

Mr. FRANK of Massachusetts. I have one remaining speaker, and since I have the right to close, I will reserve the balance of my time.

Mr. MINNICK. I yield 30 seconds to the gentleman from New Jersey (Mr. LANCE).

Mr. LANCE. Madam Chair, the current regulatory structure is not lacking authority. The Federal Reserve and

the other banking agencies had all of the powers needed to address problems in consumer protection. What was lacking was coordination, improved disclosure, and an ability to fill the gaps in the system.

This amendment solves those deficiencies without installing a new bureaucracy that would make rules with little or no input from the cops on the beat—the banking agencies. That is why I am strongly supportive of Mr. MINNICK's amendment.

Mr. FRANK of Massachusetts. Since I am the one and final speaker, I continue to reserve the balance of my time.

Mr. MINNICK. I yield 30 seconds to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding.

Madam Chair, I rise in strong support of this amendment offered by my colleague from Idaho, which is similar to one that I offered during the Financial Services Committee markup. This amendment is a bipartisan, commonsense alternative to provisions in the underlying bill that would do a disservice to consumers.

One of the lessons that we have learned throughout this process is that bigger, uncoordinated government does not work when it comes to protecting consumers and regulating financial institutions.

Madam Chair, I rise in support of the amendment offered by my colleague from Idaho. Similar to one I offered during a Financial Services Committee markup, this amendment is a bipartisan, commonsense alternative to provisions in the underlying bill that would do a disservice to consumers.

What's the answer to the financial meltdown? How do we prevent it from happening again? What's not the answer is to create another federal agency. We already have the OCC, the OTS, the NCUA, the FDIC, the FTC, the SEC, the Fed, and the list goes on. The underlying bill would layer on a new federal bureaucracy that would allow five D.C. bureaucrats to dictate what financial products and services can be offered to consumers by anyone—from the church offering a funeral payment plan to a plumber charging to fix the kitchen sink.

The personalized services offered by your local 100-year-old community banks, churches, or plumber didn't create the financial crisis. Did our local 100-year-old community banks, churches, or your plumber create the mess? No. But all could fall under the burden of new regulations and taxes imposed by a new agency.

One of the lessons we've learned throughout this process is that bigger, uncoordinated government does not work when it comes to protecting consumers and regulating financial institutions. Instead, it only creates more cracks, confusion, and costs for consumers.

Americans are calling for stronger, smarter consumer protections. But that doesn't mean they want government to run their lives or the businesses in their communities. Nor do they

want bigger government, more spending, and limited choice.

Some Members of this body think the government knows best. Others of us believe that with the right information, proper transparency, and full disclosure, families can and do make their own financial decisions. They don't need Big Brother to do it for them.

My colleague from Idaho offers a proposal today that answers the question: what about the consumer? His amendment codifies, expands, and energizes an existing body, a council of regulators, and charges it with a clear mission to better protect consumers. It establishes a mechanism for creating uniform consumer protection rules, maintains enforcement by prudential regulators, utilizes existing regulatory framework with no new bureaucracy or cost to taxpayers or small businesses, and it maintains national standards.

I urge my colleagues to support this amendment.

Mr. MINNICK. I yield 30 seconds to the gentleman from Washington (Mr. REICHERT).

Mr. REICHERT. I thank the gentleman.

Madam Chair, the choice is simple here. We can create a new, massive government bureaucracy, empower yet another czar to oversee our entire financial system, which will cost taxpayers millions more of their hard-earned money, or we can pass this amendment so that experienced regulators can better enforce the laws to protect our consumers from abuse while using existing resources. The choice is clear. Support this bipartisan, commonsense amendment that modernizes our regulatory system and helps Americans thrive in the 21st century.

Mr. MINNICK. Madam Chair, how much time is remaining?

The Acting CHAIR. The gentleman has 30 seconds remaining.

Mr. MINNICK. Madam Chair, the CBO has scored the total cost of my council and the components in the various agencies as less than \$50 million. That compares to a massive new Federal bureaucracy they have scored at \$4.6 billion.

How many times, Madam Chair, are we going to create a massive, new Federal bureaucracy to deal with an important priority? First, it was the expansion of the EPA and cap-and-trade to deal with climate change.

The Acting CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield 1½ minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Ladies and gentlemen of the House, I want to, first of all, thank Mr. MINNICK. Mr. MINNICK is an extraordinarily able Member of this body, and he represents his district and our country well as a Member of the Congress of the United States.

This amendment, I think, has brought up an important discussion on the perspectives that we all have. I am

one of those who believes that previous administrations had two very deep failures:

One was fiscal irresponsibility. We did not pay for what we bought, even at times when we said the economy was in good shape. We continued to borrow at record rates, taking a \$5.6 trillion surplus and turning it into a \$10 trillion deficit.

The other major failure, I think, of the previous administration was regulatory neglect. It had the power, as Chairman FRANK has just pointed out, in a 1994 bill, to intervene, to try to put a check on two things—number one, on subprime lending. It did not. Mr. Greenspan testified just a couple of years ago that he thought that it was a mistake. He thought people would not take risks beyond that which were appropriate, and therefore, did not step in to regulate the subprime market. As a result, we confronted crisis.

The second big bipartisan mistake was with the Clinton administration and the Republican Congress. The Clinton administration was, obviously, led by President Clinton and Phil Gramm in the Senate. They said, We don't need to look at the derivatives market. The derivatives market will take care of itself. The head of the CFTC advised heavily and tried on her own authority, because she had the authority, to regulate the derivatives market.

The Congress stepped in, and I think I probably voted for the bill. It was an extraordinary mistake on my part. Phil Gramm led the effort which said, No, we don't need to impede this robust market that was apparently making all of us so much money.

Now, Mr. FRANK advises me—and I, frankly, am not an expert on it—that most of the employees of which we are talking are going to be transferred employees, not new employees.

On regulatory neglect, I think the administration did this: They said, essentially, The free market left to its own devices will grow the economy and will create jobs, and we ought not to impede that growth and that expansion. As a result of taking the referee off the field, all the little guys got trampled on. That's not unusual. I guarantee you, if you take the referee off the football field, the split end is going to leave a second before the ball is hiked, not because the split end is a bad person but because the split end is in a competitive field and wants to take an advantage. We don't have to cast aspersions here, but people want to take advantage.

The philosophy of the Bush administration was: Don't get in the way. Regulation is bad. It undermines business. It undermines growth. Your no-cost-jobs program at its heart says, Get out of the way. Reduce regulation. We have a real difference on this issue.

Franklin Roosevelt came in and said, The reason we had a stock market

crash is because there were no referees. Under his leadership, we created a lot of referees. Very frankly, for 60 or 70 years, they kept this country pretty much on track, but we got way off track. My friends, when you wring your hands about the cost of this referee, which is called the Consumer Financial Protection Agency—and I don't accept the costs that you use, but let's say there is a significant cost. Let's say it's a couple of billion dollars. You say it's \$4 billion. Let's just say, for the sake of argument, that it's a couple of billion dollars.

□ 1200

It pales into insignificance in the \$1.5 trillion that we have borrowed to get this country out of the deep, deep, deep hole caused by the failure to regulate properly. And it wasn't the rich guys on Wall Street that paid that price; it was every one of our taxpayers that paid that price.

So when you talk about cost, the cost of doing nothing, the cost of not having a referee on the field, skews the game so badly that the little guys, the guys who sent us here, the guys who asked us to protect them from those over which they have no power to protect, they said, Protect us.

That is what this debate is about. The administration has sent down and said, Look, the SEC has its responsibility, the FDIC has its responsibility, CFTC has its responsibility, all have responsibility to make sure that our economy can grow, that trading markets can be open, honest, transparent and fair.

They look to the people who are in those markets. Most of the people are not in those markets. They are our people, the little people, the average guy who goes to work, works hard, who tries to pay his mortgage, keep his family fed and clothed and his kids educated.

He doesn't know about what all these guys are doing in the derivatives market. Nobody knew what was going on. The people who were investing in the derivatives market didn't know what was going on. There was no oversight.

Madam Chair, the distinguished lady from Prince George's County, Maryland; Montgomery County, DONNA EDWARDS, as we know, one of the central causes of our economic crisis, as I have said, was abusive consumer lending, signing Americans up for loans that they had no way of paying back. Nobody said, Time out; you're offside; penalty. Nobody said that.

Why? Because if we did that, that would impede business. That would undermine the growth of this free market economy. That's why we have antitrust laws, so that we don't have some big guy ultimately take it all, because they can underprice and shove out. We saw that with, frankly, our friends in Microsoft who did an extraordinary job

in building our economy, but at some point in time said, Time out, you've got to have competitors in this business.

For years, that practice went ignored by Washington regulators. And for a financial sector that placed massive bets on subprime mortgages, the results were eventually and tragically, for our people, catastrophic. The same abusive practices are at work in payday lending, in money transfers, and in many credit card policies, as Chairman FRANK has so ably pointed out.

In each case, Americans can wind up trapped in debt. While we do expect responsibility from anyone taking out a loan, we also must ensure that those loans are fair, transparent and written in plain language.

I'm a Georgetown lawyer. I think I'm reasonably bright. I've gone to real estate settlements and we have all gotten these forms and disclosures. I bet there is nobody here who has gone to a settlement who has read all those papers. Period. I think they are way too much paper, because I don't think, even if they read it they would understand it. Very frankly, if they read it, understood it and didn't like paragraph 5, called up their lender and said, I don't like paragraph 5, the lender would say, That's fine, you don't get the money. You sign it or else.

They're counting on us. This is a time when they are counting on us. This is a time when we can respond. That is exactly what the Consumer Financial Protection Agency would do. That is its purpose, to protect them.

I understand there are concerns about it, and I congratulate Mr. MINNICK for raising this issue and I appreciate his perspective. I simply disagree. It would take up the oversight responsibility that I think has been abandoned. It would safeguard consumers from exploitation and it would protect our economy from another collapse.

On the face of it, abandoning the CFPA and replacing it with a Consumer Financial Protection Council sounds like a superficial change, but in my opinion it is a very clear substantive change and not one that I would support. The council would be made up of 12 existing regulators who have already demonstrated, not the individuals, but the institutions, that they did not step up to the plate and say, you're offside; there's a penalty.

Rather than concentrating a wide range of oversight functions in a single body as a CFPA would do, the council would be an unwieldy and slow-moving bureaucracy. We talk about bureaucracy, we want somebody to focus and have a singular responsibility of making sure people don't get offside so the little guys get hurt. It would not enhance, in my opinion, national consumer protection laws. It would undo this bill's expanded protections over

the abusive practices that endanger the economic security of millions. Those abusive practices did lasting damage to Americans' lives, and we cannot let them down by watering down this bill.

I want to congratulate Chairman FRANK. I want to congratulate the members of the committee on both sides of the aisle. This, I think, is a critical decision that we will make. Americans sent us here to, in effect, be their referee, to call time out, to say we want to make sure the game is fair. We want to make sure that the little guy doesn't get hurt, with all due respect to my friend, who I think does an extraordinary job. On this we disagree.

I ask the Members of this House to reject the Minnick amendment.

The Acting CHAIR. All time for debate has expired.

The question is on the amendment offered by the gentleman from Idaho (Mr. MINNICK).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. FRANK of Massachusetts. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Idaho will be postponed.

AMENDMENT NO. 36, AS MODIFIED, OFFERED BY  
MR. BACHUS

The Acting CHAIR. It is now in order to consider amendment No. 36 printed in House Report 111-370, as modified by the order of the House of December 10, 2009.

Mr. BACHUS. Madam Chair, I have an amendment at the desk made in order under the rule.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute offered by Mr. BACHUS, as modified:

Strike all after the enacting clause and insert the following:

#### SEC. 1. SHORT TITLE.

This Act may be cited as the "Consumer and Taxpayer Protection Act of 2009".

#### SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

#### TITLE I—NO MORE BAILOUTS ACT

Sec. 1001. Short title.

Sec. 1002. Amendments to title 28 of the United States Code.

Sec. 1003. Amendments to title 11 of the United States Code.

Sec. 1004. Effective date; application of amendments.

Sec. 1005. Reforms of section 13 emergency powers.

Sec. 1006. Establishment of Market Stability and Capital Adequacy Board.

Sec. 1007. Functions of Board.

Sec. 1008. Powers of Board.

Sec. 1009. Responsibilities of Federal functional regulators.

Sec. 1010. Staff of Board.  
 Sec. 1011. Compensation and travel expenses.

## TITLE II—FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL

Sec. 2001. Short title.  
 Sec. 2002. Definitions.  
 Sec. 2003. Financial Institutions Consumer Protection and Examination Council.  
 Sec. 2004. Office of consumer protection.  
 Sec. 2005. State enforcement authority.  
 Sec. 2006. Unfair or deceptive acts or practices authority transferred.  
 Sec. 2007. Equality of consumer protection functions; Consumer protection divisions.  
 Sec. 2008. Prohibition on charter conversions while under regulatory sanction.

## TITLE III—ANTI-FRAUD PROVISIONS

Sec. 3001. Authority to impose civil penalties in cease and desist proceedings.  
 Sec. 3002. Formerly associated persons.  
 Sec. 3003. Collateral bars.  
 Sec. 3004. Unlawful margin lending.  
 Sec. 3005. Nationwide service of process.  
 Sec. 3006. Reauthorization of the Financial Crimes Enforcement Network.  
 Sec. 3007. Fair fund improvements.

## TITLE IV—OVER-THE-COUNTER DERIVATIVES MARKETS

Sec. 4001. Short title.  
 Subtitle A—Amendments to the Commodity Exchange Act

Sec. 4100. Definitions.  
 Sec. 4101. Swap repositories.  
 Sec. 4102. Margin for swaps between swaps dealers and major swap participants.  
 Sec. 4103. Segregation of assets held as collateral in swap transactions.

## Subtitle B—Amendments to the Securities Exchange Act of 1934

Sec. 4201. Definitions.  
 Sec. 4202. Swap repositories.  
 Sec. 4203. Margin requirements.  
 Sec. 4204. Segregation of assets held as collateral in swap transactions.

## Subtitle C—Common Provisions

Sec. 4301. Report to the congress.  
 Sec. 4302. Capital requirements.  
 Sec. 4303. Centralized clearing.  
 Sec. 4304. Definitions.

## TITLE V—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS

Sec. 5001. Short title.  
 Sec. 5002. Shareholder vote on executive compensation.  
 Sec. 5003. Compensation committee independence.

## TITLE VI—CREDIT RATING AGENCIES

Sec. 6001. Changes to designation.  
 Sec. 6002. Removal of statutory references to credit ratings.  
 Sec. 6003. Review of reliance on ratings.

## TITLE VII—GOVERNMENT-SPONSORED ENTERPRISES REFORM

Sec. 7001. Short title.  
 Sec. 7002. Definitions.  
 Sec. 7003. Termination of current conservatorship.  
 Sec. 7004. Limitation of enterprise authority upon emergence from conservatorship.  
 Sec. 7005. Requirement to periodically renew charter until wind down and dissolution.  
 Sec. 7006. Required wind down of operations and dissolution of enterprise.

## TITLE VIII—FEDERAL INSURANCE OFFICE

Sec. 8001. Short title.  
 Sec. 8002. Federal Insurance Office established.  
 Sec. 8003. Report on global reinsurance market.  
 Sec. 8004. Study on modernization and improvement of insurance regulation in the United States.

## TITLE I—NO MORE BAILOUTS ACT

### SEC. 1001. SHORT TITLE.

This title may be cited as the “No More Bailouts Act of 2009”.

### SEC. 1002. AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.

Title 28 of the United States Code is amended—

(1) in section 1408 by striking “section 1410” and inserting “sections 1409A and 1410”,  
 (2) by inserting after section 1409 the following:

#### “§ 1409A. Venue of cases involving non-bank financial institutions

“A case under chapter 14 may be commenced in the district court of the United States for the district—

“(1) in which the debtor has its principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor’s affiliate or subsidiary, if a Federal Reserve Bank is located in that district;  
 “(2) if venue does not exist under paragraph (1), in which there is a Federal Reserve Bank and in a Federal Reserve district in which the debtor has its principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor’s affiliate or subsidiary; or  
 “(3) if venue does not exist under paragraph (1) or (2), in which there is a Federal Reserve Bank and in a Federal circuit adjacent to the Federal circuit in which the debtor has its principal place of business or principal assets in the United States.”; and  
 (3) by amending the table of sections of chapter 87 of such title to insert after the item relating to section 1408 the following:

“1409A. Venue of cases involving non-bank financial institutions.”.

“(26A) The term ‘functional regulator’ means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.”;

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively,  
 (3) by inserting after paragraph (38) the following:

“(38A) The term ‘Market Stability and Capital Adequacy Board’ means the entity established in section 1006 of the No More Bailouts Act of 2009.”; and  
 (4) by inserting after paragraph (40) the following:

“(40A) The term ‘non-bank financial institution’ means an institution the business of which is engaging in financial activities that is not an insured depository institution.”.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) by inserting after paragraph (26) the following:  
 “(26A) The term ‘functional regulator’ means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.”;

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively,  
 (3) by inserting after paragraph (38) the following:  
 “(38A) The term ‘Market Stability and Capital Adequacy Board’ means the entity established in section 1006 of the No More Bailouts Act of 2009.”; and  
 (4) by inserting after paragraph (40) the following:

“(40A) The term ‘non-bank financial institution’ means an institution the business of which is engaging in financial activities that is not an insured depository institution.”.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) by inserting after paragraph (26) the following:  
 “(26A) The term ‘functional regulator’ means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.”;

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively,  
 (3) by inserting after paragraph (38) the following:  
 “(38A) The term ‘Market Stability and Capital Adequacy Board’ means the entity established in section 1006 of the No More Bailouts Act of 2009.”; and  
 (4) by inserting after paragraph (40) the following:

“(40A) The term ‘non-bank financial institution’ means an institution the business of which is engaging in financial activities that is not an insured depository institution.”.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) by inserting after paragraph (26) the following:  
 “(26A) The term ‘functional regulator’ means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.”;

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively,  
 (3) by inserting after paragraph (38) the following:  
 “(38A) The term ‘Market Stability and Capital Adequacy Board’ means the entity established in section 1006 of the No More Bailouts Act of 2009.”; and  
 (4) by inserting after paragraph (40) the following:

“(40A) The term ‘non-bank financial institution’ means an institution the business of which is engaging in financial activities that is not an insured depository institution.”.

(1) in subsection (a) by striking “13” and inserting “13, and 14”,  
 (2) by redesignating subsection (k) as subsection (l), and  
 (3) by inserting after subsection (j) the following:

“(k) Chapter 14 applies only in a case under such chapter.”.

(c) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended—

(1) in subsection (b)—  
 (A) in paragraph (2) by striking “or” at the end,  
 (B) in paragraph (3) by striking the period at the end and inserting “; or”,  
 and  
 (C) by adding at the end the following:

“(4) a non-bank financial institution that has not been a debtor under chapter 14 of this title.”;

(2) in subsection (d) by striking “or commodity broker” and inserting “, commodity broker, or a non-bank financial institution”,  
 and  
 (3) by adding at the end the following:

“(i) Only a non-bank financial institution may be a debtor under chapter 14 of this title.”.

(d) INVOLUNTARY CASES.—Section 303 of title 11, the United States Code, is amended—

(1) in subsection (a) by striking “or 11” and inserting “, 11, or 14”,  
 (2) in subsection (b) by striking “or 11” and inserting “, 11, or 14”.

(e) OBTAINING CREDIT.—Section 364 of title 11, United States Code, is amended by adding at the end the following:

“(g) Notwithstanding any other provision of this section, the trustee may not, and the court may not authorize the trustee to, obtain credit, if the source of that credit either directly or indirectly is the United States.”.

(f) CHAPTER 14.—Title 11, United States Code, is amended—

(1) by inserting the following after chapter 13:

“CHAPTER 14—ADJUSTMENT TO THE  
 DEBTS OF A NON-BANK FINANCIAL INSTITUTION

“1401. Inapplicability of other sections.  
 “1402. Applicability of chapter 11 to cases under this chapter.  
 “1403. Prepetition consultation.  
 “1404. Appointment of trustee.  
 “1405. Right to be heard.  
 “1406. Right to communicate.  
 “1407. Exemption with respect to certain contracts or agreements.  
 “1408. Conversion or dismissal.  
 “§ 1401. Inapplicability of other sections  
 “Except as provided in section 1407, sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561 do not apply in a case under this chapter.  
 “§ 1402. Applicability of chapter 11 to cases under this chapter  
 “With the exception of sections 1104(d), 1109, 1112(a), 1115, and 1116, subchapters I, II, and III of chapter 11 apply in a case under this chapter.  
 “§ 1403. Prepetition consultation  
 “(a) Subject to subsection (b)—  
 “(1) a non-bank financial institution may not be a debtor under this chapter unless that institution has, at least 10 days prior to the date of the filing of the petition by such institution, taken part in the consultation described in subsection (c); and  
 “(2) a creditor may not commence an involuntary case under this chapter unless, at least 10 days prior to the date of the filing of

the petition by such creditor, the creditor notifies the non-bank financial institution, the functional regulator, and the Market Stability and Capital Adequacy Board of its intent to file a petition and requests a consultation as described in subsection (c).

“(b) If the non-bank financial institution, the functional regulator, and the Market Stability and Capital Adequacy Board, in consultation with any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, certify that the immediate filing of a petition under section 301 or 303 is necessary, or that an immediate filing would be in the interests of justice, a petition may be filed notwithstanding subsection (a).

“(c) The non-bank financial institution, the functional regulator, the Market Stability and Capital Adequacy Board, and any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor shall engage in prepetition consultation in order to attempt to avoid the need for the non-bank financial institution’s liquidation or reorganization in bankruptcy, to make any liquidation or reorganization of the non-bank financial institution under this title more orderly, or to aid in the nonbankruptcy resolution of any of the non-bank financial institution’s components under its nonbankruptcy insolvency regime. Such consultation shall specifically include the attempt to negotiate forbearance of claims between the non-bank financial institution and its creditors if such forbearance would likely help to avoid the commencement of a case under this title, would make any liquidation or reorganization under this title more orderly, or would aid in the nonbankruptcy resolution of any of the non-bank financial institution’s components under its nonbankruptcy insolvency regime. Additionally, the consultation shall consider whether, if a petition is filed under section 301 or 303, the debtor should file a motion for an exemption authorized by section 1407.

“(d) The court may allow the consultation process to continue for 30 days after the petition, upon motion by the debtor or a creditor. Any post-petition consultation proceedings authorized should be facilitated by the court’s mediation services, under seal, and exclude ex parte communications.

“(e) The Market Stability and Capital Adequacy Board and the functional regulator shall publish and transmit to Congress a report documenting the course of any consultation. Such report shall be published and transmitted to Congress within 30 days of the conclusion of the consultation.

“(f) Nothing in this section shall be interpreted to set aside any of the limitations on the use of Federal funds set forth in the No More Bailouts Act of 2009 or the amendments made by such Act.

#### “§ 1404. Appointment of trustee

“In applying section 1104 to a case under this chapter, if the court orders the appointment of a trustee or an examiner, if the trustee or an examiner dies or resigns during the case or is removed under section 324, or if a trustee fails to qualify under section 322, the functional regulator, in consultation with the Market Stability and Capital Adequacy Board, shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case and the United States trustee shall appoint, subject to the court’s approval, one of such persons to serve as trustee in the case.

#### “§ 1405. Right to be heard

“(a) The functional regulator, the Market Stability and Capital Adequacy Board, the

Federal Reserve, the Department of the Treasury, the Securities and Exchange Commission, and any domestic or foreign agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

“(b) A party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee may raise, and may appear and be heard on, any issue in a case under this chapter.

#### “§ 1406. Right to communicate

“The court is entitled to communicate directly with, or to request information or assistance directly from, the functional regulator, the Market Stability and Capital Adequacy Board, the Board of Governors of the Federal Reserve System, the Department of the Treasury, or any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, subject to the rights of a party in interest to notice and participation.

#### “§ 1407. Exemption with respect to certain contracts or agreements

“(a) Subject to subsection (b)—

“(1) upon motion of the debtor, consented to by the Market Stability and Capital Adequacy Board—

“(A) the debtor and the estate shall be exempt from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561;

“(B) if the Market Stability and Capital Adequacy Board consents to the filing of such motion by the debtor, the Board shall inform the court of its reasons for consenting; and

“(C) the debtor may limit its motion, or the board may limit its consent, to exempt the debtor and the estate from the operation of section 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, or 561, or any combination thereof; and

“(2) if the Market Stability and Capital Adequacy Board does not consent to the filing of a motion by the debtor under paragraph (1), the debtor may file a motion to exempt the debtor and the estate from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561, or any combination thereof.

“(b) The court shall commence a hearing on a motion under subsection (a) not later than 5 days after the filing of the motion to determine whether to maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1) or, in the case of a motion under subsection (a)(2), grant the exemption. The court shall request the filing or briefs by the functional regulator and the Market Stability and Capital Adequacy Board. The court shall decide the motion not later than 5 days after commencing such hearing unless—

“(1) the parties in interest consent to a extension for a specific period of time; or

“(2) except with respect to an exemption from the operation of section 559, the court sua sponte extends for 5 additional days the period for decision if such extension would be in the interests of justice or is required by compelling circumstances.

“(c) The court shall maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1), or, in the case of a motion under subsection (a)(2), grant the exemption only upon showing of good cause. In

determining whether good cause has been shown, the court shall balance the interests of both debtor and creditors while attempting to preserve the debtor’s assets for repayment and reorganization of the debtors obligations, or to provide for a more orderly liquidation.

“(d) For purposes of timing under section 562 of this title, if a motion is filed under subsection (a)(1) or if a motion is granted under subsection (a)(2), the date or dates of liquidation, termination, or acceleration shall be measured from the earlier of—

“(1) the actual date or dates of liquidation, termination, or acceleration; or

“(2) the date on which a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant files a notice with the court that it would have liquidated, terminated, or accelerated a contract or agreement covered by section 562 of this title had a stay under this section not been in place.

#### “§ 1408. Conversion or dismissal

“In applying section 1112 to a case under this chapter, the debtor may convert a case under this chapter to a case under chapter 7 of this title if the debtor may be a debtor under such chapter unless the debtor is not a debtor in possession.”, and

(2) by amending the table of chapters of such title by adding at the end the following:

“14. Adjustment to the Debts of a Non-Bank Financial Institution .. 1401”.

#### SEC. 1004. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this title.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this title.

#### SEC. 1005. REFORMS OF SECTION 13 EMERGENCY POWERS.

(a) RESTRICTIONS ON EMERGENCY POWERS.—The third undesignated paragraph of section 13 of the Federal Reserve Act is amended—

(1) by striking “In unusual and exigent” and inserting the following:

“(3) EMERGENCY AUTHORITY.—

“(A) IN GENERAL.—In unusual and exigent”; and

(2) by adding at the end the following new subparagraph:

“(B) REQUIREMENT FOR BROAD AVAILABILITY OF DISCOUNTS.—Subject to the limitations provided under subparagraph (A), any authorization made pursuant to the authority provided under subparagraph (A) shall require discounts to be made broadly available to individuals, partnerships, and corporations within the market sector for which such authorization is being made.

“(C) TRANSPARENCY AND OVERSIGHT.—

“(i) SECRETARY OF THE TREASURY APPROVAL REQUIRED; NOTICE TO THE CONGRESS.—No authorization may be made pursuant to the authority provided under subparagraph (A) unless—

“(I) such authorization is first approved by the Secretary of the Treasury; and

“(II) the Secretary of the Treasury issues a notice to the Congress detailing what authorization the Secretary has approved.

“(ii) PROGRAMS MOVED ON-BUDGET AFTER 90 DAYS.—On and after the date that is 90 days after the date on which any authorization is made pursuant to the authority provided

under subparagraph (A), all receipts and disbursements resulting from such authorization shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

“(I) the budget of the United States Government as submitted by the President;

“(II) the congressional budget; and

“(III) the Balanced Budget and Emergency Deficit Control Act of 1985.

“(D) JOINT RESOLUTION OF DISAPPROVAL.—

“(i) IN GENERAL.—With respect to an authorization made pursuant to the authority provided under subparagraph (A), if, during the 90-day period beginning on the date the Congress receives a notice described under subparagraph (C)(i)(II) with respect to such authorization, there is enacted into law a joint resolution disapproving such authorization, any action taken under such authorization must be discontinued and unwound not later than the end of the 180-day period beginning on the date that such authorization was made.

“(ii) CONTENTS OF JOINT RESOLUTION.—For the purpose of this paragraph, the term ‘joint resolution’ means only a joint resolution—

“(I) that is introduced not later than 3 calendar days after the date on which the notice referred to in clause (i) is received by the Congress;

“(II) which does not have a preamble;

“(III) the title of which is as follows: ‘Joint resolution relating to the disapproval of authorization under the emergency powers of the Federal Reserve Act’; and

“(IV) the matter after the resolving clause of which is as follows: ‘That Congress disapproves the authorization contained in the notice submitted to the Congress by the Secretary of the Treasury on the date of relating to \_\_\_\_\_.’ (The blank spaces being appropriately filled in.).

“(E) FAST TRACK CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

“(i) RECONVENING.—Upon receipt of a notice referred to in subparagraph (D)(i), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report.

“(ii) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the notice referred to in subparagraph (D)(i). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

“(iii) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the notice referred to in subparagraph (D)(i), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

“(iv) CONSIDERATION.—The joint resolution shall be considered as read. All points of

order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

“(F) FAST TRACK CONSIDERATION IN SENATE.—

“(i) RECONVENING.—Upon receipt of a notice referred to in subparagraph (D)(i), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

“(ii) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

“(iii) FLOOR CONSIDERATION.—

“(I) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a notice referred to in subparagraph (D)(i) and ending on the 6th day after the date on which Congress receives a notice referred to in subparagraph (D)(i) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

“(II) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

“(IV) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

“(G) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

“(i) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

“(I) The joint resolution of the other House shall not be referred to a committee.

“(II) With respect to a joint resolution of the House receiving the resolution—

“(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

“(bb) the vote on passage shall be on the joint resolution of the other House.

“(ii) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

“(iii) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

“(iv) VETOS.—If the President vetoes the joint resolution, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

“(v) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subparagraph and subparagraphs (D), (E), and (F) are enacted by Congress—

“(I) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.”

(b) CURRENT PROGRAMS MOVED ON-BUDGET.—Not later than 90 days after the date of the enactment of this title, all receipts and disbursements resulting from any authorization made before the date of the enactment of this title pursuant to the authority granted by the third undesignated paragraph of section 13 of the Federal Reserve Act shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President;

(2) the congressional budget; and

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

#### SEC. 1006. ESTABLISHMENT OF MARKET STABILITY AND CAPITAL ADEQUACY BOARD.

(a) IN GENERAL.—There is hereby established the Market Stability and Capital Adequacy Board (hereafter in this title referred to as the “Board”) as an independent establishment in the Executive Branch.

(b) CONSTITUTION OF BOARD.—Subject to paragraph (4), the Board shall have 12 members as follows:

(1) PUBLIC MEMBERS.—The following shall be members of the Board—

(A) The Secretary of the Treasury.

(B) The Chairman of the Board of Governors of the Federal Reserve System.

(C) The Chairman of the Securities and Exchange Commission.

(D) The Chairperson of the Federal Deposit Insurance Corporation.

(E) The Chairman of the Commodity Futures Trading Commission.

(F) The Comptroller of the Currency.

(G) The Director of the Office of Thrift Supervision.

(2) PRIVATE MEMBERS.—The Board shall also have 5 members appointed by the President, by and with the advice and consent of

the Senate, who shall be appointed from among individuals who—

(A) are specially qualified to serve on the Board by virtue of their education, training, and experience; and

(B) are not officers or employees of the Federal Government, including the Board of Governors of the Federal Reserve System.

(3) **CHAIRPERSON.**—The Secretary of the Treasury shall serve as the Chairperson of the Board.

(4) **DIRECTOR OF FHFA AS INTERIM MEMBER.**—Until such time as the charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are both repealed pursuant to section 7006(d), the Board shall consist of 13 members with the Director of the Federal Housing Finance Agency serving as a public member under paragraph (1).

(c) **APPOINTMENTS.**—

(1) **TERM.**—

(A) **IN GENERAL.**—Each appointed member shall be appointed for a term of 5 years.

(B) **STAGGERED TERMS.**—Of the members of the Board first appointed under subsection (b)(2), as designated by the President at the time of appointment—

(i) 1 shall be appointed for a term of 5 years;

(ii) 1 shall be appointed for a term of 4 years;

(iii) 1 shall be appointed for a term of 3 years;

(iv) 1 shall be appointed for a term of 2 years; and

(v) 1 shall be appointed for a term of 1 year.

(2) **INTERIM APPOINTMENTS.**—Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) **CONTINUATION OF SERVICE.**—Each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(4) **REAPPOINTMENT TO A 2ND TERM.**—Each member appointed to a term on the Board under subsection (b)(2), including an interim appointment under paragraph (2), may be reappointed by the President to serve 1 additional term.

(d) **VACANCY.**—

(1) **IN GENERAL.**—Any vacancy on the Board shall be filled in the manner in which the original appointment was made.

(2) **ACTING OFFICIALS MAY SERVE.**—In the event of a vacancy in any position listed in subsection (b)(1) and pending the appointment of a successor, or during the absence or disability of the individual serving in such position, any acting official in such position shall be a member of the Board while such vacancy, absence or disability continues and the acting official continues acting in such position.

(e) **INELIGIBILITY FOR OTHER OFFICES.**—

(1) **POSTSERVICE RESTRICTION.**—No member of the Board may hold any office, position, or employment in any financial institution or affiliate of a financial institution during—

(A) the time such member is in office; and

(B) the 2-year period beginning on the date such member ceases to serve on the Board.

(2) **CERTIFICATION.**—Upon taking office, each member of the Board shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board.

(f) **QUALIFICATIONS; INITIAL MEETING.**—

(1) **POLITICAL PARTY AFFILIATION.**—Not more than 3 members of the Board appointed

under subsection (b)(2) shall be from the same political party.

(2) **QUALIFICATIONS GENERALLY.**—It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience commensurate with the duties of the Board.

(3) **SPECIFIC APPOINTMENT QUALIFICATIONS FOR CERTAIN APPOINTED MEMBERS.**—

(A) **STATE BANK.**—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have had experience as a State bank supervisor or senior management executive with a State depository institution.

(B) **INSURANCE COMMISSIONER.**—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have served as a State insurance commissioner or supervisor.

(4) **INITIAL MEETING.**—The Board shall meet and begin the operations of the Board as soon as practicable but not later than the end of the 180-day period beginning the date of the enactment of this title.

(g) **QUORUM.**—Four of the members of the Board designated under subsection (b)(1) and 3 members of the Board appointed under (b)(2) shall constitute a quorum.

(h) **QUARTERLY MEETINGS.**—The Board shall meet upon the call of the chairperson or a majority of the members at least once in each calendar quarter

#### **SEC. 1007. FUNCTIONS OF BOARD.**

(a) **PRINCIPAL FUNCTIONS.**—The principal functions of the Board shall be to—

(1) monitor the interactions of various sectors of the financial system; and

(2) identify risks that could endanger the stability and soundness of the system.

(b) **SPECIFIC REVIEW FUNCTIONS INCLUDED.**—In carrying out the functions described in subsection (a), the Board shall—

(1) review financial industry data collected from the appropriate functional regulators;

(2) review insurance industry data, in coordination with State insurance supervisors, for all lines of insurance other than health insurance;

(3) monitor government policies and initiatives;

(4) review risk management practices within financial regulatory agencies;

(5) review capital standards set by the appropriate functional regulators and make recommendations to ensure capital and leverage ratios match risks regulated entities are taking on;

(6) review transparency and regulatory understanding of risk exposures in the over-the-counter derivatives markets and make recommendations regarding the appropriate clearing of trades in those markets through central counterparties;

(7) make recommendations regarding any government or industry policies and practices that are exacerbating systemic risk; and

(8) take such other actions and make such other recommendations as the Board, in the discretion of the Board, determines to be appropriate.

(c) **REPORTS TO FEDERAL FUNCTIONAL REGULATORS AND THE CONGRESS.**—The Board shall periodically make a report to the Congress and the functional regulators on the findings, conclusions, and recommendations of the Board in a manner and within a time frame that allows the Congress and such regulators to act to contain risks posed by specific firms, industry practices, activities and interactions of entities under different regulatory regimes, or government policies.

(d) **TESTIMONY TO CONGRESS.**—Not later than February 20 and July 20 of each year, the Chairperson of the Board shall testify to the Congress at semiannual hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, about the state of systemic risk in the financial services industry and proposals or recommendations by the Board to address any undue risk.

(e) **RULE OF CONSTRUCTION.**—No provision of this title shall be construed as giving the Board any enforcement authority over any financial institution.

#### **SEC. 1008. POWERS OF BOARD.**

(a) **CONTRACTING.**—The Board may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Board to discharge its duties under this title.

(b) **INFORMATION FROM FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—The Board may secure directly from any executive department, agency, or independent establishment, or any other instrumentality of the United States information and recommendations for the purposes of this title.

(2) **DELIVERY OF REQUESTED INFORMATION.**—Each executive department, agency, or independent establishment, or any other instrumentality of the United States shall, to the extent authorized by law, furnish any information and recommendations requested under paragraph (1) directly to the Board, upon request made by the chairperson or any member designated by a majority of the Commission.

(3) **RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.**—Information shall only be received, handled, stored, and disseminated by members of the Board and its staff consistent with all applicable statutes, regulations, and Executive orders.

(c) **ASSISTANCE FROM FEDERAL AGENCIES.**—

(1) **GENERAL SERVICES ADMINISTRATION.**—The Administrator of General Services shall provide to the Board on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) **OTHER DEPARTMENTS AND AGENCIES.**—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law, including agencies represented on the Board under section 1006(b)(1).

#### **SEC. 1009. RESPONSIBILITIES OF FEDERAL FUNCTIONAL REGULATORS.**

(a) **FEDERAL FUNCTIONAL REGULATOR DEFINED.**—For purposes of this title, the term "Federal functional regulator" has the same meaning as in section 509(2) of the Gramm-Leach-Bliley Act, except that such term includes the Commodity Futures Trading Commission.

(b) **ASSESSMENTS AND REVIEWS.**—In order to address current regulatory gaps, each Federal functional regulator shall, before each quarterly meeting of the Board—

(1) assess the effects on macroeconomic stability of the activities of financial institutions that are subject to the jurisdiction of such agency;

(2) review how such financial institutions interact with entities outside the jurisdiction of such agency; and

(3) report the results of such assessment and review to the Board, together with such recommendations for administrative action as the agency determines to be appropriate.



**SEC. 1010. STAFF OF BOARD.**

(a) **APPOINTMENT AND COMPENSATION.**—The chairperson, in accordance with rules agreed upon by the Board and title 5, United States Code, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Board to carry out its functions.

(b) **DETAILEES.**—Any Federal Government employee may be detailed to the Board and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) **CONSULTANT SERVICES.**—The Board may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 1011. COMPENSATION AND TRAVEL EXPENSES.**

(a) **COMPENSATION.**—Each member of the Board appointed under section 1006(b)(2) may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(b) **TRAVEL EXPENSES.**—While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**TITLE II—FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL****SEC. 2001. SHORT TITLE.**

This title may be cited as the “Financial Institutions Consumer Protection and Examination Council Act of 2009”.

**SEC. 2002. DEFINITIONS.**

(a) **RENAMING COUNCIL.**—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by striking “Financial Institutions Examination Council” each place it appears, except for in section 1001 of such Act, and inserting “Financial Institutions Consumer Protection and Examination Council”.

(b) **DEFINITIONS RELATING TO CONSUMER PROTECTION.**—Section 1003 of such Act (12 U.S.C. 3302) is amended—

(1) in paragraph (2), by striking “and”; and

(2) by adding at the end the following new paragraphs:

“(4) the term ‘enumerated consumer laws’ means—

“(A) the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.);

“(B) the Community Reinvestment Act;

“(C) the Consumer Leasing Act;

“(D) the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.);

“(E) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

“(F) the Fair Credit Billing Act;

“(G) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

“(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

“(I) subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t);

“(J) sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.);

“(K) the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.);

“(L) the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

“(M) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.);

“(N) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

“(O) the Truth in Savings Act (12 U.S.C. 4301 et seq.); and

“(5) the term ‘expanded Board’ means—

“(A) the members of the Council described under section 1004(a);

“(B) the Secretary of Housing and Urban Development;

“(C) the Chairman of the Securities and Exchange Commission;

“(D) the Chairman of the Commodities Futures Trading Commission;

“(E) the Chairman of the Federal Trade Commission;

“(F) the Director of the Federal Housing Finance Agency;

“(G) the Director of the Pension Benefit Guarantee Corporation;

“(H) the Secretary of the Treasury;

“(I) the Secretary of Defense; and

“(J) the Secretary of Veterans’ Affairs.”.

(c) **DEFINITIONS RELATED TO THE STATE LIAISON COMMITTEE.**—Section 1007 of such Act (12 U.S.C. 3306) is amended by inserting after “financial institutions” the following: “and one representative of the National Association of Insurance Commissioners”.

**SEC. 2003. FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL.**

(a) **CONSUMER PROTECTION DUTIES.**—Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by adding at the end the following new subsection:

“(h) **CONSUMER PROTECTION REGULATIONS.**—

“(1) **IN GENERAL.**—The Council shall study the need for revised or new regulations for the protection of consumers under the enumerated consumer laws and shall vote on suggested model regulations that the Council determines necessary for the protection of consumers under the enumerated consumer laws.

“(2) **REGULATIONS ISSUED BY COUNCIL MEMBERS.**—Not later than the end of the 1-month period beginning on the date a suggested model regulation is agreed to by the Council by a majority vote of the members of the Council, the members of the Council, other than the Chairman of the State Liaison Committee, shall jointly issue regulations based on such suggested model regulation, where applicable.

“(3) **EXPANDED BOARD REQUIRED.**—For purposes of any action taken pursuant to this subsection and any reference to the members of the Council under this subsection, the Council shall consist of the expanded Board.

“(4) **NO COUNCIL ENFORCEMENT POWER.**—No provision of this subsection shall be construed as conferring any enforcement authority to the Council.

“(5) **REQUIREMENTS FOR REGULATIONS PROPOSED BY THE CHAIRMAN OF THE STATE LIAISON COMMITTEE.**—

“(A) **IN GENERAL.**—The Chairman of the State Liaison Committee may not propose any suggested model regulation for the Council to vote on under this subsection unless such proposed suggested model regulation is accompanied by a certification from the Chairman of the State Liaison Committee stating that more than half of the States support such proposal.

“(B) **METHOD OF DETERMINATION.**—For purposes of this paragraph, the Chairman of the

State Liaison Committee shall determine the method for determining if a State supports a proposal.”.

(b) **ADDITIONAL STAFF.**—Section 1008 of such Act (12 U.S.C. 3307) is amended by adding at the end the following new subsection:

“(d) **CONSUMER PROTECTION STAFF.**—

“(1) **IN GENERAL.**—At the request of the Council, any member of the expanded Board, other than the Chairman of the State Liaison Committee, may detail, on a reimbursable basis, any of the personnel of that member’s department or agency to the Council to assist it in carrying out the Council’s duties under subsection (h).

“(2) **EXPANDED BOARD REQUIRED.**—When making any request under this subsection, the Council shall consist of the expanded Board.”.

**SEC. 2004. OFFICE OF CONSUMER PROTECTION.**

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following new section:

**“SEC. 1012. OFFICE OF CONSUMER PROTECTION.**

“(a) **OFFICE OF CONSUMER PROTECTION.**—There is hereby established within the Council an Office of Consumer Protection (hereinafter in this section referred to as the ‘Office’).

“(b) **CONSUMER COMPLAINT HOTLINE AND WEBSITE.**—The Office shall establish a toll-free hotline and a website for consumers to contact regarding inquiries or complaints related to consumer protection. Such hotline and website shall then refer such inquiries or complaints to the appropriate Council member, which will then respond to the inquiry or complaint.

“(c) **DISCLOSURE REVIEW.**—Not less often than once every 7 years, the Office shall undertake a comprehensive review of the rules and regulations regarding disclosures made by entities under the jurisdiction of the members of the Council to consumers. In making such review the Office shall perform a cost and benefit analysis of each such disclosure and determine if the policy of the members of the Council towards such disclosure should remain the same or be revised.

“(d) **CONSUMER TESTING REQUIREMENT.**—Before prescribing any regulation pursuant to section 1006(h), the Council shall have the Office carry out consumer testing with respect to such proposed model regulation.

“(e) **PERIODIC REVIEW OF REGULATIONS.**—

“(1) **REVIEW.**—Not less than once every 7 years, the Office shall undertake a comprehensive review of all regulations issued by the members of the Council pursuant to section 1006(h)(2). In making such review, the Office shall perform a cost and benefit analysis of each regulation and determine if such regulation should remain the same or if such regulation should be revised.

“(2) **REPORT.**—After performing a review required by paragraph (1), the Office shall issue a report to the Congress describing the review process, any determinations made by the Office, and any revisions to regulations that the Office determined were needed.”.

**SEC. 2005. STATE ENFORCEMENT AUTHORITY.**

(a) **ENFORCEMENT OF COUNCIL REGULATIONS.**—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended by section 2004, is further amended by adding at the end the following new section:

**“SEC. 1013. STATE ENFORCEMENT AUTHORITY.**

“The chief law enforcement officer of a State, or an official or agency designated by a State, shall have the authority to enforce any regulations issued by the members of

the Council pursuant to section 1006(h)(2) against entities regulated by such State.”.

(b) **ENFORCEMENT OF STATE CONSUMER PROTECTION LAWS AGAINST NATIONAL BANKS AND THRIFTS.**—Notwithstanding any other provision of law, other than section 5240 of the Revised Statutes and the comparable limitation on visitatorial authority applicable to federal savings associations, the chief law enforcement officer of a State, or an official or agency designated by a State, shall have the right to enforce such State’s non-preempted consumer protection laws against national banks.

**SEC. 2006. UNFAIR OR DECEPTIVE ACTS OR PRACTICES AUTHORITY TRANSFERRED.**

Section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(1) by striking “(with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))” and inserting the following: “(with respect to entities described in paragraph (2)(B)), the Comptroller of the Currency (with respect to entities described in paragraph (2)(A)), the Board of Directors of the Federal Deposit Insurance Corporation (with respect to entities described under paragraph (2)(C)), the Director of the Office of Thrift Supervision (with respect to savings associations or any savings and loan institutions described in paragraph (3))”;

(2) by striking “each such Board” and inserting “each such entity”; and

(3) by striking “any such Board” and inserting “any such entity”.

**SEC. 2007. EQUALITY OF CONSUMER PROTECTION FUNCTIONS; CONSUMER PROTECTION DIVISIONS.**

(a) **EQUALITY OF CONSUMER PROTECTION FUNCTIONS.**—With respect to each regulatory agency, the functions of such agency related to consumer protection shall be of equal importance to such agency as the other functions of such agency.

(b) **CONSUMER PROTECTION DIVISIONS.**—

(1) **IN GENERAL.**—There is hereby established within each regulatory agency a consumer protection division.

(2) **REPORT.**—The head of each consumer protection division established under paragraph (1) shall submit an annual report to the Congress detailing the performance of the regulatory agency in which such division is located in enforcing the consumer protection laws.

(c) **REGULATORY AGENCY DEFINED.**—For purposes of this section, the term “regulatory agency” means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Trade Commission, and the Department of Housing and Urban Development.

**SEC. 2008. PROHIBITION ON CHARTER CONVERSIONS WHILE UNDER REGULATORY SANCTION.**

With respect to an entity for which there is an appropriate Federal banking agency, as such term is defined under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), such agency shall issue regulations prohibiting such an entity from converting the type of such entity’s charter during any time in which such entity is under a regulatory sanction by such agency.

**TITLE III—ANTI-FRAUD PROVISIONS**

**SEC. 3001. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.**

(a) **UNDER THE SECURITIES ACT OF 1933.**—Section 8A of the Securities Act of 1933 (15

U.S.C. 77h-1) is amended by adding at the end the following new subsection:

“(g) **AUTHORITY TO IMPOSE MONEY PENALTIES.**—

“(1) **GROUNDS FOR IMPOSING.**—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

“(A) such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

“(B) such penalty is in the public interest.

“(2) **MAXIMUM AMOUNT OF PENALTY.**—

“(A) **FIRST TIER.**—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$6,500 for a natural person or \$65,000 for any other person.

“(B) **SECOND TIER.**—Notwithstanding paragraph (A), the maximum amount of penalty for each such act or omission shall be \$65,000 for a natural person or \$325,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

“(C) **THIRD TIER.**—Notwithstanding paragraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$130,000 for a natural person or \$650,000 for any other person if—

“(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

“(3) **EVIDENCE CONCERNING ABILITY TO PAY.**—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent’s ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person’s ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person’s assets and the amount of such person’s assets.”.

(b) **UNDER THE SECURITIES EXCHANGE ACT OF 1934.**—Subsection (a) of section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended—

(1) by striking “(a) **COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.**—In any proceeding” and inserting the following:

“(a) **COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.**—

“(1) **IN GENERAL.**—In any proceeding”;

(2) by redesignating paragraphs (1) through (4) of such subsection as subparagraphs (A) through (D), respectively and moving such redesignated subparagraphs and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such subsection the following new paragraph:

“(2) **CEASE-AND-DESIST PROCEEDINGS.**—In any proceeding instituted pursuant to section 21C of this title against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(A) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

(c) **UNDER THE INVESTMENT COMPANY ACT OF 1940.**—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amended—

(1) by striking “(1) **AUTHORITY OF COMMISSION.**—In any proceeding” and inserting the following:

“(1) **AUTHORITY OF COMMISSION.**—

“(A) **IN GENERAL.**—In any proceeding”;

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

“(B) **CEASE-AND-DESIST PROCEEDINGS.**—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

(d) **UNDER THE INVESTMENT ADVISERS ACT OF 1940.**—Paragraph (1) of section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—

(1) by striking “(1) **AUTHORITY OF COMMISSION.**—In any proceeding” and inserting the following:

“(1) **AUTHORITY OF COMMISSION.**—

“(A) **IN GENERAL.**—In any proceeding”;

(2) by redesignating subparagraphs (A) through (D) of such paragraph as clauses (i) through (iv), respectively and moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

“(B) **CEASE-AND-DESIST PROCEEDINGS.**—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

**SEC. 3002. FORMERLY ASSOCIATED PERSONS.**

(a) **MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.**—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(8)) is amended by striking “any member or employee” and inserting “any person who is, or at the time of the alleged misconduct was, a member or employee”.

(b) **PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.**—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended—

(1) in subsection (c)(1)(C), by striking “or seeking to become associated,” and inserting “seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated”;

(2) in subsection (c)(2)(A), by inserting “, seeking to become associated, or, at the time

of the alleged misconduct, associated or seeking to become associated" after "any person associated"; and

(3) in subsection (c)(2)(B), by inserting " , seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" after "any person associated".

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting " , or, as to any act or practice, or omission to act, while associated with a member, formerly associated" after "member or a person associated".

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting "or, as to any act or practice, or omission to act, while a participant, was a participant," after "in which such person is a participant,".

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking "any officer or director" and inserting "any person who is, or at the time of the alleged misconduct was, an officer or director"; and

(2) by striking "such officer or director" and inserting "such person".

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-35(a)) is amended—

(1) by striking "a person serving or acting" and inserting "a person who is, or at the time of the alleged misconduct was, serving or acting"; and

(2) by striking "such person so serves or acts" and inserting "such person so serves or acts, or at the time of the alleged misconduct, so served or acted".

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:

"(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

"(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person was associated or seeking to become associated with a registered public accounting firm; and

"(ii) the authority to commence a proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

"(I) the basis of conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

"(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.".

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking "or a person associated with such a firm" and inserting " , a person associated with such a firm, or, as to any act, practice, or omission to act while associated with such firm, a person formerly associated with such a firm".

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking "the supervisory personnel" and inserting "any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person"; and

(2) in subparagraph (B)—

(A) by striking "No associated person" and inserting "No current or former supervisory person"; and

(B) by striking "any other person" and inserting "any associated person".

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking "any member" and inserting "any person who is, or at the time of the alleged misconduct was, a member".

#### SEC. 3003. COLLATERAL BARS.

(a) SECTION 15(b)(6)(A) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking "12 months, or bar such person from being associated with a broker or dealer," and inserting "12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,".

(b) SECTION 15B(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(4)) is amended by striking "twelve months or bar any such person from being associated with a municipal securities dealer," and inserting "twelve months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,".

(c) SECTION 17A(c)(4)(C) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(4)(C)) is amended by striking "twelve months or bar any such person from being associated with the transfer agent," and inserting "twelve months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, or municipal securities dealer,".

(d) SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking "twelve months or bar any such person from being associated with an investment adviser," and inserting "twelve months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent,".

#### SEC. 3004. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking " ; and" and inserting " ; or".

#### SEC. 3005. NATIONWIDE SERVICE OF PROCESS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any ju-

dicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued."

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued."

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a-43) is amended by inserting after the fourth sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued."

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended by inserting after the third sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued."

#### SEC. 3006. REAUTHORIZATION OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK.

(a) FINDINGS.—

(1) The Congress finds as follows:

(A) The work of the Financial Crimes Enforcement Network (hereinafter in this section referred to as "FinCEN") is essential to safeguard the United States financial system and its international affiliates from the abuses of financial crime, including terrorist financing, weapons of mass destruction proliferation, and money laundering.

(B) All avenues of financial intermediation are vulnerable to abuse by illicit actors, and FinCEN exercises the authorities of the Bank Secrecy Act over a broad range of financial institutions.

(2) The Congress further finds and recognizes the recent establishment by FinCEN of an International Programs Division to expand and enhance global financial intelligence sharing initiatives aimed at combating transnational crime threats facing United States financial markets, and takes note of FinCEN's efforts to collaborate with foreign financial intelligence unit partners on analytical projects to identify and address emerging threats and vulnerabilities.

(3) The Congress further finds and recognizes the role of FinCEN in discovering and investigating widespread fraud in the mortgage market and elsewhere in the financial

services industry. Alongside an effective licensing and registration system for all mortgage originators, a vigilant FinCEN is critical to the recovery of our housing markets and consumer confidence in both the home buying process and the financial services industry as a whole.

(b) REAUTHORIZATION.—Section 310(d)(1) of title 31, United States Code, is amended by striking “such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005” and inserting “not more than \$105,500,000 for fiscal year 2010, and such sums as may be necessary for fiscal years 2011, 2012, 2013, and 2014”.

(c) ADDITIONAL FINANCIAL FRAUD AUTHORIZATION OF APPROPRIATIONS.—In addition to such other amounts otherwise made available or appropriated to FinCEN, there are authorized to be appropriated to FinCEN \$15,000,000 to be used specifically for efforts to detect financial fraud. Such sums are authorized to remain available until expended.

#### SEC. 3007. FAIR FUND IMPROVEMENTS.

(a) AMENDMENT.—Subsection (a) of section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended to read as follows:

“(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), the Commission obtains a civil penalty against any person for a violation of such laws, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.”.

(b) CONFORMING AMENDMENTS.—Section 308 of such Act is amended—

(1) in subsection (b)—

(A) by striking “for a disgorgement fund described in subsection (a)” and inserting “for a disgorgement fund or other fund described in subsection (a)”; and

(B) by striking “in the disgorgement fund” and inserting “in such fund”; and

(2) by striking subsection (e).

#### TITLE IV—OVER-THE-COUNTER DERIVATIVES MARKETS

##### SECTION 4001. SHORT TITLE.

This title may be cited as the “Over-the-Counter Derivatives Markets Act of 2009”.

##### Subtitle A—Amendments to the Commodity Exchange Act

##### SEC. 4100. DEFINITIONS.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended by adding at the end the following:

“(35) SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction that—

“(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value

or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

“(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

“(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

“(B) EXCLUSIONS.—The term ‘swap’ does not include:

“(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

“(ii) any sale of a nonfinancial commodity for deferred shipment or delivery, so long as such transaction is physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

“(v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C.

77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

“(ix) any foreign exchange swap;

“(x) any foreign exchange forward;

“(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank or the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

“(xii) any security-based swap, other than a security-based swap as described in paragraph (36)(C).

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).

“(36) SECURITY-BASED SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xi)), and that—

“(i) is based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

“(ii) is based on a single security or loan, including any interest therein or based on the value thereof; or

“(iii) is based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

“(B) EXCLUSION.—The term ‘security-based swap’ does not include any agreement, contract, or transaction that meets the definition of security-based swap only because it references or is based upon a government security.

“(C) MIXED SWAP.—The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of one or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

“(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is

not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

**“(37) SWAP DEALER.—**

**“(A) IN GENERAL.—**The term ‘swap dealer’ means any person engaged in the business of buying and selling swaps for such person’s own account, through a broker or otherwise, that is regulated by a Prudential Regulator.

**“(B) EXCEPTION.—**The term ‘swap dealer’ does not include a person that buys or sells swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

**“(38) SECURITY-BASED SWAP DEALER.—**

**“(A) IN GENERAL.—**The term ‘security-based swap dealer’ means any person engaged in the business of buying and selling security-based swaps for such person’s own account, through a broker or otherwise, that is regulated by a Prudential Regulator.

**“(B) EXCEPTION.—**The term ‘security-based swap dealer’ does not include a person that buys or sells security-based swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

**“(39) MAJOR SWAP PARTICIPANT.—**

**“(A) IN GENERAL.—**The term ‘major swap participant’ means any person who is not a swap dealer, who maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging (including balance sheet hedging) or risk management purposes, and who is regulated by a Prudential Regulator. A person may be designated as a major swap participant for 1 or more individual types of swaps.

**“(B) DEFINITION OF ‘SUBSTANTIAL NET POSITION’.—**The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term ‘substantial net position’ at a threshold that the regulators determine prudent for the effective monitoring, management and oversight of the financial system.

**“(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—**

**“(A) IN GENERAL.—**The term ‘major security-based swap participant’ means any person who is not a security-based swap dealer, who maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for commercial hedging (including balance sheet hedging) or financial risk management purposes, and who is regulated by a Prudential Regulator. A person may be designated as a major security-based swap participant for 1 or more individual types of security-based swaps.

**“(B) DEFINITION OF ‘SUBSTANTIAL NET POSITION’.—**The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term ‘substantial net position’ at a threshold that the regulators determine prudent for the effective monitoring, management and oversight of the financial system.

**“(41) APPROPRIATE FEDERAL BANKING AGENCY.—**The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

**“(42) BOARD.—**The term ‘Board’ means the Board of Governors of the Federal Reserve System.

**“(43) PRUDENTIAL REGULATOR.—**The term ‘Prudential Regulator’ means—

**“(A) the Board, in the case of a swap dealer, major swap participant, security-based**

**swap dealer or major security-based swap participant that is—**

**“(i) a State-chartered bank that is a member of the Federal Reserve System;**

**“(ii) a State-chartered branch or agency of a foreign bank; or**

**“(iii) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956);**

**“(B) the Office of the Comptroller of the Currency, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—**

**“(i) a national bank; or**

**“(ii) a federally chartered branch or agency of a foreign bank;**

**“(C) the Federal Deposit Insurance Corporation, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System; or**

**“(D) the Office of Thrift Supervision, in the case of a savings association (as defined in section 2 of the Home Owners’ Loan Act) or a savings and loan holding company (as defined in section 10 of such Act).**

**“(44) SWAP REPOSITORY.—**The term ‘swap repository’ means an entity that collects and maintains the records of the terms and conditions of swaps or security-based swaps entered into by third parties.”.

**SEC. 4101. SWAP REPOSITORIES.**

**(a) SWAP REPOSITORIES.—**The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

**“SEC. 21. SWAP REPOSITORIES.**

**“(a) REQUIRED REPORTING.—**

**“(1) IN GENERAL.—**

**“(A) IN GENERAL.—**Any swap that is not accepted for clearing by a derivatives clearing organization shall be reported to either a swap repository registered pursuant to subsection (b) or, if there is no repository that would accept the swap, to the Commission in accordance with section 4r within such time period as the Commission may by rule prescribe.

**“(B) AUTHORITY OF SWAP DEALER TO REPORT.—**Counterparties to a swap may agree as to which counterparty will report such swap as required by subparagraph (A). In any swap where only one counterparty is a swap dealer, the swap dealer shall report the swap.

**“(2) TRANSITION RULES.—**Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

**“(A) Swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 270 days after the effective date of such Act.**

**“(B) Swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than the later of—**

**“(i) 180 days after the effective date of such Act; or**

**“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.**

**“(b) SWAP REPOSITORIES.—**

**“(1) REGISTRATION REQUIREMENT.—**

**“(A) IN GENERAL.—**It shall be unlawful for a swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

**“(B) INSPECTION AND EXAMINATION.—**Registered swap repositories shall be subject to

inspection and examination by any representatives of the Commission.

**“(2) STANDARD SETTING.—**

**“(A) DATA IDENTIFICATION.—**The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each swap repository.

**“(B) DATA COLLECTION AND MAINTENANCE.—**The Commission shall prescribe data collection and data maintenance standards for swap repositories.

**“(C) COMPARABILITY.—**The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

**“(3) DUTIES.—**A swap repository shall—

**“(A) accept data prescribed by the Commission for each swap under paragraph (2);**

**“(B) maintain such data in such form and manner and for such period as may be required by the Commission;**

**“(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and**

**“(D) make available, on a confidential basis, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.**

**“(4) REQUIRED REGISTRATION FOR SWAP REPOSITORIES.—**Any person that is required to be registered as a swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

**“(5) HARMONIZATION OF RULES.—**Not later than 270 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

**“(6) EXEMPTIONS.—**The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country, or as necessary or appropriate in the public interest and consistent with the purposes of this Act.”.

**(b) REPORTING AND RECORDKEEPING.—**The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

**“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.**

**“(a) IN GENERAL.—**Any person who enters into a swap that is not accepted for clearing

by a derivatives clearing organization and is not reported to a swap repository registered pursuant to section 21 shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

“(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires repositories to collect.”

(c) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—Section 8 of such Act (7 U.S.C. 12) is amended by adding at the end the following:

“(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) derivatives clearing organizations;

“(B) swap repositories pursuant to section 21(c)(3); and

“(C) reports received by the Commission pursuant to section 4r.”

#### SEC. 4102. MARGIN FOR SWAPS BETWEEN SWAPS DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 4101(b) of this title) the following:

#### “SEC. 4s. MARGIN FOR SWAPS BETWEEN CERTAIN SWAPS DEALERS AND CERTAIN MAJOR SWAP PARTICIPANTS.

“Each Prudential Regulator shall impose both initial and variation margin requirements on all swaps between swap dealers and major swap participants subject to regulation by the Regulator, that are not cleared by a derivatives clearing organization.”

#### SEC. 4103. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 4102 of this title) the following:

#### “SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

“(a) CLEARED SWAPS.—A swap dealer, futures commission merchant, or derivatives clearing organization by or through which funds or other property are held as margin or collateral to secure the obligations of a counterparty under a swap to be cleared by or through a derivatives clearing organiza-

tion shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in accordance with such rules and relations as the Commission or Prudential Regulator shall prescribe. Any such funds or other property shall be treated as customer property under this Act.

“(b) OVER-THE-COUNTER SWAPS.—At the request of a swap counterparty who provides funds or other property to a swap dealer as margin or collateral to secure the obligations of the counterparty under a swap entered into using the mails or any other means or instrumentalities of interstate commerce between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. Any such funds and property may, with the agreement of the customer, be commingled with the funds and property of other swap counterparties and customers and shall be eligible for treatment as customer property under this Act. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment or regarding the allocation of the costs of segregation.

“(c) MARK-TO-MARKET MARGIN.—Nothing in this section shall be construed to obligate any person to segregate variation or mark-to-market margin.”

#### Subtitle B—Amendments to the Securities Exchange Act of 1934

##### SEC. 4201. DEFINITIONS.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

“(65) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based swap participant’ has the same meaning as in section 1a(41) of the Commodity Exchange Act (7 U.S.C. 1a(41)).

“(68) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ has the same meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

“(69) SWAP.—The term ‘swap’ has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

“(70) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

“(71) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

“(72) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).”

##### SEC. 4202. SWAP REPOSITORIES.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended

by adding the following section after section 3A:

#### “SEC. 3B. SWAP REPOSITORIES.

“(a) REQUIRED REPORTING.—

“(1) IN GENERAL.—

“(A) IN GENERAL.—Any security-based swap that is not accepted for clearing by any clearing agency shall be reported to either a security-based swap repository registered pursuant to subsection (b) or, if there is no repository that would accept the security-based swap, to the Commission in accordance with section 13A within such time period as the Commission may by rule prescribe.

“(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties to a security-based swap may agree as to which counterparty will report such swap as required by subparagraph (A). In any security-based swap where only one counterparty is a swap dealer, the swap dealer shall report the swap.

“(2) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than 270 days after the effective date of such Act.

“(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of—

“(i) 180 days after the effective date of such Act; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(b) SECURITY-BASED SWAP REPOSITORIES.—

“(1) REGISTRATION REQUIREMENT.—

“(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

“(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

“(2) STANDARD SETTING.—

“(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

“(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

“(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

“(3) DUTIES.—A security-based swap repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

“(B) maintain such data in such form and manner and for such period as may be required by the Commission;

“(C) provide to the Commission, or its designee, such information as is required by,



and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13(m); and

“(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

“(5) HARMONIZATION OF RULES.—Not later than 270 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

“(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country, or as necessary or appropriate in the public interest and consistent with the purposes of this Act.”.

(b) REPORTING AND RECORDKEEPING.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

**“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.**

“(a) IN GENERAL.—Any person who enters into a security-based swap that is not accepted for clearing by any clearing agency and is not reported to a security-based swap repository registered pursuant to section 3B(b) shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection (a) shall—

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

“(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect.”.

(c) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) clearing agencies;

“(B) security-based swap repositories registered pursuant to section 3B(b); and

“(C) reports received by the Commission pursuant to section 13A.”.

**SEC. 4203. MARGIN REQUIREMENTS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3B:

**“SEC. 3C. MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.**

“Each Prudential Regulator shall impose both initial and variation margin requirements on all security-based swaps between security-based swap dealers and major security-based swap participants subject to regulation by the Regulator, that are not cleared by a clearing agency.”.

**SEC. 4204. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by section 4203) the following:

**“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.**

“(a) CLEARED SWAPS.—A security-based swap dealer or clearing agency by or through which funds or other property are held as margin or collateral to secure the obligations of a counterparty under a security-based swap to be cleared by or through a derivatives clearing agency shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator shall prescribe. Any such funds or other property shall be treated as customer property under this Act.

“(b) OVER-THE-COUNTER SWAPS.—At the request of a counterparty to a security-based swap who provides funds or other property to a swap dealer as margin or collateral to secure the obligations of the counterparty under a security-based swap entered into using the mails or any other means or instrumentalities of interstate commerce between the counterparty and the swap dealer that is not submitted for clearing to a de-

rivatives clearing agency, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment or regarding the allocation of the costs of segregation.

“(c) MARK-TO-MARKET MARGIN.—Nothing in this section shall be construed to obligate any person to segregate variation or mark-to-market margin.”.

**Subtitle C—Common Provisions**

**SEC. 4301. REPORT TO THE CONGRESS.**

Within 1 year after the date of the enactment of this title, and not less frequently than annually thereafter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators shall review data from swap repositories, security-based swap repositories, derivative clearing organizations, and clearing agencies, and if the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators jointly find that the activities of swaps dealers, securities-based swaps dealers, major swap participants, or major security-based swap participants not subject to regulation by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or a Prudential Regulator, in relation to swaps or security-based swaps that are not submitted to a derivatives clearing organization or clearing agency for clearing, have become so substantial or imprudent as to potentially threaten the stability of financial markets or the economy, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators shall jointly submit to the Congress a report on the situation, including recommendations as to whether the activities should be subject to further regulation.

**SEC. 4302. CAPITAL REQUIREMENTS.**

Each Prudential Regulator shall take into account the swaps and security-based swaps activities of the entities subject to regulation by the Regulator in establishing capital requirements for the entities.

**SEC. 4303. CENTRALIZED CLEARING.**

(a) IN GENERAL.—The Board, in consultation and coordination with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall implement policies and procedures designed to increase the use of central counterparties for clearing of over-the-counter swaps transactions by swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, with the goal of significantly reducing the risk profile of the market in which the transactions occur.

(b) FIRM TARGETS.—

(1) IN GENERAL.—Pursuant to subsection (a), the Board shall establish the following firm goals for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, with respect to the clearing of certain swaps:



(A) **INTEREST RATE SWAPS.**—In the case of interest rate swaps, each swap dealer, security-based swap dealer, major swap participant, and major security-based swap participant shall commit to a goal, beginning December 2009, of submitting for clearing to a derivatives clearing organization or clearing agency—

(i) 90 percent of new eligible trades (calculated on a notional basis);

(ii) 70 percent of new eligible trades (calculated on a weighted average notional basis); and

(iii) 60 percent of historical eligible trades (calculated on a weighted average notional basis).

(B) **CREDIT DEFAULT SWAPS.**—In the case of credit default swaps, each swap dealer, security-based swap dealer, major swap participant, and major security-based swap participant shall commit to a goal, beginning December 2009, of submitting for clearing to a derivatives clearing organization or clearing agency—

(i) 95 percent of new eligible trades (calculated on a notional basis); and

(ii) 80 percent of all eligible trades (calculated on a weighted average notional basis).

(2) **DEFINITIONS.**—In paragraph (1):

(A) **ELIGIBLE TRADE.**—The term “eligible trade” means a trade on an eligible product between counterparties each of whom—

(i) is a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant; and

(ii) has a clearing relationship in place with 1 or more common derivative clearing organizations or clearing agencies) for the eligible product.

(B) **ELIGIBLE PRODUCT.**—The term “eligible product” means a product eligible for clearing by a derivative clearing organization or clearing agency.

(C) **OTHER CONTRACTS AND COUNTERPARTIES.**—The Board, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall actively engage central counterparties and regulators globally to—

(1) broaden the set of derivative products eligible for clearing by swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, taking into account risk, liquidity, default management and other processes; and

(2) expand the set of counterparties eligible to clear at each eligible central counterparty taking into account appropriate counterparty risk management considerations, including the development of buy-side clearing.

#### SEC. 4304. DEFINITIONS.

The terms used in this subtitle shall have the meanings given the terms in section 1a of the Commodity Exchange Act.

### TITLE V—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS

#### SEC. 5001. SHORT TITLE.

This title may be cited as the “Corporate and Financial Institution Compensation Fairness Act of 2009”.

#### SEC. 5002. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.

(a) **AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.**—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(i) **TRIENNIAL ADVISORY SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.**—

“(1) **IN GENERAL.**—A proxy or consent or authorization for an annual meeting of the

shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder advisory vote, at least once every three years, to approve the registrant’s executive compensation policies and practices as set forth pursuant to the Commission’s disclosure rules. The shareholder vote shall be advisory in nature and shall not be binding on the issuer or its board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation for meetings of shareholders at which such an advisory vote on executive compensation is not to be conducted.

“(2) **OPT OUT.**—If not less than  $\frac{2}{3}$  of votes cast at a meeting of shareholders on a proposal to opt out of the triennial shareholder advisory vote on executive compensation required under paragraph (1) are cast in favor of such a proposal, then such shareholder advisory vote required under such paragraph shall not be required to take place for a period of 5 years following the vote approving such proposal.

“(3) **SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.**—

“(A) **DISCLOSURE.**—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), that concerns an acquisition, merger, consolidations, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple tabular form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with the named executive officers (as such term is defined in the rules promulgated by the Commission) of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other dispositions of all or substantially all of the assets of the issuer, and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such named executive officer.

“(B) **SHAREHOLDER APPROVAL.**—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed. A vote by the shareholders shall not be binding on the corporation or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board.”

“(4) **RULEMAKING.**—Not later than 1 year after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue rules and regulations to implement this subsection.”.

(b) **STUDY AND REPORT.**—The Securities and Exchange Commission shall conduct a study and review of the results of shareholder advisory votes on executive compensation held pursuant to this section and the effects of such votes. Not later than 5 years after the date of enactment of this title, the Securities and Exchange Commission shall submit a report to the Congress on the results of the study and review required by this subsection.

#### SEC. 5003. COMPENSATION COMMITTEE INDEPENDENCE.

(a) **STANDARDS RELATING TO COMPENSATION COMMITTEES.**—The Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after section 10A the following new section:

#### “SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

“(a) **COMMISSION RULES.**—

“(1) **IN GENERAL.**—Effective not later than 270 days after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

“(2) **OPPORTUNITY TO CURE DEFECTS.**—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

“(3) **EXEMPTION AUTHORITY.**—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

“(4) **NO FEDERAL PREEMPTION.**—If the law of the State under which an issuer is incorporated provides for a procedure for the board of directors to establish an independent compensation committee, then such State law shall be controlling and nothing in this section shall preempt such State law.

“(b) **INDEPENDENCE OF COMPENSATION COMMITTEES.**—

“(1) **IN GENERAL.**—Each member of the compensation committee of the board of directors of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

“(2) **CRITERIA.**—The Commission shall, by rule, establish the criteria for determining whether a director is independent for purposes of this subsection. Such rules shall require that a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee—

“(A) accept any consulting, advisory, or other compensatory fee from the issuer; or

“(B) be an affiliated person of the issuer or any subsidiary thereof.

“(3) **EXEMPTIVE AUTHORITY.**—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

“(4) **DEFINITION.**—As used in this section, the term ‘compensation committee’ means—

“(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

“(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

“(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—The charter of the compensation committee of the board of directors of an issuer shall set forth that any outside compensation consultant formally engaged or retained by the compensation committee shall meet standards for independence to be promulgated by the Commission.

“(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

“(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

“(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

“(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

“(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

“(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c); and

“(2) to any independent counsel or other adviser to the compensation committee.”.

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Securities Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this title, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

## TITLE VI—CREDIT RATING AGENCIES

### SEC. 6001. CHANGES TO DESIGNATION.

The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking “nationally recognized statistical rating” each place it appears and inserting “nationally registered statistical rating”.

### SEC. 6002. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 28(d)—

(A) in the subsection heading, by striking “not of investment grade”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(C) in paragraph (2), by striking “not of investment grade”;

(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(E) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(ii) in subparagraph (B) (as so redesignated), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(2) in section 28(e)—

(A) in the subsection heading, by striking “not of investment grade”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(C) in paragraphs (2) and (3), by striking “not of investment grade” each place that it appears and inserting “that does not meet standards of credit-worthiness established by the Corporation”;

(3) in section 7(b)(1)(E)(i), by striking “credit rating entities, and other private economic” and inserting “private economic, credit.”.

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended—

(1) in the section heading, by striking “by rating organization”; and

(2) by striking “that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934.”.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking “is rated investment grade by not less than 1 nationally recognized statistical rating organization” and inserting “meets such standards of credit-worthiness that the Commission shall adopt”.

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking “any applicable rating” and inserting “standards of credit worthiness established by the Comptroller of the Currency”;

(2) in the heading for subsection (a)(3) by striking “rating or comparable requirement” and inserting “requirement”;

(3) in subsection (a)(3), by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.”;

(4) in the heading for subsection (f), by striking “maintain public rating or” and inserting “meet standards of credit-worthiness”; and

(5) in subsection (f)(1), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”.

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking “is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as defined by the Commission”; and

(2) in paragraph (53)(A), by striking “is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as defined by the Commission”.

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking “rating” and inserting “worthiness”.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this title.

### SEC. 6003. REVIEW OF RELIANCE ON RATINGS.

(a) AGENCY REVIEW.—

(1) REVIEW.—Not later than 1 year after the date of the enactment of this title, each Federal agency listed in paragraph (4) shall, to the extent applicable, review—

(A) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(B) any references to or requirements in such regulations regarding credit ratings.

(2) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under paragraph (1) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(3) REPORT.—Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to the Congress containing a description of any modification of any regulation such agency made pursuant to paragraph (2).

(4) APPLICABLE AGENCIES.—The agencies required to conduct the review and report required by this subsection are—

(A) the Securities and Exchange Commission;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of Thrift Supervision;

(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve;

(F) the National Credit Union Administration; and

(G) the Federal Housing Finance Agency.

(b) GAO REVIEW OF OTHER AGENCIES.—

(1) REVIEW.—The Comptroller General of the United States shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(4), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and practices of each agency with respect to credit ratings.

(2) REPORT.—Not later than 1 year after the date of the enactment of this title, the Comptroller General shall transmit to the Congress a report on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.

## TITLE VII—GOVERNMENT-SPONSORED ENTERPRISES REFORM

### SEC. 7001. SHORT TITLE.

This title may be cited as the “Government-Sponsored Enterprises Free Market Reform Act of 2009”.

### SEC. 7002. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) CHARTER.—The term “charter” means—

(A) with respect to the Federal National Mortgage Association, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); and

(B) with respect to the Federal Home Loan Mortgage Corporation, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) DIRECTOR.—The term “Director” means the Director of the Federal Housing Finance Agency.

(3) ENTERPRISE.—The term “enterprise” means—

(A) the Federal National Mortgage Association; and

(B) the Federal Home Loan Mortgage Corporation.

(4) GUARANTEE.—The term “guarantee” means, with respect to an enterprise, the credit support of the enterprise that is provided by the Federal Government through its charter as a Government-sponsored enterprise.

### SEC. 7003. TERMINATION OF CURRENT CONSERVATORSHIP.

(a) IN GENERAL.—Upon the expiration of the period referred to in subsection (b), the Director of the Federal Housing Finance Agency shall determine, with respect to each enterprise, if the enterprise is financially viable at that time and—

(1) if the Director determines that the enterprise is financially viable, immediately take all actions necessary to terminate the conservatorship for each of the enterprises; or

(2) if the Director determines that the enterprise is not financially viable, immediately appoint the Federal Housing Finance Agency as receiver under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and carry out such receivership under the authority of such section.

(b) TIMING.—The period referred to in this subsection is, with respect to an enterprise—

(1) except as provided in paragraph (2), the 24-month period beginning upon the date of the enactment of this title; or

(2) if the Director determines before the expiration of the period referred to in paragraph (1) that the financial markets would be adversely affected without the extension of such period under this paragraph with respect to that enterprise, the 30-month period beginning upon the date of the enactment of this title.

(c) FINANCIAL VIABILITY.—The Director may not determine that an enterprise is financially viable for purposes of subsection (a) if the Director determines that any of the conditions for receivership set forth in paragraph (3) or (4) of section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)) exists at the time with respect to the enterprise.

### SEC. 7004. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.

(a) REVISED AUTHORITY.—Upon the expiration of the period referred to in section 7003(b), if the Director makes the determination under section 7003(a)(1), the following provisions shall take effect:

(1) PORTFOLIO LIMITATIONS.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended by adding at the end the following new section:

#### “SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF ENTERPRISES.

“(a) RESTRICTION.—No enterprise shall own, as of any applicable date in this subsection or thereafter, mortgage assets in excess of—

“(1) upon the expiration of the period referred to in section 7003(b) of the Government-Sponsored Enterprises Free Market Reform Act of 2009, \$850,000,000,000; or

“(2) on December 31 of each year thereafter, 80.0 percent of the aggregate amount of mortgage assets of the enterprise as of December 31 of the immediately preceding calendar year;

except that in no event shall an enterprise be required under this section to own less than \$250,000,000,000 in mortgage assets.

“(b) DEFINITION OF MORTGAGE ASSETS.—For purposes of this section, the term ‘mortgage assets’ means, with respect to an enterprise, assets of such enterprise consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such enterprise in accordance with generally accepted accounting principles in effect in the United States as of September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements

and pronouncements of the Financial Accounting Standards Board from time to time; and without giving any effect to any change that may be made after September 7, 2008, in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).”.

(2) INCREASE IN MINIMUM CAPITAL REQUIREMENT.—Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612), as amended by section 1111 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289), is amended—

(A) in subsection (a), by striking “For purposes of this subtitle, the minimum capital level for each enterprise shall be” and inserting “The minimum capital level established under subsection (g) for each enterprise may not be lower than”; and

(B) in subsection (c)—

(i) by striking “subsections (a) and” and inserting “subsection”; and

(ii) by striking “regulated entities” the first place such term appears and inserting “Federal Home Loan Banks”;

(iii) by striking “for the enterprises.”;

(iv) by striking “, or for both the enterprises and the banks.”;

(v) by striking “the level specified in subsection (a) for the enterprises or”; and

(vi) by striking “the regulated entities operate” and inserting “such banks operate”;

(C) in subsection (d)(1)—

(i) by striking “subsections (a) and” and inserting “subsection”; and

(ii) by striking “regulated entity” each place such term appears and inserting “Federal home loan bank”;

(D) in subsection (e), by striking “regulated entity” each place such term appears and inserting “Federal home loan bank”;

(E) in subsection (f)—

(i) by striking “the amount of core capital maintained by the enterprises.”; and

(ii) by striking “regulated entities” and inserting “banks”; and

(F) by adding at the end the following new subsection:

“(g) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—

“(1) IN GENERAL.—The Director shall cause the enterprises to achieve and maintain adequate capital by establishing minimum levels of capital for the enterprises and by using such other methods as the Director deems appropriate.

“(2) AUTHORITY.—The Director shall have the authority to establish such minimum level of capital for an enterprise in excess of the level specified under subsection (a) as the Director, in the Director’s discretion, deems to be necessary or appropriate in light of the particular circumstances of the enterprise.

“(h) FAILURE TO MAINTAIN REVISED MINIMUM CAPITAL LEVELS.—

“(1) UNSAFE AND UNSOUND PRACTICE OR CONDITION.—Failure of an enterprise to maintain capital at or above its minimum level as established pursuant to subsection (c) of this section may be deemed by the Director, in his discretion, to constitute an unsafe and unsound practice or condition within the meaning of this title.

“(2) DIRECTIVE TO ACHIEVE CAPITAL LEVEL.—

“(A) AUTHORITY.—In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Director may issue a directive to an enterprise that fails to maintain capital at or above its required level as established pursuant to subsection (c) of this section.

“(B) PLAN.—Such directive may require the enterprise to submit and adhere to a plan acceptable to the Director describing the means and timing by which the enterprise shall achieve its required capital level.

“(C) ENFORCEMENT.—Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of subtitle C of this title to the same extent as an effective and outstanding order issued pursuant to subtitle C of this title which has become final.

“(3) ADHERENCE TO PLAN.—

“(A) CONSIDERATION.—The Director may consider such enterprise's progress in adhering to any plan required under this subsection whenever such enterprise seeks the requisite approval of the Director for any proposal which would divert earnings, diminish capital, or otherwise impede such enterprise's progress in achieving its minimum capital level.

“(B) DENIAL.—The Director may deny such approval where it determines that such proposal would adversely affect the ability of the enterprise to comply with such plan.”.

(3) REPEAL OF INCREASES TO CONFORMING LOAN LIMITS.—

(A) REPEAL OF TEMPORARY INCREASES.—

(i) ECONOMIC STIMULUS ACT OF 2008.—Section 201 of the Economic Stimulus Act of 2008 (Public Law 110-185) is hereby repealed.

(ii) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.—Section 1203 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 225) is hereby repealed.

(B) REPEAL OF GENERAL LIMIT AND PERMANENT HIGH-COST AREA INCREASE.—Paragraph (2) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and paragraph (2) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) are each amended to read as such sections were in effect immediately before the enactment of the Housing and Economic Recovery Act of 2008 (Public Law 110-289).

(C) REPEAL OF NEW HOUSING PRICE INDEX.—Section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as added by section 1124(d) of the Housing and Economic Recovery Act of 2008 (Public Law 110-289), is hereby repealed.

(D) REPEAL.—Section 1124 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) is hereby repealed.

(E) ESTABLISHMENT OF CONFORMING LOAN LIMIT.—For the year in which the expiration of the period referred to in section 7003(b) of this section occurs, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, referred to in section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), respectively, shall be considered to be—

(i) \$417,000 for a mortgage secured by a single-family residence,

(ii) \$533,850 for a mortgage secured by a 2-family residence,

(iii) \$645,300 for a mortgage secured by a 3-family residence, and

(iv) \$801,950 for a mortgage secured by a 4-family residence,

and such limits shall be adjusted effective each January 1 thereafter in accordance with such sections 302(b)(2) and 305(a)(2).

(F) PROHIBITION OF PURCHASE OF MORTGAGES EXCEEDING MEDIAN AREA HOME PRICE.—

(i) FANNIE MAE.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding at the end the following new sentence: “Notwithstanding any other provision of this title, the corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.”.

(ii) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding at the end the following new sentence: “Notwithstanding any other provision of this title, the Corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.”.

(4) REQUIREMENT TO PAY STATE AND LOCAL TAXES.—

(A) FANNIE MAE.—Paragraph (2) of section 309(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(c)(2)) is amended—

(i) by striking “shall be exempt from” and inserting “shall be subject to”; and

(ii) by striking “except that any” and inserting “and any”.

(B) FREDDIE MAC.—Section 303(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(e)) is amended—

(i) by striking “shall be exempt from” and inserting “shall be subject to”; and

(ii) by striking “except that any” and inserting “and any”.

(5) REPEALS RELATING TO REGISTRATION OF SECURITIES.—

(A) FANNIE MAE.—

(i) MORTGAGE-BACKED SECURITIES.—Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by striking the fourth sentence.

(ii) SUBORDINATE OBLIGATIONS.—Section 304(e) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(e)) is amended by striking the fourth sentence.

(B) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (g).

(6) RECOUPMENT OF COSTS FOR FEDERAL GUARANTEE.—

(A) ASSESSMENTS.—The Director of the Federal Housing Finance Agency shall establish and collect from each enterprise assessments in the amount determined under subparagraph (B). In determining the method and timing for making such assessments, the Director shall take into consideration the determinations and conclusions of the study under subsection (b) of this section.

(B) DETERMINATION OF COSTS OF GUARANTEE.—Assessments under subparagraph (A) with respect to an enterprise shall be in such amount as the Director determines necessary to recoup to the Federal Government the full value of the benefit the enterprise receives from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprise, based upon the dollar value of such benefit in the market to such enterprise when not operating under conservatorship or receivership. To determine such amount, the Director shall establish a risk-based pricing mechanism as the Director considers appropriate, taking into consideration the determinations and conclusions of the study under subsection (b) of this section.

(C) TREATMENT OF RECOUPED AMOUNTS.—The Director shall cover into the general fund of the Treasury any amounts received from assessments made under this paragraph.

(b) GAO STUDY REGARDING RECOUPMENT OF COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The Comptroller General of the United States shall conduct a study to determine a risk-based pricing mechanism to accurately determine the value of the benefit the enterprises receive from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprises. Such study shall establish a dollar value of such benefit in the market to each enterprise when not operating under conservatorship or receivership, shall analyze various methods of the Federal Government assessing a charge for such value received (including methods involving an annual fee or a fee for each mortgage purchased or securitized), and shall make a recommendation of the best such method for assessing such charge. Not later than 12 months after the date of the enactment of this title, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

#### SEC. 7005. REQUIREMENT TO PERIODICALLY RENEW CHARTER UNTIL WIND DOWN AND DISSOLUTION.

(a) REQUIRED RENEWAL; WIND DOWN AND DISSOLUTION UPON NON-RENEWAL.—Upon the expiration of the 3-year period that begins upon the expiration of the period referred to in section 7003(b), unless the charter of an enterprise is renewed pursuant to subsection (b) of this section, section 7006 (relating to wind down of operations and dissolution of enterprise) shall apply to the enterprise.

(b) RENEWAL PROCEDURE.—

(1) APPLICATION; TIMING.—The Director shall provide for each enterprise to apply to the Director, before the expiration of the 3-year period under subsection (a), for renewal of the charter of the enterprise.

(2) STANDARD.—The Director shall approve the application of an enterprise for the renewal of the charter of the enterprise if—

(A) the application includes a certification by the enterprise that the enterprise is financially sound and is complying with all provisions of, and amendments made by, section 7004 of this title applicable to such enterprise; and

(B) the Director verifies that the certification made pursuant to subparagraph (A) is accurate.

(c) OPTION TO REAPPLY.—Nothing in this section may be construed to require an enterprise to apply under this section for renewal of the charter of the enterprise.

#### SEC. 7006. REQUIRED WIND DOWN OF OPERATIONS AND DISSOLUTION OF ENTERPRISE.

(a) APPLICABILITY.—This section shall apply to an enterprise—

(1) upon the expiration of the 3-year period referred to in such section 7005(a), to the extent provided in such section; and

(2) if this section has not previously applied to the enterprise, upon the expiration of the 6-year period that begins upon the expiration of the period referred to in section 7003(b).

(b) WIND DOWN.—Upon the applicability of this section to an enterprise, the Director and the Secretary of the Treasury shall jointly take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of an enterprise as an entity chartered by the United States Government over the duration

of the 10-year period beginning upon the applicability of this section to the enterprise (pursuant to subsection (a)) in an orderly manner consistent with this title and the ongoing obligations of the enterprise.

(c) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (b)—

(1) shall include the establishment and execution of plans to provide for an equitable division and distribution of assets and liabilities of the enterprise, including any liability of the enterprise to the United States Government or a Federal reserve bank that may continue after the end of the period described in subsection (b); and

(2) may provide for establishment of—

(A) a holding corporation organized under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring of the enterprise; and

(B) one or more trusts to which to transfer—

(i) remaining debt obligations of the enterprise, for the benefit of holders of such remaining obligations; or

(ii) remaining mortgages held for the purpose of backing mortgage-backed securities, for the benefit of holders of such remaining securities.

(d) REPEAL OF CHARTER.—Effective upon the expiration of the 10-year period referred to in subsection (b) for an enterprise, the charter for the enterprise is repealed, except that the provisions of such charter in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of outstanding debt obligations and mortgage-backed securities of the enterprise.

## **TITLE VIII—FEDERAL INSURANCE OFFICE**

### **SEC. 8001. SHORT TITLE.**

This title may be cited as the “Federal Insurance Office Act of 2009”.

### **SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.**

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312 after section 313;

(2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

#### **“SEC. 313. FEDERAL INSURANCE OFFICE.**

“(a) ESTABLISHMENT OF OFFICE.—There is established the Federal Insurance Office as an office in the Department of the Treasury.

“(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

“(c) FUNCTIONS.—

“(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

“(A) To monitor the insurance industry to gain expertise.

“(B) To identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system.

“(C) To recommend for review by the Market Stability and Capital Adequacy Board any activities or practices by insurers or

their affiliates that may be exacerbating systemic risk.

“(D) To assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

“(E) To coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors or any successor organization and assisting the Secretary in negotiating covered agreements.

“(F) To determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements.

“(G) To consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance.

“(H) To perform such other related duties and authorities as may be assigned to it by the Secretary.

“(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

“(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

“(e) GATHERING OF INFORMATION.—

“(1) GENERAL.—In carrying out its functions under subsection (c), the Office may request, receive, and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

“(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3) and subject to paragraph (4), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c). Notwithstanding subsection (p) and for the purposes of this paragraph only, the term ‘insurer’ means any entity that is authorized to write insurance or reinsure risks and issue contracts or policies in one or more States.

“(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that may be established by the Office by order or rule. Such threshold shall be appropriate to the particular request and need for the data or information.

“(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, or may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, or may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information

from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act) in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

“(5) CONFIDENTIALITY.—

“(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(B) Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

“(C) Any data or information obtained by the Office may be made available to State insurance regulators individually or collectively through an information sharing agreement that shall comply with applicable Federal law and that shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(D) Section 552 of title 5, United States Code, shall apply to any data or information submitted by an insurer or affiliate of an insurer.

“(f) PREEMPTION OF STATE INSURANCE MEASURES.—

“(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

“(A) directly results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State; and

“(B) is inconsistent with a covered agreement that is entered into on a date after the date of the enactment of this Act.

“(2) DETERMINATION.—

“(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination of inconsistency, the Director shall—

“(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

“(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

“(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

“(iv) provide interested parties a reasonable opportunity to submit written comments to the Office;

“(v) consider the effect of preemption on—“(I) the protection of policyholders and policy claimants;

“(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

“(III) ensuring the integrity and stability of the United States financial system; and

“(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

“(vi) consider any comments received. The Director shall provide the notifications required under clauses (i), (ii), and (iii) contemporaneously.

“(B) SCOPE OF REVIEW.—For purposes of this section, the Director’s determination of State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the covered agreement involved.

“(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination of inconsistency, the Director shall—

“(i) notify the appropriate State of the determination and the extent of the inconsistency;

“(ii) establish a reasonable period of time, which shall not be shorter than 90 days, before the determination shall become effective; and

“(iii) notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the inconsistency.

“(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

“(A) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

“(B) notify the appropriate State.

“(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

“(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.—Determinations of inconsistency pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

“(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

“(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually and collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

“(j) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) preempt any State insurance measure that governs any insurer’s rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

“(2) preempt any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly results in less favorable treatment of a non-United States insurer than a United States insurer;

“(3) be construed to alter, amend, or limit the responsibility of any department or agency of the Federal Government to issue regulations under the Truth in Lending Act (15 U.S.C. 1601 et seq.) or any other Federal law regulating the provision of consumer financial products or services;

“(4) preempt any State insurance measure because of inconsistency with any agreement that is not a covered agreement (as such term is defined in subsection (p)); or

“(5) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

“(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish a general supervisory or regulatory authority of the Office or the Department of the Treasury over the business of insurance.

“(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multi-national regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

“(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

“(n) REPORTS TO CONGRESS.—

“(1) ANNUAL REPORT.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on the insurance industry, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

“(2) OTHER REPORTS.—The Director shall submit to the President and the Committees referred to in paragraph (1) any other information or reports as deemed relevant by the Director or as requested by the Chairman or Ranking Member of any of such Committees.

“(o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

“(p) DEFINITIONS.—For purposes of this section and section 314, the following definitions shall apply:

“(1) AFFILIATE.—The term ‘affiliate’ means, with respect to an insurer, any person that controls, is controlled by, or is under common control with the insurer.

“(2) COVERED AGREEMENT.—The term ‘covered agreement’ means a written bilateral or multilateral recognition agreement that—

“(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

“(B) provides for recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

“(3) DETERMINATION OF INCONSISTENCY.—The term ‘determination of inconsistency’ means a determination that a State insurance measure is preempted under subsection (f).

“(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term ‘Federal financial regulatory agency’ means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

“(5) INSURER.—The term ‘insurer’ means any person engaged in the business of insurance, including reinsurance.

“(6) NON-UNITED STATES INSURER.—The term ‘non-United States insurer’ means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

“(7) OFFICE.—The term ‘Office’ means the Federal Insurance Office established by this section.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(9) STATE.—The term ‘State’ means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

“(10) STATE INSURANCE MEASURE.—The term ‘State insurance measure’ means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

“(11) STATE INSURANCE REGULATOR.—The term ‘State insurance regulator’ means any State regulatory authority responsible for the supervision of insurers.

“(12) UNITED STATES INSURER.—The term ‘United States insurer’ means—

“(A) an insurer that is organized under the laws of a State; or

“(B) a United States branch of a non-United States insurer.

“(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office such sums as may be necessary for each fiscal year.

#### “SEC. 314. COVERED AGREEMENTS.

“(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

“(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

“(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and



Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

“(2) **SCOPE.**—The consultation described in paragraph (1) shall include consultation with respect to—

“(A) the nature of the agreement;

“(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

“(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

“(C) **SUBMISSION AND LAYOVER PROVISIONS.**—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

“(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

“(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.”.

(b) **DUTIES OF SECRETARY.**—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking “and” at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.”.

(c) **CLERICAL AMENDMENT.**—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Federal Insurance Office.

“Sec. 314. Covered agreements.

“Sec. 315. Continuing in office.”.

#### **SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.**

Not later than September 30, 2011, the Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States.

#### **SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT OF INSURANCE REGULATION IN THE UNITED STATES.**

(a) **STUDY.**—The Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall conduct a study on how to modernize and improve the system of insurance regulation in the United States. Such study shall include consideration of the following:

(1) Effective systemic risk regulation with respect to insurance.

(2) Strong capital standards and an appropriate match between capital allocation and liabilities for all risk.

(3) Meaningful and consistent consumer protection for insurance products and practices.

(4) Increased national uniformity through either a Federal charter or effective action by the States.

(5) Improved and broadened regulation of insurance companies and affiliates on a consolidated basis, including affiliates outside of the traditional insurance business.

(6) International coordination.

(b) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) the results of the study conducted under subsection (a); and

(2) any legislative, administrative, or regulatory recommendations that the Director considers appropriate to modernize and improve the system of insurance regulation in the United States.

(c) **CONSULTATION.**—In carrying out subsections (a) and (b), the Director shall consult with State insurance commissioners, consumer organizations, representatives of the insurance industry, policyholders, and other persons, as the Director considers appropriate.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Alabama (Mr. BACHUS) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Alabama.

Mr. BACHUS. Madam Chairman, I yield myself 3 minutes.

Madam Chair, the gentleman from Maryland (Mr. HOYER) just talked about we're not going to call time out. But, ladies and gentlemen, the American people are calling time out. They are ready to put this Congress and this administration and the Federal Reserve into timeout. The time has expired on bailouts. That's the message we are hearing all over America. Americans are saying no more bailouts, and they are saying no more bailout funds.

That's the primary difference between the Democratic plan and the Republican plan. Once and for all, we say no more bailouts.

The American people, quite frankly, don't care about the mechanics. They don't care about the details. What they do care is that they be treated fairly, and they not be obligated for a risk that they didn't take. That's our plan. It's that simple. If bankruptcy is good enough for American citizens, if it's good enough for small businesses, if it's good enough for 999 of America's corporations, it ought to be good enough for the largest “too big to fail” institutions, and that's the last thing we put to death with our plan. There won't be any more “too big to fail.” You take risk or you loan or allow people to take risk with your money, you lose; not the American people.

No more bailouts. No more bailouts. Vote for the Republican substitute.

I reserve the balance of my time.

Mr. FRANK of Massachusetts. I claim the time in opposition.

The Acting CHAIR. The gentleman is recognized for 15 minutes.

Mr. FRANK of Massachusetts. I first yield myself 1 minute to say, we agree, no more bailouts. The Republicans cannot accept the fact that we have a bill that bans them. It specifically does not allow what happened.

Last year, Bush administration officials decided to use section 13(3) of the Federal Reserve to provide funds for the creditors of Bear Stearns and for AIG itself. That would not be legally possible under the bill we put forward.

Similarly, we have funds that come not from the taxpayers, but from an assessment on large financial institutions which can be used explicitly, not for any failed institution, but can be used when that institution is being put out of business in case it is necessary to prevent that failure from having negative destabilizing effects. The Republicans don't want to do that.

He said that the major difference is—another difference—we have a number of provisions in here to make it less likely that that will happen. Yes, if a big institution gets overly indebted and fails, it ought to be allowed to fail and we will have to deal with the consequences. But it would also be better not cavalierly to say, Let 'em fail. Let's try to stop it.

I now yield 2 minutes to the gentleman from Illinois (Mr. GUTIERREZ).

Mr. GUTIERREZ. Madam Chair, I would like to take that time to enter into a colloquy with the chairman.

Chairman FRANK, while I continue to strongly support the amendment that I offered during the Financial Services Committee markup changing the assessment base for FDIC deposit insurance funds payments from domestic deposits to total assets less tangible equity, it has come to my attention that the change adopted by the committee may result in disproportionate impacts on certain types of specialized banks, including custodians and bankers' banks.

A provision you included in the manager's amendment would address this issue and require the FDIC to make appropriate adjustments to the assessment base for custodians and bankers' banks. The FDIC has advised my staff that the revised version of this provision will give the agency sufficient flexibility.

I appreciate your willingness to accept this change to address the legitimate issues raised by the specialized business models of custodians and bankers' banks.

Mr. FRANK of Massachusetts. If the gentleman would yield, I would say, yes, this is another example of the superiority over this bill to the Republican substitute, because the gentleman from Illinois took the lead in addressing the unfairness of having smaller banks have to contribute, we believe, disproportionately, to the insurance fund, because of the risky problems of big banks. He has got in



here language that addresses that. It's one reason why the independent community bankers like our bill.

Yes, I will continue to work with him. I did want to do that now to stress that in this bill, as opposed to the Republican substitute, there is some redress. Big banks will have to pay more and smaller banks less because of the riskiness of what they do.

I thank the gentleman.

Mr. GUTIERREZ. Thank you.

I was hoping to bring up with you a very important subject that is vital to the health of our community banks. With the changes that this legislation makes to the DIF assessments, any funds from the Federal Home Loan Banks that banks have on their books would be doubly assessed by the FDIC. I understand the FDIC's reasoning behind the premiums on FHLB funds, but since these funds are now taken into account in the new assessment base, I believe these premiums to be duplicative. I am hoping that you will work with me and the FDIC to address my concerns about these premiums.

Mr. FRANK of Massachusetts. Yes. Again, if the gentleman would yield, this illustrates one other area where the legislation we have is far better and more responsive to the needs of small banks than the Republican bill. This improves on it, and I agree with him.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Madam Chair, the Democratic bill is silent on the root cause of the financial collapse. It was the government-sponsored enterprises, Fannie and Freddie, that were at the heart of the housing market and largely responsible for the proliferation of subprime and Alt-A mortgages throughout the financial system. Over the years, they loaded up on over \$1 trillion worth of these junk loans.

Frankly, Fannie and Freddie also infected capital markets and spread through every sector of our banking system. Before the bursting of the housing bubble, GSE securities constituted more than 150 percent of core capital for insured banks. More than 40 percent of money market mutual fund holdings were in the form of GSE securities. That is why Senator Chuck Hagel offered legislation for stronger regulation which passed the Senate Banking Committee on a party-line vote but was blocked by the Senate Democrats from coming to the floor. My amendment was also defeated.

The affordable housing goals were put in by the Democratic-controlled Congress. They mandated it in 1992. These affordable housing goals led the GSEs into the subprime and Alt-A market, and ultimately led to their collapse.

□ 1215

Former President Bill Clinton understands this epic blunder. He said, "I

think the responsibility that the Democrats have may rest more in resisting any efforts by Republicans in the Congress, or by me when I was President, to put some standards and tighten up a little on Fannie Mae and Freddie Mac."

Let it be clear: This is the main reason why our economy is where it is today, and this is why we must reform the GSEs. Instead, the Democrats keep them in conservatorship, bail them out forever in their legislation. The Republicans, on the other hand, end bailouts, and the Republicans also reform the GSEs.

Mr. FRANK of Massachusetts. Madam Chair, I yield myself 1 minute.

From 1995 through 2006, when the Republicans controlled this House and the Senate, they did no legislation on Fannie Mae and Freddie Mac. It was the Republicans who didn't do it. The Republican House in 2005 passed a bill which the Republican Senate and the Republican President opposed. The chairman of the committee, Mr. OXLEY, blamed them for doing it. In 2007, we did pass such a bill. And in 2004, it was President Bush unilaterally that pushed up substantially the affordable housing goals, including significantly for people under median income, which I opposed at the time.

Madam Chair, I yield 2 minutes to the gentleman from New York (Mr. MEEKS).

Mr. MEEKS of New York. Madam Chair, I rise in strong opposition to the Republican substitute. In fact, when you look at it, it's nowhere near H.R. 4173.

Let me tell you what H.R. 4173 does. It strengthens protections for consumers and updates the regulatory structure, brings transparency to the previously unregulated derivatives market, and ensures that no one would be permitted to survive simply because they're "too big to fail." That's what 4173 does.

Now, we all agree that the financial industry is, in fact, the lifeblood of America's economy and is a global leader in size, innovation, and employment. And I believe it is essential to sustain this industry while making it accountable for its actions, and that is exactly what H.R. 4173 accomplishes. For the sake of restoring America's economy, we must restore a strong and accountable financial sector.

Therefore, I am against the Republican substitute and for H.R. 4173 because it will ensure that the financial industry will get back on solid footing and back to the business of lending to American families and industries, while guaranteeing that financial firms will bear the risks that they take without recourse to the taxpayer.

I support H.R. 4173 because of the impact the financial crisis has had on middle America. Our small businesses cannot access credit. Retirees are

forced to go back to work because their pensions are depleted and they have upside-down mortgages. And in my community, we have an astronomical unemployment rate.

Finally, let me emphasize that these reforms that are in H.R. 4173 strengthen our system of capitalism and free enterprise.

To those who criticize this legislation as antimarkets, I would counter that this legislation is good for consumers and good for businesses because investors are staying out of the market right now and companies across the Nation are struggling to stay in business, let alone creating desperately needed jobs.

By strengthening protections for consumers and investors and bringing transparency and accountability to the marketplace, we are restoring the cornerstone of a healthy and sustainable economy of the free world.

Mr. BACHUS. Madam Chair, would you give the time remaining on each side.

The Acting CHAIR. The gentleman from Alabama (Mr. BACHUS) has 11 minutes remaining, and the gentleman from Massachusetts (Mr. FRANK) has 9½ minutes remaining.

Mr. BACHUS. Madam Chair, I yield 30 seconds to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Madam Chair, again, in 1992, it was the Democrats that put in place the legislation that led Fannie Mae and Freddie Mac into the subprime and Alt-A loans. And every time there was an amendment up, and I remember specifically my amendment up on this House floor that tried to do what was requested by the Federal Reserve to stop the systemic risk, there was opposition to it.

Now, the legislation before us today, to compound this problem, exempts Fannie Mae and Freddie Mac again from this reform. And every time there was legislation that was actually backed by the Federal Reserve, the chairman opposed that legislation.

Mr. FRANK of Massachusetts. I yield myself 30 seconds.

I want to point out that the gentleman conveniently forgets to say that the opposition came from his own Republican leadership. Yes, he offered an amendment in 2005, the only time that the Republicans let a bill come up, and he was defeated with the overwhelming vote of the Republicans as well as the Democrats. I wanted some reform that preserved rental housing.

Finally, in 2007, we in the majority passed a bill that was recommended. And in 2004, President Bush—and, yes, the affordable goals came in 1992—President Bush raised them from 42 to 54 percent over my objection. I thought it was imprudent and said so at the time.

Madam Chair, I yield 3 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Madam Chair, before I address the merits of the Republican substitute, I want to note that I had hoped we could have achieved bipartisanship during this debate on regulatory reform. As such, I hosted about a dozen gatherings, inviting Members from both sides of the aisle to hear diverse viewpoints from some of the brightest economic minds and business leaders in the country. I was also pleased that three of the four capital markets legislative proposals in this bill, the Democratic bill, gained bipartisan support during markup.

The Republicans also incorporated one of those bills, to create the Federal Insurance Office, into their substitute. Ultimately, however, the Republicans opted against supporting strong reform of financial regulation. Their substitute is inadequate and seems designed to protect Wall Street rather than to reform it.

Regulation of hedge funds and private pools of capital is a very important piece of the Democratic bill. In committee, this provision passed 67-1, and yet the Republican substitute ignores this issue.

As the rating agencies were reformed, which many Republicans voted for in the committee markup, the GOP substitute does absolutely nothing to address the issue of liability. And without liability, the Republican plan provides no accountability for the rating agencies. Because the status quo is not an option, rating agency reform is an essential part of the Democratic plan.

The Republican plan also does little to improve investor protections. Just this week, the Capital Markets Subcommittee held a hearing on the largest Ponzi scheme in U.S. history. The colossal failure of the Securities and Exchange Commission to detect and investigate this massive fraud after numerous leads demonstrates that we need reform. And yet under the Republican alternative it appears that nothing ever happened.

We double the funding of the commission and push for comprehensive organizational reform. They give the agency very little and do little to change the agency.

The GOP plan additionally chooses bankruptcy for systemically significant firms. Well, Lehman Brothers went through bankruptcy and is still in bankruptcy, which resulted in credit markets freezing up around the world. This is not a real solution.

In sum, H.R. 4173 reforms Wall Street for the protection of the consumer and the investor on Main Street. The Republican alternative, in contrast, represents business as usual for Wall Street.

We don't need more of the same contained in their plan. We need substantial reform found in H.R. 4173. Vote "no" on the Republican substitute.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding.

Madam Chair, I rise in support of the Republican alternative.

It seems like every time we come down to debate this issue, we begin to focus on past history. History is good because we can learn from that, but I think we need to hear more about what the substantive issues are in this bill, what is happening, rather than to look at the past. We need to get it right, and I think the Republican alternative does that.

There's no question that we have a need to reform the financial industry, but for consumers, for the health of our financial services and the economy, we must get it right. But this bill isn't the answer. There are a few good bipartisan provisions in the underlying bill, but the good doesn't outweigh the bad.

America needs a financial recovery and reform bill, not a permanent Big Brother government bailout program. We need reforms that will facilitate competition in the marketplace and generate more choices for consumers. We need reform that will equip consumers with the information that they need to shop around and make the financial decisions that are best for their families.

We need a stronger regulatory regime to quickly expose, stop, and put behind bars any Wall Street crooks that break the law. And financial firms that fail should do just that: fail through a new, orderly bankruptcy process.

We also need greater transparency and improved regulation for over-the-counter derivatives. We must close the gaps in communication among regulators and give them the tools to be efficient and effective.

We need to get credit flowing again so that small businesses like those in my congressional district can get the financing to expand and create the jobs that American families need so desperately.

That's responsible financial reform, and our Republican alternative aims to get us there.

Mr. FRANK of Massachusetts. Madam Chair, I reserve the balance of my time.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. I want to thank the ranking member, my good friend from Alabama, for yielding me the time. I would also like to thank him for his leadership on our committee over the past year.

I rise today in support of the Republican substitute.

My colleagues have a choice today: Do they want to perpetuate bailouts and continue to put taxpayers at risk or will they support the Republican substitute that ends bailouts?

There are two features of this bill I'm going to address.

The substitute creates a new chapter of the bankruptcy code. This new section, chapter 14, will allow for an expedient resolution of failing firms as there will be trained personnel who have the necessary skills to ensure an efficient resolution. This is not chapter 7 or chapter 11, as in the discussion we had in the committee, as my friends on the other side of the aisle have asserted; although, the bill does not prohibit a nonbank financial firm from pursuing these chapters if they so wish.

There is no taxpayer-funded bailout fund in our amendment. It is straightforward for all market participants. If you take on too much risk and fail, then you go through an expedited bankruptcy. The taxpayers will not pick up the tab. This is fair to all market participants and it's fair to the taxpayers, and I urge my colleagues to join us in ending the bailouts.

Another important section of the Republican substitute is that we address reforms to the GSEs, Fannie and Freddie. While there may not be consensus on the reforms proposed, this body must have an honest discussion about the future of these two entities and what role, if any, government should play. After all, a major component of the financial crisis was the failure of these two entities. To ignore their reform in a financial reform package is irresponsible.

I would urge support for the Republican substitute. This is the financial reform package that we need.

Mr. KANJORSKI. Madam Chair, I continue to reserve the balance of my time.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING. Madam Chair, the American people want more jobs and fewer bailouts. The Democratic majority will bring them fewer jobs and more bailouts. Their bill creates a permanent Wall Street bailout fund. The only reason to have a bailout fund is to bail people out.

The Republican bill says we're tired of the bailouts. No more bailouts. You cannot have a system where you privatize your profits and socialize your losses. That's what "bailout nation" is all about. The big get bigger, the small get smaller, the taxpayer gets poorer, and the economy becomes more political.

Jobs. The Democratic bill still believes that if we have an unelected czar who can ban credit products, who can ration credit products, that somehow we will have bliss in our economy. If you raise the price of capital, you get less capital. You cannot have capitalism without capital. Our small businesses are starving. We need more capital. This will simply cost the economy more jobs.

□ 1230

The Democratic bill fundamentally assaults the economic liberty of the American citizen. It says now you have to go on bended knee to Washington before you can put a credit card in your wallet or get a mortgage for your home. The Republican bill respects the liberties of the American citizen. It says we want to make sure that you have open and transparent information, but we respect your freedom, we respect your choices. We respect the freedom that this Nation represents.

Let's have more jobs, fewer bailouts. Let's respect the freedom of every American citizen. Reject the Democrats' bailout bill and support the Republican bill.

Mr. BACHUS. Madam Chairman, as I understand it, the chairman has one more speaker on his side so at this time I yield 2 minutes to the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. Madam Chair, the American people have spoken loud and clear. They have spoken that they are opposed to more taxpayer-funded bailouts. The American people have said they are opposed to job-destroying legislation. The American people have said they are opposed to growing and expanding and increasing the size and spending of the Federal Government.

The majority bill that we had before us earlier is a bill that fails on all counts to listen to the American public. There is no one on the other side of the aisle who can deny that their bill will continue taxpayer-funded bailouts. There is no one on the other side of the aisle who can deny that their bill will continue the destruction of jobs in this country.

And, finally, there is no one on the other side of the aisle who can honestly deny that their bill will not create a more expensive, expanding government. Their bill will create bailouts, destroy jobs, and create a bigger government.

Earlier the majority leader was on the floor and he was speaking in an amusing if not illuminating manner when he used a football analogy when he talked about the refs on the field. Under their bill, we will end up with a stadium with only refs on the field, maybe highly paid and highly charged with authority, bureaucrats and refs, but no players. There will be no players in the game any more. And, quite frankly, the American public will not be able to pay the ticket to admission to the stadium under their legislation.

I also found it somewhat amusing that the only example of deregulation that the majority leader could think to was a piece of legislation that he actually voted for. And in fact that of course was not deregulation at all.

So we have presented now a Republican substitute, a Republican sub-

stitute that listens to the American people, that provides the appropriate level of regulation. The Republican substitute will actually end taxpayer-funded bailouts. The Republican substitute will actually do so by making sure the responsible parties pay. The Republican substitute will end job-destroying legislation and practices and instead create a facility that will expand liquidity and credit in the marketplace so that we can create new and expansive number of jobs in this country. The Republican substitute will end the practice of growing and expanding the government as we have seen time and time again. Instead, the Republican substitute will make sure that we have a government that lives within its means. I stand here in support of the Republican substitute.

Mr. BACHUS. Madam Chair, at this time I yield 2 minutes to the gentleman from Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. Madam Chairman, the Republican alternative actually brings real reform to the regulatory process and not big government. The first thing that the Republican alternative does is it ends bailouts. The American people are tired of bailouts; and particularly they are tired of bailouts when they come at their expense. The other thing that the Republican substitute does is it gets the government out of picking winners and losers. If companies make bad decisions, they fail. If they make good decisions, they succeed.

The other part of the Republican plan is we say, you know what, if you are taking risky behavior, you are involved in businesses that cause more risk to the system, you have to have more capital. The other thing that the Republican plan does is it actually protects consumers and doesn't limit their choices. I think that is the big difference in this piece of legislation; this piece of legislation that the Democrats want to do, they want somebody else to make the choices for you. They have a credit czar, and that credit czar is going to tell you what kind of car loan, what kinds of student loan, and what kind of house loan you can get. I have said all along that I think the American people have enough sense to make their own decisions.

In fact, I just recently came back from Afghanistan where we have young men and women who are deployed, and they are over there trying to protect the American people's ability to make their own choices. I hope they are not going to be disappointed when they find out that back here in the good old U.S. of A., where they have been defending our freedom and liberty, we are over here trying to pass legislation that will limit their choices, limit their choices to be able to have the kind of house loan or car loan or student loan. Or maybe they want to come back from serving this great country

and this great Nation after their distinguished service, they want a small business loan, only to find out that the United States Congress is limiting the ability of banks and credit unions to provide new business loans for these men and women. I don't think that is what they are fighting for.

I urge Members to vote for the Republican substitute and vote against the underlying bill.

Mr. BACHUS. Madam Chair, I would like unanimous consent at this time to recognize our troops who are in the gallery today.

The Acting CHAIR. Under clause 7 of rule XVII, the Chair cannot entertain that request.

Mr. BACHUS. Madam Chair, at this time I yield the balance of my time to the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. Madam Chair, my colleagues, it has been quite a year. This House has been on a spending spree and a regulatory spree and a bailout spree that I could never have imagined in any of my prior 18 years here in Congress.

You know, it was a trillion-dollar spending plan, stimulus plan, that was supposed to be about creating jobs, and it turned into nothing more than a lot of big government spending; a budget that had trillion-dollar deficits on average for as far as the eye can see; and a trillion-dollar national energy tax that was going to create this giant bureaucracy and tax Americans over their gasoline, their electricity, and everything else that moves in America. Then we have the nearly trillion-dollar government takeover of our health care system. And people wonder why employers are frozen, why they are not hiring more employees when all of this is coming down the pike.

And if all of that wasn't bad enough, we have no idea what is going to happen to tax rates. There have been suggestions to increase taxes in many of the bills that have passed this House this year. And now we come to the granddaddy of all of them: the financial regulatory bill that is in front of us today.

All of us recognize there are shortcomings in our financial regulatory system; but I do believe that the overreach by my Democrat colleagues on this bill is really beyond imagination. It is going to have more bailouts for banks in this bill; nothing that will reform Fannie Mae and Freddie Mac, the real culprits at the beginning of this whole financial meltdown, but there is no reform in this bill when it comes to those two entities.

And if all of that isn't bad enough, to put more money in here to bail out bad actors is exactly what the American people don't want.

And so I rise in support of a common-sense regulatory approach offered by my Republican colleagues. I am going

to congratulate SPENCER BACHUS and all of the members of his committee for the work they have done to put this commonsense alternative together that will fix the regulatory gaps that we have without bailouts, without tens of thousands of new Federal employees that we see in the underlying bill. I would hope that my colleagues would support it.

But if my colleagues don't support the alternative that is on the floor at this moment, when that vote comes, Republicans will offer a motion to recommit, a motion to recommit that will scrap the entire underlying bill. It will also say TARP ends on December 31 this year, and all of the funds that come back from TARP should be used to repay the Federal deficit. And, thirdly, we will bring down the debt limit commensurate with those repayments.

TARP was there for an emergency. Everyone involved in TARP over a year ago understood that when that money came back, it was to go back to the Treasury to reduce the Federal budget deficit. It wasn't to become a political slush fund that we have heard bandied about here over the last couple of weeks, all kinds of ideas about how to take TARP and use it for more bailouts and more spending from here in Washington.

And so I am going to ask my colleagues, if you've had enough of the bailouts, enough of TARP, let's do the right thing for the American people. They are already saying enough is enough. Let's end TARP, let's pay down the deficit, and if this substitute does pass, you will have a chance to put an end to this entire process.

Mr. FRANK of Massachusetts. Madam Chair, I yield myself the balance of my time.

An example of the wildly excessive hyperbole that just came from the gentleman from New Jersey: increased regulation of derivatives; require overextended financial companies to have more capital; don't let people sell mortgages that will get people in trouble; and there will be no players on the field, there will be only refs. The cynical feeling that Republicans have toward regulation leads them to talk crazy.

My friend, the gentleman from Texas (Mr. NEUGEBAUER) said you will need permission to get a car loan. No sane person, including Mr. NEUGEBAUER, thinks that is true. As a matter of fact, over the objection of many of us, car loans are exempted from the bill he is widely exaggerating. So it is an inaccuracy built on an exaggeration.

What we have also is their great fear of not having in this bill the bailout that they want to attack. But before I get to that, let me take directly one of their arguments. The American people have said no more expansion of government. Not in the area certainly of fi-

nancial regulation. Their view that the American people want no more restraints on Wall Street is wrong. Their view that the American people want nothing to be done about the form of executive compensation that is not only obscenely excessive, but destabilizing because of the way in which it is structured—so that is true, they do nothing effectively about executive compensation.

They say that the American people like derivatives to be spread out with no capital to back them up so when there are failures, you have trouble. And they carry through; they are right. I disagree vehemently that the American people think that the status quo with the financial industry was a good one.

One gentleman said, Well, you will increase the cost of capital. Yes, in some cases. I want to increase the cost of speculation. The problem with the way capital has been employed is it has been employed for useful purposes to gather up funds that could be used to produce goods and services; but for some, the means became the end. And yes, if we were to increase the cost of capital for some of the speculative trading that goes on, that would be a good thing. Less of that would be a good thing.

So let's put to the American people: Do you prefer the Republican position of doing literally nothing to rein in these abuses, or should we try to rein them in? And that leads to a difference in the bill. We are not simply in our bill saying let's deal with what happens when there is a failure. They say here in their bill, if there is a failure, let them go bankrupt and that's it.

We also say if there is an institution that is overextended, we let it fail and we have specific language that says no money can go to that institution or its shareholder or its board of directors. But unlike them, we don't think that you should wait until then. We don't think that it is responsible for society to say, Go ahead and fail; we don't care. We do care. We are not going to go to their aid the way it was done last year under section 13(3), which we have amended so it can't happen again, and you cannot have what the Bush administration did with 13(3) and the AIG. I don't think that they were wrong necessarily, but that is what they did. We stop that. But we think that you should step in and don't let them get to that point.

It is not healthy for society where you don't do anything about compensation, you don't do anything about derivatives, you don't regulate them at all, and you let them crash; but when they do crash, here is the argument: You have a permanent bailout fund.

□ 1245

Madam Chair, in their heads is the only place that permanent bailout fund

exists. Well, maybe in their hearts, because it pains them to recognize that we have curtailed it.

Here's what the legislation actually says in a binding way and why their analogies to last year are so directly wrong.

Here is on page 397—I know it's a big bill, and maybe they couldn't get all the way through it. I apologize. We would have given them a reading guide if they had asked for it:

"There is established in the Treasury a separate fund to be known as the Systemic Dissolution Fund"—that's what they call the bailout fund—"to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets." And it pays the expenses of putting them out of business not from the taxpayers, but from an assessment on large financial companies; and that pains them.

They really do sympathize with Goldman Sachs, with JPMorgan Chase, with Morgan Stanley, with Bank of America, CitiCorp, yes, and hedge funds above \$10 billion. We subject them to an assessment, and they say, Oh, we're so unfair. These wonderful, healthy companies, why should they have to pay for the bailouts? Because they have all been part of the system and they benefit from that safety net.

We go on to say, "The Fund shall be available for use with respect to the dissolution of a covered financial company to cover the costs incurred by the receiver and to cover the costs of systematic stabilization actions. The Fund shall not be used in any manner to benefit any officer or director of such company."

And it says earlier on when we talk about the establishment of that fund, on page 288, it can only be used, the money that comes from Morgan Stanley and Goldman Sachs and JPMorgan Chase, the objects of Republican sympathy. The poor dears; they won't have enough money to speculate and we won't have anybody to come and play football because they have been told not to speculate.

It says that they can only do this if such action is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company. And if there is a loan from taxpayers, it makes it very clear: Any funds from taxpayers shall be repaid—that's a loan—shall be repaid by a fixed assessment from these big companies; that the shareholders do not receive payment until other claims have been fully paid; and no payments are made to creditors until the taxpayers get their money back.

We ask that the substitute be rejected.

Mr. SMITH of Texas. Madam Chair, the Administration's and this Democratic majority's

legislation is a massive, politically driven, government intervention in America's economic life.

Americans see this in the health care legislation that threatens government control over their lives. They see it in the cap-and-tax legislation that sacrifices the economy to the uncertain science of climate change. They see it in the Stimulus Bill and the federal budget that increases deficits and burdens our economy for generations.

And they see it in the legislation before us today.

This bill's giving so-called "resolution authority" to the federal government is a perfect example.

"Resolution authority" is intended to address how to handle collapsing institutions that allegedly are "too big to fail." Economists and legal experts point to the "too big to fail" mentality as the culprit that laid the groundwork for the September 2008 financial panic.

A key feature of the "too big to fail" approach is the provision of bailouts for failing firms. But bailouts only encourage risky behavior. If Congress authorizes the bail out of Wall Street every time a gamble doesn't pay off, what will deter bad business decisions in the future?

Rather than end billion dollar bailouts, today's legislation turns the "too big to fail" mentality into a cornerstone of Democrats' proposed reforms.

The bill gives special treatment to big firms; encourages risk; and gives government agencies the power to determine which firms live or die. In other words, the bill institutionalizes the mistakes that led to the 2008 financial collapse.

And consistent with the Democratic agenda, it empowers the federal government to intervene in the lives of our largest financial institutions.

The Republican substitute amendment rejects this big government ticket back to financial ruin. It slams the door shut on the bailout era and "too big to fail." It renounces the power grab that lets federal agencies and government employees determine who lives and dies in our economy. It embraces the way the experts point to as the better path towards a healthier financial future.

With respect to failing financial institutions, the better way is bankruptcy reform.

The Republican substitute establishes a new chapter of the Bankruptcy Code to resolve failed non-bank financial institutions. It puts responsibility into the hands of non-partisan, transparent bankruptcy courts. It adds new provisions to help courts better handle these bankruptcies so that future crises may be better avoided.

The amendment creates one set of fair, predictable rules for all non-bank institutions. It rests on a long-standing body of precedent well understood by firms, investors, government and the public.

And the Republican substitute guarantees that not a single taxpayer dime will ever again be paid for a Wall Street bailout.

America's economy—and taxpayers' wallets—will not be safe until billion dollar bailouts and the notion that Wall Street firms are "too big to fail" rest in the dustbin of history.

The Acting CHAIR. The question is on the amendment offered by the gen-

tleman from Alabama (Mr. BACHUS), as modified by the order of the House of December 10, 2009.

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. BACHUS. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Alabama will be postponed.

#### ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 111-370 on which further proceedings were postponed, in the following order:

Amendment No. 19 by Mr. MARSHALL of Georgia.

Amendment No. 32 by Ms. SCHA-KOWSKY of Illinois.

Amendment No. 35 by Mr. MINNICK of Idaho.

Amendment No. 36 by Mr. BACHUS of Alabama.

The Chair will reduce to 5 minutes the time for the second and fourth vote in this series.

#### AMENDMENT NO. 19 OFFERED BY MR. MARSHALL

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Georgia (Mr. MARSHALL) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

#### RECORDED VOTE

The Acting CHAIR. A recorded vote has been requested.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 188, noes 241, not voting 11, as follows:

[Roll No. 963]

AYES—188

Abercrombie  
Ackerman  
Adler (NJ)  
Andrews  
Baca  
Baird  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Bishop (NY)  
Blumenauer  
Brady (PA)  
Braley (IA)  
Brown, Corrine  
Butterfield  
Capps  
Capuano  
Cardoza  
Carnahan  
Carson (IN)  
Castor (FL)  
Christensen  
Chu  
Clarke  
Clay

Cleaver  
Clyburn  
Cohen  
Conyers  
Cooper  
Courtney  
Crowley  
Cummings  
Davis (AL)  
Davis (CA)  
Davis (IL)  
DeFazio  
DeGette  
DeLauro  
Dicks  
Dingell  
Doggett  
Doyle  
Edwards (MD)  
Ellison  
Engel  
Eshoo  
Etheridge  
Faleomavaega  
Farr  
Fattah

Filner  
Foster  
Frank (MA)  
Fudge  
Garamendi  
Giffords  
Gonzalez  
Grayson  
Green, Al  
Green, Gene  
Grijalva  
Gutierrez  
Hall (NY)  
Hare  
Hastings (FL)  
Heinrich  
Higgins  
Himes  
Hinchey  
Hinojosa  
Hirono  
Hodes  
Holt  
Honda  
Hoyer  
Inslee  
Israel

Jackson (IL)  
Jackson-Lee  
(TX)  
Johnson (GA)  
Johnson, E. B.  
Jones  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kirkpatrick (AZ)  
Klein (FL)  
Kucinich  
Langevin  
Larson (CT)  
Lee (CA)  
Levin  
Lewis (GA)  
Loebach  
Lowey  
Lujan  
Lynch  
Maffei  
Maloney  
Markey (MA)  
Marshall  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McNerney  
Meek (FL)  
Meeks (NY)

Michaud  
Miller (NC)  
Miller, George  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy, Patrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Oberstar  
Obey  
Oliver  
Pallone  
Pascarell  
Pastor (AZ)  
Paul  
Payne  
Perlmutter  
Peters  
Pingree (ME)  
Price (NC)  
Rangel  
Richardson  
Ros-Lehtinen  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Ryan (OH)  
Sablan  
Salazar  
Sánchez, Linda  
T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schauer

Schiff  
Schwartz  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Sires  
Snyder  
Speier  
Stark  
Sutton  
Taylor  
Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Turner  
Van Hollen  
Velázquez  
Visclosky  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Woolsey  
Wu  
Yarmuth

#### NOES—241

Aderholt  
Akin  
Alexander  
Altmire  
Arcuri  
Austria  
Bachmann  
Bachus  
Barrett (SC)  
Bartlett  
Barton (TX)  
Berry  
Biggart  
Bilbray  
Bilirakis  
Bishop (GA)  
Bishop (UT)  
Blackburn  
Blunt  
Bocciari  
Boehner  
Bonner  
Bono Mack  
Boozman  
Boren  
Boswell  
Boucher  
Boustany  
Boyd  
Brady (TX)  
Bright  
Broun (GA)  
Brown (SC)  
Brown-Waite,  
Ginny  
Buchanan  
Burgess  
Burton (IN)  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Carney  
Carter  
Cassidy  
Castle  
Chaffetz  
Chandler  
Childers  
Coble  
Coffman (CO)  
Cole  
Conaway

Connolly (VA)  
Costa  
Costello  
Crenshaw  
Cuellar  
Culberson  
Dahlkemper  
Davis (KY)  
Davis (TN)  
Deal (GA)  
Dent  
Diaz-Balart, M.  
Donnelly (IN)  
Dreier  
Driehaus  
Duncan  
Edwards (TX)  
Ehlers  
Ellsworth  
Emerson  
Fallin  
Flake  
Fleming  
Forbes  
Fortenberry  
Foxy  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Gingrey (GA)  
Gohmert  
Goodlatte  
Gordon (TN)  
Granger  
Graves  
Griffith  
Guthrie  
Hall (TX)  
Halvorson  
Harman  
Harper  
Hastings (WA)  
Heller  
Hensarling  
Herger  
Herseth Sandlin  
Hill  
Hoekstra  
Holden  
Hunter  
Inglis  
Issa  
Jenkins  
Johnson (IL)

Johnson, Sam  
Jordan (OH)  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kissell  
Kline (MN)  
Kosmas  
Kratovil  
Lamborn  
Lance  
Larsen (WA)  
Latham  
LaTourette  
Latta  
Lee (NY)  
Lewis (CA)  
Linder  
Lipinski  
LoBiondo  
Lucas  
Luetkemeyer  
Lummis  
Lungren, Daniel  
E.  
Mack  
Manzullo  
Marchant  
Markey (CO)  
Massa  
Matheson  
McCarthy (CA)  
McCaull  
McClintock  
McCotter  
McHenry  
McIntyre  
McKeon  
McMahon  
McMorris  
Rodgers  
Melancon  
Mica  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Minnick  
Mitchell  
Mollohan  
Moran (KS)  
Murphy (NY)  
Murphy, Tim  
Myrick  
Neugebauer

Nunes	Rogers (AL)	Souder
Nye	Rogers (KY)	Space
Olson	Rogers (MI)	Spratt
Ortiz	Rohrabacher	Stearns
Owens	Rooney	Stupak
Paulsen	Roskam	Sullivan
Pence	Ross	Tanner
Perriello	Royce	Teague
Peterson	Rush	Terry
Petri	Ryan (WI)	Thompson (PA)
Pitts	Scalise	Thornberry
Platts	Schmidt	Tiahrt
Poe (TX)	Schock	Tiberi
Polis (CO)	Schrader	Upton
Pomeroy	Scott (GA)	Walden
Posey	Sensenbrenner	Walz
Price (GA)	Shadegg	Wamp
Putnam	Shimkus	Westmoreland
Quigley	Shuler	Whitfield
Radanovich	Shuster	Wilson (OH)
Rahall	Simpson	Wilson (SC)
Rehberg	Skelton	Wittman
Reichert	Smith (NE)	Wolf
Reyes	Smith (NJ)	Young (FL)
Rodriguez	Smith (TX)	
Roe (TN)	Smith (WA)	

## NOT VOTING—11

Baldwin	Moran (VA)	Sessions
Bordallo	Murtha	Slaughter
Diaz-Balart, L.	Norton	Young (AK)
Lofgren, Zoe	Pierluisi	

□ 1317

Messrs. COBLE, SULLIVAN, ROGERS of Alabama, LUETKEMEYER, KINGSTON, ALTMIRE, BURGESS, COSTELLO, COSTA and RUSH changed their vote from “aye” to “no.”

Messrs. PAUL, BAIRD, GUTIERREZ, JOHNSON of Georgia, LYNCH, ACKERMAN, Ms. DEGETTE and Mrs. NAPOLITANO changed their vote from “no” to “aye.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

## PERSONAL EXPLANATION

Mr. LARSEN of Washington. Madam Chair, during rollcall vote No. 963 on H.R. 4173, I mistakenly recorded my vote as “nay” when I should have voted “aye.”

(By unanimous consent, Mr. HOYER was allowed to speak out of order.)

## WELCOMING OUR ARMED FORCES

Mr. HOYER. Ladies and gentlemen of the House, we here like to refer to ourselves as the House of the people, the “People’s House” as Bill Natcher used to refer to it. We exercise what our Founding Fathers set up as a free democracy, where the people can speak through freely elected Representatives. And very frankly, we are that because we have brave men and women who are willing to serve us in the Armed Forces of the United States.

From time to time, they have an opportunity to visit with us. It is not, under the rules, appropriate to directly address people who are in our gallery, but it is always in order to pay honor to those who serve us and serve us so well.

## ANNOUNCEMENT BY THE ACTING CHAIR

The SPEAKER pro tempore. Without objection, 5-minute voting will continue.

There was no objection.

## AMENDMENT NO. 32 OFFERED BY MS.

## SCHAKOWSKY

The Acting CHAIR. The unfinished business is the demand for a recorded

vote on the amendment offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

## RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 277, noes 149, not voting 14, as follows:

[Roll No. 964]

## AYES—277

Abercrombie	Diaz-Balart, L.	Kissell
Ackerman	Diaz-Balart, M.	Klein (FL)
Adler (NJ)	Dicks	Kosmas
Akin	Dingell	Kratovil
Altmire	Doggett	Kucinich
Andrews	Donnelly (IN)	Lance
Arcuri	Doyle	Langevin
Baca	Driehaus	Larsen (WA)
Baird	Edwards (MD)	Larson (CT)
Barrow	Edwards (TX)	Latham
Bean	Ellison	Lee (CA)
Becerra	Ellsworth	Levin
Berkley	Emerson	Lewis (GA)
Berman	Engel	Lipinski
Berry	Eshoo	LoBiondo
Biggert	Etheridge	Loeback
Bilbray	Faleomavaega	Lowe
Bishop (GA)	Farr	Lujan
Bishop (NY)	Fattah	Lynch
Blumenauer	Filner	Maffei
Boccieri	Fortenberry	Maloney
Boren	Foster	Markey (CO)
Boswell	Frank (MA)	Markey (MA)
Boucher	Fudge	Marshall
Boyd	Garamendi	Massa
Brady (PA)	Gerlach	Matheson
Braley (IA)	Giffords	Matsui
Bright	Gonzalez	McCarthy (NY)
Brown, Corrine	Gordon (TN)	McCollum
Brown-Waite,	Grayson	McDermott
Ginny	Green, Al	McGovern
Butterfield	Green, Gene	McIntyre
Cao	Griffith	McMahon
Capito	Grijalva	McNerney
Capps	Gutierrez	Meek (FL)
Capuano	Hall (NY)	Meeks (NY)
Cardoza	Halvorson	Melancon
Carnahan	Hare	Michaud
Carney	Harman	Miller (NC)
Carson (IN)	Hastings (FL)	Miller, George
Castle	Heinrich	Minnick
Castor (FL)	Hereth Sandlin	Mitchell
Chandler	Higgins	Mollohan
Childers	Hill	Moore (KS)
Christensen	Himes	Moore (WI)
Chu	Hinche	Murphy (CT)
Clarke	Hinojosa	Murphy (NY)
Clay	Hirono	Murphy, Patrick
Cleaver	Hodes	Murphy, Tim
Cohen	Holden	Nadler (NY)
Connolly (VA)	Holt	Napolitano
Conyers	Honda	Neal (MA)
Cooper	Hoyer	Nye
Costa	Inslee	Oberstar
Costello	Israel	Obey
Courtney	Jackson (IL)	Olver
Crowley	Jackson-Lee	Ortiz
Cuellar	(TX)	Owens
Cummings	Johnson (GA)	Pallone
Dahlkemper	Johnson, E. B.	Pascarell
Davis (AL)	Kagen	Pastor (AZ)
Davis (CA)	Kanjorski	Paulsen
Davis (IL)	Kaptur	Payne
Davis (TN)	Kennedy	Perlmutter
DeFazio	Kildee	Perriello
DeGette	Kilroy	Peters
DeLaHunt	Kind	Peterson
DeLauro	Kirk	Petri
Dent	Kirkpatrick (AZ)	Pingree (ME)

Platts	Schiff	Thompson (MS)
Polis (CO)	Schrader	Tierney
Pomeroy	Schwartz	Titus
Price (NC)	Scott (GA)	Tonko
Quigley	Scott (VA)	Towns
Rahall	Serrano	Tsongas
Reyes	Sestak	Upton
Richardson	Shea-Porter	Van Hollen
Rodriguez	Sherman	Velázquez
Rogers (MI)	Shuler	Visclosky
Ros-Lehtinen	Sires	Walz
Ross	Skelton	Wamp
Rothman (NJ)	Smith (NJ)	Wasserman
Roybal-Allard	Smith (WA)	Schultz
Ruppersberger	Snyder	Watson
Rush	Space	Watt
Ryan (OH)	Speier	Waxman
Sablan	Spratt	Weiner
Salazar	Stark	Welch
Sánchez, Linda	Stupak	Wexler
T.	Sutton	Wilson (OH)
Sanchez, Loretta	Tanner	Woolsey
Sarbanes	Taylor	Wu
Schakowsky	Teague	Yarmuth
Schauer	Thompson (CA)	

## NOES—149

Aderholt	Gingrey (GA)	Moran (KS)
Alexander	Gohmert	Myrick
Austria	Goodlatte	Neugebauer
Bachmann	Granger	Nunes
Bachus	Graves	Olson
Barrett (SC)	Guthrie	Paul
Bartlett	Hall (TX)	Pence
Barton (TX)	Harper	Pitts
Bilirakis	Hastings (WA)	Poe (TX)
Bishop (UT)	Heller	Poser
Blackburn	Hensarling	Price (GA)
Blunt	Herger	Putnam
Boehner	Hoekstra	Radanovich
Bonner	Hunter	Rehberg
Bono Mack	Inglis	Reichert
Boozman	Issa	Roe (TN)
Boustany	Jenkins	Rogers (AL)
Brady (TX)	Johnson (IL)	Rogers (KY)
Broun (GA)	Johnson, Sam	Rohrabacher
Brown (SC)	Jones	Rooney
Buchanan	Jordan (OH)	Roskam
Burgess	King (IA)	Royce
Burton (IN)	King (NY)	Ryan (WI)
Buyer	Kingston	Scalise
Calvert	Kline (MN)	Schmidt
Camp	Lamborn	Schock
Campbell	LaTourette	Sensenbrenner
Cantor	Latta	Shadegg
Carter	Lee (NY)	Shimkus
Cassidy	Lewis (CA)	Shuster
Chaffetz	Linder	Simpson
Coble	Lucas	Smith (NE)
Coffman (CO)	Luetkemeyer	Smith (TX)
Cole	Lummis	Souder
Conaway	Lungren, Daniel	Stearns
Crenshaw	E.	Sullivan
Culberson	Mack	Terry
Davis (KY)	Manzullo	Thompson (PA)
Deal (GA)	Marchant	Thornberry
Dreier	McCarthy (CA)	Tiahrt
Duncan	McCaul	Tiberi
Ehlers	McClintock	Turner
Fallin	McCotter	Walden
Flake	McHenry	Westmoreland
Fleming	McKeon	Whitfield
Forbes	McMorris	Wilson (SC)
Fox	Rodgers	Wittman
Franks (AZ)	Mica	Wolf
Frelinghuysen	Miller (FL)	Young (FL)
Gallegly	Miller (MI)	
Garrett (NJ)	Miller, Gary	

## NOT VOTING—14

Baldwin	Moran (VA)	Sessions
Bordallo	Murtha	Slaughter
Clyburn	Norton	Waters
Kilpatrick (MI)	Pierluisi	Young (AK)
Lofgren, Zoe	Rangel	

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining on this vote.

□ 1327

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 35 OFFERED BY MR. MINNICK

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Idaho (Mr. MINNICK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

#### RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 208, noes 223, not voting 10, as follows:

[Roll No. 965]

#### AYES—208

Aderholt	Emerson	McCaul
Akin	Fallin	McClintock
Alexander	Flake	McCotter
Austria	Fleming	McHenry
Bachmann	Forbes	McIntyre
Bachus	Fortenberry	McKeon
Barrett (SC)	Fox	McMorris
Barrow	Franks (AZ)	Rodgers
Bartlett	Frelinghuysen	Melancon
Barton (TX)	Gallely	Mica
Berry	Garrett (NJ)	Miller (FL)
Biggert	Gerlach	Miller (MI)
Bilbray	Gingrey (GA)	Miller, Gary
Bilirakis	Gohmert	Minnick
Bishop (GA)	Goodlatte	Mitchell
Bishop (UT)	Granger	Moran (KS)
Blackburn	Graves	Murphy, Tim
Blunt	Griffith	Myrick
Boehner	Guthrie	Neugebauer
Bonner	Hall (TX)	Nunes
Bono Mack	Harper	Olson
Boozman	Hastings (WA)	Ortiz
Boren	Heller	Paul
Boucher	Hensarling	Paulsen
Boustany	Herger	Pence
Boyd	Herseeth Sandlin	Petri
Brady (TX)	Hill	Pitts
Bright	Hoekstra	Platts
Broun (GA)	Hunter	Poe (TX)
Brown (SC)	Inglis	Posey
Brown-Waite,	Issa	Price (GA)
Ginny	Jenkins	Putnam
Buchanan	Johnson (IL)	Radanovich
Burgess	Johnson, Sam	Rehberg
Burton (IN)	Jones	Reichert
Buyer	Jordan (OH)	Rodriguez
Calvert	King (IA)	Roe (TN)
Camp	King (NY)	Rogers (AL)
Campbell	Kingston	Rogers (KY)
Cantor	Kirk	Rogers (MI)
Cao	Kirkpatrick (AZ)	Rohrabacher
Capito	Kline (MN)	Rooney
Carter	Kratovil	Ros-Lehtinen
Cassidy	Lamborn	Roskam
Castle	Lance	Ross
Chaffetz	Latham	Royce
Chandler	LaTourette	Ryan (WI)
Childers	Latta	Scalise
Coble	Lee (NY)	Schmidt
Coffman (CO)	Lewis (CA)	Schock
Cole	Linder	Sensenbrenner
Conaway	LoBiondo	Shadegg
Costa	Lucas	Shimkus
Crenshaw	Luetkemeyer	Shuler
Cuellar	Lummis	Shuster
Culberson	Lungren, Daniel	Simpson
Davis (KY)	E.	Skelton
Davis (TN)	Mack	Smith (NE)
Deal (GA)	Manzullo	Smith (NJ)
Dent	Marchant	Smith (TX)
Diaz-Balart, L.	Markey (CO)	Souder
Diaz-Balart, M.	Marshall	Space
Dreier	Massa	Stearns
Duncan	Matheson	Sullivan
Ehlers	McCarthy (CA)	Taylor

Teague  
Terry  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi

Turner  
Upton  
Walden  
Wamp  
Westmoreland  
Whitfield

Wilson (SC)  
Wittman  
Wolf  
Young (FL)

#### NOES—223

Abercrombie  
Ackerman  
Adler (NJ)  
Altmire  
Andrews  
Arcuri  
Baca  
Baird  
Bean  
Becerra  
Berkley  
Berman  
Bishop (NY)  
Blumenauer  
Bocchieri  
Boswell  
Brady (PA)  
Braley (IA)  
Brown, Corrine  
Butterfield  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Castor (FL)  
Christensen  
Chu  
Clarke  
Clay  
Cleaver  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper  
Costello  
Courtney  
Crowley  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Driehaus  
Edwards (MD)  
Edwards (TX)  
Ellison  
Ellsworth  
Engel  
Eshoo  
Etheridge  
Faleomavaega  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Fudge  
Garamendi  
Giffords  
Gonzalez  
Gordon (TN)  
Grayson  
Green, Al  
Green, Gene

Grijalva  
Gutierrez  
Hall (NY)  
Halvorson  
Hare  
Harman  
Hastings (FL)  
Heinrich  
Higgins  
Himes  
Hinchey  
Hinojosa  
Hirono  
Hodes  
Holden  
Holt  
Honda  
Hoyer  
Inslee  
Israel  
Jackson (IL)  
Jackson-Lee  
    (TX)  
Johnson (GA)  
Johnson, E. B.  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
Kissell  
Klein (FL)  
Kosmas  
Kucinich  
Langevin  
Larsen (WA)  
Larson (CT)  
Lee (CA)  
Levin  
Lewis (GA)  
Lipinski  
Loeb sack  
Lowey  
Lujan  
Lynch  
Maffei  
Maloney  
Markey (MA)  
Matsui  
McCarthy (NY)  
McCollum  
McDermott  
McGovern  
McMahon  
McNerney  
Meek (FL)  
Meeks (NY)  
Michaud  
Miller (NC)  
Miller, George  
Mollohan  
Moore (KS)  
Moore (WI)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Nye  
Oberstar  
Obey  
Oliver

Owens  
Pallone  
Pascrell  
Pastor (AZ)  
Payne  
Pelosi  
Perlmutter  
Perriello  
Peters  
Peterson  
Pingree (ME)  
Polis (CO)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Richardson  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)  
Sablan  
Salazar  
Sánchez, Linda  
    T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Sires  
Smith (WA)  
Snyder  
Speier  
Spratt  
Stark  
Stupak  
Sutton  
Tanner  
Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

□ 1343

Mr. LINDER and Ms. MARKEY of Colorado changed their vote from “no” to “aye.”

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 36, AS MODIFIED, OFFERED BY MR. BACHUS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Alabama (Mr. BACHUS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

#### RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 175, noes 251, not voting 14, as follows:

[Roll No. 966]

#### AYES—175

Ackerman	Emerson	Marchant
Aderholt	Fallin	McCarthy (CA)
Akin	Flake	McCaul
Alexander	Fleming	McClintock
Austria	Forbes	McCotter
Bachmann	Fortenberry	McHenry
Bachus	Fox	McKeon
Barrett (SC)	Franks (AZ)	McMorris
Bartlett	Frelinghuysen	Rodgers
Barton (TX)	Garrett (NJ)	Mica
Biggert	Gerlach	Miller (FL)
Bilbray	Gingrey (GA)	Miller (MI)
Bilirakis	Gohmert	Moran (KS)
Bishop (UT)	Goodlatte	Murphy, Tim
Blackburn	Granger	Myrick
Blunt	Graves	Neugebauer
Boehner	Griffith	Nunes
Bonner	Guthrie	Olson
Bono Mack	Hall (TX)	Paul
Boozman	Harper	Paulsen
Boustany	Hastings (WA)	Pence
Brady (TX)	Heller	Petri
Bright	Hensarling	Pitts
Broun (GA)	Herger	Platts
Brown (SC)	Hoekstra	Poe (TX)
Brown-Waite,	Hunter	Posey
Ginny	Inglis	Price (GA)
Buchanan	Issa	Putnam
Burgess	Jenkins	Radanovich
Burton (IN)	Johnson (IL)	Rehberg
Buyer	Johnson, Sam	Reichert
Camp	Jones	Roe (TN)
Campbell	Jordan (OH)	Rogers (AL)
Cantor	King (IA)	Rogers (KY)
Cao	King (NY)	Rogers (MI)
Capito	Kingston	Rohrabacher
Carter	Kirk	Rooney
Cassidy	Kline (MN)	Ros-Lehtinen
Castle	Lamborn	Roskam
Chaffetz	Lance	Royce
Coble	Latham	Ryan (WI)
Coffman (CO)	LaTourette	Scalise
Cole	Latta	Schmidt
Conaway	Lee (NY)	Schock
Crenshaw	Lewis (CA)	Sensenbrenner
Culberson	Linder	Shadegg
Davis (KY)	LoBiondo	Shimkus
Davis (TN)	Lucas	Shuster
Deal (GA)	Luetkemeyer	Simpson
Dent	Lummis	Smith (NE)
Diaz-Balart, L.	Lungren, Daniel	Smith (NJ)
Diaz-Balart, M.	E.	Smith (TX)
Dreier	Mack	Souder
Duncan	Manzullo	Stearns
Ehlers		

#### NOT VOTING—10

Baldwin  
Bordallo  
Lofgren, Zoe  
Moran (VA)

Murtha  
Norton  
Pierluisi  
Sessions

Slaughter  
Young (AK)

#### ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining.



Sullivan  
Terry  
Thompson (PA)  
Thornberry  
Tiahrt  
Westmoreland  
Tiberi

## NOES—251

Abercrombie  
Adler (NJ)  
Altmire  
Andrews  
Arcuri  
Baca  
Baird  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Berry  
Bishop (GA)  
Bishop (NY)  
Blumenauer  
Boccheri  
Boren  
Boswell  
Boucher  
Boyd  
Brady (PA)  
Braley (IA)  
Brown, Corrine  
Butterfield  
Calvert  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Castor (FL)  
Chandler  
Childers  
Christensen  
Chu  
Clarke  
Clay  
Cleaver  
Clyburn  
Cohen  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crowley  
Cuellar  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Driehaus  
Edwards (MD)  
Edwards (TX)  
Ellison  
Ellsworth  
Engel  
Eshoo  
Etheridge  
Faleomavaega  
Farr  
Fattah  
Filner  
Foster  
Frank (MA)  
Fudge  
Gallegly  
Garamendi  
Giffords  
Gonzalez  
Gordon (TN)

Turner  
Upton  
Walden  
Wamp  
Westmoreland  
Whitfield

Wilson (SC)  
Wittman  
Wolf  
Young (FL)

Nye  
Obey  
Olver  
Ortiz  
Owens  
Pallone  
Pascarelli  
Pastor (AZ)  
Payne  
Perlmutter  
Perriello  
Peters  
Peterson  
Pingree (ME)  
Polis (CO)  
Pomeroy  
Price (NC)  
Quigley  
Rahall  
Rangel  
Reyes  
Richardson  
Rodriguez  
Ross  
Rothman (NJ)  
Roybal-Allard  
Ruppersberger  
Rush  
Ryan (OH)  
Sablan  
Salazar  
Sanchez, Linda  
T.  
Sanchez, Loretta  
Sarbanes  
Schakowsky  
Schauber  
Schiff  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Serrano  
Sestak  
Shea-Porter  
Sherman  
Shuler  
Sires  
Skellton  
Smith (WA)  
Snyder  
Space  
Speier  
Spratt  
Stark  
Stupak  
Sutton  
Tanner  
Taylor  
Teague  
Thompson (CA)  
Thompson (MS)  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Van Hollen  
Velázquez  
Visclosky  
Walz  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Wilson (OH)  
Woolsey  
Wu  
Yarmuth

## NOT VOTING—14

Baldwin  
Bordallo  
Lofgren, Zoe  
Matsui  
McIntyre  
Moran (VA)  
Murphy (CT)  
Murtha  
Norton  
Oberstar  
Pierluisi  
Sessions  
Slaughter  
Young (AK)

## ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote).  
There are 2 minutes remaining in this vote.

□ 1350

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. MCINTYRE. Madam Chair, during roll-call vote No. 966, I was unavoidably detained. Had I been present, I would have voted “no.”

## PERSONAL EXPLANATION

Ms. BORDALLO. Madam Chair, yesterday and today I have been granted an official leave of absence by the House of Representatives and am in my district attending to official business. As such, I am unable to cast my votes in the Committee of the Whole House on the State of the Union on amendments to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. If I was present for these votes, I would vote as follows and ask that the RECORD reflects these positions: “yes” on Mr. FRANK’s amendment (rollcall vote 953); Mr. LYNCH’s amendment (rollcall vote 955); Mr. MURPHY’s amendment (rollcall vote 956); Mr. FRANK’s amendment (rollcall vote 957); Mr. STUPAK’s amendment (rollcall vote 958); Mr. STUPAK’s amendment (rollcall vote 959); Mr. KANJORSKI’s amendment (rollcall vote 960); Mr. PETER’s amendment (rollcall vote 962); Mr. MARSHALL’s amendment (rollcall vote 963); Ms. SCHAKOWSKY’s amendment (rollcall vote 964); and “no” on Mr. SESSION’s amendment (rollcall vote 954); Mr. MCCARTHY’s amendment (rollcall vote 961); Mr. MINNICK’s (rollcall vote 965); and Mr. BACHUS’s amendment (rollcall vote 966).

The Acting CHAIR. There being no further amendments, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PASTOR of Arizona) having assumed the chair, Ms. EDWARDS of Maryland, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, pursuant to House Resolution 964, she reported the bill, as amended pursuant to House Resolution 956, back to the House with sundry further amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Pursuant to House Resolution 964, the question on adoption of the amendments will be put en gros.

The question is on the amendments.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

## MOTION TO RECOMMIT

Mr. DENT. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. DENT. In its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Dent moves to recommit the bill, H.R. 4173, to the Committee on Financial Services, and in addition to the Committees on Agriculture, Energy and Commerce, the Judiciary, Rules, the Budget, Oversight and Government Reform, and Ways and Means, with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

## SEC. 1. REPEAL OF THE TROUBLED ASSET RELIEF PROGRAM.

(a) IN GENERAL.—Notwithstanding any other provision of law, the authorities provided under section 101(a) of the Emergency Economic Stabilization Act of 2008 (excluding section 101(a)(3)) and under section 102 of such Act shall terminate on December 31, 2009.

(b) RETURNED TARP MONEY TO BE USED FOR DEFICIT REDUCTION.—Notwithstanding any other provision of law, all assistance received under title I of the Emergency Economic Stabilization Act of 2008 that is repaid on or after the date of the enactment of this Act, along with any dividends, profits, or other funds paid to the Government based on such assistance on or after December 31, 2009, shall be deposited in the Treasury to reduce the deficit.

(c) LOWERING OF NATIONAL DEBT LIMIT TO CORRESPOND TO TARP REPAYMENTS.—Section 3101 of title 31, United States Code, is amended—

(1) in subsection (b), by inserting after the dollar limitation contained in such subsection the following: “, as such amount is reduced by the amount described under subsection (d)”;

(2) by adding at the end the following new subsection:

“(d) The amount described under this subsection is the amount that equals the amount of all assistance received under title I of the Emergency Economic Stabilization Act of 2008 that is repaid on or after December 31, 2009, along with any dividends, profits, or other funds paid to the Government based on such assistance on or after December 31, 2009.”.

Mr. DENT (during the reading). I ask unanimous consent to dispense with the reading.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. DENT. Mr. Speaker, this motion to recommit will immediately end the

Troubled Asset Relief Program, otherwise known as TARP, and require that all TARP funds that are repaid to the Treasury—including interest, dividends, the sale value of stock and the sale of warrants—be used to reduce our national burgeoning deficits. It will also reduce the debt limit by the same amount saved by ending TARP. I call this motion to recommit the “troubled taxpayer relief program act” because it takes an important step towards getting government out of the bailout business and curbing excessive Washington spending. TARP was originally enacted as a temporary plan to address an extraordinary crisis in our financial markets as a result of the collapse of financial firms that the government said were just “too big to fail.” Those who voted for the Emergency Economic Stabilization Act, which created TARP, did so with the assurance that the money would be returned to taxpayers. That was the assurance given at the time.

It is unfortunate that the President chose to extend the TARP program to October 3, 2010. In doing so, he has opened the door to efforts by Democrats in Congress to begin spending unallocated and repaid TARP funds for programs unrelated to the financial emergency. In fact, the underlying bill diverts \$4 billion from TARP to a number of foreclosure mitigation and neighborhood stabilization programs. It also diverts a total of \$23.625 billion to pay for the massive expansion of government bureaucracy that will result from the enactment of this legislation.

And just yesterday, we heard from Treasury Secretary Tim Geithner that the administration is developing an initiative to tackle our economic problems and unemployment by using TARP funds for small businesses. Elizabeth Warren, appointed to lead the panel that oversees the use of TARP funds, responded to the Secretary saying, “It’s not news to anyone that small business lending is important. Small businesses are closing every day. But Treasury has announced three plans and has not gotten the job done.”

The President has said that we need to “spend our way out of this recession.” The majority already tried that in passing the \$787 billion stimulus. It has not worked. Now they want to spend more TARP money. Haven’t we learned that if we want to create jobs and grow our economy, we must support the private sector and invest Federal dollars sparingly and wisely.

Unfortunately, this bill not only fails to end the TARP now that the emergency in the financial markets has abated, it also turns TARP into a revolving slush fund to pay for the majority’s political, economic and social agenda. Failing to honor the original intent of TARP and repay the taxpayers is an irresponsible breach of

trust that we are committed to stopping.

Americans are struggling under the weight of high unemployment, sluggish economic growth and unsustainable Federal deficits. This Congress has piled on with a so-called stimulus bill that borrows too much, spends too much and delivers too few jobs, and a budget that doubles the national debt in 5 years and triples it in 10 years. They are piling on with a misguided national energy tax called cap-and-trade that will cost thousands of jobs in my State of Pennsylvania and increase energy costs for families and businesses alike; an undemocratic card check bill that will deny secret ballots and impose binding arbitration; and a controversial health care bill that imperils innovation, raises taxes, cuts Medicare and endangers jobs.

Now they are piling on with this 1,300-page bill that keeps taxpayers on the hook for permanent bailouts, allows unelected bureaucrats to pick winners and losers in our economy and adds an array of new job-killing taxes and mandates on consumers, investors and small businesses.

Raiding TARP to fund more government programs that don’t create jobs verges on the reckless. The best way to bring about economic growth and job creation is to avoid the massive deficits and to lessen the massive increase in the national debt. These misguided policies, advanced by the majority, are a road to higher inflation and record tax increases. Today, we can begin the process of putting our fiscal house in order, and inspiring confidence in the private sector, by shutting down TARP, returning the unused funds to the taxpayers, and lowering the national debt limit.

At this time I would like to yield the balance of my time to Mr. HENSARLING of Texas.

The SPEAKER pro tempore. The gentleman from Texas will be recognized for 30 seconds.

Mr. HENSARLING. Mr. Speaker, TARP was passed as emergency legislation to bring about financial stability. TARP has morphed into a \$700 billion revolving bailout fund to advance the administration’s political, social and economic agenda. TARP has helped bring about our Nation’s first trillion-dollar deficit, the highest unemployment rate in a generation, and helped turn us into a bailout nation. The American people want more jobs, not more bailouts and, oh, they want their money back, and they want their nation back.

It’s time to terminate TARP.

The SPEAKER pro tempore. The time of the gentleman has expired.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are reminded not to traffic the well while another is under recognition.

Mr. FRANK of Massachusetts. I rise to speak in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. FRANK of Massachusetts. First, for those who might have believed that when the Republicans supported the Minnick amendment, or when they offered a substitute, that they said that was a better way to regulate, for those who might have believed that somebody meant that, here’s the proof that it was all a sham.

The Republicans have the right to offer a recommit motion. They could have put anything they wanted in it. Here’s what it says about consumer protection of our Minnick or about their way of dealing with other issues: “Strike all after the enacting clause.”

The Republican motion now embodies their approach to protecting consumers and regulating derivatives and restricting leverage and letting companies go out of business. It consists of “strike all after the enacting clause.” They could have taken the Minnick amendment and made it part of the recommit. They could have taken their substitute and made it part of the recommit.

What the recommit does, what the gentleman from Pennsylvania I think forgot to mention, I understand there is a lot of pressure when you are reading the script here, but he forgot to mention that the recommit motion kills all regulatory reform—dead; gone. There’s no regulatory reform.

□ 1400

I see my friend from Texas there. He’s kind of rubbing his head. His amendment is gone. There’s no Paul amendment. If they wanted to help Mr. PAUL and they wanted to look into the Fed, why isn’t that in here? “Strike all after the enacting clause,” that’s what Mr. PAUL gets from them.

So let’s be clear that it is, first of all, a cover. They use anger over the TARP to frankly make sure we’ll need another one because they kill all regulation.

Secondly, even as to the TARP, here’s my difference: The minority leader came to the well and said TARP was passed to be an emergency bill and the emergency is over. You cannot directly address a Member, so let me say, Mr. Speaker, will someone tell the minority leader it ain’t over until it’s over on Main Street all throughout America. Maybe when the Republicans had that meeting with a group of financial lobbyists, they took some time out to celebrate the ending of an emergency, but most of us know the emergency is not over. I didn’t say “ain’t” again. The emergency continues.

And here’s what the administration has proposed: Under the Bush administration—and I voted for TARP. I thought that the lack of regulation

created a crisis. But the big banks got the first TARP money. We are now finally succeeding in getting TARP money for smaller banks who can do community lending and small business lending. We voted today to take \$3 billion and give it as loans to people who can't pay their mortgages because they're unemployed. Not people who got mortgages they shouldn't have gotten. Not subprime mortgages. Hard-working people who can't pay a mortgage. The \$3 billion would go for that to help them avoid foreclosure, and they can pay it back when they get the job. That's gone. So the antisocial parts of TARP are okay and now they want to get rid of the other parts.

By the way, who are they saving money for here? Their friends, the big banks. The original TARP legislation said at the end of the day, any TARP shortfall will be made up by an assessment on the financial community. We've gone further than that. The amendment we adopted, over Republican opposition, by the gentleman from Michigan (Mr. PETERS) instructs the FDIC, in this bill that they want to kill, not surprisingly, to assess the financial institutions to make up any shortfall from the TARP. They kill that. They complained before about our assessment. They are very upset that we might levy on JPMorgan Chase and Morgan Stanley and Goldman Sachs and the others some responsibility financially for what's gone on.

So here's what they do: First of all, they kill all reform, and their pretense that they are for a different form of it, they deliberately left it out of their bill. They were just playing it.

They, secondly, say now that TARP money has gone to the big banks—and they don't have to pay it back, by the way, under this bill necessarily—and we are trying to use it socially to encourage lending, to give it to community banks with some requirement they lend to help people who are unemployed avoid having foreclosure until they get their jobs back. Now they want to get rid of it, and to whose benefit? The big banks.

The question is, should we use TARP money to give to the small banks for community banking? Should we use TARP money to help people avoid unemployment? Or should we do what they want to do and give it back so that the big financial institutions aren't assessed? That's what's at risk here. Not the taxpayers. The taxpayers are not on the hook for this TARP money. The large financial institutions are.

And I know what they say: It will be a restriction in capital. Well, I think capital's a good thing. But to the extent that capital was misused for speculation, that it was misused for unleveraged credit default swaps, then a little reining in is a good thing.

But, once again, here's what you have: a bill, a motion, that says let's

not do anything to change the financial system. Let's let companies go bankrupt and not worry about them. Let's not have anything about derivatives. Let's just do nothing and instead let's save the big banks from having to pay their fair share when the TARP is repaid.

Mr. STEARNS. Mr. Speaker, our current financial crisis, which is now global in scope, was triggered by the bursting of the U.S. housing bubble and particularly by the deteriorating quality of subprime mortgages that were bundled into toxic securities and sold all over the country and around the world. It was the housing crisis and mortgage meltdown that led us to the worst financial crisis our country has faced since the Great Depression.

In examining the root causes of the housing crisis, particularly the policies that led to the creation of the housing bubble that would inevitably burst at the seams, it is important to focus on the facts instead of the partisan blame game that often ensues here on our House floor.

To be fair, blame can be placed on both Democrats and Republicans for either supporting or simply going along with some of the bad housing policies that led to the implosion of government sponsored enterprises, GSEs, Fannie Mae and Freddie Mac and the subsequent collapse of our housing market. Democrats blame 8 years of inaction and deregulation by the Bush Administration, and Republicans blame the vigorous enforcement of the Community Reinvestment Act and the affordable housing mandate placed on Fannie Mae and Freddie Mac by Democrats.

However, one of the most ardent critics of the Bush Administration and Republican policies in general is the Chairman of the House Financial Services Committee, Representative BARNEY FRANK. Mr. FRANK has spent two days this week on the House floor blaming Republicans and President Bush for the recession and for every problem our economy is currently facing, including the mortgage meltdown.

However, in examining the causes of the mortgage meltdown and ensuing financial crisis, it is worthwhile to take a look at the facts and what has actually been said and advocated by certain members of this House. Given Representative FRANK's leading role in harshly criticizing Republican policies, we must do our due diligence and recall Mr. FRANK's role as a member and Chairman of the House Financial Services Committee and an advocate and supporter of failed GSEs Fannie Mae and Freddie Mac.

Mr. Speaker, here are some interesting facts.

In 2000, Representative FRANK stated that Republican concerns about the stability of government sponsored enterprises Fannie Mae and Freddie Mac were "overblown" and that there was "no federal liability there whatsoever."

Two years later, Mr. FRANK went even further stating, "I do not regard Fannie Mae and Freddie Mac as problems. I regard them as great assets."

Looking back, these statements are nothing short of ironic. In 2007, Mr. FRANK became Chairman of Financial Services and he appar-

ently changed his rhetoric, arguing that he had long been in favor of reforming Fannie and Freddie and blamed the lack of reform on Republicans and President George W. Bush.

This isn't a fair argument, Mr. Speaker.

Democrats in general have been longstanding and ardent defenders of out-of-control GSEs Fannie Mae and Freddie Mac, whose liberal mortgage lending policies and flawed structure of privatized gains and socialized losses greatly contributed to our current housing crisis and subsequent economic crisis.

Last year, American taxpayers were forced to bailout Fannie Mae and Freddie Mac to the tune of almost \$200 billion and are on the hook for the GSEs \$5.4 trillion in debt and other liabilities. Let us recall that it was Chairman FRANK who encouraged Fannie and Freddie to guarantee more "affordable" mortgages, which we all now know led to the mortgage market being inundated with dangerous subprime and Alt-A loans.

The Democrats also pushed for an increase in the conforming-loan limits in order to allow Fannie and Freddie to guarantee and securitize larger mortgages, and Democrats pressured regulators to ease up on their more stringent requirements for capital. All of these factors contributed to the bursting of the housing bubble.

The Democrats also played an additional role in pushing the risky housing policies that led to the housing crisis. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, also known as the GSE Act, contained an "affordable housing" requirement which is what ultimately led Fannie and Freddie to acquiring over \$5 trillion in home loans over a 16-year period. Let's recall that in 1992, Democrats were in control of both the House and Senate, and the GSE Act was a Democratic priority.

Aggressive enforcement of the Community Reinvestment Act, CRA, of 1977, created under a Democrat Congress and President, was also a major contributing factor of the mortgage meltdown and ensuing financial crisis. From 1977 to 1991, the CRA was responsible for \$9 billion in local lending commitments, and following the implementation of the Democrat's "affordable housing" mandate, CRA lending skyrocketed. In 2001, the director of the federal Office of Thrift Supervision candidly said, "Our record home ownership rate, I'm convinced, would not have been reached without CRA and its close relative, the Fannie/Freddie requirements."

So Mr. Speaker, it is clear that aggressive enforcement of Community Reinvestment Act as long advocated by the Democrats, coupled with the Democrat's affordable housing mandate on Fannie Mae and Freddie Mac certainly played a major role in fueling the housing bubble. These are facts.

Additionally, between 1993 and 2007, just before the near collapse of Fannie and Freddie, the government-backed GSEs acquired \$1.2 trillion of loans from banks and other lenders, and from 1997 to 2007, Fannie and Freddie acquired \$2.2 trillion in subprime loans and securities backed by toxic subprime loans. Altogether, 50 percent of the GSEs high-risk loans are estimated to be Community Reinvestment Act loans.

The Democratic Party has been the torch-bearer of the Community Reinvestment Act and the affordable housing mandate on Fannie Mae and Freddie Mac, which led to our housing crisis.

Today, the House of Representatives will take a vote on a broad financial regulatory reform bill sponsored by Chairman BARNEY FRANK. This bill seeks to change almost every aspect of our economy and financial markets, and yet ironically it does nothing to reform Fannie Mae and Freddie Mac, which were placed into government conservatorship last year and are being propped up by American taxpayer dollars.

Unfortunately, the Frank financial regulatory reform bill perpetuates the failed policies of the past and fundamentally restructures the Nation's free market system, placing it firmly in the hands of big government. This legislation will expose taxpayers to further exploitation by making permanent the policies used to bailout politically connected firms like Fannie Mae, Freddie Mac and AIG, while restricting access to credit and increasing the costs of credit products used by small businesses on main street.

The Frank legislation expands the powers of the very agencies that failed to catch the problems that created the financial crisis and rewards a Federal Reserve that pursued irresponsible credit policies and that ineffectively conducted its regulatory supervision. This bill also blunts market discipline through government guarantees that protect creditors against loss and authorizes the taxation of business without the approval of Congress.

The Republican Substitute to Mr. FRANK's bill phases out taxpayer subsidies of Fannie Mae and Freddie Mac over a number of years and ends the current model of privatized profits and socialized losses. I have long advocated winding down and privatizing Fannie and Freddie, and I am proud to support these reforms.

Additionally, the Republican Financial Regulatory Reform Plan puts an end to the TARP program and prevents future bailouts of financial institutions by creating a new chapter in the bankruptcy code for non-bank financial institutions. This protects taxpayers from covering the greed and excesses of failing firms. The Republican alternative also increases civil and criminal penalties for fraud, establishes a council to issue uniformed consumer protection rules, and reforms the over-the-counter derivatives markets.

Given Mr. FRANK's harsh and constant criticism of Republican policies and his eagerness to blame the Bush Administration for the financial and housing crises, I find it shocking that his financial regulatory reform bill contains no reform of GSEs Fannie Mae and Freddie Mac—the entities that are at the epicenter of the Nation's financial crisis.

While BARNEY FRANK and the Democrats regard Fannie and Freddie as great assets, Republicans regard them as great liabilities, and today we are on record supporting much needed reforms to these troubled government entities while also supporting commonsense reforms to our financial system.

Mr. Speaker, facts always speak louder than a partisan blame game. I wanted to share these comments with my colleagues in reply

to those critics who want to shift the blame for political reasons.

The SPEAKER pro tempore. The time of the gentleman from Massachusetts has expired.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

#### RECORDED VOTE

Mr. DENT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on passage of the bill, if ordered, and agreeing to the Speaker's approval of the Journal, if ordered.

The vote was taken by electronic device, and there were—ayes 190, noes 232, not voting 12, as follows:

[Roll No. 967]

#### AYES—190

Aderholt	Ehlers	Lummis
Akin	Emerson	Lungren, Daniel
Alexander	Fallin	E.
Austria	Flake	Mack
Bachmann	Fleming	Manzullo
Bachus	Forbes	Marchant
Barrett (SC)	Fortenberry	Massa
Bartlett	Fox	McCarthy (CA)
Barton (TX)	Franks (AZ)	McCaul
Biggart	Frelinghuysen	McClintock
Bilbray	Gallegly	McCotter
Bilirakis	Garrett (NJ)	McHenry
Bishop (GA)	Gerlach	McIntyre
Bishop (UT)	Giffords	McKeon
Blackburn	Gingrey (GA)	McMorris
Blunt	Gohmert	Rodgers
Boehner	Goodlatte	Miller (FL)
Bonner	Granger	Miller (MI)
Bono Mack	Graves	Miller, Gary
Boozman	Griffith	Minnick
Boren	Guthrie	Mitchell
Boustany	Hall (TX)	Moran (KS)
Brady (TX)	Halvorson	Murphy, Tim
Bright	Harper	Neugebauer
Broun (GA)	Hastings (WA)	Nunes
Brown (SC)	Heller	Nye
Brown-Waite,	Hensarling	Olson
Ginny	Herger	Paul
Buchanan	Hoekstra	Paulsen
Burgess	Hunter	Pence
Burton (IN)	Inglis	Petri
Buyer	Issa	Pitts
Calvert	Jenkins	Platts
Camp	Johnson (IL)	Poe (TX)
Campbell	Johnson, Sam	Posey
Cantor	Jones	Price (GA)
Capito	Jordan (OH)	Putnam
Carter	King (IA)	Radanovich
Cassidy	King (NY)	Rehberg
Castle	Kingston	Reichert
Chaffetz	Kirk	Rodriguez
Chandler	Kirkpatrick (AZ)	Roe (TN)
Childers	Kline (MN)	Rogers (AL)
Coble	Kosmas	Rogers (KY)
Coffman (CO)	Kratovil	Rogers (MI)
Cole	Lamborn	Rohrabacher
Conaway	Lance	Rooney
Crenshaw	Latham	Ros-Lehtinen
Culberson	LaTourette	Roskam
Davis (KY)	Latta	Royce
Deal (GA)	Lee (NY)	Ryan (WI)
Dent	Lewis (CA)	Scalise
Diaz-Balart, L.	Linder	Schmidt
Diaz-Balart, M.	LoBiondo	Schock
Dreier	Lucas	Sensenbrenner
Duncan	Luetkemeyer	Shadegg

Shimkus	Teague	Wamp
Shuster	Terry	Westmoreland
Simpson	Thompson (PA)	Whitfield
Smith (NE)	Thornberry	Wilson (SC)
Smith (NJ)	Tiahrt	Wittman
Smith (TX)	Tiberi	Wolf
Stearns	Turner	Young (FL)
Sullivan	Upton	
Taylor	Walden	

#### NOES—232

Abercrombie	Green, Gene	Oliver
Ackerman	Grijalva	Ortiz
Adler (NJ)	Gutierrez	Owens
Altmire	Hall (NY)	Pallone
Andrews	Hare	Pascarell
Arcuri	Harman	Pastor (AZ)
Baca	Hastings (FL)	Payne
Baird	Heinrich	Perlmutter
Barrow	Herseth Sandlin	Perriello
Bean	Higgins	Peters
Becerra	Hill	Peterson
Berkley	Himes	Pingree (ME)
Berman	Hinchey	Polis (CO)
Berry	Hinojosa	Pomeroy
Bishop (NY)	Hirono	Price (NC)
Blumenauer	Hodes	Quigley
Bocciardi	Holden	Rahall
Boswell	Holt	Rangel
Boucher	Honda	Reyes
Boyd	Hoyer	Richardson
Brady (PA)	Inslee	Ross
Braley (IA)	Israel	Rothman (NJ)
Brown, Corrine	Jackson (IL)	Roybal-Allard
Butterfield	Jackson-Lee	Ruppersberger
Capps	(TX)	Rush
Capuano	Johnson (GA)	Ryan (OH)
Cardoza	Johnson, E. B.	Salazar
Carnahan	Kagen	Sanchez, Linda
Carney	Kanjorski	T.
Carson (IN)	Kaptur	Sanchez, Loretta
Castor (FL)	Kennedy	Sarbanes
Chu	Kildee	Schakowsky
Clarke	Kilpatrick (MI)	Schauer
Clay	Kilroy	Schiff
Cleaver	Kind	Schrader
Clyburn	Kissell	Schwartz
Cohen	Klein (FL)	Scott (GA)
Connolly (VA)	Kucinich	Scott (VA)
Conyers	Langevin	Serrano
Gerlach	Larsen (WA)	Sestak
Cooper	Larson (CT)	Shea-Porter
Costa	Lee (CA)	Sherman
Costello	Levin	Shuler
Courtney	Lewis (GA)	Lipinski
Crowley	Lipinski	Sires
Cuellar	Loebuck	Skelton
Cummings	Lowey	Smith (WA)
Dahlkemper	Lujan	Snyder
Davis (AL)	Lynch	Space
Davis (CA)	Maffei	Speier
Davis (IL)	Maloney	Spratt
Davis (TN)	Markey (CO)	Stark
DeFazio	Markey (MA)	Stupak
DeGette	Marshall	Sutton
Delahunt	Matheson	Tanner
DeLauro	Matsui	Thompson (CA)
Dicks	McCarthy (NY)	Thompson (MS)
Dingell	McCollum	Tierney
Doggett	McDermott	Titus
Donnelly (IN)	McGovern	Tonko
Doyle	McMahon	Towns
Driehaus	McNerney	Tsongas
Edwards (MD)	Meek (FL)	Van Hollen
Edwards (TX)	Meeks (NY)	Velázquez
Ellison	Melancon	Visclosky
Ellsworth	Michaud	Walz
Engel	Miller (NC)	Wasserman
Eshoo	Miller, George	Schultz
Etheridge	Mollohan	Waters
Farr	Moore (KS)	Watson
Fattah	Moore (WI)	Watt
Filner	Murphy (CT)	Waxman
Foster	Murphy (NY)	Welch
Frank (MA)	Murphy, Patrick	Wexler
Fudge	Murtha	Wilson (OH)
Garamendi	Nadler (NY)	Woolsey
Gonzalez	Napolitano	Wu
Gordon (TN)	Neal (MA)	Yarmuth
Grayson	Obey	
Green, Al		

#### NOT VOTING—12

Baldwin	Lofgren, Zoe	Moran (VA)
Cao	Mica	Myrick

Oberstar Sessions Slaughter Souder Weiner Young (AK)

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1420

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. MICA. Mr. Speaker, on rollcall No. 967 I was unavoidably detained. Had I been present, I would have voted "aye."

Ms. MYRICK. Mr. Speaker, I was unable to participate in the following vote. If I had been present, I would have voted as follows: Rollcall vote 967, On Motion to Recommit with Instructions—H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009—I would have voted "aye."

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

Mr. BACHUS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 223, noes 202, not voting 9, as follows:

[Roll No. 968]

AYES—223

Abercrombie Ackerman Adler (NJ) Altmire Andrews Arcuri Baca Baird Barrow Bean Becerra Berkley Berman Bishop (GA) Bishop (NY) Blumenauer Boccheri Boswell Boyd Brady (PA) Braley (IA) Brown, Corrine Butterfield Capps Capuano Cardoza Carnahan Carney Carson (IN) Castor (FL) Childers Chu Clarke Clay Cleaver Clyburn Cohen Connolly (VA) Conyers Cooper Costa Costello Courtney Crowley Cummings

Dahlkemper Davis (AL) Davis (CA) Davis (IL) DeFazio DeGette Delahunt DeLauro Dicks Dingell Doggett Donnelly (IN) Doyle Driehaus Edwards (MD) Ellison Ellsworth Engel Eshoo Etheridge Farr Fattah Filner Foster Frank (MA) Fudge Garamendi Giffords Gonzalez Gordon (TN) Grayson Green, Al Green, Gene Grijalva Gutierrez Hall (NY) Hare Harman Hastings (FL) Heinrich Herseth Sandlin Higgins Himes Hinchey Hinojosa

Hirono Hodes Holden Holt Honda Hoyer Inslee Israel Jackson (IL) Jackson-Lee (TX) Johnson (GA) Johnson, E. B. Kagen Kanjorski Kennedy Kildee Kilpatrick (MI) Kilroy Kind Kissell Klein (FL) Kosmas Kratovil Langevin Larsen (WA) Larson (CT) Lee (CA) Levin Lewis (GA) Lipinski Loebsack Lowey Lujan Maffei Maloney Markey (CO) Markey (MA) Marshall Matheson Matsui McCarthy (NY) McCollum McDermott McGovern

McMahon McNeerney Meek (FL) Meeks (NY) Melancon Michaud Miller (NC) Miller, George Minnick Mollohan Moore (KS) Moore (WI) Murphy (CT) Murphy (NY) Murphy, Patrick Murtha Nadler (NY) Napolitano Neal (MA) Nye Obey Oliver Owens Pallone Pascarell Pastor (AZ) Payne Perlmutter Peters Peterson Pingree (ME)

Polis (CO) Pomeroy Price (NC) Quigley Rahall Reyes Richardson Rodriguez Rothman (NJ) Roybal-Allard Ruppensberger Rush Ryan (OH) Salazar Sanchez, Linda T. Sanchez, Loretta Sarbanes Schakowsky Schauer Schiff Schwartz Scott (GA) Scott (VA) Serrano Sestak Shea-Porter Sherman Shuler Sires Smith (WA)

## NOES—202

Aderholt Akin Alexander Austria Bachmann Bachus Barrett (SC) Bartlett Barton (TX) Berry Biggert Bilbray Bilirakis Bishop (UT) Blackburn Blunt Boehner Bonner Bono Mack Boozman Boren Boucher Boustany Brady (TX) Bright Broun (GA) Brown (SC) Brown-Waite, Ginny Buchanan Burgess Burton (IN) Buyer Calvert Camp Campbell Cantor Cao Capito Carter Cassidy Castle Chaffetz Chandler Coble Coffman (CO) Cole Conaway Crenshaw Cuellar Culberson Davis (KY) Davis (TN) Deal (GA) Dent Diaz-Balart, L. Diaz-Balart, M. Dreier Duncan Edwards (TX) Ehlers Emerson

Fallin Flake Fleming Forbes Fortenberry Foss Franks (AZ) Frelinghuysen Gallegly Garrett (NJ) Gerlach Gingrey (GA) Gohmert Goodlatte Granger Graves Griffith Guthrie Hall (TX) Halvorson Harper Hastings (WA) Heller Hensarling Herger Hill Hoekstra Hunter Inglis Issa Jenkins Johnson (IL) Johnson, Sam Jones Jordan (OH) Kaptur King (IA) King (NY) Kingston Kirk Kirkpatrick (AZ) Kline (MN) Kucinich Lamborn Lance Latham LaTourette Latta Lee (NY) Lewis (CA) Linder LoBiondo Lucas Luetkemeyer Lummis Lungren, Daniel E. Mack Manzullo Marchant Massa McCarthy (CA)

McCaull McClintock McCotter McHenry McIntyre McKeon McMorris Rodgers Mica Miller (FL) Miller (MI) Miller, Gary Mitchell Moran (KS) Murphy, Tim Myrick Neugebauer Nunes Olson Ortiz Paul Paulsen Pence Perriello Petri Pitts Platts Poe (TX) Posey Price (GA) Putnam Radanovich Rehberg Reichert Roe (TN) Rogers (AL) Rogers (KY) Rogers (MI) Rohrabacher Rooney Ros-Lehtinen Roskam Ross Royce Ryan (WI) Scalise Schmidt Schock Schrader Sensenbrenner Shadegg Shimkus Shuster Simpson Skelton Smith (NE) Smith (NJ) Smith (TX) Souder Space Stearns Stupak

Sullivan Taylor Teague Terry Thompson (PA) Thornberry Tiahrt Tiberi Turner Upton Visclosky Walden Wamp Westmoreland

## NOT VOTING—9

Baldwin Lofgren, Zoe Lynch Moran (VA) Oberstar Rangel Sessions Slaughter Young (AK)

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Two minutes remain in the vote.

□ 1428

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## PERSONAL EXPLANATION

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall vote Nos. 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, and 968. Had I been present, I would have voted "aye" on rollcall vote Nos. 953, 955, 957, 958, 959, 960, 962, 963, 964 and 968, and "nay" on rollcall vote Nos. 954, 956, 961, 965, 966 and 967.

## PERSONAL EXPLANATION

Mr. SESSIONS. Mr. Speaker, due to unexpected circumstances, I am speaking at the funeral of a family friend back in my district today. As a result, I am unable to vote on the remaining Floor proceedings for the Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173). In order to fully clarify my positions on the votes I will miss, I would have voted as follows: Kanjorski Amendment No. 51: "no"; McCarthy Amendment No. 168: "aye"; Peters Amendment No. 22: "no"; Conyers/Marshall Amendment No. 201: "no"; Schakowsky Amendment No. 209: "no"; Minnick Amendment No. 88: "aye"; Bachus Amendment No. 87: "aye"; Motion to Recommit: "aye"; Final Passage of H.R. 4173: "no".

## THE JOURNAL

The SPEAKER pro tempore (Mr. TONKO). Pursuant to clause 8 of rule XX, the unfinished business is the question on agreeing to the Speaker's approval of the Journal, which the Chair will put de novo.

The question is on the Speaker's approval of the Journal.

Pursuant to clause 1, rule I, the Journal stands approved.

□ 1430

## PERSONAL EXPLANATION

Mr. RANGEL. Mr. Speaker, on rollcall No. 968, I want to make it clear, had I been here, I would have voted in the affirmative.

# APPOINTING THE DAY FOR THE CONVENING OF THE SECOND SESSION OF THE 111TH CON- GRESS

Mr. HOYER. Mr. Speaker, I send to the desk a joint resolution and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The text of the joint resolution is as follows:

H.J. RES. 62

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the second regular session of the One Hundred Eleventh Congress shall begin at noon on Tuesday, January 5, 2010.*

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## LEGISLATIVE PROGRAM

(Mr. CANTOR asked and was given permission to address the House for 1 minute.)

Mr. CANTOR. I yield to the gentleman from Maryland (Mr. HOYER), the majority leader, for the purposes of announcing next week's schedule.

Mr. HOYER. I thank my friend for yielding.

Mr. Speaker, on Monday, the House will meet at 12:30 p.m. for morning-hour debate and 2 p.m. for legislative business, with votes postponed until 6:30 p.m. On Tuesday, the House will meet at 9 a.m. for morning-hour debate and 10 a.m. for legislative business. On Wednesday and Thursday, the House will meet at 10 a.m. for legislative business. On Friday, the House will meet at 9 a.m. for legislative business.

We will consider several bills under suspension of the rules, the complete list of which will be announced by the close of business today.

In addition, Mr. Speaker, we will consider further action on H.R. 3326, the Department of Defense Appropriations Act of 2010.

Mr. CANTOR. I thank the gentleman.

And Mr. Speaker, I'd like to ask the gentleman about the schedule for the rest of this year. Obviously many, many Members are asking the question as to when we will be able to return to our districts. Many have plans for the Christmas holiday.

So I would ask the gentleman, does he expect the House to adjourn for the year by Friday next week, December 18?

And I yield.

Mr. HOYER. I thank the gentleman for yielding.

That is my hope. It may not be my expectation. It is my hope, and it is my

plan, but obviously, as the gentleman well knows, having been in this position in the past, that is somewhat contingent upon what our colleagues in the other body do. But it is my intention, and I have announced that December 18 is the last day on which we are planning to meet. I very much want Members to be able to be home Christmas week. But as the gentleman knows as well as I do, that is dependent upon what our colleagues across the Capitol do.

Clearly, we have now passed most of our appropriations bills except for the Defense bill, so we've funded most of government. The Senate still has to enact, of course, the omnibus that we sent to them 2 days ago, which has six of the appropriations bills in it. One remains. So that if they pass that, 11 out of the 12 would have been passed. But obviously, we want to make sure that we pass our Defense bill as well.

Mr. CANTOR. Mr. Speaker, the gentleman speaks a lot about the appropriations factor, and I assume that means when we would actually bring up the Defense appropriations bill, but specifically, Mr. Speaker, I would ask the gentleman whether it is his hope that we will be considering health care in this House, or whether we could expect that to fall off into next year.

And I yield.

Mr. HOYER. I thank the gentleman for yielding.

As is true of almost all pieces of legislation that are pending, that will depend upon Senate action. And until such time as we know what the Senate is going to do, it's almost impossible for me to say with any clarity and assurance that we are going to be able to take up health care or any other piece of legislation because, obviously, the Senate action will be essential for that to happen.

Again, with respect to the Defense appropriation bill, it is essential that we pass that bill. It's essential that we pass the debt limit. It's essential that we extend, in my opinion, unemployment insurance and COBRA. It's essential that we extend the Patriot Act for at least 90 days while the legislative committees are trying to complete that. So there are a number of things, clearly, that I think it's necessary for us to do because of the time limits. But as my friend knows, health care does not have a time limit and will depend upon what action the Senate takes and when it takes it.

Mr. CANTOR. I thank the gentleman, Mr. Speaker, and would ask about the Speaker's planned codel to Copenhagen. I'm aware, I think correctly, that there are about 30 Members that will be going with the Speaker to Copenhagen, scheduled to depart Wednesday evening next week, and would like to ask whether that will impact our schedule for work next week or does he expect that we will be in for 5 days with the Speaker and the codel gone?

And I yield.

Mr. HOYER. I don't know that the Speaker and the codel are going to be gone if, in fact, we have business to do.

I think you're probably scheduled to be on that codel. I know I am. But we're going to be here working if we have work to do to complete our business. And I will be here.

The fact is, as you know, the Copenhagen conference ends I think on December 19 or maybe December 18. The Speaker had contemplated taking a delegation to that conference—which we think is extraordinarily important—but that will be contingent upon what our schedule looks like for December 17 and 18 and what we've done and accomplished by the evening of December 16.

Mr. CANTOR. I thank the gentleman.

The gentleman did, Mr. Speaker, mention one of the things that needs to be addressed, the debt limit, and I believe, if I heard correctly, the gentleman said that he felt we needed to do that prior to year's end.

That has created a lot of concern. A lot of reports in the press have indicated that perhaps the administration is looking for ways that we could avoid doing that. Obviously given the size of the expected increase of the debt limit to nearly \$2 trillion, a lot of Americans are wondering how in the world we keep spending money we don't have.

So I would ask again, does the gentleman believe that that comes to the floor next week?

And I yield.

Mr. HOYER. I thank the gentleman for yielding.

I think to the extent the Americans are considering that, they are considering that, for the bulk of this decade, I would say, we were spending money that we didn't have on a regular basis at very high levels, which is why we went from the \$5.6 trillion surplus to the \$10 trillion deficit.

Having said that, we have passed a debt extension, as the gentleman knows, and that debt extension is in the control of the United States Senate. They can take that off the table and pass that debt extension. So while it needs to be passed, we have done our work here. The Senate has that debt extension.

I can't imagine there are any of us that don't want the United States of America, as we would expect of all of ourselves and of others, to pay its debts that it has incurred.

But it could be accomplished in a number of ways, and the Senate has a debt extension bill, and if we don't act further on that, they can take that up off the floor or the desk and pass it. That is one option available. The other option the gentleman refers to is doing a new debt extension at a larger number, and that decision has not yet been made.

But I want to emphasize the Senate has on its desk a debt extension that

will make sure that the United States of America pays the bills that it has incurred.

Mr. CANTOR. I thank the gentleman, Mr. Speaker.

Mr. Speaker, the gentleman and I were both in attendance at a meeting at the White House this week where we Republicans presented a plan to the President to suggest that there are ways that we could work together, without costing the taxpayers, to try and get America back to work. It has been labeled a No Cost Jobs Plan.

And as the gentleman knows, Mr. Speaker, I had suggested last week that perhaps we could work on some of those measures together. I know that the gentleman just told us, Mr. Speaker, that we may be able to expect certain things like COBRA, UI extension, and others that he believes, I imagine, would be part of a stimulus effort, and we wonder whether we could expect any of the items that we presented as Republicans to the majority, we could expect any of the items that we presented in that No Cost Jobs Plan, to also be a part of perhaps of what may come to the floor next week?

I yield.

Mr. HOYER. I thank the gentleman for yielding.

First of all, let me say with respect to COBRA and unemployment insurance, I wouldn't call that a stimulus plan; I would call that a tourniquet plan to try to stop the bleeding of some people who have been badly damaged by the extraordinary depths to which this economy fell starting in December of 2007, leading to unemployment in the last month of the last administration of 741,000 jobs lost.

As the gentleman knows, this past month we had only 11,000 jobs lost. That's significant progress but not success until we get into creating jobs.

We clearly believe that one of the important things that we want to do before we leave here is a jobs bill. A stimulus tends to be viewed as a more broadly-based piece of legislation. We've done a lot of that, as the gentleman knows, with his vote sometimes and without his vote sometimes, over the last 12 months.

The fact is that we want to address trying to create more jobs, get our economy going, make lending available for small businesses, expand our infrastructure—which is a direct not only creation of jobs but addressing infrastructure—roads, bridges, highways—as well as sewer and water systems critical to our economy, critical to the health and welfare of our people.

So we're looking at that as we speak, and we're trying to put together a package that the Senate may agree to and that we could pass before we leave here.

With respect to the No Cost Jobs proposal, as I said at the White House with you, I would be glad to discuss it, and

I do look forward to discussing it with you. We can discuss it further this afternoon, some of the proposals that you have. I will tell you though, my friend, I have found very few things in life which are free.

□ 1445

If we are going to create jobs, if we are going to expand our economy, to pretend to the American public that it's free, just as your tax cuts were not free—any tax cuts are not for free. It sounds like it, but then there are consequences. And we believe that, for instance, the TARP funds that your motion to recommit sought to eliminate were essentially, while targeted at the time, really were for the purpose, you and I both voted for them when they were adopted, initially, they were for the purpose of trying to bring our economy from the depths to which it had fallen, preclude it from falling off the cliff and to bring our economy back.

I would suggest to you that one of the reasons we don't want to see these funds eliminated after they have helped the banks is we want us to use some of those funds to help Main Street, small business and job creation.

So, with respect to jobs, we are very focused on jobs. We look forward to working with you on that effort and your side of the aisle and suggestions that you have. And if we can reach consensus, I think the American people will be very pleased.

Mr. CANTOR. Well, Mr. Speaker, I will respond to the gentleman and say that I was, first of all, heartened by the fact that when we did come into the meeting with the President at the White House that he actually had a copy already of our Republican No Cost Jobs Plan. And I took that as a positive sign that perhaps we could actually work together in doing some things that don't cost anything.

And I would say to the gentleman, his comment that nothing is for free, there are some things that we could do together that don't cost anything that will, I think, produce jobs and most people agree they could produce jobs. And some of those being—and we told the President we would respond, and I would share that with the gentleman, also—there are a host of rules and regulations being promulgated by this administration and its agencies that frankly harm job creation. Those are the kinds of things we could stop right now if we are going to put jobs first and make sure we do everything we can to get Americans back to work.

As for the TARP funds themselves, Mr. Speaker, my recollection, we voted for that authorization of money in order to stave off a collapse in our capital markets. Most were in agreement that we were on the edge of an abyss and something needed to be done, and so we took the action. Within the prescription of that statute was the defini-

tion, or perhaps the mission, of those funds. Those funds were there to make sure our capital markets didn't collapse.

Now, all of us want to be able to say we're doing things to get people back to work. But I think what the American people are growing tired of is Congress saying that it is spending money for one purpose and then all of a sudden deciding, whoops, there's another need out there; let me then go, when we get this back into the Treasury, spend it somewhere else.

So, Mr. Speaker, the reason why our motion to recommit was crafted the way it was was because we feel very strongly in the emergency nature of the TARP program, and in the statute we called for the return of those moneys to the general fund, essentially to the taxpayers, and not to go and spend the money again, because it's borrowed in the first place. So I would say to the gentleman, we look forward to doing some things that don't cost anything to create jobs.

Some of the discussion at the White House centered on trade. We have three pending free trade agreements. If I recall correctly, the President indicated his support for those agreements, because all of us know those agreements will increase exports from this country. I believe, if I'm correct, that the leader himself, the gentleman from Maryland, did say, Mr. Speaker, that he would like to see those exports increased and perhaps those bills taken care of. Do you know what, Mr. Speaker? If we're serious about it, why don't we do that next week? We could leave before the Christmas holiday, and most people would say that by passing those bills, we could be on the path to creating 250,000 new jobs in this country.

I yield.

Mr. HOYER. I thank the gentleman for yielding.

Very frankly, he says most people believe that. The polls don't reflect that. A lot of Members on both sides don't believe that. And that's why these bills are controversial on your side and on my side. I think longer term that is the fact. We have people, however, who are having a challenge feeding their families, keeping their homes and paying their bills right now as we speak. It's not free for them. They need help.

On our side of the aisle, we think we need to give them help. Yes, we gave help to the banks. Yes, it stabilized them. I voted for that. You voted for that. I think it was the right thing to do. But those moneys, however, were to stabilize the economy. Now, they were targeted on banks, which were the immediate problem. There are an awful lot of my constituents and a lot of people around the country saying, Hey, you can help the banks, but guess what? I'm not there. My family is not there. My small business is not there. I need help.



Our proposition, under those circumstances, is, yes, the good news is, we didn't have to use all the money that President Bush asked for. President Bush used about half of it before he left. President Obama has used about half of it for the purposes intended. We also used some of it, as you know, for General Motors. That wasn't in the bill. But President Bush decided those funds ought to be used for that purpose, and Chrysler as well, to stabilize the automobile industry.

Now, I will tell my friend with respect to our discussions at the White House, and I understand we have a difference of agreement. We differ fundamentally on how to get this economy moving. Your party voted to a person against the economic package that we had in 1993, and we voted pretty much to a person, not unanimously, against your plan. I think the plan in 1990 worked. I think the plan in 2001 and 2003 didn't work. And I think statistically that is irrefutable. And we fell, as a result of a plan you supported, into the worst recession we've had in three-quarters of a century.

What we are saying is we need to take some of that money, we need to make sure that Main Street, bank lending to small business so they can stay in business and create jobs is a good use of those funds, because we are not done yet. Your leader, Mr. BOEHNER, said on this floor, it was over, the recession is over. I think what he meant was, correctly, that the economists say essentially we have bottomed out and we are coming up.

I suggest to you we bottomed out because we not only passed a bill that you and I voted for, but we passed a bill that you didn't vote for, and that is the Recovery and Reinvestment Act. Since that time, we have created 600,000 to 1.4 million jobs. According to the CBO, the gross domestic product for the first time since the third quarter 2008 has grown, actually 2007, has grown to where it was the last quarter of the last administration, 6.4 percent decrease. It grew 2.8 percent. That is almost a little over a 9-point turnaround. That's good news for the economy. But there are a lot of people still struggling.

So, yes, we believe that we need to have a jobs bill. And we think it is appropriate to address the funds that we've already authorized, not new funds but that we've already authorized, to try to bring this economy back, to not just look at it globally, but to look at individuals who are hurting. We want to apply those funds to those folks who are hurting and try to get them in their homes, get them a job, and get their families more stable.

Mr. CANTOR. Mr. Speaker, I appreciate the gentleman recognizing that there are differences, absolutely, on how we believe that we can work on getting this economy going again. I do

believe that we have some similarities, which is why we proposed the No Cost Jobs Plan.

So I ask the gentleman again, are we going to see the three trade bills come to the floor? Because in my estimation, I believe at least one, if not all of the bills, can garner a majority of the votes on this floor, something we could do next week, leaving town saying we are committed to job creation. Are we going to see those bills, Mr. Speaker?

And I will yield.

Mr. HOYER. I thank the gentleman.

I'm going to give him the answer he knows is absolutely crystal clear. The answer to that is "no." The bills are not ready to come to the floor. They need to come out of the Ways and Means Committee, as you know. They are not reported out of the Ways and Means Committee, and we are not going to bring them to the floor next week. If we brought them to the floor next week, and the gentleman knows, they would have no immediate impact.

The gentleman also knows, and has correctly stated, that I certainly am for and have been publicly reported over the last 6 months or more, I guess over a year, reported as being in favor of passing the Colombia agreement and passing the Panama agreement. I think the Korea agreement is a little more complicated in terms of making sure our markets are open to our automobiles, to our beef and other agricultural products to make sure we have a fair exchange. But Korea, obviously, is one of our largest trading partners. As the gentleman knows, that's an important agreement. We ought to give attention to it.

The gentleman knows that we are not going to bring those to the floor next week. The gentleman also knows that if we did and we passed them, and the Senate passed them somehow, that it would not make an immediate impact. You and I both agree that over the long term, it would be a positive impact. Others don't agree with that, but the answer to your question is "no."

Mr. CANTOR. I thank the gentleman, Mr. Speaker, and I think he makes the case for all the more reason we do something now. If there is no immediate impact tomorrow, at least we could be well on the way to fostering that impact on those jobs for the Americans who, as he correctly states, are facing a lot of trouble right now being out of work.

Mr. Speaker, I would like to ask the gentleman about the 72-hour rule and the importance of that that we felt back earlier this year. And because of the way that the stimulus bill was brought to the floor earlier, in January or February, the backlash was such that I believe the gentleman and his party committed to 72 hours to review any bill before it was voted on, for the Members as well as the public to realize their right to know.

Mr. Speaker, my question to the gentleman is: Why now have we abandoned that commitment? Why have we abandoned the public's right to know in major pieces of legislation this week, in both the omnibus bill as well as the bank bailout, the TARP II bill that we just passed? Both of those bills came to this floor. The House voted on it, on the example of the omnibus, and within 24 hours, not 72. And in the example of what we consider to be an extension of TARP and a bank bailout bill, there was a 249-page manager's amendment that was made available 8 a.m. yesterday, and that very same manager's amendment was voted on at 8:54 p.m. last night. How is it that we have now decided that it is not important to recognize and abide by the 72-hour rule?

And I yield to the gentleman.

Mr. HOYER. I thank the gentleman for yielding.

First of all, the gentleman has an inclination to state premises that we all agree on things that we don't necessarily all agree on.

Clearly, we want to give notice. Clearly, we believe we ought to give fair notice. As it relates to the bill that was considered today, that bill has had over 3 months of hearings and has been on the table for a long period of time. The gentleman is correct that the final bill and the manager's amendment did not have 72 hours, but almost all the components within it had been known to everybody as proposals that were on the table either in committee or substitute committee markup for some period of time.

With respect to the bill that you referred to that we passed on the six appropriations bills, we, of course, had numerous committee hearings, subcommittee markup, full committee markup, House consideration. We passed all six of those bills through this House. The gentleman is correct that there were amendments included in there, and there was notice of all those, but I would have liked more time.

The problem is, of course, we have come to what is, as the gentleman pointed out, a target date of the 18th. We still have important work to do. We intend to do that. We are going to give as much notice as we can do and meet our responsibilities to the American public.

The gentleman smiles when I say as much notice as we can give. The gentleman surely will not say, because the gentleman is honest, he understands this process as well as I do. He and I have been here for some years. I have been here a little longer. When his side was in control, as he knows, some majority pieces of legislation were considered within hours on this floor, the prescription drug bill being a specific example, the biggest entitlement reform we had had in a long period of time. You reported it at some hour in the

a.m., 12 or 1 o'clock a.m., and reported it on the floor a little after 9 a.m.

□ 1500

We considered the bill that afternoon and passed it that day or early the next day. And that wasn't even, as I recall, at the end of the session. But the gentleman knows, as a practicality, both leaderships find it necessary, in order to complete the business that the public expects us to complete, to sometimes move that, when agreement can be reached, at the end of a session. Unfortunately, I've been at this legislative process for over 40 years, and Members like to delay until such time as they think delay is no longer an option.

Mr. CANTOR. I thank the gentleman.

Mr. Speaker, I was somewhat amused by the gentleman's commitment to give the public and Members as much time as they, the majority, could. Again, we have a 72-hour rule in place, I thought, and that was for the very purpose of allowing all of us, including our constituents, the right to realize what's going on in this House. Obviously, we have a lot of work undone for the year. We've got 5 legislative days next week. Certainly, if we are going to be incurring the type of debt and expenditure that we are looking at, surely we could make sure that there is adequate notice and that the 72-hour rule is abided by.

Again, Mr. Speaker, I would say to the gentleman, this is what the public is tired of. I find it somewhat interesting that the gentleman says it's okay for the majority to do that because when we were in the majority we did that. Well, I know the gentleman knows, we were let go in the majority in 2006 and they assumed the majority. And again, there is a reason for that, the public is looking for transparency, the public is looking for fiscal responsibility, and certainly, when we are talking the numbers that we are talking, in terms of taxpayer dollars, \$1.8 trillion in new debt, certainly, I think, Mr. Speaker, we should afford the public its right to know.

Mr. Speaker, I thank the gentleman very much.

Mr. HOYER. Will the gentleman yield before he yields back his time?

Mr. CANTOR. I yield.

Mr. HOYER. I appreciate the gentleman's observation that you were let go. I want to make it clear to the gentleman, I do not believe you were let go because you failed to meet a time frame for reporting bills. I believe, frankly, the substance of our work is that which the public makes a judgment on. And, frankly, we think that the reason that they turned to us in 2006 and 2008 was because they thought that the programs and policies you were pursuing weren't working for our country or for the economy or for them, with all due respect.

But I continue to tell the gentleman that we want to try to make sure, as you did—sometimes—that you, our Members, the public have sufficient knowledge to make the decisions that are called upon for them to make.

Mr. CANTOR. I thank the gentleman.

And I would say in closing that the gentleman may be right, it may be that the cause for the 2006 loss and the majority now coming into power was because of the policies, because of the war, because of fiscal practices, what have you, any number of things. But certainly now the gentleman knows that the public is not too keen on the agenda being pushed by this majority. In fact, most of the people in this country feel we're headed down the wrong track.

But also, Mr. Speaker, the public is extremely, extremely concerned about their future. We've got to restore the trust in this institution, Mr. Speaker. We've got to abide by the same rules that we expect the public to abide by, and that is transparency. That is, when we commit to a certain set of rules to live by, we ought not change them mid-course. That is not what we should be doing. We shouldn't be changing the rules of the game as far as the TARP program is concerned. The public thought that money would be paid back. We shouldn't be changing course in terms of the 72-hour rule. The public has gotten to know that and expects us to give them their right to know, Mr. Speaker. That's what I'm talking about in terms of this Democratic majority in this House living up to the public trust that they gained in 2006.

With that, Mr. Speaker, I thank the gentleman and I yield back.

#### ADJOURNMENT TO MONDAY, DECEMBER 14, 2009

Mr. HOYER. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 12:30 p.m. on Monday next for morning-hour debate.

The SPEAKER pro tempore (Mr. TONKO). Is there objection to the request of the gentleman from Maryland?

There was no objection.

#### IRANIAN PROTESTORS, THE WORLD IS WATCHING

(Mr. HASTINGS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HASTINGS of Florida. Mr. Speaker, one of the great privileges we have is to come here and speak about those who have departed life and to pay condolences and commiserate with their families.

Last week, three persons that were very dear to me died. They are Isaiah "Ike" Williams, a classmate of mine in law school from Jacksonville; C. Bette

Winbush, the first black city commissioner in St. Petersburg; and the Reverend Samuel George, a Presbyterian minister that lived in Pittsburgh but in my earlier career worked in Fort Lauderdale. All three of these people fought their entire lives for tolerance and equality. The Reverend George taught me a great deal about ecumenism and interdenominational undertakings.

Their courage brings to mind for me the courage, turning away from their work, to those that are in the streets in Iran who are protesting their government as I did with Reverend George and C. Bette and Ike and are saying to their government that they should be free and have the opportunity to protest.

I just want those Iranians to know, as I give condolences to my friends that have all departed, that they are not alone. And one of the things that we used to say in the civil rights movement, the whole world is watching.

#### SEPTEMBER 11 MEMORIAL SHOULD USE AMERICAN WORKERS TO COMPLETE PROJECT

(Ms. FOXX asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. FOXX. Mr. Speaker, it came to my attention this week that North Carolina Granite Corporation, a small business in Mt. Airy, North Carolina, was recently informed that it lost a bid to supply cut granite for the National September 11 Memorial in New York City. Unfortunately, news outlets reported that this business, which employs 135 people in the Fifth Congressional District, lost the contract to bidders in Italy and Africa.

Mr. Speaker, this is very disturbing. I hope that the decision-makers at the memorial will reconsider their decision to ship this important work overseas. The people of North Carolina Granite are highly talented workers with experience on projects such as the World War II Memorial in Washington, D.C. who are eager to help complete the National September 11 Memorial. In the midst of an economic downturn, it makes more sense than ever to use American craftsmen to help build a memorial in honor of those who sacrificed so much on that day 8 years ago.

#### WALL STREET REFORM AND CONSUMER PROTECTION ACT

(Mr. COFFMAN of Colorado asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COFFMAN of Colorado. Mr. Speaker, I rise today to speak in strong opposition to the latest in a line of misguided pieces of legislation the

House of Representatives has debated in the 111th Congress.

The Wall Street Reform and Consumer Protection Act may sound like an effort everyone can endorse, but unfortunately it is just the latest government takeover of private industry. This legislation will greatly expand the powers of the Federal Reserve. Government agents of the Federal Reserve could now be responsible for breaking up a profitable company merely due to their opinion that an eventual failure could pose a systemic threat to our economy. This flies in the face of the free market ideals and the American Dream, which used to be work hard and you can accomplish anything. Due to the actions of this Congress, it now reads, "Work hard, fail, the government will bail you out; work hard and do well, the government will take you down."

#### GET OUR COUNTRY BACK ON TRACK

(Mr. MORAN of Kansas asked and was given permission to address the House for 1 minute.)

Mr. MORAN of Kansas. Mr. Speaker, Americans are being forced to foot the bill for trillions of dollars of increased government spending this year while they are struggling to make their own ends meet.

As Kansans sit at their kitchen table trying to balance their checkbooks, this Congress has been borrowing and spending money like there is no tomorrow. The latest example of this reckless spending is a 2,500-page omnibus spending bill approved by the House of Representatives yesterday. This \$447 billion package does not require any of the tough choices that Americans are having to make every day in this difficult economy. Unfortunately, for the next generation of Americans, there will be severe consequences from our government's failure to control spending and the resulting huge increases in our national debt.

The Democrat leadership will soon try to raise our \$12.1 trillion national debt limit by an additional \$1.8 trillion. The Federal Government is mortgaging our Nation's future and its well-being to countries like China. The result of this spend-and-borrow approach is evident.

President Obama and Speaker PELOSI, show bold leadership and get our country back on track by cutting spending and reducing our country's debt, not by omnibus spending bills and debt ceiling increases.

#### REMEMBERING ED STIMPSON

(Mr. DICKS asked and was given permission to address the House for 1 minute.)

Mr. DICKS. Mr. Speaker, it is with great sadness that I come before the

House to note the death of a leader in the civil aviation industry and a man familiar to many here in Congress. Mr. Ed Stimpson, who served as president of General Aviation Manufacturers Association for 19 years, died at his home on November 25 in Boise, Idaho. Many of us in this Chamber recall that he was the driving force behind the General Aviation Revitalization Act which altered the liability of small aircraft manufacturers and led to a reinvigoration of the small aircraft industry in the United States.

After he retired from direct leadership of the association, he took on a new project, the "Be a Pilot" campaign that was designed to increase the population of student pilots in the United States. It was a great success, not only in enlarging the number of citizens capable of flying live aircraft, but also in providing a technological boost to the manufacturing industry that resulted in the design and construction of new and safer aircraft.

Later, he was named by President Bill Clinton to the International Civil Aviation Organization, a Montreal-based group that promotes safe aviation around the world. He served in that post with the rank of ambassador through 2004, and he was one of three ambassadors to be reappointed by President George W. Bush. His reappointment was indicative of the bipartisan approach he brought to all of his endeavors.

Ed Stimpson was also a recipient of the Wright Brothers Memorial Trophy for Lifetime Achievement. He was a great leader, a great friend of many of us, and he will be missed.

I would like to insert a personal reflection that was published in Seattle last week by a long-time friend of Ed's, Mr. Ted Van Dyk.

#### OUR GOOD FRIEND, ED STIMPSON

(By Ted Van Dyk)

Ed Stimpson, a longtime leader in the civil-aviation industry, died this past Wednesday in Boise. His obituary, distributed via Associated Press from Boise and picked up by other media, was maddeningly unsatisfying. It listed his achievements as a U.S. ambassador, head of national civil-aviation bodies, and leader of a general-aviation trade association. But it gave no sense of his wonderful qualities as a human being and of his meaningful civic and political involvements.

Born in Bellingham exactly one month before I was, Ed Stimpson was the son of a beloved physician and the oldest of seven children. The hospital where both of us were born is now named after his father. We grew up in hard times and shared a firm commitment to the Democratic Party and its agenda of the time. The president of our high school Democratic Club was Sterling Munro, who later would serve as Sen. Henry (Scoop) Jackson's principal assistant.

In 1962, when I was being released from a recall to military service, a chance street-corner meeting with Ed led to my being hired by the then-European Communities (the present European Union). He was at that time representing the Seattle World's Fair

in Washington, D.C. At the fair he met Dorothy Sortor, a Century 21 public-affairs officer, and later married her. They were brought together, I always thought, by Eddie Carlson, the driving force behind the fair and a lifetime friend and sponsor of many of us who were coming up at the time.

Later Ed went on to executive positions in government, in aviation, and in business. While an officer of Morrison-Knudsen, he and his wife Dottie bought a home in Boise which was their home base thereafter. Ed and Dottie also helped transform Boise from a conservative political bastion into the state's Democratic stronghold. In 1972, when Jackson had no chance of nomination, they campaigned hard for his presidential candidacy. Later, when House Speaker Tom Foley's reelection was threatened, they dropped everything and moved to Spokane to help in what turned out to be a losing effort.

Ed's and Dottie's strongest and longest friends have included Rep. Norm Dicks and his family, former Jackson chief of staff Denny Miller, and former Warren Magnuson chief of staff Jerry Grinstein. He and Dottie kept a photo album of their outings with the Dicks family. (Other local friends include two members of the Crosscut family, Peter Jackson, son of Scoop, and Gene Carlson, son of Eddie Carlson). Beyond politics, aviation, and the business world, Ed Stimpson had an army of friends and admirers who had met him at various intersections along the way. When he was diagnosed with lung cancer several months ago (Ed had never smoked), e-mails began flowing in great number among friends from all his lives.

I called Ed when I got the news. He had found himself short of breath while walking through the Denver airport and had gone to his doctor for what he thought would be a routine checkup. Later, the lung cancer spread to his brain.

As my own good luck would have it, I spent last Saturday with Ed and Dottie at St. Luke's hospital in Boise. He was heavily medicated. He argued unsuccessfully with his nurses that he be allowed to dress and "have lunch and conversation at a more suitable place" than at his hospital bed. Characteristically, he talked not about himself or his illness but about current public issues, his involvement in an aviation-industry study, and his pride in his part in strengthening the Idaho Democratic Party. Denny Miller visited a day later. Then Ed was sent home to hospice care. He passed almost immediately—spared, as it turned out, from a long ordeal for him and for Dottie which might have followed.

E-mails have flowed from the Stimpson network since his passing. That is because he was held in such love and respect by all whose lives he had touched. Over his lifetime he was never known to speak cruelly or harshly about another person. He preferred instead to make his own positive contributions wherever he could. His integrity shone. He was the archetype "other-oriented" person, always seeking to help other people and causes, never to advance himself. He was a good and rare human being.

#### SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

## CAP-AND-TRADE IS BAD FOR AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

Mr. MORAN of Kansas. Mr. Speaker, one in 10 Americans are without jobs this holiday season. This level of unemployment is the highest our country has seen in a quarter-century. In the midst of these difficult times, jobs are at the top of America's holiday wish list, yet the President has sent negotiators to Copenhagen to devise and deliver another job killer.

Negotiators from nations around the world convened in the Danish capital this week with the goal of developing a successor to the failed Kyoto Protocol, which sought to reduce worldwide greenhouse gas emissions. When Kyoto was negotiated, the Senate unanimously approved the Byrd-Hagel resolution. This important resolution established U.S. policy that our country would not enter into any climate treaty that leaves out developing nations or hurts the American economy. In passing the resolution, the Senate recognized the damage such an agreement would do to the U.S. economy.

The President and his negotiators would be wise to abide by these guidelines today, as any agreement reached in Copenhagen would likely be more devastating to the American economy than Kyoto. But it's not just Copenhagen that Americans have to worry about, the President wants to pursue an environmental agenda in any way he can, including through cap-and-trade. In my view, cap-and-trade, approved by the House of Representatives in June, remains one of the most damaging pieces of legislation ever passed by the House of Representatives during my time in Congress, especially as it affects agriculture and rural America.

□ 1515

The passage of a cap-and-trade bill will increase the cost of doing business in the United States, will force business owners to close their doors, and will cause companies to leave the country for locations where costs are lower.

The respected Heritage Foundation studied the Waxman-Markey cap-and-trade bill. The study showed that the legislation would result in annual losses to GDP of almost \$400 billion and that it would lead to the loss of 1 million jobs.

At a House Agriculture Subcommittee on Conservation, Credit, Energy, and Research hearing last week, USDA's chief economist and other experts from universities across the Nation all testified that the costs for fuel, fertilizer and other business inputs would increase under cap-and-trade, meaning more harm to business and the people they employ.

For example, one witness cited an Energy Information Administration

analysis that showed, in 2030, the Waxman-Markey bill would raise diesel fuel costs by 15 percent, electricity costs by 22 percent and industrial natural gas costs by 26 percent. The last thing we need is another law or treaty that dashes the hope for economic recovery and that destroys more jobs, but the President continues to push for just that.

On Monday, the EPA ruled that carbon dioxide and five other greenhouse gases are a danger to public health and to the environment. This decision means EPA can impose greenhouse gas regulations without Congressional action. This threat is no reason to pass cap-and-trade. We must defeat cap-and-trade in the Senate and then put an end to the faulty interpretation of the Clean Air Act by the EPA.

The President should refrain from entering into international agreements, and the EPA must be stopped from making decisions that are not supported by science or current law. At a time when so many Americans are without work, the President needs to focus on ways to create jobs and to improve the economy.

A cap-and-trade bill, EPA regulations, or an international treaty, all of which are on the President's holiday wish list, would be devastating to the U.S. economy. That's a holiday gift that no American can afford. The passage of cap-and-trade, an agreement in Copenhagen, clean air findings by the EPA—we can just as soon leave those presents under the Christmas tree unopened.

President Obama and Speaker PELOSI, don't be the grinch that steals our Christmas. And I hope that is not "just the way it is."

## CEREAL NIGHT AND RECOGNIZING THE IMPORTANCE OF PAH AWARENESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island (Mr. LANGEVIN) is recognized for 5 minutes.

## CEREAL NIGHT

Mr. LANGEVIN. Mr. Speaker, I rise today to recognize a very special event happening tonight in my district thanks to the efforts of a very special young boy and his family. This evening, the second annual Cereal Night will take place at North Kingstown High School in Rhode Island, which is where hundreds will gather to donate to our local food pantries.

The mastermind behind this event is one of my young constituents, Patrick Gannon, an 11-year-old 5th grader and Cub Scout from North Kingstown. Like all Rhode Islanders, Patrick has seen the devastating effects of the economic downturn in our State, where unemployment has reached 13 percent, where record numbers of foreclosures con-

tinue to force people from their homes, where food pantries are struggling to meet the needs in their communities, and where too many of our neighbors are desperate for a hand.

Well, last year, when he was only 10 years old, Patrick came up with a way to help. His idea was that, one night of the year, families could eat cereal for dinner and could donate the money or food they saved to a local food pantry. While encouraged by his parents, Bill and Jackie, he began to organize the first Cereal Night last December. Soon, friends, local businesses, and even our Governor were involved in highlighting this initiative.

On the night before the event, though, a snowstorm hit Rhode Island, making it doubtful that there would be a big turnout. Nevertheless, Patrick was there the next day at one of the drop-off sites, running out to cars through the snow to accept their donations. At the end of the day, three tons of food were donated to the Rhode Island Food Bank, and plans to build on this success were put in motion.

Like any proud mother, Jackie did her best to spread the word—reaching out to nonprofit organizations and even writing to President and Mrs. Obama, telling them about Patrick's work and asking them to make Cereal Night a national event. Well, sadly, she won't be able to see those efforts come to fruition. On November 7 of this year, 2 days before Patrick's 11th birthday, Jackie suffered a ruptured aneurysm and passed away. Well, her death was a shocking and heartbreaking blow to her family and friends, but they have channeled their grief towards the cause that she was inspired to embrace by her son Patrick.

This year, Cereal Night will be an opportunity for the community to come together to give something back to those in need, to celebrate Patrick's imagination and commitment and to honor the life of a beloved mother who touched all those who were lucky enough to know her.

This holiday season, we are reminded of how important it is to help each other get through these tough times. We are all reminded of families like the Gannons, where the spirit of giving and of serving the community is passed down from generation to generation. We are reminded that you are never too young to make a difference.

Patrick is an inspiration to me, and I encourage my colleagues and all those who are listening to follow his example by donating to a local food pantry, by starting a Cereal Night in your own community, and by spreading the word about this simple effort that can mean so much to a neighbor in need.

My thoughts and prayers go out to Jackie's family, including Patrick, her husband, Bill, and their younger son, Liam, as well as her friends and all those who mourn her loss.

RECOGNIZING THE IMPORTANCE OF PAH  
AWARENESS

Mr. Speaker, I start a second statement, which is equally inspiring.

I consider it a privilege to recognize and commend the extraordinary efforts of a young man named Matt Moniz. This 11-year-old from Boulder, Colorado, scaled three of the world's seven summits in order to raise money and awareness for his best friend, Iain Hess, who suffers from Pulmonary Arterial Hypertension, or PAH.

PAH is a rare, progressive disorder characterized by abnormally high blood pressure in the pulmonary artery—the blood vessel that carries blood from the heart to the lungs. For people living with PAH, like Matt's friend, Iain, the simplest of daily activities can cause shortness of breath, dizziness, fatigue, chest pain, and swollen legs and ankles.

As an experienced climber, Matt is very familiar with these symptoms, which can often affect climbers at high altitudes; but while Matt knows that he'll be fine as soon as he descends the mountain, there is no known cure for those who suffer from PAH. It's a life-threatening disease that can cost thousands of dollars a month to treat. In fact, Iain's medical bills run more than \$100,000 a year. Right now, Iain's family is fortunate to have health insurance that absorbs much of the cost of his care. However, they are all too aware that Iain may soon reach the lifetime limit of his coverage, leaving them no choice but to pay for the care themselves.

That's why, Mr. Speaker, by the way, it is so important that we pass national health insurance that this House passed just a short time ago.

Equally cognizant of difficulties that Iain and his family face, Matt decided to do his part to help. In a noble act of true empathy and friendship, Matt Moniz joined his family and friends in a campaign to climb 14 of Colorado's 14,000-foot peaks in 14 days, covering a total of 42,020 vertical feet and 71 miles. This, in and of itself, would have been an incredible feat, but this extraordinary young man accomplished it in 8 days. His goal was to give each climber a firsthand sense of a typical day in the life of a patient living with PAH while simultaneously raising money to ease the financial burden for his friend Iain and his family.

Well, on Saturday, July 18, 2009, Matt and his fellow climbers completed this extraordinary endeavor, raising a total of \$20,000 for the Iain Hess Breathe Easy Fund and the Pulmonary Hypertension Association. Of course, he could not have accomplished this amazing task without the love and support of his father, Mike, of his mother, Deidra, and of his twin sister, Kaylee—all of whom took part in the climb—as well as Iain's sister, Olivia Hess, and numerous other friends, family, sup-

porters, community partners, and sponsors.

Mr. Speaker, Matt's compassion and tenacity exemplify the best of who we are and what we aspire to be. Matt is in the audience today with his family. I want to applaud Matt for his extraordinary effort, and I look forward to supporting his campaign to raise awareness of PAH so we can work toward a cure for everyone so that everyone can breathe a little easier.

ANNOUNCEMENT BY THE SPEAKER  
PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind Members not to make reference to those sitting in the gallery.

THE DEMISE OF THE AMERICAN  
ECONOMY AND THE ROAD TO SO-  
CIALISM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, I get a big kick out of listening to the colloquy between the leadership people every week when we come to the end of the week and we start talking about the program for the following week. If I were an American citizen, sitting at home, watching this, I'd be so confused about what's going on. So I felt compelled tonight to come down here and just talk a little bit about what's going on so my colleagues back in their offices—and if anybody else is paying any attention—can really find out what's going on in this place.

This last fiscal year just passed. We went in the hole \$1.4 trillion. So far, this fiscal year, in 2 months, we're ahead of last year's fiscal year. We were \$1.4 trillion in the hole this last fiscal year, and we're already ahead of that this year. The health care bill that is pending in the Senate is going to cost between \$1 trillion and \$3 trillion—probably closer to \$3 trillion if it passes. We passed an omnibus spending bill yesterday that cost \$447 billion. Now, these aren't millions. We are talking about billions and trillions. The cap-and-trade bill that they are talking about, which is going to raise everybody's electric bills and gasoline bills and gas bills to heat their homes, is going to cost \$894 billion.

We are digging ourselves into a hole that is unbelievable. Yet I hear my colleagues on the other side of the aisle saying, You know, we're going to create jobs; we're going to solve these problems; everything is coming up roses. It isn't.

I talked to some of the pages in the back today, young people who are out here who are getting a chance to see how Congress works. I actually feel sorry for them because we are creating

an environment where, when they grow up and get out and get a job, they are going to be faced with very high inflation and with very high taxes. There is no way to pay for all of the things we are doing the way we are going. There is just no way.

With Medicare and Medicaid, Medicare is close to being bankrupt. On the other side, they are talking about lowering the age to 55 of the people who can become participants in Medicare. That's another 30-some million people they want to add to it, and it's supposed to go bankrupt in the next 3, 4, or 5 years. I mean it just does not make sense.

In addition to that—and these are all facts—they want to increase taxes, and they want to let the tax cuts we passed in about 2001 expire, which means that's a tax increase. If they expire, then taxes are going to go up, so they are going to raise taxes that way as well.

They talk about jobs and the economy. Taking money from the taxpayer and throwing it at the economy is not working. They tried that with the stimulus bill—over \$1 trillion, when you include interest—and the jobless rate went up to 10.2 percent. The President said before he took office that he wouldn't let it go above 8 percent. Now they're bragging because it's back down to 10 percent, and it's probably going to go up again.

You can't create jobs with government money and by throwing money at it. You've got to do something to stimulate the small business man and the private sector. The way you do that is the way Ronald Reagan did it.

You come in, and you say to the businessman, Okay. We are going to cut your taxes so you can keep people on the payroll and can hire people and can produce more product.

You say to the consumer, the guy who is working, We're going to cut your taxes. You'll have more money to go out and buy a refrigerator or a car or something else.

Because of that, you create a demand economy. You start creating people wanting to buy things. Producers are going to produce things. You're going to have more people working because you're going to need people working to produce those things. That's what Reagan did, and we had 20 years of economic growth. They're doing just the opposite right now.

Right now, this administration and the Democrats in Congress are taking over the automobile industry. We all know that. They are trying to take over the health industry with socialized medicine, which is one-sixth of our economy. They are trying to take over the energy area, which is going to raise everybody's cost of electricity, gasoline, and gas with a cap-and-trade bill. They are trying to control completely the financial industry—the banks and Wall Street and everything else.

Socialism simply does not work. Blowing taxpayers' money like we are doing does not work. We are creating an environment right now where we are going to see real economic chaos, and I believe everybody in America feels it. When I go to my town meetings and have 500 or 600 people show up when we used to have 40, they feel it. They know what's going on, and they want government to get out of the way. They want jobs created, but they know that it has to be created through the private sector. Government can't give unless it takes, and it is taking and taking and taking and taking.

So I would just like to say to my colleagues back in their offices and to anybody else who pays attention—and if I were talking to the American people, I'd say—Call your Congressmen and Senators, and tell them to stop this madness.

□ 1530

#### HONORING RUTH TIGHE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the Northern Mariana Islands (Mr. SABLON) is recognized for 5 minutes.

Mr. SABLON. Mr. Speaker, here is a worthy New Year's resolution. "Try to remember to praise people at the time of their praiseworthy performance, instead of years afterwards, or, as is often the case, after they've died. We should let people know that we appreciate them, that their efforts are noticed, while it still makes a difference to them." These wise words are from the pen of Ruth L. Tighe, citizen, librarian, environmentalist, community activist, and newspaper columnist in the Northern Mariana Islands.

I would like to take Ruth's advice and not wait for the new year by telling Congress about Ruth Tighe herself. She is a person whose efforts have been noticed and noteworthy for more than three decades in the Marianas. She has made a difference, and I want her to know how much she is appreciated.

Even before arriving in the Mariana Islands, Ruth was living a remarkable story. Born in Germany in 1931, Ruth emigrated to the United States with her family in 1934. She grew up in upstate New York, became a naturalized citizen and worked her way through school, eventually earning a master's in library science from Columbia University while raising five children as a single mother.

It was as a professional librarian that Ruth came to our islands. She was there to help the people of Guam, the Northern Marianas and the Trust Territory of the Pacific Islands prepare for the first-ever White House Conference on Libraries and Information Science held in 1979. Ruth fell in love with the Pacific and soon returned, working for

the Marianas Department of Education. She has trained school librarians and raised public awareness about the importance of reading and enriching the quality of our lives.

Ruth eventually turned from managing the written words of others to writing her own. She became a reporter and editor of one of the Marianas newspapers. She also established her signature column, "On My Mind." Over the course of her many years of commenting on island issues, Ruth has always strived to be fair, objective, informative and entertaining. Judging by the popularity of her column, today a much-read and respected blog among people from many diverse backgrounds and walks of life, I believe she has succeeded.

Never afraid of challenges, at the age of 50, Ruth took up scuba diving and has since accumulated a record of over 400 dives. Enamored with the rich coral reefs and colorful marine life Ruth encountered under water, Ruth became a fierce defender of all the natural environment. She has advocated for the protection of coral reefs and native forests, stricter clean-water regulations, the cleanup of PCB contamination in the village of Tanapag, protection of the historic Sugar Dock Beach, and the creation of the national marine monument in the Northern Mariana Islands. Ruth has drawn others to the cause, helping form several community-based environmental groups, including the CNMI Organization For Conservation Outreach, Beautify CNMI, the Friends of the Monument, and the Mariana Islands Nature Alliance.

Here is another familiar view of Ruth. Approaching the microphone at a public hearing and introducing herself, Ruth Tighe, citizen. Through her writing and through her own active participation, Ruth has been an advocate for good governance and a model of informed citizenry. Always, Ruth offers constructive solutions that seek to benefit the islands and all the people, rather than her own personal or professional gain. Among many causes, Ruth has campaigned for the advancement of women's groups, a transparent and accountable government, and a more humanitarian approach to immigration and labor reform.

Ruth's weekly column and other writings have also helped foster and strengthen our sense of community. Often this takes the form of praise to people and organizations in the Marianas for jobs well done, including resourceful teachers, local newspapers for insightful reports, businesses that provided excellent customer service, community volunteers, and numerous individuals who wrote articulate columns or letters of their own.

I feel glad to be able to turn the light back on Ruth herself for the praiseworthy person that she is. Today Ruth is valiantly battling cancer of the lung, successfully, it would appear.

But I want to take her advice and say loud and clear, and on behalf of the people of the Northern Mariana Islands, thank you, Ruth Tighe, for all you have done, and, we pray, will continue to do for years to come to make the Northern Mariana Islands a wonderful place to be.

#### NOVEMBER MASSACRE IN PHILIPPINES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. SCHIFF) is recognized for 5 minutes.

Mr. SCHIFF. Mr. Speaker, I rise today in support of Mr. BERMAN's resolution, H. Con. Res. 218.

On November 23, 57 people were systematically massacred in the southern Maguindanao Province of the Philippines. The massacre is considered the deadliest election-related attack in the country's history.

Reports have alleged that the massacre was a planned ambush by the Ampatuan clan on a group of journalists and family members of supporters of a gubernatorial candidate, Ismael Mangudadatu. The group was traveling through the Ampatuan township in a caravan to the provincial capital to file candidacy documents on behalf of Mr. Mangudadatu. The 57 victims were covered in a mass grave only a day after they were killed.

Mr. Mangudadatu, the gubernatorial candidate, has stated that he believes it was clear the attack was planned because the huge hole that acted as the mass grave had been dug before the attack.

The Ampatuan clan is one of the most politically powerful in the region and has ruled the impoverished Maguindanao Province since 2001 with brute force and intimidation. The Ampatuans are notorious for running a large pro-government army, which include many militiamen who serve as an auxiliary force to the military and police when battling insurgents in the region.

Andal Ampatuan, Jr., a local mayor and son of the provincial governor, is believed to have ordered the killings and has been charged with 25 counts of murder. He turned himself in late November.

Philippine President Arroyo declared November 26 a national day of mourning and said, "This is a supreme act of inhumanity that is a blight on our nation. The perpetrators will not escape justice. The law will hunt them until they are caught."

I hope President Arroyo stays true to these words. However, the Ampatuan clan is strongly allied with President Arroyo, and human rights groups are concerned that this relationship could hinder an impartial investigation. Additionally, human rights groups and democracy advocates are concerned

about a recent decision President Arroyo made to declare martial law in the region, arguing she lacks the constitutional authority.

Mr. Speaker, as the co-Chair of the Congressional Caucus for Freedom of the Press, there is another element of this attack that is particularly distressing to me. Of the 57 killed in the massacre, 30 were journalists and media workers. According to Reporters Without Borders and the Committee to Protect Journalists, this is the deadliest known attack on journalists in history.

Information is power, which is precisely why journalists far too often become targets for groups like the Ampatuan clan. A free and independent media provides the nourishment for democracy to thrive and grow and expose corrupt factions like the Ampatuan clan. Citizens rely upon credible, accurate information from the media to make informed decisions and hold their leaders accountable. Reporters and editors who demand reform, accountability, and transparency increasingly find themselves at risk. The censorship, intimidation and murder of these journalists are not crimes only against these individuals; they also impact those who are denied access to their ideas and information.

Mr. Speaker, we cannot let these crimes go unpunished. We need to shine a spotlight brightly on the Philippines until those who are responsible are brought to justice. President Arroyo needs to sever any ties she has with the Ampatuan clan and should request an independent investigation by the Philippine National Bureau of Investigation. For far too long the Philippines have suffered from the plague of corruption, impunity, and violence, and it is time for the international community to demand reform.

November 23, 2009, was a sad day in the history of Philippines and a dark day for press freedom. I was proud to support the resolution's passage, which puts the United States on record as condemning this atrocious act and sending our condolences to the families and friends of the victims.

#### WE ARE LOSING OUR FREEDOM IN THE UNITED STATES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from California (Mr. DANIEL E. LUNGREN) is recognized for 60 minutes as the designee of the minority leader.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, earlier the majority leader, in his dialogue with the Republican whip, stated that perhaps the reason that Republicans were relieved of their responsibility of being the majority in the House of Representatives was because of the substance of legislation considered at that time, rather than procedure.

Well, I am not going to quarrel with the majority leader, but I would like to change our debate from the past to the present and the future. I would like to examine some common themes that are running through the substance of the legislation that has been presented on this floor during this year.

I might say that my desire to have this hour today was prompted by a discussion I had with a member of my constituency, a woman living in my district, who came up to me at my last town hall meeting. As we were wrapping up the meeting and after I had spoken with a number of individual constituents, I was starting to leave the room when this woman, somewhat older than I, came up to me, and she had tears in her eyes and she literally began to tremble as she began to speak to me. What was noticeable immediately was that she spoke with a heavy Eastern European accent.

She explained to me that decades ago she had had the opportunity to escape from a communist country and come to this country for the freedom that it allowed her. She said, with tears in her eyes, Mr. Congressman, please help us stop what's happened. She said, I fear that we are losing our freedom here in the United States and that my children and my grandchildren will not have the same freedoms that I came to this country for. She also said that she had recently visited friends in Europe, and she said, Mr. Congressman, they are laughing at us. They are seeing us give away our freedoms in this country. Please don't allow that to happen.

I thought that it might be important for us to, on this occasion, pause for a moment and think about what that means. What do we mean when we talk about freedom in this country? What was this concept of freedom or liberty? How was it understood by our Founding Fathers? Well, the best way to try and figure that out, I would suggest, is to go to what we call our founding documents, the primary of which is the Declaration of Independence.

In the second paragraph of the Declaration of Independence it says these words, We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and to institute a new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to affect their safety and happiness.

□ 1545

Words that many of us have read as we have studied them in school, perhaps not studied them enough. These words are not that difficult to understand. Their meanings are not that difficult to ascertain. "We hold these truths to be self-evident": It means that they are easily understood. By applying reason, we can see that these truths exist, not just for us but for all people who have the capacity to reason. The first thing they say is that "all men are created equal." Of course, they meant that in the universal term, that all individuals are created equal.

"That they are endowed by their Creator with certain inalienable rights." Now, the revolutionary aspect of that simple statement was this: Prior to that time, organized governments appeared to suggest that the rights that people had were not given to them by their creator; that is, they did not find themselves within individuals. Rather, all rights were those invested in the government, usually the majestic monarch, who, if they had a religious belief, it was that the monarch had a direct relationship with God far more direct than the individual, and that therefore the monarch decided what rights were given to the people. In other words, individuals only had rights at the sufferance of the government. The revolutionary aspect of this Declaration of Independence was not only that we were declaring our independence from the mother country but we were basing that declaration on self-evident truths that we as individuals had rights given to us directly by our God. This was a transformation of the then traditional thought that the individual was subservient necessarily to the state.

And we went further in this statement, our forefathers did. That is to declare some of those unalienable rights to be life, liberty, and the pursuit of happiness. And then interestingly in this Declaration, our Founders thought it important to say this: "That to secure these rights, governments are instituted among men." Not to obtain these rights because the rights already exist. To secure these rights. Government is to be put in a place of protecting those rights that already exist, not to give us those rights. Now, this is revolutionary because it established a relationship in which the people essentially rule. And that's why it said further that governments are instituted among men—meaning men, women, and children—among all, deriving, that is, the governments, their just powers from the consent of the governed. In other words, once again it is the notion of limited government, a government limited in its power only by that which is given to them by the people and the people only give up those rights which they voluntarily decide to give up. And then, of course,



when we get to our Constitution, the actual legal document which underlies all of the laws of the United States, it begins with these words:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

In other words, if you look at the operative parts of that opening sentence, it is "we the people of the United States" do ordain and establish the Constitution for the United States of America. "We the people," not the government. We're forming the government and we're establishing the contract which then exists between ourselves and our government. And it very clearly states, as informed by the Declaration of Independence, that our independence comes as a right essentially of natural law. They didn't have any trouble saying "Creator" with a capital "C." Now, this doesn't mean that rights in this country are not acknowledged among people who don't believe in God, but what it means is our foundational documents presume that we have rights given to us directly by God.

One would think, therefore, that under those circumstances when we the people decide to establish a governmental structure that that is a blueprint for majority rule, and in most cases that is true. But one of the other intriguing and important aspects of our Constitution, as amended by the Bill of Rights and the other amendments, is that the majority voluntarily restricted its majority rule in specific instances. We in some ways specifically said the majority rule will be limited so that minority rights in certain specific instances may exist. So in some ways you can say that the Constitution and the amendments put a restriction on democracy. It limits democratic practices. It limits our ability as free individuals to collectively make a decision as to our governance. But we accepted that. We volunteered that on our own.

Why do I bring that up? I bring that up because essentially if we're going to follow the Constitution, it means all branches of government must follow the Constitution and it means that we ought to be concerned if we have a court that presumes to trespass on the appropriate areas of responsibility that we the people did not give away or restrict but retained to ourselves and therefore allowed for decisions in the future to be made by majority rule. That's why it's important for us to understand that while the Congress has a role, the President has a role, and the courts have a role, none is truly superior to the other.

There are certain areas in which we are given primacy of responsibility. Here in the Congress we're responsible for legislating, the executive branch for executing, and the judicial branch for deciding in some ways proper interpretation of what the legislative branch has said or rules and regulations that the executive branch has promulgated. But just as importantly, if our courts are going to not unnecessarily interfere with our freedom, the courts should apply what I call "legal humility" and understand the limitations of their ambit of authority. And if they trespass into those other areas, they by that act take away from our individual freedom. Why? Because they then arrogate to themselves decisions that were to be left to the people. And if, in fact, they say they are doing it on a constitutional basis, they are saying, from our decision, there is no appeal; we are the ultimate decider.

Now, to put it in simpler terms, one time, and I believe I was watching television when I saw this, I heard Justice Scalia attempt to explain this problem in this way: He said when he was a kid and you saw a problem, you saw something you didn't like, you saw something that ought to be changed, he said you would say "There ought to be a law." He said, unfortunately, now today all too often when people see something they don't like, see something that ought to be changed as far as they're concerned they say, "Oh, it's unconstitutional."

Now, those two different statements convey a tremendous difference in substance. On the one case if you say, I don't like what I'm seeing, there ought to be a law, you say the legislative process, the democratic process, people by way of persuasion and ultimately by vote either directly by the people, and in my home State of California we have some direct votes by way of initiative, or by our representatives, which is normally the case, either in our State legislatures or here in the Congress, you make an appeal to attempt to persuade a majority in those bodies to your position, and that's how you change law. Too often people give up on that process and attempt to try to say that their particular problem is uniquely a constitutional problem and that that problem, therefore, is so important it can only be decided by way of reference to the Constitution and the final arbiter of the Constitution is the Supreme Court.

In one case in California in the Ninth Circuit, and I'll paraphrase this because I don't have the words exactly in front of me, a judge on the Ninth Circuit in dissent said that because something is important does not mean it is constitutional. And he went on to say it would seem in our scheme of government it should be just the opposite way, that most important questions would be decided by the people because

we're a democracy and that under only exceptional and limited circumstances would they be decided by the courts as something constitutional.

But what have we done here in this House this year with respect to the freedoms? What, in fact, was my constituent saying to me, what was that lady saying to me, about her fear that we're losing our freedoms? Well, I could engage in a conversation with her about my concerns over where the courts have overreached. I believe she was directing me to those subjects that we have been discussing here and voting here on this floor and in the Senate, in the other body, on matters of substance, the debate of which rarely includes a discussion of freedom.

Let me just take one to start with: The health care bill that was on this floor and the provisions of a health care bill or bills that are being considered in the Senate. One of the rarely remarked-upon elements of that bill here, or the bills over in the Senate, is the mandate on the individual whereby it states that as a condition of remaining in the United States as a legal person in the United States, you must purchase health insurance as determined by the Federal Government on a yearly basis.

Now, the argument has been made that, well, we have a problem with health care in this country. Some call it a crisis. I would say that I know of no one who wants us to maintain the status quo. The question is, what is the proper response to the challenges we have? But some have said if you're going to look at this from afar or systematically, what you ought to do is to require everybody to have health care insurance.

Well, that might be an interesting idea. But we have a sense of limited government established in the Constitution of which I spoke before, and the idea that government is limited is essential to that understanding of freedom. And I look in vain in the words of the Constitution to find anywhere that I am charged with the authority as a Member of this body and working with other Members collectively in this body to say that an American may not remain an American unless or until he or she purchases the insurance that I deem they must have and that I could change from year to year to year.

□ 1600

Not only that, I see nowhere where it says that I can enforce that obligation by way of threat of fine or jail sentence, and that is what happens in the bills that we have had before us.

And my question is, as much as I want us to solve the problems inherent in the current health care system, I run up against, with all due respect to the former Vice President of the United States, what I consider to be the real inconvenient truth. It is called

the Constitution. It doesn't allow us to do everything that we would like to do. It doesn't allow government to take all of the money or to take your freedoms away or my freedoms away when it is convenient. We have to do it within the context, within the four corners of the Constitution of the United States.

Now the President of the United States in his address to the Congress said, well, this is similar to having auto insurance. It is not, Mr. President. And to those who have argued that on this floor, I would say it is not. If you have ever been involved in cases involving cars, automobile accidents, and insurance coverage, et cetera, you know that we do not have a right to drive on the public roads; it is called a privilege. You can condition a privilege. The other thing is no one has an obligation to have a car. If you choose not to have a car, you don't have to have car insurance. If you keep your car in the garage, you don't have to have car insurance. If you keep it on display in your house, you don't have to have car insurance. If you have a farm or ranch and you never put it on a public road, you don't have to have car insurance. Why, because you are not on the public roads upon which it is a privilege to drive, not a right.

My right and your right and the right of anybody in this Chamber or any of our constituents to exist in the United States as a legal person should not be conditioned on some obligation that we in the Congress decide. Oh, we think it is a good thing for the overall system that everybody must have health care; therefore, we are going to require each person to have it, and if you don't have it in exactly the form we say, you are going to be fined, and if you don't pay the fine, you can be sent to prison. If we say that on this particular part of our life, where does it end?

There has been very little talk about freedom when we talked about the cap-and-trade bill, and yet we know it is going to impose tremendous taxes and a regulatory regime on virtually everything we do. When you turn on your light switch at home, when you turn on your computer, when you pick up your telephone, when you walk out the door, when you get in your car, when you drive your car, when you go anywhere, the costs are going to be enormous. One of the dirty little secrets around here is that they hope we won't notice because they will be hidden costs. You are not going to be presented with the cost every time you turn on your light switch, but it will be embedded in the cost that you pay on a monthly basis. It is not going to affect you each time you turn on the car because they are not going to put a bill in front of you every time you drive your car, but every time you get gasoline, you will. Any time you use anything that is energy related, you are going to pay a penalty, essentially, for using that, and

that determination will be made by the Federal Government.

But that was not enough for some. No, last week, or was it earlier this week—I forget now—the EPA administrator made an endangerment finding on CO<sub>2</sub> and other greenhouse gases as being pollutants. Now, you and I could sit down or others could sit down and argue about how we would define pollutants, but there is no one who can rationally argue, in my judgment, that the Clean Air Act, there was any anticipation by those who voted on it in the House or the Senate that this would include such a determination by the EPA administrator, and that as a result, the EPA administrator would be in the position of regulating our lives to the extent that he or she will have in the future.

When you realize what this regulatory regime is going to be, they are telling us that if your Congress—that is, your legislators, and I am talking about generally if constituents would be told this—that your elected officials as legislators make the decision not to eventually pass cap-and-trade and give that authority to the Federal Government, it will not matter because the EPA has, by administrative decision, taken that out of the hands of the Congress and now will decide it themselves.

So, therefore, and I believe that many Federal employees are wonderful people attempting to do the job as they see fit, but nonetheless, in many ways they are faceless bureaucrats who are not responsive to people at town hall meetings, who do not have to go before the people for reconsideration or vote every 2 years as those in the House do, or every 6 years as those in the Senate do. In other words, they are part of the executive branch, and in administering, they are at least another arm's length away from the people that are supposed to be free in our Nation. And so we are being told by some, that unless we in the Congress follow what they want us to do in the executive branch, they will take a command and control authority themselves and do even worse than we would do, so, therefore, we better act.

Now, I don't know what you call that. There are a lot of words that come to mind, but "freedom" is not one of them.

We also hear that Members of this body, including the Speaker, are desirous of attending the Climate Change Conference in Copenhagen. It used to be called "global warming." It is now called "climate change." Many people have questions about global warming. You can't say there is not climate change, because that is one thing we can all agree on. Climate does change. That certainly doesn't help us understand what the nature of the climate change is and the cyclical nature of the climate change and the natural part of

the climate change versus the man-made part. In fact, we have been told by some, including the former Vice President, that we have no right to question it.

I don't know, Mr. Speaker, what you were taught when you were in school, but I was taught that science is the continuing activity of questioning, that science is attempting to pursue certain truths in the natural world, and the only way you can determine those is by constantly putting up your proposition to peer review, if you will, and questioning and that skepticism is a good thing; not cynicism, but skepticism. And yet we have been told that we are not allowed to question it, that all of the questions have been answered and that, therefore, we should genuflect to this current notion of the scientific determination and, in essence, take the normal sense of politics in the best sense, that is, I mean, individuals through their power at the ballot box, to be able to make determinations as to how they wish to be ruled in this, a self-governing Nation.

But we have been told, no, if we do that, we are selfish. In fact, the newly elected leader of the European Parliament announced that number one on his hit parade was to make sure that they had some sort of schematic achievement at this Copenhagen Conference, and in explaining it he used the term "global governance" at least three times; global governance. Interestingly, because I believe the former Vice President of the United States, in speaking to a group in London on the day that this House passed cap-and-trade, announced to that august group that this was a great triumph for what they were working on because it was the first real step toward global governance.

I do know one thing about our Founding Fathers, the Founders of this country: they were not about global governance. They were not about the idea of a powerful, deciding force across an ocean ruling their lives. As a matter of fact, the essence of the revolution was casting off the authority of the mother country and allowing us here, in what became the United States, to be involved in a process, an experiment in self-governance that continues to this day.

So when I hear the term "global governance," I get worried. I get worried because I think the Founding Fathers of this country would have been worried. Global governance suggests an authority somewhere up there with a global perspective that is somehow considered superior to our ability to govern in our country, in our State, and at the local level.

And if we accept that argument, it seems to me that we reject the notion of federalism that is at the base of the protection of individual rights in this country. Some people have said or

made the observation on more than one occasion that Congress appears to be an inefficient institution involved in an inefficient process. Well, you know, that is right. And in some ways that is a direct result of the Founding Fathers who believed that in order to avoid the fads of the time, that they needed to have a system of checks and balances which sacrificed efficiency for the protection of freedom. That is, they thought that a government further away from you and more powerful than you and individual institutions closer to you could do more harm overall than a decision made by an individual or by a family or by a group where that wrong might be confined to just that individual, that family, or that group. So they believed that in order to protect against the overreach, the mistakes of a government that could have overwhelming power, they would try and defuse that power and promote the idea of numerous different entities recognizing what some call—and it is called, actually, as a matter of Catholic social policy—the principle of subsidiarity. That essentially means that decisions ought to be made by the individual when he or she can make them; then an individual within the family; and then an individual or family within or surrounding what are known as mediating institutions, voluntary institutions, churches, voluntary associations, clubs, neighborhood groups, and then government, but government at the closest level, meaning local government, then county government, then regional government, then State government, and then Federal Government.

The interesting thought there is not only does it protect the freedom of the individual, but in most cases it creates a more vibrant society, because all parts of that society, beginning with the individual, contribute to the vitality of the society because they, in fact, themselves, are vital to that community. It is a notion that local government is important.

□ 1615

I mean, if you look at Tocqueville's tremendous work about this country in the 1800s, he talked about us being a country of joiners, a country of voluntary associations, a country of churches. And he likened this new America to the old Europe, or he contrasted this new America to the old Europe, and suggested that America was different, and America had a future that was different than what Europe had precisely because of the recognition of the worth of the individual and all of these institutions that protected the individual from the overwhelming power of the government but also created a more vibrant society as a result of this activity.

And yet, if you're looking at cap-and-trade, if you're looking at the EPA

endangerment finding and the consequences of that, if you're looking at the hopes of the people at Copenhagen who wish they had global governance, it moves us in the other direction.

What other decisions have we been making that may impinge upon the freedom of the American people? Well, you know, when you talk about taxes, you're not just talking about taking money out of somebody's pocket; you're talking about when you take money out of your pocket, they may have less money to do something that they, in their own individual lives, believe is best for them or best for their family or best for their church or best for their association or best for their local government, as opposed to the Federal Government.

And too often, we have been told that it's un-American to pay low taxes. In fact, I believe in the last election in an interview, the current Vice President of the United States said something to the effect that it is American to pay more taxes. The Supreme Court has said you're not obligated to pay any more taxes than you're legally required to. If you want to voluntarily give money to the government, that's fine.

Why would the court say that, and why would that be right? Because taxes are an involuntary taking from an individual to the government. Don't get me wrong—I don't think taxes are unnecessary. They are necessary. But I think we have a legal and moral obligation as protectors of the freedom of the people to not exact from them anything more than is absolutely necessary to do the proper functioning of government. Because if we do more than that, we are taking some of the freedom of the American people away.

Similarly, in the area of spending—as well as in the area of debt, and perhaps even more in the area of debt because that not only impacts us today as individual members of this society, but that impacts our children and our grandchildren and children still unborn in terms of their ability to be able to live their lives and to have the free expression of their talents in such a way that they may make contributions to this world and that they may be free men and women.

And so the—I will use a legal term—the gravamen of my argument tonight or this afternoon is that my constituent who fled from communism in Eastern Europe to this country decades ago for the freedom that this country allowed her and the fear that she's expressed that we're losing some of these freedoms is not a wild notion on her part but is in fact a significant concern that has a reasonable basis. And that we in Congress have an obligation to listen to people such as my constituent who said, Please don't take our freedom away.

We rarely hear freedom spoken of on this floor, and we rarely hear it spoken

of in the context of the legislation that we have before us. But we should understand. If we genuflect to an overweeningly powerful government, we are essentially changing the relationship that exists between those of us as individuals and our government as understood by our Founding Fathers in the Constitution.

And I would stand with Abraham Lincoln when he said that the Constitution can only be properly understood as informed by the words of the Declaration of Independence. And the words of the Declaration of Independence, once again, tell us that we hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men.

Not that government gives us these rights; government is supposed to protect those rights, secure those rights, those rights that we, through rational perception, can determine—our God-given natural rights.

I would hope that we wouldn't believe that those are just old-fashioned words, but those are in fact guiding lights by which we make our decisions here on the floor of the House, or that we ought to throw away or cast aside comments made by our constituents indicating to us that they fear we may be losing our freedoms. That is not a panic attack by someone. That's not an act of delirium. Rather, it is a deep-seated concern that I think we should follow advisedly.

And Mr. Speaker, I would just hope that as we go forward with the remaining days of this year, and as we approach next year, that as we look at something as important as health care, we try and say, how do we deal with the challenges that exist in health care without subverting the sense of freedom and liberty that is contained in the Constitution? We can do it; we just have to think again. We can do it because we know generations that have gone before us have reached their challenges without in any way violating our Constitution but rather working towards securing those liberties that are recognized in our Constitution.

And my friend from Texas, would you like me to yield to you?

Mr. GOHMERT. I appreciate my friend's point. I have been listening, and I have been very moved by the words from my friend from California.

When you think about, as my friend from California pointed out, the Constitution and the words "We the people of the United States, in order to form a more perfect union," then it says "and to secure the blessings of liberty to ourselves and our posterity," and you look at the 1,990 pages in that health care bill, and you realize, as my friend pointed out, you're going to require people to purchase a policy just

to live, and do it under the guise of helping them. When you read the bill, you find out if you're just above the poverty level in that bill, but you don't make enough money to buy the Cadillac policy required in that law, then we're going to add an extra 2½ percent income tax to you just to live in this country.

And as my friend pointed out, so often we've heard the President talk about, Well, you have to buy car insurance. I would challenge anyone to find a State in this country that requires any individual—because there isn't one—requires any individual to purchase insurance to protect his or her own car for damages to his or her own car. No.

Every State requires you to buy insurance against hurting another individual or property. It does not require you to buy insurance even to have the privilege to drive. As my friend pointed out, it is a privilege, but just to have that privilege they don't make you buy insurance to protect your own car. No. They make you buy it to protect somebody else in order to enjoy that privilege.

And then we've heard so many people here say, We're worried about the jobs, and that's why we've got to pass climate change. And we have people come one after another to the floor and say this will not cost jobs. This is going to help people. It's going to provide green jobs. And what that said to everyone who has read the bill, when they heard someone say "this bill will not cost jobs," what it said is they didn't read the bill, because if you read over past 900, between 900 and 1,000, there is something created called the—I believe it's the Climate Change Adjustment Fund, and it says very clearly in there it is designed for those who lose their jobs as a result of the climate change bill.

And so, they obviously didn't read that.

Mr. DANIEL E. LUNGREN of California. If the gentleman will yield.

Mr. GOHMERT. Yes. Certainly I'll yield.

Mr. DANIEL E. LUNGREN of California. In other words, the bill anticipated a loss of jobs and creates a specific fund to reimburse people or to subsidize people or to in some way help those people who lose their job as a result of the effects of the bill.

Mr. GOHMERT. That's right. And it's going to have to raise taxes and raise costs for everything else in order to create the fund to pay the people that lose the jobs as a result of the bill.

And there's other good news in there for Members of Congress, though, that voted for the bill—and it seemed a little self-serving to be in there—and obviously the people who said it wouldn't cost jobs just hadn't read the bill, but whoever's staff member or special interest group wrote that bill, they knew people would lose their jobs.

But then also the fund is created to provide relocation allowances for those who lose their jobs to try to help them move to where their jobs are going. Unfortunately, it will not provide money for you to go to China, India, Argentina—the places where the jobs will really be sent if this bill becomes law.

But that bill provides a self-serving aspect because I know in my heart, having read that bill, that when people across America get those huge energy bills that result from the cap-and-trade bill, when they start getting those bills, they're going to be so mad. They're going to vote Members out who voted for that bill, but the good news to the Members is when they lose their job as a result of this bill, they may be entitled to a relocation allowance and subsidies for losing their jobs as a result of the bill.

Mr. DANIEL E. LUNGREN of California. If the gentleman will yield on that.

Mr. GOHMERT. Yes, I will.

Mr. DANIEL E. LUNGREN of California. One of the concerns we ought to have is making people more dependent on government. When you make people dependent on government, you necessarily take away some of their freedom. And that's one of the things that we ought to be concerned about here.

We know through every economic analysis that's available that the progenitor of jobs, the creator of jobs, the source of jobs in this country is the private sector. We know that more and more abides in the small-and medium-sized businesses.

And if in fact we were dedicated to creating jobs at this time, it would make far more sense to do what the gentleman suggested well over a year ago, that we suspend the payroll tax, that we suspend the payroll tax both from the employer and the employee, which would have the effect of having immediate income in the pockets of both employer and employee, and we would then trust the individuals.

Because employers and employees are individuals. We would trust them to make rational decisions in their lives which may just be better collectively than the decisions imposed on them by the Federal Government, where we choose winners and losers, and necessarily have to make political decisions with respect to winners and losers. And wouldn't that more quickly cause an impact on the economy on a positive side than waiting for whatever Congress and whatever administration decides finally in terms of distributing funds as they see it?

Mr. GOHMERT. The gentleman is so right. And it goes back to the beginning of the Constitution. That would go so much farther to secure the blessings of liberty. For, as they said, to ourselves and our posterity—posterity of the future generations.

But you go back to this atrocious health care bill that was passed,

there's even what's come to be called the wheelchair tax in that.

□ 1630

How is that going to secure liberty for anybody?

Mr. DANIEL E. LUNGREN of California. Is the gentleman talking about the medical equipment tax?

Mr. GOHMERT. That would be the tax.

Mr. DANIEL E. LUNGREN of California. I believe it's not only on wheelchairs. As someone who recently, well, 2 years ago, had a new hip replacement, I understand that I was lucky I had it then because under this bill, a hip replacement, like a wheelchair, would be considered a piece of medical equipment and there would be a tax placed on that. So for the privilege of being injured in some way and then receiving medical attention requiring a piece of medical equipment, you get the indignity of having a tax placed on you. Now I don't know what kind of a tax you call that. It's not a comfort tax. It's not a sin tax.

Do you remember when we used to call these taxes on cigarettes and alcohol "sin tax" because they were supposedly aimed at vices that people had? But it makes very little sense.

And here is the other thing. I had the tele-town hall the other night, and one of the people on the line said, well, why don't you just have a government program and why not just do it through the Medicaid system; expand it for other people to have it in the Medicaid system. And I said to her, well, how would we pay for it? Well, we just pay for it through taxes. And so I was reminded of that great quote by the French economist, Frederic Bastiat, who said many years ago that the state is that great fictitious entity by which everyone seeks to live at the expense of everyone else. Now what he was saying is when we create in our argumentation the idea of "state" without understanding what we're talking about, it is easy to say, well, the state can take care of it, or we'll just tax for it; where the suggestion is that somehow that comes from somewhere else. And if you got it down to the real individual level and say, at what point do I have a right to say to you that I can reach into your pocket and take money from your pocket to pay for something I want done?

Now I think we would all agree that there are those who can't help themselves, that we want to create some sort of safety net. But if the idea that we are going to have larger and larger percentages of the population have their needs or wants taken care of by the government because it doesn't cost them anything, at some point in time, we are going to reach that point of which Margaret Thatcher spoke, when she said, the problem with socialism is pretty soon you run out of other people's money. And it's even more than

that, because if you corrupt our system such that people forget to, well, people no longer understand how you generate wealth, rather than just redistribute wealth, you essentially create less wealth, you essentially put limitations that otherwise would not exist on creating new wealth that then can be utilized for individuals and their lives and, yes, to support government.

I think that is what we have to continue to remind ourselves, not necessarily remind our constituents, but remind ourselves because we are here making these decisions, that just as Ronald Reagan said, freedom is never free, meaning that we always have to have a commitment towards freedom on a military sense and people that would sacrifice, freedom is not automatically free in our own country. We have to fight for it all the time, and we have to remind ourselves sometimes that maybe we have to ask more of ourselves individually, in our own families, in our churches and in our voluntary associations to do more. And we ask more of ourselves and less of government, and then determine exactly those areas where we help people who truly can't help themselves and make sure that we have a true undergirding of our society to help those people. But don't basically damage the capacity of the American people to use their genius, use their creativity and use their dedication to try and utilize the talents God gave them.

Mr. GOHMERT. If the gentleman would yield, we have no better example of just what the gentleman is talking about than the pilgrims. There's a marvelous, huge mural down the hall in the Rotunda of the pilgrims having a prayer meeting with the Bible open to the beginning of the New Testament. And I know the gentleman from California's heart, and I know his Christian faith, and I know there are many of Christian faith here, and we don't try to push our religious beliefs on others, but you have to recognize what a part of our heritage they are.

Now, the pilgrims, being Christians, signed a compact, an agreement among themselves, because they thought we want liberty for everybody, but we're going to give that up, put that in a common pot, we're going to all own the land together, we're going to all bring into the common storehouse, and then we're going to divide equally.

Mr. DANIEL E. LUNGREN of California. How well did that work?

Mr. GOHMERT. It didn't work out so well. The first winter, nearly half of them starved to death. And as the gentleman from California points out, they came up with this incredible ability of the people in America to come up and innovate. They came up with this great idea. They said, okay, we nearly starved half the people out. What we're going to do from now on is we're going to divide the property up and give ev-

erybody their own private property, and then everybody works their own property; you're responsible for your own upkeep, and if you have some left over, it's up to you. You can give it away, you can sell it, you can trade it or whatever. Remarkably, that's where the liberties we derive came from. And when Jefferson said the natural course or progress of things is for liberty to yield and government gain ground, he knew what he was talking about. He knew our history.

Mr. DANIEL E. LUNGREN of California. It sounds as if they were talking about freedom or liberty with responsibility.

Mr. GOHMERT. That's it.

Mr. DANIEL E. LUNGREN of California. And I think we need to talk about both ends of it. If we are going to be a free people, we have to be a responsible people. If we are going to be a people who cherish freedom, we have to be a people who cherish responsibility. And we must ask of ourselves, each and every one of us, to be responsible in our actions, to understand there is something of the common good that requires something of all of us, but that if we, in fact, mistake that notion or misinterpret that notion such that we think that no longer are individuals free, and that only important questions can be decided by the Federal Government, and in the Federal context only by the Supreme Court, what we are doing is not only becoming dependent on others, in this case government, but we are undercutting the tremendous, as I say, vitality that this country has always had. And so we're not only cheating ourselves, but we're cheating everybody else, as well.

I think that every once in a while it is good for us to have a conversation on this floor about, some would say, huge concepts of freedom. I would say essential concepts of freedom, foundational concepts such as freedom, freedom which is spelled out in the Constitution and the Declaration of Independence.

And so, I would just hope that as we continue in the last days of this congressional year, and as we look forward to the next congressional year, that we not forget about freedom and that, in fact, as we try and meet the challenges of the present and the future, that freedom be our lodestar.

With that, I yield back the balance of my time.

#### WESTERN CIVILIZATION

The SPEAKER pro tempore (Ms. PINGREE of Maine). Under the Speaker's announced policy of January 6, 2009, the gentleman from Iowa (Mr. KING) is recognized for 60 minutes.

Mr. KING of Iowa. Madam Speaker, I appreciate the privilege of being recognized here on the floor of the House of Representatives. As I listened to the dialogue of my colleagues, Mr. LUN-

GREY of California and Mr. GOHMERT of Texas, I can't help but pick up a little bit where they left off.

I would like to address the situation of freedom, and then I hope to transition it into some other subject matters, all of them related to the subject matter that has been brought up by Mr. LUNGREN, who knows it well; and that is to propose a concept that's going on here that has to do with our western civilization. And as we studied western civilization, and maybe it has become a dirty word among the politically correct left, but it clearly has been a subject matter for hundreds of years in one way or another; and as we have watched what has happened across Europe and compare it to what happens here in the United States, there are those, especially on this side of the aisle, that believe somehow we're an appendage of the modern, forward-thinking, liberated, progressive Europeans who have become a social democracy and in many cases a post-Christian Europe.

I will argue, and I will to greater length, that we are a different country, that we're founded on Christian principles, Judeo-Christian values, and we've learned to assimilate people into this culture, but the foundation of our culture has been the law, the rule of law, and the values that flow from the religious foundation of the people that came here to settle this country. They are the ones that wrote the Declaration, they are the ones that wrote the Constitution, they are the ones that ratified it. And the core of the civilization remains the same.

I want to draw this comparison, this juxtaposition, if I might, Madam Speaker, and that is that in Europe for more than 100 years, they have had socialized medicine. It started in Germany under Otto Von Bismarck. He did so for a political reason. It wasn't necessarily a reason of what was best for the German people, it was how Bismarck was able to expand and strengthen his political base. So he looked out across Germany and decided that if he is going to pacify the people, if he is going to get loyalty there, he was going to make sure that everybody had what they will call free health care in Germany.

And so he, I will say, adeptly, as from a political perspective, was successful in passing legislation that established socialized medicine in Germany more than 100 years ago. And that was contagious enough that it was adopted by, by now every country in that part of the world. And the country that I pay the most attention to and look back on historically has been the experience in the United Kingdom. They had a higher level of freedom when they went into World War II. And of course, they were looking at their enemy more in the eye than we were. And Winston Churchill helped lead them through that time.

But in the aftermath of the all-out effort to expend every resource they had to preserve the British Empire, they also saw their economy with too much of a burden on it, and it was collapsing at the end of World War II. There were all kinds of stresses on it.

You can imagine, Madam Speaker, all the rebuilding that had to take place, the restructure of government, the lessons learned and the repositioning of assets, resources and conviction that takes place in a time of war. If you win the war, you don't undergo quite the changes as you do if you lose the war. But Great Britain was afraid their economy would collapse. And among the things that they did, just as we have knee-jerk reacted to an economic downward spiral here in this country and passed TARP legislation, \$787 billion in an economic stimulus plan—and I say “we” as this Congress, and I opposed those things—just as this administration, it actually started in the previous administration, began nationalizing huge economic entities in America, three large investment banks, AIG, Fannie Mae, Freddie Mac, General Motors, Chrysler, about one-third of the private sector profits in the United States nationalized because we have fear of failure. Well, the British had fear of failure in the aftermath of World War II.

And so one of the things they did to try to provide a safety net for people would be to adopt a national health care act similar to Bismarck's national health care act in Germany. And that's socialized medicine. They passed it in 1948.

I sat reading through the *Colliers* magazines, the yellowed copies of that just a few years ago, that had been saved for me by a World War II veteran that had watched this national health care in the United Kingdom pass. And the things that they predicted that would happen before its passage and implementation into law were the ones that came to pass within a year. The doctor said, we're going to have long lines, and I won't be able to treat all the patients with the care and the attention that I have in the past.

When the government sets the fee that you get for doing the work, and the people that are receiving those health care benefits don't have to pay for them, there's an overutilization of the service. It's human nature. It's kind of like former chairman of the Ways and Means Committee, Bill Thomas, said of the people that utilize Medicare the most in America. He said, well, the people there, they wake up in the morning and feel good, and since it doesn't cost anything, they go to the doctor to find out why. Well, some of that happened in Great Britain. And it has happened in Canada. It has happened all over Europe and most of the industrialized world except in the United States. Government supplanted

one of the responsibilities of the people; and there was less reason for people to be cohesive and hold themselves together. If you look across Europe, this post-Christian Europe that I've talked about, the churches that were built when there was a dynamic faithful force, and I will say prior to, during and post the industrial revolution, if you look at just the churches, just the edifices, the gothic architecture that's there, you can see there was a powerful force. That force has been significantly diminished. And I will argue that it has been diminished in a real part because the role of our faith, the role of our families, the role of communities pulling together, the nucleus of which were the places of worship, the churches, has been replaced by the government.

□ 1645

So if the government can provide you with all the health care that you need and your own personalized health insurance premium, which is advocated by the people on this side of the aisle—on the opposite side of the aisle, I want to make that clear for the record, Madam Speaker. If government can take care of rent subsidy and heat subsidy and give you a childcare credit—so pay you for the children that you have—and if the government can pay you for the earned income tax credit so if you don't make enough money they cut you a check for that, if the government can replace all that the churches did with the check that comes unwillingly from the taxpayer, when all of that happens, then people slow down their attendance or they stop going to church. They forget about the core of their faith. They forget about the reason of the blessings that we have, and slowly, society falls back to a dependency class that settles upon the government that has replaced the need that the churches were fulfilling out of the willing giving of their membership.

I believe that one of the reasons for post-Christian Europe is because they have replaced the responsibilities and the duties and the activities and the services that come willingly from the churches with a service that comes unwillingly from the taxpayers but guaranteed as an entitlement to the people. That is what we're poised to do in this country because the people on this side want to create a dependency class. If they can create a dependency class, then their goal is to expand the political class. That is the short version of the subject matter that I think was very well raised and articulated by the gentleman who spoke ahead of me, Mr. LUNGREN.

I would also ask my friend from Texas, Judge GOHMERT, if he was able to get everything off of his heart before he goes back to where his heart really is, which is in Texas.

So I yield as much time as he may consume to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. I thank my friend from Iowa so very much.

The gentleman from Iowa makes such a great point; we think we're the be all and end all in this Congress. And as I said in here last week over the debate about the death tax, we have the power to pry money from someone's wallet when they're lying cold and dead. We have the power to do that; we do not have the moral authority to do that.

But we even hear people, as they did last week and have in previous debates, who play on some of our Christian faith and say, well, it sounds like the Christian thing to do would be for our government to help everybody, take care of everybody. But you could go throughout the New Testament and you will never find one place where Jesus ever said, Go ye, therefore, take from other people and give to someone else. He said, You do it. With your own money, what you've earned, what you've made, you take and you give from your own self. Don't go take somebody else's money just because you've got the power. You don't have the moral authority to do that. Do it yourself. And there is a great deal of blessing derived from individuals doing that and helping others, but it is tyranny when you use the power and abuse the moral authority and take from other people to do what you, yourself, want to do.

When you look at the bills we've been passing, including the bill passed today, “financial reform” so-called, it's not financial reform. It's like the health care bill wasn't a health care bill. It is a government takeover. I hear friends and very scholarly people say, well, this is a takeover by the government of one-sixth of the economy, of the health care. But the truth is, it's not even that. It's more than that. Because if you go to the trouble to try to get through the massive bill that's been brought here, it's about taking over and legislating and regulating restaurants. That's not health care. It's legislating vending machines. It goes into all kinds of things.

I read a provision where it is required that the Secretary of Health and Human Services shall do a study of businesses. Study of businesses? It goes on to tell them what you've got to study for. You've got to make sure that certain businesses are making good decisions that will allow them to stay solvent. Do you want Washington bureaucrats coming to your business in Iowa—I know they don't in east Texas—and sitting down with you that has never balanced a budget, never made any money on their own, have been living on government welfare, and then they're going to tell you you think you have too much inventory?

What do you know about inventory? You've never been in this business.

It is kind of like the car czar and all these people that were appointed by the President, unaccountable to anybody. They made laws. They subverted the bankruptcy code. They just ignored the Constitution, the laws, and this Congress did nothing about it, let it go. The Supreme Court did nothing about it, let it go. They just supplanted all of those things and dictated things from behind.

Mr. KING of Iowa. If the gentleman will briefly yield, and reclaiming my time, I would make this point, that the bankruptcy courts through which the auto makers were pushed, when I listened to the witnesses that were before our Judiciary Committee and point-blanked them on this question? Do you believe that there was anything that changed throughout the course of the bankruptcy court as a result of the testimony or evidence that was presented to it, or was the deal, the proposal that was presented by the administration, as an investor in the car makers, did that proposal remain in tact all the way through the courts, or were the judgment of the courts applied to the final product? Their answer was, without equivocation, no. The deal was the deal, and the courts essentially rubber-stamped the deal. That's the testimony that I heard, but it is, of course, summarized in a nutshell for the benefit of this dialog.

I again yield to the gentleman from Texas.

Mr. GOHMERT. I appreciate that so much.

The fact is, even on the health care bill, when the President had his town hall lady named Pam Stern—and I went and watched the video and typed this up myself—but she had pointed out she had a mother that was approaching 100 years old and she needed a pacemaker in order to have the other things she needed. And apparently the arrhythmia specialist—he had not met her—decided nobody at age 99 should need a pacemaker, but then her own doctor recommended he meet her. So he met Pam Stern's mother and said, Wow, this lady is alive and going strong. She deserves a pacemaker. So he put it in, and she is 105 right now and going strong.

And Pam Stern put this question, she said, Outside the medical criteria for prolonging life for somebody who is elderly, is there any consideration that could be given for a certain spirit, a certain joy of living, quality of life, or is it just a medical cutoff at a certain age? And the President went round and round, Well, we're not going to solve every difficult problem in terms of end-of-life care, and he goes on and beats around the bush. And he finishes his answer by saying, Well, at least we can let doctors know and your mom know that, you know what, maybe this isn't

going to help. Maybe you're better off not having the surgery but taking a painkiller. This is the government saying, you know, despite the Constitution talking about securing the blessings of liberty to ourselves and our posterity, this is the government saying not only are we not going to give you liberty, we're not going to give you what you need to have life. That is a government that, unless you committed a heinous crime, the government has no right to tell you that you can't get what you need to live of your own volition. And that is such a mistake.

And we think we can do it on our own. The gentleman before, our friend from California (Mr. LUNGREN) and our friend from Iowa is so articulate about these things. But when you go back to our founding, you see that the Founders knew very well they could not do it within themselves. They hired George Washington to fight the revolution for them, and it went until 1783.

Everybody knows about July 4, 1776, when the Declaration of Independence was made public. But he fought on as Commander, and he did something nobody in the history of mankind has ever done. He won a revolution, had the military under his control, could have been king, Caesar, emperor, generalissimo, czar—could have been “the” czar of America, but he did something, as depicted in a mural down the hall.

He came into the Continental Congress with his outstretched hand, depicted in that mural, with his resignation. He said, Here is all the power back, because they passed a bill December 27, 1776, giving him basically all the power. They had to make contracts to enter whatever agreements, pay whatever they needed to pay, but there he was, 1783, tendering it all back. And in his own words—called the founder of our country—and actually, the whole resignation was so profound it was printed up.

They got the resignation, printed it, and distributed it throughout the country because this was such an incredible document. This is what he thought; not the arrogance of people that say we know all. We do all. People in America are too stupid to do for themselves. They have to trust us in government because they're not smart enough. This is what Washington said—and this is not the whole thing because it would take too much time perhaps—but he said, “I now make it my earnest prayer”—he thought it was okay to pray like that in public—“that God would have you in the state over which you preside in His holy protection.”

He goes on and he says, to entertain brotherly affection and love for one another, for their fellow citizens of the United States, particularly for their brethren who served in the field, and finally, “that He would most graciously be pleased to dispose us all to do just-

tice, to love mercy, to demean ourselves with charity, humility, and pacific temper of mind which were the characteristics of the Divine Author of our blessed religion”—he thought there was a blessed religion here and a divine author that he knew—“and without an humble imitation of whose example in these things, we can never hope to have a happy nation.” He signed it, “I have the honor to be, with great respect and esteem, Your Excellency's most obedient humble servant, George Washington.”

And then, of course, for 4 years the Articles of Confederation were created after Washington left. That was too loose of a web. The country was falling apart. The military tries to get Washington to come back and preside as a ruler, a king, and he refused to have any part of it. In 1787, they finally talk him into coming back because they convinced him truthfully that the 13 colonies will not come back unless George Washington agrees to come back. He comes back for nearly 5 weeks in Philadelphia, windows covered, meeting there privately, trying to come up with a constitution that would hold, something that would work, something that they could be proud of. They had met nearly 5 weeks and accomplished basically nothing.

And this is just the last point I wanted to share. I head back every weekend to my beloved east Texas, and will shortly, but after nearly 5 weeks, Benjamin Franklin stands up, recognized by President Washington, President of the Constitutional Convention—and most people that know history know that Benjamin Franklin did sow some wild oats, he did, and he did in France and England and somewhat here. But by this point he's 80 years old. He's about 2½ years away from meeting his maker, meeting the ultimate judge. He is just as brilliant, just as witty, charming, a real genius, but he has more thoughts toward the eternal.

And so after Washington recognizes him, he stands up—and we have the whole thing because James Madison, as Secretary, recorded it all—and he went through and said, you know, we've been meeting for nearly 5 weeks. We have more noes than ayes on most of these issues. We've accomplished nothing. And these are his words, as recorded by James Madison. “In this situation of this assembly, groping as it were in the dark to find political truth and scarce able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate understanding? In the beginning contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for the Divine protection.”

Benjamin Franklin goes on and says, “Our prayers, sir, were heard and they were graciously answered. All of us



who are engaged in this struggle must have observed frequent instances of a superintending Providence in our favor. To that kind of Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend, or do we imagine that we no longer need his assistance?"

Franklin goes on and he says, "I have lived, sir, a long time. And the longer I live, the more convincing proofs I see of this truth: God governs in the affairs of men, and if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, sir, in the sacred writing, that except the Lord build the house, they labor in vain that build it."

□ 1700

Franklin said, "I firmly believe this; and I also believe that, without His concurring aid, we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little, partial local interests, our projects will be confounded, and we ourselves shall become a reproach and a byword down to future ages."

He went on and said, "I therefore beg leave to move that henceforth prayers of heaven imploring the assistance of heaven and its blessings on our deliberations be held in this assembly every morning."

He knew who governed in the affairs of men. They began unanimously having prayer. They had it every day as he moved, and it resulted in the Constitution that we still utilize today for those who still utilize it.

I would recommend, as I know my friend has so many times, for those who have not read the Constitution or who have not read it recently, read it. I love the way it ends: "Done in convention, by the unanimous consent of the States present, the 17th day of September, in the year of Our Lord, One Thousand Seven Hundred Eighty-Seven."

A great way to end a great document. I thank you and I yield back to my friend from Iowa.

Mr. KING of Iowa. I thank the gentleman from Texas.

It is interesting to me, Madam Speaker, to listen to this presentation and to think about the impact of the core of the faith on our Founding Fathers. Clearly, Ben Franklin was a leader of them. Part of me is a little curious about what it would have been like to have heard his entire confession, but it was interesting to hear the statement that he made.

I'd reflect also that, for 60 years, the Founding Fathers and their successors and the leaders of this Nation and others would come in, and they went to church in this very Capitol building. For 60 years, they worshiped in this Capitol building on a regular basis.

The first Black man to speak in the United States House of Representatives was a pastor who came here right at the end of the Civil War to speak about the passage of the 13th and 14th and 15th Amendments.

As I watch things transition here in the House, I'd like to say also, as another word to add to this discussion, that George Washington's Thanksgiving proclamation said—and it was a prayer—God grant this Nation the degree of prosperity which he alone knows to be best.

I think that's consistent with the presentation from the gentleman from Texas.

You know, this isn't exclusively about how we make a lot of money. It isn't exactly how we are able to turn this economy around and to put a lot of cash into people's pockets. There's something more important than this. I've long said that, if I have to choose between an education without a moral foundation and a moral education without the best academic foundation, I'm going to take the moral education. That's what I want my children to learn, and that's what I want my grandchildren to learn, and that's what I want this Nation to learn.

There is something about prosperity, but I look back a decade or more ago, and there was a very well-educated Unabomber who didn't have a moral foundation. We have smart people with good educations and not moral foundations. They are destructive with their educations, their academics and their brilliance. We want a society where we have the opportunity to get back to the point where we don't lock our doors anymore.

Madam Speaker, did you ever think, when you forget your car keys and you can't get in and you're standing out there and it's January and 20 below, why it is your car is locked? Well, it's because of the people in society who don't have a moral foundation. It's because of the thieves. Why do you lock your house? It's the same reason. It's not just simply endemic that we have to build cars with keys or houses with locks or dead bolts and bars across them. We do that because it's a sign of the erosion in our moral foundation. There are still places in America where people don't lock their doors. There's a place in America where I live.

Yet, today, standing on the streets of Washington, D.C., it happened to me, and it wouldn't have been hard for many others to have experienced the same thing. When an ambulance goes by, people on the street will stop talking because the siren is too loud, and some of them are irritated because the siren has interrupted their conversations. That's the level of compassion that emanates from the curb sometimes in the cities of America to the ambulance, itself. Where I live, if an ambulance goes by my house, we al-

ready know who is inside, and we know who the family members are who are reached by it. That's that neighborhood component. Those neighborhoods exist within the cities, too, Madam Speaker. I don't mean to imply that they don't.

When people are in a transitional stage and the more there are and the more it erodes the moral foundation, the more we need to take our resources to defend ourselves against the people who would steal our property and who would assault our very families and individuals. That's the lack of a moral foundation. If we get that right, then at least, in theory, we won't need nearly as much for, let's say, the police force, which could go out and serve papers and could do those things. They won't need to be occupied in fighting off violence all the time as they are.

#### THE SUPREME COURT AND THE DETAINEE TREATMENT ACT

Now we have a situation here that is also of great concern. Madam Speaker, yesterday, Mr. GOHMERT and I and a number of others did a press conference over in front of the Supreme Court building. We did that to take up the issue of Guantanamo Bay—the Gitmo detainees, the enemy combatants, the radical Islamist jihadists, who have declared war against the United States, who have committed their training and their lives and their assets and their resources into killing us, and who have succeeded to a significant level, particularly on September 11, 2001.

I've been to the locations of ground zero in New York and at the Pentagon here in Washington, D.C., and I've seen the impact of the attacks on our Nation. I've been down to Guantanamo Bay, Madam Speaker, and I've talked with and have observed the detainees down there. We've had over 800 detained in Guantanamo Bay. We tried to get as many of them released and sent back to their home countries as we could. We still boiled it down to, at that time, about 241 enemy combatants, radical Islamist jihadists—the worst of the worst—who didn't have a place to go. We didn't have a process to deal with them. They were committing acts of war against the United States. At least that's the evidence that we have.

So President Bush started this fairly early in the process, and Congress passed legislation called the Detainee Treatment Act, which set up military tribunals to try these enemy combatants, is what they were called if I remember correctly in legislation, and established those parameters—all consistent within internationally set standards, all consistent within Geneva Convention standards.

Then they also set up an appeals process in the event that an individual who was to be tried or who was tried under the Detainee Treatment Act

were to appeal that decision or to appeal even being tried before the Detainee Treatment Act, their appeals would go to the U.S. Circuit Court of D.C., the District of Columbia Court of Appeals.

That's what happened in the Hamdan case. The Hamdan case is a landmark precedent case. That's the case of Osama bin Laden's chauffeur, who argued that he should have some constitutional rights and that the limitations that were set by the Detainee Treatment Act were too broad. So he took the case—his attorneys—and I don't know that these were pro bono attorneys, but I know there are dozens—and I'll say—scores of pro bono attorneys who are seeking to establish new precedents. They took the case to the D.C. Circuit, which upheld the Detainee Treatment Act that had been passed by Congress, signed by President Bush. They upheld it to the letter in the D.C. Circuit.

The Supreme Court, by the way, had been forbidden from hearing a case which came out of the Detainee Treatment Act because, under article III, section 2 of the Constitution, this Congress stripped that authority from any court other than from the District of Columbia Circuit. Even though the D.C. Circuit upheld the letters of the law and the content of the statute, after the decision of the D.C. Circuit and outside of the bounds of the law, itself, of the article III, section 2 language which stripped the Supreme Court of jurisdiction, the Supreme Court reached over and heard the case anyway. They got outside their zone. They went across the fence, and decided they were going to graze in the pasture that was set aside exclusively for the D.C. Circuit. They overturned some components of the Detainee Treatment Act.

So we came back to this Congress again, and I argued we should have ignored the court because they didn't have jurisdiction to hear the case and that Congress had said so, and it's clearly a component in the Constitution—article III, section 2 stripping—but the Supreme Court heard the case anyway, and it came to a decision. Here is the article III, section 2 language that was designed to prohibit the Supreme Court:

It says, "In all the other cases before mentioned"—that would include the Hamdan case, and I'm quoting from the Constitution now again—"the Supreme Court shall have appellate jurisdiction both as to law and to fact—" so far, the Supreme Court would be okay, Madam Speaker, but this is the part to pay attention to—"with such exceptions and under such regulations as the Congress shall make." Congress made exceptions and Congress made regulations. Congress essentially forbid the Supreme Court from hearing such a case on the Detainee Treatment Act. They did so anyway.

I read that decision through carefully—about this thick, Madam Speaker—and it took a while. The case came out on a Thursday. I got my hands on the printed document on Friday. On Saturday morning, I went out. This must have been June because I remember sitting in my backyard, reading carefully down through this Supreme Court decision called Hamdan. I marked up the margins with all of my opinions. When I got through that stack of paper, it was a little thicker because it was wrinkled up a little bit, and it always swells a little when you write on it.

I looked up at the sky, and I thought, My gosh. The Supreme Court has defied Congress and the Constitution. They heard a case they didn't have any business hearing, and now they've issued this decision, this opinion, which as I said is all it was, which is now going to redirect Congress to go back and to redefine the Detainee Treatment Act.

So my position was that Congress should simply pass a resolution that we restate the Detainee Treatment Act and ignore the Supreme Court because they were outside the bounds of the jurisdiction that's offered to them in the Constitution.

I would agree with Justice Scalia that the cases of article III, section 2 stripping are legion. That was the word that Justice Scalia used. Those cases are legion. Yet, by the time I had analyzed the case—and not that I had the leverage that was going to turn this thing around the other way—the Chairs of the Judiciary Committee in the House and the Senate and the President of the United States, President Bush, all had conceded to the Supreme Court, and had said, Now we are going to comply.

So, at that point, it was too late to put the toothpaste back in the tube. It was too late to reel this back in again and to cast it out and get it right. So Congress came back and passed new legislation, new legislation on the heels of the Detainee Treatment Act which set up enemy combatant review tribunals. Then it was adjusted for the decision of the Supreme Court. We tried again. Along came the Boumediene case. Then it narrowed somewhat our ability under those decisions of the Supreme Court if we conceded those positions which the majority of Members of Congress did and the administration did, but it left intact the ability under military tribunals to try these detainees, these enemy combatants, these radical jihadists, who we are faced with.

So we continued forward then with the development of Guantanamo Bay, with the housing of these detainees down at Guantanamo Bay. We had built the courtrooms. We had built up secure rooms and had set up a place where the family members could observe the trials and where the press

could observe the trials. There was a microphone that projected to them with a bit of a delay and an officer sitting there with his ear tuned to anything that came out which would be classified/secret information that could put the people of the United States in jeopardy. He was the person who could put his finger on the mute button of that microphone and could delay things so that the observing rooms could be cleared of reporters and family and so that we could go to the classified types of information that would be part of the trial.

The facilities down at Guantanamo Bay are perfectly suited for the task at hand of trying these enemy combatants. They were built for that. There are not any facilities anywhere in the world which are custom-built to try enemy combatants other than Guantanamo Bay down in Cuba.

I went down and visited the place one weekend shortly before Easter of this year. I would say that that location might be the best place you could be if you were going to be someone who is an enemy combatant, which is similar to being a prisoner of war. I don't believe there have been prisoners of war, prisoners who have been picked up in armed conflicts, who have been treated as well as the detainees at Guantanamo Bay.

□ 1715

I don't know how they could be treated as good as the detainees at Guantanamo Bay. They are living down there in private cells. They each have their own room. There are some exceptions, but essentially they each have their own room. They have got their bunk and their personal possessions. They each get their own personal Koran. The Koran comes to them in a zip-locked bag all carefully packaged up so that no, and I put this in quotes, no "infidel" has touched the Koran and desecrated it by the hand of an infidel.

They get their own sterile Koran delivered to them. They get a prayer rug that's embroidered, fancier than anything in my house and fancier than anything I have seen in anybody's house. They get their own personal little skull cap or prayer cap that they wear.

They get a menu to choose three squares a day, nine items, all of them approved for Islamic meals. They have a little arrow in the bottom of every cell or maybe under the mattress that points east to Mecca, wherever that's dialed in on the compass of the world. As you move around, it's a little bit different direction to point to Mecca.

You will notice if you go, Madam Speaker, into the Middle East, and you look up on the ceiling of a hotel room, there will often be an arrow there. That's the arrow for which direction to Mecca, which direction to pray, if you are a Muslim. They have an arrow in

each of the cells that tell them which direction to pray.

The thermostat is set at 75 degrees in their air conditioned, Caribbean prison, because they claim that 75 degrees is their cultural temperature. I would suggest that it ranges up over 140 degrees myself, but 75 degrees, they claim, is their cultural temperature. That's the climate control that they get.

They are not even exposed to the elements unless they volunteer to go out. They are in that 82- or 83-degree temperature that is very stable, especially during the day in the Caribbean. It seldom goes down below 60 degrees at night. They are in a perfectly controlled environment in the best location you could ask for to be able to have an outdoors environment.

The attacks on Americans in Guantanamo Bay average about 20 a day. About half of those attacks are these detainees throwing human waste in the faces of our mostly Navy guards. These guards are trained to restrain themselves from retaliation, and they take pride in restraining themselves from retaliation. That's about 10 times a day they are throwing human waste in the faces or were trying to rub it in the faces of our guards.

The other 10 times a day, out of the 20 assaults, come down to physical assaults with their cuffs or their chains, an assault, or they are trying to physically injure the guards, about 20 attacks a day. Now if that happens in a maximum security prison in the United States, they will go into solitary confinement. There will be charges brought against them.

If found guilty—and of course if they're guilty, we likely will find them guilty—then these prisoners in American prisons would get an extended stay in their maximum security prison. They would watch their diet be dialed down to fewer calories per day and they would go into solitary confinement for a period of time.

That, Madam Speaker, that is what happens in an American prison. Down at Guantanamo Bay, with these worst of the worst, the most vile American haters, the planner and the planners of the September 11 assault on the United States, the worst thing we can do to them, if they should get a guard down and injure that guard and rub human waste into his face and perhaps nearly strangle the guard, the worst thing we can do to Khalid Sheikh Mohammed if that happens is, we reduce his outdoor exercise time down to 2 hours a day. It's the worst penalty we can do.

They get their air-conditioned cell, their private room. They get a menu that's designed to fit their religious beliefs. They get their Koran and their skull cap and they get their rug. Oh, and by the way, out of the 800 or so that were down at Guantanamo Bay, one of them asked for not a Koran but

a Bible. When the word got out that there was an individual there who wanted a Bible, the ability to keep order down at Guantanamo Bay became very precarious. There was going to be such a rejection of the idea that there would be a Bible in the hands of someone down there, that they denied this inmate a Bible.

We are promoting religious freedom to the people that are there and giving them all of the trappings that they require, with arrows to pray towards, and Korans, and skull caps, and prayer rugs. But if there is a Christian in the mix, they are denied their equal rights, their right to faith and religion.

The temperature is set for the cultural temperature, at 75. That's Guantanamo Bay. Perfectly set up, though, to try these enemy combatants, to house them. Some of them need to be locked up for life, and some of them need to be executed.

We can't get there because the world has said we think that you were hard on these prisoners down there. So we are adjusting American policy because of critics in places like Europe, critics that are international, let's see, what do we have, Amnesty International, and other global Web sites that allege the United States is cruel and inhuman.

No one could have been any less cruel or any more human in dealing with these detainees than the United States has. I have gone there to see it, Madam Speaker, and it is a place where you would want to be if you had to be locked up.

Now, because of the politics of this, the Obama administration has decided that they have, the President, 2 days after he was inaugurated on January 22 of 2009, issued an executive order that said we are going to close Guantanamo Bay. It's 7 pages long, it's written in English, but it's posted on the bulletin board down in Guantanamo Bay in Arabic and in English, a bulletin board cover with Plexiglass in the middle of the commons area, right over by their foosball table.

So they can take a break from their foosball and read the promise from the President that they are not going to be there a day after January 22, 2010. I don't know if the President can keep that promise, but that's certainly the promise that's made to the detainees.

That number has been reduced a little bit. We had the Uyghurs, some of them were sent to Bermuda. There have been others that have been infiltrated back out to the rest of the world.

Madam Speaker, I want to make this point that of those who were released, and the numbers of those who were released is a number greater than 500 by the Bush administration, there is about a 1 in 7 incidence of recidivism. Of those that were released—these were not the worst of the worst that were re-

leased, these were the best of the worst that were released—it was more than 500.

That more than 500 went back around the world and at least one out of seven went back and began to plot against or attack the United States. That's a lousy recidivism rate. Some will say, well, we have a greater rate of that when we release people from the prisons in the United States.

We have a closer eye we keep on them too, Madam Speaker. At least in America we have a police force out there that when people break the law we have a tendency to go find out who they are, where they live, and pick them up and try them again, and lock them up again. But when you turn somebody loose in the world, and they go back into the mountains of Pakistan or Afghanistan, and they train and plot to attack Americans, it's kind of hard to catch them a second time.

If we do that with one out of seven, then what happens with the worst of the worst? What happens with these 241 that are now down around 220. If they get released into the world, these are the most dedicated killers of freedom-loving people that exist on the planet, at least in incarceration. They are going to make common cause with the others that they can find around the world, and they will turn around and attack the United States.

It is inevitable, and the equation that the President of the United States and Eric Holder, the attorney general, needs to understand, Madam Speaker, is, that of these 221 detainees that they are looking desperately to try to find a way to bring them to the United States, or at least a large share of them to the United States, if they are adjudicated in civilian courts, as they propose will happen with KSM, Khalid Sheikh Mohammed, whom I have laid eyes on and watched him operate and read his documents—he blamed the attacks of September 11, 2001, on us, Madam Speaker. He wrote that in his defense document. You would think in his defense document he would try to defend himself. Instead, he attacked us.

He said, it's your own fault, America. We told you that we hate you. We declared war on you. We said we were going to come and kill you. You failed to defend yourselves from us, and so, therefore, it's your fault that 3,000 Americans were killed September 11. You had to know we were coming because we said we would, and you didn't defend yourselves. That's Khalid Sheikh Mohammed. That's how evil he is.

Now the President has said, and Eric Holder has said, that we will feel better when they are prosecuted in the United States and when they are executed. I will say the President and the attorney general have repeatedly said that KSM will be constricted, and I will say it opens up a whole array of new appeals

to think that KSM, while it would be announced that he would be convicted and implied, at least, that he would be executed, by the President of the United States, who is a lawyer, a Harvard lawyer, an instructor of constitutional law at the University of Chicago, even though he was an adjunct professor, that's the announcement from the President of the United States and the Attorney General that says essentially this, that some say it's the Old West story. I say it's a Mark Twain story; first we will hang them, then we will try them.

I would point your attention, Madam Speaker, to a writing by Mark Twain called "Roughing It," sometime about the turn or the middle of the 19th century Mark Twain wrote a story, "Roughing It," about a Captain Ned Blakely. Ned Blakely, who sailed off to the Chinchas Islands to get a load of whatever the product was there.

As he sailed into the bay, he had the meanest man on the islands come aboard, named Bill Noakes. They had a big fight, and Captain Ned Blakely won that. Bill Noakes came back another time, they had another big fight. Even though Captain Blakely won that over a period of time, this mean Bill Noakes shot and killed the first mate of Captain Blakely.

The first mate happened to be a Black man, a Black man whom had great favor of Captain Ned Blakely, a Black man who was trying to get away from the confrontation, was actually running, and he was chased down and shot to death by Bill Noakes in the narrative by Mark Twain. So no one wanted to take on Bill Noakes. He was too mean out on the island. There were about a dozen ship's captains that were part of what we would say would be the law in that era. Ned Blakely went and arrested him and planned to hang him in the morning.

When the other captains found out about it, they came to see Ned Blakely, Captain Blakely, and said to him, You can't hang this man; he has to have a trial. Captain Blakely said, Fine, let's have the trial. I will help you with the trial. I will help you prosecute the man. How soon do you think you could do it? They said, Well, we think we could have the trial in the morning.

But Captain Blakely said, Well, I am going to be a little busy in the morning with the hanging and the burying, so let's do the trial in the afternoon. That's how Mark Twain described this. First we will hang him, then we will try him. Actually, he said, First we will hang him, then we will bury him, then we will try him.

That's about the message that came from the President of the United States and the Attorney General of the United States. He essentially declared Khalid Sheikh Mohammed and his four other compatriots to be guilty and subject to the death penalty, and predicted

that they will be convicted and executed, an unbelievable prediction for the President of the United States and the Attorney General of the United States, to take that position.

We are doing what? We are bringing these Gitmo detainees to the United States, not because there is any logical reason to do this; there is no rational reason to bring these enemy combatants to U.S. soil. There is no constitutional reason, Madam Speaker, there is no statutory reason, there is no rational, logical reason. There is no strategic or tactical reason. We don't get more safety with bringing them here, we don't get the odds of a conviction with bringing them here.

KSM has confessed his own guilt and asked for a death penalty. As Scully Simpson said yesterday, take the plea, attorney general, take the plea, Mr. President. If he wants to plead guilty and submit himself to the death penalty, why would you bring them to the United States and bring them within six blocks of Ground Zero in New York City and subject them to the circus of a civilian court? We know what that looks like. O. J. Simpson's circus court comes to mind, that media circus that would come.

For what purpose? Not because it's constitutional, statutory, logical, reasonable or tactical, none of that. Madam Speaker maybe, just maybe, if we want to be charitable we could say maybe the President and the Attorney General would want to demonstrate to the world that America has a legitimate civilian court and that equal justice will be provided under the law for anyone on the entire planet, not just people that have set foot in the United States, our citizens of the United States or our Americans.

Madam Speaker, if that is the motivation for the President and the Attorney General to express to the world that we are equal justice under the law and an open judicial system, that we have the courage and the confidence and the wherewithal to try these enemy combatants in a civilian court, so now the rest of the world is going to like us, because we have done something that isn't really smart, and may be the most colossal blunder in this administration? It could be the most colossal blunder of many administrations, Madam Speaker.

□ 1730

All for what? All to ask the rest of the world to like us, to trust us, to respect our judicial system? Could that be the reason? And if it is the reason, and it's the only one that seems to be threaded with anything that one could construe as logic in this decision, that it had to be approved by the President and announced by the Attorney General, if the rationale is the rest of the world will lift their criticism of how we've dealt with these enemy combat-

ants if we just bring them out of the military tribunals, this court system, and put them in the civilian court, I will submit that if that were a sound logic and it had any chance of being effective and it would be good for the public relations of the world, they've already messed it up; they've already destroyed any benefit that might come from trying KSM in a civilian trial within six blocks of Ground Zero in New York City because the President of the United States and the Attorney General of the United States have both announced that KSM and his four co-conspirators are guilty and that we're going to prove it in an open court, without cameras, but prove it in an open court, and we're going to sentence them to death.

Now how in the world is anybody around the world going to believe that this was an objective decision, that it actually is the result of a court when the verdict is already announced by the President of the United States and the Attorney General?

Madam Speaker, this is self-defeating logic here, and I think that they have actually defeated their own rationale.

I want to, in the moments that are left, just go through some pieces of this rationale so that it goes into the RECORD. And that is this:

The Obama administration is acting dangerously by bringing foreign terrorists to our shores from Guantanamo Bay. This is a direct threat to our national security. And by doing this, the Obama administration is opening us up for another terrorist attack.

You've heard a host of other concerns from my colleagues. I'm the ranking member of the Immigration Subcommittee, and I will focus a little bit on immigration, Madam Speaker. The truth is if we bring these terrorists to U.S. soil, we may not be able to keep them in detention. Even worse, we may not ever be able to deport them. So if we manage to convict these terrorists, which is a question, they may one day become our constituents' new neighbors. And how? Well, because of the confluence of two factors: One of them is the Convention Against Torture, and the other one is the Supreme Court 2001 decision called *Zadvydas*.

First, the Convention prohibits the return of aliens to countries where they may be tortured. So if we could release any one of these detainees, we would send them back where? We can't send them back now because of that fear. The U.S. Department of Justice regulations implementing the convention, the Convention Against Torture, that is, made no exceptions whatsoever for anyone's activities. Whether they be rapists, murderers, participants in genocide, or terrorists, they're all equally protected. Hundreds of criminals have already received relief from deportation as a result of the Convention Against Torture, and so has an

alien involved in the assassination of Anwar Sadat. Osama bin Laden himself could probably frustrate deportation by making a torture claim under this convention. I mean, after all, the more heinous a person's actions and consequently the more hated they are in their home countries, the more likely they are to be subjected to torture, so the stronger is their claim that they couldn't be returned to their home country for fear they would be tortured when they arrive.

So the ability of terrorists to frustrate the deportation process might be tolerable, but if we were certain that we could keep these terrorists detained, that would be the condition by which it would be potentially tolerable. But this may not be the case because section 412 of the PATRIOT Act does wisely provide for the indefinite detention of terrorist aliens, indefinite, regardless of whether they qualify under the Convention Against Torture or whether they have other available relief from removal. However, it's very possible that the intervening Supreme Court will rule this provision unconstitutional and there would go the indefinite detention section under the PATRIOT Act.

In *Zadvydas*, the Supreme Court ruled that under a different law, aliens who had been admitted to the United States and then ordered removed could not be detained for more than 6 months if for some reason, such as the Convention Against Torture, they could not be removed. In the *Zadvydas* case, the Supreme Court made a statutory interpretation, but they also put up a warning and said to us that they were interpreting the statute to avoid a serious constitutional threat. So the Court believed that a statute permitting indefinite detention of an alien would raise a serious constitutional problem.

So already, *Zadvydas*, that decision, has resulted in the release of hundreds of alien criminals into our communities. Jonathan Cohn, the former Deputy Assistant Attorney General, testified, and I quote, that "the government is now required to release numerous rapists, child molesters, murderers, and other dangerous illegal aliens into our streets. Vicious criminal aliens are now being set free within the U.S."

It seems incredible that the administration would intentionally bring alien terrorists into the United States knowing that we may never be able to deport them or even detain them on a long-term basis, and that's the immigration component of this argument, Madam Speaker.

This is a very serious decision on the part of the President and the Attorney General. And if allowed to set foot in the United States, it establishes a precedent, a precedent that will be very difficult to reverse. It establishes a precedent that any enemy combatant that we would pick up anywhere in the

world may have to be read their Miranda rights. Remember, Madam Speaker, they are reading Miranda rights to enemy combatants in Afghanistan as we speak. They are being asked to pick up battlefield evidence out on the battlefields. It's an entirely different process to prepare for a military tribunal than it is for a civilian prosecution. The chain of evidence and the introduction of hearsay evidence are under different types of rules. And that's for a wise reason because, laying this out, this Congress understood the difference between war and criminal actions. This Congress understood the difference. Our previous President understood the difference. This President seems to believe that this war on terror is fighting a criminal action, not an enemy war on terror action. So it brings forth this idea of bringing these enemy combatants to the United States.

This point needs to be understood, Madam Speaker: Of the 221 or so that might be brought to the U.S., and I reject the idea of allowing any of them to set foot on our soil, could we presume that they're all facing a death sentence? Could we presume that they will all be convicted? Could we then presume that they would all face that sentence and be executed so they were no longer any trouble to us and they could be the martyrs that they wish to be and set the example for others that might attack innocent people under the banner of al Qaeda, this hateful organization?

In closing, Madam Speaker, I will submit that some will be released and some of them will attack free people. Some of those victims are likely to be Americans.

I reject al Qaeda KSM coming to the United States, and I yield back the balance of my time.

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. BALDWIN (at the request of Mr. HOYER) for today on account of illness.

Ms. BORDALLO (at the request of Mr. HOYER) for December 10 until December 15 on account of official business in the district.

Mr. SESSIONS (at the request of Mr. BOEHNER) for today on account of attending a funeral in the district.

#### SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LANGEVIN) to revise and extend their remarks and include extraneous material:)

Mr. LANGEVIN, for 5 minutes, today.

Mr. MURPHY of Connecticut, for 5 minutes, today.

Mr. SABLON, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. SCHIFF, for 5 minutes, today.

Mr. GRAYSON, for 5 minutes, today.

(The following Members (at the request of Mr. MORAN of Kansas) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, December 18.

Mr. JONES, for 5 minutes, December 18.

Mr. BURTON of Indiana, for 5 minutes, today and December 18.

Mr. MORAN of Kansas, for 5 minutes, today.

#### ADJOURNMENT

Mr. KING of Iowa. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 38 minutes p.m.), under its previous order, the House adjourned until Monday, December 14, 2009, at 12:30 p.m., for morning-hour debate.

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5006. A letter from the Regulatory Liaison, Department of Agriculture, transmitting the Department's final rule — Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2006 Tariff-Rate Quota Year November 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5007. A letter from the Regulatory Liaison, Department of Agriculture, transmitting the Department's final rule — Technical Assistance for Specialty Crops (RIN: 0551-AA71) received November 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5008. A letter from the Division Chief, Division of Legislation and Regulations, Department of Transportation, transmitting the Department's final rule — U.S. Citizenship for Contracts on RRF Vessels [Docket No.: MARAD 2008 0076] (RIN: 2133-AB73) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5009. A letter from the Assistant General Counsel for Regulatory Services, Office of General Counsel, Department of Education, transmitting the Department's final rule — Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program [Docket ID: ED-2009-OPE-0004] received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and Labor.

5010. A letter from the Director, Defense Security Cooperation Agency, transmitting (Transmittal No. 09-65) pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5011. A letter from the Director, Defense Security Cooperation Agency, transmitting

Transmittal No. 09-56, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5012. A letter from the Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-64, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5013. A letter from the Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-55, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5014. A letter from the Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-62, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5015. A letter from the Director, International Cooperation, Department of Defense, transmitting Pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, Transmittal No. 16-09 informing of an intent to sign a Project Agreement with Federal Republic of Germany; to the Committee on Foreign Affairs.

5016. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 127-09, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad, pursuant to section 36(c) and 36(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5017. A letter from the Associate Director, PP&I, Department of the Treasury, transmitting the Department's final rule — Sudanese Sanctions Regulations; Iranian Transactions Regulations received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Foreign Affairs.

5018. A letter from the Director of Legislative Affairs, Office of the Director of National Intelligence, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

5019. A letter from the Secretary, Department of Health and Human Services, transmitting a petition filed on behalf of workers from Baker-Perkins Company in Saginaw, Michigan, to be added to the Special Exposure Cohort (SEC), pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000; to the Committee on the Judiciary.

5020. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes [Docket No.: FAA-2009-1026; Directorate Identifier 2009-NM-197-AD; Amendment 39-16084; AD 2009-23-10] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5021. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Modification of the New York, NY, Class B Airspace Area; and Establishment of the New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area [Docket No.: FAA-2009-0837; Airspace Docket No. 09-AWA-2; Amendment Nos. 71-34, 93-94] (RIN: 2120-AJ59) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5022. A letter from the Director of Regulations Management, Department of Veterans

Affairs, transmitting the Department's final rule — Servicemembers' Group Life Insurance- Dependent Coverage (RIN: 2900-AN39) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

5023. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Section 108 Reduction of Tax Attributes for S Corporations [TD 9469] (RIN: 1545-BH54) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5024. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Examination of returns and claims for refund, credit or abatement; determination of correct tax liability (Rev. Proc. 2009-52) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5025. A letter from the Assistant Secretary, Legislative Affairs, Assistant Secretary of Defense, transmitting letter of issuance of certification, pursuant to Public Law 111-83, section 565; jointly to the Committees on Armed Services and Oversight and Government Reform.

#### DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XIII the following action was taken by the Speaker:

The Committee on Ways and Means discharged from further consideration. H.R. 2194 referred to the Committee of the Whole House on the State of the Union.

#### TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 2989. Referral to the Committee on Ways and Means extended for a period ending not later than January 19, 2010.

#### PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. COHEN (for himself, Mr. ANDREWS, Mr. PAYNE, Mr. CONYERS, Mr. HOLT, Mr. WATT, Mr. ADLER of New Jersey, Ms. LINDA T. SANCHEZ of California, Mr. PALLONE, and Mr. PASCRELL):

H.R. 4283. A bill to prohibit United States attorneys and assistant United States attorneys from acting as or working for corporate monitors for specified periods after their service with the Government terminates; to the Committee on the Judiciary.

By Mr. RANGEL (for himself and Mr. LEVIN):

H.R. 4284. A bill to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes; to the Committee on Ways and Means.

By Mrs. BONO MACK (for herself, Mr. GRIJALVA, Ms. RICHARDSON, Mr. CALVERT, Mr. BACA, and Mr. ISSA):

H.R. 4285. A bill to authorize the Pechanga Band of Luiseno Mission Indians Water

Rights Settlement, and for other purposes; to the Committee on Natural Resources.

By Mr. COHEN (for himself, Mr. DAVIS of Illinois, and Mr. PAYNE):

H.R. 4286. A bill to amend the Elementary and Secondary Education Act of 1965 to allow a local educational agency that receives a subgrant under section 2121 of such Act to use the funds to provide professional development activities that train school personnel about restorative justice and conflict resolution; to the Committee on Education and Labor.

By Mr. COHEN:

H.R. 4287. A bill to establish an Office of Livability in the Office of the Secretary of Transportation, and for other purposes; to the Committee on Transportation and Infrastructure.

By Ms. HERSETH SANDLIN (for herself, Mr. GOODLATTE, Mr. BOYD, Mr. SMITH of Texas, Mr. DEFAZIO, Mr. SENSENBRENNER, and Mr. LUCAS):

H.R. 4288. A bill to prohibit the provision of Federal economic development assistance for any State or locality that uses the power of eminent domain power to obtain property for private commercial development or that fails to pay relocation costs to persons displaced by use of the power of eminent domain for economic development purposes; to the Committee on Agriculture, and in addition to the Committees on Transportation and Infrastructure, Financial Services, Natural Resources, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. DEGETTE:

H.R. 4289. A bill to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes; to the Committee on Natural Resources.

By Mr. HARE (for himself, Ms. SCHAKOWSKY, Mr. STUPAK, Mr. COHEN, Ms. KILPATRICK of Michigan, Mr. JACKSON of Illinois, Mr. KILDEE, Ms. SUTTON, Mr. COURTNEY, Ms. EDWARDS of Maryland, Mr. MEEKS of New York, Mr. OBERSTAR, Mr. RUSH, Mr. ANDREWS, Ms. CLARKE, Ms. DELAUNO, Ms. FUDGE, Mr. GRAYSON, Mr. GUTIERREZ, Mr. KENNEDY, Ms. WOOLSEY, Mr. WEINER, Mr. SCOTT of Virginia, Ms. SLAUGHTER, Mr. HALL of New York, Mr. GENE GREEN of Texas, Mr. NADLER of New York, Mr. CARSON of Indiana, Ms. JACKSON-LEE of Texas, Mr. MICHAUD, Mr. TONKO, Mr. DOYLE, Ms. BERKLEY, Ms. HIRONO, Ms. SHEA-PORTER, Ms. CHU, Ms. WATSON, Mr. GRIJALVA, Mr. LUJÁN, Ms. TSONGAS, Mr. LOEBSACK, Mr. PRICE of North Carolina, Mr. HASTINGS of Florida, Mr. ROTHMAN of New Jersey, Mr. GARAMENDI, Mr. KAGEN, Mr. SABLON, Mr. ELLISON, Mr. CLEAVER, Mr. LARSON of Connecticut, and Mr. BRALEY of Iowa):

H.R. 4290. A bill to establish the New Economy Grant Program through the Department of Labor to create public works jobs on State and local lands and community-based public interest projects, to direct aid to State and local governments for the retention and rehiring of certain public employees, and provide direct aid to the Departments of Agriculture and Interior to create public works jobs to address their deferred maintenance items; to the Committee on Education and Labor, and in addition to the Committees on the Judiciary, Science and



Technology, Natural Resources, Agriculture, Financial Services, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. LINDA T. SÁNCHEZ of California (for herself and Mr. BLUMENAUER):

H.R. 4291. A bill making emergency supplemental appropriations for fiscal year 2010 for the National Park Service, National Forest Service, and Federal Highway Administration for public land rehabilitation, road projects, and job creation; to the Committee on Appropriations, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CHILDERS:

H.R. 4292. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit to the issuers of qualified zone academy bonds and qualified school construction bonds; to the Committee on Ways and Means.

By Mr. ARCURI:

H.R. 4293. A bill to amend the Public Works and Economic Development Act of 1965 to maximize the efficiency in administering governmental functions; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ARCURI:

H.R. 4294. A bill to amend the Public Works and Economic Development Act of 1965 to eliminate cost-sharing requirements in connection with economic adjustment grants made to assist communities that have suffered economic injury as a result of military base closures and realignments, defense contractor reductions in force, and Department of Energy defense-related funding reductions; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. COURTNEY:

H.R. 4295. A bill to direct the Administrator of the Small Business Administration to establish and carry out a program to provide loans directly to small business concerns, and for other purposes; to the Committee on Small Business.

By Mrs. HALVORSON:

H.R. 4296. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive for the installation and maintenance of mechanical insulation property; to the Committee on Ways and Means.

By Mr. HODES:

H.R. 4297. A bill to direct the Administrator of the Federal Emergency Management Agency to review, update, and revise certain regulations relating to assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mrs. MCCARTHY of New York (for herself, Mr. TOWNS, Mr. MORAN of Virginia, Ms. JACKSON-LEE of Texas, Mrs. MALONEY, Mr. SERRANO, Mr. MCGOVERN, and Mr. QUIGLEY):

H.R. 4298. A bill to prevent gun trafficking in the United States; to the Committee on the Judiciary.

By Mr. SMITH of Washington (for himself, Mr. GRIJALVA, Ms. WATSON, Mr. CARNAHAN, Ms. CLARKE, Mr. DICKS, Mr. BUCHANAN, and Mr. BRALEY of Iowa):

H.R. 4299. A bill to authorize a capitalization of self-sustainable social services grant program to provide workforce development opportunities and training to people with barriers to employment; to the Committee on Education and Labor.

By Mr. TIERNEY (for himself, Ms. SLAUGHTER, Mr. CAPUANO, Mr. ANDREWS, Mr. ARCURI, Mr. BISHOP of New York, Mr. CARNAHAN, Mr. CLYBURN, Mr. COHEN, Mr. CONYERS, Mr. COSTELLO, Mr. COURTNEY, Mr. CUMMINGS, Mrs. DAHLKEMPER, Mr. DEFALZIO, Mr. DELAHUNT, Ms. DELAURO, Mr. DOGGETT, Mr. DOYLE, Ms. EDWARDS of Maryland, Mr. ELLISON, Ms. ESHOO, Mr. FARR, Mr. FILNER, Mr. GARAMENDI, Mr. GRIJALVA, Mr. HARE, Mr. HASTINGS of Florida, Mr. HINCHAY, Ms. HIRONO, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JONES, Ms. KAPTUR, Mr. KENNEDY, Mr. KUCINICH, Mr. LANGEVIN, Mrs. LOWEY, Mr. LYNCH, Mr. MASSA, Ms. MATSUI, Ms. MCCOLLUM, Mr. McDERMOTT, Mr. MCGOVERN, Mr. GEORGE MILLER of California, Mr. MOLLOHAN, Mr. MURTHA, Mr. NADLER of New York, Mr. OLVER, Mr. PLATTS, Mr. RODRIGUEZ, Ms. SCHAKOWSKY, Mr. SERRANO, Ms. SHEA-PORTER, Mr. STARK, Ms. SUTTON, Mr. THOMPSON of Mississippi, Mr. TONKO, Mr. TOWNS, Ms. TSONGAS, Mr. VISCLOSKEY, Ms. WATSON, Mr. WAXMAN, Mr. WELCH, and Ms. WOOLSEY):

H.R. 4300. A bill to amend the Truth in Lending Act to establish a national usury rate for consumer credit card accounts under open end consumer credit plans, and for other purposes; to the Committee on Financial Services, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HOYER:

H.J. Res. 62. A joint resolution appointing the day for the convening of the second session of the One Hundred Eleventh Congress; considered and passed.

By Mr. CONYERS (for himself and Mr. KUCINICH):

H. Con. Res. 221. Concurrent resolution requesting that the President issue a proclamation annually calling upon the people of the United States to observe Global Family Day, One Day of Peace and Sharing, and for other purposes; to the Committee on Foreign Affairs.

By Ms. BEAN (for herself, Mr. COOPER, and Mr. MITCHELL):

H. Res. 965. A resolution repealing rule XXVIII of the Rules of the House of Representatives relating to the statutory limit on the public debt; to the Committee on Rules.

By Mr. BURGESS:

H. Res. 966. A resolution calling on the President and the Secretary of Education to fire Kevin Jennings from his post as "Safe Schools Czar"; to the Committee on Education and Labor.

By Ms. CLARKE (for herself, Mr. GONZALEZ, Mr. GUTIERREZ, Ms. MOORE of

Wisconsin, Mrs. MALONEY, Mr. HINOJOSA, Mr. SERRANO, Mr. CLAY, Mr. DAVIS of Illinois, Mr. BISHOP of Georgia, Ms. KILPATRICK of Michigan, Mr. TOWNS, Mr. GRIJALVA, Ms. BORDALLO, Mr. WATT, Mr. MEEK of Florida, and Mr. MEEKS of New York):

H. Res. 967. A resolution recognizing the 15th anniversary of the establishment of the Community Development Financial Institutions Fund and reaffirming the importance of its mission of economic and community development; to the Committee on Financial Services.

By Mr. HASTINGS of Florida:

H. Res. 968. A resolution expressing sympathy for and solidarity with the people of the Russian Federation following the bombing of the Nevsky Express; to the Committee on Foreign Affairs.

#### ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. FORTENBERRY.  
H.R. 391: Mr. HUNTER, Ms. GRANGER, and Mr. HARPER.  
H.R. 503: Mr. FRELINGHUYSEN.  
H.R. 678: Mr. JACKSON of Illinois.  
H.R. 775: Ms. HARMAN and Mr. MARCHANT.  
H.R. 816: Ms. SLAUGHTER.  
H.R. 1017: Mrs. HALVORSON.  
H.R. 1030: Mr. TIBERI.  
H.R. 1177: Mr. MEEK of Florida.  
H.R. 1205: Mr. YARMUTH and Mr. UPTON.  
H.R. 1283: Mr. KILDEE.  
H.R. 1305: Mr. MILLER of North Carolina.  
H.R. 1402: Mr. DAVIS of Tennessee.  
H.R. 1479: Ms. SLAUGHTER and Mr. JOHNSON of Georgia.  
H.R. 1523: Ms. SHEA-PORTER.  
H.R. 1547: Mr. JOHNSON of Illinois.  
H.R. 1549: Mr. JOHNSON of Georgia.  
H.R. 1551: Mr. CLAY.  
H.R. 1616: Mr. POLIS.  
H.R. 1646: Mr. ROSS.  
H.R. 1751: Mr. GUTIERREZ.  
H.R. 1778: Mr. MICHAUD, Mr. GRIJALVA, and Mr. THOMPSON of California.  
H.R. 1799: Mr. SOUDER.  
H.R. 1879: Mr. LUETKEMEYER.  
H.R. 1924: Mr. DICKS and Mr. PETERSON.  
H.R. 1964: Ms. CASTOR of Florida.  
H.R. 1992: Mr. BISHOP of New York.  
H.R. 2000: Mr. DAVIS of Illinois.  
H.R. 2006: Mr. FRANK of Massachusetts.  
H.R. 2049: Ms. SLAUGHTER.  
H.R. 2057: Mr. PETERSON.  
H.R. 2112: Mr. COBLE and Ms. TSONGAS.  
H.R. 2135: Mr. MCINTYRE.  
H.R. 2149: Ms. SLAUGHTER.  
H.R. 2372: Mr. INGLIS.  
H.R. 2478: Mr. BILBRAY.  
H.R. 2578: Mr. KAGEN.  
H.R. 2593: Mr. TIAHRT.  
H.R. 2624: Mr. SHUSTER and Ms. WOOLSEY.  
H.R. 2669: Mr. COURTNEY.  
H.R. 2709: Mr. GUTIERREZ and Ms. WATSON.  
H.R. 2788: Mr. HUNTER.  
H.R. 2882: Mr. HEINRICH.  
H.R. 3012: Mr. MARSHALL.  
H.R. 3024: Mr. LIPINSKI and Mr. FILNER.  
H.R. 3101: Mr. MCGOVERN.  
H.R. 3129: Mr. SCHOCK.  
H.R. 3227: Mr. FRANK of Massachusetts.  
H.R. 3277: Mr. COURTNEY.  
H.R. 3286: Mr. NADLER of New York and Mr. KUCINICH.  
H.R. 3287: Mr. TIM MURPHY of Pennsylvania.  
H.R. 3321: Mr. JACKSON of Illinois and Mr. KLEIN of Florida.



H.R. 3331: Mr. WITTMAN and Mr. FORBES.  
H.R. 3393: Mr. DRIEHAUS, Mr. FOSTER, Mr. PAUL, and Mr. PLATTS.  
H.R. 3401: Ms. SLAUGHTER.  
H.R. 3402: Mr. PAUL.  
H.R. 3412: Mr. ISRAEL and Mr. KIRK.  
H.R. 3427: Mr. JACKSON of Illinois.  
H.R. 3458: Mr. HONDA.  
H.R. 3464: Mr. CARSON of Indiana.  
H.R. 3510: Mr. CARNEY and Mr. BERMAN.  
H.R. 3688: Mrs. DAHLKEMPER.  
H.R. 3699: Mr. MORAN of Virginia.  
H.R. 3712: Mr. FATTAH, Mr. ALTMIRE, Mr. TIM MURPHY of Pennsylvania, Mr. DENT, and Mr. SOUDER.  
H.R. 3715: Mrs. LUMMIS.  
H.R. 3790: Mr. CHANDLER, Ms. SUTTON, Mr. MILLER of North Carolina, Ms. HERSETH SANDLIN, and Mr. ISRAEL.  
H.R. 3845: Ms. PINGREE of Maine.  
H.R. 3916: Mr. GERLACH, Mr. SHUSTER, Mr. MOLLOHAN, and Mrs. CAPITO.  
H.R. 3918: Ms. MARKEY of Colorado.  
H.R. 3930: Mr. GERLACH and Mr. FORBES.  
H.R. 3943: Mr. CONYERS, Ms. NORTON, and Ms. JACKSON-LEE of Texas.  
H.R. 4072: Mr. MCINTYRE.  
H.R. 4082: Mr. SPACE and Mrs. SCHMIDT.  
H.R. 4088: Mr. FILNER and Mr. SAM JOHNSON of Texas.  
H.R. 4090: Mr. PETERS.  
H.R. 4102: Mr. MCCAUL.  
H.R. 4109: Mr. MCGOVERN, Mr. LARSON of Connecticut, and Mr. POMEROY.  
H.R. 4112: Mr. SPRATT.  
H.R. 4114: Ms. EDWARDS of Maryland.  
H.R. 4133: Mr. PERRIELLO.  
H.R. 4141: Mr. CARSON of Indiana and Mr. PENCE.  
H.R. 4149: Mr. MCMAHON, Mr. TEAGUE, and Mr. LUJÁN.  
H.R. 4156: Mr. HALL of New York.  
H.R. 4168: Ms. MARKEY of Colorado and Mr. THOMPSON of California.  
H.R. 4183: Mr. PETERS and Mr. WELCH.  
H.R. 4196: Mr. CONYERS and Ms. SUTTON.  
H.R. 4199: Mr. BRALEY of Iowa, Mr. HOLDEN, and Mr. BOYD.  
H.R. 4214: Mr. BACA, Mr. BERMAN, Mr. BILBRAY, Mr. CALVERT, Mr. CAMPBELL, Mr. CARDOZA, Ms. CHU, Mr. FARR, Mr. GALLEGLY, Mr. ISSA, Mr. LEWIS of California, Mr. DANIEL E. LUNGREN of California, Mr. MCCARTHY of California, Mr. MCCLINTOCK, Mr. MCNERNEY, Mr. GARY G. MILLER of California, Mr. NUNES, Mr. RADANOVICH, Ms. RICHARDSON, Mr. ROHRABACHER, Mr. SCHIFF, Ms. WATSON, and Ms. WOOLSEY.  
H.R. 4220: Mr. ROGERS of Kentucky.  
H.R. 4227: Mr. REHBERG and Mr. ALEXANDER.

H.R. 4235: Mrs. NAPOLITANO.  
H.R. 4247: Mrs. MCCARTHY of New York.  
H.R. 4255: Ms. KILROY, Mr. PLATTS, Ms. JENKINS, Mr. TEAGUE, Ms. MARKEY of Colorado, Mr. OLSON, Mr. BRIGHT, Mr. WAMP, and Mr. MICA.  
H.R. 4260: Mr. ORTIZ, Mr. ELLISON, and Ms. BORDALLO.  
H.R. 4262: Mr. MCCARTHY of California, Mrs. BACHMANN, Mr. GOODLATTE, Mr. ROSKAM, Mr. PENCE, Mr. MACK, Mr. SULLIVAN, Mr. TIBERI, Mr. TIAHRT, Mr. BOOZMAN, Mr. DUNCAN, Mrs. BONO MACK, Mr. ADERHOLT, and Mr. BACHUS.  
H.R. 4265: Mr. WELCH, Mr. COHEN, and Mr. COURTNEY.  
H.R. 4267: Mrs. BLACKBURN.  
H.R. 4268: Mr. CARSON of Indiana, Ms. WOOLSEY, Mr. GRAYSON, Ms. MCCOLLUM, Ms. ROYBAL-ALLARD, Mrs. NAPOLITANO, Mr. FILNER, Mr. MICHAUD, Ms. CORRINE BROWN of Florida, and Mr. YARMUTH.  
H. Con. Res. 220: Mr. ALEXANDER, Mr. AUSTRIA, Mr. BOCCIERI, Mr. BOREN, Mr. BOSWELL, Mr. CAO, Mr. CHANDLER, Mr. COFFMAN of Colorado, Mr. CONNOLLY of Virginia, Mr. COOPER, Mr. GRIFFITH, Mrs. HALVORSON, Mr. HARE, Mr. HARPER, Mr. HILL, Ms. KILROY, Mr. KISSELL, Mr. LANCE, Mr. LUETKEMEYER, Mr. MARKEY of Massachusetts, Mr. MASSA, Mr. MELANCON, Mr. MINNICK, Mr. MITCHELL, Mr. OWENS, Mr. PAULSEN, Ms. PINGREE of Maine, Mr. ROONEY, Mr. SNYDER, Mr. SPRATT, Mr. STUPAK, Mr. TAYLOR, Mr. TEAGUE, Ms. TITUS, Mr. YARMUTH, Mr. SABLAN, Mr. BARROW, Mr. BISHOP of New York, Mr. BLUMENAUER, Mr. CASSIDY, Mr. DEFazio, Mr. DRIEHAUS, Mr. HIMES, Ms. JACKSON-LEE of Texas, Mr. KIND, Ms. SUTTON, Mr. WALDEN, Mr. WU, Mr. YOUNG of Alaska, and Mr. GUTHRIE.  
H. Res. 510: Mr. DRIEHAUS.  
H. Res. 704: Mr. CARNEY, Mr. HIMES, Mr. GARAMENDI, Ms. JENKINS, Ms. MATSUI, Mrs. CHRISTENSEN, Ms. LORETTA SANCHEZ of California, Ms. BALDWIN, Ms. WOOLSEY, and Mr. LANCE.  
H. Res. 776: Mr. MARKEY of Massachusetts, Ms. BEAN, Mr. LUJÁN, Mr. HOLT, Mr. ISRAEL, Mr. POLIS, and Mr. MORAN of Virginia.  
H. Res. 898: Mr. VAN HOLLEN and Mr. FRANK of Massachusetts.  
H. Res. 904: Ms. SCHAKOWSKY, Ms. JACKSON-LEE of Texas, Mr. PIERLUISI, and Ms. MARKEY of Colorado.  
H. Res. 905: Mr. JOHNSON of Georgia, Mr. BERMAN, Ms. WASSERMAN SCHULTZ, Mr. FOSTER, and Mr. COHEN.  
H. Res. 924: Mr. HUNTER and Mr. ROGERS of Kentucky.

H. Res. 932: Ms. KILROY, Ms. RICHARDSON, Mr. FALCOMA VAEGA, Mr. HONDA, and Mr. WU.  
H. Res. 945: Mr. CALVERT.  
H. Res. 947: Ms. EDWARDS of Maryland.  
H. Res. 949: Mr. BACHUS, Mr. POE of Texas, and Mr. SCALISE.  
H. Res. 951: Mr. TIAHRT, Mr. BONNER, Mrs. SCHMIDT, Mr. BOOZMAN, Mr. BURTON of Indiana, and Mr. JOHNSON of Illinois.  
H. Res. 954: Mr. CALVERT.  
H. Res. 957: Mr. HELLER, Mrs. BLACKBURN, Mr. COBLE, Mr. PRICE of Georgia, Mr. ROONEY, Mr. SCALISE, Mrs. BONO MACK, Mr. MACK, Mr. PENCE, Mr. BRADY of Texas, Mr. MANZULLO, Mr. OLSON, Mr. ROSKAM, Mr. HASTINGS of Washington, Mr. NUNES, Mr. CONAWAY, Mr. WILSON of South Carolina, Mr. SHUSTER, Mr. ROHRABACHER, Mr. JORDAN of Ohio, Mr. HENSARLING, Mr. CAMPBELL, Ms. FALLIN, Mr. WAMP, Mr. CASTLE, and Mr. HARPER.  
H. Res. 958: Mr. SPRATT.  
H. Res. 960: Mr. ROYCE, Mr. MOORE of Kansas, Mr. COSTA, and Ms. WASSERMAN SCHULTZ.

#### DISCHARGE PETITIONS— ADDITIONS OR DELETIONS

The following Members added their names to the following discharge petitions.

Petition 5 by Mrs. BLACKBURN on H.R. 391: Phil Gingrey, John Sullivan, Bill Cassidy, and Mary Bono Mack.

Petition 8 by Mr. NUNES on H.R. 3105: Mario Diaz-Balart, Jeff Miller, C. W. Bill Young, K. Michael Conaway, Jean Schmidt, Bill Cassidy, Rob Bishop, Cathy McMorris Rodgers, John Fleming, Spencer Bachus, Judy Biggert, Jim Jordan, Patrick T. McHenry, Blaine Luetkemeyer, John Linder, Ed Whitfield, Dan Burton, Todd Tiahrt, Michael K. Simpson, Don Young, David Dreier, Ted Poe, Jerry Moran, Jack Kingston, Charles W. Boustany, Jr., Rodney Alexander, Steven C. LaTourette, Mike Rogers (MI), Howard Coble, Tom Price, John Kline, Jeb Hensarling, Mary Fallin, Pete Olson, Donald A. Manzullo, Sam Johnson, W. Todd Akin, John J. Duncan, Jr., Marsha Blackburn, Mark E. Souder, Robert E. Latta, Thomas J. Rooney, Tom Latham, Joe Wilson, John B. Shadegg, John Abney Culbertson, Kevin Brady, Kenny Marchant, Bill Posey, Walter B. Jones, Jeff Flake, Jeff Fortenberry, Steve Scalise, John R. Carter, and Frank D. Lucas.

**SENATE—Friday, December 11, 2009**

The Senate met at 10 a.m. and was called to order by the Honorable JEFF MERKLEY, a Senator from the State of Oregon.

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Gracious God, through the power of Your spirit, empower us to live vibrant lives that glorify You. Awaken our lawmakers to the opportunities all around them. Help them to hear Your call to move forward and to accomplish the things that honor You, as You guide them in the pursuit of wisdom and truth. May they confidently face their duties, knowing that You are their sufficient shield and defense. Lord, make them willing to listen, even to people with whom they expect to differ, united by the desire to represent You with exemplary conduct.

We pray in Your great Name. Amen.

**PLEDGE OF ALLEGIANCE**

The Honorable JEFF MERKLEY led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE**

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 11, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEFF MERKLEY, a Senator from the State of Oregon, to perform the duties of the Chair.

ROBERT C. BYRD,  
*President pro tempore.*

Mr. MERKLEY thereupon assumed the chair as Acting President pro tempore.

**RECOGNITION OF THE MAJORITY LEADER**

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

**SCHEDULE**

Mr. REID. Mr. President, following leader remarks, the Senate will be in a

period of morning business. Senators will be permitted to speak for 10 minutes each during that period. Republicans will control the first 30 minutes, and the majority will control the next 30 minutes. We will continue work on an agreement to vote in relation to the drug reimportation matter, the Crapo motion to commit, and the side-by-side to the Crapo motion. These amendments and the motion are with respect to H.R. 3590, the health insurance reform legislation.

Yesterday, we filed cloture on the bill we got from the House, the appropriations bill, H.R. 3288, which includes Commerce-Justice-Science, Military Construction, Labor-HHS, Transportation, financial services, State and Foreign Operations. We are going to have at least two rollcall votes on motions to waive with respect to the appropriations conference report today. Senators will be notified when these votes are scheduled.

I direct this question through the Chair to my friend from South Dakota. I offered a unanimous consent request yesterday evening that set up a schedule of votes on the Crapo motion and, of course, the Dorgan amendment. Last night, I was told the Republicans were not ready yet. I ask my friend, are the Republicans ready to vote?

Mr. THUNE. Mr. President, the Republican leader has just arrived. I reserve any statement for him.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

**RECOGNITION OF THE MINORITY LEADER**

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

**HEALTH CARE AND THE OMNIBUS**

Mr. MCCONNELL. Mr. President, Republicans are fully engaged in the health care debate. It is our view that there is no more important work we can do here than to show Americans what the Democratic plan for health care would mean to them. Once we return to the debate, Republicans will be ready with two important amendments.

One of those amendments, by Senator CRAPO, would enable the President to keep one of the pledges he made as a candidate and as President about what the Democratic plan for health care reform would look like. He said that no family making less than \$250,000 a year and no individual making less than \$200,000 a year would see a tax increase of any kind. The Crapo motion would ensure that promise is kept.

An amendment by Senators HUTCHISON and THUNE would ensure that none of the taxes imposed by this bill would go into effect a day earlier than the benefits. In other words, you don't get taxes before you get benefits. This is a commonsense amendment. You certainly wouldn't ask someone to pay for the mortgage on a house 4 years before they were allowed to move in. In the same way, we should not tax people for a benefit they don't get for 4 long years.

The Hutchison-Thune amendment also aims to keep government honest, because most Americans have a hard time believing Washington would collect taxes on one thing for 4 years and actually have the discipline not to use the money on something else. This amendment would guard against that.

For the moment, the majority has decided to take us off health care. It has moved to an Omnibus appropriations bill that has all the hallmarks of all the other bloated spending bills we have seen this year. It is really outrageous, actually. At a time of double-digit unemployment, at a time when Democrats are talking about increasing by nearly \$2 trillion the amount of money the government is legally allowed to borrow, the majority has moved us off of one \$2.5 trillion spending bill and on to a 1,000-page omnibus that would cost the American taxpayer another \$½ trillion right in the middle of a recession.

Once again, the majority has shown a lack of restraint when it comes to spending. At a moment of record debt, at a moment when inflation is nearly flat, this bill represents a 12-percent annual increase in government spending. Let me say that again. Inflation is flat. Yet we are increasing discretionary spending by 12 percent in this omnibus spending bill. The American people are not increasing their spending 12 percent. Moreover, it includes a number of controversial, unrelated provisions, including, among other things, language to weaken restrictions on abortion funding.

This \$½ trillion spending bill spends \$50 billion more than last year. All this

spending comes right on the heels of a new report from Treasury that says the government ran a deficit of nearly \$300 billion in October and November—the worst deficit we have ever had at this point in a fiscal year, ever. At a time when families across the country are struggling to make ends meet, lawmakers almost seem to be flouting their ability to spend taxpayer money. This bill contains many worthy projects. Unfortunately, the majority has piled on so much spending, so much debt and new controversial policies that I certainly can't support it.

As you may know, the Senate is considering a bill that would make basic changes in the country's health care system. We have been debating it for weeks. What I keep hearing on the other side is no reference to what the American people think. I hear these arguments about making history. Ignoring the public is not a great way to make history. We have not seen poll data for months that indicate the American people support the Reid bill. The most devastating one came out last night. A CNN opinion research poll taken December 2 and 3, this week—not exactly a bastion of conservatism—indicates that 61 percent of the American people oppose this health care bill and only 36 percent favor it.

We are looking for one courageous Member of the other side of the aisle—just one—to stand up and say he or she will not ignore the overwhelming opinion of the American people, he or she will not be so arrogant as to assume we have the right answer here and 61 percent of the American people somehow don't know what they are talking about.

The American people are pretty smart. They have been watching this carefully. This health care bill, like no other issue, affects every single American regardless of age. Everybody is interested in the subject. They have watched the debate closely. They are telling us: Please, Congress, please do not pass this bill.

I yield the floor.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The Senator from Texas.

#### ORDER OF PROCEDURE

Mrs. HUTCHISON. Mr. President, as I understand it, we are now in the 30-

minute timeframe for the Republicans; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that we be allowed to have a colloquy so we can go back and forth.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. HUTCHISON. I thank the Acting President pro tempore.

#### HEALTH CARE REFORM

Mrs. HUTCHISON. Mr. President, I think the Republican leader just stated the case for why it is so important that we have the votes and that we go back to the drawing board on this bill. Americans are looking at the fine print of this bill. They are seeing \$½ trillion in taxes.

Just this week, the President has had a jobs summit because we are all concerned about jobs. My goodness, since the President took the oath of office, more than 3.5 million Americans have lost their jobs—300,000 Texans—our budget has tripled to \$1.4 trillion, and the Federal debt as a portion of the U.S. economy has risen to its highest level since World War II. So we are very concerned about these taxes. In fact, the small businesses of our country have said: No, do not do this to us.

The NFIB, which is the National Federation of Independent Business, sent a letter just this week saying:

When evaluating healthcare reform options, small business owners ask themselves two specific questions. First, will the bill lower insurance costs? Second, will the bill increase the overall cost of doing business?

Well, the answer to the first question is clearly no because the business taxes start on January 1, 2010—3 weeks or so from now—and going forward, the mandates and taxes in 2014 to small businesses are egregious. It could be \$750 per employee or it could be \$3,000 per employee if you do not have exactly the right mix of health care coverage for your employees. Well, at \$3,000 per employee, small businesses are telling me: I am out of here. We are just going to let people go to the government option because we cannot afford that.

So the answer to question No. 2 in the NFIB letter—which is, “Will the bill increase the overall cost of doing business?”—is, well, of course it will, at a time when we are seeing the numbers of people employed go down.

We are in a financial crisis in this country. People are jobless. We are in a holiday season. People are very stressed, and here we have a health care bill being rushed through, without amendments being able to come forward with a real chance for passing them. The cost of business is going to go up, which means more people are going to be laid off.

Now, I want to ask my friend, the Senator from South Dakota, a question because he and I are teaming up on an amendment. If we are going to have taxes increase in 3 weeks, you would say: Oh, OK, well taxes are going to start in 3 weeks, so, then, where is the package I signed up for that is going to lower my health care costs? So I would ask the Senator from South Dakota, when do the programs that are supposed to lower health care costs take effect?

Mr. THUNE. I would say to my friend from Texas, Senator HUTCHISON, that as we have examined this legislation and have looked at its cost and its benefits and how that is distributed over time, it has become clear that what the other side has tried to do—the Democrats have tried to do—with this bill is understate its true cost by front-loading the tax increases and back-loading the spending. In other words, the tax increases kick in right away, when much of the benefit of the bill does not kick in for several years.

So I want to point something out, just to illustrate what the Senator from Texas has said; that is, the tax increases in the bill begin on January 1 of this year. So 21 days from now, Americans, individuals, families, and small businesses are going to see their taxes go up. Unfortunately, they are not going to see any benefit come until 1,482 days later.

What that, in effect, does is it understates the total cost of this legislation. They have said: We want to get this under \$1 trillion. The President said: I need a bill under \$1 trillion. So they have tried to come up with a bill that is about \$1 trillion. But what they do not tell you is that by delaying the benefits and front-loading the tax increases, you are actually going to have a 4- or 5-year period where people are having to experience tax increases. That is going to impact the small businesses because you have a Medicare payroll tax increase, which, by the way, for the first time, will not be used for Medicare but will be used to create a whole new entitlement health care program.

You have an employer mandate which is going to hit small businesses. You have the tax on medical device manufacturers, on prescription drugs, on health plans. You have all these taxes that kick in right away.

So what happens? These taxes get passed on to the consumers in this country in the form of higher premiums, so people are going to see their premiums go up. Small businesses are going to see their taxes go up immediately—well, 21 days from now. But Americans are not going to see any benefit from this for 1,482 days. So what we have is a gimmick that has been used to disguise the total cost of this bill, which we all know when fully implemented is not \$1 trillion but \$2.5 trillion.

So the Senator from Texas and I have a motion, which I believe is supported by the Senator from Wyoming, who is in the Chamber, that would delay the tax increases until such time as the benefits begin so we synchronize or align the tax increases and the fees to begin at the same time the benefits do so we will reflect the true cost of this legislation to the American people and not unfairly begin punishing small businesses by raising their taxes before a single dollar of benefit is going to be distributed to the American people.

Mrs. HUTCHISON. So I would ask the Senator from South Dakota—because it is our amendment, the Hutchison-Thune amendment—and surely the American people, who would look at the debate, would say: We are missing something. This cannot be right. We can't have taxes that are increasing our premiums, increasing our prescription drug costs, increasing our medical devices we must have for our health care for 4 years. Did he say that right? Did he say we would be paying those higher costs for 4 years before there is any option available to allow more people to have health care coverage?

Mr. THUNE. I would say to my friend from Texas, it is kind of the same old Washington game, the same old Washington gimmick, the same old back-room deal that has been cut basically that, of course, we have had no input into. Incidentally, there is another now, the latest permutation of this discussion, going on right now behind closed doors, which is the Medicare expansion, which is a subject for a whole other day.

But I think the American people are looking at this and saying: How does this impact me? More than anything else, they are watching this big debate in Washington, DC, and saying: How does this impact me? I think what they are concluding is that 90 percent of the American public, according to the Congressional Budget Office, would see their premiums stay the same at best or at worst go up, and when I say "stay the same," that means double the rate of inflation annual increases in their health insurance premiums.

So the best you can hope for, if you are an American today, is the status quo when it comes to your health insurance premiums.

If you buy in the individual marketplace, your premiums are going to go up 10 to 13 percent above the annual, double the rate of inflation increases that we are currently seeing.

So that is what happens to the American public, the average person out there, in terms of their health insurance premiums. If you are a small business, you are looking at tax increases. You are looking at a whole new raft of tax increases that you are going to end up having to pay, which is why all of the small business organizations—the Senator from Texas pointed out the

letter from the National Federation of Independent Business, which says this is going to drive the cost of doing business up. This is going to increase the cost of health care, not lower it. What they want to see in reform—small businesses that are the economic engine that creates jobs in this economy—is they want to see health care reforms put in place that drive health care costs down.

We know from every estimate that has been done, such as from the Congressional Budget Office—we have some data now from the CMS actuary that just came out yesterday that says overall health care expenditures are going to go up, health insurance premiums are going to go up. So small businesses are looking at higher taxes.

If you are a senior citizen in America, and one of the 11 million people who get Medicare Advantage, your benefits are going to be cut. So you have higher premiums, increased taxes on small businesses, Medicare benefit cuts to senior citizens across this country, and cuts to providers, and if you are a young American, you are faced with a \$2.5 trillion new entitlement program that you are going to have to pay for.

That is what the American people, as they are observing this debate, can expect to come out of this, if the bill that has been proposed by the majority is enacted. That is why we are working so hard to defeat that and put in place some commonsense reforms that actually make sense to the American people.

I know the Senator from Wyoming, who is a physician, knows full well the impact of many of these policies from being on the front line. He is someone who has had to deliver health care services in a rural State. So I would ask him to give us his thoughts about what these tax increases and Medicare cuts are going to mean to health care delivery in places such as Wyoming.

Mr. BARRASSO. I thank my colleague from South Dakota because South Dakota and Wyoming are very similar in many ways. Both have rural areas all spread across the State, with people needing health care.

And I have seen it. I have seen the concerns from people, but also from small businesses. My colleagues mentioned the National Federation of Independent Business. A lot of businesses in Wyoming are members of that organization, and rightfully so, because small business is the engine that drives the economy. They are the job creators in this country.

I see these taxes—4 years of taxes—before the first health care services are given as going to hurt our small businesses in Wyoming. It is going to hurt small businesses all around the country.

In one of the morning papers, it talks about the plans that are being presented by the Democrats, with all the

increases in health costs—the fines, the taxes, that this will cost 1.6 million jobs before the first health care services are given in 2013—1.6 million jobs across the country. That affects all of our States.

At a time when unemployment is at 10 percent, at a time when Investor's Business Daily, this morning, says: "Job Cuts Hit Hardest on Low-Skill Men; Outlook Is Gloomy," at a time when we are looking at an outlook which they call in the headlines of the front page of their paper "gloomy," why would we say: Lets increase taxes on Americans, and then cut Medicare from our seniors who depend upon Medicare, and lets not improve services for 4 more years?

It is no surprise then that the Republican leader would come to the floor and say we have now reached an all-time high of American people opposed, completely opposed, to this piece of legislation. The Republican leader read a poll that said 61 percent of Americans now oppose this bill. Well, it is because they are learning more about it. The more people of America see what is in this bill, the more they realize they cannot believe any of the promises that were made by the Democrats, by the administration, the promises that were made, and the polling shows it.

Two specific questions that were asked in the poll were two specific promises that the President made. One is, he said he will not sign a bill if it adds one dime to the deficit. OK. We do not want to add to the deficit, although the Democrats want us to vote this weekend on raising the debt level by well over \$1 trillion. And why? Because they cannot control the spending. But the question was, do you think the Federal budget deficit would or would not increase if this bill is passed—when the President said it will not raise it by a dime?

Mr. President, 79 percent of Americans said this is going to increase the deficit. Only 19 percent believe what the President is telling the American people.

Then the question of taxes. The President said: My plan will not raise your taxes one penny. What do the American people think when the President speaks? Question: Do you think your taxes would or would not increase? This is the CNN poll the Republican leader just talked about, done earlier this month: Do you think your taxes would or would not increase? The number of people who believe their taxes will increase if this passes, 85 percent. Eighty-five percent of the American people believe they are not getting it straight from the President of the United States. Only 14 percent believe him when he says he will not raise taxes a penny.

So we have the Democrats bringing forth a bill—to me, as a practicing physician in Wyoming, taking care of families in Wyoming, talking to doctors,

talking to patients, having townhall meetings in the State, having telephone townhall meetings, the Democrats bring forth a bill that the people of Wyoming and the people of America realize is going to cost them more, is going to add to the deficit, and hurt the health care they receive.

Eighty-five percent of Americans are happy with the health care they receive. They do not like the cost. They do not like the price. But this bill we are looking at is going to raise premiums for people who have insurance. The President promised that for families all across America, their premiums would drop by \$2,500 per family. But if you go out there trying to buy insurance, if this bill passes, you are going to end up paying \$2,100 more than you would otherwise if nothing passes. That is why the majority of Americans say we would be better off if nothing passed. That is what the American people say. The Democrats seem to be ignoring the voice of the American people. At a time of 10 percent unemployment, at a time when the National Federation of Independent Business points out that we will lose over a million more jobs if this passes, we should be looking at ways to help small businesses hire more workers, hire more people.

The small businesses continue to be the engines that drive up the economy. Senator COLLINS from Maine was on the floor and gave an explanation of some of the taxes on all of the small businesses in Maine. If you have 10 employees and you go to an 11th employee, if this bill passes, that small business gets penalized for growing their business.

We want to have an opportunity to hire people.

She also explained that if we actually try to work ways through small businesses to give raises to people, those businesses get penalized from a tax standpoint.

As I look at this health care bill, we need health care reform that is going to bring down the cost of care. This bill is going to raise the cost of care for all Americans. It is going to hurt our seniors by taking almost \$500 billion out of Medicare, a program on which the seniors depend. It is going to raise \$500 billion in taxes which is going to hurt the engine that drives the economy. It is going to hurt small business. It is going to cause people to lose their jobs. I think it is foolish for people to continue to support this bill. It makes no sense.

I listened to my colleague from South Dakota who showed the chart that says 21 days until the tax increases begin but almost 4 years until the benefits begin. What do the people in South Dakota have to say about this?

Mr. THUNE. Let me, if I might, enter into a discussion with the Senator

from Wyoming because, as he said, his State and my State are not unlike in terms of the composition of population. We have big geographies in Wyoming and in South Dakota and in the West and a lot of rural health care delivery. The primary job creator in places such as Wyoming and South Dakota is small business. Small businesses are the economic engine that creates jobs.

As the Senator from Wyoming mentioned, according to many of the analyses that have been done of this legislation, it would be a job killer. It has been suggested by the National Federation of Independent Business that 1.6 million jobs would be lost.

What is ironic about that is I have heard our colleagues on the other side repeatedly say this is going to be great for jobs. This is going to be good for the economy. If that is true, then why are all of these business organizations coming out and saying it would increase the cost of doing business and it would increase health care costs? We have that now validated by the Congressional Budget Office, by the CMS Chief Actuary at Health and Human Services saying overall health care costs under this legislation are going to go up, not down, both as a percentage of the gross domestic product as well as for individuals who are going to see it in the form of higher health insurance premiums.

I say to my friend from Wyoming, because he and I represent similar constituencies and the economies are similar, although he has—we wish we had more oil and gas in South Dakota along the lines of what they have in Wyoming—but the small business sector is what creates jobs.

He mentioned the National Federation of Independent Business. I wish to mention one other letter we received from an organization called the Small Business Coalition for Affordable Health Care. In it they state that these reforms fall short of long-term, meaningful relief for small business. Any potential savings from these reforms are more than outweighed by the new taxes, new mandates, and expensive new government programs included in the bill. This is signed by 50 small business organizations, one of which, by the way, is the American Farm Bureau Association, which is a big presence in my State, represents a lot of farmers and ranchers, small business people, and I am sure represents a lot of members in the State of Wyoming as well as in the State of Texas.

I think what they are saying is, what all of these business groups are saying, and that is we don't find anything in this—there may be some good things in it, but we find the overall core elements of this bill to be a detriment to job creation, will kill jobs, and will drive up the cost of doing business in this country.

It is hard for me to believe that some of the statements made by the other

side—and I assume they are making them with the greatest sincerity, but they are factually wrong. If they weren't, we wouldn't have every business organization in this country coming out and saying we are opposed to this because it is going to increase the cost of doing business, it is going to kill jobs, and it is going to increase the cost of health care.

So to our colleague from Texas I would say I suspect she has a lot of small businesses in her State, not unlike Wyoming and South Dakota, that share that view.

Mrs. HUTCHISON. Mr. President, I am glad you mentioned the Farm Bureau because my constituents in the Farm Bureau, 400,000 members of the Texas Farm Bureau, have contacted me repeatedly about how bad this will be for the farmers, the small businesses they own, and the few people they employ. Maybe they have five employees. This will be a killer for them.

To reinforce the letter that the Senator from South Dakota read from the Small Business Coalition for Affordable Health Care, they say in the letter:

If this bill is enacted, the small business community will be forced to divert resources away from hiring and expansion, the very investments our country so desperately needs as it continues to struggle in a faltering economy with double-digit unemployment.

Then they go on to talk about what those costs are going to be: a small business health insurance tax; an employer mandate that encourages job cuts, not job creation; and the temporary small business tax credit falls short.

I am glad they mentioned this temporary small business tax credit because I have heard them say on the other side of the aisle: But there is a tax credit for small business that will alleviate the pain.

Well, that credit is for employers with fewer than 25 employees with average annual wages of less than \$40,000. Very few small businesses are going to be able to qualify for this tax credit. That is a very strict standard. The average annual wages of less than \$40,000 are going to be very difficult. However, if they qualify, the credit is temporary. The credit is temporary. It is not a permanent credit that helps people who would be able to qualify for this credit. So, in effect, this is not a tax credit at all, and certainly when it goes away it will help no one.

I ask unanimous consent to have printed in the RECORD the letter from the Small Business Coalition for Affordable Healthcare.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 10, 2009.

DEAR REPRESENTATIVE: Representing the country's largest, oldest and most respected small business associations who have spent

more than a decade working to increase access and affordability of private health insurance, the Small Business Coalition for Affordable Healthcare is writing to express our opposition to the Patient Protection and Affordable Care Act (H.R. 3590).

Small business has been a constructive participant in the current healthcare debate. Our small business and self-employed entrepreneurs have been clear about what they need and want: lower costs, more choices and greater competition for private insurance. These reforms are critical, but to be workable and sustainable, they must be balanced against the overall cost of doing business. Unfortunately, with its new taxes, mandates, growth in government programs and overall price tag, the Patient Protection and Affordable Care Act costs too much and delivers too little.

While a few of the provisions in the bill reflect some of the insurance market reforms that the small business and self-employed communities have long sought, those reforms fall short of long-term meaningful relief for small business. Any potential savings from those reforms are more than outweighed by the new taxes, new mandates and expensive new government programs included in the bill. Those new costs of doing business are also disproportionately targeted at small business. If this bill is enacted, the small business community will be forced to divert resources away from hiring and expansion—the very investments our country so desperately needs as it continues to struggle in a faltering economy with double-digit unemployment. Those new costs include:

#### A small business health insurance tax

Though small business has repeatedly called for reducing the cost of health insurance, the Senate bill includes a devastating new \$6.7 billion annual tax (\$60.7 billion over ten years) that will fall almost exclusively on small business and the self-employed because they purchase in the fully-insured market. While the fee is levied on the insurance company, a recent CBO report confirms the small business insurance tax “would be largely passed through to consumers in the form of higher premiums for private coverage.” This will send costs upward—the opposite of what the nation’s small employers need.

An employer mandate that encourages job cuts, not job creation

The only certainty of an employer mandate is that it punishes both the employer and employee. The employer bears the first blow in trying to afford the new unfunded mandate and the second blow is borne by the employee in the form of lower wages and job loss. The mandate in H.R. 3590 devastates the small business community in two ways. First, since the bill does little to make insurance more affordable and the tax credit is so limited, few will be able to obtain affordable insurance. Second, the penalties assessed on firms—both offering and non-offering—will most certainly result in a reduction of full-time workers to part-time workers and discourage the hiring of those entrants into the workforce who might qualify for a government subsidy. Overall, the mandate included in this legislation is especially troubling because it fails to recognize how the cost of health benefits directly impacts wages of the employee. Instead, H.R. 3590 blames the employer for a cost (health insurance) that is beyond their control.

The temporary small business tax credit falls short

A short-term tax credit only puts off the inevitable—increased cost in future years.

The effectiveness of the tax credit in H.R. 3590 is limited: the full value of the credit is only available to those with wages of less than \$20,000 and phases out at \$40,000. While the credit is designed to offset the cost of insurance, its “savings” potential is merely temporary since it only applies if you buy insurance in the exchange and it expires after just two years.

Health insurance exchange plans lack affordable choices

Small business has long sought a simpler and more efficient way to shop for insurance. H.R. 3590 creates a framework for exchanges that can help ease administrative and overhead costs. However, those savings are quickly erased if the exchange plans are more expensive than what small employers can afford. A recent CBO analysis of premiums under H.R. 3590 paints a disheartening picture: small group premiums, at best, would decrease by about 2 percent and could increase 1 percent. The impact on non-group premiums is even more devastating, as they are expected to increase an average of 10–13 percent per person. Those estimates, in addition to the financing provisions included in the bill, slam the “savings” door shut. Steps must be taken to ensure that a greater variety of more affordable plans are available to small employers and their employees.

Limited value of Simple cafeteria plans

The inclusion of Simple cafeteria plans in H.R. 3590 has the potential to bring about a new option for small employers seeking to offer coverage in an employer-sponsored setting. The bill, however, currently lacks language to permit owners of many “pass-through” business entities to participate in cafeteria plans. Unless owners can participate in the plan, they will be less likely to provide insurance to their workforce.

Insurance rating reforms that result in “rate shock”

Employers in the small group and non-group market have long lived with the fear that a single illness could either price them out of affordable insurance or that they could be rejected for coverage altogether. While H.R. 3590 attempts to ensure that insurance will be more widely available to all, the restrictive rating (3:1 on age) and lack of a phase-in for existing plans threatens to undermine the viability of both plans that people own today or plans that they will buy in the future through the exchange. Only balanced rating reforms that are phased-in over an appropriate timeframe have the potential to transform these poorly functioning insurance markets.

New paperwork burdens and costs for small businesses

The Patient Protection and Affordable Care Act imposes a new tax-compliance paperwork burden on small businesses. The “corporate reporting” provision is an expansion of reporting requirements (for transactions of more than \$600), which adds another \$17 billion to the cost of doing business for small business.

A waiting period that lacks flexibility

Small employers, including those who employ full-time, part-time, temporary and seasonal workers, face much higher turnover rates than their large business counterparts. They face significant challenges related to providing healthcare benefits to their workforces. The Patient Protection and Affordable Care Act presents two specific problems. First, it defines a full-time employee as working an average workweek of 30 hours. Second, it outlines a 90-day waiting period,

but then implements fines (at the 30–60-day and the 60–90-day timeframe) of \$400 and \$600 per affected worker respectively. In industries with above average turnover (e.g. the restaurant industry has roughly a 75 percent turnover rate annually) these provisions would lead to fewer full-time workers and less hiring overall.

Employers and employees lose flexibility and choice

Small employers need more affordable health insurance options. However, the prohibition of HSA, FSA and HRA funds to purchase over-the-counter medications, along with the \$2,500 limit on FSA contributions, diminishes flexibility and threatens to further limit the ever-shrinking options employers have to provide meaningful healthcare to their employees.

An unprecedented increase in the Medicare payroll tax

Since its creation the payroll taxes dedicated to Medicare programs have been dedicated specifically to funding Medicare. However, the Patient Protection and Affordable Care Act changes the purpose of the tax while setting the precedent to use payroll taxes to pay for other non-Medicare programs. Furthermore, it will raise taxes for some small businesses.

No meaningful liability reform

Our medical liability litigation system creates a disincentive for affordability and efficiency while creating a climate where the practice of defensive medicine increases healthcare spending, and overall costs. Those increased costs extract a particularly heavy toll on the ability of small business to access affordable healthcare for their employees and dependents. Meaningful liability reform will inject more fairness into the medical malpractice legal system, and reduce unnecessary litigation and legal costs.

A public option that threatens choice and competition

A government-run plan cannot compete fairly with the private market and threatens to destroy the marketplace, further limiting choices. We believe that, with proper reforms, the private market can be held accountable and provide greater competition and lower-cost solutions where insurers compete based on their ability to manage, rather than shed risk.

While our nation’s entrepreneurs in the small business and self-employed communities strongly believe that the status quo is unsustainable, the measure of success is not simply to produce reform legislation. As some in the media have recently emphasized, the choice is not between the status quo and the bills we have seen emerge from this process. The choice is between flawed legislation and workable alternatives. In short, the legislation must improve the status quo. H.R. 3590 fails to provide those much-needed improvements, and instead makes things worse than they are today. We greatly hope that the Senate will refocus its energy and work with small business to develop the common-sense solutions that make our core needs a top priority.

Sincerely,

Aeronautical Repair Station Association;  
American Bakers Association; American Farm Bureau Federation®; American Hotel & Lodging Association; American International Automobile Dealers Association; American Rental Association; AMT—The Association For Manufacturing Technology; Associated Builders and Contractors, Inc.;

Associated Equipment Distributors; Associated General Contractors of America.

Association For Manufacturing Technology; Association of Ship Brokers & Agents; Automotive Aftermarket Industry Association; Automotive Recyclers Association; Commercial Photographers International; Electronic Security Association; Independent Electrical Contractors; Independent Office Products & Furniture Dealers Alliance; International Foodservice Distributors Association; International Franchise Association.

International Housewares Association; International Sleep Products Association; National Association of Convenience Stores (NACS); National Association of Home Builders; National Association of Manufacturers; National Association of Mortgage Brokers; National Association of Wholesaler-Distributors; National Automobile Dealers Association; National Club Association; National Federation of Independent Business.

National Lumber Building Material Dealers Association (NLBMDA); National Retail Federation; National Retail Lumber Association; National Roofing Contractors Association; National Tooling and Machining Association; National Utility Contractors Association; Northeastern Retail Lumber Association; Precision Machined Products Association; Precision Metalforming Association; Printing Industries of America.

Professional Photographers of America; Self-Insurance Institute of America (SIIA); Service Station Dealers of America and Allied Trades; Small Business & Entrepreneurship Council; Society of American Florists; Society of Sport and Event Photographers; Stock Artist Alliance; The PGA of America; Tire Industry Association; U.S. Chamber of Commerce.

Mrs. HUTCHISON. Mr. President, I am from a State that has big cities, but the vast majority of my State is rural, as is Wyoming and as is South Dakota. I see my employers, my small business owners, which are the largest bulk of the employers in my State, every day. I talk to them or I see them. Unfortunately, we are in Washington every day right now, 7 days a week, but when I am home I see them and when I am here and talking to them on the phone, or they are visiting me, I talk to them and they are aghast. They are aghast that Congress would actually be putting more strain on small business at a time when we know the jobless rate is the highest since World War II and people are trying to do their part to increase our economy and they can't do it with more taxes, more mandates, more burdens. So it is time we look at the tax burden and do something about it.

The Senator from South Dakota and I are trying to do something about it. We are saying, at the very least we should not allow this bill to go forward when the taxes start next month—January 2010—because none of the programming gets up and running until

2014. So we are going to have the mandates and the business taxes and we are going to have the program that is supposed to alleviate the health care crisis in our country in 2014. Shouldn't we start all of the taxes in 2014 rather than asking people to pay for 4 years the taxes that will increase insurance premiums, increase prescription drug costs, and increase medical equipment costs—\$100 billion in new taxes on those items—shouldn't we at least put it off until the supposed program comes into place. Because in 4 years, with any luck in America, we won't have these programs start.

There is hope for America that we can stop this program by 2014 as people learn what is in it and protest enough that the Members of Congress who are elected in 2010, elected in 2012, will say: No, we now know that this would be a disaster for our country. There is hope.

I would ask the Senator from Wyoming, when people start learning about the Medicare cuts about which you have spoken so eloquently, and the taxes on the small businesses in your State and all of our States, do you think that perhaps not putting these taxes in place is a good policy, because maybe we can still stop this when people find out what is in it, when it is supposed to take effect 4 years from now?

Mr. BARRASSO. Mr. President, I would respond to my colleague from Texas that I think she is absolutely right. The more people learn about this bill and the details of the bill, the more the American people oppose this bill.

My colleague from Texas made a wonderful point yesterday and again today when she said if they start this tax collecting right now, do we even know the money is going to be there 4 years from now to start supplying the services. There was a story in today's USA TODAY talking about unemployment in this country, and the story says:

Public Gain, Private Pain. For Federal workers there is a hiring boom. The Federal Government is adding jobs this year at a rate of nearly 10,000 per month.

We have read about all of the different bureaucracies that will be brought into play if this passes: over 70 new bureaucracies, 150,000 more Federal employees, more Washington bureaucrats to make rules and regulations that affect the people of America. It talks about the 10-percent unemployment in the country. It says, it is the new Federal jobs—not the small business jobs, the Federal jobs—that have helped bring down the unemployment rate from 10.2 to 10 percent. It is the Federal jobs.

I am looking at all of this money that Washington is going to collect. I used to think it was a big gimmick so they could say, Well, we have kept the number under \$900 billion. I still believe it is a big gimmick, but I am con-

cerned they are going to spend the money as well so the money won't be there, which is the point of the Senator from Texas, who has been very fiscally conservative, out there always making sure we are not spending the taxpayer money in any way that is not a wise use of the money.

Is that one of the concerns the Senator has? I know the Senator from South Dakota has similar concerns: Will the money be there if they are going to hire more Washington bureaucrats, which is what USA TODAY says?

Mr. THUNE. That is exactly what our concern is. I would also add this recent study that came out yesterday by the CMS chief actuary sheds a lot of additional light on what is a very bad proposal, a big government proposal that does create 70 new programs here in Washington, DC, but does nothing to affect in a positive way the health care costs that most Americans are dealing with right now. The actuary goes on to say that access to care problems is plausible and even probable under the Reid bill.

So the issue we have talked about in States such as Wyoming and South Dakota, where people travel long distances to get access to health care, would be aggravated by this legislation because there would be a need for more and more providers—hospitals, physicians—who currently don't take Medicaid patients. You expand Medicare, which is the latest proposal the Democrats have put forward, and as a consequence of that you get fewer and fewer hospitals, fewer and fewer physicians who are accepting Medicare patients, because Medicare and Medicaid are both underreimbursed, therefore creating a cost shift where the cost is shifted over to private payers whose premiums continue to go up and up.

So that is why we see all of these studies coming out saying premiums are going to go up, taxes are going to go up, and Medicare benefits are going to be cut, particularly for seniors who have Medicare Advantage. At the end of the day, this ends up being a \$2.5 billion expansion of the government here in Washington, DC.

But to the point the Senator from Texas made—and I think—I know we are running out of time. We want to vote. We want to vote on this motion. We don't think you ought to start taxing people in 21 days and not start delivering benefits for almost 1,500 days.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. THUNE. That is what our motion would do: Synchronize the tax increases with the benefits.

I yield the floor.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that until the Democrats take over, we may continue to talk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.



Mrs. HUTCHISON. Mr. President, to continue with the Senator from South Dakota, I am glad he made the point because we are very much hoping our amendment will be in the order when we start voting on the health care amendments.

The amendment is so clear; it is very simple. I have it here. For Washington, it is half a page. That is something everyone will be able to appreciate—the motion to commit with instructions:

Senator Hutchison and Senator Thune move to commit the bill to the Committee on Finance with instructions to report back to the Senate with changes to align the effective dates of all taxes, fees, and tax increases levied by such bill so that no such tax, fee, or increase takes effect until such time as the major insurance coverage provisions of the bill, including the insurance exchanges, have begun.

The committee is further instructed to maintain the deficit neutrality of the bill over the 10-year budget window.

That is what was promised. This was going to be deficit neutral. It is not deficit neutral. The cost of this bill is \$2.5 trillion over the 10-year period when it starts, in 2014 until 2023. It is \$2.5 trillion. The “offset”—I put that in quotes because the offsets are \$500 billion in tax cuts to Medicare, which will lower the ability of hospitals to stay in business and treat Medicare patients and doctors to be able to treat Medicare patients.

So the quality of Medicare is going to go down. Medicare Advantage will be severely restricted. So you have \$500 billion in cuts to Medicare, and then you have \$500 billion in tax increases and mandates. That is a total of \$1 trillion in offsets in a bill that costs \$2.5 trillion.

What the Senator from South Dakota and I are trying to do is let's keep our word. Let's keep our word and do two things that the American people should expect: No. 1, that we would not start the taxes until the program takes effect; No. 2, that it would be deficit neutral.

By my math, I ask the Senator from South Dakota, it looks to me like we are \$1.5 trillion into the deficit, and we are already at a debt ceiling that is higher than we have had as a percentage of our GDP since World War II. So it is a \$12 trillion debt ceiling we are hitting right now, and we are talking about a \$1.5 trillion deficit in the bill we are being asked to vote for.

I ask the Senator from South Dakota, who is my cosponsor on this very important amendment, don't we owe the American people the transparency, as well as the policy, that we would eliminate the deficit and we would stop these disastrous taxes from taking effect, so maybe we would have a chance to change this product going forward in the next 4 years so the American people will not be saddled with these expenses, taxes, and mandates?

Mr. THUNE. We do want to get a vote—a vote on our amendment and on

other amendments. Right now, that is being prevented or blocked. We haven't had a vote since Tuesday. We have amendments that are ready to go.

The other side said they are open to amendments and they want to get the bill moving forward, but we are being prevented from getting votes on amendments. In the meantime, this backroom deal that is being cut, which we haven't seen—supposedly it has been sent to the CBO to find out what it will cost. We are waiting for that deal to emerge. In the meantime, we are looking at a piece of legislation that costs \$2.5 trillion when fully implemented.

As the Senator said, it relies on Medicare cuts and tax increases to finance it. Just yesterday, the chief actuary at the Center for Medicare and Medicaid Services basically said the savings that are relied upon, in terms of Medicare cuts, are unlikely to be sustainable on a permanent basis. They raise the question about whether those cuts are actually going to occur and, if they do, whether they will be sustained. If they are not, then you have the question of whether a lot of these providers out there—if the cuts do occur, and they continue to lose more and more every time they see a Medicare patient, then they are going to quit participating in the Medicare Program. You will have fewer providers offering services, making it more difficult for people—especially in places such as Wyoming and South Dakota—to get access to health care.

You are assuming all these cuts in Medicare are going to occur, and you are assuming all these tax increases. Even with all that, you have a \$2.5 trillion expansion of the Federal Government, which inevitably is going to rely more and more on borrowing. You are going to see more and more of this going on the debt, and we will pass it on to future generations.

As CMS pointed out, it is unlikely these Medicare payment cuts are going to be sustainable without driving hospitals and doctors and other health care providers out of business. When they start reacting to this and those Medicare cuts are no longer sustainable, then you have built in all this new spending, and there is no way to pay for it without raising taxes dramatically, which would be, I guess, something the other side—since they have already demonstrated a significant willingness to raise taxes in this bill or borrowing, neither of which is good for the future of the country or our economy.

Right now, our economy is trying to come out of a recession. Small businesses, which create the jobs in our economy, are faced with higher taxes under this bill. They have come forward and said—every conceivable business is saying this will drive up the cost of doing business, and it will raise the cost of health care in this country.

So you have all these small businesses saying we are not going to be able to create jobs. You have that specter out there. You also have the idea of the Medicare cuts, which are, according to the CMS actuary, unlikely to be sustainable, leading to borrowing and debt, which means we are already running a \$1 trillion deficit every year and piling more on the Federal debt and there will be a movement here to raise the debt limit by almost \$2 trillion. So we will pass this on to future generations, future young Americans, who are going to bear the cost of this massive expansion of the Federal Government.

There isn't anything in this that is good for the American public, which is why they are reacting the way they are, and why you are seeing these 61 percent of Americans coming out in the polls against it.

I say to my friend from Wyoming, his thoughts with regard to this issue, these Medicare cuts being sustainable, how it is going to impact the delivery of health care around this country, and what it will do to future generations in terms of the additional debt and borrowing.

Mr. BARRASSO. As my friend knows, small communities—

Mrs. HUTCHISON. I am sorry to interrupt my friend. I ask unanimous consent that he have 1 minute to finish, after which the floor would go to the majority.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BARRASSO. To follow up, the small communities of this Nation have great concerns about these cuts in Medicare because the small community hospitals that stay open know they have to live within their means. When Medicare cuts total over almost  $\frac{1}{2}$  trillion, it is the small communities that have just one hospital in a frontier medicine mode taking care of people who may live 50, 100, or 150 miles away, those hospitals' very survivability is at stake.

That is why we cannot pass this bill, which will hurt seniors, raise taxes on the American people, cost jobs, and cause people who have insurance to have their premiums raised. For all these reasons, this bill is the wrong prescription for America.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, first of all, I ask unanimous consent that the amount of time by which the other side went over the allotted time be added to our block of time.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

#### PRESCRIPTION DRUG PRICING

Mr. DORGAN. Mr. President, I have come to the floor to speak about something a colleague of mine spoke about

last night, which I think he believes separates us when, in fact, it doesn't.

Before I do that, I wish to talk for a moment about the amendment of mine now pending on the floor of the Senate, dealing with the issue of prescription drug pricing.

I offered this amendment, along with my colleague, Senator SNOWE, with the support of a broad bipartisan group of Members of the Senate—Republicans and Democrats—at a time when there has been so few bipartisan amendments. The amendment I have offered is, in fact, bipartisan and had bipartisan speeches in favor of it in the last several days. That is unusual, but I think it is also refreshing.

The amendment is very simple. It has been around for a long time. It has been hard to get passed because the pharmaceutical industry is a very strong, assertive industry. It is a good industry, but I have strong disagreements with their pricing policies. This amendment simply says the American people ought to have the freedom to access FDA-approved drugs wherever they are sold—as long as they are FDA approved—and offered at a fraction of the price they are sold at in the United States.

I ask unanimous consent to show on the floor, once again, two bottles of pills.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. This bottle contained Lipitor, perhaps the most popular cholesterol-lowering drug in the world. This was made by an American company in an Irish plant—made in Ireland and shipped around the world. This bottle, as you can see, is identical to this one. One has a red label and one has a blue label.

The only difference in a circumstance, where you have the same pill, put in the same bottle, made by the same company, is the price. Americans pay \$4.78 per tablet and, in this case, folks in another country pay \$2.05. Why the difference? Again, it is not just one country. This bottle is shipped to virtually every other country, including Great Britain, France, Germany, Spain, Canada, and it is sold at a much lower price.

The question is, Should the American people be required to pay the highest prices in the world for prescription drugs and not have the freedom to access those drugs in the global marketplace?

Some say: Well, if you did that—if you allow the American people to access that drug from Canada or Germany at a fraction of the price, we would get counterfeit drugs.

It is interesting that in our amendment we actually have more safety provisions than exist in our domestic drug supply. There does not now exist a tracing capability, pedigree, or batch

lots. That would be a part of our amendment. That doesn't exist for America's drug supply today. We will actually improve the safety of the drug supply with this amendment.

I didn't offer this amendment to cause trouble for people. I know this is causing great angst in the Senate. We have been tied up several days now on this issue. I know the pharmaceutical industry has a great deal of clout. This issue revolves around \$100 billion, \$19 billion of which will be saved by the Federal Government in the next 10 years and nearly \$80 billion saved by the American consumers because they can access FDA prescription drugs at a fraction of the price.

So I understand why some are fighting hard to prevent this. But this is important public policy. The price of prescription drugs has gone up 9 percent this year alone. Every single year, the price of prescription drugs goes up. Every year since 2002, drug price increases have risen above the rate of inflation. We can't, in my judgment, pass health care reform through the Congress and say: Yes, we did that, but we did nothing about the relentless increases in the price of prescription drugs. We will solve that not by imposing price controls but by giving the American people freedom. They are told it is a global economy. Well, it is a global economy for everything except the American people trying to access prescription drugs at a fraction of the price in most other countries.

Again, I didn't offer this amendment to try to cause trouble; I offered this amendment to try to solve a problem. This Congress should not, in my judgment, move ahead with health care reform and decide it ought to leave the question of the American people paying the highest prices for prescription drugs—leave that alone and let that continue to be the case for the next 10 years or the next 20 years. I will speak more about it later.

#### TRADE WITH CUBA

Mr. DORGAN. Mr. President, I came to the floor to speak about a speech a colleague, for whom I have great affection, gave yesterday on the floor of the Senate. He was concerned about a provision in the appropriations bill that is now being considered, a provision dealing with the sale of agricultural commodities to Cuba.

My colleague said the provision would undo current law, where the Castro regime in Cuba would have to pay in advance for goods being sold to them because of their terrible credit history.

That is not an accurate statement. I expect there is just a misunderstanding. I would be very happy if my colleague would wish to have a colloquy on the floor to set out the law and the provision in the bill so all of us understand the same thing.

No. 1, I helped write the law that finally opened just a small crevasse—the ability of our farmers in America to sell their agricultural commodities into the Cuban marketplace. Why did I do that? Because we have an embargo on Cuba that, in my opinion, has failed for 40 or 50 years. At the time that embargo included restricting the sale of food to the Cuban people.

I do not think we ought to ever embargo food shipments anywhere in the world. I think it is immoral. I do not think we ever ought to use food as a weapon. Yet that is exactly what has been done.

Our farmers could not sell agricultural commodities into Cuba. Canadian farmers could. French farmers could. German farmers could. American farmers could not.

I changed the law, along with a Republican colleague, with a Dorgan-Ashcroft amendment. We changed the law. We opened it just a crack so American farmers could sell their commodities into the Cuban marketplace. But it had to be for cash. The Cubans had to pay cash in advance. I support that. I helped write the law.

In fact, what I would like to do is put up a copy of the current law. The current law indicates "cash in advance." We have sold about \$3 billion of agricultural commodities into the Cuban marketplace since the law was passed, and they have paid cash in advance.

What happened was, President Bush decided just prior to an election that he wanted to send a signal that he was really tightening things with Cuba. He decided to change the definition—not by law but by administrative fiat—and he said "cash in advance" will mean the Cubans have to pay for the commodity even before it is shipped from a port in the United States. For four years up to then, the government allowed U.S. farmers to ship the goods from the port and then have the Cubans pay cash when the commodity arrives in Cuba. The President made that change as an attempt to shut down the sale of agricultural commodities to Cuba.

Here is what the Calgary Herald, a Canadian newspaper, said: "Cuba to Buy \$70 Million of Canadian Wheat." Then in the body of the article it says:

Cuban food purchases from Canada will increase 40 percent this year due to difficulties buying from the United States which is requiring payment before shipment of the food sales.

As I said, President Bush tightened the rules to say that "cash in advance," in a law I wrote, shall be interpreted as meaning you must pay even before the shipment. I have never even considered the phrase could be interpreted like that, but that is the way the law is now being administered.

In the pending appropriations bill, there is an amendment I included. It is not, in my judgment, something we

ought to debate. It is just there. We ought to understand it. It very simply says this.

During fiscal year 2010, for purposes of . . . the Trade Sanctions Reform and Export Enhancement Act of 2000 . . . the term "payment of cash in advance" shall be interpreted as payment before the transfer of title to, and the control of, the exported items to the Cuban purchaser.

It takes the definition of "payment of cash in advance" back to how it was originally interpreted after I got my bill passed and we started selling into the Cuban marketplace. It restores it to what it was.

My colleague yesterday said this would undo the current law where the Castro regime would have to pay in advance. Obviously, that is not the case. It is just not the case. "Payment of cash in advance shall be interpreted" to mean "payment before the transfer of title to, and control of, the exported items . . ." There is nothing here suggesting credit be offered to the Cuban regime. This only resolves an issue that was created when President Bush wanted to shut off agricultural commodity shipments to the country of Cuba. As I indicated, the result of the Bush administration's interpretation is what the Calgary Herald wrote about: American farmers, watch the Canadians grab your market.

Why on Earth should we withhold food shipments anywhere? It makes no sense to me. Why should we say to our farmers who produce foods—and we need to export that food—that the Canadians can have an advantage, the Europeans can have an advantage, they can service that market but we cannot, even though we require cash in advance. Lets make it even harder by requiring payment before shipping even. That makes no sense to me. That is why I wanted to correct it. I wanted to correct it to get it back to what the law reads.

My colleague who spoke on this issue yesterday is a good Senator and somebody I like a lot, but he indicates that this amendment of mine undoes current law where the Castro regime would have to pay in advance. That is just not the case. That is not the case.

Maybe the best way for us to resolve this is, let's do a colloquy on the floor to put in the RECORD the exact language, because the shipment of agricultural commodities to Cuba in the future will continue to require cash payments in advance. That is just a fact.

Let me say also, my colleagues—I use the term plural—who feel very strongly about this issue, the Cuba issue, we have common cause. I have no truck for the Cuban Government. I want the Cuban people to be free. I have no sympathy for the Cuban Government. But it is interesting to me that our engagement with Communist China and Communist Vietnam, for example, is to say that constructive engagement through

trade and travel is the best way to address those issues. We believe that. Except we say in Cuba that we do not believe it. We restrict the right of the American people to travel to Cuba, which is slapping around the rights of the American people in order to poke our finger in the eye of Fidel Castro, I guess. And we do other things that make no sense.

My colleagues who have raised these issues actually won on one issue that kind of bothers me. I also put an amendment in this legislation that I understand now has been emasculated. Let me describe what that was.

Most people do not know this, but we have airplanes flying over Cuba, at least in international waters, broadcasting television signals to Cuba. I was able to get that shut down in an amendment in the appropriations process because we are broadcasting television signals to Cuba to tell the Cuban people how great freedom is—they can hear that on a Miami station 90 miles away—but we are broadcasting television signals being broadcast by an airplane and the signals are signals the Cuban people cannot see. Isn't that interesting? It is called TV Marti. Here is a picture of what TV Marti broadcasts. That is the television screen for TV Marti. The Cubans block it easily, and the Cuban people do not see it and cannot see it.

We started out broadcasting that with aerostat balloons. They called it Fat Albert. This is the second one. The first one got loose. Fat Albert got loose. It was tethered on a big, long tether, hanging way up in the air, to broadcast television signals to the Cuban people that the Cubans were blocking. So we are spending a lot of money broadcasting television signals that nobody can see. In the first case, we had aerostat balloons, huge balloons, tethered way up in the air, spending millions of dollars a year. One got loose and flew over the Everglades, and they had a devil of a time trying to capture Fat Albert. So they got a second Fat Albert and kept broadcasting signals no one could see. But that wasn't good enough. In fact, they decided: You know what, we are going to get ourselves a big fat airplane and we will fly that airplane around and broadcast signals to Cuba from an airplane. And those signals, too, by the way, are routinely blocked and no one can see them. In my judgment we should not waste that kind of money.

John Nichols, professor of communications and international affairs at Penn State University had this to say. He is one of the experts on communications policy.

TV Marti's quest to overcome the laws of physics has been a flop. Aero Marti, the airborne platform for TV Marti, has no audience currently in Cuba, and it is a complete and total waste of \$6 million a year in taxpayer dollars.

The \$6 million is just for the airplane. They spend much more than that on TV Marti.

It is a total and complete waste of \$6 million a year in taxpayer dollars. The audience of TV Marti, particularly the Aero Marti platform, is probably zero.

We have been doing this for 10 years and more. Since I raised this issue, we have spent \$¼ billion broadcasting television signals into a country that cannot see them.

Let me continue:

TV Marti's response to this succession of failures over a two-decade period has been to resort to ever more expensive technological gimmicks, all richly funded by Congress, and none of those gimmicks, such as the airplane, have worked or probably can work without the compliance of the Cuban Government. It is just the law of physics.

In short, TV Marti is a highly wasteful and ineffective operation.

I put in an amendment that cut \$15 million out of this program. I know it is radical to say you should not broadcast to people who cannot see them. I suspect this must be considered some sort of jobs program. That would be the only excuse for continuing funding.

I had an amendment that shut down TV Marti. If ever—ever, ever—there were an opportunity to cut government waste, this is it. This is just a program that accomplishes nothing and has no intrinsic value at all. But in the middle of a very significant economic downturn, when deficits have spiked up, up, way up, I apparently cannot even get this done. I got it done in the Senate, but it did not get through the conference. I guess for the next year or so—Fat Albert is retired—the airplane will still fly. And here is a television set in Cuba sees of TV Marti snow, static. We will continue to spend \$15 million or so so the Cubans can look at static on their television sets. It is not much of a bargain for the American taxpayer, I would say.

I only point this out because I lost on this issue. Those who feel strongly that we ought to continue to do this won. I hope that one day, perhaps we could agree that when we spend money, let's spend it on things that work, spend it on things that are effective, spend it on things that advance our interest and our values. This certainly does not.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

#### HEALTH CARE REFORM

Mr. CASEY. Mr. President, I rise this morning to speak about health care and our children and the health care reform, the Patient Protection and Affordable Care Act, as relates to our children.

The chart on my left makes a couple of fundamental points.

For children, health care reform must follow one simple principle, and I also say it is only four words: No child

worse off. When I say “no child,” of course I am speaking of children who do not often have a voice. Obviously, if they are children from a family that is very wealthy, I think they will be just fine no matter what happens here. But children who are poor and children who experience and have to live with special needs are the ones I am talking about when I say “no child worse off.”

I filed many weeks ago—actually, months ago now—a joint resolution, No. 170. I was joined in that resolution by Senator DODD, Senator ROCKEFELLER, Senator BROWN, Senator WHITEHOUSE, and Senator SANDERS. We filed that resolution just to make this point with a couple more words than “no child worse off,” but that was the fundamental point to guide us through this process because sometimes in a debate on something that is this significant, and parts of it are complicated to be enacted into law—it is a challenge to pass health care reform. I think we will. I think we must. But we do need guiding principles, and I believe one of these should be “no child worse off” for special needs children.

A lot of the child advocates across America have told us, for many years, something so simple but something very meaningful in terms of providing further guidance for this debate. Children are not small adults. That does not sound so profound, but it really matters when it comes to health care. We can't just say: If you have a health care plan for adults, it will work for kids, do not worry about it. Unfortunately, that is not the case.

If we do not do the right thing, we could lose our way on that basic principle. We have to get it right, and we have to give poor and special needs children a voice in this debate. I do not think there is any question that Senators on this side of the aisle are guided by that basic principle.

I want to next turn to the bill, the Patient Protection and Affordable Care Act, and walk through some of the provisions. There are many good provisions in the bill for children, but I want to walk through a couple.

How does it help children? That is a fundamental question. You cannot escape the basic implications of that. First, the bill eliminates preexisting condition exclusions. That is in the first couple pages of the bill. Obviously, it has an enormously positive impact for adults. We have heard story after story of literally millions of Americans denied coverage year after year because of the problem of preexisting conditions. It has special meaning when it comes to children.

No. 2, the bill ensures that benefits packages include oral and vision care. We know what that means for children, and in particular we are thinking about the horrific, tragic, and preventable death recently of Deamonte Driver of Maryland, a young boy who lost his

life because his family did not have the coverage for an infected tooth—an infected tooth, not something that is complicated to deal with. His family couldn't afford the care. A child in America died from an infected tooth that would have cost \$80 to treat.

So when we talk about insuring benefit packages that include oral and vision care, that doesn't say it too well until you connect it to the life and the death—the tragic death—of a young child not too far from Washington, DC.

Thirdly, the Patient Protection and Affordable Care Act will mandate prevention and screenings for children. This is so important. We know our poorest children, who have the benefit of being covered by Medicaid, get these kinds of services so we can prevent a child from getting sicker or prevent a disease or a condition or a problem from becoming that much worse for that child.

As I said before, children are not small adults, so we have to make sure we have strategies and procedures in place that deal with the special needs and the special challenges that children face in our health care system.

Finally, the act has increasing access to immunizations. I don't think I have to explain to any American how important immunizations are. The Centers for Disease Control will provide grants to improve immunizations for children, adolescents, and adults.

Let me move to the third chart. The third chart outlines some other provisions for children. Here are three more ways the Patient Protection and Affordable Care Act helps children, among many others. It creates pediatric medical homes. People may say: What is a medical home? What does that mean? Well, I need simplicity just like anyone does. This is my best summary of a medical home.

A medical home obviously isn't a place. It is treating people in the way they ought to be treated in our health care system. The ideal—and I think this bill gets us very close to meeting this goal—is that every American should have a primary care physician and then be surrounded by the expertise of our health care system. Children especially need that kind of help. So we want to make sure every child not only has a primary care physician—in this case a pediatrician—but also has access to all of the expertise that pediatricians and our system can give them access to.

Next, the act strengthens the pediatric workforce. We can't just say we want children to have access to pediatric care. We have to make sure we have the workforce in America to provide that kind of care.

Thirdly, the act expands drug discounts to children's hospitals. Before this act, before the act that we are debating, children's hospitals did not have access to a program that provides

discounts on the drugs they need for sick children. Now children will benefit from the discounted prices that result from the passage of this act. This is vitally important.

Let me go to one more chart.

Parliamentary inquiry, Mr. President: How much time do I have remaining?

The ACTING PRESIDENT pro tempore. Two minutes.

Mr. CASEY. Two minutes. I will just do one chart and then we will move quickly.

This chart makes a very fundamental point. At a time in our history when over the course of a year the national poverty rate went up by 800,000, and the number of people without insurance is going up—and in the midst of a recession, you would understand and expect that—the one thing we don't focus on is that because of the effectiveness of the Children's Health Insurance Program, there is one number on this chart that is going down—and we hope it keeps going down—and that is the number of uninsured children.

It is interesting that on this chart between 2007–2008, as the child poverty rate went up by 800,000 children, the number of children without insurance is down by that same number—800,000. It shows the Children's Health Insurance Program is working, even in the midst of a recession. So I have an amendment that strengthens the Children's Health Insurance Program in the bill.

I know I am out of time, Mr. President, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding that we have gone over the original allocation of time, and Senator MCCAIN is coming to the floor. We will, of course, offer to the minority side whatever extra time we will use so that there will be a like amount available to them, and I will make every effort to shorten my remarks.

The ACTING PRESIDENT pro tempore. The majority has not exceeded its time. There is 12 minutes remaining on the clock.

Mr. DURBIN. Sorry, I was misinformed. But whatever we promised the minority side, they will receive like treatment on whatever time we use.

#### UNANIMOUS CONSENT REQUEST— H.R. 3590

Mr. DURBIN. Mr. President, yesterday, the majority leader propounded a unanimous consent request to have four votes with respect to the health care bill. The Republican leader objected to the consent, since he indicated they had just received a copy of Senator LAUTENBERG's side-by-side amendment to the Dorgan amendment and so they needed time to review the amendment.

Therefore, I now ask unanimous consent that following the period of morning business today, the Senate resume consideration of H.R. 3590 for the purpose of considering the pending Crapo amendment to commit and the Dorgan amendment, No. 2793, as modified; that Senator BAUCUS be recognized to call up a side-by-side amendment to the Crapo motion; that once that amendment has been reported by number, Senator LAUTENBERG be recognized to call up his side-by-side amendment to the Dorgan amendment, as modified; that prior to each of the votes specified in the agreement, there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use or yielding back of the time, the Senate proceed to a vote in relation to the Lautenberg amendment; that upon disposition of the Lautenberg amendment, the Senate then proceed to vote in relation to the Dorgan amendment; that upon disposition of that amendment, the Senate proceed to vote in relation to the Baucus amendment; and that upon disposition of that amendment, the Senate proceed to vote in relation to the Crapo motion to commit; that no other amendments be in order during the pendency of this agreement, and that the above referenced amendments and motion to commit be subject to an affirmative 60-vote threshold; that if they achieve that threshold, they then be agreed to and the motion to reconsider be laid upon the table; if they do not achieve that threshold, they then be withdrawn.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ENZI. Mr. President, reserving the right to object, we are going to have three Democratic amendments and one Republican amendment voted on, and the Democrats wrote the bill. The Democrats are doing a side by side to their own amendment.

It looks to me like they ought to get together and get some things figured out. There ought to be a little bit more fairness on the number of amendments. So I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DURBIN. Mr. President, this is the second time we have offered to call amendments for a vote, and the complaint from the other side is, you are not calling amendments for a vote.

How many times do we have to ask for permission to call amendments for a vote, run into objections from the Republican side, and then hear the speech: Why aren't we voting on amendments?

I am certain that in the vast expansion of time and space, we can work out something fair in terms of the number of amendments on both sides. In fact, maybe the next round will have more Republican amendments than Democratic amendments. I don't know how many Republican amendments or

Democratic amendments we have voted on so far. We can get an official tally, but that really seems like a very minor element to stop the debate on health care—because we need to have an equal number of amendments. Can't grown-ups work things out like this and with an understanding that we will resolve them? If we can't, then for goodness' sake don't subject us to these arguments on the Senate floor that we are not calling amendments for a vote. We have just tried 2 days in a row, and the Republicans once again have stopped us with objections. That is a fact.

I would implore the leadership—not my friend from Wyoming; I know he is doing what he is instructed to do by the leaders—for goodness' sake, let's break this logjam. Let's not, at the end of the day, say, well, we stopped debating this bill when we should have been debating it, when we have offered 2 days in a row in good faith to have actual amendments offered and debated.

I would also say, Mr. President, this is the bill we are considering, H.R. 3590, when we return to it. This is the health care reform bill, and this is a bill which has been the product of a lot of work. A lot of work has gone into it both in the House and in the Senate. In the Senate, two different committees met literally for months writing this bill, and they should take that time because this is the most significant and historic and comprehensive bill I have ever considered in my time in Congress—more than 25 years. This bill affects every person in America—every person in the gallery, everyone watching us on C-SPAN, every person in America. It addresses an issue that every American is concerned about—the future of health care, how we are going to make it affordable.

At a time when fewer businesses offer the protection of health insurance, at a time when individuals find themselves unable to buy health insurance that is good and that they can afford; at a time when health insurance companies are turning down people right and left for virtually any excuse related to pre-existing conditions, we cannot continue along this road. Those who are fighting change, those who are resisting reform, are basically standing by a broken system.

There are many elements in American health care that are the best in the world, but the basic health care system in America is fundamentally flawed. This is the only civilized Nation on Earth where you can die for lack of health insurance—literally die.

Mr. President, 45,000 people a year die because they do not have the health insurance they need to bring them to the doctor they need at a critical moment in life. They do not have the health insurance they need to afford the surgical procedure they need to avoid a deadly disease.

If a person has a \$5,000 deductible on their health insurance, and a doctor

tells them—as a man who wrote me from Illinois said—you should have a colonoscopy, sir; there is an indication you could have a problem that could develop into colon cancer and it could be fatal.

The man says: How much is the colonoscopy?

Well, it is \$3,000 out of pocket.

The man says: I can't afford it. I just can't pay for it.

So he doesn't get the colonoscopy and bad things can occur. That happens in America, but it doesn't happen in any other civilized country.

It is true in some systems he may have had to wait an extra week or a month, but he gets the care he needs. He doesn't die for lack of health insurance. That is what is going on in America. Almost 50 million Americans without health insurance today—almost 50 million in this great and prosperous Nation—went to bed last night without the peace of mind of the coverage of health insurance. This bill addresses that.

At the end of the day, 94 percent of the people living in America will be able to sleep at night knowing they have a decent health insurance plan. That is an amazing step forward. That is a step consistent with the establishment of Social Security, which finally took the worry away from seniors and their families about what would happen to grandma and grandpa when they stopped working.

I remember those days. There was a time when grandma and grandpa retired and moved in with their kids. Remember that era? I do. It happened in our family, and they didn't have any choice. They had to because they had modest jobs and not a lot of savings and they put it on their kids to find that spare bedroom or let them sleep in basement that was made over so that they would have a comfortable and safe place to be.

Social Security changed that for most American families. This bill will change health care for most American families. The same thing is true with Medicare. The critics of Medicare—and they have been legion on the floor of the Senate—ignore the obvious: 45 million Americans will have peace of mind to know that they can get affordable health care once they reach the age of 65. They would not lose their life savings. They will get a good doctor, a good hospital, and a good outcome.

Isn't that what America is all about? Isn't that why we are supposed to be here? Why don't we have more support? The Republican side of the aisle only comes to say what is wrong with the idea of health care.

Steven Pearlstein, in this morning's Washington Post—which I hope some of my Republican colleagues will read—talks about a lost opportunity which the Republicans have.

We have invited the Republicans from day one to be part of the conversation about health care reform.

Senator ENZI of Wyoming is one who assiduously gave every effort, spent 61 days trying to reach a bipartisan agreement. It failed, but at least he tried. I commend him for trying.

Too many others on the other side didn't try. But Steven Pearlstein writes:

One can only imagine how Republicans could have reshaped health-reform legislation in the Senate . . . Without question, they could have won more deficit-reducing cost savings in the Medicare program by setting limits on spending growth and reforming the way health care is organized, provided and paid for. And they could have begun to realize their goal of "consumer-driven health care" by insisting that the new insurance exchanges offer at least one plan built around individual health savings accounts and catastrophic coverage.

Pearlstein goes on to talk about the possibilities. He says:

They could have taken a page from John McCain's platform and insisted on replacing the current tax exclusion of health-care benefits with a flat tax credit that would be more progressive and put downward pressure on insurance premiums.

I am not guaranteeing that any of those proposals would have been in, but they all could have been in if we had a dialog. Instead of a dialog, we have a shouting match, one side of the aisle shouting at the other side of the aisle. It is exactly the stereotype of Washington which America has come to hate. America wants us to solve problems, not get into these, you know, fur-flying debates, where we see who can get the rhetorical better of the other. They want us to solve problems but, unfortunately, we are still waiting for the first Republican to cross the aisle on the passage of this bill and work with us. The door is still open. The invitation is still there. The idea of doing nothing is unacceptable and that should be the message.

The fact is, there is no comprehensive Republican health care reform bill—period. Senators come to the floor, such as Senator COBURN, and say: I have some good ideas. I bet he does. I may even subscribe to them. But his ideas have not gone through the rigor this bill has gone through. This bill was sent to the Congressional Budget Office and scored, asking the basic questions: No. 1, will it add to the deficit? They came back and told us: No, the Democratic health care reform bill will, in fact, save money, \$130 billion in 10 years; \$650 billion in the second 10 years. We asked them: Is it going to insure more Americans? They came back and said: Yes, 94 percent will be insured when this is over. That same rigor has not been applied to the Republican ideas because it is hard, it is tough, and it takes time. I commend them for their thoughtful ideas, but to say they have something they can match against this bill, comprehensive reform—just go to the Republican Senate Web site and look for the Republican comprehensive reform bill. Do you

know what you will find? You will find the Democratic bill. That is all they can talk about. They don't have a comprehensive health care reform bill.

But we are not going to quit. America, we cannot go home for Christmas until we get this job done.

After we have been here 12 straight days debating, we kind of get into a trance-like, catatonic state, where we can't remember what our last speech was about and we go to sleep at night thinking about what we might have said on the floor or what we are going to say tomorrow. But the fact is, we have to stay and do our job, not just in passing health care reform but doing something significant to help the unemployed and deal with jobs and the economy before we leave here to try to enjoy Christmas, or what is left of it or the holiday season, with our families.

This is a job that has to be done. I am sorry we have reached a point where the Republicans have not been actively involved in creating this bill. We tried for the longest time. In the HELP Committee, where Senator ENZI serves as the ranking Republican, more than 100 Republican amendments were accepted as part of this debate and still not one single Republican Senator would vote for the bill in that committee.

So far the scorecard on Republican participation in health care reform debate is a lot of speeches, a lot of press releases, a lot of charts on the floor but only two votes—one from a Republican Congressman in Louisiana for the House bill; one from Senator SNOWE of Maine for the Senate Finance version of this bill.

The ACTING PRESIDENT pro tempore. The time of the majority has expired.

Mr. DURBIN. That is it. I urge my colleagues to join us in a cooperative effort to try to come up with something more positive than just our lonely speeches on the floor.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, while my friend from Illinois—

Mr. DURBIN. Mr. President, I ask unanimous consent morning business be closed. I wish to make sure Senator MCCAIN has time.

Mr. MCCAIN. I ask for an additional 10 minutes of morning business so I could maybe engage in a colloquy with my favorite combatant here.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCAIN. Maybe we can talk a little bit about his remarks.

I have to say, I appreciate the eloquence and the passion the Senator from Illinois has brought to this debate. He makes some very convincing points. One of the major points—and I would be glad to listen to the Senator.

I think it is fair for us to respond to each other's comments very quickly. The Senator from Illinois said we have been engaged in the negotiations and inputs have been made into the formulation of this bill.

I have to tell the Senator from Illinois, I have been engaged in many bipartisan compromises, whether it be issues such as campaign finance reform, whether it be—a whole large number of issues, including defense weapons acquisition reform. I say to the Senator from Illinois, do you know what the process was? People sat down at the table together when they were writing the legislation. I am a member of the HELP Committee, OK? I say to the Senator from Illinois, do you know what the process was—because I am on the committee. A bill was brought before the committee without a single—Senator ENZI will attest to this—without a single period of negotiations, where we sat down together with the chairman of the committee, where they said: What is your input into this legislation?

We had many hours of amendments in the committee, all of which, if they were of any real substance, were rejected on a party-line vote.

I have to tell the Senator from Illinois he can say all he wants to that there have been efforts to open this to bipartisanship. There have not. My experience in this Senate—I know how you frame a bipartisan bill and that has not been the process that has been pursued by the majority.

I understand what 60 votes mean. But in all due respect, I say to the eloquence of my friend from Illinois, that has not been the process which I have successfully pursued for many years, where people have sat down together at the beginning, where you are there on the takeoff and also then on the landing.

I would be glad to hear the response of the Senator from Illinois.

I ask unanimous consent if the Senator and I could engage in a colloquy.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. First, those who are watching, this is perilously close to a debate on the floor of the Senate, which rarely occurs in the world's most deliberative body, where Senators with opposing views actually, in a respectful way, have an exchange. I thank the Senator—

Mr. MCCAIN. Respectful but vigorous.

Mr. DURBIN. I thank the Senator from Arizona. Here is what I understood happened. I know Senator DODD came to the HELP Committee with a base bill to start with, but it is my understanding, in the process, 100 Republican amendments were accepted on that bill. If I am mistaken, I know the Senator will correct me, but—

Mr. MCCAIN. I will be glad to correct the Senator from Illinois. Senator ENZI is here. None of those amendments were of any significant substance that would have a significant impact on the legislation, I have to say to the Senator from Illinois. For example, medical malpractice, we proposed several amendments that would address what we all know, what the Congressional Budget Office says is \$54 billion—other estimates as much as \$100 billion—in savings. There were no real fundamental amendments.

I have to say that some of those amendments were accepted. But it still doesn't change the fact that at the beginning, as the Senator from Illinois said—the bill came to the committee without a bit, not 1 minute of negotiation before the bill was presented to the committee. The ranking member is on the floor. He will attest to that. Please go ahead.

Mr. DURBIN. I would say to the Senator from Arizona, I went through bankruptcy reform with Senator GRASSLEY and a similar process was followed when the Republicans were in the majority. He produced the base-line bill, and I made some modifications and, ultimately, at one point in time, we agreed on a bill, came up with a common bill. The starting point is just that, a starting point. But I say to the Senator from Arizona, look at what happened to the issue of public option. I believe in public option passionately. I believe it is essential for the future of health care reform, for competition for private health insurance companies to give consumers a choice, to make sure we have one low-cost alternative at least in every market. Yet, at the end of the day, I did not get what I wanted and what is being proposed, now at the Congressional Budget Office, is not my version of public option.

We ended up bending toward some of the more moderate and conservative members of the Democratic caucus and toward the Republican point of view. I don't know of a single Republican who came out for public option. Maybe I am forgetting one. At the end of the day, the point I am making to the Senator is there was an effort at flexibility and an effort at change to try to find some common ground. Unfortunately, the ground we are plowing has only 60 Democratic votes. It could have been much different. It could still be much different.

Mr. MCCAIN. May I ask my friend, wasn't the reason the public option was abandoned was not because of a Republican objection, it was because of the Democratic objection? The Senator from Connecticut stated, unequivocally, the public option would make it a no deal.

I appreciate the fact that Republican objections were observed. But I don't believe the driving force behind the abandonment of this public option, if it

actually was that—we have not seen the bill that is going to come before us—was mainly because of the necessity to keep 60 Democratic votes together.

Mr. DURBIN. The Senator from Arizona is correct. But I add, Senator SNOWE has shown, I believe, extraordinary courage in voting for this bill in the Senate Finance Committee and made it clear she could not support the public option. We are hoping, at the end of the day, she will consider voting for health care reform. That was part of the calculation.

Mr. MCCAIN. We are hoping not.

Mr. DURBIN. I understand your point of view, but I would say—you are right. But we were moving toward our 60 votes, but it would be a great outcome if we end up with a bill that brings some Republicans on board, and it was clear we couldn't achieve that if we kept the public option in. There are other elements here. We are going to have a real profound difference when it comes to the issue of medical malpractice and how to approach it. But I think, even on that issue, we could have worked toward some common ground, and I hope someday we still can.

Mr. MCCAIN. Could I ask my friend about the situation as it exists right now? Right now, no Member on this side has any idea as to the specifics of the proposal the majority leader, I understand, has sent to OMB for some kind of scoring. Is that the way we want to do business, that a proposal that will be presented to the Senate sometime next week and voted on immediately—that is what we are told—is that the way to do business in a bipartisan fashion? Should we not at least be informed as to what the proposal is the Senate majority leader is going to propose to the entire Senate within a couple days? Shouldn't we even know what it is?

Mr. DURBIN. I would say to the Senator from Arizona, I am in the dark almost as much as he is, and I am in the leadership. The reason is, because the Congressional Budget Office, which scores the managers' amendment, the so-called compromise, has told us, once you publicly start debating it, we will publicly release it. We want to basically see whether it works, whether it works to continue to reduce the deficit, whether it works to continue to reduce the growth in health care costs.

We had a caucus after this was submitted to the Congressional Budget Office, where Senator REID and other Senators who were involved in it basically stood and said: We are sorry, we can't tell you in detail what was involved. But you will learn, everyone will learn, it will be as public information as this bill currently is on the Internet. But the Congressional Budget Office has tied our hands at this point putting it forward. Basically, what I

know is what you know, having read press accounts of what may be included.

Mr. MCCAIN. Could I ask my friend from Illinois—and by the way, I would like to do this again. Perhaps when he can get more substance into many of the issues.

Mr. DURBIN. Same time, same place tomorrow?

Mr. MCCAIN. I admit these are unusual times. But isn't that a very unusual process, that here we are discussing one-sixth of the gross national product; the bill before us has been a product of almost a year of sausage-making. Yet here we are at a position on December 12, with a proposal that none of us, except, I understand, one person, the majority leader, knows what the final parameters are, much less informing the American people. I don't get it.

Mr. DURBIN. I think the Senator is correct, saying most of us know the fundamentals, but we do not know the important details behind this. What I am saying is, this is not the choice of the majority leader. It is the choice of the Congressional Budget Office. We may find that something that was sent over there doesn't work at all, doesn't fly. They may say this is not going to work, start over. So we have to reserve the right to do that, and I think that is why we are waiting for the Congressional Budget Office scoring, as they call it, to make sure it hits the levels we want, in terms of deficit reduction and reducing the cost of health care.

It is frustrating on your side. It is frustrating here. But I am hoping, in a matter of hours, maybe days, we will receive the CBO report.

I would like to ask the Senator from Arizona, if he wouldn't mind responding to me on this. Does the Senator believe the current health care system in America is sustainable as we know it, in terms of affordability for individuals and businesses? Is the Senator concerned that more and more people do not have the protection of health insurance; fewer businesses offer that protection?

The ACTING PRESIDENT pro tempore. The 10-minute time period has expired.

Mr. MCCAIN. I ask unanimous consent for 5 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Is the Senator concerned as well with the fact that we have 50 million Americans without health insurance and the number is growing; that in many of the insurance markets across America there is no competition, one or two take-it-or-leave-it situations? Does that lead him to conclude we cannot stay with the current system but have to make some fundamental changes and reforms?

Mr. MCCAIN. I say to my friend, everything he said is absolutely correct. I



am deeply concerned about the situation of health care in America. I know the Senator from Illinois is deeply concerned about the fact that it is going to go bankrupt, about the fact that the Medicare trustees say that within 6 or 7 years it is broke. From what we hear, there is now a proposal over there to extend eligibility for Medicare, which obviously puts more people in the system, which obviously, under the present setup, would accelerate a point of bankruptcy, at least from what I know of this.

But the fundamental difference we have, in my opinion, is not what we want—we both share the deep ambition that every American has affordable and available health care—it is that we believe a government option, a government takeover, a massive reorganization of health care in America will destroy the quality of health care in America and not address the fundamental problem. We believe the quality is fine.

We think the problem is bringing costs under control. When you refuse to address an obvious aspect of cost savings such as malpractice reform, such as going across State lines to obtain health insurance, such as allowing small businesses to join together and negotiate with health care companies, such as other proposals we have, then that is where we have a difference. We share a common ambition, but we differ on the way we get there. I do not see in this bill, nor do most experts, a significant reduction in health care costs except slashing Medicare by some \$½ trillion, which everybody knows doesn't work, and destroying the Medicare Advantage Program of which in my home State 330,000 seniors are a part.

Mr. DURBIN. I say to the Senator two or three things. First, the CBO tells us this bill will make Medicare live 5 years more. This bill will breathe into Medicare extended life of 5 additional years. Second, I have heard a lot of negative comments about government-sponsored health care. I ask the Senator from Arizona, is he in favor of eliminating the Medicare Program, the veterans care program, the Medicaid Program, the CHIP program to provide health insurance for children, all basically government-administered programs? Does he believe there is something fundamentally wrong with those programs that they should be jettisoned and turned over to the private sector?

The second question, does the Senator from Arizona want to justify why Medicare Advantage, offered by private health insurance companies, costs 14 percent more than the government plan being offered, and we are literally subsidizing private health insurance companies to the tune of billions of dollars each year so they can make more profits at the expense of Medicare?

Mr. MCCAIN. First, obviously I want to preserve those programs. But every one of those the Senator pointed out is going broke. They are wonderful programs. They are great things to have. But they are going broke. He knows it and I know it, and the Medicare trustees know it. To say that we don't want these programs because we want to fix them is obviously a mischaracterization of my position, our position. We want to preserve them, but we all know they are going broke. It means cost savings. It means malpractice reform. It means all the things I talked about. The Senator mentioned Medicare Advantage. That is called Medicare Part C. That is part of the Medicare system. There are arguments made that there are enormous savings over time because seniors who have this program, who have chosen it, who haven't violated any law, are more well and more fit and have better health over time, thereby, in the long run, causing significant savings in the health care system which is what this is supposed to be all about. I ask in response: How in the world do you take a Medicare system which, according to the trustees, is going broke and then expand it to people between age 55 and 64? The math doesn't work. It doesn't work under the present system which is going broke. To add on to it, any medical expert will tell you, results in adverse selection and therefore increases in health care costs.

Mr. DURBIN. If I may respond, why is Medicare facing insolvency? Why is it going broke? Why are the other systems facing it? Because the increase in cost in health care each year outstrips inflation. There is no way to keep up with it unless we start bending the cost curve. We face that reality unless we deal with the fundamentals of how to have more efficient, quality health care. Going broke is a phenomena not reflective in bad administration of the program but in the reality of health care economics.

What I am about to say about the expanded Medicare is based solely on press accounts, not that I know what was submitted to CBO in detail. I do not. But the 55 to 64 eligibility for Medicare will be in a separate pool sustained by premiums paid by those going in. If they are a high-risk pool by nature, they will see higher premiums. What happens in that pool will not have an impact on Medicare, as I understand it. It will be a separate pool of those receiving Medicare benefits that they will pay for in actual premiums. It won't be at the expense or to the benefit of the Medicare Program itself. What I have said is based on press accounts and not my personal knowledge of what was submitted to CBO.

Mr. MCCAIN. The Senator has seen the CMS estimates this morning that this will mean dramatic increases in health care costs. You may be able to

expand the access to it, but given the dramatic increase, one, it still affects the Medicare system and, two, there will obviously be increased costs, if you see the adverse selection such as we are talking about.

I see the staff is getting restless. I ask my friend, maybe we could do this again during the weekend and during the week. I appreciate it. I think people are helped by this kind of debate. I respect not only the passion but the knowledge the Senator from Illinois has about this issue.

Mr. DURBIN. I thank the Senator.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER (Mr. BEGICH). The clerk will report.

The bill clerk read as follows:

Conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, one of the troubling aspects of this conference report is that the appropriators air dropped three very significant spending bills into the text during conference. In other words, three bills without any debate, discussion or amendment were air dropped into this pending legislation. The three bills are the Labor-HHS-Education, financial services and general government, and the State-Foreign Operations appropriations bills. Combined, these three bills spend over \$237 billion and contain 2,019 earmarks. It is remarkable and unacceptable that the Senate is willing to approve expenditure of such huge sums without the opportunity to debate and amend their content.

I see the Senator from Hawaii, who will say: This is the way we have had to do business before. We have to do this because of the pressure of time, the fiscal year ended, et cetera, et cetera. Again, we get back to this old line that we heard for an entire year and even early this year about change, about how we were going to change things in Washington. We are going to change the way we do business.

President Obama said about the last omnibus bill passed last March, 3 months into the Obama administration:

The future demands that we operate in a different way than we have in the past. So

let there be no doubt: this piece of legislation must mark an end to the old way of doing business and the beginning of a new era of responsibility and accountability that the American people have every right to expect and demand.

What are we doing today? The exact same thing that we were doing before.

Here is a quote from the White House Chief of Staff Rahm Emanuel about the last omnibus bill. This is the one we weren't going to do anymore.

Second, this is last year's business.

He was talking about the one we passed in March.

And third, most importantly, we are going to have to make some other changes going forward to reduce and bring more—reduce the ultimate number and bring the transparency. And that's the policy that he enunciated in his campaign.

Bob Schieffer:

But it sounds to me like what you're—what he's about to do, here, is say, well I don't like this but I'm going to go ahead and sign it—

Talking about the last omnibus bill—but I'm going to warn you, don't ever do it again. Is that what's about to happen here?

Emanuel:

In not so many words, yes.

And then, of course, the Senate majority leader said about the last omnibus:

We have a lot of issues we need to get to after we fund the government, something we should have done last year but we could not because of the difficulty we had with working with President Bush.

I wonder if we are going to blame President Bush for this one. If it rained, if it didn't rain? We blamed him for almost everything. Whatever it is, let's blame President Bush. The point is, what this bill is, and another one that will be coming up in a couple days, is exactly the same business as usual, a porkbarrel-laden bill with increases in spending when the American people are hurting in the worst possible way. The American people are hurting and the Labor, Health and Human Services and Education appropriations bill has \$11.3 billion or a 7-percent increase in spending over last year's spending level. Where are we? This is America. Americans are hurting. There is 10 percent unemployment. People can't stay in their homes. They can't keep their jobs. We are passing a piece of legislation with 1,749 earmarks just in the Labor, Health and Human Services piece of over \$806 billion.

Do you want to hear a few of them? They are fascinating. Here is my favorite of all—there are a lot of good ones—\$2.7 million to support surgical operations in outer space at the University of Nebraska. I assure my colleagues, I am not making that up. That is an appropriation in this bill. Let me repeat: \$2.7 million to support surgical operations in outer space. There are a lot of compelling issues before the American people. Surgical operations in outer

space at the University of Nebraska? I guess the University of Nebraska has some kind of expertise that they need \$2.7 million so we could support surgical operations in outer space. I wonder when the next surgical operation is scheduled in outer space? Maybe we ought to go into that.

I will be spending more time on the floor on this. But \$30,000 for a Woodstock film festival youth initiative? Woodstock was a pretty neat experience, but do we need to spend \$30,000 to revisit that one? There is \$200,000 to renovate and construct the Laredo Little Theater in Texas. The next time you are in Laredo, be sure to stop by the theater and see \$200,000 of your money which is going to renovate and construct this little theater. There is \$500,000 for the Botanical Research Institute of Texas in Fort Worth; \$200,000 for a visitors center in Bastrop, TX, a visitor center there in Bastrop with a population of 5,340 people. We are going to spend \$200,000 of my taxpayers' dollars to build them a visitor center. There is \$200,000 for design and construction of the Garapan public market in the Northern Mariana islands; \$500,000 for development of a community center in Custer County, ID, population 4,342. If my math is right, that is about \$100 per person. Right here in our Nation's Capital, \$200,000 to the Washington National Opera for set design, installation and performing arts at libraries and schools. They have an operating budget of \$32 million. Their Web site says the secret of its success is due to its position without the crucial government support typical in most world capitals. Then, of course, we always get back to Hawaii: \$13 million on fisheries in Hawaii, nine projects throughout the islands ranging from funding the bigeye tuna quotas, marine education and training, and coral research.

The list goes on and on. The next time you are in New York, go to Lincoln Center. We are spending \$800,000 of your money for jazz at the Lincoln Center. Jazz lovers, rejoice. For those who are not jazz lovers, we have \$300,000 for music programs at Carnegie Hall; \$3.4 million for a rural bus program in Hawaii. Apparently, the \$1.9 million in the 2009 omnibus was not enough. In other words, we gave \$1.9 million for this rural bus program in Hawaii so we have to now give them \$3.4 million more.

Custer County, ID, with a population of 4,342, as of the year 2000—I am sure they have grown since—\$500,000 for development of a community center in Custer County, ID.

The list goes on.

Then, of course, it is loaded with controversial policy riders that should have been debated in the Senate.

In the Department of Labor bill, the conference rescinds \$50 million from unobligated immigration enforcement funds under section 286(v) of the Immi-

gration and Nationality Act. This will result in a decrease in the enforcement of immigration law. I guarantee you, if that provision had been debated here on the floor of the Senate, that \$50 million would never have been removed.

The conference agreement includes new language providing authority to the International Labor Affairs Bureau, the agency charged with carrying out the Department of Labor's international responsibilities. This may be a worthy program, but it should be addressed in legislation.

There are so many other policy provisions in this bill which have not been authorized, which is supposed to be done by authorizers.

The conference agreement provides \$35 million for the Delta Health Initiative. The Delta Health Initiative provides a service to individuals in only one area of the country, the delta region of Mississippi. I have visited the delta region in Mississippi, and there are severe health needs. But couldn't we authorize this program? Couldn't we authorize it? Couldn't we have the proper debate and discussion?

The list goes on and on.

Of course, there is \$25 million “for patient safety and medical liability reform demonstrations” that was not included in the House or Senate. Medical liability reform demonstrations—there is a demonstration project already in being. It is called the State of Texas, where they have reduced medical malpractice costs dramatically, and the physicians and caregivers are flowing back into the State of Texas.

Mr. President, I will be talking more later this afternoon about all the pork and earmarking that is in this bill.

I have to tell you that the anger and the frustration out there is at an incredibly high level. Those of us who—I am sure most of us do—spend a lot of time at townhall meetings and hearing from our constituents know there is a level of anger out there, the likes of which I have not seen before. Here they are, hurting so badly because they cannot keep their homes and their jobs. My home State of Arizona is No. 2 in the country of homes where the mortgage payment is higher than the home value—48 percent of the homes in my State. So here we are with 10-percent unemployment, with deficits—this year of \$1.4 trillion—and there are dramatic increases, a 7-percent increase in spending in one, a 14-percent increase in spending in the other, and they do not get it. They do not get it. They do not get it. Americans are having to tighten their belts.

My home State of Arizona is in a fiscal crisis. They are having to cut services to our citizens because we cannot print money in Arizona. They only print money here. And here we are with Omnibus appropriations bills with as high as a 14-percent increase in spending, loaded down with billions of dollars worth of porkbarrel projects.

I predict to my colleagues that the anger out there will be manifest in a number of peaceful ways, including in the ballot booth. They are sick and tired of this. I saw a poll yesterday where the approval rating of Members of Congress has fallen below that of the approval rating for used car salespersons. I think it was at 4 percent, as I recall the poll. I have not met any of the 4 percent. I have not met anybody who approves of what we are doing.

This exercise we are in right here, on December 11, 2009, with a pork-laden Omnibus appropriations bill which frivolously and outrageously spends their dollars when they are struggling to keep their heads above water is something that is going to be rejected sooner or later by the American people. I have warned my colleagues that the American people are sick and tired of this. They did not like it before. Now they are fed up with it.

We will be hearing more this afternoon.

So, Mr. President, I rise today to raise a point of order under rule XXVIII against H.R. 3288, the Omnibus appropriations bill. I do this to ensure that this bloated legislation is not permitted to proceed to full consideration by the Senate.

Specifically, rule XXVIII precludes conference reports from including policy provisions that were not related to either the House or the Senate version of the legislation as sent to conference. Several provisions included in division D—the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act—of this omnibus bill are out of scope and were never considered on the floor of the Senate.

Mr. President, I raise a point of order that the conference report violates the provisions of rule XXVIII.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, I move to waive all applicable sections of rule XXVIII, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. McCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. Under rule XXVIII, there is up to 1 hour equally divided.

The Senator from Hawaii.

Mr. INOUE. Mr. President, I yield myself 10 minutes.

Mr. President, I rise today with mixed emotions. When I assumed the chairmanship of the Appropriations Committee last January, I immediately reached out to the senior Republican member of the committee from Mississippi, Senator COCHRAN, to seek his support in achieving my cen-

tral objective for the fiscal year: to return this appropriations process to the regular order. The vice chairman, Senator COCHRAN, agreed wholeheartedly, and together we committed to passing all 12 appropriations bills individually and to sending each of the completed bills to the President for his signature.

It might be of interest to my colleagues that of the 12 bills assigned to this committee, 11 were passed by the end of July, many months ago. One was held up at the request of the House but passed in mid-September. This is December. These bills have been passed. And it might be of further interest to the Senate that of the 12 bills, 9 were passed unanimously, bipartisan, 30 to 0. Three passed by one objection—29 to 1.

Completing action on our annual appropriations bills is our most fundamental responsibility. The Founding Fathers gave us the power of the purse, and for good reason. Our system of checks and balances, which has served us so well in the last 220 years, allows the executive branch to propose spending initiatives that make clear to us their intentions and desires. But the Constitution gives the Congress the ultimate decisionmaking authority, and it is our responsibility to fulfill this obligation.

Regular order allows each Senator the opportunity to debate and to amend each bill on an individual basis. Every Senator on both sides of the aisle recognizes that regular order is the preferred course of action.

The underlying Transportation, Housing and Urban Development bill will provide urgently needed funding so we can keep our transportation system safe and strong and provide much-needed assistance to our most vulnerable populations.

In addition, every one of the six bills we consider today was reported out by the full committee. As I pointed out, three of them were passed unanimously and the other three by a vote of 29 to 1. Every one of them has been written in a bipartisan fashion with considerable input on the part of the minority party.

The negotiations with our House counterparts have been spirited at times, but I can assure my colleagues that on the difficult issues, our subcommittee chairmen and ranking members have done an excellent job of defending Senate positions and of coming to fair and equitable compromises when such was necessary.

I would also note that on Tuesday evening, we held a full and open conference with the House at which every conferee, including 22 Members of the Senate, bipartisan Members, and 14 Members of the House, also bipartisan, was afforded the opportunity to offer amendments on any provision of the legislation. For the record, comity was demonstrated by the Senate conferees, and no amendments—no amendments—

were offered on our side. At the conclusion of the conference, 16 conferees, including 4 Republican members, signed the conference report.

Finally, I can say this is a clean bill. There are no extraneous measures attached. For this reason, as I just mentioned, we have bipartisan support of the bill, and I am proud of that fact.

Some have criticized this bill as spending too much. I will point out that the amounts recommended in the bill are below the amounts requested by the President and equal to the amount approved by the Congress in the Budget Committee. It has been a long process. Furthermore, the only area where the committee exceeded the amount requested by the President is for military construction and for veterans.

Moreover, some have criticized the majority for resorting to an omnibus measure once again. Clearly, those who criticize are those responsible for this outcome. When the Senate needs 4 days to pass a noncontroversial conference agreement on the Energy and Water appropriations bill, we know the only reason can be that a few Members want to delay our progress. Why do they want to do that? So they can complain when the calendar has expired and we have no time left for the regular order.

As a reminder to all of us, the Military Construction bill was delayed for 6 days of debate on this floor. It was a bill that was voted out of the Appropriations Committee unanimously, bipartisan-wise, and then delayed. But after the delay of 6 days, this Senate passed it by a vote of 100 to 0. What was the opposition all about? What was the delay all about, when everyone here was in favor of it? There was not a single dissenting vote, so it is obvious there was not opposition to the bill. It was simply that a few Members wanted to delay the bill.

Mr. President, now is December 11, and it is nearly time to adjourn the Senate for the year. We have not completed our work, and therefore we have consolidated six appropriations bills in one measure. My colleagues know precisely why we have reached this point, and it is not the fault of one member of the Appropriations Committee, nor the fault of the majority. It is the fault of a handful of Members who would rather see the responsibility for funding our Federal Government turned over to the bureaucrats and administration than have the Congress exercise its constitutional responsibility. I am a very patient person, but at times the rhetoric of this debate is too much to take.

With Senator COCHRAN, my vice chairman, as my partner, we have tried to move 12 individual bills only to be thwarted by a few Members—just a few Members. That is why we are here and where we are today with an omnibus bill.

As we look ahead to consideration of fiscal year 2011 appropriations bills, I

hope all Members of the Senate will learn from the frustrations of this year. We can succeed in returning to regular order for appropriations. We only need a modicum of cooperation and a recognition that delay for the sake of delay serves no one's best interests, least of all the people of the United States.

I strongly support this clean, bipartisan bill. I urge my colleagues to support it as well.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, for several weeks I have been saying, where are the appropriations bills? Under Federal law, we are supposed to have those done by October 1—October 1. Let's see. This is December 10. We must be past that deadline.

Well, here come the bills. They are all packed into one. There won't be the debate we would get if we handled them one by one. It is fascinating to me that one of them is Health and Human Services. All year we have heard that health is what is breaking the people of this Nation, how important health care is; why we have to do health care reforms under strict deadlines—strict deadlines that have shifted a number of times and are irrelevant to getting a good bill. But health care is that important, and it is one-sixth of the Nation's economy. So why haven't we had the health care appropriations debate before October 1? Why did it get put off until now? I guess it is because all of the earmarks weren't ready yet or maybe it is because they thought this bill ought to pass and solve all of the problems.

I think the bill could have passed much faster. I think it could have solved a lot more problems. If it would have had the kind of bipartisanship Senator DURBIN keeps describing as having happened, we would already have the bill done. Much of what he keeps repeating—and the more times you repeat it doesn't make it more true—in every speech he gives, he makes the same comments about how long the HELP Committee worked on this bill and how many amendments from the Republican side were automatically accepted into the HELP bill. We always have to come out and correct that. Yes, there were a number of amendments. That bill was put together over a period of 2 weeks with a new committee chairman, without a single input from Republicans. It was

brought to the committee for markup. We did have about 3 days to do amendments, and we did a lot of amendments. They did accept some of the amendments. Of course, we helped correct punctuation, we helped correct spelling, and we did have a few amendments that were accepted that actually made a difference.

After the vote, they didn't publish the bill for the public to look at—the amended version of the bill for the public to look at. I think that was so they could rip out the Republican amendments they had accepted. That has never been done in committees. When amendments are accepted, they are left in the bill, or at least the Senator who proposed the amendment gets to talk about why maybe it should or shouldn't be in there, or at least he is informed that they are going to rip it out. Not in this case. The bill is published, we are looking for some of these things and find they are gone. Then they wonder why there is opposition to the bill.

Then he talks about the hours we spent together working as the Group of 6. I appreciate him mentioning the hours, but hours don't make any difference if ideas aren't taken. The purpose of the hours is to be able to express ideas that can be included in a bill. Just getting to express them isn't enough. To make them bipartisan, they have to be included. Anybody who looks at the things we have on our Web sites would understand that we did have some good ideas, some things that would make a change in the way we do health care in America. Are those in this bill? No.

This is the Reid bill. This wasn't put together by the HELP Committee or the Finance Committee, although significant parts of both of those bills, which we didn't have input into, are a part of it. How was that designed? That was designed behind closed doors right over there, with no Republican input whatsoever. How does that make it bipartisan? How does that even give us a chance to make it bipartisan? Then they wonder why we have amendments.

Here is a fascinating thing on amendments: In the HELP Committee, the Democrats presented more amendments than the Republicans did. The Republicans did get two that we voted on and passed. The Democrats had over 30 that they presented to get passed. How come they even had to put in amendments? It was their bill. We are facing the same thing with the bill that is on the floor here. They are putting in more amendments than we are. Every time we put in an amendment they have a side-by-side on it to give them some cover to say, well, what they said wasn't that important. It wouldn't make a difference. Besides that, we don't want to do it, so we will have something that says we voted for that concept.

If you put the bill together, you shouldn't be the ones filibustering and doing the amendments. They have a unique position here now. We have a Democratic amendment and a Democratic side-by-side. I don't remember ever seeing that before. But we had a request this morning for three Democratic votes and one Republican vote. That is real bipartisanship? Yet they want the cooperation.

The thing that upsets me the most is they keep saying this will save money, this bill is going to save the country money, and we are in this appropriations process and we ought to be interested in saving the country money. But CBO didn't say that. CBO did not say that this bill will save money, unless you use a whole bunch of phony accounting, and there is phony accounting in this bill. That is how they are able to say, Oh, yes, we save money. We save money. This is going to save the American people a lot of money. No, it does not. Do not buy that story. Look at the accounting. I am the accountant. I have taken a look at it, but I am not that good of an authority.

We just got the report from the CMS chief actuary. Yes, that is the actuary who is actually in charge of Medicare and Medicaid and he did an analysis on it. I am going to go into some more detail on that analysis, because he says this bill does not save money. This bill will cost seven-tenths of 1 percent more than if we did nothing. Is that health care reform?

And where is the transparency we were promised would happen under this administration? Transparency? They built the bill behind the closed doors over on that side of the Senate Chamber and now a significant part of the bill—which is called the public option, government option, government-run program, whatever you want to call it—has been drastically changed. The newspapers have written about it. People have seen it. But the newspapers haven't seen what is in there. The Democrats, according to Senator DURBIN, the majority whip, have not seen that bill. The only one who has seen it is Senator REID and the Congressional Budget Office. He is not going to disclose any of that—any of that—until after he sees what the score is going to be. That is the ultimate in transparency, in my opinion. If you think you have a good idea, maybe you ought to let people see what the score is and see what the bill is, and you ought to if you expect us to debate it in a hurry. That is what we are under, this hurry-up situation. Hurry up so a bill that isn't going to do anything until 2014 can be passed by Christmas.

This side is ready to reform health care. This side is ready to stay in through the weekend. We already stayed in through last weekend. We will stay in until Christmas. We will stay in the days after Christmas. We

will stay in next year. But it has to be right. The American public expects this to be right.

There has never been a major piece of legislation passed by this body in the history of the United States that was passed by one party. Not yet, there hasn't been. There is a good reason for that. It is full of flaws if just one side's ideas are incorporated in the bill, and this is no exception. This has a lot of flaws. This is a real move to the left to incorporate most of the people over there, but they weren't able to incorporate all of them, so now they are doing a secret public option to expand Medicare to distract people without telling them what is in it and expecting us in a few days to vote on this thing.

Well, I am going to share some of these numbers from the CMS chief actuary a little later, but I see my colleague is here and is actually going to talk mostly on the appropriations bill. I will say that what I have had to say ties in directly to appropriations. It is spending money. We are going to spend \$464 billion of Medicare money from a system that is going broke and we are going to raise taxes—that is kind of an appropriation too—to cover the other  $\frac{1}{2}$  trillion in new programs that are not going to lower premiums or save the United States money, according to the CMS Chief Actuary Rick Foster.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I wish to thank Senator ENZI for not just what he said today but for what he has been doing throughout this whole debate to make very complex issues much simpler so that people can listen in to what is being said here and understand what we are doing. It has been a frustrating process here dealing with this attempted government takeover of health care. While the majority has us here on the floor debating one bill, they are behind a closed door over here creating a whole new bill and making periodic announcements about what might be in it. It is kind of like a magician who gets you looking at one hand while the sleight of hand is actually doing the magic with the other hand, and that is what we see happening here today. The majority wants to force this major piece of legislation through before Christmas while people aren't paying attention.

In the middle of this, they have decided to take a break to expand spending at unprecedented levels. I am here right now to support Senator MCCAIN's rule XXVIII point of order that points out that the majority, the Democratic majority, has violated all of these so-called ethics and transparency improvements that they were bragging about only a year ago. We are not supposed to take bills and in the secret of conferences add things that weren't in

the House or the Senate version. That violates a specific rule, an ethics rule that the majority trumpeted not too long ago. This bill contains out-of-control spending. It completely reverses Congress's traditional position on many values issues such as taxpayer-funded abortions and needle exchanges in the District of Columbia. It ends the DC Opportunity Scholarship Program that has done so much to help a small number of disadvantaged minority students. It increases funding for Planned Parenthood, the Nation's leading provider of abortions, and it legalizes medical marijuana. Yet the overall funding levels of this bill are unconscionable at a time when we are in recession and so many people are out of work. We have massive debt that threatens our Nation's economic future and our very currency itself.

The bill represents a \$50 billion increase or 12.5 percent over last year's funding level. This is not mandated spending; this is discretionary spending. This is a time the President is saying we have to get a handle on our debt. Yet every bill the Democratic majority has pushed across this floor has major increases in spending. It is actually nearly a \$90 billion increase over the year before.

Mr. President, what the President said he was against, which was earmarks, this bill has 5,224 earmarks, costing nearly \$4 billion, in addition to the other spending. I cannot read all of those, but I think people across the country have learned what earmarks mean. Here are a few examples:

\$500,000 for construction of a beach park promenade; six different bike paths totaling \$2.11 million; \$250,000 for a trail at Wolftrap Center for the Performing Arts; and \$250,000 for the Entrepreneurial Center for Horticulture.

I could go on and on. It makes no sense to be doing this. I think maybe one of the most egregious parts of the bill, which I want to focus on for a few minutes, goes back to those values issues. It is one thing to make abortion legal; it is quite another thing to force Americans who consider abortion immoral, based on their beliefs, or religious beliefs—it is immoral to make them pay for it, to actually promote abortion.

That is what this bill does. Everywhere you turn, this administration is promoting anti-life initiatives and advancing policies that most Americans find morally objectionable—namely, taxpayer-funded abortions. We have seen that throughout this health care debate, and now in the very set of bills that funds our government, it is promoting and funding abortion.

This Nation has had a debate about whether we should even allow abortions to be legal. But we have been in general agreement as a nation, and even here in the Congress, for years that we should not force taxpayers to

pay for abortions. That is a terrible use of the power of government.

The omnibus bill reported by the House-Senate conference allows taxpayer funds to be used to pay for elective abortion in the District of Columbia, because Congress controls DC's entire budget, including appropriating the city's local revenues. If this omnibus bill passes, Congress will be allowing U.S. taxpayer dollars to fund abortion on demand, when it was previously prohibited.

This is a major shift in policy. We must step back and see where our priorities are as a nation. The values of our country are at stake in this legislation. As we look at this, I hope no American is so naive as to think that if they pass this government takeover of health care, no matter what we put in the legislation, they will eventually fund elective abortions in this country. It shows everywhere they pass a piece of legislation that they are trying to promote abortion in this country.

A vote for the omnibus is a vote for taxpayer-funded abortion. A vote against Senator MCCAIN's point of order is a vote for taxpayer-funded abortion. It is simple and it is clear. Congress is responsible for the budget and the way the funds are spent. If we don't think the government should create an incentive for taking unborn lives, we should not allow it in the legislation before us today.

In addition to this troubling revelation, the bill contains many other egregious reversals of longstanding policy contradicting traditional American values. The underlying bill legalizes medical marijuana and uses Federal funds to establish a needle exchange program in Washington, DC. Both encourage the use of drugs.

This is another glimpse of what is going to happen with government-run health care. If this Congress is promoting the use of medical marijuana, needle exchange programs, abortion, in this funding bill, does anyone believe that that won't be a part of a government-run health care system? Of course not.

Additionally, this bill eliminates the successful DC Scholarship Opportunity Program, which aids low-income children by giving them scholarships to attend private schools in Washington, DC. This affects only about 1,500 children. I have had a chance to meet with some of them who were in schools that were not working. This small scholarship program allows disadvantaged, primarily minority, students in Washington, DC, to go to a private school of their choice. Remarkably, in just a few years, the students who moved from the government schools to the private schools were 2 years ahead of their peers. It is an example of something that is working, helping disadvantaged students, and it is a good example of an administration that is more interested

in paying off union interests—in this case the teachers union—than doing what is good for the children in our country. To eliminate this small, inexpensive program is absurd. But it reveals to you—

Mr. DURBIN. Will the Senator yield for a question?

Mr. DEMINT. No, I won't. It reveals to you the true motives of the majority. If we look at this bill and this eventual health care bill—if we ever have time to see it before they try to pass it—we are beginning to see a real glimpse, a true picture of where this Democratic majority is going.

Finally, this bill increases funding for title X family planning services, of which Planned Parenthood is the largest recipient. Planned Parenthood is the Nation's largest provider of abortions. Increasingly, they are what we call directed abortions. When people come to Planned Parenthood and look for advice on family planning, they are more often than not encouraged and pushed toward abortion.

All around this bill, you see what is going on. It is a major change in policy—not to make abortion available but to make Americans pay for it and to promote it.

I, along with 34 of my colleagues in the Senate, signed and sent a letter to the majority leader regarding the troubling anti-life policies in this omnibus bill. Collectively, we vowed to speak out to protect the longstanding Federal funding limitations on abortion—a belief that has enjoyed broad bipartisan support for many years.

For this reason, as well as a number of other values issues that are irresponsibly addressed in this legislation, I support Senator MCCAIN to raise a point of order against the omnibus under rule XXVIII of the Standing Rules of the Senate. I urge my colleagues to do the same.

I remind my colleagues that a vote against the McCain point of order is a vote to force American taxpayers to promote and pay for abortions. It is plain and simple. I am sure there will be a lot of smoke and mirrors after my talk that will try to convince you that is not true. But it is in the legislation and it will happen. We need to stop it.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I hope the Senator from South Carolina won't leave. He would not yield for a question. I want to address his remarks, and some of them are not accurate. I don't want him to feel that I am saying this outside of his presence.

I ask the Senator from South Carolina, while he has a few minutes, if he could look in the bill and find the provision in the bill that kills the DC Opportunity Scholarship Program. Please present it to me now, because it is not there. It is not there.

The DC Opportunity Scholarship Program is a voucher program, created more than 5 years ago. It was authorized through the Appropriations Committee, not through formal authorization. As many as 1,700 students in DC ended up going to school and getting about \$7,500 a year to help pay the tuition for their schools. The program has diminished in size—I will concede that—even though I tried in a debate and negotiations to change that. It is down to about 1,300 students. It is funded in this bill to the tune of \$13.2 million.

So for the Senator from South Carolina to stand up and say, as he did, that this program is killed, how does he explain the \$13.2 million in the bill?

Mr. DEMINT. If the Senator will yield, the President has said he is going to end this program.

Mr. DURBIN. Does this bill end it?

Mr. DEMINT. I will come to the floor to explain the technical aspects of why it is not.

Mr. DURBIN. I am anxious to hear it. Explain all the technical aspects you would like, but the fact is that \$13.2 million goes to the DC Opportunity Scholarship Program. And the 1,300 students currently in the program will be protected and will receive the tuition—a grant of \$7,500 per student—in the coming year. That is a fact. To stand there and say otherwise is wrong.

Mr. DEMINT. You grandfather it in—if the Senator will yield for a question, does this bill fund the continuation of the program beyond the 1,300 who are already in it?

Mr. DURBIN. No. It limits the program to 1,300.

Mr. DEMINT. It kills the program then.

Mr. DURBIN. No. If they are why—

Mr. DEMINT. But the program will not continue.

Mr. DURBIN. Reclaiming my time. What happens is this program next year will be up going through the Senate and the House of Representatives. For the Senator from South Carolina to misrepresent the contents of the bill is not fair.

Secondly, this idea of government funding abortion, let me say to the Senator from South Carolina, here are the basic pillars on this controversial issue in America. First, the Supreme Court has said abortion is a legal procedure in *Roe v. Wade*.

Second, Congress said, through the Hyde amendment, that we will spend no Federal funds for abortion except in cases involving the life of the mother, rape, and incest.

Third, Congress said any provider—hospital, doctor, medical professional—who in good conscience cannot participate in an abortion procedure will never be compelled to do so.

This bill doesn't change that at all. In the Senator's State of South Carolina and in my State of Illinois, the

leadership of the States—the Governor and the legislature—decide what they will spend their State funds on. That is done in States across the United States. Seventeen States have decided they will have State funds pay for abortions beyond the Hyde amendment. It is their State's decision, not our decision in DC. We, in this bill, give them the same authority that the State of South Carolina has and the State of Illinois has. No Federal funds from the government, from Congress, can be spent on this exercise or use of funds for abortions beyond the Hyde amendment. But if they choose to use their own funds—just as South Carolina and Illinois make their choice—then they make that decision.

Many in Congress have a secret yearning to be mayors of the District of Columbia. They want to be on the city council—not just in the Senate. They want to make every finite decision for the 500,000 or 600,000 people who live here.

Mr. DEMINT. Will the Senator yield?

Mr. DURBIN. Not at this time. When I finish, I will. The people who live here in DC are taxpaying citizens. They pay their taxes and they vote for President. They send their young men and women off to war just like every State in the Union. I think they are entitled to some of the basic rights we enjoy in each of our own States.

I also want to say a word about the needle exchange program. I get nervous around needles. I don't like to run in to the doctor and say give me another shot. So taking an issue like this on is not a lot of fun to start with. Why are we talking about needle exchange programs in the District of Columbia? For one simple reason: The HIV/AIDS infection rate in the District of Columbia, Washington, DC, the Nation's Capital, is the highest in the Nation. We are living in a city with the highest incidence of needle-related HIV/AIDS and meningitis and other things that follow. A needle exchange program says to those who are addicted: Come to a place where they can at least put you in touch with someone who can counsel you and help move you off your addiction, and they will give you a clean needle instead of a dirty one. I hate it, and I wish we didn't need it. I don't like it. But in States across the Nation they make the decision that this is the humane and thoughtful thing to do to finally bring addicts in before they infect other people and spread this epidemic.

The doctors are the ones who tell us this works. States make the decisions on it. I think the District of Columbia, facing the highest incidence of infection from HIV/AIDS, should also make that same decision in terms of the money they spend. The provision that came over from the House of Representatives would have limited the distribution of this program to virtually a handful of places in DC. We

said that DC can make the rules about where the safe places are for these needle exchange programs.

As I said, I hate to even consider the prospect, but I cannot blind myself to the reality that we have this high incidence of infection in the District of Columbia, and the medical professionals tell us this is working. We are bringing addicts in. We are bringing them into a safer situation. We are counseling some of them beyond their addiction. We are saving lives.

Am I supposed to turn my back on that and say, I am sorry, it offends me to think of this concept? It offends me to think of people dying needlessly, and that is why we have this program.

Let me say a word about the DC Public Schools. I did not ask to take this DC appropriations bill on. This is not something I ran for in the House of Representatives or the Senate. But it is part of my responsibility. This is a great city with great problems, but there are some shining lights on the horizon, and one of them is Michelle Rhee, chancellor of the public school system in the District of Columbia.

Michelle is an amazing story of a young woman attending Cornell University. She decided, when she graduated, to sign up for one of the top employers of college graduates in America today, Teach for America. She went off and taught in Baltimore. She took a hopeless classroom situation and in 2 years turned it around. Kids from the neighborhood had test scores nobody dreamed of because of Michelle's skill. She worked in New York, bringing non-traditional teachers into the teaching situation and then was asked to be chancellor here.

She is working on an overall reform for the DC Public Schools, which I endorse. It is a reform which will move us toward pay for performance, where those teachers who do a good job and improve test scores are rewarded. It is a voluntary program for teachers. The results are starting to show. This week in the District of Columbia, they reported math scores that showed dramatic improvements compared to cities around the Nation.

She has another responsibility: while 45,000 kids are in the public schools of DC, 28,000 are enrolled in public, but independent, charter schools. The charter schools have to match the performance of the public schools or improve upon them. It is the same for the voucher schools, the DC opportunity scholarships.

The Senator from South Carolina stands before us to say I eliminate the program. Where does that \$13.2 million go? It goes to the program, the DC opportunity scholarships. I did change the program. I changed the program because I failed initially when I offered amendments.

Here are some of the changes I made, and you be the judge as to whether these are unreasonable changes.

I said for the voucher schools—half of them are Catholic schools—I said for the voucher schools, every teacher in basic core subjects has to have a college degree. How about that for a radical idea, a teacher with a college degree? It is now required. It was not before.

Second, the buildings they teach in—these DC voucher schools have to pass the fire safety code. Is that a radical idea killing the program? If it means closing a school that is dangerous, sure, I would close that school in a second before I would send my child or grandchild there.

Third, we said, if you attend a DC voucher school, the students there have to take the same tests as the DC Public Schools so we can compare how you are doing. If you take a different test, you have different results. We are never going to have a true comparison.

I also added in here, at the suggestion of Senator LAMAR ALEXANDER of Tennessee, a former Secretary of Education, that each of the DC voucher schools either has to be accredited or seeking accreditation. I don't think that is radical. I don't think it closes a program.

The final thing I say is, the people who administer this program have to actually physically visit the school at least twice a year. We had a hearing where the administrator of the program was shown pictures of some of these DC voucher schools and, frankly, he said: We have not been there. Maybe once a year we get by. It has to be more than that. We have to make sure these schools are functioning and operating. We are sending millions of Federal dollars into them. We expect it at public schools, we expect it at charter schools. Should we not ask the same of the DC voucher schools?

I say this, at least those in the Archdiocese of Washington agreed to these things and have said: For our Catholic schools, we are ready to meet these standards and tests. My hat is off to them. It is a challenge, I am sure, but it is one I think they will meet. I want them to continue to do that.

I did try to expand this program in one aspect in the course of our negotiations, with Senator COLLINS' assistance, so siblings would be allowed to attend this program. I think it would be helpful. We were not successful. There are those opposed to this altogether.

I say the Senator from South Carolina has mischaracterized the DC voucher program. He has not fully explained that we have not changed the Hyde amendment, which prohibits Federal funds for abortion purposes, other than strict narrow categories. He went on to say something about the needle exchange program, which does not reflect the reality and the gravity of the health crisis facing the District of Columbia.

This is not a radical bill. This is a bill which I think is in the mainstream of America. It is a bill consistent with the same laws that apply in his State of South Carolina and my State of Illinois and most other States across the Nation.

I wish we were not in this paternalistic position in relation to the District of Columbia. I would rather this city had home rule, had its own Members of Congress, could make its own decisions. That is my goal. I would like to see that happen. In the meantime, I think we should treat the people who live here fairly, give them a chance to deal with their significant problems, acknowledge success, as we just reported in the public schools, and try to help them where we can.

This is, in fact, a great city and the capital of a great nation. I think the mayor does a good job.

I reserve the remainder of my time.

Mr. ENZI. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Wyoming has 8 minutes 26 seconds. The Democrats have 7 minutes 30 seconds.

Mr. ENZI. Mr. President, I rise to discuss a new report on Senator REID's health care reform bill. This kind of fits in with the appropriations that deal with Health and Human Services that is over 2 months past due.

Last night, we received a new analysis of the Reid bill we have been discussing about 11 days straight, performed by the Center for Medicare and Medicaid Services—that is CMS—which is under the Department of Health and Human Services. The chief actuary, Rick Foster—this is the guy in charge of all this. He is the chief actuary. This is not somebody outside the system. This is the guy who has to answer for all this. He serves as the independent technical adviser to the administration and Congress on estimating the true costs of health care reform. Some of the findings in this report directly contradict some of the claims we heard this week about the Reid bill.

For a week now, we have heard how the Reid bill will help slow spending growth and reduce how much we as a nation spend on health care. Mr. Foster's analysis shows that statement is false.

According to this report, national health expenditures will actually increase by seven-tenths of 1 percent over the next 10 years. That is seven-tenths of 1 percent if we did nothing different. Despite promises that the bill would reduce health care spending growth, this report shows the Reid bill actually bends the health care cost curve upward.

We have also heard, over the past week, how this bill will reduce health insurance premiums. Again, the administration's own chief actuary says this is false. The new report describes how



the fees for drugs, devices, and insurance plans in the Reid bill will increase health insurance premiums, increasing national health expenditures by approximately \$11 billion per year.

We have also heard how the Reid bill will reduce the deficit, extend the solvency of the Medicare trust fund, and reduce beneficiary premiums. According to the Foster report, these claims are all conditioned on the continued application of the productivity payment cuts in the bill which the actuary found were unlikely to be sustainable on a permanent annual basis. If these cuts cannot be sustained, one of two things will happen. Either this bill will dramatically increase the deficit or beneficiaries will not be able to continue to see their current doctors and other health care providers.

In reviewing the \$464 billion in Medicare cuts in the Reid bill, the Foster report found these cuts would result in providers finding it difficult to remain profitable.

The report went on to note that absent legislative intervention, these providers might end their participation in the Medicare Program. In addition, if enacted, the report found that the cuts would result in roughly 20 percent of all Part A providers—that is hospitals, nursing homes, et cetera—becoming unprofitable within the next 10 years as a result of these cuts.

As a former small business owner myself, I understand the impact this will have on doctors, hospitals, and other health care providers. In rural areas, such as my State, these providers will go out of business or have to refuse to take any more Medicare patients.

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care. He said the Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients. That is what we have been saying for about 11 days.

The Reid bill also forces 18 million people into the Medicaid Program. The Foster report concluded this will mean a significant portion of the increased demand for Medicaid services will be difficult to meet. These are not the claims made by insurance companies or anyone who might have a vested interest in the outcome of the debate. These come directly from the administration's own independent actuary.

In light of this report, why are the sponsors of this bill continuing to argue for a \$2.5 trillion bill of new programs which will increase health care spending, drive up premiums, and threaten the health care of Medicare beneficiaries?

We can do better. We need to start over and develop a bipartisan bill that will address the real concerns of American people—develop a bipartisan bill. They cannot just exclude one side be-

cause there is a majority that won the election and gets to write the bills. We get tired of hearing that told to us. Where is your comparable bill? We are not trying to have a comparable bill, we are trying to have input into the current bill or the current bills: Sit down, talk about the principles, find the actual things that fit into those principles, develop the details, and have a bill that goes step by step so we get the confidence of the American people. The step we ought to start with is Medicare. That is why I present this report from the actuary of CMS, which is part of the Department of Health and Human Services, which is assigned most of the job of coming up with the details of the bill we have before us. That means actual elected officials would not be doing it. But this CMS actuary says everything that has been said by that side of the aisle is false unless there is some phony accounting that goes into it.

I yield the floor and reserve the remainder of our time.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that we divide the time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, Division F of this omnibus conference agreement provides funding for the State Department, Foreign Operations, and related programs.

I want to thank the ranking member of the subcommittee, Senator GREGG, and his very capable staff, Paul Grove and Michele Wymer, for once again working with me and my staff in a bipartisan manner to produce this conference agreement.

I also want to thank Chairwoman NITA LOWEY and Ranking Member KAY GRANGER, and their staffs, for working so cooperatively with us throughout this process.

The fiscal year 2010 State Foreign Operations conference agreement provides \$48.8 billion in discretionary funding, a \$3.3 billion decrease from the President's budget request of \$52 billion.

The bill is \$1.2 billion below the fiscal year 2009 level, including supplemental

funds. This is an important point that needs to be understood by all Senators, because yesterday a Senator on the other side of the aisle criticized this bill for being 31 percent above fiscal year 2009.

That is misleading, because it does not account for the billions of dollars in fiscal year 2009 "emergency" supplemental funding that was the standard way of doing business under the previous administration.

To ignore those costs to American taxpayers is disingenuous. President Obama has made clear that he intends to fund these programs on budget, not through supplemental gimmicks. That is what the Congress urged him to do, and now he is being criticized for doing so.

If you compare apples to apples, this bill provides \$1.2 billion less spending than in fiscal year 2009.

Some Republican Senators have made speeches against this omnibus package on account of earmarks they don't like, even though some of them requested their own earmarks. In fact, earmarks comprise a tiny fraction of the total package.

Like past years, the State-Foreign Operations conference agreement does not contain any earmarks as defined by the Appropriations Committee.

We do fund many programs that are priorities of Democrats and Republicans, including assistance for countries like Afghanistan, Pakistan and Iraq, and longstanding allies like Israel, Egypt, and Jordan.

In addition, the conference agreement provides \$5.7 billion to combat HIV/AIDS, including \$750 million for the Global Fund. Funds are provided to combat other diseases, like malaria, tuberculosis, and neglected tropical diseases.

The agreement provides \$1.2 billion for climate change and environment programs, including for clean energy programs and to protect forests.

The agreement provides \$1.2 billion for agriculture and food security programs, with authority to provide additional funds.

There are provisions dealing with corruption and human rights, funding for international organizations like the United Nations, NATO and the International Atomic Energy Agency, and to promote democracy, economic development, and the rule of law from Central America to Central Asia.

The conference agreement provides the funds to support our embassies and diplomats around the world, public diplomacy and broadcasting programs, the Peace Corps, and many other programs that promote United States interests.

I don't support everything in this omnibus package any more than anyone else does. I had hoped, as I know did Chairman INOUE and Vice Chairman COCHRAN, that we could have

brought each of the bills in this omnibus, including the State-Foreign Operations bill, to the Senate floor individually.

But a handful of Senators on the other side have made clear that they will do whatever is procedurally possible to slow down or prevent consideration of these bills.

Despite that, I can say that the State Foreign Operations conference agreement was negotiated with the full participation of both House and Senate chairmen and ranking members. It was in every sense a collaborative process.

It is a balanced agreement and should be supported by every Senator who cares about U.S. security and the security of our allies and friends around the world.

The PRESIDING OFFICER. The question occurs on agreeing to the motion to waive all applicable sections of rule XXVIII. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. COBURN), the Senator from Texas (Mrs. HUTCHISON), and the Senator from North Carolina (Mr. BURR).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "Nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 36, as follows:

[Rollcall Vote No. 372 Leg.]

#### YEAS—60

Akaka	Feinstein	Mikulski
Baucus	Franken	Murray
Begich	Gillibrand	Nelson (NE)
Bennet	Hagan	Nelson (FL)
Bingaman	Harkin	Pryor
Bond	Inouye	Reed
Boxer	Johnson	Reid
Brown	Kaufman	Rockefeller
Burris	Kerry	Sanders
Byrd	Kirk	Schumer
Cantwell	Klobuchar	Shaheen
Cardin	Kohl	Specter
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Cochran	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	Lincoln	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden

#### NAYS—36

Alexander	Feingold	McCaskill
Barrasso	Graham	McConnell
Bayh	Grassley	Murkowski
Bennett	Gregg	Risch
Brownback	Hatch	Roberts
Chambliss	Inhofe	Sessions
Corker	Isakson	Shelby
Cornyn	Johanns	Snowe
Crapo	Kyl	Thune
DeMint	LeMieux	Vitter
Ensign	Lugar	Voinovich
Enzi	McCain	Wicker

#### NOT VOTING—4

Bunning	Coburn
Burr	Hutchison

The PRESIDING OFFICER. The yeas are 60, the nays are 36. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I ask unanimous consent that no further points of order be in order during the pendency of H.R. 3288.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. It is my understanding that the next vote will be tomorrow morning at 9:30. We will be happy to come in at 8:30, but I ask unanimous consent if we could have that vote at 9:30. We will come in at 9, if that is OK with everybody.

Mr. MCCAIN. Will the majority leader yield for a question?

Mr. REID. I am happy to.

Mr. MCCAIN. And the disposition of the pending Dorgan amendment, could we have some idea about that?

Mr. REID. I think my friend from Arizona asks a very pertinent question. We offered a consent request last evening—and I did again today—that we would have the votes now before the Senate in sequential order. I offered a unanimous consent request to do that. We are happy to do that. I announced there would be no more votes today. On Monday when we come in, we will be happy to do that.

Mr. MCCONNELL. I say to my friend the majority leader, the problem with that is we have been going back and forth with an amendment on each side, and the agreement that you have proffered, if I understand it correctly, basically had two Democratic side-by-sides. Am I not correct in my understanding of that?

Mr. REID. Yes, but on all amendments that we have had up to this point, every side, Democrats or Republicans, has had the opportunity to do side-by-sides if they wanted to. In the weeks we have worked on this, what has transpired here, I am quite sure, has happened before. Simply stated, we have been requested by Republicans to have some votes, and we have agreed to have the votes. I explained in some detail last evening why we can't do it on a piecemeal basis. Procedurally, it puts us into a quagmire. Let's clear the deck. There will be other amendments after that we would certainly try to have each side offer.

But I agree with the Senator from Arizona, we should get rid of the drug reimportation amendment one way or the other, in addition to the motion offered by Senator CRAPO.

Mr. MCCONNELL. My point was, typically a side-by-side is offered one

on each side. On the drug reimportation issue, you have basically two votes, both generated on the Democratic side, which created some confusion. But we will have to continue to talk about this and see if we can work our way through it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I wanted to ask the minority leader—some of us are a little bit perplexed. I know the Senate has its rules, and we try to work through them. But we also at this time of year often try to accommodate families and schedules and so forth. I am curious as to whether the minority leader might not consent to allowing us or why it is that we couldn't, since Senators are here today, schedule the vote and agree to have the vote on the 60-vote margin today rather than tomorrow morning, requiring all staff and everybody in the Senate to come in on a Saturday.

Mr. REID. If I could make a comment before my friend the Republican leader comments, everyone should understand—this should make it easier for everybody—I am going to be home all weekend in Washington. I won't be traveling the country doing any fundraisers that people seem to be afraid of.

Mr. MCCONNELL. The answer to it is that our good friend the majority leader told us on November 30 we would be here the next two weekends. He said again this past Monday we would be here this weekend. I assumed and I know he certainly meant what he said. Our Members are here and ready to work. We wish to work on health care amendments. But as a result of the privileged status of the conference report that is before us, we have had that displaced. But I think everybody was on full notice as to what the work schedule was going to be for last weekend and this weekend.

Mr. KERRY. Mr. President, if I could respond, I don't mean to assert myself in any way that is inappropriate with respect to the leader, but we all know that in the workings of the Senate, what we are doing is both complicated and serious and critical to the country.

We are waiting for CBO to appropriately, consistently—as a member of the Finance Committee, we adhered to a very strict notion that we would try to find the precise modeling and cost of whatever it was we might do. It is entirely appropriate, to have a proper debate or discussion, that we know exactly what the cost is of any particular proposal. That is what we are waiting for. So the majority leader is appropriately trying to move another piece of legislation that is ripe, that is important to the country. This is just a question of courtesy to Senators and to their families and to the staff of the Senate who have been working extraordinarily hard. The question is simply, why, as a matter of convenience, we

couldn't schedule a vote for today instead of being scheduled for tomorrow. We could do that by unanimous consent.

Mr. REID. If I could have the RECORD reflect, the Republican leader is right. I said we would be in session the next several weekends. But if you go back and look at the RECORD, how many times have I said we would be in session over the weekend and, interestingly enough, around here, magic things happen on Thursdays and Fridays. I have had every intention, as I have every time I have said it, that we should be in on a weekend, and usually we are able to work something out. We haven't been able to this time. I accept that. I am not complaining. But certainly the question of my friend from Massachusetts is a pertinent one. Senators are here now. Maybe we could have the vote early. But it is set statutorily. My unanimous consent request was, and I am not sure it was responded to, that we could have that vote at 9:30 tomorrow morning without having the mandatory 1-hour beforehand.

I heard no objection to that. We will just come in at 8:30. We will come in at 8:30 tomorrow morning and have a 9:30 vote.

Mr. KERRY. Mr. President, I ask unanimous consent that the vote scheduled for tomorrow morning be held instead today at some convenient time within the next hours.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. Mr. President, reserving the right to object—and I will object—we have been told by the majority that the single most important thing we could do would be to work on weekends and try to pass this health care bill which, according to the CNN poll that came out last night, the American people oppose 61 to 36, before Christmas. We are here. We are prepared to work. We would like to get back on the health care bill as rapidly as possible and vote on amendments to the bill. It either is or it isn't important enough for us to be here before Christmas. My Members are not expecting to take a break. We have been told by the majority all year long this is important. First we had to get it done before August. Then we had to get it done before Thanksgiving. Now we have to get it done before Christmas. We are here, ready to work.

I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from New Hampshire.

Mr. GREGG. Is the Senator from Arkansas seeking recognition?

Mrs. LINCOLN. Yes.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. GREGG. Mr. President, I still have the floor. I was just asking a question.

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. GREGG. Mr. President, I ask unanimous consent to be allowed to speak for up to 10 minutes and then that the Senator from Arkansas be recognized, and then we will come back to this side.

The PRESIDING OFFICER. Is there objection?

The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, reserving the right to object—and I have no intention of objecting—I would like to also propound a unanimous consent request that after the Senator from Arkansas has spoken and after the Senator from New Hampshire has spoken, Senator COLLINS, I, and Senator BAYH be recognized for up to 30 minutes for a colloquy.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Oregon?

The majority leader is recognized.

Mr. REID. Mr. President, reserving the right to object, I would ask my friend from Oregon if he would allow this modification to his unanimous consent request. It would be as follows: consent that Senator LINCOLN be recognized and that she be allowed to speak for up to 10 minutes; that Senator GREGG be recognized for up to 10 minutes; and then that Senators WYDEN, COLLINS, and BAYH be permitted to engage in a colloquy for up to 30 minutes; that following the conclusion of that 30 minutes, Senator ALEXANDER or his designee be recognized for up to 30 minutes to engage in a colloquy with other members of the Republican caucus.

The PRESIDING OFFICER. Is there objection?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, reserving the right to object, I understand that is in addition to Senator WYDEN's request, which is that I should begin with my first 10 minutes, then we would go to the Senator from Arkansas, then we would go to Senator WYDEN, and then we would go to the outline as represented by the majority leader.

Mr. REID. If that is OK with the Senator from Arkansas.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, thank you very much.

Mr. President, I rise to speak a little bit about this health care bill. I know there has been a lot of discussion of it already today, but I think it is important—very important—that as this health care bill comes forward, we know what it says.

Unfortunately, we received this 2,074-page health care bill about 8 days ago, after it had been worked on for 8 weeks in camera, behind closed doors by the Democratic leadership. We have only had 8 days to look at it. We now hear there is going to be a massive revision

of it—a massive revision—that is going to involve potentially expanding Medicare to people who are aged 55.

Medicare is already broke, by the way. It is broke. It has a \$38 trillion unfunded liability. And we are going to add another 10 million people, maybe, into Medicare? That makes no sense at all.

But what I think is important is that what we know so far has been reviewed by a lot of different people, but some of them have not been all that objective. So there was a request made to CMS, which is an arm of the administration—therefore, one would presume it was not necessarily biased toward the Republican side of the aisle; in fact, maybe just the opposite; I do not think it is biased at all, hopefully; but if there was bias here, it certainly would not be Republican—to review the proposal of Senator REID.

Let me read to you what the CMS conclusion is—some of them—on the Reid bill.

According to the CMS Actuary: “The Reid bill increases National Health Expenditures” by \$234 billion during the period 2010 to 2019. Why is this important? Well, it is pretty darn important because we had representations that the purpose of this health care reform was to decrease, to move down, health care costs. Now we find this bill, as scored by the CMS Actuary, significantly increases the national health care expenditures.

Secondly, they concluded that “the Reid bill still leaves an estimated 24 million people . . . uninsured.” Twenty-four million people—that is almost half of the uninsured today. Why is that important? We were told the purpose of this health reform exercise was to, one, insure everybody; two, bend the health care costs down; and three, make sure that if you have your own health care that you like, you do not lose it. Well, on two counts, it appears the Reid bill clearly fails that test and gets an F—on the issue of bending health care costs down and on the issue of insuring everyone, according to CMS, an independent group.

Third, it says:

The new fees for drugs, devices, and insurance plans in the Reid bill will increase—

Increase—

prices and health insurance premium costs for customers. This will increase national health [care] expenditures by approximately \$11 billion per year.

So instead of bringing health premiums down, as was represented by the President—he said it was going to go down by \$2,100 per family—your health care premiums are going to go up. What happens when health care premiums go up? People stop giving you health care insurance because they cannot afford it. Employers cannot afford it. So on the third issue, will you lose your health insurance if you like it, yes, you will. Yes, you will because

the price of your health insurance is going to go up under the Reid bill.

There are a couple other points they make which are fairly important here:

The actuary's analysis shows that claims that the Reid bill extends the solvency are shaky.

They are "shaky"—the claims that it extends the Medicare trust fund solvency.

Quoting further:

Moreover, claims that the Reid bill extends the Medicare HI Trust Fund and reduces beneficiary premiums are conditioned on the continued application of the productivity payment adjustments in the bill, which the actuary found were unlikely—

That is their concept, "unlikely"—to be sustainable on a permanent annual basis. . . .

So the idea that this bill somehow assists Medicare—by the way, this bill cuts Medicare by \$½ trillion, almost, in the first 10 years. When it is fully implemented, it cuts Medicare by \$1 trillion in a 10-year timeframe, and over the next 20 years, it cuts Medicare by \$3 trillion. The idea that this is going to somehow help Medicare is fraudulent on its face, according to the Actuary. "Fraudulent on its face" is my term. It is "unlikely" to accomplish that.

Then it goes into this issue of the CLASS Act, which we have heard so much puffery about how wonderful this CLASS Act is, which is basically another Ponzi scheme, as it was described by the chairman of the Budget Committee, not myself. The Actuary said:

The Reid bill creates a new long term insurance program (CLASS Act) that the CMS actuaries found faces "a very serious risk"—

This is their term, "a very serious risk"—

of becoming unsustainable as a result of adverse selection by participants. . . .

In other words, only people who are probably going to need long-term care are going to opt into this program. So this plan will basically not be able to pay the costs of the benefits it is proposing because they will not have funds coming in to support the people who need it because there will be no larger insurance pool of healthy people who are using the program. Only the people who need the program will use it. So the CLASS Act representations we have heard around here have been debunked by this CMS report.

This is not our side saying these things. It is not our side saying that the cost of this bill will drive up the cost of national health care. It is not our side saying there are 24 million people left uninsured when this is fully implemented. It is not our side saying premiums will go up when this bill is fully implemented. It is not our side saying the CLASS Act will be a seriously unsustainable program. It is not our side saying Medicare will not be benefited by this program. In fact, it will be negatively impacted by this

program. It is CMS saying that, an independent Actuary—not that independent; an arm of the administration. The administration's Actuary is saying it, not our side. So I think it is legitimate to have some serious concerns about this bill.

The CMS report goes on and says:

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care.

Now, that is serious. That is serious.

It found that roughly 20 percent of all Part A providers—hospitals—would become unprofitable—20 percent of all Part A providers, such as hospitals, would become unprofitable within the next 10 years as a result of the proposals in the Reid bill.

Well, I know "profits" is a bad word on the other side of the aisle, but the simple fact is, if you do not have profit in a hospital, the odds are pretty good you are going to go out of business. You are going to go out of business because you cannot pay the costs of operating that hospital. Even nonprofits have some sort of cushion in order to make it through. Now we have the CMS Actuary telling us that 20 percent of the hospitals in this country are going to go into a negative cashflow and are going to become unprofitable as a result of what this bill proposes.

Well, colleagues, Senators, why would we vote for a bill which increases the cost of health care for the country and does not bend the health care cost down, which leaves half the people in this country who are uninsured still uninsured, which raises the premium costs for Americans, which puts the Medicare system at risk, which will put hundreds of providers at risk, hospitals, and which creates a brandnew entitlement which is not sustainable? And those conclusions are come to by the CMS, the independent CMS Actuary. Why would we want to put that type of program in place? Of course, we should not.

Listen, this 2,074 pages of bill—it was put together haphazardly. It was just sheets of paper stuck together. It ends up costing us \$2.5 trillion overall. Every page costs us about \$1 billion. Obviously, it was not well thought out because the CMS Actuary looked at it and said it is not well thought out. It does not accomplish its goals.

So rather than moving forward with the bill, why don't we just step back and start doing things we know are going to work? Why don't we start doing a few things around here we know are going to work?

I know the Senator from Oregon is on the floor, and he happens to be the sponsor of a bill which actually would make some progress in the area. Why don't we—I would be willing to step back and start from his bill because his bill at least makes sense. If it were scored by the CMS Actuary, it would not come out like this. They would not

be saying that people would be uninsured, that the price of health care was going to go up and that Medicare was going to go into a disastrous strait and create an unsustainable entitlement.

So we have ideas around here that do work or are fairly close or at least have the foundation to work. Why don't we use those rather than this bill? That is my only point. This bill is ill thought out, and that is not my conclusion, that is the only conclusion you can come to when you look at the CMS Actuary's evaluation of it.

Mr. President, I appreciate the courtesy of the Presiding Officer, and I especially appreciate the courtesies of the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, thank you. And I appreciate the courtesies of my colleague from Oregon for allowing me to speak now.

I rise today to talk a little bit about the health care concerns, particularly, in our small businesses. I first wish to compliment and thank my colleagues, particularly Senator LANDRIEU, who is chairman of the Small Business Committee, as well as Senator SNOWE, with whom I have worked for years on the plight of the small businesses in our States and across the country—their need to be able to really access the kinds of competition and choice that allow them to make good decisions and spend their health care dollars more wisely and being able to do what they all want to do in small business, and that is to be able to cover their employees, to make sure their employees and their employees' families are covered with reasonable and meaningful health insurance that actually covers what they need but is at an affordable price. So I thank those women, as well as Senator STABENOW, who I know has also been working on these issues.

But I really come to the floor today to highlight the challenges Arkansas small business owners face in providing quality, affordable health care for themselves, their families, and their employees under the current system and to look at what we can do to improve what their challenges are, what it is they face.

Small businesses are our No. 1 source of jobs in Arkansas, and they are truly the economic engines of our local economies, but they are also the economic engines of our national economy, not to mention learning laboratories for great ideas that will allow us in this great Nation to be truly competitive in the 21st century.

Arkansas's nearly 250,000 small business and self-employed individuals make significant contributions to our State's economy and generated \$7.2 billion in 2008. Small employers account for 97 percent of the employers in our State, and I would daresay nationally it is somewhere at that same level.

Addressing the needs of small businesses is absolutely critical to any health insurance reform legislation we bring forward.

As I mentioned before, Senator SNOWE and I have worked together for many years to try to address these concerns, talking with small businesses and their advocacy groups to try to figure out what it is we can provide them, just as we provide ourselves as Federal employees the ability to access health insurance that has been negotiated, where people have come together, pooled the resources of all of our risks as Federal employees—all 8 million of us—to really get a better deal in the marketplace.

We want to be able to allow small businesses to do the same, to come together nationwide, pool themselves in their State exchanges, and be able to really take advantage of sharing their assets and their risks in the health insurance marketplace and get the best possible product they can.

Those small businesses that are able to afford health care coverage for their employees in today's world continue to experience skyrocketing costs, jeopardizing our States' and our Nation's competitive edge, both among themselves nationwide domestically but also internationally. We find that our small businesses are finding themselves more and more in the situation of having to be competitive globally to be able to do the business they do and to create the jobs they need to create.

Yesterday, I spoke with a radio station owner from Wynne, AR, in Cross County, who said high costs have threatened his ability to be able to provide coverage for his employees. Or, worse, skyrocketing costs are forcing business owners to consider giving up their businesses altogether, like the small business owner from Malvern, AR, who wrote me that he was giving up his 17-year-old business because he can no longer afford his rising health care insurance premiums. His wife and his daughter each have a preexisting medical condition, and he feels pressured to find a new job that provides affordable employer-sponsored coverage for his family.

I heard from another small business owner in Mena who told me that at the age of 65, he continued to keep himself on his own small business's health insurance plan in order to ensure that he could maintain providing health insurance to his employees, many with whom he grew up. They were friends of his from grade school or church and community services and other places where he had built lifelong relationships, not only as an employer and an employee but as part of a community. Being able to maintain providing that to them was so critical to him that he was willing to ante up.

I have heard from small business owners from all across my State who

desperately want to offer health care coverage for their employees, but it is simply not cost productive. The fact is, so many people think small businesses just want to opt out, that they don't want to provide health insurance, but they do. They do because it is important to them as a part of that community to do something for their employees who also happen to be their friends and neighbors. They also want to make sure their business is the best it can be, and in order to do that they have to compete for those skilled workers. Getting the best workers means providing good benefits, with health care being at the top of that list.

Another Arkansan asked me to please include the self-employed in my efforts to secure affordable health care. There are many small businesses with only one employee, and health care under this scenario is extremely expensive. They are put in an individual market where they are rated against themselves in many instances and not given the benefit of what we enjoy as Federal employees; that is, pooling ourselves together, adding our assets and our risks together so that we can mitigate that risk among all 8 million Federal employees.

These are just a few of the stories I have heard from Arkansans, and that is why in every Congress since 2004, I have introduced legislation to help small business owners afford health coverage for themselves, their employees, and their families. Several of my provisions are already included in the health insurance reform bill currently before the Senate, including the tax credit to help small businesses afford coverage, and we want to improve upon that. Also included are insurance exchanges through which consumers can compare insurance plans side by side so that they will be able to choose the option that is best for them, allowing their employees to see what is available to them and making sure that they are having access to all the options of the marketplace. There are reforms that force insurance companies to change the way they do business by limiting what an insurer can charge based on age and by banning the practices of denying coverage based on preexisting conditions or increasing rates when customers all of a sudden get sick.

We look at our small businesses and, yes, there are a lot of young entrepreneurs, but a lot of our small businesses are those individuals in that category above 55. These are people who, unfortunately, are starting to see chronic disease challenges in their life as they age. Unfortunately, they become an issue, or certainly their coverage becomes an issue when we talk about preexisting conditions. So it is critical that we make sure we change the way insurers do business as usual today and make sure they are playing

fair with the small business entities out there.

Just one more of my efforts is something on which we worked with Senator SNOWE and Senator DURBIN, which is to allow that there would be national private insurers, as there are today, but allowing them to sell multistate plans nationwide, to be able to sell their plans in all 50 States. It would be with a strong Federal administrator who would be able to negotiate for quality and affordable coverage. Some of this has emerged as another potential part of the framework for national health insurance reform that can help us achieve our goals of more choices and more affordability for consumers, particularly those in the small business marketplace.

So I wish to thank the Presiding Officer for the opportunity to share with my colleagues and certainly those Americans out there who are the ingenuity and the engine of our economy. I know my colleague from Oregon has talked so much about choice and competition. It is so important, more important than ever in that small business marketplace and in that individual marketplace, as well as providing exchanges and the ability for national insurers, private insurers to be able to provide these types of products across all 50 States. Also, a multistate plan gives our small businesses and our self-employed, our individual marketplace, our independent contractors, such as our realtors and others, the ability to have access to greater choice, greater competition in that marketplace, and, therefore, a better product—greater, more meaningful coverage at a more reasonable cost, and that is what we want to see. More importantly, that is what our small businesses want to see.

So I thank the Presiding Officer, and I yield the floor to my colleague from Oregon and my colleague from Indiana, and the Senator from Maine as well, whom I know will have a great addition to this conversation. Thank you.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Indiana.

Mr. BAYH. Madam President, I wish to begin by complimenting my friend and colleague from Arkansas. We entered this body together, and she has consistently advocated on behalf of small businesses, not only across Arkansas but across the country. We both want to reform the health care system. We know this has a major impact on small businesses. They create most of the new jobs in our society. So if we care about job creation, we need to care about how health insurance costs affect businesses. They are going up too fast, and Senator LINCOLN has consistently advocated for doing what we can to get those cost increases down and, in fact, lower the burden on our small businesses. So this is not only a health issue, it is a jobs issue. She has been a real leader for many years.

So it is a privilege to work with the Senator on these important issues. Our class is doing well.

I also wish to say how much I am privileged to work with my friend from Oregon, Senator WYDEN, who has been one of the most innovative thinkers in the area of health reform. Once again, he is leading the way on an issue I am going to speak to for just a second.

I am happy to see my colleague from Maine is with us. It saddens me to say that, regrettably, this is one of the few examples of bipartisan cooperation where we have come together across the aisle, Democrats and Republicans, working together to figure out how in a practical way we can help solve the problem our country faces.

Here we have an issue of what to do about the 7 percent of Americans who are the individual insurance market but are receiving no subsidies from the government. According to the CBO, they are at risk of having their premiums go up. That is not right, particularly at a time when even people who are making more than \$88,000 very often are struggling. So the question is, What can we do about it?

Senator COLLINS, Senator WYDEN, and myself focused on these individuals because we wanted to do what we could, in the words that my colleague from Oregon emphasizes so often, to provide choice and encourage competition to improve both price and quality. That is what our amendments are all about.

I wish to read a very brief statement and then turn it over to my colleagues.

When I go home to Indiana, the health care concern I hear the most about from ordinary Hoosiers, particularly middle-class Hoosiers, is what are we going to do to make their coverage more affordable. Many people in my State already have insurance, but they are struggling to keep up with the skyrocketing increases and the cost of that care.

We began our health care debate and these deliberations in this body this past spring. In mid-October, months into our debate, some of us were struck by the fact that we had not answered the most basic question: How much is this going to cost, and what do we do to bring those costs down? So I, along with some others, submitted in writing that question to the Congressional Budget Office. What will this do for people in the small group markets such as small business owners, what will this do for individuals in the large group markets who work for larger employers, and what will it do for individuals who are out there struggling on their own to provide health insurance for themselves and for their loved ones?

When they released their report, I was pleased to see that the current legislation before us would either contain or lower costs for 93 percent of the

American people. For 83 percent of those in small group and large group plans, it is about holding even or modestly lower. For the 17 percent in the individual marketplace, about 10 of that 17 percent get subsidies sufficient to actually bring their prices down, which leaves us with the 7 percent of those individuals in the individual market who get no subsidies and may see serious cost increases if nothing is done. The Wyden-Collins-Bayh amendments accomplish just that.

Our first amendment promotes more health choices for both employers and workers who would otherwise have few, if any, choices. It would help individuals who would be forced to buy their own insurance at higher rates than they currently pay. It would give them the option to purchase low-cost plans that offer essential, basic coverage. It would ensure that Congress does not mandate that anyone buy a more expensive plan than they currently have.

Our second amendment is a market-based reform that would pressure insurance companies economically to lower premiums and penalize them if they try to raise rates before the new exchanges are fully up and running. It would immediately adjust the insurer fee in the bill to give insurance companies a strong financial incentive to keep premiums down. It would do this by making it economically smart for companies to hold the line on overhead and executive salaries and to root out administrative inefficiencies.

Our third amendment would offer vouchers to give consumers who have health insurance but aren't satisfied with it access to more choices to meet their health care needs. It would offer vouchers that individuals could use to shop in the new insurance exchanges we are creating. Those who prefer their current plan to what is offered in the exchange could return the voucher and keep their existing coverage.

If we pass these amendments, we can credibly tell the American people that our long efforts will have addressed rising health insurance premium costs for everyone, and that is at the heart of this effort we have undertaken.

In closing, I will say that Americans are not looking for a Democratic solution or a Republican solution to our health care challenge. They are looking for us to come together to pass a reform bill that works in practical terms in their daily lives. More choices, premium cost increases under control, eliminating preexisting conditions—those are the things that will help middle-class families in my State and others across the country.

I am proud that the Wyden-Collins-Bayh affordability package will represent one of the few bipartisan efforts in this body. As I was saying, I regret the fact that it is one of the few, but I am proud we have come together to work to address this important chal-

lenge. I hope my colleagues will agree that we have a responsibility to restrain premium costs for all American families by encouraging consumer choice and robust competition in the private marketplace. I hope we will pass these amendments because they accomplish exactly that.

Madam President, thank you for your patience. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I wish to begin my part of this colloquy with Senator BAYH and Senator COLLINS by thanking my colleague from Indiana. I also thank my colleague from Maine because both senators have said from the very beginning of this discussion that the bottom line for millions of working families, for single moms, for folks who are walking on an economic tightrope across the country, they are going to see this issue through the prism of what it means for them in terms of their premiums and their costs.

Over these many months, Senator BAYH and Senator COLLINS and I have been toiling to put together some bipartisan ideas. We have filed these ideas as a package of amendments, submitted them to the majority leader, Senator REID, and the chairman of the Finance Committee, Senator BAUCUS, and we just wanted to take a few minutes today to talk in particular about why it is so essential that there be a bipartisan effort put together for additional steps to contain costs.

Senator BAYH is absolutely right in describing the Congressional Budget Office analysis. Certainly, many people were fearful the CBO report would come out and say that on day one after enactment premiums would rise into the stratosphere as a result of the legislation. Fortunately, that was not the case in the report for most people.

We also believe there is a whole lot more that can be done. So we have said, Democrats and Republicans are going to try to prosecute that case. What it comes down to is ensuring that, in the text of this legislation, there is more choice and more competition.

The reality is, ever since the 1940s, the days of the wage and price control decisions that have done so much to shape today's health care system, most Americans have not had real choice in the health care marketplace and have not been able to enjoy the fruits of a competitive system. Most Americans have little or no choice. Most Americans don't get a chance to benefit when they shop wisely.

As Senator BAYH noted—and as Senator COLLINS and I have noted over the last few days—that is something we ought to change. It is certainly not a partisan idea. Senator REID and Senator BAUCUS, to their credit, have agreed with me that there ought to be



more choice for those folks who have what, in effect, are hardship exemptions under this legislation. There are people, for example, who spend more than 8 percent of their income on health who aren't eligible for subsidies, who have these hardship exemptions; and Senator REID, Senator BAUCUS, and I have agreed they ought to be able to take any help they are getting from their employer in the form of a voucher and go into the marketplace. These people should be able to put into their pockets any savings that come about because they have shopped wisely.

But as Senator BAYH has noted, we have an opportunity to go further. If an employer in the exchange decides, on a voluntary basis, that their workers should have a choice, under the proposal advanced by the Senator from Indiana, the Senator from Maine, and myself, they would be able to do it.

It is the voluntary nature of our idea that Senator BAYH has outlined, an approach that gives more options to both employers and employees, that caused our proposal to win an endorsement from the National Federation of Independent Business.

I ask unanimous consent at this time to have printed in the RECORD that letter from the National Federation of Independent Businesses.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION  
OF INDEPENDENT BUSINESS,  
December 10, 2009.

Hon. RON WYDEN,  
U.S. Senate, Dirksen Senate Office Building,  
Washington, DC.

Hon. SUSAN COLLINS,  
U.S. Senate, Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATORS WYDEN AND COLLINS: On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business association, we are writing in support of the Wyden-Collins amendment (Optional Free Choice Voucher—amendment #3117), which provides vouchers as a new voluntary option for employers and employees to purchase health insurance.

For small business, the goal of healthcare reform is to lower costs, increase choices and provide real competition for private insurance. The Wyden-Collins amendment achieves what we know are clear bipartisan goals in healthcare reform—expanding access to coverage, increasing consumer choice and improving portability.

Free choice vouchers recognize that the employer-employee relationship in America has changed considerably since employer-sponsored insurance began in the 1940s. They give employees tax- advantaged resources to tailor healthcare choices and purchases to their own preferences and needs. Because the employees will be able to choose from more policies, they will be more invested in their healthcare decisions. They will be better consumers because they will be more aware of costs, and this will help “bend the cost curve.”

In today's diverse and highly mobile workforce, people change jobs every few years. Improving portability will reduce the “job lock” that currently stifles entrepreneur-

ship. Since free choice vouchers would help make health insurance portable, employees will not be locked into jobs when better opportunities come along.

This amendment addresses the shortcomings of the existing employer-based system for small businesses. In the current system, small employers often have few options beyond “take it or leave it.” This new and voluntary option will encourage employers to provide insurance coverage for employees. It is the exact opposite of employer mandates that harm struggling businesses, discourage startups and kill jobs.

While some may claim this amendment weakens employer-sponsored health insurance, NFIB disagrees. The current system works better for larger firms who can operate more efficiently and effectively, and this inequity must be addressed. Simply put, what works for Wall Street does not work for Main Street. The Wyden-Collins amendment works to address this by making coverage more affordable for many of the nation's job creators.

NFIB appreciates your commitment to healthcare reform and your continuous efforts to find solutions that work for small business.

Sincerely,

SUSAN ECKERLY,  
Senior Vice President,  
Public Policy.

Mr. WYDEN. Madam President, I will make one last comment and then we will be happy to have our colleague from Maine join us in this bipartisan colloquy.

As we go forward with this legislation, I hope we will do more to look at the exchanges, which are the new marketplace for American health care. We haven't had that kind of approach since decades ago when we had a discussion about a system that, for all practical purposes, tethered people to one choice that was a judgment by an employer and insurance company. I wish to make sure, in the days ahead, that as many people as possible can keep exactly what they have today. That is something the President feels strongly about. That is something every Member of the Senate feels strongly about. I also want employers and employees to be able to say they are going to have a broader range of choices than they do now.

I think that can be done in a way that does not destabilize employer-based coverage. In fact, I believe it will strengthen employer-based coverage. I think that is one of the reasons the National Federation of Independent Business has endorsed our proposal.

We have a lot of work to do. I think there is a lot of good faith among Senators on both sides to get this done. I have always felt that on issues such as this, when you are talking about one-sixth of the American economy, you ought to try to find as much common ground as you possibly can. The three of us have come together behind a new set of amendments that does find some bipartisan common ground, around principles the President has embraced—choice and competition.

At this point, I yield whatever time she desires to our friend from Maine,

who is a wonderful partner in this, along with Senator BAYH. Americans are looking for commonsense ideas above all else. That is what we have sought to do in this proposal.

I yield to my friend from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, first, let me thank my two colleagues for their hard work on these amendments. My colleague from Oregon, Senator WYDEN, has been working so hard on health care issues for such a long time. My colleague from Indiana, Senator BAYH, and I have worked together on other issues, and I am proud of the fact that the three of us have been able to come together, in a bipartisan way, to present to our colleagues three important amendments.

It is, as Senator BAYH has noted, so unfortunate that the debate on this bill has been so divisive and partisan. Senator WYDEN approached me about trying to find some common ground on issues that would unite us.

I should make clear the adoption of these amendments—important though they are and great steps forward though they are—do not solve all the problems I have with the legislation before us. But they do improve the underlying bill in important ways because they help to advance the goal of more affordable insurance choices for consumers. Providing more choices and more competition and greater affordability, after all, should be major goals of health care reform.

The bill before us falls short in meeting those objectives.

Let me discuss our amendments. In summary, our amendments would allow individuals, who are not receiving subsidies, to purchase lower cost plans if that coverage is more affordable for them and more appropriate for them.

We are also proposing health insurance vouchers that would provide more options for employers and employees alike. We are proposing incentives to insurers to keep their rates lower than they otherwise might be.

Let me further explain our three amendments. First, we would open the catastrophic plan—the so-called young invincibles plan—in the individual market to anyone, regardless of age, who is not eligible for a subsidy under the bill.

It is incredible to me that we are going to so constrain the insurance choices for an individual who is receiving no taxpayer subsidy at all. That does not make sense. We want to ensure not only that people can keep the insurance they have, if they like it, but also that they have more options available to them. Why should we say that an individual who is not receiving any help—no subsidy at all—can only purchase one of the four types of plans that are authorized by this bill?



Some would say, well, if you do that, you are going to have a problem where a person will perhaps have a health savings account or a supplemental catastrophic insurance plan and wait until they are ill to trade up to a far better plan. But there is a way to stop that from happening. We have drafted our amendment so that if an individual wished to upgrade his or her coverage, he or she would have to wait until the next plan year and then could only upgrade to what is known as the bronze plan—the next higher level of coverage. That would help greatly to avoid the problem of adverse selection and having a situation where an individual simply waits until he or she becomes ill before upgrading coverage.

We also wish to make sure consumers know exactly what they are buying and what kind of coverage they are getting. That is why we would require health plans to disclose fully the terms of the coverage to ensure that consumers fully understand the limitation.

Finally, this amendment makes clear that States have the ability to impose additional requirements or conditions for the catastrophic plans offered under this bill.

The bottom line is, health care reform should be about expanding access to affordable choices. The bill that is on the floor now would cause many Americans in the individual market to pay more for health care coverage than they do today. That isn't right. If their health care coverage is working well for them, if they are higher income and can bear the risk, if they have a health savings plan, if they are not getting a taxpayer subsidy, why should we dictate, to this degree, the level of coverage they can buy?

I believe this amendment is simple common sense. Let me explain what it would mean in my home State of Maine because I think it shows that one size does not fit all. In Maine, 87.5 percent of those purchasing coverage in the individual market have a policy with an actuarial value of less than 60 percent. The most popular individual market policy sold in Maine costs a 40-year-old about \$185 a month. These individuals often pair this catastrophic coverage with a health savings account.

Under the bill we are debating, unless they are grandfathered and don't have any change—for example, they have not gotten married or divorced—then that 40-year-old would have to pay at least \$420 a month—more than twice as much—for a policy that would meet the new minimum standard. Otherwise they would have to pay a \$750 penalty.

There is an exception in the bill, but it is only for people who are under the age of 30. What we are saying is, let's broaden that, so that if you don't receive help from the government, if you don't receive a taxpayer subsidy, you, too, can buy that kind of catastrophic coverage plan.

A second amendment the three of us are offering would provide more choices to small businesses and to their employees. Giving employers and employees more choices should be among the chief goals of health care reform.

Our amendment would allow employers who choose to do so to offer vouchers to employees so they can purchase insurance on the exchange. This would allow them, for example, to use the employer voucher, plus tap into the subsidy available because of their income level, and put some of their own funds into purchasing the kind of coverage they want. As Senator WYDEN has explained, this program is completely optional. Employers could offer these vouchers or decide to continue with their employer plan.

Let me tell you one reason I think this strengthens the bill. We need more people buying insurance through the exchanges, because if more people are using the exchanges, it broadens the risk pool, and the rates will be better for everyone. In insurance, having more people over which to spread the risk drives costs and premiums down.

So it is not surprising to me that our Nation's largest small business group, the NFIB, has endorsed our amendment. Let me read one paragraph from the NFIB letter because it really sums it up. The NFIB says:

This amendment addresses the shortcomings of the existing employer-based system for small businesses. In the current system, small employers often have few options beyond "take it or leave it." This new and voluntary option will encourage employers to provide insurance coverage for employees. It is the exact opposite of employer mandates that harm struggling businesses, discourage startups, and kill jobs.

I think the NFIB has said it well. This will give more choices both to employers and to employees.

Finally, let me say a few words about our proposal to modify the formula for the allocation of the \$6.7 billion annual tax on health insurance providers.

There are a lot of problems with that particular tax, not the least of which is the gap between when the tax is imposed and when the subsidies are finally available 4 years later. Another problem is that the tax applies to non-profit insurers as well as for-profit insurers. I am working with Senator CARL LEVIN to try to address that problem.

Here is what we are saying. The way the tax is designed in the bill, there is little to keep insurers from jacking up premiums, which is exactly the opposite of what we want them to do. They are going to just pass this tax on. So what we propose is to give insurers an incentive to keep premiums as low as possible. Under our amendment, if you are an insurer that is holding down the cost of your premiums, you don't pay as large a share of the tax. That makes sense. That helps us be more fair to the efficient insurer that is working hard to keep premiums down.

Again, I am very pleased to join with my two colleagues in presenting to the Senate three amendments that will provide more choices, greater affordability, and more options. These should be the goals of health care reform, and these amendments help to advance those goals.

Mr. WYDEN. Madam President, how much time do we have?

The PRESIDING OFFICER. There is 3 minutes 50 seconds remaining.

Mr. WYDEN. Madam President, I thank my colleague from Maine for her great statement. She summed it up so well.

To close, I will turn to Senator BAYH, and if we have time, I will add a thought or two.

Mr. BAYH. Madam President, I will be brief. I compliment Senator COLLINS on an excellent presentation. She summarized it very succinctly and in a way that was compelling.

I hope our colleagues will take note that among the three of us, we have the east coast represented, the west coast represented, and the Midwest represented. So we span the country and this body. I hope that will cause our colleagues to take some note.

The Senator from Maine focused on the letter from the NFIB. This helps small businesses at a time when they are struggling to create jobs. I hope our colleagues will take note of this letter.

The Senator from Maine also pointed out, why should we control the health care choices of individuals who are receiving no subsidies. That ought to be up to them. We accomplish all of those things.

It is a pleasure doing business with Senator COLLINS. This is a practical approach to solving these problems. I hope our colleagues will take notice.

The last thing I will say is, I repeatedly have people come up to me and say: Boy, RON WYDEN has some great ideas. We need more of these ideas in this bill. And this is accomplishing that. Senator WYDEN has been a true leader for many years in this area. I am glad choice and competition is being introduced, and it is because of his good work.

Mr. WYDEN. Madam President, to close, briefly, I thank my colleagues. I don't want to make this a bouquet-tossing contest, but to have Senator BAYH and Senator COLLINS—they are as good of partners as it can possibly get.

At the end of the day, Americans are going to watch this bill, they are going to watch it next year during the open enrollment season when millions are signing up for their coverage, and they are going to be looking to see if we did everything possible to hold down their premiums. Holding down their premiums—there is a variety of ways to go about it, but there is no better tool than to bring the principles of the marketplace, the principles that are used

in every other part of American life—choice and competition—for the challenge ahead.

With the help of Senator COLLINS and Senator BAYH, we are going to prosecute that case. We are going to do it in a bipartisan way.

I thank my colleagues. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I ask unanimous consent that Republican Senators be permitted to engage in a colloquy during our time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Madam President, my grandfather was a Santa Fe railway engineer. He lived in Newton, KS. So far as I can tell, he was one of the most important men in the world. I was 5, 6, 7 years old when I would go out there. He drove one of these great big steam locomotives. If there were as many yellow flags and red flags along the track when he was driving that Santa Fe locomotive as there are with the health care locomotive that is going through the Senate today, I think my grandfather would have been guilty of gross negligence if he did not slow it down and see what those red flags and yellow flags meant.

There is a lot of talk about making history with this bill, but there are a lot of different ways to make history. One of the things I hope we will be very careful to do in the Senate is not to make a historic mistake with this health care legislation.

Now we have even one more red flag to consider. It came out last night from Chief Actuary Richard Foster of the Centers for Medicare and Medicaid Services. The Centers for Medicare and Medicaid Services is not a Republican organization nor a Democratic organization. It is in the Obama administration. But it is the agency in charge of the Federal Government's spending for health care, which, according to Mr. Samuelson, who wrote a column in *Newsweek* recently, was 10 percent in the year 1980 and 25 percent today of our government's total expenditures.

If we go back to the reason we started all this debate on health care, let's remember that the reason we started the debate was first to see if we can bring down the costs of health care because the red flags and the yellow flags are everywhere for small businesses, for individuals, for our government. We cannot continue to afford the increasing cost of health care in America. So our first goal here is to bring down the costs.

Yet, Mr. Foster, the Chief Actuary of the Centers for Medicare and Medicaid Services, in a lengthy report delivered last night on the health care bill—most of which we have seen but some of which we do not know about yet; it is still being written in the back room—

says that it will increase costs. Instead of reducing costs, it will increase costs. It points out the obvious, which is that the taxes in the bill will raise the premiums for the 180 million of us pay who have employer-based insurance, and for those who have individual insurance. It talks about the millions of Americans who will be losing their employer insurance by the combination of provisions in this bill, many of whom will end up in Medicaid, where 50 percent of doctors will not see a new patient. But maybe the most important finding is the most obvious finding, the one which we have been suggesting to our colleagues day-in and day-out. It is one we ought to pay attention to and one which almost every American can easily understand. And it is this—it has to do with Medicare, the government program on which 40 million seniors depend. This bill would cut \$1 trillion—let's start this way. Medicare, the program we depend on, its trustees say it is going broke in 5 years. It is already spending more than it brings in, and it will be insolvent between 2015 and 2017. Those are the Medicare trustees telling us this.

What does this bill do to that?

Mr. MCCAIN. Will the Senator yield for a question?

Mr. ALEXANDER. If I may finish my point.

What does this bill do? It would cut \$1 trillion from Medicare. I ask the Senator from Arizona, if the program is going broke and you cut \$1 trillion out—and then it has been suggested over the last few days that we add several million more people into Medicare—what do you suppose the result would be?

Mr. MCCAIN. The answer is, obviously, that I don't know.

I would like to say to the Senator from Tennessee—and Dr. BARRASSO is here as well—a lot of Americans have heard of the Congressional Budget Office. I am not sure many have heard of the Centers for Medicare and Medicaid Services, which is part of the Department of Health and Human Services. Are they not the people whose entire focus is not on the entire budget, as CBO's is, but just on Medicare and Medicaid, so that they can make determinations as to the future and the impact of various pieces of legislation on specifically Medicare and Medicaid? Is that a correct assessment?

Mr. ALEXANDER. The Senator from Arizona is exactly right. I believe I have my figures right. I think Mr. Samuelson said in his column the other day that in 1980 the Federal Government was spending 10 percent of all our dollars on health care and today it is 25 percent. And this is the agency in charge of most of that massive Federal expenditure every year.

Mr. MCCAIN. I thank my friend. Because the findings as of December 10, 2009, which is entitled "Estimated Fi-

nancial Effects of the 'Patient Protection and Affordable Care Act of 2009,' as Proposed by the Senate Majority Leader on November 18, 2009," have some incredibly, almost shocking results, I say to my friend from Tennessee.

We know the bill before us does not bring costs under control. But as I understand this—and it is pretty, may I say, Talmudic in some ways to understand some of the language that is in this report, but is it not true that the Reid bill, according to this report—this is not the Republican policy committee but the Centers for Medicare and Medicaid Services—doesn't it say:

The Reid bill creates a new long-term insurance program—

Called the CLASS Act—

that the CMS actuaries found faces "a very serious risk" of becoming unsustainable as a result of adverse selection by participants. The actuary found that such programs face a significant risk of failure and expects that the program will result in "net Federal cost in the long term."

I would like to mention two other provisions to my friend from Tennessee and Dr. BARRASSO, who is very familiar not only with this center but with Medicare and Medicaid services.

The Reid bill funds \$930 billion in new Federal spending by relying on Medicare payment cuts which are unlikely to be sustainable on a permanent basis. As a result—

According to CMS—

providers could "find it difficult to remain profitable and, absent legislative intervention, might end their participation in the Medicare program."

The Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients, meaning that a significant portion of the increased demand for Medicaid services would be difficult to meet.

They go on to say:

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care. He also found that roughly 20 percent of all Part A providers (hospitals, nursing homes, etc.) would become unprofitable within the next 10 years as a result of these cuts.

Finally, he goes on to say:

The CMS actuary found that further reductions in Medicare growth rates through the actions of the Independent Medicare Advisory Board—

Which is one of the most controversial parts of this legislation—

which advocates have pointed to as a central lynchpin in reducing health care spending, "may be difficult to achieve in practice."

This is a remarkable study, I say to my friend from Tennessee.

Mr. ALEXANDER. I thank the Senator from Arizona for being so specific about this and making it clear that this is not a Republican Senator talking, this is a Republican Senator reading the report of the Federal Government's Chief Actuary for the Medicare and Medicaid Program. Senator BARRASSO, a physician for 25 years in Wyoming, brought to our attention some of

these things earlier this week when he pointed out what this also says.

Isn't the point that if we keep cutting Medicare, there are not going to be any hospitals and any doctors around to take care of patients who need care?

Mr. MCCAIN. May I also ask, in addition to that question, has Dr. BARRASSO ever heard of the CMS being biased or slanted in one way or another? Isn't it one of the most respectable and admired objective observers of the health care situation as far as Medicare and Medicaid are concerned?

Mr. BARRASSO. My answer to that is they are objective. That is why we did not get this report—I have the same copy my colleague from Arizona has. This just came out, and the reason is because they wanted to take the time to study the bill which they got in the middle of November. So they needed the time to actually go through point by point what the implications were.

The Senator talked about the one segment where they talk about they "face a significant risk of failure." They actually go on to say: "This will eventually trigger an insurance death spiral." This is for people who depend upon Medicare for their health care.

There is an Associated Press story out today that says this provides a sober warning—a sober warning—today to Members of the Senate. This is a time when the Senate raised the debt limit in this country by over \$1 trillion. As the old saying goes—I say to my friend who served in the Navy—they are spending money like drunken sailors, and yet they want to keep the bar open longer. They want to increase the debt at a time when our Nation cannot afford it, when we have 10 percent unemployment.

The folks who know Medicare the best and can look at this objectively and share with the American people what their beliefs are as to what the impact is going to be say that is going to be devastating for patients who rely on Medicare for their health care—our seniors—and devastating for small community hospitals. I see the former Governor, now Senator of Nebraska, is here, and he knows, as I do from Wyoming, the impact on our small community hospitals.

But as the Senator from Tennessee said, this is all being done in a back room. We are not privy to the newest changes, which I think are actually going to make matters worse. The New York Times today says Democrats' new ideas would be even more expensive. Questions exist about the affordability. What we are dealing with is a situation that is unsustainable, and that is why the newest poll out today by CNN—certainly not biased one way or the other—finds that 61 percent of Americans oppose this bill. It is the highest

level of opposition to date because more and more people are seeing and learning the truth about what is being proposed in the bill before the Senate.

Mr. MCCAIN. This is the information on the bill as it is; correct—the original bill? This is without the expansion of Medicare taken into this study, which already, as the Senator quoted from the New York Times and other health care experts, is going to increase costs even more. As you expand Medicare, among other things, you run the risk of adverse selection, which means the people who are the sickest immediately enroll, which then increases the cost, and then who would be paying the increased Medicare payments? The young and the healthy. I ask my friend from Wyoming, should we do that to the next generations of Americans?

Mr. BARRASSO. Well, we should not. We need to be fair. We need to deal with this in a realistic way. But the bill in front of us now is going to raise taxes \$500 billion, it is going to cut Medicare by almost \$500 billion for our seniors who depend upon it, and for people who have insurance they like, it is going to increase their premiums. They are going to end up paying more than if no bill was passed at all.

That is why, across the board, more people would rather have this Senate do nothing than to pass this bill we are looking at today. They understand the impact on this Nation and our future is devastating. This will cause us to lose jobs, with the taxes; it will cause us to lose care in small communities; and for our seniors who depend upon Medicare, they are going to throw more people into Medicaid, another program where half the folks now can't find a doctor who will see them.

All in all, there is nothing I see about this bill or any of the new changes and certainly nothing in this report that says to the American people: Hey, you might want to think about this. The American people have thought about it. This report tells the American people this is not what they want for health care in this Nation.

Mr. ALEXANDER. Madam President, I ask unanimous consent to have printed in the RECORD the summary of the report of the Centers for Medicare & Medicaid Services.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES, OFFICE OF THE ACTUARY,

Baltimore, MD, December 10, 2009.

From: Richard S. Foster, Chief Actuary.

Subject: Estimated Financial Effects of the "Patient Protection and Affordable Care Act of 2009," as Proposed by the Senate Majority Leader on November 18, 2009.

The Office of the Actuary has prepared this memorandum in our longstanding capacity

as an independent technical advisor to both the Administration and the Congress. The costs, savings, and coverage impacts shown herein represent our best estimates for the Patient Protection and Affordable Care Act. We offer this analysis in the hope that it will be of interest and value to policy makers as they develop and debate national health care reforms. The statements, estimates, and other information provided in this memorandum are those of the Office of the Actuary and do not represent an official position of the Department of Health & Human Services or the Administration.

This memorandum summarizes the Office of the Actuary's estimates of the financial and coverage effects through fiscal year 2019 of selected provisions of the proposed "Patient Protection and Affordable Care Act of 2009" (PPACA). The estimates are based on the bill as released by Senate Majority Leader Harry Reid on November 18 as an amendment in the nature of a substitute for H.R. 3590. Included are the estimated net Federal expenditures in support of expanded health insurance coverage, the associated numbers of people by insured status, the changes in Medicare and Medicaid expenditures and revenues, and the overall impact on total national health expenditures. Except where noted, we have not estimated the impact of the various tax and fee proposals or the impact on income and payroll taxes due to economic effects of the legislation. Similarly, the impact on Federal administrative expenses is excluded. A summary of the data, assumptions, and methodology underlying our estimates of national health reform proposals is available in the appendix to our October 21 memorandum on H.R. 3200.

#### SUMMARY

The table shown on page 2 presents financial impacts of the selected PPACA provisions on the Federal Budget in fiscal years 2010–2019. We have grouped the provisions of the bill into six major categories:

- (i) Coverage proposals, which include both the mandated coverage for health insurance and the expansion of Medicaid eligibility to those with incomes at or under 133 percent of the Federal poverty level (FPL);
- (ii) Medicare provisions;
- (iii) Medicaid and Children's Health Insurance Program (CHIP) provisions other than the coverage expansion;
- (iv) Proposals aimed in part at changing the trend in health spending growth;
- (v) The Community Living Assistance Services and Supports (CLASS) proposal; and
- (vi) Immediate health insurance reforms.

The estimated costs and savings shown in the table are based on the effective dates specified in the bill as released. Additionally, we assume that employers and individuals would take roughly 3 to 5 years to fully adapt to the insurance coverage provisions and that the enrollment of additional individuals under the Medicaid coverage expansion would be completed by the third year following enactment. Because of these transition effects and the fact that most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period, the cost estimates shown in this memorandum do not represent a full 10-year cost for the proposed legislation.

## ESTIMATED FEDERAL COSTS (+) OR SAVINGS (–) UNDER SELECTED PROVISIONS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2009

(In billions)

Provisions	Fiscal year										Total, 2010–19
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
Total <sup>1</sup>	\$16.1	–\$1.6	–\$18.6	–\$35.2	\$22.4	\$78.1	\$83.0	\$76.2	\$74.5	\$71.0	\$365.8
Coverage <sup>2</sup>					93.8	141.1	158.3	165.8	178.6	192.3	929.9
Medicare	11.5	1.3	–13.4	–24.3	–60.5	–52.0	–66.0	–80.9	–95.8	–113.3	–493.4
Medicaid/CHIP	–0.4	–0.1	–0.7	–5.3	–4.9	–4.9	–4.8	–4.9	–4.8	–4.8	–35.6
Cost trends					–0.0	–0.1	–0.2	–0.4	–0.6	–0.9	–2.3
CLASS program		–2.8	–4.5	–5.6	–5.9	–6.0	–4.3	–3.4	–2.8	–2.4	–37.8
Immediate reforms	5.0										5.0

<sup>1</sup> Excludes Title IX revenue provisions except for 9015, certain provisions with limited impacts, and Federal administrative costs.<sup>2</sup> Includes expansion of Medicaid eligibility.<sup>3</sup> Includes estimated non-Medicare Federal savings from provisions for comparative effectiveness research, prevention and wellness, fraud and abuse, and administrative simplification. Excludes impacts of other provisions that would affect cost growth rates, such as the productivity adjustments to Medicare payment rates, which are reflected in the Medicare line.

As indicated in the table above, the provisions in support of expanding health insurance coverage (including the Medicaid eligibility changes) are estimated to cost \$930 billion through fiscal year 2019. The net savings from the Medicare, Medicaid, growth-trend, and CLASS proposals are estimated to total about \$564 billion, leaving a net cost for this period of \$366 billion before consideration of additional Federal administrative expenses and the increase in Federal revenues that would result from the excise tax on high-cost employer-sponsored health insurance coverage and other revenue provisions. (The additional Hospital Insurance payroll tax income under section 9015 of the PPACA is included in the estimated Medicare savings shown here.) The Congressional Budget Office and Joint Committee on Taxation have estimated that the total net amount of Medicare savings and additional tax and other revenues would somewhat more than offset the cost of the national coverage provisions, resulting in an overall reduction in the Federal deficit through 2019.

The chart shown on the following page summarizes the estimated impacts of the PPACA on insurance coverage. The mandated coverage provisions, which include new responsibilities for both individuals and employers, and the creation of the Health Benefit Exchanges (hereafter referred to as the “Exchanges”), would lead to shifts across coverage types and a substantial overall reduction in the number of uninsured, as many of these individuals become covered through their employers, Medicaid, or the Exchanges.

By calendar year 2019, the mandates, coupled with the Medicaid expansion, would reduce the number of uninsured from 57 million, as projected under current law, to an estimated 24 million under the PPACA. The additional 33 million people who would become insured by 2019 reflect the net effect of several shifts. First, an estimated 18 million would gain primary Medicaid coverage as a result of the expansion of eligibility to all legal resident adults under 133 percent of the FPL. (In addition, roughly 2 million people with employer-sponsored health insurance would enroll in Medicaid for supplemental coverage.) Another 20 million persons (most of whom are currently uninsured) would receive individual insurance coverage through the newly created Exchanges, with the majority of these qualifying for Federal premium and cost-sharing subsidies, and an estimated 20 percent choosing to participate in the public insurance plan option. Finally, we estimate that the number of individuals with employer-sponsored health insurance would decrease overall by about 5 million, reflecting both gains and losses in such coverage under the PPACA.

As described in more detail in a later section of this memorandum, we estimate that total national health expenditures under this

bill would increase by an estimated total of \$234 billion (0.7 percent) during calendar years 2010–2019, principally reflecting the net impact of (i) greater utilization of health care services by individuals becoming newly covered (or having more complete coverage), (ii) lower prices paid to health providers for the subset of those individuals who become covered by Medicaid, and (iii) lower payments and payment updates for Medicare services, together with net Medicaid savings from provisions other than the coverage expansion. Although several provisions would help to reduce health care cost growth, their impact would be more than offset through 2019 by the higher health expenditures resulting from the coverage expansions.

The actual future impacts of the PPACA on health expenditures, insured status, individual decisions, and employer behavior are very uncertain. The legislation would result in numerous changes in the way that health care insurance is provided and paid for in the U.S., and the scope and magnitude of these changes are such that few precedents exist for use in estimation. Consequently, the estimates presented here are subject to a substantially greater degree of uncertainty than is usually the case with more routine health care proposals.

The balance of this memorandum discusses these financial and coverage estimates—and their limitations—in greater detail.

## EFFECTS OF COVERAGE PROPOSALS ON FEDERAL EXPENDITURES AND HEALTH INSURANCE COVERAGE

*Federal expenditure impacts*

The estimated Federal costs of the coverage provisions in the PPACA are provided in table 1, attached, for fiscal years 2010 through 2019. We estimate that Federal expenditures would increase by a net total of \$366 billion during this period—a combination of \$930 billion in net costs associated with coverage provisions, \$493 billion in net savings for the Medicare provisions, a net savings of \$36 billion for the Medicaid/CHIP provisions (excluding the expansion of eligibility), \$2 billion in savings from proposals intended to help reduce the rate of growth in health spending, \$38 billion in net savings from the CLASS proposal, and \$5 billion in costs for the immediate insurance reforms. These latter four impact categories are discussed in subsequent sections of this memorandum.

Of the estimated \$930 billion net increase in Federal expenditures related to the coverage provisions of the PPACA, about two-fifths (\$364 billion) can be attributed to expanding Medicaid coverage for all adults who make less than 133 percent of the FPL and all uninsured newborns. This cost reflects the fact that newly eligible persons would be covered with a 100-percent Federal Medical Assistance Percentage (FMAP) for the first 3 years and approximately 90 percent there-

after; that is, the Federal government would bear a significantly greater proportion of the cost of the newly eligible enrollees than is the case for current Medicaid beneficiaries.

Mr. ALEXANDER. I ask the Senator from Georgia, while this is a complex document, in many ways, isn't it a matter of common sense that if you take a program that is going broke and you take \$1 trillion out of it and you add millions of people to it, isn't the end result going to be there is not going to be anyone left to take care of the patients who need help? Isn't that the logical result, just as this report says?

Mr. CHAMBLISS. Not only does that report say that, but as you say, common sense ought to tell you that. Unfortunately, it is pretty obvious the folks on the other side of the aisle who are promoting this bill don't get that message.

Let me quote the chairman of the Finance Committee, who today issued this statement relative to the CMS report the Senator has in his hand. He said:

The report shows that health reform will ensure both the Federal Government and the American people spend less on health care than if this bill does not pass.

That statement is directly contrary to the statement in the CMS report that Senator ALEXANDER just referenced, which says:

... we estimate that total national health expenditures under this bill would increase by an estimated total of \$234 billion (0.7 percent) during calendar years 2010–2019.

Not only that, but the report says that national health expenditures would increase as a percentage of GDP from \$1 of every \$7, which is about 16 percent, to \$1 out of every \$5, which is 20 percent.

What the report concludes is not only are our health care costs going to go up, but as the Senator from Arizona said, 20 percent of all Part A providers—nursing homes, hospitals, home health—would become unprofitable within the next 10 years as a result of the provision in this bill relating to the Medicare cuts the Senator from Tennessee talked about.

The American people do get it. That is why these poll numbers the Senator from Wyoming just stated coming out of CNN and why the FOX poll I saw this morning said 57 percent of the people in America are opposed to this bill.

The American people are getting it but, for some reason, our friends on the other side of the aisle are not.

Mr. ALEXANDER. I see the Senator from Nebraska is here, and we had a conversation earlier about the attitude of people in Nebraska. It is very helpful to have independent evaluators who tell us that if you cut \$1 trillion out of a program that is going bankrupt and then add more people to it, doctors and hospitals are going to go broke. We have heard that before from the Mayo Clinic, and I think Senator JOHANNIS has been hearing that in the State of Nebraska.

Mr. JOHANNIS. I have heard it all over the State. Today, let me say, the fog cleared. The fog cleared and the Sun is shining brightly on this mammoth experiment with 16 percent of the economy. This actuary says, very clearly—and he has no ax to grind with anyone—that costs are going to go up under this bill; that care is going to be jeopardized under this bill; that the very linchpin, the essence of what this bill was supposed to be all about, can't happen.

If I might, I wish to refer to something which I will ask to be a part of the RECORD to gain some perspective.

I wish to applaud my colleagues on this side, and here is why. We wrote to the majority leader back in the first part of November and we said CBO had not been able to tell us what the ultimate impact would be on health care costs and we felt strongly we needed a second opinion. So we asked that this bill be submitted to scrutiny by CMS, and that is what we are getting today. Twenty-four of us signed onto that.

Madam President, I ask unanimous consent to have printed in the RECORD the letter to the majority leader, dated November 12, 2009.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, November 12, 2009.

Hon. HARRY REID,  
Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MAJORITY LEADER REID: This health care bill will be the most significant piece of legislation that Congress considers this year because it would undoubtedly affect every American. Therefore, it is vitally important that we do not make decisions without a complete and thorough analysis of the bill.

One of the most important issues facing us as we review this legislation is its effect on overall health care spending. The President has repeatedly stated that he believes health reform should control health care costs. Achieving that objective, as you know, means more than simply employing draconian cuts in Medicare spending and creating numerous new taxes to minimize the effect of creating a vast new health care entitlement on the federal deficit. Bending the cost curve means curbing the rate of all health spending.

Unfortunately, the Congressional Budget Office has been unable to produce an estimate of the effect of the bills before us on

overall medical spending though we note that the CMS Actuary has provided such an assessment of an earlier version of the House health reform bill (HR 3200). Such an analysis would be invaluable to the Senate as we consider this important legislation.

Therefore, we request that you submit the legislation to the Office of the Actuary at CMS for analysis and make the findings public before you bring the bill to the Senate floor for consideration. We agree with President Obama that health care legislation must "bend the cost curve so that we're not seeing huge health-care inflation over the long term." Therefore, we would specifically like the Office of the Actuary at CMS to determine if this legislation will bring down health care expenditures over the long term.

We look forward to your response and the assurance that this secondary analysis will be completed in order to provide us and the American people with the information necessary to make a well-informed vote.

Sincerely,

Mike Johanns; Sam Brownback; Pat Roberts; Robert F. Bennett; Tom Coburn; Richard Burr; Christopher S. Bond; Roger F. Wicker; John Barrasso; Michael B. Enzi; Jim Bunning; Mike Crapo; Orrin G. Hatch; Lamar Alexander; Susan M. Collins; John Thune; George S. LeMieux; Jim DeMint; Mitch McConnell; George V. Voinovich; John Cornyn; James E. Risch; Kay Bailey Hutchison; Lindsey Graham; Thad Cochran.

Mr. JOHANNIS. Today, we finally have come to grips with the fact that all the promises made are not being fulfilled by this bill; that the \$2.5 trillion that will be spent will accomplish nothing; that health care costs would not go down—they will, in fact, go up; and that people will lose their private insurance.

I tell you the most heartbreaking thing for me, and any other Senator who has rural hospitals, which is just about every Senator, is that 20 percent, as the Senator from Georgia points out, will be underwater. That means nursing homes that provide care for real people, and that means hospitals that provide services for real people. I tell you, in a State such as Nebraska, when hospital care disappears in a small town, that may mean hospital care disappears for hundreds of miles.

Mr. ALEXANDER. If I could ask the Senator from Nebraska this question. Did a rural hospital in Nebraska or Wyoming or some State not—did I notice in a letter from the Mayo Clinic this week, they said cuts such as this or an expansion of Medicare under these circumstances would cause them to—well, to drop Medicare, period; they lost \$840 million this year, and they are beginning to say to some citizens from Nebraska, Montana, other areas: We can't take you if you are a Medicare patient or if you are a Medicaid patient.

Mr. JOHANNIS. They are saying that, and that is what is happening because they are losing money. They are definitely losing money on Medicaid and they are losing money on Medicare.

So what the Reid bill does is it says: Mr. ALEXANDER, you sell whatever—

cars. Let's use that as the analogy—and I know you are losing \$100 on every car. But let's just give you twice as many to sell. Well, you are going to lose twice as much money. That is their solution to the health care crisis in this country.

But what this actuary points out, what the Mayo Clinic points out, and what so many analysts now have pointed out is that this bill is going to put hospitals under and it is going to put nursing homes under.

Here is another point that gets lost in this complex debate. That nursing home or that hospital may be the only major employer in that community. When you lose that, you not only lose your medical care, but you lose those jobs. I have said on the floor before that this bill is a job killer. It is a job killer. There is no way of getting around it. Those jobs will disappear in that small town, that rural area, and even in the big cities.

I hope our friends on the other side study this very carefully. This is a roundhouse blow to the Reid plan—to the Reid-Obama plan. This, in my judgment, proves, beyond a shadow of a doubt, that this is going to crush health care in our country.

Mr. ALEXANDER. I would ask the Senators from Wyoming and Georgia, who are here, to go back to the beginning. When we began this debate, the President, in his summit at the beginning of the year, very correctly—and I applauded him for that—all of us said we have to reduce health care costs—costs to us, costs to small businesses, and costs to our government. But doesn't this report of the chief actuary of the government say the Reid bill will actually increase health care costs?

Mr. BARRASSO. It does say that. The President has said he wanted to bend the cost curve down. This report says, if we do these things that are in the Reid bill, costs of care will actually go up faster than if we did nothing at all. That means for people who buy their own insurance, the cost of their premiums will go up faster than if this Senate passed nothing at all.

Mr. ALEXANDER. So if I am understanding it, we are going to cut \$1 trillion, when fully implemented, out of Medicare; we are going to add \$1 trillion in taxes, when fully implemented; we are going to run up the debt, we believe on this side; we are going to increase premiums and costs are still going up?

Mr. BARRASSO. For people all across the country, costs are still going to go up. The cost of doing business will go up. For families who buy their own insurance, the cost of their premiums will go up. For people who are on Medicare, they are going to see tremendous cuts into that program, and they depend on that for their health care. So costs are going up for people

who pay for their own and for businesses that try to build jobs.

We know small business in this country is the engine that drives the economy, and according to the National Federation of Independent Businesses, 70 percent of all new jobs come from small businesses. They are going to be penalized to the point they are not going to be able to add those new jobs. The NFIB says we will lose across the country 1.6 million jobs over the next 4 years as the government keeps collecting the taxes but doesn't even give any of these health care services because those have all been delayed for 4 years.

Mr. ALEXANDER. We have about 6 minutes remaining in our time. I wonder if the Senator from Georgia, having heard the comments, has any additional recommendations on the chief actuary's report.

Mr. CHAMBLISS. I wish to ask a question or two of the Senator from Wyoming, who is a medical doctor and who, prior to coming to the Senate, was an active orthopedic surgeon.

I have had physicians come into my office by the droves and talk to me about Medicare before we ever got into this health care debate, and what I heard was in reference to the reimbursement rate under Medicare to physicians and to hospitals being so low.

In fact, the American Hospital Association has come out just in the last 24 hours and pointed out that hospitals across the Nation get a return of about 91 cents for every dollar of care provided. That is not 91 cents of the amount of charges from the hospital to Medicare, it is 91 cents of the cost of the care provided. So the return is about 10 percent less to a hospital than the cost that the hospital has in it.

My understanding is that at least 10 percent less than the cost provided for a physician is reimbursed to the physician under Medicare. As a result of that, the younger physicians, particularly, who are coming out of medical school with these huge debts they have incurred as a result of the long years they are required to be in school, simply cannot afford to take Medicare patients and they are not taking Medicare patients. Is that in fact what is happening in the real world? And will that not get worse under this proposal?

Mr. BARRASSO. It is happening. It will get worse under the proposal that is ahead of us. That 90-percent figure is actually a high number. I know a number of physicians and hospitals, especially in rural communities, that get reimbursed less than that. The ambulance services do not even get reimbursed enough from Medicare—these are volunteer ambulance services—to fill the ambulance with the gas for taking somebody the long distances from where they may have fallen and hurt themselves, broken a hip, to get them all the way to the hospital. This is across the board bad for America.

We say we want patients to be able to get care. If you throw a whole bunch more people on to this boat that is already sinking, which is what the Democratic leader is now trying to do, it is going to make it that much harder for our hospitals to stay open, especially in these communities where there is only one hospital providing care—much more difficult. But with any young physician coming out with a lot of debt, trying to hire the nurse and pay the rent and the electricity and the liability insurance and all of that, these do not even cover the expenses. That means they have to charge more to the person who does have insurance, the cost shifting that occurs.

As a result, for people who have insurance, they are going to see their rates going up. For people who rely on Medicare, it is going to be harder to find a doctor. For those who are put onto Medicaid, with the aid for those who need additional help, which the Senate majority leader is trying to put more people into that area, it is going to be harder for them to find care.

Across the board, there is nothing good with this proposal. What we have seen today documented from the folks who are objective and look at the whole picture, they think it is actually as bad—they admit it is as bad as we have been saying it is. They say you guys have been right, what you are saying about the cost of care, the impact on health care. And their phraseology is such that I think they absolutely pinpoint all of the reasons that the American people, now by a number of 61 percent, oppose this bill we are taking a look at. That is why the Mayo Clinic has said, in the letter from their executive director of their Health Policy Center, "Expanding this system to persons 55 to 64 years old will ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across the country." That is what we are looking at.

Mr. ALEXANDER. Madam President, how much time remains?

The PRESIDING OFFICER. There remains 1½ minutes.

Mr. ALEXANDER. Madam President, if I could conclude our time, with the permission of the Senator from Georgia and Wyoming, instead of racing down this train track with yellow flags and red flags flying everywhere, people often ask us: What would you do? What we would do is what we think most Americans would do when faced with a big problem, not try to solve it all at once but to say, What is our goal? Our goal is reducing cost. What are the first four or five steps we can take to reduce costs? Can we agree on those? We think we can. Let's start taking them. For example, small business health plans to allow small businesses to offer insurance to their employees at a lower rate. That legislation is prepared and before the Senate.

Reducing junk lawsuits against doctors. That reduces costs.

Allow competition across State lines for insurance policies. That reduces costs.

Going step by step to re-earn the trust of the American people to reduce health care costs is the way to go, instead of making what this new report from the Center for Medicare and Medicaid Services helps to show again would be a historic mistake.

I yield the floor.

Mr. ROBERTS. Will the Senator yield for an observation?

Mr. ALEXANDER. Certainly.

Mr. ROBERTS. I thank the Senator for yielding.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Kansas.

Mr. ROBERTS. Madam President, I will be very brief. I thank the Senator from Tennessee, not only for his statement but for his constant efforts. Facts are stubborn things. Yet he has pointed out basically what this report now confirms. During the last few months we have seen some commentary that says "scare tactics," of all things. I happen to have the privilege of being the chairman of the Rural Health Care Caucus. I was in the House of Representatives when I had the privilege of serving there and I am a cochairman with Senator TOM HARKIN of Iowa. There are about 30 of us who, from time to time, will correspond and meet and send messages back and forth to try to keep the rural health care delivery system viable.

We have been worried for some time in regard to what is going to happen to Medicare, what is going to happen in regard to cost, what is going to happen in regard to rationing. Every hospital director, every hospital board in rural America has worried about these things—more especially about CMS, which has been described here in detail. That is the Centers for Medicare and Medicaid Services.

I have to tell you, if you are a hospital administrator or if you are on the board of a local hospital in a rural area, and you hear the word CMS, it is probably not viewed in the best of considerations, that CMS is in charge of enforcing what H2S comes down with. So in terms of reimbursement, in terms of all things—competitive bidding—and I am talking about doctors, hospitals, nursing homes, home health care, hospice, all of this—when they hear the word CMS a cold chill goes down the back of their neck, more or less like expecting Lizzy Borden to come in the front door.

So I am especially glad that the actuary, Mr. Richard Foster, the Chief Actuary from CMS, has shined the light of truth into darkness. He has taken the original bill we have been talking about for some time, as my colleague has pointed out, and said basically this



bill is going to increase costs and is going to result in rationing. It does not take into consideration the latest iteration that we hear from the press and media about including people 55 to 65 into Medicare. It is going to be interesting, if we have enough time—although I know that the distinguished majority leader has asked for a CBO score—but I would sure like to know what Mr. FOSTER would think of that idea. I think it would be far worse.

I encourage all of my colleagues who belong to the Rural Health Care Caucus to take a very hard look at this. This confirms what we have been saying for some time. These are not scare tactics, these are actual facts.

Let me say, too, I know when this debate first started some of the national organizations that represent doctors and hospitals, perhaps nursing homes—certainly not any home health care—well, I take that back. There was a letter written by the home health care folks at one time, but certainly not hospices—indicating that they were lukewarm, warm to the bill, or would perhaps support it. I think the message was pretty clear—come to the breakfast or you won't come to lunch. That was pretty bare knuckles but they hoped that at least by insuring those who have insurance, that would make their situation better.

Then, of course, came the latest iteration to this bill of putting in people 55 to 65, and the national association, in regard to our doctors and our hospitals, said: Whoa.

Let me point out in Kansas and in many States throughout the country there never was the support. They knew exactly what would happen if we passed this bill and CMS would come knocking on their door. I might add it wouldn't be CMS that would actually do that, it would be the Internal Revenue Service under this bill, and that was one consideration where I made about a 15-minute speech and obviously not too many people paid attention. But all patients, all doctors, all nurses, all clinical lab folks, anybody connected with the home health care industry or hospice or nursing homes or whatever, should have known it is going to be the IRS that is going to enforce this as well as CMS, which has been doing most of the enforcing.

In Kansas, the Kansas Medical Society said: No, no, we are not going to go along with this bill. I am talking about the bill we have been talking about for some time. The Kansas Hospital Association was adamant. They said no. Obviously that was because of advice they got from 128 hospitals in my State, saying: No, we cannot reconcile with this because of cost, because of the rationing. We are only being reimbursed at 70 percent or less, as we talk about it—and the doctors about 80 percent.

Many doctors do not serve Medicare now in Kansas. Let me rephrase that.

Some doctors don't serve Medicare in Kansas. If this bill passes, a lot of doctors simply will not serve Medicare. You can have the best plan or the best card in the world, it is not going to make any difference if you can't see a doctor. It is not worth a dime.

Then I have to say the Kansas Nursing Home Association and Kansas Home Health Care folks and the Kansas Hospice folks all said: No, this is not where we want to go. This is self-defeating. This is not going to do what the sponsors of the bill and what everybody for health care reform hoped they would actually see happen.

I don't know what the word is, I am—not overwhelmed, I am extremely glad; I am somewhat surprised but I am extremely glad that CMS again shined the light of truth into darkness. I commend Mr. FOSTER, the chief actuary. I recommend this as required reading for everybody who was going to vote for this bill and certainly with the latest iteration, where we are adding anywhere from 10 to 20 to 30 million people to Medicare, which will make the situation much worse in regard to Medicare being actuarially sound and costs going up, premiums going up, and also rationing, the dreaded rationing. It is not a scare tactic but actually a fact.

I yield my time.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, I have been on the floor now for about an hour listening to my colleagues on the health care debate. Certainly I want to express the opinion from many people in the Northwest. We know that doing nothing about health care certainly will guarantee that premiums will go up. We know it happened in the last 10 years; they have gone up 100 percent. We know that doing nothing now means they will go up 8 to 10 percent a year. We also know there is about \$700 billion in waste in the system.

This is about what we can do to reform the system so we can stop the rise, the increase we are seeing in our premiums. There are many things in this legislation, changing fee-for-service systems so we are driving down the quantity of health care that is delivered instead of making sure that it is quality; making sure we make reforms in long-term care; making sure we give the power to States to negotiate and drive down the costs. I know my colleague Senator COLLINS was on the floor with some of my other colleagues, the Senators from Oregon and Indiana, to discuss their ideas about how we improve cost containment.

I hope my colleagues in the next days will join us in the discussion about how we continually improve the bill to drive down costs, because doing nothing will not get us to that point.

(The remarks of Ms. CANTWELL and Ms. COLLINS pertaining to introduction of S. 2827 are located in today's RECORD

under "Statements on Introduced Bills and Joint Resolutions.")

Ms. COLLINS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAPO. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. Madam President, I ask unanimous consent to be able to enter into a colloquy with my Republican colleagues for up to 30 minutes, and that following those remarks, the Republican leader be recognized, and that following his remarks Senator DURBIN be recognized to speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. Thank you, Madam President.

Madam President, I would like to speak on health care. The pending business before the Senate right now is actually the Omnibus appropriations bill, which the Senate moved to yesterday, after having started the debate on the health care legislation.

My motion is the pending business on the health care legislation, and so it is that motion I would like to talk about. Before I do so, I would like to again raise objection and concern to the fact that we have moved off the health care legislation debate to the Omnibus appropriations bill, both because I believe we should stay on the health care issue and work it through, but also because we moved to an Omnibus appropriations bill that we have not had an opportunity to review carefully and that raises the spending—I believe for these seven appropriations bills that have been compiled together, the spending is raised by an average of about 12 percent.

Once again, Congress is in a spending free fall, and whether it be the stimulus package or the appropriations for our ordinary operations of government or whether it be the bailouts or the tremendous other aspects of spending pressures and proposals, including the health care legislation we have, there seems to be no restraint in Washington with regard to spending the taxpayers' dollars.

But let's talk for a minute about the motion that was before the Senate before we moved off the health care legislation. It was a motion I raised to object to the tax increases on the middle class in America that are contained in the bill.

The motion I have is very simple. It focuses on the President's pledge. The President pledged that "no family making less than \$250,000 will see their taxes increase—not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your



taxes." The President pledged: You will not see any of your taxes increase one single dime.

So the motion I brought was very simple. It was simply to commit the bill to the Finance Committee to have the Finance Committee go through the 2,074-page bill and remove from the bill the taxes that are in it that apply to the middle class in the United States, as defined by the President here: being those who, as a couple, are making less than \$250,000 a year, or those, as an individual, who are making less than \$200,000 a year.

What we have seen is that not only has there been delay on reaching that goal but a counterproposal to the amendment has been brought up by the chairman of the Finance Committee, Senator BAUCUS. His counteramendment says:

It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.

A number of us are here today to talk about the fact that this sense of the Senate is designed to provide cover for those who do not want to vote to protect American taxpayers. It is a meaningless sense of the Senate. We are going to go through the sense of the Senate phrase by phrase.

I would like to ask my colleague from the State of Wyoming if he would like to step in on the first phrase and comment. The first phrase says what the amendment is: "It is the sense of the Senate . . ." Would my friend from Wyoming like to comment on what that means?

Mr. BARRASSO. I would be happy to. OK, so we agree, it is the sense of the Senate. It is meaningless in terms of actually having the force of law. The Senator talked about the issues of the spending and the taxes, so we came up with a sense of the Senate.

This is why we are asking people all across the country to read the bill. The sense of the Senate essentially means nothing. It says we kind of agree on this, but there is no law applied.

Mr. CRAPO. Exactly. It is very critical to point out, a sense of the Senate has no binding impact. It is just sort of what we think.

Let's go to the next phrase in the amendment: "that the Senate should reject any procedural maneuver that . . ." in other words, the Senate should reject a procedural maneuver.

First of all, if the Senate is going to reject a procedural maneuver, that refers to what is happening on the Senate floor, procedural efforts. It does not refer to any substantive measure in the bill. The amendment we had pending—which this is going to be a counterpart to—specifically refers to the substance

of the bill and says the substance of the bill should be changed to take out the taxes, the hundreds of billions of dollars of taxes.

I wonder, before we go to the next phrase, does my colleague from Wyoming care to comment?

Mr. BARRASSO. Well, I do care to comment. I care to comment that the important thing is to get the taxes out of the bill—not what a sense of the Senate is, not some procedural maneuver. It is the specifics of removing the taxes from the bill.

When the President says, "My plan won't raise your taxes one penny," which was his quote, we need to be able to make sure the President is telling us the truth, that we need to remove these taxes from the bill.

The Joint Committee on Taxation looked at this bill—specifically looked at this bill—and it said that 38 percent of the people earning less than \$200,000 a year will see a tax increase—a tax increase under the Reid bill.

So we want to make sure the President's words go with what is in the bill. So we need to actually remove the taxes—not just have a sense of the Senate.

Then, when we look at the chief of staff of the Joint Committee on Taxation, he was asked a question at the Finance Committee, and he said, when it all "shakes out," we would expect people who are going to be paying taxes are going to have incomes "less than" the number the President said.

So I want to get to the point of the Crapo amendment, the amendment that actually says: Get these taxes out of the bill. This is a bill that is going to raise taxes by \$500 billion, and those are taxes that are going to impact all Americans.

At a time when we have 10-percent unemployment, when the Senate is being asked to increase the debt level by another almost \$2 trillion, the last thing we need to be spending our time on is a sense of the Senate. We need to actually get to those taxes that are going to affect the people, the hard-working people of America get those taxes out of the bill.

So as we are looking at that Baucus amendment; it is very nice, but it reminds me of the Bennet amendment we had here last week, and I think everybody voted for it. The New York Times, in their editorial, said it was a meaningless amendment. I want an amendment with some teeth in it that I can vote for, and I am ready to vote right now.

Mr. CRAPO. I thank my colleague from Wyoming.

The next phrase in the amendment—referring to a procedural motion—says that "would raise taxes on middle class families."

There is nobody bringing a motion to raise taxes. My amendment says it is referring the bill to the Finance Com-

mittee to take out the taxes on those who earn less than \$200,000 or \$250,000.

I note that my colleague from Kansas has arrived.

Would the Senator care to jump in at this point?

Mr. ROBERTS. I will tread with great care, I would say to my distinguished friend.

I thank the Senator for this colloquy. But you asked what it means that "the Senate should reject any procedural maneuver that"—that is in quotes—and what does that really mean?

Well, it applies only to the Senate procedural motions. By itself it would have no effect on any substantive provision. That is the way it is commonly understood under Senate rules. It means, if adopted, the amendment would not remove any provision that has been identified as a tax increase on middle-class taxpayers, which is precisely what the Senator is trying to do. So basically it means nothing.

Mr. CRAPO. I think that is exactly the point we are trying to point out.

The next phrase in the amendment says, "such as a motion to commit the pending legislation to the Committee on Finance." Remember, that is referring to the previous phrase that refers to a motion to increase taxes.

The only thing we need to say about this phrase is, there is a motion to commit the bill to the Finance Committee, but there is not a motion to commit the bill to the Finance Committee to raise taxes. It is to cut taxes.

The next phrase in the amendment is to suggest that there is an effort to try to kill the legislation.

Now, this is my motion. I suppose the implication there is, by trying to take the taxes out of the bill, we are trying to kill the legislation. What does that mean? Well, that means if you take the taxes out of this bill, that the bill does not stand. I assume that is what the amendment is trying to say. The reason that it does not stand is because they are saying the bill does not increase the deficit. Well, the only way you can say that the bill does not increase the deficit is if you do not bring into consideration the nearly \$500 billion of cuts in Medicare, the nearly \$500 billion of taxes which are being put on the people of this country, and the additional budget gimmicks that do not start counting the spending for 4 years, plus a number of other budget gimmicks.

So what they are saying is, you cannot take out one of the key legs of this bill, which is the way we raise all the money for this massive new spending, or else it will kill the bill. I think it is a pretty interesting fact that they have actually admitted in their own amendment what kind of games are being played.

Mr. ROBERTS. Will the Senator yield for a question?

Mr. CRAPO. Yes.

Mr. ROBERTS. That phrase that the Senator just mentioned is, "which is designed to kill legislation." My question has already been answered by the distinguished Senator, what does it mean, but there are no motions that have been considered or pending, including the pending motion to commit by the distinguished Senator—is the motion designed to kill this legislation? Because that is what you are going to hear on the other side, and that is not the case.

Mr. BARRASSO. Madam President, it seems to me that what the Senator is doing with the Crapo amendment is actually trying to help people, trying to help the American people by taking this burden of \$500 billion of taxes off of their backs, off of their shoulders, helping the American people. That is what I see he is trying to accomplish, at a time where with a gimmick they are going to start taxing immediately and when the taxes go into play—today is the 11th of December; in 20 days they are going to start collecting taxes for services they are not going to give for 4 more years. So it seems to me what is going on here with the Crapo amendment is it is saving the American people by keeping dollars in their pockets, keeping dollars in the pockets of the hard-working people of our country.

I am not the only one who is saying that. There is a new CNN poll out today that specifically asks the question—because the President has made a statement about the fact that you wouldn't see your taxes go up—Do you think your taxes would or would not increase if HARRY REID's bill is passed, and 85 percent of the American people in a CNN poll out today said they believe their taxes are going to go up; 85 percent of the American people.

Mr. CRAPO. I would say to my colleague from Wyoming that they are right, if this bill is not committed back to the Finance Committee to take those taxes out.

The next phrase in the amendment is—this is referring to a procedural motion, we call it—"that provides tax cuts for American workers and families."

In other words, they don't want to send it back to committee to have a procedural motion put into place that would stop them from providing tax cuts for American families.

Again, it is rhetoric. Read the motion. The motion does not say to take out any benefits in the bill for anybody in America, unless you consider taxing people to be a benefit to them, but it simply says the taxes in the bill that are imposed on people that the President identified to be in the middle class and would be protected must be removed from the bill.

Mr. ROBERTS. Would the distinguished Senator yield for a question?

Mr. CRAPO. Yes.

Mr. ROBERTS. As Republicans, there is probably no principle that unifies us

more than keeping taxes low on American workers and families, and I don't think our friends on the other side would dispute that notion. Indeed, the Democratic Party assumed control of the White House almost a year ago, as everybody knows, and seated large majorities here in the Congress. The one unmistakable distinction between the parties is this: Our party has respectfully opposed—I underline the word respectfully—opposed numerous efforts by the majority party to impose broad-based taxes increases on American workers and families. So one only need to look at the stimulus debate or the budget debate or the cap-and-trade legislation, and I could go on and on and on, more especially with the health care debate, and the bill before us.

Don't you follow from that general principle?

Mr. CRAPO. Absolutely. Again, I believe what is going on here with this new amendment is simply an effort to sort of divert attention from the real issue that is before the American people, the motion that was before the Senate, before we were forced by a procedural vote yesterday to move off the bill, and that is the question of the taxes in the bill.

The final phrase refers to a couple of the provisions in the bill that do have some support for improving the tax circumstances for small businesses and the affordability tax credit, meaning the tax credit that will be utilized to implement the subsidies for insurance.

Again, we can say it any number of times, but the fact is the motion they are trying to avoid does not deal with either of these provisions of the bill; it deals with those provisions in the bill that tax the American people.

Mr. BARRASSO. I am fine with voting on this, but it doesn't mean anything. I think it is absolutely meaningless, the Baucus amendment. I want to get to the heart of the matter, the meat of the matter, which is the Crapo amendment. That is the one I think makes the difference for the American people. If I were a citizen sitting at home watching C-SPAN on a Friday afternoon saying, what is going on in the Senate, what do I want, what is going to help me, I would say I want to call my Senator and say: Vote for the Crapo motion because that is the one that is actually going to help keep money in my pocket. The sense of the Senate? Oh, that is nice, but it is meaningless.

I am ready to vote right now for the Crapo motion because that is the one I think is going to help possibly save my job if I am at home and working. I am worried about unemployment in the country, I am worried about the taxes and the impact that is going to have. Because I worry if we don't get these taxes out of here, it is going to be a job killer for our Nation and for families all across this country, in Idaho, in

Wyoming, in Kansas, in Kentucky. I think we have great concerns for the economy and the 10-percent unemployment. We need to get those taxes out of there now.

Mr. CRAPO. The Senator is, in fact, right. If you go back and try to get a little perspective on the entire debate, most Americans would agree that we need health care reform, but when they say that, they are talking about the need to control the skyrocketing costs of their health insurance and the costs of medical care, and they are talking about making sure we have real, meaningful access to quality health care in America.

In his statements, the President has many times commented about different parts of that. We remember when he said, If you like what you have, you can keep it. Well, we have seen that is not true, and there will be and have been already amendments to try to address those questions.

Remember when he said it is going to drive down the cost of health care and drive down your health care premiums? Well, we have learned now that it doesn't do that either; it actually drives up the cost of health care insurance and it is going to drive up the cost of medical care in this country.

Remember when he said you will not see your taxes go up? In fact, he pledged that if you were a member of the middle class, whom he defined as those making less than \$250,000 as a couple or \$200,000 as an individual, you would not see your taxes go up. Well, this motion is focused on that part of the debate. What did we see happen? Instead of letting us fix the bill, send the bill back to the Finance Committee to make the bill comply with the President's pledge, we saw two procedural maneuvers, one to maneuver off the bill, to get off the bill and move to the omnibus appropriations bill; secondly, to put up a bait-and-switch amendment that makes it look as though there is some kind of protection being put in place when, in reality, it is nothing more than a sense of the Senate relating to procedural motions that don't exist. I agree with my colleague from Wyoming and with my colleague from Kansas.

I see we have several of our other colleagues joining us here now. We need to keep the focus on health care and we need to keep the focus on those core parts of the bill that are critical to the American people.

Before I ask my colleague from Kansas if he wishes to make any other comments, I will reiterate the point that my colleague from Wyoming made with regard to the American people's understanding of this issue. In that CNN poll that I believe showed over 60 percent—I think it was 61 percent—of the people in this country who do not want this bill to move forward because they are now understanding what it

does, in that same poll, 85 percent of the people in this country believe that this pledge of the President is broken by this bill.

Mr. ALEXANDER. I wonder if I might ask the Senator from Idaho and the Senator from Kansas, both the Senators are on the Finance Committee, I believe, and have been working on this health care bill for a long time. It is typical of a big, complex bill such as this that it is difficult to pass, and you get a sense every now and then of whether it is likely to pass or unlikely to pass. This week has been a particularly difficult week for the bill. I have noticed the majority leader trying to create a sense of inevitability about the bill.

But, increasingly, it seems to me, with it becoming clear that with so much of it being paid for by new taxes, and then last night the chief actuary of the Centers for Medicare and Medicaid Services saying the cost is going up, premiums are going up; with the Mayo Clinic saying it is beginning to not take Medicare patients, and the idea of putting millions more Americans into a program already going broke which you are taking \$1 trillion out of is a bad idea; I wonder if in all—and all this talk about history being made and the inevitability of this bill, that the Senator from Idaho might not think, looking back over this whole debate, that maybe there are a lot of different ways to make it—that maybe a growing number of Senators might be thinking—not saying yet—might be thinking that this bill would be an historic mistake and that all the king's horses and all the king's men are not going to be able to push this up over the top.

Mr. CRAPO. The Senator from Tennessee is right, and he has put his finger on one of the key issues that is going on here in the Senate that sometimes isn't highlighted as closely as I think maybe it should be. That is, while we are talking about the need to make sure this bill does not raise taxes on the middle class, to make sure that the bill does not increase the cost of health insurance premiums, and to make sure that we maintain quality of health care and don't cut Medicaid and Medicare, the real battle here is an effort to create a legacy to essentially put the government in control of the health care economy. That is the debate. That is the legacy. That is the history that those who are pushing the bill are seeking to make, and they are seeking to make it at the expense of those on Medicare, of those of the taxpayers in America; and of the costs, the cost curve that they said they want to drive down, dealing with the cost of our health care.

I see our leader is here.

Mr. MCCONNELL. I say to my friends from Tennessee and Idaho, December 11, 2009 may be remembered as the seminal moment in the health care debate

for those who are writing about what finally happened on this issue. There were two extraordinary messages delivered on this very day on this health care issue. They were delivered from CMS and from CNN. CNN told us how the American people felt about it: 61 percent, as the Senator from Idaho pointed out, telling us please don't pass this bill. A week ago, Quinnipiac said 14 percent more disapproved than approved; the week before Gallup said 9 percent more disapproved than approved. We can see what is happening here: widening public opposition.

And then CMS, the actuary, the independent government employee who is an expert on this, says this bill, the Reid bill, doesn't do any of the things it is being promoted to accomplish. So two important messages on December 11 delivered from CNN and from CMS.

Mr. ROBERTS. Would the Senator yield?

Mr. CRAPO. Yes.

Mr. ROBERTS. I wish to thank our distinguished leader for pointing that out. It has been a seminal event. As I said before, I have the privilege of being chairman of the Rural Health Care Caucus. There are probably 30 of us in a bipartisan caucus to try to protect and improve the rural health care delivery system. I took that report by Mr. Foster, who is the actuary of CMS, and said, this is required reading. I made the point that if you mention CMS to a beleaguered hospital administrator or a member of the board or any medical provider—doctor, nursing home, home health care, hospice; even hospice is cut in regard to the cuts—they know if a CMS representative is knocking on the door, that is a lot like sending a cold shiver down their spine thinking it is Lizzie Borden. Of all of the agencies that now are shining the light of truth into darkness in regard to the nature of this bill in increased costs, and yes, rationing—no, it is not a scare tactic—CMS is that agency. It would be amazing if we could get CMS to report back on, if we knew what it was—the media reports are how we get the information on this new iteration of a bill where allegedly we are going to add in people from 55 years old into the Medicare system. You do that, and now all of a sudden even the national organizations, let alone the State provider associations who have been opposed to this, to say, Whoa, we can't do that. That is going to break the system.

What I wish to point out and what I think is another piece of information that has sort of been overlooked, the CBO has estimated the cost to the Internal Revenue Service to implement taxes and penalties and enforce them—I am talking about the IRS now, not CMS, but the IRS that is going to implement and administer and enforce taxes and penalties on the bill—that cost is \$10 billion estimated by CBO.

That would double the budget size of the IRS. We have to train these people, and then you have to figure out what kind of questions they are going to ask of employers and employees in regard to the fines and the fees, you have to read the fine print. The American people understand this tremendous tax increase is going to be administered by the IRS and that is not going to be a happy circumstance. But those two things that the leader has brought out are absolutely primary in this debate.

I think a side-by-side is a straw man. I think it is very clear about that. I am happy to comment on that further. I wish to give others an opportunity to speak.

Mr. ALEXANDER. If I can make a short comment, I thank the Senator from Idaho for his leadership on taxes. But Senator MCCONNELL's comment about those two events on December 9—the poll from CNN and the report from the Centers for Medicare and Medicaid Services chief actuary—made me think about the immigration bill 2 years ago, in 2007. There were a lot of our best Senators working to pass comprehensive immigration bill, including Senators MCCAIN, KENNEDY, KYL, MARTINEZ, Members on both sides of the aisle, who worked very hard to do it. There seemed to be a sense of inevitability that that bill might pass. The President was even behind it.

But then it began to have so many problems, and the red flags began to pop up just like they are popping up with this comprehensive health care bill. There came a time, perhaps much like December 10, when the sense of inevitability was replaced by a sense that we were making a historic mistake, and a bill that got on the floor with 64 votes only had 46 to get off.

I have a feeling this bill, the more we learn about it, the wiser thing to do is to let it fall of its own weight. Then we can start over, step by step, to reearn the trust of the American people by reducing health care costs. We can do that. That is the sense I have.

I appreciate the Republican leader's observation about those important events on the 9th.

Mr. CRAPO. Mr. President, I agree with my colleagues. I think the comment of our leader is very insightful. As you start seeing the evidence mount, and the fact that the American public is understanding the weight of this mounting evidence about this legislation, we could be at the tipping point right now, where it has become so evident that the purpose behind health care reform has not only been missed by this legislation, but it has been made worse—the objectives.

I point to this chart, the cost curve. When you talk to most Americans about what they believe the purpose behind health care reform is, the vast majority say it is to control the skyrocketing costs. Well, those who are

promoting the bill say it does that, it bends that cost curve. Which cost curve? Is it the size of government? That goes up \$2.5 trillion in the first full 10 years of implementation. The cost of health care—the CMS report came out, it is about the 10th report, but this is from the actuary of the Medicare and Medicaid system who analyzed this independently, and he says health care costs are going to go up, not down.

The CBO said the cost of insurance is going to go up, not down. The Federal deficit—they say the bill doesn't make the Federal deficit go up. In fact, regarding that, the only way they can claim that is if they implement their budget gimmicks of delaying implementation of the bill for 4 years on the spending side, while raising taxes now, or if they raise hundreds of billions in taxes and cut Medicare by hundreds of billions of dollars.

These things are starting to be understood by the American people. That is why I believe we are starting to see those kinds of answers in the polls. It is not just the CNN poll, as the leader knows. Many polls are showing the American people get it.

Mr. ROBERTS. Will the Senator yield for another question?

Mr. CRAPO. Yes.

Mr. ROBERTS. I would like to get back to the side-by-side amendment allegedly being offered by the chairman of the Finance Committee, the Senator from Montana. I said straw man, and that is pretty harsh, but I intend it to be. We have seen how, if the language is examined, the amendment, at a minimum, is a red herring. You can fairly say the amendment, rather, has no other purpose than to facilitate a strong argument.

On Tuesday, when Senator CRAPO laid down his amendment, the majority didn't show us this side-by-side amendment until shortly before we thought—and they thought—we were going to vote. So that very limited notice makes you think it may be more likely to distract from or muddy the clear question the Senator from Idaho brought; that is, the motion to commit before the Senate. The motion was designed to be to be straightforward, and the Senator did that.

A vote for the motion is a vote to send the Reid amendment and underlying bill back to the Finance Committee. Under the motion, the Finance Committee would report back a bill that eliminates the tax increases on middle-income taxpayers. One could not say it anymore simply. That is what the motion does. The other bill is a straw man.

After the remarks by the distinguished leader, I would say this may be a seminal event. I think that is one of the key votes where the other side could start to realize this and start to finalize this without all the rhetoric

and ideology and philosophical support for this bill, and they could start the road back, if you will, of doing it in a step-by-step, thoughtful way—doing it, meaning real health care reform.

I commend the Senator. Again, this side-by-side is a straw man. The Senator is clear in what he wants to do. Under the Senator's motion, the Finance Committee would report back a bill that eliminates the tax increases for middle-income taxpayers. We can restart the debate in a bipartisan way, where we can agree on many common goals. I thank the Senator.

Mr. CRAPO. I thank my colleague. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. REED). Thirty minutes.

Mr. CRAPO. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, the Republican leader is recognized.

Mr. MCCONNELL. Mr. President, this follows along further with my colleagues who were discussing the CMS report.

Americans, of course, were told the purpose of reform was to lower costs, to bend the so-called cost curve down. But the report released last night by the administration's own independent scorekeeper, as we have been discussing on the floor of the Senate, shows the Reid bill gets a failing grade.

The chief actuary is the person the administration depends on to give its straightforward, unbiased analysis of the impact the legislation would have. This is an independent expert. It is the official referee, if you will. So this is quite significant.

According to CMS, the Reid bill increases national health spending. According to CMS, there are new fees for drugs, devices and insurance plans in the Reid bill and they will increase prices and health insurance premiums for consumers.

According to CMS, claims about the Reid bill extending the solvency of Medicare are based on the shakiest of assumptions.

According to CMS, the Reid bill creates a new long-term insurance program, commonly referred to around here as the CLASS Act, that CMS actuaries found faces a "very serious risk of becoming unsustainable."

The CMS found that such programs face a significant risk of failure.

The Reid bill pays for a \$1 trillion government expansion into health care, with nearly \$1 trillion in Medicare payment cuts.

All of this, I continue to be quoting from the CMS report.

The report further says the Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients, meaning a significant portion of the increased demands for Medicaid services would be difficult to meet.

The CMS actuary noted the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care.

The CMS actuary also found that roughly 20 percent of all Part A providers—that is hospitals and nursing homes, for example—would become unprofitable within the next 10 years as a result of these cuts. As a result of those Medicare cuts, 20 percent of hospitals and nursing homes would become unprofitable within 10 years.

The CMS actuary found that further reductions in Medicare growth rates through the actions of the independent Medicare advisory board, which advocates have pointed to as a central linchpin in reducing health care spending, "may be difficult to achieve in practice."

The CMS further found the Reid bill would cut payments to Medicare Advantage plans by approximately \$110 billion over 10 years, resulting in "less generous benefit packages" and decreasing enrollment in Medicare Advantage plans by about 33 percent. That is a 33-percent decrease in Medicare Advantage enrollment over 10 years.

What should we conclude from this CMS report? The report confirms what we have known all along: The Reid plan will increase costs, raise premiums, and slash Medicare.

That is not reform. The analysis speaks for itself. This day, this Friday, as we were discussing yesterday, is a seminal moment. We have heard from CMS, the Government's objective actuary, the bill fails to meet any of the objectives we all had in mind. We also heard from CNN about how the American people feel about this package: 61 percent are opposed; only 36 percent are in support.

The American people are asking us not to pass this, and the Center for Medicaid Services' actuary is telling us it doesn't achieve the goals that were desired at the outset.

How much more do we need to hear? How much more do we need to hear before we stop this bill and start over and go step by step to deal with the cost issue, which the American people thought we were going to address in this debate?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CASEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CASEY. Mr. President, we are in our discussion of health care. We have been focused on a couple of major goals. The obvious goals that I think are a major part of the legislation we are debating are controlling costs, the goal of providing better quality of care,

providing health care to millions of Americans—tens of millions, really—who would have no chance to get that kind of coverage without this legislation, and also the concern we have about not only controlling costs, but we have legislation on the floor that actually reduces the deficit by \$130 billion and beyond the 10 years by hundreds of billions.

One of the concerns we have is that in the midst of a health care debate about numbers and the details of the programs is that we also do not forget that some parts of our health care system work well but often might need an adjustment or an amendment or a change that would benefit a vulnerable population of Americans who do not have the kind of coverage or protection or peace of mind they should have.

One of the more successful parts of our health care system as it relates to new parents, especially new mothers and new children, is what is known by the broad category of nurse home visitation programs. They have been enormously successful over many years.

I have an amendment I filed for this health care bill called the nurse home visitation Medicaid option amendment. It sounds a little complicated, but it is actually rather simple. It is part of what we need to do in the next couple of days and weeks as we complete our work on health care.

One point to make initially is that we know these nurse home visitation programs work. They get results for new parents, new mothers, and have positive benefits to a new mother and her children.

We all have had the experience, if we are parents, of the anxieties of what it is like to be a new parent but especially what a new mother goes through—all of the anxiety. It is not limited to one income group. No matter what income you are, no matter what background, it is a challenge to fully understand what it is like to have a baby and to care for that child appropriately. That is one of the underlying concerns we have.

In our health care system, we have to do everything possible to give that child a healthy start in life, and the best way to give a child a healthy start is to make sure his or her mother—and hopefully both parents—is able to handle the pressures and manage the anxieties that so many new parents have.

The amendment I filed supports optional nurse home visits. That means that if someone chooses not to take advantage of this program, obviously, they do not have to. The amendment simplifies the process for providers of nurse home visitation to seek Medicaid reimbursement. Some will say there is Medicaid reimbursement now. Yes, there is, but it gets complicated to a point where a lot of States are not getting the full benefit of that reimbursement. This amendment will impact the

lives of Medicaid-eligible pregnant women and their children, and the impact is profound. The amendment is co-sponsored by Senator GILLIBRAND of New York. It will allow States the option to seek more adequate reimbursement for nurse home visitation services. Again, a State is not forced to seek greater reimbursement, but I believe a lot of States could and should take advantage of this kind of an option.

In Pennsylvania, we have been trying to do this for years, even in the midst of having very effective nurse home visitation programs. One can just imagine how valuable that is for a new mother, that they can get advice and help from a nurse or another kind of professional and get them through the early days and weeks of being a new parent.

I believe a State such as Pennsylvania that has had a track record of these kinds of programs that have a direct and positive impact on children and their families, their mothers especially, should be able to take advantage of this, as I am sure many other States.

The amendment helps States cut through the redtape and allow these evidence-based nurse home visitation services—let me say those words again: “evidence-based.” This is not some theory; this is not some maybe—let’s try to create a program. These programs work. The evidence is, in a word, irrefutable over many years that these nurse home visitation programs work. We want to allow States to be reimbursed under a State Medicaid option.

We have about 30 years of research to back up the following claims. Let me give four or five points.

We start with a category for every 100,000 families who are served by nurse home visitation programs or nurse-family partnership programs—all in that same category.

For every 100,000 families, 14,000 fewer children will be hospitalized for injuries and 300 fewer infants will die in their first year of life. That alone, that number alone is worth making sure States have this option. What is the price of saving 300 infants a year out of 100,000 families? It is incalculable. There is no value we could put on that kind of lifesaving as well as down the road saving money.

Let me give a couple of other examples.

For every 100,000 families served by these nurse home visitation-type programs, 11,000 fewer children will develop language delays by age 2. That is a profound impact on the child—his or her ability to achieve in school and then his or her ability to develop a high skill and therefore contribute positively to our economy. There is no price one can put on 11,000 new children learning more at a younger age.

Out of 100,000 families, 23,000 fewer children will suffer child abuse and ne-

glect in the first 15 years of life. Again, there is no way we can quantify that with a number or budget estimate. But I would like to say we support strategies around here that are evidenced-based and scientifically based to make sure children are not abused, that they live through the first couple years of their lives when they are at risk of dying.

One more statistic. Out of the 100,000 families we use as a measurement, 22,000 fewer children will be arrested and enter the criminal justice system in the first 15 years of their lives. Just like the statistic about the first year of life or not having in this case 23,000 more children suffer child abuse and neglect, these are impossible to measure. In a sense, it is the measure itself that we save children’s lives, we make them healthier. They and their families are able to contribute more to society.

This is the right thing to do to give our States the option—just the option—of seeking greater reimbursement for these important services. I have seen it firsthand.

Many years ago—it must be at least 10 years ago—in Pennsylvania, I actually went to the home of a brand-new mother, a lower income mother in northeastern Pennsylvania. We walked in the door, with her permission, with the nurse who was working with her after she left the hospital with her new baby. There is no way to put into words how valuable that relationship was between a new mother and a nurse, between a new mother and a health care professional to give her the start in any circumstance but especially if a new mother has financial pressures which are extraordinary and almost unbearable for some new mothers or has pressures as it relates to her husband or boyfriend, whoever is part of her life. Sometimes there is violence. Sometimes there are other pressures that some of us cannot even begin to imagine, in addition to the obvious pressure of being a new mother, being a new parent, and wanting to do the right thing.

These programs, as the evidence and science tell us, work to give new mothers peace of mind and to give States the ability to directly and positively impact the lives of that new mother and her child.

So we should give States this option, and that is why I urge my colleagues to support the nurse home visitation Medicaid option amendment.

Mr. President, I yield the floor and suggest the absence of a quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I ask unanimous consent that following my remarks Senator BROWN of Ohio and then Senator LEMIEUX of Florida be recognized in that order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, each day it seems there is a new analysis of the Democratic proposal on health care that suggests it is not such a great idea. Today, a devastating report was made public by the Obama administration itself—the Department of Health and Human Services—and their group that is in charge of Medicare and Medicaid. It goes by the initials CMS. Specifically, the Chief Actuary, Richard S. Foster, of the Centers for Medicare and Medicaid Services, issued a report about the effect of the Reid legislation on health care as it pertains to a whole variety of things—the cost of the legislation, the effect it is going to have on taxes, on premiums, on benefits, the cost with respect to Medicare and the kinds of things that will occur to beneficiaries in Medicare, and so on. It is a complete report by a person who I think all would agree is not only qualified to speak to these things but also quite objective, as the chief actuary of CMS. He reached a number of very interesting conclusions, and I want to briefly discuss eight of them.

The first thing is that he noted his estimates were actually not a full 10-year estimate, and I will quote what he said here.

Because of these transition effects and the fact that most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period, the cost estimates shown in this memorandum do not represent a full 10-year cost for the proposed legislation.

The reason that is important is we have been saying here for quite a long time that you can't just look at the first 10 years in order to see the full impact of this legislation because for the first 4 years most of the benefits don't exist. They are simply collecting taxes and fees and revenues, and then is when the benefits kick in, as a result of which, when they say it is all in balance, it is in balance because they are collecting money for 10 years but they only have to pay for benefits for 6 of those 10 years. So the real question is: What does it cost over the first full 10 years of implementation? And it turns out that is about \$2.5 trillion.

We have known this, and we have made the point. I think even the chairman of the Finance Committee has acknowledged the \$2.5 trillion if you take the first 10 years of implementation. But I think it is good to actually have that confirmed now by the Chief Actuary of CMS.

Secondly, a point I have been making all along is that when the President said repeatedly: If you like your insurance, you get to keep it, that is not

true; and it is not true for a variety of reasons under the bill, and again this report confirms what we have been saying is in fact true; namely, that a number of workers who currently have employer-sponsored insurance would lose their coverage. In addition to that, seniors who are enrolled in private Medicare plans, which are known as the Medicare Advantage plans, would lose benefits, and many of them would no longer be covered.

Let me read two quotations, first relative to employer-sponsored insurance; and, second, people who are on Medicare Advantage plans. I am quoting now.

Some smaller employers would be inclined to terminate their existing coverage, and companies with low average salaries might find it to their and their employees' advantage to end their plans. The per-worker penalties assessed on nonparticipating employers are very low compared to prevailing health insurance costs. As a result, the penalties would not be a significant deterrent to dropping or forgoing coverage.

What does that mean? The employer under this bill has an obligation to provide insurance to his or her employees. If they don't do that, then they pay a penalty. The problem is that the penalty is much less than the cost of buying the insurance. So what we have been saying all along, and what the CMS actuary confirms here, is that in a lot of cases, small employers—and particularly companies with low average salaries—will find it to their advantage to drop the insurance coverage and have their folks go into the so-called exchange programs. The penalty these employers pay will be much less than what they are paying now to provide insurance.

So these folks who are very happy with the insurance they have right now are not going to be very happy when they get something substantially less than that through the so-called exchange. They may like the coverage they have now, but, unfortunately, what the President promised, that they would get to keep it, is not true. And this is confirmed by what I read to you.

What about folks on Medicare Advantage? These are senior citizens above 65 who are on Medicare, and what they have chosen to participate in is the private insurance coverage component of Medicare called Medicare Advantage. Here is the quotation.

Lower benchmarks would reduce Medicare Advantage rebates to plans and thereby result in less generous benefit packages. We estimate that in 2015, when the competitive benchmarks would be fully phased in, enrollment in Medicare Advantage plans would decrease by about 33 percent.

Everybody has acknowledged there would be a reduction, but there has been little debate about how much it would be. Our initial projections are borne out by the CMS actuary—a decrease in enrollment in Medicare Advantage by about 33 percent. That is a

third. This is important to me because 337,000 Arizonans participate in Medicare Advantage—almost 40 percent of all our seniors. And a third of them, if this works across the board, are going to lose their plan because of this. In any event, they are all going to lose benefits because of “the result in less generous benefit packages.”

This hasn't been much in dispute, because the Congressional Budget Office itself has described precisely how much the benefit packages will be reduced by, and it is 90-some dollars. It is from 130-some dollars in actuarial value down to 40-some dollars in actuarial value, which is a huge reduction, obviously. So reduction in benefits; a third of the people no longer on Medicare Advantage. The bottom line, whether you are privately insured through your employer or you are a senior citizen in Medicare Advantage, you are not going to be able to keep the benefits and the plan you like and have, notwithstanding the President's commitment to the contrary.

Third, Medicare cuts. We have been talking a lot about Medicare cuts, and my colleagues on the other side say: Well, we don't think that the Medicare cuts are the way you describe them. Seniors are still going to have access to doctors and so on. This report is devastating in blowing a hole in that argument. Let me quote a couple of the things they say.

Providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and, absent legislative intervention, might end their participation in the program (possibly jeopardizing access to care for beneficiaries).

This is what we have been predicting. If you impose extra costs and mandates on the people who are providing the care—whether it be the hospitals, the physicians, home health care, or if you are taxing something such as medical devices—all of those impose costs on the people who are providing these medical benefits. What the CMS actuary is saying here is that the combination of those things would potentially jeopardize access to care for the beneficiaries. There aren't going to be as many of these people in business to provide care for an increasing number of people.

Let me go on with the quotation that I think will make this clear:

Simulations by the Office of the Actuary suggest that roughly 20 percent of Part A providers [hospitals, nursing homes, home health] would become unprofitable within the 10 year projection period as a result of the productivity adjustments.

In other words, 20 percent of the hospitals, home health care folks and others are not going to be profitable anymore. They are going to be out of business because of the burdens that are being placed upon them in this legislation. What happens when you have the baby boomers going into the Medicare Program? Under the latest idea from

the other side of the aisle, we are even going to have 30 million potentially being able to join Medicare—the folks from 55 up to 65—but you are going to reduce by 20 percent the number of folks to take care of them—the hospitals and home health care and so on. Obviously, you have a big problem. Access will be jeopardized, as the actuary says.

This is where rationing, in effect, comes in. There simply aren't enough doctors, hospitals, and others to care for the number of patients who want to see them. This is how it starts. First, long delays, long lines, long waiting periods before you can get your appointment, and eventually denial of care because there is simply nobody to take care of you.

This is exacerbated by something else in the legislation, which is the fourth point here. The actuary talks about the independent Medicare advisory board. What is happening is that Medicare is being cut in three different ways: one, Medicare Advantage, which I mentioned; two, the providers are being slashed in the reimbursements that they are receiving; and three, this legislation creates an independent Medicare advisory board that is supposed to make recommendations on how to effect huge reductions in the cost of Medicare, and the primary way they will do that is by reducing the amount of money paid to doctors, to hospitals, to others who take care of patients. That, obviously, will also result in less care for the senior citizens.

If the cuts are so drastic that Congress says no, we are not going to do them, then you don't have the savings the bill relies upon to pay for the new entitlement. So one of two things happens, and they are both disastrous: Either you have these huge cuts, which are devastating for access to care or the cuts are so unrealistic they do not go into effect, in which case the legislation can't be paid for. And then I guess you are going to have to raise taxes on the American people because you aren't able to effect the savings from Medicare.

Here is what the actuary says:

In general, limiting cost growth to a level below medical price inflation alone would represent an exceedingly difficult challenge.

That is the challenge being put before them here—an exceedingly difficult challenge.

Actual Medicare cost growth per beneficiary was below the target level in only 4 of the last 25 years, with 3 of those years immediately following the Balanced Budget Act of 1997; the impact of the BBA prompted Congress to pass legislation in 1999 and 2000 moderating many of the BBA provisions.

What does that mean? In 1997, Congress passed the Balanced Budget Act, which drastically reduced the payments to these providers in order to cut the cost of Medicare. Three out of the four years in which the costs were

reduced, it was immediately following that legislation. But starting in 1999 and into the year 2000, Congress realized those cuts were too deep; you were not going to get doctors and hospitals to continue to take care of patients if we continued to cut what they were paid for their services. So the cuts were ameliorated and, as a result, the savings were not achieved.

What the actuary is saying here is if that same thing happens again, if these cuts are so drastic we actually don't let them go into effect because they would be self-defeating, then you will not have the savings that have been promised and scored here as enabling this legislation to be so-called "budget neutral." It won't be budget neutral. So as I said, one of two things will happen, and both are bad. Either you have the cuts, which are devastating for seniors or you don't have them and they are devastating to taxpayers.

Five is Medicare expansion. I think all of us agree on both sides of the aisle that Medicaid is a very vexing problem because the States have to pay for a percentage of the Medicaid patients and the States are generally in very poor financial shape and they do not need more people added to the Medicaid rolls that can't pay for them.

My Governor was in town earlier this week, and she said: Please, please, don't add people to the Medicaid rolls and expect the States are going to be able to pay for them. Let me read a couple of the quotes from this actuarial report.

Providers might tend to accept more patients who have private insurance (with relatively attractive payment rates) and fewer Medicare or Medicaid patients, exacerbating existing access problems for the latter group.

That latter group, of course, is the Medicaid group. The problem is that reimbursement is so low for Medicaid, frankly, they are the last patients a doctor sees, and their care is not the best. If we are going to provide care for a group of people, we need to do it right. Unfortunately, this is how rationing begins if you don't have enough money to do it right.

Then let me conclude with this quotation.

[This] possibly is especially likely in the case of the substantially higher volume of Medicaid services, where provider payment rates are well below average.

And that is my point.

Therefore, it is reasonable to expect that a significant portion of the increased demand for Medicaid would be difficult to meet, particularly over the first few years.

What they are saying is that there aren't going to be the physicians and the other people to care for the Medicaid patients here and, as a result, the promise we have made to these people we are not going to be able to keep.

Enrolling in Medicaid does not guarantee access to care by a long shot.

No. 6. Again, this is something we have been saying. This is not really too

controversial because the Congressional Budget Office has said the same thing that the Actuary here says. But it is always good to have a backup opinion. This is the tax on drugs, on devices, and on insurance plans. We have all been saying of course those costs are passed on to the consumer in the form of higher premiums or, in a couple of cases, higher taxes. That is what is demonstrated:

Consumers will face even higher costs as a result of the new taxes on the health care sector.

I might just say before I read the quotation here, it doesn't make any sense to me why, in order to pay for this new entitlement, you would tax the very people you want to take care of. Tax the doctors, insurance companies, device manufacturers that make the diabetes pump or the stent for a heart patient or some other device that improves our health care these days? Let's tax them? I am saying maybe you want to tax liquor or tobacco or something, but why tax the things that make people healthier? Go figure. That is what the bill does.

Here is what the Actuary says:

We anticipate that such fees would generally be passed through to the health consumers in the form of higher drug and device prices and higher insurance premiums, with an associated increase of approximately \$11 billion per year in overall national health expenditures, beginning in 2011.

Remember how we were going to drive costs down with this bill? We weren't going to be paying as much? The Actuary says:

We anticipate such fees would be generally passed through to the consumers in the form of higher drug and device prices and higher insurance premiums, with an associated increase of \$11 billion a year.

This is going backward, not forward. The whole idea was to reduce costs and premiums. Instead, they are going up.

No. 7. Here is another tax. We are going to tax the higher premium plans. In response—this is a 40-percent tax on these plans. What will employers do? According to the Actuary:

... employers will reduce employees' health care benefits.

That makes sense. If you are going to tax an insurance plan that has a lot of good benefits in it, then the employer is going to say: Rather than paying that tax, I will reduce the benefits—precisely what CMS says. This is another case in which if you like what you have, sorry, you are not going to get to keep it. We are going to tax it. Then the employer is going to reduce the benefits.

Here is the quotation from CMS:

In reaction to the excise tax, many employers would reduce the scope of their health benefits.

This is exactly what we have been saying.

Here are seven specific ways in which the CMS Actuary, working for the



Obama administration Department of Health and Human Services, has verified the complaints Republicans have been making about this legislation for weeks—that it will raise premiums, it will raise taxes, it will raise costs. It will raise the cost of health care. It will raise the cost to the government. It will provide fewer benefits. It will result in the transition of people from private insurance to the exchange which is created in here and will result in less access to care because there will be fewer providers to take care of more people. What a wonderful reform.

This is why, when I talk about this legislation, I do not talk of health care reform. I am reminded of the line from a novel in which the individual says:

Reform, sir? Don't talk of reform. Things are bad enough already.

Indeed, they are. We do have problems. One of those problems is premium costs going up.

I note that my colleagues in the House of Representatives on the Republican side offered an amendment which, according to calculations of the Congressional Budget Office and according to the House Republicans, would have actually reduced premiums by \$3,000 a year for the average family rather than increasing them. Republicans have good ideas about attacking the specific problems we face today. What we do not need is something under the guise of reform which is so massive, so intrusive into our lives and, with all due respect, not well thought out in terms of its long-range implications.

What you end up with at the end of the day, according to CMS now, according to the Actuary of the U.S. Government Health and Human Services, CMS, it raises premiums, raises taxes, reduces access to care, increases the cost, and provides fewer benefits. I cannot imagine how we could go home at Christmastime and say to our constituents: This is what we are giving you for Christmas this year.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized.

Mr. BROWN. Mr. President, I rise to speak in opposition to a provision in the Patient Protection and Affordable Care Act that would impose a 40 percent excise tax on certain health insurance plans.

It is my strong belief that a benefits tax is the wrong way to pay for health reform legislation.

Beginning in 2013, this legislation would impose an excise tax of 40 percent on insurance companies and plan administrations for any health insurance plan that is above the threshold of \$8,500 for singles and \$23,000 for family plans.

The tax would apply to the amount of the premium in excess of the threshold.

This tax would not only be imposed on basic health benefits, it would be

imposed if the combined value of basic benefits, dental benefits, and vision benefits reaches the \$8,500 limit.

In other words, Americans would be better off without dental and vision coverage than with it.

How could a disincentive to dental and vision coverage be a good idea? The answer is, "it's not."

In subsequent years, increases in the benefit thresholds will be tied to the consumer price index plus one percent.

What this means is that more and more workers and employers will be affected in subsequent years.

In fact, the Congressional Budget Office, CBO, estimates that, by 2016, this benefits tax would affect 19 percent of workers with employer-provided health coverage.

CBO further projects that revenues resulting from the tax would increase by 10-15 percent every year in the second decade after the tax takes effect.

And though this appears to be a tax on insurance companies, we should not be fooled.

Insurance companies are likely to pass these costs onto their customers—forcing employees to pay higher premiums or encouraging employers to cut or limit coverage.

Health reform legislation should not penalize middle-income Americans who have forgone salary and wage increases in return for more generous health benefits.

I remember, as the Presiding Officer in his leadership in the Banking Committee remembers, during the auto discussions, when President Bush first moved to help the auto companies that were under such duress, many people on the other side of the aisle saw the legacy costs as something bad, the legacy costs the auto companies had. In fact, these legacy costs were benefits negotiated by unions. Those workers had been willing to give up present-day wages to have better health insurance and better pensions. This is the same kind of issue.

And health reform legislation should not encourage the elimination of existing health benefits.

Instead, health reform legislation should ensure that Americans who have negotiated good health benefits—including dental and vision coverage—are able to keep those benefits without punishment.

I have heard many of my colleagues argue that this excise tax will "bend the cost curve" of health care costs and expenditures.

However, the Commonwealth Fund found that "there is little empirical evidence that such a tax would have a substantial effect on health care spending."

And it makes no sense to bend the cost curve by compromising access to needed health services now—leading to higher health care costs later.

You are squeezing on a balloon, not changing the long-term trajectory of health spending.

To bend the cost curve, we need to identify and reward the provision of the right care, in the right settings, at the right time.

We need to target duplication, promote best practices, and clamp down on those who overprice health insurance and health care products and services—exploiting their role in ensuring the health of the American people.

We need to give Americans more purchasing power and inject more competition into the health care marketplace.

We don't need to reverse the clock on health care progress by discouraging Americans from having good health coverage.

There is so much that is critically important in health reform legislation—from delivery system reforms to prevention and wellness initiatives to provisions which strengthen Medicare to making insurance more affordable and accessible for all Americans—but this counterproductive tax on middle-income Americans is not a provision I can support.

That is why I have cosponsored an amendment with Senator SANDERS of Vermont that would eliminate this benefits tax and instead impose a surtax on the very wealthiest earners—those who benefitted so much from the Bush-era tax cuts.

Our amendment, as modified, would replace the benefits tax on health insurance plans with a 5.4 percent surtax on adjusted gross income for individuals who earn more than \$2.4 million a year and couples who earn more than \$4.8 million per year.

Instead of taxing middle class Americans for having good health coverage, our amendment would help address the disproportionate impact of the Bush tax cuts—which were outrageously tilted toward the wealthiest of the wealthy.

Multimillionaires and billionaires fared far better than middle-class families under the Bush Administration. Let's not continue that tradition in this Congress.

The PRESIDING OFFICER (Mr. KIRK). The Senator from Florida.

Mr. LEMIEUX. Mr. President, it is always good to follow my colleague from Ohio. I rise to speak about the health care bill. I, specifically, wish to speak about this new report we have received from the Office of the Actuary from the Centers for Medicare & Medicaid Services. This report, unfortunately, confirms many of the problems we already knew. This report comes from an independent actuary who works in the very agencies that have to implement our Federal health care programs. This actuary has reviewed the proposal before us, the proposal that is intended to be health care reform. The review and report of this actuary shows significant problems with this proposal and why we must start over and take a step-by-step approach.

I had the opportunity to read this report this afternoon in my office, word for word, and go through it line by line. I hope all my colleagues do on both sides of the aisle. There are many troubling things this report shines light upon. First, the proposal we are debating increases the cost of health care. For Americans who are at home and might be watching this to see various Senators on the floor of this great body, they think the reason we are here is to reduce the cost of health care and to promote more access. Those are the two big goals. That is what the President told us. We are going to lower the cost of health care. This report shows, national health care expenditures are going to go up from 16 percent of the gross domestic product to 20 percent.

The chief actuary says, on page 4 of this report, we are going to spend \$234 billion more on health care over the next 10 years. We are going to spend more on health care. We are not going to reduce costs. We are going to increase costs.

Moreover, the Federal Government, in its provision of health care, is going to spend \$366 billion more in health care provisions. We are told this proposal is budget neutral or it actually creates less of a deficit. It cuts the deficit of the Federal budget. But as has been revealed this week—and this is just gimmickry—the taxes start before the benefits. For 4 years, we pay the taxes and the benefits don't start until 2014. So 4 years of penalties without any benefits. This is similar to if you were to go buy a home and you went to buy the home and you said: We are going to live here for the next 10 years, and the real estate agent said to you: That is fine. You are just going to pay for the first 4 years, but you don't get to move in until 2014.

For families sitting around the kitchen tables, that is not how they balance their budgets. But that is this strange world that Washington is, that you can set up this budget gimmickry in order to get it to so-called budget neutrality. The actuary of CMS recognizes that. He says, on page 2, most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period.

The cost estimates shown in this memorandum do not represent a full 10-year cost of the proposed legislation.

It is not budget neutral. It is just a gimmick.

The second problem the actuary points to is, it jeopardizes access to care for seniors. My colleagues have been saying this for the past couple weeks. You can't take \$½ trillion out of Medicare and have it not hurt the provision of health care for seniors. This plan is going to gut Medicare as we know it. It severely cuts funding for Medicare.

In this report, it goes through all the cuts to Medicare Advantage, to home

health, to hospice. The actuary goes through all these cuts. What does the actuary conclude is going to be the result? Our friends on the other side of the aisle say this is not going to cut Medicare; it is going to save Medicare. How do you take \$½ trillion out and save Medicare? The actuary understands it. He knows that doctors who provide services under Medicare for seniors or for the poor under Medicaid aren't going to take these reimbursements anymore. They will not see people and provide health care. So it is not health care reform if the doctor will not see you.

Right now, in this country 24 percent of doctors aren't taking Medicare; 40 percent are not taking Medicaid. The actuary says providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and might end their participation in the program, possibly jeopardizing access to care for beneficiaries.

The second reason we are doing health care reform, access to care, is going to be hurt for seniors by this bill. That is on page 9, for those who are following at home. By the way, we are going to put this report on our Web site at [lemieux.senate.gov](http://lemieux.senate.gov). If you want to read it, you can read all the details.

The next thing the actuary discovers as a problem with this bill is that for the 170 to 180 million Americans who have health insurance, your premiums are going to go up, not down. We are not going to bend the cost curve down. Health care will be more expensive, more expensive than if we were to do nothing and not implement this bill at all.

The chief actuary says premiums for the government-run plan, for example, would be 4 percent higher than for private insurers. So we don't achieve that goal. What is going to happen when we put all this burden on businesses? Because we know that under this program we are going to penalize businesses if they don't provide health insurance. We are going to penalize individuals if they don't provide health insurance. So what are small businesses going to do who are hardly making it now? In Florida, we have 11 percent unemployment. Our small businesses are suffering.

The actuary says on page 7, some small employers would be inclined to terminate their existing coverage. So they will drop their health insurance. You are an employee in a small business, they drop your health insurance. Now you must go buy the Federal program, where you will be subsidized. What does that mean? It means every man and woman will be paying taxes to help pay for health care insurance, taxes we can't afford, spending we can't afford, not in a world where we have a \$12 trillion budget deficit. We are just pushing the cost off on our children and grandchildren. That is

when this deficit is going to come home to roost.

The actuary also says the excise tax on high cost employer-sponsored health insurance is going to cause employers to scale back coverage. So if you have one of the better health care plans, the Cadillac plans, your employer will not be incentivized to give you less coverage, less benefits, less access. Is that what we thought reform was supposed to be?

Now we also know from the actuary we are going to raise taxes in this bill. As my friend, the Senator from Arizona, was saying, we are going to tax device makers. We are going to tax pharmaceutical companies, the implements and devices and medicines that save our lives. We know there is \$64 billion in penalties in this bill. The actuary says, on page 5, if you are a small business or you are an individual and you don't provide the insurance, you are going to be taxed, penalized, \$64 billion in penalties.

The actuary says:

We anticipate that such fees would generally be passed to health consumers—

These are the taxes on the devices and the drugs—  
in the form of higher prices and higher insurance premiums.

I also wish to address one point before concluding. My friends on the other side have been saying there are not going to be any cuts to benefits because we will run a more efficient system. There is going to be less fraud and abuse and waste.

We all want that. That makes a lot of sense. But the actuary, in evaluating this—and he talks about it on page 12—finds that the cuts and the reductions are negligible. In fact, he can't even sufficiently provide evidence to know what the estimates of savings might be; at best, \$2.3 billion for all the efficiency and savings. Remember, this is a \$2.5 trillion program. There is \$2.3 billion in savings, like 1 percent. So it is not the efficiency that is going to make up the cuts; it is going to be a cut in benefits to seniors. It will be higher insurance premiums for Americans. That is not health care reform.

It is why the Wall Street Journal called this bill the worst bill ever. In talking about this new proposal to expand Medicare and drop the age for Medicare, this morning the Wall Street Journal corrected itself and said that is even worse than the worst bill ever.

Similar to the Presiding Officer, I am new to this Chamber. I have been here about 90 days. It is a great honor to serve in the Senate, representing 18 million people from Florida, but it is also a little bit frustrating. The way the Senate works is not the real world. It is not like moms and dads who sit around the kitchen table and try to figure out how to make ends meet and they can only spend as much money as they take in. That is not how we work

in this institution. We don't work in a reasonable way.

My colleague from Utah will speak in a minute. He was on the floor the other night talking eloquently about how, when you do real reform, you get 80 Senators to vote on a proposal. If this bill passes, 60 Democrats will vote for it, 40 Republicans will not. If just one Democrat would feel their conscience and not vote for this bill, we could start over. We could work together in a bipartisan way and help those 45 million Americans who don't have health insurance. But we wouldn't do it by robbing from Medicare. We wouldn't do it by raising taxes. We wouldn't do it by creating a \$2.5 trillion new program.

I have struggled to try to figure out a way to explain to the people how bad this bill is. I know it is hard. You are sitting at home, around the kitchen table, trying to understand what Washington is up to. It is hard to understand. I have thought about cultural references and historical references, maybe even things in pop culture that I could use as an analogy to try to explain what is going on in the Senate. The only thing I can think of is the "Wizard of Oz." In the "Wizard of Oz," Dorothy gets thrown into the tornado in sort of an alternate reality, a place that doesn't play by the same rules. That is sort of the Congress. Dorothy and the lion and the tin man and the scarecrow are told: Follow the yellow brick road, you will get there. All your answers will be solved. Everything will be great.

That is sort of like this phrase we hear around here: Make history, make history, just get it done. Pay no attention to the cuts in Medicare. Pay no attention to the Medicaid you will put on the States that can't afford it. Pay no attention to the higher taxes and the higher premiums people will have to suffer under. Similar to the scarecrow, who doesn't have a brain, it is not very thoughtful to put more expenses and more taxes on the States with Medicaid when they can't afford it. Similar to the tin man, who doesn't have a heart, it is not very thoughtful to take money out of health care for seniors. Similar to the lion, who has no courage, we don't have the courage to do what is right and work together in a bipartisan way. When you get to the end of the yellow brick road and you get to Oz, you find out there is nothing behind the curtain.

This isn't health care reform. We need to start over, and we need to get it right.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Utah.

**Mr. HATCH.** Mr. President, I appreciate the remarks of my distinguished colleague from Florida. People need to listen to him. I am grateful to have him in the Senate, a fine man he is and a good example to all of us. I appreciate his remarks.

I rise to explain why I believe the Reid health care bill is not only bad policy for this country but also undermines the Constitution and the liberty it makes possible. I urge my colleagues to resist two errors that can distort our judgment and lead us down the wrong path. Those errors are assuming that the Constitution allows whatever we want to do and ignoring this question altogether.

We have only the powers the Constitution grants us because liberty requires limits on government power and we have our own responsibility to make sure we stay within those limits.

James Madison said that if men were angels, no government would be necessary, and if angels were to govern men, no limits on government would be necessary. Because neither men nor the governments they create are angelic, government and limits on government are both necessary to protect liberty—not just government but limits on government as well. Those limits come primarily from a written Constitution which delegates enumerated powers to the Federal Government.

Here is how the Supreme Court put it just a few years ago. This is in *United States v. Morrison* in 2000, quoting *Marbury v. Madison*—one of the most important decisions ever by the Supreme Court, probably the single most important decision—back in 1803:

Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. "The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written."

The important word there happens to be "limits."

No one likes limits, least of all politicians with grand plans and aggressive agendas. It is tempting to ignore or forget the limits the Constitution imposes on us by pretending the Constitution means whatever we want it to mean. But we take an oath to support and defend the Constitution, not to make the Constitution support and defend us. The Constitution cannot limit government if government controls the Constitution.

In April 1992, during a debate on welfare reform legislation, the senior Senator from New York, Mr. Moynihan, with whom I served, made a point of order that an amendment offered by a Republican Senator was unconstitutional. Here is what Senator Moynihan said:

We do not take an oath to balance the budget, and we do not take an oath to bring about universal peace, but we do take an oath to protect and defend the Constitution of the United States.

Applying that sage advice today, we do not take an oath to reform the health care system or to bring about universal insurance coverage, but we do take an oath to protect and defend the Constitution of the United States.

For the past 8 years, my friends on the other side of the aisle insisted that the Constitution sets definite and objective limits that the President must obey. The Constitution, they said, does not mean whatever the President wants it to mean. Compelling circumstances or even national crises, they said, cannot change the fact that the Constitution controls the President, not the other way around.

It is easy to insist that the Constitution controls another branch of government, that the Constitution does not mean whatever another branch of government wants it to mean. The real test of our commitment to liberty, however, is our willingness to point that same finger at ourselves.

I ask my colleagues, is the Constitution rock solid, unchanging, and supreme for the executive branch but malleable, shape-shifting, and in the eye of the beholder for the legislative branch?

A principle applied only to others is just politics, and politics alone cannot protect liberty. We must be willing to say that there are lines we may not cross, means we may not use, and steps we may not take.

The Constitution empowers Congress to do many things for the American people. Just as important, however, is that the Constitution also sets limits on our power. We cannot take the power without the limits.

I want to address several constitutional issues raised by this legislation.

The first is the requirement in section 1501 that individuals obtain not simply health insurance but a certain level of insurance. Failure to meet this requirement results in a financial penalty which is to be assessed and collected through the Internal Revenue Code.

We hear a lot about how Senators on this side of the aisle are supposedly defending the big, evil insurance companies, while those on the other side of the aisle are defenders of American families. This insurance mandate exposes such partisan hypocrisy.

Let me just ask you one simple question. Who would benefit the most from the unprecedented mandate to purchase insurance or face a penalty enforced by our friends at the Internal Revenue Service? The answer is simple. There are two clear winners under this Draconian policy and neither is the American family. The first winner is the Federal Government, which could easily use this authority to increase the penalty or impose similar ones to create new streams of revenue to fund more out-of-control spending. Second, the insurance companies are the most direct winners under this insurance mandate because it would force millions of Americans who would not otherwise do so to become their customers. I cannot think of a bigger

windfall for corporations than the Federal Government ordering Americans to buy their products.

Right now, States are responsible for determining the policies that best meet the particular demographic needs and challenges of their own residents. That is the States. Massachusetts, for example, has decided to implement a health insurance mandate, while Utah has decided not to do so. This bill would eliminate this State flexibility so that the Federal Government may impose yet another one-size-fits-all mandate on all 50 States and on every American. I cannot think of anything more at odds with the system of federalism that America's Founders established, a system designed to limit government and protect liberty.

I can understand why this mandate is so attractive to those who believe in an all-powerful Federal Government. After all, raising the percentage of those with health insurance is easy by simply ordering those without insurance to buy it. But while government may choose the ends, the Constitution determines the permissible means. That is why one of the basic principles is that Congress must identify at least one of our powers enumerated in the Constitution as the basis for any legislation we ultimately pass.

The health insurance mandate is separate from the penalty used to enforce it. The only enumerated power that can conceivably justify the mandate is the power to regulate interstate commerce. For more than a century, the Supreme Court treated this as meaning what it says. Congress cannot use its power to regulate commerce in order to regulate something that is not commerce. Congress cannot use its power to regulate interstate commerce in order to regulate intrastate commerce.

In classic judicial understatement, the Supreme Court has said that "our understanding of the reach of the commerce clause . . . has evolved over time." Indeed, it has. Since the 1930s, the Supreme Court has expanded the power to regulate interstate commerce to include regulating activities that substantially affect interstate commerce. That is obviously far beyond, by orders of magnitude, what the commerce power was intended to mean, but that is where things stand today, and some say it justifies this health insurance mandate in this bill.

Using the Constitution or even the Supreme Court's revision of the Constitution as a guide requires more than a good intention fueled by an active imagination. The Supreme Court has certainly expanded the category of activities—get that word "activities"—that Congress may regulate. But every one of its cases has involved Congress seeking to regulate just that: activities in which people have chosen to engage. Even the Supreme Court has never abandoned that category altogether

and allowed Congress instead to require that individuals engage in activities, in this case by purchasing a particular good or service. The Court has never done that.

Let me mention just three of the Supreme Court's commerce clause cases. In its very first case, *Gibbons v. Ogden* in 1824, Thomas Gibbons had received a Federal license to operate a steamboat between New Jersey and New York and wanted to compete with Aaron Ogden, who had been granted a steamboat monopoly by New York State. In *Wickard v. Filburn*, Roscoe Filburn used the winter wheat he planted on his Ohio farm to feed his livestock and make bread for his own dinner table. In the winter of 1942, he grew more wheat than allowed under the Agricultural Adjustment Act and challenged the resulting fine. And in *Hodel v. Surface Mining & Reclamation Association*, companies challenged a Federal statute regulating surface coal mining.

These cases have two things in common. The Supreme Court upheld Federal authority in each case, but each case involved an activity—remember the word "activity"—in which individuals chose to engage. There would have been no *Gibbons v. Ogden* if Thomas Gibbons had not chosen to operate a steamboat. Congress could regulate his activity but could not have required that he engage in it. There would have been no *Wickard v. Filburn* if Roscoe Filburn had not chosen to grow wheat. Congress could regulate his activity but not have required that he engage in it. And there would have been no *Hodel* case if companies had not chosen to mine coal. Congress could regulate their activity but could not have required that they engage in it.

The key word in the commerce clause is the word "regulate," and the key word in every Supreme Court case about the commerce clause is the word "activity." Regulating an activity in which individuals chose to engage is one thing; requiring that they engage in that activity is another.

The Congressional Budget Office examined the 1994 health care reform legislation which also included a mandate to purchase health insurance. Here is the CBO's, the Congressional Budget Office's, conclusion. This is August 1994, the Congressional Budget Office:

A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action. The government has never required people to buy a particular good or service. . . . Federal mandates typically apply to people as parties to economic transactions, rather than members of society.

That is pretty important language. In other words, Congress can regulate commercial activities in which people choose to engage but cannot require that they engage in those commercial activities.

Just a few months ago, as Congress once again is considering a health in-

surance mandate, the Congressional Research Service examined the same issue. Here is what the Congressional Research Service concluded. This was in July 2009. The CRS concluded:

Whether such a requirement [to have health insurance] would be constitutional under the Commerce Clause is perhaps the most challenging question posed by such a proposal, as it is a novel issue whether Congress may use this clause to require an individual to purchase a good or service.

Can Congress use this clause to require an individual to purchase a good or service?

One thing did change in the legal landscape between 1994, when CBO called the health insurance mandate "unprecedented," and 2009, when CRS called it "novel." The Supreme Court twice found that there are limits to what Congress may do in the name of regulating interstate commerce.

In *United States v. Lopez*, the Court rejected a version of the commerce power that would make it hard "to posit any activity by an individual that Congress is without power to regulate."

If there is no difference between regulating and requiring what people do, if there is no difference between incentives and mandates, if Congress may require that individuals purchase a particular good or service, why did we even bother with the Cash for Clunkers Program? Why did we bother with TARP or other bailouts? We could simply require that Americans buy certain cars or appliances, invest in certain companies, or deposit their paychecks in certain banks. For that matter, we could attack the obesity problem by requiring Americans to buy fruits and vegetables and to eat only those.

Some say that because State governments may require drivers to buy car insurance, the Federal Government may require that everyone purchase health insurance. That is too simplistic, that argument. Simply stating that point should be enough to refute it. States may do many things that the Federal Government may not, and if you do not drive a car, you do not have to buy car insurance. This legislation would require individuals to have health insurance simply because they exist, even if they never see a doctor for the rest of their lives.

The defenders of this health insurance mandate must know that they are on shaky constitutional ground. The bill before us now includes findings which attempt to connect the mandate to the Constitution. I assume they are the best arguments that this unprecedented and novel mandate is constitutional.

Those findings fail in at least four ways.

First, the findings say that the requirement to purchase health insurance will add millions of new consumers to the health insurance market. I cannot dispute the observation

that requiring more people to purchase health insurance will result in more people having health insurance. I think that seems quite self-evident. But the question is not the effect of the mandate but the authority for the mandate. Liberty requires that the ends cannot justify the means. The findings also fail to establish that the insurance mandate is constitutional by failing to offer a single example—a single precedent, a single case—in which Congress has required individuals to purchase a particular good or service or the courts have upheld such a requirement. The cases I described are typical, and similar examples are legion. Every one involves—every one of those cases I have cited—the regulation of activity in which individuals choose to engage. Requiring that the individual engage in such activity is a difference not in degree but in kind.

The findings also fail to answer the question by observing that States such as Massachusetts have required that individuals purchase health insurance. As I noted regarding the example of car insurance, our Federal and State system allows States to do many things that the Federal Government may not. That is one of those limits on the Federal Government that is necessary to protect liberty.

The findings fail to answer the question by mistakenly focusing on whether Congress may regulate the sale of insurance. That misses the point in two respects. Simply because Congress may regulate the sale of health insurance does not mean that the Congress may require it. Simply because Congress may regulate the sale of health insurance does not mean that Congress may regulate the purchase of health insurance. This legislation requires you to believe that nonactivity is the same as activity; that choosing not to do something is the same as choosing to do it; that regulating what individuals do is the same as requiring them to do it. That notion makes no common sense, and it certainly makes no constitutional sense. If Congress can require individuals to spend their own money on a particular good or service simply because Congress thinks it is important, then the Constitution means whatever Congress says it means and there are and will be no limits to the Federal Government's power over each and every one of our lives.

That version of Federal power will be exactly what the Supreme Court in *Lopez* prohibited; namely, that there would be no activity by individuals that the Federal Government may not control. Neither the power to regulate interstate commerce granted by the Constitution nor the power to regulate activities that substantially affect interstate commerce granted by the Supreme Court go that far. They don't go that far.

The American people agree. A national poll conducted last month found

that 75 percent of Americans believe that requiring them to purchase health insurance is unconstitutional because Congress's power to regulate commerce does not include telling Americans what they must buy. By a margin of more than 7 to 1, Americans believe that elected officials should be more concerned with upholding the Constitution regardless of what might be popular than enacting legislation even if it is not constitutional.

Some defenders of this legislation such as the House majority leader have said that Congress may require individuals to purchase health insurance because it can pass legislation to promote the general welfare. The only thing necessary to dismiss this argument is to read the Constitution. Read the Constitution. That dismisses this argument. Just read it. Read the Constitution. Article I refers to general welfare as a purpose, not as a power. It is a purpose that limits rather than expands Congress's power to tax and to spend. The requirement that individuals purchase health insurance is not an exercise of either the power to tax or the power to spend, and so even the purpose of general welfare is not connected to it at all. Needless to say, it makes no sense to include in a written Constitution designed to limit Federal Government power an open-ended, catchall provision empowering Congress to do anything it thinks serves the general welfare.

If America's Founders wanted to create a Federal Government with that much power, they could have written a much shorter Constitution, one that simply told Congress to go for it and legislate well. That is what they could have done. They didn't do that, thank goodness.

The Heritage Foundation has just published an important paper arguing that this health insurance mandate is both unprecedented and unconstitutional. It is authored by Professor Randy Barnett, the Cormack Waterhouse Professor of Legal Theory at the George Washington Law Center; Nathaniel Stewart, an attorney with the prestigious law firm of White & Case, and Todd Gaziano, Director of the Center for Judicial and Legal Studies at the Heritage Foundation.

I ask unanimous consent to have the conclusion portion of the Legal Memorandum published by the Heritage Foundation printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### CONCLUSION

In theory, the proposed mandate for individuals to purchase health insurance could be severed from the rest of the 2,000-plus-page "reform" bill. The legislation's key sponsors, however, have made it clear that the mandate is an integral, indeed "essential," part of the bill. After all, the revenues paid by conscripted citizens to the insurance companies are needed to compensate for the

increased costs imposed upon these companies and the health care industry by the myriad regulations of this bill.

The very reason why an unpopular health insurance mandate has been included in these bills shows why, if it is held unconstitutional, the remainder of the scheme will prove politically and economically disastrous. Members need only recall how the Supreme Court's decision in *Buckley v. Valeo*—which invalidated caps on campaign spending as unconstitutional, while leaving the rest of the scheme intact—has created 30 plus years of incoherent and pernicious regulations of campaign financing and the need for repeated "reforms." Only this time, the public is aligned against a scheme that will require repeated unpopular votes, especially to raise taxes to compensate for the absence of the health insurance mandate.

These political considerations are beyond the scope of this paper, and the expertise of its authors. But Senators and Representatives need to know that, despite what they have been told, the health insurance mandate is highly vulnerable to challenge because it is, in truth, unconstitutional. And political considerations aside, each legislator owes a duty to uphold the Constitution.

Mr. HATCH. I also wish to share with my colleagues a letter I received from Dr. Michael Adams and attorney Carroll Robinson. They are on the faculty of the Barbara Jordan Mickey Leeland School of Public Affairs at Texas Southern University. Mr. Robinson, a former member of the Houston City Council, was named by the Democratic Leadership Council in 2000 to its list of "100 to Watch."

I ask unanimous consent their entire letter, which is dated October 25, 2009, be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATCH. Let me share just an excerpt from these two people. This is an excerpt from Michael Adams, Ph.D., and Carroll G. Robinson, Esquire, from the Barbara Jordan and Mickey Leeland School of Public Affairs, Texas Southern University:

Our reading of the Constitution and Supreme Court precedent could not identify any reasonable basis, expressed or implied, for granting Congress the broad, sweeping and unprecedented power that is represented by the individual mandate requirement. In fact, we could not find any court decision, state or federal, that said or implied that the Constitution gave Congress the power to mandate citizens buy a particular good or service or be subject to a financial penalty levied by the government for not doing so.

That is pretty impressive stuff.

It is certainly possible to achieve the goal of greater health insurance coverage by constitutional means, not unconstitutional means. I am quite certain, however, that those means are politically impossible.

Liberty requires that the Constitution trump politics, but in the legislation before us, politics trumps the Constitution.

Another provision in this legislation that is inconsistent with the Constitution is section 9001, which imposes an

excise tax on high-cost employer-sponsored insurance plans differently in some States than in others. The legislation imposes a tax equal to 40 percent of benefits above a prescribed limit but raises that limit in 17 States to be determined by the Secretaries of the Treasury and Health and Human Services.

My colleague from Ohio, Senator BROWN, spoke against this provision on policy grounds earlier.

The Constitution allows Congress to impose excise taxes but requires that they be “uniform throughout the United States.” This is one of those provisions that will be dismissed with pejorative labels such as archaic by those who find it annoying. But it is right there in the same Constitution that we have all sworn to uphold. We have all sworn that same oath to protect and defend, and we are just as bound today to obey it.

Frankly, a good test of our commitment to the Constitution is when we must obey a provision that limits what we want to do.

The Supreme Court has had relatively few opportunities to interpret and apply the uniformity clause, but its cases do provide some basic principles which I think easily apply to the legislation before us today. The Court has held, for example, that a Federal excise tax must be applied “with the same force and effect in every place where the subject of it is found.”

The Congress has wide latitude in determining what to tax and may tailor a regional solution to a geographically isolated problem, but laws drawn explicitly in terms of State lines will receive heightened scrutiny. By the plain terms of the legislation before us, insurance plans providing a certain level of benefits in one State will be taxed while the very same plans providing the very same benefits in another will not be taxed. We do not yet know what States will be treated differently, but we do know, according to this bill, that 17 of them will. That actually makes the constitutional point more clearly by identifying the State-based discrimination more starkly. Congress may decide to tax insurance plans with benefits that exceed a particular limit, but the tax must have the same force and effect wherever that subject of the tax is found. That is the clear meaning of the constitutional provision and the clear holding of the Supreme Court's precedents. Taxing the same insurance plans differently in one State than in another is the opposite of taxing them uniformly throughout the United States.

I commend to my colleagues the work of Professor Thomas Colby of the George Washington University Law School, whose comprehensive work on the uniformity clause was published in volume 91 of the *Virginia Law Review*.

I asked the Congressional Research Service to look at this uniformity

clause issue. Its report confirmed that this differential tax on high-cost insurance plans is drawn explicitly along State lines and that a court will more closely scrutinize the reasons for the State-based distinction. It also concluded that Congress has not articulated any justification for singling out certain States for different treatment. I have raised this issue over and over throughout the process of developing and considering this legislation. I serve on both of the Senate committees that are involved in this process. In fact, I can say I have served on three: not only the HELP Committee—the Health, Education, Labor and Pensions Committee—but also the Finance Committee, as well as the Judiciary Committee that, for some reason, has some great interest in the Constitution. I have never heard any justification for singling out certain States for different tax treatment.

The attitude seems to be that this is what the majority wants to do, so they are going to do it no matter what the Constitution says. That may be politically possible, but that does not make it constitutionally permissible.

Other legal analysts and scholars who are examining this health care takeover legislation are raising additional constitutional objections. Professor Richard Epstein of the University of Chicago School of Law, for example, focuses on provisions that restrict insurance providers' ability to make their own risk-adjusted decisions about coverage and premiums. He argues these restrictions amount to a taking of private property without just compensation and in violation of the fifth amendment.

Others have observed that the legislation requires States to establish health benefit exchanges. It does not ask, cajole, encourage, or even bribe them. It simply orders State legislatures to pass legislation creating these health benefit exchanges and says if States do not do so, the Secretary of Health and Human Services will establish the exchanges for them. How thoughtful.

But as the Supreme Court said in *FERC v. Mississippi* in 1982:

This Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations.

The Supreme Court reaffirmed a decade later in *New York v. United States* that “the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States.”

In that case, the Court struck down Federal legislation that would press State officials into administering a Federal program.

More recently, in *Printz v. United States*, the Supreme Court stated:

We have held, however, that State legislatures are not subject to Federal direction.

Yet this legislation does what these cases said Congress may not do. It

commands States to pass laws, it regulates States in their capacity as States, and it attempts to make States subject to Federal direction.

Let me return to the principles with which I began. Liberty requires limits on government power. Those limits come primarily from a written Constitution which delegates enumerated powers to Congress. We must be able to identify at least one of those enumerated powers to justify legislation, and those powers should not mean whatever we, in our delightful wisdom, want them to mean.

Those principles lead me to conclude that Congress does not have the authority to require that individuals purchase health insurance, and that Congress cannot tax certain health insurance plans in some States but not in others.

These, and the others I have mentioned, are only some of the constitutional issues raised by this legislation. Any of these, and others I have not mentioned, could well be the basis for future litigation challenging this legislation should it become law.

Writing for the Supreme Court in 1991, Justice Sandra Day O'Connor reminded us:

The Constitution created a Federal Government of limited powers.

America's Founders, she wrote, limited Federal Government power to “protect our fundamental liberties.”

Here is the way Justice O'Connor put it, writing for the Supreme Court in *New York v. United States* in 1992:

But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location, as an expedient solution to the crisis of the day.

That is a pretty remarkable statement. I could not have said it better myself. Those are either principles we must obey or clichés we may ignore.

If the Constitution means anything anymore, if it does what it was created to do by not only empowering but, more importantly, limiting government power, then now is the time to stand on principle rather than to slip on politics.

I yield the floor.

EXHIBIT 1

OCTOBER 25, 2009.

Hon. ORRIN G. HATCH,  
U.S. Senator.

DEAR SENATOR HATCH: We support reducing the cost of health insurance and expanding access to quality, affordable prevention, wellness and health care services for all Americans. Despite our support for health care reform that empowers consumers, we have serious concerns about the constitutionality of the individual mandate requirement being proposed by Congress.

At least one scholar has argued that the individual mandate requirement is constitutional because Congress has unlimited authority under the Commerce Clause to regulate the economic activity of individual



American citizens no matter how infinitesimal.

We do not agree with that position. In Philadelphia, the Framers established a federal government of limited powers. If Congress has unlimited power under the Commerce Clause to regulate the economic activity of citizens, then the Constitution is no longer (and never was) "a promise . . . that there is a realm of personal liberty which the government may not enter."

We believe that this promise still exists and is not a mirage. The Supreme Court said so, at least as recently as 2003.

It has also been argued that the individual mandate is constitutional because citizens have "no fundamental right to be uninsured" or "to decline insurance." These are strawman characterizations intended to distract attention from the real constitutional question: Does Congress have the power to mandate citizens buy a specific good or service or be subjected to a financial penalty for not doing so?

Our reading of the Constitution and Supreme Court precedent could not identify any reasonable basis, expressed or implied, for granting Congress the broad, sweeping and unprecedented power that is represented by the individual mandate requirement. In fact, we could not find any court decision, state or federal, that said or implied that the Constitution gave Congress the power to mandate citizens buy a particular good or service or be subject to a financial penalty levied by the government for not doing so.

There are cases that say Congress can tell consumers what products to buy if they choose to buy, but no cases that say Congress can mandate that a citizen must buy a particular good or service or be fined for not doing so.

The individual mandate requirement directly burdens the fundamental meaning of being an American citizen as embodied in the Ninth Amendment reaching back through the Declaration of Independence to the Magna Carta and its expansion coming forward from the 3/5ths Clause of Article I of the Constitution and the Court's *Dred Scott* decision to the Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth and Twenty-Sixth Amendments as well as through Supreme Court decisions related to these amendments, legislation adopted pursuant to them, the Bill of Rights and its penumbra.

The Supreme Court has ruled that freedom of speech, expression and association are constitutionally protected. Our right to freely move around the country is also constitutionally protected. Congress can regulate the size of political donations but has no authority to tell a citizen which political candidate or party they can lawfully contribute to.

Like political donations, how a citizen legally spends their money in the market place is clearly a form of expression and association that requires strict scrutiny, or heightened, protection.

Calling the individual mandate a tax raises another constitutional concern. Under the mandate, American citizens are essentially subject to a financial penalty simply for being a citizen of the United States residing in a state of the Union. It is essentially an existence fee, a fee for existing.

Under the Fourteenth Amendment, the definition of citizenship does not include any requirement that Americans pay a "tax" simply because we are citizens. In fact, the Twenty-Fourth Amendment and related Supreme Court decisions expressly prohibit financially burdening the rights of citizens to

prevent them from exercising a right of citizenship. Citizens have a liberty interest in deciding when to buy a good or service and which to buy from the legally available options.

The Supreme Court has said, "Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and . . . laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom."

We believe that reducing the cost of health care insurance and expanding coverage can be achieved without opening the constitutional Pandora's Box of the individual mandate requirement.

Sincerely,

CARROLL G. ROBINSON, Esq.  
MICHAEL O. ADAMS, PhD.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I am delighted to follow my colleague from Utah. I am pleased he has raised these constitutional issues, which I think are significant to this bill. The idea that we could have a constitutional mandate to buy health insurance, to me, is highly questionable under our rights under the role of the Federal Government and under the Constitution. Senator HATCH has been on the Judiciary Committee for many years and he understands these issues very well.

We are now on our sixth iteration of the health care reform bill. This one talks about expanding Medicare, basically as one of the key components of solving the problem. Here is a quote from the Mayo Clinic I found, and others have also been cited. I found this interesting, succinct, and accurate:

Any plan to expand Medicare, which is the Government's largest public plan, beyond its current scope does not solve the Nation's health care crisis, but compounds it. It is also clear that an expansion of the price control of the Medicare payment system will not control overall Medicare spending or curb costs. This scenario follows the typical pattern for price control, reduced access, compromised quality, and increasing costs anyway. We need to address these problems, not perpetuate them through health reform legislation.

That was the Mayo Clinic. It is clearly not the way to go to solve the crisis or the problems. It probably hastens the day Medicare goes bankrupt, which is set to happen in 2017, 7 years away.

I want to talk about the possibility that this health care bill puts this very early piece of economic recovery that we are having at risk. The latest reports on unemployment provide some hope that our battered economy may be showing some tentative signs of economic recovery, as the job loss continues to slow. Most of this is based off of monetary policy. We are seeing some of this taking place.

Consumer confidence is still low. Unemployment hovers at 10 percent, and over 7 million jobs were lost since the beginning of the recession.

It should be clear that any potential recovery is incredibly fragile. That being the case, Congress and the administration should focus like a laser beam on policies that encourage economic growth and put Americans back to work. That seems to be obvious.

Instead, though, the administration and the Democratic-controlled Congress have taken up crucial months with a proposed revamping of our entire health care system that will cost nearly \$2.5 trillion over the next 10 years, to be paid for by new taxes and employer mandates, and it will impose a grave risk to a sustained rebound of our Nation's economy. This hurts our economic recovery.

Not only that, but the Democratic health care bill includes some positively perverse incentives that would discourage hiring, work, saving, and even marriage. Again, it would discourage hiring, work, savings, and marriage. Higher taxes, more employer mandates, and disincentives to job creation, productivity, and family formation are hardly the prescription for the growth our economy so desperately needs right now.

Both the House and the Senate bills would, for instance, increase the already existing penalty on work faced by many low-income families who receive tax and in-kind benefits from government welfare programs. We already heard this. Health insurance subsidies in the legislation for individuals and families in poverty would tack on an additional 12 to 20 percent to marginal tax rates, which already approach 40 to 50 percent for families receiving a variety of benefits for those with low incomes. This would result in marginal tax rates of 50 to 60 percent for most affected families.

If working more hours or obtaining better paying jobs results in more than half of those additional earnings being taken away as a result of taxes or a reduction in benefits—if you are a low-income individual, you are working more, you are getting more money coming in, but your benefits from the government are reduced. So if you are taking 50 to 60 percent away in a reduction of benefits or in taxes, the incentive to work harder or to invest in an education is greatly reduced. That is obvious on its face. Yet it is in this bill.

This is not the only work disincentive in the bill. It is common for teenagers and college students to obtain jobs so they can have some spending money on their own or to help with their educational expenses. The Senate bill penalizes the families of these younger workers by including their wages in benefit eligibility calculations. For many low-to-moderate income families, the inclusion of their



wages could mean a significant increase in their cost of health insurance or even in them losing thousands of dollars of health insurance subsidies altogether. That is in the bill.

And more harmful to the economy, potentially, are the incentives directed at employers. Both the House and Senate bills include temporary subsidies to small businesses to encourage them to offer employer-sponsored health insurance. As the number of employees increase or as salaries increase, the amount of the credit provided to the business decreases. The structure of this subsidy not only discourages employers from hiring new employees, but it also discourages them from increasing employees' salaries. We don't want those sorts of disincentives in any bill.

Ironically, the incentives in the bill would even work to encourage employers to drop health insurance coverage for individual employees or eliminate insurance coverage altogether. The Senate bill would cap employee contributions to insurance premiums at 9.8 percent of their income. If an employer offered a policy that required employees to pay more than this, the employee would be eligible to purchase insurance through the new "health care exchanges." The employer would have to pay a fine. Since, in many cases, that fine is considerably less than the additional insurance costs the employer would incur if they retained coverage, many businesses concerned about the bottom line would be enticed by the bill to stop providing any health insurance coverage. So they are actually enticed here to drop health insurance coverage—another thing we don't want to see happen.

Furthermore, employers who offer flexible spending accounts or FSAs will be encouraged to stop providing these tax-free medical spending accounts for their employees. Under the Senate Democrats' bill, FSA contributions will be included in the total cost of employees' health insurance benefits for the purpose of calculating the proposed tax on high-cost health plans—the so-called Cadillac health care plans. Adding an FSA contribution could push the total cost of health benefits above the high-cost threshold for many workers, which will result in the employer being liable for a portion of the 40 percent high-cost plan's tax. As more and more plans become subject to the high-cost plan's tax, it will be in the employer's best interest to eliminate FSA offerings altogether. That is another disincentive we don't want to see happening.

The proposed legislation would also create new marriage penalties across the income spectrum. We have been working for some years to do away with the marriage penalty. Marriage is a good and solid institution that helps so much in this Nation. Yet it puts in a marriage penalty, penalizes people

for getting married; it is built into this legislation. These penalties can be so large that, in some cases, couples would have to forgo marriage in order to avoid thousands of dollars in new taxes. The penalties are significant. Low- and moderate-income families often have limited savings as well. Given the already significant marriage penalties in low-income benefit programs, it seems ironic that the government would create yet another program that penalizes low-income individuals for getting married.

Currently, if they are on public assistance and they get married, their combined incomes often move a couple out of the support they receive for their families, whether it is health support, housing, or food support. By getting married, they often lose their benefits. Instead of taking them away, we ought to be helping them form solid families. That sort of disincentive is built into this health insurance plan as well, where you actually put in disincentives for low-income couples to get married. In other words, to be able to get the health insurance subsidy, they may have to forgo marriage. That is not the sort of incentive we want in the system and in the bill. We are trying to take it away in the welfare programs, but to add another piece to low and moderate-income couples is the wrong way for us to go.

That the Democratic health care legislation would set the United States on a path to a single-payer government-run health insurance system of the sort found in Europe and Canada is bad enough, but even more troubling is the fact that these proposals would create a series of perverse incentives ultimately harmful to workers, businesses, and the entire economy. The Senate must reject this poorly conceived, ruinously expensive scheme and get back to the business of helping our economy recover.

I have talked to many people across the United States and particularly in Kansas, many people who are deeply concerned about this economy and the perverse things coming out of Washington. While they might start considering investing in their small business, putting some income or something out to be able to grow and create jobs, people are holding back and saying: I don't know how many more taxes you will put on us or what the health insurance plan will look like. I don't know what cap and trade will do on raising energy costs.

They are holding back. These perverse economic signals, and the discussion of them in Washington, is perversely affecting the economy. It is hurting the economic recovery. If you put these pieces into place statutorily, you are hurting savings, hurting hiring, hurting marriage formation, and you will further hurt an already very tentative recovery from taking place.

This is a bad medicine for the economy. The idea that you would expand Medicare to take care of that is a terrible idea. You will be hurting a program that already is not financially solvent in the long term and is looking at something like \$30 trillion of unfunded obligations already on its books. That alone, if you expand it back to age 55, plus the provider community—the American Medical Association and the American Hospital Association are opposed to this expansion of Medicare. They don't get full reimbursement of costs right now. With the talk about bringing it back to age 55, you will be sweeping a large number of people into Medicare, so you are sweeping in a lot of people who are already in private insurance plans. When they are pulled out of private insurance which pays at the full rate to the provider community, you are taking those resources away from the provider community, from doctors and hospitals. That is why you are seeing the American Medical Association and the American Hospital Association come out against this proposal on Medicare expansion. How on Earth would it ever be paid for, when the program is already not on a stable financial track?

The Federation of American Hospitals stated this:

The FAH is strongly opposed to this proposal. A Medicare buy-in would involve Medicare rates, would be controlled by CMS, and would crowd out older workers with private coverage and may choose early retirement as a result. Such a policy will further negatively impact hospitals.

In my rural State, in particular, it would have a huge negative impact on a number of the hospitals in my State.

Mr. President, I yield the floor.

THE PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, is there a unanimous consent order of business?

THE PRESIDING OFFICER. There is not.

Mr. DURBIN. Mr. President, I rise to speak as in morning business.

I would like to say at the outset I respect very much my colleague from the State of Kansas. He and I have worked on many issues together. In fact, we traveled together to Africa, a memorable trip for both of us, I am sure, visiting the Democratic Republic of Congo, Rwanda, and meeting a lot of people in desperate straits. I thank him for that.

I know he is now preparing for another public career in the State of Kansas, with the blessing of the Kansas voters. But in the meantime, he continues to be a very important, vital voice in the Senate. I thank him for that as well.

We do disagree on health care reform. I know he has had a chance to explain his point of view. I will say I disagree with many of his conclusions about what we are about, what we are trying to accomplish.

This is the bill that is before us when we return to the health care reform debate. It is 2,074 pages long. It is the product of 1 year's work by two major committees in the Senate. The House of Representatives spent a similar period of time in three different committees working on it to come up with their work product, which they passed just a few weeks ago.

This is historic because we have been promising this and threatening this and talking about this for decades. It was Theodore Roosevelt who first raised the question about whether America could accept the challenge of providing health care for every citizen. That was over 100 years ago. Then, of course, Harry Truman, who, in a more modern era, issued the same challenge. He was confronted by his critics who said: He is talking about socializing medicine. Must be socialism that Harry Truman is proposing. The idea died.

Then, again, Lyndon Johnson raised it in the early 1960s. He was a master of the Senate, as he has been characterized in a book that has been written about him. He believed he had the power to make this happen to deal with the health care system across the board in America. It turned out he made a significant contribution with the enactment of Medicare and Medicaid but could not reach the goal of universal health care or comprehensive health care reform.

This President, President Obama, came to us and issued the same challenge. He said we have reached a point of no return. The current health care system in America is unsustainable, it is unaffordable, and the cost of health care goes up dramatically. Ten years ago, a family of four paid an average of \$6,000 a year, \$500 a month for health care insurance. Now that is up to twice that amount, \$12,000 average for a family of four, \$1,000 a month. In 8 years, with projected increases in costs, we expect that the monthly premium for the family of four to go up to \$2,000 a month, \$24,000 a year. We know that represents 40 percent of earnings for many people. That is absolutely unsustainable.

What we have tried to do, first and foremost, is address affordability. How can we make health insurance protection more affordable for more families? How can we start lessening the annual increase in premiums and actually help people by substantially cutting the cost of premiums for many families? It is a big challenge, and we have, I think, risen to the challenge with this bill.

The other side of the aisle has ideas, they have amendments, they have speeches, they have charts, but they do not have a comprehensive health care reform bill. They do not have a bill that has been sent over to the Congressional Budget Office, carefully read, and evaluated. It took weeks to do it. They do not have a bill that came back

from the Congressional Budget Office, considered to be the neutral observer of action on Capitol Hill. They do not have a bill that came back from the CBO that has been characterized as actually reducing the deficit.

This bill, according to the Congressional Budget Office, will reduce America's deficit over the next 10 years by \$130 billion and over the following 10 years another \$650 billion. It is not just dealing with health care reform; it is dealing with the costs of health care to our government and reducing our expenditures by significant amounts. It is the largest deficit-reduction bill ever considered on the floor of the Senate.

Although the Republicans have many ideas, they do not have anything that matches this bill in terms of deficit reduction or bringing down the cost of health care. They have not produced a bill which will extend the reach of health insurance coverage to 94 percent of our people in this country, which this bill does.

For the first time in the history of the United States of America, 94 percent of our American citizens will have peace of mind knowing they have health insurance. Today, 50 million do not. This bill will take 30 million off the uninsured rolls and put them in insurance plans that can protect their families, and it will help them pay for the premiums. If people are making less than 400 percent of poverty—which in layman's terms is about \$80,000 a year in income. If your family makes \$80,000 or less, we provide in this bill that we will help you pay for your premiums. The lower your income, the more we will help pay.

If you are making, for example, as an individual, less than \$14,000 a year, you will not pay for your health care. It will be covered by Medicaid, the program that is now nationwide, and you will not have to pay a premium. Then as you make more money, you will pay a little bit of a premium with help from this bill.

The Republicans have not produced a plan of any kind that deals with helping families of limited means, modest means, pay for their health insurance premiums. We have. The Congressional Budget Office has scored it. One of the major provisions in this bill—and one I think most people will identify with quickly—is the fact that health insurance reform is included too. There is a Patients' Bill of Rights in this bill. It basically says we should bring an end to the discriminatory practices of health insurance companies against American citizens. We know what we are talking about.

Friends of mine, a family I am closer to than any other family in Springfield, IL, has a son fighting cancer. He is a young man in his forties. He has young children in high school. He was diagnosed with melanoma just a few years ago. His oncologist has worked

with him with chemotherapy and radiation and with the kind of treatment and drugs and surgeries he needed. As a result of it, he has gone through some tough surgeries and tough treatment. His oncologist said at one point: We have a drug we believe will help you. He gave him the drug, and the drug, in fact, arrested the development of his cancer.

Shortly after the drug was prescribed and administered, his health insurance company that he paid into for years came back and said: We will not cover that drug. The drug costs \$12,000 a month. It is impossible for him, as the coach of a baseball team at one of our universities, to come up with that kind of money. His family borrowed money to pay for one of the treatments, and now they are suing the insurance company in the hopes that they can get coverage.

After all those years paying in, when they finally needed that coverage, they turned him down. I hope he wins that lawsuit. This is a very profitable insurance company. It is a company that should be paying, but they are not. That is one example of thousands we could talk about.

The purpose of this bill is to make sure a friend of mine, his family, and other families just like his have a fighting chance against these insurance companies. We say in this bill we are going to provide a way for protection for people with a preexisting condition; that if you have a history of high cholesterol or high blood pressure, if you have some cancer in your family, it is not going to disqualify you. You are still going to be eligible for health insurance, a policy you can afford.

We also say, when it comes to your children—you know how it is today, you learn the hard way—when your kids who are on the family plan reach the age of 24, they are off. We extend that to age 26, which I think is a little more peace of mind, particularly for students graduating from college looking for jobs these days. It is not easy. We want to make sure they are covered with health insurance while they are paying off their student loans and building their career. That is in this bill.

There is not a bill from the Republican side of the aisle that deals with the Patients' Bill of Rights. In fact, it is a rare Senator on the other side of the aisle who even stands and is critical of health insurance companies in the way they are treating people in this country.

I do not know if my friends on the other side of the aisle get back home enough to meet with some of these families. Surely they do. They must receive mail that tells them about these stories we have all heard about. You would think they would be endorsing our approach in this bill. Instead, they are critical of it from start to finish.

They talk a lot about taxes. I want you to know, under this bill, if you have a small business with 25 or fewer employees, we actually provide tax breaks to help you provide insurance for your employees. There are a lot of businesses, mom-and-pop businesses, for example, that cannot afford health insurance that will have a chance now because of tax breaks here.

Then, when it comes to paying for premiums, I mentioned earlier, if you make \$80,000 or less, we provide tax breaks in helping you pay for it. The cost of it in tax breaks is \$440 billion over 10 years. It is a huge amount of money we are providing to American citizens to give them a chance to pay for their health insurance premiums. All we hear from the other side is: Oh, this bill is going to raise taxes. It does raise some. It raises taxes on health insurance companies for what we call Cadillac health care policies.

We can debate for a long time whether that level of policy, \$25,000, is a reasonable level or should be something different. But the fact is, it is a tax on the health insurance company. It will likely result in fewer policies that are that grand and that expansive being issued.

I think this is a bill that moves in the right direction. It is a bill that makes insurance more affordable. It is a bill that does not increase the deficit, it reduces it. It is a bill that gives people a fighting chance against health insurance companies that discriminate against their customers. It is a bill that extends the coverage of health insurance of 94 percent of Americans. It is a bill that looks at putting Medicare on sound footing. It adds 5 years of solvency to Medicare—5 years. There has not been a bill produced on the other side of the aisle that even adds 1 year, that I am aware of. It adds 5 more years of solvency. That is the reason why this bill has been supported by the American Association of Retired Persons. We have support of medical professionals, senior organizations, and consumer groups all across America. They know, as we do, we cannot wait any longer.

I also wish to make the point that the Senate bill offers significant savings for seniors. The CMS Actuary projects a net \$469 billion in Medicare and Medicaid savings over 10 years, slightly more than the Congressional Budget Office. It extends the life of the Medicare trust fund, according to the Office of the Actuary, by 9 years. That is longer than anyone has projected in previous forecasts, but it is a significant increase, almost doubling the life of the Medicare trust fund over what it currently would be.

It reduces premiums by \$12.50 a month by the year 2019 or \$300 per couple per year. Slowing Medicare growth will lower health care costs for seniors as well as younger Americans. Not only

will there be a premium savings, but coinsurance will fall as well.

The Senate bill slows the growth of health care costs. The Actuary report we have, for example, says, “. . . Reductions in Medicare payment updates for providers, the actions of the Independent Medicare Advisory Board, and the excise tax on high-cost employer-sponsored health insurance would have a significant downward impact on future health care cost growth rates.”

The bend in the health care cost curve is evident. Health care costs under the Senate bill begin to decline as cost savings begin to kick in.

I have not mentioned this bill focuses on prevention and wellness too. If there is one thing we need, it is to encourage people to take care of themselves and to get a helping hand for the tests they need to stay healthy and to monitor their conditions. This preventive care and wellness, though we have not been credited by the Congressional Budget Office, is an important element of this bill.

I think there is one thing on which we should all agree. The cost of health care, particularly for small businesses, is very difficult. On the Senate floor, both Democrats and my friends on the other side of the aisle have recognized small businesses are struggling to pay for health insurance. But there is a real difference. We have offered a solution, one that is comprehensive and one that has been scored and carefully analyzed by the Congressional Budget Office.

Unfortunately, that has not happened on the other side. Their approach is basically to criticize what we have proposed but to offer no alternative. If they are happy with the current system, I understand that. If they will concede that it is hard to produce a bill like this, I would understand that. But merely to criticize this without alternative, a comprehensive alternative that has been carefully analyzed, I don't think is a responsible approach to the serious problem that we face today.

There are real-life stories of people who have contacted me. One of them I will tell you about involves a small business. Right now we know that one sick employee of a small business can drive the cost of health care for the whole company to limits where they just can't afford it. My friends, Martha and Harry Burrows, whom I have met, are small business owners in Chicago, and they have to wrestle with this problem and try to run a successful business at the same time. When they opened their toy store, Timeless Toys, 16 years ago, they promised to provide health insurance to their full-time employees. Martha Burrows said:

Since we were covered, we wanted to offer the same benefit to our employees.

But as their health care premiums have skyrocketed with leaps of more

than 20 percent at a time, the commitment has taken its toll on their business. Providing health insurance to their full-time staff of seven meant cuts not only to profits but also to the wages of their employees. In general, the older employees faced even higher costs. We shouldn't put our Nation's employers in a position where the health costs of an older worker can make such a huge difference.

Marcia says:

I don't like making decisions that way. I want to base hiring decisions on the quality of the person.

The legislation on the floor, incidentally, deals with the rating of premium costs for senior citizens, for example, and makes a fairer rating system. Currently, health insurance companies in America are exempt from the antitrust laws. Under a bill known as McCarran-Ferguson, passed in the 1940s, they are exempt, along with organized baseball, which means the insurance companies—health insurance companies and others—can literally sit down in a room and conspire, collude, agree on prices they are going to charge. If any other companies that were supposed to be competing did that in America they would be sued but not the insurance companies. So they can set premiums and agree on what the premiums will be, and they can divide up the market for the sale of their products, sending some companies to one town and some to another, making sure they do not compete against one another.

That is the reality of health insurance today. What we provide in this bill is protection against the ratings which discriminate against people because they are elderly or because they are women. We put limits to the rating differences that will be allowed in health insurance policies. There is no bill I know of from the Republican side that even considers or addresses that problem.

Mr. President, one of the issues that I have tried to focus on in the midst of this recession is our foreclosure crisis. Back in December of 2006, when the housing markets were humming along and the bankers and brokers were raking in money, the Center for Responsible Lending published a report called “Losing Ground.” That report, in December of 2006, estimated that nearly 2 million homes would be lost to foreclosure in the coming years due largely to shoddy subprime mortgages.

Here is what the Mortgage Bankers Association told the Washington Post when they heard of this study. It was authored by the Center for Responsible Lending.

The report is ‘wildly pessimistic’ because most homeowners have prime loans and are not at financial risk.

That is what a senior economist at the Mortgage Bankers Association said in December of 2006. He went on to say:

The subprime market is a small part of the overall market. Lending industry officials

have said that regulatory action could injure the subprime market.

When he speaks of regulatory action, he means regulating these subprime markets.

On the floor of the Senate, I was involved in a debate with a Senator from Texas named Phil Gramm. I offered an amendment to a bankruptcy bill which Senator GRASSLEY and I worked on which said: If you are guilty of predatory lending, you will be precluded in bankruptcy from pursuing your claim. That was debated on the Senate floor, and debating on the other side against my amendment was Senator Phil Gramm of Texas, who said on the floor of the Senate:

If the Durbin amendment passes, it will destroy the subprime mortgage market.

Well, my amendment failed by one vote, and the subprime mortgage market continued until it collapsed just a couple of years ago. I wish I had had another vote for my amendment.

At the time this debate took place in December of 2006, about 25 percent of home loans were subprime. So the mortgage bankers, unfortunately, misled the public about the state of the market at the time to wave away warnings about any crisis that might be following, and we all know what that has meant to this country.

I go back to that episode now because 3 years later, in 2009, we have had more than 2 million foreclosures, something the Mortgage Bankers Association said wouldn't happen. In fact, the Mortgage Bankers Association has recently announced that in the third quarter of this year, nearly one in seven families paying mortgages in this country were either behind on their payments or already in foreclosure—one out of seven people holding mortgages today. It is hard to imagine. That is the highest it has ever been.

The statement from the Mortgage Bankers Association said:

Despite the recession ending in mid-summer, the decline in mortgage performance continues.

Three years ago, the rosy scenario they painted has now morphed into a much more serious situation which they cannot ignore. I have been talking about this foreclosure crisis since early in 2007. I stand here with some regret and say it is getting worse.

In Illinois, foreclosure filings in the six-county region around Chicago went up 67 percent in the last quarter. This isn't just a problem for the city of Chicago. New filings in Cook County, mainly suburban areas, were down 4.6 percent last quarter. The problem, unfortunately, has migrated to the suburbs. All of the so-called "collar counties" around Chicago have experienced massive increases in foreclosure activity. Kane County, a near-in county to the city of Chicago, saw foreclosure filings increase 97 percent in the last quarter over a comparable period last year.

I know the administration is working on this. The Home Affordable Modification Program is helping some families. I know Treasury has stepped up naming and shaming and hoping that it will provide more data for the public on which banks are actually trying. Some are—not much but some are. Many are not trying at all to renegotiate mortgages for people facing foreclosure. But no matter how much the Treasury Department leans on these bankers, the big banks that service most of these troubled mortgages have simply not stepped up to the plate.

Treasury reported yesterday that 3.3 million families are eligible for the Home Affordable Modification Program. Those are the families who are at least 2 months behind on their mortgages and in serious risk of being thrown out in the street. How many families, based on this 3.3 million families eligible for this program, have been able to get a bank to commit to a permanent loan modification that will keep them in their homes? There were 31,000 out of 3.3 million; less than one-tenth of 1 percent of the families in trouble have been able to work out a permanent solution with their bankers. That is disgraceful.

The big banks that created this mess continue to stand in the way of cleaning it up. They are making billions of dollars while foreclosing on millions of American families. Shaming the banks with speeches on the floor of the Senate isn't going to work. We have learned the hard way that many banks are beyond embarrassment. You can't embarrass bankers who take billions of taxpayer dollars to stay solvent and to overcome their bad banking policies, then turn around and pay millions out in bonuses to the officers of the same banks. You can't publicly shame bankers into doing something when they simply don't care.

But let's be clear. Congress hasn't done its part either. We have not done enough to make these banks help the American people who need some help. I will continue to come to the floor to remind my colleagues that we must address this crisis far more aggressively than we have, and I will continue to look for ways to help.

One last statistic. The Wall Street Journal ran a front-page story recently highlighting that one in four homeowners who are paying a mortgage today owes more on their mortgage than their house is worth. One in four homeowners is making house payments on a home that is now underwater. If you owe more than your house is worth and have no extra cash lying around, you are really vulnerable. If there is a sickness in your family, a health care emergency, a job loss, you could lose your home. If you are underwater, you are likely to stay there.

The 10.7 million families who find their mortgages are higher than the

value of their homes are at serious risk of foreclosure. Over 400,000 of those families are at risk in my home State of Illinois. JPMorgan Chase estimates that home prices won't hit bottom until next year, so it is going to get worse before it gets better.

So do we stand idly by and watch this—watch people lose their life's savings and their homes, watch these boarded-up homes spring up across our neighborhoods, around towns large and small across America and shake our heads and say it is inevitable? We don't have to. What we have to do is lean on these banks legally, with new laws that put pressure on them to make a difference. Don't appeal to their better nature. We have tried that, and it didn't work. We have to use the law. We have to stand up for this economy and putting it back on its feet, and we have to make the point of saying to these bankers that they have to negotiate these mortgages.

We need to do our part in the Senate. As we focus on health care and jobs and the state of the economy, let's not lose sight of this foreclosure crisis that is devastating neighborhoods across the country. The economy will struggle to fully recover until more families are confident enough in their homes that they are willing to go out and go shopping again. We must do more.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I had a chance to listen to my good friend, the Senator from Illinois; his remarks about why the bill before the Senate is going to reduce costs and pay down on the national debt. Now, that is the Senator from Illinois. I am the Senator from Iowa. But I would like to not refer to my judgment about this bill right now. What I would like to refer to is the judgment outlined in a report that was issued today from the Chief Actuary of the Centers for Medicare & Medicaid Services in the Department of Health and Human Services, a professional person who calls it like it is. That is his responsibility.

Remember, I am quoting from a report that was just given today about this 2,074-page bill we have before us, and that my friend from Illinois was just speaking very favorably about. So I am going to talk about somebody in the executive branch of government, under the President of the United States, who says this about this reform bill—that it will cost more than the status quo. The Chief Actuary of the Centers for Medicare & Medicaid Services issued a report on Senator REID's bill which shows that health care costs would go up, not down, under his bill. The Chief Actuary warned that the Democrats' health care bill would increase health care costs, threaten access to care for seniors, and force people off their current coverage.

In other words, the administration's own Chief Actuary conclusively demonstrates that the Democrats' rhetoric does not match the reality of the bill. The cost curve would bend up, not down. National health expenditures would increase from 16 percent of GDP to 20.9 percent under the Reid bill. The Chief Actuary concluded that the Federal Government and the country would spend \$234 billion more under the bill than without it. The Chief Actuary also says that the bill "jeopardizes access to care for beneficiaries" because of the bill's severe cuts in Medicare.

Quoting the Chief Actuary:

Providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and . . . might end their participation in the program (possibly jeopardizing access to care for beneficiaries).

Then it speaks about the savings in the bill being unrealistic. The Actuary says that many of the Medicare cuts "are unrelated to the providers' costs of furnishing services to beneficiaries." It is therefore "doubtful" that providers could reduce costs to keep up with the cuts.

Then the Chief Actuary speaks about new taxes costing consumers \$11 billion per year. The new taxes in the Reid bill would increase drug and device prices and health insurance premiums for consumers. The Actuary estimates this would increase costs on consumers by \$11 billion per year, beginning in 2011—that is 3 years before most benefits kick in.

Then the Actuary speaks about health care shortages, that these health care shortages are "plausible and even probable," particularly for Medicare and Medicare beneficiaries. Because of the increased demand for health care, the Actuary says that access-to-care problems—again these words "plausible" and even "probable" under the Reid bill. The access problems will be the worst for seniors on Medicare and low-income people on Medicaid. The Actuary says "providers might tend to accept more patients who have private insurance with relatively attractive payment rates and fewer Medicare and Medicaid patients, exacerbating existing access problems for the latter group."

Premiums for the government-run plan would actually be higher than under private plans. Agreeing with the Congressional Budget Office, the Chief Actuary said that because the government plan would not encourage higher value health care and it would attract sicker people, premiums for the government-run plan would be 4 percent higher than for the private insurers.

Then there is a point about employers dropping coverage. The Chief Actuary concluded that 17 million people will lose their employer-sponsored coverage. Many smaller employers would be "inclined to terminate their exist-

ing coverage" so their workers could qualify for "heavily subsidized coverage" through the exchange.

Then it speaks, lastly, about the long-term health care part of this bill called the CLASS Act. The CLASS Act stands for Community Living Assistance Services and Support, C-L-A-S-S.

The Chief Actuary has determined that the CLASS Act long-term care insurance program faces "a significant risk of failure" because the high costs will attract sicker people and lead to low participation. Even though premiums would be \$240 a month, the policy would result in "a net Federal cost in the long term."

I think quoting the Chief Actuary is a very good way to bring attention to the shortcomings that, on this side of the aisle, we have tried to discuss about the 2,074-page bill. Members on this side of the aisle have shown that the Reid bill will bend the health spending curve the wrong way over the next year and that the Reid bill cuts Medicare by  $\frac{1}{2}$  trillion and jeopardizes seniors' access to care. So, again, quoting from the Health and Human Services Chief Actuary's analysis confirms the dangerous consequences of the 2,074-page Reid bill.

I would like to highlight some of the findings in a more encompassing way than I just did, quoting the Chief Actuary.

First, contrary to what Members on the other side of the aisle claim, the Chief Actuary's report confirms that the Reid bill bends the cost curve the wrong way. According to the HHS Chief Actuary, over the next 10 years—and this chart highlights it—"total national health expenditures under this bill would increase by an estimated total of \$234 billion." And a good portion of the increase in national health expenditures would be caused by the so-called fees in this bill on medical devices and on prescription drugs and on health insurance premiums.

Here we have a chart where the Chief Actuary found that ". . . fees would . . . be passed through to health consumers in the form of higher drug and device prices and higher insurance premiums . . ." This would result in ". . . an associated increase of approximately \$11 billion per year in overall national health expenditures." This refutes claims from the other side that the so-called fees won't be passed on to consumers. And this analysis clearly refutes claims from the other side that the Reid bill saves money.

Next, the Chief Actuary also confirms that the Reid bill jeopardizes beneficiary access to care. The Chief Actuary tallied up around \$493 billion in net Medicare cuts, and he raised concerns in particular about two categories of these Medicare cuts.

First, the report warns about the permanent productivity adjustments to annual payment updates. These pro-

ductivity adjustments "automatically cut annual Medicare payment updates based on productivity measures for the entire economy," not just for that section of health care part of the economy.

The Chief Actuary confirms that these permanent cuts would threaten access to care. Referring to these cuts, he wrote that ". . . the estimated savings . . . may be unrealistic" and ". . . possibly jeopardizing access to care for beneficiaries."

"It is doubtful that many could improve their own productivity to the end achieved by the economy at large." This is a direct quote from the Chief Actuary's report. He goes on to say, "We are not aware of any empirical evidence demonstrating the medical community's ability to achieve productivity improvements equal to those of the overall economy."

In other words, basically he is saying this: If you are going to make a judgment that you are going to cut health care costs and that productivity has to be measured by the entire economy, you can't take the entire economy and apply it to a small segment of the economy—health care—and expect it to be fair and expect that small segment of the economy to be as productive and equal the productivity of the entire U.S. economy.

You have to listen to these people who are professionals in these areas. The Chief Actuary is a professional. In fact, the Chief Actuary's conclusion is that it would be difficult for providers to even remain profitable over time, as Medicare payments fail to keep up with the cost of caring for beneficiaries.

Referring to this chart, ultimately, here is the Chief Actuary's conclusion: that providers who rely on Medicare might end their participation in Medicare, ". . . possibly jeopardizing access to care for beneficiaries." That is right out of the Chief Actuary's report, is where that quote comes from.

He even has numbers to back up these statements. His office ran simulations of the effect of these drastic and permanent cuts. Here we have the quote. Based on the simulations, the Chief Actuary found that during the first 10 years, ". . . 20 percent of Medicare Part A providers would become unprofitable . . . as a result of productivity adjustments."

This is going to be horrible on rural America where we already have difficult times recruiting doctors and keeping our hospitals open. As I said, it is difficult to keep up with these productivity adjustments by our providers. It is for this reason that the Actuary found that "reductions in payment updates . . . based on economy-wide productivity gains, are unlikely to be sustainable on a permanent annual basis." That is right out of the report of the Actuary.

The second category of Medicare cuts the Chief Actuary raises concerns about would be imposed by the new independent Medicare advisory board created in this 2,074-page bill. This new body of unelected officials would have broad authority to make even further cuts in Medicare. These additional cuts in Medicare would be driven by arbitrary cost growth targets based on a blend of general economic growth and medical inflation. This board would have the authority to impose further automatic Medicare cuts, even absent any congressional action.

The Chief Actuary gives a reality check to this proposal. He shows how tall an order the Reid bill's target for health care cost growth actually is.

Again quoting the Actuary:

Limiting cost growth to a level below medical price inflation would represent an exceedingly difficult challenge.

He points out in this analysis that Medicare cost growth was below this target in only 4 of the last 25 years. Just think—what this 2,074-page bill is trying to accomplish is something that has been accomplished in only 4 out of the last 25 years.

The Actuary also points out that the backroom deals that carved out certain types of providers would complicate this board's effort to cut Medicare. So, to this analysis:

The necessary savings would have to be achieved primarily through changes affecting physician services, Medicare Advantage payments, and Part D.

So providers, such as hospitals, will escape from this board's cut at the expense of doctors, Medicare Advantage plans, and higher premiums imposed on beneficiaries for their Medicare drug coverage, Part D of Medicare. If we survey the Nation's seniors, I doubt very much they would say that raising their premiums for Medicare drug coverage is what they would call health care reform.

This board, which can cut reimbursements, is guaranteed to have to impose these additional Medicare cuts. In other words, they can do it.

According to the Chief Actuary's analysis of the Medicare cuts in the Reid bill, even though the Medicare cuts already in the Reid bill are "quite substantial," they would—the savings "would not be sufficient to meet the growth rate targets." This means the board will be required by law to impose even more Medicare cuts, in addition to the massive Medicare cuts already in the bill.

This bill imposes a \$2½ trillion tab on Americans. It kills jobs with taxes and fees that go into effect 4 years before the reforms kick in.

It kills jobs with an employer mandate. It imposes \$½ trillion in higher taxes on premiums, on medical devices, on prescription drugs and more. It jeopardizes access to care with massive Medicare cuts. It imposes higher costs.

It raises premiums. It bends the growth curve the wrong way; in other words, up instead of down. This is not what people have in mind when they think about health care reform.

There is another aspect to this bill that I wish to go over. I hope the third time is the charm. I hope this time the other side of the aisle will understand that the Reid bill increases taxes on middle-income families, individuals, and single parents. That is because contrary to the claims made by the other side of the aisle, the Reid bill clearly raises taxes on middle-income Americans. We have data, not from this Senator, but as I quoted previously the expertise of the Chief Actuary, I want to quote the expertise now of the Joint Committee on Taxation, professionals who are blind to politics, who judge things and call them like they see them. Yesterday I pointed out how the same Joint Committee on Taxation data led my Democratic friends to proclaim that the Reid bill provided a net tax cut to all Americans. We have this distribution chart I used previously to show that that net really is not net.

There is no question that the bill does provide a tax benefit to a group of Americans, a relatively small group. A much larger group, however, will see their taxes go up. Most, if not all in this group, will not benefit from the government subsidy for health insurance. That is part of this 2,074-page bill. As a result, the generous subsidy that is in that bill that is going to a small group of Americans cannot be used by this larger group to offset their increased tax liabilities. The other side, however, wants to spread the large tax benefit that is going to this small group of Americans to everybody; in other words, all Americans, even among those Americans who are not eligible to receive the subsidy, and then somehow claim that all Americans are receiving a tax cut. How can a person receive a tax cut if they are not receiving some type of tax benefit?

Yes, the data shows that some will receive a benefit, but the data also shows that the others will see a tax increase. I have highlighted in yellow these various figures, individuals and families who will see a tax increase. In general, these individuals and families are not receiving the subsidy for health insurance. This means they have no government benefit to offset their new tax liability. The most important point I want to make—for the third time—is that these tax increases fall on individuals making more than \$50,000 and families making more than \$75,000. Again, I highlighted this group on the Joint Committee on Taxation chart.

The Joint Committee distributed in this chart three separate tax provisions: the high-cost plan tax, the medical expense deduction limitation, and the Medicare payroll tax. Among these

tax provisions, the high-cost plan tax seems to be garnering the most attention and also tremendous opposition. I don't have to explain who the opponents of this tax increase are. Everybody knows. In fact, yesterday I had representatives of the Iowa Education Association, the teachers of Iowa, saying they are against that high plan tax because it is going to hurt Iowa teachers. So if this provision, the high-cost plan tax, were to drop out of the Reid bill for one reason or another—and this bill is still being written in secret or at least changes in this 2,074-page bill are being written in secret so who knows what is going to happen to this highly controversial thing—if it is taken out, some Members may feel they have successfully shielded the middle class from a tax increase. Unfortunately, for those Members who may be hopeful of this, lesser known tax provisions that are likely to stay in the changes that come through the Democratic health care reform product would still raise taxes on the middle class.

Again, don't take my word for it. The Joint Committee on Taxation tells us so. Specifically, that committee sent a letter to Senator CRAPO stating that tax provisions such as the cap on flexible savings accounts, the elimination of tax reimbursements for over-the-counter medicines and, most importantly, the individual mandate excise tax penalty will increase taxes on people making less than \$250,000. That happens to be middle-class individual, middle-class families, and middle-class single parents.

I ask unanimous consent to have printed in the RECORD that letter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON TAXATION,  
Washington, DC, December 9, 2009.

Hon. MIKE CRAPO,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR CRAPO: This letter is in response to your request of December 8, 2009, for information regarding the "Patient Protection and Affordable Care Act," as introduced by Senator Reid. In particular, you requested that we provide you with information on the provisions in the bill that would increase tax liability for taxpayers with adjusted gross income ("AGI") under \$200,000 (\$250,000 in the case of a joint return).

In previous correspondence with you, we provided a distributional analysis of the bill. In estimating the distributional effects of the bill, we distributed items that have economic incidence on individuals, including some items that do not have statutory incidence. We are enclosing a copy of that distributional analysis for reference. Included in the distribution table are the following items that would have statutory incidence as well as economic incidence on individuals and are likely to increase tax liabilities for some taxpayers with AGI below \$200,000 (\$250,000 in the case of a joint return):

1. Raise the 7.5 percent AGI floor on medical expenses deduction to 10 percent; and

2. Additional 0.5 percent hospital insurance tax on wages in excess of \$200,000 (\$250,000 joint).

You asked us to enumerate items that we have not previously distributed and that we believe could affect the tax liability of taxpayers with AGI below \$200,000 (\$250,000 in the case of a joint return). Below is a list of the provisions that we have not previously distributed and that have statutory incidence on individuals, with some of those in-

dividuals likely to have income below your threshold:

1. Conform definition of medical expenses for health savings accounts, Archer MSAs, health flexible spending arrangements, and health reimbursement arrangements;

2. Increase the penalty for nonqualified health savings account distributions to 20 percent;

3. Limit health flexible spending arrangements in cafeteria plans to \$2,500;

4. Impose a five-percent excise tax on cosmetic surgery and similar procedures; and

5. Impose an individual mandate penalty.

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

THOMAS A. BARTHOLD.

Enclosure.



#D-09-26  
November 19 2009

**DISTRIBUTIONAL EFFECTS OF A PROPOSAL TO  
IMPOSE A 40 PERCENT EXCISE TAX ON HEALTH COVERAGE IN EXCESS OF \$8,500/\$23,000  
(\$9,850/\$26,000 FOR RETIRED AND HIGH RISK) INDEXED TO THE CPI-U PLUS ONE PERCENTAGE POINT;  
PROVIDE EXCHANGE PLAN CREDITS AND SUBSIDIES TO CERTAIN LOW-INCOME TAXPAYERS;  
INCREASE H TAX ON EARNINGS IN EXCESS OF \$200,000 (\$250,000 JOINT FILERS);  
AND INCREASE THE AGI FLOOR FOR MEDICAL EXPENSE DEDUCTIONS TO TEN PERCENT(1)**

Calendar Year 2017

INCOME CATEGORY (2)	CHANGE IN FEDERAL TAXES (3)		FEDERAL TAXES (3) UNDER PRESENT LAW		FEDERAL TAXES (3) UNDER PROPOSAL		Average Tax Rate (4)	
							Present	Proposal
	Millions	Percent	Billions	Percent	Billions	Percent	Law	Percent
Less than \$10,000.....	-\$60	-0.6%	\$10	0.3%	\$10	0.3%	7.3%	7.2%
\$10,000 to \$20,000.....	-\$6,154	-32.3%	\$19	0.6%	\$13	0.4%	4.8%	3.3%
\$20,000 to \$30,000.....	-\$19,168	-36.7%	\$52	1.7%	\$33	1.1%	10.4%	6.6%
\$30,000 to \$40,000.....	-\$18,744	-21.3%	\$88	2.8%	\$69	2.3%	13.9%	10.9%
\$40,000 to \$50,000.....	-\$12,573	-11.3%	\$111	3.6%	\$98	3.2%	14.5%	12.9%
\$50,000 to \$75,000.....	-\$12,007	-3.7%	\$325	10.5%	\$313	10.2%	16.2%	15.6%
\$75,000 to \$100,000.....	\$2,292	0.7%	\$346	11.1%	\$349	11.4%	18.0%	18.1%
\$100,000 to \$200,000.....	\$14,387	1.6%	\$887	28.5%	\$902	29.4%	22.6%	23.0%
\$200,000 to \$500,000.....	\$6,187	1.2%	\$535	17.2%	\$541	17.6%	27.7%	28.0%
\$500,000 to \$1,000,000.....	\$2,360	1.2%	\$205	6.6%	\$207	6.7%	29.9%	30.3%
\$1,000,000 and over.....	\$3,454	0.7%	\$531	17.1%	\$534	17.4%	29.8%	30.0%
<b>Total, All Taxpayers.....</b>	<b>-\$40,024</b>	<b>-1.3%</b>	<b>\$3,109</b>	<b>100.0%</b>	<b>\$3,069</b>	<b>100.0%</b>	<b>21.2%</b>	<b>20.9%</b>

Source: Joint Committee on Taxation

Detail may not add to total due to rounding.

(1) The proposal would impose a 40% excise tax at the insurer level on health coverage in excess of \$8,500 for single plans and \$23,000 for family plans. For retired individuals age 55 and over or those covered by a plan for high risk industries, the 40% excise tax would apply on health coverage in excess of \$9,850 for single plans and \$26,000 for family plans. Amounts would be indexed for inflation by the CPI-U plus one percentage point in years after 2013. The excise tax is nondeductible. The proposal would provide transition relief for the high 17 states. Under the proposal, refundable tax credits would be provided to taxpayers who enroll in exchange plans with income between 100 percent and 400 percent of FPL. The proposal provides for outlays in the form of cost-sharing subsidies for out-of-pocket medical expenses for exchange participants between 100% and 200% of FPL. The proposal increases the AGI threshold for the deduction of medical expenses from 7.5% to 10%, except for age 65 and older. The proposal would increase the revenue effects of changes in excludable compensation due to the effects of the broader reform on employer sponsored coverage. The analysis includes the revenue effects of changes in excludable compensation due to the effects of the broader reform on employer sponsored coverage.

(2) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest,

[2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] worker's compensation,

[5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, and

[8] excluded income of U.S. citizens living abroad. Categories are measured at 2009 levels.

(3) Federal taxes are equal to individual income tax (including the outlay portion of refundable credits), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax is not included due to uncertainty concerning the incidence of the tax.

Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis.

(4) The average tax rate is equal to Federal taxes described in footnote (3) divided by income described in footnote (2).

#D-09-26  
November 19, 2009

**DISTRIBUTIONAL EFFECTS OF A PROPOSAL TO  
IMPOSE A 40 PERCENT EXCISE TAX ON HEALTH COVERAGE IN EXCESS OF \$8,500/\$23,000  
(\$8,500/\$26,000 FOR RETIRED AND HIGH RISK) INDEXED TO THE CPI-U PLUS ONE PERCENTAGE POINT;  
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INCREASE HI TAX ON EARNINGS IN EXCESS OF \$200,000 (\$250,000 JOINT FILERS);  
AND INCREASE THE AGI FLOOR FOR MEDICAL EXPENSE DEDUCTIONS TO TEN PERCENT(1)**

[Returns in Thousands; Dollars in Millions]

Calendar Year 2017

INCOME CATEGORY (2)	CHANGE IN FEDERAL TAXES (3)							
	All Returns		Single Filers		Joint Filers		Head of Household	
	Returns	Dollars	Returns	Dollars	Returns	Dollars	Returns	Dollars
Less than \$10,000.....	785	-\$60	562	-\$9	92	\$4	131	-\$55
\$10,000 to \$20,000.....	4,149	-\$6,154	2,955	-\$4,031	426	-\$522	768	-\$1,601
\$20,000 to \$30,000.....	7,889	-\$19,168	4,228	-\$6,021	1,138	-\$3,431	2,523	-\$9,716
\$30,000 to \$40,000.....	9,396	-\$18,744	4,694	-\$2,857	2,006	-\$6,138	2,696	-\$9,749
\$40,000 to \$50,000.....	9,480	-\$12,573	4,631	-\$554	2,615	-\$5,223	2,233	-\$6,796
\$50,000 to \$75,000.....	19,375	-\$12,007	7,621	\$3,100	8,150	-\$9,514	3,604	-\$5,592
\$75,000 to \$100,000.....	14,038	\$2,292	3,082	\$1,695	9,619	\$134	1,338	\$464
\$100,000 to \$200,000.....	19,465	\$14,387	2,326	\$1,325	16,397	\$12,545	743	\$516
\$200,000 to \$500,000.....	4,845	\$6,187	530	\$792	4,200	\$5,220	115	\$175
\$500,000 to \$1,000,000.....	749	\$2,360	79	\$226	649	\$2,066	22	\$67
\$1,000,000 and over.....	417	\$3,454	49	\$364	360	\$3,016	9	\$73
<b>Total, All Taxpayers.....</b>	<b>90,589</b>	<b>-\$40,024</b>	<b>30,757</b>	<b>-\$5,937</b>	<b>45,652</b>	<b>-\$1,881</b>	<b>14,160</b>	<b>-\$32,207</b>

Source: Joint Committee on Taxation

Detail may not add to total due to rounding.

- (1) The proposal would impose a 40% excise tax at the insurer level on health coverage in excess of \$8,500 for single plans and \$23,000 for family plans. For retired individuals age 55 and over or those covered by a plan for high risk industries, the 40% excise tax would apply on health coverage in excess of \$8,500 for single plans and \$26,000 for family plans. Amounts would be indexed for inflation by the CPI-U plus one percentage point in years after 2013. The excise tax is nondeductible. The proposal would provide transition relief for the high 17 states. Under the proposal, refundable tax credits would be provided to taxpayers who enroll in exchange plans with income between 100 percent and 400 percent of FPL. The proposal provides for outlays in the form of cost-sharing subsidies for out-of-pocket medical expenses for exchange participants between 100% and 200% of FPL. The proposal increases the AGI threshold for the deduction of medical expenses from 7.5% to 10%, except age 65 and older. The proposal would increase the revenue effects of changes in excludable compensation due to the effects of the broader reform on employer sponsored coverage. The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: (1) tax-exempt interest, (2) employer contributions for health plans and life insurance, (3) employer share of FICA tax, (4) worker's compensation, (5) nontaxable Social Security benefits, (6) insurance value of Medicare benefits, (7) alternative minimum tax preference items, and (8) excluded income of U.S. citizens living abroad. Categories are measured at 2009 levels.
- (2) Federal taxes are equal to individual income tax (including the outlay portion of refundable credits), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax is not included due to uncertainty concerning the incidence of the tax. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis.

Mr. GRASSLEY. In closing, let me turn to one more chart the Joint Tax Committee has provided. This chart shows the effect on the medical expense deduction limitation. This tax increase is just one of the many tax increases likely to stay in the new Democratic proposal. On this chart, which is for the year 2019, because that is when this bill is fully implemented, we see positive dollar figures. I have highlighted these dollar figures in yellow. For those who may not be able to see, I will reiterate that this chart only has positive dollar figures on it. But remember, as I explained yesterday, when we see positive dollar figures from the Joint Committee on Taxation, that committee is telling us that taxes for these people are going to go up. That means for all of the tax returns listed on this chart, taxes will be going up for each. And this tax increase, the medical expense deduction limitation, reaches as low as someone making \$10,000 a year.

Maybe some of these low-income individuals and families who will see a tax increase under this provision will receive a subsidy for health insurance. These people may be able to offset this new tax liability. But you can bet your bottom dollar that a large portion of the middle-income individuals and families are not receiving a subsidy. This means that this tax liability highlighted in yellow cannot be offset by the government benefit.

My Democratic friends cannot escape that fact. Even if my friends drop some of the tax provisions in the current Reid bill, many tax provisions will most likely remain. And those tax provisions will increase taxes on middle-class Americans. This not only breaks President Obama's pledge, but it will arbitrarily burden middle-class Americans for years to come.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from New Jersey.

Mr. MENENDEZ. What is the pending business before the Senate?

The PRESIDING OFFICER. The conference report to accompany H.R. 3288.

Mr. MENENDEZ. I thank the Chair.

I rise about a program funded in that conference report. It is a program that we put under the framework of Cuba broadcasting. It is surrogate broadcasting into a closed society, a society for which the State controls all information or attempts to control all information to its 11 million citizens. It is a part of a long tradition of the United States with the Voice of America type of broadcasting, the effort to try to bring a free flow of information into countries in the world which are governed by despotic rulers. We did this successfully in the former Soviet Union. We did it successfully in Eastern Europe and during the changes in the Czech Republic, then Czecho-

slovakia, Poland, the Solidarity movement, and many others. We have been proud of that history of bringing the free flow of information. We now try to use it in different parts of the world based on the new challenges we have.

One of those places in the world in which we do this surrogate broadcasting is into the island of Cuba, because it has a repressive regime that will not allow the free flow of information to go to its people. We have a program called Radio and Television Marti. Marti is sort of like the George Washington of Cuba. It is named after him.

In 1983, Congress passed the Radio Broadcasting to Cuba Act to provide the people of Cuba, through Radio Marti, with information the Cuban Government would try to censor and keep from them. Subsequently in 1990, Congress authorized U.S. television broadcasting to Cuba through Radio and Television Marti to support the right of the Cuban people to receive information and ideas they would not normally receive. It opened radio and television broadcasting to Cuba, provided a consistently reliable and authoritative source of accurate, objective, and comprehensive news commentary and other information about events in Cuba and elsewhere. It did so to promote the cause of freedom inside of Cuba.

We know there is a long history of repressive regimes trying to block our surrogate broadcasting around the world. They just don't simply sit back and say: Send it all in. Let me accept whatever it is you are sending in. That is not their effort. Their effort is to block. And our difficulty with broadcasting has never been a justification for cutting funding for these programs. We have never submitted to the proposition that when a regime tries to block our surrogate broadcasting—whether it was Voice of America, Radio Free Europe, all of those efforts, there was always blocking taking place—that that is a cause or justification for cutting funding. It should not be a different standard now.

I ask, when it comes to Cuba broadcasting, why the double standard? In fact, especially now when change is coming to Cuba, it is in our interest to have the capacity to broadcast information to the Cuban people.

I want to show one of the charts that may be a little difficult back at home, but these are actual photographs which came from a January 2009 Government Accountability Office report which were provided by an organization that reports on Cuban affairs. It depicts evidence of Cubans' ability to watch Television Marti despite Cuban jamming efforts. These pictures were taken from inside of Cuba. They may not be the best picture quality, although I doubt they have digital television inside of Cuba. But nonetheless, they have the ability to see it.

There are other pictures of Cubans. Here is a picture of a group of individuals who, in fact, are part of an effort to create a library system, something as fundamental in the United States as a free public library. There isn't that in Cuba, at least not a free public library. They control what books might be found there.

So these groups try to create information. One of the things they do is, again, to be able to have access—as shown in this picture. This is a panel that is talking on Television Marti. Here, in this picture, is a young child watching a Marti program inside of Cuba. You can see the logo here of Marti TV.

As shown in this picture, this was a special that was broadcast into Cuba and was seen in Cuba on the Reverend Dr. Martin Luther King on the whole issue of peaceful, nonviolent change—as a message to the Cuban people that, in fact, these things could be achieved.

Now, you can see at the bottom of these pictures—it is a little hard to see—but here is the Marti logo that is seen on the bottom right-hand corner on several of these photographs.

This came from that Government Accountability Office report. A January 2009 report by the Government Accountability Office noted the following:

The Broadcasting Board of Governors—which is the oversight we have as the Federal Government—and the Office of Cuba Broadcasting and the U.S. Interests Section in Havana—which, in essence, is, we do not have an Embassy there because we do not have relations, but we have an Interests Section there—that Cuba officials emphasized that they face significant challenges in conducting valid audience research due to the closed nature of Cuban society.

U.S. government officials stationed in Havana are prohibited by the Castro regime from traveling outside of Havana.

We know it is difficult to travel to Cuba for the purpose of conducting audience research. We know the threat of Cuban Government surveillance and reprisals for interviewers and respondents raises concerns about respondents' willingness to answer sensitive questions frankly.

In this January 2009 Government Accountability Report, U.S. officials indicated that research on Radio and TV Marti's audience size faces significant limitations. For example, none of the data is representative of the entire Cuban population. Telephone surveys are the only random data collection effort in Cuba, but it might not be representative of Cuba's media habits for several reasons. But here are two of the main ones.

First, only adults in homes with published telephone numbers are surveyed. According to Broadcasting Board of Governors documents, approximately

17 percent of Cuban adults live in households with published household numbers. That means that 83 percent of the population does not have a published telephone number.

Second, the Board of Governors and the Office of Cuba Broadcasting officials noted that because individuals in Cuba are discouraged or prohibited by their government from listening to and watching U.S. international broadcasts, they might be fearful of responding to media surveys and disclosing their media habits.

If I am told that it is illegal for me simply to watch the programming of some international organization, and that I can go to jail for listening to that programming, then ultimately—then ultimately—am I going to be truthful to some telephone survey about: Did I watch TV Marti? Did I listen to Radio Marti?

Mr. President, I know about this personally. Years ago, when I was in the House of Representatives, while I had an aunt who was still alive at the time, who I had asked never to acknowledge me as her nephew—which she agreed to—in my second term, however, she was listening to me on Radio Marti, and in a moment of pride, she said: “Oh, that Menendez is my nephew.”

Unfortunately, she said it in front of some visitors who she thought were her friends. One of them was part of El Comité de Defensa de la Revolución, which means “The Committee to Defend the Revolution,” a block watch organization in every city, in every village, in every hamlet inside Cuba, whose only job is to go and spy on their neighbors and tell the state security who speaks ill or does something against the regime.

Unfortunately, for that simple act of speaking out, saying to a friend: “Oh, that Menendez is my nephew,” my aunt suffered serious consequences.

So the audience size might very well be larger than the survey results would indicate because people are fearful to say: Yes, I am listening to Radio and Television Marti, because I cannot do that and not face the consequences of a regime that would arrest me.

Radio and TV Marti have a larger audience in Cuba. Why do I say that? Because a 2007 survey that the Office of Cuba Broadcasting commissioned, intended to obtain information on programming preferences and media habits, also contained data on Radio and TV Marti's audience size.

While the survey was not intended to measure listening rates or project audience size, this nonrandom survey of 382 Cubans, who had recently arrived in the United States—so now they were free to say what they actually did back at home because they were not subject to being arrested simply for listening to Radio and Television Marti—found that 45 percent of all of those respondents reported listening to Radio Marti

and that over 21 percent reported watching TV Marti within the last 6 months before leaving Cuba.

So I rise because I want to bring this data, this information, this perspective to the debate.

I am happy to see the very deep cuts that were made to the Office of Cuba Broadcasting that contains both Radio and Television Marti have largely been restored. That is one of the reasons I felt willing to vote to proceed with the omnibus bill.

One of the body's greatest strengths is the ability to freely debate issues in an open format, issues on which, in the end, we might completely disagree, but issues that need to be brought into clear focus for the American people.

However, when I see my colleagues drawing conclusions on their own, without reasonable data to support those conclusions, I feel compelled to come and present an alternative perspective of the facts.

Why is this important to us. The United States is a beacon of light of freedom and democracy around the world. The promotion of democracy and human rights has always been one of the pillars of our foreign policy.

Yesterday was Human Rights Day, which is the day that marks the anniversary of the United Nations Assembly's adoption of the Universal Declaration of Human Rights in 1948. It is recognized every year on December 10.

Yesterday, in the midst of the recognition of this day in Havana, we saw the brutal Castro regime cracking down on people just because they were trying to exercise their right for peaceful demonstration. We saw people beaten, arrested, and forcibly detained.

There is a group of ladies; they call themselves the Ladies in White. They are mothers and sisters and friends of jailed dissidents inside of Cuba. So these are people of imprisoned family members—their son or their daughter, their brother or sister, their friends—and the only reason those people are in jail is because they have pursued peaceful means to try to create change inside of their own country. They may have said something. They may have worn a white band that says “cambio,” which means “change.” They may have simply uttered the fact that: What we need is change inside of Cuba.

So these Ladies in White—they dress fully in white so that, in fact, it is a form of being noticed, but, again, a peaceful form—held long-stem flowers and miniature Cuban flags. They were attacked by hundreds of angry pro-government demonstrators who sought to drown out their chants of “freedom” by yelling “this street belongs to Fidel.”

Now, in Cuba, these groups are not spontaneous. It is not the citizenry. It is something called “rapid response brigades.” They are state security dressed as civilians, whose purpose is

to make it seem that the populous is against the human rights activists and political dissidents. But, ultimately, they are state security agents who act in a way to make it seem quite different. But they are thugs.

Mr. President, the reason the regime organizes protests in this way is so if you orchestrate a protest, where it looks like its citizens are protesting against each other, then the regime can deny, in fact, any role in the event.

However, we know very well the role the Castro regime plays in these demonstrations. Especially in light of the events of yesterday and today, we know the Castro regime is a brutal totalitarian dictatorship that continues to violate the most basic human rights, continues to crush debate and crush dialog.

Yesterday, I came to the floor as part of my concerns and I spoke about this gentleman and his wife, as shown in this picture. I spoke about Jorge Luis García Pérez “Antunez.” This is a gentleman who said, while standing in a plaza in his hometown, which is in the center of Havana—it is not where the tourists go, not on the beaches of Havana; it is in the heart of Havana—he said what we need is the type of change we saw in Eastern Europe.

For that simple statement, he was thrown into jail for 17 years—17 years. He came out a couple years ago, but he has not changed. He has not changed his views or his effort to create human rights.

He issued a public letter that I read yesterday, an English translation, of a public letter he wrote to the present dictator, Raul Castro, the brother of Fidel Castro, and he said many things. I am not going to read the whole letter again, but he said things like: Let me ask you a few questions that I think are important.

With what right do the authorities, without a prior crime being committed, detain and impede the free movement of their citizens in violation of a universally recognized right?

The very rights that are being observed in that international Human Rights Day of the Universal Declaration of Human Rights.

What feelings could move a man like Captain Idel González Morfi to beat my wife, a defenseless woman so brutally causing lasting effects to her bones for the sole act of arriving at a radio station to denounce with evidence the torture that her brother—

Her brother; this is his wife shown in the picture—received in a Cuban prison.

I spoke about him yesterday and his letter. What happened today, Mr. President?

Today, the day after Human Rights Day, and the day after I read his letter into the RECORD, and 2 days after he presented that letter to Raul Castro, he was arrested again by the regime and arbitrarily detained with his wife and another activist.

What is his crime? That I read a letter in the U.S. Senate about his calls for freedom and democracy? And the day after the recognition of international human rights, he gets arrested today, and his wife gets arrested today—or detained today. I am not sure. He got arrested for sure.

TV Marti is one of the many efforts the U.S. Government rightly invests in to try to reach the Cuban people with information, to try to reach the people who were beaten today and yesterday and, for decades, simply for trying to demonstrate peacefully, to speak their mind, to walk in peace and in remembrance of their loved ones they lost under the clenched fists of this regime.

I feel badly that the day after I spoke about Mr. Antunez, he ends up in jail. So we need to have a spotlight, just as we did for Aleksandr Solzhenitsyn in the Soviet Union; just as we did for Vaclav Havel as he was trying to create change for the Czech Republic; just as we did with Lech Walesa when he was having the Solidarnosc Movement inside Poland.

For some reason, I can't get anybody to come to this floor and talk about the human rights violations inside Cuba. I hear a lot about: Let's trade with Cuba, let's do business with Cuba, let's travel to Cuba but, God, I never hear anyone talking about these human rights activists like the Lech Walesas, the Vaclav Havels, the Aleksandr Solzhenitsyns of that other time.

This man got arrested today simply because yesterday we made his letter public. That is the Castro regime that I know, not the romanticism of what some people have about what goes on at that island.

So I am pleased the Office of Cuba Broadcasting has made efforts over the last year to reevaluate the programs they are carrying out and carefully consider creative ways to reach the Cuban people. They have done this with Television Marti. They will continue to do this with other programs. I would expect nothing less. The kind of evaluation should continue. We should constantly strive to tailor our programs so our investments are reaching those who truly need our help, investments that are advancing U.S. foreign policy interests, the national interests of the United States, and the national security interests of the United States.

I have a declaration that came out of Cuba of over 100 human rights activists inside Cuba who are in support of the efforts of the United States as it relates to the surrogate broadcasting that goes into Cuba from Radio and Television Marti. This broadcasting provides some free flow of information of what is happening in the rest of the world, as well as what is happening inside Cuba. Because that is part of what we help here, to let those who otherwise would not know because of a closed society and a dictatorship that

rules with an iron fist what is happening even inside their own country, what is happening to people such as Mr. Antunez, what is happening to the ladies in white who are protesting peacefully about their loved ones in jail.

With that letter of over 100 human rights activists is the recognition that we will not let up for Mr. Antunez and the recognition that there are voices who will continue to speak out for the human rights.

The last point I wish to make, imagine if you were sitting in a gulag somewhere, if you were beaten simply because you had a few words to say about creating change peacefully in your own country; imagine if you could be swept away by security police and taken to some jail and maybe not seen for years after that. Would you not want someone somewhere in the world to be standing and speaking for you? I would, and that is what I try to do on this floor.

With that, I yield the floor.

Mr. FEINGOLD. Mr. President, the massive, unamendable spending bill before the Senate includes three bills that the Senate never had a chance to consider, and is chock-full of earmarks. At a time of record budget deficits, we should be showing our constituents that we are serious about fiscal responsibility. Instead of controlling spending, this bill represents business as usual in Congress.

Mr. DEMINT. Mr. President, I rise today to address a question submitted to me from the good Senator from Illinois as to whether the DC Opportunity Scholarship Program will in fact end after this year. In order to respond to my colleague, I would like to highlight a particular section of the Financial Services and General Government Appropriations Act of 2010 that funds the District of Columbia's budget.

In title IV, which explains how the District of Columbia is funded, it states that \$13.2 million will indeed be provided for opportunity scholarships for existing students in the DC Opportunity Scholarship Program. However, the very next line clearly states that the funds are to "remain available until expended," which means that the program will eventually be phased out and terminated once the funding for current students is exhausted. Students in the program will slowly be phased out over time, unable to avail themselves of future educational opportunities currently given to them through this program.

The DC Opportunity Scholarship Program, which has the overwhelming support of DC residents, parents, Mayor Adrian Fenty, Chancellor Michelle Rhee, former Mayor Anthony Williams, and a majority of the DC City Council, has now been mandated a slow death by House and Senate appropriators. This scholarship program, which gives

students of Washington, DC's poorest families a chance at a quality education, has now effectively been terminated since there is only funding available for existing scholarships and existing students, and not for future scholarships and future students.

By funding this program in such a manner in the omnibus, Congress is ultimately signaling the beginning of the end for this scholarship program. By disallowing future students to take part, the size of the program will shrink year after year, and will deny entry to siblings of existing participants—punishing many who have been waiting in line for this tremendous opportunity. Additionally, the federal evaluation of this program will be compromised as the numbers of participants diminishes, making it difficult for administrators to evaluate the effectiveness of the program.

The fact that this administration continues to claim that the DC Opportunity Scholarship Program is not being terminated is yet another act of deception on their part to the American people. The President, who himself is a recipient of a K-12 educational scholarship, has refused to stand up for children in our Nation's Capital and fight for the same educational opportunities afforded to him and his family—a right he exercises now as he practices school choice with his own children.

Mr. JOHNSON. Mr. President, working families are struggling to pay the costs of health care in this country. As the debate over health care reform progresses, we must keep in mind that Americans need and deserve quality, affordable health care. All too often families learn that the plan they could afford was not adequate when they needed it most.

I recently heard from Cory and Erin in Lake Herman, SD. They shared the story of their daughter's birth and how they discovered the inadequacies of their seemingly affordable health insurance policy. When Cory and Erin's daughter Katarzyna was born in 2006, Cory was working as an English and math teacher. At the time, the family health insurance plan available to him through the school district cost nearly 50 percent of his monthly salary. Cory chose instead to buy a catastrophic, high-deductible policy on the individual market for just over 10 percent of his income. Cory and Erin were healthy adults and had no major medical issues until the birth of their daughter. Their insurance policy did not cover prenatal or maternity care.

Wanting to be smart health care consumers, Cory and Erin shopped around for the best and most affordable hospital to welcome the birth of their first child and decided on their nearby community hospital. However, when Katarzyna was born, she had a lung infection that required immediate action. Exhausted and worried for the

health of their new baby girl, Cory and Erin had only moments to decide whether to airlift Katarzyna to a hospital with specialized care. At that moment, the last thing they could think about was the cost.

Katarzyna spent 3 nights in the Natal Intensive Care Unit of one of the State's largest hospitals, where she received top-notch care and survived the near-fatal pneumonia. The total cost came to \$24,000, of which Cory and Erin's high-deductible insurance policy covered only \$12,000. For the next several months, the family faced not only the challenges of a new baby but significant debt and a drawn-out struggle with their insurance company. They found a mistake with nearly every bill they received. Since this experience, Cory and Erin have purchased a new policy but worry that the insurance they can afford is not adequate in the face of another unforeseen medical emergency.

Like many Americans, Cory and Erin have health insurance. Despite their limited income, they took the responsibility to buy their own policy and tried to be smart health care consumers. Their experience, however, illustrates the vulnerability of Americans who purchase insurance on the individual market, as well as the limits to which it is possible for Americans to be informed health care consumers.

The health care market does not function like other consumer markets. Ask your neighbor what a gallon of milk costs and they could tell you. Ask them how much it costs to have a baby and you would likely get a variety of answers, based entirely on their own experience with this important life event. The fact is the cost of having a baby depends. It depends on how much you pay for health insurance, what your insurance policy will cover and how much of that cost is your share. It depends on where you live, what complications may arise and whether the hospital nearby is equipped to handle an emergency.

The Patient Protection and Affordable Care Act will guarantee families access to affordable health insurance and coverage for essential benefits, including prenatal and maternity care. New health insurance exchanges in every State will provide a menu of quality, affordable health insurance plans for the self-employed and those who can't afford the coverage offered by their employer. Families who need assistance will be eligible for tax credits to make the plan of their choice affordable. Most importantly, families like Cory, Erin and Katarzyna's will have health insurance that covers life's essential needs. The birth of a child should not be a time to worry about what your health insurance will pay for or whether you can afford the treatment you need. Health care reform will give American families one less thing

to worry about with the security of quality, affordable health care.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that after any leader remarks on Saturday, December 12, the Senate then resume consideration of the conference report to accompany H.R. 3288, and that at 9:30 a.m., the Senate proceed to vote on the motion to invoke cloture on the conference report, with the time until 9:30 a.m. equally divided and controlled between the leaders or their designees; further, that if cloture is invoked, then postcloture time continue to run during any recess, adjournment, or period of morning business; that on Sunday, December 13, all postcloture time be considered expired at 2 p.m., and the Senate proceed to vote on the adoption of the conference report to accompany H.R. 3288.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### TRIBUTE TO CAROL BORNEMAN

Mr. MCCONNELL. Mr. President, today I would like to recognize an outstanding Kentuckian for her talented efforts to entertain and educate the public about the Cumberland Gap National Historic Park. Ranger Carol Borneman is the recipient of the 2009 Freeman Tilden Award for the southeast region of the National Park Service. Ranger Carol, as she is commonly known from her television show, "Wild Outdoor Adventures with Ranger Carol," has been with the Cumberland Gap National Historical Park for over 15 years and serves as the park's supervisory interpreter.

The Cumberland Gap, through the Cumberland Mountains and near the Kentucky-Virginia border, was America's historical gateway to the West. Ranger Carol's stories bring to life the travel experiences of America's earliest western settlers in a way that is both educational and memorable.

There is no doubt that it is Ranger Carol's love for the park that keeps her stories entertaining. Mark Woods, Superintendent of the Cumberland Gap National Historical Park, stated that "she truly has a passion for the work that she does and it definitely comes through on the show. . . . You cannot watch the show without being captivated by Carol's knowledge, dedication, and sheer enthusiasm."

The Freeman Tilden Award is the most prestigious award given in the

field of interpretation and education within the National Park Service. Borneman is not new to such an honor; in fact, this is the second time she has received it. It is with great pride that I rise today to ask my colleagues to join me in congratulating Ranger Carol Borneman on receiving the Freeman Tilden Award, and for her outstanding efforts to keep important Kentucky history alive for future generations to enjoy.

#### REMEMBERING A. ROBERT DOLL

Mr. MCCONNELL. Mr. President, today I would like to reflect on the life of a dear friend, the late A. Robert Doll. Bob, as he was affectionately known, was a well-known lawyer, leader, and volunteer in his beloved Louisville community. His passing is a great loss, but his legacy lives on in the business and organizations he so dearly loved.

Mr. Doll was a founding member of the law firm Greenebaum, Doll & McDonald in Louisville. He joined the firm in the 1950s after receiving his law degree from the College of William and Mary. During his 50-plus years with Greenebaum, Doll & McDonald, Bob helped the firm grow from a mere 20 lawyers to a firm with multiple offices and 120 lawyers. When Bob was just 30 years old, he argued and won a case before the U.S. Supreme Court.

Mr. Doll showed his respect for his customers with the motto, "I believe that a successful law firm must emphasize and create the delivery of prompt and exceptional legal service to the client—we must remember that the client is king." One of the great successes of his career was helping to bring the Toyota plant to Scott County. He also served as the president of the Louisville Bar Foundation. In 1986, Mr. Doll was named Lawyer of the Year by the Louisville Bar Association.

Bob was also active in his community, as he served as president of the Greater Louisville YMCA board of directors and maintained a leading role in the Boy Scouts of America. Phillip Scott, the current firm chairman of Greenebaum, Doll & McDonald, stated that "Mr. Doll was not just a great lawyer, but a great man and great leader. He was a progressive leader who made Greenebaum the firm it is today. We deeply value the friendship, ideals and character he bestowed upon on us, and we'll miss him greatly."

As a leader in his community, Bob Doll was a man of integrity who made a real positive impact in the Commonwealth. His devotion for creating and maintaining a client-focused business shows he always cared about serving the community first. He will be missed by all who had the pleasure of knowing him, and I ask that my colleagues join me in paying tribute to the wonderful life of Mr. A. Bob Doll.

## EL SALVADOR

Mr. LEAHY. Mr. President, I want to briefly discuss a subject that should interest all Senators concerning the country of El Salvador, which recently elected a new President and last month suffered extensive loss of life and devastating property damage as a result of torrential rains caused by Hurricane Ida.

First, I congratulate the people of El Salvador on the election, which was historic in that President Funes is the country's first President since the end of the civil war who is a member of the FMLN, which after the 1992 Peace Accords evolved from an armed insurgency into a political party. I am encouraged by what I have heard about President Funes' policies and wish him the best.

Second, the destruction caused by Hurricane Ida was extensive. Exceptionally heavy and constant rain fell on November 7 and 8, resulting in flooding and landslides that killed 192 people. Another 80 were reported missing, and more than 14,295 others were displaced from their homes. Thousands of homes, as well as roads, bridges, and other public buildings, were damaged or destroyed.

On November 10, U.S. Chargé d'Affaires Robert Blau declared a disaster in response to the damage, and the U.S. Agency for International Development has so far allocated some \$280,851 in humanitarian aid. An assessment of the total damage is underway, but it is expected to be in the hundreds of millions, if not billions, of dollars.

Congressman JIM MCGOVERN and I have urged the administration to provide additional aid. We remember how the U.S. Government all but forgot about El Salvador after the war ended, and this is a time to help the Salvadoran people recover from this tragedy.

Third, an issue that has deeply concerned me for many years is the problem of corruption and impunity in El Salvador. The police and the courts lack the training and resources they need, crimes are rarely solved and perpetrators are rarely punished. Violent crime and corruption have become endemic. El Salvador's democratic and economic development will continue to be impeded by a justice system that is incapable of enforcing the rule of law, and in which the Salvadoran people and foreign investors have little confidence.

One of the courageous Salvadorans who is trying to change this is Ms. Zaira Navas, inspector general of the National Police. She has a woefully inadequate budget and too few staff. But despite that, from everything I have heard she is doing an outstanding job for justice and the people of El Salvador.

I mention Ms. Navas because of the critical importance of the job she is doing, and because she has recently re-

ceived death threats and I am concerned for her safety. I urge officials at the U.S. Embassy to discuss with President Funes what steps can be taken immediately to provide her the security she needs, and to increase the budget of her office.

El Salvador is a small country but one with which the U.S. has a long history. We both have newly elected presidents, and I am hopeful that we will see a renewed effort to work together to broaden our relations. Nothing, in my view, is more important than strengthening the rule of law and supporting people like Ms. Navas, but we should also expand our collaboration in health, education and exchanges, the environment, trade and investment, science and technology, the arts and culture.

## CONGO

Mr. FEINGOLD. Mr. President, last month, the United Nations Group of Experts on the Democratic Republic of Congo presented its latest report to the U.N. Security Council. Over the years, the Group of Experts has conducted critical investigations into violations of the sanctions and the U.N. arms embargo toward Congo as well as human rights abuses and the linkages between natural resource exploitation and the financing of illegal armed groups. Yet, too often, the Group of Experts' reports and recommendations have not resulted in action by the Security Council and/or U.N. member states. I hope it will be different with this report, especially since it identifies a number of concrete steps through which U.N. member states can address the financial and support networks that fuel the violence in eastern Congo.

This new Group of Experts report particularly focuses on the FDLR, the armed group comprising many former Rwandan génocidaires that is at the heart of the instability in eastern Congo. It documents how this group continues to benefit from "residual but significant support" from top commanders of the Congolese military. It also documents how this group is supported by a far-reaching international Diaspora network. Based on records of satellite phones, the Group of Experts found that the FDLR commanders frequently communicate with people in twenty-five different countries in Europe, North America and Africa. The report also mentions credible reports and testimony that the FDLR is using Burundi "as a rear base" for regrouping and recruitment purposes.

To address these continued support networks, the Group of Experts recommends that U.N. member states direct their respective law enforcement and security agencies to conduct investigations and share relevant information on FDLR Diaspora members providing material support to the group.

The Group also calls on member states to prosecute violations of the sanctions regime by their nationals or leaders of armed groups that are currently residing within their countries. The report cites three such leaders who have resided in France and Germany. With regard to the Congolese military, the Group recommends that the Security Council require member states to notify and get approval from the Sanctions Committee for all deliveries of military equipment and provision of training to Congo. This would help ensure that international assistance is not contributing to abusive behavior or going to units of the military believed to be colluding with armed groups.

Building on its previous reports, the Group of Experts report also shows how the FDLR and other armed groups continue to benefit from the exploitation of natural resources. According to this Group's investigations, the FDLR continues to get millions of dollars in direct financing from gold and cassiterite reserves in eastern Congo. The report illustrates how gold from eastern Congo is smuggled out to Uganda and Burundi, and then travels on to the United Arab Emirates and ultimately international markets. Similarly, the report documents how former rebels of the CNDP—who have ostensibly become part of the Congolese military—continue to control and exploit mineral-rich areas. In fact, two of the most lucrative mining sites are reportedly controlled by units of the Congolese military that are composed almost exclusively of former CNDP units. This is especially worrying in the context of the CNDP's integration into the Congolese military, which is still extremely fragile.

I have long called for action to address the armed exploitation of Congo's minerals, which fuels this conflict. I was pleased to join with Senators BROWNBACK and DURBIN earlier this year to introduce the Congo Conflict Minerals Act, S. 891, which would commit the United States to address this issue comprehensively. And I was glad that Secretary Clinton spoke about this issue during her visit to Congo in August. As the Group of Experts report makes clear, armed groups will continue to exploit the region's rich mineral base as long as it is profitable. The Group of Experts recommends that member states take necessary measures to clarify the due diligence obligations of companies under their respective jurisdictions that operate with these minerals. The Group also calls for the Congolese government to establish an independent monitoring team, with international support, to conduct spot checks of mines and mineral trading routes.

I am glad that there is increasing outrage about what is happening in eastern Congo. It is the single deadliest conflict since the Second World War



and millions have been displaced from their homes, forced to live in squalid conditions. Countless women and girls and some men and boys in the Congo have endured rape and sexual violence. But our outrage means little unless it translates into concrete actions to fundamentally change the situation in Congo. We need to finally get serious about addressing the underlying issues that make this war profitable and allow it to persist. The Group of Experts has provided a clear picture of some of those issues as well as specific ways that U.N. member states can address them, including within our own national jurisdictions. I applaud the Group for its courageous work. I strongly hope that the Security Council will pursue the report's recommendations, and I urge the Obama administration to lead the way in this respect.

#### RECOGNIZING WREATHS ACROSS AMERICA

Ms. SNOWE. Mr. President, today I pay tribute to Wreaths Across America and Morrill and Karen Worcester, whose outstanding vision of a nationwide effort to extol America's fallen heroes is now in its 18th year!

Nothing could be more central to the Wreaths Across America organization—which counts among its many tremendous volunteers and partners, The Maine State Society of Washington, DC, the Civil Air Patrol, the Patriot Guard Riders, and members of The American Legion and Veterans of Foreign Wars—than its noble mission to remember those who made the ultimate sacrifice, honor those who serve, and teach our children that today's freedoms have been won at a great price. And how fitting it is that Mainers across our State ushered in this week of solemn events and wreath-laying ceremonies sponsored by Wreaths Across America, the culmination of which will be the delivery of as many as 16,000 wreaths for placement at Arlington National Cemetery on December 12 as well as observances in more than 400 participating locations nationwide, including 24 overseas veterans cemeteries. Indeed, I could not have been more gratified to join Senator COLLINS in introducing legislation, designating December 12, 2009, as "Wreaths Across America Day" which passed the Senate unanimously on the first of this month.

What an inexpressible source of pride it is that tomorrow, on the morning of the 12th, a convoy of Mainers is scheduled to arrive at Arlington National Cemetery to lay Maine-made balsam wreaths at the grave sites of our Nation's fallen heroes. The Patriot Guard Riders will continue their tradition of escorting tractor-trailers filled with wreaths donated by Worcester Wreath Company in Harrington, ME, to Arling-

ton National Cemetery. On a personal note, I well recall the Worcester's initiating the Arlington Wreath Project in December of 1992, when Morrill called my office to ask if he could place his excess wreaths on the graves at Arlington National Cemetery. I never could have imagined that what occurred then would someday evolve into a nationwide expression of unfailing gratitude to our troops.

The enduring legacy of our bravest and finest for whom service above self and country above self-interest is woven into the fabric of our greatness is a powerful reminder that freedom is not free, especially as the indelible memories of those heroes who, in the immortal words of President Lincoln "gave the last full measure of devotion," are etched forever in our minds and upon our hearts. We also owe an enormous debt of gratitude to the men and women extraordinary enough to wear the uniform who are currently serving in harm's way and placing their lives on the line on our behalf, especially in Iraq and Afghanistan. Indeed, what a fitting remembrance this annual gesture of reverence and gratefulness by Wreaths Across America represents, especially during this joyous season of giving, for those who have bequeathed this great land so much, and for whom we are truly grateful.

#### TRIBUTE TO FIRST SERGEANT BRADLEY G. SIMMONS

Mr. BROWN. Mr. President, I rise to honor 1stSgt Bradley G. Simmons, U.S. Marine Corps, for his year of service to the U.S. Senate and for his continuing service to our Nation and the Marine Corps.

For the past year, 1stSgt Bradley Simmons has worked in my office and served the people of Ohio as the first enlisted Marine fellow in the U.S. Senate.

Before joining the Senate, 1stSgt Bradley Simmons served in Kuwait with the 3rd Assault Amphibian Battalion. He also participated in the initial attack and continuing operations in Iraq.

His heroic service as an AAV section leader during that time earned him the Navy and Marine Corps Commendation Medal and a combat distinguishing device for valor.

1stSgt Bradley Simmons' strength, dedication, and firsthand experience overseas made him an invaluable resource for my staff and our Nation's service members and veterans.

Understanding of the difficult transition for returning service members and veterans, 1stSgt Bradley Simmons reached out to help them and their families in tangible ways.

From helping Ohio veterans with their VA claims; to assisting a wounded service member during rehabilita-

tion; to meeting and speaking with the families whose loved ones are overseas, 1st Sgt Bradley Simmons demonstrated an unequivocal commitment to his fellow service members.

His tireless work on the Visions Scholars Act of 2009 will help ensure that veterans suffering from eye injuries would not also suffer from the current nationwide shortage of visions specialists at the VA.

The Vision Scholars Act of 2009 passed the Senate last month with great assistance from Sergeant Simmons.

But 1stSgt Bradley Simmons has been more than a trusted adviser.

He's been a teacher and a friend. As First Sergeant Simmons likes to say, he has been running a full-scale Marine Corps familiarization program in my office for the past year.

With a story-telling talent that left you laughing, with a moment of contemplation on the life of a marine, or with a little PT encouragement for the deskbound, First Sergeant Simmons made us appreciate the leadership qualities that are found throughout the ranks of the Marine Corps, but especially in him.

From interns in my office to constituents in the State, to all of my staff in Ohio and Washington, he succeeded in educating us about the honor, tradition, and sacrifices readily made by our Marines and our military forces.

He made us better at our jobs and better citizens in our communities.

He accompanied me to Walter Reed to visit troops recovering from combat injuries and later assisted in helping a few of them transition to life as a civilian, or on active duty in the guard or reserve.

He invited my staff to the Pentagon to a welcome home those recently injured in Iraq and Afghanistan.

During this past year, First Sergeant Simmons taught us about the determination and commitment of the men and women who give honor to the Marine Corps.

A lot has changed in the past year for our office, and for 1stSgt Bradley Simmons as well. First Sergeant Simmons came to my office as a gunnery sergeant.

At his promotion ceremony a few weeks back, his superiors explained that the Marine Corps does not base promotion in rank on previous performance and accomplishment.

Instead, promotion is based on a candidate's innate capability and potential to do the job well and the rank of first sergeant justice.

Like his superiors, I am as confident that he will succeed in anything he attempts and that he demonstrates the courage and commitment that we recognize in him.

His humility belies his dedicated service to our Nation. It provides great

comfort knowing that hundreds of marines will have the opportunity to work, live, learn, and serve with First Sergeant Simmons.

He is a testament to the Marines, to our Nation, to his family, and to his home State of Kansas.

And to Karen, his wife, thank you for your support and sacrifice while your husband serves this Nation. I enjoyed meeting you and I know that 1stSgt Bradley Simmons can do what he does because of your love and support.

After having the privilege of working with First Sergeant Simmons over the past year and seeing the lasting mark he has left on my office, I am honored to have someone of his caliber and commitment representing our Nation.

Thank you, 1stSgt Bradley G. Simmons, for your distinguished service to the people of Ohio and for your continued commitment to protecting our Nation and the prosperity of all Americans.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 10:47 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4017. An act to designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the "Ann Marie Blute Post Office".

At 3:00 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 62. Joint resolution appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

The message further announced that pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), as amended by division P of the Consolidated Appropriations Resolution, 2003 (22 U.S.C. 6901), the

Minority Leader re-appointed the following members on the part of the House of Representatives to the United States-China Economic and Security Review Commission, effective January 1, 2010: Mr. Peter T.R. Brookes of Virginia and Mr. Daniel M. Slane of Ohio.

#### MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4017. An act to designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the "Ann Marie Blute Post Office"; to the Committee on Homeland Security and Governmental Affairs.

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1506. An act to provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-3981. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "National Veterinary Accreditation Program" (Docket No. APHIS-2006-0093) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3982. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Swine Health Protection; Feeding of Processed Product to Swine" (Docket No. APHIS-2008-0120) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3983. A communication from the Chairman, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, a report relative to the Buy American Act; to the Committee on Banking, Housing, and Urban Affairs.

EC-3984. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "New Qualified Plug-in Electric Drive Motor Vehicle Credit" (Notice No. 2009-89) received in the Office of the President of the Senate on December 4, 2009; to the Committee on Finance.

EC-3985. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certifi-

cation of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Japan relative to the design and manufacture of propellant actuated devices for F-15J Aircraft; to the Committee on Foreign Relations.

EC-3986. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Mexico relative to the design and manufacture of Military Flexible Printed Circuit Board Assemblies (Flex Circuits) in the amount of \$50,000,000 or more; to the Committee on Foreign Relations.

EC-3987. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Japan relative to the design, manufacture, and repair of the Japan PATRIOT Product Improvement Program in the amount of \$50,000,000 or more; to the Committee on Foreign Relations.

EC-3988. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to Israel relative to the design, manufacture, and delivery of tactical computers and data processing and communications systems in the amount of \$50,000,000 or more; to the Committee on Foreign Relations.

EC-3989. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to Canada to support the sale of C-130J Hercules Aircraft in the amount of \$100,000,000 or more; to the Committee on Foreign Relations.

EC-3990. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to the United Kingdom relative to the design and manufacture of Wing Trailing Edge Panels and Flap Hinge Fairings for the C-17 Globemaster III Transport Aircraft in the amount of \$100,000,000 or more; to the Committee on Foreign Relations.

EC-3991. A communication from the Secretary, Department of Agriculture, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-3992. A communication from the Acting Chairman, Equal Employment Opportunity Commission, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-3993. A communication from the Assistant Deputy Associate Administrator for Acquisition Policy, General Services Administration, Department of Defense and National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "Federal Acquisition Regulation; Federal Acquisition Circular 2005-38" received in the Office of the President of the Senate on December 9, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-3994. A communication from the Chief Human Capital Officer, Small Business Administration, transmitting, pursuant to law, a report relative to a vacancy in the position of Chief Counsel for Advocacy, received in the Office of the President of the Senate on December 8, 2009; to the Committee on Small Business and Entrepreneurship.

### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 448. A bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CARPER (for himself, Mr. ALEXANDER, Mr. BYRD, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. WARNER, and Mr. WEBB):

S. 2872. A bill to authorize appropriations for the National Historical Publications and Records Commission through fiscal year 2014, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BEGICH:

S. 2873. A bill to amend the Internal Revenue Code of 1986 to deny the deduction for direct to consumer advertising expenses for prescription pharmaceuticals and to provide a deduction for fees paid for the participation of children in certain organizations which promote physical activity; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2874. A bill to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the "Ray Rondenno, Sr. Post Office Building"; to the Committee on Homeland Security and Governmental Affairs.

By Mr. FEINGOLD:

S. 2875. A bill to establish the Commission on Measures of Household Economic Security to conduct a study and submit a report containing recommendations to establish and report economic statistics that reflect the economic status and well-being of American households; to the Committee on Homeland Security and Governmental Affairs.

By Ms. LANDRIEU:

S. 2876. A bill to amend the Internal Revenue Code of 1986 to clarify the capital gain or loss treatment of the sale or exchange of mitigation credits earned by restoring wetlands, and for other purposes; to the Committee on Finance.

By Ms. CANTWELL (for herself and Ms. COLLINS):

S. 2877. A bill to direct the Secretary of the Treasury to establish a program to regulate the entry of fossil carbon into commerce in the United States to promote clean energy jobs and economic growth and avoid dangerous interference with the climate of the Earth, and for other purposes; to the Committee on Finance.

By Mrs. GILLIBRAND:

S. 2878. A bill to prevent gun trafficking in the United States; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. KERRY, Ms. SNOWE, Mr. PRYOR, and Mr. WARNER):

S. 2879. A bill to direct the Federal Communications Commission to conduct a pilot program expanding the Lifeline Program to include broadband service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

### ADDITIONAL COSPONSORS

S. 605

At the request of Mr. KAUFMAN, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 605, a bill to require the Securities and Exchange Commission to reinstate the uptick rule and effectively regulate abusive short selling activities.

S. 730

At the request of Mr. ENSIGN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 730, a bill to amend the Harmonized Tariff Schedule of the United States to modify the tariffs on certain footwear, and for other purposes.

S. 812

At the request of Mr. BAUCUS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 812, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

S. 1067

At the request of Mr. BROWNBACK, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1389

At the request of Mr. NELSON of Nebraska, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 1389, a bill to clarify the exemption for certain annuity contracts and insurance policies from Federal regulation under the Securities Act of 1933.

S. 1524

At the request of Mr. KERRY, the name of the Senator from Nebraska (Mr. JOHANNES) was added as a cosponsor of S. 1524, a bill to strengthen the capacity, transparency, and accountability of United States foreign assistance programs to effectively adapt and respond to new challenges of the 21st century, and for other purposes.

S. 1589

At the request of Ms. CANTWELL, the names of the Senator from Missouri (Mr. BOND) and the Senator from Illinois (Mr. BURRIS) were added as cosponsors of S. 1589, a bill to amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

S. 1790

At the request of Mr. DORGAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1790, a bill to amend the Indian Health Care Improvement Act to revise and extend that Act, and for other purposes.

S. 1859

At the request of Mr. ROCKEFELLER, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1859, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 1932

At the request of Mr. BENNETT, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 1932, a bill to amend the Elementary and Secondary Education Act of 1965 to allow members of the Armed Forces who served on active duty on or after September 11, 2001, to be eligible to participate in the Troops-to-Teachers Program, and for other purposes.

S. 2776

At the request of Mr. ALEXANDER, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2776, a bill to amend the Energy Policy Act of 2005 to create the right business environment for doubling production of clean nuclear energy and other clean energy and to create mini-Manhattan projects for clean energy research and development.

S. 2777

At the request of Ms. SNOWE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2777, a bill to repeal the American Recovery Capital loan program of the Small Business Administration.

S. 2833

At the request of Mr. REED, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 2833, a bill to provide adjusted Federal medical assistance percentage rates during a transitional assistance period.

S. 2843

At the request of Ms. STABENOW, the name of the Senator from Indiana (Mr.

BAYH) was added as a cosponsor of S. 2843, a bill to provide for a program of research, development, demonstration, and commercial application in vehicle technologies at the Department of Energy.

S. 2852

At the request of Mr. BEGICH, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 2852, a bill to establish, within the National Oceanic and Atmospheric Administration, an integrated and comprehensive ocean, coastal, Great Lakes, and atmospheric research, prediction, and environmental information program to support renewable energy.

S. 2869

At the request of Ms. LANDRIEU, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 2869, a bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

S. CON. RES. 20

At the request of Mr. BYRD, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. Con. Res. 20, a concurrent resolution authorizing the last surviving veteran of the First World War to lie in honor in the rotunda of the Capitol upon his death.

AMENDMENT NO. 2790

At the request of Mr. CASEY, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Alaska (Mr. BEGICH) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of amendment No. 2790 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2827

At the request of Mr. TESTER, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of amendment No. 2827 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2878

At the request of Mr. CARDIN, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of amendment No. 2878 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of mem-

bers of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2879

At the request of Mr. CARDIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of amendment No. 2879 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2904

At the request of Ms. SNOWE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of amendment No. 2904 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2924

At the request of Mr. CASEY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 2924 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2938

At the request of Mrs. GILLIBRAND, the names of the Senator from Minnesota (Mr. FRANKEN), the Senator from Massachusetts (Mr. KIRK) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of amendment No. 2938 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3011

At the request of Ms. LANDRIEU, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of amendment No. 3011 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3037

At the request of Mr. JOHNSON, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 3037 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3101

At the request of Mr. FRANKEN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment No. 3101 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3102

At the request of Mr. DURBIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 3102 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3112

At the request of Ms. CANTWELL, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of amendment No. 3112 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3114

At the request of Mr. GRASSLEY, the names of the Senator from Nevada (Mr. REID) and the Senator from Montana (Mr. TESTER) were added as cosponsors of amendment No. 3114 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3119

At the request of Mr. WARNER, the names of the Senator from Delaware (Mr. CARPER), the Senator from Maine (Ms. SNOWE) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of amendment No. 3119 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3132

At the request of Mrs. McCASKILL, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of amendment No. 3132 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

#### STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARPER (for himself, Mr. ALEXANDER, Mr. BYRD, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. WARNER, and Mr. WEBB):

SA 2872. A bill to authorize appropriations for the National Historical Publications and Records Commission through fiscal year 2014, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. CARPER. Mr. President, I rise today with my colleagues to introduce an important and bipartisan piece of legislation that will help protect our Nation's history for future generations.

Our bill reauthorizes the National Historical Publications and Record Commission, or NHPRC for short, which was first established by Congress in 1934. The Commission is the grant-making body of the National Archives and Records Administration and is comprised of representatives from the President of the United States, the U.S. Senate and House of Representatives, the Federal judiciary, the Departments of State and Defense, the Library of Congress, and six national, professional associations of archivists. Since 1964, the Commission has funded projects that locate, preserve, and provide public access to some of our nation's most precious historical resources that otherwise would be lost and destroyed.

For example, some of the history that has been preserved by the NHPRC over the years has helped award-winning historian David McCullough write his biography of John Adams and Pulitzer Prize-winner Ron Chernow write his biography of Alexander Hamilton. Further, the NHPRC has helped establish or modernize public records programs in cities all across America such as the cities of Seattle, Boston, and San Diego. The NHPRC also has been the key federal body to help preserve the oral histories of many Native American tribes such as the Seneca, Blackfoot, Sioux, Navajo, Apaches, and dozens more.

Further, I am proud to say that the NHPRC recently sped up and digitized over 5,000 documents left behind by our Nation's founding fathers that were previously unpublished. Congress passed legislation last year that I was honored to co-author with our former colleague, Senator John Warner from

Virginia, requiring the NHPRC to work with the groups publishing the volumes so that the documents could be made available online at no charge to any student of history. Before, they were walled-up behind the doors of large libraries and expensive to access. To put that into context, the NHPRC has saved anyone who needs to view the letters of John Adams thousands of dollars, which would have been the traditional cost of a complete set of published letters.

Lastly, the bill I am introducing today removes an artificial profit cap that Congress put in place a few years ago that prevents the National Archives and Records Administration from operating its regional facilities more like a business. For example, there are times at the end of the year when the revolving fund that pays for the operation and maintenance of the regional archival facilities earns a profit. Instead of incentivizing the National Archives to save the excess profit for long-term capital investments, the cap incentivizes regional facilities to spend the money on short term projects that they may not be needed. This simply does not make sense for the National Archives or for the taxpayer.

I look forward to working with my colleagues to get this important and necessary bill enacted before it's too late. I think everyone can agree that one of the things our democracy relies on is educated citizenry. The NHPRC is the principle body that helps make that happen.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2872

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. AUTHORIZATION OF APPROPRIATIONS THROUGH FISCAL YEAR 2014 FOR NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION.

Section 2504(g)(1) of title 44, United States Code, is amended—

- (1) in subparagraph (R), by striking “and”;
- (2) in subparagraph (S), by striking the period and inserting “; and”; and
- (3) by adding at the end of the following:

“(T) \$13,000,000 for fiscal year 2010, \$13,500,000 for fiscal year 2011, \$14,000,000 for fiscal year 2012, \$14,500,000 for fiscal year 2013, and \$15,000,000 for fiscal year 2014.”.

#### SEC. 2. INCREASED FLEXIBILITY FOR ARCHIVIST IN THE RECORDS CENTER REVOLVING FUND.

Subsection (d) under the heading “RECORDS CENTER REVOLVING FUND” in title IV of the Independent Agencies Appropriations Act, 2000 (Public Law 106-58; 113 Stat. 460; 44 U.S.C. 2901 note), is amended—

- (1) in paragraph (1), by striking “not to exceed 4 percent” and inserting “determined by the Archivist of the United States”; and
- (2) in paragraph (2), by striking “Funds in excess of the 4 percent at the close of each

fiscal year” and inserting “Any unobligated and unexpended balances in the Fund that the Archivist of the United States determines to be in excess of those needed for capital equipment or a reasonable operating reserve”.

#### SEC. 3. GRANTS FOR ESTABLISHMENT OF STATE AND LOCAL DATABASES FOR RECORDS OF SERVITUDE, EMANCIPATION, AND POST-CIVIL WAR RECONSTRUCTION.

Section 8 of the Presidential Historical Records Preservation Act of 2008 (44 U.S.C. 2504 note) is amended to read as follows:

#### “SEC. 8. GRANTS FOR ESTABLISHMENT OF STATE AND LOCAL DATABASES FOR RECORDS OF SERVITUDE, EMANCIPATION, AND POST-CIVIL WAR RECONSTRUCTION.

“(a) IN GENERAL.—The Archivist of the United States, after considering the advice and recommendations of the National Historical Publications and Records Commission, may make grants to States, colleges and universities, museums, libraries, and genealogical associations to preserve records and establish electronically searchable databases consisting of local records of servitude, emancipation, and post-Civil War reconstruction.

“(b) MAINTENANCE.—Any database established using a grant under this section shall be maintained by appropriate agencies or institutions designated by the Archivist of the United States.”.

By Mr. FEINGOLD.

S. 2875. A bill to establish the Commission on Measures of Household Economic Security to conduct a study and submit a report containing recommendations to establish and report economic statistics that reflect the economic status and well-being of American households; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, our government agencies collect and report a range of economic information but much of what we see or hear is most suited to describing the general state of the country's economy. This information does not reflect what is happening in and what matters most to our families and the quality of our lives. For example, our national unemployment figures don't tell us that those who are employed may not have benefits, or that they are working two or three jobs to earn the income that they report, or that their mortgage debt and college loans are jeopardizing their ability to repay their credit card debt or their medical bills. By knowing and reporting this kind of information we can not only more accurately reflect what our families are experiencing economically, we can better inform policymakers about what matters most to people and the steps that need to be taken to address household economic needs and concerns.

To address this need I am re-introducing the Commission on Measures of Household Economic Security Act of 2009. The bill would establish a bipartisan congressional commission of 8 economic experts to look at existing

government economic data and identify the possible need for new information, more accurate methodologies and better ways to report these economic measures to give a more accurate and reliable picture of the economic well being of American households. As part of their effort, the Commission will be asked to meet with representative groups of the public so that their views are taken into account in the Commission's recommendations.

In doing this, the Commission will look at such things as the current debt situation of American individuals and households, including categories of debt such as credit card debt, education related loans and mortgage payments; the movement of Americans between salaried jobs with benefits to single or multiple wage jobs with limited or no benefits with a comparison of income to include the value of benefits programs such as health insurance and retirement plans; the percentage of Americans who are covered by both employer-provided and individual health care plans and the extent of coverage per dollar paid by both employers and employees; the savings rate, including both standard savings plans and pension plans; the disparity in income distribution over time and between different demographic and geographic groups; and the breakdown of household expenditures between such categories as food, shelter, medical expenses, debt servicing, and energy.

In addition, the Commission will consider the relevance of certain non-market activities, like household production, education, and volunteer services that affect the economic well-being of households but are not measured or valued in currently reported economic statistics. As Robert F. Kennedy famously said, some of our economic indicators measure "everything in short, except that which makes life worthwhile." We need to make an effort to value more than just our gross domestic product and sales receipts. We need to better measure and understand what matters to American households.

This effort to improve how we measure what matters in our economy is very much in the Wisconsin tradition of accountable good government. It was Senator Robert LaFollette, Jr. who, in 1932, introduced a resolution requiring the U.S. Government to establish a more scientific, specific and accurate set of measures of the health of the U.S. economy. From his request, Simon Kuznets, a University of Pennsylvania economics professor, developed the first set of national accounts which form the basis for today's measure of GDP and other economic indicators. Kuznets won the 1971 Nobel Prize in Economics "for his empirically founded interpretation of economic growth which has led to new and deepened insight into the economic and social structure and process of develop-

ment". His work was the basis for much of the New Deal reform policies. Yet Kuznets specifically acknowledged that his measures were incomplete and did not go far enough to measure what may really matter. In his 1934 report to the Senate on his compilation of statistics associated with Gross National Product he concluded: "The welfare of a nation can . . . scarcely be inferred from a measurement of national income as [so] defined. . . ." This bill is intended to advance these earlier efforts to make our economic statistical measures more reflective of the welfare of our families and our nation.

The cost of this commission will be fully covered by amounts already authorized and appropriated to the Bureau of Labor Statistics. I urge my colleagues to support my legislation.

By Ms. CANTWELL (for herself and Ms. COLLINS):

S. 2877. A bill to direct the Secretary of the Treasury to establish a program to regulate the entry of fossil carbon into commerce in the United States to promote clean energy jobs and economic growth and avoid dangerous interference with the climate of the Earth, and for other purposes; to the Committee on Finance.

Ms. CANTWELL. Mr. President, I send to the desk legislation on my behalf and Senator COLLINS', the Senator from Maine, dealing with putting a market signal on carbon so we can get off of carbon and move forward on a green energy economy that will create millions of jobs in America.

I know we are still on health care so I am not going to take a lot of time right now to talk about this because we in the next several weeks and months ahead are going to have a lot of time to talk about this issue. But I do want to say for my colleagues, as we are introducing this legislation: The American people have been on a roller coaster ride with energy prices. I know the Presiding Officer knows this because she comes from the Northeast and knows what home heating oil costs have done to her State and surrounding States. I know my colleague from Maine knows this as well. That is part of her motivation in joining me in this cause, I am sure. The American public cannot sustain having oil prices wreak havoc on our economy for the next 30 years.

We know from economists that sometime in the next 5 to 30 years we will be at peak oil, and once we are at peak oil, the cost to the U.S. economy will be even more extravagant. The American people want to know what we are going to do to transition off of that and do so in a respectable way. What they are not so interested in is a proposal that would have Wall Street come up with a funding source by doing speculative trading to continue the games that have been played for the last year

or 2 years on various commodities that drove the economy into the ditch.

I find it interesting that today in the newspapers coming from Copenhagen, now they have decided that up to 90 percent of all market activity in the European trading markets was related to fraudulent activity. That tells us that trading markets already existing on carbon futures have had great deals of problems with manipulation. I don't think we need to repeat that. What we want to do instead is say, we are going to make sure that consumers get a check back to help them with their energy bills. We want to say we are going to protect them from the skyrocketing prices of energy, but we are going to transition off of fossil fuels and onto new sources of energy, of biofuels, of alternatives such as wind and solar, of things such as plug-in electric vehicles, of an electricity grid that can be more efficient and a smart two-way communications system.

In the end, our economy is going to be better. We are going to create more jobs. We are going to make sure that consumers are not held hostage by future huge energy spikes. If we do that, we are going to leave to the next generation a better situation. We will leave the planet Earth in better shape. But most importantly, we are going to take the U.S. economy, struggling to move ahead, and we are going to create thousands of jobs in the short term and millions of jobs in the next several years. That is good news, to think that the United States could become a leader in energy technology, that we are not going to be as dependent upon the Chinese for battery technology of the future as we are right now on Middle East oil.

I introduce this legislation with the most respect for my colleagues, Senators BOXER and KERRY, LIEBERMAN and MCCAIN, many of my colleagues have been involved in this issue for many decades, but to work across the aisle. If health care shows us anything, we have to cut down the amount of time it takes to move these important pieces of legislation by working together in an effort to show that we do understand the needs of the American public. We have to drive down their costs, not just on health care but on fuel as well. We have to give them economic opportunity for the future. Sending this market signal is the best way to create jobs and help protect consumers for the future.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am pleased to join my colleague from Washington State, Senator CANTWELL, in introducing what I believe to be landmark legislation, the Carbon Limits and Energy for America's Renewal, or CLEAR Act. Let me commend the Senator for her leadership on this important issue.



One of the most appealing parts of this bill is it takes a fresh look at the issues facing our country in the area of developing alternative energy, promoting energy independence, and addressing climate change and the need for more green jobs in the economy. Indeed, this bill addresses the most significant energy and environmental challenges we face. It would help to reduce our dependence on foreign oil, promote alternative energy and energy conservation, and advance the goal of energy independence for our Nation.

The cost of gas and oil imposes a great burden on many Americans, particularly those living in large rural States such as the State of Maine. High gasoline prices have a disproportionate impact on Mainers who often have no choice but to travel long distances to their jobs, grocery stores, and doctors' offices. This lessens the amount of money they have to spend on other necessities.

In addition, 80 percent of Mainers heat their homes with home heating oil. That is one of the highest percentages in the Nation. The State of Maine is one of the States most dependent on foreign oil of any State in the Nation. Our Nation must work together on comprehensive long-term actions that will stabilize gas and oil prices, help to prevent energy shortages, avoid those spikes when we are held hostage to foreign oil, and achieve national energy independence. This effort will require a stronger commitment to renewable energy sources such as wind energy, as well as energy efficiency and conservation.

The development and implementation of these new approaches to environmental stewardship and energy independence will also provide a powerful stimulus to our economy and the creation of green jobs. Like my colleague, I want the United States to lead the way on green technology, not lose our edge to China, for example.

In addition to advancing these goals, the CLEAR Act is the fairest climate change approach from the perspective of consumers. It would rebate 75 percent of the proceeds generated by the cap on carbon emissions directly to citizens. That is a tremendous advantage of this bill over alternative approaches such as the cap-and-trade bill.

I also share the concerns of my colleague from Washington State about the abuses we have seen in energy and agricultural markets, when speculators are allowed to participate in the market. That is why in our bill, which imposes an upstream cap on carbon, only the producers are allowed to participate in the trading. That is a far better approach that will guard against market manipulation and excessive speculation.

In the United States alone, emissions of the primary greenhouse gas carbon dioxide have risen more than 20 percent

since 1990. Clearly climate change is a daunting environmental challenge, but we must develop solutions that do not impose a heavy burden on our economy, particularly during these difficult economic times. That is why I am pleased to join as the lead cosponsor of the CLEAR Act. Climate change legislation must protect consumers and industries that could be hit with higher energy prices. We must recognize that many of our citizens are struggling to afford their monthly energy bills now and cannot afford dramatically higher prices. We also must produce legislation that would provide predictability in the price of carbon emissions so that businesses can plan, invest, and create good jobs. Climate change legislation should encourage the adoption of energy efficiency measures and the further development of renewable energy.

I am very excited about the possibilities for the State of Maine because of its immense potential to develop offshore wind energy. Estimates are that the development of 5 gigawatts of offshore wind in Maine would be enough to power more than 1 million homes for a year. It could attract \$20 billion of investment to the State of Maine and create more than 15,000 green energy jobs, jobs that are desperately needed in our State. The CLEAR Act would help to achieve all of those goals.

I could not support the bill that was passed to deal with climate change by the House of Representatives. Let me read a couple of the descriptions of that bill. The New York Times described it as "fat with compromises, carve-outs, concessions, and out-and-out gifts." The Washington Post in an editorial described it as having pollution credits and revenue that were "divvied up to the advantage of politically favored polluters."

I do not believe this bill, which is a 2,000-page monstrosity, can garner the necessary 60 votes to proceed in the Senate. The CLEAR Act, by contrast, would help to move a stalled debate forward by offering a fairer, a more efficient, and a straightforward approach.

You have only to look at our bill. It is 39 pages long compared to 2,000 pages of the House-passed bill.

My full statement goes into detail on how the bill would work. I hope my colleagues will look closely at it. But let me talk about one part. That is in the CLEAR Act, 75 percent of the carbon auction revenues would be returned to consumers as tax free rebates. They wouldn't be lost to speculation or to \$½ billion of fees every year to investment firms on Wall Street. No, 75 percent of those revenues would be returned on a per capita basis to consumers. That means that 80 percent of Americans would incur no net new cost under the CLEAR Act. The average Mainer would stand to actually gain \$102 per year from the CLEAR Act. I

can tell you, Mainers would welcome that. It would help them winterize their homes, meet their energy bills, invest in energy conservation and efficiency, or have a little more money to get by.

By contrast, under the House-passed cap-and-trade bill, the average citizen in this country would experience a net cost increase of \$175 per year. That is a big difference and a big advantage of the Cantwell-Collins approach.

What about the other 25 percent of the auction revenues? What we would propose is that those would go to a trust fund to fund energy efficiency programs and renewable energy research and development, to provide incentives for forestry and agriculture practices that sequester carbon, to encourage practices that reduce other greenhouse gases, to help energy-efficient, energy-intensive manufacturers, and to assist low-income consumers. That fund would be called the Clean Energy Reinvestment Trust, the CERT fund. It would be subject to the annual appropriations process so that Congress could adapt assistance for climate-related activities on an annual basis rather than being locked into a complicated allocation scheme that may well favor special interests.

I am excited about this bill. It offers us a way forward to a green economy. It will help create jobs. It will alleviate the burden on consumers, particularly in New England, where the Presiding Officer and I live, as well as the Northwest. It makes sense. It is a common-sense approach. I hope my colleagues will consider joining the Senator from Washington and me on this important legislation.

Again, I commend Senator CANTWELL's leadership. She has done a great deal of work to come up with this approach, and I am excited to be joining her in this effort.

To reiterate, today I am pleased to join my colleague from Washington, Senator CANTWELL, in introducing landmark legislation, the Carbon Limits and Energy for America's Renewal, or CLEAR, Act.

This bill addresses the most significant energy and environmental challenges facing our country. It would help reduce our dependence on foreign oil, promote alternative energy and energy conservation, and advance the goal of energy independence for our Nation.

The costs of gas and oil impose a great burden on many Americans, particularly those living in large, rural States like Maine. High gasoline prices have a disproportionate impact on Mainers who often have to travel long distances to their jobs, doctors' offices, and grocery stores, which lessens the amount of money they have available to spend on other necessities. Also, 80 percent of Mainers heat their homes



with home heating oil, one of the highest percentages in the Nation. Our Nation must work together on comprehensive, long-term actions that will stabilize gas and oil prices, help to prevent energy shortages, and achieve national energy independence. This effort will require a stronger commitment to renewable energy sources, such as wind energy, and energy efficiency and conservation.

The development and implementation of these new approaches to environmental stewardship and energy independence will also provide a powerful stimulus for our economy and the creation of "green" jobs.

In addition to advancing the goal of energy independence and creating green jobs, the CLEAR Act is the fairest climate change approach for consumers. It would rebate 75 percent of the proceeds generated by the cap on carbon directly to citizens.

According to recent reports from the Intergovernmental Panel on Climate Change, increases in greenhouse gas emissions have already increased global temperatures, and likely contributed to more extreme weather events such as droughts and floods. These emissions will continue to change the climate, causing warming in most regions of the world, and likely causing more droughts, floods, and many other problems.

In the United States alone, emissions of the primary greenhouse gas, carbon dioxide, have risen more than 20 percent since 1990. Climate change is the most daunting environmental challenge we face, and we must develop reasonable solutions to reduce our carbon emissions.

I have personally observed the dramatic effects of climate change and had the opportunity to be briefed by the preeminent experts, including University of Maine professor and National Academy of Sciences member George Denton. In 2006, on a trip to Antarctica and New Zealand, for example, I saw sites in New Zealand that had been buried by massive glaciers at the beginning of the 20th century, but are now ice free. Fifty percent of the glaciers in New Zealand have melted since 1860—an event unprecedented in the last 5,000 years. It was remarkable to stand in a place where some 140 years ago, I would have been covered in tens or hundreds of feet of ice, and then to look far up the mountainside and see how distant the edge of the ice is today.

The melting is even more dramatic in the Northern Hemisphere. In the last 30 years, the Arctic has lost sea ice cover over an area ten times as large as the State of Maine, and at this rate will be ice free by 2050. In 2005 in Barrow, AK, I witnessed a melting permafrost that is causing telephone poles, planted years ago, to lean over for the first time ever.

I also learned about the potential impact of sea level rise during my trips to these regions. If the west Antarctica ice sheet were to collapse, for example, sea level would rise 15 feet, flooding many coastal cities. In its 2007 report, the IPCC found that even with just gradual melting of ice sheets, the average predicted sea level rise by 2100 will be 1.6 feet, but could be as high as 1 meter, or almost 3 feet. In Maine a 1 meter rise in sea level would cause the loss of 20,000 acres of land, include 100 acres of downtown Portland, including Commercial Street. Already in the past 94 years, a 7-inch rise in sea level has been documented in Portland.

The solutions to these problems must not impose a heavy burden on our economy, particularly during these difficult economic times. That is why I am pleased to be the lead cosponsor of the CLEAR Act.

While we must take meaningful action to respond to climate change, it must be a balanced approach. Climate change legislation must protect consumers and industries that could be hit with higher energy prices. We must recognize that many of our citizens are struggling just to pay their monthly energy bills and cannot afford dramatically higher prices. Such legislation also must provide predictability so that businesses can plan, invest, and create jobs.

Climate change legislation should encourage adoption of energy efficiency measures and the further development of renewable energy, which could spur our economy and job creation. For example, Maine has immense potential to develop offshore wind energy. Estimates are that development of 5 gigawatts of offshore wind in Maine—enough to power more than 1 million homes for a year—could attract \$20 billion of investment to the State and create more than 15,000 green energy jobs that would be sustained over 30 years.

The CLEAR Act achieves all of these goals, whereas the bill passed by the House of Representatives earlier this year has been characterized by the *Boston Globe* as "providing cushions for industry;" "fat with compromises, carve-outs, concessions and out-and-out gifts," a *New York Times* article by John Broder, June 30, 2009; and having pollution credits and revenue that were "divvied up to the advantage of politically favored polluters," from the *Washington Post* editorial, June 26, 2009. This House bill could not garner the necessary 60 votes in the Senate. The CLEAR Act will help to move a stalled debate forward by offering a more efficient, straightforward approach.

Let me discuss how our bill would work. The CLEAR Act places an upstream cap on carbon entering the economy. The upstream cap on carbon would capture 96 percent of all carbon

dioxide emissions, 93 percent of total annual U.S. greenhouse gas emissions by weight, and 82 percent of total annual U.S. greenhouse gas emissions by global warming potential.

The initial annual carbon budget under the cap would be set based on the amount of fossil carbon likely to be consumed by the U.S. economy in 2012, the year in which the CLEAR Act regulations would begin, based on projections by the Energy Information Administration. For the first 2 years, the cap would stay at the 2012 level to give companies time to adapt to the system. Starting in 2015, the carbon budget would be reduced annually along a schedule designed to achieve nearly an 80 percent reduction in 2005 level emissions by 2050.

The cap will recognize voluntary regional efforts like the Regional Greenhouse Gas Initiative, RGGI. RGGI is a cooperative effort by 10 northeast and mid-Atlantic States to limit greenhouse gas emissions. These 10 States have capped CO<sub>2</sub> emissions from the power sector and will require a 10-percent reduction in these emissions by 2018.

Coal companies, oil and gas producers, and oil and gas importers would have to buy permits or "allowances" for the carbon in their products. They would buy the permits in a monthly auction in which those companies would be the only ones allowed to participate. One hundred percent of the allowances would be auctioned; no free allowances are provided to special interests. Thus, the CLEAR Act does not provide special favors like the House bill.

Unlike the House bill, in the CLEAR Act, only the companies directly regulated by the legislation would participate in the auction. This avoids the huge potential for market manipulation and speculation to drive up carbon prices that exists in the House bill. Financial experts estimate that under the House bill, carbon permit trading could create a \$3 trillion commodity market by 2020. Do we really want to have energy consumers subsidizing Wall Street traders?

In the CLEAR Act, 75 percent of the carbon auction revenues would be returned to consumers as tax-free rebates. Nationwide, this means 80 percent of Americans would incur no net costs under the CLEAR Act. The average Mainer would stand to gain \$102 per year from the CLEAR Act. By contrast, under the House-passed cap and trade bill, the average citizen would experience a net cost increase of \$175 per year.

The other 25 percent of the auction revenues generated under CLEAR would go into a trust fund to fund energy efficiency programs and renewable energy research and development, to provide incentives for forestry and agriculture practices that sequester

carbon, to encourage practices that reduce other greenhouse gases, to help energy-intensive manufacturers, and to assist low-income consumers. The fund, called the Clean Energy Reinvestment Trust, CERT Fund, would be subject to the annual appropriations process. This would allow Congress to adapt assistance for climate-related activities on an annual basis, rather than being locked into a complicated allocation scheme that favors special interests.

I applaud the leadership of my colleague from Washington for developing this straightforward, effective and fair climate bill. I urge all my colleagues to consider joining us on this important legislation.

By Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. KERRY, Ms. SNOWE, Mr. PRYOR, and Mr. WARNER):

S. 2879. A bill to direct the Federal Communications Commission to conduct a pilot program expanding the Lifeline Program to include broadband service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce legislation that will enable more low-income households to receive broadband and its benefits.

Broadband has fundamentally changed the way Americans live their daily lives. It has changed how we do business, get information, find jobs, learn, communicate, and interact with Federal, State, and local governments. Over the next few years, we can only expect more innovation and more broadband applications that open doors to new opportunities and provide even more benefits to consumers.

While broadband has been more quickly deployed and adopted in predominantly urban areas, availability and adoption in rural areas has lagged behind. Low-income rural households are among the least likely to subscribe to broadband. At the same time, businesses and educational institutions, among others, have migrated many essential services and opportunities to the Internet. The result is that people without broadband, particularly in rural areas, are being left behind.

Today, 77 percent of Fortune 500 companies only accept job applications online. Seventy-eight percent of students regularly use the Internet for classroom work. Similarly, State, and local government agencies, as well as vital healthcare services, are increasingly migrating online, especially as budget cuts reduce the availability and quality of offline services.

All of this means that the children of families without broadband lose access to learning opportunities. Qualified workers lose access to jobs. Low-income Americans waste precious time—sometimes even having to take off

from their jobs—in government offices, waiting for services that are otherwise available online.

This income-based digital divide is stark. Americans who earn less than \$30,000 per year have a 50 percent lower rate of broadband adoption than those who earn \$100,000 annually. What makes it worse is that, in some ways, low-income consumers are the ones who stand to benefit the most from affordable broadband access. Online job information and educational opportunities can provide low-income consumers with critical means to improve their lives and the lives of their children.

Like basic telephone service, broadband is quickly becoming a necessity. Consumers without access are at risk of becoming second class citizens in a growing digital world. The original Lifeline program recognized that telephone service was a critical part of everyday life and that low-income Americans needed to be connected to the world around them. What was true for telephony then is true for broadband now. That is why the Lifeline program at the FCC should be expanded to support broadband access for low-income households.

The legislation we introduce today creates a two-year pilot program to expand the FCC's Lifeline program by supporting broadband service for eligible low-income households. It also asks the FCC to provide Congress with a report on expanding the Link-Up program to assist with the costs of securing equipment, such as computers, needed to use broadband service.

We must make sure that we act now to bridge the divide that threatens to make low-income consumers second-class citizens. For this reason, I urge my colleagues to join me and support this legislation.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3164. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3165. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3166. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3167. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr.

HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3168. Mr. CASEY (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3169. Mr. CORNYN (for himself and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3170. Mr. PRYOR (for himself and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3171. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3172. Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3173. Mr. MERKLEY (for himself and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3174. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3175. Mr. SPECTER (for himself, Mr. BROWN, and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3176. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3177. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3178. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3179. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3180. Mr. GRASSLEY (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3181. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3182. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3183. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3184. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3185. Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3186. Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3187. Mr. WYDEN (for himself and Mr. CRAPO) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3188. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3189. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3190. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3191. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3192. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3193. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3194. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3195. Mr. ENZI submitted an amendment intended to be proposed to amendment

SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3196. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3197. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3198. Mr. CORNYN (for himself and Mr. LEMIEUX) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 3164.** Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 330, strike lines 7 through 11 and inserting the following:

“individual is—

“(i) a member of a recognized religious sect or division thereof which is described in section 1402(g)(1), and

“(ii) an adherent of established tenets or teachings of such sect or division as described in such section.

**SA 3165.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1395, strike line 11 and all that follows through “**SEC. 778.**” on line 15 and insert the following:

#### **SEC. 5314. FELLOWSHIP TRAINING IN PUBLIC HEALTH.**

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 311 the following:

#### **“SEC. 311A.**

**SA 3166.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain

other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 816, after line 20, insert the following:

#### **SEC. 3115. GAO STUDY AND REPORT ON MEDICARE BENEFICIARY ACCESS.**

(a) **STUDY.**—The Comptroller General of the United States (in this section referred to as the “Comptroller General”) shall conduct a study on the ability of Medicare beneficiaries to fully access available health care services during the 5-year period following enactment of this Act. Such study shall include the following:

(1) A detailed analysis regarding levels of access to health care services for different groups or populations of Medicare beneficiaries, including a breakdown—

(A) by location, including rural areas (as defined in section 1886(d)(2)(D) of the Social Security Act), health professional shortage areas (as designated under section 332 of the Public Health Service Act), medically underserved communities (as defined in section 799B(6) of such Act), and medically underserved populations (as defined in section 330(b)(3) of such Act);

(B) by type of health care service, including physician services and primary care services; and

(C) by any other measure determined appropriate by the Comptroller General.

(2) A summary that identifies—

(A) any groups or populations of Medicare beneficiaries that lack adequate access to health care services; and

(B) any types of health care services that are not fully accessible to Medicare beneficiaries.

(b) **REPORT.**—

(1) **INTERIM REPORT.**—Not later than 30 months after the date of enactment of this Act, the Comptroller General shall prepare and submit an interim report to Congress that contains the preliminary results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(2) **FINAL REPORT.**—Not later than 60 months after the date of enactment of this Act, the Comptroller General shall prepare and submit a final report to Congress that contains the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(c) **MEDICARE BENEFICIARY.**—In this section, the term “Medicare beneficiary” means an individual entitled to benefits under part A of title XVIII of the Social Security Act, enrolled under part B of such title, or both.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as are necessary to carry out this section.

**SA 3167.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1413 and insert the following:

**SEC. 1413. STREAMLINING OF PROCEDURES FOR ENROLLMENT THROUGH AN EXCHANGE AND STATE MEDICAID, CHIP, AND HEALTH SUBSIDY PROGRAMS.**

(a) **IN GENERAL.**—The Secretary shall establish a system meeting the requirements of this section under which residents of each State may apply for enrollment in, receive a determination of eligibility for participation in, and continue participation in, applicable State health subsidy programs. Such system shall ensure that if an individual applying to an Exchange, to a State Medicaid program under title XIX of the Social Security Act, or to a State children's health insurance program (CHIP) under title XXI of such Act, is found to be ineligible for the program to which the individual applied, the individual shall be screened for eligibility for all other potentially applicable such programs and shall be enrolled in the program for which the individual qualifies.

(b) **REQUIREMENTS RELATING TO FORMS AND NOTICE.**—

(1) **REQUIREMENTS RELATING TO FORMS.**—

(A) **IN GENERAL.**—The Secretary shall develop and provide to each State a single, streamlined form that—

(i) may be used to apply for all applicable State health subsidy programs within the State;

(ii) may be filed online, in person, by mail, or by telephone;

(iii) may be filed with an Exchange or with State officials operating one of the other applicable State health subsidy programs; and

(iv) is structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who qualify for applicable State health subsidy programs.

(B) **STATE AUTHORITY TO ESTABLISH FORM.**—A State may develop and use its own single, streamlined form as an alternative to the form developed under subparagraph (A) if the alternative form is consistent with standards promulgated by the Secretary under this section.

(C) **SUPPLEMENTAL ELIGIBILITY FORMS.**—The Secretary may allow a State to use a supplemental or alternative form in the case of individuals who apply for eligibility that is not determined on the basis of the household income (as defined in section 36B of the Internal Revenue Code of 1986).

(D) **RELEVANCE.**—The forms described in subparagraphs (A) and (B) shall not require the applicant to answer any questions that are irrelevant to establishing eligibility for applicable State health subsidy programs. The Secretary shall establish procedures that avoid any need for such requirements, which shall include determining the amounts expended for medical assistance that are described in subsection (y)(1) of section 1905 of the Social Security Act (as added by section 2001(a)(3) of this Act) through the use of the post-enrollment procedures described in section 1903(u)(1)(C) of the Social Security Act.

(2) **NOTICE.**—The Secretary shall provide that an applicant filing a form under paragraph (1) shall receive notice of eligibility for an applicable State health subsidy program without any need to provide additional information or paperwork unless such information or paperwork is specifically required by law when information provided on the form is inconsistent with data used for the electronic verification under paragraph (3) or is otherwise insufficient to determine eligibility.

(c) **REQUIREMENTS RELATING TO ELIGIBILITY BASED ON DATA EXCHANGES.**—

(1) **DEVELOPMENT OF SECURE INTERFACES.**—Each State shall develop for all applicable

State health subsidy programs a secure, electronic interface allowing an exchange of data (including information contained in the application forms described in subsection (b)) that allows a determination of eligibility for all such programs based on a single application. Such interface shall be compatible with the method established for data verification under section 1411(c)(4).

(2) **DATA MATCHING PROGRAM.**—Each applicable State health subsidy program shall participate in a data matching arrangement for determining eligibility for participation in the program under paragraph (3) that—

(A) provides access to data described in paragraph (3);

(B) applies only to individuals who—

(i) receive assistance from an applicable State health subsidy program; or

(ii) apply for such assistance—

(I) by filing a form described in subsection (b); or

(II) notwithstanding section 1411(b), by requesting a determination of eligibility and authorizing disclosure of the information described in paragraph (3) to applicable State health coverage subsidy programs for purposes of determining and establishing eligibility; and

(C) is consistent with standards promulgated by the Secretary, including the privacy and data security safeguards described in section 1942 of the Social Security Act or that are otherwise applicable to such programs.

(3) **DETERMINATION OF ELIGIBILITY.**—

(A) **IN GENERAL.**—Each applicable State health subsidy program shall, to the maximum extent practicable—

(i) establish, verify, and update eligibility for participation in the program using the data matching arrangement under paragraph (2); and

(ii) determine such eligibility on the basis of reliable, third party data, including information described in sections 1137, 453(i), and 1942(a) of the Social Security Act, obtained through such arrangement, provided that if such data do not establish an individual's eligibility for medical assistance under title XIX of the Social Security Act, the rules described in section 1902(e)(14)(H) of such Act shall apply to such individual.

(B) **EXCEPTION.**—This paragraph shall not apply in circumstances with respect to which the Secretary determines that the administrative and other costs of use of the data matching arrangement under paragraph (2) outweigh its expected gains in accuracy, efficiency, and program participation.

(4) **SECRETARIAL STANDARDS.**—The Secretary shall, after consultation with persons in possession of the data to be matched and representatives of applicable State health subsidy programs, promulgate standards governing the timing, contents, and procedures for data matching described in this subsection. Such standards shall take into account administrative and other costs and the value of data matching to the establishment, verification, and updating of eligibility for applicable State health subsidy programs.

(d) **ADMINISTRATIVE AUTHORITY.**—

(1) **AGREEMENTS.**—Subject to section 1411 and section 6103(1)(21) of the Internal Revenue Code of 1986 and any other requirement providing safeguards of privacy and data integrity, the Secretary may establish model agreements, and enter into agreements, for the sharing of data under this section.

(2) **AUTHORITY OF EXCHANGE TO CONTRACT OUT.**—Nothing in this section shall be construed to—

(A) prohibit contractual arrangements through which a State Medicaid agency determines eligibility for all applicable State health subsidy programs, but only if such agency complies with the Secretary's requirements ensuring reduced administrative costs, eligibility errors, and disruptions in coverage; or

(B) change any requirement under title XIX that eligibility for participation in a State's Medicaid program must be determined by a public agency.

(e) **APPLICABLE STATE HEALTH SUBSIDY PROGRAM.**—In this section, the term "applicable State health subsidy program" means—

(1) the program under this title for the determination of eligibility for premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402;

(2) a State Medicaid program under title XIX of the Social Security Act;

(3) a State children's health insurance program (CHIP) under title XXI of such Act; and

(4) a State program under section 1331 establishing qualified basic health plans.

**SA 3168.** Mr. CASEY (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 466, between lines 5 and 6, insert the following:

**SEC. 2305. OPTIONAL COVERAGE OF NURSE HOME VISITATION SERVICES.**

(a) **IN GENERAL.**—Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3), 2006, and 2301(a)(1), is amended—

(1) in subsection (a)—

(A) in paragraph (28), by striking "and" at the end;

(B) by redesignating paragraph (29) as paragraph (30); and

(C) by inserting after paragraph (28) the following new paragraph:

"(29) nurse home visitation services (as defined in subsection (z)); and"; and

(2) by inserting after subsection (y) the following new subsection:

"(z) The term 'nurse home visitation services' means voluntary home visits that are provided by trained nurses to a family with a first-time pregnant woman, or a child (under 2 years of age), who is eligible for medical assistance under this title, but only, to the extent determined by the Secretary based upon evidence, that such services are effective in achieving 1 or more of the following:

"(1) Improving maternal or child health and pregnancy outcomes or increasing birth intervals between pregnancies.

"(2) Reducing the incidence of child abuse, neglect, and injury, improving family stability (including reduction in the incidence of intimate partner violence), or reducing maternal and child involvement in the criminal justice system.

"(3) Increasing economic self-sufficiency, employment advancement, school-readiness, and educational achievement, or reducing dependence on public assistance."

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to services furnished on or after January 1, 2010.

(c) **CONSTRUCTION.**—Nothing in the amendments made by this section shall be construed as affecting the ability of a State under title XIX or XXI of the Social Security Act to provide nurse home visitation services as part of another class of items and services falling within the definition of medical assistance or child health assistance under the respective title, or as an administrative expenditure for which payment is made under section 1903(a) or 2105(a) of such Act, respectively, on or after the date of the enactment of this Act.

**SA 3169.** Mr. CORNYN (for himself and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 6001.

**SA 3170.** Mr. PRYOR (for himself and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 828, between lines 3 and 4, insert the following:

**SEC. 3130. RESTORING STATE AUTHORITY TO WAIVE THE 35-MILE RULE FOR MEDICAL CARE CRITICAL ACCESS HOSPITAL DESIGNATIONS.**

Section 1820(c)(2)(B)(i)(II) of the Social Security Act (42 U.S.C. 1395i-4(c)(2)(B)(i)(II)) is amended by inserting “or on or after the date of enactment of the Patient Protection and Affordable Care Act” after “January 1, 2006.”

**SA 3171.** Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1999, between lines 20 and 21, insert the following:

**SEC. 9005A. ANNUAL ROLLOVER OF HEALTH FSA BALANCES.**

(a) **IN GENERAL.**—Subsection (i) of section 125 of the Internal Revenue Code of 1986, as added by section 9005(a)(2), is amended—

(1) by striking all matter before “if a benefit” and inserting the following:

“(i) **SPECIAL RULES APPLICABLE TO HEALTH FLEXIBLE SPENDING ARRANGEMENTS.**—

“(1) **LIMITATION ON CONTRIBUTIONS TO HEALTH FLEXIBLE SPENDING ARRANGEMENTS.**—For purposes of this section,” and

(2) by adding at the end the following new paragraph:

“(2) **ALLOWANCE OF CARRYOVER OF UNUSED AMOUNTS IN HEALTH FLEXIBLE SPENDING ARRANGEMENTS.**—

“(A) **IN GENERAL.**—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because under the plan or arrangement a participant is permitted access to any unused amounts attributable to salary reduction contributions under such plan or arrangement in the manner provided under subparagraph (B).

“(B) **CARRYOVER OF UNUSED AMOUNTS.**—A plan or arrangement may permit a participant in a health flexible spending arrangement to elect to carry over so much of the unused amounts attributable to salary reduction contributions under such plan or arrangement as of the close of any calendar year as does not exceed \$1,000 to the immediately succeeding calendar year.

“(C) **AMOUNTS NOT DEFERRED COMPENSATION.**—No amount shall be treated as deferred compensation for purposes of this title by reason of any carryover under this paragraph.

“(D) **COORDINATION WITH CONTRIBUTION LIMIT.**—The maximum amount which may be contributed to a health flexible spending arrangement under paragraph (1) for any calendar year to which an unused amount is carried over under this paragraph shall be reduced by such amount.”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to calendar years beginning after December 31, 2010.

**SA 3172.** Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 18, between lines 15 and 16, insert the following:

**“SEC. 2713A. COVERAGE OF CERTAIN CARE.**

“A group health plan and a health insurance issuer offering group or individual health insurance coverage shall provide coverage for wound-care supplies that are medically necessary for the treatment of epidermolysis bullosa and are administered under the direction of a physician.”

**SA 3173.** Mr. MERKLEY (for himself and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 354, between lines 2 and 3, insert the following:

(D) **APPLICATION TO CONSTRUCTION INDUSTRY EMPLOYERS.**—In the case of any employer the substantial annual gross receipts of which are attributable to the construction industry—

(i) subparagraph (A) shall be applied by substituting “who employed an average of at least 5 full-time employees on business days during the preceding calendar year or whose annual payroll expenses exceed \$250,000 for such preceding calendar year” for “who employed an average of at least 50 full-time employees on business days during the preceding calendar year”, and

(ii) subparagraph (B) shall be applied by substituting “5” for “50”.

**SA 3174.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At after title IX, insert the following:

**TITLE X—HEALTH CARE REFORM OVERSIGHT COMMITTEE**

**SEC. 10001. HEALTH CARE REFORM OVERSIGHT COMMITTEE.**

(a) **ESTABLISHMENT.**—There is established a committee to be known as the Health Care Reform Oversight Committee (referred to in this section as the “Committee”), for the purpose of maintaining close oversight of the implementation of the requirements of this Act (including the amendments made by this Act), including with regard to the affordability criteria set forth in this Act, the impact of this Act on small businesses, and pricing trends resulting from implementation of this Act.

(b) **MEMBERSHIP.**—The Committee shall be composed of 12 members, selected by the President pro tempore of the Senate and the Speaker of the House of Representatives, in consultation with the majority and minority leaders of the Senate and of the House of Representatives, from among members of the public experienced in health care administration, tax policy, small business, actuarial science, health insurance plan design or sales, or a profession that would lend credibility to the work of the Committee. Not more than 3 members of the Committee may be Federal employees.

(c) **CHAIRPERSON.**—The Committee shall select a Chairperson from among its members.

(d) **MEETINGS.**—The Committee shall meet at the call of the chairperson, or as voted by 7 members, as is necessary to maintain close oversight of the implementation of the requirements of this Act (including the amendments made by this Act), to address specific problems raised by such implementation, or to address constituent concerns.

(e) **QUORUM.**—A quorum shall consist of a total of 7 members of the Committee, except that a total of 5 members shall be present to conduct hearings, unless such requirement that 5 members be present to conduct hearings is waived by a majority of the Committee.

(f) **DUTIES OF THE COMMITTEE.**—The Committee shall provide close oversight of all aspects of the requirements of this Act, including the amendments made by this Act.

(g) **POWERS OF THE COMMITTEE.**—

(1) HEARINGS.—The Committee may, for the purpose of carrying out this section—

(A) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Committee considers advisable.

(2) REPORTS AND RECOMMENDATIONS.—The Committee may issues reports and findings as it deems appropriate, including offering suggestions for legislation to improve the requirements and activities under this Act (including the amendments made by this Act).

(3) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1) shall bear the signature of the Chairperson of the Committee and shall be served by any person or class of persons designated by the Chairperson for that purpose.

(B) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt that court.

(4) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Committee. The per diem and mileage allowances for witnesses shall be paid from funds available to pay the expenses of the Committee.

(5) INFORMATION FROM FEDERAL AGENCIES.—The Committee may secure directly from any Federal department or agency such information as the Committee considers necessary to carry out this Act. Upon request of the Chairperson of the Committee, or of another member of the Committee representing a majority vote, the head of such department or agency shall furnish such information to the Committee.

(6) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(7) GIFTS.—The Committee may accept, use, and dispose of gifts or donations of services or property.

(h) COMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Each member of the Committee who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee. All members of the Committee who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) TRAVEL EXPENSES.—The members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Committee.

(i) TERMINATION OF THE COMMITTEE.—The Committee shall terminate 5 years after the date of enactment of this Act.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

**SA 3175.** Mr. SPECTER (for himself, Mr. BROWN, and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 816, after line 20, insert the following:

**SEC. 3115. EXCLUSION OF CUSTOMARY PROMPT PAY DISCOUNTS EXTENDED TO WHOLESALERS FROM MANUFACTURER'S AVERAGE SALES PRICE FOR PAYMENTS FOR DRUGS AND BIOLOGICALS UNDER MEDICARE PART B.**

Section 1847A(c)(3) of the Social Security Act (42 U.S.C. 1395w-3a(c)(3)) is amended—

(1) in the first sentence, by inserting after “prompt pay discounts” the following: “(other than, for drugs and biologicals that are sold on or after January 1, 2011, and before January 1, 2016, customary prompt pay discounts extended to wholesalers, but only to the extent such discounts do not exceed 2 percent of the wholesale acquisition cost)”; and

(2) in the second sentence, by inserting after “other price concessions” the following: “(other than, for drugs and biologicals that are sold on or after January 1, 2011, and before January 1, 2016, customary prompt pay discounts extended to wholesalers, but only to the extent such discounts do not exceed 2 percent of the wholesale acquisition cost)”.

**SA 3176.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 334, between lines 18 and 19, insert the following:

**“(E) SPECIAL RULE FOR INDIVIDUALS BETWEEN THE AGES OF 55 AND 64.—**

**“(i) IN GENERAL.—**In the case of an applicable individual who has attained the age of 55 but has not attained the age of 65 before the beginning of a calendar year, this paragraph shall be applied to such individual for months during such calendar year by substituting ‘5 percent’ for ‘8 percent’ in subparagraphs (A) and (D).

**“(ii) USE OF INCREASED FEDERAL FUNDS.—**

**“(i) IN GENERAL.—**The amount available for any calendar year for expenditure under the early retiree reinsurance program under section 1102 of the Patient Protection and Affordable Care Act shall be increased by the amount the Secretary of Health and Human

Services estimates under subclause (II) for the calendar year. Notwithstanding section 1102(a)(1) of such Act, amounts made available under this subclause for any calendar year after 2014 may be used to make payments under such reinsurance program.

**“(II) ESTIMATES.—**The Secretary of Health and Human Services, in consultation with the Secretary, shall estimate for each calendar year after 2013 the net increase (if any) in Federal revenues, and the net decrease (if any) in Federal outlays, by reason of the application of clause (i). The sum of such amounts (expressed as a positive number) shall be the amount taken into account under subclause (I). The Secretary shall adjust the estimate for any calendar year to correct any errors in an estimate for any preceding calendar year.

**SA 3177.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 336, between lines 16 and 17, insert the following:

**“(6) COLLEGE STUDENTS.—**

**“(A) IN GENERAL.—**Any applicable individual for any month which occurs within an academic period during which the individual is a student (whether full-time or part-time) who meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)) at an institution of higher education (including a community college or trade school) described in such section. For purposes of the preceding sentence, any month between 2 consecutive academic periods shall be treated as occurring during an academic period.

**“(B) USE OF INCREASED FEDERAL FUNDS.—**

**“(i) IN GENERAL.—**The amount available for any calendar year for expenditure under the reinsurance program under section 1341 of the Patient Protection and Affordable Care Act shall be increased by the amount the Secretary of Health and Human Services estimates under clause (11) for the calendar year. Notwithstanding section 1341(b)(4) of such Act, amounts made available under this subclause for any calendar year after 2018 may be used to make payments under any reinsurance program of a State in the individual market in effect during such calendar year.

**“(ii) ESTIMATES.—**The Secretary of Health and Human Services, in consultation with the Secretary, shall estimate for each calendar year after 2013 the net increase (if any) in Federal revenues, and the net decrease (if any) in Federal outlays, by reason of the application of subparagraph (A). The sum of such amounts (expressed as a positive number) shall be the amount taken into account under clause (i). The Secretary shall adjust the estimate for any calendar year to correct any errors in an estimate for any preceding calendar year.

**SA 3178.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R.



3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 156, beginning with line 4, strike all through page 157, line 7, and insert the following:

(D) PRESIDENT, VICE PRESIDENT, MEMBERS OF CONGRESS, POLITICAL APPOINTEES, AND CONGRESSIONAL STAFF IN THE EXCHANGE.—

(i) IN GENERAL.—Notwithstanding chapter 89 of title 5, United States Code, or any provision of this title—

(I) the President, Vice President, each Member of Congress, each political appointee, and each Congressional employee shall be treated as a qualified individual entitled to the right under this paragraph to enroll in a qualified health plan in the individual market offered through an Exchange in the State in which the individual resides; and

(II) any employer contribution under such chapter on behalf of the President, Vice President, any Member of Congress, any political appointee, and any Congressional employee may be paid only to the issuer of a qualified health plan in which the individual enrolled in through such Exchange and not to the issuer of a plan offered through the Federal employees health benefit program under such chapter.

(ii) PAYMENTS BY FEDERAL GOVERNMENT.—The Secretary, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which—

(I) the employer contributions under such chapter on behalf of the President, Vice President, and each political appointee are determined and actuarially adjusted for age; and

(II) the employer contributions may be made directly to an Exchange for payment to an issuer.

(iii) POLITICAL APPOINTEE.—In this subparagraph, the term “political appointee” means any individual who—

(I) is employed in a position described under sections 5312 through 5316 of title 5, United States Code, (relating to the Executive Schedule);

(II) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5, United States Code; or

(III) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(iv) CONGRESSIONAL EMPLOYEE.—In this subparagraph, the term “Congressional employee” means an employee whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

**SA 3179.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other

purposes; which was ordered to lie on the table; as follows:

On page 334, between lines 18 and 19, insert the following:

“(E) SPECIAL RULE FOR INDIVIDUALS UNDER AGE 30.—

“(i) IN GENERAL.—In the case of an applicable individual who has not attained age 30 before the beginning of a calendar year, this paragraph shall be applied to such individual for months during such calendar year by substituting ‘5 percent’ for ‘8 percent’ in subparagraphs (A) and (D).

“(ii) USE OF INCREASED FEDERAL FUNDS.—

“(I) IN GENERAL.—The amount available for any calendar year for expenditure under the reinsurance program under section 1341 of the Patient Protection and Affordable Care Act shall be increased by the amount the Secretary of Health and Human Services estimates under subclause (II) for the calendar year. Notwithstanding section 1341(b)(4) of such Act, amounts made available under this subclause for any calendar year after 2018 may be used to make payments under any reinsurance program of a State in the individual market in effect during such calendar year.

“(II) ESTIMATES.—The Secretary of Health and Human Services, in consultation with the Secretary, shall estimate for each calendar year after 2013 the net increase (if any) in Federal revenues, and the net decrease (if any) in Federal outlays, by reason of the application of clause (i). The sum of such amounts (expressed as a positive number) shall be the amount taken into account under subclause (I). The Secretary shall adjust the estimate for any calendar year to correct any errors in an estimate for any preceding calendar year.

**SA 3180.** Mr. GRASSLEY (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1053, between lines 2 and 3, insert the following:

**SEC. 3403A. PROTECTING SENIORS FROM HIGHER PREMIUMS, REDUCED BENEFITS, AND RATIONING OF LIFE-SAVING CARE UNDER MEDICARE PARTS C AND D.**

Section 1899A(c)(2)(A) of the Social Security Act, as added by section 3403, is amended—

(1) in clause (ii), by striking “under section 1818, 1818A, or 1839”; and

(2) by striking clause (iv).

**SA 3181.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 909, strike line 21 and all that follows through page 910, line 19.

**SA 3182.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

**TITLE X—ENSURING THAT SAVINGS FROM MEDICAL CARE ACCESS PROTECTION ARE USED TO REDUCE THE COVERAGE GAP UNDER MEDICARE PART D**

**Subtitle A—Reducing the Coverage Gap Under Medicare Part D**

**SEC. 10001. REDUCING THE COVERAGE GAP.**

Section 1860D–2(b) of the Social Security Act (42 U.S.C. 1395w–102(b)), as amended by section 3315, is further amended—

(1) in paragraph (3)(A), by striking “and (7)” and inserting “(7), and (8)”;

(2) in paragraph (7), by striking subparagraph (C); and

(3) by adding at the end the following new paragraph:

“(8) INCREASE IN INITIAL COVERAGE LIMIT IN SUBSEQUENT YEARS.—

“(A) IN GENERAL.—For plan years beginning on or after January 1, 2011, the initial coverage limit described in paragraph (3)(B) otherwise applicable shall be increased by an amount which the Chief Actuary of the Centers for Medicare & Medicaid Services determines is equal to the estimated amount of savings during the plan year as a result of the provisions of the Medical Care Access Protection Act of 2009.

“(B) CONSIDERATIONS.—In determining the amount of the increase under subparagraph (A) for a plan year, the Secretary shall take into account—

“(i) any increase under such paragraph during the preceding year or years; and

“(ii) any estimated increase in utilization as a result of the application of this paragraph.

“(C) APPLICATION.—The provisions of subparagraph (B) of paragraph (7) shall apply to the application of subparagraph (A) of this subparagraph in the same manner as such provisions apply to the application of subparagraph (A) of paragraph (7).”.

**Subtitle B—Medical Care Access Protection**

**SEC. 10101. SHORT TITLE.**

This subtitle may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

**SEC. 10102. FINDINGS AND PURPOSE.**

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting



interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) **EFFECT ON FEDERAL SPENDING.**—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) **PURPOSE.**—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

#### SEC. 10103. DEFINITIONS.

In this subtitle:

(1) **ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COLLATERAL SOURCE BENEFITS.**—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) **COMPENSATORY DAMAGES.**—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care pro-

vider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

**SEC. 10104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

**SEC. 10105. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of

the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

**SEC. 10106. MAXIMIZING PATIENT RECOVERY.**

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33½ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

**SEC. 10107. ADDITIONAL HEALTH BENEFITS.**

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) **APPLICATION OF PROVISION.**—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

**SEC. 10108. PUNITIVE DAMAGES.**

(a) **PUNITIVE DAMAGES PERMITTED.**—

(1) **IN GENERAL.**—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that

such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) **FILING OF LAWSUIT.**—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) **SEPARATE PROCEEDING.**—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) **LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.**—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) **DETERMINING AMOUNT OF PUNITIVE DAMAGES.**—

(1) **FACTORS CONSIDERED.**—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) **MAXIMUM AWARD.**—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) **LIABILITY OF HEALTH CARE PROVIDERS.**—

(1) **IN GENERAL.**—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) **MEDICAL PRODUCT.**—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device”

have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

#### **SEC. 10109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

#### **SEC. 10110. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) **SMALLPOX VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) **OTHER FEDERAL LAW.**—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

#### **SEC. 10111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) **HEALTH CARE LAWSUITS.**—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this

subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) **PREEMPTION OF CERTAIN STATE LAWS.**—

No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 10105(a).

(c) **PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.**—

(1) **IN GENERAL.**—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) **RULE OF CONSTRUCTION.**—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

#### **SEC. 10112. APPLICABILITY; EFFECTIVE DATE.**

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3183.** Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### **SEC. \_\_\_\_ . PROTECTING MIDDLE CLASS FAMILIES FROM TAX INCREASES.**

It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and

families, including the affordability tax credit and the small business tax credit.

**SA 3184.** Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title IX, insert the following:

**Subtitle—Expansion of Adoption Credit and Adoption Assistance Programs**

**SEC. 01. EXPANSION OF ADOPTION CREDIT AND ADOPTION ASSISTANCE PROGRAMS.**

(a) INCREASE IN DOLLAR LIMITATION.—

(1) ADOPTION CREDIT.—

(A) IN GENERAL.—Paragraph (1) of section 23(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking “\$10,000” and inserting “\$15,000”.

(B) CHILD WITH SPECIAL NEEDS.—Paragraph (3) of section 23(a) of such Code (relating to \$10,000 credit for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking “\$10,000” and inserting “\$15,000”, and

(ii) in the heading by striking “\$10,000” and inserting “\$15,000”.

(C) CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.—Subsection (h) of section 23 of such Code (relating to adjustments for inflation) is amended to read as follows:

“(h) ADJUSTMENTS FOR INFLATION.—

“(1) DOLLAR LIMITATIONS.—In the case of a taxable year beginning after December 31, 2009, each of the dollar amounts in subsections (a)(3) and (b)(1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2008’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

“(2) INCOME LIMITATION.—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A)(i) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2001’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”.

(2) ADOPTION ASSISTANCE PROGRAMS.—

(A) IN GENERAL.—Paragraph (1) of section 137(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking “\$10,000” and inserting “\$15,000”.

(B) CHILD WITH SPECIAL NEEDS.—Paragraph (2) of section 137(a) of such Code (relating to \$10,000 exclusion for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking “\$10,000” and inserting “\$15,000”, and

(ii) in the heading by striking “\$10,000” and inserting “\$15,000”.

(C) CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.—Subsection (f) of section 137 of such Code (relating to adjustments for inflation) is amended to read as follows:

“(f) ADJUSTMENTS FOR INFLATION.—

“(1) DOLLAR LIMITATIONS.—In the case of a taxable year beginning after December 31, 2009, each of the dollar amounts in subsections (a)(2) and (b)(1) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2008’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

“(2) INCOME LIMITATION.—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2001’ for ‘calendar year 1992’ in subparagraph thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.”.

(b) CREDIT MADE REFUNDABLE.—

(1) CREDIT MOVED TO SUBPART RELATING TO REFUNDABLE CREDITS.—The Internal Revenue Code of 1986 is amended—

(A) by redesignating section 23, as amended by subsection (a), as section 36B, and

(B) by moving section 36B (as so redesignated) from subpart A of part IV of subchapter A of chapter 1 to the location immediately before section 37 in subpart C of part IV of subchapter A of chapter 1.

(2) CONFORMING AMENDMENTS.—

(A) Section 24(b)(3)(B) of such Code is amended by striking “23.”.

(B) Section 25(e)(1)(C) of such Code is amended by striking “23,” both places it appears.

(C) Section 25A(i)(5)(B) of such Code is amended by striking “23, 25D,” and inserting “25D”.

(D) Section 25B(g)(2) of such Code is amended by striking “23.”.

(E) Section 26(a)(1) of such Code is amended by striking “23.”.

(F) Section 30(c)(2)(B)(ii) of such Code is amended by striking “23, 25D,” and inserting “25D”.

(G) Section 30B(g)(2)(B)(ii) of such Code is amended by striking “23.”.

(H) Section 30D(c)(2)(B)(ii) of such Code is amended by striking “sections 23 and” and inserting “section”.

(I) Section 36B of such Code, as so redesignated, is amended—

(i) by striking paragraph (4) of subsection (b), and

(ii) by striking subsection (c).

(J) Section 137 of such Code is amended—

(i) by striking “section 23(d)” in subsection (d) and inserting “section 36B(d)”, and

(ii) by striking “section 23” in subsection (e) and inserting “section 36B”.

(K) Section 904(i) of such Code is amended by striking “23.”.

(L) Section 1016(a)(26) is amended by striking “23(g)” and inserting “36B(g)”.

(M) Section 1400C(d) of such Code is amended by striking “23.”.

(N) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code of 1986 is amended by striking the item relating to section 23.

(O) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting “36B,” after “36A.”.

(P) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 36A the following new item:

“Sec. 36B. Adoption expenses.”.

(c) EXTENSION OF CREDIT AND ADOPTION ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—Section 36B of the Internal Revenue Code of 1986, as redesignated by subsection (b), is amended by adding at the end the following new subsection:

“(i) TERMINATION.—This section shall not apply to expenses paid or incurred in taxable years beginning after December 31, 2014.”.

(2) IN GENERAL.—Section 137 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(g) TERMINATION.—This section shall not apply to expenses paid or incurred in taxable years beginning after December 31, 2014.”.

(3) SUNSET FOR MODIFICATIONS MADE BY EGTRRA TO ADOPTION CREDIT REMOVED.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the amendments made by section 202 of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

**SA 3185.** Mr. BROWN submitted an amendment intended to be proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 553, between lines 14 and 15, insert the following:

**SEC. 2721. INCREASED PAYMENTS FOR PEDIATRIC CARE UNDER MEDICAID.**

(a) IN GENERAL.—

(1) FEE-FOR-SERVICE PAYMENTS.—Section 1902 of the Social Security Act (42 U.S.C. 1396b), as amended by section 2001(b)(2), is amended—

(A) in subsection (a)(13)—

(i) by striking “and” at the end of subparagraph (A);

(ii) by adding “and” at the end of subparagraph (B); and

(iii) by adding at the end the following new subparagraph:

“(C) payment for pediatric care services (as defined in subsection (hh)(1)) furnished by physicians (as defined in section 1861(r)) (or for services furnished by other health care professionals that would be pediatric care services under such subsection if furnished by a physician) at a rate not less than 80 percent of the payment rate that would be applicable if the adjustment described in subsection (hh)(2) were to apply to such services under part B of title XVIII (or, if there

is no payment rate for such services under part B of title XVIII, the payment rate for the most comparable services, as determined by the Secretary in consultation with the Medicaid and CHIP Payment and Access Commission established under section 1900 and adjusted as appropriate for a pediatric population) for services furnished in 2010, 90 percent of such adjusted payment rate for such services furnished in 2011, and 100 percent of such adjusted payment rate for such services furnished in 2012 and each subsequent year;"; and

(B) by adding at the end the following new subsection:

"(hh) INCREASED PAYMENT FOR PEDIATRIC CARE.—For purposes of subsection (a)(13)(C):

"(1) PEDIATRIC CARE SERVICES DEFINED.—The term 'pediatric care services' means evaluation and management services, without regard to the specialty of the physician or hospital furnishing the services, that are procedure codes (for services covered under title XVIII) for services in the category designated Evaluation and Management in the Healthcare Common Procedure Coding System (established by the Secretary under section 1848(c)(5) as of December 31, 2009, and as subsequently modified by the Secretary) and that are furnished to an individual who is enrolled in the State plan under this title who has not attained age 19. Such term includes procedure codes established by the Secretary, in consultation with the Medicaid and CHIP Payment and Access Commission established under section 1900, for services furnished under State plans under this title to individuals who have not attained age 19 and for which there is not an a procedure code (or a procedure code that the Secretary, in consultation with such Commission, determines is comparable) established under the Healthcare Common Procedure Coding System.

"(2) ADJUSTMENT.—The adjustment described in this paragraph is the substitution of 1.25 percent for the update otherwise provided under section 1848(d)(4) for each year beginning with 2010."

(2) UNDER MEDICAID MANAGED CARE PLANS.—Section 1932(f) of such Act (42 U.S.C. 1396u-2(f)) is amended—

(A) in the heading, by adding at the end the following: "; ADEQUACY OF PAYMENT FOR PEDIATRIC CARE SERVICES"; and

(B) by inserting before the period at the end the following: "and, in the case of pediatric care services described in section 1902(a)(13)(C), consistent with the minimum payment rates specified in such section (regardless of the manner in which such payments are made, including in the form of capitation or partial capitation)".

(b) INCREASED FMAP.—Section 1905 of such Act (42 U.S.C. 1396d), as amended by sections 2006 and 4107(a)(2), is amended

(1) in the first sentence of subsection (b), by striking "and" before "(4)" and by inserting before the period at the end the following: ", and (5) 100 percent (for periods beginning with 2010) with respect to amounts described in subsection (cc)"; and

(2) by adding at the end the following new subsection:

"(cc) For purposes of section 1905(b)(5), the amounts described in this subsection are the following:

"(1)(A) The portion of the amounts expended for medical assistance for services described in section 1902(a)(13)(C) furnished on or after January 1, 2010, that is attributable to the amount by which the minimum payment rate required under such section (or, by application, section 1932(f)) exceeds the pay-

ment rate applicable to such services under the State plan as of the date of enactment of the Patient Protection and Affordable Care Act.

"(B) Subparagraph (A) shall not be construed as preventing the payment of Federal financial participation based on the Federal medical assistance percentage for amounts in excess of those specified under such subparagraph."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2010.

**SA 3186.** Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 729, strike line 21 and all that follows through line 13 on page 730, and insert the following:

"(xv) Promoting—

"(I) improved quality and reduced cost by developing a collaborative of high-quality, low-cost health care institutions that is responsible for—

"(aa) developing, documenting, and disseminating best practices and proven care methods;

"(bb) implementing such best practices and proven care methods within such institutions to demonstrate further improvements in quality and efficiency; and

"(cc) providing assistance to other health care institutions on how best to employ such best practices and proven care methods to improve health care quality and lower costs.

"(II) improved quality and reduced cost by developing a similarly focused collaborative of pediatric providers and institutions through the Medicaid and CHIP programs."

**SA 3187.** Mr. WYDEN (for himself and Mr. CRAPO) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 828, between lines 3 and 4, insert the following:

**SEC. 3130. MEDICARE CRITICAL ACCESS HOSPITAL PROVISIONS.**

(a) FLEXIBILITY IN THE MANNER IN WHICH BEDS ARE COUNTED FOR PURPOSES OF DETERMINING WHETHER A HOSPITAL MAY BE DESIGNATED AS A CRITICAL ACCESS HOSPITAL UNDER THE MEDICARE PROGRAM.—

(1) IN GENERAL.—Section 1820(c)(2)(B) of the Social Security Act (42 U.S.C. 1395i-4(c)(2)(B)) is amended—

(A) in clause (iii), by inserting "(or 20, as determined on an annual, average basis)" after "25"; and

(B) by adding at the end the following flush sentence:

"In determining the number of beds for purposes of clause (iii), only beds that are occupied shall be counted."

(2) EFFECTIVE DATE.—The amendments made by this subsection take effect on January 1, 2010.

(b) CRITICAL ACCESS HOSPITAL INPATIENT BED LIMITATION EXEMPTION FOR BEDS PROVIDED TO CERTAIN VETERANS.—

(1) IN GENERAL.—Section 1820(c) of the Social Security Act (42 U.S.C. 1395i-4(c)) is amended by adding at the end the following new paragraph:

"(3) EXEMPTION FROM BED LIMITATION.—For purposes of this section, no acute care inpatient bed shall be counted against any numerical limitation specified under this section for such a bed (or for inpatient bed days with respect to such a bed) if the bed is provided for an individual who is a veteran and the Department of Veterans Affairs referred the individual for care in the hospital or is coordinating such care with other care being provided by such Department."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after the date of the enactment of this Act

**SA 3188.** Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

**SEC. . TREATMENT OF HRAS.**

For purposes of the provisions of, and amendments made by, this Act, and the provisions of any other law, funds from a health reimbursement arrangement used in whole or in part by an individual to purchase an individual or family health benefits plan shall not be considered or construed as an employer contribution and such individual or family plan shall not be considered or construed as a group health benefits plan.

**SA 3189.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1053, between lines 2 and 3, insert the following:

**SEC. 3404. AUTHORITY TO VARY THE AMOUNT OF THE MEDICARE PART B PREMIUM FOR NEW BENEFICIARIES THAT SMOKE AND BENEFICIARIES THAT MAKE HEALTHY CHOICES.**

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(2), by striking "and (i)" and inserting "(i), and (j)"; and

(2) by adding at the end the following new subsection:

"(j) AUTHORITY TO VARY THE AMOUNT OF THE PREMIUM FOR BENEFICIARIES THAT SMOKE

AND BENEFICIARIES THAT MAKE HEALTHY CHOICES.—With respect to the monthly premium amount for individuals who enroll under this part after the date of the enactment of the Patient Protection and Affordable Care Act, the Secretary shall vary the amount of such premium for such an individual if the individual smokes or makes healthy choices to improve health outcomes (as defined by the Secretary).”.

**SA 3190.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 245, between lines 14 and 15, and insert the following:

(B) SPECIAL RULE FOR CERTAIN INDIVIDUALS ELIGIBLE FOR MEDICAID.—If a taxpayer is an individual described in section 1902(k)(3) of the Social Security Act who elects, in accordance with procedures established by a State under that section, to enroll in a qualified health plan and whose household income does not exceed 100 percent of an amount equal to the poverty line for a family of the size involved, the taxpayer shall—

(i) for purposes of the credit under this section, be treated as an applicable taxpayer and the applicable percentage with respect to such taxpayer shall be 2.0 percent; and

(ii) for purposes of reduced cost-sharing under section 1402 of the Patient Protection and Affordable Care Act, shall be treated as having household income of more than 100 percent but less than 150 percent of the poverty line (as so defined) applicable to a family of the size involved.

On page 404, between lines 13 and 14, insert the following:

“(3) The State shall establish procedures to ensure that any individual eligible for medical assistance under the State plan or under a waiver of the plan (under any subclause of subsection (a)(10)(A) or otherwise) who is not elderly or disabled may elect to enroll in a qualified health plan through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act instead of enrolling in the State plan under this title or a waiver of the plan. An individual making such an election shall waive being provided with medical assistance under the State plan or waiver while enrolled in the qualified health plan. In the case of an individual who is a child, the child’s parent may make such an election on behalf of the child.

**SA 3191.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1266, between lines 17 and 18, insert the following:

#### SEC. 4403. TERMINATION OF PROGRAMS.

Notwithstanding any other provision of this Act (or an amendment made by this Act), the Secretary of Health and Human Services shall terminate a program established under this title if the Secretary of Health and Human Services determines that such program has not reduced health care costs for the Federal government and beneficiaries under such program.

**SA 3192.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 356, between lines 19 and 20, insert the following:

“(f) LIMITATION.—If in any calendar year the national unemployment rate (as determined by the Bureau of Labor Statistics) exceeds 6 percent, then, notwithstanding any other provision of law, this section shall not apply for the remainder of such calendar year.”.

**SA 3193.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1142, strike lines 8 through 16 and insert the following:

(c) USE OF FUND.—Notwithstanding any other provision of this Act (or an amendment made by this Act), the Secretary shall allocate amounts in the Fund to the high risk pool program under section 1101 and the reinsurance program for individual and small group markets in each State under section 1341, in order to lower health care premiums for Americans.

**SA 3194.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle E of title IV, insert the following:

#### SEC. 4403. PROHIBITION ON THE USE OF FUNDS FOR THE CONSTRUCTION OF SIDEWALKS, PLAYGROUNDS, OR JUNGLE GYMS.

Notwithstanding any other provision of this Act (or an amendment made by this Act), no funds appropriated under this Act (or an amendment made by this Act) shall be allocated to pay for the construction of sidewalks, playgrounds, or jungle gyms.

**SA 3195.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 101, between lines 19 and 20, insert the following:

(3) INCLUSION OF HIGH DEDUCTIBLE HEALTH PLANS.—If a health plan is a high deductible health plan (as defined in section 223(c)(2) of the Internal Revenue Code of 1986) that meets all requirements under such section to be offered in connection with a health savings account—

(A) such plan shall be treated as a qualified health plan under this section, and as minimum essential coverage under section 5000A of such Code, for purposes of this Act and the amendments made by this Act;

(B) no requirement imposed by any provision of, or any amendment made by, this Act shall apply with respect to the plan or issuer thereof.

**SA 3196.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, between lines 19 and 20, insert the following:

(g) USE OF FUND.—Notwithstanding any other provision of this Act (or an amendment made by this Act), the Secretary shall allocate amounts appropriated under subsection (e) to the high risk pool program under section 1101 and the reinsurance program for individual and small group markets in each State under section 1341, in order to lower health care premiums for Americans.

**SA 3197.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike the matter proposed to be inserted and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Health Plans Act of 2009”.

#### TITLE I—ENHANCED MARKETPLACE POOLS

#### SEC. 101. RULES GOVERNING ENHANCED MARKETPLACE POOLS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:



# **"PART 8—RULES GOVERNING ENHANCED MARKETPLACE POOLS**

## **"SEC. 801. SMALL BUSINESS HEALTH PLANS.**

"(a) IN GENERAL.—For purposes of this part, the term 'small business health plan' means a fully insured group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

"(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

"(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining medical care;

"(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership;

"(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation; and

"(4) does not condition membership on the basis of a minimum group size.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), (3), and (4) shall be deemed to be a sponsor described in this subsection.

## **"SEC. 802. ALTERNATIVE MARKET POOLING ORGANIZATIONS.**

"(a) IN GENERAL.—The Secretary, not later than 1 year after the date of enactment of this part, shall promulgate regulations that apply the rules and standards of this part, as necessary, to circumstances in which a pooling entity other (hereinafter 'Alternative Market Pooling Organizations') is not made up principally of employers and their employees, or not a professional organization or such small business health plan entity identified in section 801.

"(b) ADAPTION OF STANDARDS.—In developing and promulgating regulations pursuant to subsection (a), the Secretary, in consultation with the Secretary of Health and Human Services, small business health plans, small and large employers, large and small insurance issuers, consumer representatives, and state insurance commissioners, shall—

"(1) adapt the standards of this part, to the maximum degree practicable, to assure balanced and comparable oversight standards for both small business health plans and alternative market pooling organizations;

"(2) permit the participation as alternative market pooling organizations unions, churches and other faith-based organizations, or other organizations composed of individuals and groups which may have little or no association with employment, provided however, that such alternative market pooling organizations meet, and continue meeting on an ongoing basis, to satisfy standards,

rules, and requirements materially equivalent to those set forth in this part with respect to small business health plans;

"(3) conduct periodic verification of such compliance by alternative market pooling organizations, in consultation with the Secretary of Health and Human Services and the National Association of Insurance Commissioners, except that such periodic verification shall not materially impede market entry or participation as pooling entities comparable to that of small business health plans;

"(4) assure that consistent, clear, and regularly monitored standards are applied with respect to alternative market pooling organizations to avert material risk-selection within or among the composition of such organizations;

"(5) the expedited and deemed certification procedures provided in section 805(d) shall not apply to alternative market pooling organizations until sooner of the promulgation of regulations under this subsection or the expiration of one year following enactment of this Act; and

"(6) make such other appropriate adjustments to the requirements of this part as the Secretary may reasonably deem appropriate to fit the circumstances of an individual alternative market pooling organization or category of such organization, including but not limited to the application of the membership payment requirements of section 801(b)(2) to alternative market pooling organizations composed primarily of church- or faith-based membership.

## **"SEC. 803. CERTIFICATION OF SMALL BUSINESS HEALTH PLANS.**

"(a) IN GENERAL.—Not later than 6 months after the date of enactment of this part, the applicable authority shall prescribe by interim final rule a procedure under which the applicable authority shall certify small business health plans which apply for certification as meeting the requirements of this part.

"(b) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—A small business health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

"(c) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of small business health plans under this part. Such regulation shall provide for the revocation of a certification if the applicable authority finds that the small business health plan involved is failing to comply with the requirements of this part.

"(d) EXPEDITED AND DEEMED CERTIFICATION.—

"(1) IN GENERAL.—If the Secretary fails to act on an application for certification under this section within 90 days of receipt of such application, the applying small business health plan shall be deemed certified until such time as the Secretary may deny for cause the application for certification.

"(2) CIVIL PENALTY.—The Secretary may assess a civil penalty against the board of trustees and plan sponsor (jointly and severally) of a small business health plan that is deemed certified under paragraph (1) of up to \$500,000 in the event the Secretary determines that the application for certification of such small business health plan was willfully or with gross negligence incomplete or inaccurate.

## **"SEC. 804. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.**

"(a) SPONSOR.—The requirements of this subsection are met with respect to a small business health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

"(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to a small business health plan if the following requirements are met:

"(1) FISCAL CONTROL.—The plan is operated, pursuant to a plan document, by a board of trustees which pursuant to a trust agreement has complete fiscal control over the plan and which is responsible for all operations of the plan.

"(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

"(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

"(A) BOARD MEMBERSHIP.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

"(ii) LIMITATION.—

"(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

"(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

"(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

"(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to a small business health plan which is in existence on the date of the enactment of the Small Business Health Plans Act of 2009.

"(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with insurers.

"(c) TREATMENT OF FRANCHISES.—In the case of a group health plan which is established and maintained by a franchisor for a franchisee or for its franchisees—

"(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchisor were deemed to be the sponsor referred to in section 801(b) and each franchisee were deemed to be a member (of the sponsor) referred to in section 801(b); and

"(2) the requirements of section 804(a)(1) shall be deemed met.



For purposes of this subsection the terms ‘franchisor’ and ‘franchisee’ shall have the meanings given such terms for purposes of sections 436.2(a) through 436.2(c) of title 16, Code of Federal Regulations (including any such amendments to such regulation after the date of enactment of this part).

**“SEC. 805. PARTICIPATION AND COVERAGE REQUIREMENTS.**

“(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to a small business health plan if, under the terms of the plan—

“(1) each participating employer must be—

“(A) a member of the sponsor;

“(B) the sponsor; or

“(C) an affiliated member of the sponsor, except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

“(2) all individuals commencing coverage under the plan after certification under this part must be—

“(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

“(B) the dependents of individuals described in subparagraph (A).

“(b) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to a small business health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

“(c) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to a small business health plan if—

“(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

“(2) information regarding all coverage options available under the plan is made readily available to any employer eligible to participate; and

“(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

**“SEC. 806. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.**

“(a) IN GENERAL.—The requirements of this section are met with respect to a small business health plan if the following requirements are met:

“(1) CONTENTS OF GOVERNING INSTRUMENTS.—

“(A) IN GENERAL.—The instruments governing the plan include a written instrument, meeting the requirements of an in-

strument required under section 402(a)(1), which—

“(i) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A)); and

“(ii) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)).

“(B) DESCRIPTION OF MATERIAL PROVISIONS.—The terms of the health insurance coverage (including the terms of any individual certificates that may be offered to individuals in connection with such coverage) describe the material benefit and rating, and other provisions set forth in this section and such material provisions are included in the summary plan description.

“(2) CONTRIBUTION RATES MUST BE NON-DISCRIMINATORY.—

“(A) IN GENERAL.—The contribution rates for any participating small employer shall not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and shall not vary on the basis of the type of business or industry in which such employer is engaged, subject to subparagraph (B) and the terms of this title.

“(B) EFFECT OF TITLE.—Nothing in this title or any other provision of law shall be construed to preclude a health insurance issuer offering health insurance coverage in connection with a small business health plan that meets the requirements of this part, and at the request of such small business health plan, from—

“(i) setting contribution rates for the small business health plan based on the claims experience of the small business health plan so long as any variation in such rates for participating small employers complies with the requirements of clause (ii), except that small business health plans shall not be subject, in non-adopting states, to subparagraphs (A)(ii) and (C) of section 2912(a)(2) of the Public Health Service Act, and in adopting states, to any State law that would have the effect of imposing requirements as outlined in such subparagraphs (A)(ii) and (C); or

“(ii) varying contribution rates for participating small employers in a small business health plan in a State to the extent that such rates could vary using the same methodology employed in such State for regulating small group premium rates, subject to the terms of part I of subtitle A of title XXIX of the Public Health Service Act (relating to rating requirements), as added by title II of the Small Business Health Plans Act of 2009.

“(3) EXCEPTIONS REGARDING SELF-EMPLOYED AND LARGE EMPLOYERS.—

“(A) SELF EMPLOYED.—

“(i) IN GENERAL.—Small business health plans with participating employers who are self-employed individuals (and their dependents) shall enroll such self-employed participating employers in accordance with rating rules that do not violate the rating rules for self-employed individuals in the State in which such self-employed participating employers are located.

“(ii) GUARANTEE ISSUE.—Small business health plans with participating employers who are self-employed individuals (and their dependents) may decline to guarantee issue to such participating employers in States in which guarantee issue is not otherwise required for the self-employed in that State.

“(B) LARGE EMPLOYERS.—Small business health plans with participating employers

that are larger than small employers (as defined in section 808(a)(10)) shall enroll such large participating employers in accordance with rating rules that do not violate the rating rules for large employers in the State in which such large participating employers are located.

“(4) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

“(b) ABILITY OF SMALL BUSINESS HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude a small business health plan or a health insurance issuer offering health insurance coverage in connection with a small business health plan from exercising its sole discretion in selecting the specific benefits and services consisting of medical care to be included as benefits under such plan or coverage, except that such benefits and services must meet the terms and specifications of part II of subtitle A of title XXIX of the Public Health Service Act (relating to lower cost plans), as added by title II of the Small Business Health Plans Act of 2009.

“(c) DOMICILE AND NON-DOMICILE STATES.—

“(1) DOMICILE STATE.—Coverage shall be issued to a small business health plan in the State in which the sponsor’s principal place of business is located.

“(2) NON-DOMICILE STATES.—With respect to a State (other than the domicile State) in which participating employers of a small business health plan are located but in which the insurer of the small business health plan in the domicile State is not yet licensed, the following shall apply:

“(A) TEMPORARY PREEMPTION.—If, upon the expiration of the 90-day period following the submission of a licensure application by such insurer (that includes a certified copy of an approved licensure application as submitted by such insurer in the domicile State) to such State, such State has not approved or denied such application, such State’s health insurance licensure laws shall be temporarily preempted and the insurer shall be permitted to operate in such State, subject to the following terms:

“(i) APPLICATION OF NON-DOMICILE STATE LAW.—Except with respect to licensure and with respect to the terms of subtitle A of title XXIX of the Public Health Service Act (relating to rating and benefits as added by the Small Business Health Plans Act of 2009), the laws and authority of the non-domicile State shall remain in full force and effect.

“(ii) REVOCATION OF PREEMPTION.—The preemption of a non-domicile State’s health insurance licensure laws pursuant to this subparagraph, shall be terminated upon the occurrence of either of the following:

“(I) APPROVAL OR DENIAL OF APPLICATION.—The approval or denial of an insurer’s licensure application, following the laws and regulations of the non-domicile State with respect to licensure.

“(II) DETERMINATION OF MATERIAL VIOLATION.—A determination by a non-domicile State that an insurer operating in a non-domicile State pursuant to the preemption provided for in this subparagraph is in material violation of the insurance laws (other than licensure and with respect to the terms of subtitle A of title XXIX of the Public Health Service Act (relating to rating and benefits added by the Small Business Health Plans Act of 2009)) of such State.

“(B) NO PROHIBITION ON PROMOTION.—Nothing in this paragraph shall be construed to prohibit a small business health plan or an insurer from promoting coverage prior to the expiration of the 90-day period provided for in subparagraph (A), except that no enrollment or collection of contributions shall occur before the expiration of such 90-day period.

“(C) LICENSURE.—Except with respect to the application of the temporary preemption provision of this paragraph, nothing in this part shall be construed to limit the requirement that insurers issuing coverage to small business health plans shall be licensed in each State in which the small business health plans operate.

“(D) SERVICING BY LICENSED INSURERS.—Notwithstanding subparagraph (C), the requirements of this subsection may also be satisfied if the participating employers of a small business health plan are serviced by a licensed insurer in that State, even where such insurer is not the insurer of such small business health plan in the State in which such small business health plan is domiciled.

**“SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.**

“(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), a small business health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of \$5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to small business health plans.

“(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

“(1) IDENTIFYING INFORMATION.—The names and addresses of—

“(A) the sponsor; and

“(B) the members of the board of trustees of the plan.

“(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

“(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

“(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any by-laws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

“(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan, health insurance issuer, and contract administrators and other service providers.

“(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to a small business health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which the small business health plans operate.

“(d) NOTICE OF MATERIAL CHANGES.—In the case of any small business health plan certified under this part, descriptions of material changes in any information which was

required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

**“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.**

“A small business health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

“(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

“(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

“(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

**“SEC. 809. IMPLEMENTATION AND APPLICATION AUTHORITY BY SECRETARY.**

“The Secretary shall, through promulgation and implementation of such regulations as the Secretary may reasonably determine necessary or appropriate, and in consultation with a balanced spectrum of effected entities and persons, modify the implementation and application of this part to accommodate with minimum disruption such changes to State or Federal law provided in this part and the (and the amendments made by such Act) or in regulations issued thereto.

**“SEC. 810. DEFINITIONS AND RULES OF CONSTRUCTION.**

“(a) DEFINITIONS.—For purposes of this part—

“(1) AFFILIATED MEMBER.—The term ‘affiliated member’ means, in connection with a sponsor—

“(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor, or

“(B) in the case of a sponsor with members which consist of associations, a person who is a member or employee of any such association and elects an affiliated status with the sponsor.

“(2) APPLICABLE AUTHORITY.—The term ‘applicable authority’ means the Secretary of Labor, except that, in connection with any exercise of the Secretary’s authority with respect to which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

“(3) APPLICABLE STATE AUTHORITY.—The term ‘applicable State authority’ means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

“(4) GROUP HEALTH PLAN.—The term ‘group health plan’ has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

“(5) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning provided in section 733(b)(1), except

that such term shall not include excepted benefits (as defined in section 733(c)).

“(6) HEALTH INSURANCE ISSUER.—The term ‘health insurance issuer’ has the meaning provided in section 733(b)(2).

“(7) INDIVIDUAL MARKET.—

“(A) IN GENERAL.—The term ‘individual market’ means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

“(B) TREATMENT OF VERY SMALL GROUPS.—

“(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

“(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

“(8) MEDICAL CARE.—The term ‘medical care’ has the meaning provided in section 733(a)(2).

“(9) PARTICIPATING EMPLOYER.—The term ‘participating employer’ means, in connection with a small business health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

“(10) SMALL EMPLOYER.—The term ‘small employer’ means, in connection with a group health plan with respect to a plan year, a small employer as defined in section 2791(e)(4).

“(11) TRADE ASSOCIATION AND PROFESSIONAL ASSOCIATION.—The terms ‘trade association’ and ‘professional association’ mean an entity that meets the requirements of section 1.501(c)(6)-1 of title 26, Code of Federal Regulations (as in effect on the date of enactment of this Act).

“(b) RULE OF CONSTRUCTION.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is a small business health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

“(1) in the case of a partnership, the term ‘employer’ (as defined in section 3(5)) includes the partnership in relation to the partners, and the term ‘employee’ (as defined in section 3(6)) includes any partner in relation to the partnership; and

“(2) in the case of a self-employed individual, the term ‘employer’ (as defined in section 3(5)) and the term ‘employee’ (as defined in section 3(6)) shall include such individual.

“(c) RENEWAL.—Notwithstanding any provision of law to the contrary, a participating employer in a small business health plan shall not be deemed to be a plan sponsor in applying requirements relating to coverage renewal.

“(d) HEALTH SAVINGS ACCOUNTS.—Nothing in this part shall be construed to create any mandates for coverage of benefits for HSA-qualified health plans that would require reimbursements in violation of section 223(c)(2) of the Internal Revenue Code of 1986.”

(b) CONFORMING AMENDMENTS TO PREEMP-TION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

“(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of a small business health plan which is certified under part 8.”.

(2) Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(4), by striking “Subsection (a)” and inserting “Subsections (a) and (d)”;

(B) in subsection (b)(5), by striking “sub-section (a)” in subparagraph (A) and inserting “subsection (a) of this section and sub-sections (a)(2)(B) and (b) of section 805”, and by striking “subsection (a)” in subparagraph (B) and inserting “subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805”;

(C) by redesignating subsection (d) as sub-section (e); and

(D) by inserting after subsection (c) the following new subsection:

“(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall super-sede any and all State laws insofar as they may now or hereafter preclude a health in-surance issuer from offering health insur-ance coverage in connection with a small business health plan which is certified under part 8.

“(2) In any case in which health insurance coverage of any policy type is offered under a small business health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may establish rating and benefit requirements that would other-wise apply to such coverage, provided the re-quirements of subtitle A of title XXIX of the Public Health Service Act (as added by title II of the Health Insurance Marketplace Mod-ernization and Affordability Act of 2007) (concerning health plan rating and benefits) are met.”.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: “Such term also includes a person serving as the sponsor of a small business health plan under part 8.”.

(d) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting “or part 8” after “this part”.

(e) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

“PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

“801. Small business health plans.

“802. Alternative market pooling organiza-tions.

“803. Certification of small business health plans.

“804. Requirements relating to sponsors and boards of trustees.

“805. Participation and coverage require-ments.

“806. Other requirements relating to plan documents, contribution rates, and benefit options.

“807. Requirements for application and re-lated requirements.

“808. Notice requirements for voluntary ter-mination.

“809. Implementation and application au-thority by Secretary.

“810. Definitions and rules of construction.”.

## SEC. 102. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

“(d) CONSULTATION WITH STATES WITH RE-SPECT TO SMALL BUSINESS HEALTH PLANS.—

“(1) AGREEMENTS WITH STATES.—The Sec-retary shall consult with the State recog-nized under paragraph (2) with respect to a small business health plan regarding the ex-ercise of—

“(A) the Secretary’s authority under sec-tions 502 and 504 to enforce the requirements for certification under part 8; and

“(B) the Secretary’s authority to certify small business health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

“(2) RECOGNITION OF DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recog-nized, with respect to any particular small business health plan, as the State with which consultation is required. In carrying out this paragraph such State shall be the domicile State, as defined in section 805(c).”.

## SEC. 103. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.

(a) EFFECTIVE DATE.—The amendments made by this title shall take effect 12 months after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this title within 6 months after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an ar-rangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and bene-ficiaries of its participating employers, at least 200 participating employers make con-tributions to such arrangement, such ar-rangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to pro-vide such benefits to its participating em-ployers, upon the filing with the applicable authority (as defined in section 808(a)(2) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for cer-tification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrange-ment is operated by a board of trustees which has control over the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrange-ment at such time after the date of the en-actment of this Act as the applicable re-quirements of this subsection are not met with respect to such arrangement or at such time that the arrangement provides coverage

to participants and beneficiaries in any State other than the States in which cov-erage is provided on such date of enactment.

(2) DEFINITIONS.—For purposes of this sub-section, the terms “group health plan”, “medical care”, and “participating em-ployer” shall have the meanings provided in section 808 of the Employee Retirement In-come Security Act of 1974, except that the reference in paragraph (7) of such section to an “small business health plan” shall be deemed a reference to an arrangement re-ferred to in this subsection.

## TITLE II—MARKET RELIEF

### SEC. 301. MARKET RELIEF.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

### “TITLE XXIX—HEALTH CARE INSURANCE MARKETPLACE MODERNIZATION

#### “SEC. 2901. GENERAL INSURANCE DEFINITIONS.

“In this title, the terms ‘health insurance coverage’, ‘health insurance issuer’, ‘group health plan’, and ‘individual health insur-ance’ shall have the meanings given such terms in section 2791.

#### “SEC. 2902. IMPLEMENTATION AND APPLICATION AUTHORITY BY SECRETARY.

“The Secretary shall, through promulga-tion and implementation of such regulations as the Secretary may reasonably determine necessary or appropriate, and in consulta-tion with a balanced spectrum of effected en-tities and persons, modify the implementa-tion and application of this title to accom-modate with minimum disruption such changes to State or Federal law provided in this title and the (and the amendments made by such Act) or in regulations issued thereto.

### “Subtitle A—Market Relief

#### “PART I—RATING REQUIREMENTS

##### “SEC. 2911. DEFINITIONS.

“In this part:

“(1) ADOPTING STATE.—The term ‘adopting State’ means a State that, with respect to the small group market, has enacted small group rating rules that meet the minimum standards set forth in section 2912(a)(1) or, as applicable, transitional small group rating rules set forth in section 2912(b).

“(2) APPLICABLE STATE AUTHORITY.—The term ‘applicable State authority’ means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the insurance laws of such State.

“(3) BASE PREMIUM RATE.—The term ‘base premium rate’ means, for each class of busi-ness with respect to a rating period, the low-est premium rate charged or that could have been charged under a rating system for that class of business by the small employer car-rier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

“(4) ELIGIBLE INSURER.—The term ‘eligible insurer’ means a health insurance issuer that is licensed in a State and that—

“(A) notifies the Secretary, not later than 30 days prior to the offering of coverage de-scribed in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the Model Small Group Rat-ing Rules or, as applicable, transitional small group rating rules in a State;

“(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer small group health insurance coverage in that State con-sistent with the Model Small Group Rating

Rules, and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency); and

“(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such group health coverage) and filed with the State pursuant to subparagraph (B), a description in the insurer’s contract of the Model Small Group Rating Rules and an affirmation that such Rules are included in the terms of such contract.

“(5) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ means any coverage issued in the small group health insurance market, except that such term shall not include excepted benefits (as defined in section 2791(c)).

“(6) INDEX RATE.—The term ‘index rate’ means for each class of business with respect to the rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

“(7) MODEL SMALL GROUP RATING RULES.—The term ‘Model Small Group Rating Rules’ means the rules set forth in section 2912(a)(2).

“(8) NONADOPTING STATE.—The term ‘non-adopting State’ means a State that is not an adopting State.

“(9) SMALL GROUP INSURANCE MARKET.—The term ‘small group insurance market’ shall have the meaning given the term ‘small group market’ in section 2791(e)(5).

“(10) STATE LAW.—The term ‘State law’ means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

“(11) VARIATION LIMITS.—

“(A) COMPOSITE VARIATION LIMIT.—

“(i) IN GENERAL.—The term ‘composite variation limit’ means the total variation in premium rates charged by a health insurance issuer in the small group market as permitted under applicable State law based on the following factors or case characteristics:

“(I) Age.

“(II) Duration of coverage.

“(III) Claims experience.

“(IV) Health status.

“(ii) USE OF FACTORS.—With respect to the use of the factors described in clause (i) in setting premium rates, a health insurance issuer shall use one or both of the factors described in subclauses (I) or (IV) of such clause and may use the factors described in subclauses (II) or (III) of such clause.

“(B) TOTAL VARIATION LIMIT.—The term ‘total variation limit’ means the total variation in premium rates charged by a health insurance issuer in the small group market as permitted under applicable State law based on all factors and case characteristics (as described in section 2912(a)(1)).

#### “SEC. 2912. RATING RULES.

“(a) ESTABLISHMENT OF MINIMUM STANDARDS FOR PREMIUM VARIATIONS AND MODEL SMALL GROUP RATING RULES.—Not later than 6 months after the date of enactment of this title, the Secretary shall promulgate regulations establishing the following Minimum Standards and Model Small Group Rating Rules:

“(1) MINIMUM STANDARDS FOR PREMIUM VARIATIONS.—

“(A) COMPOSITE VARIATION LIMIT.—The composite variation limit shall not be less than 3:1.

“(B) TOTAL VARIATION LIMIT.—The total variation limit shall not be less than 5:1.

“(C) PROHIBITION ON USE OF CERTAIN CASE CHARACTERISTICS.—For purposes of this paragraph, in calculating the total variation limit, the State shall not use case characteristics other than those used in calculating the composite variation limit and industry, geographic area, group size, participation rate, class of business, and participation in wellness programs.

“(2) MODEL SMALL GROUP RATING RULES.—The following apply to an eligible insurer in a non-adopting State:

“(A) PREMIUM RATES.—Premium rates for small group health benefit plans to which this title applies shall comply with the following provisions relating to premiums, except as provided for under subsection (b):

“(i) VARIATION IN PREMIUM RATES.—The plan may not vary premium rates by more than the minimum standards provided for under paragraph (1).

“(ii) INDEX RATE.—The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than 20 percent, excluding those classes of business related to association groups under this title.

“(iii) CLASS OF BUSINESSES.—With respect to a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than 25 percent of the index rate under clause (ii).

“(iv) INCREASES FOR NEW RATING PERIODS.—The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

“(I) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, except that such change shall not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

“(II) Any adjustment, not to exceed 15 percent annually and adjusted pro rata for rating periods of less than 1 year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier’s rate manual for the class of business involved.

“(III) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier’s rate manual for the class of business.

“(v) UNIFORM APPLICATION OF ADJUSTMENTS.—Adjustments in premium rates for claim experience, health status, or duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

“(vi) PROHIBITION ON USE OF CERTAIN CASE CHARACTERISTIC.—A small employer carrier

shall not utilize case characteristics, other than those permitted under paragraph (1)(C), without the prior approval of the applicable State authority.

“(vii) CONSISTENT APPLICATION OF FACTORS.—Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

“(viii) TREATMENT OF PLANS AS HAVING SAME RATING PERIOD.—A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

“(ix) REQUIRE COMPLIANCE.—Premium rates for small business health benefit plans shall comply with the requirements of this subsection notwithstanding any assessments paid or payable by a small employer carrier as required by a State’s small employer carrier reinsurance program.

“(B) ESTABLISHMENT OF SEPARATE CLASS OF BUSINESS.—Subject to subparagraph (C), a small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs related to the following:

“(i) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

“(ii) The small employer carrier has acquired a class of business from another small employer carrier.

“(iii) The small employer carrier provides coverage to one or more association groups that meet the requirements of this title.

“(C) LIMITATION.—A small employer carrier may establish up to 9 separate classes of business under subparagraph (B), excluding those classes of business related to association groups under this title.

“(D) LIMITATION ON TRANSFERS.—A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage since issue.

“(b) TRANSITIONAL MODEL SMALL GROUP RATING RULES.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of this title and to the extent necessary to provide for a graduated transition to the minimum standards for premium variation as provided for in subsection (a)(1), the Secretary, in consultation with the National Association of Insurance Commissioners (NAIC), shall promulgate State-specific transitional small group rating rules in accordance with this subsection, which shall be applicable with respect to non-adopting States and eligible insurers operating in such States for a period of not to exceed 3 years from the date of the promulgation of the minimum standards for premium variation pursuant to subsection (a).

“(2) COMPLIANCE WITH TRANSITIONAL MODEL SMALL GROUP RATING RULES.—During the transition period described in paragraph (1), a State that, on the date of enactment of this title, has in effect a small group rating rules methodology that allows for a variation that is less than the variation provided

for under subsection (a)(1) (concerning minimum standards for premium variation), shall be deemed to be an adopting State if the State complies with the transitional small group rating rules as promulgated by the Secretary pursuant to paragraph (1).

“(3) **TRANSITIONING OF OLD BUSINESS.**—

“(A) **IN GENERAL.**—In developing the transitional small group rating rules under paragraph (1), the Secretary shall, after consultation with the National Association of Insurance Commissioners and representatives of insurers operating in the small group health insurance market in non-adopting States, promulgate special transition standards with respect to independent rating classes for old and new business, to the extent reasonably necessary to protect health insurance consumers and to ensure a stable and fair transition for old and new market entrants.

“(B) **PERIOD FOR OPERATION OF INDEPENDENT RATING CLASSES.**—In developing the special transition standards pursuant to subparagraph (A), the Secretary shall permit a carrier in a non-adopting State, at its option, to maintain independent rating classes for old and new business for a period of up to 5 years, with the commencement of such 5-year period to begin at such time, but not later than the date that is 3 years after the date of enactment of this title, as the carrier offers a book of business meeting the minimum standards for premium variation provided for in subsection (a)(1) or the transitional small group rating rules under paragraph (1).

“(4) **OTHER TRANSITIONAL AUTHORITY.**—In developing the transitional small group rating rules under paragraph (1), the Secretary shall provide for the application of the transitional small group rating rules in transition States as the Secretary may determine necessary for an effective transition.

“(C) **MARKET RE-ENTRY.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law, a health insurance issuer that has voluntarily withdrawn from providing coverage in the small group market prior to the date of enactment of the Small Business Health Plans Act of 2009 shall not be excluded from re-entering such market on a date that is more than 180 days after such date of enactment.

“(2) **TERMINATION.**—The provision of this subsection shall terminate on the date that is 24 months after the date of enactment of the Small Business Health Plans Act of 2009.

“**SEC. 2913. APPLICATION AND PREEMPTION.**

“(A) **SUPERSEDING OF STATE LAW.**—

“(1) **IN GENERAL.**—This part shall supersede any and all State laws of a non-adopting State insofar as such State laws (whether enacted prior to or after the date of enactment of this subtitle) relate to rating in the small group insurance market as applied to an eligible insurer, or small group health insurance coverage issued by an eligible insurer, including with respect to coverage issued to a small employer through a small business health plan, in a State.

“(2) **NONADOPTING STATES.**—This part shall supersede any and all State laws of a non-adopting State insofar as such State laws (whether enacted prior to or after the date of enactment of this subtitle)—

“(A) prohibit an eligible insurer from offering, marketing, or implementing small group health insurance coverage consistent with the Model Small Group Rating Rules or transitional model small group rating rules; or

“(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or im-

plementing small group health insurance coverage consistent with the Model Small Group Rating Rules or transitional model small group rating rules.

“(b) **SAVINGS CLAUSE AND CONSTRUCTION.**—

“(1) **NONAPPLICATION TO ADOPTING STATES.**—Subsection (a) shall not apply with respect to adopting States.

“(2) **NONAPPLICATION TO CERTAIN INSURERS.**—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers that offer small group health insurance coverage in a nonadopting State.

“(3) **NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.**—Subsection (a)(1) shall not supercede any State law in a non-adopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the Model Small Group Rating Rules or transitional model small group rating rules.

“(4) **NO EFFECT ON PREEMPTION.**—In no case shall this part be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this part be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974.

“(5) **PREEMPTION LIMITED TO RATING.**—Subsection (a) shall not preempt any State law that does not have a reference to or a connection with State rating rules that would otherwise apply to eligible insurers.

“(C) **EFFECTIVE DATE.**—This section shall apply, at the election of the eligible insurer, beginning in the first plan year or the first calendar year following the issuance of the final rules by the Secretary under the Model Small Group Rating Rules or, as applicable, the Transitional Model Small Group Rating Rules, but in no event earlier than the date that is 12 months after the date of enactment of this title.

“**SEC. 2914. CIVIL ACTIONS AND JURISDICTION.**

“(A) **IN GENERAL.**—The courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this part.

“(b) **ACTIONS.**—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2913.

“(C) **DIRECT FILING IN COURT OF APPEALS.**—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

“(d) **EXPEDITED REVIEW.**—

“(1) **DISTRICT COURT.**—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

“(2) **COURT OF APPEALS.**—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the peti-

tion, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

“(e) **STANDARD OF REVIEW.**—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

“**SEC. 2915. ONGOING REVIEW.**

“Not later than 5 years after the date on which the Model Small Group Rating Rules are issued under this part, and every 5 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners, shall prepare and submit to the appropriate committees of Congress a report that assesses the effect of the Model Small Group Rating Rules on access, cost, and market functioning in the small group market. Such report may, if the Secretary, in consultation with the National Association of Insurance Commissioners, determines such is appropriate for improving access, costs, and market functioning, contain legislative proposals for recommended modification to such Model Small Group Rating Rules.

“**PART II—AFFORDABLE PLANS**

“**SEC. 2921. DEFINITIONS.**

“In this part:

“(1) **ADOPTING STATE.**—The term ‘adopting State’ means a State that has enacted a law providing that small group, individual, and large group health insurers in such State may offer and sell products in accordance with the List of Required Benefits and the Terms of Application as provided for in section 2922(b).

“(2) **ELIGIBLE INSURER.**—The term ‘eligible insurer’ means a health insurance issuer that is licensed in a nonadopting State and that—

“(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the List of Required Benefits and Terms of Application in a nonadopting State;

“(B) notifies the insurance department of a nonadopting State (or other applicable State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage in that State consistent with the List of Required Benefits and Terms of Application, and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency) by the Secretary in regulations; and

“(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such group health coverage) and filed with the State pursuant to subparagraph (B), a description in the insurer’s contract of the List of Required Benefits and a description of the Terms of Application, including a description of the benefits to be provided, and that adherence to such standards is included as a term of such contract.

“(3) **HEALTH INSURANCE COVERAGE.**—The term ‘health insurance coverage’ means any

coverage issued in the small group, individual, or large group health insurance markets, including with respect to small business health plans, except that such term shall not include excepted benefits (as defined in section 2791(c)).

“(4) LIST OF REQUIRED BENEFITS.—The term ‘List of Required Benefits’ means the List issued under section 2922(a).

“(5) NONADOPTING STATE.—The term ‘nonadopting State’ means a State that is not an adopting State.

“(6) STATE LAW.—The term ‘State law’ means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

“(7) STATE PROVIDER FREEDOM OF CHOICE LAW.—The term ‘State Provider Freedom of Choice Law’ means a State law requiring that a health insurance issuer, with respect to health insurance coverage, not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider’s license or certification under applicable State law.

“(8) TERMS OF APPLICATION.—The term ‘Terms of Application’ means terms provided under section 2922(a).

#### “SEC. 2922. OFFERING AFFORDABLE PLANS.

“(a) LIST OF REQUIRED BENEFITS.—Not later than 3 months after the date of enactment of this title, the Secretary, in consultation with the National Association of Insurance Commissioners, shall issue by interim final rule a list (to be known as the ‘List of Required Benefits’) of covered benefits, services, or categories of providers that are required to be provided by health insurance issuers, in each of the small group, individual, and large group markets, in at least 26 States as a result of the application of State covered benefit, service, and category of provider mandate laws. With respect to plans sold to or through small business health plans, the List of Required Benefits applicable to the small group market shall apply.

“(b) TERMS OF APPLICATION.—

“(1) STATE WITH MANDATES.—With respect to a State that has a covered benefit, service, or category of provider mandate in effect that is covered under the List of Required Benefits under subsection (a), such State mandate shall, subject to paragraph (3) (concerning uniform application), apply to a coverage plan or plan in, as applicable, the small group, individual, or large group market or through a small business health plan in such State.

“(2) STATES WITHOUT MANDATES.—With respect to a State that does not have a covered benefit, service, or category of provider mandate in effect that is covered under the List of Required Benefits under subsection (a), such mandate shall not apply, as applicable, to a coverage plan or plan in the small group, individual, or large group market or through a small business health plan in such State.

“(3) UNIFORM APPLICATION OF LAWS.—

“(A) IN GENERAL.—With respect to a State described in paragraph (1), in applying a covered benefit, service, or category of provider mandate that is on the List of Required Benefits under subsection (a) the State shall permit a coverage plan or plan offered in the small group, individual, or large group market or through a small business health plan in such State to apply such benefit, service, or category of provider coverage in a manner consistent with the manner in which such coverage is applied under one of the three

most heavily subscribed national health plans offered under the Federal Employee Health Benefits Program under chapter 89 of title 5, United States Code (as determined by the Secretary in consultation with the Director of the Office of Personnel Management), and consistent with the Publication of Benefit Applications under subsection (c). In the event a covered benefit, service, or category of provider appearing in the List of Required Benefits is not offered in one of the three most heavily subscribed national health plans offered under the Federal Employees Health Benefits Program, such covered benefit, service, or category of provider requirement shall be applied in a manner consistent with the manner in which such coverage is offered in the remaining most heavily subscribed plan of the remaining Federal Employees Health Benefits Program plans, as determined by the Secretary, in consultation with the Director of the Office of Personnel Management.

“(B) EXCEPTION REGARDING STATE PROVIDER FREEDOM OF CHOICE LAWS.—Notwithstanding subparagraph (A), in the event a category of provider mandate is included in the List of Covered Benefits, any State Provider Freedom of Choice Law (as defined in section 2921(7)) that is in effect in any State in which such category of provider mandate is in effect shall not be preempted, with respect to that category of provider, by this part.

“(C) PUBLICATION OF BENEFIT APPLICATIONS.—Not later than 3 months after the date of enactment of this title, and on the first day of every calendar year thereafter, the Secretary, in consultation with the Director of the Office of Personnel Management, shall publish in the Federal Register a description of such covered benefits, services, and categories of providers covered in that calendar year by each of the three most heavily subscribed nationally available Federal Employee Health Benefits Plan options which are also included on the List of Required Benefits.

“(d) EFFECTIVE DATES.—

“(1) SMALL BUSINESS HEALTH PLANS.—With respect to health insurance provided to participating employers of small business health plans, the requirements of this part (concerning lower cost plans) shall apply beginning on the date that is 12 months after the date of enactment of this title.

“(2) NON-ASSOCIATION COVERAGE.—With respect to health insurance provided to groups or individuals other than participating employers of small business health plans, the requirements of this part shall apply beginning on the date that is 15 months after the date of enactment of this title.

“(e) UPDATING OF LIST OF REQUIRED BENEFITS.—Not later than 2 years after the date on which the list of required benefits is issued under subsection (a), and every 2 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners, shall update the list based on changes in the laws and regulations of the States. The Secretary shall issue the updated list by regulation, and such updated list shall be effective upon the first plan year following the issuance of such regulation.

#### “SEC. 2923. APPLICATION AND PREEMPTION.

“(a) SUPERSEDING OF STATE LAW.—

“(1) IN GENERAL.—This part shall supersede any and all State laws insofar as such laws relate to mandates relating to covered benefits, services, or categories of provider in the health insurance market as applied to an eligible insurer, or health insurance coverage issued by an eligible insurer, including with respect to coverage issued to a small business health plan, in a nonadopting State.

“(2) NONADOPTING STATES.—This part shall supersede any and all State laws of a nonadopting State (whether enacted prior to or after the date of enactment of this title) insofar as such laws—

“(A) prohibit an eligible insurer from offering, marketing, or implementing health insurance coverage consistent with the Benefit Choice Standards, as provided for in section 2922(a); or

“(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing health insurance coverage consistent with the Benefit Choice Standards.

“(b) SAVINGS CLAUSE AND CONSTRUCTION.—

“(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting States.

“(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers who offer health insurance coverage in a nonadopting State.

“(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supersede any State law of a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the Benefit Choice Standards.

“(4) NO EFFECT ON PREEMPTION.—In no case shall this part be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this part be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974.

“(5) PREEMPTION LIMITED TO BENEFITS.—Subsection (a) shall not preempt any State law that does not have a reference to or a connection with State mandates regarding covered benefits, services, or categories of providers that would otherwise apply to eligible insurers.

#### “SEC. 2924. CIVIL ACTIONS AND JURISDICTION.

“(a) IN GENERAL.—The courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this part.

“(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2923.

“(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

“(d) EXPEDITED REVIEW.—

“(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

“(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in



a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

“(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

#### “SEC. 2925. RULES OF CONSTRUCTION.

“(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a health insurance issuer in an adopting State or an eligible insurer in a non-adopting State may amend its existing policies to be consistent with the terms of this subtitle (concerning rating and benefits).

“(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this subtitle shall be construed to create any mandates for coverage of benefits for HSA-qualified health plans that would require reimbursements in violation of section 223(c)(2) of the Internal Revenue Code of 1986.”

### TITLE III—HARMONIZATION OF HEALTH INSURANCE STANDARDS

#### SEC. 301. HEALTH INSURANCE STANDARDS HARMONIZATION.

Title XXIX of the Public Health Service Act (as added by section 201) is amended by adding at the end the following:

##### “Subtitle B—Standards Harmonization

#### “SEC. 2931. DEFINITIONS.

“In this subtitle:

“(1) ADOPTING STATE.—The term ‘adopting State’ means a State that has enacted the harmonized standards adopted under this subtitle in their entirety and as the exclusive laws of the State that relate to the harmonized standards.

“(2) ELIGIBLE INSURER.—The term ‘eligible insurer’ means a health insurance issuer that is licensed in a nonadopting State and that—

“(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the harmonized standards in a nonadopting State;

“(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage in that State consistent with the harmonized standards published pursuant to section 2933(d), and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency) by the Secretary in regulations; and

“(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such health coverage) and filed with the State pursuant to subparagraph (B), a description of the harmonized standards published pursuant to section 2933(g)(2) and an affirmation that such standards are a term of the contract.

“(3) HARMONIZED STANDARDS.—The term ‘harmonized standards’ means the standards

certified by the Secretary under section 2933(d).

“(4) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ means any coverage issued in the health insurance market, except that such term shall not include excepted benefits (as defined in section 2791(c)).

“(5) NONADOPTING STATE.—The term ‘non-adopting State’ means a State that fails to enact, within 18 months of the date on which the Secretary certifies the harmonized standards under this subtitle, the harmonized standards in their entirety and as the exclusive laws of the State that relate to the harmonized standards.

“(6) STATE LAW.—The term ‘State law’ means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

#### “SEC. 2932. HARMONIZED STANDARDS.

“(a) BOARD.—

“(1) ESTABLISHMENT.—Not later than 3 months after the date of enactment of this title, the Secretary, in consultation with the NAIC, shall establish the Health Insurance Consensus Standards Board (referred to in this subtitle as the ‘Board’) to develop recommendations that harmonize inconsistent State health insurance laws in accordance with the procedures described in subsection (b).

“(2) COMPOSITION.—

“(A) IN GENERAL.—The Board shall be composed of the following voting members to be appointed by the Secretary after considering the recommendations of professional organizations representing the entities and constituencies described in this paragraph:

“(i) Four State insurance commissioners as recommended by the National Association of Insurance Commissioners, of which 2 shall be Democrats and 2 shall be Republicans, and of which one shall be designated as the chairperson and one shall be designated as the vice chairperson.

“(ii) Four representatives of State government, two of which shall be governors of States and two of which shall be State legislators, and two of which shall be Democrats and two of which shall be Republicans.

“(iii) Four representatives of health insurers, of which one shall represent insurers that offer coverage in the small group market, one shall represent insurers that offer coverage in the large group market, one shall represent insurers that offer coverage in the individual market, and one shall represent carriers operating in a regional market.

“(iv) Two representatives of insurance agents and brokers.

“(v) Two independent representatives of the American Academy of Actuaries who have familiarity with the actuarial methods applicable to health insurance.

“(B) EX OFFICIO MEMBER.—A representative of the Secretary shall serve as an ex officio member of the Board.

“(3) ADVISORY PANEL.—The Secretary shall establish an advisory panel to provide advice to the Board, and shall appoint its members after considering the recommendations of professional organizations representing the entities and constituencies identified in this paragraph:

“(A) Two representatives of small business health plans.

“(B) Two representatives of employers, of which one shall represent small employers and one shall represent large employers.

“(C) Two representatives of consumer organizations.

“(D) Two representatives of health care providers.

“(4) QUALIFICATIONS.—The membership of the Board shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health plans, providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

“(5) ETHICAL DISCLOSURE.—The Secretary shall establish a system for public disclosure by members of the Board of financial and other potential conflicts of interest relating to such members. Members of the Board shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95-521).

“(6) DIRECTOR AND STAFF.—Subject to such review as the Secretary deems necessary to assure the efficient administration of the Board, the chair and vice-chair of the Board may—

“(A) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

“(B) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

“(C) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Board (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

“(D) make advance, progress, and other payments which relate to the work of the Board;

“(E) provide transportation and subsistence for persons serving without compensation; and

“(F) prescribe such rules as it deems necessary with respect to the internal organization and operation of the Board.

“(7) TERMS.—The members of the Board shall serve for the duration of the Board. Vacancies in the Board shall be filled as needed in a manner consistent with the composition described in paragraph (2).

#### “(b) DEVELOPMENT OF HARMONIZED STANDARDS.—

“(1) IN GENERAL.—In accordance with the process described in subsection (c), the Board shall identify and recommend nationally harmonized standards for each of the following process categories:

“(A) FORM FILING AND RATE FILING.—Form and rate filing standards shall be established which promote speed to market and include the following defined areas for States that require such filings:

“(i) Procedures for form and rate filing pursuant to a streamlined administrative filing process.

“(ii) Timeframes for filings to be reviewed by a State if review is required before they are deemed approved.

“(iii) Timeframes for an eligible insurer to respond to State requests following its review.

“(iv) A process for an eligible insurer to self-certify.

“(v) State development of form and rate filing templates that include only non-preempted State law and Federal law requirements for eligible insurers with timely updates.

“(vi) Procedures for the resubmission of forms and rates.



“(vii) Disapproval rationale of a form or rate filing based on material omissions or violations of non-preempted State law or Federal law with violations cited and explained.

“(viii) For States that may require a hearing, a rationale for hearings based on violations of non-preempted State law or insurer requests.

“(B) MARKET CONDUCT REVIEW.—Market conduct review standards shall be developed which provide for the following:

“(i) Mandatory participation in national databases.

“(ii) The confidentiality of examination materials.

“(iii) The identification of the State agency with primary responsibility for examinations.

“(iv) Consultation and verification of complaint data with the eligible insurer prior to State actions.

“(v) Consistency of reporting requirements with the recordkeeping and administrative practices of the eligible insurer.

“(vi) Examinations that seek to correct material errors and harmful business practices rather than infrequent errors.

“(vii) Transparency and publishing of the State's examination standards.

“(viii) Coordination of market conduct analysis.

“(ix) Coordination and nonduplication between State examinations of the same eligible insurer.

“(x) Rationale and protocols to be met before a full examination is conducted.

“(xi) Requirements on examiners prior to beginning examinations such as budget planning and work plans.

“(xii) Consideration of methods to limit examiners' fees such as caps, competitive bidding, or other alternatives.

“(xiii) Reasonable fines and penalties for material errors and harmful business practices.

“(C) PROMPT PAYMENT OF CLAIMS.—The Board shall establish prompt payment standards for eligible insurers based on standards similar to those applicable to the Social Security Act as set forth in section 1842(c)(2) of such Act (42 U.S.C. 1395u(c)(2)). Such prompt payment standards shall be consistent with the timing and notice requirements of the claims procedure rules to be specified under subparagraph (D), and shall include appropriate exceptions such as for fraud, nonpayment of premiums, or late submission of claims.

“(D) INTERNAL REVIEW.—The Board shall establish standards for claims procedures for eligible insurers that are consistent with the requirements relating to initial claims for benefits and appeals of claims for benefits under the Employee Retirement Income Security Act of 1974 as set forth in section 503 of such Act (29 U.S.C. 1133) and the regulations thereunder.

“(2) RECOMMENDATIONS.—The Board shall recommend harmonized standards for each element of the categories described in subparagraph (A) through (D) of paragraph (1) within each such market. Notwithstanding the previous sentence, the Board shall not recommend any harmonized standards that disrupt, expand, or duplicate the benefit, service, or provider mandate standards provided in the Benefit Choice Standards pursuant to section 2922(a).

“(c) PROCESS FOR IDENTIFYING HARMONIZED STANDARDS.—

“(1) IN GENERAL.—The Board shall develop recommendations to harmonize inconsistent State insurance laws with respect to each of

the process categories described in subparagraphs (A) through (D) of subsection (b)(1).

“(2) REQUIREMENTS.—In adopting standards under this section, the Board shall consider the following:

“(A) Any model acts or regulations of the National Association of Insurance Commissioners in each of the process categories described in subparagraphs (A) through (D) of subsection (b)(1).

“(B) Substantially similar standards followed by a plurality of States, as reflected in existing State laws, relating to the specific process categories described in subparagraphs (A) through (D) of subsection (b)(1).

“(C) Any Federal law requirement related to specific process categories described in subparagraphs (A) through (D) of subsection (b)(1).

“(D) In the case of the adoption of any standard by a plurality of States, as reflected in those referred to in subparagraphs (A), (B), or (C), the Board shall provide evidence to the Secretary that such standard is necessary to protect health insurance consumers or promote speed to market or administrative efficiency.

“(E) The criteria specified in clauses (i) through (iii) of subsection (d)(2)(B).

“(d) RECOMMENDATIONS AND CERTIFICATION BY SECRETARY.—

“(1) RECOMMENDATIONS.—Not later than 18 months after the date on which all members of the Board are selected under subsection (a), the Board shall recommend to the Secretary the certification of the harmonized standards identified pursuant to subsection (c).

“(2) CERTIFICATION.—

“(A) IN GENERAL.—Not later than 120 days after receipt of the Board's recommendations under paragraph (1), the Secretary shall certify the recommended harmonized standards as provided for in subparagraph (B), and issue such standards in the form of an interim final regulation.

“(B) CERTIFICATION PROCESS.—The Secretary shall establish a process for certifying the recommended harmonized standard, by category, as recommended by the Board under this section. Such process shall—

“(i) ensure that the certified standards for a particular process area achieve regulatory harmonization with respect to health plans on a national basis;

“(ii) ensure that the approved standards are the minimum necessary, with regard to substance and quantity of requirements, to protect health insurance consumers and maintain a competitive regulatory environment; and

“(iii) ensure that the approved standards will not limit the range of group health plan designs and insurance products, such as catastrophic coverage only plans, health savings accounts, and health maintenance organizations, that might otherwise be available to consumers.

“(3) APPLICATION AND EFFECTIVE DATE.—The standards certified by the Secretary under paragraph (2) shall apply and become effective on the date that is 18 months after the date on which the Secretary certifies the harmonized standards.

“(e) TERMINATION.—The Board shall terminate and be dissolved after making the recommendations to the Secretary pursuant to subsection (d)(1).

“(f) ONGOING REVIEW.—Not earlier than 3 years after the termination of the Board under subsection (e), and not earlier than every 3 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners and the entities

and constituencies represented on the Board and the Advisory Panel, shall prepare and submit to the appropriate committees of Congress a report that assesses the effect of the harmonized standards applied under this section on access, cost, and health insurance market functioning. The Secretary may, based on such report and applying the process established for certification under subsection (d)(2)(B), in consultation with the National Association of Insurance Commissioners and the entities and constituencies represented on the Board and the Advisory Panel, update the harmonized standards through notice and comment rulemaking.

“(g) PUBLICATION.—

“(1) LISTING.—The Secretary shall maintain an up to date listing of all harmonized standards certified under this section on the Internet website of the Department of Health and Human Services.

“(2) SAMPLE CONTRACT LANGUAGE.—The Secretary shall publish on the Internet website of the Department of Health and Human Services sample contract language that incorporates the harmonized standards certified under this section, which may be used by insurers seeking to qualify as an eligible insurer. The types of harmonized standards that shall be included in sample contract language are the standards that are relevant to the contractual bargain between the insurer and insured.

“(h) STATE ADOPTION AND ENFORCEMENT.—Not later than 18 months after the certification by the Secretary of harmonized standards under this section, the States may adopt such harmonized standards (and become an adopting State) and, in which case, shall enforce the harmonized standards pursuant to State law.

“SEC. 2933. APPLICATION AND PREEMPTION.

“(a) SUPERSEDING OF STATE LAW.—

“(1) IN GENERAL.—The harmonized standards certified under this subtitle and applied as provided for in section 2933(d)(3), shall supersede any and all State laws of a nonadopting State insofar as such State laws relate to the areas of harmonized standards as applied to an eligible insurer, or health insurance coverage issued by an eligible insurer, including with respect to coverage issued to a small business health plan, in a nonadopting State.

“(2) NONADOPTING STATES.—This subtitle shall supersede any and all State laws of a nonadopting State (whether enacted prior to or after the date of enactment of this title) insofar as they may—

“(A) prohibit an eligible insurer from offering, marketing, or implementing health insurance coverage consistent with the harmonized standards; or

“(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing health insurance coverage consistent with the harmonized standards under this subtitle.

“(b) SAVINGS CLAUSE AND CONSTRUCTION.—

“(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting States.

“(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers who offer health insurance coverage in a nonadopting State.

“(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supersede any State law of a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to

obtain relief under State law to require an eligible insurer to comply with the harmonized standards under this subtitle.

“(4) NO EFFECT ON PREEMPTION.—In no case shall this subtitle be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this subtitle be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974.

“(c) EFFECTIVE DATE.—This section shall apply beginning on the date that is 18 months after the date on harmonized standards are certified by the Secretary under this subtitle.

**“SEC. 2934. CIVIL ACTIONS AND JURISDICTION.**

“(a) IN GENERAL.—The district courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this subtitle.

“(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2933.

“(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

“(d) EXPEDITED REVIEW.—

“(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

“(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

“(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

**“SEC. 2935. AUTHORIZATION OF APPROPRIATIONS; RULE OF CONSTRUCTION.**

“(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

“(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this subtitle shall be construed to create any mandates for coverage of any benefits below the deductible levels set for any health savings account-qualified health plan pursuant to section 223 of the Internal Revenue Code of 1986.”

**SA 3198.** Mr. CORNYN (for himself and Mr. LEMIEUX) submitted an amendment intended to be proposed to

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

**1. SHORT TITLE.**

This Act may be cited as the “Seniors and Taxpayers Obligation Protection Act of 2009”.

**SEC. 2. REQUIRING THE SECRETARY OF HEALTH AND HUMAN SERVICES TO CHANGE THE MEDICARE BENEFICIARY IDENTIFIER USED TO IDENTIFY MEDICARE BENEFICIARIES UNDER THE MEDICARE PROGRAM.**

**(a) PROCEDURES.—**

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, in order to protect beneficiaries from identity theft, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish and implement procedures to change the Medicare beneficiary identifier used to identify individuals entitled to benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title so that such an individual’s social security account number is not used.

(2) MAINTAINING EXISTING HICN STRUCTURE.—In order to minimize the impact of the change under paragraph (1) on systems that communicate with Medicare beneficiary eligibility systems, the procedures under paragraph (1) shall provide that the new Medicare beneficiary identifier maintain the existing Health Insurance Claim Number structure.

(3) PROTECTION AGAINST FRAUD.—The procedures under paragraph (1) shall provide for a process for changing the Medicare beneficiary identifier for an individual to a different identifier in the case of the discovery of fraud, including identity theft.

**(4) PHASE-IN AUTHORITY.—**

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary may phase in the change under paragraph (1) in such manner as the Secretary determines appropriate.

(B) LIMIT.—The phase-in period under subparagraph (A) shall not exceed 10 years.

(C) NEWLY ENTITLED AND ENROLLED INDIVIDUALS.—The Secretary shall ensure that the change under paragraph (1) is implemented not later than January 1, 2010, with respect to any individual who first becomes entitled to benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title on or after such date.

(b) EDUCATION AND OUTREACH.—The Secretary shall establish a program of education and outreach for individuals entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title, providers of services (as defined in subsection (u) of section 1861 of such Act (42 U.S.C. 1395x)), and suppliers (as defined in subsection (d) of such section) on the change under paragraph (1).

**(c) DATA MATCHING.—**

(1) ACCESS TO CERTAIN INFORMATION.—Section 205(r) of the Social Security Act (42 U.S.C. 405(r)) is amended by adding at the end the following new paragraph:

“(9)(A) The Commissioner of Social Security shall, upon the request of the Secretary—

“(i) enter into an agreement with the Secretary for the purpose of matching data in the system of records of the Commissioner with data in the system of records of the Secretary, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met, in order to determine—

“(I) whether a beneficiary under the program under title XVIII, XIX, or XXI is dead, imprisoned, or otherwise not eligible for benefits under such program; and

“(II) whether a provider of services or a supplier under the program under title XVIII, XIX, or XXI is dead, imprisoned, or otherwise not eligible to furnish or receive payment for furnishing items and services under such program; and

“(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any information disclosed and procedures to permit the Secretary to use such information for the purpose described in clause (i).

“(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

“(C) Information provided pursuant to an agreement under this paragraph shall include information regarding whether—

“(i) the name (including the first name and any family name or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner’s records, and

“(ii) such individual is shown on the records of the Commissioner as being deceased.”

(2) INVESTIGATION BASED ON CERTAIN INFORMATION.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1128F the following new section:

**“SEC. 1128G. ACCESS TO CERTAIN DATA AND INVESTIGATION OF CLAIMS INVOLVING INDIVIDUALS WHO ARE NOT ELIGIBLE FOR BENEFITS OR ARE NOT ELIGIBLE PROVIDERS OF SERVICES OR SUPPLIERS.**

“(a) DATA AGREEMENT.—The Secretary shall enter into an agreement with the Commissioner of Social Security pursuant to section 205(r)(9).

“(b) INVESTIGATION OF CLAIMS INVOLVING CERTAIN INDIVIDUALS WHO ARE NOT ELIGIBLE FOR BENEFITS OR ARE NOT ELIGIBLE PROVIDERS OF SERVICES OR SUPPLIERS.—

“(1) IN GENERAL.—The Secretary shall, in the case where a provider of services or a supplier under the program under title XVIII, XIX, or XXI submits a claim for payment for items or services furnished to an individual who the Secretary determines, as a result of information provided pursuant to such agreement, is not eligible for benefits under such program, or where the Secretary determines, as a result of such information, that such provider of services or supplier is not eligible to furnish or receive payment for furnishing such items or services, conduct an investigation with respect to the provider of services or supplier. If the Secretary determines further action is appropriate, the Secretary shall refer the investigation to the Inspector General of the Department of Health and Human Services.

“(2) ASSESSMENT OF IMPLEMENTATION AND EFFECTIVENESS BY THE OIG.—The Inspector General of the Department of Health and Human Services shall test the implementation of the provisions of this section (including the implementation of the agreement

under section 205(r)(9)) and conduct such period assessments of such implementation as the Inspector General determines necessary to determine the effectiveness of such implementation.”.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

**SEC. 3. MONTHLY VERIFICATION OF ACCURACY OF CLAIMS FOR PAYMENT FOR PHYSICIANS' SERVICES.**

(a) **IN GENERAL.**—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd) is amended—  
(1) in subsection (b), by adding at the end the following new paragraph:

“(7) The monthly verification of the accuracy of claims for payment for physicians' services under the system under subsection (i).”; and

(2) by adding at the end the following new subsection:

“(1) **MONTHLY VERIFICATION OF ACCURACY OF CLAIMS FOR PAYMENT FOR PHYSICIANS' SERVICES.**—

“(1) **SYSTEM.**—

“(A) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall establish and implement a system to verify (electronically or otherwise, taking into consideration the administrative burden of such verification on physicians and group practices) on a monthly basis that the claims for payment under part B for physicians' services furnished in high risk areas are—

“(i) for physicians' services actually furnished by the physician or the physician's group practice; and

“(ii) otherwise accurate.

“(B) **NO DETERMINATION OF MEDICAL NECESSITY.**—In no case shall any verification conducted under the system established under subparagraph (A) include a determination of the medical necessity of the physicians' service.

“(2) **VERIFICATION.**—Under the system, the Secretary, at the end of each month, shall provide the physician or the group practice with a detailed list of such claims for payment that were submitted during the month in order for the physician or the group practice to review and verify the list. In providing the detailed list, the Secretary shall use the provider number of the physician or the group practice.

“(3) **AUDITS.**—The Secretary shall conduct audits of the review and verification by physicians and group practices of the detailed list provided under paragraph (2). Such audits shall assess whether the physician or group practice conducted such review and verification in a fraudulent manner. In the case where the Secretary determines such review and verification was conducted in a fraudulent manner, the Secretary shall recoup any payments resulting from the fraudulent review and verification and impose a civil money penalty in an amount determined appropriate by the Secretary on the physician or group practice who conducted the fraudulent review and verification. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

“(4) **HIGH RISK AREAS DEFINED.**—In this subsection, the term ‘high risk area’ means a county designated as a high risk area under subsection (j)(1).

“(5) **REPORT BY THE SECRETARY.**—Not later than 1 year after implementation of the sys-

tem established under paragraph (1), the Secretary shall submit a report to Congress on the progress of such implementation. Such report shall include recommendations—

“(A) on how to improve such implementation, including whether the system should be expanded to include verification of claims for payment under part B for physicians' services furnished in additional areas; and

“(B) for such legislation and administrative action as the Secretary determines appropriate.”.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out the amendments made by this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.

**SEC. 4. DETECTION OF MEDICARE FRAUD AND ABUSE.**

(a) **IN GENERAL.**—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd), as amended by section 3, is amended—

(1) in subsection (b), by adding at the end the following new paragraph:

“(8) Implementation of fraud and abuse detection methods under subsection (j).”; and

(2) in subsection (c), by adding at the end of the flush matter following paragraph (4), the following new sentence: “In the case of an activity described in subsection (b)(8), an entity shall only be eligible to enter into a contract under the Program to carry out the activity if the entity is selected through a competitive bidding process in accordance with subsection (j)(3).”; and

(3) by adding at the end the following new subsection:

“(j) **DETECTION OF MEDICARE FRAUD AND ABUSE.**—

“(1) **ESTABLISHMENT OF SYSTEM TO IDENTIFY COUNTIES MOST VULNERABLE TO FRAUD.**—Not later than 6 months after the date of enactment of this subsection, the Secretary shall establish a system to identify the 50 counties most vulnerable to fraud with respect to items and services furnished by providers of services (other than hospitals and critical access hospitals) and suppliers based on the degree of county-specific reimbursement and analysis of payment trends under this title. The Secretary shall designate the counties identified under the preceding sentence as ‘high risk areas’.

“(2) **FRAUD AND ABUSE DETECTION.**—

“(A) **INITIAL IMPLEMENTATION.**—The Secretary shall establish procedures for the implementation of fraud and abuse detection methods under this title with respect to items and services furnished by such providers of services and suppliers in high risk areas designated under paragraph (1) (and, beginning not later than 18 months after the date of enactment of this subsection, with respect to items and services furnished by such providers of services and suppliers in areas not so designated) including the following:

“(i) In the case of a new applicant to be a supplier, a background check, a pre-enrollment site visit, and random unannounced site visits after enrollment.

“(ii) Not less than 5 years after the date of enactment of this subsection, in the case of a supplier who is not a new applicant, re-enrollment under this title, including a background check and a site-visit as part of the application process for such re-enrollment, and random unannounced site visits after such re-enrollment.

“(iii) Data analysis to establish prepayment claim edits designed to target the claims for payment under this title for such items and services that are most likely to be fraudulent.

“(iv) Prepayment benefit integrity reviews for claims for payment under this title for such items and services that are suspended as a result of such edits.

“(B) **REQUIREMENT FOR PARTICIPATION.**—In no case may a provider of services or supplier who does not meet the requirements under subparagraph (A) (including, in the case of a supplier, the requirement of a background check) participate in the program under this title.

“(C) **BACKGROUND CHECKS.**—The Secretary shall determine the extent of the background check conducted under subparagraph (A), including whether—

“(i) a fingerprint check is necessary;

“(ii) a background check shall be conducted with respect to additional employees, board members, contractors or other interested parties of the supplier; and

“(iii) any additional national background checks regarding exclusion from participation in Federal programs (such as the program under this title, title XIX, or title XXI), adverse actions taken by State licensing boards, bankruptcies, outstanding taxes, or other indications identified by the Inspector General of the Department of Health and Human Services are necessary.

“(D) **EXPANDED IMPLEMENTATION.**—Not later than 24 months after the date of enactment of this subsection, the Secretary shall establish procedures for the implementation of such fraud and abuse detection methods under this title with respect to items and services furnished by all providers of services and suppliers, including those not in high risk areas designated under paragraph (1).

“(3) **COMPETITIVE BIDDING.**—In selecting entities to carry out this subsection, the Secretary shall use a competitive bidding process.

“(4) **REPORT TO CONGRESS.**—The Secretary shall submit to Congress an annual report on the effectiveness of activities conducted under this subsection, including a description of any savings to the program under this title as a result of such activities and the overall administrative cost of such activities and a determination as to the amount of funding needed to carry out this subsection for subsequent fiscal years, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.”.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out the amendments made by this section, there are authorized to be appropriated—

(1) such sums as may be necessary, not to exceed \$50,000,000, for each of fiscal years 2010 through 2014; and

(2) such sums as may be necessary, not to exceed an amount the Secretary determines appropriate in the most recent report submitted to Congress under section 1893(j)(4) of the Social Security Act, as added by subsection (a), for each subsequent fiscal year.

**SEC. 5. USE OF TECHNOLOGY FOR REAL-TIME DATA REVIEW.**

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

**“SEC. 1899. USE OF TECHNOLOGY FOR REAL-TIME DATA REVIEW.**

“(a) **IN GENERAL.**—The Secretary of Health and Human Services shall establish procedures for the use of technology (similar to that used with respect to the analysis of credit card charging patterns) to provide real-time data analysis of claims for payment under the Medicare program under title XVIII of the Social Security Act to identify and investigate unusual billing or

order practices under the Medicare program that could indicate fraud or abuse.

“(b) COMPETITIVE BIDDING.—The procedures established under subsection (a) shall ensure that the implementation of such technology is conducted through a competitive bidding process.”.

#### SEC. 6. EDITS ON 855S MEDICARE ENROLLMENT APPLICATION.

Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

“(22) CONFIRMATION WITH NATIONAL SUPPLIER CLEARINGHOUSE PRIOR TO PAYMENT.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish procedures to require carriers, prior to paying a claim for payment for durable medical equipment, prosthetics, orthotics, and supplies under this title, to confirm with the National Supplier Clearinghouse—

“(i) that the National Provider Identifier of the physician or practitioner prescribing or ordering the item or service is valid and active;

“(ii) that the Medicare identification number of the supplier is valid and active; and

“(iii) that the item or service for which the claim for payment is submitted was properly identified on the CMS-855S Medicare enrollment application.

“(B) ONLINE DATABASE FOR IMPLEMENTATION.—Not later than 18 months after the date of enactment of this paragraph, the Secretary shall establish an online database similar to that used for the National Provider Identifier to enable providers of services, accreditors, carriers, and the National Supplier Clearinghouse to view information on specialties and the types of items and services each supplier has indicated on the CMS-855S Medicare enrollment application submitted by the supplier.

“(C) NOTIFICATION OF CLAIM DENIAL AND RESUBMISSION.—In the case where a claim for payment for durable medical equipment, prosthetics, orthotics, and supplies under this title is denied because the item or service furnished does not correctly match up with the information on file with the National Supplier Clearinghouse—

“(i) the National Supplier Clearinghouse shall—

“(I) provide the supplier written notification of the reason for such denial; and

“(II) allow the supplier 60 days to provide the National Supplier Clearinghouse with appropriate certification, licensing, or accreditation; and

“(ii) the Secretary shall waive applicable requirements relating to the time frame for the submission of claims for payment under this title in order to permit the resubmission of such claim if payment of such claim would otherwise be allowed under this title.”.

#### SEC. 7. STRATEGIC PLAN FOR THE DEVELOPMENT OF A SERIAL NUMBER TRACKING SYSTEM FOR DURABLE MEDICAL EQUIPMENT.

Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by section 6(a), is amended by adding at the end the following new paragraph:

“(23) STRATEGIC PLAN FOR THE DEVELOPMENT OF A SERIAL NUMBER TRACKING SYSTEM FOR DURABLE MEDICAL EQUIPMENT.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall develop a strategic plan for the development and implementation of a serial number tracking system for durable medical equipment.

“(B) SERIAL NUMBER TRACKING SYSTEM FOR DURABLE MEDICAL EQUIPMENT.—The plan de-

veloped under subparagraph (A) shall include mechanisms to ensure that an item of durable medical equipment which has not been issued a unique identifier under the unique device identification system established under section 519(f) of the Federal Food, Drug, and Cosmetic Act bears a unique identifier, unless the Secretary already requires an alternative placement or provides an exception for a particular item or type of durable medical equipment under such section 519(f).

“(C) PROVISION OF UNIQUE IDENTIFIER TO THE SECRETARY.—The plan developed under subparagraph (A) shall include appropriate mechanisms for manufacturers of items of durable medical equipment to submit to the Secretary unique identifiers issued under subparagraph (B) or such section 519(f) with respect to such items. The plan shall include mechanisms for the Secretary to provide for the storage of such unique identifier in accordance with subparagraph (F)(i).

“(D) REQUIREMENTS FOR MANUFACTURERS AND WHOLESALERS.—The plan developed under subparagraph (A) shall include mechanisms for manufacturers of items of durable medical equipment, or, in the case where a wholesaler provides an item of durable medical equipment to suppliers, wholesalers, to—

“(i) upon issuing an item to a supplier, develop a product description for the item which includes—

“(I) the unique identifier of the item;

“(II) the specific Healthcare Common Procedure Coding System (HCPCS) code for the item;

“(III) the name of the supplier the item was shipped to; and

“(IV) the supplier's Medicare identification number; and

“(ii) submit the product description developed under clause (i) to the Secretary for storage in the unique identifier database in accordance with subparagraph (F)(i).

“(E) REQUIREMENTS FOR SUPPLIERS.—The plan developed under subparagraph (A) shall include mechanisms to ensure that suppliers of items of durable medical equipment—

“(i) upon issuing the item to a beneficiary, note the unique identifier of such item on—

“(I) the claim form submitted for such item; and

“(II) when appropriate or otherwise required, the detailed product description of the item;

“(ii) in the case where the item is issued to a beneficiary on a rental basis, designate the unique identifier with an ‘R’ after the number to indicate that the item was rented, and not purchased, by the beneficiary; and

“(iii) upon return of the item to the supplier, notify the Secretary—

“(I) before reissuing that item and resubmitting that number on such a claim form; or

“(II) upon resubmitting that number on such a claim form.

“(F) RESPONSIBILITIES FOR THE SECRETARY.—

“(i) MAINTENANCE OF DATABASE OF SERIAL NUMBERS.—The plan developed under subparagraph (A) shall include the responsibility of the Secretary to establish and maintain a database containing the unique identifiers submitted by manufacturers of items of durable medical equipment under subparagraph (C).

“(ii) PAYMENT.—

“(I) LIMITATION.—Subject to subclause (II), the plan developed under subparagraph (A) shall include mechanisms to ensure that payment may only be made for an item of durable medical equipment if the unique

identifier on the claim form submitted for such item matches the unique identifier submitted by the manufacturer of such item under subparagraph (C).

“(II) EXCEPTION TO LIMITATION AFTER VERIFICATION OF RECEIPT.—The plan developed under subparagraph (A) shall include mechanisms to ensure that in the case where the unique identifier is not on the claim form submitted for such item or does not match the unique identifier submitted by the manufacturer of such item under subparagraph (C), no payment shall be made under this part for the item of durable medical equipment until the Secretary has verified that the beneficiary has received such item in accordance with subclause (IV).

“(III) DUPLICATIVE UNIQUE IDENTIFIERS.—The plan developed under subparagraph (A) shall include mechanisms to ensure that in the case where a unique identifier is submitted on more than 1 claim form submitted for such an item and there is no indication from the supplier that the item of durable medical equipment has been returned by 1 beneficiary and is now being used by another beneficiary, no payment shall be made under this part for such item of durable medical equipment unless the Secretary has verified that the beneficiary has received such item in accordance with subclause (IV).

“(IV) VERIFICATION.—The plan developed under subparagraph (A) shall include provisions for the Secretary to conduct any verification required under subclause (II) or (III) within 30 days after receipt by the Secretary of the relevant claim form. In the case where such verification is not completed within such time period, the Secretary shall pay such claim, complete the verification, and, in the case where the Secretary has entered into a contract with an entity for the conduct of such verification, recover any payments that would not have been made if the verification had been completed within such time period from such entity.

“(iii) QUALITY CONTROL AUDITS.—The plan developed under subparagraph (A) shall include a requirement that the Secretary conduct quality control audits to identify unusual billing patterns with respect to items of durable medical equipment for which payment is made under this part and may provide that the Secretary conduct unannounced site visits or commission other agencies to conduct such site visits as part of such quality control audits.

“(iv) NO USE AS A PRECERTIFICATION MECHANISM.—The plan developed under subparagraph (A) shall include mechanisms to ensure that in no case shall a unique identifier issued under subparagraph (B) or section 519(f) of the Federal Food, Drug, and Cosmetic Act be used as a precertification mechanism for the supply of an item of durable medical equipment or the payment of a claim for such an item under this part.”.

#### SEC. 8. GAO STUDY AND REPORT ON EFFECTIVENESS OF SURETY BOND REQUIREMENTS FOR SUPPLIERS OF DURABLE MEDICAL EQUIPMENT IN COMBATING FRAUD.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the effectiveness of the surety bond requirement under section 1834(a)(16) of the Social Security Act (42 U.S.C. 1395m(a)(16)) in combating fraud.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report containing the results of the

study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

#### NOTICE OF HEARING

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a business meeting has been scheduled before Committee on Energy and Natural Resources. The business meeting will be held on Wednesday, December 16, 2009, at 11:30 a.m., in room SD-366 of the Dirksen Senate Office.

The purpose of the business meeting is to consider pending legislation.

For further information, please contact Sam Fowler at (202) 224-7571 or Amanda Kelly at (202) 224-6836.

#### PRIVILEGES OF THE FLOOR

Mrs. MURRAY. Mr. President, I ask unanimous consent that Richard Burkard, a detailee from the Government Accountability Office to the Appropriations Committee, be granted the privilege of the floor during consideration of the consolidated appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDERS FOR SATURDAY, DECEMBER 12, 2009

Mr. MENENDEZ. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9 a.m., Saturday, December 12; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the conference report accompanying H.R. 3288, the consolidated appropriations bill, as provided for under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. MENENDEZ. Mr. President, at 9:30 a.m., the Senate will proceed to a cloture vote on the consolidated appropriations conference report. If cloture is invoked, the Senate will proceed to vote on the adoption of the conference report at 2 p.m. on Sunday.

#### ORDER FOR ADJOURNMENT

Mr. MENENDEZ. Finally, I ask unanimous consent that following the remarks of the distinguished Senator from Nevada, Senator ENSIGN, the Senate adjourn under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MENENDEZ. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. I ask unanimous consent that I be able to speak as long as I take tonight and then following my comments, the Senate stand in adjournment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENSIGN. Mr. President, first, I wish to say to my friend from New Jersey, I appreciate the remarks he has made. I have stood with the Cuban people and especially with the dissidents down there for years, many times with my friend from New Jersey. I appreciate the issue he is bringing up and fighting for those folks.

There have been those cases over the years where American voices have reached all the way into those gulags, whether it was the old Soviet Union or North Korea or wherever it may be. America being the beacon of hope for so many people around the world, it is critical that Members of this body, as well as the President of the United States, speak out for freedom and speak out for those people to give them hope that there are people in America who are listening and who are paying attention to them, so they will keep fighting for freedom in their own country. So I appreciate the comments the Senator from New Jersey made tonight.

#### OMNIBUS APPROPRIATIONS

I rise tonight, though, to speak about the legislation that is before the Senate. It is the Consolidated Appropriations Act or, as some people call it, the mini bus. This is a \$447 billion bill. Around here, that seems like a small number. I believe this spending bill represents yet another step in the wrong direction for our country. I believe this legislation is only more of the same old recipe of fiscal irresponsibility that guides the majority in Congress. In a time of sky-high budget deficits and staggering debt, the American people are now demanding a better way forward.

I wish to make it clear for the record what this legislation does. As a Senate Budget Committee analysis shows, this bill increases spending by 12 percent over last year's fiscal year for the six spending bills that are wrapped up in this legislation. When we look at each of these bills separately, the numbers are even more shocking. The State Department received a 33-percent increase over last year. Transportation, Housing, and Urban Development received a 23-percent increase over last year. Keep in mind that these accounts together received more than \$60 billion of increase in the stimulus bill that was signed earlier this year.

When we look at the gritty details, for example, at individual programs, the numbers are just as bad. The bill

increases the Corporation for National Community Service by 30 percent and includes a 41-percent increase for bilateral economic assistance. There is also a 9-percent increase in Amtrak, and keep in mind that Amtrak got a \$1.3 billion extra amount of money in the stimulus bill this year.

These spending increases are set against a dire economic picture. According to the nonpartisan Congressional Budget Office, in fiscal year 2010, the deficit will be \$1.4 trillion. Right now, American families are hurting. I know my home State of Nevada has experienced some of the highest unemployment levels in the country—13 percent, according to the Department of Labor. In talking to constituents back home, I can guarantee my colleagues it is actually much higher. We have a situation where because people quit looking for jobs, the unemployment rate is understated. In my State is probably closer to 20 percent.

Democrats expect this bloated spending bill to receive what has become a customary rubberstamp when it comes to spending in this town. But I don't see how a \$300,000 earmark to Carnegie Hall in New York City or \$250,000 for a bike path in Michigan can be considered responsible spending during the economic times we are in. There are over 5,000 earmarks in this omnibus bill, this mini bus bill, whatever you want to call it, that is before us today—5,000 earmarks.

Not surprisingly, with all this spending, the majority in Congress must increase the debt limit. The debt limit is the limit set by Congress of how much debt our country can take on. This is similar, if you think about it, to your credit card limit. Right now, the debt limit is set at a little over \$12 trillion—trillion. Let me take a little side note. We speak about trillions of dollars anymore as though it is nothing. Well, to put \$1 trillion in a little bit of perspective—I have said this on this floor before—if you spend \$1 million a day, 7 days a week, 365 days a year, to get to \$1 trillion, you would have had to start spending that \$1 million a day every day from the time Jesus was born, spend it until now, and you still wouldn't be at your first \$1 trillion. Yet our country already has \$1 trillion in debt.

Anyway, the majority is raising the debt limit. This would be akin to taking your credit card and maxing it out but then going to the bank and saying: By the way, can I increase my credit limit by 20 percent? Oh, by the way, I have no idea how I am going to pay it back, except maybe my children will be able to pay it back someday. That is exactly what this Congress is doing. We are saying: We can't pay this debt back. There is no way we can pay this debt back. Maybe our children, maybe our grandchildren can pay it back.

Americans across the country are going through tough times and they

are doing what many in this body are unwilling to do. They are tightening their belts and cutting back on spending. According to the Federal Reserve, household debt has been reduced by \$351 billion in the last quarter. This is the largest quarterly decline in our Nation's history. That is right. American families see the danger of fiscal irresponsibility and they are cutting back on borrowing the money they may have trouble paying back. State governments, local governments, businesses are doing the same as American families: They are cutting back.

We also have interest we must pay on this debt. Just like the interest you pay on your credit card when you carry a balance, Americans pay interest on the debt this country continues to accumulate. CBO estimates today the annual interest on this Nation's debt last year was around \$179 billion—a big number, \$179 billion. A lot of good could be done with that if we weren't just spending that, paying the interest on the debt. Well, that \$179 billion by the year 2019 is projected to go to almost \$800 billion, not including any of the new spending programs that are being proposed out there—\$800 billion a year. As much as we are spending on our national defense will just be interest on our debt.

My friends on the other side of the aisle have made it a habit to come down to the Senate floor and say: Well, where were Republicans when President Bush was in office, adding to the debt, increasing the deficit? Well, I was right here saying many of the same things I am saying today. Not only did I vote against many of the spending bills that were passed during the previous administration, but I would have liked to have seen President Bush put his foot down and veto some of these bills and force Congress to cut back on out-of-control spending.

If President Obama is worried about the debt that his children and grandchildren are going to inherit, he has a hard time showing it. It seems to me the President is in denial regarding the fiscal train wreck that is taking place in this country.

In July of this year, President Obama said he understands the concern about the debt and admitted his recovery plan has added to the growing debt. But he stated at the time that now is not the time to tighten our belt and stop spending.

In November, however, President Obama said:

I think it is important, though, to recognize that if we keep adding to the debt, even in the midst of the recovery, that at some point, people could lose confidence in the U.S. economy in a way that could actually lead to a double-dip recession.

First, the President says we must keep spending, even during the recession. Then he says that continued spending and increasing the debt dur-

ing the recession could lead to a lack of confidence in the U.S. economy by the American people and by people around the world.

The President remains in his state of denial because before us is a \$447 billion bill that he will likely sign into law.

I challenge President Obama to show leadership and veto this bill. Say to the Senate and the House of Representatives: Get your fiscal house in order. It is time we show responsibility to our children and grandchildren. Spending this year has added up a little bit. The TARP—an additional \$350 billion was added to the TARP program this year. This has now become a slush fund. The stimulus bill was \$787 billion. It was supposed to not allow the unemployment rate to go over 8 percent. We now know the unemployment rate is 10 percent. There were supposed to be millions of jobs saved or created. That certainly doesn't appear to be the case. In this stimulus bill, we see that \$6 million will go to a PR firm whose head is a former pollster for a high-ranking member in the Obama administration. Again, that was for \$6 million. That was to educate folks on what it means to go from analog television to digital. I don't know if anybody watched TV this last year, but the cable companies, the broadcasters, spent tens and tens of millions of dollars to tell folks about the transition and what it meant to transition from analog to digital. Walmart and other companies that were selling the converter boxes were telling people about it. The government didn't need to spend this money. The private sector was handling it just fine.

That is just one small example of the wasteful spending that was part of the stimulus bill. My State has a 13-percent unemployment rate, as I mentioned before. So the stimulus bill certainly doesn't seem to have helped my State.

I want to show you what we are facing with this debt. Under the President's budget that was passed earlier this year, the debt will double within 5 years, and it will actually triple within 10 years. The debt that this country is taking on will double within 5 years and triple within 10 years.

Now we are going to add a \$2.5 trillion health care bill, which is what the spending will be when it is fully implemented. The other side of the aisle has said that it actually decreases the deficit. That is part of the smoke and mirrors. You get all of the tax increases and the Medicare cuts in the first few years, but the actual benefits don't start until 2014. So if you look at a true 10-year picture, the spending in the bill is about \$2.5 trillion.

On top of that, the bill I am talking about today, the \$447 billion "minibus" of appropriations bills, is a 12-percent increase from last year to this year.

When are we going to get the message from the American people? In the past, it doesn't seem like they cared that much about the debt and deficit. We are hearing about it all across the country today. That is the reason you're seeing in poll after poll that it is one of the big things the American people are concerned about now. I am happy they are finally paying attention. I just hope this body starts paying attention to what the American people are saying.

Mr. President, now I want to turn my attention to the DC Opportunity Scholarship Program and how the bill that is before us would eliminate this vital and successful program.

This omnibus bill would accomplish this by restricting the enrollment of any new students and lead to the end of the program. As many of you know, the DC Opportunity Scholarship Program is part of a comprehensive strategy designed to provide a quality education for every child in the District, regardless of income or neighborhood.

The District roundly supports this program. DC's mayor, Adrian Fenty, testified in favor of the program. He has sent letters of support to Members of Congress regarding the scholarship program.

Other DC leaders have also expressed their support, including City Council Chairman Vincent Gray, DC Public School Chancellor Michelle Rhee, and former Mayor Anthony Williams.

The residents support the program too. A Greater Washington Urban League Poll found that almost 70 percent of DC residents support this education funding.

Although the Chancellor of Public Schools, Michelle Rhee, has made much progress reforming DC's public schools, there is still much work to do.

The statistics paint a grim picture. According to the Department of Education's National Assessment of Education, DC ranked last in the Nation based on fourth and eighth grade reading assessments.

In 2007, only 14 percent of fourth graders—14 percent—were proficient in reading and math in DC schools. DC's overall performance on SATs is not much better. Reading scores are 32 points below the national average, while math scores are 60 points below the national average.

DC has some of the highest levels of per-pupil spending in the Nation. Unfortunately, this large investment is bearing little fruit.

The biggest tragedy of all is that a quality education represents the best chance for most of these children to escape the cycle of poverty that so many of their families are in today. For many, the DC Opportunity Scholarship Program provides that chance.

The average household income of participating families that get these scholarships is \$22,000 a year for a family of four. All participating students



come from families below 185 percent of the poverty line. Nearly 100 percent of the participating students are minorities.

Eighty-six percent of the scholarship students would otherwise be assigned to attend a DC public school that did not meet the "adequate yearly progress" standards in 2006 and 2007 and are in need of improvement, corrective action, or restructuring.

Unfortunately, many of the Democrats in this body continue to put politics ahead of a program that is helping to ensure low-income children have the ability to attend safe and effective schools.

Some opponents of the DC Opportunity Scholarship say the program isn't effective. They say it doesn't work and only diverts money from DC public schools. I simply disagree, and I believe the facts paint a very different picture, a more accurate representation of the success of the scholarship program.

According to Dr. Patrick Wolf at the University of Arkansas, the principal investigator studying the scholarship program, this program is working.

DC opportunity scholarship recipients show the largest achievement impact in reading of any education policy program yet evaluated in a randomized control trial. These randomized trials are the gold standard when it comes to figuring out whether a program works.

While the numbers paint an encouraging picture, I think 90 percent of parents of children in the program who say that the scholarship program gives their child a chance at a quality and safe education is a better measure.

David Martinez, whose daughters, Brenda and Katherine, already attend Sacred Heart through the scholarship program, wanted his youngest daughter, Heidi, to enroll as well.

David writes:

I wanted my 5-year-old daughter, Heidi, to attend a private school, as well. I was overjoyed when we received a letter—telling us that the scholarship had been granted. Then, two weeks later—because President Obama, the Congress, and Education Secretary Arne Duncan sided against my daughter—we received another letter. This letter said that Heidi wouldn't receive her scholarship. We were devastated when we read the letter.

Patricia Williams writes of her son Fransoir. Before the program, she worried how she could help Fransoir get a good education and make sure he was safe and supervised. Patricia hopes that all her children attend college in the future.

Despite the fact that the parents and students involved in the DC Opportunity Scholarship have pleaded with lawmakers to preserve the program, Democrats continue to advocate eliminating the opportunity for more than 1,700 students to continue attending private schools.

When you look close at the data on DC schools, it is no wonder that the DC

Opportunity Scholarship parents are so vocal about keeping the program alive. Per-pupil expenditures in the District public schools are more than \$14,000 per pupil per year, and DC class size is one of the lowest, 14 to 1 student-teacher ratio. Yet reading scores continue to languish at or near the bottom in every national assessment.

Recent data shows that 69 percent of fourth graders are reading below basic levels, as defined by the Department of Education in Washington, DC.

DC students in DC public schools rank last in the Nation in both SAT and ACT scores.

Beyond the low performance in the classrooms, DC schools are often violent and dangerous. A Federal Government study found that 12 percent of DC students were threatened or injured by a weapon on school property during a recent school year—well above the national average.

Would most Americans put up with those kinds of statistics, or would they fight for change? This body has to fight for the students and the parents in Washington, DC.

According to the Washington Post, Anacostia High School alone saw 61 violent offenses, including 3 sexual assaults and 1 instance of the use of a deadly weapon.

Perhaps these facts are why President Obama has chosen to enroll both of his daughters in a private school in Washington.

Clearly, we can do better, and the DC Opportunity Scholarship Program is a means to achieve better results for low-income children in Washington.

There are promising signs that this program works. My colleagues, including Senators on both sides of the aisle—Senators LIEBERMAN, COLLINS, FEINSTEIN, VOINOVICH, BYRD, and ALEXANDER—have joined in a bipartisan bill to improve and extend this successful program.

This program should not see its death through the appropriations process.

In conclusion, what this "minibus"—the bill before us today—is doing is rolling over the future of this country. Call it what you want—minibus, omnibus, or 18 wheeler—it is carrying a load of debt and wasteful spending and government irresponsibility. It is a reminder to the American people that while they balance their budgets and scrape to pay their bills and try to save something for the future, the Federal Government continues its reckless shopping spree and just prints the money. This is not what we are sent here to do. I hope the President sees that and vetoes this irresponsible legislation.

I yield the floor.

## ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m. tomorrow.

There being no objection, the Senate, at 7:44 p.m., adjourned until Saturday, December 12, 2009, at 9 a.m.

## NOMINATIONS

Executive nominations received by the Senate:

### TENNESSEE VALLEY AUTHORITY

MARILYN A. BROWN, OF GEORGIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2012. VICE SUSAN RICHARDSON WILLIAMS, TERM EXPIRED.

### NUCLEAR REGULATORY COMMISSION

WILLIAM CHARLES OSTENDORFF, OF VIRGINIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2011. VICE DALE KLEIN, RESIGNED.

### DEPARTMENT OF DEFENSE

SHARON E. BURKE, OF MARYLAND, TO BE DIRECTOR OF OPERATIONAL ENERGY PLANS AND PROGRAMS. (NEW POSITION)

### FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED.

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA,

### DEPARTMENT OF STATE

SEAN J. MCINTOSH, OF NEW YORK

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

### DEPARTMENT OF STATE

JILLIAN FRUMKIN BONNARDEAUX, OF VIRGINIA  
LYNDA J. HINDS, OF CALIFORNIA

THE FOLLOWING—NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

### DEPARTMENT OF STATE

RYAN AIKEN, OF UTAH  
R. ANDREW ALLEN, OF GEORGIA  
NATALIA ALMAGUER, OF FLORIDA  
LAURA AYLWARD, OF WASHINGTON  
JENNIFER AZARI, OF NEW JERSEY  
KARA B. BABROWSKI, OF FLORIDA  
ZACHARY BAILEY, OF VIRGINIA  
JUDITH E. BAKER, OF MASSACHUSETTS  
ESTHER F. BELL, OF RHODE ISLAND  
IRMIE KEELER BLANTON III, OF GEORGIA  
CHELAN J. BLISS, OF WASHINGTON  
DAVID SEAN BOXER, OF VIRGINIA  
ALEXIA MCNEAL BRANCH, OF CALIFORNIA  
RAVI FRANKLIN BUCK, OF MISSOURI  
MATTHEW BUSHELL, OF CONNECTICUT  
OMAR CARDENTY, OF FLORIDA  
DANIEL C. CARROLL, OF HAWAII  
ANDREW N. CARUSO, OF VIRGINIA  
MICHAEL P. CASEY, OF VIRGINIA  
BENJAMIN COCKBURN, OF GEORGIA  
JOANNE ILENE COSSITT, OF CONNECTICUT  
ROCCO COSTA, OF MARYLAND  
CHRISTOPHER B. CREAGHE, OF COLORADO  
ROBIN S. CROMER, OF SOUTH CAROLINA  
GAETAN DAMBERG-OTT, OF MINNESOTA  
JESSICA RENEE DANCEL, OF COLORADO  
SCOTT B. DARGUS, OF WASHINGTON  
PETER JOHN DAVIDIAN, OF OHIO  
REBEKAH E. DAVIS, OF THE DISTRICT OF COLUMBIA  
JASON DYER, OF NEW MEXICO  
MARCUS GEORGE FALION, OF TENNESSEE  
GAIL HEGARTY FELL, OF NEW YORK  
JOSEPH ANTON FETTE, OF CALIFORNIA  
AARON ELLIOTT GARFIELD, OF CALIFORNIA  
PHILLIP M. GATINS, OF FLORIDA  
SARAH GJORGJJEVSKI, OF VIRGINIA  
SAMUEL EVERETT GOFFMAN, OF ILLINOIS  
DANIEL ROSS HARRIS, OF CALIFORNIA  
NOEL HARTLEY, OF THE DISTRICT OF COLUMBIA  
JANEL MARGARET HEIRD, OF MICHIGAN  
PELJN M. HELGERS, OF THE DISTRICT OF COLUMBIA  
CHRISTOPHER D. HELMKAMP, OF VIRGINIA  
WILLIAM N. HOLTON, JR., OF ILLINOIS  
TRAVIS A. HUNNICUTT, OF VIRGINIA  
DONNA J. HUSS, OF INDIANA



MOUNIR E. IBRAHIM, OF NEW YORK  
AMENAGHAMWON IYI-EWEKA, OF WISCONSIN  
DANA MARIE JEA, OF FLORIDA  
JOANNA TRACY KATZMAN, OF NEW JERSEY  
JENNIFER ANNE KELLEY, OF THE DISTRICT OF COLUMBIA  
CRAIG S. KENNEDY, OF GEORGIA  
THOMAS D. KOHL, OF FLORIDA  
JACK C. LAMBERT, OF OREGON  
BRENT JOSEPH LAROSA, OF MARYLAND  
ALEXI LEFEVRE, OF FLORIDA  
IAN MACKENZIE, OF MASSACHUSETTS  
JUAN D. MARTINEZ, OF NEW YORK  
KELLY JEAN MCANERNEY, OF PENNSYLVANIA  
MAUREEN A. MCNICHOLL, OF ILLINOIS  
GREGORY MEIER, OF CALIFORNIA  
MARC A.J. MELINO, OF WASHINGTON  
MATAN MEYER, OF FLORIDA  
BENJAMIN J. MILLS, OF NEW MEXICO  
SEAN P. MOFFATT, OF MARYLAND  
CHARLES VINCENT MURPHY, OF CALIFORNIA  
LINDA A. NEILAN, OF NEW JERSEY  
EMILY YASMIN NORRIS, OF MASSACHUSETTS  
ELIZABETH CURRAN O'ROURKE, OF ILLINOIS  
MARY LILLIAN PELLEGRINI, OF NEW HAMPSHIRE  
LISA MARIE PETZOLD, OF MASSACHUSETTS  
KATHRYN STANSBURY PORCH, OF MARYLAND  
MARIA DEL PILAR QUIGUA, OF MASSACHUSETTS  
RYAN M. QUINN, OF WISCONSIN  
SCOTT RULON RASMUSSEN, OF WASHINGTON  
LEA PALABRICA RIVERA, OF NEW YORK  
TANYA ELAINE ROGERS, OF TEXAS  
SUSAN ROSS, OF NEW YORK  
ZACHARY R.S. ROTHSCHILD, OF THE DISTRICT OF COLUMBIA  
LAUREN C. SANTA, OF THE DISTRICT OF COLUMBIA  
TODD BENSON SARGENT, OF VERMONT  
MONICA A. SLEDJESKI, OF NEW YORK  
MATTHEW BOUTON STANNARD, OF CALIFORNIA  
MATTHEW M. STEED, OF CALIFORNIA  
DAVID S. STIER, OF NEW YORK  
ANNA STINCHCOMB, OF THE DISTRICT OF COLUMBIA  
CASSIE COADY SULLIVAN, OF NEW YORK  
VIOLETA TALANDIS, OF MARYLAND  
DANIEL J. TARAPACKI, OF NEW YORK  
TIMOTHY TRANCHILLA, OF THE DISTRICT OF COLUMBIA  
GREGORY J. VENTRESCA, OF NEW YORK  
DOMINGO J. VILLARONGA, OF NEW YORK  
NICHOLAS VON MERTENS, OF NEW HAMPSHIRE  
DARREN WANG, OF CALIFORNIA  
THOMAS CHARLES WEBER, OF TEXAS  
JOHN NOEL WINSTEAD, OF WYOMING  
WILLIAM QIAN YU, OF WASHINGTON

## IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

NOEMI ALGARINLOZANO  
CAROL ANN BARCLA ANDREWS  
SUSAN F. BALL  
SUSAN E. BASSETT  
YOLANDA D. BLEDSOE  
KEVIN J. BOHAN  
KAREN L. CHURCH  
STEPHEN K. DONALDSON  
CAROLE A. FARLEY  
ANNETTE S. GABLEHOUSE  
VIRGINIA A. GARNER  
DANIEL E. GERKE  
PENELOPE F. GORSUCH  
VIVIAN C. HARRIS  
MADELINE D. HOWELL  
AMELIA L. HUTCHINS  
BILLY G. HUTCHISON  
DENISE R. IRIZARRY  
ALETA P. JEFFERSON  
GUYLENE D. KRIEGHFLEMING  
DEBORAH R. MARCUS  
ELEANOR C. NAZARSMITH  
DEAN L. PRENTICE  
JAMES E. REINEKE  
THERESA D. RODRIGUEZ  
LISA A. SCHMIDT  
ROBIN L. SCHULTZE  
KAREN L. SCLAFANI  
JULIA G. STOSHAK  
CHRISTINE S. TAYLOR  
MARY M. WHITEHEAD  
PATRICK J. WILLIAMS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

DAVID W. BOBB  
CHARLES R. CARLTON, JR.  
CRAIG J. CHRISTENSON  
DAVID COHEN  
JAMES H. DIENST  
BRIDGET C. GREGORY  
SAMUEL D. HALL III  
ALVIS W. HEADEN III  
STEVEN R. HINTEN  
DOUGLAS C. HODGE  
BAILEY H. MAPP  
DANIEL E. REISER  
LONDON S. RICHARD  
ERIC A. SHALITA

MARK E. SMALLWOOD  
BRIAN K. SHANTON  
JAY M. STONE  
ROBERT W. WISHTISCHIN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

RANDALL M. ASHMORE  
ADAM G. BEARDEN  
SCOTT T. BROWN  
MICHAEL S. BURKE  
HEATHER M. CARTER  
ROBERT R. EDWARDS, JR.  
KURTIS W. FAUBION  
D. SCOTT GUERMONTREZ  
JASON T. HALL  
SCOTT J. HIMLES  
THOMAS M. HUNTER  
JEFFERY F. JONES  
ELMO J. ROBISON III  
R. BRUCE ROEHM  
HERBERT C. SCOTT  
JAMES A. SPERL

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

SEAN W. DIGMAN  
LARRY J. EVANS  
TOMMY D. FISHER  
MICHAEL E. FULTON  
ALLEN J. HEBBERT, JR.  
GERALD P. KABAN  
ANGELA M. MONTELLANO  
JACOB E. PALMA  
HYEKYUNG HELENA PAE PARK  
PHILLIP C. PORTERA  
ROGER E. PRADELLI  
ROBERT V. REINHART, JR.  
DAVID L. ROBINSON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

ALBERT H. BONNEMA  
MARK J. BROOKS  
MARY T. BRUEGGEMEYER  
JAMES H. BURDEN, JR.  
BRET D. BURTON  
THOMAS N. CHEATHAM  
NICOLA A. CHOATE  
BRANDON D. CLINT  
CHARLES D. CLINTON  
MARK R. COAKWELL  
MARCUS M. CRANSTON  
BRIAN K. CROWNOVER  
ERIC W. FESTER  
DAVID GARRETT, JR.  
PHILIP L. GOULD  
PAUL E. GOURLEY  
NABIL M. HABIB  
BENJAMIN A. HARRIS  
KAREN A. HEUPEL  
JAMES L. JABLONSKI II  
WILMER T. JONES III  
JAMES A. KEENEY  
MICHAEL R. KOTELES  
JOHN P. LYNCH  
DEBRA L. MALONE  
RANDY O. MAUFFRAY  
RANDALL R. MCCAFFERTY  
KENT D. MCDONALD  
WILLIAM F. MOORE  
PAUL H. NELSON  
MARRINER V. OLDHAM  
TIMOTHY R. PAULDING  
GARY A. PETTZMEIER  
TODD W. POINDEXTER  
MICHAEL G. RAPP  
TODD E. RASMUSSEN  
ROCKY R. RESTON  
JOANN Y. RICHARDSON  
EDGAR RODRIGUEZ  
LOWELL G. SENSINTAFFAR  
STACY A. SHACKELFORD  
TERESA M. SKOJAC  
LEIGH A. SWANSON  
MICHAEL S. TANKERSLEY  
GRANT P. TIBBETTS  
DEREK K. URBAN  
SCOTT A. VANDEHOEF  
BRYAN M. VYVERBERG  
GEORGE A. WADDELL  
LESLIE A. WILSON  
RAWSON L. WOOD  
JON B. WOODS  
SCOTT D. ZALESKI  
GIANNA R. ZEH

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

ERIC R. BAUGH, JR.

DORON BRESLER  
STEPHEN H. CHARTIER  
JILL A. CHERRY  
ORLANDO L. COLONCONCEPCION  
FREDERICK A. CONNER  
GREGORY A. CONNER  
MARVIN CONRAD  
JONATHAN D. EVANS  
DANIEL B. GABRIEL  
MICHAEL T. GARDNER  
CECILIA I. GARIN  
DAVID E. HALL  
DENNIS M. HOLT  
DAVID M. JONES  
MIKELLE L. KERNIG  
JAMES DALE KISER, JR.  
KELLI C. MACK  
ROBERT K. MCGHEE  
KATHERINE R. MORGANTI  
BARRY F. MORRIS  
JESSE MURILLO  
JEANLUC G. C. NIEL  
KYLE W. ODOM  
INAAM A. A. PEDALINO  
KYLE E. PELKEY  
AIDA M. SOLIVANORTIZ  
YOUNG K. SUNG  
JOHN A. THOMAS  
JAMES R. THOMPSON  
WILLIAM K. TUCKER  
GEORGE S. TUNDER, JR.  
KARYN E. YOUNG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

ADAM M. ANDERSON  
BRETT C. ANDERSON  
ROBERT S. ANDREWS  
DAVID E. ANDRUS  
MARIA M. ANGLER  
MARY CATHERINE ARANDA  
JORGE ARZOLA  
SHAWN M. BAKER  
KIMBERLY M. BALOGH  
ANTHONY S. BANKES  
JEFFREY W. BARR  
PETRAN J. BEARD  
RICHARD W. BENTLEY  
JEFFREY J. BIDINGER  
JAMES A. BLEDSOE  
DENNIS F. BOND II  
CRAIG D. BOREMAN  
STACEY L. BRANCH  
BRETT D. BRIMHALL  
SCOT E. CAMPBELL  
FRANCIS R. CARANDANG  
GABRIELLA CARDOZAFAVARATO  
DAVID H. CARNAHAN  
BRYCHAN K. CLARK  
DAREN S. DANIELSON  
PAUL BARTOLOMEO DIDOMENICO  
GEORGE M. DOCKENDORF  
JAMISON W. ELDER  
ANN S. FENTON  
COLLEE FITZPATRICKWEISBROD  
JAY T. FLOTTMANN  
SARAH O. FORTUNA  
CURTIS M. FOY  
DOUGLAS S. FRENIA  
KELLY D. GAGE  
JOSEPH P. GALLAGHER  
MICHAEL S. GARRETT  
VERONICA M. GONZALEZ  
THERESA B. GOODMAN  
WADE T. GORDON  
NOAH H. GREENE  
LOUIS Q. GUILLERMO  
ERIC S. HALSEY  
DERRICK A. HAMAOKA  
MATTHEW P. HANSON  
KARIN N. HAWKINS  
BRET D. HEEREMA  
ERIC J. HICK  
JAMES M. HITCHCOCK  
CRYSTAL L. HNATKO  
KYLE B. HUDSON  
SCOTT W. HUGHES  
TODD P. HUHN  
JON R. JACOBSON  
JOEL W. JENNE  
DAVID S. JONES  
LOREN M. JONES  
THOMAS E. KIBELSTIS  
PAUL KLIMO, JR.  
MICHELE L. KNIERIM  
JANA S. KOKKONEN  
JAMES B. KOPP  
ELLA B. KUNDU  
NIRVANA KUNDU  
ALEX J. LEE  
JEFFREY D. LEWIS  
KARYN C. LEWIS  
KEEGAN M. LYONS  
DANIEL S. MADSEN  
CHARLES G. MAHAKIAN  
MARIA I. MARTINO  
PHILLIP E. MASON  
DEREK A. MATHIS  
EDWARD L. MAZUCHOWSKI II

HOWARD J. MCGOWAN  
DONALD J. MCKEEL  
MICHAEL D. MICHENER  
QUINTESSA MILLER  
BRIAN A. MOORE  
PAUL M. MORTON  
SAMUEL B. MUNRO  
DANIEL H. MURRAY  
HAFEZ A. NASR  
BRETT R. NISHIKAWA  
WILLIAM C. OTTO  
SARAH M. PAGE  
WESLEY D. PALMER  
GILBERTO PATINO  
JUDITH E. PECK  
ALYSSA C. PERROY  
TIMOTHY M. PHILLIPS  
BRIAN J. PICKARD  
ROBERT R. PORCHIA  
TONYA S. RANS  
NATALIE L. RESTIVO  
MARK G. RIEKER  
ERIC M. RITTER  
JENNIFER M. RIZZOLI  
MARK O. ROBINSON  
KYLE M. ROCKERS  
GEOFFREY T. SASAKI  
STEPHANIE A. SAVAGE  
CHRIS A. SCHEINER  
STEPHEN E. SCRANTON  
JIFFY C. SETO  
ANDREA D. SHIELDS  
DANIEL A. SHOEMAKER  
REBECCA W. SHORT  
TERESA A. SIMPSON  
ROMMEL B. SINGH  
JOHN HWA SLADKY  
KEVIN E. STEEL  
ELIZABETH DOKFA P. STEWART  
MARK A. SUMMERS  
DEENA E. SUTTER  
LON J. TAFF  
PATRICK J. THOMPSON  
RAMONE A. TOLIVER  
MARK S. TOPOLSKI  
EDDIE H. UY  
JOSEPH D. VILLACIS  
KIRSTEN R. VITRIKAS  
DANIEL R. WALKER  
DAVID T. WANG  
YUANHONG WANG  
JOHN C. WHEELER  
PATRICK F. WHITNEY  
MAUREEN N. WILLIAMS  
LEE T. WOLFE  
GRAND F. WONG  
ROGER A. WOOD  
HENRY ALLEN WOODS, JR.  
JOSHUA L. WRIGHT  
JOY C. WU  
SHAHID A. ZAIDI

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT  
TO THE GRADE INDICATED IN THE UNITED STATES AIR  
FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

BRIAN J. ALENT  
AYMAN M. ALI  
ZACHARY D. ALLMAND  
ELIZABETH A. BOWMAN  
JEFFREY R. BURROUGHS  
JAN R. CARLSON  
BENJAMIN T. CLARK  
JEFFREY E. CULL  
SHONNA R. CURRY  
JESSICA N. DEAN  
DAVID M. DENNISON  
JENNIFER M. DEPEW  
RYAN M. DIEPENBROCK  
MATTHEW J. EDWARDS  
JEFFREY D. FLEIGEL III  
DANIEL D. FRIDMAN  
BENJAMIN J. GANTT  
LANNY J. GIESLER  
PHILLIP J. HARVEY  
CYNTHIA HERNANDEZFALU  
SHAWNA N. HOFFERT  
LAQUANIS S. HOOKER  
LAWERENCE S. HORNE  
HANLING H. JOSWICK  
NEIL C. KESSEL  
JONGSUNG KIM  
JERED B. KING  
KRISTEN B. KNODEL  
AARON T. KRANCE  
JAE S. LEE  
LOUIS JOSEPH MARCONYAK, JR.  
AMY G. MASON  
SHAWN P. MCMAHON  
BRENT A. MILNE  
TAMARA A. MURRAY  
LOSCAR N. PEREZVELEZ  
COURTNEY A. SCHAPIRA  
NICHOLAS D. SCHULTE  
NATHAN T. SCHWAMBURGER  
JELENA C. SEIBOLD  
LORA R. SKEAHAN  
DRAGOS STEFANDOGAR  
JAMES R. VANDRE  
LANCE R. WASHBURN  
DENNIS J. WEBER II

RACHEL A. WEBER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT  
TO THE GRADE INDICATED IN THE UNITED STATES AIR  
FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

ERIC E. ABBOTT  
ERIK L. ABRAMES  
VAN W. ADAMSON  
JASON M. ALLEN  
MICHAEL A. AROCHO  
ANGELE J. ARTHUR  
JOSEPH R. BABER  
MICAH J. BAHR  
CARRIE G. BAKER  
ERIK A. BAKER  
TROY W. BAKER  
KEVIN J. BALDOVICH  
JEREMY W. BALDWIN  
JAMES R. BALES  
RYAN A. BARENCHI  
ROBERT T. BARIL  
CHRISTOPHER W. BATES  
GAIL C. BATES  
CLAIRALYN L. BAUCOM  
TIMOTHY S. BAUMGARTNER  
ELIZABETH A. BEAL  
AMY S. BECK  
SCOTT J. BENTLEY  
WILLIAM A. BETHEA  
CHARLES A. BEVAN III  
DAVID K. BIGELOW  
BRANDON J. BINGHAM  
CHRISTOPHER D. BLACK  
KWABENA L. BLANKSON  
CALE WALTER BONDS  
KEVIN S. BORCHARD  
ERNEST E. BRAXTON  
HEATHER K. BRIGHT  
PAMELA J. BRODERICK  
AMY N. BROWN  
DANIEL J. BROWN  
MICHAEL J. BUYS  
SUSAN J. CARBOGNIN  
MICHAEL H. CARPENTER  
KATRINA CARTER  
DAVID J. CASSAT  
ELISE M. CHAMBERS  
NATALIE G. CHAN  
MICHAEL J. CLEGG  
NATHAN F. CLEMENT  
TIMOTHY J. COKER  
JASON A. COMPTON  
TARA L. CONNER  
JAMES R. COONEY  
GEOFFREY J. COOPER  
SUSANNAH C. COOPER  
CHRISTINA L. CRISTALDI  
SPENCER J. CURTIS  
AUGUSTA L. CZYSZ  
DANIEL F. DAVENPORT  
AMY M. DAVIS  
JESSICA M. DAVIS  
RICHARD P. DAVIS  
JONATHAN A. DAY  
AUTUMN N. DEAN  
MELISSA J. DOOLEY  
BRANDEN G. DUFFEY  
SPENCER G. DUNCAN  
STEPHEN T. ELLIOTT  
JONATHAN E. ELLIS  
JOEL B. ELTERMAN  
MICHELLE M. ENGELKEN  
JOSEPH K. ERBE  
WILLIAM R. ERRICO  
DONALD S. EULER, JR.  
ROGER N. EWONKEM  
TIMOTHY D. FAGEN  
SHANNON D. FARAG  
DAVID D. FARNSWORTH  
MELINDA G. FIERROS  
COREY D. FINCH  
AUSTIN D. FINDLEY  
CARRIE E. FLANAGAN  
STACY F. FLETCHER  
FREDERICK L. FLYNT, JR.  
CRISTINA L. FRANCHETTI  
RYAN D. FREELAND  
SHAWN K. FRENCH  
SCOTT H. FRYE  
DANIEL L. GALLO  
JOHN G. GANCAYCO  
RYAN F. GIBBONS  
GUY N. GIBSON  
SHAUN M. GIFFORD  
PHILLIP J. GOEBEL  
MICHELLE NICOLE GONZALEZ  
JASON C. GOODWIN  
ZACHARY P. GORAL  
JOSE B. GOROSPE  
MARIA E. GOROSPE  
ERIC S. GRAJKOWSKI  
GIOVI GRASSOKNIGHT  
BRIAN J. GROAT  
FREDERICK P. GROIS III  
AJIT GUBBI  
MICHELLE S. GUCHERAU  
MICHAEL S. HAMPTON  
TRISTAN E. HANDLER  
BRENT S. HARLAN  
CORTNEY ELIZABETH HARPER

JEFFREY N. HARRIS  
NOAL I. HART  
WILLIAM A. HAYES II  
KEVIN F. HEACOCK  
SARAH M. HEDRICK  
JASON A. HIGGY  
JASON H. HINES  
THAO T. B. HO  
DIANE C. HOMEYER  
JACOB G. HOOVER  
WILLIAM R. HOWARTH  
JUSTIN C. HUANG  
ISAAC P. HUMPHREY  
KYLE F. JARNAGIN  
TAUNYA M. JASPER  
KEVIN N. JENSEN  
JULIE C. JERABEK  
ASHLEY B. JOHNSON  
COLLEEN N. JOHNSON  
SARA KAY LUTTIO JOHNSTONE  
FRANCES J. JONES  
LASONYA D. JONES  
OSCAR B. JONES  
ROBERT J. JONES, JR.  
KEVIN KALWERISKY  
ALEXANDER P. KELLER IV  
JARED C. KELSTROM  
TIMOTHY P. KENNARD  
KEIRON T. KENNEDY  
SARA S. KERLEY  
JONATHAN R. KEVAN  
JEREMY P. KILBURN  
DANNY S. KIM  
JEFFREY D. KISER  
DAVID A. KLEIN  
ELIZABETH A. KLEWENO  
SHANNON F. KLUMP  
JOSHUA H. KNOWLES  
JAMES B. KOCH  
KATHERINE A. KOCZAN  
CALEB E. KROLL  
THOMAS J. KRYZAK  
BRIAN D. LARSON  
JOSHUA L. LATHAM  
ZHI V. LAU  
RANDY A. LEACH  
CHRISTOPHER C. LEDFORD  
RYAN S. LEE  
JADE A. LHEUREUX  
JOHN LICHTENBERGER III  
APRIL LIGATO  
PEICHUN LIN  
SCOTT R. LINK  
NANCY W. LO  
GUSTAVO A. LOPES  
WILLIAM N. LUTHIN  
DUSTIN O. LYBECK  
MEIKEL P. MAJOR  
LOU ROSE M. MALAMUG  
JELRIZA C. B. MANSOURI  
DAVID J. MARTINEZ  
AMELITA A. MASLACH  
JOEL G. MASSEY  
JAMIE A. MASSIE  
RENEE I. MATOS  
MICHAEL J. MATSUURA  
MICHAEL J. MATTEUCCI  
JEFFREY C. MCCLEAN  
MARC D. MCCLEARY  
RISPBA N. MCCRAYGARRISON  
TORREE M. MCGOWAN  
RYAN S. MCHUGH  
CHRISTOPHER C. MEDINA  
WAYNE J. MERBACK  
BRADLEY R. MEYER  
LISA R. MICHELS  
CHARLES B. MILLER  
SHANNA M. MOLINA  
JEREMY D. MOLL  
TYLAN A. MUNCY  
BRIAN H. NEESE  
COURTNEY R. NELSON  
SHERWIN P. NEPOMUCENO  
KHANG H. NGUYEN  
JOSEPH D. NOVAK  
VALERIE C. OBRIEN  
KEVIN L. OLSON  
ROBERT M. ORE  
KATHRYN R. OUBRE  
JEREMY W. OWENS  
CHI NA PAK  
BRETT L. PALMER  
BRUCE M. PALMER  
BENJAMIN J. PARK  
ROGER T. PARK  
JASON D. PASLEY  
JOSHUA B. PEAD  
CANDACE S. PERCIVAL  
SERAFIM PERDIKIS  
SARA LYNN PETERSONSCHRADER  
ANDREW J. PETERSON  
KRISTINE K. PIERCE  
DARREN S. PITTARD  
BRANDON W. PROPPER  
JAMIE M. RAND  
PHILLIP J. REDD  
ANDREW G. REES  
SUSAN L. REESE  
CHRISTOPHER A. REGNIER  
STEVEN REGWAN  
AMANDA B. RICHARDS  
TIGHE C. RICHARDSON

JONATHAN M. RICKER  
JILL E. ROTH  
JUSTIN P. ROWBERRY  
JAIME RUIZ PEREZ  
PETER R. SABATINI  
DERICK A. SAGER  
STEPHEN C. SAMPLE  
RICHARD J. SAXEN  
RANDAL S. SCHOLMA  
KARA S. SCHULTZ  
ROSS A. SCHUMER  
REBEKAH A. SENSENIG  
TRISTAN L. SEVDY  
JONATHAN B. SHAPIRO  
CHARLOTTE A. SHEALY  
MEHDI C. SHELHAMER  
MARK E. SHEPHERD  
GREGORY A. SKOCHKO  
CLARISA I. SMITH  
TRIMBLE L. SPITZER  
TRAVIS A. STEPHENSEN  
HEATHER L. STEWART  
NORMAN E. STONE III  
STEPHEN T. D. STOREY  
LISA E. STRICKLAND  
SARAH J. STRINGER  
JAMIE M. SWARTZ  
ROBERT C. SWIFT  
RAMON N. THOMAS  
ROGER S. THOMAS  
GINA M. THOMASON  
KATHERINE S. TILLIE  
PAUL A. TILTON  
JAMES R. TOWNLEY  
PETER T. TRAN  
TIM P. TRAN  
RONALD J. URTON  
ANDREW R. W. VACLAVIK  
FLORA P. VARGHESE  
DOUGLAS R. VILLARD  
ADAM P. VOSEN  
TERENCE E. WADE  
DENNIS D. WALKER  
ANDREW L. WALLS  
YANG WANG  
JEREMIAH R. WATKINS  
LARISSA F. WEIR  
CHRISTINA M. WELCH  
DALIA J. WENCKUS  
JENNIFER L. WHATLEY  
BRAD E. WHEELER  
CALEN N. WHERRY  
BENJAMEN H. WILLIAMS  
PHILIP A. WIXOM  
EMILY B. WONG  
AARON F. WOODWARD  
JEFFREY S. WOOLFORD  
BRIAN W. WRITER  
DUOJIA XU  
ETHAN EVERETT ZIMMERMAN

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

*To be lieutenant colonel*

OLGA M. ANDERSON  
DAVID O. ANGLIN  
JASON M. BELL  
ROSEANNE M. BENNETT  
DEIRDRE G. BROU  
MARY E. CARD  
JONATHAN E. CHENEY  
HEATHER J. FAGAN  
DANIEL M. FROELICH  
DEON M. GREEN  
JOHN A. HAMNER II  
JAMES G. HARWOOD  
TIMOTHY P. HAYES, JR.  
KEVEN J. KERCHER  
MAUREN A. KOHN  
RODNEY R. LEMAY  
ERIC D. MAGNELL  
ROBERT L. MANLEY III  
ANDRAS M. MARTON  
SEAN T. MCGARRY  
OREN H. MCKNELLY  
MICHAEL D. MIERAU, JR.  
RUSSELL N. PARSON  
KELLI L. PETERSEN  
EMILY C. SCHIFFER  
THOMAS E. SCHIFFER  
CHRISTINE M. SCHVERAK  
DAVID T. SCOTT  
KARIN G. TACKABERRY  
NELSON J. VANECK  
AARON A. WAGNER  
CHARLES W. WALLACE  
SCOTT D. WALTERS  
MARTIN N. WHITE  
ERIC W. YOUNG

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 6222:

*To be major*

BRIAN J. DIX

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. DIXIE A. MORROW

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. PAUL S. DWAN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. DANIEL B. FINCHER  
COL. DAVID C. WESLEY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COLONEL GARY C. BLASZKIEWICZ  
COLONEL ARTHUR C. HAUBOLD  
COLONEL MICHAEL D. KIM  
COLONEL LINDA S. MARCHIONE  
COLONEL RICHARD O. MIDDLETON II  
COLONEL ROBERT N. POLUMBO  
COLONEL JANE C. ROHR  
COLONEL PATRICIA A. ROSE  
COLONEL PETER SEFCIK, JR.  
COLONEL JAMES F. SMITH  
COLONEL EDMUND D. WALKER  
COLONEL WILLIAM O. WELCH

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be vice admiral*

VICE ADM. DAVID ARCHITZEL

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 5046:

*To be major general*

COL. VAUGHN A. ARY

## EXTENSIONS OF REMARKS

### A TRIBUTE TO CAMPBELLSVILLE UNIVERSITY WOMEN'S VOLLEYBALL TEAM

#### HON. BRETT GUTHRIE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. GUTHRIE. Madam Speaker, I rise today to honor the Campbellsville University Women's Volleyball Team for their outstanding performance this season. While the team's record-setting 38 wins constitute a monumental achievement in their own right, the fact that the Campbellsville University Volley Tigers won the team's—and the university's—first NCCAA National Championship is truly a testament to their exceptional effort and indomitable spirit.

The Lady Tigers' extraordinary commitment to academic and athletic excellence has not only distinguished them as role-models for their community, but has also earned Campbellsville University the national attention it so richly deserves. It is fitting, then, that the Volley Tigers' tremendous success aptly demonstrates not only their own exacting standards of excellence, but those of the university itself.

In addition to Coach Randy LeBleu and Assistant Coach Amy Eckenfels, I would like to commend the members of the team, Caitlin Dresing, Brooke Marcum, Lilian DaSilva, Tiarra Wilham, Lilian Odek, Caroline Martin, Samantha James, Shannon Cahill, Christiana Sindehar, and seniors Jovana Koprivicia, Whitney Haynes and Renee Netherton, on their outstanding success. I wish them nothing but the best in their future endeavors.

### HONORING SERGEANT BENTON THAMES FOR HIS EXEMPLARY SERVICE TO THE UNITED STATES OF AMERICA AS COMMANDER OF THE RELIEF AT THE TOMB OF THE UNKNOWN SOLDIER AT ARLINGTON NATIONAL CEMETERY

#### HON. BILL CASSIDY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CASSIDY. Madam Speaker, I rise today in honor of Sergeant Benton Thames from the Town of Springfield in Louisiana's Sixth Congressional District. It gives me great pleasure to extend to Sergeant Thames immense gratitude and appreciation for his exemplary service to our country as Commander of the Relief at the Tomb of the Unknown Soldier at Arlington National Cemetery.

Sergeant Thames has dutifully guarded the Tomb of the Unknown Soldier for over two

years. His responsibilities include changing of the guard and laying of the wreath at the Tomb. Sergeant Thames strives to make this ceremony special for the thousands of veterans and Americans who visit this sacred landmark annually. Sergeant Thames' dedicated service and commitment to our brave and courageous veterans and fallen heroes is truly admirable.

Sergeant Thames is a graduate of Springfield High School, and a former resident of Louisiana's Sixth Congressional District. In his spare time, Sergeant Thames volunteers with the Louisiana Honor Air program which aids World War II veterans in a variety of ways. I am honored by Sergeant Thames' service to our country and wish him continued success as Commander of the Relief at the Tomb of the Unknown Soldier.

### IN HONOR AND RECOGNITION OF DR. WILLIAM HENRY "BILL" COSBY JR.

#### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and recognition of Dr. William Henry "Bill" Cosby Jr.—a husband, a father, a renowned entertainer, and an activist who has recently been selected to receive the Kennedy Center's 12th Annual Mark Twain Prize for American Humor. His contributions as an author, writer, actor, singer, comedian, and television producer span every facet of the entertainment industry and his work is beloved around the world.

In 1961, Mr. Cosby was the first African American to win the coveted Emmy award for his work on the TV show, "I Spy." Since then, Mr. Cosby has garnered numerous awards for excellence in the performing arts including the Golden Globe, a People's Choice award, and Grammy and Emmy awards. His natural comedic talent was first noticed in college when he attended Temple University and worked as a bartender. His quick wit and laid-back style easily drew others to him, including the legendary producer and director Carl Reiner. During his successful career in entertainment, Mr. Cosby remained committed to education, eventually earning a doctorate degree in Education from the University of Massachusetts at Amherst.

Mr. Cosby is a rare comedic genius. He is intelligent, creative and never relies on profanity. His popular stand-up comedy performances are drawn from personal experiences such as a childhood spent on the streets of Philadelphia and his experiences as husband and a father. His thought provoking performances feature themes of family, love and human fallibilities. In addition to stand-up, his

work in television is well known. He worked on hits including the "Electric Company," the animated comedy "Fat Albert and The Cosby Kids" and starred as Dr. Heathcliff Huxtable, the affable, educated and loving father on the hit comedy "The Cosby Show." Mr. Cosby's work explored challenging family issues softened by comedy. His impact on children and young adults is immeasurable. Even today, Dr. Huxtable continues to be the most beloved television father of all time. Moreover, Mr. Cosby continues to be a mentor and voice of empowerment in urban and black communities. He uplifts and inspires young and old through public forums, music, humor and song. He continues to educate and encourage involvement based on the principles of family unity, community involvement and personal responsibility.

Madam Speaker, please join me in honor and recognition of Dr. William Henry "Bill" Cosby. Mr. Cosby's brilliant artistry, unwavering activism and volunteer spirit continue to lighten hearts and enlighten minds by bringing hope and laughter to millions. Mr. Cosby has made and continues to make our nation and our world a better place.

### TRIBUTE TO DR. DENNIS SANDLIN

#### HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ROGERS of Kentucky. Madam Speaker, I rise today to pay tribute to the late Doctor Dennis Sandlin, a Kentucky physician who lost his life, standing fast in the face of danger to practice ethical and responsible medicine in a medically underserved region, inundated with poverty and drug addiction.

On December 8, 2009, Doctor Sandlin was tragically murdered in front of nurses and staff at the Leatherwood-Blackey Medical Clinic in Perry County, Kentucky. Doctor Sandlin routinely refused to give doctor-shopping drug seekers a prescription for pain pills without passing proper evaluation. He refused to allow his practice to be part of the drug epidemic, although many physicians in the past have given in to fear of demands and threats by drug seekers across the region. After being denied narcotics for a second time that morning, a patient returned to Doctor Sandlin's office and fatally shot him in the head.

Doctor Sandlin returned home to Perry County, after graduating from the University of Louisville's School of Medicine, to provide healthcare to less fortunate individuals. He served generations of families for 28 years until his untimely death. Doctor Sandlin's medical practice may be over, but his style of practice will live on as the pinnacle of good medicine.

Madam Speaker, I ask my colleagues to join me in memory of Doctor Dennis Sandlin. In

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

my opinion, he died a hero. Every physician, pharmacist, law enforcement official, medical and pharmacy student can learn from Doctor Sandlin's tenacity to practice responsible medicine and never give place to fear.

#### PERSONAL EXPLANATION

### HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. GRANGER. Madam Speaker, on rollcall Nos. 939, 940, 942, 943, and 945 I was absent from the House.

Had I been present, I would have voted "no."

ALLEGHANY COUNTY RESIDENTS  
HONORED BY NORTH CAROLINA  
HISTORICAL SOCIETY FOR SES-  
QUICENTENNIAL CELEBRA-  
TIONS—12-10-09

### HON. VIRGINIA FOXX

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. FOXX. Madam Speaker, I rise today to praise the citizens of Alleghany County for recently winning a number of awards from the North Carolina Historical Society for the promotion and production of the celebration of Alleghany's Sesquicentennial.

The Alleghany Historical Genealogical Society and a local business, Imaging Specialists, took home awards for a number of multimedia productions that were used to promote Alleghany's 150th anniversary.

Imaging Specialists also took home the coveted President's Award for the leading role the business took in designing and producing historical projects over the past year.

Local residents Ernest Joines, Janice Alexander, Avin Joines and Jane Furlow each received honors from the state historical society for work ranging from a compilation of local music to a quilt design depicting area scenery.

All told the state Historical Society handed out a dozen different awards to these groups and individuals for the excellence demonstrated in the promotion of Alleghany County's Sesquicentennial events earlier this year. These much-deserved awards were the product of long hours of hard work. I applaud each winner for their dedication to their community and for their vision to produce such a fine celebration of Alleghany County's history.

IN HONOR AND RECOGNITION OF  
CHARLES BURKE

### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and recognition of Charlie Burke upon the occasion of his retirement

from Baldwin-Wallace College after nearly fifty years of dedicated teaching, service, and leadership.

Professor Burke taught his first course in American Government and Politics in 1961. Since coming to Baldwin-Wallace in 1970, he has continued to teach and develop the course. He also crafted over a dozen other courses that critically analyze domestic and international politics.

Through both his curricular and extra-curricular leadership positions, Professor Burke was instrumental in making Baldwin-Wallace College an internationally-recognized, liberal-arts institution of higher learning. Equally importantly, Professor Burke demonstrated commitment to students. He connected with and mentored students in order to facilitate learning and leadership in informal ways.

Professor Burke is one of only two students from his high school class to attend college. He also enlisted in the army at age 17 and served in the demilitarized zone in Korea. With help from the GI Bill, Professor Burke studied at Boston University, the Massachusetts Institute of Technology, and the University of Massachusetts.

Madam Speaker and colleagues, please join me in honor and recognition of Charlie Burke, who has academically and personally helped better the lives of his students.

#### TRIBUTE TO SERGEANT RICK LAMPE

### HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LATHAM. Madam Speaker, I rise to recognize Sergeant Rick Lampe on the occasion of his retirement from the Iowa State Patrol.

For the last 35 years, Sgt. Lampe has served Iowa faithfully and honorably. He first served four years with the sheriff's office in Waverly, Iowa before serving 31 years with the Iowa State Patrol. In 1979, he began his career with the Iowa State Patrol in Ogden, Iowa, where he plans to enjoy his retirement. Six and a half years ago, Sgt. Lampe was promoted to sergeant. Since 1993, he has provided security for Senator CHUCK GRASSLEY's biannual Ambassador's Tour across Iowa. Sgt. Lampe and his wife, Julie, have raised two sons, Nate and Nick and are blessed with three grandchildren.

Times have certainly changed during Sgt. Lampe's time in the Iowa State Patrol, even in the past ten years. In 1999, Sgt. Lampe's six county district had 47 officers working the area. Today there are only 26 officers working the same area. When he began, patrol officers did not spend significant time in training, but now nearly half of a patrol officer's time is training. There also have been many technological advances such as in-car computers that have helped simplify parts of the job throughout the years.

Sgt. Lampe's bravery and dedication in the Iowa State Patrol goes above and beyond what we are asked of as citizens of this country and has earned him the respect of his peers. I commend Sgt. Rick Lampe for his

many years of loyalty and outstanding service in protecting Iowans and serving his community. It has been an immense honor to represent Sgt. Lampe in Congress, and I know that my colleagues in the United States Congress join me in wishing him all the best as he embarks on this new journey.

RECOGNIZING MASTER SERGEANT  
ROGER COWART—SCOTTSDALE  
HEALTHCARE'S "SALUTE TO  
MILITARY" HONOREE

### HON. HARRY E. MITCHELL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. MITCHELL. Madam Speaker, I rise today to recognize a member of the Armed Forces from my home state of Arizona. Each month, Scottsdale Healthcare honors servicemembers who perform diligent service to this country. For the month of December, they have recognized retired Master Sergeant Roger Cowart.

I commend Scottsdale Healthcare for paying tribute to such an outstanding servicemember for his bravery and service to our country.

Mr. Cowart served more than 25 years as a medic in the United States Air Force. He distinguished himself in the performance of outstanding service to the United States in numerous duties, culminating as Flight Chief, Pediatrics, 48th Medical Operations Squadron, 48th Medical Group, 48th Fighter Wing, and Royal Air Force Lakenheath, England.

As an Independent Duty Medical Technician, he provided medical care and practitioner mentoring in the most austere conditions. He is now a member of Scottsdale Healthcare's prestigious Military Training Partnership Team. As the technician for the high-tech simulation lab, he expertly uses his military and medical experience to create realistic trauma training scenarios. This training gives military medical personnel an excellent idea of what to expect when deployed to a war zone and ensures that the men and women who accept the call to duty receive the best care possible.

Madam Speaker, please join me in recognizing this Airman's outstanding contributions and for serving our country and protecting the lives of his fellow service men and women.

#### PERSONAL EXPLANATION

### HON. RON KIND

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. KIND. Madam Speaker, I was unable to have my vote recorded on the House floor on Tuesday, December 8, 2009, due to inclement weather that kept me from flying back from Wisconsin in time for votes. Had I been present, I would have voted in favor of the Motion to Instruct Conferees on H.R. 3288 (Rollcall No. 931), H. Con. Res. 199 (Rollcall No. 932), H. Con. Res. 206 (Rollcall No. 933), H. Res. 940 (Rollcall No. 934), H. Res. 845

(Rollcall No. 935), H.R. 2278 (Rollcall No. 936), H. Res. 915 (Rollcall No. 937), and H. Res. 907 (Rollcall No. 938).

#### A TRIBUTE TO SAN SAN LEE

### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. TOWNS. Madam Speaker, I rise today in recognition of violinist San San Lee.

San San Lee was born in Taipei, Taiwan and raised in Michigan and Wisconsin since the age of one. Ms. Lee received a Bachelor of Music degree from the Oberlin College-Conservatory in Oberlin, Ohio and a Masters of Music degree from the Juilliard School on scholarships.

As a winner of the Oberlin Concerto competition, her performance of the entire Tchaikovsky Violin Concerto with the Oberlin Orchestra was broadcast on WOBC and classical station WCLV-Cleveland. Ms. Lee toured as a member of the Juilliard Orchestra in Japan, China and Hong Kong which included live radio and television broadcasts. Her primary teachers included Margery Aber, Dorothy Mauney, Stephen Clapp and Joseph Fuchs. She also studied at Moscow's Tchaikovsky Conservatory with Sergei Kravchenko and Eduard Grach during their International Summer Festival and with Serban Lupu at the International Summer Festival in Todi, Italy.

As a winner of the Artists International Auditions, Ms. Lee performed her debut recital at Carnegie's Weill Recital Hall and was further invited to perform on their Alumni winners series. By invitation, she also performed a recital on the "Live from the Elvehem" series that was broadcast live on Wisconsin Public Radio in Madison, WI. Her numerous solo and chamber performances took place at Lincoln Center's Bruno Walter Auditorium, Merkin Hall, The American Landmark Festival, Harvard Club, The United Nations Auditorium, U-Penn, Texas Christian University, Louisiana State University, amongst others. Her solo & chamber performances span throughout the United States, Europe, Russia, and Eastern Europe. Ms. Lee has been invited as violin clinician teaching at Suzuki violin, chamber workshops and institutes nationwide. She teaches privately and has recently joined the violin faculty at the Riverdale Country School. Ms. Lee has been a member of the violin faculties at the School for Strings since 1990 and at Juilliard's Music Advancement Program since 1991, serving as their first departmental strings chair.

Madam Speaker, I urge my colleagues to join me in recognizing a renowned violinist, San San Lee.

#### IN HONOR OF THE BRIDGEVILLE FIRE COMPANY

### HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CASTLE. Madam Speaker, it is with great pleasure that I rise today to pay tribute

to the Bridgeville Fire Company for 100 years of outstanding service to the people of Delaware. The importance of emergency fire and medical services within our communities cannot be emphasized enough. I am proud to represent a state that is home to such selfless and dedicated firefighters, EMTs, and service volunteers as those of the Bridgeville Fire Company in Bridgeville, Delaware.

The Bridgeville Fire Company was born from a tradition of strong community involvement, and the Company has kept that tradition alive through the years. The fire department was organized on December 14, 1909 in the old Opera House. Ira Lewis, William E. Dimes, and Howard E. Hardesty were appointed to secure the necessary membership to incorporate what is known today as the Bridgeville Volunteer Fire Company, Inc. Over the next 12 months, plans were drawn and approved for the first building, at a cost of \$1,100. Since then, the Bridgeville Fire Company has steadily grown into a pillar of strength within the community.

A century later, I would like to recognize and honor all the current and former members of the Bridgeville Fire Department for their service to our community, including: President Allen Parsons; Vice President Steve McCarron; Secretary John Tomeski, Sr; Treasurer Pete Stephens and Fire Recorder Malhon Baker. Their efforts inspire others and I am honored to highlight the positive influence that they have had throughout Delaware and beyond.

On this anniversary I would also like to once again commend the Bridgeville Fire Company for 100 years of exceptional service. The bravery and hard work of its members past and present and of its dedicated ladies auxiliary make Delaware a safer place to live, and I wish them all the best on this momentous occasion.

#### HONORING BEECH HIGH SCHOOL BUCCANEERS ON WINNING THE 2009 TSSAA CLASS 5A STATE FOOTBALL CHAMPIONSHIP

### HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. GORDON of Tennessee. Madam Speaker, I rise today to recognize the 2009 Beech High School Buccaneers for winning the TSSAA Class 5A State Football Championship.

I commend Beech High School Head Coach Anthony Crabtree and Assistant Coaches Jim Campbell, Darrell Keen, Patrick Duffer, Keith Powell, Kerry Jackson, Ryan Harris, Cody Brummett, and Principal Frank Cardwell.

These young men completed their season by defeating the Columbia Lions in a 47-33 win in the Blue Cross Bowl on Friday, December 4. The hard work and dedication this season brought the Buccaneers to the school's first state championship. Max Zinchini, Junior, was the defensive MVP with five tackles and two interceptions.

I congratulate each player of the 2009 5A State Champion Buccaneer Team: Dwayne

Fleming, Daniel Richardson, Lincoln Kenitzer, Max Zinchini, Deshaun Tarkington, Taylor Peoples, Jarod Neal, Justin Cherry, Brock Haley, Jay Huff, Conner Jett, Ponciano Cobb, Tony Newsom, Hunter Allison, Daniel Payne, Travis Haymer, Ethan Walker, Jason Brooks, Jonathan Sites, Dakota Deno, Hunter Stewart, Charles Metcalfe, Devonte Cobb, Clayton Ream, Malik Lewis, Jeffrey Hunter, Taylor Cash, Dante Paige, Alex Gomer, Dustin Bailey, Marquis Kingcade, Michael Santifer, Kyle Mortensen, Marquel Harold, Wesley Aiello, Camden Dalton, Jason Hunter, Brian Montgomery, Cody Winford, Justin Toro, Payton Schneider, Rob Hamilton, J.T. Barnes, Cole Nabors, Kyle Anderson, Zach Rumsey, Kevin Kline, John Stillman, Eric Buchanan, Jared Barfield, Christian Martinez, Ryan Turner, Jamey Howell, Jayden Maddox, Josh Knight, Alec Willett, Trey Barnfield, Trey Ralph, Drew Chaffee and Managers Austin Young, Chris Whited, and Lamont Sneed.

#### HONORING THE RETIREMENT OF JOANN C. TADLOCK

### HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. JONES. Madam Speaker, I have the privilege of representing the wonderful people of the third district of North Carolina, which includes hundreds of military families and civilians that work for our military.

Today, I would like to honor one such civilian—Mrs. Joann C. Tadlock will retire from the Naval Air Systems Command, Fleet Readiness Center East, Cherry Point, North Carolina on February 3, 2010.

Mrs. Tadlock's distinguished government career spans over 31 years, a career that is full of achievements and accolades that greatly reflect upon her and upon the organizations with which she has served.

In April of 1978, Mrs. Tadlock began her Federal career as a Clerk for the Department of the Interior, holding progressively responsible administrative positions within the Department of the Interior and the Naval Air Systems Command.

Mrs. Tadlock returned to school and earned her bachelor's and master's degrees and became a Personnel Management and Equal Employment Opportunity Intern.

Mrs. Tadlock subsequently served as the principal classifier for the Human Resources Office, Marine Corps Air Station Cherry Point and has most recently served as Total Force leader and Navy's Multi-Trade expert in supporting the Fleet's best interests.

Madame Speaker, I am very proud of Mrs. Joann Tadlock and I thank her on her many years of service to our great nation and our military. Her contributions to the Department of Navy will be missed as she moves forward to new and exciting opportunities.

I would like to ask my colleagues to join me in congratulating Mrs. Joann Tadlock on such an extraordinary career.

Mrs. Tadlock epitomizes the dedication and professionalism that make our Federal government a model all over the world.

God bless Joann, all of our troops, and may God continue to bless America.

# INTRODUCTION OF THE TRANSPARENCY IN CORPORATE MONITORS ACT OF 2009

## HON. STEVE COHEN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COHEN. Madam Speaker, today I am pleased to introduce legislation today that will provide guidance and prevent abuse in the appointment of corporate monitors to implement deferred and nonprosecution agreements.

Last Congress, the Judiciary Subcommittee on Commercial and Administrative Law led the charge against the politicization of United States Attorneys' Offices in the last Administration. Additionally, both last year and this year, the Subcommittee held hearings on deferred and nonprosecution agreements in criminal cases against corporate defendants, and the selection of corporate monitors to implement those agreements. Those hearings, as well as recent press articles, revealed the need for guidelines to govern the appointment of corporate monitors in these cases.

The Government's use of deferred and nonprosecution agreements as a prosecutorial tool with respect to corporate defendants has grown exponentially in recent years. Unfortunately, the selection and use of corporate monitors to implement those agreements has been tainted by a disturbing lack of guidance, and even more troubling indications of abuse.

In one case, a former U.S. Attorney—Christopher Christie—selected former Attorney General John Ashcroft to serve as a corporate monitor, for which Mr. Ashcroft collected fees of up to \$52 million. The circumstances surrounding his appointment and service as a monitor were not made public at the time of his selection and other than the hearings the Commercial and Administrative Law Subcommittee held on the issue—no provision was ever made for oversight or accountability concerning Mr. Ashcroft's selection or performance as a monitor.

To prevent such reckless abuse from taking place in the future, I have introduced legislation that will prohibit United States attorneys and assistant United States attorneys from acting as or working for corporate monitors for specified periods after their service with the Government terminates. This legislation will provide accountability, transparency, and uniformity in the appointment of corporate monitors to implement deferred and nonprosecution agreements.

Public trust and confidence are essential elements of an effective justice system—our laws and their enforcement must not only be fair, but they must also be perceived as fair. The perception of unfairness and favoritism undermines governmental authority in the justice process. My legislation will help restore fairness and rebuild trust in our public process.

## PERSONAL EXPLANATION

### HON. ALBIO SIRE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. SIRE. Madam Speaker, I would like to state for the record my position on the following vote I missed on Thursday, December 10, 2009. If present, I would have voted yes during rollcall No. 947 on H. Res. 961, on Ordering the Previous Question providing consideration of the conference report to accompany the bill making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

## LIECHTENSTEIN'S COOPERATION ON TAX AND FINANCIAL CRIME ISSUES

### HON. JOHN SULLIVAN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. SULLIVAN. Madam Speaker, I rise to bring to the attention of my colleagues the significant strides that the Principality of Liechtenstein has made through its comprehensive reforms in the regulation of its financial sector over the last nine years. These reforms are impressive. It is clear that Liechtenstein has demonstrated itself to be a trusted and effective partner in combating a wide range of financial crimes, including money laundering, terrorist financing, and tax fraud.

As the Organization for Economic Cooperation and Development (OECD) removed Liechtenstein from its grey list of non-cooperating states in tax matters on November 11, 2009, I would like to use this benchmark to recognize the Principality for its record of achievements in increasing not only the transparency of its financial center internationally, but its increased partnership with the United States. Recent reforms guarantee that Liechtenstein will provide the United States and others with an increasing range of cooperation on international tax matters. Its initial reforms concentrated on anti-money laundering efforts. More recently, the government of Liechtenstein signed an important Tax Information Exchange Agreement with the United States and has concluded negotiations of an Anti-Fraud Agreement with the European Union.

Liechtenstein's reform efforts began in 2000 when it committed itself to reform the regulation of its financial sector to better ensure that its banks and other service providers could not provide financial services to terrorists, drug lords, or other criminals. In 2001, Liechtenstein was taken off the Financial Action Task Force's (FATF) list of non-cooperating countries. Since that time, Liechtenstein has improved its cooperation with the United States and the rest of the international community in the fight against all forms of crime.

Liechtenstein has worked closely with the U.S. government—including the Office of Foreign Asset Control (OFAC) and the Financial

Crimes Enforcement Network (FinCEN)—to combat terrorist financing networks. In addition, since 2002, Liechtenstein's Financial Intelligence Unit has been engaged in an ongoing multilateral effort to disclose the financial network of Abdul Qadeer Khan, the founder of Pakistan's nuclear weapons program. Liechtenstein also successfully worked to secure the return to the Iraqi government of a Falcon 50 airplane that had belonged to Saddam Hussein and has worked with the Volcker Commission in investigations of the UN's "Oil for Food" program.

Another step in Liechtenstein's international cooperation on financial crimes was the conclusion of a Mutual Legal Assistance Treaty (MLAT) with the United States in 2002. Additionally, the Tax Information Exchange Agreement (TIEA) between Liechtenstein and the United States was signed in 2008. Once fully implemented in 2010, Liechtenstein and the United States will work closely together on the full range of tax issues, including tax fraud and tax evasion.

Liechtenstein's actions are to be commended. The continued productivity of the U.S.-Liechtenstein partnership is essential to fighting financial crimes and terrorist financing and I thank Liechtenstein for their commitment to these reforms.

## CONGRATULATING WINTON WOODS HIGH SCHOOL FOOTBALL TEAM DIVISION II STATE TITLE

### HON. STEVE DRIEHAUS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. DRIEHAUS. Madam Speaker, I'd like to congratulate Winton Woods High School on their football team's Division II State Title. Last Friday, December 4, 2009, the Winton Woods Warriors traveled north to Massillon, Ohio, where they brought home the school's first-ever state title with a 42-12 win over Maple Heights. Under the leadership of Coach Troy Everhart, the Warriors capped an outstanding season, boasting a 13-2 record. The Warriors' achievements this season are a source of pride for Winton Woods High School and all of greater Cincinnati. Congratulations, again, to Winton Woods High School on a great season and a great win.

WINTON WOODS HIGH SCHOOL

Dr. Terri Holden, Principal.

Dr. Camille Nasbe, Superintendent.

#### TEAM ROSTER

2—Cornelius Roberts, 3—Corey Webber, 4—Juan Glover, 5—Tyler Smith, 6—Judge Marvin, 7—Thomas Owens, 8—Demond Hill, 9—Bryon McCorkle, 10—Dominique Brown, 11—Jalen Bradley, 12—Iel Freeman, 14—Julian Barnett, 16—Gary Underwood, 18—Antonio Poole, 20—Donshea Harris, 21—Markus Jackson, 22—Jeremiah Goins, 23—Zack Bomar, 24—Mike Crawford, 25—Chuck Wynn, 26—Antonio Sweeney, 28—Keeno Hollins, 29—Chris Stallworth, 30—Raheem Elston, 32—David Hampton, 33—Aaron Kemper, 34—Harrison Butler, 35—Pryde Geh, 36—Avery Cunningham, 38—Steffon Rodgers, 45—Johnathan Barwick, 46—Zauntre Dyer, 48—Tyler Gist, 50—Da'Sean Dykes, 51—James



Richardson, 52—Perrin Cunningham, 53—Brad Thompson, 54—Josh Bailey.

55—Walter Richardson, 56—Harrison Reid, 58—Cameron Brown, 60—Hudson Pande, 61—Desmond Jarman, 62—Carlos Gray, 63—Aaron Patton, 65—Patrick Lett, 67—Tyler Nelson, 68—Jalen Crenshaw, 70—Donavan Myers, 71—D J Darby, 72—Marcus Murphy, 77—Brendan Gordon, 79—Mike Roach, 81—Dominic Bell, 82—Robbie Lewis, 83—Austin Mitchell, 85—Rodney Lofton, 86—Zach Campbell, 89—Stephen Tucker.

Troy Everhard, Head Coach.

Coaches: Jeff Sweeney, Tony Boyd, Isaac Fuller, Andre Parker, Mike Middleton, Derrick Jenkins, Justin Long, Art Wilson, Calvin Johnson, Donnie Gillespie, Larry Turney, Ben Spector.

Herb Woeste, Athletic Director.

#### PERSONAL EXPLANATION

### HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. ROYBAL-ALLARD. Madam Speaker, I was unavoidably detained yesterday and was not present for Rollcall vote number 953.

Had I been present, I would have voted "aye."

#### TRIBUTE TO VELMA JUSTICE CHILDERS

### HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ROGERS of Kentucky. Madam Speaker, I rise today to pay tribute to the late Velma Justice Childers, a Republican leader in Kentucky who proudly planted her feet in the conservative movement.

Ms. Childers was an energetic civic leader always promoting the great attributes of Pikeville, Pike County and Eastern Kentucky. She was a hard working Republican who firmly believed in conservative principles of government. Velma eagerly offered her advice, counsel and friendship to politicians, neighbors and young rising leaders.

Her ability to communicate and rally support for conservative values, earned her reference as the "Grande Dame" of the Kentucky Republican Party. In addition to her passion for civic responsibility, Velma spent a lifetime sharing compassion and encouragement with members of the First Baptist Church of Pikeville for more than 50 years and as a member of the Board of Trustees for the University of the Cumberlands for 13 years, among various other committees across Southern and Eastern Kentucky.

Madam Speaker, I ask my colleagues to join me in memory of Velma Justice Childers, a woman who tirelessly touted the values upon which our country was founded. Her enthusiasm will be missed.

INTRODUCTION OF A CONCURRENT RESOLUTION "REQUESTING THAT THE PRESIDENT ISSUE A PROCLAMATION ANNUALLY CALLING UPON THE PEOPLE OF THE UNITED STATES TO OBSERVE GLOBAL FAMILY DAY, ONE DAY OF PEACE AND SHARING, AND FOR OTHER PURPOSES"

### HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CONYERS. Madam Speaker, today I rise to introduce a resolution requesting that the President issue an annual proclamation that calls upon the people of the United States to observe Global Family Day, One Day of Peace and Sharing. Joining me in this effort is the gentleman from Ohio, DENNIS KUCINICH, and I would like to acknowledge him at this time.

Global Family Day, One Day of Peace and Sharing, is an annual observance, occurring on January 1st, that was conceived by children to further the cause of peace, sharing, and understanding among all members of the international community. As the year is coming to a close, I introduce this resolution for a few reasons.

First, I believe it is important that all people, regardless of race, culture, religion or economic status, celebrate life on earth together as one human family. A global holiday, like Global Family Day, One Day of Peace and Sharing, allows people around the world to realize this ideal by promoting global fellowship and cooperation.

A better appreciation for one another can only lead to the eradication of human suffering that results from violence, hunger, poverty, and other social ills. Practicing better global family values at the start of a new year may mean the realization of such concepts of goodwill and harmony throughout the year.

Second, I know that one day dedicated to global peace and cooperation is a day that every Member of Congress can support. Despite our differences, each of us has an interest in pursuing peaceful solutions to many of our contemporary problems. From worldwide hunger, to international human trafficking, to widespread religious intolerance, we are all impassioned by issues that call for a peaceful resolution to achieve a more desirable world.

Global Family Day, One Day of Peace and Sharing, can be one of the vehicles with which we unite to pursue these various missions for peace. A resolution calling for the recognition of Global Family Day, One Day of Peace and Sharing has always received bipartisan support as a bipartisan Congress adopted this resolution in 2000 and 2006. I am confident that there will be a similar reception this Congress.

Finally, while the Congress has adopted this resolution on other occasions, in the bipartisan spirit I have just described, we have yet to have a President issue a proclamation calling upon the people of the United States to recognize Global Family Day, One Day of Peace and Sharing.

We ask that the President and the First Family lead the nation in observing Global Family Day, One Day of Peace and Sharing on January 1, 2010. Those participating in the global holiday can be invited to ring a bell, share a meal, and make a pledge in the name of peace. Through these acts we will become better neighbors within the global community.

In closing, I ask that my colleagues join me in support of this resolution recognizing Global Family Day, One Day of Peace and Sharing and requesting that the President lead the country in this holiday's recognition. By working together as one global family, we can better meet the challenges humanity will surely face in the years to come.

#### THE FINANCIAL CRISIS, TARP AND PAY-GO

### HON. PAUL RYAN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. RYAN of Wisconsin. Madam Speaker, in September of 2008, credit markets seized up. Many did not understand the full ramifications of the financial crisis at the time that has since resulted in a deep recession with high unemployment. To respond to that crisis, Congress came together on a bipartisan basis and enacted the Emergency Economic Stabilization Act of 2008, EESA, that included the Troubled Asset Relief Program, TARP.

During the debate on that bill, there was tremendous controversy over the \$700 billion in authority the administration was seeking to help stabilize financial markets and to avoid a much more severe economic crisis. Treasury was ultimately granted this extraordinary authority, but Congress included many key taxpayer protections. Among those protections, we wanted to make sure that TARP did not become a piggy bank for Congress to use to fund other programs.

The Senate has a budget procedure that is designed to keep funding designated as an emergency from being used as an offset in the future for budget enforcement purposes. The House does not have this procedure for mandatory spending bills, such as the TARP, or tax legislation. It was agreed to at that time that TARP funds could not be used as an offset for new programs or tax reductions for the purposes of budget enforcement. The EESA designated TARP as an emergency for the purposes of Senate enforcement. In the House, the budget is enforced through clause 10 of rule XXI of the Rules of the House of Representatives, the pay-as-you-go rule, and the Congressional Budget Act of 1974.

In order to assure this, Section 204 of the TARP law includes the following language: "rescissions of any amounts provided in this Act shall not be counted for purposes of budget enforcement."

This language can only mean one of two things: (1) It means legislation considered by the House of Representatives must find other offsets for new spending or tax reductions and may not use unexpended TARP resources to comply with budget-related points of order; or (2) It means nothing.

The budget and the treatment of TARP and emergencies is a technical matter and it posed a challenge to draft this language under the extraordinary circumstances and pressures involved in the drafting of the EESA. However, the clear intent of the counsels involved in the drafting of the specific legislative language was that TARP should not be used to fund new programs, the expansion of existing programs, or for tax reductions.

The Wall Street Reform and Consumer Protection Act of 2009, H.R. 4173, includes language effectively cancelling \$10.2 billion in TARP funds in order to offset the effects of increased spending, and only by virtue of the TARP funds, is considered to abide by the pay-as-you-go point of order.

Using TARP to offset new programs is clearly inconsistent with the agreement on the TARP and the EESA when it was enacted on a bipartisan basis in 2008 and I believe it is inconsistent with a plain reading of the law.

This was an instance when we were working together and it is unfortunate that the law and the rules are now being interpreted to allow the TARP to become a piggy bank to increase spending, deficits, and debt.

**HONORING AMANDA FERRANDINO  
FOR RECEIVING THE PRESTIGIOUS  
FULBRIGHT SCHOLARSHIP**

**HON. STEVE ISRAEL**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ISRAEL. Madam Speaker, I rise today to acknowledge a young woman in my district, Amanda Ferrandino.

Ms. Ferrandino has been selected to receive a prestigious Fulbright award. The Fulbright Program is an international exchange program that is sponsored by the U.S. Department of State. Recipients of this award are selected on the basis of academic or professional achievement, as well as demonstrated leadership in their chosen fields. Ms. Ferrandino plans to study Anthropology in Bangladesh.

I congratulate her on this accomplishment and applaud her contribution to global education and international relations.

**A TRIBUTE TO POLICE LT. BILL L.  
CRANFILL FOR THREE DECADES  
OF SERVICE TO THE CITIZENS  
OF REDLANDS, CA**

**HON. JERRY LEWIS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LEWIS of California. Madam Speaker, I would like to pay tribute today to Redlands Police Lt. Bill L. Cranfill, who has provided protection and service to the city's residents for more than three decades and has helped make the force one of the most professional and well-respected in the region.

Bill Cranfill began working with the Redlands Police Department in 1976 as a volun-

teer reserve officer, and was hired as a permanent officer in May 1978. He graduated from the San Bernardino County Sheriff's Academy that year and holds both a bachelor's and master's degree from La Salle University.

Officer Cranfill won the first of the two Meritorious Service Awards he has received in 1980 for rescuing a woman from a burning building.

He was promoted to corporal in 1981 and was made a sergeant in 1985. After completing a wide range of leadership training, including the FBI Academy, he became a lieutenant in 1988.

Lieutenant Cranfill has helped to make the Redlands Police Department one of the most professional and progressive forces in the region, working alongside Police Chief Jim Bueerman and other top officers like Lt. Dan Shefcik, Lt. Rogelio Garcia and Commander Tom Fitzmaurice.

During his career, Lieutenant Cranfill has headed the Patrol Services Bureau and the Investigative Services Bureau. He has been the department's crisis negotiation coordinator, and was named the Redlands Public Safety Manager of the Year in 2008.

For many in the Redlands community, however, Lieutenant Cranfill is known as the Director of Public Safety for the University of Redlands. Serving under contract in that role for much of the past decade, Lieutenant Cranfill has helped the university maintain top standards for security, courtesy and even-handed discipline with an open campus that is an asset to the community around it.

Beyond his high-profile role with the university, Lieutenant Cranfill is well-known for community involvement. He has helped run the Redlands Emergency Services Academy, which trains high school graduates in police and fire techniques, and is a strong supporter of the Redlands Bicycle Classic, an internationally-known bicycle race.

He is an active member of the Redlands Morning Kiwanis and has served as the Redlands Police Department's representative to the United Way. He has volunteered numerous times for Tipa-Cop fundraisers for local charities, ran in the annual Law Enforcement Torch Run and Redlands Community Hospital Run for Life benefiting the Special Olympics and participated frequently in the Loma Linda University Medical Center Children's Hospital Halloween event.

Madam Speaker, after 30 years of dedication to law enforcement, Lt. Bill L. Cranfill is retiring this month. Please join me in thanking him for his decades of providing safety and service to the residents of Redlands, and wish him well in his future endeavors.

**INTRODUCTION OF THE STOPP  
ACT**

**HON. BOB GOODLATTE**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. GOODLATTE. Madam Speaker, private ownership of property is vital to our freedom and our prosperity, and is one of the most fun-

damental principles embedded in our Constitution. The Founders realized the importance of property rights when they codified the Takings Clause of the Fifth Amendment to the Constitution, which requires that private property shall not be taken "for public use, without just compensation." This clause created two conditions to the government taking private property: That the subsequent use of the property is for the public and that the government gives the property owners just compensation.

However, the Supreme Court's recent 5-4 decision in *Kelo v. City of New London* is a step in the opposite direction. This controversial ruling expands the ability of State and local governments to exercise eminent domain powers to seize property under the guise of "economic development" when the "public use" is as incidental as generating tax revenues or creating jobs, even in situations where the government takes property from one private individual and gives it to another private entity.

By defining "public use" so expansively, the Court essentially erased any protection for private property as understood by the Founders of our Nation. In the wake of this decision, State and local governments can use eminent domain powers to take the property of any individual for nearly any reason. Cities may now bulldoze private citizens' homes, farms, and small businesses to make way for shopping malls or other developments.

I completely agree with Justice O'Connor who, in her dissent in the *Kelo* case, wrote: "Today the Court abandons this long-held, basic limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings "for public use" is to wash out any distinction between private and public use of property—and thereby effectively to delete the words "for public use" from the Takings Clause of the Fifth Amendment."

For these reasons, I have introduced legislation with Representative STEPHANIE HERSETH SANDLIN to ban all Federal economic development money for a period of two years for any State or local government that uses eminent domain for private economic development purposes.

The STOPP act also prohibits funding to a State or local government that fails to provide relocation assistance to a person displaced from property by any use of eminent domain for an economic development purpose. Relocation assistance must meet the level and be of the same manner as that required under the Uniform Relocation and Real Property Acquisition Policies Act of 1970. The STOPP act also provides landowners with a right to enforce the prohibition of funds under this act.

No one should have to live in fear of the government snatching up their home, farm, or business, and the Private Property Rights Protection Act will help to create the incentives to ensure that these abuses do not occur in the future.

HONORING THE LIFE  
ACHIEVEMENT OF JO JOHNSON

**HON. JIM COSTA**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COSTA. Madam Speaker, I rise today to commend Jo Johnson, the Executive Director of the Fresno-Madera Agency on Aging in Fresno, California as she prepares to retire after 18 years of dedicated service to seniors and the community of Fresno.

Jo Johnson is a Valley native, born in Fresno, California. She is a graduate of the Class of 1968 from Roosevelt High School and received her Bachelor's Degree from California State University, Fresno in 1972. Jo is married to Mr. John J. Johnson, Jr.

Jo has spent the majority of her career working as a selfless public servant. In 1973, she was hired by the Fresno County Probation Department as a Research Analyst. Then, in 1974, she moved to the State of Oregon to work as a Social Worker in the Children's Services Division. Jo returned to the Central Valley in 1975 and worked as a Probation Officer for the Tulare County Probation Department in Tulare, California until 1984. After spending time in the public sector, Jo worked as a paralegal in her husband's office in Big Bear Lake, California. In 1991, Jo was hired by the Fresno-Madera Area Agency on Aging (FMAAA).

Serving as Executive Director, Jo has helped direct the Fresno-Madera Agency on Aging to numerous accomplishments. When she was first hired in 1991, Jo created the Valley Coalition of Area Agencies on Aging which brought together the various county agencies to plan and direct legislation which would benefit the elderly. At the National level, Jo has participated in the 1994 Health Care University conference in Washington, D.C. sponsored by the Administration on Aging. Jo also received a Congressional appointment to the California delegation for the 1995 White House Conference on Aging. At the State level, she was appointed by the California Department on Aging to numerous committees helping to create nutrition policy and shape administrative structure.

Under Jo's guidance, the Fresno-Madera Agency on Aging became the first California area agency to own real estate. The Fresno-Madera Agency on Aging is the only statewide Agency to develop a campus of collocated services that facilitates immediate responses to consumer needs. Jo helped create a system that supports a team that investigates elder abuse and was the first to be recognized by the California Attorney General. The Fresno-Madera Agency on Aging has taken their original investment of \$1.5 million in community development block grants provided by the City of Fresno and helped create \$25 million worth of real property on an 8 acre campus. Furthermore, over 17 years ago, Jo was instrumental in the creation of the FMAAA's annual event "Seniors Serving Seniors". This event honoring seniors and those who help seniors is held in May of each year and is overwhelmingly successful because of Jo's love for seniors.

The leadership that Jo has shown for the senior community of Fresno has been steadfast during her time of service. Jo serves as an outstanding example for those who truly want to make a positive difference. I am honored to not only call Jo a friend but also a champion for seniors. Madam Speaker, I ask my colleagues to rise with me today to express our appreciation for Jo Johnson's dedicated service to seniors and her community.

HONORING DR. TERRI JULIAN, DIRECTOR FOR THE JACK H. WISBY JR. POST TRAUMATIC STRESS DISORDER TREATMENT CENTER

**HON. ERIC J.J. MASSA**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. MASSA. Madam Speaker, I rise today to honor Dr. Terri Julian, Director for the Jack H. Wisby Jr. Post Traumatic Stress Disorder Clinic and newly instituted Women's Residential Program, at the Batavia Campus of the Veterans Administration Western New York Health System VAWNYHS. Dr. Julian is the past recipient of the Federal Woman of the Year Award, 2006, and it is my privilege to recognize her significant contributions to the VA system, made on behalf of our veterans.

Dr. Julian was the major force behind the development of the Women's Residential Program at the Batavia campus of VAWNYHS. This is one of two programs nationwide in the Veterans Health Administration, VHA, that provides female veterans treatment for military sexual and/or combat trauma. The all-female staff includes a psychologist, social worker and social service assistants who collectively work to improve the care provided to afflicted female veterans. Dr. Julian's dedicated efforts to the program enable its practitioners to provide high-quality care to our nation's female veterans, who, it is recognized by the VHA, have a recovery process that is unique from their male counterparts.

In addition to the Women's Residential Program, Dr. Julian has improved the organizational capacity of the Jack H. Wisby Jr. Post Traumatic Stress Disorder Clinic used by the entire Batavia campus of the VAWNYHS so it now provides the highest quality care for stress-related injuries to all veterans, regardless of gender.

One need only look to Dr. Julian's numerous accolades to understand her commitment and passion for comprehensive care to veterans. As a leader in her field, she is often requested by her peers to lead workshop and training programs, author professional articles and give expert advice on PTSD program development and implementation.

Our servicemen and women sacrifice immensely for our great nation and I am honored that they are recipients of the quality care provided by Dr. Julian and those like her in the VHA. On behalf of the United States Congress, it is my privilege to publically and permanently laud Dr. Terri Julian's dedicated efforts to our veterans.

HONORING THE RETIREMENT OF  
LT. FRANK HENTSCHELL

**HON. BART STUPAK**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. STUPAK. Madam Speaker, I rise to recognize Lt. Frank Hentschell of Munising, Michigan on his retirement from the Michigan State Police after 36 years of dedicated law enforcement service. Lt. Hentschell's enthusiasm for his work and commitment to the communities he has served is testament to the caliber of officers in the Michigan State Police.

A native of the Upper Peninsula, Lt. Hentschell started his career in uniform as a Boy Scout. He made Eagle Scout, the highest rank in Boy Scouts, by age 13 and continues to be active in Boy Scouts to this day.

As a graduate of Northern Michigan University's Police Academy, Lt. Hentschell was also certified as an EMT and firefighter. His police career began in 1973 with the Manistique Public Safety Department, where he served for five years before leaving the post to help re-establish the Chocoley Police Department near Marquette, Michigan. He served as chief of the Chocoley Police Department for one year before leaving to join the Michigan State Police in 1984.

Following graduation from the 98th State Police Training Academy in Lansing, Michigan, Lt. Hentschell was assigned to the State Police post in Flat Rock down in Southeast Michigan. There he became a member of the Emergency Support Team and served from 1987 to 1995. He also served as a trooper at posts in Erie and Munising and as sergeant at the post in Gaylord, Michigan. He earned the title of Lieutenant in 1995 when he returned to the Upper Peninsula to serve at the Iron River Michigan State Police Post. In 2001, Lt. Hentschell came back to Munising where he has served since.

Over the years, Lt. Hentschell's hard work and dedication has been recognized through a number of written commendations. He received the 1989 Officer of the Year award from Monroe County while serving at the Flat Rock post, and Kiwanian of the Year while serving in Iron River.

Lt. Hentschell's wife Donna has been by his side throughout his career. They will remain in the Munising area following his retirement and look forward to travelling together and spending time with their daughter Sandra and granddaughter, Katie.

Madam Speaker, Lt. Frank Hentschell has spent 36 years of his life enforcing the law and protecting the citizens of Michigan. His lifelong devotion to law enforcement should be commended. Throughout his career he has touched the lives of countless individuals he has worked with and served. I ask Madam Speaker, that you and the entire U.S. House of Representatives, join me in recognizing Lt. Hentschell for his courage, his dedication, and his years of service on his retirement from the Michigan State Police.

## THE PUBLIC LANDS REHABILITATION AND JOB CREATION ACT

**HON. LINDA T. SÁNCHEZ**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. LINDA T. SÁNCHEZ of California. Madam Speaker, I rise today in support of the Public Lands Rehabilitation and Job Creation Act.

The landscape of America is dotted with national treasures, including our national parks, monuments, and forests. From Yosemite National Park in my home state of California to Acadia National Park in Maine, national parks are of recognized for the natural splendor that surrounds us and conserving our precious natural resources for future generations must be a priority.

Since 1916, the National Park Service has admirably preserved and protected our natural treasures. In recent years, however, a log jam of maintenance and safety issues has developed. Structures are unsound, trails overgrown, roads impassable, and cabins unusable. A lack of resources, both money and manpower, has contributed to this situation. If we invest in repairing, rebuilding, and rehabilitating these resources now, we will not only have a safer infrastructure and a brighter future, we will employ tens of thousands of people throughout the nation.

Since January 2008, the number of unemployed Americans has grown each month. In some areas, the unemployment rate has reached more than twenty percent. We have taken steps to stimulate the economy and catch people in the social safety net, but we have not done enough. While a stronger safety net helps families survive, in the end, Americans don't want unemployment checks, they want to work.

We have people without work and work without people. The solution could not be clearer. We can put people back to work now and restore our national treasures by passing this bill to increase funding for the National Park Service and National Forest Service.

Despite almost 8,000 permanent and seasonal employees, nearly every park manager asserts that their current staffing level is woefully insufficient to take on identified maintenance issues. Within four to six months of receiving additional funds, the Park Service can prepare needed plans and complete essential hiring. These new employees will resurface roads; rehabilitate trails; repair visitor centers, museums, and campsites; and restore wild areas to their previous pristine nature. The new opportunities will range from lower-skilled, entry-level work to highly paid, highly skilled, professional and master craftsman jobs.

Similarly, the Forest Service can create at least fourteen and a half direct hire jobs in well-paying fields like engineering, design, and construction for every million dollars we invest in road repair and decommissioning.

Opportunities to improve roads, buildings, and other infrastructure exist in urban and rural areas across the nation, from the Theodore Roosevelt Birthplace in New York City, to Fort Sumter in South Carolina; and from Cabrillo National Monument in San Diego to the Hiawatha National Forest in Michigan.

Without additional investment, our infrastructure problems will continue to grow and hinder use and enjoyment of our nation's natural resources. Theodore Roosevelt once said that we should ensure the mountains and trees and canyons and streams are preserved for our children and our children's children, "with their majestic beauty all unmarred." If we continue to neglect our greatest national treasures, our problems will fester and future generations will have less to enjoy.

We can cure this oversight through increased investments that will put more than 50,000 Americans back to work, performing needed, meaningful tasks that our children and grandchildren will enjoy for years to come.

Congress rarely has a chance to act on opportunities this well paired. We should put Americans back to work and preserve our public lands for future generations. We cannot let this opportunity slip by. We need these jobs, and we need to pass the Public Lands Rehabilitation and Job Creation Act.

INTRODUCTION OF H. RES. \_\_\_\_\_,  
EXPRESSING SYMPATHY FOR  
AND SOLIDARITY WITH THE PEOPLE OF THE RUSSIAN FEDERATION  
FOLLOWING THE BOMBING  
OF THE NEVSKY EXPRESS

**HON. ALCEE L. HASTINGS**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to introduce a resolution expressing sympathy for and solidarity with the people of the Russian Federation following the bombing of the Nevsky Express. This is a simple measure, but an important one. After our Nation suffered the terrorist attacks of 2001, Russia was among the first to reach out and offer unqualified condolences and support. Madam Speaker, too often when the Russians hear from this body they hear moralistic statements of condemnation and outrage. In the spirit of fairness and mutual respect, now is the time for Russia to hear our genuine sympathy and support. We all face a common enemy in the terrorists and extremists who would murder innocents to advance an ideology. Let us stand together with our Russian neighbors in their moment of sorrow and work together for a safer world. I urge my colleagues to support this resolution.

THE DECEMBER 4TH FIRE IN THE  
CITY OF PERM, RUSSIA

**HON. JAMES R. LANGEVIN**

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LANGEVIN. Madam Speaker, I rise today to express my deep sorrow over the tragic fire that took the lives of one hundred forty-two people at a nightclub in the city of Perm, Russia, on December 4th.

News of this fire hit close to home for me, and for many of my constituents, as it closely

mirrors the devastating 2003 Station Nightclub fire in West Warwick, Rhode Island, which killed 100 people and injured over 200 more. According to early reports, the Perm fire started when performance pyrotechnics ignited the ceiling of the nightclub, sending patrons stampeding for one narrow exit. One hundred forty two people were killed and scores more were injured as patrons tried to escape the flames.

In the United States, fires caused over \$15.5 billion in damages last year, but their most horrific toll were the over 3,400 lives, including 118 firefighters, who were lost as a result. Studies have shown that fire sprinklers can dramatically reduce property damage and, more importantly, save lives. In fact, the National Fire Protection Association has no record of a fire killing more than two people in a public assembly, or an educational, institutional or residential building, with a complete and fully operational automatic fire sprinkler system.

This is why earlier this year I reintroduced the Fire Sprinkler Incentive Act of 2009 that provides tax incentives for property owners to retrofit buildings with automatic fire sprinkler systems. I hope that through this and other measures, we can raise awareness and improve fire safety—not only in this country, but around the world—and ensure that tragedies like those in Russia and Rhode Island are never repeated.

I want to once again extend my sympathy, and that of the people of Rhode Island, for the families of the victims of the Perm fire and to the Russian people. We know all too well the pain and loss you are feeling, and we send our thoughts and prayers to your community in this difficult time.

RECOGNIZING THE ENGAGEMENT  
OF MARC WIRTZ AND AMANDA  
HASLAM

**HON. DANIEL E. LUNGREN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. DANIEL E. LUNGREN of California. Madam Speaker, I rise today to announce that Marc Wirtz, an intern in my office, proposed to his girlfriend of 4 years, Amanda Haslam, at the top of our Nation's Capitol at sunset. I am pleased to congratulate the new couple and wish them the very best in their future together.

HONORING CHEYENNE SPETZLER  
OF HUMBOLDT COUNTY, CALIFORNIA

**HON. MIKE THOMPSON**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. THOMPSON of California. Madam Speaker, I rise today to recognize Cheyenne Spetzler, Chief Operations Officer of Open Door Community Health Centers, of Humboldt County, California. Ms. Spetzler has dedicated 30 years to providing quality health care for

the people of Humboldt and Del Norte Counties.

Beginning as a volunteer, Cheyenne has worked at all levels of Open Door Community Health Centers, ultimately becoming responsible for daily operations of the clinic system. Under her leadership, the original part-time clinic staffed by volunteers developed into a comprehensive network of nine licensed facilities and mobile medical programs throughout the two counties. Ms. Spetzler led the team responsible for the addition of the Del Norte Community Health Center in 1990, the Eureka Community Health Center in 1991 and the Burre Dental Center in Eureka in 2003.

Today, the Open Door Community Health Centers provide medical, dental and mental health care to more than 40,000 individuals annually and employ a staff of more than 350. The Open Door network provides health care to approximately one-third of the total population from this large rural area the size of Connecticut, and is the largest safety-net provider in Northwestern California.

Ms. Spetzler has served the people of California as a long time board member of the statewide Reproductive Health Association and as a member of numerous state and local associations and committees. She also continues to promote healthy living through her passion for sports, including the development of women's soccer at Humboldt State University, first as a club team and later as a fully intercollegiate women's soccer team.

Cheyenne Spetzler is also a respected Mayan scholar who has taught Mayan Hieroglyphic Decipherment at the University of Texas at Austin and Humboldt State University in Arcata. She served as primary researcher for the NOVA television special "Cracking the Maya Code" released in 2008.

Ms. Spetzler is a respected member of the community, highly regarded for her successful efforts to develop health care facilities, which meet community health care needs through their focus on health education, access to care and prevention.

Madam Speaker, it is appropriate at this time that we recognize Cheyenne Spetzler for her unwavering leadership and dedication to improving the health of California's North Coast communities.

#### CLIMATEGATE: THE DESTROYED DOCUMENTS

**HON. JOE BARTON**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. BARTON of Texas. Madam Speaker, I submit the executive summary document concerning the suppressed comments on the EPA endangerment finding for inclusion in the RECORD. The entire document, 'Comments on Draft Technical Support Document for Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act,' will be available on the Energy and Commerce Committee website.

#### COMMENTS ON DRAFT TECHNICAL SUPPORT DOCUMENT FOR ENDANGERMENT ANALYSIS FOR GREENHOUSE GAS EMISSIONS UNDER THE CLEAN AIR ACT

(By Alan Carlin, NCEE/OPEI)

Based on TSD Draft of March 9, 2009

March 16, 2009

We have become increasingly concerned that EPA has itself paid too little attention to the science of global warming. EPA and others have tended to accept the findings reached by outside groups, particularly the IPCC and the CCSP, as being correct without a careful and critical examination of their conclusions and documentation. If they should be found to be incorrect at a later date, however, and EPA is found not to have made a really careful independent review of them before reaching its decisions on endangerment, it appears likely that it is EPA rather than these other groups that may be blamed for any errors. Restricting the source of inputs into the process to these two sources may make EPA's current task easier but it may come with enormous costs later if they should result in policies that may not be scientifically supportable.

We do not maintain that we or anyone else have all the answers needed to take action now. Some of the conclusions reached in these comments may well be shown to be incorrect by future research. Our conclusions do represent the best science in the sense of most closely corresponding to available observations that we currently know of, however, and are sufficiently at variance with those of the IPCC, CCSP, and the Draft TSD that we believe they support our increasing concern that EPA has not critically reviewed the findings by these other groups.

As discussed in these comments, we believe our concerns and reservations are sufficiently important to warrant a serious review of the science by EPA before any attempt is made to reach conclusions on the subject of endangerment from GHGs. We believe that this review should start immediately and be a continuing effort as long as there is a serious possibility that EPA may be called upon to implement regulations designed to reduce global warming. The science has and undoubtedly will continue to change and EPA must have the capability to keep abreast of these changes if it is to successfully discharge its responsibilities. The Draft TSD suggests to us that we do not yet have that capability or that we have not used what we have.

We would be happy to work with and assist anyone who might want to undertake such a serious review of the science and hope that these comments will at least illustrate the scope of what we believe is needed.

We hope that the reader will excuse the many unintentional errors that are undoubtedly in these comments. Our only excuse is that we had less than four days to draft these very lengthy and complex comments. It has not been possible to fully adhere to our usual very high standards of accuracy as a result. If there should be questions, we will be happy to try to correct any errors that anyone may find, however.

It is of great importance that the Agency recognize the difference between an effort that has consumed tens of billions of dollars by the IPCC, the CCSP, and some additional European, particularly British, funding over a period of at least 15 years with what two EPA staff members have been able to pull together in less than a week. Obviously the number of peer reviewed papers that exist and the polish of the summary reports can-

not be compared. What is actually noteworthy about this effort is not the relative apparent scientific shine of the two sides but rather the relative ease with which major holes have been found in the GHG/CO<sub>2</sub>/AGW argument. In many cases the most important arguments are based not on multi-million dollar research efforts but by simple observation of available data which has surprisingly received so little scrutiny. The best example of this is the MSU satellite data on global temperatures. Simple scrutiny of this data yields what to us are stunning observations. Yet this has received surprisingly little study or at least publicity. In the end it must be emphasized that the issue is not which side has spent the most money or published the most peer-reviewed papers, or been supported by more scientific organizations. The issue is rather whether the GHG/CO<sub>2</sub>/AGW hypothesis meets the ultimate scientific test—conformance with real world data. What these comments show is that it is this ultimate test that the hypothesis fails; this is why EPA needs to carefully reexamine the science behind global warming before proposing an endangerment finding. This will take more than four days but is the most important thing we can do right now and in the coming weeks and months and possibly even years.

#### EXECUTIVE SUMMARY

These comments are based on the draft Technical Support Document for Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act (hereafter draft TSD) issued by the Climate Change Division of the Office of Atmospheric Programs on March 9, 2009. Unfortunately, because we were only given a few days to review this lengthy document these comments are of necessity much less comprehensive and polished than they would have been if more time had been allowed. We are prepared, however, to provide added information, more detailed comments on specific points raised, and any assistance in making changes if requested by OAR.

The principal comments are as follows:

As of the best information we currently have, the GHG/CO<sub>2</sub> hypothesis as to the cause of global warming, which this Draft TSD supports, is currently an invalid hypothesis from a scientific viewpoint because it fails a number of critical comparisons with available observable data. Any one of these failings should be enough to invalidate the hypothesis; the breadth of these failings leaves no other possible conclusion based on current data. As Feynman (1975) has said failure to conform to real world data makes it necessary from a scientific viewpoint to revise the hypothesis or abandon it (see Section 2.1 for the exact quote). Unfortunately this has not happened in the global warming debate, but needs to if an accurate finding concerning endangerment is to be made. The failings are listed below in decreasing order of importance in our view:

1. Lack of observed upper tropospheric heating in the tropics (see Section 2.9 for a detailed discussion).

2. Lack of observed constant humidity levels, a very important assumption of all the IPCC models, as CO<sub>2</sub> levels have risen (see Section 1.7).

3. The most reliable sets of global temperature data we have, using satellite microwave sounding units, show no appreciable temperature increases during the critical period 1978–1997, just when the surface station data show a pronounced rise (see Section 2.4). Satellite data after 1998 is also inconsistent with the GHG/CO<sub>2</sub>/AGW hypothesis.

4. The models used by the IPCC do not take into account or show the most important ocean oscillations which clearly do affect global temperatures, namely, the Pacific Decadal Oscillation, the Atlantic Multidecadal Oscillation, and the ENSO (Section 2.4). Leaving out any major potential causes for global warming from the analysis results in the likely misattribution of the effects of these oscillations to the GHGs/CO<sub>2</sub> and hence is likely to overstate their importance as a cause for climate change.

5. The models and the IPCC ignored the possibility of indirect solar variability (Section 2.5), which if important would again be likely to have the effect of overstating the importance of GHGs/CO<sub>2</sub>.

6. The models and the IPCC ignored the possibility that there may be other significant natural effects on global temperatures that we do not yet understand (Section 2.4). This possibility invalidates their statements that one must assume anthropogenic sources in order to duplicate the temperature record. The 1998 spike in global temperatures is very difficult to explain in any other way (see Section 2.4).

7. Surface global temperature data may have been hopelessly corrupted by the urban heat island effect and other problems which may explain some portion of the warming that would otherwise be attributed to GHGs/CO<sub>2</sub>. In fact, the Draft TSD refers almost exclusively in Section 5 to surface rather than satellite data.

The current Draft TSD is based largely on the IPCC AR4 report, which is at best three years out of date in a rapidly changing field. There have been important developments in areas that deserve careful attention in this draft. The list includes the following six which are discussed in Section 1:

Global temperatures have declined—extending the current downtrend to 11 years with a particularly rapid decline in 1907–8; in addition, the PDO went negative in September, 2007 and the AMO in January, 2009, respectively. At the same time atmospheric CO<sub>2</sub> levels have continued to increase and CO<sub>2</sub> emissions have accelerated.

The consensus on past, present and future Atlantic hurricane behavior has changed. Initially, it tilted towards the idea that anthropogenic global warming is leading to (and will lead to) more frequent and intense storms. Now the consensus is much more neutral, arguing that future Atlantic tropical cyclones will be little different than those of the past.

The idea that warming temperatures will cause Greenland to rapidly shed its ice has been greatly diminished by new results indicating little evidence for the operation of such processes.

One of the worst economic recessions since World War II has greatly decreased GHG emissions compared to the assumptions made by the IPCC. To the extent that ambient GHG levels are relevant for future global temperatures, these emissions reductions should greatly influence the adverse effects of these emissions on public health and welfare. The current draft TSP does not reflect the changes that have already occurred nor those that are likely to occur in the future as a result of the recession. In fact, the topic is not even discussed to our knowledge.

A new 2009 paper finds that the crucial assumption in the GCM models used by the IPCC concerning strongly positive feedback from water vapor is not supported by empirical evidence and that the feedback is actually negative.

A new 2009 paper by Scafetta and Wilson suggests that the IPCC used faulty solar

data in dismissing the direct effect of solar variability on global temperatures. Other research by Scafetta and others suggests that solar variability could account for up to 68% of the increase in Earth's global temperatures.

These six developments alone should greatly influence any assessment of "vulnerability, risk, and impacts" of climate change within the U.S., but are not discussed in the Draft TSD to our knowledge. But these are just a few of the new developments since 2006. Therefore, the extensive portions of the EPA's Endangerment TSD which are based upon science from the IPCC AR4 report are no longer appropriate and need to be revised before a TSD is issued for comments.

Not only is some of the science of the TSD out-of-date but there needs to be an explicit, in-depth analysis of the likely causes of global warming in our view. Despite the complexity of the climate system the following conclusions in this regard appear to be well supported by the available data (see Section 2 below):

A. By far the best single explanation for global temperature fluctuations appears to be variations in the PDO/AMO/ENSO. ENSO appears to operate in a 3–5 year cycle. PDO/AMO appear to operate in about a 60-year cycle. This is not really explained in the draft TSD but needs to be, or, at the very least, there needs to be an explanation as to why OAR believes that these evident cycles do not exist or why they are so unimportant as not to receive in-depth analysis.

B. There appears to be a strong association between solar sunspots/irradiance and global temperature fluctuations. It is unclear exactly how this operates, but it may be through indirect solar variability on cloud formation. This topic is not really explored in the Draft TSD but needs to be since otherwise the effects of solar variations may be misattributed to the effects of changes in GHG levels.

C. Changes in GHG concentrations appear to have so little effect that it is difficult to find any effect in the satellite temperature record, which started in 1978.

D. The surface measurements (such as HADCRUT) are more ambiguous than the satellite measurements in that the increasing temperatures shown since the mid-1970s could either be due to the rapid growth of urbanization and the heat island effect or by the increase in GHG levels. However, since no such increase is shown in the satellite record it appears more likely that urbanization and the UHI effect and/or other measurement problems are the most likely cause. If so, the increases may have little to do with GHGs and everything to do with the rapid urbanization during the period. Given the discrepancy between surface temperature records in the 1940–75 and 1998–2008 and the increases in GHG levels during these periods it appears even more unlikely that GHGs have as much of an effect on measured surface temperatures as claimed. These points need to be very carefully and fully discussed in the draft TSD if it is to be scientifically credible.

E. Hence it is not reasonable to conclude that there is any endangerment from changes in GHG levels based on the satellite record, since almost all the fluctuations appear to be due to natural causes and not human-caused pollution as defined by the Clean Air Act. The surface record is more equivocal but needs to be carefully discussed, which would require substantial revision of the Draft TSD.

F. There is a significant possibility that there are some other natural causes of global

temperature fluctuations that we do not yet really understand and which may account for the very noticeable 1998 temperature peak which appears on both the satellite and surface temperature records. This possibility needs to be fully explained and 2009 DRAFT discussed in the Draft TSD. Until and unless these and many other inconsistencies referenced in these comments are adequately explained it would appear premature to attribute all or even most of what warming has occurred to changes in GHG/CO<sub>2</sub> atmospheric levels.

These inconsistencies between the TSD analysis and scientific observations are so important and sufficiently abstruse that in our view EPA needs to make an independent analysis of the science of global warming rather than adopting the conclusions of the IPCC and CCSP without much more careful and independent EPA staff review than is evidenced by the Draft TSP. Adopting the scientific conclusions of an outside group such as the IPCC or CCSP without thorough review by EPA is not in the EPA tradition anyway, and there seems to be little reason to change the tradition in this case. If their conclusions should be incorrect and EPA acts on them, it is EPA that will be blamed for inadequate research and understanding and reaching a possibly inaccurate determination of endangerment. Given the downward trend in temperatures since 1998 (which some think will continue until about 2030 given the 60 year cycle described in Section 2) there is no particular reason to rush into decisions based on a scientific hypothesis that does not appear to explain much of the available data.

Finally, there is an obvious logical problem posed by steadily increasing U.S. health and welfare measures and the alleged endangerment of health and welfare discussed in this draft TSD during a period of rapid rise in at least CO<sub>2</sub> ambient levels. This discontinuity either needs to be carefully explained in the draft TSD or the conclusions changed.

TRIBUTE TO OFFICER PHILIP  
DAVIS OF PELHAM, ALABAMA

HON. SPENCER BACHUS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 11, 2009

Mr. BACHUS. Madam Speaker, let us honor of the memory of Officer Philip Davis, the first officer in the history of the Pelham, Alabama Police Department to die in the line of duty.

Officer Davis was performing his sworn duty to protect the public when he was shot and fatally wounded during a traffic stop on I-65 in Shelby County on December 3.

Philip Davis was a four and a half year veteran of the Pelham Police Department. He previously was an officer in Calera and with the University of Alabama Police Department.

Officer Davis was devoted to the law, his community, his faith, and especially his family. He felt that it was his calling to serve and protect others.

Pelham Police Chief Tommy Thomas said, "He was an excellent police officer. He loved his job and we loved him."

Shelby County District Attorney Robbie Owens said, "Philip was a genuinely good, Christian person and dear police officer. We will all miss Philip. He was a good man."

Pelham Mayor Don Murphy said, "This was a very sad day for the City of Pelham and for law enforcement all across our nation. Philip was an asset to both the Police Department and the City of Pelham. His dedication, personality and commitment will be greatly missed. Our thoughts and prayers are with his young family."

Philip Davis was just 33 years old. Our sympathies and prayers are with his wife, Paula, and his two young children, Sarah and John.

In a close-knit community like Pelham, Philip Davis was a friend, neighbor, and role model.

The depth of the community's love for him was clear from the way citizens lined up in cars and along the streets during memorial services that were attended by more than one thousand fellow law enforcement officials.

All law enforcement officers and their families live with a special burden every day. They know there are risks involved with every call, whether it is serious or seemingly routine. Yet our police officers willingly accept these risks in order to keep our communities safe. That is why our officers deserve nothing less than our highest respect and complete support.

The untimely death of any police officer is a loss not only to the immediate community, but to our nation.

The National Law Enforcement Officers Memorial in Washington, which is not far from the U.S. Capitol, is our national tribute to the sacrifices that courageous members of the law enforcement community have made to keep us secure. The name of Officer Philip Davis will be added to this memorial so that his legacy is properly remembered and cherished.

No words can adequately make up for the loss of a dedicated officer and devoted husband and father. But as an inscription at the Memorial reads, "It is not how these officers died that made them heroes; it is how they lived."

I thank my colleagues for this opportunity to honor to life and service of Officer Philip Davis.

#### REMEMBERING THE LIFE OF MR. JOSE LAGOS

#### HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to honor the life of humanitarian and compassionate activist, Mr. Jose Lagos. Mr. Lagos died of cancer on November 30, 2009 at Jackson Memorial Hospital in Miami, Florida at the age of 45. My heartfelt condolences go out to his family and friends at this most difficult time.

Emigrating from his home country of Honduras, Mr. Lagos spent his life working to improve South Florida's immigration policies. He was born on April 11, 1964 in the Honduran capital of Tegucigalpa, where he attended a Catholic high school. In 1985, Mr. Lagos and his family relocated to Miami where he enrolled at Miami-Dade Community College. He went on to earn an Associate's Degree in business administration. In 1990, Mr. Lagos

began working on immigration issues as the executive director of an association that helped medical school graduates from other countries obtain their physician's licenses.

Mr. Lagos was a true leader and unifier. South Florida is a mosaic of different immigrant cultures and, unfortunately, many Federal immigration policies have proven to be more divisive than effective. Mr. Lagos worked to overcome these obstacles. As director of the non-profit Unidad Hondurena, Spanish for "Honduran Unity," Mr. Lagos bridged ideological gaps and created powerful synergies throughout the immigration community. He led vigorous grassroots efforts to advance the rights of fellow Hondurans and Hispanics, including protesting fee hikes for temporary work permits and citizenship applications, alerting immigrants to scams, and organizing charities. Mr. Lagos understood the power of unity and also strongly supported efforts to gain Temporary Protected Status, TPS, for Haitians.

One year ago, Mr. Lagos was diagnosed with cancer. Throughout his treatment, however, his spirit never wavered. He continued to speak on behalf of those who came to our country seeking the American dream. This past summer, Mr. Lagos exhibited his dedication and courage outside a church in Little Havana by rallying others to protest the suspension of international aid to Honduras. This is the mark of a true hero, a champion of the people.

Madam Speaker, Mr. Jose Lagos will be remembered in South Florida for his message of unity. He celebrated and embodied our great nation's rich immigrant heritage. The loss of Mr. Lagos is indeed a loss for us all, and for the battle for fair immigration reform.

#### OUR UNCONSCIONABLE NATIONAL DEBT

#### HON. MIKE COFFMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COFFMAN of Colorado. Madam Speaker, on December 10, 2009, our national debt was \$12,079,739,352,131.13.

On January 6, 2009, the start of the 111th Congress, the national debt was \$10,638,425,746,293.80.

This means the national debt has increased by \$1,441,313,605,837.33 so far this year.

According to the non-partisan Congressional Budget Office, the forecast deficit for this year is \$1.6 trillion. That means that so far this year, we borrowed and spent an average \$4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

#### EARMARK DECLARATION

#### HON. FRANK A. LoBIONDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LoBIONDO. Madam Speaker, as per the requirements of the Republican Con-

ference Rules on earmarks, I secured the following earmarks in H.R. 3288.

Requesting Member: Congressman FRANK LoBIONDO (NJ-02)

Bill Number: HR 3288

Account: Air Force, Military Construction, Air National Guard

Legal Name of Requesting Entity: 108th Air Refueling Wing

Address of Requesting Entity: McGuire AFB, NJ

Description of Request: Provide an earmark of \$9.7 million for construction of properly sized and adequately configured facilities to house the base engineer administrative, maintenance, and training functions, and readiness (disaster preparedness). Facilities support daily activities associated with maintaining/repairing base infrastructure and facilities for the ARW, and mobility requirements for the 108th Civil Engineering Squadron (CES) and readiness requirements.

#### IN HONOR OF JULIUS E. COLES

#### HON. GERALD E. CONNOLLY

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CONNOLLY of Virginia. Madam Speaker, I rise today in honor of a man who, for more than 40 years, has dedicated himself to the betterment of people from around the world.

Julius E. Coles was born in Atlanta, Georgia, in 1942. He received a B.A. from Morehouse College in 1964 and a Masters of Public Affairs from Princeton University's Woodrow Wilson School of Public and International Affairs in 1966. Mr. Coles then began a long and impressive career with the United States Agency for International Development (USAID).

During his tenure with USAID, Mr. Coles served as a Mission Director in Swaziland and Senegal, as well as serving in other capacities at foreign service posts in Vietnam, Morocco, Liberia, Nepal and Washington, D.C. In recognition of his extraordinary contributions in foreign service, he received the Distinguished Career Service Award in 1995 and the Presidential Meritorious Service Award in 1983, 1984, 1985 and 1986. Mr. Coles retired from USAID in 1994, having achieved the rank of Career Minister.

These achievements alone would have constituted a career full of accomplishments deserving of great pride and satisfaction. Yet for Mr. Coles, this was just the beginning of a new and exciting chapter.

From 1994 to 1997, Mr. Coles served as Director of Howard University's Ralph J. Bunche International Affairs Center, and, from 1997 to 2002, he was the Director of Morehouse College's Andrew Young Center for International Affairs.

In 2002, yet another opportunity arose—one that would fully utilize his expertise in foreign service and international affairs and combine that expertise with the ability to reach thousands of people suffering from hunger, HIV/AIDS and poverty. Mr. Coles became the third President of Africare.



Africare was founded in 1970 by two Americans, Dr. William O. Kirker and his wife, Barbara Kirker. Dr. and Mrs. Kirker had been working in Niger at the Maine-Soroa Hospital since 1966, and in 1970, in the midst of a devastating drought, they established Africare to provide medical services and health care to the people of Niger.

In 1971, Africare reconstituted itself, adding experts in various fields and broadening the mission to support not only health related issues, but development and relief programs in any African country and to serve as a bridge between Africans and Americans, especially Americans of African descent.

Mr. C. Payne Lucas served as the executive director and second president of Africare from 1971–2002, and, under his leadership, Africare became a well-known and highly respected organization. During the years of Mr. Lucas' presidency, Africare provided almost \$450 Million through development work including the key project areas of food, water, environment, emergency assistance and rural health initiatives. Mr. Lucas initiated a program to address HIV/AIDS in 1987. In 1998, efforts to better help Africa were categorized into four crucial programmatic focal points: (1) HIV/AIDS; (2) food security, population and the environment; (3) conflict resolution and "good governance"; and (4) computer and Internet technology transfer. Those focus areas have been maintained to the present day.

In 2002, Mr. Coles became President of Africare, promising to build on the legacy of C. Payne Lucas. In just 7 short years, Mr. Coles has taken Africare to a new level. Under his leadership, Africare has received more than \$400 Million in new commitments, nearly doubling the total amount of development dollars generated by Africare over its 39 year history combined. Mr. Coles has added the areas of water and sanitation to the key program areas of food security and agriculture, health and HIV/AIDS and emergency and humanitarian response. Mr. Coles has opened new programs across the African continent. There are now more than 25 field offices in Africa along with offices in Paris and Ottawa as well as the Washington, D.C., headquarters.

Mr. Coles has successfully updated management practices and systems resulting in an increase in the productivity and effectiveness of Africare's programs while simultaneously reducing expenses. Today Africare spends 93 percent of every dollar on programs; only 7 percent is spent on administrative and fundraising costs. Africare has earned top ratings from Charity Navigator, The American Institute of Philanthropy and the Better Business Bureau.

Although Africa still faces many challenges and the work is not yet done, much progress has been made. While still pandemic, the HIV/AIDS infection rates have slowed and, in some areas, stabilized. Fifteen percent more Africans have access to safe drinking water over 1990 levels and the infant mortality rate has decreased 40 percent between 1960 and 2000. Programs sponsored by Africare in Microenterprise, Civil-Society Development and Governance, and Women's and Children's issues are leading the way towards a better tomorrow for all Africans.

This progress and the promise for a brighter future would not have been possible without

the dedication and determination of Julius Coles and those who went before him at Africare. Mr. Coles could have retired in 1994 and enjoyed the peace and serenity of a man who had led a full professional life and who had contributed so much to humanity. But he chose to answer another calling; he chose to work towards ending the suffering of so many in a continent that is half way around the world. Because he did, thousands of lives have been saved and countless thousands more have been improved. Because he did, Africa and all Africans face a much brighter future.

Madam Speaker, I ask that my colleagues join me in expressing our deepest respect and appreciation to Mr. Coles for his decades of service. Julius F. Coles is a true hero who has lived up to the highest standards, fought for the survival of others and has truly made the world a better place. I also ask that my colleagues join me in wishing Mr. Coles continued happiness, success and health in his retirement.

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RECOGNIZING THE COMPASSION  
AND CONTRIBUTIONS OF MS.  
DIANA STANLEY

**HON. ALCEE L. HASTINGS**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to honor Ms. Diana Stanley and to recognize her contributions in fighting homelessness in South Florida. Ms. Stanley is the Executive Director of The Lord's Place, one of the leading homeless providers in West Palm Beach, Florida. The Lord's Place provides homeless families and individuals with a new beginning.

Beginning as a modest soup kitchen in 1979, The Lord's Place has become a place of transformation for many homeless men, women, and children in Palm Beach County over the last 30 years. In 1983, The Lord's Place expanded its services by opening its first shelter and has since opened two more shelters along with two retail stores and a retail job-training program. In 1997, The Lord's Place began a partnership with Cafe Joshua, another homeless restoration agency, to provide additional and improved services in the community. In April 2000, this collaboration led to the merger of the two organizations. The Lord's Place is dedicated to breaking the cycle of homelessness by providing innovative, compassionate, and effective services to those in need in the community.

Ms. Diana Stanley joined The Lord's Place as Executive Director in April 2007. Under her leadership, The Lord's Place created two campuses: a family campus in West Palm Beach, bringing together the Family Emergency Housing Program with the Family Permanent Program; and a men's campus in Boynton Beach, joining the day program, Operation JumpStart, with the permanent men's housing program, Joshua House.

Furthermore, Ms. Stanley enhanced the agency's internal continuum of care with two new programs. The Engagement Center pro-

vides the area homeless and near-homeless with a much needed point-of-entry to services in the community. In the first year of operation, more than 14,000 men, women, and children entered through the Engagement Center doors for a hot meal, peer mentoring, access to the resource center, and case management services in a home-like atmosphere. Additionally, the Recovery Center is an innovative new emergency housing program for single men located on the Boynton Beach property opposite Joshua House. Its innovative programming provides housing and personalized support services designed to address the issues that led to the resident's homelessness.

In 2008, Ms. Stanley was the driving force in creating The Lord's Place's Micro-Enterprise Program, comprised of Cafe Joshua Catering, Maintenance and Beyond, and The Lord's Place's new thrift shop and coffee bar, "One More Time." In 2009, the Cafe Joshua Job Training and Placement Program was born, enhancing Cafe Joshua programming. The program employs an education model that teaches the hard and soft skills necessary for successful employment. It meets the participant where they are in their process of finding a job and teaches them employable skills in a supportive environment.

Madam Speaker, I truly appreciate all the hard work that Ms. Diana Stanley does each and every single day on behalf of the less fortunate in the West Palm Beach community. Ms. Stanley has been an integral part in writing Palm Beach County's 10-Year Plan to End Homelessness. With her assistance, the plan was recently approved by the Palm Beach County Board of Commissioners. I greatly admire her commitment and dedication to helping the homeless get back on their feet as our nation strives to end homelessness.

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OUR UNCONSCIONABLE NATIONAL  
DEBT

**HON. MIKE COFFMAN**

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COFFMAN of Colorado. Madam Speaker, today, December 11, 2009, our national debt is \$12,092,672,900,402.34. We have increased the national debt \$12,933,548,271.21 since just yesterday.

On January 6th, 2009, the start of the 111th Congress, the national debt was \$10,638,425,746,293.80.

This means the national debt has increased by \$1,454,247,154,108.54 so far this year.

According to the non-partisan Congressional Budget Office, the forecast deficit for this year is \$1.6 trillion. That means that so far this year, we borrowed and spent \$4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

# HONORING THE 50TH ANNIVERSARY OF ENSTROM HELICOPTER CORPORATION

## HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, December 11, 2009

Mr. STUPAK. Madam Speaker, I rise to recognize Enstrom Helicopter Corporation of Menominee, Michigan as it celebrates its 50th anniversary in the community. This company designs and produces helicopters that can be found performing a wide range of duties across the globe, while staying true to its hometown roots.

Enstrom Helicopter began with a mining engineer from the Upper Peninsula named Rudy Enstrom. In the 1940's Rudy began building a helicopter and this hobby became a passion. After years of developing and building his own helicopter, Rudy caught the attention of businessmen in the Menominee area and founded R. J. Enstrom Corporation in 1959. The project to replace Rudy's original prototypes with a better engineered product was led by Jack Christensen, Al Belauer and Paul Schultz.

In 1965, Enstrom Helicopter achieved FAA certification on its F-28 model and received certification in 1968 for its more powerful model, the F-28A. Today the company produces three models, the F-28F, the 280FX and the 480B. Enstrom's 280FX and F-28F piston-powered helicopters are the only turbo-charged helicopters produced in the world today.

Over the years Enstrom Helicopter has had capable leaders at the helm, including F. Lee Bailey, Bob Tuttle and today's president, Jerry Mullins. These men have guided the continued growth of the company, thanks in large part to their ability to retain a dedicated and experienced workforce.

Having produced approximately 1,200 aircraft, Enstrom helicopters can be found in 45 countries around the world. In fact, 70 percent of Enstrom helicopters are purchased overseas. Recently the company delivered 480B models destined for Ukraine, India, Thailand, and Bulgaria. These helicopters are used for a variety of purposes, including agricultural spraying, search and rescue, cattle herding, law enforcement, and personal transport.

Despite its international popularity, Enstrom Helicopter has remained committed to the Menominee community throughout its history. In turn, the residents of Menominee and surrounding areas have thrown their support behind Enstrom. During its first 10 years as a public company, as many as 10,000 individual shareholders living primarily in the Upper Peninsula and northern Wisconsin invested in the company. This early support from the community was largely responsible for the ultimate success of the company.

Madam Speaker, Enstrom Helicopter Corporation is both a community company and a world leader in helicopter production. Over the years, it has continued to innovate, grow and provide good jobs for the residents of Menominee. I ask, Madam Speaker, that you, and the entire U.S. House of Representatives, join me in recognizing Enstrom Helicopter Corporation,

its management, and employees past and present on this golden anniversary of 50 years.

# IN RECOGNITION OF THE AWARDING OF AN HONORARY DEGREE TO MR. JOHN YASHIO KASHIKI

## HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 11, 2009

Mr. COSTA. Madam Speaker, I rise today to pay special tribute to Mr. John Yoshio Kashiki of Parlier, California on the occasion of receiving an honorary degree from the University of California, Davis more than six decades after his studies were interrupted by the events of World War II. I ask my colleagues to join me in thanking John for his decades of service to the people of California's Central Valley.

Mr. Kashiki was born in California in 1919 and grew up in the Imperial Valley. John was attending the University of California, Davis when the onset of World War II led to the internment of Japanese-Americans and nationals of Japanese heritage. John Kashiki was one of hundreds of men and women attending the University of California who were forced to leave their studies in 1942 as a result of the executive order.

Mr. Kashiki's experience with internment did not, however, serve to sway his commitment to his country. John volunteered to serve in the storied 442nd Infantry regiment of the United States Army which was composed of Asian-American soldiers who served with great distinction in Europe. After returning home, John started farming and packing businesses in Parlier, California and remains an active member of the community and an avid fisherman.

Over six decades after enrolling in college, John and the forty-six other students who were forced to abandon their studies at the University of California, Davis, are being recognized by the University with the awarding of the honorary degrees they so richly deserve. John, and fellow class members, will receive their degrees on December 12th, 2009 with friends and family in attendance.

Please join me in congratulating Mr. John Yashio Kashiki on this well-deserved honor and thanking him for his years of service to his community and to his country.

# HONORING RENEE AHLERS FOR RECEIVING THE PRESTIGIOUS FULBRIGHT SCHOLARSHIP

## HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, December 11, 2009

Mr. ISRAEL. Madam Speaker, I rise today to acknowledge a young woman in my district, Renee Ahlers.

Ms. Ahlers has been selected to receive a prestigious Fulbright Award. The Fulbright Program is an international exchange program that is sponsored by the U.S. Department of

State. Recipients of this award are selected on the basis of academic or professional achievement, as well as demonstrated leadership in their chosen fields. Ms. Ahlers plans to teach English as a Foreign Language in Mexico.

I congratulate her on this accomplishment and applaud her contribution to global education and international relations.

# TRIBUTE TO PIKEVILLE COLLEGE SCHOOL OF OSTEOPATHIC MEDICINE

## HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, December 11, 2009

Mr. ROGERS of Kentucky. Madam Speaker, I rise today to pay tribute to a pioneer in rural medicine and one of U.S. News & World's Report's 2009 top 20 medical schools in the Nation in rural medicine, the Pikeville College School of Osteopathic Medicine.

Founded in 1997, the Pikeville College School of Osteopathic Medicine was established to address the physician shortage in rural Kentucky and Appalachia. Governor Paul Patton, Burlin Coleman, and the founding Dean, the late Dr. John Strosnider's vision was made possible because of the generosity of Attorney G. Chad Perry. Together, their efforts have formed one of the leading rural health medical schools in the Nation.

In less than a decade, more than 500 physicians have graduated from the Pikeville College School of Osteopathic Medicine. Over 150 of these graduates have completed their residencies and are now practicing medicine. Even more impressive, these graduates are keeping the school's mission alive as over 60 graduates have opened offices within a 2-hour drive of Pikeville, Kentucky. Several more are practicing medicine in the rural communities of Western Kentucky and throughout the Appalachian region. These graduates are working with medically underserved populations and advancing rural health care each and every day.

The Pikeville College School of Osteopathic Medicine also holds the honor of ranking fourth in the Nation for percentage of graduates entering primary care residencies. The school emphasizes primary care, encourages research, promotes lifelong scholarly activity, and produces graduates who are committed to serving the health care needs of communities in Eastern Kentucky and Appalachia.

Serving as a model for other medical schools, the Pikeville College School of Osteopathic Medicine continually reaches out to other institutions, hospitals and medical centers around the country, carrying their message of hope for impoverished regions of the country. Their example continues the dream that one day every rural region will have better access to primary care physicians.

Madam Speaker, I ask my colleagues to join me in honoring a shining example of reaching out to those in need, the Pikeville College School of Osteopathic Medicine. I congratulate the school and its board of directors on its prestigious ranking and wish them many more years of success.

EPA CARBON DIOXIDE REGULATION  
ENDANGERS AMERICAN  
JOBS AND ECONOMIC STRENGTH

**HON. VIRGINIA FOXX**

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. FOXX. Madam Speaker, earlier this week the EPA declared that carbon dioxide is a danger to public health. As a result government bureaucrats will now have the power to create burdensome new regulations on businesses in almost every sector of our economy. This is an important distinction. Bureaucrats, not elected officials, will be in control of one of the most significant shifts in economic policy in recent memory.

This so-called "endangerment finding" is a dramatic step in the wrong direction. If the EPA regulates the emission of carbon diox-

ide—the same gas emitted by every person in American with each breath—the end result will be job losses and harm to our economy.

But as if this development were not enough to raise serious concerns, yesterday media reports quoted an Obama administration official saying that if Congress doesn't pass a cap and tax law "the EPA is going to have to regulate in this area. And it is not going to be able to regulate on a market-based way, so it's going to have to regulate in a command-and-control way, which will probably generate even more uncertainty."

It is unclear whether this is meant as a threat to Congress to ram through the economically harmful cap and tax legislation—which is essentially a national energy tax—or if it is a prediction of the EPA's upcoming heavy-handed interference in almost every aspect of our economy.

Here's a news flash for the Obama administration: this is America. We are not a com-

mand and control economy and the American people will not stand for control by bureaucrats.

Regardless, the bottom line is crystal clear: the EPA's endangerment finding on carbon dioxide endangers the jobs of hard-working Americans and endangers a strong economic recovery.

PERSONAL EXPLANATION

**HON. KAY GRANGER**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. GRANGER. Madam Speaker, on rollcall Nos. 941, 944, and 946, I was absent from the House. Had I been present, I would have voted "yes."

**SENATE—Saturday, December 12, 2009**

The Senate met at 9 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, today we seek the sanctuary of Your presence so that we can face perplexing challenges with strong spirits and quiet minds. Help our lawmakers to recognize truth and to welcome revelation from whatever quarter they arise. Keep them ethically fit, as inwardly they become more adequate and wise, dependable and strong. May they guard the treasures of our freedom, bought with a great cost. Remind them that they will be judged by their fruits and that You require them to be faithful. Empower them to trust You more fully, live for You more completely, and serve You more willingly.

Lord, bless also the support staffs who labor this weekend. Reward them for their faithfulness.

We pray in Your wonderful Name. Amen.

**PLEDGE OF ALLEGIANCE**

The Honorable ROLAND W. BURRIS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE**

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 12, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. BURRIS thereupon assumed the chair as Acting President pro tempore.

**RECOGNITION OF THE ACTING MAJORITY LEADER**

The ACTING PRESIDENT pro tempore. The majority whip is recognized.

**SCHEDULE**

Mr. DURBIN. Mr. President, following leader remarks, the Senate will resume consideration of the conference report to accompany H.R. 3288, the consolidated appropriations bill, with the time until 9:30 a.m. equally divided and controlled between the two leaders or their designees. At 9:30 a.m., the Senate will proceed to vote on the motion to invoke cloture on the conference report. Under an agreement reached last night, the vote on adoption of the conference report will occur tomorrow, Sunday, December 13.

**RESERVATION OF LEADER TIME**

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

**DEPARTMENTS OF TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT**

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 3288, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 9:30 will be equally divided and controlled between the leaders or their designees.

The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, this morning I will vote no on the cloture motion to H.R. 3288. I oppose H.R. 3288 and will not be able to be present to vote no on final passage. The reason I will not be here is that tomorrow my wife and I will be celebrating our 50th wedding anniversary with our 20 kids and grandkids.

Mr. DURBIN. Mr. President, let me congratulate my colleague from Oklahoma on 50 years of marriage. Your wife must be a saint.

Mr. INHOFE. Indeed, she is.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, H.R. 3288 is a consolidated appropriations bill

which contains almost all of the remaining spending bills for the fiscal year 2010. This is a process we had not anticipated. We had hoped we could take each bill individually and consider them on the floor and bring them to conclusion. Unfortunately, we ran out of time.

We had over 90 different efforts made to stop debate on the Senate floor on a variety of measures. It took us literally 4 weeks to extend unemployment benefits. This is something usually done routinely on a bipartisan basis, but unfortunately, because of delays and threats of filibusters, it took us 4 weeks to finally come to a vote to extend unemployment benefits in the midst of the worst recession the United States has experienced in over 75 years. It is unthinkable, at a time people were sending us e-mails and letters saying: I can't believe the Senate won't provide a helping hand. It isn't as if the bill itself was controversial. When it finally came to a vote, it passed 97 to nothing. There was no controversy associated with it. The controversy was manufactured on the floor of the Senate to delay consideration of such a very basic bill for 4 weeks.

Those 4 weeks could have been spent calling up these appropriations bills so we could have had what was needed—a healthy, open debate on the bills. Instead, we were forced to wait until toward the end of the session and consolidate the unpassed bills in one measure and bring it to the floor of the Senate today.

I will tell Members of the Senate who wonder if these bills have been carefully reviewed that each and every one of them passed overwhelmingly from the Appropriations Committee. There was one dissenting vote on two or three of these measures, but by and large they passed unanimously. There was little controversy in the Appropriations Committee from either side of the aisle.

The Senate Appropriations Committee, on which I am honored to serve, had been working spring and summer to pass all 12 appropriations bills. Chairman DANNY INOUE is not only a great American hero, he is a great American chairman. As the Senate Appropriations Committee chairman, this man has taken up a responsibility which few would shoulder and has done it with an extraordinary amount of talent and dedication. At his side has been Senator THAD COCHRAN, Republican of Mississippi, who works just as hard to try to make sure what we produce is a great credit to this institution and meets the needs of this great country.

There is one bill remaining after these six pass. It may be one of the most important—the Defense appropriations bill. It was passed by the committee in September and represents the only remaining bill left for us to pass this year, which we certainly want to do before we adjourn at the end of this period before Christmas.

These bills were reported out of committee with overwhelming bipartisan votes. Nine of the 12 were reported unanimously. However, when we moved these bills to the floor, we ran into these obstacles. At one point when we were considering, for example, the question of extending unemployment benefits to millions of Americans who have lost their jobs, exhausted their savings, lost their health insurance, and stand to lose their homes, there was an argument made by one Senator on the other side of the aisle that he didn't want us to call this bill until he had a chance to offer another amendment—another amendment on the ACORN organization. We have had a series of these amendments. We have flogged this group mercilessly for month after weary month. Yet they were going to hold up unemployment benefits for this Senator to have one more chance, one more swing at this organization. That, to me, is not responsible. The responsible thing to do is to recognize all of these families who were counting on us.

Time was lost that could have been used not only to provide unemployment benefits in a more expeditious manner but also to consider these appropriations bills. Appropriations bills in the past, and not too distant past, used to take 1 or 2 days before the Senate. Members would come to the floor, amendments would be offered, debated, end of story. We would have a final vote, and we would move on. Now even routine bills with no controversy take weeks because of amendments to be offered which, frankly, have little or no relevance to the nature of the bill before us.

We brought up the Commerce-Justice-Science appropriations bill on October 6. We didn't finish that bill until November 5. This is a critically important one, one for which most Members would gladly endorse its mission.

These appropriations bills have taken longer because, unfortunately, the minority will not agree to reasonable time limits to consider amendments and finish debate. Instead, we find ourselves consistently sidetracked.

So here we are. We have 21 days before the end of the calendar year, and we need to finish the business of the Congress. To do so, we engaged Republican Members of the Appropriations Committee and worked on reasonable compromises on the differing bills in the House and Senate. I am troubled that some of the very Republican Members of the Senate Appropriations Com-

mittee—not all of them; three of them stood up and voted to move this process forward—some of the very Members of the Senate Appropriations Committee who have sat through the subcommittee hearings, the full committee deliberations, have made valuable contributions to the bills themselves, now want to stop the process. It makes no sense. If we are going to do this in an orderly fashion, we should do it in a bipartisan fashion. I hope that is what will happen today.

This package of appropriations bills is a result of a truly bicameral and bipartisan effort. It represents the priorities of our Nation. It invests in students, veterans, and law enforcement, just to name a few. It makes college education more affordable for students by increasing Pell grants to \$5,500 a year. Is there a better time for us to do that, to say to children and families that don't have a lot of money: Now is the time to hone your skills, to create new talents in a more challenging economy. Go to school. If you will go to school, we will help you. This package of bills increases the amount of money available for the children in those families. I hope Members on both sides of the aisle will support it.

The conference report also helps local governments fight crime and put more police on our streets. Take a look at the budgets of cities and towns, of counties, of States, and you will realize they are in a death struggle to provide basic services. We have increased grants for local law enforcement by \$480 million over last year. Many of the critics of our efforts say: You are spending more money. Yes, we are spending more money to keep cops on the street, to keep neighborhoods safe so that families feel secure. I think it is money well spent. Money spent to help our first responders, firefighters, and policemen is a critical investment. This bill makes that investment. That grant program was cut by almost \$2 billion by the previous administration. We are trying to restore that money so we can put more people on the street protecting our citizens. This conference report sets the right priorities by helping States and local police departments fight crime. We also include \$298 million for the COPS Program to put more cops on the beat. This funding will help hire and retain approximately 1,400 police officers. The COPS Program has helped train nearly 500,000 law enforcement personnel.

The conference report also helps veterans. It is not enough to give speeches on the floor about how much we love our men and women in uniform and honor our veterans. It is not enough to wear a lapel pin and participate in parades and then come to the floor and vote against the bills that provide the money for the Veterans' Administration.

What we provide here is increased funding to the Veterans Affairs Depart-

ment of \$5.3 billion over last year's level. Those who come and criticize the level of spending in this package of bills are criticizing the additional investment to help our veterans when we need to more than ever. Returning from Iraq and Afghanistan with post-traumatic stress disorder, traumatic brain injuries, amputations, these men and women need our help. This package of bills provides that help. We will provide increased access to quality care for all of our veterans. The conference report increases discretionary spending at the VA by more than \$5 billion to help them care for 6.1 million veterans they expect to see in 2010.

If I understood the unanimous consent order, we were equally dividing time between now and 9:30. I ask how much time I have remaining on the majority side.

The ACTING PRESIDENT pro tempore. There is 3½ minutes.

Mr. DURBIN. I reserve the remainder of my time.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. McCONNELL. Mr. President, I will proceed under my leader time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. McCONNELL. Mr. President, yesterday may well have been a seminal moment in this debate. We heard from CMS. And for those who do not know what that is, who may be watching C-SPAN 2, that is the Centers for Medicare & Medicaid Services. They did an analysis of the Reid health care bill, a rather detailed analysis. The important part I will summarize. It says: We estimate that total national health expenditures under this bill would increase by an estimated \$234 billion during the calendar years 2010 to 2019. In other words, it will increase the deficit. We know there was a letter to Chairman BAUCUS from six Democrats on September 17, 2009, saying:

There are many, wide-ranging options to address the broad and complicated issue of runaway health care costs, and we pledge our support to you in making the necessary and tough decisions. This is our number one priority. If we pass health [care] reform legislation without addressing the issue of health care spending, we will have failed.

That letter was signed by Senator KOHL of Wisconsin, Senator MCCASKILL of Missouri, Senator PRYOR of Arkansas, Senator BEGICH of Alaska, Senator BAYH of Indiana, and Senator KLOBUCHAR of Minnesota to the chairman of the Finance Committee, saying: "If we pass health care reform legislation without addressing the issue of health [care] spending, we will have failed."

We know from CMS, the actuary at the Department of Health and Human Services, that the Reid bill fails the test of Senators KOHL, MCCASKILL,

PRYOR, BEGICH, BAYH, and KLOBUCHAR. So we know what CMS thinks.

We also know what CNN thinks. We know where the American people are. We have watched the public opinion polls dramatically shift against the Reid proposal. The well-respected Quinnipiac poll a week or so ago had the proposal disapproved by 14 percent; the week before that, Gallup had it disapproved by 9 percent. And now CNN, just yesterday, the latest poll: people oppose the Senate bill 61 to 36.

We have heard from both CMS and CNN. When will our colleagues on the other side of the aisle respond to either cold, hard facts or the American people? They argue: "to make history." It is clear this would be a historical mistake of gargantuan proportions—a historical mistake of gargantuan proportions. The only history we would be making here is a historical mistake.

We know from the experts it will not achieve the goal. We know from the American people they do not want us to pass it. It is time to stop this effort and to start over and go step by step to fix the problems the American people sent us here to fix regarding the American health care system.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

If no one yields time, time will be charged equally.

The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I want to speak for a moment about the vote we are about to take here to proceed with the so-called Omnibus Appropriations Act, H.R. 3288. This is the bill which for those who have not been following closely cleans up a little bit of a mess that the Congress has created because we did not do our work earlier in the year.

We are supposed to pass appropriations bills to run the government, to run the various Departments, and we did not get around to doing that. So right here, at the very end, we have to combine all kinds of those bills together in what is called an omnibus bill—six bills in total.

I find it ironic we are talking about a bill which is nearly \$500 billion—to be exact, it is \$446.8 billion in new spending—at a time when our national deficit is \$1.4 trillion, the health care bill we are debating in its first 10 years of implementation is \$2.5 trillion and, next week, we are going to be asked to raise the debt ceiling in this country by something like \$1.8 trillion.

I saw a bumper sticker that said, "Don't Tell Them What Comes After A Trillion." We used to think in billions. When I first came to Congress, millions were a big deal. Now we are talking trillions, and it is being tossed around as if it is nothing. Now another  $\frac{1}{2}$  trillion spending bill.

Well, obviously we need to run the government. But do you suppose the

government could be a little bit like families and be a little bit prudent in how much it spends or how much it increases its spending over the previous year?

Let me give you some examples. The bill for Transportation and HUD receives a 23-percent increase over last year—23 percent. The State Foreign Operations bill receives a 33-percent increase over last year. Included in that bill is a 24-percent increase for the State Department's salaries and operations. A lot of Americans would like to see their salaries and operations increased by 24 percent. Commerce, State, and Justice receives a 12-percent increase over last year.

You might say, well, the government is in tough shape. We need, for some reason, to increase our spending by 33 percent. No, not with what is in this bill.

My colleagues have done a little bit of a check to see if there are any earmarks in this bill, for example. And guess what—5,224 earmarks and those earmarks alone are over \$3.8 billion.

I gave some examples of those earmarks, and I do not want to embarrass any of my colleagues by citing them today. But I think it would be appropriate for us to at least have the opportunity to strike some of these earmarks and save a little bit of money. Because the argument is always made: Well, we can't save money. We have to keep spending what we are spending. There is nothing in there to cut.

There is a lot in there to cut. So the point I want to make to my colleagues here today, before we vote to proceed with this legislation, is we could do better. There is no argument that we have to spend 33 percent more on the State Foreign Operations bill or 23 percent more on what we call affectionately around here the THUD bill, when we have this deficit of \$1.4 trillion, when we have to increase the national debt by \$1.8 trillion, when we are talking about spending another \$2.5 trillion, and that is just for the first 10 years of operation on the health care bill. I have not even mentioned the bills earlier this year—bailing out AIG, the insurance companies, General Motors, Chrysler, and the stimulus package, and well over \$1 trillion when you add in the interest.

By the way, I did not mention interest. Part of the problem is we do not have this money. We are borrowing it. We have to borrow this money in order to pay it to these folks, and that means you have to pay interest. I have not even included the interest cost, which for all these bills amounts to several hundreds of billions of dollars.

There is a point at which, if you are talking about your own family and your own credit card, instead of asking the credit card company to expand the limit so you can put even more money on your credit card—which is what we

are doing here—you would start paying that credit card down and you would be a little bit more careful about your spending.

All I am asking is: Can't we be a little more careful about our spending so we do not have to increase Departments of government by 23 percent, 33 percent over last year's spending? I do not think that is too much to ask on behalf of our taxpayers.

The ACTING PRESIDENT pro tempore. The majority whip is recognized.

Mr. DURBIN. Mr. President, I want to make a point of pulling out the calendar here and reading the membership on the Senate Appropriations Committee. I thought for sure there were Republicans serving on that committee, and it turns out there are 12 of them. They serve on the committee. They are on the subcommittees. They sat on the full committee deliberations, and they include the Republican minority leader.

Of the six appropriations bills which have come before us today for a vote, they were voted out of the Appropriations Committee by overwhelming votes. In fact, three of the bills were unanimous, meaning that at least the minority leader was counted as voting for the bills which the Senator from Arizona has just criticized, and three of them had a 29-to-1 vote, so I will not suppose what the minority leader's vote was.

But to come before us today and argue that the majority is cramming these votes and bills down the throats of Members without giving them opportunity is to ignore what came before it: the fact that there were subcommittee hearings, the fact that there was a vote in the Appropriations Committee on each of the bills, and they passed overwhelmingly.

So at least at an early stage, an important stage in this process, 11 or 12 Republican Senators signed on and approved the bills. To argue that we are bringing something before the Senate, pushing it through quickly without deliberation, on a partisan basis, does not stand up.

And to listen to the Senator from Arizona, I would tell you, bluntly, the increases in spending in this bill—some of them I hope the Senator from Arizona would not characterize as unwise. I know he feels as I do about veterans in this country. There is a substantial increase in money for veterans for their care. We want to do that. I will be honest with you, we need to pay the real cost of war, and that includes the commitment we have made to men and women who serve our country.

The same thing, I am sure, is true when it comes to law enforcement. I am sure the Senator from Arizona feels as I do.

The ACTING PRESIDENT pro tempore. The majority's time has expired.

Mr. DURBIN. I urge my colleagues—when this comes for a vote in a few moments—to support the cloture motion. Let's move this forward. Thank you.

Mr. KYL. Mr. President, how much time is remaining on our side?

The ACTING PRESIDENT pro tempore. The Senator from Arizona has 5 minutes.

Mr. KYL. Thank you, Mr. President. Let me respond to my friend, the majority whip now. Two plain points. First of all: that Republicans also serve on the Appropriations Committee. That is true. If the majority whip, however, wants to defend this bill, that is his prerogative. He can do that. I have the right to vote against it.

I do not serve on the Appropriations Committee, and I do not think it is a good bill. There may be some Republicans who do. I did not contend this was strictly a partisan activity, but I said it was wrong. When our constituents, who pay the taxes in this country, ask us to be more frugal, we could be more frugal than this.

Secondly, undoubtedly, in a bill of almost \$500 billion, there are good things. In fact, I know there are some good things in this bill. And I certainly suspect that the increase in veterans spending the majority whip referred to is probably supported by everybody in this body. That is the problem, however. When you do not do these appropriations bills one at a time, so you can vote on each one on its own merits, you are relegated to combining them into one giant bill. That is why it is called an omnibus bill, and you cannot differentiate between the things you support and the things you oppose. So what you have to end up doing is accepting all of the bad stuff in order to be able to support the good things.

That is a time-honored tradition around here. If you cannot get it all passed on its own merits, then bundle it up with a whole bunch of other stuff, and we will have to accept a lot of bad policy and bad spending because we do not want to be accused of not supporting our Nation's veterans.

Some of us are willing to say—and I, in fact, have had this conversation with veterans before: Would you rather have us vote against a bill which includes veterans spending but is way more than we should be spending or vote for that bill simply because it has veterans spending in it? I used to have this conversation with veterans when I was in the House of Representatives because they always combine veterans spending with HUD, and it was hard to pass the HUD bill but easy to pass the veterans bill. That is why they did it that way. My veterans were very understanding when I voted against that bill.

We have to be a little bit more courageous around here and a little bit more honest with our constituents in the way we set these bills up, so we do not

argue to them: Oh, you don't want to vote against veterans, do you? No, nobody wants to vote against veterans. But if you get to the point in the year where you have not done your work, and you have to combine all these bills together—and you have some good spending, for example, for veterans, but you are also raising the State Department by 33 percent—I think a lot of folks would say: That is too much. And we could actually save money by being more discreet in supporting some things and opposing others.

That is why it would have been better if the majority could have gotten these bills to us one at a time rather than combined into one omnibus bill.

So, I do think, at a certain point in time, our constituents can demand of us more fiscal prudence, more responsibility in the way we vote. The only way Republicans have to oppose a process by which all of these things came together at once, and the only way other Democrats who wish to demonstrate their prudence in spending to their constituents can do that, is to vote "no" so we do not proceed to this bill, so we could try to break it apart and vote on veterans, if you want to vote for veterans, but not a 33-percent increase in the State Department bill.

I urge my colleagues to vote "no" and to do this in a more responsible way so we do not have to go home and say to our constituents: Well, we voted for a 33-percent increase in the State Department over last year. I know it is tough for you, but the State Department needed that money. So I hope you will forgive us for doing that.

I do not think we want to do that. I hope my colleagues will vote "no."

#### PROJECT ATTRIBUTION CORRECTION

Mrs. MURRAY. Mr. President, I wish to join with my ranking member, Senator BOND, in a colloquy to correct clerical errors in the attribution table accompanying division A of H.R. 3288. Senator MERKLEY and Senator WYDEN are listed as having requested the Oak Street Extension, Schererville, IN, project under surface transportation priorities. My staff has confirmed that this project was not requested by Senator MERKLEY or Senator WYDEN, and, as such, Senator MERKLEY and Senator WYDEN's names should not be listed as requestors.

Mr. BOND. My colleague and chair, Senator MURRAY, is correct. The names were added as a result of a clerical error, and Senators WYDEN and MERKLEY should not be listed as sponsors.

In addition to this project, there are additional projects for which Senate names were inadvertently left off of the attribution table. I have confirmed with my staff that the Senators listed below did request the following projects, which have been properly disclosed and for which they have certified that they have no pecuniary in-

terest. Specifically, the projects, the account in which they are funded, and the additional sponsors are as follows:

I-49 North, LA, interstate maintenance, Senator VITTER;

Interstate 69, LA, interstate maintenance, Senator VITTER;

I-12 Interchange at LA-16, LA, interstate maintenance, Senator VITTER;

I-20 Lincoln Parish, LA, Delta Regional Transportation Development Program, Senator VITTER;

Clearview at Earhart drainage, LA, Delta Regional Transportation Development Program, Senator VITTER;

Rail spur extension—Greater Ouachita Parish, LA, rail line relocation and improvement, Senator VITTER;

Greater Ouachita Port Surface Development Project, LA, Economic Development Initiative, Senator VITTER;

Earthworks Engineering Research Center—EERC, Iowa State University, IA, transportation planning, research, and development, Senator GRASSLEY;

Jet engine technology inspection to support continued airworthiness—JET, Iowa State University, IA, transportation planning, research, and development, Senator GRASSLEY;

Interstate 74 corridor construction, IA, interstate maintenance, Senator GRASSLEY;

Alice's road extension/Ashworth Road to University Avenue, IA, surface transportation priorities, Senator GRASSLEY;

Construct four lane highway 20 West of U.S. 71, IA, surface transportation priorities, Senator GRASSLEY;

Iowa Highway 92 reconstruction, surface transportation priorities, Senator GRASSLEY;

Roger Snedden Dr. extension/grade separation—phase 1, IA, surface transportation priorities, Senator GRASSLEY;

University Boulevard widening, Clive, IA, surface transportation priorities, Senator GRASSLEY;

Iowa Highway 100 extension and improvements, Cedar Rapids, IA, surface transportation priorities, Senator GRASSLEY;

I-480/Tiedeman Road interchange modification, OH, interstate maintenance, Senator VOINOVICH;

I-76 Access/Martha Avenue connection, Akron, OH, surface transportation priorities, Senator VOINOVICH; and

Warrensville/Van Aken Transit Oriented, OH, surface transportation priorities, Senator VOINOVICH.

Mrs. MURRAY. Mr. President, Senator BOND, is correct. My staff has confirmed that the changes to the attribution table should be made so that the Senators listed above can be appropriately recognized as having requested the projects cited above.

Mr. BOND. I thank the chair for her assistance in this matter.

Ms. COLLINS. Mr. President, I rise today to discuss the conference report before us, which contains six of the seven remaining appropriations bills. Division D of the conference report contains the Financial Services and General Government appropriations bill. As ranking member of the subcommittee responsible for writing this division, I want to thank Senator DURBIN for his leadership and collegiality throughout the past year. Since joining this subcommittee, I have seen Senator DURBIN demonstrate the kind of bipartisan cooperation that is the hallmark



of the Appropriations Committee. He and I worked in a collaborative fashion to produce a bipartisan bill.

The Financial Services and General Government Subcommittee has jurisdiction over a diverse group of agencies, many of which have a profound impact on the financial stability of our economy and on the lives of most Americans. This appropriations bill is a key part of efforts to restore the stability of, and the public confidence in, America's financial institutions. It makes needed investments to strengthen the Securities and Exchange Commission's ability to enforce rules governing our financial markets and to detect and prosecute fraudulent schemes. It also increases the Federal Trade Commission's capacity to protect consumers from scams and anticompetitive behavior.

Senator DURBIN and I share many of the same concerns about the ability of our financial regulatory institutions to protect small investors and market participants. For years, the SEC's funding and staffing levels had declined, even as its oversight responsibilities rapidly increased. As a result, staffing shortages and an environment of lax oversight and enforcement at the SEC contributed to our current financial crisis. Funding shortfalls have hampered the ability of this agency to fulfill its mission of protecting the public through enforcement of securities laws.

We have included a 16-percent increase in funding for the SEC that will help the agency better fulfill its mission by giving it the resources to increase staffing levels and to make information technology upgrades.

The conference report also provides important increases above the President's budget request for the Consumer Product Safety Commission and the Federal Trade Commission. The CPSC protects American consumers from defective and unsafe products, while the FTC protects consumers from unscrupulous marketing scams.

The bill also provides ample funding for the Small Business Administration. Our economic strength and future are tied to the strength of small businesses. The conference report funds important SBA programs like Women's Business Centers, Veterans' Programs, Native American Outreach, and HUBZones above the President's budget request. As a former regional administrator of the SBA, I am particularly supportive of the increase of \$16 million over the President's request for the Small Business Development Center Program. Each year, the SBDC network of over 900 service centers provides management and technical assistance to an estimated 1.2 million small business owners and aspiring entrepreneurs.

The conference agreement includes an important provision that protects

the due process rights of auto dealers. The auto dealers are essential to the success of the auto manufacturers because the dealers facilitate distribution, sales, and servicing of hundreds of millions of vehicles annually. It is in the best interest of the public to have a competitive and viable automobile distribution network throughout the country, including in urban, suburban, and rural areas. It is also in the interest of the local economies, the national economy, and our economic recovery to preserve jobs at successful small businesses.

Senator DURBIN and I share similar views about the funding priorities for most of the agencies within this bill. One of the few areas where he and I disagree is the DC school voucher program. We both respect one another's different positions on this issue, but I am disappointed that this bill effectively ends this successful program.

The DC Opportunity Scholarship Program has provided additional educational options for some of the District's most at-risk, low-income children who had previously attended some of the lowest-performing schools in the country.

Sadly, DC's public schools continue to underperform despite a per-pupil expenditure rate that is the third highest in the Nation. Experts have carefully studied the DC Opportunity Scholarship Program and concluded that the educational success of the program's participants in reading has outpaced those in DC public schools.

Of the \$75.4 million for DC public schools in this bill, \$42.2 million is to improve the District's public schools, \$20 million is to support DC public charter schools, and \$13.2 million is for Opportunity Scholarships. Unfortunately, the conference report contains language that would only allow currently enrolled students to remain in the program. No new students would be permitted, despite the fact that the \$7,500 per student cost for scholarship children is less than one-half the \$15,511 per student cost for DC public schools.

In May, Senator LIEBERMAN and I held a hearing in the Homeland Security and Governmental Affairs Committee during which we heard compelling success stories of current and former participants in the program. Their testimony helped to highlight the real world implications of discontinuing the program. The fear about this program ending was poignantly stated by a little girl wearing a T-shirt asking: "What About Me?"

By all accounts, students are succeeding and thriving in their scholarship schools, and their parents are overwhelmingly satisfied with the education that their children are receiving. So I do not see the wisdom of blocking new students from participating in this successful program.

I am disappointed that the full Senate never had an opportunity to take up, debate, and amend the Financial Services and General Government appropriations bill when it was reported out of committee.

This is unfortunate, especially since Senator DURBIN and I worked hard to write a bipartisan bill which had overwhelming support in the committee. The Senate has had time to consider all 12 Appropriations bills. Chairman INOUE and Vice Chairman COCHRAN both worked hard to complete and report all 12 bills out of committee by September. For the record, the Financial Services bill was reported out of committee on July 9.

Next year we must return to regular order so that all Senators can have an opportunity to debate these important bills.

I thank the Financial Services and General Government Subcommittee staff: Marianne Upton, Diana Hamilton, Melissa Petersen, and Richard Burkard with the majority; and Mary Dietrich and Rachel Jones with the minority.

Turning to Division A of the conference report, I would like to speak in support of a provision I authored. This provision will increase safety, save energy, and decrease vehicle emissions by creating a 1-year pilot project to allow trucks weighing up to 100,000 pounds to travel on Maine's interstates. This provision also requires an analysis by the U.S. Department of Transportation and the State of Maine of provision's impact on safety, road and bridge durability, energy use, and commerce.

By way of background, let me explain why this pilot project is needed. Under current law, trucks weighing 100,000 pounds are allowed to travel on the portion of Interstate 95 designated as the Maine Turnpike, which runs from Maine's border with New Hampshire to Augusta, our capital city. At Augusta, the Turnpike designation ends, but I-95 proceeds another 200 miles north to Houlton. At Augusta, however, heavy trucks must exit the modern four-lane, limited-access highway and are forced onto smaller, two-lane secondary roads that pass through cities, towns, and villages. The same problem occurs for Maine's other Interstates like I-295 out of Portland and I-395 in the Bangor-Brewer area.

Diverting trucks onto these secondary roads raises critical safety concerns. In fact, there have been several accidents, some of which have tragically resulted in death, which have occurred after these large trucks were diverted onto secondary roads and through smaller communities. For example, In May 2007, a 17-year-old high school student from Hampden, ME, lost her life when her car was struck by a heavy truck on Route 9. The truck driver could not see the car turning onto that two-lane road as he rounded

a corner. Interstate 95 runs less than three-quarters of a mile away, but Federal law prevented the truck from using that modern, divided highway, a highway that was designed to provide ample views of the road ahead.

A year earlier, Lena Gray, an 80-year-old resident of Bangor, was struck and killed by a tractor-trailer as she was crossing a downtown street. Again, that accident would not have occurred had that truck been allowed to use I-95, which runs directly through Bangor.

While improving safety is the key objective, a uniform truck weight limit of 100,000 pounds on Maine's interstate highways also would reduce highway miles, as well as the travel time necessary to transport freight through Maine, resulting in economic and environmental benefits. Moreover, Maine's extensive network of local roads would be better preserved without the wear and tear of heavy truck traffic.

Interstate 95 north of Augusta, ME, where trucks are currently limited at 80,000 pounds, was originally designed and built for military freight movements to Loring Air Force Base at weights much heavier than 100,000 pounds. Raising the truck weight limit would keep heavy trucks on the interstates, which are designed to carry more weight than the rural State roads.

Current Maine law requires that vehicles carrying up to 100,000 pounds on state roads be six-axle combination vehicles. Current Federal law requires that vehicles carrying 80,000 pounds be five-axle. Contrary to erroneous assumptions, six-axle 100,000 pound vehicles are not longer, wider or taller than the five-axle 80,000 pound vehicles. The six-axle 100,000 pound vehicles, which include an additional set of brakes, allow for greater weight distribution thereby not increasing road wear and tear. Further, stopping distances and safety are in no way diminished, and preliminary data from studies conducted by the Maine State Police support this statement. That is why Maine's Commissioner of Public Safety, the Maine State Troopers Association, and the Maine Association of Police all support this pilot project.

A higher weight limit in Maine will not only preserve our rapidly deteriorating roads, but will provide economic relief to an already struggling trucking industry. Trucks weighing up to 100,000 pounds are permitted on interstate highways in New Hampshire, Massachusetts, and New York as well as the Canadian Provinces of New Brunswick and Quebec. Maine truck drivers and the businesses they serve are at a competitive disadvantage.

Last year, I met with Kurt Babineau, a small business owner and second generation logger and trucker from Maine. Like so many of our truckers, Kurt has been struggling with the increasing costs of running his operation. All of

the pulpwood his business produces is transported to Verso Paper in Jay, ME, a 165-mile roundtrip. This would be a considerably shorter trip if his trucks were permitted at 100,000 pounds to remain on Interstate 95. Instead, his trucks must travel a less direct route through cities and towns. Kurt estimated that permitting his trucks to travel on all of Interstate 95 would save him 118 gallons of fuel each week. At last year's diesel cost of approximately \$4.50 a gallon, and including savings from his drivers spending less time on the trip, he could have saved more than \$700 a week, and more than \$33,000 and 5,600 gallons of fuel annually. These savings would not only be beneficial to Kurt's bottom line, but also to his employees, his customers, and to our nation as we look for ways to decrease the overall fuel consumption.

An increase of the Federal truck weight limit in Maine is widely supported by public officials throughout Maine, including the Governor, the Maine Association of Police, and the Maine Department of Public Safety, which includes the State Bureau of Highway Safety, the Maine State Police, and the Bureau of Emergency Communications. The Maine Legislature also has expressed its support for the change having passed resolutions over the past several years calling on Congress to raise the Federal truck weight limit to 100,000 pounds in Maine. I look forward to passage of this important provision, which has been long awaited in my State.

#### CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report to accompany H.R. 3288, the Transportation, HUD, Related Agencies Appropriations Act for Fiscal Year 2010.

Daniel K. Inouye, Al Franken, Jon Tester, Paul G. Kirk, Jr., Roland W. Burris, Edward E. Kaufman, Jack Reed, Daniel K. Akaka, Mark Begich, Patty Murray, Jeff Bingaman, Robert P. Casey, Jr., Sherrod Brown, Thomas R. Carper, Byron L. Dorgan, Richard J. Durbin, Harry Reid.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 3288, the Transportation, Housing and Urban Development and Related Agencies Appropriations Act of 2010 shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. COBURN), the Senator from South Carolina (Mr. GRAHAM), the Senator from South Carolina (Mr. DEMINT), and the Senator from Indiana (Mr. LUGAR).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted "nay" and the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

The PRESIDING OFFICER (Mrs. GILLIBRAND). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 373 Leg.]

#### YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown	Kaufman	Rockefeller
Burris	Kerry	Sanders
Byrd	Kirk	Schumer
Cantwell	Klobuchar	Shaheen
Cardin	Kohl	Shelby
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Cochran	Leahy	Tester
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden

#### NAYS—34

Alexander	Feingold	McConnell
Barrasso	Grassley	Murkowski
Bayh	Gregg	Risch
Bennett	Hatch	Roberts
Brownback	Hutchison	Sessions
Burr	Inhofe	Snowe
Chambliss	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker
Ensign	McCain	
Enzi	McClaski	

#### NOT VOTING—6

Bond	Coburn	Graham
Bunning	DeMint	Lugar

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 34. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Minnesota is recognized.

Mr. FRANKEN. Madam President, I rise today to speak in support of amendment No. 2795, which would repeal the antitrust exemption for health insurance and medical malpractice insurance. I thank my colleague Chairman LEAHY for championing this legislation, which is crucial to health reform and to working families around the country who pay too much in health insurance premiums.

We are on the verge of expanding health insurance to 31 million more Americans—an accomplishment that

would be truly historic. But as heartened as I am about the relief this will bring to families, I am deeply concerned that this expansion could be a windfall for insurance companies if we don't include additional checks and balances. We should be putting significant Federal funds towards health insurance—but that money should go towards helping people afford health insurance, not towards lining the pockets of insurance companies and their CEOs.

As a country, we have long understood the profound importance of economic competition. Competition leads to greater entrepreneurship, creativity, and productivity for businesses. It leads to lower prices and higher quality for consumers. Competition is why America has created so many of the most innovative businesses in the world. It is also why we enacted antitrust laws—because we need to protect this value we hold dear, and we know that competition won't always happen on its own.

Because I understand the value of competition, I am extremely concerned about the antitrust exemption in current law for health insurance and malpractice insurance. It is indisputable that health insurance premiums have gone through the roof in recent years. From 1999 to 2008, median income rose about 24 percent, but insurance premiums grew by 131 percent. It is no wonder that so many American families are struggling to afford insurance.

These high premiums are directly connected to the lack of competition in statewide health insurance markets. Ninety-four percent of State health insurance markets are considered “highly concentrated,” according to the U.S. Department of Justice. In 16 States, the two biggest health care insurance companies controlled 75 percent or more of the market in 2007. In Hawaii, that figure was 98 percent. In Rhode Island and Alaska, it was 95.

But while American families suffer, insurance company profits continue to rise. From 2000 to 2008, the major insurance companies made over \$59½ billion. Their profits rose by 428 percent from 2000 to 2007. And their CEOs are making big bucks themselves—in 2007, the CEO of Aetna took home \$23 million, while the CEO of CIGNA took home \$25.8 million.

The antitrust exemption for health insurance and malpractice insurance may have had a purpose at one point in time—it gave the health insurance companies time to respond to a major change in the law. When Congress passed the McCarran Ferguson Act in 1945, it was responding to a 1944 Supreme Court case that upended the insurance industry as they knew it. The bill passed without any hearings in the Senate and with very little debate in the House.

Most indications suggest that both the House and the Senate expected the

antitrust exemption to be temporary. But somehow, through the conference report, this “temporary fix” became permanent—and health insurance markets have become more and more concentrated as a result.

This cannot continue. Senator LEAHY's amendment gives us the opportunity to further the American ideal of competition, and help working people in the process. I urge my colleagues to bring this amendment up for a vote, and to vote to repeal the antitrust exemption. This issue is just too important for us to wait any longer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I rise to speak on the pending bill before us, one of the great porkbarrel, earmark-filled pieces of legislation I have seen come before this body.

I would like to quote from ABC News, by Jonathan Karl and Devin Dwyer, “Tis the Season of ‘Pork’: Congress Gifts \$4 Billion in Earmarks.”

Just weeks before returning to their districts for Christmas, Congress is poised to give the gift of pork—roughly \$4 billion of it.

More than 5,000 earmarks were included in the \$447 billion omnibus spending bill passed yesterday by the House, funding “pet projects” of key members of Congress from both parties and all regions of the country. The Senate will vote on the bill this weekend.

Independent analyses of the bill reveal a whopping 12 percent increase in government spending for 2010 while the inflation rate in the country remains near zero.

Really, isn't that remarkable? A 12-percent increase in spending when people are out of jobs, out of their homes. They cannot afford, basically, what they need to sustain their lives, and we have increased spending by 12 percent and 4,500 earmarks, about \$4 billion of it.

“This Congress has not shown that they are at all serious about the budget deficit in any way,” said Brian Riedl of the Heritage Foundation. “The spending spree is continuing even as the deficit escalates to \$2 trillion.”

The earmarks are all explicitly listed in the bill—right next to the members of Congress who inserted them: \$800,000 for jazz at New York's Lincoln Center, for Rep. Jerold Nadler, D-N.Y., and Sen. Tom Harkin, D-Iowa. Harkin, and Rep. Leonard Boswell, D-Iowa, got \$750,000 for exhibits at the World Food Prize Hall in Iowa. Hawaii Democratic senators Dan Inouye and Daniel Akaka helped get \$3.4 million for a rural bus program in Hawaii.

“The country needs to be tightening its belt, just like the rest of America,” said Steve Ellis of Taxpayers for Common Sense. Republicans have criticized the spending package, but many Democrats say it funds key priorities.

Two of the biggest earmarks are from Republican senators Thad Cochran and Roger Wicker of Mississippi at a cost of \$8 million for improvements to four rural State airports. One airport serves fewer than 100 passengers a day and another—the Mid-Delta Regional Airport—sees even less.

By the way, I have seen the pork extended to both of those airports over the years.

The new funds would come on top of \$4.4 million the airports just received from the stimulus package.

I am not making this up.

“We obviously have huge aviation and transportation needs in this country and stuffing millions of dollars in small, little-used airports in Mississippi is not a wise use of funds,” said Ellis.

President Obama had promised to curb the inclusion of earmarks in government spending bills but he has yet to issue the threat of a veto.

My friends, do not wait for the threat of a veto.

In March, Obama signed a \$410 billion spending package that contained nearly 8,000 pet projects.

“I am signing an imperfect omnibus bill because it's necessary for the ongoing functions of government,” Obama said at the time. “But I also view this as a departure point for more far-reaching change.”

What has changed? What has changed? Nothing. Nothing has changed.

Senate majority leader HARRY REID said about the last omnibus: We have a lot of issues we need to get to after we fund the government—something we should have done last year but could not because of the difficulty we had working with President Bush.

Difficulty working with President Bush? Whom did the majority leader have trouble working with this time?

Again, I repeat, a 1,350-page Omnibus appropriations conference report, 6 bills, spends \$450 billion, 4,752 earmarks totaling \$3.7 billion, and a full 409 pages of this conference report are dedicated to listing congressional pork-barrel spending. Spending on domestic programs in this bill is increased 14 percent over the last fiscal year, while spending on military construction and care for veterans has increased by only 5 percent.

Let's look at a little bit of it. Transportation, Housing and Urban Development contains 1,400 earmarks totaling over \$1 billion. Commerce-Justice-Science contains 1,511 earmarks totaling \$715 million. The list goes on and on. Here we are with a deficit of \$1.4 trillion, a debt of \$12 trillion, unemployment at 10 percent, nearly 900,000 families lost their homes in 2008, yet there is every indication that the aggregate numbers for 2009 will be worse. With all this, we continue to spend and spend and spend. Every time we pass an appropriations bill with increased spending and load it up with earmarks, we are robbing future generations of Americans of the ability to obtain the American dream. Forty-three cents out of every dollar spent in this bill is borrowed from our children and our grandchildren and, unfortunately, generations after theirs. This is the greatest act of generational theft committed in the history of this country.

Let me go through a few of these, if I might, and remind people of the context this is in. In my home State of Arizona, 48 percent of the homes are “underwater,” meaning they are worth less than the mortgage payments people have to pay. We have small businesspeople losing credit everywhere. Instead of trying to fix their problems and helping them out, it is business as usual in the Senate of the United States of America and the Congress.

For example: \$200,000 for the Washington National Opera, Washington, DC, for set design, installation and performing arts at libraries and schools; \$13.9 million on fisheries in Hawaii—there is always Hawaii—nine projects throughout the islands ranging from funding bigeye tuna quotas, marine education and training, and coral research; \$2.7 million—one of my favorites—to support surgical operations in outer space at the University of Nebraska. As I have said many times—the common theme—you will always have a location designated for these projects. That is why some of them may be worthwhile, but we will never know because they don’t compete them. They earmark them for the particular place they want to help. Unfortunately, that shuts out other people. There may be other places besides the University of Nebraska that can support surgical operations in outer space. I suggest we get Dr. Spock and Bones out there to help at the university. I don’t know if they live in Omaha or not. I am sure to them and all the others on “Star Trek,” surgical operations in outer space may be one of their priorities. It certainly isn’t a priority of the citizens of my State.

One of the great cultural events that took place in the 20th century was the Woodstock Festival. In order to do a lot more research on that great cultural moment, we are going to spend \$30,000 for the Woodstock Film Festival Youth Initiative; \$200,000 to renovate and construct the Laredo Little Theater in Texas—people from all over America are flocking to the Laredo Little Theater, and they want to invest \$200,000 of their tax dollars into the Laredo Little Theater. The money would be used to replace worn auditorium seating and soundproofing materials. Anybody got a little theater that warrants soundproofing? Maybe they should apply to the Senator from Texas.

Continuing: \$665,000—I am not making this one up—for the Cedars-Sinai Medical Center in Los Angeles for equipment and supplies for the Institute for Irritable Bowel Syndrome Research. I have a lot of comments on that issue, but I think I will pass so as not to violate the rules of the Senate. There is \$500,000 for the Botanical Research Institute of Texas in Fort Worth. I am sure the Botanical Re-

search Institute in Fort Worth is a good one. I would like to see other botanical research institutes able to compete. There is \$600,000 for water storage tower construction in Ada, OK, population 16,008; \$200,000 for a visitor center in Bastrop, TX, the population is 5,340; \$292,200 for elimination of slum and blight in Scranton, PA—that may have been put in by the cast of the office—\$229,000 for elimination of slum and blight in Scranton; \$200,000 for design and construction of the Garapan Public Market in the Northern Mariana Islands; \$500,000 for development of a community center—\$½ million—in Custer County, ID, population 4,343; \$100,000 for the Cleveland Municipal School District—they just picked one and gave them \$100,000—\$800,000 for jazz at the Lincoln Center; \$300,000 for music programs at Carnegie Hall; \$400,000 for Orchestra Iowa Music Education, Cedar Rapids, IA, to support a music education program; \$2.5 million for the Fayette County Schools in Lexington, KY, for a foreign language program; \$100,000 to the Cleveland Municipal School District in Cleveland, OH, to improve math and language skills through music education; \$700,000 for the National Marine Fisheries Service for the project Shrimp Industry Fishing Effort Research Continuation; \$1.6 million to build a tram between the Huntsville Botanical Garden and the Marshall Flight Center in Alabama—how many places need \$1.6 million to build a tram, it will probably go out to the statue of Vulcan—\$250,000 for the Monroe County Fiscal Court for the Monroe County Farmers Market in Kentucky; \$750,000 for the design and fabrication of exhibits to be placed in the World Food Prize Hall of Laureates in Iowa; \$500,000 to support creation of a center to honor the contribution of Senator Culver, an Iowa State Senator, at Simpson College; \$400,000 to recruit and train closed captioners and court reporters at the AIB College of Business in Iowa; \$250,000 for renovating the Murphy Theatre Community Center in Ohio.

There is a lot more, and I will go through them briefly. The point is, you will notice several things. One, the preponderance of these pork-barrel and earmark projects is allocated to members of the Appropriations Committee, which is fundamentally unfair. Second, you will find these are designated to a certain place, to make sure none of that money is spent somewhere else where the need may be greater. Third, it breeds corruption. It is a gateway drug. What we are talking about is a gateway drug. It is especially egregious now.

Continuing: \$300,000 to monitor and research herring in Maine; \$200,000 to study Maine lobsters; \$250,000 for a Father’s Day rally parade in Philadelphia. I scoff and make fun of a lot of these but \$250,000 for a Father’s Day

rally parade in Philadelphia. There is \$100,000 for the Kentler International Drawing Space, an art education program in Brooklyn. Here is a deprived area, \$75,000 for art projects in Hollywood Los Angeles Park; \$100,000 for a performing arts training program at the New Freedom Theater in Philadelphia; \$100,000 to teach tennis at the New York junior tennis league in Woodside, NY; \$2.8 million to study the health effects of space radiation on humans at the Loma Linda University, Loma Linda, CA; \$200,000 for the Aquatic Adventures Science Education Foundation in San Diego; \$100,000 to archive newspaper and digital media at the Mississippi Gulf Coast Community College in Perkinston, MS; \$3.9 million on researching weaving and knitting at Clemson University, Raleigh, NC, Philadelphia University, UC Davis in Davis, CA; \$90,000 for a commercial kitchen business incubator at the El Pajaro Community Development Corporation in Watsonville, CA; \$500,000 to study vapor mercury in the atmosphere at Florida State; \$1 million to examine sea scallops fisheries at the Massachusetts Marine Fisheries in Bedford; \$300,000 for seal and stellar sea lion biological research; \$300,000 for Bering Sea crab management; \$500,000 to upgrade the Baldwin County Courthouse security in Fairhope, AL; \$900,000 for the operational costs and capital supporting the Alien Species Action Plan cargo inspection facility in Maui; \$2 million to streetscape the city of Tuscaloosa, AL; \$100,000 for an engineering feasibility study of a bike connector in Hiran, OH; \$400,000 for a pedestrian overpass in Des Moines; \$300,000 for a bike path in Cuellar, TX; \$900,000 for a river freight development study in Missouri; \$800,000 for a scenic trail in Monterey Bay, CA, another deprived area; \$750,000 for the Philadelphia Museum of Art Transportation Improvement Program, Brady, PA; \$500,000 for park-and-ride lots at Broward County, Meek, FL; \$487,000 to restore walkways in Newport Cliff, RI, another low-income area; \$974,000 for Regional East-West and Bikeway in Albuquerque.

The list goes on and on and on, up to nearly \$4 billion. The problem is, among other problems, in the last campaign, the President campaigned for change, change you can believe in. There is no change here. It is worse. It is worse because of the conditions Americans find themselves in—out of their homes, out of jobs, high unemployment, tough economic conditions. It is business as usual, spending money like a drunken sailor, and the bar is still open.

I tell my colleagues, again, what I keep saying over and over: There is a peaceful revolution going on. They are sick and tired of the way we do business in Washington. They don’t think their tax dollars should be spent on these pork-barrel earmarked projects.

They are mad about it. We are not getting the message. We are not hearing them. We are not responding to the problems and the enormous challenges the American people have. We are continuing this kind of obscene process, which not only is wrong on its face but breeds corruption in Washington.

I ask unanimous consent that the AP story "Senate Set to Advance \$1.1 trillion Spending Bill" be printed in the RECORD, as well as the ABC News story and the FOX News story "Watchdogs Cry Foul Over Thousands of Earmarks in Spending Bills."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE SET TO ADVANCE \$1.1T SPENDING BILL  
(By Andrew Taylor)

WASHINGTON.—The Senate is poised to clear away a Republican filibuster of a huge end-of-year spending bill rewarding most federal agencies with generous budget boosts.

The \$1.1 trillion measure combines much of the year's unfinished budget work—only a \$626 billion Pentagon spending measure would remain—into a 1,000-plus-page catch-all spending bill that would give Cabinet departments such as Education, Health and Human Services and State increases far exceeding inflation.

After a 60-36 test vote on Friday in which Democrats and a handful of Republicans helped the measure clear another GOP obstacle, the bill was expected to win on Saturday the 60 Senate votes necessary to guarantee passage. A final vote is expected Sunday.

The measure provides spending increases averaging about 10 percent to programs under immediate control of Congress, blending increases for veterans' programs, NASA and the FBI with a pay raise for federal workers and help for car dealers.

It bundles six of the 12 annual spending bills, capping a dysfunctional appropriations process in which House leaders blocked Republicans from debating key issues while Senate Republicans dragged out debates.

Just the \$626 billion defense bill would remain. That's being held back to serve as a vehicle to advance must-pass legislation such as the debt increase.

Saturday's bill would offer an improved binding arbitration process to challenge General Motors' and Chrysler's decisions to close more than 2,000 dealerships, which often anchor fading small town business districts. It also renewed for two more years a federal loan guarantee program for steel companies.

The bill also caps a heated debate over Obama's order to close the military-run prison for terrorist suspects at Guantanamo Bay, Cuba. It would permit detainees held there to be transferred to the United States to stand trial but not to be released.

The bill would also void a long-standing ban on the funding of abortion by the District of Columbia government and overturns a ban on federal money for needle exchange programs in the city. It also phases out a D.C. school voucher program favored by Republicans and opens the door for the city to permit medical marijuana.

It would also lift a nationwide ban on the use of federal funds for needle-exchange programs.

Federal workers would receive pay increases averaging 2 percent, with people in areas with higher living costs receiving slightly higher increases.

Once the bill clears the Senate, it would advance to President Barack Obama's desk.

WATCHDOGS CRY FOUL OVER THOUSANDS OF  
EARMARKS IN SPENDING BILL

Republicans and taxpayer watchdogs are railing against the thousands of earmarks included in the omnibus spending bill that passed the House Thursday and is awaiting a vote in the Senate.

Republicans and tax watchdog groups are railing against the thousands of earmarks included in the omnibus spending bill that the House passed Thursday and is awaiting a vote in the Senate.

The \$1.1 trillion bill includes \$447 billion in operating budgets for 10 Cabinet departments. Mixed in are more than 5,000 earmarks totaling \$3.9 billion, according to watchdog Taxpayers for Common Sense.

Pork-watchers are only just beginning to sort through the earmarks, which typically are goodies set aside for the districts of members of Congress, as the bill tracks toward a final vote. So far, they've uncovered gems ranging from \$700,000 for a shrimp fishing project in Maryland to \$30,000 for the Woodstock Film Festival Youth Initiative to \$200,000 for a visitor's center in a Texas town with a population of about 8,000.

"Let's stop the madness," House Republican Leader John Boehner said, before the bill passed without any GOP support. Twenty-eight House Democrats also opposed it.

House Minority Whip Eric Cantor, R-Va., wrote to President Obama urging him to veto the bill, and pledging that Republicans would stand by him if he did.

Obama in March waved off controversy over a \$410 billion spending bill that also was riddled with earmarks, arguing that it represented "last year's business." This time around, Boehner said, the president needs to crack down on the pork under his watch.

Republicans, though, have hardly shied away from the earmarks. Sen. Thad Cochran, R-Miss., is pushing \$200,000 for the Washington National Opera. Sen. Judd Gregg, a fiscal hawk, is behind a \$1 million earmark for renovation at the Portsmouth Music Hall.

Taxpayers for Common Sense reports a total of 5,224 earmarks in the 2010 spending bill, which also includes funding for Medicare and Medicaid. Groups like Citizens Against Government Waste, as well as Sen. John McCain's staff, have drawn attention to dozens of items they consider questionable. Here's just a sampling:

—\$150,000 for educational programs and exhibitions at the National Building Museum.

—\$400,000 for renovation of the Brooklyn Botanical Garden.

—\$150,000 for exhibits at the Theodore Roosevelt Inaugural Site Foundation in Buffalo, N.Y.

—\$500,000 for Mississippi River exhibits at the National Mississippi River Museum and Aquarium in Dubuque, Iowa.

—\$200,000 for the Washington National Opera.

—\$30,000 for the Woodstock Film Festival Youth Initiative.

—\$2.7 million for the University of Nebraska Medical Center, to support surgical operations in space.

—\$200,000 for a visitor's center in Bastrop, Texas.

—\$700,000 for a project called, "Shrimp Industry Fishing Effort Research Continuation," at the National Marine Fisheries Service in Silver Spring, Md.

—\$292,200 for the elimination of blight in Scranton, Pa.

—\$750,000 for exhibits at the World Food Prize Hall of Laureates in Iowa.

—\$1.6 million for a tram between the Marshall Flight Center and Huntsville Botanical Garden in Alabama.

—\$655,000 for equipment at the Institute for Irritable Bowel Syndrome Research in Los Angeles.

Republicans have been on a tear over earmarks and excessive spending over the past week, particularly as Congress prepares to take up a new jobs-creation package and raise the debt ceiling by nearly \$2 trillion.

Rep. Mark Kirk, R-Ill., and Rep. Tom Price, R-Ga., on Thursday named what they called the 11 most wasteful spending projects considered by Congress so far this year.

On Wednesday, four Republican lawmakers demanded an audit of the \$787 billion stimulus program following reports of exaggerated or inaccurate accounts of the number of jobs created.

McCain, R-Ariz., and Sen. Tom Coburn, R-Okla., on Tuesday released a report on 100 "questionable" stimulus projects worth nearly \$7 billion.

Mr. MCCAIN. Madam President, I am sorry to be repetitive. I know my colleague is waiting, so I will end with this: This is wrong. We all know it is wrong. The American people know it is wrong. People who vote for this kind of porkbarrel spending are going to be punished by the voters, and we are going to end this obscene process, and we are going to end it soon, as early as the next election.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, we are now considering a bill that represents a dramatic expansion in government spending, as the Senator from Arizona has so eloquently stated. This Omnibus appropriations bill represents a 12-percent increase over last year—a fiscal year that ended with the largest deficit in American history of \$1.4 trillion.

I do not know of any other area in the economy where people are spending 12 percent over what they spent last year. Certainly no family budget in America, no business in America is spending 12 percent more this year than they did last year—while we see 10 percent of our people unemployed.

Millions of families across the country and small businesses are, in fact, tightening their budgets. But the budgets of these Federal agencies and of the Federal Government itself keep expanding. There is a 33-percent increase in spending for foreign operations, a 23-percent increase in Transportation, Housing, and Urban Development.

One of the worst things this spending is doing is creating tremendous uncertainty, both here at home and in other places such as China which are buying our debt, about whether we are ever going to get serious about our fiscal responsibility.

The President asked last week why job creators were not stepping up and creating jobs. Well, the fact is, people are watching what we are doing in Congress, and they do not know what the

rules will be 6 months from now or a year from now or whether Congress will ever recover from this binge it has been on when it comes to spending.

But it is clear we cannot spend—we cannot spend—our way out of this recession. Job creators are scared. They are scared, and they are sitting on the sidelines because all of the spending, all of the tax increases, all of the government takeovers coming out of Washington, DC, these days leave them with the sense that they do not know what the rules are going to be. And why in the world would you want to create a job, expand your business, or make an investment when the very premise upon which you did so would change because of all the chaos in Washington?

The facts of our debt crisis are not in dispute. The total public debt stands at about \$12 trillion. We have, in 2009, a \$1.4 trillion fiscal deficit. In other words, we have spent more than \$1.4 trillion than the Treasury brought in in fiscal year 2009. Then we are accumulating debt even faster during this year than we did last year.

According to the Treasury Department, the deficit for the first 2 months—2 months—of the new fiscal year was almost \$300 billion—\$300 billion for 2 months—a total larger than the full-year deficits in 2002, 2006, or 2007. So in 2 months, the deficit was worse than it was for the entire years of 2002, 2006, and 2007.

Our deficits will average nearly \$1 trillion every year for the next decade—\$1 trillion every year for the next decade—according to the administration. This ought to be a shot across our bow.

Moody's Investors Service said its debt rating on U.S. Treasury securities may "test the Triple-A boundaries." The translation of that is they are beginning to doubt whether at some point the U.S. Government will be able to pay its bills or will default on those bills at some point hopefully not any time soon. But this is the sort of pressure we are putting not only on our ability to create jobs but on our future and particularly on our children's future, if we cause Moody's Investors Service and others to rate U.S. Treasury securities less than a Triple-A rating.

Well, we know soon our colleagues on the other side of the aisle are going to ask Congress to vote to lift the debt ceiling. In other words, this is like the credit limit on your credit card. Once Congress is bumped up against that \$12 trillion debt ceiling, Congress is going to have a vote on whether to ask the American people and people buying our debt whether we can increase the limit of our credit card because we have maxed it out.

Media reports indicate that the majority intends to slip this provision into a bill on funding our troops in Af-

ghanistan because, frankly, they are embarrassed to have a stand-alone vote on raising the debt ceiling, especially because they know there are many of us on both sides of the aisle who will insist on some measure to effect some discipline on this spending binge as a condition to voting on the debt ceiling. But whatever the vehicle the majority leader decides upon, they cannot hide the fact that we are borrowing money so fast that we will have to raise the debt ceiling another 15 percent.

Conveniently, this increase will get the government through the next midterm elections, it is reported according to some experts. Not a coincidence. No one, particularly those in control of the Congress, wants to have another vote on lifting the debt ceiling or asking the American people to raise the credit card limit before the next election because they know the American people are increasingly angry and frightened by the spending binge they see here, and particularly the accumulating debt.

That is not even getting to the financial crisis that entitlement programs are facing, such as Medicare and Social Security. We know Medicare's unfunded liabilities are roughly \$38 trillion. I realize that number is so big that there are perhaps none of us who can fully comprehend how much money that is—but \$38 trillion in unfunded liabilities for Medicare alone. Yet the proposed Medicare "compromise" among 10 Democrats would roughly double the burden of Medicare and not fix it but actually make things worse.

Well, I want to mention one other item of fiscal irresponsibility I have witnessed. I think we need to cancel one of the credit cards that has been used by the administration—not just this administration but the past administration—and Congress for purposes Congress never intended when it authorized this program, the Troubled Asset Relief Program or TARP.

I know the Senator from South Dakota is on the Senate floor. He has been one of the leaders in this effort because he believes, I think, as I do, that we cannot amend it, so we need to end it. We need to cut out this revolving credit account that is being used for inappropriate purposes known as TARP, the Troubled Asset Relief Program.

Let's go back and look at why TARP was authorized by Congress in October of 2008. It is important to remember what the situation was at that time. Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke had many conversations with legislators on both ends of the Capitol on both sides of the aisle, and they said in their public testimony—on September 23, Secretary Paulson said that Congress must act "in order to avoid a continuing series of financial institution failures and frozen credit markets

that threaten . . . the very health of our economy."

In private, their diagnosis was even more dire. We were told "that we're literally maybe days away from a complete [financial] meltdown of our financial system" in the United States unless Congress acts to authorize the Troubled Asset Relief Program.

Many of us, including myself, voted for TARP because we were told by the smartest people on the planet that unless we did this, our economy would suffer an economic meltdown. But I must tell you, I am extremely disappointed that the very nature of the program was changed after Congress authorized it. For example, we were told by Secretary Paulson and others that the money would be used for one purpose, and one purpose only; that is, to purchase toxic assets.

Well, there is a saying that says: "Fool me once, shame on you. Fool me twice, shame on me." And we were fooled into believing that the TARP would be used to purchase these toxic assets and get them off the books as a way of protecting pensions, savings, and investments of hard-working American taxpayers.

Unfortunately, the very people who promised us and told us what purpose the TARP would be used for misled us because two administrations now—the previous administration and this administration—have used TARP as if it were a big government slush fund. They ignored the clear language of the TARP legislation, and they have repeatedly defied the will of Congress.

Let me briefly mention how the TARP funds have been used in a way that Congress never authorized and never intended.

Only weeks after TARP was enacted, the Bush administration abandoned this stated goal of purchasing toxic assets. Instead, the administration funneled billions of dollars directly into some of the Nation's largest financial institutions, making huge purchases of stock and warrants of some of the Nation's largest financial institutions.

The Federal Government, in other words, began acquiring ownership, stakes in banks, financial institutions, and, yes, even car manufacturers, with the full support of the Obama administration. In fact, the Obama administration has even gone so far as to use TARP to set executive pay at several companies. During the reorganization of General Motors, the Obama administration has used that leverage to benefit its union allies over the rights of secured bondholders who had loaned their money to these companies. I have been a vocal opponent of this misuse of TARP by both administrations.

In December 2008, I joined my colleagues in voting against the government bailout of the auto industry, a vote ignored by both the previous administration and the current administration.



Earlier this year, I supported a TARP disapproval resolution that would have stopped the program dead in its tracks because of this misrepresentation of the purpose for which these funds would be used. I have also supported several initiatives that would have increased TARP transparency and congressional oversight.

Then, in September, I joined many of our colleagues in sending a letter to Secretary Tim Geithner, at Treasury, asking him not to extend his TARP authority beyond the end of this year, as the law allows him to do. This would have eliminated the need for the government to borrow more money through this program. But, unfortunately, Secretary Geithner notified Congress that he has extended TARP authority until next October.

Now we read that the administration is proposing using repaid TARP funds; that is, money that was loaned to these large financial institutions that is now being repaid—that Treasury anticipates using this for a second stimulus plan. Well, I guess that is because they think the first stimulus plan worked so well.

You will recall, the stated objective was to hold unemployment below 8 percent. Well, it has gone above 10 percent and, frankly, I think we need to learn from our mistakes as well as things we have done right. It would be a mistake to put more money, particularly TARP money, into a new stimulus plan and have it work so ineffectively, as the first stimulus plan did.

Repaid TARP dollars cannot pay for anything. TARP is like a credit card. Every dollar spent is a borrowed dollar, adding up additional deficits, additional debt. Using TARP on new spending would break the promise the President made when he voted for TARP in this very Chamber. At that time, then-Senator Obama said:

[I]f American taxpayers are financing this solution, then they have to be treated like investors. They should get every penny of their tax dollars back once the economy recovers.

That was then-Senator Obama, now President of the United States.

I would just conclude by saying, Congress should help the President keep his promises, even when it seems he has changed his mind now, by suggesting that we extend TARP and use TARP on a purpose that Congress has never authorized and never intended.

It seems like the bad ideas never end when it comes to spending and debt out of Washington, DC, these days. In addition to all of these other problems I have mentioned, I have not talked about this health care bill, which would exacerbate and make much worse the deficits and debt situation, and not make it better—all the time while not bending the cost curve down but making things worse, raising premiums, raising taxes, cutting Medicare.

We need to end TARP because, frankly, it is being misused in ways that Congress has never authorized and never intended and, indeed, over the very objections of Congress. We need to learn from our mistakes. Frankly, the stimulus spending, which I voted against because I thought it was based on an academic theory which had not been proven, which was that Congress knew better than the American people how to get the economy working again—by direct spending, by spending borrowed money, the \$1.1 trillion in the stimulus plan—we need to end these free-spending ways and show some fiscal responsibility. The best way we could do that, in my opinion, would be to end this program which has been the subject of so much abuse and misuse.

I ask unanimous consent that the following letter, dated January 15, 2009, from then-Director-Designate of the National Economic Council, Lawrence H. Summers, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE OFFICE OF THE PRESIDENT ELECT,  
Washington, DC, January 15, 2009.

HON. NANCY PELOSI,  
*Speaker,*  
*House of Representatives.*  
HON. JOHN BOEHNER,  
*Republican Leader,*  
*House of Representatives.*  
HON. HARRY REID,  
*Majority Leader,*  
*U.S. Senate.*  
HON. MITCH MCCONNELL,  
*Republican Leader,*  
*U.S. Senate.*

DEAR MADAM SPEAKER, LEADER BOEHNER, LEADER REID AND LEADER MCCONNELL: Thank you for the extraordinary efforts you have made this week to work with President-Elect Obama in implementing the Emergency Economic Stabilization Act of 2008. In addition to the commitments I made in my letter of January 12, 2009, the President-Elect asked me to respond to a number of valuable recommendations made by members of the House and Senate as well as the Congressional Oversight Panel. We completely agree that this program must promote the stability of the financial system and increase lending, preserve home ownership, promote jobs and economic recovery, safeguard taxpayer interests, and have the maximum degree of accountability and transparency possible.

As part of that approach, no substantial new investments will be made under this program unless President elect Obama has reviewed the recommendation and agreed that it should proceed. If the President elect concludes that a substantial new commitment of funds is necessary to forestall a serious economic dislocation, he will certify that decision to Congress before any final action is taken.

As the Obama Administration carries out the Emergency Economic Stabilization Act, our actions will reflect the Act's original purpose of preventing systemic consequences in the financial and housing markets. The incoming Obama Administration has no intention of using any funds to implement an industrial policy.

The Obama Administration will commit substantial resources of \$50-100B to a sweep-

ing effort to address the foreclosure crisis. We will implement smart, aggressive policies to reduce the number of preventable foreclosures by helping to reduce mortgage payments for economically stressed but responsible homeowners, while also reforming our bankruptcy laws and strengthening existing housing initiatives like Hope for Homeowners. Banks receiving support under the Emergency Economic Stabilization Act will be required to implement mortgage foreclosure mitigation programs. In addition to this action, the Federal Reserve has announced a \$500B program of support, which is already having a significant beneficial impact in reducing the cost of new conforming mortgages. Together these efforts will constitute a major effort to address this critical problem.

In addition to these commitments, I would like to summarize some of the additional reforms we will be implementing.

1. Provide a Clear and Transparent Explanation for Investments:

For each investment, the Treasury will make public the amount of assistance provided, the value of the investment, the quantity and strike price of warrants received, and the schedule of required payments to the government.

For each investment, the Treasury will report on the terms or pricing of that investment compared to recent market transactions.

The above information will be posted as quickly as possible on the Treasury's website so that the American people readily can monitor the status of each investment.

2. Measure, Monitor and Track the Impact on Lending:

As a condition of federal assistance, healthy banks without major capital shortfalls will increase lending above baseline levels.

The Treasury will require detailed and timely information from recipients of government investments on their lending patterns broken down by category. Public companies will report this information quarterly in conjunction with the release of their 10Q reports.

The Treasury will report quarterly on overall lending activity and on the terms and availability of credit in the economy.

3. Impose Clear Conditions on Firms Receiving Government Support:

Require that executive compensation above a specified threshold amount be paid in restricted stock or similar form that cannot be liquidated or sold until the government has been repaid.

Prevent shareholders from being unduly rewarded at taxpayer expense. Payment of dividends by firms receiving support must be approved by their primary federal regulator. For firms receiving exceptional assistance, quarterly dividend payments will be restricted to \$0.01 until the government has been repaid.

Preclude use of government funds to purchase healthy firms rather than to boost lending.

Ensure terms of investments are appropriately designed to promote early repayment and to encourage private capital to replace public investments as soon as economic conditions permit. Public assistance to the financial system will be temporary, not permanent.

4. Focus Support on Increasing the Flow of Credit:

The President will certify to Congress that any substantial new initiative under this program will contribute to forestalling a significant economic dislocation.



Implement a sweeping foreclosure mitigation plan for responsible families including helping to reduce mortgage payment for economically stressed but responsible homeowners, reforming our bankruptcy laws, and strengthening existing housing initiatives like Hope for Homeowners.

Undertake special efforts to restart lending to the small businesses responsible for over two-thirds of recent job creation.

Ensure the soundness of community banks throughout the country.

Limit assistance under the EESA to financial institutions eligible under that Act. Firms in the auto industry, which were provided assistance under the EESA, will only receive additional assistance in the context of a comprehensive restructuring designed to achieve long-term viability.

The incoming Obama Administration is committed to these undertakings. With these safeguards, it should be possible to improve the effectiveness of our financial stabilization efforts. As I stressed in my letter the other day, we must act with urgency to stabilize and repair the financial system and maintain the flow of credit to families and businesses to restore economic growth. While progress will take time, we are confident that, working closely with the Congress, we can secure America's future.

Sincerely,

LAWRENCE H. SUMMERS,  
*Director-Designate,  
National Economic Council.*

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON of Florida. Madam President, we have in front of us appropriations bills. We have heavy matters of the deficit. We have heavy matters of how we are going to get the U.S. Government to get its fiscal house in order.

I remind the Senate the last time we had a surplus was in 2001. If we had been wise and had not cut the revenue of this country so significantly, we could have been good stewards of that healthy surplus and we could have paid off the national debt over a 12-year period, and we wouldn't be where we are today, but we are. While these matters are weighing heavily on us, it seems our attention is being continuously diverted to other things, such as White House party crashers and the unfortunate circumstance that one of the most famous athletes, Tiger Woods, finds himself in.

We have a debate about the health care bill and it seems that during the course of last summer, the whole health care debate was about one subject and that was the question of the public option. We now know, because all the experts are telling us, that if we have a public option as a part of this health insurance exchange, the exchange itself will only cover something like 15 to 20 percent max of the people, and the public option would only include something like 4 million or 5 million people, and that we are talking

about 1.5 percent of the total folks in the country. Yet the debate raged all summer as if that were the only issue about health reform.

So here we find ourselves trying to pass a health reform bill with so much attention diverted elsewhere, with people pushing and pulling and tugging—all the special interests—how in the world can we bring this together? How do we bring it together so we can get the high threshold of 60 votes in the Senate?

On the one hand, there are the insurance companies. The insurance companies have a huge stake. Now the insurance companies are running TV advertisements all over the country trying to kill this bill because they realize there is going to be a limitation on their ability to do everything they want to do and to charge what they want to charge and to cancel at will, and to have frivolous reasons such as a skin rash as a preexisting condition and therefore we are not going to insure you. That is what has led to us getting to the point of saying, "Enough. We are going to pass a health insurance reform bill."

Then, of course, what comes to light is suddenly, in this package that was not in the package that came out of the Senate Finance Committee but is in this package, there is actually a nod to the insurance industry in the form of a limitation on the amount of payments that could be made on anyone's insurance policy in one year. Well, again, there is a lot of opportunity for mischief and abuse. We have to correct things such as that.

Is there anyone who doubts that we don't need health insurance reform and health care reform, even though we are getting the opposite messages from the insurance companies; that we are getting the opposite messages from anybody who is a special interest that doesn't get entirely what they want? What are some of those? Hospitals, doctors, all kinds of health providers, medical device manufacturers, and the various interests of patients. But if you look at it, you can't get all that you want, Mr. Special Interest, and instead, keep in mind the goal we are trying to achieve, and that is take a system that is near tilt and get it on the road to reform.

There is another part of this reform we have to do and that is that the U.S. Government cannot afford the cost escalation that is going on in its payment of Medicare and Medicaid. So there are reforms we can enact, many of which are in this bill, such as accountable care organizations that will follow the patient; electronic records that will modernize records so that any doctor or health care provider who sees the patient will have up-to-date access to what has been the care so that records are not lost; emphasis on a primary care physician who can do a lot

of preventive care before the emergency ever gets there; then, of course, utilizing a lot of the miracles of modern medicine including pharmaceuticals to hold off conditions so that we don't get to that emergency; so that if you are not insured you end up at the emergency room, or even if you are insured you end up at the emergency room, which is the most expensive place to get care.

Is there a lot we can do? Yes. It is what we must do. With the hurdle in this Senate being so high that we have to get 60 votes to close off debate, we have to be successful. It will not be pretty and it will not be perfect, but it will be a step in the right direction.

There are portions of this proposed law that will take effect not immediately but a year or two or three down the road, and if we have made mistakes, we can correct those mistakes, but we must be successful. For us to turn back now, no matter who is arguing against it, for us to protect a special interest, no matter who is arguing for it, at the expense of the greater good of health care reform, would be a drastic mistake. Not one of us will be happy going home to our families for Christmas if we don't enact this. It is for those reasons that I feel very strongly we will be successful, as difficult and as tortuous as this process is. This Senator will keep pressing forward until we get that final passage.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I understand that maybe I will have my speech interrupted by a unanimous consent request from the leadership, so if that happens, I ask that my remarks be continuous throughout the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. There has been a lot of talk over the past few days about Senator REID's so-called compromise. Although he said he has broad agreement, I have yet to see any specific details. In fact, it sounds as though Members of his very own caucus, the Democratic caucus, aren't aware of these details either.

I find it quite hard to understand how there can be "broad agreement" on something when they don't know what is in it. Of course, I hope we will see details very soon. An issue such as health care reform affecting 306 million Americans and restructuring one-sixth of our economy is something that should not be done in secret. And when the so-called compromises come out, I would expect we would have the same 72 hours on the Internet for the public and the 99 Members of this body other than the leader to review them in the totally transparent way we have always been promised, and as this 2,074-page bill has been transparent, as well as all of the amendments. Because this

is one of the biggest and most important pieces of legislation I have worked on in all of my years in the Congress. So I hope Senator REID is not planning to keep the details of his compromise under wraps and then ask us to vote on it. This piece of legislation is going to touch the lives of every single American, from the cradle to the grave, so we owe it to our constituents to make sure we have sufficient time to study any changes to the underlying bill. We all need to remember that it is their money, the taxpayers' money, that is being spent on this bill, not ours.

As I have said, so far, Senator REID is keeping this "broad agreement" under wraps. So today I can only talk about what I have heard from my colleagues or read in the newspaper, and who knows whether what the newspaper or our colleagues are surmising what this compromise might be actually is.

I have heard the majority leader is planning to expand the already unsustainable Medicare Program. The idea has been met with, of course, strong opposition, as we would expect from hospitals, doctors, and other health care providers, particularly from rural America, because expanding Medicare to people ages 55 to 64 and paying Medicare rates is going to make it even more difficult for our hospitals to survive because the Federal Government only reimburses 80 percent of costs.

Today, with people over 65, with the government not paying more than 80 percent, it can be offset by private sector charges by the hospitals to a greater amount to make it up. But if you load another tens of millions of people on Medicare—and it is just about broke anyway—you can see that this deficit of our hospitals is going to be greater and it is going to be even more difficult to make up because there will be fewer private-paying people to make up the deficit.

I said the hospital, doctors, and health care providers are bringing strong opposition to this idea of expanding the Medicare Program because they fear that the largest expansion of Medicaid in history and an expansion of Medicare to people age 55 to 64 will drive providers out of business. And then what, of course, does that do for our seniors? It makes it even harder for low-income Americans under Medicaid and seniors under Medicare to have access to care. What are the promises of the Federal Government in Medicare worth if you don't have doctors to provide the services to the seniors when they get sick?

I have already spoken over the last few days about why I agree with these providers and why I oppose that part of Senator REID's so-called compromise. Of course, now we have the administration's own Chief Actuary confirming that the Medicare cuts already in this bill—in other words, the 2,074-page bill,

without even considering the so-called Reid compromise, which we don't know what it is—the Chief Actuary confirmed that the Medicare cuts already in the bill are so severe that providers might, even now, end their participation in the program, even before you add on all the people who are 55 to 64. If the compromise expands Medicare even further, then this is going to make this problem even worse.

I also find it curious that some would even consider this a compromise. For instance, Speaker PELOSI could not convince House Democrats to support a government-run plan paying Medicare rates, but that is exactly what Senator REID's compromise is proposing, I have been told. That doesn't sound like much of a compromise to me.

In fact, let me quote another Congressman, ANTHONY WEINER of New York, who doesn't see it as a compromise either. In fact, he sees it as a big step toward their ultimate goal of a single-payer health plan where government is going to run everything. And you will have one choice: the government plan. You won't have choices the way we have in America today.

Congressman WEINER said this:

This exchange would perhaps get us on the path to a single-payer model.

I don't see this as a compromise to a government-run plan. In fact, in some ways, it is worse because this could harm seniors' access to care starting not down the road but on day one.

I don't want to spend too much time today talking about Medicare expansion. I think I have made my feelings on this idea pretty clear. Instead, I would like to focus on another aspect of the supposed new Reid compromise we are hearing about.

This is what we are hearing about—that the newest Reid proposal would have the Office of Personnel Management operate a national health insurance plan. This may sound pretty harmless at first glance, especially since Senator REID has refused to release any details, but there are some very big problems with a proposal like having the Office of Personnel Management take over.

Around here, we use the term "OPM" for the Office of Personnel Management. It is the office in charge of the Federal Government's 2 million-person workforce. One could consider OPM as the human resource agency or department for all of the Federal Government, dealing with everything from salaries to the operation of the Federal Employees Health Benefits Program, which I think is the reason Senator REID thinks this agency would be well equipped to run the largest insurance company in the country.

Unfortunately, a former Director of OPM disagrees. He was asked about giving new responsibilities to the Office of Personnel Management. This former Director, Linda Springer, said this:

I flatout think that OPM doesn't have the capacity to do this type of role.

Federal employees have also expressed concern. People in this body—particularly the other party—ought to be listening to the National Treasury Employees Union or the National Active and Retired Federal Employees Association. They have come out in opposition to this proposal of OPM running a national health insurance company.

In a Washington Post story highlighting union opposition, the author writes that unions raise these concerns:

... legitimate concerns about expanding the size and scope of OPM beyond its capacity.

So there are already concerns from a former Director and more than 5 million Federal workers and retirees and dependents that OPM is not equipped to handle this new responsibility. That alone should make any Member pause before signing on to this so-called broad agreement.

I also think it is important that Members are aware of some of the challenges the Office of Personnel Management faces with its current responsibility, without loading it down with a lot more, because being the human resources department for the Federal Government is, obviously, no easy task. In fact, I would imagine it is a pretty thankless job that entails a lot of long hours.

Please don't misconstrue my comments as an attack on OPM, its Director, or any of its employees. They do the best job they can under difficult circumstances. But they are going to have real problems if Senator REID's compromise does include a government-run insurance plan operated by OPM. If he is going to come out of nowhere with a new proposal to hastily hand the American health insurance system over to this government agency, I think it is important for the American people to know what they are getting into.

We need to be asking some hard questions. Is this expansion of the Federal Government necessary? We are about to vote to raise the debt ceiling by \$1.8 trillion because the national credit card has maxed out. Some Members of the Senate seem intent upon increasing the size of the Federal Government even more.

There is a second question beyond the generic one of, can you afford to expand the Federal Government role and expenditures. It is, should the OPM, a government agency, be handed the key to the largest health insurance plan in the entire country? I don't know that the current OPM Director—and I would imagine he is a very nice person, and since I don't know him, I don't want him to take offense to what I say. But I think it is fair to point out that his position, just prior to taking

over at OPM, was running the National Zoo. Does this really mean we should put him in charge of the national health insurance plan?

The Office of Personnel Management has been consistently criticized for being out of date and being inefficient on everything from processing national security projects to administering Federal benefits. We have all heard about the massive backlog in people waiting for Social Security disability benefits. Some 833,000 Americans are currently on a waiting list to see if they qualify for government disability benefits, and some Members blame OPM for this backlog.

I am going to put a chart up here from a person whom I trust in the House of Representatives, Representative EARL POMEROY. I think he does very excellent work. He heard about this backlog. He made some comments about OPM. Congressman POMEROY is a Democrat from North Dakota and a member of the very powerful House Ways and Means Committee. He said:

The Office of Personnel Management is fiddling around, years go by before they can even get around to all the things they have to get around to. . . .

This seems to reinforce what the government unions and the former Director have expressed about OPM's ability to handle this new responsibility.

I want to continue to quote Congressman POMEROY:

People are being hurt, some of the most vulnerable people in this country are being hurt every day because of bureaucratic bungling at OPM. . . .

Senator REID hasn't provided enough details, but Congressman POMEROY's comments certainly raise concerns.

Undermining the availability of disability benefits is bad enough, but do my colleagues want to also be responsible for setting up an unworkable system that leaves hundreds of thousands of Americans on the waiting list for their health care benefits?

Government agencies, whether it is the Office of Personnel Management or some other agency, do not have an impeccable track record. As President Reagan often said, the nine most terrifying words in the English language are "I'm from the government and I'm here to help." Think of a health care system with the responsiveness of Hurricane Katrina or think of the efficiency of the Internal Revenue Service or the customer service at the department of motor vehicles. That doesn't sound like a recipe for real health reform to me.

The OPM has also taken considerable criticism for its handling of retiree benefits. The agency's own 2008 financial report stated:

[The Office of Personnel Management] had increased difficulty keeping up with retirement claims and had a decrease in the number of customers satisfied with their services.

That is coming directly from the agency, saying how it is coming up short responding to the needs of the American people, and particularly government employees, and that is before we are talking about adding a new government health insurance program to the responsibilities of OPM.

The Hill newspaper wrote this last week:

Watchdogs maintain the program is riddled with inefficiencies that ultimately cost both the agency and the Federal Government money.

So I think there are legitimate concerns about whether this Federal agency is even equipped to take on the additional responsibilities of a whole new government countrywide program that is obviously a massive undertaking.

I also wonder why this proposal is even necessary. The bill already sets up government-run exchanges that would offer a choice of competing for-profit or not-for-profit plans. My colleagues on the other side of the aisle have compared this system to the Federal Employees Health Benefits Program. This bill already has provisions that encourage national health plans. This leads me to ask the question: Why does this bill need another layer of bureaucracy to create a national plan run by a government agency?

Some have suggested this is just another backdoor attempt to end up with a government-run plan. Another detail that has been reported supports this claim. We have been told that if not enough not-for-profit plans agree to contract with the Office of Personnel Management or if they do not meet certain affordability standards, the Office of Personnel Management will have the authority to establish its own government-run plan.

With some of the other provisions that are in this bill, this trigger approach seems to be rigged. There are at least two reasons why this is the case. First, the bill undermines any ability to avoid the first government plan trigger to make health coverage more affordable. The bill puts in place a bunch of new regulatory reforms, a bunch of fees, and a lot of taxes that will drive up premiums, making it impossible for health plans to meet new affordability requirements.

Again, you are going to say you question this Senator's judgment saying that. Do not take my word for it. The nonpartisan Congressional Budget Office, a group of professionals who do not care about politics, predicts premiums will be 10 to 13 percent more expensive as a result of this bill.

Then, of course, we have the second government plan trigger which gives the Office of Personnel Management the authority to create a government-run plan if not enough not-for-profit national plans contract with OPM.

Senator REID failed to mention in announcing his broad agreement that

there is not one national plan in existence today, for-profit or not-for-profit—not one national plan—that is offered in all 50 States. It does not exist.

Once again, it sounds to me like this so-called trigger is being rigged to shoot. I can only assume this backdoor attempt to shoehorn in a government-run plan at the last minute happens to be an act of desperation. Senator REID and his colleagues have seen the facts. You have heard them from our distinguished Republican leader. According to a CNN poll from December 2 and 3, 61 percent of Americans oppose this 2,074-page bill. At a time when the Democratic leadership is pushing a \$1.8 trillion increase in the debt limit, we learn from the White House's own Actuary that this \$2.5 trillion bill, this 2,074-page bill bends the cost curve up by increasing health care spending. If you go back to day one of this year, when we first started talking about health care reform, one of the overriding goals was to bend that cost curve down. After 11 months of activity, we have a bill with that cost curve going up—not one of the major goals we set out to do 11 months ago.

This bill is also under pressure from opposition by the National Federation of Independent Business, speaking for the small businesses of America, the ones that do 70 percent of the net hiring. It is also opposed by the National Association of Manufacturers, the Chamber of Commerce, the National Retail Federation, and almost every other business group across the country.

Because of this last-minute, desperate attempt to appease the far left, this rumored new compromise now is being opposed by hospitals, doctors, and other health care providers. These people were on board through most of these 11 months promising their support, and now they see it going in the wrong direction.

With all those factors, I do not see how anyone, let alone 60 Senators, can vote for this bill, this last-minute, desperate attempt to expand Medicare and hand over private health insurance systems over to a Federal agency, the Office of Personnel Management. This step, if it materializes, has made a bad bill even worse.

I have another part of the bill to which I wish to speak. We have this 2,074-page bill before us, and I wish to refer to just a few words on page 2,034, way at the tail end of the bill, in section 9012 of the Reid bill. It only takes up eight lines, but it could have a major impact on millions of retirees and even on the entire U.S. economy.

Listen to this. The AFL-CIO, the Americans Benefits Council, and the Business Roundtable have all joined in opposition to this provision, section 9012. How often do we have the AFL-CIO, the American Benefits Council, and the Business Roundtable—that

roundtable is the big corporations in America—joining in opposition to anything? But they are in opposition to section 9012 of the bill.

This would prohibit businesses from fully deducting a subsidy they receive to maintain retiree drug coverage. The Medicare Modernization Act of 2003 created this subsidy to encourage businesses to keep offering retiree drug coverage once the Part D benefit was established because back in 2003, our goal in passing the prescription drug bill for seniors was not to disturb people who already had drug coverage and they liked what they had and they wanted to keep it. We did not want these big corporations dumping these people off into something with which they were unfamiliar. So we helped to encourage companies and save the taxpayers money. I will refer to those specific dollar figures in a minute.

In Federal tax policy, it is very unusual to provide a deduction for a business expense, such as retiree health costs, if that expense is subsidized by a Federal program. But in this case, the conferees decided to provide this unusual tax treatment for compelling health policy purposes, some to which I have already referred.

If people are satisfied with what they have, we should not pass a bill pushing people out of a plan they like. But it was also to save taxpayers' dollars because the rationale was, it was cheaper to pay a \$600 subsidy than to have these people forced out of their corporate plan and then to have the taxpayers pay an average of \$1,100 that it will cost if the retiree joined the Part D government plan.

You know what. After 6 years, so far it has worked. Millions of seniors have been able to keep their retiree coverage as a result of this subsidy, and the Part D Program continues to come in under budget and also to receive high marks from our senior citizens.

But the provision tucked away in this 2,074-page bill on page 2034 could change all that and, in fact, have severe consequences and, let me say, unintended consequences not just on those retirees but for the entire U.S. economy.

In an effort to pay for this massive expansion of a government-run health plan, the Reid bill proposes to eliminate the tax deductibility of this provision. This could cause employers all across the country to drop retiree coverage. This will not only break the President's promise by preventing millions of seniors from keeping what they have—remember that promise during the campaign—it will also cause the costs of the Part D Program to go up.

In addition, accounting rules for retiree benefits require that the businesses that do keep offering plans, offering these benefits, will have to report the total revised cost on the day the bill becomes law.

We have an op-ed written in the Wall Street Journal about this point. This could cause businesses to post billions of dollars in losses and significantly impact an already struggling economy.

Is this something we want to do when we still have 10-percent unemployment? I think the majority ought to give second thought to that.

A letter sent on December 11 from the chief financial officers of some of the largest employers in the country stated:

The impact of the proposed Medicare Part D changes would be felt throughout the overall U.S. economy as corporate entities and investors would be forced to react.

Another letter signed by the AFL-CIO stated this provision would "unnecessarily destabilize employer-sponsored benefits for millions of retirees."

Once again, how often do we get these large corporations and the AFL-CIO singing off the same song sheet?

This simple provision tucked away on page 2034 is just one more in a long list of policies that could have serious unintended consequences for American businesses and retirees.

At this point, it appears the majority is so determined to get a bill at any cost that they will put in place bad policies and promises to somehow clean up the mess later on. That is not the way to write legislation. That is not what the American people were hoping for when they were told Congress was going to fix the health care system. This provision is just one more reason we need to scrap this product and go back to the drawing board.

In finishing, I will say what I have probably said two or three times before. We are trying to fix the health care system, health care reform. The word "reform" implies all of that. If you were having a coffee klatch in rural New York or rural Iowa this very morning and one of us Senators dropped in on it and they started asking us about a bill because they were already talking about health care reform and any one of us told them it would increase taxes, it would increase health insurance premiums, that it would not do anything about decreasing inflation of health care—in other words, costs are going to go up yet—and we are going to take \$464 billion out of Medicare, a program that is already in distress, to set up a whole new government program, you know what. Every one of those people around the table would say: That doesn't sound like health care reform to me. Let's not denigrate the word "reform."

I ask unanimous consent to have printed in the RECORD a letter from the AFL-CIO.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NOVEMBER 2, 2009.

Re Retiree health coverage

Hon. NANCY PELOSI,  
*Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: We are writing to express our serious concerns regarding two provisions included in H.R. 3200, The Affordable Health Care for America Act, and urge that they not be included in legislation approved by Congress. Section 110 would curtail the ability to change retiree health coverage and Section 534 would change the tax treatment of subsidies provided to employers who provide retiree drug coverage. Both provisions would likely have the unintended effect of discouraging the provision of employer-sponsored retiree health coverage, thereby undermining one of the goals of health reform legislation and placing the cost and burden of providing this vital coverage onto the federal government.

#### SECTION 110

Retiree health coverage has long been the subject of collective bargaining and is an important part of the overall package of benefits and compensation negotiated between labor and management. By severely restricting the ability to modify retiree health coverage this provision limits the flexibility that parties have during negotiations. In some situations, existing labor agreements already contain cost sharing arrangements that would be unilaterally overridden by this provision.

This restriction could unintentionally result in employers dropping sponsorship of retiree health coverage altogether to avoid future restrictions. Rising health costs and financial accounting rules have resulted in a steady erosion of employer-sponsored retiree coverage; and no doubt this decline is the motivation for this provision. It would be disastrous for millions of Americans still covered by retiree health plans to see those plans severely limited or eliminated altogether as employers seek to avoid being locked into a particular benefit in perpetuity.

#### SECTION 534

This provision of the bill would cease the current tax excludability of the 28% subsidy provided to employers who continue to provide prescription drug coverage to their retirees. The \$3 billion in federal tax revenue estimated to be raised from this provision is highly unlikely to be realized. The current tax treatment was included in the Medicare Modernization Act of 2003 precisely to encourage employers to continue sponsoring drug coverage—not only helping to preserve this important benefit, but also resulting in savings to the federal government by avoiding the necessity of many retirees to obtain Medicare Part D coverage. If only the tax revenue to be collected is calculated, but not also the federal outlays to provide the comparable benefit, then the actual cost to the government is not being accurately considered.

Moreover, Congress must consider the impact of this provision in the context of a reformed health system, as opposed to the current system. Other features of H.R. 3200, including the aforementioned limits on the ability to modify retiree health coverage, could well lead to an unintended and precipitous decline in some of the most comprehensive health coverage protection for retirees available today.

Finally, Congress has not considered at all the negative impact, required under Financial Accounting Standard 106, on the financial statements of companies that currently

provide retiree health coverage. Regardless of the ultimate effective dates of Sections 110 and 534, accounting rules dictate that immediately upon being signed into law, these provisions would substantially increase the FAS 106 liability for the very companies providing the most comprehensive coverage to current and future retirees. In the current economic environment, this would be particularly ill-advised and disruptive.

Health care reform must be about stabilizing and expanding the employer-sponsored health benefits system. These two provisions would unnecessarily destabilize employer sponsored benefits for millions of retirees at a time of unprecedented changes in health coverage. Whatever differences the undersigned organizations may have on other aspects of pending health care reform legislation, on these two matters both labor and management are in full agreement. We respectfully urge that both these provisions be deleted from the legislation under consideration.

Sincerely,

DIANN HOWLAND,  
*Vice President, Legislative Affairs, American Benefits Council.*

WILLIAM SAMUEL,  
*Director, Department of Legislation, AFL-CIO.*

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, we had indicated to Senators REID and DURBIN that we wanted to see if there was a way to develop some path forward on the health care bill, and I wish to at this point propound a consent agreement that might well give us a way to move forward on some of the amendments that have been pending for quite some time, some of which are both supported and opposed on each side.

Having said that, I ask unanimous consent that after the vote on the adoption of the pending conference report, the Senate resume consideration of H.R. 3590 under the following order; there be 2 hours of debate equally divided between the two leaders or their designees and following the use or yielding back of that time, the Senate proceed to a series of stacked votes in relation to the following amendments or motions; a Baucus sense-of-the-Senate amendment related to taxes, the pending Crapo motion—which I might add parenthetically has been out there since last Tuesday—the Crapo motion to commit the bill related to taxes, then the Dorgan amendment, which is on the drug importation issue, No. 2793, and then a McCain amendment, No. 3200, on the same subject.

I further ask unanimous consent that the above referenced motion and amendments be subject to an affirmative 60-vote threshold, and if they achieve that threshold, they become agreed to; further, if they do not achieve that threshold, they be withdrawn; finally, I ask that no amend-

ments be in order to any of the mentioned amendments and motion.

Before the Chair rules, I wish to make a quick point. The majority leader has been proposing a series of votes, which regrettably has not held to our pattern of alternating back and forth. We have many people interested in the pending amendments, and under the agreement I put forward, each side would get two votes, as we have tried to operate throughout the health care debate, and then we would move forward.

The PRESIDING OFFICER. Is there objection?

The Senator from Illinois.

Mr. DURBIN. Mr. President, reserving the right to object, I ask unanimous consent to engage in a colloquy with the minority leader. Perhaps there will be a better understanding of his unanimous consent request before I make my final decision.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. I wish to ask, as I understand it now, when it comes to—and let's set aside Crapo-Baucus and assume there is commonality in that. As I understand it now, the Dorgan amendment, which would allow for the importation of pharmaceuticals and drugs into the United States, has been offered on our side as well as a Lautenberg amendment, which has some history in the Senate. It was previously offered by Senator COCHRAN of Mississippi and establishes a standard for certification of safety of the drugs coming in.

Could the Senator from Kentucky describe to me what the new McCain amendment No. 3200 does?

Mr. MCCONNELL. Well, fortunately, Senator MCCAIN is on the floor at this time, and I will ask him to describe it.

Mr. MCCAIN. I wish to say to my colleague, first of all, as is well known, side-by-sides have been one side of the aisle and the other side of the aisle. If the Lautenberg amendment were in order on the Dorgan amendment as a side-by-side, that would obviously be a change from what we have been doing.

Basically, what my amendment does is make some perfecting changes to the underlying Dorgan amendment. It has some sense-of-the-Senate provisions and several other provisions which I think would help make it more effective. I have to be very honest with my friend from Illinois, it doesn't undermine the Dorgan amendment. I think it supplements the Dorgan amendment, just as the Bennet amendment to Medicare costs supplemented the position we had that Medicare benefits wouldn't be cut.

So side-by-side amendments aren't necessarily in contrast with each other; sometimes they perfect, and I think my amendment makes it a better amendment—makes the Dorgan amendment a better proposal.

Mr. DURBIN. I ask unanimous consent to expand the colloquy to include Senator MCCAIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Does the amendment of the Senator from Arizona, No. 3200, include the existing language of the Dorgan amendment?

Mr. MCCAIN. Yes, plus some perfecting language, as far as the Senate is concerned, about other procedures that would expedite the Dorgan amendment as well.

Mr. DURBIN. Is the Senator from Arizona prepared to offer the Lautenberg language in his amendment?

Mr. MCCAIN. No, obviously not, because I don't agree with the Lautenberg language in my amendment, as you know. But what we are trying to do is, obviously, make the Dorgan amendment better, just as other amendments that are side-by-sides have tried to make amendments better. They do not necessarily cancel them out but make them better.

Mr. DURBIN. Is the Senator from Arizona a cosponsor of the Dorgan amendment?

Mr. MCCAIN. Yes, a proud cosponsor.

Mr. DURBIN. Would the Senator from Arizona consider offering whatever is different in 3200 as a separate amendment to the Dorgan amendment?

Mr. MCCAIN. I guess what I am not sure—if I understand my friend, I am offering an amendment as a side-by-side in order to, in my view, improve the Dorgan amendment; again, in all candor, not to undermine but to make it better.

Mr. DURBIN. Well, Mr. President, I have an obligation to not only my leader but obviously to Senator LAUTENBERG, who is being dealt out of the picture here with this unanimous consent request, and he has been offering an amendment which is well known and has been offered previously by Senator COCHRAN of Mississippi, a Republican. At this point, if Senator LAUTENBERG is offering—I think at this point I am constrained to object based on this new McCain amendment, and we will discuss it with Senate leadership as to whether we can find a path through this.

This is the third day we have been struggling with this. It appears there is a lot of credence put in the belief that we have to have exactly the same number of Republican and Democratic amendments, and I understand that from the minority point of view.

Mr. MCCONNELL. Maybe I have a solution to the problem. It actually involves my side agreeing to a procedure we have not followed throughout this bill, but let me suggest the following, which I think would get us out of this conundrum we seem to be in: that even though we have alternated from side to side, we would agree to both Dorgan and Lautenberg in conjunction, right

after Crapo and Baucus; and then we get in the queue our next two—which I believe you are already familiar with, because they have been discussed on the floor—the Hutchison-Thune amendment, and then a Snowe amendment.

Mr. MCCAIN. And I withdraw, with great reluctance and great anger, my amendment, because I think the Lautenberg amendment would be in violation of what we have agreed to.

Mr. MCCONNELL. In other words, Mr. President, putting it another way, we are basically conceding to what the Senator had earlier proffered as a way to get moving on the bill, and then we would get back into our process of going side to side. And we want you to know that our next two—as we have been letting each side know what the other side was going to offer—our next two would be the Snowe amendment and the Hutchison-Thune amendment.

Mr. DURBIN. Let me suggest this. I will formally object to the original unanimous consent request, and I will then take what I consider to be a good-faith offer from your side as to the next two amendments to the majority leader. We will review the amendments, and I hope even today we will be back to Senators and suggest whether that is a path out of this.

Mr. MCCAIN. Could I be clear with the Senator from Illinois that what this means is we would move forward with the side-by-side Dorgan and Lautenberg—we would agree to that—and then we would also expect agreement on following amendments so that we could lock those in for debate and votes?

Mr. DURBIN. May I ask whether the two amendments the minority leader mentioned, which would be Thune and Hutchison, and the other amendment, Snowe, we would be allowed to have side-by-sides to those?

Mr. MCCONNELL. Of course.

Mr. DURBIN. If you would be kind enough—

Mr. MCCONNELL. If you so chose.

Mr. DURBIN. If you are kind enough to give us time to review that proposal, we will be sure to get back to you.

Mr. MCCONNELL. I understand capitulation when we do it, and we have essentially said to the majority we will go along with what you had earlier requested and we would like for you to take “yes” for an answer and for us to wrap this up and have a sense of where we are going from here.

Mr. DURBIN. I promise we will get back in a timely fashion.

I object to the initial unanimous consent request.

The PRESIDING OFFICER. Objection is noted.

Mr. SESSIONS. Mr. President, the vote we had earlier this morning, moving forward onto the omnibus spending bill that is before us, is a stunning statement that we are not listening to the American people; that we are un-

aware or indifferent to the level of spending that is occurring in this country, which is unlike anything that has occurred before. Many have complained that President Bush overspent, and on some occasions he did. One expert told me recently that they have compared President Bush's misdemeanors to felony murder when you look at the seriousness of the spending levels that we are now undertaking in the baseline budgets of the various Federal agencies.

This is different from the stimulus package that is already out there—to spend \$800 billion in stimulus funding that has been poured into this economy—on top of the baseline budget spending items. So not only do we have this unprecedented stimulus package from earlier this year—the largest single spending bill in the history of the American Republic—but we are now moving forward with baseline budget items that have increases that are stunning, unjustified, irresponsible, and put us on a pathway to double domestic spending in far less than 10 years. This is unthinkable.

I have to go back to the core threat we are facing, as more and more experts and economists are reminding us of it. This is based on the Congressional Budget Office study; it is based on the budget presented by the President of the United States over 10 years. Earlier this year, he presented us a budget. And what did it show? It showed our total American debt in 2008 was \$5.8 trillion. That is a tremendous amount of money. That is what the total debt from the founding of the American Republic was—\$5.8 trillion. They project that by 2013 that debt will increase to \$11.8 trillion—doubling in 5 years—and increasing to \$17.3 trillion in the year 10 of the President's budget—tripling the national debt.

They say: Well, we have an economic recession. Well, we have had recessions before. We have a recession more often than every decade. We had thought that, hopefully, we could maybe figure a way to avoid them, but we haven't done that yet. I guess blame can go around to a lot of different people. But I would say this does not project another recession in the 10 years we are tripling the debt.

As I have said, we are on an unprecedented course of spending that has never been seen in our country before. The only thing like it was during World War II and we were in a life-and-death struggle, fighting wars on both the Pacific and Atlantic, and Africa—around the world. Virtually every able-bodied person was either in the military or building ships and airplanes and weaponry to send to our soldiers. The whole country was mobilized.

We never did this to our deficit then, and we did it in a way that commenced a pay-down of those debts after it was over. What I wanted to emphasize

was—many of my colleagues have heard it stated, people seem to all admit it—we are on an unsustainable path. This is not a sustainable spending schedule. Then how do we get off of it? When do we get off of it, if it is unsustainable?

Is it by producing a bill that we just voted on that increases spending at 12 percent, a rate of spending that would double those six discretionary spending bills' accounts in 5, 6, or 7 years? It would double it. Is that the way to get spending under control? I don't think so.

Remember, I am not counting in this 12-percent increase the stimulus package that was passed. I would also note, under the budget the President submitted, the deficits in the outyears are not going down. There is no projection in those 10 years that we would have a recession, but there is also no projection that the deficits would be falling. In fact, the deficit, in 1 year, in 2019, would be over \$1 trillion. So these are stunning numbers.

The highest deficit we have ever had was at \$450 billion. The year before this year—we just concluded in September 30 of this year—\$1.4 trillion. Next year it will be \$1.5 trillion. There should be some dip, we hope, for a few years, and then it is going back up on an unsustainable path. It is just stunning. We cannot do this. That is one of the big things that is occurring in the streets of America with our tea parties and others. People are saying: Congress, what is the matter with you? Don't you understand you are mortgaging our children's future; you are devaluing the dollar; you are placing our economy at risk, as virtually every expert economist you talk to says, including Mr. Bernanke—not very aggressively, in my view, but he said that recently. This is a bad path.

What does that mean when you have a big debt? The debt goes up. How do you get the money? Where does the money come from? You have to borrow it. We put on the market Treasury bills and notes, and we ask people to loan us the money so we can spend, spend, spend more than we take in, year after year.

Some say it is the entitlements that are causing this, and entitlements are growing. That is our Social Security and our Medicare. One reason those are growing is, frankly—it is a very serious reason—we have more seniors and they are living longer. They have been going up 6 or 7 percent a year. We are troubled by that. But the truth is, Social Security and Medicare have been in surplus.

What has happened to the surplus? It has been spent on discretionary spending. We are spending the Social Security surplus and Medicare surplus—but it is going caput. Medicare is fading fast, and by 2017 the trust fund will be exhausted. So we are not going to have



a surplus to spend. So you borrow the money; this is what you do.

In 2009, we paid interest on the money that people loaned us—much of it from China and oil-rich States, many of which are not friendly to us. We are paying them huge amounts of interest—\$170 billion. How much is that? That is a lot of money. My State of Alabama is about an average size State. We are a frugal State. We don't have huge government. We have some pretty good economic growth as a result of that. But we have a \$2 billion annual general fund budget—\$2 billion. We paid \$170 billion, the United States of America, in interest alone in 2009.

Look what CBO says, our objective Budget Office. It is under the control, really, of the Democratic majority, but they take pride in giving us numbers that are valid and reliable. I think they do that for the most part.

Look at this. They say by 2019, the interest we will be paying on the debt will not be \$170 billion but \$799 billion because we cannot stop spending. It is just unthinkable.

People say we have to do better. This is unsustainable. We need to do something.

When? We just voted this morning for a bill. I don't have a chart on that, but I will just read the numbers to you. It increases spending on 6 of the 13 appropriations bills. We try to pass them individually, 13 appropriations bills that fund the Federal Government. When we get to the end, it is easier sometimes for the leadership just to cobble all six of them together in a big package and put it out there and say vote up or down. That is what we have done. That is not a good policy. We need to do better than that. We really need 2-year budgeting, and then we would have time to bring up these bills one by one and give them the scrutiny they deserve. But if we look at the overall spending in these 6 bills, 6 of the 13 that have been put together in a package, it shows that the percentage of growth in spending on the baseline level is 12 percent.

That is a stunning figure, when you think about it. What is the inflation rate today? Zero. We do not have inflation. The last number was .2 percent deflation over the past year. The average family is containing their spending. Ask the average city mayor. Aren't they trying to contain spending and be more efficient and be leaner and more effective? What about our State governments? The same thing. They are facing real problems, and they are trying to contain the growth of spending and we increase it by 12 percent.

What kind of increase did the average working American get in their salary? Probably zero and lucky to hold it. If they had been getting overtime, they are probably not getting overtime today. Maybe in the family two people were working, maybe now only one is working.

What about the State Department and foreign operations, what kind of increase did they get? A 33-percent increase in spending, most of which I assume will be spent around the world somewhere.

What about Transportation and HUD? I have a chart on that. I just have the last 2 years since our colleagues have been in the majority. Last year it was a 12.3-percent increase—a stunning increase. Look at this year, 2010—23-percent increase on HUD, Housing and Urban Development, and Transportation; 23 percent on top of 12. This is the kind of spending that would double the HUD budget in 3 to 4 years. The foreign operations, I just mentioned, at the rate of increase we have, it would double in 2 to 3 years. The whole budget would double in 2 to 3 years.

Let's talk about Transportation/HUD. Did they get any money out of the stimulus package? You are counting that in here, aren't you, Senator SESSIONS, the money that Transportation/HUD got out of it?

No, I am not. This is baseline spending. What did they get? The total Transportation/HUD budget—I hope my colleagues will think about these numbers—is \$68 billion this year. Remember, I just noted interest in 2019 would be \$800 billion. That gives some perspective on the level of spending we have. But, again, that is just the baseline spending, and it does not count the \$62 billion of spending that came out of the stimulus package, according to this chart. Remember, only a small percentage of the stimulus package went to highways. They said it was for bridges and infrastructure and highways, and I think about 4 percent of the overall amount went to highways. Now they are claiming we don't have enough money for highways and they talk about another stimulus bill of another couple of hundred billion dollars—just another \$100 billion, \$200 billion.

Remember, \$100 billion—the entire Transportation-HUD expenditure this year is \$68 billion.

I don't think this is any kind of exaggeration. I am not an alarmist, but I am alarmed because I am telling the truth about these numbers.

What have we done on previous spending bills that have come through the Senate? Two other bills have already come through the Senate and had stunning increases in them. Look at this. This is Interior and the Environment expenditures—Department of the Interior and the Environment—EPA, basically. Look at that: 16.6 percent increase in 1 year. It had a tight budget last year, but it had a 16-percent increase this year. The EPA, the Environmental Protection Agency, which now is claiming the ability to regulate CO<sub>2</sub>, they got a 33-percent increase in spending. EPA got a 33-per-

cent increase in spending. We have never seen those kinds of numbers before.

Look at these expenditure growth items over the last number of years. When President Bush was in, everybody said he was a spendthrift, that President Bush put us in debt.

Democrats say: We are not doing anything. This is a President Bush—it is all his fault. He was a big spender.

I criticized him some for overspending. A lot of Republicans have. But look at his averages for those Interior and Environment appropriations.

It averaged 1 percent from 2001 to 2009, so he was holding the line. He had some 5-percent years, 5.6, but some negative years too. So the average was a modest 1 percent. Remember, 16 percent growth in spending at a time when inflation is zero.

Another example of that—let's take the Agriculture bill. I believe in agriculture. I have tried to support most of these bills. I have worried sometimes that we were spending too much on agriculture. But I can't vote for this. We have already moved this legislation through the Senate, the Agriculture appropriations discretionary spending. Here we had in 2004 a minus 1 percent, zero in 2005, zero in 2006, a 6-percent jump in 2007, 1.1 percent in 2008, now 15 and 14.5 percent increases. How can we say we are responsible when we are doing that? We were having deficits through these years.

We have never seen deficits averaging \$1 trillion a year, which is basically what is going to occur under President Obama's budget. I wish it weren't so. I wish I didn't have to make this speech, because these deficits are dangerous to the American economy.

These numbers remain here are stunning numbers. The only one that got a modest increase was for the men and women in uniform of the Defense Department. But State and Foreign Ops, 32.8-33 percent; Interior, 16.6; Commerce-Justice-Science, 12.3 percent; T-HUD, 23 percent; Agriculture, 14 percent; Defense, 4.1. That should tell us something about maybe where the priorities are around here. It is troubling to me.

What do the American people think about this? I have heard a lot of my colleagues say: We have a recession and we have this war that is going on. We just have to spend more. The American people understand that. It is all right. We just want to do this, and let's do it.

Look at this poll that came out recently. Actually, it was November, last month, a CNN poll. The question was, Which of the following comes close to your view of the budget deficit: The government should run a deficit, if necessary, when the country is in a recession and at war or the government should balance the budget even when the country is in a recession and is at war. Sixty-seven percent say balance



the budget. First, they know this isn't World War II. We have a very expensive war. We need to make sure our men and women are well funded. But it is not the driving factor in the deficits we are having today. Only 30 percent said, run a deficit. Four percent had no opinion. Sixty-seven percent said we ought to have a balanced budget, even in a time of war and recession.

There are other problems. There are ramifications that arise from this kind of reckless spending. It has been a catch line for a number of our colleagues who support this health care bill that it would reduce the deficit. Past history with entitlements has shown that is not so. Estimates don't prove to be accurate. No. 1. No. 2, there are gimmicks in this health care bill that hide its true cost. I will mention one of them for the moment.

One of the big ones is that we don't pay the doctors. The doctors are projected, after this next year and for 9 years under this budget scheme, to take a 23-percent cut in their payments for the work they do for Medicare—a 23-percent cut. Many doctors already are leaving Medicare and Medicaid because they are not paid enough. They are paid substantially less by the U.S. Government for Medicare and Medicaid than private insurance companies pay them for the work they do.

That was part of the plan to fix Medicare, to fix permanently the payments for our physicians. When the numbers didn't add up—and if you paid the physicians what you are supposed to pay them, it would cost \$250 billion over 10 years—they attempted to take the doctor fix payment and put it in a separate bill, every penny of it going to the debt, saying: Our health care bill is deficit neutral. The health care bill is deficit neutral. I am voting for a bill that is not going to impact the debt.

Well, when you move a \$250 billion hole out of your bill and put it over here, that is one way to hide what you are doing. If you count that, we have a \$120 billion deficit in the bill by the scoring of our own colleagues. They just took that out because the numbers wouldn't add up if it were in. It is wrong. It is the kind of gimmicks and manipulation the American people are getting tired of. Some people are going to pay at the ballot box for continuing this kind of thing.

Let me give some examples of how even the estimates of these bills fundamentally turn out to be wrong. In 1967, the estimate for how much Medicare would cost in 1990 was \$12 billion. They projected how much Medicare would cost in 1990. What was the actual cost in 1990? It was \$98 billion, not \$12 billion. That means the estimates were off by a factor of 8. In 1987, Congress estimated that Medicaid payments to hospitals would cost \$1 billion in 1992. That was just 5 years out. The 5-year projection was Medicaid payments to

hospitals would be \$1 billion. What was the actual cost? It was \$17 billion, meaning the estimate was off by a factor of 17 in only 5 years.

This kind of recklessness jeopardizes our economy. I don't think this spending is helping our economy because I think what is occurring is that people who invest in the future, hundreds of millions, maybe billions of dollars in big factories, are worried about our recklessness. They are worried about future economic stability. They are not as willing to invest because we are not acting responsibly.

Stanford University economist Michael Boskin stated in a recent editorial in the *Wall Street Journal*:

The explosion of spending, deficits and debt foreshadows even higher prospective taxes on work, saving, investment and employment. That not only will damage our economic future but is harming jobs and growth now.

There is too much truth in that.

Brian Riedl at the Heritage Foundation, on October 6, in the *Washington Times*, did an op-ed that said that estimates on the size of the deficits I have just given are likely to be wildly optimistic. When I said the debt triples from \$5.8 to \$17.3 trillion, I am not including health care in those numbers. It hasn't passed. That is not current law. They didn't count that in the numbers when they were scoring it. He notes that the President assumed that spending would only increase at the rate of inflation for 9 years after 2010, after he included an 8-percent increase for spending in 2010.

The President's deficit estimates also assume interest rates lower than those in the 1980s or 1990s. Once all the factors in Mr. Riedl's analysis are added up, he projects a total deficit for the next 10 years to be \$13 trillion—an unsustainable level for sure and well above what CBO has scored. He is projecting higher interest rates on the debt because so much money would be borrowed worldwide. How do you induce people to loan you money? You have to offer them higher interest rates to get them to loan you money. They will not be loaning money at the low interest rates we have today because of this economic slowdown. Interest rates are going up. CBO acknowledges that in their score. The Heritage scholar said it is going to go up higher than CBO had scored.

An October 14 *New York Times* article said that the reason we are not pressing China to appreciate its currency, to stop devaluing its currency against ours is because we rely on them to purchase our debt.

Dong Tao, an economist at Credit Suisse, said:

Obama's interest is not to push China to appreciate its currency, but to get them to pay the bills.

In other words, to get them to keep buying our Treasury bills so we can keep borrowing money.

Small manufacturers all over the country, including Alabama, have suffered from China's undervalued currency. They not only have a wage advantage over us to a significant degree, they also don't have the environmental laws we have. They also devalue their currency—all of which makes them more able to undercut American companies' manufacturing and adversely compete against them. I am constantly hearing about it from my State. I know others are hearing the same thing.

However, China and other countries may not be able to keep financing our debt in the future. Professor Allan Meltzer, a well-known scholar on the Federal Reserve and monetary policy, noted in a column in the *Wall Street Journal* that our current and projected deficits are too large relative to current and prospective world savings to rely on other countries being able to finance them for the next 10 years. We just can't expect to be able to have that much wealth out there in terms of our own citizens saving money to buy the Treasury bills and debt of the United States. Other countries are not going to have it either.

In a Budget Committee hearing on budget reform, November 10, former Comptroller of the Currency and GAO David Walker testified that by 2040—time flies faster than we like to admit—we will have to double taxes to keep current with our commitments. This is the former Comptroller General of the United States, the head of the GAO, the Government Accountability Office. He knows these numbers, and he has been very concerned about our reckless spending for quite a number of years. He is basically committing himself to trying to get this country on a sound financial track. Mr. Walker stated that in 12 years, interest will be the single biggest line item in the budget, even assuming interest rates don't change from today's low rates. But interest rates are going to go up, at least some. He also said that debt and deficits are the public's largest concern by 20 points in the opinion polls.

That is what I am hearing from my constituents. They want some leadership up here. They want us to say: We would like to be able to provide more for this, that, and the other. But we simply have to get our house in order. And in the long run, if we hold the line now, we can get this house back into order. I believe we can. But we cannot on the path we are today. In a *Financial Times* editorial in May of this year, Mr. Walker warned that the United States is in danger of losing its triple-A financial credit rating. Well, is that possible that the United States of America would not have the highest credit rating in the world? Mr. Walker said it is possible. He made that comment in May of this year.

Of course, if you do not have the highest credit rating, you have to pay

higher interest rates to get people to buy your debt, to loan you money. So if you want to loan two people money, and one is rock solid, you might loan it to them for 4 percent. But if another person is risky, you may want 5, 6, 7, 8, 9 percent from them.

So Moody's rates people to see how reliable they are in paying their debt back with dollars worth the same as you loan them. Mr. Walker warned that our reckless spending was putting us on a path where we would no longer have our triple-A credit rating.

Well, sure enough, in a report just this week, the big rating service, Moody's, stated that the U.S. is in danger of losing its triple-A credit rating. Pierre Cailleteau, chief international economist at Moody's, stated that unlike several years ago, "now the question of a potential downgrade of the U.S. is not inconceivable."

Well, that would make the interest payment of \$799 billion for 1 year, in 2019, be low. If we get downgraded, that interest payment is going to go up.

So under the most pessimistic scenario put forward by Moody's, the United States would lose its top rating in 2013.

This is a great country. We have such dynamic people and economy. They are willing to work. They are willing to compete. They are willing to save and all. But we need some leadership, and we need some leadership from Congress. We are oblivious to what the American people are telling us, and we are oblivious to the massive debt increases we are putting on the American people.

Therefore, this bill that cloture was invoked on today, should not pass because having a 12-percent increase in spending, which would double that whole bill's financial spending in—what?—5, 6, or 7 years, is unthinkable at this point in time, and I am against it. I hate to be against it. I see a lot of things in there I like. But I do not believe the Republic is going to sink into the ocean if we would have a 1- or 2-percent increase in spending for these six bills. I do not believe everything is going to collapse if we were to have a little frugality around here—give up some of our pork spending, give up some of our special projects and focus on what is the national interest for a change, and try to contain the surging growth of spending.

I do not know when it is going to occur. Everybody says we have to stop. So when? I say now. I say, let's send this bill back. Let's do not pass this bill. Let's send it back to the conferees and the appropriators and say: Come back with a bill that is more responsible. Then we will pass it. We are not going to not pass legislation to fund these things. Don't let anybody say that.

But the question is, What kind of increases can we justify? I am worried

about it. The American people are worried about it. Soon Congress needs to get worried about it. If not, we are going to have some new people in Congress, and some new people are going to fix it because it can be fixed if we show determination.

I thank the Chair and yield the floor.  
The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I rise this afternoon to speak about health care and the bill that is on the Senate floor that we have been debating now for a number of days, the Patient Protection and Affordable Care Act. I want to provide, first, a brief overview, but in particular to focus on provisions that relate to our children and then get into some detail about those provisions and the important programs that are contained within those parts of the bill.

First of all, as we all know from the debate, what this side of the aisle has been trying to do is not just to pass legislation, but to do it in a way that meets the goals we set forth many months ago and, as well, what President Obama indicated much earlier this year in terms of some basic goals.

I will just cite a few of those: To make sure when we are enacting legislation that we do not add to the deficit; that we at least break even, so to speak. But the good news is, on the scoring done by the Congressional Budget Office, the Patient Protection and Affordable Care Act will actually lower—lower—the deficit over 10 years by some \$130 billion, and then lower it even further over the course of the next 10 years, by one estimate, over \$600 billion. So that is good news about deficit reduction as it relates to this bill. Even if we broke even, it would be significant.

Also, we are obviously trying to cover tens of millions of Americans who do not have coverage. The foundation of the bill on that issue is that some 94 percent of the American people will be covered, adding some 30 million to 31 million in terms of coverage. That is also a goal. I think we are going to be able to meet that.

Then there are a whole series of things we have talked and talked about for years and have never done. We talk about how we have to enhance health care quality. We have not done much about it, and we are going to be able to make changes in this bill to do that.

Certainly prevention. Everyone knows—the studies on this are, in a word, irrefutable—that prevention is not only good for a patient and good for his or her own family, and good for the economy long term because you are going to have a healthier worker, but it is also a giant cost saver, sometimes in a way that you cannot quantify or even often get credit for from the Congressional Budget Office.

I have no doubt—and I think I join a lot of other people who know a lot

more about prevention than I do—that this will be a huge cost saver in addition to being something that leads to better health outcomes. So in terms of quality and prevention and deficit reduction and coverage, it is a very strong bill.

It is also a strong bill in terms of dealing with what we can call, in two words, consumer protections. That does not even begin to describe what this bill will do in terms of helping at least one category of Americans. We saw a study a couple months ago that indicated over a several-year period of time—if my recollection serves me, 3 years—millions of Americans—not thousands or tens of thousands, but millions of Americans—have been denied coverage because of a preexisting condition. That is because we have allowed insurance companies to do it year after year, and in some cases a lot longer than that.

Well, we do not need to just talk about it and decry it and condemn it, we need to make it illegal. But we also have to make sure we do not just pass legislation—a lot of which has to be implemented down the road—and then say to those with preexisting conditions: We have changed the law, but you have to wait several years.

One of the immediate benefits under the Patient Protection and Affordable Care Act relates to those Americans who have preexisting conditions. The act will provide \$5 billion in immediate Federal support for a new program to provide affordable coverage to uninsured Americans with preexisting conditions. Coverage under the program will continue until the new exchanges are operational. That is good news for millions of Americans who have been denied coverage.

I cannot tell you—I think every Senator in this Chamber on both sides of the aisle, Democrat, Republican, Independent—has received letters from Americans, horrific, tragic stories, in many instances, where they have been denied coverage, sometimes leading to death, sometimes leading to, even if it is not death, the worst of health care outcomes. So that high-risk pool, as it is called, for those with preexisting conditions will mean immediate benefit under the bill.

I will mention a couple of other things that will happen immediately, and then I will move to the provisions on children. We hear a lot about business on this floor and arguments about who is stronger or who is more of an advocate for small business especially. But what we do not say enough is, this act, the Patient Protection and Affordable Care Act, will offer tax credits to small businesses to make employee coverage more affordable, and those tax credits will go up to 50 percent of premiums, which will be available to firms that choose to offer coverage.

That is another not just good reform—good for the small businesses,

good for the employee, and really good for our economy short term and long term—but it is one of those immediate benefits.

I will cite one more, and then I will move on.

This Congress, a couple years ago, passed Medicare Part D, as it is known, adding prescription drug coverage. One of the adverse impacts from that legislation is, an older citizen gets the benefit of that and is able to benefit from the prescription drug coverage, but then they fall into the so-called doughnut hole. That is a very innocent-sounding phrase, “doughnut hole.” It does not sound that bad. It is a nightmare for someone.

Basically, what it means is that an older citizen has to carry the whole freight for a long time and pay a lot of money at a certain period of time when they fall within that category.

The Patient Protection and Affordable Care Act will reduce the size of the so-called doughnut hole by raising the ceiling on the initial coverage period by \$500 in 2010. That is another immediate benefit of the enactment of this bill.

The act will also guarantee 50-percent price discounts on brand-name drugs and biologics purchased by low-income and middle-income beneficiaries up to the coverage cap. That is another immediate benefit.

These are benefits in terms of small business, in terms of covering those with preexisting conditions immediately, as well as helping older citizens deal with and manage the difficult doughnut hole problem so many of them have been suffering from.

Let me do a quick summary. I will start with this chart. As shown on this chart, this is just a summary of some of the challenges of where we are now and what happens if we do nothing. It says: Status Quo is Unacceptable and Unsustainable. That is an understatement.

The first bullet point on there: Every week, 44,230 people are losing their health insurance coverage. So every week that goes by, every day that goes by, we have Americans losing their coverage—bad for the individual and their family, and it is real bad for our economy.

The second bullet point: Between January 2008 and December 2010—roughly you are looking there at a 3-year type period—178,520 individuals in Pennsylvania are projected to lose their health care coverage. There is no way to adequately describe the adverse impact that projection and that data point has on the people of Pennsylvania. You cannot have a growing economy if people are losing their health coverage. The numbers are spiraling out of control, not only in Pennsylvania but across the country. You cannot sustain any economy that way long term.

The third and final bullet point: Without reform, family coverage will cost \$26,679 in 2016—just 7 years from now—consuming 51.7 percent of projected Pennsylvania family median income. The cite is the New American Foundation.

That same number for the country—in other words, the percentage of median family income going to pay for health care—for health care, something so fundamental and basic in our society—it is 51.7 percent in Pennsylvania in 2016. The good news for the rest of the country is that the national average is only—only—a little more than 45 percent.

I have not met a person in Pennsylvania or anywhere else in this country, but I know I have not met a person in Pennsylvania who says: Do you know what. Don't worry about it. Don't worry about passing any health care reform bill. Don't worry about getting it done because in 2016—I am living in Pennsylvania—I can come up with 51.7 percent of my income for health care. Don't worry about it. I can handle it.

We know no one can afford that. Even a family of tremendous means might have trouble affording more than half their income—half their income—to pay for health care.

What if the projection is wrong? What if it is off by 10 percentage points? That is 40 percent. What if it is wrong even more? What if it is only 30 percent? I do not know of a family who can afford that.

So we have a lot of reasons to get this right and to pass the bill. That projection is one of the most horrific.

Now I will move to the chart on children.

I will give just a quick summary of what the bill does for children, and then we will walk through the Children's Health Insurance Program.

A couple of basic points: pediatric benefit package; that comes with this legislation, including oral and vision coverage for children. Many health plans do not provide that kind of coverage. It is one of those unwritten stories—or if it has been written, it has not been written about enough—where children lose out, sometimes even in a good health care plan for their parents. So it is not good enough to say, well, we have some coverage here and kids will be just OK. Children, as the advocates remind us all the time—these are not my words—are not small adults. They have different health care needs, and they have different health care problems and challenges.

Pediatric benefits, as part of the benefit package, is a dramatic change and a very important change.

This bill will not only require coverage for basic pediatric services under all health plans but also oral and vision needs, which improve a child's ability to learn and perform in school. So we can't talk about getting better

test scores in school and doing all kinds of things that are in our education system if a child is not given the basic health care a child needs, not the health care an adult needs.

The second point under what the bill would do is more pediatric providers. We have to have strategies in place to recruit and incentivize and train more pediatricians. You can't just say you want more coverage for kids and throw more money at it; you need to have the workforce to do it. The Patient Protection and Affordable Care Act will expand the workforce, including pediatricians, pediatric nurse practitioners, specialists in pediatrics, and pediatric oral health professionals to give kids what they should have in this country of ours where we know what works. We know exactly what works when it comes to children's health insurance.

Then, providing greater quality, improving the quality of coverage for children. The preventive health care we are going to provide for children is dramatic.

Finally, let me make a point about children overall. We hear a lot of discussion about where health care—what part of the country benefits the most and who will benefit the most. Well, under this legislation, there is not an American, I believe, who will not be positively impacted one way or another, sometimes directly. But one message came out loudly and clearly during the debate on children's health insurance going back a number of years in the Senate. Often, most people think of children under the benefit of the Children's Health Insurance Program as living in urban areas maybe or in a big city because that is where poverty is highest and, therefore, lower and middle-income families benefit from Medicaid or children's health insurance. That is largely true, for sure. But what came through to me in that debate many years ago—several years ago now—is something I never knew before, which is that one-third of rural children in America are the beneficiaries of either Medicaid or the Children's Health Insurance Program. Not many people heard that until a couple years ago. So this isn't about one specific demographic—or geographic, I should say—location where children are and who need these benefits, where there is Medicaid or the Children's Health Insurance Program. We know this is a problem for rural children, for urban children, for children who live in small towns, and even in suburban communities that are perceived to be a little more secure economically.

When I have been talking about what we have to do for children, I often point to a line from the Scriptures, a very simple line, but I think it holds us accountable in this debate as it relates to children. There is a line in the Scriptures that says, “A faithful friend is a sturdy shelter.” The question we

have to ask when we are debating how we are going to help our children in this legislation is: Will we be a faithful friend to children? It is actually a pretty simple question, with profound, almost incalculable implications. Are we going to be that sturdy shelter for children, children who don't have a voice, who don't have economic power, who don't have a lobbyist showing up on Capitol Hill every day saying: Take care of this child or help this group of children. So the question for the Senate, one of many questions we have to answer by the end of this debate is: Will we be a sturdy shelter for children? Will we be a faithful friend to children?

Let me conclude with a couple remarks about the Children's Health Insurance Program, in particular. My colleagues can see up here, in Pennsylvania—this is typical of a number of States but not every State—through Pennsylvania's Children's Health Insurance Program benefits, children are guaranteed to receive comprehensive insurance coverage, including the following:

Every child should have this. I don't care who they are or where they live or what their economic status is, they should have immunizations. They should have routine checkups, prescription drugs, dental care, maternity care for their mothers, mental health benefits, up to 90 days' hospitalization per year, durable medical equipment, substance abuse treatment, partial hospitalization for mental health services, and, finally, rehabilitation therapies and home health care. That whole menu of benefits for children is not some theory or some hope, in a sense; this is what the Children's Health Insurance Program means to America's children, their parents, their family, and, I would argue, this is about economic development in the long run.

This is about developing a high-skilled workforce. If a child has these benefits in place, they can make it in life, with a couple other breaks and some other incentives. But if they don't have this list and they don't have the best possible health care, they are going to be in a lot of trouble. All of us will be in trouble because our economy will never be as strong as it can be and must be unless we do that.

Let me go to the next chart, which is a subset of that. This chart depicts what is in children's health insurance now: Well-child visits. I have talked about that a lot. It is not a real glitzy subject for people to debate but a critically important part of what children's health insurance means and the benefits mean, a well-child visit. In the course of 1 year, under the Children's Health Insurance Program—under the program we put in place and Congress enacted almost 15 years ago and then we reauthorized it just this year and President Obama signed the legisla-

tion—it means, instead of 7 million kids covered—that is a great amount and that is great, but in a couple years, we are going to be able to expand that to 14 million children. I wish to make sure—and I am sure this view is shared across the aisle as well—that every child should have six of those well-child visits in a year. It is a key time for a parent and physician to communicate. Doctors recommend six visits in the first year. They get a complete physical examination, including height, weight, and other developmental milestones are measured. Hearing and vision are checked. We have all had the experience where a child doesn't get those kinds of basic checks and they have a hearing problem because it wasn't detected early or a vision problem. One of my four daughters had a vision problem. It wasn't caught at an early enough stage and we had some real difficulties making sure she had the right care.

Important topics discussed, including normal development. What does that mean? A doctor should be able to talk to a parent about that, and the program covers that. Nutrition, sleep, safety, infectious diseases, and then general preventive care. Why should there even be a debate about whether children get this? The good news is, we have a program that does that and the good news is also that we have just expanded that program.

Here is where the challenge comes in. In the midst of health care reform, the House of Representatives did a lot of good things in their bill. One thing they did not do well is make sure the Children's Health Insurance Program is as strong as it needs to be and must be, and that is the reason why I received the following letter. I will not read the whole letter, but this letter came from Barbara Ellis. She is in Broomall, PA. I spoke to her a couple days ago about her letter. I will not read all of it, but I think it describes pretty aptly what we are talking about.

Barbara and her husband Ben live in Delaware County, PA, in Broomall. She says:

We are a one income family with two sons, ages 6 and 8. Due to the high price of health insurance my children are currently covered under the free Pennsylvania Children's Health Insurance Program.

That is the good news. But here is the part where she is worried:

We qualify for free Children's Health Insurance coverage in Pennsylvania, but my husband's income is greater than 150 percent of the Federal poverty level which means our children won't qualify for the coverage under the House's proposed plan.

Then she says—probably the most important part of this whole letter: "This has us terrified."

So it would any parent who does not have the peace of mind to know, when they fall asleep at night, they don't have to worry about whether their

children have health insurance. But if we don't do the right thing, she will have that sense of terror. She says this as she concludes the letter:

It would help us tremendously if you could support keeping the Children's Health Insurance provisions intact which would, in turn, support families like ours.

That is what I have done by way of an amendment to our bill to make sure we strengthen what the House did and strengthen even our own bill. Our children's health insurance amendment, which I will not go through today, strengthens and safeguards the program through 2019 and beyond to address any changes health care reform may bring.

We will talk more about it, but this is key to be able to make sure we have not just a set of benefits for children that are directly tied to their care and will help them for decades afterward and help our economy and give their families peace of mind but also that in the process of making sure we keep these kinds of benefits, we keep the program strong, not just until 2013 but at least all the way to 2019. I think we can do that. I think we can do that in the midst of this debate and get it right and give families and especially children that kind of protection.

In a word, what we have to make sure we do is to ensure that the Senate and the Congress and this administration do everything they can to prove and to demonstrate that we are a faithful friend to children, that we will always be their sturdy shelter.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, I appreciate the good Senator from Pennsylvania and his discussion and his clear and constant focus on children and children's health. I wish to commend him for his good work and for always reminding us of the importance of our children in so many aspects of our policies. So I thank him for that.

I, too, rise this afternoon to talk about the debate on health care and the debate we seem to have ongoing with the numbers. Whether it is numbers that are coming out from the Congressional Budget Office, the CBO, or from our States or from other noteworthy entities, there is a great deal of back and forth as to whose numbers are right, whose numbers are wrong.

There has been a great deal of discussion in the past day or so about the numbers we have received and the analysis we received from the Office of the Actuary, from CMS, the Centers for Medicare and Medicaid Services. The Chief Actuary is Mr. Richard Foster. A good deal of discussion has been had as to these numbers, and the question that needs to be asked is: Why would the numbers from the CMS Actuary be any more significant than, say, what

we have seen coming out of the Congressional Budget Office?

The Chief Actuary of CMS is kind of the independent arbiter, if you will. They look at both the private and public health care expenditures. The Chief Actuary provides actuarial details that I think we recognize can be critically important for certainly my State and for any of our States' economists to develop individual State estimates of the financial impacts, the effects of the health care reform proposal.

As important as discussion on the broader scale is, the people back in my State want to know: Well, what does it mean for us in Alaska? What does it mean for increased access? What does it mean for us in terms of our premiums? Are they going up? Are they going down? How do we as a State that is very unique in its markets—geographically dislocated, smaller population—how does this health care reform proposal impact us? So the numbers and the assessment we have received from the Office of the Actuary are very important.

I have mentioned we all want to know what this Democratic health care proposal will mean to us as individuals in terms of the increase to premiums, the impact on the long-term sustainability of Medicare, whether it is going to restrict access to care in a State such as Alaska or throughout rural America. And ultimately, will this \$2.5 trillion bill bend this cost curve down on health care expenses that are pricing so many Americans out of the market on health insurance.

I think it is so important that we be focused on the cost side and on the spending side. That is a bipartisan thing. We haven't done a lot that is bipartisan of late, but it is clear we all want to know we are doing all we can effectively to reduce those costs.

I will note a letter that came from six colleagues on the Democratic side. This was sent when the Finance Committee bill was being considered. A letter went out to Chairman BAUCUS that provided that:

There are many wide-ranging options to address the broad and complicated issues of runaway health care costs, and we pledge our support to you in making the necessary and tough decisions.

"This is our No. 1 priority," the letter states. "If we pass health care reform without addressing the issue of health care spending, we have failed."

I couldn't agree more with my Democratic colleagues who signed that letter. We will have failed if we have not addressed the issue of cost, the issue of spending.

Again, this takes me back to the report from CMS, the Actuary's report. I want to highlight some of the very important points that were raised by the Chief Actuary.

First, the Reid bill reduces payment updates to health care providers, which

are unlikely to be sustainable on a permanent basis. If you go through the report, on page 9 is a statement that:

As a result, providers could find it difficult to remain profitable, and absent legislative intervention might end their participation in the Medicare Program. The Reid bill is especially likely to result in providers who are unwilling to treat Medicare or Medicaid patients.

On page 18, the statement is:

Providers might tend to accept more patients who have private insurance and fewer Medicare and Medicaid patients, exacerbating existing access problems for the latter group. Either outcome, or a combination of both, should be considered plausible and even probable.

I can tell you for a fact this is not just some maybe or if, in fact, these things happen; this is happening.

I received a call 1 week ago from a practitioner in Alaska, in Anchorage, a family care practitioner. I was told that this practitioner, who has been practicing for many years in the family care practice—that the decision had been made to opt out of Medicare. In the e-mail we received and the followup conversation that was had with this practitioner, it was specifically cited that it is due to what is—I am reading from the e-mail we received—"due to what is in the Reid bill, as it will collapse my practice."

This is incredibly important to us not only in a State such as Alaska, where we are in a crisis situation when it comes to providers who are willing to take new Medicare individuals. Right now, in our State's largest city, we have 13 providers who will take new Medicare individuals—13. Well, if this individual whom we have communicated with a week ago is making the decision to opt out of Medicare because of the low reimbursement rates, because of what is seen developing here on the floor of the Senate, and the impact that will have on that family care practice—talk about not being able to sustain things—it is not acceptable.

When I read the language in the Actuary report that says that providers might tend to accept more patients or might find it more difficult to remain profitable and might end their participation in the Medicare Program—to me, I am saying it is not "might," it is happening, it is now, and it is impacting Alaskans' access to care in my State.

This is something we should all be concerned about. It is not just this one practitioner. We have heard this has caused a great deal of anxiety within Alaska, primarily because that is where I am checking in with folks. But the anxiety about their ability to sustain a practice, again, with Medicare reimbursement rates as low as they are—in our State, we don't have a medical school, so it is not as if we are growing more practitioners to come in. It is very costly to have a practice in Alaska. We have a lot of strikes against us.

We have to figure out a way we can continue to receive care from these fine professionals. But right now, from a policy perspective, it seems as if we are doing everything possible to drive them out.

I am talking a lot about the situation in Alaska, but don't think for a minute that it is isolated to my State. The statement that is made by the Actuary is devastating news for States that are also facing problems of access, in terms of finding a general care doctor to see them, such as Oregon, Nevada, Colorado, and New Mexico.

There was a GAO report—granted, this is a 2006 GAO report, but it did an assessment of what is happening in locations across the country, and those areas where access is compromised. You look at the statistics coming out of GAO, and their wording is:

This suggests the distinct possibility of a deepening problem in many of our Western States.

So it is not just in a few isolated communities. We have States that are looking at this and calling the crisis for what it is. What we are doing in this health care bill currently before us is we are using Medicare as kind of this guinea pig, if you will, cutting from the Medicare—from the health program, even though we all recognize Medicare is slated to go broke by 2017—and using the Medicare money to expand Medicaid and, if the Medicare reports are true, expanding Medicare as well. So the end result is to harm Medicare patients as we expand Medicaid.

Alaska is a little bit unique. We are one of two States where Medicaid is actually a better payer, or better in terms of the reimbursements, than Medicare. But even still, the economists we have at the University of Alaska's Institute for Social and Economic Research have said that Medicare patients will lose access and, as they have suggested, kind of go to the back of the bus, if we expand Medicare.

I want to use their language specifically. This is from the analyst at ISER. He has stated that:

We can continue to be concerned that the newly enrolled through the Medicaid expansion and the new exchange will create a big surge in demand that could easily create a traffic jam in the health care system and send the Medicare beneficiaries to the back of the line in Alaska due to Medicare's low reimbursement rate. Expanding Medicaid is bad for Alaska.

The Chief Actuary at CMS is saying Medicare and Medicaid patients will both face limited access to care under this bill. While in Alaska Medicaid patients may fare better, what is happening is at the cost, or expense, if you will, of Medicare patients. So you are robbing Peter to pay Paul.

Keep in mind that, as we look at the CMS letter—the Chief Actuary's letter—it doesn't even address the Democratic leader's desire to bring to the floor the provision that would expand

Medicare to those 10 years younger than the current threshold age for Medicare. So what we are seeing within this analysis is probably just the floor in terms of what the impact will be if we allow for this expanded Medicare provision, this buy-in, if you will.

Again, my State's seniors are absolutely suffering on Medicare, with virtually no primary doctors who will see them in our State's largest city. Now we have experts saying Medicare's patient access to care is going to suffer.

We simply cannot expand broken health care systems. We have to fix the systems. You don't expand a broken thing and hope it will fix itself.

Yesterday, in our State's largest newspaper, the headline at the bottom of the fold was:

"Health Bills May Hurt Some Alaskans," consultant says.

And it says:

Older residents could have more trouble seeing doctors.

If you don't think that sends chills up and down the seniors in my State, knowing that the difficulty they are facing now could be made worse—a point that I think is important to add to the conversation here. You might think, well, Alaska, you don't typically have a lot of seniors, you are a younger population. We are that, but it should be noted that we are, per capita, the State with the fastest growing senior population in the Nation. We have a situation where, as we have our baby boomers aging in, the numbers are increasing dramatically, as far as those who will require the care. The number of patients who are 65 and older at the health care facilities, Anchorage Neighborhood Health Center, has jumped on the order of 50 percent within a few years. The neighborhood health center saw twice as many Medicare patients in 2007 as in 2001.

The report also found that older Alaskans have been visiting the emergency room in growing numbers. What we are seeing is an expansion of those who will be our Medicare consumers. In 2008, there were 49,455 Alaskans 65 and older; but by 2015, 5 years from now, the number is expected to increase 50 percent. By 2020, 10 years from now, the number is projected to increase to over 86,000 individuals in Anchorage. Yet, we have fewer and fewer primary care doctors who are willing to accept these Medicare patients.

The proposal out there is that we are going to cut \$½ trillion from Medicare to pay for a new government entitlement. That doesn't add up.

Back to the Actuary's report. It goes on to state that:

We estimate that total national health expenditures under this bill would increase by an estimated total of \$234 billion during calendar years 2010 to 2019.

We know that bending down the cost curve, which has been so essential to the health care reform bill, according

to our own government's expert, is not going to be achieved in the Democratic leader's health care proposal.

Contrary to what Senator BAUCUS said last week, that Senator MCCONNELL's statement that this bill raises costs was "a false statement," this bill does, in fact, raise health care expenditures, and all you need to do is go to the Actuary's statement to determine that.

The Actuary's report goes on to provide:

The new fees for drugs, devices, and insurance plans in the Reid bill will increase prices and health insurance premium costs for consumer. This will increase national health expenditures by approximately \$11 billion per year.

We know this bill is going to raise money on the backs of patient consumers. This is going to happen in my State. It is going to happen in every other State. And it is going to be done by taxing the industries that provide us with the prescription drugs, the medical devices, such as tongue depressors, medical thermometers, blood sugar meters, x-ray machines, and the like.

Whether or not you agree on taxing these industries, what the CMS Actuary is telling us is that these additional taxes are going to be passed on to the patient consumer to the tune of \$11 billion every year. Again, the American people should know that their costs on drugs, thermometers, diabetes test strips, labs, and x rays are all going to go up because new penalties imposed by the Federal Government will be passed on to the patients.

I appreciate the work Mr. Foster, the Chief Actuary, has done in getting us this report. I wrote him a letter on Monday asking if we could get the report so the folks in our respective States could look through it and better assess and understand. They want to know that they are relying on a good, sound assessment. But I will tell you, after reviewing the Actuary's report, I do not know how anyone could come to a different conclusion other than that these proposals, these bills, do not look good for my State, they do not look good for the medically underserved areas of the country, such as urban areas with limited access to care because of their high Medicaid populations or for rural America where general-care doctors just simply are not taking Medicare patients.

This is just a bad bill. It is a bad bill. It hurts our seniors, it does not bend down the cost curve, it spends \$2.5 trillion, and it raises health care costs. We have to figure out a path forward that is reform that does not increase the cost to our constituents around this country, that truly does make a difference when it comes to the delivery of health care costs in this Nation, and that really does provide for expanded access.

I have said numerous times that just by giving an individual a card that says: OK, now you are part of a health care plan but you don't have access to a provider, we really haven't done what we have promised to do to help you receive good health care.

There is a great deal that is floating out there in terms of "he said, she said" type of conversation on the numbers. It is incumbent on us in the Senate to give thorough vetting, thorough assessment. We have to rely on the experts. We hope we rely on those experts who have been able to look at the proposals fairly and evenly and give their best assessment. I have a great deal of confidence in our independent entity in the State of Alaska, the Institute for Social Economic Research at the University of Alaska. I appreciate what they have done to provide more focus on what this national proposal will do to access to care in my State and costs that will be borne by my constituents.

I think the more time we spend understanding what we have in front of us, the more we realize this is a bad deal for America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Utah.

Mr. HATCH. Mr. President, yesterday the administration's own Department of Health and Human Services health analysis warned Americans about the impact of this bill. According to the official scorekeepers at CMS, the Centers for Medicare and Medicaid Services, the Reid health care bill will actually not only increase our national health care costs by \$234 billion over the next 10 years but will also reduce access and cut benefits for our seniors. This non-biased report simply proves what we have been saying all along: You cannot reform a \$2.4 trillion health care system simply by spending another \$2.5 trillion of hard-earned taxpayer money. Despite all the rhetoric from the other side about this historic legislation, the only thing this bill accomplishes, after imposing \$½ trillion in new taxes and \$½ trillion in Medicare cuts, is to simply bend our Nation's health care cost curve up.

As a longtime supporter of the Medicare Advantage Program, I offered an amendment on the Senate floor to strip nearly \$120 billion in cuts to the Medicare Advantage Program that provides comprehensive health benefits, including vision, dental, and reduced cost-sharing, to almost 11 million seniors.

Unfortunately, despite statements from the Congressional Budget Office that these cuts would result in reduced cuts for seniors enrolled in Medicare Advantage, Democrats in the Senate voted to keep the cuts in the package to finance more Federal spending—\$500 billion in cuts in Medicare. Whom are they kidding? Medicare has \$38 trillion in unfunded liabilities.

This report is another reminder of why it was a mistake to not adopt my



amendment. The CMS Actuary found that the cuts to the Medicare Advantage Program in the Reid bill would not only result in "less generous benefit packages" for our seniors but, more important, it would decrease enrollment in Medicare Advantage plans by 33 percent.

Clearly, health care spending continues to grow too fast. This year will mark the largest ever 1-year jump in the health care share of our GDP. This jump is a full percentage point to 17.6 percent. You can think of this as a horse race between costs and resources to cover those costs. The sad reality is that costs win year after year.

Growing health care costs translate directly into higher coverage costs. Since the last decade, the cost of health coverage has increased by 120 percent, three times the growth of inflation and four times the growth of wages. Rising costs is the primary driver behind why we continue to see a rising number of uninsured in our country and why increasing numbers of businesses find it hard to compete in a global market.

Without addressing this central problem, we cannot have a real and sustainable health care reform bill. So what does this \$2.5 trillion tax-and-spend bill do to address health care costs? Absolutely nothing. According to the Congressional Budget Office, the premiums for Americans who buy insurance on their own will actually increase by 10 to 13 percent, while premiums for small and large groups will largely remain unchanged and continue to rise between 5 to 6 percent a year.

Furthermore, according to the CMS report, the new fees on prescription drugs, medical devices, such as wheelchairs and hearing aids, and health care plans will not only increase overall health care prices but also health insurance premiums for millions of Americans.

Let me make this point as clearly as I can. This bill does not address the underlying problem of slowing down the growth of health care costs. It simply spends hundreds of billions of dollars in new subsidies to buy out the cost of these increases for families making up to \$80,000 a year. Instead of fixing the real problems, this bill simply tries to spend its way out of the problems. Does that sound new to you? This administration seems to think that just throwing money at things is going to help.

We have been hearing a lot recently about how Democrats are throwing the government-run plan out of their bill to quickly jam this bill through the Senate before Christmas. The American people need to be careful about believing this propaganda. The Democratic solution to the government plan is a Ponzi scheme that would embarrass even Bernie Madoff himself.

I have to be fair here. I have to rely on news reports to discuss these provi-

sions. You heard me right—news reports. Why is that? Because no one knows what is actually in the bill they have sent to the CBO. Not even my friends on the Democratic side, by and large, know. The Reid bill was put together by very few Democrats with the White House in the back rooms of the Capitol. Nobody really knew what they were doing until they came out with it.

Once we all saw it, we all realized what a mess that is. They found themselves in trouble, so they have gone and done another bill and submitted it to CBO, and hardly anybody on the floor knows exactly what the features are in that bill. No one knows actually what is in the bill. And despite the continuous claims of transparency our friends on the other side are always talking about, the real bill continues to change on a daily basis behind the closed doors of the majority leader's office.

I am really glad to know that it is not just the Republicans who are in the dark about what is actually in this bill. Democratic Members of Congress in this body are also in the same boat. It is really unbelievable. We are being asked to move forward on legislation that will reform one-sixth of the American economy and impact every American life and business without knowing what is actually in the bill. We have to rely on news reports. I have never seen anything like this in my 33 years of Senate service.

One proposal that has come to the floor in recent days is the idea of expanding Medicare to include coverage for Americans 55 and over. Currently, we all know Medicare is for Americans 65 and over. It is a bankrupt program. It is well intentioned, it does a lot of good, but it is bankrupt. It is a program that can barely pay for the benefits of the 40 million seniors in it today. Medicare is on a path to fiscal meltdown, with Part A facing bankruptcy by 2017. I don't think anybody denies that. It underpays doctors by 20 percent and hospitals by 30 percent compared to the private sector, forcing an increasing number of providers to simply stop seeing our Nation's seniors.

According to the June 2008 MedPAC report, 9 out of 10 Medicare beneficiaries have to get additional benefits beyond their Medicare coverage.

What is Washington's solution to address this problem and crisis? Take up to \$500 billion out of this bankrupt program and at the same time push millions of Americans into it. Does that sound logical to you?

The CMS report states in clear terms that the Medicare cuts in this bill could jeopardize our seniors' access to care. The cuts would result in nearly 20 percent of all Part A providers, such as hospitals and nursing homes, operating in the red within the next 10 years as a result of these cuts. Twenty percent—that is a pretty big number.

It should come as no surprise that this proposal faces strong opposition from a wide variety of provider groups, from doctors and hospitals that are already under tremendous financial pressure due to underpayments from Medicare.

Keep in mind, the AMA here in Washington has backed this monstrosity. Now some people think that AMA represents all the doctors. It does not. The average doctor out there is incensed about this. Adding more lives to this insolvent Medicare Program will only further limit their ability to see all Medicare patients, not just the new ones.

Even more troubling is the impact of this expansion on the premiums of our Medicare seniors from this ill-conceived policy. This expansion would encourage an influx of sick Americans in private coverage into Medicare, which will simply raise premiums for seniors already enrolled in Medicare. So seniors, expect your cost of Medicare to go up.

So why are Democrats pushing this idea? Congressman ANTHONY WEINER said it best. I think he was very honest; very upfront. He said this:

Extending this successful program to those between 55 and 64, a plan I proposed in July, would be the largest expansion of Medicare in 44 years and would perhaps get us on the path to a single-payer model.

Well, the Democratic endgame on health care reform is crystal clear: Make as many Americans as possible dependent on the Federal Government programs. Democrats believe by making millions of Americans dependent on big government programs, on the backs of their grandchildren's future, they are taking a huge leap toward creating a permanent majority for themselves. Why, it would be a natural constituency for them.

Well, let me tell you this—America is built on the spirit of self-reliance, not government handouts. Poll after poll, especially the CNN poll, has said 61 percent of Americans are now opposed to the bill, and study after study is warning us this is the wrong solution for our Nation. This unknown bill, which continues to change by the day behind closed doors, is a direct violation of the President's own pledge to only support a reform that would reduce costs, protect benefits, and not raise taxes.

I sincerely hope the Democrats will step away from their arrogance of power and listen to the will of the American people. It is not too late for us to push the reset button and work on health care reform in a truly bipartisan manner. We are eager and willing, as we have been all year, to work on a responsible solution that every American can be proud of. There are all kinds of things we could agree on, that Republicans would work hand in glove with Democrats to solve, if they were willing to do it.



But keep in mind the HELP Committee bill was totally Democratic. Not one Republican was asked to help write it. The House bill, totally Democratic. Not one Republican was asked to help write it. I admit my friend, the Senator from Montana, MAX BAUCUS, worked hard to try to get a bipartisan bill. But in the end, he did not have enough flexibility to reach a deal. All of a sudden, he finds his bill being put together—between the House bill and the HELP Committee bill—behind closed doors, with very few people involved—all Democrats and the White House and probably two or three or four or five from the Senate but no more than that.

Throughout this debate, I have heard a lot of rhetoric from the other side of the aisle how Republicans are opposed to this \$2.5 trillion tax-and-spend bill because, as the Democrats incorrectly suggest, we want the status quo. Oh, give me a break. We all know this is completely false. We on this side of the aisle have asked the Democrats over and over again to step back and write a new bill with us. But they are so consumed with their arrogance of power that they simply want to push what they have always wanted; that is, more government and more government controls over all our lives. America is a free nation, the greatest Nation in the history of mankind. What makes us great is not our reliance on the Federal Government but our individual resolve and strength. Americans want the Federal Government to help them, not support them.

Well, let me tell you the other side of this. In a recent Gallup Poll, Independents around this country opposed this bill 53 to 37. These are Independents. So it would be wise for my Democratic friends to realize America is not behind them; not behind this bill. It is time for them to listen to what the majority of Americans want and that is not this bill.

I cannot tell you the kind of opposition I have seen in my State to this bill. It is almost unprecedented. I read it in the letters, hear it in the calls. At airports and grocery store aisles and on the streets people stop me and say: Don't let that thing pass.

Absolute power corrupts, and that is what we are seeing in Washington today. Democrats control the White House, the House, they have a filibuster-proof Senate and they have used this absolute power to rubberstamp this administration's big-government agenda and have tripled our deficit within 1 year—1 year. We will run deficits of at least \$1 trillion a year for the foreseeable future, while our national debt will triple. We are literally mortgaging the future of this country to foreign countries as we speak. Enough is enough. Let us step back and start over on a plan we can all be proud of and all work on.

We hear a lot about how the Republicans are simply standing for big and evil insurance companies and how the Democrats are the defenders of American families. Well, these days, nowhere is this Democratic hypocrisy more clear than the individual, mandated policy that is part of this tax-and-spend legislation.

Let's be very clear about who would benefit the most from this provision, which would, for the first time in our Nation's history, give the Federal Government the power to force Americans to either buy health insurance or face a tax penalty enforced by our friends at the Internal Revenue Service. There are only two clear winners under this policy, and it is not the American families. First, it is the Federal Government, that will now use this authority as a blank checkbook to increase the penalty in the future as a new revenue stream for its out-of-control spending habits; and, second, are the insurance companies, that will now reap the benefits of having Americans being forced to buy coverage at the decree of the Federal Government.

Right now, States are responsible for determining policies that best meet their unique demographic needs and challenges. Massachusetts, for example, has decided to implement an individual mandate, while Utah has decided not to. Under this bill, we are explicitly taking away this State flexibility and authority to give the Federal Government the authority to make this one-size-fits-all decision for all 50 States and every American. This is an unprecedented grab of State power by Washington—a fundamental threat to the very Federalist vision our Founding Fathers used more than 200 years ago to create the greatest Nation in the history of the world, in the history of mankind.

I am gravely concerned about the precedent this policy will set for us as a nation going forward. If the Federal Government can force us to buy health insurance, what else can it force us to do? The possibilities are endless, just like my concerns, which I share with millions of Americans, on Washington's growing role in our private lives and personal decisions. Think about it. Washington has become an unwanted houseguest in our homes and lives who will not leave. If it does not start listening to the families, it will get kicked out, sooner rather than later. Think about it.

A couple of our friends have even said: Well, it is similar to car insurance. The States require you to buy insurance for your car, and it is in the best interest of the community that you do so. Well, the reason they do is because you want to drive. It is an activity you want to participate in, and so they get away with it. Here, if they have an individual mandate, they are forcing you to buy policies that are de-

fined by Washington. If you don't, you are going to be penalized.

This has never happened before in our lives. If they can get away with this, I have to tell you, they can get away with anything. The liberties of all Americans are going to be affected by it. This is not an activity. This is not something we choose to do necessarily. If we choose to do it on our own, that is great. But to have the government come in and say you have to buy this policy—for the first time in history—you have to do this, even though you don't want to buy it, is unprecedented.

Well, let me say, I think it is fair to see I am not very enthused about the health care ideas of our colleagues. But I do wish to end on a positive note. There are some good things we can all do, some of which are in the bill. It is not totally bad. It is only about 90 percent bad, but there is at least 10 percent we could build on; that we could work together on.

I am not just saying that. Look, I have been around here a long time. I can name all kinds of bills I have worked on with some of the most liberal people in the whole Congress to pass. Hatch-Waxman is a perfect illustration. That created the modern generic drug industry. HENRY WAXMAN is as liberal as it gets but he was willing to face up to these realities with me, and we did Hatch-Waxman. I call it Waxman-Hatch when I am around him.

I might add the orphan drug bill. We found there were only maybe two or three orphan drugs being developed. These are drugs to benefit population groups of less than 200,000. Well, it is clear the drug companies can't afford to do it for 200,000 people because it costs upward of \$1 billion. Biological drugs cost even more than that, and they are not truly drugs. But the fact is, they cost even more than that. We came up with some very small incentives—but they were incentives with prestige—and some tax breaks and all of a sudden it was about a \$14 million or \$15 million bill, as I recall, in the early 1980s, when I was chairman of the Labor and Human Resources Committee. Today, we have well over 300 orphan drugs being developed, many of which have been developed, and from some of them blockbuster drugs have evolved.

Let's take the CHIP bill. That was the Hatch-Kennedy bill. Ted Kennedy, very liberal. He would have preferred to have the Federal Government do it all—just like our colleagues do today with this enormous number of 60 votes on their side—but he was willing to work with me. I went to him and said: Look, I had two families from Provo, UT, come to visit me—husbands and wives. In each family's case, both the husband and the wife work. Neither family's combined joint income is over \$20,000 a year. At that time, it was too

much to have their kids qualify for Medicaid and too little for them to be able to buy health insurance. I said: The only kids left out of the health care equation are children of the working poor. Teddy, we have to do something about that. He saw it, and he said yes.

He wasn't happy with the bill, in the end, because it was exactly what I told him it would be. It would basically be block-grants to states, where the States would handle it in accordance with their own demographics. It has worked amazingly well, until now. They are shoving more and more people into CHIP, other than the children of the working poor whom we originally decided to help.

Well, I could go on and on and on, on so many pieces of legislation, but I will just mention those few. I am very concerned because I actually believe that if we get what they are talking about on the other side, it will not only bankrupt the country, it will make more and more people dependent upon the Federal Government. Like I say, a natural constituency for the Democratic Party, but it is a matter of great concern to me.

Are our colleagues bad people? No. They simply believe the Federal Government can do it better. There are some things the Federal Government can do better, such as defending our national security interests, which is what the Constitution expects the Federal Government to do.

But even there, under this administration, we are not doing as well as we should. Although I commend the President for deciding to send the people to Afghanistan and for standing on these issues. Once he saw the intelligence and the other information, it infused reality into his decision-making process. I give him credit. I am one who believes he deserves great credit for the decision he made. But even in that decision, he had to be very careful how he characterized when we are going to leave. He did leave it flexible. In that alone, he deserves a lot of credit because he knows there may not be enough time to do all we have to do to create the well-trained police and security forces that are necessary to keep Afghanistan free and to keep the world from allowing the Taliban and al-Qaida to obtain nuclear weapons.

Well, that is another subject for another day. I wish to end by saying I don't believe anybody on the other side is an evil person or a person who doesn't believe they are acting in the best interest of the country, but I do not see how—I do not see how they can continue to push what they are trying to push, I think to the detriment of this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Before my colleague leaves the floor, I wish to ask

him a question or two if he wouldn't mind. He has been involved in most of the major health issues that have passed this body in the last 15 years. What was the vote margin in the Senate on some of those bills, on the Hatch-Kennedy, Hatch-Waxman bills? How many votes, roughly? I am not asking you to pull that up from memory, and it may not be fair to do. As I recall, a number of people on both sides of the aisle ended up supporting those bills.

Mr. HATCH. On the CHIP bill I can't remember what the exact number was but I think it was between 70 or 80 votes. It was a bipartisan bill. In fact, on the Finance Committee when I brought it up only two Senators voted against it. It was like 19 to 2.

Mr. BROWNBACK. In the Finance Committee?

Mr. HATCH. Every Republican except two, and every Democrat voted for it.

Mr. BROWNBACK. And Hatch-Waxman? It is longer back.

Mr. HATCH. That was unanimous. If I recall correctly, I think it was done through a unanimous consent.

Mr. BROWNBACK. I believe you did a major health care bill with Senator DODD from Connecticut.

Mr. HATCH. Yes.

Mr. BROWNBACK. Do you recall the split?

Mr. HATCH. They were all bipartisan. That is what gets me, because people know—people such as myself, such as the senior Senator from Kansas—we are willing to work on it with them. We know we can't get everything we want. Our colleagues have different viewpoints than we do. But tell me that I am wrong—I know you can't—that the HELP Committee bill was done solely between a few people at the White House and the Kennedy staff, and basically a few Democrats. That was it. No Republicans.

The House bill, I wish to ask the Senator, does he know of any Republican who was asked to participate in helping to develop that monstrosity they call the House bill?

Mr. BROWNBACK. If I could respond to my colleague, I do not know of any. I don't know of any who were even asked. I know of some who were told you can join this bill, or asked that—OK, can you join our bill but you don't have any input.

Mr. HATCH. After they came up with it, but how about the Reid bill? Does the Senator know if any Republicans were involved, able to participate in that bill, after the discussion between the White House and Senator REID and a few Democrats?

Mr. BROWNBACK. None. I know of none.

Mr. HATCH. None were involved. After they get it they say we want to work with you. After they get it done in the ways that I don't think any Republican can support, then they will

say, yes, we would like it to be bipartisan. Has the Senator seen any acceptance of amendments here on the floor?

Mr. BROWNBACK. I haven't seen any at all, and particularly when we tried to work in a bipartisan fashion to add Hyde language into the bill that was defeated, not accepted.

My point is something I have seen the Senator say in a quote, that a good health care bill should have 70 votes because it is major legislation that affects everybody in the United States. It has huge costs associated with it. So it is not something you do on a single-party basis, it is something you work extensively on over a long period of time.

I ask my colleague again, over how many years he worked with Senator Kennedy on getting the Hatch-Kennedy bill, or Waxman—my guess is those are lengthy pieces of negotiations that take a period of time to get something that has bipartisan support.

Mr. HATCH. That is right. One thing I appreciated very much about Senator Kennedy, as liberal as he was—he was the leading liberal lion in the Senate, in the whole Congress, in my opinion—he knew unless we could get together in a bipartisan way we could not get the job done. This involves one-sixth of the American economy; one-sixth. We are being told take it or leave it. That is what I call an arrogance of power.

I don't want to be mean to my colleagues, I think many of them are very sincere, but it is an arrogance of power to not deal with the other side and to not even talk to us about it until after you have done what you want to do. I have to say, this is the worst I have seen it in the whole 33 years I have been in the Senate.

Mr. BROWNBACK. If I could ask one more question before my colleague leaves—and also a comment that I like the Senator's tie, nice bright colors on a Saturday session.

Mr. HATCH. It is a western tie. I thought I would wear it out of loudness today.

Mr. BROWNBACK. What does the Senator think of getting—how many total votes could you get for a bipartisan health care bill along the lines of which a number of people on our side have discussed, where you expand access, you try to bend the cost curve down, you try to get more access to low-income individuals? Does the Senator think he could craft a bipartisan bill that could get well over 60 votes on health care reform?

Mr. HATCH. I believe we could craft a bill that would get almost 100 votes. I think we would at least get between 70 and 80 votes and probably more if we worked together to do it. I don't think there is any question we could do that.

Look, we all want prevention, we want maintenance, we all want to cover as many people as we possibly can, we all want to correct some of the

deficiencies that are in these bills, we all want to take care of people with preexisting illnesses. I could go on and on. Those are things we could build upon in ways that would work.

This bill is not going to work very well. But we could build upon that, bipartisan-wise, and build a complete bill. We Republicans would not get everything we want. But I think there are Democrats who believe we ought to use the principles of federalism, have 50 State laboratories out there, let them work on their own problems in accordance with their own demographics. I know Kansas is not New Jersey. Neither is Utah. And New Jersey is not Kansas or Utah, to pick three States. You can do that with any three States. But we know one thing, if we follow the principles of federalism—that is what we did in CHIP, and CHIP worked well by anybody's measure—if we follow the principles of federalism we would be able to look and pick and choose from the various States what works and what does not.

You would have the usually big Democratic States that probably wouldn't function no matter what you do. But even they would benefit. Even they would benefit from looking at the other States and saying will that work in our State. Frankly, that is what made this country great.

There are friends on the other side who do not agree with me on that but there are friends over there who do agree with me on that, as you can see, getting 70 or 80 votes on the CHIP bill. There were other bills we put through by unanimous consent, because people recognized they were well intentioned, well written, had bipartisan support and nobody wanted to vote against them.

Mr. BROWNBACK. I said I would only ask the Senator one more question, but I have one more. My question is you didn't do those bills on the fly where you were amending them, saying OK, we can't quite find 60, let's go back to a closed room and let's rebuild the bill. You built them over a long period of time. You did a good job of working the problems out together, and then you built it as it went along. You didn't say OK, let's do it on the fly, let's change this, let's change that. You build a solid piece of legislation and move it forward, not changing it at the 11th hour as we are seeing take place now.

Mr. HATCH. That is right. When Senator Kennedy and I did the CHIP bill, as an illustration, we had to go up and down this country giving speeches everywhere, building constituencies, working very hard together. It is no secret, in the end it was not everything he wanted. It wasn't everything I wanted either. He wanted the Federal Government in control of it. I wanted the States to be in control of it. But in the end I happen to know, as one of the

dearest friends of Senator Kennedy, with all the differences we had—and we had plenty, we fought each other most of the time, but in the end he was as proud of that bill as any bill he passed or he worked on—even though it was put together in a way that brought a great number of Republicans on board.

Frankly, that can be done here. I have no doubt it could be done here. I look at the distinguished Senator in the chair. He is one of the brightest guys in the Senate. He has a lot of experience in this area. I personally believe the people such as the Senator from Rhode Island, the Senator from Kansas, myself—if we got together we could do things that our respective States would be proud of and would be pleased to work on—even though there would be some give and take, and that is what we need to do.

Look, I point out one more time, the HELP bill is totally Democratic, not one Republican, until they brought the bill to the committee. The House bill—totally Democratic, not one Republican was even asked to give input. And this bill, not one Republican. In fact, not many Democrats.

I made the point here a few minutes ago, most of the Democrats do not know what is in the bill that was submitted to the Congressional Budget Office. You heard the very competent minority—majority whip, the Senator from Illinois, say he did not know what was in the bill either. When the minority—excuse me, the majority; I have that in my mind, I think. If the majority whip didn't know, how in the world are we Republicans going to know? And how in the world are the rest of the Democrats going to know? These are things that worry me and bother me.

I believe they believed with President Obama's aura, with his strength in politics, with all of us wanting to help him and with their distinctive 60-person majority, that they could put over whatever they wanted to. This was their opportunity to go to a single-payer system—or at least to move the whole system much farther toward a single-payer system than it even is today.

These things bother me a great deal. Frankly, I hope we can get our colleagues to sit down and work with us. I think both sides would have to give. Both sides would have to get together. But at least one-sixth of the American economy would be treated with respect rather than one side saying take it or leave it.

Mr. BROWNBACK. I thank my colleague from Utah for that explanation and also for the years of service he has given, and particularly a lot of focus on health care issues. I haven't always agreed with my colleague from Utah. I have always found him, though, very sound in his thinking, very knowledgeable in his ways, in knowing how you do this, and particularly when you are

talking about health care these are bipartisan issues in and of themselves and they need to be in this body.

He also talked about the principles of federalism, which I think we have deviated from in what we see from this bill. I wish to read from the Constitution, article I, section 8. That is the piece I wish to focus on here for a minute about the constitutional question involved in this health care bill. Article I, section 8 reads simply this way, that the Congress shall have—and then it lists a series of enumerated powers: power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.”

That is our ability to regulate commerce, with the foreign nations, among the several States, and with the Indian tribes. There are a number of people raising the question about whether you can constitutionally require everybody in the United States, by virtue of their citizenship or status in the United States, to have health insurance. I think it is highly questionable.

It appears to me from several legal scholars that this is unconstitutional for us to do. It is a major plank in the health care legislation that has been brought forward by the Democratic majority and I do not believe it is going to stand constitutional challenge. I want to develop that for my colleagues here today.

The Congressional Budget Office said this about the constitutional question here. They said forcing individuals to buy insurance would be “. . . an unprecedented form of federal action.” Those are big words in a time when we are seeing a lot of what I think are unprecedented Federal actions. Then going on to say, “The Government has never required people to buy any good or service as a condition of lawful residence in the United States.”

You would be requiring, as a condition for lawful residence in the United States, the purchasing of a good or a service—in this case health insurance. As laudable as some people may look at that or say that is, that would be what is being required. The Congressional Budget Office does not know of any time where a person in the United States has been required to buy any good or service as a condition simply of lawful residence in the United States. I think it raises significant constitutional questions.

You have to remember, as everybody does, but I think we have to remind ourselves because too often we act as if we don't remember that the Federal Government is a constitutional government of limited powers.

From James Madison in the Federalist Papers, quoted often but it bears repeating because it is a foundational issue:

[I]n the first place it is to be remembered that the general government is not to be charged with the whole power of making and

administering laws. Its jurisdiction is limited to certain enumerated objects.

Which is what I just read from in article I, section 8.

Chief Justice John Marshall, in the famous *Marbury v. Madison* case, stated:

The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written.

We can't violate that. The Federal Government is limited to enumerated powers granted by the Constitution. The Founding Fathers who drafted and ratified the Constitution were unwavering in their desire to restrict the powers of States and limit the powers of Congress. To achieve their goal they created a system that splits State and Federal authority so that one government, Federal or State, does not maintain too much power over the liberty of the American people. Therefore, the Framers created a system with a legislature of limited and enumerated powers, the Congress, to enact laws which shall be necessary and proper for the execution of powers. One of those is the commerce clause I just read which grants Congress the authority to regulate commerce with foreign nations, among the several States, interstate commerce, and with Indian tribes.

Many have used the commerce clause to justify the implementation of this unconstitutional mandate. Those individuals often cite the case of *Wick v. Filburn*, a 1942 case. The U.S. Supreme Court decision found that a law prohibiting a commercial farmer growing an additional acre of wheat to feed chickens beyond the limits imposed on wheat production mandated by the Federal Government was constitutional and fell under the enumerated powers granted by the commerce clause. *Filburn* was ordered to destroy his crops and pay a fine to the government for being too productive.

The Supreme Court, interpreting the Constitution's commerce clause, decided that *Filburn's* wheat growing activities reduced the amount of wheat he would buy for chicken feed on the open market and affected interstate commerce and, thus, could be regulated by the Federal Government. However, that Supreme Court decision, agree with it or not, still does not expand the powers of this body under the commerce clause to impose a monetary fine or penalty upon a citizen who fails to purchase or enter into a private contract for health insurance. That doesn't expand our authority under the commerce clause. It doesn't change the commerce clause. For us to require somebody to do something simply as a status of citizenship, the Congressional Research Service says:

Despite the breadth of powers exercised under the Commerce Clause, it is unclear whether the clause would provide a solid constitutional foundation for legislation

containing a requirement to have health insurance. Whether such a requirement would be constitutional under the Commerce Clause is perhaps the most challenging question posed by such a proposal, as it is a novel issue whether Congress may use this clause to require an individual to purchase a good or a service.

To think that the Federal Government can compel any individual to purchase a commodity because that individual is alive and breathing is unconstitutional and is at least a novel issue that this \$2.5 trillion proposal is built around. Should we be doing this major change in health care, \$2.5 trillion in spending, ½ trillion in reduction in Medicare, ½ trillion raising in taxes off of a novel constitutional question involved in the inherent piece of it, that being the requirement for everybody to have health insurance? I think not. Along with all the other problems with it, I think it has an enormous constitutional question right in the middle of it. And what if you pull that out and the Supreme Court says, ultimately, you can't require that. Then you have done \$2.5 trillion, \$½ trillion in Medicare cuts, \$½ trillion in tax increases, and your core piece is pulled out; it is unconstitutional. Then the whole house of cards falls apart.

Another popular argument for forcing citizens to purchase health insurance under penalty of law is that States require people to buy car insurance. This argument is not only constitutionally flawed but also an underwhelming argument that in many respects hardly deserves comment and adds little to the debate. It is recognized that States maintain inherent police powers to regulate behavior and enforce order within their borders to promote public welfare, security, health, and safety. This is a fundamental difference between the power of States and the enumerated powers of the national government, such as commerce between States and Indian tribes. This is a much broader granting of jurisdiction to the States.

State vehicle insurance laws are exactly that, laws implemented by States, and are generally derived from State constitutions and not the Federal Constitution under which this body operates. Furthermore, these laws require an individual who voluntarily participates in the use of an automobile to insure that vehicle. It is not a right of citizenship as a Kansan that you have to buy auto insurance. But if you want to operate a car on our roads, you have to have auto insurance. It isn't a requirement of citizenship.

We are requiring this as an article of citizenship. You have to have health insurance, a novel and enormously expansive role of the Federal Government.

The Federal mandate for the purchase of health insurance forces individuals to purchase a commodity not because they choose to participate in

an economic or commercial activity such as what one would think would be covered under the commerce clause but forces an individual to purchase a product simply because that person exists. This mandate is an abuse of the power granted to this Congress by the Constitution.

Last night I spent some time developing another thought that I think is an important one for us to consider. It is one this body has spent some time over the last decade dealing with; that is, the removal of the marriage penalty from our Tax Code, which we haven't gotten very far in doing, but getting the marriage penalty out, the thought being that marriage is a good institution. It is a fabulous institution for the formation of family. It is something that has an enormous role in our culture and society and should be rewarded and should not be taxed.

The fundamental principle exists, if you want less of something, tax it; if you want more of something, subsidize it. In the Democratic health care bill there are marriage penalties on both low-income and upper income individuals that will reduce the incidence of marriage in this society, under the principle that if you are going to tax something, you will get less of it.

This bill has marriage penalty taxes in it. I want to go through a series of these, starting with the high cost plan tax, the Cadillac insurance plan. Married couples under this bill are hit hardest by the high cost plans tax. The number of single and married tax filers is equal, but married taxpayers pay more than twice as much as singles as a percent of new tax revenue in this bill.

So if you are married filing jointly, you will pay 62 percent—single filers, 25 percent—in this bill. Is that something we want to do? Do we want to say, if you are married, you will pay more of the tax? Most people would say: We want to encourage marriage and the formation of family around marriage. We should have these at least equal or maybe do a higher tax on the other end. But most would say let's have these be equal.

Instead, in this we have a huge increase in the amount of money married filers will have to pay as compared to taxes paid by single filers. Consequently, you encourage people to say: Let's not get married because we don't want to pay the increase in taxes.

The high cost plans tax, the Cadillac plans tax, will hit married couples' households far more severely than single filers. Even though the number of married filers and single filers is roughly equal, the high cost plans tax will impact the total tax bill of married couples much more severely: 25 percent of the revenue will be from single filers, 62 percent of the bill will go to married filers. One thing is certain, 62 percent of married couples' households don't make more than \$250,000.

So not only is this unfair to married households, it is a direct contradiction of the President's promise that you wouldn't pay more taxes if you were making below \$250,000. In this case you do under the Cadillac insurance plan proposal or piece in this proposal.

I want to look at another chart on this subject. If we wanted to talk about factors that impact an individual's decision to enter the workforce or to invest in a business, an important factor is the marginal tax rate they will face on the next dollar they earn. Basically, it is a question of whether it is worth the effort and risk to work. What is my marginal tax? If I work longer and make another \$100, how much do I get to keep? The marginal tax rate.

This is an especially important factor for low-income households, people who don't have much marginal income to work off of. They need every dollar they can get. So if you are going to tax their marginal rate, they are looking at this saying: I don't want to get in that category. I need to hold back from getting in that category.

We have tried to help the less economically fortunate with various types of support programs: TANF, food stamps, the earned-income tax credit, the additional child tax credit, to name a few. Low-income families already face high marginal tax rates as a result of the phaseout of their benefits and tax rates that mean the loss of benefits they get under TANF, food stamps, the earned-income tax credit, housing assistance, the welfare package we put together for low-income individuals. Low-income families already face high marginal tax rates as a result of the phaseout of their benefits. These phaseouts already impose significant barriers to marriage.

In other words, whenever you get a combined income of a low-income couple, you lose more benefits. Consequently, people don't get married because they look and say: I will lose my health benefits if I get married. I will lose my medical benefits, my housing benefits. I may lose food stamps. I will not get married.

Yet you look at the chances for children in that situation to get out of poverty, their best chance is to have a stable mom and dad and a stable marriage environment, providing for the comfort and support of those children. Our incentives are disincentives toward marriage in this way, and they are built even more significantly into this health care bill.

As an example, let's take two individuals at 150 percent of the poverty level. After the new subsidies proposed in this legislation are taken into account, these two individuals would pay \$1,478 for their health insurance. But if they get married, their bill will increase to \$2,308, a marriage penalty of \$830, if you are at the 150 percent of poverty level or below. If you are at 150

percent of poverty or below, you don't have marginal income to mess around with. You need everything you have just to provide the basics. So if you are looking at this increase in the marriage penalty of \$830, you are saying: We can't afford to get married.

Is that the signal we want to send from the Federal Government? No. Everybody in this body would say that.

Let's take a pair of individuals earning 250 percent of the poverty level. One has no children; the other has two children. Unmarried they will, after subsidies, pay \$5,865 for their health coverage. If they decide to marry, they will face a penalty of \$2,050.

Let's turn to the new Medicare tax that will go into effect in 2013. The tax will apply to wage and salary income as well as certain business income for individuals. The tax will apply to income of that type for above \$200,000 for individuals and \$250,000 for joint filers.

The penalty is obvious on its face. Let's take an example. Two unmarried individuals earn \$200,000 each, and their total Medicare taxes would be \$11,600. But if they get married, the penalty is \$750. Or take two individuals, one making \$150,000 and the other \$200,000. Single, their Medicare taxes total \$10,150; if they get married, they will pay an additional \$500. This is on top of the marriage penalties that two earners face under current law. The marriage penalty is there. I don't think it is as significant as for the low-income individuals, but it is here as well.

My point is, why on Earth would that even be built into the base of the bill, particularly on the low-income couples? Why on Earth would you build in a marriage penalty on people who can't afford it? If combined income is over \$250,000, you can afford another \$500. I am willing to agree with that. But not this couple that is making at 150 percent of poverty or 250 percent of poverty, one with two kids. They can't afford that. Why on Earth would you build it into this? This is ridiculous that it be placed in the proposal. It makes no sense.

Creating and expanding on the penalties for marriage makes zero sense. Families are a critical determinant of the well-being of our society. Family structure also has a significant impact on economic well-being, on education, and the effect on the social fabric of this Nation is positive.

It is a fundamental law of economics that when you tax something, you get less of it. Why would we tax marriage, particularly for low-income individuals, when it is the best chance for those children involved with this couple to have a stable environment, if they will form a solid marriage unit? And we are going to tax it and discourage it. That is wrong. That is wrong as a policy matter.

There is a number of other problems I have had with this overall bill. This

piece of it absolutely makes no sense to me, why we would do something like this. I urge my colleagues to vote against this bill, to take these sorts of things out, to take them out of the base law. Unfortunately, in the United States today, this is kind of repeating what already takes place in food stamps, what takes place in health benefits for low-income individuals right now. They cannot afford to get married or they lose their benefits. It is ridiculous. We ought to give people bonuses for getting married, not penalties for getting married. Now we are going to add to it by putting it in this health insurance bill. It is wrong and it is bad policy.

Mr. President, I yield the floor.  
The PRESIDING OFFICER. The Senator from Alaska.

#### MORNING BUSINESS

Mr. BEGICH. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### NOMINATION OF ALAN D. SOLOMONT

Mr. GRASSLEY. Mr. President, on September 21, 2009, I announced my intention to object to proceeding to the nomination of Alan D. Solomont to be the Ambassador to Spain because of the incomplete responses that the Corporation for National and Community Service, CNCS, had provided to my document requests regarding the removal of its Inspector General, Gerald Walpin. Mr. Solomont was the chairman of the board of CNCS at the time that my requests went unanswered, and he began the process that led to Mr. Walpin's removal by contacting the White House Counsel's Office on May 20, 2009.

Since September 21, the White House produced approximately 1,900 additional pages of previously withheld documents. During that time, my staff conducted a series of negotiations with CNCS and the White House Counsel's Office over the hundreds of pages of remaining documents that were being withheld or had been redacted. As a result of these negotiations, this week the White House authorized and CNCS provided: 1. descriptions of the information redacted from several CNCS documents, 2. 37 previously produced documents with substantive redactions removed, and 3. 370 pages of previously withheld documents. In addition, the White House made Mr. Solomont available for a follow-up interview on December 8, 2009, so that he could be questioned about new information that had been learned from these documents and other sources since his initial interview on July 15, 2009.

In order to obtain this additional information, I agreed to no longer object to proceeding to Mr. Solomont's nomination if the White House took these steps. I have kept my word and informed leadership that I no longer intend to object. However, I remain concerned about the accuracy and completeness of Mr. Solomont's answers to questions during both his July 15 and December 8, 2009 interviews. I understand Congressman ISSA of the House Committee on Oversight and Government Reform shares those concerns and has sent a letter to Mr. Solomont to that effect.

Although CNCS has produced a total of approximately 3,000 pages of material responsive to my request, the record should also be clear that the White House continues to withhold 46 documents, on grounds of deliberative process and attorney work product privileges. The White House did not provide a detailed log of the documents being withheld despite my requests. I will continue to seek answers to the remaining questions in this matter.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3199. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3200. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 3199.** Mr. CORKER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 399, strike line 10 and all that follows through page 403, line 17, and insert the following:

“(y) INCREASED FMAP FOR MEDICAL ASSISTANCE FOR NEWLY ELIGIBLE MANDATORY INDIVIDUALS.—

“(1) 100 PERCENT FMAP.—Notwithstanding subsection (b), the Federal medical assistance percentage determined for a State that is one of the 50 States or the District of Columbia with respect to amounts expended for medical assistance for newly eligible individuals described in subclause (VIII) or (IX) of section 1902(a)(10)(A)(i) shall be equal to 100 percent.

“(2) DEFINITIONS.—In this subsection:

“(A) NEWLY ELIGIBLE.—The term ‘newly eligible’ means an individual described in subclause (VIII) or (IX) of section 1902(a)(10)(A)(i) who, on the date of enactment of the Patient Protection and Affordable Care Act, is not eligible under the State plan or under a waiver of the plan for full benefits or for benchmark coverage described in section 1937(b)(1) or benchmark equivalent coverage described in section 1937(b)(2), or is eligible but not enrolled (or is on a waiting list) for such benefits or coverage through a waiver under the plan that has a capped or limited enrollment that is full. Such term includes an individual for whom the State elects to provide medical assistance prior to January 1, 2014, under section 1902(k)(2).

“(B) FULL BENEFITS.—The term ‘full benefits’ means, with respect to an individual, medical assistance for all services covered under the State plan under this title that is not less in amount, duration, or scope, or is determined by the Secretary to be substantially equivalent, to the medical assistance available for an individual described in section 1902(a)(10)(A)(i).”.

(4) MEDICAL CARE ACCESS PROTECTION ACT.—(A) SHORT TITLE.—This paragraph may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

(B) FINDINGS AND PURPOSE.—

(i) FINDINGS.—

(I) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(II) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(III) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(aa) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(bb) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(cc) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(C) PURPOSE.—It is the purpose of this paragraph to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(i) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(ii) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(iii) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(iv) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(v) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

(D) DEFINITIONS.—In this paragraph:

(i) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(ii) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(iii) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(I) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(II) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(III) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(IV) any other publicly or privately funded program.

(iv) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(v) CONTINGENT FEE.—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(vi) ECONOMIC DAMAGES.—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment



for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(vii) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(viii) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(ix) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(x) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(xi) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(xii) **HEALTH CARE PROVIDER.**—

(I) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(II) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this paragraph, a professional association that is organized under State law by an individual physician or group of physicians, a partner-

ship or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under clause (I).

(xiii) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(xiv) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(xv) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(xvi) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(xvii) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(E) **ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**—

(i) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(ii) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(I) fraud;

(II) intentional concealment; or

(III) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(iii) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(iv) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a vio-

lation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this Act applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

(F) **COMPENSATING PATIENT INJURY.**—

(i) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this paragraph shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in clause (ii).

(ii) **ADDITIONAL NONECONOMIC DAMAGES.**—

(I) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(II) **HEALTH CARE INSTITUTIONS.**—

(aa) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(bb) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(iii) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(I) an award for future noneconomic damages shall not be discounted to present value;

(II) the jury shall not be informed about the maximum award for noneconomic damages under clause (ii);

(III) an award for noneconomic damages in excess of the limitations provided for in clause (ii) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(IV) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations



described in clause (ii), the future non-economic damages shall be reduced first.

(iv) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this subparagraph, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(G) **MAXIMIZING PATIENT RECOVERY.**—

(i) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(I) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(II) **CONTINGENCY FEES.**—

(aa) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(bb) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(AA) 40 percent of the first \$50,000 recovered by the claimant(s).

(BB) 33½ percent of the next \$50,000 recovered by the claimant(s).

(CC) 25 percent of the next \$500,000 recovered by the claimant(s).

(DD) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(i) **APPLICABILITY.**—

(I) **IN GENERAL.**—The limitations in clause (i) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(II) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this subparagraph.

(iii) **EXPERT WITNESSES.**—

(I) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(aa) except as required under subclause (II), is a health care professional who—

(AA) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(BB) typically treats the diagnosis or condition or provides the type of treatment under review; and

(bb) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(II) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved

treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(III) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in subclause (I), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with subclause (I)(bb), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(IV) **LIMITATION.**—The limitations in this clause shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

(H) **ADDITIONAL HEALTH BENEFITS.**—

(i) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(ii) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, clause (i) shall not apply.

(iii) **APPLICATION OF PROVISION.**—This subparagraph shall apply to any health care lawsuit that is settled or resolved by a fact finder.

(I) **PUNITIVE DAMAGES.**—

(i) **PUNITIVE DAMAGES PERMITTED.**—

(I) **IN GENERAL.**—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(II) **FILING OF LAWSUIT.**—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(III) **SEPARATE PROCEEDING.**—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(aa) whether punitive damages are to be awarded and the amount of such award; and

(bb) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(IV) **LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.**—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no pu-

nitive damages may be awarded with respect to the claim in such lawsuit against such person.

(ii) **DETERMINING AMOUNT OF PUNITIVE DAMAGES.**—

(I) **FACTORS CONSIDERED.**—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(aa) the severity of the harm caused by the conduct of such party;

(bb) the duration of the conduct or any concealment of it by such party;

(cc) the profitability of the conduct to such party;

(dd) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(ee) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(ff) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(II) **MAXIMUM AWARD.**—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(iii) **LIABILITY OF HEALTH CARE PROVIDERS.**—

(I) **IN GENERAL.**—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(II) **MEDICAL PRODUCT.**—The term "medical product" means a drug or device intended for humans. The terms "drug" and "device" have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

(J) **AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**—

(i) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(ii) **APPLICABILITY.**—This subparagraph applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

(K) **EFFECT ON OTHER LAWS.**—

(i) **GENERAL VACCINE INJURY.**—

(I) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(aa) this paragraph shall not affect the application of the rule of law to such an action; and

(bb) any rule of law prescribed by this paragraph in conflict with a rule of law of such title XXI shall not apply to such action.

(II) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this paragraph or otherwise applicable law (as determined under this paragraph) will apply to such aspect of such action.

(i) SMALLPOX VACCINE INJURY.—

(I) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(aa) this paragraph shall not affect the application of the rule of law to such an action; and

(bb) any rule of law prescribed by this paragraph in conflict with a rule of law of such part C shall not apply to such action.

(II) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this paragraph or otherwise applicable law (as determined under this paragraph) will apply to such aspect of such action.

(iii) OTHER FEDERAL LAW.—Except as provided in this subparagraph, nothing in this paragraph shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

(L) STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.—

(i) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this paragraph shall preempt, subject to clauses (ii) and (iii), State law to the extent that State law prevents the application of any provisions of law established by or under this paragraph. The provisions governing health care lawsuits set forth in this paragraph supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(I) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this paragraph; or

(II) prohibits the introduction of evidence regarding collateral source benefits.

(ii) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this paragraph shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this paragraph, notwithstanding subparagraph (F)(i).

(iii) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(I) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this paragraph (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(II) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to—

(aa) preempt or supersede any Federal or State law that imposes greater procedural or

substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this paragraph;

(bb) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(cc) create a cause of action that is not otherwise available under Federal or State law; or

(dd) affect the scope of preemption of any other Federal law.

(M) APPLICABILITY; EFFECTIVE DATE.—This paragraph shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3200.** Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

#### **TITLE X—IMPORTATION OF PRESCRIPTION DRUGS**

##### **SEC. 10001. SHORT TITLE.**

This title may be cited as the "Pharmaceutical Market Access and Drug Safety Act of 2009".

##### **SEC. 10002. FINDINGS.**

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American spend more than \$200,000,000,000 on prescription drugs every year;

(6) the Congressional Budget Office has found that the cost of prescription drugs are between 35 to 55 percent less in other highly-developed countries than in the United States; and

(7) promoting competitive market pricing would both contribute to health care savings and allow greater access to therapy, improving health and saving lives.

##### **SEC. 10003. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.**

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

##### **SEC. 10004. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.**

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 10003, is further amended by inserting after section 803 the following:

##### **"SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.**

**"(a) IMPORTATION OF PRESCRIPTION DRUGS.—**

**"(1) IN GENERAL.—**In the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

**"(A)** the limitation on importation that is established in section 801(d)(1) is waived; and

**"(B)** the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

**"(2) IMPORTERS.—**A qualifying drug may not be imported under paragraph (1) unless—

**"(A)** the drug is imported by a pharmacy, group of pharmacies, or a wholesaler that is a registered importer; or

**"(B)** the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

**"(3) RULE OF CONSTRUCTION.—**This section shall apply only with respect to a drug that is imported or offered for import into the United States—

**"(A)** by a registered importer; or

**"(B)** from a registered exporter to an individual.

**"(4) DEFINITIONS.—**

**"(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—**For purposes of this section:

**"(i)** The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

**"(ii)** The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

**"(iii)** The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

**"(B) QUALIFYING DRUG.—**For purposes of this section, the term 'qualifying drug' means a drug for which there is a corresponding U.S. label drug.

**"(C) U.S. LABEL DRUG.—**For purposes of this section, the term 'U.S. label drug' means a prescription drug that—

**"(i)** with respect to a qualifying drug, has the same active ingredient or ingredients, route of administration, dosage form, and strength as the qualifying drug;

**"(ii)** with respect to the qualifying drug, is manufactured by or for the person that manufactures the qualifying drug;

**"(iii)** is approved under section 505(c); and

**"(iv)** is not—

**"(I)** a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

**"(II)** a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262), including—

**"(aa)** a therapeutic DNA plasmid product;

**"(bb)** a therapeutic synthetic peptide product;

**"(cc)** a monoclonal antibody product for in vivo use; and

**"(dd)** a therapeutic recombinant DNA-derived product;

“(III) an infused drug, including a peritoneal dialysis solution;

“(IV) an injected drug;

“(V) a drug that is inhaled during surgery;

“(VI) a drug that is the listed drug referred to in 2 or more abbreviated new drug applications under which the drug is commercially marketed; or

“(VII) a sterile ophthalmic drug intended for topical use on or in the eye.

“(D) OTHER DEFINITIONS.—For purposes of this section:

“(i)(I) The term ‘exporter’ means a person that is in the business of exporting a drug to individuals in the United States from Canada or from a permitted country designated by the Secretary under subclause (II), or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

“(II) The Secretary shall designate a permitted country under subparagraph (E) (other than Canada) as a country from which an exporter may export a drug to individuals in the United States if the Secretary determines that—

“(aa) the country has statutory or regulatory standards that are equivalent to the standards in the United States and Canada with respect to—

“(AA) the training of pharmacists;

“(BB) the practice of pharmacy; and

“(CC) the protection of the privacy of personal medical information; and

“(bb) the importation of drugs to individuals in the United States from the country will not adversely affect public health.

“(ii) The term ‘importer’ means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

“(iii) The term ‘pharmacist’ means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

“(iv) The term ‘pharmacy’ means a person that—

“(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

“(II) employs 1 or more pharmacists.

“(v) The term ‘prescription drug’ means a drug that is described in section 503(b)(1).

“(vi) The term ‘wholesaler’—

“(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

“(II) does not include a person authorized to import drugs under section 801(d)(1).

“(E) PERMITTED COUNTRY.—The term ‘permitted country’ means—

“(i) Australia;

“(ii) Canada;

“(iii) a member country of the European Union, but does not include a member country with respect to which—

“(I) the country’s Annex to the Treaty of Accession to the European Union 2003 includes a transitional measure for the regulation of human pharmaceutical products that has not expired; or

“(II) the Secretary determines that the requirements described in subclauses (I) and (II) of clause (vii) will not be met by the date on which such transitional measure for the regulation of human pharmaceutical products expires;

“(iv) Japan;

“(v) New Zealand;

“(vi) Switzerland; and

“(vii) a country in which the Secretary determines the following requirements are met:

“(I) The country has statutory or regulatory requirements—

“(aa) that require the review of drugs for safety and effectiveness by an entity of the government of the country;

“(bb) that authorize the approval of only those drugs that have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs;

“(cc) that require the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country to be adequate to preserve their identity, quality, purity, and strength;

“(dd) for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective; and

“(ee) that require the labeling and promotion of drugs to be in accordance with the approval of the drug.

“(II) The valid marketing authorization system in the country is equivalent to the systems in the countries described in clauses (i) through (vi).

“(III) The importation of drugs to the United States from the country will not adversely affect public health.

“(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

“(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a ‘registrant’) submits to the Secretary a registration containing the following:

“(A)(i) In the case of an exporter, the name of the exporter and an identification of all places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter.

“(ii) In the case of an importer, the name of the importer and an identification of the places of business of the importer at which the importer initially receives a qualifying drug after importation (which shall not exceed 3 places of business except by permission of the Secretary).

“(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

“(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of imported qualifying drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

“(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the sources of exported qualifying drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation; and maintenance of records and samples).

“(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

“(D) An agreement by the registrant to—

“(i) notify the Secretary of a recall or withdrawal of a qualifying drug distributed

in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

“(ii) provide for the return to the registrant of such drug; and

“(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

“(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

“(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

“(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

“(H) An agreement by the registrant to notify the Secretary not more than 30 days before the registrant intends to make the change, of—

“(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

“(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

“(I) In the case of an exporter:

“(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

“(ii) An agreement to post a bond, payable to the Treasury of the United States that is equal in value to the lesser of—

“(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

“(II) \$1,000,000.

“(iii) An agreement by the exporter to comply with applicable provisions of Canadian law, or the law of the permitted country designated under subsection (a)(4)(D)(i)(II) in which the exporter is located, that protect the privacy of personal information with respect to each individual importing a prescription drug from the exporter under subsection (a)(2)(B).

“(iv) An agreement by the exporter to report to the Secretary—

“(I) not later than August 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the 6-month period from January 1 through June 30 of that year; and

“(II) not later than January 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the previous fiscal year.

“(J) In the case of an importer, an agreement by the importer to report to the Secretary—

“(i) not later than August 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the 6-month period from January 1 through June 30 of that fiscal year; and

“(ii) not later than January 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the previous fiscal year.

“(K) Such other provisions as the Secretary may require by regulation to protect the public health while permitting—

“(i) the importation by pharmacies, groups of pharmacies, and wholesalers as registered importers of qualifying drugs under subsection (a); and

“(ii) importation by individuals of qualifying drugs under subsection (a).

“(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

“(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

“(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(H) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

“(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website and the information provided through the toll-free telephone number accordingly.

“(4) SUSPENSION AND TERMINATION.—

“(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

“(i) Subject to clause (ii), the Secretary may suspend the registration if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with a registration condition.

“(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not comply with subsection (g)(2)(A) or (g)(4), or has exported a qualifying drug to an individual in violation of subsection (i), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

“(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

“(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a

pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

“(5) DEFAULT OF BOND.—A bond required to be posted by an exporter under paragraph (1)(I)(ii) shall be defaulted and paid to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has—

“(A) exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsection (g)(2)(A), (g)(4), or (i); or

“(B) failed to permit the Secretary to conduct an inspection described under subsection (d).

“(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported into the United States only if there is compliance with the following:

“(1) The drug was manufactured in an establishment—

“(A) required to register under subsection (h) or (i) of section 510; and

“(B)(i) inspected by the Secretary; or

“(ii) for which the Secretary has elected to rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided for under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

“(2) The establishment is located in any country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug is manufactured for distribution in a foreign country that is not a permitted country).

“(3) The exporter or importer obtained the drug—

“(A) directly from the establishment; or

“(B) directly from an entity that, by contract with the exporter or importer—

“(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

“(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

“(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities, including records, of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

“(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority re-

garding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

“(4)(A) The foreign country from which the importer will import the drug is a permitted country; or

“(B) The foreign country from which the exporter will export the drug is the permitted country in which the exporter is located.

“(5) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

“(6) The exporter or importer retains a sample of each lot of the drug for testing by the Secretary.

“(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

“(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

“(A) the exporter agrees to permit the Secretary—

“(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

“(ii) to have access, including on a day-to-day basis, to—

“(I) records of the exporter that relate to the export of such drugs, including financial records; and

“(II) samples of such drugs;

“(iii) to carry out the duties described in paragraph (3); and

“(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

“(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary randomly, but not less than 12 times annually, on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

“(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence shall—

“(A) be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

“(B) include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies.

“(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

“(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the exporter at which qualifying drugs are stored and from which qualifying drugs are shipped.

“(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which shall be accomplished or supplemented by the use of anticounterfeiting or

track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an exporter.

“(C) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

“(D) Monitoring the affixing of markings under paragraph (2).

“(E) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records, of other parties in the chain of custody of qualifying drugs.

“(F) Determining whether the exporter is in compliance with all other registration conditions.

“(4) PRIOR NOTICE OF SHIPMENTS.—A registration condition is that, not less than 8 hours and not more than 5 days in advance of the time of the importation of a shipment of qualifying drugs, the importer involved agrees to submit to the Secretary a notice with respect to the shipment of drugs to be imported or offered for import into the United States under subsection (a). A notice under the preceding sentence shall include—

“(A) the name and complete contact information of the person submitting the notice;

“(B) the name and complete contact information of the importer involved;

“(C) the identity of the drug, including the established name of the drug, the quantity of the drug, and the lot number assigned by the manufacturer;

“(D) the identity of the manufacturer of the drug, including the identity of the establishment at which the drug was manufactured;

“(E) the country from which the drug is shipped;

“(F) the name and complete contact information for the shipper of the drug;

“(G) anticipated arrival information, including the port of arrival and crossing location within that port, and the date and time;

“(H) a summary of the chain of custody of the drug from the establishment in which the drug was manufactured to the importer;

“(I) a declaration as to whether the Secretary has ordered that importation of the drug from the permitted country cease under subsection (g)(2)(C) or (D); and

“(J) such other information as the Secretary may require by regulation.

“(5) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the importer involved agrees, before wholesale distribution (as defined in section 503(e)) of a qualifying drug that has been imported under subsection (a), to affix to each container of such drug such markings or other technology as the Secretary determines necessary to identify the shipment as being in compliance with all registration conditions, except that the markings or other technology shall not be required on a drug that bears comparable, compatible markings or technology from the manufacturer of the drug. Markings or other technology under the preceding sentence shall—

“(A) be designed to prevent affixation of the markings or other technology to any container that is not authorized to bear the markings; and

“(B) shall include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of such technologies.

“(6) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

“(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the importer at which a qualifying drug is initially received after importation.

“(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an importer.

“(C) Reviewing notices under paragraph (4).

“(D) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records of other parties in the chain of custody of qualifying drugs.

“(E) Determining whether the importer is in compliance with all other registration conditions.

“(e) IMPORTER FEES.—

“(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of \$10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

“(2) INSPECTION FEE.—A registration condition is that the importer involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

“(3) AMOUNT OF INSPECTION FEE.—

“(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for importers for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered importers, including the costs associated with—

“(i) inspecting the facilities of registered importers, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(6);

“(ii) developing, implementing, and operating under such subsection an electronic system for submission and review of the notices required under subsection (d)(4) with respect to shipments of qualifying drugs under subsection (a) to assess compliance with all registration conditions when such shipments are offered for import into the United States; and

“(iii) inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

“(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered importers under subsection (a).

“(C) TOTAL PRICE OF DRUGS.—

“(i) ESTIMATE.—For the purposes of complying with the limitation described in subsection (B) when establishing under sub-

paragraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

“(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during that fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

“(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered importers during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered importer on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

“(D) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an importer shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of qualifying drugs imported by importers under subsection (a).

“(4) USE OF FEES.—

“(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

“(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

“(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

“(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

“(f) EXPORTER FEES.—

“(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of \$10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

“(2) INSPECTION FEE.—A registration condition is that the exporter involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than

October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

“(3) AMOUNT OF INSPECTION FEE.—

“(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for exporters for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered exporters, including the costs associated with—

“(i) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(3);

“(ii) developing, implementing, and operating under such subsection a system to screen marks on shipments of qualifying drugs under subsection (a) that indicate compliance with all registration conditions, when such shipments are offered for import into the United States; and

“(iii) screening such markings, and inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

“(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered exporters under subsection (a).

“(C) TOTAL PRICE OF DRUGS.—

“(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

“(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during that fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

“(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered exporters during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered exporter on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

“(D) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an exporter shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of qualifying drugs exported by exporters under subsection (a).

“(4) USE OF FEES.—

“(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

“(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

“(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

“(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

“(g) COMPLIANCE WITH SECTION 801(a).—

“(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

“(2) SECTION 505; APPROVAL STATUS.—

“(A) IN GENERAL.—A qualifying drug that is imported or offered for import under subsection (a) shall comply with the conditions established in the approved application under section 505(b) for the U.S. label drug as described under this subsection.

“(B) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

“(i) IN GENERAL.—The person that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country shall in accordance with this paragraph submit to the Secretary a notice that—

“(I) includes each difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

“(aa) the variations provided for in the application; and

“(bb) any difference in labeling (except ingredient labeling); or

“(II) states that there is no difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

“(aa) the variations provided for in the application; and

“(bb) any difference in labeling (except ingredient labeling).

“(ii) INFORMATION IN NOTICE.—A notice under clause (i)(I) shall include the information that the Secretary may require under section 506A, any additional information the Secretary may require (which may include data on bioequivalence if such data are not required under section 506A), and, with respect to the permitted country that approved the qualifying drug for commercial distribution, or with respect to which such approval is sought, include the following:

“(I) The date on which the qualifying drug with such difference was, or will be, intro-

duced for commercial distribution in the permitted country.

“(II) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the qualifying drug from a condition established in the approved application for the U.S. label drug.

“(III) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

“(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

“(I) the information provided in the notice is complete and true; and

“(II) a copy of the notice has been provided to the Federal Trade Commission and to the State attorneys general.

“(iv) FEE.—

“(I) IN GENERAL.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

“(II) FEE AMOUNT FOR CERTAIN YEARS.—If no fee amount is in effect under section 736(a)(1)(A)(ii) for a fiscal year, then the amount paid by a person under subclause (I) shall—

“(aa) for the first fiscal year in which no fee amount under such section is in effect, be equal to the fee amount under section 736(a)(1)(A)(ii) for the most recent fiscal year for which such section was in effect, adjusted in accordance with section 736(c); and

“(bb) for each subsequent fiscal year in which no fee amount under such section is in effect, be equal to the applicable fee amount for the previous fiscal year, adjusted in accordance with section 736(c).

“(v) TIMING OF SUBMISSION OF NOTICES.—

“(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (C) applies shall be submitted to the Secretary not later than 120 days before the qualifying drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the qualifying drug with the difference begin less than 120 days after the country requires the difference.

“(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than the day on which the qualifying drug with the difference is introduced for commercial distribution in a permitted country.

“(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary on the

date that the qualifying drug is first introduced for commercial distribution in a permitted country and annually thereafter.

“(vi) REVIEW BY SECRETARY.—

“(I) IN GENERAL.—In this paragraph, the difference in a qualifying drug that is submitted in a notice under clause (i) from the U.S. label drug shall be treated by the Secretary as if it were a manufacturing change to the U.S. label drug under section 506A.

“(II) STANDARD OF REVIEW.—Except as provided in subclause (III), the Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, using the safe and effective standard for approving or disapproving a manufacturing change under section 506A.

“(III) BIOEQUIVALENCE.—If the Secretary would approve the difference in a notice submitted under clause (i) using the safe and effective standard under section 506A and if the Secretary determines that the qualifying drug is not bioequivalent to the U.S. label drug, the Secretary shall—

“(aa) include in the labeling provided under paragraph (3) a prominent advisory that the qualifying drug is safe and effective but is not bioequivalent to the U.S. label drug if the Secretary determines that such an advisory is necessary for health care practitioners and patients to use the qualifying drug safely and effectively; or

“(bb) decline to approve the difference if the Secretary determines that the availability of both the qualifying drug and the U.S. label drug would pose a threat to the public health.

“(IV) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

“(V) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection of the establishment in which the qualifying drug is manufactured—

“(aa) such inspection by the Secretary shall be authorized; and

“(bb) the Secretary may rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

“(vii) PUBLICATION OF INFORMATION ON NOTICES.—

“(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall readily make available to the public a list of notices submitted under clause (i).

“(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

“(aa) a notice is under review;

“(bb) the Secretary has ordered that importation of the qualifying drug from a permitted country cease; or

“(cc) the importation of the drug is permitted under subsection (a).

“(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

“(C) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under subsection (c) or

(d)(3)(B)(i) of section 506A, require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

“(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general that the notice has been submitted with respect to the qualifying drug involved.

“(ii) If the Secretary has not made a determination whether such a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the qualifying drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

“(I) order that the importation of the qualifying drug involved from the permitted country not begin until the Secretary completes review of the notice; and

“(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the order.

“(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

“(I) order that the importation of the qualifying drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

“(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

“(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

“(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall—

“(I) vacate the order under clause (ii), if any;

“(II) consider the difference to be a variation provided for in the approved application for the U.S. label drug;

“(III) permit importation of the qualifying drug under subsection (a); and

“(IV) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

“(D) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

“(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the qualifying drug involved continues in effect.

“(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

“(I) order that the importation of the qualifying drug involved from the permitted country cease;

“(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

“(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

“(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the dif-

ference shall be considered to be a variation provided for in the approved application for the U.S. label drug.

“(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of a notice under subparagraph (B)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

“(i) shall consider such difference to be a variation provided for in the approved application for the U.S. label drug;

“(ii) may not order that the importation of the qualifying drug involved cease; and

“(iii) shall promptly notify registered exporters and registered importers.

“(F) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

“(i) IN GENERAL.—A person who manufactures a drug approved under section 505(b) shall submit an application under section 505(b) for approval of another drug that is manufactured for distribution in a permitted country by or for the person that manufactures the drug approved under section 505(b) if—

“(I) there is no qualifying drug in commercial distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the drug approved under section 505(b); and

“(II) each active ingredient of the other drug is related to an active ingredient of the drug approved under section 505(b), as defined in clause (v).

“(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

“(I) request approval of the other drug for the indication or indications for which the drug approved under section 505(b) is labeled;

“(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the other drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

“(III) include a right of reference to the application for the drug approved under section 505(b); and

“(IV) include such additional information as the Secretary may require.

“(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on which the information referred to in clause (ii)(II) is submitted to the government of the permitted country.

“(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

“(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

“(I) the same; or

“(II) different salts, esters, or complexes of the same moiety.

“(3) SECTION 502; LABELING.—



“(A) IMPORTATION BY REGISTERED IMPORTER.—

“(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the qualifying drug bears—

“(I) a copy of the labeling approved for the U.S. label drug under section 505, without regard to whether the copy bears any trademark involved;

“(II) the name of the manufacturer and location of the manufacturer;

“(III) the lot number assigned by the manufacturer;

“(IV) the name, location, and registration number of the importer; and

“(V) the National Drug Code number assigned to the qualifying drug by the Secretary.

“(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

“(iii) REQUESTED LABELING.—The labeling provided by the Secretary under clause (ii) shall—

“(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the qualifying drug;

“(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof;

“(III) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the qualifying drug is safe and effective but not bioequivalent to the U.S. label drug; and

“(IV) if the inactive ingredients of the qualifying drug are different from the inactive ingredients for the U.S. label drug, include—

“(aa) a prominent notice that the ingredients of the qualifying drug differ from the ingredients of the U.S. label drug and that the qualifying drug must be dispensed with an advisory to people with allergies about this difference and a list of ingredients; and

“(bb) a list of the ingredients of the qualifying drug as would be required under section 502(e).

“(B) IMPORTATION BY INDIVIDUAL.—

“(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the packaging and labeling of the qualifying drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and the labeling of the qualifying drug includes—

“(I) directions for use by the consumer;

“(II) the lot number assigned by the manufacturer;

“(III) the name and registration number of the exporter;

“(IV) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug;

“(V) if the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

“(aa) a prominent advisory that persons with an allergy should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

“(bb) a list of the ingredients of the drug as would be required under section 502(e); and

“(VI) a copy of any special labeling that would be required by the Secretary had the U.S. label drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears any trademark involved.

“(ii) PACKAGING.—A qualifying drug offered for import to an individual by an exporter under this section that is packaged in a unit-of-use container (as those items are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

“(I) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

“(II) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the exporter will provide the drug in packaging that is compliant at no additional cost.

“(iii) REQUEST FOR COPY OF SPECIAL LABELING AND INGREDIENT LIST.—The Secretary shall provide to the registered exporter involved a copy of the special labeling, the advisory, and the ingredient list described under clause (i), upon request of the exporter.

“(iv) REQUESTED LABELING AND INGREDIENT LIST.—The labeling and ingredient list provided by the Secretary under clause (iii) shall—

“(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the drug; and

“(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof.

“(4) SECTION 501; ADULTERATION.—A qualifying drug that is imported or offered for import under subsection (a) shall be considered to be in compliance with section 501 if the drug is in compliance with subsection (c).

“(5) STANDARDS FOR REFUSING ADMISSION.—A drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

“(A) The drug is not a qualifying drug.

“(B) A notice for the drug required under paragraph (2)(B) has not been submitted to the Secretary.

“(C) The Secretary has ordered that importation of the drug from the permitted country cease under subparagraph (C) or (D) of paragraph (2).

“(D) The drug does not comply with paragraph (3) or (4).

“(E) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

“(F) The Secretary becomes aware that—

“(i) the drug may be counterfeit;

“(ii) the drug may have been prepared, packed, or held under insanitary conditions; or

“(iii) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

“(G) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

“(H) The Secretary has under section 505(e) withdrawn approval of the drug.

“(I) The manufacturer of the drug has instituted a recall of the drug.

“(J) If the drug is imported or offered for import by a registered importer without submission of a notice in accordance with subsection (d)(4).

“(K) If the drug is imported or offered for import from a registered exporter to an individual and 1 or more of the following applies:

“(i) The shipping container for such drug does not bear the markings required under subsection (d)(2).

“(ii) The markings on the shipping container appear to be counterfeit.

“(iii) The shipping container or markings appear to have been tampered with.

“(h) EXPORTER LICENSURE IN PERMITTED COUNTRY.—A registration condition is that the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

“(1) the exporter is authorized under the law of the permitted country in which the exporter is located to dispense prescription drugs; and

“(2) the exporter employs persons that are licensed under the law of the permitted country in which the exporter is located to dispense prescription drugs in sufficient number to dispense safely the drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such drugs to individuals.

“(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION.—

“(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

“(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

“(i) is valid under applicable Federal and State laws; and

“(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

“(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of the permitted country in which the exporter is located, as a condition of dispensing the drug to the individual.

“(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

“(i) to indicate that the prescription, and the equivalent document in the permitted country in which the exporter is located, have been filled; and

“(ii) to prevent a duplicative filling by another pharmacist.

“(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

“(E) The quantity of the drug does not exceed a 90-day supply.

“(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an ‘ineligible subpart H drug’ if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

“(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a

drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

“(j) MAINTENANCE OF RECORDS AND SAMPLES.—

“(1) IN GENERAL.—A registration condition is that the importer or exporter involved shall—

“(A) maintain records required under this section for not less than 2 years; and

“(B) maintain samples of each lot of a qualifying drug required under this section for not more than 2 years.

“(2) PLACE OF RECORD MAINTENANCE.—The records described under paragraph (1) shall be maintained—

“(A) in the case of an importer, at the place of business of the importer at which the importer initially receives the qualifying drug after importation; or

“(B) in the case of an exporter, at the facility from which the exporter ships the qualifying drug to the United States.

“(k) DRUG RECALLS.—

“(1) MANUFACTURERS.—A person that manufactures a qualifying drug imported from a permitted country under this section shall promptly inform the Secretary—

“(A) if the drug is recalled or withdrawn from the market in a permitted country;

“(B) how the drug may be identified, including lot number; and

“(C) the reason for the recall or withdrawal.

“(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

“(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of qualifying drugs in the country; or

“(B) monitor recalls and withdrawals of qualifying drugs in the country using any information that is available to the public in any media.

“(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a qualifying drug in a permitted country.

“(l) DRUG LABELING AND PACKAGING.—

“(1) IN GENERAL.—When a qualifying drug that is imported into the United States by an importer under subsection (a) is dispensed by a pharmacist to an individual, the pharmacist shall provide that the packaging and labeling of the drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and shall include with any other labeling provided to the individual the following:

“(A) The lot number assigned by the manufacturer.

“(B) The name and registration number of the importer.

“(C) If required under paragraph (2)(B)(vi)(III) of subsection (g), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug.

“(D) If the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

“(i) a prominent advisory that persons with allergies should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

“(ii) a list of the ingredients of the drug as would be required under section 502(e).

“(2) PACKAGING.—A qualifying drug that is packaged in a unit-of-use container (as those

terms are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

“(A) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

“(B) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the pharmacist will provide the drug in packaging that is compliant at no additional cost.

“(m) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, this section does not authorize the importation into the United States of a qualifying drug donated or otherwise supplied for free or at nominal cost by the manufacturer of the drug to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country.

“(n) UNFAIR AND DISCRIMINATORY ACTS AND PRACTICES.—

“(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing agreement or other agreement), to—

“(A) discriminate by charging a higher price for a prescription drug sold to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section than the price that is charged, inclusive of rebates or other incentives to the permitted country or other person, to another person that is in the same country and that does not export a qualifying drug into the United States under this section;

“(B) discriminate by charging a higher price for a prescription drug sold to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a qualifying drug under this section, or that does not distribute, sell, or use such a drug;

“(C) discriminate by denying, restricting, or delaying supplies of a prescription drug to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

“(D) discriminate by publicly, privately, or otherwise refusing to do business with a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or with a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

“(E) knowingly fail to submit a notice under subsection (g)(2)(B)(i), knowingly fail to submit such a notice on or before the date specified in subsection (g)(2)(B)(v) or as otherwise required under paragraphs (3), (4), and (5) of section 10004(e) of the Pharmaceutical Market Access and Drug Safety Act of 2009, knowingly submit such a notice that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such a notice;

“(F) knowingly fail to submit an application required under subsection (g)(2)(F), knowingly fail to submit such an application on or before the date specified in subsection

(g)(2)(F)(iii), knowingly submit such an application that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such an application;

“(G) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country;

“(H) refuse to allow an inspection authorized under this section of an establishment that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country;

“(I) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country to good manufacturing practice under this Act;

“(J) become a party to a licensing agreement or other agreement related to a qualifying drug that fails to provide for compliance with all requirements of this section with respect to such drug;

“(K) enter into a contract that restricts, prohibits, or delays the importation of a qualifying drug under this section;

“(L) engage in any other action to restrict, prohibit, or delay the importation of a qualifying drug under this section; or

“(M) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages or attempts to engage in the importation of a qualifying drug under this section.

“(2) REFERRAL OF POTENTIAL VIOLATIONS.—The Secretary shall promptly refer to the Federal Trade Commission each potential violation of subparagraph (E), (F), (G), (H), or (I) of paragraph (1) that becomes known to the Secretary.

“(3) AFFIRMATIVE DEFENSE.—

“(A) DISCRIMINATION.—It shall be an affirmative defense to a charge that a manufacturer has discriminated under subparagraph (A), (B), (C), (D), or (M) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial, restriction, or delay of supplies of a prescription drug to a person, the refusal to do business with a person, or other discriminatory activity against a person, is not based, in whole or in part, on—

“(i) the person exporting or importing a qualifying drug into the United States under this section; or

“(ii) the person distributing, selling, or using a qualifying drug imported into the United States under this section.

“(B) DRUG DIFFERENCES.—It shall be an affirmative defense to a charge that a manufacturer has caused there to be a difference described in subparagraph (G) of paragraph (1) that—

“(i) the difference was required by the country in which the drug is distributed;

“(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug;

“(iii) the person manufacturing the drug for distribution in the United States has given notice to the Secretary under subsection (g)(2)(B)(i) that the drug for distribution in the United States is not different from a drug for distribution in permitted

countries whose combined population represents at least 50 percent of the total population of all permitted countries; or

“(iv) the difference was not caused, in whole or in part, for the purpose of restricting importation of the drug into the United States under this section.

“(4) EFFECT OF SUBSECTION.—

“(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

“(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

“(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

“(ii) require that such discounts be made available to other purchasers of the prescription drug; or

“(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

“(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

“(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

“(ii) apply to such donations or supplying of a prescription drug.

“(5) ENFORCEMENT.—

“(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

“(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

“(i) shall enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section; and

“(ii) may seek monetary relief threefold the damages sustained, in addition to any other remedy available to the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

“(6) ACTIONS BY STATES.—

“(A) IN GENERAL.—

“(i) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State have been adversely affected by any manufacturer that violates paragraph (1), the attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction to—

“(I) enjoin that practice;

“(II) enforce compliance with this subsection;

“(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

“(IV) obtain such other relief as the court may consider to be appropriate.

“(ii) NOTICE.—

“(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

“(aa) written notice of that action; and

“(bb) a copy of the complaint for that action.

“(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

“(B) INTERVENTION.—

“(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Federal Trade Commission shall have the right to intervene in the action that is the subject of the notice.

“(ii) EFFECT OF INTERVENTION.—If the Federal Trade Commission intervenes in an action under subparagraph (A), it shall have the right—

“(I) to be heard with respect to any matter that arises in that action; and

“(II) to file a petition for appeal.

“(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

“(i) conduct investigations;

“(ii) administer oaths or affirmations; or

“(iii) compel the attendance of witnesses or the production of documentary and other evidence.

“(D) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Federal Trade Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

“(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

“(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

“(i) is an inhabitant; or

“(ii) may be found.

“(G) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

“(H) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the at-

torney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

“(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term ‘antitrust laws’ has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

“(8) MANUFACTURER.—In this subsection, the term ‘manufacturer’ means any entity, including any affiliate or licensee of that entity, that is engaged in—

“(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

“(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.”

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

“(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

“(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

“(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

“(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

“(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(B) or in an application required under section 804(g)(2)(F), or the failure to submit such a notice or application.

“(4) The importation of a drug in violation of a registration condition or other requirement under section 804, the falsification of any record required to be maintained, or provided to the Secretary, under such section, or the violation of any registration condition or other requirement under such section.”; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

“(6) Notwithstanding subsection (a), any person that knowingly violates section 301(i) (2) or (3) or section 301(aa)(4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.”

(c) AMENDMENT OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

“(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

“(1) the drug has been refused admission because the drug was not a lawful import under section 804;

“(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

“(3) the individual may under section 804 lawfully import certain prescription drugs from exporters registered with the Secretary under section 804; and

“(4) the individual can find information about such information, including a list of registered exporters, on the Internet website of the Food and Drug Administration or through a toll-free telephone number required under section 804.”

(2) **ESTABLISHMENT REGISTRATION.**—Section 510(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) is amended in paragraph (1) by inserting after “import into the United States” the following: “, including a drug that is, or may be, imported or offered for import into the United States under section 804.”

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) **EXHAUSTION.**—

(1) **IN GENERAL.**—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

“(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.”

(2) **RULE OF CONSTRUCTION.**—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

(e) **EFFECT OF SECTION 804.**—

(1) **IN GENERAL.**—Section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall permit the importation of qualifying drugs (as defined in such section 804) into the United States without regard to the status of the issuance of implementing regulations—

(A) from exporters registered under such section 804 on the date that is 90 days after the date of enactment of this Act; and

(B) from permitted countries, as defined in such section 804, by importers registered under such section 804 on the date that is 1 year after the date of enactment of this Act.

(2) **REVIEW OF REGISTRATION BY CERTAIN EXPORTERS.**—

(A) **REVIEW PRIORITY.**—In the review of registrations submitted under subsection (b) of such section 804, registrations submitted by entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of enactment of this Act will have priority during the 90 day period that begins on such date of enactment.

(B) **PERIOD FOR REVIEW.**—During such 90-day period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) **LIMITATION.**—That an exporter in Canada exports, or has exported, prescription drugs to individuals in the United States on or before the date that is 90 days after the date of enactment of this Act shall not serve as a basis, in whole or in part, for disapproving a registration under such section 804 from the exporter.

(D) **FIRST YEAR LIMIT ON NUMBER OF EXPORTERS.**—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”) may limit the number of registered exporters under such section 804 to not less than 50, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(E) **SECOND YEAR LIMIT ON NUMBER OF EXPORTERS.**—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 100, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(F) **FURTHER LIMIT ON NUMBER OF EXPORTERS.**—During any 1-year period beginning on a date that is 2 or more years after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 25 more than the number of such exporters during the previous 1-year period, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(3) **LIMITS ON NUMBER OF IMPORTERS.**—

(A) **FIRST YEAR LIMIT ON NUMBER OF IMPORTERS.**—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 100 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs imported into the United States.

(B) **SECOND YEAR LIMIT ON NUMBER OF IMPORTERS.**—During the 1-year period beginning on the date that is 2 years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 200 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs into the United States.

(C) **FURTHER LIMIT ON NUMBER OF IMPORTERS.**—During any 1-year period beginning on a date that is 3 or more years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 50 more (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups) than the number of such importers during the previous 1-year period, so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs to the United States.

(4) **NOTICES FOR DRUGS FOR IMPORT FROM CANADA.**—The notice with respect to a qualifying drug introduced for commercial distribution in Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than

30 days after the date of enactment of this Act if—

(A) the U.S. label drug (as defined in such section 804) for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period most recently completed before the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(5) **NOTICE FOR DRUGS FOR IMPORT FROM OTHER COUNTRIES.**—The notice with respect to a qualifying drug introduced for commercial distribution in a permitted country other than Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act if—

(A) the U.S. label drug for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period that is first completed on the date that is 120 days after the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(6) **NOTICE FOR OTHER DRUGS FOR IMPORT.**—

(A) **GUIDANCE ON SUBMISSION DATES.**—The Secretary shall by guidance establish a series of submission dates for the notices under subsection (g)(2)(B)(i) of such section 804 with respect to qualifying drugs introduced for commercial distribution as of the date of enactment of this Act and that are not required to be submitted under paragraph (4) or (5).

(B) **CONSISTENT AND EFFICIENT USE OF RESOURCES.**—The Secretary shall establish the dates described under subparagraph (A) so that such notices described under subparagraph (A) are submitted and reviewed at a rate that allows consistent and efficient use of the resources and staff available to the Secretary for such reviews. The Secretary may condition the requirement to submit such a notice, and the review of such a notice, on the submission by a registered exporter or a registered importer to the Secretary of a notice that such exporter or importer intends to import such qualifying drug to the United States under such section 804.

(C) **PRIORITY FOR DRUGS WITH HIGHER SALES.**—The Secretary shall establish the dates described under subparagraph (A) so that the Secretary reviews the notices described under such subparagraph with respect to qualifying drugs with higher dollar volume of sales in the United States before the notices with respect to drugs with lower sales in the United States.

(7) **NOTICES FOR DRUGS APPROVED AFTER EFFECTIVE DATE.**—The notice required under subsection (g)(2)(B)(i) of such section 804 for a qualifying drug first introduced for commercial distribution in a permitted country (as defined in such section 804) after the date of enactment of this Act shall be submitted to and reviewed by the Secretary as provided under subsection (g)(2)(B) of such section 804, without regard to paragraph (4), (5), or (6).

(8) **REPORT.**—Beginning with the first full fiscal year after the date of enactment of this Act, not later than 90 days after the end of each fiscal year during which the Secretary reviews a notice referred to in paragraph (4), (5), or (6), the Secretary shall submit a report to Congress concerning the progress of the Food and Drug Administration in reviewing the notices referred to in paragraphs (4), (5), and (6).

## (9) USER FEES.—

(A) EXPORTERS.—When establishing an aggregate total of fees to be collected from exporters under subsection (f)(2) of such section 804, the Secretary shall, under subsection (f)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered exporters during the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to \$1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365.

(B) IMPORTERS.—When establishing an aggregate total of fees to be collected from importers under subsection (e)(2) of such section 804, the Secretary shall, under subsection (e)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered importers during—

(i) the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to \$1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365; and

(ii) the second fiscal year in which this title is in effect to be \$3,000,000,000.

## (C) SECOND YEAR ADJUSTMENT.—

(i) REPORTS.—Not later than February 20 of the second fiscal year in which this title is in effect, registered importers shall report to the Secretary the total price and the total volume of drugs imported to the United States by the importer during the 4-month period from October 1 through January 31 of such fiscal year.

(ii) REESTIMATE.—Notwithstanding subsection (e)(3)(C)(ii) of such section 804 or subparagraph (B), the Secretary shall reestimate the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during the second fiscal year in which this title is in effect. Such reestimate shall be equal to—

(I) the total price of qualifying drugs imported by each importer as reported under clause (i); multiplied by

## (II) 3.

(iii) ADJUSTMENT.—The Secretary shall adjust the fee due on April 1 of the second fiscal year in which this title is in effect, from each importer so that the aggregate total of fees collected under subsection (e)(2) for such fiscal year does not exceed the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during such fiscal year as reestimated under clause (ii).

(D) FAILURE TO PAY FEES.—Notwithstanding any other provision of this section, the Secretary may prohibit a registered importer or exporter that is required to pay user fees under subsection (e) or (f) of such section 804 and that fails to pay such fees within 30 days after the date on which it is due, from importing or offering for importation a qualifying drug under such section 804 until such fee is paid.

## (E) ANNUAL REPORT.—

(i) FOOD AND DRUG ADMINISTRATION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e), (f), or (g)(2)(B)(iv) of such section 804, the Secretary shall prepare and submit to the House of Representatives and the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected

for the fiscal year for which the report is made and credited to the Food and Drug Administration.

(ii) CUSTOMS AND BORDER PROTECTION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e) or (f) of such section 804, the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall prepare and submit to the House of Representatives and the Senate a report on the use, by the Bureau of Customs and Border Protection, of the fees, if any, transferred by the Secretary to the Bureau of Customs and Border Protection for the fiscal year for which the report is made.

## (10) SPECIAL RULE REGARDING IMPORTATION BY INDIVIDUALS.—

(A) IN GENERAL.—Notwithstanding any provision of this title (or an amendment made by this title), the Secretary shall expedite the designation of any additional permitted countries from which an individual may import a qualifying drug into the United States under such section 804 if any action implemented by the Government of Canada has the effect of limiting or prohibiting the importation of qualifying drugs into the United States from Canada.

(B) TIMING AND CRITERIA.—The Secretary shall designate such additional permitted countries under subparagraph (A)—

(i) not later than 6 months after the date of the action by the Government of Canada described under such subparagraph; and

(ii) using the criteria described under subsection (a)(4)(D)(i)(II) of such section 804.

## (F) IMPLEMENTATION OF SECTION 804.—

(1) INTERIM RULE.—The Secretary may promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

(2) NO NOTICE OF PROPOSED RULEMAKING.—The interim rule described under paragraph (1) may be developed and promulgated by the Secretary without providing general notice of proposed rulemaking.

(3) FINAL RULE.—Not later than 1 year after the date on which the Secretary promulgates an interim rule under paragraph (1), the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule provided for under paragraph (1), to the extent that such provisions are not modified.

(g) CONSUMER EDUCATION.—The Secretary shall carry out activities that educate consumers—

(1) with regard to the availability of qualifying drugs for import for personal use from an exporter registered with and approved by the Food and Drug Administration under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by this section, including information on how to verify whether an exporter is registered and approved by use of the Internet website of the Food and Drug Administration and the toll-free telephone number required by this title;

(2) that drugs that consumers attempt to import from an exporter that is not registered with and approved by the Food and Drug Administration can be seized by the United States Customs Service and destroyed, and that such drugs may be counterfeit, unapproved, unsafe, or ineffective;

(3) with regard to the suspension and termination of any registration of a registered importer or exporter under such section 804; and

(4) with regard to the availability at domestic retail pharmacies of qualifying drugs

imported under such section 804 by domestic wholesalers and pharmacies registered with and approved by the Food and Drug Administration.

(h) EFFECT ON ADMINISTRATION PRACTICES.—Notwithstanding any provision of this title (and the amendments made by this title), the practices and policies of the Food and Drug Administration and Bureau of Customs and Border Protection, in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, shall remain in effect.

(i) REPORT TO CONGRESS.—The Federal Trade Commission shall, on an annual basis, submit to Congress a report that describes any action taken during the period for which the report is being prepared to enforce the provisions of section 804(n) of the Federal Food, Drug, and Cosmetic Act (as added by this title), including any pending investigations or civil actions under such section.

**SEC. 10005. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.**

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 10004, is further amended by adding at the end the following section:

**“SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.**

“(a) IN GENERAL.—The Secretary of Homeland Security shall deliver to the Secretary a shipment of drugs that is imported or offered for import into the United States if—

“(1) the shipment has a declared value of less than \$10,000; and

“(2)(A) the shipping container for such drugs does not bear the markings required under section 804(d)(2); or

“(B) the Secretary has requested delivery of such shipment of drugs.

“(b) NO BOND OR EXPORT.—Section 801(b) does not authorize the delivery to the owner or consignee of drugs delivered to the Secretary under subsection (a) pursuant to the execution of a bond, and such drugs may not be exported.

“(c) DESTRUCTION OF VIOLATIVE SHIPMENT.—The Secretary shall destroy a shipment of drugs delivered by the Secretary of Homeland Security to the Secretary under subsection (a) if—

“(1) in the case of drugs that are imported or offered for import from a registered exporter under section 804, the drugs are in violation of any standard described in section 804(g)(5); or

“(2) in the case of drugs that are not imported or offered for import from a registered exporter under section 804, the drugs are in violation of a standard referred to in section 801(a) or 801(d)(1).

**“(d) CERTAIN PROCEDURES.—**

“(1) IN GENERAL.—The delivery and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

“(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to described in subsection (c) are identified and destroyed.

“(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United

States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

“(f) **RULE OF CONSTRUCTION.**—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than \$10,000.”

(b) **PROCEDURES.**—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

**SEC. 10006. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.**

(a) **STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.**—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking “and who is not the manufacturer or an authorized distributor of record of such drug”;

(B) by striking “to an authorized distributor of record or”;

(C) by striking subparagraph (B) and inserting the following:

“(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

“(C)(i) The Secretary shall by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as ‘alternative requirements’) to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include standardized anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the discrete package of the drug from which the drug is dispensed with equal or greater certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

“(ii) When the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition may be met in lieu of the registration condition established in such clause (i).”;

(2) in paragraph (2)(A), by adding at the end the following: “The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.”; and

(3) in paragraph (3), by striking “and subsection (d)—” in the matter preceding subparagraph (A) and all that follows through “the term ‘wholesale distribution’ means” in subparagraph (B) and inserting the following: “and subsection (d), the term ‘wholesale distribution’ means”.

(b) **CONFORMING AMENDMENT.**—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

“(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

“(5) For purposes of this subsection, the term ‘authorized distributors of record’ means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer’s products.”

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on January 1, 2012.

(2) **DRUGS IMPORTED BY REGISTERED IMPORTERS UNDER SECTION 804.**—Notwithstanding paragraph (1), the amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act with respect to qualifying drugs imported under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by section 10004.

(3) **EFFECT WITH RESPECT TO REGISTERED EXPORTERS.**—The amendment made by subsection (a)(2) shall take effect on the date that is 90 days after the date of enactment of this Act.

(4) **ALTERNATIVE REQUIREMENTS.**—The Secretary shall issue regulations to establish the alternative requirements, referred to in the amendment made by subsection (a)(1), that take effect not later than January 1, 2012.

(5) **INTERMEDIATE REQUIREMENTS.**—The Secretary shall by regulation require the use of standardized anti-counterfeiting or track-and-trace technologies on prescription drugs at the case and pallet level effective not later than 1 year after the date of enactment of this Act.

(6) **ADDITIONAL REQUIREMENTS.**—

(A) **IN GENERAL.**—Notwithstanding any other provision of this section, the Secretary shall, not later than 18 months after the date of enactment of this Act, require that the packaging of any prescription drug incorporates—

(i) a standardized numerical identifier unique to each package of such drug, applied at the point of manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacturing); and

(ii)(I) overt optically variable counterfeit-resistant technologies that—

(aa) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(bb) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(cc) are manufactured and distributed in a highly secure, tightly controlled environment; and

(dd) incorporate additional layers of non-visible convert security features up to and including forensic capability, as described in subparagraph (B); or

(II) technologies that have a function of security comparable to that described in subclause (I), as determined by the Secretary.

(B) **STANDARDS FOR PACKAGING.**—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to this paragraph, the manufacturers of such drugs shall incorporate the technologies described

in subparagraph (A) into at least 1 additional element of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

**SEC. 10007. INTERNET SALES OF PRESCRIPTION DRUGS.**

(a) **IN GENERAL.**—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503B the following:

**“SEC. 503C. INTERNET SALES OF PRESCRIPTION DRUGS.**

“(a) **REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.**—

“(1) **IN GENERAL.**—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

“(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

“(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

“(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

“(i) are not intended to be accessed by purchasers or prospective purchasers; or

“(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

“(2) **REQUIREMENTS.**—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

“(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

“(i) The name of such person.

“(ii) Each State in which the person is authorized by law to dispense prescription drugs.

“(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

“(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

“(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

“(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words ‘licensing and contact information’.

“(b) **INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

“(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

“(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

“(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

“(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

“(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

“(2) EXCEPTIONS.—Paragraph (1) does not apply to—

“(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

“(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

“(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

“(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

“(3) QUALIFYING MEDICAL RELATIONSHIP.—

“(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

“(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

“(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

“(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

“(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

“(4) RULES OF CONSTRUCTION.—

“(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (e)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

“(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

“(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

“(c) ACTIONS BY STATES.—

“(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

“(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

“(A) to intervene in such action;

“(B) upon so intervening, to be heard on all matters arising therein; and

“(C) to file petitions for appeal.

“(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

“(5) ACTIONS BY OTHER STATE OFFICIALS.—

“(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

“(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

“(d) EFFECT OF SECTION.—This section shall not apply to a person that is a registered exporter under section 804.

“(e) GENERAL DEFINITIONS.—For purposes of this section:

“(1) The term ‘practitioner’ means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

“(2) The term ‘prescription drug’ means a drug that is described in section 503(b)(1).

“(3) The term ‘qualifying medical relationship’, with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

“(f) INTERNET-RELATED DEFINITIONS.—

“(1) IN GENERAL.—For purposes of this section:

“(A) The term ‘Internet’ means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/Internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

“(B) The term ‘link’, with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

“(i) to move from viewing one portion of a page on such site to another portion of the page;

“(ii) to move from viewing one page on such site to another page on such site; or

“(iii) to move from viewing a page on one Internet site to a page on another Internet site.

“(C) The term ‘page’, with respect to the Internet, means a document or other file accessed at an Internet site.

“(D)(i) The terms ‘site’ and ‘address’, with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

“(ii) The term ‘domain name’ means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as ‘.com’, ‘.edu’, ‘.gov’, ‘.net’, or ‘.org’.

“(iii) The term ‘Internet Protocol numbers’ includes any successor protocol for determining a specific location on the Internet.

“(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

“(g) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person’s selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.

“(h) NO EFFECT ON OTHER REQUIREMENTS; COORDINATION.—The requirements of this section are in addition to, and do not supersede, any requirements under the Controlled Substances Act or the Controlled Substances Import and Export Act (or any regulation promulgated under either such Act) regarding Internet pharmacies and controlled substances. In promulgating regulations to carry out this section, the Secretary shall coordinate with the Attorney General to ensure that such regulations do not duplicate or conflict with the requirements described in the previous sentence, and that such regulations and requirements coordinate to the extent practicable.”

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

“(l) The dispensing or selling of a prescription drug in violation of section 503C.”

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF



PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503C of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF FEDERAL AND STATE LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of Federal or State laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated \$100,000 for each of the first 3 fiscal years in which this section is in effect.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect 90 days after the date of enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

#### SEC. 10008. PROHIBITING PAYMENTS TO UNREGISTERED FOREIGN PHARMACIES.

(a) IN GENERAL.—Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following:

“(h) RESTRICTED TRANSACTIONS.—

“(1) IN GENERAL.—The introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system is prohibited.

“(2) PAYMENT SYSTEM.—

“(A) IN GENERAL.—The term ‘payment system’ means a system used by a person described in subparagraph (B) to effect a credit transaction, electronic fund transfer, or money transmitting service that may be used in connection with, or to facilitate, a restricted transaction, and includes—

“(i) a credit card system;

“(ii) an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service; and

“(iii) any other system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic fund transfers, or money transmitting services.

“(B) PERSONS DESCRIBED.—A person referred to in subparagraph (A) is—

“(i) a creditor;

“(ii) a credit card issuer;

“(iii) a financial institution;

“(iv) an operator of a terminal at which an electronic fund transfer may be initiated;

“(v) a money transmitting business; or

“(vi) a participant in an international, national, regional, or local network used to effect a credit transaction, electronic fund transfer, or money transmitting service.

“(3) RESTRICTED TRANSACTION.—The term ‘restricted transaction’ means a transaction or transmittal, on behalf of an individual who places an unlawful drug importation request to any person engaged in the operation of an unregistered foreign pharmacy, of—

“(A) credit, or the proceeds of credit, extended to or on behalf of the individual for the purpose of the unlawful drug importation request (including credit extended through the use of a credit card);

“(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the individual for the purpose of the unlawful drug importation request;

“(C) a check, draft, or similar instrument which is drawn by or on behalf of the individual for the purpose of the unlawful drug importation request and is drawn on or payable at or through any financial institution; or

“(D) the proceeds of any other form of financial transaction (identified by the Board by regulation) that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the individual for the purpose of the unlawful drug importation request.

“(4) UNLAWFUL DRUG IMPORTATION REQUEST.—The term ‘unlawful drug importation request’ means the request, or transmittal of a request, made to an unregistered foreign pharmacy for a prescription drug by mail (including a private carrier), facsimile, phone, or electronic mail, or by a means that involves the use, in whole or in part, of the Internet.

“(5) UNREGISTERED FOREIGN PHARMACY.—The term ‘unregistered foreign pharmacy’ means a person in a country other than the United States that is not a registered exporter under section 804.

“(6) OTHER DEFINITIONS.—

“(A) CREDIT; CREDITOR; CREDIT CARD.—The terms ‘credit’, ‘creditor’, and ‘credit card’ have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

“(B) ACCESS DEVICE; ELECTRONIC FUND TRANSFER.—The terms ‘access device’ and ‘electronic fund transfer’—

“(i) have the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a); and

“(ii) the term ‘electronic fund transfer’ also includes any fund transfer covered under Article 4A of the Uniform Commercial Code, as in effect in any State.

“(C) FINANCIAL INSTITUTION.—The term ‘financial institution’—

“(i) has the meaning given the term in section 903 of the Electronic Transfer Fund Act (15 U.S.C. 1693a); and

“(ii) includes a financial institution (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

“(D) MONEY TRANSMITTING BUSINESS; MONEY TRANSMITTING SERVICE.—The terms ‘money transmitting business’ and ‘money transmitting service’ have the meaning given the terms in section 5330(d) of title 31, United States Code.

“(E) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(7) POLICIES AND PROCEDURES REQUIRED TO PREVENT RESTRICTED TRANSACTIONS.—

“(A) REGULATIONS.—The Board shall promulgate regulations requiring—

“(i) an operator of a credit card system;

“(ii) an operator of an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service;

“(iii) an operator of any other payment system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic transfers or money transmitting services where at least one party to the transaction or transfer is an individual; and

“(iv) any other person described in paragraph (2)(B) and specified by the Board in such regulations,

to establish policies and procedures that are reasonably designed to prevent the introduction of a restricted transaction into a payment system or the completion of a restricted transaction using a payment system

“(B) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In promulgating regulations under subparagraph (A), the Board shall—

“(i) identify types of policies and procedures, including nonexclusive examples, that shall be considered to be reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; and

“(ii) to the extent practicable, permit any payment system, or person described in paragraph (2)(B), as applicable, to choose among alternative means of preventing the introduction or completion of restricted transactions.

“(C) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTION.—

“(i) IN GENERAL.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, and any participant in such payment system that prevents or otherwise refuses to honor transactions in an effort to implement the policies and procedures required under this subsection or to otherwise comply with this subsection shall not be liable to any party for such action.

“(ii) COMPLIANCE.—A person described in paragraph (2)(B) meets the requirements of this subsection if the person relies on and complies with the policies and procedures of a payment system of which the person is a member or in which the person is a participant, and such policies and procedures of the payment system comply with the requirements of the regulations promulgated under subparagraph (A).

“(D) ENFORCEMENT.—

“(i) IN GENERAL.—This subsection, and the regulations promulgated under this subsection, shall be enforced exclusively by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

“(ii) FACTORS TO BE CONSIDERED.—In considering any enforcement action under this subsection against a payment system or person described in paragraph (2)(B), the Federal functional regulators and the Federal Trade Commission shall consider the following factors:

“(I) The extent to which the payment system or person knowingly permits restricted transactions.

“(II) The history of the payment system or person in connection with permitting restricted transactions.

“(III) The extent to which the payment system or person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.

“(8) TRANSACTIONS PERMITTED.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, is authorized to engage in transactions with foreign pharmacies in connection with investigating violations or potential violations of any rule or requirement adopted by the payment system or person in connection with complying with paragraph (7). A payment system, or such a person, and its agents and employees shall not be found to be in violation of, or liable under, any Federal, State or other law by virtue of engaging in any such transaction.

“(9) RELATION TO STATE LAWS.—No requirement, prohibition, or liability may be imposed on a payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, under the laws of any state with respect to any payment transaction by an individual because the payment transaction involves a payment to a foreign pharmacy.

“(10) TIMING OF REQUIREMENTS.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, must adopt policies and procedures reasonably designed to comply with any regulations required under paragraph (7) within 60 days after such regulations are issued in final form.

“(11) COMPLIANCE.—A payment system, and any person described in paragraph (2)(B), shall not be deemed to be in violation of paragraph (1)—

“(A)(i) if an alleged violation of paragraph (1) occurs prior to the mandatory compliance date of the regulations issued under paragraph (7); and

“(ii) such entity has adopted or relied on policies and procedures that are reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; or

“(B)(i) if an alleged violation of paragraph (1) occurs after the mandatory compliance date of such regulations; and

“(ii) such entity is in compliance with such regulations.”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day that is 90 days after the date of enactment of this Act.

(c) IMPLEMENTATION.—The Board of Governors of the Federal Reserve System shall promulgate regulations as required by subsection (h)(7) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333), as added by subsection (a), not later than 90 days after the date of enactment of this Act.

**SEC. 10009. IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.**

Section 1006(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)(2)) is amended by striking “not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.” and inserting “import into the United States not more than 10 dosage units combined of all such controlled substances.”

**SEC. 10010. SEVERABILITY.**

If any provision of this title, an amendment by this title, or the application of such

provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

**SEC. 10011. SENSE OF THE SENATE REGARDING REPORTING.**

(a) IN GENERAL.—It is the sense of the Senate that, beginning 180 days after the date of enactment of this Act, and every 180 days thereafter, the Secretary of Health and Human Services should report to Congress on the status of the progress of the provisions of this title (and the amendments made by this title) to permit the importation from certain approved countries of safe and affordable prescription drugs approved by the Food and Drug Administration.

(b) CONTENTS.—Any report submitted under subsection (a) should include a description of the steps being taken by such Secretary to ensure that the implementation of this title (and the amendments made by this title) results in—

(1) the effective oversight of drugs, pharmacies, manufacturers, and registration of importers and exporters in accordance with this title (and such amendments);

(2) a safe prescription drug supply for American consumers; and

(3) cost savings to American consumers.

**ORDERS FOR SUNDAY, DECEMBER 13, 2009**

Mr. BEGICH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1:30 p.m., Sunday, December 13; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the conference report accompanying H.R. 3288, the consolidated appropriations bill, as provided for under the previous order; and that following any leader remarks, the time until 2 p.m. be equally divided and controlled between the two leaders or their designees.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

**PROGRAM**

Mr. BEGICH. Mr. President, at 2 p.m., the Senate will proceed to a roll-call vote on the adoption of the conference report to accompany H.R. 3288, the consolidated appropriations bill.

**ORDER FOR ADJOURNMENT**

Mr. BEGICH. Finally, Mr. President, I ask unanimous consent that following the remarks of Senator THUNE and Senator ENZI, the Senate adjourn under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Dakota.

**OMNIBUS APPROPRIATIONS AND HEALTH CARE REFORM**

Mr. THUNE. Mr. President, I want to address the issue of health care reform, of course, which is the main reason Congress is here this weekend and was here last weekend, and in all likelihood will be here next weekend. But I also think it is important we put these things into an overall context and take a look at the bill we are voting on right now.

We are going to have a vote on final passage tomorrow. We had a cloture vote this morning on a spending bill, and the spending bill—which represents six, I think, appropriations bills that did not get done earlier this year—represents a package of spending that overall increases by 12 percent over last year.

That is an interesting number, given the fact that the Consumer Price Index—which is the sort of, if you will, conduit to which a lot of these decisions that are made around here is tied; in other words, the CPI is what we view to be inflation; and sometimes we say we mark up bills at inflation or inflation plus this or inflation plus that—where the CPI was, ending on October 1 of this year, about two-tenths of 1 percent but in the negative column.

So you have a CPI that is actually negative, an inflation index that is actually negative for most Americans. This, again, is representative of the totality of our economy and what things cost, and that is a lot of times how appropriations bills are measured.

So you have a CPI, Consumer Price Index, that is running in the negative, and yet you have appropriations bills—this one representing, again, as I said earlier, six appropriations bills, individual appropriations bills that did not get done earlier—packaged into one big spending bill that is a 12-percent increase over the previous year.

How can we go to the American people and justify year-over-year spending increases that are 12 percent, when they are having to balance their budgets and tighten their belts and live in an economy where some people are losing their jobs? But certainly everybody is trying, struggling to survive out there. That is true for small businesses. That is true for families. That is true for pretty much everybody, it seems, except the Congress.

Here in Washington, DC, we seem not to be listening to what is happening in America. We are marking up spending bills at 12 percent over last year's level, at a time when the CPI is actually running in the negative—when you have negative cost-of-living increase. Yet we are marking up appropriations bills that represent a 12-percent increase over last year's spending level?

Put that on top of a stimulus bill that passed earlier this year that, with interest, is a \$1 trillion spending bill.

So you have a \$1 trillion spending bill with interest passed earlier this year, much of which went to the very same Federal agencies that are going to benefit from this 12-percent increase over last year in annual appropriations. So you have a \$1 trillion stimulus bill, you look at appropriations bills—again, this being representative of most of the bills this year—that year-over-year increase at 12 percent, at a time when most Americans are having to tighten their belts.

We hear that. We also hear that TARP is now going to be used as a slush fund, so to speak, to pay for all kinds of other government spending. In other words, they have decided—at least, I think the administration has—to use the TARP fund as sort of a “pay for” for lots of things they want to do.

Most of us know that the TARP fund was created specifically to stabilize our financial markets, to prevent what we thought at the time was going to be an imminent financial collapse. That purpose has been served. I have a bill that would end TARP at the end of this year on December 31. If it is not allowed to expire at the end of this year, when it is set to expire—if it is not allowed to expire, if it is extended and it goes well into next year—it can be used, as I said, for all these other things that politicians have designs on doing.

So my legislation would end it at December 31 of this year, as was intended, and make sure any funds that are paid back in from loans that have been made or assets that have been acquired actually go back to the Treasury to pay down the Federal debt. Because that is what, in fact, TARP was intended to do. Once the job was accomplished, it was not to become a “grab bag” and “found money” for Congress to use for all these other things.

You have the TARP fund now morphing and evolving into this sort of political slush fund to be used for all these other spending priorities. You have the stimulus, this \$1 trillion stimulus bill, out there. You have this appropriations bill with a 12-percent year-over-year increase over last year's level. On top of all that, we pile on a \$2.5 trillion expansion of the Federal Government in Washington to pay for a new entitlement program with the health care reform bill that has been, is being debated in the Senate in the last week and in the week to come.

So at some point you have to say—and I think the American people look at us and say—enough already. I think that is what they are saying. I think the reason we are seeing these public opinion polls that are turning a thumbs-down on this massive expansion of the Federal Government here in Washington to fund health care is because the American public is becoming increasingly uncomfortable with the idea that the Federal Government continues to run the credit card up.

The stimulus money was all borrowed money. The TARP money is borrowed money. The appropriations bills, for the most part, this year are—or for a large part, at least—borrowed money. Mr. President, 43 cents out of every dollar the Congress spent in the last year—the fiscal year ending September 30—was borrowed money.

We continue to borrow and borrow and pass on the debt to future generations. We cannot continue to do that and expect to have a future that enjoys the same level of prosperity and the same level of economic growth and vitality we have experienced in the past. You cannot continue to pile up these massive amounts of debt. The Federal debt is going to double in 5 years, it is going to triple in 10, if we continue on the current path. Right now, I do not see anything that is going to put any brakes on this.

The capacity and the appetite and the willingness and the inclination of Washington, DC, and politicians here to continue to spend and spend seems to be unlimited. At some point, we have to put the brakes on. We have people who have a foot on the pedal. The Democratic majority in the House of Representatives, the Democratic majority here in the Senate, the White House, all have their feet on the accelerator. Somebody has to put on the brake. That is what we are trying to do.

That is why I think it is important we end TARP before it gets misused and spent for all these other things and why it is important we rein in these appropriations bills. We are doing everything we can to stop this appropriations bill from being passed at a 12-percent increase over last year's level. And we are doing everything we can, I would say, to stop this massive expansion—\$2.5 trillion expansion—of the Federal Government to fund the new health care entitlement, at a time when we have all these other debt problems and deficits, as far as the eye can see.

So I wanted to, in shifting gears, paint that as sort of the context against which this whole health care debate is occurring. But I want to shift, if I could, to some of the more recent developments with regard to the debate over health care.

I think there are a couple things that, to me, are game changers in terms of the debate. One of those, of course, is the study that came out yesterday from the CMS, or the Centers for Medicare & Medicaid Services, the Actuary who points out the health care reform bill that is currently before the Senate will not drive health care costs down but will, in fact, increase health care costs by \$234 billion, and that today, about one-sixth of every dollar we spend is on health care; that 10 years from now, in 2019, that will be almost 21 percent—that is what the CMS

Actuary said—that the total amount we spend on health care in this country—which today is about 17 percent—10 years from now will be almost 21 percent. So the amount spent on health care as a percentage of our gross domestic product goes dramatically up, not down. And \$234 billion is what the CMS Actuary said health care costs would go up by in the next 10 years.

Of course, we had previously the CBO essentially saying the same thing. The Congressional Budget Office—for those who live outside of Washington, DC—is sort of the nonpartisan estimator, if you will, of what a lot of these Federal programs are going to cost.

The Congressional Budget Office said that under the bill put forward by the Senate majority here, the Democratic leadership in the Senate, you would actually increase health care spending by \$160 billion over the next 10 years, again bending the health care cost curve up, not down. So now you have the experts—the Congressional Budget Office, the Centers for Medicare & Medicaid Services Actuary—all saying health care costs are going to go up, not down, and significantly up.

You have the small business organizations out there saying—the National Federation of Independent Business, the Chamber of Commerce, the National Association of Wholesalers and Distributors, and I might add there is another group that has been formed called the Small Business Coalition for Affordable Healthcare, which represents 50 different business organizations—this health care reform bill will increase the cost of doing business in this country and will drive up health care costs. So they have come out in opposition to it, as have all the other business organizations I mentioned, for the same reason. They realize health care reform ought to be about getting their costs down and improving their ability to create jobs. By the way, three-quarters of the jobs created in our economy are created by small business.

So what are we going to do to small businesses? Pile on a bunch of new taxes to pay for this expansion, this \$2.5 trillion expansion of the Federal Government in the form of this new health care entitlement. All for what? So they can see their health care costs continue to go up. You pile on the new taxes, you cut Medicare to all the providers out there. And I want to draw them into this too because not only have the small businesses said this is going to drive health care costs up—and they have come out opposed to it—not only has the Congressional Budget Office said that, not only the Centers for Medicare & Medicaid Services Actuary said that, you have academics saying that, but now you also have the providers saying that.

Hospitals and physicians groups are coming out and saying this latest proposal by the Democratic majority to

expand Medicare will put hospitals out of business. Because hospitals get underreimbursed by Medicare, and so do physicians. So what do they do? They shift costs over to the private payers, which is everybody else in this country, and everybody else sees their premiums go up. It shrinks the number of private payers, expands the number of government payers, and for these hospitals in places such as South Dakota—I see my colleague from Wyoming on the floor—that are very dependent on Medicare, they are going to see less and less reimbursement coming into their facilities, which does not cover their costs, and very soon you will have a lot of hospitals, particularly in rural areas, going out of business. That has been stated. The chairman of the Senate Budget Committee, Senator CONRAD from North Dakota, came out and said that basically this latest proposal would bankrupt a lot of hospitals in his State. I think that is true for a lot of States and particularly in rural States such as mine and the Senator from Wyoming.

We have small businesses saying: We can't sustain these increases. We think this is a really bad deal. We have the experts, the analysts, the Congressional Budget Office, and the Center for Medicare and Medicaid Services saying this increases costs for health care in this country. And now we have the American people weighing in and saying: We think this is a bad deal. We think it is going to increase our health care costs. The CNN poll that came out 2 days ago said 61 percent of Americans oppose the health care reform bill that is pending right now in the Senate. Other polls show similar results. So we have a very sizable majority of the American people who have now weighed in saying this is a bad deal because it cuts Medicare, it raises taxes, and at the end of the day, it raises premiums.

So who is for this? Who thinks this is a good thing? Well, apparently a number of Democrats here in the Senate, but that is an increasingly shrinking universe of people.

The American people have said it is a bad deal. The experts say it is a bad deal. Small businesses say it is a bad deal. Providers say it is a bad deal. What is left?

Well, I am hoping there are a couple of courageous Democrats who are going to step forward, agree with the American people, and say: We are listening to the American people. We are listening to the experts. We are listening to small businesses that create two-thirds or three-quarters of the jobs in our economy. And we agree we are going to stop this train wreck from happening, sit down, start over, do this right, work with Republicans, and write a bill that actually does constrain costs, that drives the cost curve down and provides access for more Americans. I

hope there are a few Democrats out there who will do that because I think on our side we have all concluded, based on what we hear from the American people, what we hear from the experts, what we hear from the business community, what we hear from the provider community, the hospitals and the physicians, that this is a really bad deal. At the end of the day, after all of this new spending, after all the new taxes, after all the Medicare cuts, what are we left with?

What everybody says they want out of health care reform is lower costs. Our colleagues on the other side come down here repeatedly and say we have to do something about the cost of health care. People in this country are struggling with health care costs, absolutely. We could not agree more. What they will do with this bill if it passes is make matters worse, not better, by increasing costs for most Americans.

I wish to show my colleagues exactly what I mean. If you are a family of four—and this is, again, according to the Congressional Budget Office, which looked at this and analyzed these bills and said: If you are in the small group market or large group market, you are going to see year-over-year increases in health care costs, which is somewhere between 5 and 6 percent, which is what we are seeing today—and by the way, that is twice the rate of inflation historically—but a 5- to 6-percent increase in health care premiums. If you are in the individual marketplace, you are going to see your premiums go up anywhere from 10 to 13 percent beyond that. So if you are in the individual market, it gets much worse. But if you are in the small group or large group market, here is what it says: If you are in a family of four today and you are receiving your insurance through your employer and they are getting their insurance through a large group market, you are paying about \$13,000 a year. In 2016, 7 years from now, you are going to be paying over \$20,000 a year for health insurance coverage.

So your health insurance coverage is going to go up under this bill, not down, according to the Congressional Budget Office. It is going to go up at a rate that is double the rate of inflation. Again, this is for people who get their insurance in the large and small group markets. The yellow line represents the large group market, the red line represents the small group markets, but the result is the same. It is an upward trajectory. It is a spike up in the cost of health insurance for people who get their coverage for health insurance in one of those two markets. Again, as I said before, if you are in the individual marketplace, you could spike this thing like this because their costs are going to be 10 to 13 percent above and beyond what you are seeing here in the large group market. That is according to the Congressional Budget Office.

So 90 percent of Americans, according to the Congressional Budget Office, are going to see their health insurance premiums stay the same, and by "stay the same," I mean go up by twice the rate of inflation—in other words, locking in the status quo—or worse yet, if you are in the individual marketplace, it will be going up 10 to 13 percent.

So all of this talk about lowering the cost of health care and not settling for the status quo may sound good, it is great rhetoric, but it is absolutely factually inaccurate.

So our colleagues who come down here day after day talking about how this health care reform bill is going to drive down the cost of health care are not listening. They are not listening to the American people. They are not listening to the experts. They are not listening to the small business community. They are not listening to the provider community.

I have to say that even the academic community has weighed in on this particular issue as well.

I wish to read for my colleagues something that was said recently by the dean of the Harvard Medical School:

Speeches and news reports could lead you to believe the proposed congressional legislation would tackle the problems of cost, access, and quality, but that's not true. The overall effort will fail to qualify as reform. I find near unanimity of opinion that whatever its shape, the final legislation that will emerge from Congress will markedly accelerate national health care spending rather than restrain it. This will make an eventual solution even more difficult.

That from the dean of the Harvard Medical School.

So I hope that before this debate concludes—the push is to get it done by the end of the year. I am not sure why. It seems to me, at least, that this is not something we want to hurry. We are talking about reordering or restructuring one-sixth of the American economy. As I said, today it represents 17 percent of our GDP. We spend about \$2.5 trillion a year on health care. We ought to get this right. There is an intent on the other side to jam this through sometime next week. Well, I hope we can put the brakes on this. I hope there are a couple of courageous Democrats—at least one but two would be better, maybe even more—who will step forward and say: We are going to listen to the American people. We are going to listen to the providers out there, the hospitals and physicians. We are going to listen to the experts. We are going to listen to the small business community that creates the jobs. And we are not going to blindly follow the leader and take this country over the cliff when it comes to health care delivery and when it comes to our economy.

There is one final point I will make about that because I thought this was a remarkable finding by the CMS in

their study. They essentially said that the savings that are proposed in Medicare—the new Federal spending that relies on Medicare cuts which are unlikely to be sustainable on a permanent basis—we all, over here, agree with that. The appetite for the Congress, the willingness for the Congress to cut reimbursements to hospitals and to nursing homes and to home health agencies and to hospices, I find very suspect.

So at the end of the day, if you cannot sustain those—and let's say, for example, for a minute that you can. Let's say these Medicare cuts take effect. If they take effect, and if the Democrats have their way and they expand Medicare, we are going to put more and more people onto a sinking ship because we have a program that is going to be bankrupt in 2017, we are told by the actuaries. We are going to cut \$1 trillion out of it over the next 10 years when it is fully implemented, and we are going to put more people onto it. So if those cuts occur, we are going to have more and more hospitals going out of business because they flat aren't going to be able to make ends meet. That is the other thing, by the way, the CMS Actuary found in their study.

But they said they don't believe we can sustain these Medicare cuts on a permanent basis. Meaning what? Meaning that the cost of this program, \$2.5 trillion over 10 years, is going to fall on the backs of future generations because it will be borrowed. It will be added to the debt, which is growing at \$1 trillion a year, as I said earlier.

We are going to have a vote, if you can believe that, here in the very near future to actually raise the debt ceiling by \$2 trillion over and above what it is today, which is \$12 trillion. This debt situation is probably the most serious crisis and challenge facing this country going forward. It just seems as though there is an endless, limitless appetite for spending and borrowing around here, and at some point the chicken is going to come home to roost and the bills will have to be paid. You can't continue to sustain this level of borrowing.

These Medicare cuts are unsustainable, which is what the CMS Actuary says. That means a lot of the cost of this new program is going to be financed partly by tax increases, which, as I said, are harmful to small businesses, but secondly by more and more borrowing and more and more debt. More and more future generations, younger Americans, will be faced with a massive inheritance of Federal debt because we weren't willing to make the hard choices to be able to live within our means.

So I hope when it is all said and done, there will be some people who will step forward, have the courage not to blindly follow the leader but to say with the American people, with the experts,

with the small business community, with the provider community, with even some of the academic community, that this does nothing to constrain or lower health care costs. The emperor has no clothes. If they do that, we can sit down together.

We are not here for a minute to suggest we shouldn't have health care reform. All we are here to suggest is that it ought to be done the right way, it ought to be done on a bipartisan basis, and it ought to be done in a way that actually bends the cost curve down rather than raises it and that does not cost us \$2.5 trillion of cuts to Medicare, which is going to impact a lot of seniors, increase taxes, which is going to crush small businesses, or debt, which is going to punish future generations.

That is what this debate is about. It is a consequential debate for America's future. The stakes are very high. I hope the American people will be engaged in it, and I hope we will be able to find some bipartisan support for defeating this really bad idea and moving to something that actually will make a difference, that will restrain costs, and that will provide health insurance reform that is meaningful reform and that doesn't bankrupt us, doesn't bankrupt hospitals, doesn't bankrupt future generations, doesn't cost us jobs by putting new taxes on small businesses, and actually bends the cost curve down.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from South Dakota for his enthusiasm and passion and ability to explain things. The passion we have seen throughout the day from the Republicans who have spoken is a reflection of the passion we are hearing in our telephone calls and in our e-mails and in our letters. Our volume is much higher than the 61 percent the CNN poll says. Of course, we wouldn't expect the CNN poll to necessarily reflect our constituents. That enthusiasm across America, that passion, that concern should be reflected in this Chamber.

I get a lot of mail and even phone calls from other States, and they say: How come my Senator isn't listening to me? How come he is not listening to all of my friends? Thank you for what you are doing on health care.

What we are doing on health care, of course, is asking that it be done step by step so that we can get the confidence of the American people, not do something grandiose that can't be well thought out because it is so big.

I spent time as the ranking member of the Health, Education, Labor, and Pensions Committee in an extensive markup on a bill that we had no input in writing. The other side says we had input into the amendments, and we did do some amendments and some were accepted. There were even some that

were fairly significant that were accepted.

Of course, what was disappointing was that after the August recess—they didn't print it before the August recess because they didn't want people to know what was actually in it at that time. But following the August recess, when they finally printed it, we found out that provisions we had put in by agreement had been ripped out. Never have I had that happen in my 12 years in the U.S. Senate.

Then I was part of the Gang of 6—the Group of 6, my mother would prefer to call it because she told me never to join a gang. But over a period of at least 60 days, we spent a lot of time and effort from morning until night trying to get a health care bill that would work for America.

One of the things we discovered is that it is very extensive. Nobody can comprehend how big health care is in America. We talked about it being 16 percent of the whole economy. Well, does that register with you? We talk about the trillions that are involved. I don't understand trillions. We spend billions around here, but trillions is a whole other level. I don't even think the kids who work on billions understand trillions. When we say 1 trillion, a lot of people say: Well, that is just 1. Well, it is a thousand billion, and a billion is a thousand million. So it is a lot of money.

But when we were doing this in this Gang of 6, what we did was kind of divide the issues up into 13 different parts—you might call them steps.

We started working through those. Sometimes we would have to leave one because we had basic questions we needed to ask about those sections so we would have a big enough understanding to be able to draft legislation for it. Basic questions. Basic questions. We only made it through slightly more than half the 13 areas before we were faced with a phony deadline. They said September 15 is the drop-dead date for this group to finish work. If you don't have it done by then, we will put something together anyway.

If you are still getting basic questions answered, don't you think you ought to work on it a little longer and have a few more people in? One of the groups we had in were the Governors. We were going to have a vast expansion of Medicaid—not quite as vast as is in here, and what is in this new bill that we have not yet seen, even though we are quite a ways into this, but a vast expansion of Medicaid. Medicaid works through the States and the States have to pick up part of the costs—actually, they pick up a lot of the costs. As we have expanded Medicaid and expanded the rolls on Medicaid, we have put a greater burden not only on the Federal Government, though it is on the Federal Government, too, but also on the State governments. The State governments don't get to vote on it at all.

The Senator from Tennessee, Mr. ALEXANDER, who used to be a college president and was also a Secretary of Education, pointed out a number of times that when Governors are faced with this budget crunch on Medicaid, what do they do? Virtually the only place they can cut is universities and colleges. That is why there has been this dramatic increase in college tuition—because of what Medicaid has done to the States.

Now we are talking about another drastic increase in the number of people in Medicaid. We thought it would be a good idea if we got the Governors on the phone—we hoped the Governors task force on Medicaid would meet with us, and I think they might have, but we were trying to rush it into a short period of time, so we did conference calls. They wanted to know how it was going to affect their States. We knew how many billions it was going to cost as a whole for those States, but we didn't have a breakdown individually. CBO and the Joint Tax Commission don't do breakdowns by States. But we had some people on staff—Democratic staff—who thought they could break that down, and they did. They presented us with these numbers, and I called my Governor and said: I know this is going to be a problem, and I will see what I can do about it, but it is a lot of money. Of course, if I am talking about how much it was for Wyoming, it would not sound nearly as much as for New York, but it is the same kind of percentages, we just have less population.

Another surprising thing that happened to us was it looked like Nevada and New York would be hit real hard. The next day we got numbers and—we had the same CBO and Joint Tax score. That didn't change a bit. There was one set of numbers. But the evaluation, the next day, looked a lot better for Nevada and New York. It didn't bring it down enough, so there was a special provision that has been put in the bill—it was not done in the Gang of 6—that made it much nicer for Nevada and New York. We said: Wait a minute, why are you doing that for Nevada and New York? Some of the influential people around here from Nevada and New York said this economy is in a real downturn, and we are being hit harder than anybody else. I said: Well, that is a nice gesture, but this part of the bill isn't going into effect for 4 years. How do we know that in 4 years Nevada and New York are the ones that are going to be hard hit? We ought to have provisions for whoever is hard hit.

Those are the kinds of things we were trying to take care of in committee with inadequate numbers. As we worked through—well, the President wanted to do a speech to the Nation, a joint session speech. They do those over on the House side, and the House and Senate show up for it. It was on

health care. Following that health care speech, the next morning we went to the Gang of 6 meeting. I kept notes on what the President said. I had about 12 areas we had tried to draft legislation on that he had pretty specific suggestions on. I had to say: This is something we didn't do. We didn't do this yet. We talked about that for a whole day. Immigration was one of the big ones. Medical malpractice was another. That has been a huge concern to the medical community.

I have several things I need to say on this health care bill. I know we are talking in the 30 hours following the appropriations bill. I have things to say about the appropriations bill too. I usually don't talk for very long down here, but I have some of that pent-up passion from all the calls and things I have gotten. So I will talk about both spending and health care.

I will start with the spending because we just voted for a bill that costs \$446.8 billion, and Senators didn't have any opportunity to debate the critical issues within that bill. Of the six bills, three—Financial Services, Labor-HHS, and State and Foreign Ops—were airdropped into conference with no opportunity for debate on this floor. So we had no opportunity for consideration. The Transportation bill, the HUD bill, received a 23-percent increase over last year. The State and Foreign Ops bill received a 33-percent increase over last year. Collectively, the six appropriations bills account for a 12-percent increase in Federal spending over last year.

Our national deficit for the past fiscal year stands at \$1.4 trillion. I don't see that going down at all. Our current unemployment level is at 10 percent, despite the administration's insistence earlier in the year that Congress pass a \$1 trillion-plus stimulus package. The Senate is currently in the middle of a debate on a health care reform bill that has a 10-year implementation cost of \$2.5 trillion. Sometime in the next month, we will be forced to raise the Nation's debt ceiling for the second time this year to a level that exceeds the current ceiling of \$12.1 trillion.

The bill makes a number of significant policy changes with respect to the fairness doctrine. This omnibus does not include the fiscal year 2008 ban on Federal funds being used to enforce or implement the so-called fairness doctrine. The bill makes changes to several longstanding policy provisions contained in the Financial Services bill and specifically the District of Columbia section dealing with abortion, medical marijuana, needle exchanges, domestic partners, and the DC Opportunity Scholarships.

The bill also contains 5,224 earmarks that total \$3.8 billion.

Well, let me go into the definition of an earmark. According to the champion of it for many years, Senator

MCCAIN, it is not an earmark if you take a specific project to the committee of jurisdiction, where they can debate it and decide whether it is a valid project and how it might fit in with other formulas and things they are already working on. If the committee that actually works that issue approves it, it is not an earmark. But, of course, it has to be put in, in the authorization process, not dropped in by airmail when the conference committee is meeting at the end of the bill. It is considered an earmark when it is just sent to conference, nobody got to debate it and vote on it, and it was shoved into the bill. There are ways special projects can be done and approved by several votes. Normally, it would be the committee of authorization and then the Appropriations Committee and then the floor of the Senate; and that same process would have already been done on the House side because they start all funding bills. So that is probably six or seven votes on an item before it can actually get passed, if it goes through the regular procedure.

Of course, it is easier to have somebody to champion it and quietly slip it in without any votes, except a final vote. The final vote is what we are doing right now. It is on the whole package. You cannot pick out a section or an earmark and have a vote on that. Besides that, with 5,224 earmarks, that would take a long time. But it totals \$3.8 billion. That is still a lot of money. It has been denigrated since we went into the trillion-dollar category, but \$3.8 billion is still a lot of money.

How is this playing out around the country? I found a blog I hadn't seen before. It kind of speaks to what we are doing in appropriations right now. This is uglytruthstudios.com. It begins:

Don't tell me where your priorities are. Show me where you spend your money and I will tell you what they are.

That is James W. Frick, who is not the author of this. The author then goes on to say:

I was mad when I decided to start this blog and podcast. I was mad about the current state of our congressional spending. I know, I know, a lot of folks are upset about the government and what they spend. My anger starts with the simple fact that they cannot complete the spending process. They haven't been able to complete the process, not even one time, since 1999.

You can see that this is directed against both sides of the aisle.

Folks, you are right to be mad about the out of control spending of the Federal Government, but we all must start with a hard look at how the money is being spent before we can take an honest look at what it's being spent on.

Take for instance the topic of Healthcare. You will be hard pressed to find a single soul in this country that doesn't think the system needs to be re-evaluated.

For the last eight plus months we have heard on the morning news, the Sunday talk



shows, from congressional leaders, the President of the United States, and even concerned citizens about the impending healthcare crisis.

Primetime television has been interrupted for Presidential addresses. The President addressed a joint session of Congress, he held town meetings, he held focus group meetings, he met with members of industry.

Congress itself has begged and pleaded for people to not get too excited about their plans, to work with them on putting reform in place. This was a crisis. A crisis that needed to be addressed immediately, the citizens of the United States of America needed to get behind the effort they were putting forth.

The media was dominated with the urgency to get something done. Television showed outraged Americans at town hall meetings. Congress exchanged ideas and both sides pointed the finger at the other side trying to show that their side was most in tune with what our country needed. They were on top of this situation.

Well they have "sort of" been tending to the business of our nation's healthcare. The ugly truth though is this: in their rush to be in the media on the Healthcare crisis, Congress has not yet completed the Labor, HHS and Education Appropriation for the 2010 Federal Fiscal year. The House completed their version of the bill on July 27. The Senate has not yet passed a version of the bill.

The Senate in all their talk about getting Healthcare done has yet to even take the bill up on the floor for a vote.

Well, that part isn't true anymore. It has been finally taken up. It was supposed to be October 1, but we are tardy in that.

Now, mind you, tomorrow night you will probably have your football game, family dinner or general quiet evening interrupted by the Senate working through the weekend.

That is where we are now.

A vote of monumental importance during prime time television, but not on the job that they should have been doing; no, no, this is a vote on what they want to do.

For simple reference sake this is the equivalent of taking out a trillion plus dollar loan, making commitments associated to the loan, and never spending a second asking yourself the following questions: Is this in the budget? Can we afford it? Hell have we even thought about what we are willing to spend on it? Have we decided yet what we are spending on healthcare this year?

Healthcare was not a big enough problem this year for the United States Senate to complete the normal course of business by appropriating the spending for Fiscal Year 2010. However, it apparently is a big enough deal to forward spend a conservative average of over \$85 billion a year. It is not a big enough deal to spend the \$160 Plus Billion this year that includes Labor and Education as well.

The House of Representatives despite passing their appropriation in July has not accounted for the spending in their passage of a conservatively estimated \$1.2 trillion Healthcare Plan. I am sure they would argue that they have, their actual spending doesn't start for a few years. I would argue that you had better start thinking about doubling spending in 5 years now.

That is a slap in the face to hard working Americans. In my book we all have roles to play. If you got elected to Congress or in this specific case, the Senate, you were placed in a position of public trusteeship. You were

elected to spend the people's money and make sure we are a solvent nation. I bet that they just got so caught up in solving the problem that they forgot to handle the process of budgeting and spending. But wait, they continue to spend, and they make forward commitments with our money that never come in on budget.

You will find that I am not a big call to action guy. I am actually kicking myself for not stopping my normal job and getting started railing on this problem before now. I have watched in great horror over the last 10 years as both parties have ignored the process of spending, and funded our government with our tax dollars through one size fits all process. A one size fits all process that generally is traded on our hard earned tax dollars, votes exchanged for passage.

It is time for the nonsense to stop. Keep watching them. I have heard and firmly believe that you can track someone's intentions by how they plan and spend their money. No matter what the claimed intentions may be, people normally put their money where their mouth is. Congress is putting our money where their mouth is. If Healthcare isn't important enough to finish the appropriations process on, then don't take the time to spend more money on it.

Remember—It's all about the money stupid.

Mr. President, we are finally getting to the spending. We have been spending all year, but we are finally getting to some of these pieces. It still leaves the defense piece undone. We are continuing last year's appropriations up to the current time.

I have some things I have gleaned from different places. I particularly thank the Wall Street Journal for their articles and editorials that inform America. I think if I were picking one source of information, that is the one I would pick. I read the Washington Post, the Washington Times, the Wall Street Journal, and I get clips from every newspaper in Wyoming. I get a couple of those newspapers complete. I read a lot of news, but from a national perspective and one that is actually paying attention to what we are doing here, my favorite is the Wall Street Journal.

Earlier in the week, I quoted from a cost article I had found in the Wall Street Journal. I was chastised for using them as a source and then was countered by a Senator using Wikipedia. You can go into Wikipedia and do your own editing. I am not sure if that is a good source. I would prefer to rely on the Wall Street Journal.

There is not any article or opinion that cannot be quibbled with, and that is just like the amendments we have here. What I prefer to think is when an amendment or an article or a speech is given, we ought to be looking for the idea, the grain of truth, the juice of it that should be used, and we are not doing that right now. We are just doing amendments there and amendments here. We are defeating the amendments here. And it kind of bothers me that we have all these amendments from this side because, first of all, our amend-

ments were voted down, all except two, when we went through the Health, Education, Labor, and Pensions Committee process to get the bill out of committee and when we went to the Finance Committee, the same thing happened. I think we had two amendments that were taken as well over a whole week of amendments. The two bills were taken to a closed door back here and were massaged into a new bill. Some pieces of those two bills can be found there, but not all of it and not in the same form. We had no input to that at all. No input at all. Now it is on the Senate floor, and we have the chance to do amendments.

I contend the Democrats are filibustering their own bill because every time we put up an amendment, they put up an amendment. If you wrote the bill, that bill ought to be good enough that you do not have to keep countering your own bill. We did not get to write the bill so we ought to be able to make at least some points about what ought to be changed by using our amendments.

Last week—one of the most fascinating things around here that I have seen—there was a Democratic amendment and then a Democratic side-by-side to it. Normally we get to present the side-by-sides. They are arguing within themselves. It is on a very important issue.

Getting back to the spending, I will mention that since taking office, Mr. Obama pushed through a \$787 billion stimulus bill. Hardly any of that money has actually gone out. I would guess about 25 percent of it is all because there is health IT in there. It is \$47 billion, and that is not going to go out for 4 years. I don't know how you put something in a stimulus bill where you are trying to get something done immediately and not release the money for 4 years. Granted, there is some work that needs to be done in that 4 years in order to make that money worth anything at all. It just fascinates me.

We had a \$787 billion stimulus bill that was not anticipated to go into effect right away; \$33 billion expansion of SCHIP; a \$410 billion Omnibus appropriations spending bill; and an \$80 billion car company bailout. The President also pushed an \$821 billion cap-and-trade bill through the House and is now urging Congress to pass a nearly \$1 trillion health care bill.

The administration says it is now instructing agencies to either freeze spending or propose 5-percent cuts in their budget for next year. This will not add up to much unless agencies use the budget they had before the stimulus inflated their spending on their baseline in calculating their cuts. That is why we are talking about this bill right now, the minibus or omnibus that is pretty ominous, with all the spending in it, with every one of those bills



having a huge increase over a year ago. That will get built into the baseline so next year there can be another huge increase. They compound dramatically.

If the Education Department uses its current stimulus-inflated budget of \$141 billion instead of the \$60 billion budget it had before the President moved into the White House, freezing its budget will do nothing to fix the fiscal mess that has been created. As I mentioned, there is this little thing of second-degreering their own amendment.

The Democrats are having a little problem deciding on their message. On the one hand, the President said just this week that we have to "spend our way out of this recession. On the other they keep telling us the deficit is too large and isn't 'sustainable.' In this tug of political spin, watch what they spend, not what they say. And that means watching this weekend's expected Senate vote," which we have had, "on the 1,088-page \$445 billion"—ominous—"omnibus" package of spending bills to fund the government for fiscal 2010. The House passed a similar elephant earlier this week—I don't know why they are referring to it that way; it is similar to a donkey—"allowing spending federal agency budgets to increase spending by some \$48 billion, or about 12 percent from 2009. That increase—when inflation is negligible—is in addition to the \$311 billion in stimulus already authorized or out the door for these programs. Adding this new stash means that federal agencies will have received nearly a 70 percent increase in the last 2 years."

Has anybody gotten that kind of increase? "Oh, and that's not all. The President and Congress also want to spend as much as \$200 billion more from the Troubled Asset Relief Program"—which is another stimulus, but it was done as a series of loans, so we are supposed to get the money back from that. What they are talking about doing is taking the money from that program and using it for some other programs. Anything that comes back is supposed to go to reduce the deficit. Lord knows that is big enough.

As I mentioned, there are 5,324 earmarks in this bill. That brings the total for the year to about 10,000 or about 23 for every congressional district. That is after a promise that the President would not sign any bill that had earmarks, but he has already done that once. Hopefully, he will not do it twice.

We have been talking about jobs this week. I even got invited to the White House to talk to the President about jobs. Of course, the message the Senator from Washington, Mrs. MURRAY, and I delivered to the President is, we ought to get the Workforce Investment Act done. That is a job training program that would train 900,000 people a year to higher skill levels to meet

some of the skill levels we are missing in this country that we are having to export.

What has been the status on this bill? We have been working on this for 4 years—4 years. This country did not need jobs before. Now we need jobs, so maybe we are going to get something done on that.

She, I, and Senator Kennedy passed this bill through the Senate twice unanimously, but the House has never taken it up. I don't know how we are going to get jobs done if something that is that bipartisan—it passed the Senate both times with everybody voting for it. We cannot get more bipartisan than everybody voting for it. We are talking about bipartisan bills. That is really important.

Talking about jobs, one of the things I mentioned at the White House was that 2 days before this meeting, the EPA had put out the notice of the new regulation where they are going to take care of greenhouse gas emissions, CO<sub>2</sub> and seven other chemicals.

According to Kimberly A. Strassel:

In the high stakes game of chicken the Obama White House has been playing with Congress over who will regulate the Earth's climate.

Right now the Copenhagen meeting is going on—

The president's team just motored into a ditch. So much for threats.

The threat the White House has been leveling at Congress is the Environmental Protection Agency's "endangerment finding," which EPA Administrator Lisa Jackson finally issued this week. The finding lays the groundwork for the EPA to regulate greenhouse gas emissions across the entire economy, on the grounds that global warming is hazardous to human health.

From the start, the Obama team has wielded the EPA action as a club, warning Congress that if it did not come up with cap-and-trade legislation the EPA would act on its own—and in a far more blunt fashion than Congress preferred. As one anonymous administration official menaced again this week: "If [Congress doesn't] pass this legislation," the EPA is going to have to "regulate in a command-and-control way, which will probably generate even more uncertainty."

The thing about threats, though, is that at some point you have to act on them. The EPA has been sitting on its finding for months, much to the agitation of the environmental groups that have been upping the pressure for action.

President Obama, having failed to get climate legislation, didn't want to show up to the Copenhagen climate talks with big, fat nothing. So the EPA pulled the pin. In doing so, it exploded its own threat.

Far from alarm, the feeling sweeping through many quarters of the Democratic Congress is relief. Voters know cap-and-trade is Washington code for painful new energy taxes. With a recession on, the subject has become poisonous in congressional districts. Blue Dogs and swing-state senators watched in alarm as local Democrats in the recent Virginia and New Jersey elections were pounded on the issue, and lost their seats.

But now? Hurrah! It's the administration's problem! No one can say Washington isn't doing something; the EPA has it under con-

trol. The agency's move gives Congress a further excuse not to act.

"The Obama administration now owns this political hot potato," says one industry source. "If I'm [Nebraska Senator] Ben Nelson or [North Dakota Senator] Kent Conrad, why would I ever want to take it back?"

All the more so, in Congress's view, because the EPA "command and control" threat may yet prove hollow. Now that the endangerment finding has become reality, the litigation is also about to become real. Green groups pioneered the art of environmental lawsuits. It turns out the business community took careful notes.

Industry groups are gearing up for a legal onslaught; and don't underestimate their prospects. The leaked emails from the Climatic Research Unit in England alone are a gold mine for those who want to challenge the science underlying the theory of man-made global warming.

But the EPA's legal vulnerabilities go beyond that. The agency derives its authority to regulate pollutants from the Clean Air Act. To use that law to regulate greenhouse gases, the EPA has to prove those gases are harmful to human health.

That is the endangerment finding. One is CO<sub>2</sub>, and I am breathing that out right know.

Put another way, it must provide "science" showing that a slightly warmer earth will cause Americans injury or death. Given that most climate scientists admit that a warmer earth could provide "net benefits" to the West, this is a tall order.

Then there are the rules stemming from the finding. Not wanting to take on the political nightmare of regulating every American lawn mower, the EPA has produced a "tailoring rule" that it says allows it to focus solely on large greenhouse gas emitters. Yet the Clean Air Act—authored by Congress—clearly directs EPA to also regulate small emitters.

This is where the green groups come in. The Tailoring rule "invites suits," says Sen. John Barrasso—

Who is the other Senator from Wyoming—

who has merged as a top Senate watchdog of EPA actions. Talk of business litigation aside, Mr. Barrasso sees "most of the lawsuits coming from the environmental groups" who want to force the EPA to regulate everything.

[The President] may emerge from Copenhagen with some sort of "deal." But his real problem is getting Congress to act, and his EPA move may have just made that job harder.

I thank Kimberly Strassel for those words.

Staying on the topic of jobs:

House Democrats keep stepping on President Obama's applause lines about innovation and job creation. On Tuesday, Mr. Obama announced that "we're proposing a complete elimination of capital gains taxes on small business investment" for 1 year. Responding with rare dispatch, the House voted yesterday—

Actually, that would be the day before yesterday now. Some of these things I wrote and hoped I would give before now.

—the House voted yesterday to change the capital gains rate for venture capitalists who invest in technology start-ups. But rather than eliminating the tax, the House more

than doubled it, moving the tax rate to 35 percent from 15 percent by reclassifying such gains as ordinary income.

Private equity fund managers and managers of real-estate and oil-and-gas partnerships would also get socked with a 133 percent tax-rate increase. Now, there's a way to encourage economic growth and new jobs. Knowing how popular tax increases are with unemployment at 10 percent, the House majority rushed the bill to the floor without a hearing or even a committee vote. Then they buried it in a package advertised as an extension of tax cuts for research and development.

And that is how it will come over here.

And, of course, there are some other problems in the United States with jobs. There are projections that show unemployment in construction will rise by about 1.3 million and that will be outweighed by the continued drop in manufacturing and mining jobs. Goods-producing employment as a whole is expected to show virtually no growth in total jobs, according to the report. By 2018, that sector will account for 12.9 percent of the jobs, down from 14.2 percent of the jobs. You know, in order to grow the economy, you either have to produce something or you have to sell something. So separately, the number of workers filing new jobless claims rose 17,000 to 474,000 last week, the Labor Department said, which is an unwelcome change after 5 weeks of declines.

Of course, accounting is one of my favorite things. I am the accountant in the Senate, and we have been doing some accounting on jobs that are saved. Clear back at the very beginning of the administration, when Secretary Geithner was appearing before the Finance Committee and the President was saying he will create or save 3 million jobs, I asked what is the definition of saving a job? After he explained a little bit on that, I said: Well, I think probably anybody who is employed, still employed would meet that criteria, so why don't you save or create 180 million jobs? But now we have had some measurements done on jobs that were saved, and this one particularly stuck with me. There is a report on the stimulus for a shoe store in Kentucky, and since I used to be in the shoe business as well, that kind of stuck out. This is from the Washington Examiner—a ticker on stimulus jobs created—and what they said is a shoe store owner claimed to create nine jobs on an \$889 contract, when in fact he supplied nine pairs of shoes to the Army Corps of Engineers. A lot of accounting problems around here, and talking about saving jobs without a good definition is only one of them.

Let's see. The government has taken over the banking industry, the car industry, trying to take over the health care industry, trying to take over the energy industry, none of which Washington knows much about, but one that hasn't had much said about it yet is

student loans, and I am not sure exactly when that is coming to this body, but I did want to mention that the Department of Education right now is pressuring schools to move to a government-run student loan program in lieu of utilizing private lenders, who are more efficient and have traditionally offered better customer service. That is why people stay with them, is the better customer service, if the price is the same. However, it is also important to note that the proposed student loan takeover, which is H.R. 3221, would cause private lenders to cut an estimated 35,000 jobs across the country. That is according to a survey by the Federal Family Education Loan Program Industry Groups. With the unemployment rate lingering around 10 percent, it is nothing short of amazing that presumably vulnerable politicians continue to advocate big government programs that will result in private-sector job loss.

We will be saying more about that as it comes up. I am not sure when it is going to come up, but I did hear the Secretary of Education—and again, this is good government accounting—said it would provide another \$80 billion for them to work with. Under the best of government accounting, it would be \$40 billion, I believe. And even that is only because of the way it is accounted for.

Another problem we have now is with taxes, with the estate tax, and that is one that won't die because the Democrats are afraid to let the tax rate hit zero. For years, we have had people saying that the estate tax is not fair; that in this country you get taxed when you earn money, you get taxed when you buy something, you get taxed when you use something, you get taxed when you sell something, but the tax people are upset about is the tax you get after you are dead. We had a bill that already passed. The hated death tax is scheduled to expire, with the rate falling from 45 percent to zero for 2010. Then it will be restructured in 2011 at a rate of 55 percent.

This bizarre policy goes back to 2001, when the Democrats wouldn't let President Bush permanently kill the death tax. So the Republicans bet if the tax were eliminated for 1 year, it would never come back. Well, the moment of truth has arrived and the House Democrats recently voted to cancel that repeal and hold the rate permanently at 45 percent with a \$3½ million exemption. So now the majority leader wants to do the same, and would suspend the health care debate and turn to that estate tax, but he would need 60 votes to do that, and I think that is because all the Republicans and many of the Democrats are saying no to that. BLANCHE LINCOLN and JON KYL, Arkansas and Arizona, have placed some proposals out there.

The correct way to tax a gain in the value of assets bequeathed to an heir

with capital gains of 15 percent is when the assets are sold. There ought to be some actual action that derives some revenue for it; otherwise, people out our way are having to sell off ranches prematurely in order to have the money to pay off death taxes when the founder of the family passes away. A recent problem we have had with that is that the land values are going up. I suppose they have stagnated at the moment, but it is hard to tell. These ranchers were putting money in, trying to do estate planning so they could pay this with not having to sell off part of the farm, and were doing a pretty good job of that. Of course, they made some adjustments when we made adjustments and started giving them a decline. And there is going to be a lot more said on that yet.

We have this massive spending bill, this huge increase in spending, and I want to share with you some of the words of Douglas Holtz-Eakin, the former Director of the Congressional Budget Office, which we talk about here regularly and point out as being a nonpartisan office. He spoke recently at the Senate Committee on the Budget, or relatively recently—November 10. This is kind of what he said:

President Barack Obama took office promising to lead from the center and solve big problems. He has exerted enormous political energy attempting to reform the Nation's health-care system. But the biggest economic problem facing the Nation is not health care. It's the deficit. Recently, the White House signaled that it will get serious about reducing the deficit next year—after it locks into place the massive new health-care entitlements. This is a recipe for disaster, as it will create a new appetite for increased spending and yet another powerful interest group to oppose deficit-reduction measures.

Our fiscal situation has deteriorated rapidly in just the past few years. The Federal Government ran a 2009 deficit of \$1.4 trillion—the highest since World War II—as spending reached nearly 25 percent of GDP and total revenues fell below 15 percent of GDP. Shortfalls like these have not been seen in more than 50 years.

Going forward, there is no relief in sight, as spending far outpaces revenues and the Federal budget is projected to be in enormous deficit every year. Our national debt is projected to stand at \$17.1 trillion 10 years from now, or over \$50,000 per American. And per American means every man, woman and child.

Continuing to quote:

By 2019, according to the Congressional Budget Office's analysis of the President's budget, the budget deficit will still be roughly \$1 trillion, even though the economic situation will have improved and revenues will be above historical norms.

The planned deficits will have destructive consequences for both fairness and economic growth. They will force upon our children and grandchildren the bill for our overconsumption. Federal deficits will crowd out domestic investment and physical capital, human capital, and technologies that increase potential GDP and the standard of living. Financing deficits could crowd out exports and harm our international competitiveness, as we can already see happening

with the large borrowing we are doing from competitors like China.

Yes, the President went to China recently; Secretary Geithner has been to China. They weren't over there trying to visit the Great Wall. They were over there trying to explain to China how we would be able to pay off our bonds. And last week, it was said that Standard & Poor's and Moody's were taking a look at the United Kingdom and the United States to see if there shouldn't be a downgrade in their rating. And so Mr. Holtz-Eakin says:

At what point, financial analysts ask, do rating agencies downgrade the United States? When do lenders price additional risk to Federal borrowing, leading to a damaging spike in interest rates? How quickly will international investors flee the dollar for a new reserve currency? And how will the resulting higher interest rates, diminished dollar, higher inflation, and economic distress manifest itself? Given the President's recent reception in China—friendly but fruitless—these answers may come sooner than any of us would like.

Mr. Obama and his advisers say they understand these concerns, but the administration's policy changes are the equivalent of steering the economy toward an iceberg. Perhaps the most vivid example of sending the wrong message to international capital markets are the health-care reform bills—one that passed the House earlier this month and another under consideration in the Senate. Whatever their good intentions, they have too many flaws to be defensible.

First and foremost, neither bends the health-cost curve downward. The CBO found the House bill fails to reduce the pace of health-care spending growth. An audit of the bill by Richard Foster, the chief actuary for the Centers for Medicare and Medicaid Services—

And that is the CMS, which is a division of Health and Human Services. So this is the chief actuary issuing this report.

—found that the pace of national health-care spending will increase by 2.1 percent over 10 years, or by about \$750 billion. Senate Majority Leader Harry Reid's bill grows just as fast as the House version.

Yesterday, or the day before yesterday, we got a new actuarial report that addressed the Reid bill as opposed to the House bill, and we talked about that fairly extensively. I haven't seen any articles about it yet. But one summary comment on it is that, according to this Actuary of CMS—which is a part of the administration—the cost of health care under the Reid bill will increase by seven-tenths of 1 percent. That doesn't sound like much, but it is seven-tenths of 1 percent more—more than if we did nothing. That is not bending the cost curve down.

Mr. Holtz-Eakin goes on to say:

Second, each bill sets up a new entitlement program that grows at 8 percent annually as far as the eye can see—faster than the economy will grow, faster than tax revenues will grow, and just as fast as the already-broken Medicare and Medicaid programs. They also create a second new entitlement program, a federally run, long-term-care insurance plan.

Finally, the bills are fiscally dishonest, using every budget gimmick and trick in the

book: Leave out inconvenient spending, back-load spending to disguise the true scale, front-load tax revenues, let inflation push up tax revenues, promise spending cuts to doctors and hospitals that have no record of materializing, and so on.

If there really are savings to be found in Medicare, those savings should be directed toward deficit reduction and preserving Medicare, not to financing huge new entitlement programs. Getting long-term budgets under control is hard enough today. The job will be nearly impossible with a slew of new entitlements in place.

In short, any combination of what is moving through Congress is economically dangerous and invites the rapid acceleration of a debt crisis.

It is a dramatic statement to finance markets that the federal government does not understand that it must get its fiscal house in order. . . .

The time to worry about the deficit is not next year, but now. There is no time to waste.

Again, Mr. Holtz-Eakin is the former Director of the Congressional Budget Office and a fellow at the Manhattan Institute. This is adapted from testimony he gave to the Senate Committee on the Budget on November 10.

Since that time I have been talking about how we have maxed out our credit cards, but this is something known across the Nation.

I have to share something. I mentioned I get things from all the papers in Wyoming. This comes from the Lovell Chronicle. That is a place that is probably about 120 miles from Yellowstone Park. That is always how I describe our State, in terms of Yellowstone Park, because a lot of people know where that is.

Her name is Diane Badget and she writes a column regularly.

My dad used to play this silly game with us. We'd hear "THUMP, THUMP" coming from the kitchen. One of us would ask, "Dad, what are you doing?" He'd reply, "Beating my head against the wall." At that point another of us would dutifully respond, "Why?" Then we'd wait a second for the expected reply: "Cause it feels so good when I quit!"

Has the bickering in Washington sickened you to the point where you almost don't care what they do as long as they shut up? Be careful! That's what some are hoping for. They are disdainful of our feeble attempts to get them to listen to us. They hope that if we beat our heads against the wall long enough we'll realize how much better we'd feel if we'd just quit.

She goes on to talk a little about Copenhagen.

The plans for building safe, clean nuclear power plants to provide electricity evaporated when the promise of a secure place to store spent nuclear fuel suddenly ended. Yet this same administration has decried coal fired plants as "ecological disasters" and large-scale wind and solar energy as too expensive to build yet. Nothing has been done to utilize the vast reserves of resources in Alaska.

Okay, if we can't use coal plants, can't afford wind or sun, Alaska doesn't exist, and nuclear options just got flushed, what should we do? Oh, I know! Let's gather up half of the over-zealous geniuses who supported Obama's decision and put them on giant

hamster wheels hooked to generators! Then we'll take the other half and utilize their hot air to turn turbines! It makes as much sense as anything in the Cap and Trade bill.

My grandkids can't pray in school, but other kids are provided with prayer mats. No wonder so many terrorists are found right here in the very country they have sworn to destroy. How many more radicals are walking among us, undetected?

She talks about:

The decision to try the 9/11 conspirators in our court system is a travesty. These murderers have already pleaded guilty in a military tribunal. They are not entitled by our Constitution to a trial. U.S. citizens are entitled to a trial before a jury of their peers.

But she does move on to healthcare as well.

Are you confused yet? Apparently Congress is. The health care plan that the Senate voted to send to the floor for debate is a perfect example. One side says that it will be deficit neutral, will ensure competition, will not affect Medicare and won't result in more taxes. The other side says it will cost too much, eliminate competition, slash Medicare and tax us out of our underwear.

Barbara Boxer (D. Ca) touted Medicare as a great example of how seniors are able to chose a "public option". Excuse me? When we turn 65 we are required to sign up for Medicare. How is that optional? I think at this point both sides of the aisle are trying to sell us snake oil, and somewhere in the middle is the truth.

Are you worried yet? Are your children and grandchildren going to enjoy the same freedoms and opportunities that we enjoyed? The future of my grandchildren should have been better than the life I had, and my life has been pretty doggone good. Instead, future generations are going to be paying, financially and personally, for the mistakes made right now by a president who presumes too much power and a system of checks and balances that no longer works.

We have been talking about having a bipartisan bill here. Maybe that would end the contradiction and furor that we are talking about here. I think a lot of people must have missed the speech OLYMPIA SNOWE made about durable social reform always being bipartisan. I want to share some comments on that. I know her speech wasn't noticed by the press corps.

With Majority Leader Harry Reid's announcement this week of a double-secret bargain that Democrats hope will squeeze ObamaCare through the Senate after nine whole days of debate so far in the world's greatest deliberative body—the Maine Republican's words seem more pertinent than ever.

Mrs. Snowe began by noting that this year's health debate is "one of the most complex and intricate undertakings the Congress has ever confronted," and that she, too, has devoted much of her three-decade political career to promoting cheaper, better quality insurance. "But it must be done in an effective, common-sense and bipartisan way," she cautioned.

Far from "systematically working through the concerns, the issues and the alternatives," Mrs. Snowe added, Democrats have instead favored "artificially generated haste" and settled on a strategy "to ram it, to jam it" through Congress. The Senator detailed her good-faith participation in the

"group of six" on the Senate Finance Committee, which met some 31 times over the spring and summer and reflected "the kind of extensive, meticulous process that an issue of this magnitude requires."

The negotiators tried to build a consensus, blending the best ideas from both parties. Or at least they did before the group of six, and Mrs. Snowe in particular, became a liberal political target for supposed obstructionism. Chairman Max Baucus then pushed their unfinished work to the Senate floor, where Mr. REID is now rushing to pass a bill in a race against its rising unpopularity and President Obama's falling approval ratings.

Mr. REID made his case with his usual intellectual nuance this week: "Instead of joining us on the right side of history, all the Republicans can come up with is, 'Slow down, stop everything, let's start over.' If you think you've heard these same excuses before, you're right. When this country belatedly recognized the wrongs of slavery, there were those who dug in their heels and said, 'Slow down, it's too early, things aren't bad enough.'"

Then, after equating opposition to Medicare cuts and tax increases with support for human bondage that it took a bloody civil war to end, Mr. Reid went on to draw analogies to women's suffrage, Social Security, civil rights and Medicare.

Mr. Reid would have done better listening to Mrs. Snowe about the "history" of major social legislation, which she also discussed in her November speech. Her main and telling point was that durable social reform in America has always been bipartisan, and not merely with one or two opposition party votes.

While Social Security passed when Democrats controlled both Congress and the White House, she said, 64 percent of Senate Republicans and 79 percent of the House GOP supported it. Civil rights passed with 82 percent of Republicans in the Senate and 80 percent in the House, while 41 percent and 51 percent, respectively, voted for Medicare. Mrs. Snowe could have added the 1996 welfare reform that President Clinton signed with the support of nearly all Republicans in Congress, 98 Democratic Representatives and 25 Democratic Senators.

"Policies that will affect more than 300 million people simply should not be decided by partisan, one-vote-margin strategies," Senator Snowe explained, and Congress should not be "railroading solutions along partisan lines."

On the debate that we have had, one of the points of contention, of course, has been Medicare. They talked on that side of the aisle about how good Medicare is. We talked on this side of the aisle about how Medicare is being harmed. I think what we are really giving people the impression of it is when we pass the bill, all of it will be free. That will not happen. But there was some contention that private insurance was less fair to people, Medicare was always fair. So I dug up some information on it. Investors Business Daily has done a little bit of research in that area. They found that:

Throughout the health care debate insurance companies have been cast as greedy villains that gleefully deny medical claims. But when it comes to rejecting claims, they can't hold a candle to government.

They found the most claims are the ones denied by Medicare, not the private sector.

What has happened in the last couple of days, Medicare has been so popular that the leader has said he is going to include, now, a piece that will bring the age group to 55. We have been talking about how, under the present circumstances, with the money that is being stolen from Medicare, that it is going to go broke. The majority leader—and evidently it is just the majority leader because when we asked to see a copy of it yesterday in a little colloquy we had with the Senator from Illinois, Senator DURBIN, he said he had not seen it. So I think—I know they had been briefed on it probably in a general way the night before. But it was explained to us that if anybody knew what was actually in that, that then the CBO score that comes out of that, how much it will cost, would have to be shared with everybody.

I thought we were in the new era of transparency. That doesn't sound very transparent to me. Even Democrats didn't get to see it because, if they did, then all of us could see how much it is going to cost as soon as the Congressional Budget Office has declared that.

That bothers me. I think it kind of bothers America. What we are worried about is it is going to come to the floor all of a sudden and we are going to have to make decisions on it. Evidently it is being talked about a little bit on the other end of the building, because I saw that Speaker PELOSI stopped short of endorsing the full Senate compromise, saying she needed to see "something in writing." But she said, "There is certainly a great deal of appeal" in expanding Medicare. But the Washington Post did a little editorial. This would have been on December 10. They called it "Medicare Sausage? The emerging buy-in proposal could have costly unintended consequences."

Incidentally our side has only seen this based on what the media has heard, and I don't know what kind of briefings the media has had on what this particular proposal has.

The Washington Post says: "The emerging buy-in proposal could have costly unintended consequences," and begins by saying:

The only thing more unsettling than watching legislative sausage being made is watching it being made on the fly. The 11th-hour compromise on health care reform and the public option supposedly includes an expansion of Medicare to let people ages 55 to 64 buy into the program. This is an idea dating to at least the Clinton administration, and Senate Finance Committee Chairman Max Baucus originally proposed allowing the buy-in as a temporary measure before the new insurance exchanges get underway. However, the last minute introduction of this idea within the broader context of health reform raises numerous questions—not the least of which is whether this proposal is a far more dramatic step toward a single-payer system than the lawmakers on either side realize.

The details of how the buy-in would work are still sketchy and still being fleshed out,

but the basic notion is uninsured individuals 55 to 64 who would be eligible to participate in the newly created insurance exchanges could choose instead the emergency coverage through Medicare. In theory, this would not add to Medicare costs because the coverage would have to be paid for—either out of pocket or with the subsidies that would be provided to those at lower income levels to purchase insurance on the exchanges. The notion is that, because Medicare pays lower rates to health-care providers than do private insurers, the coverage would tend to cost less than a private plan. The complication is understanding what effect the buy-in option would have on the new insurance exchanges and, more important, on the larger health-care system.

Currently, Medicare benefits are less generous in significant ways than the plans to be offered on the exchanges. For instance, there is no cap on out-of-pocket expenses.

Wasn't one of the promises that we were going to be sure that catastrophic was covered for everybody? One of the things I discovered early on in this process is that catastrophic is not covered in Medicare, not in the regular plan. You have to get the Medicare Advantage to get catastrophic or the more expensive Medigap policy. Of course, we are talking about taking a whole bunch of money out of the Medicare Advantage, which the companies say will either reduce benefits or eliminate it altogether.

I think this book was delivered to every office. I got one in my office. It is called "Voodoo Anyone?" It is "How to understand economics without really trying." I do hope every Senator finds their copy of this book and takes a look at it because it talks about prices, how prices are set, what affects prices, what happens when you fix prices. Then it talks about health care and energy and education and crime and social and agriculture and labor and monopolies, and financial markets and government action.

I have never found a book that put it quite as succinctly or quite as understandably as this book does. We need to be paying some attention to the fixing prices part of it, for sure. He gives a nice example on this.

You're in a college town, and you realize that there is no good place to buy a decent bicycle. So you get some money together (loans, the parents, investors, whatever) and you open up Deals on Wheels. But business at first is slow. So you figure you'll bring in customers for a sale. You look at your books and you make some tough decisions. You paid \$100 for a bike from the manufacturer, and you sell it for \$110. But without customers, you realize you need to do something.

So you decide to sell the bicycles for \$80 as a way to draw customers to Deals on Wheels. You know that you can't continue to sell your bikes at a loss, so you say it's a one-day sale only. And sure enough, the word gets out, and you've got more customers than you can handle. They can't fit in the store and spill out on the street.

Little did you know that a lawmaker passed by, saw the crowd and realized something good was going on. The politician goes back to Washington, D.C., and convinces his

colleagues that an \$80 bicycle is a great thing. "Bicycles have so many benefits," intones the lawmaker. "They can help you get healthy. And the more people who ride bikes, the less pollution there is. And, of course, more people riding bicycles will help the United States become less dependent on foreign oil."

To thunderous applause, the politician sits down and watches his bill that will cap the price of bicycles at \$80 pass in a near unanimous vote. (The politician and all his colleagues have calculated a lot of votes will come their way in the next election as a result of this bill).

But for you, the bicycle dealer, the one-day sale has become a permanent condition. You can't find bicycles for less than \$90, so you're going to be selling all bicycles at a loss.

Do you stay in business? You instead sell off the rest of your inventory and explore other employment opportunities.

I read that to lead up to what he has on Medicare. He says:

Remember the bicycle example? A price control on bicycles below the cost of production signaled to consumers to buy cheap bikes. But it also told producers that they couldn't make any money. When you have high demand and low supply, you get a shortage. And that's where the Medicare program stands today—waiting lists, fewer doctors who see Medicare patients and shorter hospital stays are all evidence of a shortage in the medical care for senior citizens.

There are several more pages on Medicare I won't cover. I encourage my colleagues to read it. It is a very small book, a very short book, but it makes a lot of excellent points.

Of course, the day before yesterday we got this report from the Actuary of CMS, which is part of Health and Human Services, which is a part of the administration. He said that Medicare would not be sustainable under the Reid bill.

Is there a way to fix Medicare? I think so. We have promoted over here several times that instead of taking these cuts to Medicare and expanding them into brandnew entitlements—an entitlement is something that goes on forever without congressional approval—we ought to lop off the Medicare piece and make sure we get it right.

Yes, there are things that have been noted that would save money. But that money that is saved ought to go right back into Medicare so that those seniors who are so nervous across the country would understand we weren't cutting their programs.

They say: No, we are not cutting the program. We haven't cut a single guaranteed benefit.

We also haven't fooled a single senior out there. The only ones we have fooled have been the AARP. Of course, the AARP is going to make more money off of Medigap than they ever made off Medicare Advantage. They have to look at where the bread is buttered here.

Senator DODD said that he would like to know exactly which pages had cuts to Medicare on it. I have a sheet here

that shows the exact page numbers in the bill and the CBO report.

I ask unanimous consent that the following be printed in the RECORD in this regard.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### MEDICARE CUTS IN THE REID BILL

##### HOSPITALS SERVING SENIORS

\$200 billion in cuts, page 663, through Medicare quality reporting programs; \$1.5 billion in cuts, p. 687, Medicare payment adjustments for hospital-acquired conditions; \$7.1 billion in cuts, p. 775, hospital readmissions reduction program; \$20.6 billion, p. 842, Disproportionate Share Hospital (DSH) payment cuts; \$105.5 billion, p. 974, Medicare market basket updates.

##### NURSING HOMES

\$15 billion, p. 977, Medicare market basket updates.

##### HOSPICES

Nearly \$8 billion, p. 987, Medicare market basket updates.

##### HOME HEALTH

More than \$40 billion, p. 983, Medicare market basket updates.

##### MEDICARE ADVANTAGE

\$118 billion, p. 869, Medicare Advantage payment adjustments; \$1.9 billion, p. 908, application of coding intensity adjustment.

Mr. ENZI. Of course, the Democrats do recognize that there is a problem with Medicare going broke; otherwise, they wouldn't have to put a special commission in there. There is a special MedPAC commission. There already is a MedPAC, so there is going to be a MedPAC on steroids in there. That means it will have to report to us and we will have to take action on it or else they will be able to take action anyway. If we are not breaking the system, what do we need that for?

Actually, if we use the money that comes from Medicare only for Medicare, the commission would have a much easier job.

For one thing, we would be able to do the doc fix. The other side keeps referring to how the deficit will be reduced by this bill—\$157 billion in the first 10 years and another number for the second 10 years. But that is only if you believe we will not fix any of these things that are major problems, such as the doctors.

We are not paying the doctors enough. Right now, 25 percent of the doctors won't take a new Medicare patient. The number varies between 45 percent and 50 percent who won't take a new Medicaid patient because we pay too little. We did the price fixing such as I described in that book. If you do price fixing, you can't afford to pay the doctors enough. The doctors know that. They are not going to work for nothing or less than nothing. Consequently, if you can't see a doctor, you don't have any kind of insurance. That is a basic guarantee of insurance, that you will get to see some medical person and they will do some kind of

treatment if you need it. We are also hoping the doctor gets to make the decision on the treatment you have.

There is also a little medical commission in the bill, preventative commission, a task force that put out a report on mammograms and upset the whole country, with some justification. As those things are adopted for everybody, it takes away the right for the doctor to say: My patient is a little bit different. We are all a little bit different. Some of these commissions and task forces need to be looked at. Is America listening?

Last week, there was a vote in Kentucky. There were two people running for the legislature there. It was a highly Democratic district. The Republican talked about health care. That was his whole pitch. He did a warning on health care. He won in a heavily Democratic district.

This is being reported repeatedly across the country. I have some things where I could go into some of the poll numbers that are out there now. I know individuals are looking at those poll numbers and realizing the American people have figured it out. They really have. Congress hasn't figured it out, but the American people have figured it out.

I have to talk about one specific part of the bill. Senator HARKIN and I worked together on this bipartisan amendment. It wasn't one we invented; it is one we found from Safeway. Safeway has some programs they put into effect for their employees on a voluntary basis that cut the cost of health care for Safeways while increasing the benefits for the employees. That is not happening anywhere in America. You have seen the charts on how fast health care is expanding. Safeway was able to get about an 8-percent reduction the first year and has been able to hold it level since then.

Senator HARKIN and I asked: How did you do that? One of the ways was to give people incentives to do the right thing. Again, it was on a voluntary basis. We got the flexibility for these incentives put into the HELP Committee markup. It was approved. It was put in. It was bipartisan. It should have been approved and put in. It was also a good idea. There was this clinic that we call Safeway that had been the lab for it, that had tried it and it worked. It was to raise the limit people could have for doing these incentives from 20 percent to 30 percent and even up to 50 percent, if it worked. Without my approval, that was jerked out of the bill before it was actually printed.

I hope people take a look at the November 29 issue of Roll Call, where there is an editorial by Morton Kondracke, who explains how this all works and what a difference it could make and how terrible it is that it got pulled out.

It is interesting that some of the groups that were against it were ones

such as the American Cancer Society, the American Heart Association, and the American Diabetes Association. They did it on the basis that it discriminates against people who want to stay fat and won't quit smoking. Incidentally, a smoker costs \$1,200 a year to somebody else because it isn't included in their insurance that way.

Ways of improving the system—I will talk about that at another time. I can see everybody is fascinated by all of this. We will talk about lawsuits and health savings accounts.

The other side would like to eliminate health savings accounts. Actually, what they want to do is tell you what insurance you have to have. They want the government to tell you what the minimum acceptable insurance is. That is not bad enough. If you don't buy at least the minimum acceptable insurance, then you get fined. Under the House bill, you can go to jail. That is only if you don't pay your taxes as a result of the fine. That is done through the IRS. It is a huge expansion of the IRS at the same time.

Health savings accounts have been working in this country. In fact, they work for our employees in the Senate. The health savings account is where you buy a high-deductible policy and you have the right to put money tax free into a savings account that can only be used for health, with the theory that if you do have something happen to you, you can draw out of your health savings account to pay this deductible.

If you are young and healthy, it is a tremendous thing. One of the young ladies in my office said: Let's see, the amount I have to pay for regular insurance and the amount I have to pay for a health savings account are considerably different. If I took that difference and put that into a health savings account, it would still belong to me. It would roll over from year to year, and I would have that available tax free whenever I need it. She did that. Within 3 years, she had the entire deductible covered in there. She was smart enough to continue to put money in there, tax free money that will take care of her health care expenditures. Do you think she will be upset if we eliminate health savings accounts? Yes, I think so.

There is another thing Senate employees use; that is, flexible spending accounts. Even if you pick the ones without the high deductible, you have the right to figure out how much your medical expenses are going to be the next year and put those into a special account, a flexible savings account. Over the next year, you can use that money from the flexible savings account, which comes out of your paycheck, tax free for the medical needs you have.

People who know they are going to have medical needs find this to be use-

ful. They find that they can tell—you have to do it by Monday—how much you think you are going to spend the next year. The downside of it is, if you don't spend it all, the extra goes back to the Federal Government. Even though it came out of your paycheck, it goes back to the Federal Government.

A lot of people would say this would be a good deal if we could roll that over. There are a lot of eyeglasses and dentists appointments that are done in December for people to be able to use that flexible spending account. If it rolled over, they could continue to use it for what was really necessary.

That is being limited in the bill. That will be a detriment to people who have some catastrophic things happening to them. Cancer would be one of those things. If they know how much they are going to have to spend on MRIs and CAT scans and other kinds of tests over the coming year, in December they put that amount of money in there, and then they can have this little bit of a tax advantage for taking care of their health care costs.

That is much like big business provides in the much better plans than we have in the Senate.

To conclude, I would like to have a document printed in the RECORD by unanimous consent, which is titled: "A Specific Plan of Action: Lowering Health Care Costs."

I am inserting this on behalf of Senator MCCAIN because people keep claiming that when he ran for President, he said things differently than what is being said now, and with this as part of the RECORD, maybe we can get them to quit saying that. Because he did talk about waste, fraud, and abuse in Medicare and the need to contain it and physician payments and coordinated care and preventable medical errors. So I ask unanimous consent that document be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### A SPECIFIC PLAN OF ACTION: LOWERING HEALTH CARE COSTS

John McCain Proposes a Number of Initiatives That Can Lower Health Care Costs. If we act today, we can lower health care costs for families through common-sense initiatives. Within a decade, health spending will comprise twenty percent of our economy. This is taking an increasing toll on America's families and small businesses. Even Senators Clinton and Obama recognize the pressure skyrocketing health costs place on small business when they exempt small businesses from their employer mandate plans.

Cheaper Drugs: Lowering Drug Prices. John McCain will look to bring greater competition to our drug markets through safe re-importation of drugs and faster introduction of generic drugs.

Chronic Disease: Providing Quality, Cheaper Care for Chronic Disease. Chronic conditions account for three-quarters of the Nation's annual health care bill. By empha-

sizing prevention, early intervention, healthy habits, new treatment models, new public health infrastructure and the use of information technology, we can reduce health care costs. We should dedicate more federal research to caring and curing chronic disease.

Coordinated Care: Promoting Coordinated Care. Coordinated care—with providers collaborating to produce the best health care—offers better outcomes at lower cost. We should pay a single bill for high-quality disease care which will make every single provider accountable and responsive to the patients' needs.

Greater Access and Convenience: Expanding Access to Health Care. Families place a high value on quickly getting simple care. Government should promote greater access through walk-in clinics in retail outlets.

Information Technology: Greater Use of Information Technology To Reduce Costs. We should promote the rapid deployment of 21st century information systems and technology that allows doctors to practice across state lines.

Medicaid and Medicare: Reforming the Payment System To Cut Costs. We must reform the payment systems in Medicaid and Medicare to compensate providers for diagnosis, prevention and care coordination. Medicaid and Medicare should not pay for preventable medical errors or mismanagement. Medicare should lead the way in health care reforms that improve quality and lower costs. We need to change the way providers are paid to move away from fragmented care and focus their attention on prevention and coordinated care, especially for those with chronic conditions. This is the most important step in effectively caring for an aging population. We must work in a bipartisan manner to reform the physical payment system, focus efforts on eliminating fraud and move Medicare into a new generation of coordinated, quality care.

Smoking. Promoting the Availability of Smoking Cessation Programs. Most smokers would love to quit but find it hard to do so. Working with business and insurance companies to promote availability, we can improve lives and reduce chronic disease through smoking cessation programs.

State Flexibility: Encouraging States To Lower Costs. States should have the flexibility to experiment with alternative forms of access, coordinated payments per episode covered under Medicaid, use of private insurance in Medicaid, alternative insurance policies and different licensing schemes for providers.

Tort Reform: Passing Medical Liability Reform. We must pass medical liability reform that eliminates lawsuits directed at doctors who follow clinical guidelines and adhere to safety protocols. Every patient should have access to legal remedies in cases of bad medical practice but that should not be an invitation to endless, frivolous lawsuits.

Transparency: Bringing Transparency to Health Care Costs. We must make public more information on treatment options and doctor records, and require transparency regarding medical outcomes, quality of care, costs and prices. We must also facilitate the development of national standards for measuring and recording treatments and outcomes.

#### CONFRONTING THE LONG-TERM CARE CHALLENGE

John McCain Will Develop a Strategy for Meeting the Challenge of a Population Needing Greater Long-Term Care. There have been a variety of state-based experiments

such as Cash and Counseling or the Program of All-Inclusive Care for the Elderly (PACE) that are pioneering approaches for delivering care to people in a home setting. Seniors are given a monthly stipend which they can use to: hire workers and purchase care-related services and goods. They can get help managing their care by designating representatives, such as relatives or friends, to help make decisions. It also offers counseling and bookkeeping services to assist consumers in handling their programmatic responsibilities.

SETTING THE RECORD STRAIGHT: COVERING  
THOSE WITH PRE-EXISTING CONDITIONS

Myth: Some claim that under John McCain's plan, those with pre-existing conditions would be denied insurance.

Fact: John McCain supported the Health Insurance Portability and Accountability Act in 1996 that took the important step of providing some protection against exclusion of pre-existing conditions.

Fact: Nothing in John McCain's plan changes the fact that if you are employed and insured you will build protection against the cost of any pre-existing condition.

Fact: As President, John McCain would work with governors to find the solutions necessary to ensure those with pre-existing conditions are able to easily access care.

Mr. ENZI. I hope, on future appropriations—I hope when the President gets this bill, if it makes it through the process—and it appears as though it should easily do that—he will veto the bill and send it back because the 5,224 earmarks, amounting to \$3.8 billion—instead of talking about 5 percent of what the Cabinet members expend, it might be more valuable to talk about \$3.8 billion.

There are other things that need to be done. We do need to start being fiscally responsible. Of course, one of the questions is: Why haven't we been, in the past, fiscally responsible? That answer to that is, we did not have our credit cards maxed out before. We were able to print the money and nobody noticed. But now when we print the money, people do notice. So we have both the end of the year appropriations—the end of the year, incidentally, was the last day of September, and we are doing them now—and we have this health care crisis to solve. There is not anybody who does not

want to come up with a solution to it. But we want to do it step by step and get the confidence of the American people.

The American people do not have confidence in what we are doing. I have several documents that would show what percentage of the people do not agree we are doing the right thing. That ought to get the attention in virtually every State because it is not just as a national whole, it is in every State. People have figured out what we are trying to do, and they do not think we are doing it right. We better get it right or people will be even more upset.

I yield floor.

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ADJOURNMENT UNTIL 1:30 P.M.  
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 1:30 p.m. tomorrow.

Thereupon, the Senate, at 4:17 p.m., adjourned until Sunday, December 13, 2009, at 1:30 p.m.



**SENATE—Sunday, December 13, 2009**

The Senate met at 1:30 p.m. and was called to order by the Honorable MARK UDALL, a Senator from the State of Colorado.

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Compassionate God, we need Your help to meet the challenges of our time. Manifest Your might for the honor of Your Name. Surround our lawmakers with the shield of Your favor so that their work will accomplish Your will on Earth. Use them so effectively that the hopes and dreams You have for Your world might be more fully realized in our day. Lord, open their minds to a wisdom that can change and shape our times, according to Your plan. And Lord, bless the many faithful staffers who labor long hours behind the scenes of the legislative process.

We pray in Your merciful Name. Amen.

**PLEDGE OF ALLEGIANCE**

The Honorable MARK UDALL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE**

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 13, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK UDALL, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,  
*President pro tempore.*

Mr. UDALL of Colorado thereupon assumed the chair as Acting President pro tempore.

**RESERVATION OF LEADER TIME**

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

**DEPARTMENTS OF TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT**

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 3288, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 2 p.m. will be equally divided and controlled between the leaders or their designees.

The Senator from Iowa.

Mr. HARKIN. Parliamentary inquiry: How much time would I be recognized for now?

The ACTING PRESIDENT pro tempore. The Senator from Iowa will be recognized for 13 minutes.

Mr. HARKIN. Mr. President, today and every day an estimated 14,000 Americans will lose their health insurance coverage. The historic legislation before us takes unprecedented steps to expand this coverage to the great majority of Americans, while cracking down on the abusive practices of the health insurance industry. However, expanding coverage alone is not going to solve our problem. The additional 31 million Americans who will gain coverage thanks to this bill are going to need health care providers, mainly primary health care providers—the doctors, the nurses, the many other health professionals whose skills and hard work provide patients with the high-quality health care they need. We are going to need public health professionals who can provide assistance during times of emergency such as the current H1N1 pandemic. They will need places to go when they become sick, including doctors' offices, community health centers, and nurse-managed health clinics.

Today, many communities are facing shortages of primary care practitioners and other health care providers. This map gives an indication of the lack of primary health care providers in America. The darker area is where we have the lowest number of primary health care practitioners. We can see it is mostly rural America. That is not entirely true, but it is mostly in rural

America in which we lack that kind of care.

Currently, 65 million Americans live in areas suffering from a shortage of these health care professionals. The Department of Health and Human Services estimates it would take more than 16,000 additional practitioners to meet our need. Many of my constituents—and I am sure those of the occupant of the chair—don't have the primary care practitioners they need.

I must say, I was up this morning; I was working out; I was watching CNN news. Along came a little blurb: Shortage of primary care health care people in America. That is going to put a crunch on us in terms of meeting our health care needs. People are now beginning to pick up on this all over the country.

What are we doing about it? First, we have to recognize some of the root causes. One of the root causes is debt. It is the amount of money health care students pay to go to school. Here is the debt of graduates of medical school: 44 percent have over \$175,000 of debt; the vast majority have over \$125,000; and some, almost half, have \$175,000 of debt. What happens is that with this huge debt, they can't afford to work in rural areas or areas where they don't get recompensed.

Qualified applicants are not admitted because of a shortage of faculty members. In 2008, an estimated 50,000 applicants were turned away from baccalaureate and graduate schools of nursing. This is unacceptable. Again, not only do we have to have more primary care practitioners, we need the faculty.

It is a growing problem. The Bureau of Labor Statistics estimates that by 2016, we will have a shortage of over 1 million direct care workers, including home health aides, nursing aides, and others who care for our aging population. That is why expanding access to primary and preventative care has been a key focus throughout our health reform efforts.

With Senator MURRAY's leadership of the workforce group, the HELP Committee has focused on expanding resources to increase the supply of qualified health care providers. In the Finance Committee, Senator BAUCUS also made expanding access to primary care a priority, as well as expanding residency and training initiatives for primary care practitioners. Under Majority Leader REID's guidance, the Patient Protection and Affordable Care Act, the health reform bill before us, combined both HELP Committee and Finance Committee provisions to expand the health care workforce, especially the primary care workforce.

Let's see what this does.

First, the bill will train an additional 24,000 primary care physicians via the National Health Services Corps. It provides loan repayment, scholarships, and higher reimbursement for primary care providers in underserved areas. It also increases the supply of public health workers at the Federal, State, and local level, and tribal health agencies. We provide new resources for more community health centers and nurse-managed health centers. We expand primary care residency and training initiatives and hospitals and community health centers.

Our bill will improve health care providers' ability to serve our increasingly diverse population by providing training in cultural competency, in working with individuals with disabilities, in providing care within the medical home model. Because innovative health care delivery models such as the medical home emphasize team-based care, we invest in a range of health care professionals, from physicians, to nurses, to dentists, to home health aides, to allied health professionals.

In addition, to increase the capacity of health professionals schools and faculty to train new providers, we offer loan repayment programs to doctors, nurses, and dentists who agree to serve as faculty members at medical, nursing, and dental schools.

Finally, our bill creates an independent national health care workforce commission to examine and provide recommendations to Congress on how Federal workforce programs can be improved and how Federal dollars can be most effectively spent.

It is critical that we act on this historic legislation for many reasons. Most of the debate has been about expanding coverage, cracking down on health insurance abuses, and expanding preventative care to keep people healthy in the first place.

But there is also one other aspect of this bill that has not been talked about; that is, what we are doing to increase the number of people whom we are going to have to have for primary care, for our community health centers, for faculty members in the future. This is something we have ignored for far too long at our own peril. We can't forget that while we are expanding coverage—and we are going to cover 94 percent of the American people with this health care bill—while we will make it more affordable, while we are going to protect Medicare, while we are going to do all the things to really make our health system more affordable, more quality-conscious, cover more people, make sure people can get in to their primary care first rather than go to an emergency room, we can't forget that we need the faculty. We need teachers, and we need to help in debt repayment, loan repayments, by giving more scholarships to these

young people, the nurses, the nurses aides, the physical therapists, the people who work with people with disabilities, doctors, dentists—the whole panoply of people involved in primary care. We have to help them get through school so they don't have a mountain of debt on their heads, so they can practice medicine where they want, not where they are forced to go in order to pay back their debts.

Again, I thank Senator MURRAY on the HELP Committee, who did so much to put all of this into our bill. This is a major provision of the health care legislation we are not hearing debated about here on the floor very much, but it is one of the most critical parts of the bill.

I thank Senator BAUCUS and all the work they did on the Finance Committee to put in the tax provisions and others to help us, first, invest in and grow the primary care workforce and also to make it possible for people to become faculty members and teachers by helping them pay back their loans and their debts.

I wanted to take this time to highlight this part of the bill. It is not talked about much, but I believe it is one of the most important parts of the health reform bill before us.

I yield the floor and retain the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. How much time remains on both sides?

The ACTING PRESIDENT pro tempore. The minority has 13 minutes, and the majority has 4 minutes.

Mr. MCCAIN. I yield 3 minutes to the Senator from Florida.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. LEMIEUX. Mr. President, I am here to speak about this omnibus spending bill we will vote on today. It is more proof that Washington is out of control in its spending and that the leadership on the other side of the aisle is wanting to spend our children's money.

This is a \$445 billion bill. I know my colleague from Arizona will talk about the 5,000 earmarks in this bill costing \$3.9 billion. It is a 12-percent spending increase over last year, \$46.7 billion more than the bloated budget we passed in 2009, a 33-percent increase in State-Foreign Operations, a 24-percent increase in Transportation and HUD. These are unsustainable. We have a \$12 trillion debt, a debt our children and our grandchildren will have to pay.

Here we are again with a 12-percent increase, and in a bill that is full of earmarks—earmarks such as \$700,000 for a shrimp fishing project in Maryland, \$30,000 for the Woodstock Film Festival youth initiative. I am sure these are great programs, but when we have \$12.001 trillion in debt, we can't afford these programs.

Mr. President, 2009 has been a record-setting year for debt. We had a \$1.4 trillion budget deficit. Now in 2010, even though we are new in the year, we are already running a \$296 billion budget deficit. In October and November, we took in \$268 billion in tax revenues. That is a hard number to find around here because most people don't look at the money we take in. They can just spend whatever they want to. We took in \$268 billion, but we spent \$565 billion.

This is not how families make their decisions around their kitchen tables, where they have to make ends meet. This is not even how the States do it, where they have balanced budget amendments. The spending in Washington is out of control, and the Members of this body should not vote for this omnibus spending bill.

Mr. President, I yield back the remainder of my time to my colleague from Arizona.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I understand there will be debate until 2 o'clock, and then a vote on the consolidated—consolidated—appropriations conference report. What does "consolidated appropriations conference report" mean? It means there are six bills, three which were never considered on the floor of the Senate. That is what the Senate means by "consolidated," my friends. So for three of the bills, we were never allowed to debate, to amend, or accept, or reject.

They are now spending \$450 billion, loaded up with 4,752 earmarks, totaling \$3.7 billion, 1,350 pages long, and of that 409 pages are dedicated to listing congressional porkbarrel spending.

I know most Americans are watching NFL football today and they probably do not pay much attention to what we do on a Sunday afternoon here on the floor of the Senate. But if they knew—if they knew what we are about to pass: a bill that has increased spending by 14 percent over last year's level, with the exception, of course, for our veterans care, which is only increased by 5 percent.

Here we are with a \$1.4 trillion—now a \$1.5 trillion debt this year, an aggregate of over \$12 trillion, unemployment at 10 percent, and 900,000 families who lost their homes in 2008, and the numbers for 2009 will be greater.

So what do we do here? We spend and spend and earmark and earmark. The Consumer Price Index went down 1.3 percent, so we are going to increase spending by 5 percent.

What could the American people do with the \$3.7 billion in earmarks that are in this bill? Let me tell you a few of them, and you will not believe it, and I am not making it up: \$2.7 million to support surgical operations in outer space at the University of Nebraska.

I know Trekkies all over America will approve of that. I know Dr. Leonard McCoy—"Bones"—and even Dr. Spock and Captain Kirk will call them all to the bridge and be happy to know that \$2.7 million is going to go to Dr. Leonard McCoy and his friends to support surgical operations in outer space, while thousands of Americans are losing their homes.

Another one I have been unable to describe adequately without violating the rules of the Senate: \$655,000 for Cedars-Sinai Medical Center, Los Angeles, CA, for equipment and supplies for the Institute for Irritable Bowel Syndrome Research. The only thing I can say is, that problem will not be reduced when people read this legislation, so there may be a need for it.

So here we are. The list goes on and on. It is crazy stuff: \$200,000 for a visitors center in Bastrop, TX, population 5,340; \$292,200 for elimination of slum and blight in Scranton, PA—the cast of "The Office" is rejoicing—\$200,000 for "design and construction of the Garapan Public Market" in the Northern Mariana Islands. The Woodstock Film Festival Youth Initiative is going to get \$30,000.

It is beyond imagination when you put it into the context that Americans are suffering more than they have at anytime in their lives. Thanks to the greed and avarice of Wall Street, Main Street is under tremendous duress. This is shameful.

I want to remind my colleagues, last March—not that long ago—the President of the United States signed another pork-laden omnibus bill. The President of the United States said:

I am signing an imperfect omnibus bill because it is necessary for the ongoing functions of government. But I also view this as a departure point for more far-reaching change.

He also said:

The future demands that we operate in a different way than we have in the past. So let there be no doubt: this piece of legislation—

The one he was signing last March loaded with pork—

this piece of legislation must mark an end to the old way of doing business, and the beginning of a new era of responsibility and accountability that the American people have every right to expect and to demand.

If the President of the United States is going to carry out those words, he will veto this bill. He will veto this bill and send it back and tell them to get rid of this pork, tell them to get rid of it.

So what is going to happen? In a few minutes—we all know what is going to happen in a few minutes—by a very large vote, the Senate of the United States is going to vote in favor of this bill. There will be, on this side of the aisle—the party of fiscal conservatives that lost the last two elections—one major reason being because we let

spending get out of control—there will be Members on this side of the aisle who will vote for this porkbarrel bill. On the other side of the aisle, a majority over there—an overwhelming majority; all but maybe one or two—will also vote for the bill. Then they will go home—if we ever get out of here—they will go home, and they will say: I am a fiscal conservative, and I am all for a commission to cut spending. Let's appoint a commission. Let's not take any responsibilities ourselves. Let's appoint a commission, and that commission will recommend how we can reduce spending.

If you want to reduce spending and eliminate unnecessary and wasteful spending, vote against this bill that increases spending over last year by some 14 percent. If you want to vote for it, fine, but isn't it a little hard, with a straight face, to go back and tell your constituents you are for the elimination of this wasteful and porkbarrel and corrupting spending? It corrupts, my friends. It is a gateway drug to corruption. We have former Members of Congress in Federal prison because of this.

First, since it is going to be passed, I urge the President of the United States—I do not urge—I demand the President of the United States to keep his word when he signed another porkbarrel-laden bill last March, to veto this bill. I urge my colleagues—I urge my colleagues—let's stand up against this for once: a bill that has \$3.7 billion in earmarks.

Immediately, colleagues remind us: Well, this is a legitimate earmark. This is important; that is important. The problem with it is, nobody ever saw it before. It never competed. Maybe we need to support surgical operations in outer space. Do we need it at the University of Nebraska? No. It is earmarked for the University of Nebraska.

By the way, I do not think, except for Trekkies, many Americans think we need to spend \$2.7 million to support surgical operations in outer space.

All I can say is: Do not be surprised when the American people, less than a year from now, next November, rise up and reject this kind of behavior and practice of irresponsible spending, while they are hurting more than they have ever been in their lives. They deserve better than what we are getting out of this legislative process, and they have every right to demand something different.

Let's show some courage and vote against this bill, send it back to the President, get rid of the porkbarrel spending, and send it back, and let us vote for it. We could do it immediately. I urge my colleagues, look at this bill and vote against it.

Mr. President, I reserve the remainder of my time.

Ms. MIKULSKI. Mr. President, my top priority is jobs—to help those who

have one, keep it and to help those who don't have one, find one. That is why I have always supported the automobile dealers in Maryland and across the country, which each employ on average about 50 people and are also economic pillars in large and small communities throughout the United States. Dealers don't just provide jobs for people who sell cars they also provide them to people who service the cars and for managers and office workers who make dealerships run smoothly.

I have fought for the auto dealers in several ways over the past year, first on the Recovery Act, where we passed tax incentives to help consumers purchase new cars, and then again this summer when I worked with my colleagues to pass cash for clunkers, which saved jobs in the auto industry, promoted energy efficiency, and helped the middle-class afford a car, which is most families' second largest purchase behind their home.

Dealers are not only critical to their local economies; they also make the auto industry work by distributing, selling, and servicing the cars at practically no cost to the manufacturers. That is why I cosponsored S. 1304—to give car dealers a chance to contribute to our economic recovery and to provide jobs as the domestic auto industry restructures and retools.

Today, I am proud to support a provision in section 747 of the Financial Services appropriations conference report that shows dealers that Congress is on their side and on the side of creating and protecting jobs as our economy struggles toward recovery.

This provision will give automobile dealers around the Nation a fair shot at getting back into business by setting up a neutral and fair arbitration process. First, it requires that manufacturers make all pertinent information available to dealers. I expect all parties to fully comply with this requirement and for all relevant information to be made available in a transparent and easily understandable form to dealers and to the arbitrators.

Also, I support section 747 because it requires arbitrators to consider all the relevant factors that affect whether a dealer is and can be successful, and that demonstrate how dealers contribute to the viability of the manufacturing companies whose cars they sell. I also expect and encourage arbitrators to consider the rights that dealers are guaranteed under all applicable Federal and State laws when making their decisions.

Our economy is struggling to recover because there aren't enough jobs. Auto dealers are a major employer across the country, and they also are essential to reviving a healthy American auto industry. As the American auto industry looks to the future, we can't forget the essential role that dealers play, providing both thousands of jobs

and also the affordable cars and auto related services that American families need.

Mr. KAUFMAN. Mr. President, I rise today to voice my support for several of the initiatives in the State and Foreign Operations bill for fiscal year 2010, contained within the 2010 consolidated appropriations bill. Specifically, I want to highlight five specific areas that I view as critical to our national security: first, staffing resources for the Foreign Services of the Department of State and the U.S. Agency for International Development, or USAID; second, the Civilian Stabilization Initiative and Complex Crises Fund; third, economic and security assistance to Afghanistan, Pakistan, and Iraq; fourth, public diplomacy and international broadcasting; and fifth, reducing carbon emission and contributing to a global agreement on climate change. Our deepened investment and commitment to these issues are critical to maintaining America's leadership and defending U.S. security interests globally.

As we face the reality of engaging in two wars in Afghanistan and Iraq, it is essential that we recognize the civilian role in counterinsurgency. A strong civilian presence is essential to building governance, promoting economic development, and providing essential services to increase popular support for local governments facing insurgencies. As Secretary Clinton has highlighted, U.S. national security is about the three Ds—development, diplomacy, defense. If we invest more in development, we may prevent future conflicts through the critical work of civilians and avoid future burdens on our military.

Today, our Foreign Service officers at the Departments of State and USAID are on the frontlines in Afghanistan, Pakistan, and Iraq and around the world in places like Lebanon, Indonesia, and Haiti. At the same time, our military often ends up responding to crises because civilian agencies do not have the staff or the funding to do so as quickly, robustly, or efficiently. This is a trend we must seek to reverse, ensuring that all U.S. personnel—military and civilian—have the tools they need to succeed in increasingly difficult missions globally.

Today, there are more musicians in our military bands than diplomats in the State Department, which total less than 7,000. A report last year by the American Academy of Diplomacy documented the need for nearly 3,000 additional State Department and more than 1,000 additional USAID foreign service officers by fiscal year 2014. And this assessment was done before our increasing civilian needs in Afghanistan became clear.

I am encouraged that this bill begins to address this critical issue by providing for 745 new State Department

officers and 300 new officers at USAID. And as the requirements continue to grow, we must continue to build the size of the Foreign Service to meet increased needs globally. Finally, as more civilians serve in dangerous areas and warzones, they deserve our full support and gratitude for their service and sacrifice, especially the time these posts require away from their families.

The second area of the bill I would like to highlight is the Civilian Stabilization Initiative, which is led by the Office of the Coordinator for Reconstruction and Stabilization, or S/CRS, at the Department of State, in close cooperation with USAID and with the contribution of several other Federal agencies. S/CRS's mission is to enhance our institutional capacity to respond to crises involving failing, failed, and postconflict states and complex emergencies. S/CRS it tasked with leading and coordinating U.S. civilian efforts across the interagency to help stabilize and reconstruct societies in transition from conflict so they can reach a sustainable path toward peace, democracy, and a market economy.

I also welcome the funding component of this mission with the creation of a \$50 million Complex Crises Fund for USAID to prevent and respond quickly to emerging or unforeseen complex crises, in coordination with the Departments of State and Defense. It is my hope that we can continue to increase this funding through civilian accounts, especially as we phase out section 1207 funding in defense appropriations. The more robust our civilian agencies, the less burden we will impose on our already overstretched military.

The third program I would like to address is our foreign assistance budget in Afghanistan, Pakistan, and Iraq. This funding will help address some of our most critical foreign policy challenges and global security priorities. More girls will be in school, more families will have access to health care and other essential services, and more communities will thrive thanks to the more than \$2.6 billion for Afghanistan, more than \$1.4 billion in Pakistan, and \$467 million in Iraq. These are critical investments in the economic infrastructure and development of these countries and in the long-term security of the United States.

The fourth program I want to highlight is public diplomacy, specifically, U.S. international broadcasting and the work of the Broadcasting Board of Governors, BBG, which provides credible news programs and serves as an example of a free press worldwide. The bill we will soon vote on contains just under \$734 million allocated for international broadcasting operations. The more we can do to fund programs like the BBG, the better we will be able to compete with the forces of disinformation.

U.S. international broadcasting began during the early years of World War II, when Voice of America broadcast into areas formerly under Nazi occupation. The programs began by saying "daily at this time, we shall speak to you about America and the war. The news may be good or bad. We shall tell you the truth."

This tradition of journalistic integrity has continued to this day, as the BBG's entities—consisting of Voice of America, Radio Free Europe/Radio Liberty, Radio Free Asia, Radio and TV Marti, and the Middle East Broadcasting Network—broadcast in 60 languages to an estimated weekly audience of 175 million people globally.

In the Foreign Relations Committee this October, Senator BOXER was gracious in allowing me to chair a hearing in her subcommittee to examine the BBG's work in Afghanistan and Iraq. In both countries, the BBG has created sources of credible news and information readily accessible to the local population, in some cases for the first time in their history. In this sense, the role of broadcasting in war zones is particularly critical because it creates channels of communication with and among the population, which plays a role in winning hearts and minds. This is why it is critical to continue to fund objective, reliable broadcasting.

While U.S. international broadcasting is essential to make sure facts are available worldwide via television and radio, the Internet and mobile networks are the medium of the future. And in repressive societies where there is no access to a free press, populations use the Internet and cell phones to evade government censorship. This year, we saw such examples dramatically played out—when the Uighurs of western China began protesting a brutal government crackdown and when demonstrators in Iran protested after the June presidential election.

In both cases, blogs, short-message services, and social networking sites were heavily utilized, and popular movements sought to evade state censorship with proxy sites and other technology. That is why, in the case of Iran, I introduced the Victims of Iranian Censorship, or VOICE Act with Senators MCCAIN, LIEBERMAN, CASEY, and GRAHAM. This bill, which was signed into law with the Defense authorization bill in October, authorized funds to continue the development online censorship evasion technology. I am pleased that \$30 million in this omnibus has been appropriated for the Internet Access and Freedom Account, so that such programs can be expanded, with a particular focus on Iran and China.

Finally, one of the most pressing issues we are facing is climate change. As we speak, representatives from more than 190 countries have gathered in Copenhagen to find common ground

on averting the worst consequences of our changing climate and adapting to the changes we have already inflicted on the globe.

This will be the subject of much discussion on this floor in the coming months. Today, I want to acknowledge that this bill takes bold and tremendously important steps toward creating a better and safer climate. More than \$1.2 billion are intended to help us face the threats of climate change, from contributions to multilateral funds that will bend the curve toward clean development around the world to assistance to the people most vulnerable to rising sea levels and changing rainfall patterns.

Mr. President, there are many provisions in this bill to be applauded, but I believe these five areas demonstrate significant investments in our national security. I look forward to casting my vote in favor of this bill, which I believe supports a stronger and better resourced American foreign policy.

Mr. MCCONNELL. Mr. President, today I will cast my vote against H.R. 3288, the six-bill appropriations omnibus. This bloated package includes the following spending bills: Military Construction/Veterans Affairs, VA; State, Foreign Operations; Commerce, Justice and Science; Financial Services; Transportation, Housing and Urban Development; and Labor, Health and Human Services and Education.

I will vote against this \$½ trillion package because it spends \$50 billion more in taxpayer money than last year—a 12 percent increase. When unemployment stands at 10 percent—and higher than that across Kentucky—and families are struggling to make ends meet, the Federal Government should not be burdening its citizens with more debt. Congress must be a better steward of public funds. Moreover, the bill includes a number of policy riders, such as spending taxpayer dollars on abortions, that undercut the culture of life that our government should be promoting.

My opposition to the omnibus as a whole comes despite the fact there are several portions of this sprawling package that I would like to vote for. For example, I support much of the Military Construction/VA bill. I voted for it as a freestanding measure when the Senate passed its version a few weeks ago. And the measure carries a number of provisions that are important to Kentuckians, such as enhanced funding of chemical demilitarization efforts at the Blue Grass Army Depot, added monies for the soldiers and their families at Fort Campbell, and a provision honoring Kentucky veteran Robley Rex. The Military Construction/VA bill also includes a number of important national priorities that I support such as modernizing troop housing, expanding mortgage relief for the men and women in uniform, enhancing rural

health care for our veterans, improving family housing for our soldiers, bolstering mental health care for returning combat veterans, aiding homeless veterans, and strengthening the ability of the VA to process claims more quickly. Were the Military Construction/VA measure a freestanding bill, I would vote for it.

Aside from the Military Construction/VA portion of the omnibus, I also regret I cannot register my support for certain parts of the State, Foreign Operations appropriations bill. I favor a number of provisions in the latter bill including funding for Israel, support for our allies in the war on terror and monies for Burmese refugees.

Finally, there are segments of the other four bills in this package that reflect Kentucky priorities that were included at my request and that I am supportive of.

In closing, it is unfortunate that the majority continues to avoid regular order. I am hopeful that the majority's effort in this regard does not presage further legislative shortcuts on matters of national importance.

The ACTING PRESIDENT pro tempore. Who yields time?

Time will be charged equally.

Mr. BENNET. Mr. President, I ask unanimous consent that the time during the quorum call be divided equally and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. LEVIN. Mr. President, if the Senator will withhold that.

Mr. BENNET. I will.

#### ARBITRATION PROCESS

Ms. STABENOW. Mr. President, I would like to discuss with the chairman of the Financial Services and General Government Appropriations Subcommittee, Senator DURBIN, as manager of the Financial Services Subcommittee section of the bill before the Senate, language included in the bill that creates a binding arbitration process for auto dealers associated with General Motors and Chrysler whose contracts were terminated as part of the manufacturers' restructuring efforts this year.

The difficult decisions made during the last year have highlighted the interconnectedness of the industry and have shown the impact that these companies have in every State in the country. I particularly understand how difficult this situation has been for Michigan auto dealers. My father and grandfather ran the Oldsmobile dealership in Clare, MI, where I grew up. My very first job was washing cars on that lot.

Thousands of employees, either directly employed by the companies or through the thousands of dealerships and suppliers, depend on the viability of the auto manufacturers. Without the manufacturers, there is no dealer network, and small businesses across the country would close, adding more dev-

astating job losses as our economy is trying to recover. What we do here must continue to ensure a healthy future for the auto companies as they work towards a profitable future. When negotiating an agreement for arbitration was it the Chairman's intent that the dealers entitled to this arbitration process would only be the dealers that were terminated as a result of the bankruptcy?

Mr. DURBIN. Yes, it is my understanding that the only dealerships entitled to arbitration are those dealerships that were terminated as a result of the manufacturers' bankruptcy, rather than those that may have closed for other business reasons.

Ms. STABENOW. The statutory language for the arbitration process provides criteria that will be used to review each case. Is it the Chairman's goal that by considering the economic interest of the public at large the arbitrator should focus on maximizing the return of taxpayer dollars that have been invested in the company?

Mr. DURBIN. Yes, the economic interest of the public at large must be considered to ensure that the investments will be recovered as quickly as possible.

Ms. STABENOW. Additionally, when reviewing the cases, does the statutory language ensure arbitrators take into consideration the stability and protection of the existing dealer network?

Mr. DURBIN. Yes, the statutory language will allow arbitrators to review the potential impact of reinstating a dealership on the existing dealer network for the covered manufacturer, as well as on any dealer retained by the covered manufacturer in a given market territory.

Ms. STABENOW. I thank the Chairman for these clarifications and for his ongoing efforts to ensure a fair process for all stakeholders as the auto industry continues to restructure.

Mr. LEVIN. Mr. President, I would like to discuss with the chairman of the Financial Services and General Government Appropriations Subcommittee, Senator DURBIN, as manager of the Financial Services Subcommittee section of the bill before the Senate, two aspects of the provision included in that bill that establishes an arbitration process for review of decisions made by Chrysler and GM to terminate or wind down auto dealerships earlier this year. Under the process laid out in this provision, an arbitrator is to balance the economic interests of the covered dealership, the covered manufacturer, and the public at large by considering a number of factors. Those factors include the covered dealership's profitability, the covered manufacturer's overall business plan, the covered dealership's satisfaction of the performance objectives of the franchise agreement, and the covered dealership's performance in relation to the

criteria used to terminate the dealership.

Is it the chairman's understanding that in looking at these factors, and in particular in looking at the dealership's profitability and the manufacturer's overall business plan, that the arbitrator will consider the profitability of the dealership with respect to the new vehicles sales of the covered manufacturer?

Mr. DURBIN. Yes, that is my understanding. In making decisions about the makeup of the dealership network, profitability in terms of new vehicles sales for that manufacturer is what is critically important to the long-term financial health of the manufacturer. That manufacturer's long-term health is also vitally important to the Federal Government because of the significant taxpayer investment in these companies.

Mr. LEVIN. I thank the chairman for his assurances and his clarification.

I would also like to raise a question about the arbitration process established in this bill. The statutory language could be interpreted to allow for potentially as many as hundreds or thousands of arbitrators each involved in individual reviews of dealership decisions. I am concerned that a very large number of arbitrators would be unduly burdensome and impractical to the point of being unworkable. The statutory language requires that arbitrations be conducted in the State where the covered dealerships are located. It is my hope that the arbitration process could be managed in a given State so that there would be one arbitrator or a small manageable panel of arbitrators within any given State. Does the chairman believe that the statutory language would allow for management of arbitration in this way?

Mr. DURBIN. Yes, the statutory language would allow for that. The primary intent of this provision is to ensure that covered dealerships have a fair and impartial review of the termination decision. I agree with the Senator from Michigan that we should try to avoid a situation where there would be hundreds or even thousands of individual arbitrators.

Mr. LEVIN. Mr. President, I want to highlight several provisions of the legislation now before us that I believe will provide important benefits to Michigan and the Nation, and one that I think does not serve the Nation's interests.

The Consolidated Appropriations Act of 2010 contains provisions that will improve our health care system, ensure that contracting dollars do not flow to companies avoiding income taxes by incorporating overseas, improve Federal oversight of our financial system, and improve educational opportunity for our citizens.

I am especially pleased to see an increase in funding for health informa-

tion technology, HIT. This bill will provide \$61 million to the Office of the National Coordinator for Health Information Technology. These funds will help increase administrative efficiency and move our current system away from paper-based organization. This will help ensure that doctors and patients have the necessary information easily accessible when working together to make important health care decisions and ensure that health records of individuals remain confidential. Improving the interoperability of our HIT systems will not only enhance the quality of care, experts believe that improved HIT will reduce health care costs for all Americans, streamlining billing practices and reducing administrative costs that waste so many billions of dollars.

I strongly support the bill's language continuing the prohibition on Federal contracts with "inverted" corporations. Corporate inversions—the practice of incorporating some or all of a U.S.-based company's businesses overseas—are transparent tax-avoidance schemes. There is no reason we should provide taxpayer dollars to firms that dodge their tax obligations, and I am pleased that we will continue to bar such companies from Federal contracting unless doing so would damage national security.

The bill also includes an increase of \$151 million in funding for the Securities and Exchange Commission. This increased funding will support enhanced enforcement, capital market oversight, and investor protection activities, including investigations of accounting fraud, market manipulation, insider trading, and investment scams that target seniors and low-income communities. This is a wise investment in protecting our citizens and our economy from those who seek to profit by fraud or from taking excessive risks that endanger the financial system.

Also included are a number of important education provisions. The legislation would increase the maximum Pell grant award by \$200, to \$5,500; provide funding for disadvantaged, disabled and first-generation college students; and restore \$1.5 billion in title I funding for disadvantaged public school students. Of particular importance is \$11.5 billion in funding for Individuals with Disabilities Education Act programs, which marks a historic Federal commitment to education of those with disabilities.

There are also important measures that will help boost Michigan's economy and its future. I am pleased that this bill includes \$1 million I requested for the Thunder Bay National Marine Sanctuary and Underwater Preserve in Alpena. Part of the National Oceanic and Atmospheric Administration's sanctuary system, the Thunder Bay Sanctuary protects well-preserved shipwrecks that are a valuable piece of Michigan's history and our Nation's.

The funding provided in this bill will allow for expansion of the Great Lakes Maritime Heritage Center to include a Science Hall and other facilities that will allow more people to explore and learn about Michigan's maritime history.

The bill also includes important language that will bring the Woodward Avenue Light Rail Project closer to reality, an important economic development project in the heart of metropolitan Detroit. The conferees retained language regarding the Woodward Avenue project similar to language I authored for the Senate bill.

These all are important provisions worthy of support. But I am disappointed that the legislation includes a provision requiring General Motors and Chrysler to submit to binding, third-party arbitration in disputes with auto dealerships closed as part of those companies' restructuring efforts.

There is widespread agreement among auto industry analysts that GM and Chrysler needed to consolidate their dealer structure in order to compete. The Federal Government has made a substantial—and wise—investment in these companies, which are key components of our manufacturing sector. Submitting to arbitration of decisions already approved in bankruptcy court risks hampering the recoveries these companies and their workers are fighting so hard to achieve. My vote in favor of this act follows reassurances I received from the chairman of the Financial Services and General Government Appropriations Subcommittee, Senator DURBIN, in response to my concerns about a number of provisions in the arbitration language.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be divided equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURRIS). Without objection, it is so ordered.

All time has expired.

The question is on agreeing to the conference report.

Mr. HARKIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN), the Senator from Oregon (Mr. MERKLEY), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. COBURN), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Ohio (Mr. VOINOVICH).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

The PRESIDING OFFICE. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 35, as follows:

[Rollcall Vote No. 374 Leg.]

#### YEAS—57

Akaka	Franken	Nelson (NE)
Baucus	Gillibrand	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bingaman	Inouye	Reid
Boxer	Johnson	Rockefeller
Brown	Kaufman	Sanders
Burris	Kerry	Schumer
Byrd	Kirk	Shaheen
Cantwell	Klobuchar	Shelby
Cardin	Kohl	Specter
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Cochran	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	Lincoln	Webb
Durbin	Menendez	Whitehouse
Feinstein	Mikulski	Wyden

#### NAYS—35

Alexander	Enzi	McCain
Barrasso	Feingold	McCaskill
Bayh	Graham	McConnell
Bennett	Grassley	Murkowski
Brownback	Gregg	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Sessions
Corker	Isakson	Snowe
Cornyn	Johanns	Thune
Crapo	Kyl	Vitter
DeMint	LeMieux	Wicker
Ensign	Lugar	

#### NOT VOTING—8

Bond	Dorgan	Murray
Bunning	Inhofe	Voinovich
Coburn	Merkley	

The conference report was agreed to. Mr. DURBIN. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Republican leader is recognized.

#### SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

Mr. MCCONNELL. Mr. President, I think you are going to report the bill. Regular order.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. MCCONNELL. Mr. President, is not the regular order to return to the health care bill?

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Dorgan modified amendment No. 2793 (to amendment No. 2786), to provide for the importation of prescription drugs.

Crapo motion to commit the bill to the Committee on Finance, with instructions.

The PRESIDING OFFICER. The Republican leader is recognized.

#### CLOTURE MOTION

Mr. MCCONNELL. Mr. President, we have been trying for days to get an agreement to have votes on the health care measure, which our friends on the other side have said is so important to the American people and must be acted upon before Christmas. Specifically, the pending Crapo amendment has been there since last Tuesday. It now becomes clear to me the majority simply does not want to have any more votes, presumably pending these discussions that are going on behind closed doors on a bill that almost nobody in the Senate has seen.

Therefore, I send a cloture motion to the desk on the Crapo amendment.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending Crapo motion to commit H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees.

Mitch McConnell, Chuck Grassley, Judd Gregg, Lamar Alexander, Johnny Isakson, David Vitter, Sam Brownback, George S. LeMieux, Pat Roberts, Jeff Sessions, Bob Corker, John Barrasso, Jon Kyl, John McCain, Saxby Chambliss, Thad Cochran, Lindsey Graham.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I hope we can bring to fruition a consent agreement to allow us to begin to vote. Yesterday, against considerable opposition on my own side, I basically backed down and offered the consent agreement the majority leader had offered a few days ago, which would have allowed our Democratic friends to have a side-by-side with their own amendment on the issue of drug reimportation and a side-by-side with Senator CRAPO's amendment on taxes. The majority objected, essentially, to the consent that they had previously offered a few days before.

I hope we can get back on track. The commitment was made by the majority at the beginning of this debate that we would have plenty of amendments. We had a process where we went from one side to the other, back and forth, smoothly. Either side was able to offer side-by-side amendments if they chose

to. I think it is not fair to the American people—not fair to the American people to deny them the opportunity to have votes on what has been called the most important issue of our era, so important it has to be done before Christmas.

In the meantime, they are in some secret meeting, trying to come up with a bill that not only not all Senators have seen, not even Democratic Senators, but the American people have not seen it. We know what the core of the bill is. There are amendments the American people would like to see us debate and vote on and that is why I filed cloture on the Crapo amendment. Hopefully, we will not have to have that cloture vote, we can get back on track, as we were until things began to bog down midweek.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois, the majority whip.

Mr. DURBIN. Mr. President, the majority side offered a unanimous consent, I believe on three successive days, to the Republican side, which they did not accept. Then yesterday the minority leader offered a variation on that, which is being considered at this moment by the majority leader. We are not prepared—I am not prepared to make a statement until the majority leader has made a final decision, having talked over the new offer with our members. The time may come. I cannot predict whether it will.

I do believe we have to work on it some more. In the meantime, I think the floor should be open for comments. I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MCCONNELL. I object.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. DURBIN. I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.



The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona.

#### HEALTH CARE REFORM

Mr. KYL. Mr. President, given the season, maybe we should spend a little time talking about what Americans are wishing for Christmas. I don't think very many people in the Chamber have had much chance to go do their Christmas shopping. At least maybe we can consider what folks are telling us they would like to have. We have certainly heard it. They want jobs. They want the economy to improve. They want meaningful health care reform that will drive down costs and increase their access and avoid harming a full economic recovery. What they don't want is to be burdened with a litany of new taxes. Unfortunately, the health care bill we have been debating is layered with new tax after new tax.

What I hope is that the majority will eventually agree to considering more amendments, including, for example, amendments such as the Hutchison-Thune amendment which will limit the taxes in this bill, taxes that will hit families, seniors, the chronically ill, small businesses, those who use flexible spending accounts, and those, for example, who use medical devices. In total, there are 12 new taxes in this bill, many of which will take effect right after the bill passes, though the other components will not go into effect until 2014. The Internal Revenue Service estimates it would need between \$5 and \$10 billion over the next 10 years to oversee collection of these new taxes.

Americans know their taxes are going up if this bill passes. In fact, 85 percent believe that will happen, according to a new CNN poll. They are right. Surely that helps to account for the fact that a full 61 percent disapprove of the bill, according to that same poll, with just 36 percent supporting it. Think of that, a CNN poll, brand new, 61 percent of the American people oppose the bill, only 36 percent support it. Every week, the numbers get worse.

I spoke recently about the adverse impact of a new payroll tax on job creation, especially for small businesses. Today, I want to talk about how three additional taxes would hurt Americans: one, the new tax on the chronically ill; two, a new tax on flexible spending accounts; three, a new tax on medical devices.

First, let's talk about the chronically ill. These are the sickest Americans, the chronically ill and seniors who tend to have more medical problems. These folks would be hurt by a change in the Tax Code that actually raises the amount of money they owe the Federal Government every year.

Here is how it works. Currently, taxpayers can deduct the costs of their

catastrophic medical expenses if those expenses exceed 7.5 percent of their income. The bill would raise that threshold to 10 percent. So people, especially seniors and the chronically ill, would have to spend a lot more of their own money on these kinds of expenses before they could begin to take advantage of a tax deduction.

The Joint Committee on Taxation says this change would cost taxpayers more than \$15 billion over the next 10 years. We are talking about a lot of money. It would raise taxes on 5.8 million taxpayers, 87 percent of whom earn under \$100,000 a year. So we are not talking about, for the most part, the wealthy. In fact, because of this problem, the Nelson amendment was adopted in the Finance Committee that would at least exempt seniors until the year 2016. Obviously, it isn't only seniors who pay the tax. Secondly, we don't want to impose it on them after 2016 either.

According to the CRS:

The deduction can ease the financial burden imposed by costly medical expenses. For the most part, the federal tax code regards these expenses as involuntary expenses that reduce a taxpayer's ability to pay taxes by absorbing a substantial part of income.

That is certainly true. Many people rely on this deduction to offset expenses beyond their control.

Under the Democratic bill, 5.8 million of the sickest Americans would get a bigger tax bill from Uncle Sam. That is not reform.

The second new tax is on flexible spending accounts. Many Americans with these flexible spending accounts would see a tax increase under the bill. How does that work? Under current law, employees can make a tax-free contribution to a flexible spending account in order to pay out-of-pocket expenses for medically necessary goods and services, things such as diabetes testing supplies, orthodontia bills for braces and tooth repair, to name a few. Right now, there is no limit on these contributions to the FSA. Most employers who offer the FSA peg it at about \$5,000. The bill would cut that in half and limit by law the amount the employers could contribute to \$2,500. Why? That means families would pay taxes on medical expenses in excess of that amount. That is the reason. They need more revenue under the bill. This is a very clever backdoor way to get it, limit the amount the employer can contribute to your FSA, so you end up having to pay more taxes on things that are important to your health care and that of your family.

The Joint Committee on Taxation estimates this provision would cost taxpayers \$15 billion over 10 years or, to put it another way, it is one of the ways they raise revenues in the bill to pay for the high cost of the legislation, another \$15 billion.

Who would be affected by this increase? The Employers Council on

Flexible Compensation estimates that the median income for the 35 million Americans holding FSAs is \$55,000. That is the median income—half are above, half are below. Think about that. Half the people who would be impacted by this make less than \$55,000 a year. Many middle-income families will lose money on medical expenses because of this provision.

Finally, the medical device tax. The Democratic bill imposes an annual nondeductible tax on medical device makers that would cost \$20 billion over 10 years. The reason for this, again, is to generate revenues to pay for the high cost of the bill; otherwise, why would you tax something that can be a lifesaver for people? I have said before that I could see, I suppose, taxing liquor or tobacco, but why would you tax this? This helps save lives. Thousands of products—wheelchairs, surgical equipment, contact lenses, stethoscopes, hospital beds, artificial heart valves, diabetes testing equipment—all of these are the kinds of medical devices targeted by this tax. It will even hit cutting-edge technologies such as CT scanners. Why would we do this?

American taxpayers are the ones who will foot the bill for the tax because, according to the CBO, the medical device tax "would increase costs for the affected firms which would be passed on to purchasers and would ultimately raise insurance premiums by a corresponding amount."

Congress taxes a device manufacturer. They pass the tax on to the cost of the item that takes care of the individual. And since the insurance companies usually have to pay for that, their premiums go up to reflect the increased costs—another reason why, under this bill, insurance premiums don't go down, they go up. This tax means increased costs for health insurers, which in turn pass it on to patients in the form of higher premiums. This would go into effect immediately, even though subsidies for government-mandated insurance are not available until 2014. The net impact would be an \$8 billion increase in patient premiums in 2010, 2011, 2012, and 2013, before any of the subsidies in the bill take effect. Is this really what we want—to drive up patient premiums with new taxes? We know those are not the kinds of reforms Americans are asking for.

To reiterate, the taxes I have discussed include a tax increase on the chronically ill and seniors, a tax increase on holders of flexible spending accounts, mainly middle-income families, and a tax on medical devices that would drive up insurance premiums.

Many of the 12 total taxes would take effect immediately even though the rest of the bill wouldn't take effect until the year 2014. That is part of the budget gimmickry used to pay for this Federal leviathan. Your taxes go up in 2010 but nothing to show for it until

2014. That is why the Democrats claim to have a budget-neutral bill that comes in at less than \$1 trillion. Washington will be sitting on a pile of money 4 years in advance of full implementation of the bill. But when you take a look at the true 10-year cost beginning in 2014, the price tag is an astounding \$2.5 trillion, a figure confirmed by the chairman of the Finance Committee.

Because I disapprove of these budget gimmicks and the imposition of these taxes, I support the Hutchison-Thune amendment, an amendment which says that new taxes will not be enacted until the rest of the bill is.

I urge my Democratic colleagues not to object to voting on the pending amendments and to take up additional amendments such as the Snowe amendment, which will come later, and the Hutchison-Thune amendment, which would at least address the problems I have discussed. The American people don't want a slew of new taxes for Christmas.

**THE PRESIDING OFFICER.** The Senator from Illinois.

**Mr. DURBIN.** Mr. President, this would be the perfect moment for me to say to those who are following this debate: That is the critique of the Senator from Arizona of the Democratic bill. I would like to offer a critique of the Republican plan for health care reform, but I can't do that. It is impossible because it doesn't exist.

This bill, 2,075 pages, has been worked on for a year. It is not easy. It is complex. We have prepared a bill and brought it before the Senate. The Republican side of the aisle has had the same year and has produced nothing.

I am sorry, that is not true. They have produced press releases and speeches and charts and a handful of bills which attack sections of this bill. But they have not produced a bill that has been cleared by the Congressional Budget Office, as this one has; that will reduce the deficit; that will, in fact, reduce health care premiums for the vast majority of Americans, at least the growth in premiums. They haven't produced a bill that will mean 30 million more Americans will have health insurance. They haven't produced a bill that is going to finally give consumers a fighting chance against health insurance companies. They haven't done it. They have produced speeches and press releases. That is where we are today, after 1 full year.

Obviously, the other side of the aisle is happy with the current system of health care and doesn't want to change it. If they did, they would offer a comprehensive health care reform bill. They failed to do that. They have come before us and said: We have a lot of our own bills. We call them Republican bills. Not any of those bills have been subjected to the kind of scrutiny this bill has been subjected to by the Con-

gressional Budget Office. They may have good ideas. I can't say that they do or don't. But by and large, they are just taking potshots at this bill because they don't have a bill.

You listen to the Senator from Arizona. He talks about taxes. He fails to mention one or two critically important things.

First, this bill has \$441 billion in tax cuts in the first 10 years for average people trying to pay their health insurance premiums. I don't know if the Senator from Arizona thinks that is a good idea or not. He has never spoken to that, at least that I have heard. I think it is a good idea. If you are making less than \$80,000 a year, we want to make sure you have insurance, and this bill wants to make sure we give you a helping hand. It is a tax cut.

Secondly, this bill provides tax relief for small businesses with fewer than 25 employees. Those are "mom and pop" small businesses, where they find it hard to buy insurance, and it is expensive when they find it. This bill gives a tax break to those businesses. So when the Senator comes up and speaks about this little tax and that little tax, he fails to step back and look at the big picture. The big picture is this bill changes health care in a positive way. It keeps the good things we have in America's health care system, but it changes some of the things that need to be changed.

This bill makes health insurance more affordable, and that is something every American wants. I have yet to hear a proposal from the other side of the aisle which does that—certainly nothing that has been subject to the scrutiny of the Congressional Budget Office.

This bill also expands health insurance to 94 percent of the American population. That is an all-time high. We have never had that many people insured in America.

The Senator from Arizona just talked about a tax on medical devices. Why would industries such as the hospital industry or the medical device industry or the pharmaceutical industry agree to pay more money to the government as part of this? For one very simple and fundamental reason: 30 million more Americans will have health insurance. They will be using more medical devices and paying for them with their insurance policies. They will be using more pharmaceuticals. More hospitals will get paid instead of relying on charity care.

So many of these providers have stepped up to us and said: If the goal is to expand the base of people insured paying into the system, our industry, which provides medical services, medical devices, and that sort of thing, is willing to participate, to come up with the money to make this work. That is the part the Senator from Arizona did not make a note of, and he should

have. It is a very critical and important part of this.

So I would say that although none of us like to see taxes increased, if at the end of the day we believe our health insurance premiums will come down, that more Americans are going to have the peace of mind of health insurance; if they believe at the end of the day there will be more people insured and paying for more services, you can understand why the health care industry is participating in this conversation about this bill.

As for the tax cuts, for those making \$80,000 a year or less, I think it is a good idea. It is one of the biggest tax cut packages we have had, and we pay for it.

This bill will generate a surplus in the Treasury in the first 10 years of \$130 billion, in the second 10 years of another \$650 billion. It is the biggest deficit-reduction bill ever considered on the floor of the Senate, according to the Congressional Budget Office, and the Republicans have nothing to offer which comes even close to that.

This is a rare Sunday session. The rest of the day will be spent with speeches like this on the Senate floor about this issue. But I can tell you, we have never considered one more important. This is an issue which touches every American, every American family, and every American business. We have worked long and hard to bring this to the floor. I know it is not perfect; no bill ever is. But it is a good-faith effort that has gone through the scrutiny of the Congressional Budget Office.

For the critics on the other side—and there are many—my first question to each and every one of them is, Where is your comprehensive health care reform plan? Where is a plan that has gone through the scrutiny and review that this plan has gone through? The answer is, it does not exist.

So I welcome their critique, but I understand it is a critique without an alternative.

**Mr. President,** I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Rhode Island.

**Mr. WHITEHOUSE.** Mr. President, I ask unanimous consent that the distinguished Senator from Iowa be recognized for 20 minutes, and that I be recognized at the conclusion of his remarks for up to 20 minutes.

**THE PRESIDING OFFICER.** Is there objection?

Without objection, it is so ordered.

**Mr. WHITEHOUSE.** Mr. President, I thank the Presiding Officer and yield the floor.

**THE PRESIDING OFFICER.** The Senator from Iowa.

**Mr. GRASSLEY.** Mr. President, the Senator from Illinois is still on the Senate floor. Last week, I pointed out the plans that Republicans have introduced right here. The only way the

Senator from Illinois can have an out is he was cute—he was cute—in modifying it, that it has not been scored by the Congressional Budget Office. But here is the fact on what the Congressional Budget Office can do and not do.

They were busy since May with the Senate health bill, getting it scored. They were busy working with us in the Group of 6 to try to get a bipartisan bill scored. Since October 2 until now, they have been working with the Senate leader full time to score everything they have had a chance to put out.

So I do not want anybody listening around the country to think Republicans do not have alternatives to what is being offered. But the only thing he can say is: They do not have a plan that has been scored. But we have plans, and if they went to hire more help in the Congressional Budget Office, we will get them scored.

Mr. President, I rise for the sake of the 50 States in the United States today because in this 2,074-page bill is a massive budget burden for every 1 of the 50 States—or maybe I better say for almost all of the 50 States—because of the expansion of Medicaid. I am talking about Medicaid, a Federal-State program. I am not talking about Medicare, a totally Federal program.

If this bill becomes law, the Congressional Budget Office estimates by the year 2019, 54 million nonelderly, non-disabled Americans will be locked into Medicaid. Now, there is a very important word I want to emphasize—“locked”—because with these additional people in Medicaid, they will not have any choice. Medicaid is the only place to get their health care, where a lot of other people will have choices under what we call the exchange.

So let me say it another way. I say they are locked in because this bill does not allow Americans with incomes below 133 percent of the Federal poverty level to get tax credits like most other Americans who are not below 133 percent of the Federal poverty level in a subsidy that comes through the exchange.

Mr. President, 54 million Americans will be locked into a program—and this is where we get back to the States—that the 50 States cannot afford. We are not being honest with ourselves or our constituents or the people who will depend on the safety net if we try to argue that States can fund their share of this massive expansion.

Medicaid, as I said, is a Federal-State partnership, probably about 43 years old. The Federal Government pays for, on average, 57 percent of the cost of Medicaid. So, on average, States pay about 43 percent of the program, and the States administer the program.

In my State of Iowa, that division would be about 68 percent coming from the Federal Government, 32 percent the taxpayers of Iowa pay for.

To describe Medicaid's financial situation as fragile would be an under-

statement. Earlier this year, Congress voted to provide States an additional \$87 billion to prevent States from drastically cutting back their program. That is \$87 billion out of the \$787 billion stimulus bill.

When we were considering that bill, the Government Accountability Office made it clear to us that States were in crisis. Every day you read about States being in crisis—budget crisis. The Government Accountability Office models predicted that State spending will grow faster than State revenues for at least the next 10 years. So here is the warning the Government Accountability Office has provided to those of us in Congress:

Since most state and local governments are required to balance their operating budgets, the declining fiscal conditions shown in our simulations suggest that, without intervention, these governments would need to make substantial policy changes to avoid growing fiscal imbalances.

The State fiscal situation has not improved in the months since the Government Accountability Office report.

Now, let's go to the National Governors Association. They published a report recently entitled, “The State Fiscal Situation; The Lost Decade.” In this report, the Nation's Governors portray a bleak picture of State finances. Their report highlights the situation with State revenues and the economic situation. Their report notes:

The recent economic downturn started in December 2007 and likely ended in August or September 2009, making it one of the deepest and longest since the Great Depression.

State revenues are not likely to rebound until the years 2014 or 2015. States will continue to have to finance retiree pensions, as they wait for this rebound. The National Governors Association's conclusion is, obviously, a somber one. Their report goes on to say:

The bottom line is that states will continue to struggle over the next decade because of the combination of the length and depth of this economic downturn and the projected slow recovery. Even after states begin to see the light, they will face the “over-hang” of unmet needs accumulated during the downturn.

Meaning the recent recession.

The report continues:

The fact is that the biggest impact on states is the one to two years after the recession is over. With states having entered the recession in 2008, revenue shortfalls persisting into 2014 and a need to backfill deferred investments into core state functions, it will take states nearly a decade to fully emerge from the current recession.

Here we have the National Association of State Budget Officers, from a December 2009 fiscal report about the terrible position States are in right now, even without loading them down with the additional burden that is going to come through Medicaid expansion in this 2,074-page bill. Quoting from the National Association of State Budget Officers:

States are currently facing one of the worst, if not the worst, fiscal periods since the Great Depression.

You see that quote behind me, as shown on that chart.

Under current conditions, States will face significant challenges if they are to meet their current Medicaid obligations—emphasis upon “current”—without the addition of these millions of people being put on Medicaid because of the expansion in this 2,074-page bill.

States are also going to have to make substantial policy changes to meet their budget obligations just currently the way the situation is.

Will States cut their Medicaid Programs to cut costs? Right now, as a condition of the \$87 billion in stimulus funds, States cannot cut because that is a requirement of the stimulus package. Under this bill, they will not be able to touch their Medicaid Programs until 2014, the year they are forced, then, to massively expand their programs.

So what will States do to make their budgets work? Will they cut roads and bridges? Will they cut education? Will they cut back on law enforcement and prisons? Will the States raise taxes?

I cannot say what 50 different States will do for certain. But States are going to have to make significant changes. Right now, in my State of Iowa, my Democratic Governor, Chet Culver, is trying the best he can to work out of a \$565 million hole of which he has spending cuts in State government that is intended to address the shortfall in the current budget year. A shortfall of more than \$1 billion is forecast in my State for the budget year that begins July 1 of next year. That is a major problem for our State legislators meeting in January. This isn't just Iowa. Forty-three States have been forced to cut spending in 2009. It is not just about the raw numbers, it is about the people served by the program.

A few days ago I had a group of constituents in my office asking for support for a children's mental health program. They told heart-wrenching stories about the challenges they face as parents in providing care for their children. Their children bravely recounted the struggles they have faced and are overcoming as they battle mental illness.

They benefit from a combined Federal-State program to provide them critical support services that aren't covered in Medicaid. The State dollars that go into that program are going to be severely jeopardized when this bill takes effect and the States are going to have to assume a larger share because of our forcing them to expand Medicare coverage.

It is going to hurt these children I referred to. Right now, Iowa is looking at the possibility of closing two State mental health facilities. In fact, the Des Moines Register recently editorialized that out of four, we only ought to keep one open.

On December 4, Iowa State courts were closed as workers there were furloughed without pay in an effort to close the budget gap. States are struggling to keep up essential services. Senators here will add a giant new unfunded mandate to States and hide behind the rhetoric of State responsibility.

It is very disappointing to have people who claim to be champions of the poor and the needy turn a blind eye to the obvious impact of their actions in this bill on State budgets and on the people served by those States. Yet, in the face of the evidence, the Democrats are proposing a bill that forces States to expand their Medicaid Programs.

This bill proposes that every State cover every American up to 133 percent of poverty. This is a massive expansion of the welfare state. It is the largest expansion of Medicaid in the 43-year history of the program. It will add another 15 million people to the Medicaid rolls. It will increase Federal Medicaid spending by \$374 billion. It also will increase State spending by \$25 billion.

Which States will be affected? Every State here that is colored in red on this chart will be affected by this mandate. States are in their most dire fiscal situation since the Great Depression and the Democrats want to slap all of these States in red with a huge unfunded mandate.

The majority obviously believes Medicaid expansion is the right way to increase coverage. The majority is willfully ignoring facts. States already can't afford the programs, and this bill requires States to expand their programs and make them pay more for the privilege of doing so.

That is not the only cost being shifted to the States. The insurer tax in this bill hits Medicaid managed care plans. Those managed care plans run on an extremely narrow margin. The tax on them is simply going to be passed on to the States. The decision made in the back rooms of the majority leader's office to keep all of the additional Medicaid drug rebate dollars for the Federal Government will hurt States.

I know some people will try to argue that you can't take something from the States they never had, but for years States have been negotiating supplemental rebates with drug companies. Those will most certainly go away. As more and more people get added to the fraying safety net, that safety net will not be able to hold up. That safety net is going to fall apart. This is a bill that will crash the safety net. If this bill is signed into law, it is only a matter of time before Congress is forced to come back and restructure the policies in this bill and spend tens of billions of dollars more to keep the safety net from failing completely.

Providing extra dollars to the States is going to become an annual rite in

the Congress. It will very quickly become the so-called doctors fix or the SGR problem of Medicaid. The Governors know this as well. I wish to quote some.

I will start with Nevada Governor Jim Gibbons:

Under the Reid plan, a mandatory expansion of the Nevada Medicaid program would add more than 41,000 people to the program's rolls in 2014, expanding Nevada's Medicaid enrollment by nearly 60 percent by 2019. Overall, the Reid plan will cost Nevada taxpayers more than \$613 million in State General Fund dollars between 2014 and 2019. In addition to imposing this massive tax burden, the bill also removes existing state options, essentially federalizing this program.

Then a quote from North Dakota's Governor John Hoeven:

We, along with the National Governors Association, urge extreme caution in moving forward with any plan that would commit the states, without their express participation and consent, to obligations that may financially bind them for decades into the future.

I will close with two of my favorite Governor quotes, and both of these are Democrats. The governor of Tennessee says this:

There won't be new prisons built during that period. There won't be much in the way of capital improvements in the state during that period. So it's very scary for governors to be saying as soon as the revenues get back there, the federal government is going to come in and say here's how you're going to spend your new money.

Governor Brian Schweitzer of Montana, describing Medicaid, says:

One of the least effective programs in terms of health care in the history of this country is something called Medicaid. About 20 percent of America is on a Medicaid program and they would like to shift it and grow it to somewhere around 25 or 30 percent.

A quote from Governor Schweitzer goes on:

Now Medicaid is a system that isn't working, almost everyone agrees. But what Congress intends to do is increase the number [of people] on Medicaid so they could do it on the cheap. It is not working for anybody.

The Democrats in Congress are committing well more than \$1 trillion of taxpayer dollars to health care reform. It is not our money, it is the taxpayers' money. It is our responsibility to make sure it is spent wisely. In Medicaid, with a massive expansion and a de facto tax increase on the States, this is clearly not the case. In other words, the money is not spent wisely.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 1½ minutes remaining.

Mr. GRASSLEY. In a minute and a half, I would simply bring to the attention of all of the Members of the Senate the fact that between now and December 30 of this year, besides working on this health care bill, we have these things that have to be done:

The debt ceiling has to be increased.

We have to pass the Defense appropriations bill.

We have to decide what is going to happen with the death tax. The estate tax is going to end at the end of this year. Next year, there is not going to be any estate tax. I don't think anybody wants that situation to happen because it is only going to happen for 1 year, so we need to do something on estate tax.

The highway bill needs to be reauthorized or extended.

The PATRIOT Act has to be extended because at least three parts of it expire, and if they are not reinstituted, a lot of the work of the FBI tracking terrorists is going to be impossible.

We have several tax provisions—73, to be exact—that are extended from time to time. They need to be extended.

Doctors are going to take a 23-percent cut in their reimbursement under Medicare if we don't do something about it.

The Federal Aviation Administration needs to be reauthorized, and maybe the Satellite Home Viewers Act needs to be reauthorized, all between now and the end of the year.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GRASSLEY. This bill doesn't take effect until 2014, so we ought to be getting off of this health care bill and get some of these things done that need to be done before the end of the year.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, it appears to be just the two of us here, so if the Senator from Iowa wishes to take a few more minutes to conclude his remarks, I have no objection.

Mr. GRASSLEY. No, I am finished. I thank the Senator.

Mr. WHITEHOUSE. Very well. Mr. President, I have had the chance to sit yesterday where the Presiding Officer is sitting today and hear several hours of Republican criticism of the health care bill, much of it focusing on the recent report from the CMS Office of the Actuary and the concern about cost. I wish to say a few words about that.

Clearly, the problem of cost is a very real and dramatic one. This is the curve of our national health care spending, starting back in 1955, the year I was born, at \$12 billion and increasing at an accelerating rate until in 2009 we were at \$2.5 trillion every single year. Of course, if we look at the curve, we are not going to level out next year at that level; it is going to keep rocketing upward to the point where in my home State of Rhode Island, if we don't do anything, by 2016—which is just over the horizon; it is not too far to look forward to, even in this building—\$26,000 is what it will cost the average family of four for their health insurance. So the problem of

cost is a very real one and the numbers involved are staggering.

However, if you are going to look at the CMS report, I would suggest there is not just one number to look at, there are several numbers. Then there is an alternative consideration that I think we need to consider.

The Republicans have focused on page 4 of the CMS report where the Actuary estimates that total national health expenditures under this bill would increase by an estimated total of \$234 billion, or 0.7 percent during the calendar years 2010 to 2019, over those 10 years. That is an important number, I will grant them that, but I think there is another number that is equally important—indeed, more important, and that is on the page before. On page 3 the CMS Actuary says that: “Under this legislation, an additional 33 million people would become insured by 2019.”

An additional 33 million Americans would become insured by 2019. Think about that. We have over and over again come to the floor and told of stories from our home States, heard our colleagues tell us stories from their home States about the terrible toll and tragedy that befalls families when they are uninsured or underinsured. Just 30 years ago when we were about here on the chart, only 8 percent of American families filing for bankruptcy protection did so as a result of medical bills. Now it is 60 percent. Sixty percent of family bankruptcies relate back to medical emergencies, unforeseen diagnoses, medical bills that have broken the family. Thirty-three million people with adequate health insurance so they don't face that trauma and that catastrophe, that is something real.

It has been estimated that because of a lack of insurance, 40,000 people a year die prematurely. Forty thousand Americans dead as a consequence of lack of insurance. So this bill would cover 33 million people and lift that burden of worry, of anxiety, of financial catastrophe, of illness, even of death, off of all of those families. That is not something to shrug off. Yet, not once did I hear that number mentioned by the other side. Not once did they even mention that this bill would cover 33 million Americans who would otherwise be without health insurance. They must hear the same stories at home. It is not that in Republican States there are no bankruptcies and no deaths because people are uninsured and no misery, no tragedy. They just come to this floor and don't bother to count that side of the equation.

Another number out of the report is that if you took just the savings side, the net savings from the Medicare-Medicaid growth trend and class proposals in the bill are estimated to total about \$564 billion—net savings totaling \$564 billion, before you get to those 33 million. When you cover them, that is

how it gets to that \$224 billion. If you do rough math, and if you have 33 million Americans and they start getting coverage, say, 5 years out—so that there is 5 years of coverage in this for them—divide by \$234 billion, it is about \$1,500 per person per year to have those 33 million people insured.

Anybody who thinks for 1 minute about the human side of our health care tragedy cannot help but think that that would be a wise investment—for \$1,500, to give somebody the security of health insurance. Of course, that assumes that this bill actually does, when it is implemented, raise costs by \$234 billion.

As somebody used to say on the radio, that is not the end of the story. The end of the story takes a little bit of development. I note that the Actuary himself said that the actual future impacts of this act on health expenditures, insured status, and individual decisions, and employee behavior are “very uncertain.”

Why? Because few precedents exist for use and estimation. Consequently, “the estimates presented here are subject to a substantially greater degree of uncertainty than is usually the case with more routine health care proposals.”

In the conclusion, the CMS Chief Actuary reiterates that, saying:

These findings are subject to much greater uncertainty than normal. Many of the provisions are unprecedented or have been implemented only on a smaller scale. Consequently, little historical experience is available with which to estimate the potential impact.

Where does that affect the bill? It doesn't affect it in new coverage. We know how much it costs to cover people. It doesn't affect it with expanding access to health care. We know how much that costs. Where it affects it is on the savings side.

It is not just the CMS Actuary who says that. As I will get to in a moment, that is also the conclusion of the Congressional Budget Office. They agree on this. If we are going to get something done about this health care increase, we are going to have to do something about reforming the delivery system, about taking out waste and excess costs. Those things are, by definition, hard to predict. They don't lend themselves to the actuarial prediction that the CMS Actuary does and that CBO does. But there is a big target out there. Here is President Obama's Council of Economic Advisers. They had a report out in July:

Efficiency improvements in the U.S. health care system potentially could free up resources equal to 5 percent of U.S. GDP.

It should be possible to cut total health expenditures about 30 percent without worsening outcomes . . . which would again suggest that savings on the order of 5 percent of GDP could be feasible.

Five percent of GDP is about \$700 billion a year. So there is a big saving

target to do something about those national health expenditures. And some groups, such as the Lewin Group, have come up with pretty good ideas of where those savings could be found. They, by the way, don't project it as \$700 billion a year in excess waste and costs. They predict that it is over \$1 trillion a year that we now burn up in our system through excess services, waste, and excess costs. They actually have broken out where you can find excess costs due to transactional inefficiencies, excess billing and paperwork, excess cost due to competition and regulatory factors. They don't compete. You get a couple of big insurance companies in there that take over and they are not subject to the antitrust laws and make deals with each other and with the hospitals—of course, the regular person is on the short end of that deal. Excess cost from poor care management and lifestyle factors. We know care management is terrible. There is very poor coordination of care and we are investing in wellness and prevention to address lifestyle factors. Excess costs from incentives to overuse services. When you pay doctors, that is what they do. When you pay for better health care outcomes, you will get them and get them cheaper. This adds up to over \$1 trillion in excess costs. It is our target. It is a real number. It is a big number.

There is a problem with how you get after the savings. A lot of people actually agree on this. I will pull a couple of sources together. We heard from the CMS Actuary, who said some of this is unprecedented and there aren't historical records to exactly extrapolate how it is going to work. Here is what Doug Elmendorf, the head of the CBO, said:

Changes in government policy have the potential to yield large reductions in both national health expenditures and Federal health care spending without harming health.

Many experts agree on some general direction in which the Government's health policy should move. Many of the specific changes that might ultimately prove most important cannot be foreseen today and could be developed only over time through experimentation and learning.

There is a potential for large reductions in costs. We agree on the general direction that needs to be pursued to achieve large reductions. But experimentation and learning are going to be necessary to do it.

There is a Professor Jonathan Gruber, probably the lead health economist—one of the leading health economists in the world, who is at the Massachusetts Institute of Technology. He said this:

My summary is, it is really hard to figure out how to bend the cost curve. But I can't think of a thing to try that they didn't try—

That is in our bill.

They really make the best effort anyone has ever made. Everything is in here. I can't think of anything I would do that they are

not doing in the bill. You couldn't have done better than they are doing.

Seven hundred billion dollars to a trillion dollar target—hard to project it whether you are CBO or CMS. But we know the general directions that are required, and we have everything in this bill that we can to explore it.

Somebody has actually taken a bit of a look at this, and they admit their findings aren't as solid as a full actuarial report. But the Commonwealth Fund does a lot of work in this area. They are very good people. Here is what they conclude:

The effect of national reform on total national health expenditures and the insurance premiums that families would likely pay is this: We would save \$683 billion, or more, in national health spending over the 10-year period 2010 to 2019.

Where do they go for that? To things such as administrative expenses. Remember, I pointed out the problem of administrative expense and transactional inefficiencies? Currently, nearly 13 percent of insurance premiums are accounted for by administrative costs. Things that we do in this bill can reduce that. They make a very modest estimate that administrative costs will fall 10 percent of total premiums.

The reduction in health spending associated with reduced insurer administration is \$191 billion to \$221 billion over 2010 to 2019. That is just making the paperwork more efficient. And it is around a \$200 billion savings.

CBO also estimates some reduction in premiums from exchanges. If you take the CBO estimates, and they apply them here, they say those estimates from the exchanges yield 10-year savings of \$29 billion to \$34 billion. Then they look at the delivery system innovations—payment innovations, so you are paying for outcomes, not procedures, and negotiations in pharmaceutical prices. As you know, our friends across the aisle made the pharmaceutical industry immune from negotiation by the Federal Government in their last piece of legislation, Part D; comparative effectiveness studies, so you know whether something works or not before you pay for it; financial incentives for low-quality and high-cost providers to get their act together; wellness and prevention investments; demonstration and pilot projects on Medicare to pull things together, and the ongoing Medicare Commission that our colleague Senator ROCKEFELLER is such a champion of, as well as the excise tax on the high-cost insurance plans.

The exact amount to be saved from these provisions collectively is uncertain, the report admits. They look at scholarly estimates. One scholarly report estimates that significant health care reform could reduce cost increases by 1.5 percentage points annually, or more than \$700 billion in the 10-year

window. Another report estimates that a savings of more than 10 percent is possible, largely from payment reforms such as bundled payment systems.

A Commonwealth Fund report indicates that similar provisions would slow the annual growth in national health expenditures from 6.5 percent to 5.6 percent over the period 2010 to 2020.

So cost reductions on the order of 1.0 percentage points are realistic. To be conservative, they considered cost changes of a smaller amount, .75 percent. They concluded that the public and private savings from health system modernization are \$530 billion over the 10 years. Taking account of these different factors, they say, on net, the Senate bill should reduce health care spending by \$683 billion over 2010 to 2019.

Why is that? We have another very thoughtful observer of the health care scene who has offered opinions on this, and that is Dr. Atul Gawande, who has written several times in the *New Yorker* on this subject. He notes that:

It appears the legislation has no master plan for dealing with the problem of soaring medical costs. We crave sweeping transformations. However, all the current bill offers is those pilot programs, a battery of small-scale experiments. The strategy seems hopelessly inadequate to solve a problem of this magnitude. And yet—

He concludes, and here is the interesting thing—history suggests otherwise.

And uses the example:

Another indispensable, but costly sector, that was strangling the country at the beginning of the 20th century, and that was agriculture.

He said:

The government never took over agriculture, but the government didn't leave it alone either. It shaped a feedback loop of experiments and learning and encouragement for farmers across the country.

Experiments and learning. Does that sound like the CBO words?

The results were beyond what anyone could have imagined. Productivity went way up, prices fell by half. Today, food is produced on no more land than was devoted to it a century ago, and with far greater variety and abundance than ever before in history.

The strategy works because United States agencies were allowed to proceed by trial and error, continually adjusting policies over time, in response not to ideology but to hard measurement of the results against social goals. The same goes for reforming the health care system . . . Nobody has found a master switch that you can flip to make the [delivery system cost] problem go away. . . . we first need to recognize that there is no technical solution.

Much like farming . . . hospitals, clinics, pharmacies, home-health agencies, drug and device suppliers. . . . They want to provide good care, but they also measure their success by the amount of revenue they take in, and, as each pursues its individual interests, the net result has been disastrous.

The system, he says, "rewards doing more over doing right, it increases paperwork and the duplication of efforts,

and it discourages clinicians from working together for the best possible results."

The PRESIDING OFFICER. The Senator has used 20 minutes.

Mr. WHITEHOUSE. May I have an additional 5 minutes?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Dr. Gawande continues:

Pick up the Senate health-care bill—yes, all 2,074 pages—and leaf through it. Almost half of it is devoted to programs that would test various ways to curb costs and increase quality.

Just like Professor Gruber said:

. . . I can't think of a thing to try that they didn't try. They really make the best effort anyone has ever made. Everything is in here. . . . I can't think of anything I'd do that they are not doing in the bill. You couldn't have done better than they are doing.

Dr. Gawande continues:

The bill is a hodgepodge. And it should be. Which of these programs will work? We can't know. That's why the Congressional Budget Office doesn't credit any of them with substantial savings. . . . But we should not lose faith.

He concludes:

. . . there's no piece of legislation that will have all the answers. . . . But if we're willing to accept an arduous, messy, and continuous process we can come to grips with a problem even of this immensity. We've done it before.

So when the other side comes to the table and argues that this bill is a cost disaster, a nightmare, and all the things they are saying, I urge people to consider two things. First is that they have been pretty clear that they do not want a bill at all, ever, any bill, none. Their desire to deny our new President this victory is an ulterior goal they have declared. Senators have said they want it to be his Waterloo. They have said: It is our goal to break him, to break his momentum.

So when they say start over, it is a little hard to believe it. If they were candid, they would say: No, stop dead and leave things just the way they are. Obviously, they could not say that because America would not get behind that. So they have come up in the last few days with this "start over" theory.

When you look at what their political purpose is, to break President Obama, to break his momentum, to stop any health care bill from happening, it is worth considering their protestations on the floor in that light.

The other light in considering them is in this one: If we are going to save significant money by making the delivery system more efficient, all experts agree you cannot cost it out in advance. The actuaries cannot figure it out. But the tools we need to make it happen, the intent of the Obama administration to make it happen is in there.

The savings target is between \$700 billion and over \$1 trillion a year. When we achieve those savings, we are



improving the quality of health care. It is less duplicative, it is less wasteful, it is less paperwork, and the quality goes up.

A perfect example is the famous Keystone Project in Michigan where they practically eliminated hospital-acquired infections in intensive care units in a number of hospitals in Michigan. In 15 months, they saved 1,500 lives and \$150 million. When they started that project, could an actuary have predicted that would happen? No, never. Never. And at the beginning of the agricultural revolution, when agricultural extension agents first went out and we modernized the American agricultural center, could they have predicted what Dr. Gawande reported? No, they could not. You cannot predict it, but this President can direct it. He can make it happen. We will give him the tools.

For those who are concerned about cost, there is very significant grounds for optimism about what happens in this bill. If we don't do it this way with those delivery system reforms, we are going to be left with a bloody toolbox, cutting people off, throwing them off, chopping the benefits, paying providers less. It will be to health care reform what a Civil War surgeon's toolbox was to modern medicine—saws, knives, cauterizing irons, and the patients screaming. It does not have to be that way. There is a better way, and it is in the bill.

I thank the distinguished Senator for yielding me the extra time. I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. BURR. Mr. President, I ask unanimous consent to speak for 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BURR. Mr. President, as my colleague finished, he made the statement, "when the other side comes to the table." Let me just say at the beginning, we have been asking to be invited to the table since the beginning of this debate. Unfortunately, we don't know where the table is. We have never been invited, and we hope before this is over we will have an opportunity to provide input into a health care bill that affects 300 million Americans.

But on this rare session, as I have heard it described, of a Sunday session of the Senate where I know the Presiding Officer of the Senate has sat in the chair for quite a while now, I am reminded of one of our colleagues, the Senator from Oklahoma, the doctor, TOM COBURN, whose mother passed away on Sunday. Sometime this week-end there is a service.

I know my colleagues join me in saying to TOM that our hearts and our prayers go out to him and to his family. My mother died in between the time I was elected to the Senate but before I was actually sworn in. She was

able to see me win, but she didn't live to see me sworn in to the Senate.

I know how traumatic the loss of a parent can be. I remember, in my case, how quickly you focus on the fact that mothers have an incredible gift given to them by God—the gift of birthing children, of replenishing the next generation. I remember my focus shifted from the loss of my mother to the responsibility of my children. I think as parents we had undervalued that. That was a shock to me to make me wake up and say: I have a responsibility now to make sure that I nurture, to make sure that I raise, to make sure that I educate. It fell on my wife's and my shoulders because that is the next generation of business. That is and will be the next generation of leaders locally, at the State level, and at the national level.

Parents are invaluable but so are the kids they produce and the opportunity from there on generationally to experience what is great about this country, and that is unlimited opportunity. My responsibility is not just to nurture and to raise two sons, in my case, or in TOM's case great daughters, and one is a tremendous opera singer—probably one of the most sought after in the world—but it is also to make sure we protect the opportunities we were given, to make sure that what people have fought for in wars before are recognized to preserve the opportunity of success.

I feel as though, in our position today, that is part of our responsibility. We are here to preserve the opportunity for generations—for pages, for children, for our own kids.

So it does hurt on a rare Sunday session to have come in during one of the most difficult economic crisis periods in our country's history and watch without much thought as the Senate passed a spending bill that had a 12-percent increase from last year, something no family can do right now, something that no individual can do.

We will borrow 43 cents of every dollar that we just spent in that bill. There is no family in the world who can go into a bank today and say: I would like to borrow 43 cents on every dollar. I would like to go out and buy this big-screen TV. I don't need it, but I want it.

There are some things in this bill we need. But there is a lot in this bill we just want—over 5,000 earmarks. Members of Congress actually, at a time that we should be prioritizing our spending in this country, not only did we raise it 12 percent over last year, but we had the audacity to stick 5,244 earmarks in this bill because we can do that, because somebody asked us.

The truth is, families cannot, communities cannot, most States cannot. They have laws against it. They have to balance their budgets. Families have to balance their budgets or they file for

bankruptcy. Communities have to balance their budgets and try to meet the core responsibilities of providing services to their communities. There is a choice when they do it: Do we overtax a community through property taxes or do we prioritize on what we spend our money?

We never prioritize in this institution anymore. We believe we can spend as much as we possibly want to, and that is evidenced by 5,244 earmarks. The fact is, we just spent \$3.9 billion that was not even in the bill originally when the appropriators received their caps.

I am sure the community needed their park, and I am sure that the community needed the study or the service that each one of those 5,244 earmarks represent. But let me ask this: If they need it that badly, couldn't they fund it themselves? Let me say it again.

If they need it that badly, couldn't they fund it themselves?

Why were earmarks created? It is a way to get somebody else to pay for something you want, not necessarily what you need.

Let me say to you, Mr. President, and my colleagues, to everybody listening: We are broke. We borrow 43 cents of every dollar we spend in the Federal Government right now. The 10-year projection says we are going to increase the debt in the next 10 years more than we did under the previous 43 Presidents.

What else do we need to hear to stop spending? It just continues to roll on and on.

You know what. We are going to get another opportunity next week to spend money we don't have. We are going to get an opportunity to raise the debt ceiling, something that for the 15 years I have been here was a big debate: How much do we need? When do we do it? It was a tool that we used to force us to prioritize. We are going to stick a \$1.8 trillion debt ceiling increase into a Defense appropriations bill so that everybody feels guilty about voting against it if they do—and I will, for the first time, because I believe it is wrong. I believe it is wrong, and it should not be done.

Let me just say this: Sometimes you have to say no. As my children grew up, the toughest thing was to look at those kids and say no. I want this. What do you want for Christmas? I want this. No.

When I started work, I was always told in sales: The toughest thing you are ever going to have to do is say no.

I will buy it from you, but I will only pay this much. No.

We are at that point where the American people have said prioritize. We have to look at communities, we have to look at States, and we have to have guts enough to say no.

Wealth is not created by government. Wealth is not created by States. But



government steals wealth when the opportunity is available.

Communities will grow, and they will be healthy, and States will grow and they will be healthy but only through local success. It does not come through handouts from the Federal Government. All that does is give us a false sense of security and a false sense of a bank account.

In the midst of all this, as we passed this huge spending bill, a 12-percent increase, we are debating health care. We are debating a \$2.5 trillion health care bill that steals \$464 billion from Medicare.

I talked about the transition I went through from the loss of a parent to the focus of children, and now all of a sudden I am back to stealing from my parents. As an institution, we are getting ready to steal \$464 billion from Medicare, and people up here don't seem worried about it. My dad and possibly your dad and your mother have been paying into it their entire lives and were promised it would always be there.

I am going to tell you a little secret today: Medicare is underfunded by \$34 trillion. That is trillion, with a "t." You know the most popular bumper sticker around today is: Don't tell Congress what comes after a trillion. So Medicare is underfunded by \$34 trillion. That is not a guess by an actuary, that is a real number. The Medicare board says it is insolvent in 2017—8 years from now. What are we doing? We are stealing \$464 billion out of it.

I have heard people come to the floor and say they will never miss it. It would not affect a benefit. It would not affect a service. It would not affect a facility, a hospital. Now, all of a sudden over this weekend, we have been presented with news stories that suggest—because nobody has seen a bill, including many Democrats—there may be a deal that expands Medicare to include the 55-to-64-year-old age group—potentially, 20-plus million people. I have heard other people say it is only going to be 2 million or so. I guess it will be crafted in a way that it will leave some out and put some in. I am not sure how you do that. I thought the purpose of the Federal Government was to be fair and equitable to all. But maybe this will be crafted in a way that we let 2 million 55-to-64-year-olds in and we leave the other 18 million-plus out.

Anyway, my good friend from Rhode Island talked about the CMS Actuary and what he had to say. I wasn't prepared to come today and read every editorial out of the Wall Street Journal, but had I done so, I think they would have rebutted most of what my colleague said. But let me just read a couple quotes from the Actuary—the same one Senator WHITEHOUSE talked about.

This report says:

The Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients.

"... unwilling to treat Medicare and Medicaid patients." In other words, not stealing the \$464 billion—well, yes, stealing the \$464 billion is going to generate less interest by providers to see patients. There is only 60 percent of the doctors today seeing Medicaid patients. There is about 74 percent seeing Medicare patients.

So if you like your health insurance, you can keep your doctor, you can keep your plan. Well, that is out the window basically, based upon what the CMS Actuary said. The Actuary noted:

The Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care.

Keep in mind, this is the President's person. Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care. He also found that roughly 20 percent of all Part A providers, which are hospitals and nursing homes—two things additionally that we specifically cut, hospitals and nursing homes—would become unprofitable within the next 10 years as a result of these cuts.

Well, my take as a businessman, not a lawyer, is that when an entity is unprofitable, they go out of business. When there is not enough revenue to meet your expenses, you close your door. So in essence, what the CMS Actuary noted in this was that hospitals and nursing homes would shut their doors. They would close. That is why Senator CONRAD and others and me, who represent rural parts of the country, have tried to say to my colleagues: Pass that bill, and you eliminate rural hospitals. You eliminate the ability to provide preventative care in rural America.

When a woman in rural America gets pregnant, there will not be prenatal care there. She will have to drive 60 miles to get the prenatal care she needs, and she will never do that. But she will drive 60 miles to deliver that baby who will end up in the NIC unit, probably for weeks, because she didn't have the proper prenatal care. We will spend hundreds of thousands of dollars to treat that baby when we could have kept that local facility open to provide the level of preventative care she needed. But, no, in this it says 20 percent—20 percent—of our country's hospitals and nursing homes will close if we pass the Reid bill.

The Actuary also found that further reductions in Medicare growth rates through the actions of the Independent Medicare Advisory Board—now, this is important, because this is what they always point to, that the Medicare Advisory Board is going to do this. The Independent Medicare Advisory Board, which advocates have pointed to as an essential linchpin in reducing health care spending—may be difficult to achieve, in practice.

In laymen's terms: They ain't gonna do it. So the independent Medicare advisory board, the CMS Actuary says it is not going to happen. Gees, how can we take the same Actuary's report and get such a different view of what the results of this bill are between me and the last speaker?

The Actuary says:

The Reid bill would cut payments to Medicare Advantage plans by approximately \$110 billion over 10 years, resulting in less generous benefit packages and decreasing enrollment in Medicare Advantage plans by 33 percent.

Like your insurance? You get to keep it. No. Like your doctor? You get to keep him. No. Like your hospital? You get to keep it. Not if it closes. Like your nursing home? You get to keep it. No. The Actuary says 20 percent of them are going to go out of business. They would not be in business.

As a matter of fact, the Reid bill funds \$903 billion in new Federal spending by relying on Medicare cuts. As a result, the actuary says:

Providers could find it difficult to remain profitable, and absent legislative intervention might end their participation in the Medicare program, possibly jeopardizing access to care for beneficiaries.

Well, now we have eliminated the hospital, we have eliminated the nursing home, we have eliminated Medicare Advantage, and now the Actuary says the doctors, because of what we are doing, may opt out of the system.

The majority whip came to the floor earlier, and he said the Republicans will not offer a plan. For the record, and for the 100th time, TOM COBURN and I introduced comprehensive health care legislation in May. We were the first Members of Congress, House or Senate, to introduce comprehensive health care legislation. I am not sure how many times I can come to the floor and say that. TOM and I have come down and spoken hour after hour and given descriptions of what our plan does.

We don't expect it to be adopted. It has some good things in it. We would love to have some input into whatever the legislation is going to do. But make no mistake about it, just because you stick your head in a hole and do not see anything else out there doesn't mean it is not there. To come to the floor and claim that no Republicans have offered a legislative remedy to health care is to stick your head in a hole and say: I am not going to look; therefore, nothing exists.

I know I am coming to the end, and I see the ranking member of the Finance Committee wants to speak.

The PRESIDING OFFICER. The Senator has 30 seconds.

Mr. BURR. My good friend from Rhode Island said—I wrote it—"Actuaries can't cost it out." He said before he left the floor: "Actuaries can't cost it out." Well, he may or may not be right. I can tell you this: The American

people can cost it out, and the American people have said no—no to passage of this Reid health care bill. We should listen to the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, we keep hearing about all the tax cuts that are in this 2,074-page bill. Earlier today, I heard the distinguished senior Senator from Illinois say this, after Senator KYL was done speaking, and I am reading from the transcript.

First, this bill has \$441 billion in tax cuts in the first 10 years for average people trying to pay their health insurance premiums. I don't know if the Senator from Arizona—

There he means Senator KYL—

thinks that is a good idea or not. He has never spoken to that at least that I have heard. I think it is a good idea. If you are making less than \$80,000 a year, I want to make sure you have insurance, and this bill wants to make sure we give you a helping hand. It is a tax cut.

First of all, when you have a tax credit or subsidy for buying insurance, the Joint Committee on Taxation describes 73 percent of that as outlays, 27 percent as tax reductions. So to call \$441 billion a tax cut is completely contrary to the way scorekeepers for the Congress keep track of things.

The second thing I noticed, in talking about helping people earning \$80,000 a year or so—and I heard another Senator speak frankly about tax increases for people at \$75,000—is that there seems to be an effort to define down what the middle class is, from the way the President of the United States described it during his campaign—individuals under \$200,000 and families under \$250,000 being the middle class.

Well, I wish to go into some detail about this because I have had an opportunity to speak on this point and I think other Members have as well and somehow we don't seem to get through to our friends on the other side of the aisle who have consistently stated that the Reid bill, according to the Joint Committee on Taxation, is a net tax cut—and emphasis upon the word “net.”

Yesterday, this chart was used to illustrate this point—a chart the other side was using to illustrate that point. This chart I am referring to has multiple bars with dollar figures. For example, in 2019 we see here a figure of \$40.8 billion net tax cut. My Democratic friends said this number came from the Joint Committee on Taxation. Unfortunately, the chart my friends were using at that time is not entirely clear on how they came up with this net tax cut, so that is what I want to bring to the attention of my colleagues. It was quite natural for most to wonder how that number came about, so they said: Show me the data.

To clear up any confusion, here is the Joint Committee on Taxation table the

Democrats relied on to claim that the Reid bill results in a net tax cut. Do you see here this negative figure of \$40,786 million? Of course, negative, that minus mark there. My friends on the other side, unfortunately, do not explain what is going on. Instead, it appears the other side simply made an assertion that they hope many of us, and those in the media, would believe. I am not going to let my friends on the other side of the aisle get away with this because the entire story is not being told. So let me take a moment to explain.

First, in simplest terms, where you see the negative number on this chart, the Joint Committee on Taxation is telling us there is some type of tax benefit going to the taxpayers. For example, families making between \$50,000 and \$75,000 you can see have a negative \$10,489 number in their column. This means the Joint Committee on Taxation is telling us that this income category is receiving \$10.4 billion in tax benefits. But I need to have you listen more closely because when we see a negative number on this chart, the Joint Committee tells us there is a tax benefit. So, conversely, where we see positive numbers, in these areas here, where you see positive numbers, the Joint Committee on Taxation is telling us these taxpayers are seeing a tax increase.

I have actually enlarged those numbers of tax returns and the dollar amounts where there is a positive number for individuals and families—once again, right in here. These positive numbers indicate a tax increase.

My friends have said that all tax returns on this chart are receiving a net tax cut. If this were so, why are there not negative numbers next to all the dollars on this chart? Because not everyone on this chart is receiving a tax cut, despite what has been said, including just within the last hour. Quite to the contrary, a number of taxpayers are clearly seeing a tax increase. This group of taxpayers is middle-income taxpayers.

I didn't come down to the floor to say my friends on the other side are wrong. After all, you can see the negative numbers quite frequently on the chart. After all, you see this negative number, \$40,800 million. What I am doing is clarifying that my friends on the other side cannot spread this \$40.8 billion tax cut across all of the affected taxpayers on this chart and then say all have received a tax cut. Why? Because this chart produced by the Joint Committee on Taxation shows that taxes go up for individuals making more than \$50,000 and families making more than \$75,000. It is right here on these yellow figures. Numbers do not lie.

Of course, people who inhabit the Joint Committee on Taxation are professional people who do not have a political agenda, and they tell it like it

is. That is what they are hired for. That is why there are the same people around whether you have a Democratic or Republican majority in the Congress.

I would like to give you my read on what the Joint Committee on Taxation is saying here with these figures.

First, there is a group of low- and middle-income taxpayers who clearly benefit under the government subsidy for health insurance. This group, however, is relatively small.

There is another, much larger group of middle-income taxpayers who are seeing their taxes go up for one or a combination of the following tax increases: the high-cost plan tax, the medical expense deduction limitation, and the Medicare payroll tax increase. In general, this group is not benefiting from the government subsidy. After all, how can taxpayers see a tax cut if they are not even eligible for a subsidy?

Also, there is an additional group of taxpayers who would be affected by other tax increase provisions in the Reid bill that the Joint Committee on Taxation could not distribute as other things in the bill are distributed on this chart. These undistributed tax increases include things such as putting a cap on the flexible savings accounts. There has never been a cap. So when you cap it at \$2,500 and people cannot put in more than \$2,500 under this 2074-page bill, that is a tax increase for those people who had higher expenses and wanted to put that money in a flexible savings account.

Then also there is a tax that is not accounted for here on cosmetic surgery. My friend from Idaho, Senator CRAPO, whose amendment is pending before the Senate, recently received a letter from the Joint Committee on Taxation stating that this additional group exists and many in this group make less than \$250,000 a year.

My friends on the other side of the aisle cannot, No. 1, say that all taxpayers receive a tax cut and, No. 2, say that middle-income Americans will not see a tax increase under the Reid bill as promised by the President in the last campaign.

I yield the floor.

#### ADDITIONAL COSPONSORS

AMENDMENT NO. 3172

At the request of Mr. BROWN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 3172 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

ORDERS FOR MONDAY, DECEMBER  
14, 2009

Mr. UDALL of Colorado. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m., Monday, December 14; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two

leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each, with the Republicans controlling the first 30 minutes, and the majority controlling the next 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 2 P.M.  
TOMORROW

Mr. UDALL of Colorado. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 5:01 p.m., adjourned until Monday, December 14, 2009, at 2 p.m.

**SENATE—Monday, December 14, 2009**

The Senate met at 2 p.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Loving God, You are just and compassionate. As we labor today, we need Your strength. Forgive us for becoming impatient, for being too busy, too distracted, and too quick to speak or act. Forgive us for not taking time to think or to pray. Bless our Senators in their work. May they labor with integrity and faithfulness, cheerfulness and kindness, optimism and civility. Lord, keep them ever mindful of life's brevity and of the importance of being faithful in life's little things. Help them to seek to serve rather than to be served, following Your example of humility and sacrifice.

We pray in Your sacred Name. Amen.

**PLEDGE OF ALLEGIANCE**

The Honorable MARK R. WARNER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE**

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The bill clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,

Washington, DC, December 14, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. WARNER thereupon assumed the chair as Acting President pro tempore.

**RECOGNITION OF THE MAJORITY LEADER**

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

**SCHEDULE**

Mr. REID. Mr. President, following leader remarks, the Senate will pro-

ceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each. The Republicans will control the first 30 minutes, the majority will control the next 30 minutes. We are still working on an agreement to line up votes that have been the subject of competing agreements with respect to the health care reform legislation. Pending is a Crapo motion, with a Baucus side-by-side on taxes; and a Dorgan amendment, with a Lautenberg alternative. So we have four amendments on which we need to try to work something out. That is not done yet, but as soon as it is worked out we will notify Senators of any scheduled votes.

**HEALTH CARE REFORM**

Mr. REID. Mr. President, every day we do not act, it gets more expensive to stay healthy in America.

If you are fortunate enough to have health insurance, this is not news to you. You have no doubt noticed your premiums have more than doubled in the last decade, even though the quality of your health care has not doubled—and that is an understatement.

If you are fortunate enough to have coverage, you might have noticed that you are paying at least an extra \$1,000 a year to cover all of the other families who do not have health insurance.

Those with insurance know when premiums eat up a larger slice of their paychecks, they have less money to take home to their families. Those without insurance know the pain of skipping medicine or treatments or doctors visits because it simply costs too much to go to the doctor. Economists tell us if we do nothing, those costs will continue to climb and to climb. The economists tell us that without question, if we do not do something, the costs will continue to increase.

Very recently, the President's Council of Economic Advisers has crunched the numbers, and this respected group tells us the bill before the Senate will indeed keep health care costs down.

Lower costs are good for every American. It means more people who do not have insurance today will be able to afford it, and those who do have insurance will have more stability and security against losing it.

The White House's economists highlighted a number of other impressive effects of our bill. The amount our government spends on Medicare for our seniors and Medicaid for the underprivileged will be much less than if we do not act. Our Nation's deficit will be

much lower than if we did not act. Health care costs in the private sector will be much lower than they would be if we did not act. And with this bill, American families' incomes will increase more than they would if we did not act. The same is true for job creation, small business growth, and our overall economy.

After all, health reform is economic reform. When you are not spending so much of your paycheck on premiums, you have more left to feed your family and to fuel our economy.

We also know a healthier workforce is a more productive workforce, and a more productive workforce means a healthier economy. Those are pretty good reasons to act and a pretty strong rebuttal against the strategy of doing nothing. This data proves once again what we have said from the start: this bill will save lives, save money, and save Medicare.

That is the reality, and that is why we are working to make it possible for every American to afford a shot at a healthy life. It is a goal that will make our economy stronger and make our citizens healthier. It is a goal with an eye to the future, to our children, one that appreciates the long-term effects of what we do.

The other side has a goal of its own—one that not only ignores the reality of the present but dismisses both the long-term benefits of acting and the long-term costs of doing nothing. Whereas we are working to slow the growth of health care costs, they are working to slow down the Senate. In fact, they would like to bring this body to a screeching halt.

But we will not let talking points meant to scare seniors and frighten families obscure the hard data that show just how unhealthy our health care system is. We will not be derailed by those who spend more time hoping for America's leaders to fail than they do helping the American people succeed. We will not be sidetracked by those who try to stop history in its tracks.

Mr. President, would the Chair now announce morning business.

**RESERVATION OF LEADER TIME**

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

**MORNING BUSINESS**

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business, with Senators permitted to speak

for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The Senator from Tennessee.

#### ORDER OF PROCEDURE

Mr. CORKER. Mr. President, I ask unanimous consent that the Republicans be allowed to speak as a group over the next 30 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CORKER. Mr. President, I thank you.

#### HEALTH CARE REFORM

Mr. CORKER. Mr. President, I rise today to speak about the health care bill that is before us. One of the major points of contention over the last 2 weeks has been the fact that Medicare savings are being utilized to leverage an entirely different entitlement and not even taking care of the SGR issue that is so important to physicians around our country.

The other important stat is the fact that half of the expansion in health care benefits that is occurring under this bill is under Medicaid, probably the worst health care program in America. After a year of discussions among many folks on a bipartisan basis, and ending up with a very partisan bill, the fact that half of the expansion is occurring in one of the worst programs that exist in our country, locking people at 133 percent of poverty into Medicaid, with no other choice, does not seem to me to be true health care reform.

I know the Senator from New Hampshire, who has spoken eloquently on this issue, has something to say about that.

Mr. GREGG. I thank the Senator from Tennessee for opening this discussion on the issue of Medicaid. But I did want to ask a couple questions relative to what the Senate leader just said about the bill that is before us.

We have to remember the bill that is before us—all 2,074 pages, as I understand it—is not the bill we are going to actually consider. There is somewhere in this building a hidden bill, known as a managers' amendment, which is being drafted by one or two or three people on the other side of the aisle, and which is going to appear *deus ex machina* on our desks fairly soon. We do not know what is in it. A lot of the people on the other side do not know what is in it. The press does not know what is in it. The American people do not know what is in it.

Mr. CORKER. The President does not know what is in it.

Mr. GREGG. The President does not know what is in it. Nobody knows what is in it. But they are designing this

bill, which is going to be represented to expand Medicaid even further and to also offer the ability to people age 55 and over to buy into Medicare, which is going to have a huge impact.

But what the Senator from Nevada said, which I want to ask the Senator from Tennessee about, is, he said this bill before us—this 2,074-page bill, which we know is what we are working off of—is going to reduce health care costs.

Is it not true that the President's Actuary—the Actuary for CMS, who is the President's Actuary—sent us a letter last week which said that health care costs in the first 10 years would go up by \$235 billion?

The majority leader also said people will be able to keep their insurance. Is it not true that the President's Actuary said millions of people will lose their own insurance under this bill?

Further, is it not true, in the area of Medicare, that the President's Actuary actually said that the expansion in Medicare and the Medicare cuts in this bill that are before us in the Democratic bill would actually lead to a massive reduction in the number of providers for Medicare; that up to 20 percent of the providers in Medicare would become unprofitable and therefore they would have to leave Medicare, making Medicare unavailable to people because there would be no recipient?

Didn't the Actuary also say, in the area of Medicaid—and I am quoting—“it is reasonable to expect that a significant portion of the increased demand for Medicaid would” be difficult to meet, particularly in the first few years, and that is because providers would no longer be profitable and would have to leave the business of providing—doctors groups, hospitals, small clinics?

Are not all those three points true relative to what the President's Actuary has told us—not us, not the Republican side but what the President's Actuary said? And don't all three points contradict the representations of the majority leader?

Mr. CORKER. Not just his representations, but the representations of the President of the United States. As a matter of fact, it is hard to understand any goal that is being achieved other than making sure our country has a huge indebtedness.

But the senior Senator from Tennessee has talked about this very subject the Senator is talking about—about Medicaid, in essence, giving people a bus ticket, where there is no bus because of the fact that if we add these people to a system where 40 percent of physicians do not take it, 50 percent of specialists do not take it, in essence, you have people accessing a system where there are not providers to care for them.

I do not know if the senior Senator from Tennessee wants to expand on that.

Mr. ALEXANDER. I thank Senator CORKER from Tennessee.

We have our usual situation on the Republican side—a lot of Senators who wish to speak on the subject of Medicaid—so I am going to keep my remarks brief. But looking around I see one, two, three, four of us who have been Governors of a State. The Acting President pro tempore was the Governor of the State of Virginia. Senator CORKER, himself, was mayor of Chattanooga and the chief operating officer of the Tennessee State government.

Why do I bring that up? Because the Medicaid Program we are discussing—I know to many people listening to this debate, it gets confusing. Medicare is the program for seniors on which 40 million to 45 million people depend. We have talked about that a lot, and how the cuts to Medicare are going to be used to pay for this bill. But we have not talked as much about Medicaid, which is an even larger government program. Sixty million people depend on Medicaid, and they must be low-income people in order to qualify for the program. This bill would add 15 million more Americans to the Medicaid Program which, as Senator CORKER said, is like giving someone a bus ticket to a bus line that only operates half the time, because about 50 percent of the time, doctors will not see new Medicaid patients.

But there is another problem with the Medicaid proposal, which all of the Governors here—I know if they are like me, nothing made me any angrier than to see a bunch of Washington politicians come up with a big idea, announce it, take credit for it, and then send me the bill when I was Governor. Usually we would find them back at the Lincoln Day Dinner or the Jackson Day Dinner the next spring making a big speech about local control. Well, what happens here is a huge bill for this Medicaid expansion that is going to be sent to the States.

I would say to Senator CORKER, hasn't our Governor, a Democratic Governor, Governor Bredesen—who like all of us has struggled with paying for Medicaid—has he not said this will cause about \$750 million in added expense? I would ask the Senator from Tennessee, wouldn't that require either big cuts to higher education or big tax increases to pay for it?

Mr. CORKER. As you pointed out, in California there was almost an insurrection among students there because of the high cost of tuition, because of the fact that other programs in the State were eating up money. It is the same kind of thing that is going to happen in States across this country. Our Governor, who is a Democrat and who probably knows as much about health care as anybody in the country,

is very concerned about what this is going to do—hoping, by the way, that revenues in our State reach 2008 levels by the year 2013. So he is very concerned.

I know Senator JOHANNIS from Nebraska has been a Governor. I am sure he has some things to add to this debate.

Mr. JOHANNIS. I do have some things I wish to add to this debate. I have gone across the State. I have talked to hospital administrators and I always ask them the same question: If you had to keep your hospital open on Medicaid reimbursement, could you do that? With no exceptions whatsoever, from the largest to the smallest hospitals, they say, MIKE, we would go broke because the Medicaid reimbursement is so bad. No question about it, that is bad news for the hospitals.

But ask any Governor. It doesn't matter if they are a Democrat or a Republican—and the senior Senator from Tennessee is so right, nothing would irritate Governors more, nothing would get us in a more bipartisan furor than the politicians in Washington passing something, taking all the credit for it, and then sending the bill to the State taxpayers. I will give a speech on this to nail this down in the next couple of days.

The States have very limited options. They can raise taxes or they can cut very valuable programs such as education, K-12 education, higher education, and already States are struggling. In Nebraska we had a special session where our Governor and our legislature stood up and said, We have to cut spending, and they cut over \$300 million. Can you imagine if I were to call up later on in a couple of weeks from now and say, I know you did your very best at that special session, but we sent you another bill for millions and millions of dollars over the next 10 years that you have to deal with?

The final point I wish to make is, do my colleagues realize what we are doing to the people we will be putting on Medicaid? Already 35 to 40 percent of the physicians won't take Medicaid. Why? Because the reimbursement rates are so incredibly pitiful. So if you are at 133 percent of poverty, we basically lock you into Medicaid. It is like giving somebody a driver's license but then saying, there is no way you can ever get a car to drive, because, look, here is the problem: They can't get medical care no matter if they have that Medicaid card. What it will do to our health care system is literally bring it to its knees, because we are going to have this massive rush of people who have the Medicaid card in hand and we don't have the capacity to deal with that. The doctors, the hospitals are all going to be in trouble because of this. It is the wrong policy for a whole host of reasons.

Mr. CORKER. Mr. President, I read a story this weekend in the New York

Times where Medicaid recipients, especially young Medicaid recipients, have huge prescriptions taken out on them for antipsychotic drugs because basically the physicians don't want to take the time to deal with them, and so they are huge users of them.

When we speak about physicians, I think it is always important to talk to one. Fortunately, we have one on our side, Senator BARRASSO, who I know has treated many Medicaid recipients. I know he has a lot to say on this topic.

Mr. BARRASSO. I have a couple of points I wish to add because I think you made a point, as does Senator JOHANNIS. The concern is are there going to be enough doctors to take care of these patients. We are talking about 18 million more people placed on the Medicaid rolls, which is a huge unfunded mandate to the States. Having practiced in Wyoming for 25 years, in Casper, taking care of families, taking care of lots of patients on Medicaid, it becomes harder and harder for doctors to take new patients.

There is an article in this week's Wyoming Tribune Eagle: Doctor Shortage Will Worsen. As many as a third of today's practicing physicians will retire by the time all of these additional 18 million get on to Medicaid.

There is an article in the Wall Street Journal and it talks about a report from a research group, nonprofit, based in Washington, the Center for Studying Health System Change, and it says, as the Senator has previously stated:

Nearly half of all the doctors polled said that they had stopped accepting or limited the number of new Medicaid patients. That is because many Medicaid programs, straining under surging costs, are balancing their budgets by freezing or reducing payments to doctors. That, in turn, is driving many doctors, particularly specialists, out of the program.

For people in Wyoming, whether in Cokeville or Kemmerer or Casper, in all of these communities we are looking to try to recruit physicians. It is making it much more difficult when we look at this health care proposal the Democrats have, which is going to raise taxes, cut Medicare, cause premiums to go up for people who have insurance, and one of the reasons is because it underpays so much for things such as Medicaid. Yet they are talking about putting another 18 million people on Medicaid.

This morning I called one of the offices of a physician group in Wyoming and said, What are the differences in terms of Medicaid versus regular insurance? For something like carpal tunnel, we know about overuse of the wrist and carpal tunnel surgery where the normal fee is about \$2,000 for the surgery. Medicaid itself reimburses less than \$500. Medicare—they are talking about putting a lot more people on Medicare—reimburses less than \$400.

It is very difficult if you are trying to run an office and you pay all of the

overhead expenses and see everybody who wants to see you to do it on the fees alone that you get from Medicare or Medicaid. That is why I have great concerns. If we have all these people on Medicaid, will it actually help them get care?

I think this Democratic proposal we are looking at fails. It fails in terms of getting costs under control. It fails in terms of increasing quality or increasing access, but those are the things we need in health care reform.

I see my colleague from Florida is here, who has experience, having run a Governor's office as Chief of Staff. He may want to add to this discussion as well. I can't see any way this would be sustainable. As a matter of fact, a report that came out recently from the CMS, the group that oversees all of this, said it is not sustainable, that one out of five hospitals by the year 2020 and one out of five doctor groups will basically have to go out of business and close their doors.

Mr. CORKER. Mr. President, it is pretty amazing when you think about it. We have a 2,074-page bill that includes the largest expansion of Medicaid in the history of the program. It would take about 1 page of that 2,074 pages to expand Medicaid and do no reform, and yet that is where 50 percent of the expansion is taking place. Yet, the 2,073 pages remaining don't meet many goals that many—any goals, really, other than access—any goals that Americans would stand behind.

I know the Senator from Florida, who has spent a lot of time on this issue, wants to speak on this topic.

Mr. LEMIEUX. I thank my colleague from Tennessee. I didn't have the honor to be a Governor but I got to sit in the office next door to be the Governor's Chief of Staff. We had these issues of trying to balance budgets because, unlike the Federal Government which is out of control, States actually have to balance their budgets. Receipts have to meet expenditures. When your Medicaid budget grows and grows and grows—and in Florida, \$18 billion is what we pay in Medicaid. It is the largest expenditure in the Florida State budget. When it grows and grows and grows, what happens? You have to cut education. You have to cut public service programs that do things such as law enforcement, correctional facilities that hold prisoners. You hurt the other main functions of government if you keep adding in Medicaid.

I wish to highlight a point my colleague from Tennessee made. It occurred to me when I was going through the Chief Actuary's report we received last Friday from the Center for Medicaid and Medicare Services that this plan the Democrats have put forward is the expansion of Medicaid. Let's be honest. This is Medicaid for the masses. Thirty-three million people supposedly are going to be covered by

this plan if it is implemented. How do those numbers add up? Eighteen million are Medicaid, 20 million go into this new exchange, and then we lose 5 million because their employer drops them because they can go into the exchange. So what are the majority of the people who are going to go under this new health care reform going to get? They are going to get the worst health care system in America, called Medicaid, a system where doctors won't participate. If the doctor is not in, it is not health care reform.

This is not all it is cracked up to be. I did a little back-of-the-envelope math: \$2½ trillion to put 18 million people into Medicaid. We could give all of those people \$166,000 each, put it into an account and say: Here, fund your health care for the next 10 years or we could create this huge government program that expands a program that most doctors won't accept.

My colleague Dr. BARRASSO has it right. Forty percent of the doctors won't take Medicaid, and 50 percent of the specialists. How is this health care reform?

I know my colleagues here have a lot of experience on this issue. I see my colleague from Mississippi and it looks as though he has a great chart and is going to talk about increased Medicaid spending, so I am sure he has something great to say to us.

Mr. WICKER. Yes, and I appreciate so many of our colleagues being here today because I am glad we are getting into the Medicaid aspect of this bill. There has sort of been a feeling around this building the last couple of days that if we could only take care of the Medicare buy-in and the government-run option this bill would be OK. So I think today we are bursting that myth and pointing out the huge unfunded mandate the Medicaid portion would put on almost all the States.

Every State in red as shown on this chart would be required under this bill to increase their Medicaid spending. Only Vermont and Massachusetts would not have to be mandated by us in Washington to do this additional spending. Of course, with the unfunded mandate, what the Federal Government is saying is, We think this is a great idea. We think people should be covered with additional Medicaid Programs and, by the way, you folks at the State level should come up with the funds to pay for it. That is the very nature of an unfunded mandate.

I am not a Governor nor have I been a Chief of Staff of a Governor, but I have a letter from my Governor, Gov. Haley Barbour, who says:

If the current bill, which would expand Medicaid up to 133 percent, were enacted into law, the number of Mississippians on Medicaid would increase to 1,037,000, or one in three of our citizens. Over 10 years this bill would cost Mississippi's taxpayers \$1.3 billion—

The generosity of this Congress would be to tell the legislators and taxpayers of my

State of Mississippi: Congratulations. We get more coverage and, by the way, you have to pay an additional \$1.3 billion—necessarily requiring Mississippi to raise taxes in order to continue vital programs such as education and public safety.

As has been pointed out, our State governments don't have a printing press. They have to balance the budget and make the numbers come out at the end of every year. We are putting a new burden, if we pass this legislation unamended, a tremendous burden on our Governors.

One other comment. There has been mention of the Governor of Tennessee who is a two-term, respected Democrat who knows a little something about health care. I think the actual quote last summer from Gov. Phil Bredesen was that he feared "Congress was about to bestow the mother of all unfunded mandates on the State of Tennessee."

I have here in my hand—and we don't have time because we have so many people who want to speak—I have 13 quotes, not from Republican Governors such as Gov. Haley Barbour of Mississippi, but Democratic Governors all across this Nation, including the newly elected Democratic Governor's Association chairman, Gov. Jack Markell, and 12 others saying, we cannot afford, we cannot accept, we cannot bear at the State level this unfunded mandate upon this number of States.

Mr. CORKER. I thank the Senator. That was very good. I am hearing some comments about there being a wink and a nod process taking place which is sort of what we have happening right now with the bill. We don't know what is in it, but I understand there may have been a tilt by leaders of the Democratic Party to say to Governors: If you won't raise much Cain here, we are going to take care of you down the road on this issue. I don't know if I would trust something like that to happen in this body but—

Mr. WICKER. Here is the problem there. If they take care of the Governors down the road by saying we are going to send the money from Washington to cover this, then all of this talk about the program cutting costs at the Federal level goes out the window. Something is going to have to pay for it. Either we are going to have to gin up the printing press here, borrow some more money from China and send it to the States, which I guess is what the Senator was referring to, or we are going to pass the unfunded mandate on to the taxpayers of 48 of our States.

Mr. CORKER. So many Senators, so much participation, so little time. I think there is about 6 minutes left. The distinguished Senator from Utah has not yet spoken. The distinguished Senator from Idaho—a former Governor—has not yet spoken. I wondered if the senior Senator from Utah might close us out in the remaining time, just to bring this all to a climactic conclusion.

Mr. HATCH. Mr. President, I appreciate the comments of my colleagues. They are right-on. They know what they are talking about regarding the Medicaid program.

If this bill becomes law, the CBO estimates that by the year 2019, 54 million nonelderly, nondisabled Americans will be locked into Medicaid. Think about that.

Americans with incomes below 133 percent of the Federal poverty level are not eligible for tax credits to purchase private coverage through the exchange.

I will take a few minutes to read part of a letter I received from our Governor in Utah, Gary Herbert—who worked at almost every job from local government right up to Governor of the State—about the Medicaid expansion included in the Reid bill. My Governor is deeply concerned about the impact the proposed Medicaid expansion would have on individual States. Here is what he said:

In Utah, we have a good system of public medical programs that provide for our neediest population.

The extension of Medicaid to additional populations, as discussed in proposed Federal healthcare legislation, will amount to an unfunded mandate that would create financial havoc for our state.

While I understand the idea that everyone must "share in the pain," and appreciate the Administration's commitment to reforming healthcare without increasing the size of the federal deficit, to force Medicaid cost increases onto states will simply shift massive cost increases to the states.

As we prepare the state's fiscal year 2011 budget, we face continued cuts to agency budgets and reduced government service on top of painful reductions made last year. The unfunded mandate of a forced Medicaid expansion will only exacerbate an already dire situation.

If required to increase our Medicaid program as envisioned in Washington, Utah and most every other state will be forced to fund the money to do so through other means. This will require states to either raise taxes or continue to cut budgets in areas currently suffering from a lack of funding, such as public and higher education. We must work together to ensure that no new requirements for states to fund healthcare for additional populations pass.

In summary, I ask my colleagues, if the Reid bill is signed into law and the Medicaid expansions go into effect, what will the States do to make their budgets work? According to Utah Governor Herbert, States will be looking at a variety of options, such as cutting education programs and raising taxes. It would devastate the State, as Governor Barbour has said and as almost every Governor would say. I thought that was an important point to make.

Mr. CORKER. Mr. President, I know the Senator has been a leader in making sure people throughout this country have appropriate health care. I thank the Senator for those comments.

There is no one better to respond than a former Governor, the Senator from Idaho, JIM RISCH.



Mr. RISCH. Mr. President, first of all, let me say this raid on the States is just that. This is going to be a tax increase, and it is not included anywhere, it is not talked about anywhere. There is no way the States can deal with this except with massive tax increases or massive cuts in education.

In most States, I am sure, like Idaho, about two-thirds of the budget is spent on education, about 10 percent of it is on public safety, and you have about 20 percent that is on social services. Unless you have been a Governor, you can't understand how difficult it is to control what has become an expanding black hole in Medicaid.

The first social program this Congress came along with was Social Security. They decided they would do it, and they funded it. The second was Medicare. They decided they would do it, and they funded it. Along came Medicaid, and some genius here decided the Feds will only pay 70 percent or so and we will make the States pay 30 percent. Well, everywhere across this country, Governors are saying: Don't do this to us.

The dozen of us here who are former Governors were asked to participate in a conference call a couple weeks ago. I listened, but I didn't talk. I didn't need to because there was great bipartisan support for killing this bill. The most vocal people were Democrats. The most vocal Governors were Democrats, who were saying we cannot tolerate this kind of an increase. That is what is going to happen under this bill.

I am sorry none of my friends from the other side of the aisle are here, with the exception of the Presiding Officer.

Could the Senator from Mississippi take the top chart off. If my friends were here, I would tell them to pay attention to the polls because that is what America is going to look like on CNN next November 2, in the evening, if you continue down this road.

I thank the Chair.

Mr. CORKER. I thank the Senator. I know of nobody who has spoken more eloquently on this topic than the Senator from New Hampshire. Before I hand it off to him, when I was in my 40-something-plus townhall meeting since this debate began, our citizens said to me they wanted the same choices I had as a U.S. Senator. This expansion for the American people is mostly being done in the area of Medicaid.

I don't know if the Senator has any comment to that effect or a comment as to whether we Senators ought to be in Medicaid, if this is our idea of health care reform. I certainly hope he will close us out, and I thank him for his tremendous contribution.

Mr. GREGG. Mr. President, I thank all of the Senators here for their comments. I say this—and I think the Senator from Tennessee was alluding to this at town meetings—this expansion

of Medicaid isn't good for people. It is not good for people on private insurance. Their insurance will go up, and a lot of employers will have to drop insurance because it is too expensive. It is not good for people getting Medicaid because the number of providers willing to see them will go down. That is what the Actuary tells us, and that is what common sense also tells you. When you are only paying 60 percent of the cost of seeing somebody, people will stop seeing them. It is not good for everybody in all those red States up there on the chart because their taxes will go up because the States are going to get the bill for this. States can do nothing but raise their taxes. So it is not good for people and not good for health care in this country, in my opinion.

Mr. CORKER. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. Thirty minutes has been consumed.

Mr. CORKER. I am sure the Senator from Tennessee—if there is time remaining and if nobody is here to claim it—would like to speak. He is always good at explaining the deficiencies of this bill.

Mr. ALEXANDER. Mr. President, I thank the Senator. I am impressed with the number of Senators here this afternoon. One thought comes to mind, and I wonder if some of my colleagues may want to talk about it. I woke up one day and saw on television a sign that said "32 percent tuition increase for the students of California." The University of California could be the best public institution of higher education in the world.

One of the great things the United States has—which keeps us competitive and gives us a chance to continue to grow and create new jobs—is a superior system of higher education. About half of the best universities—Harvard, Yale, and the private universities—half or more than half are public universities, where tuition is a few thousand dollars a year. Well, what is going to happen with this? All of us who have been Governors have gone through this. You have a pot of money left, and it either goes into higher education or Medicaid. For the last 30 years, we have been having to fight to fund Medicaid, and as a result States have not been funding public higher education properly and the quality has gone down and the tuition has gone up.

What is this bill saying? It says that, after 3 years, we are going to dump a huge new cost on the States. I don't believe I am overstating it when I say that in our State of Tennessee, given the terrible fiscal condition our States are in today—and our State is more conservatively run than most—I believe our State could only fund this through a new State income tax and/or serious damage to higher education or

both. I wonder if that is not the case in all of the other States represented here.

Mr. CORKER. Listening to what the Senator just said, I looked on the other side of the aisle and realized there is no one there. This is one of those issues. I know that on Medicare, the other side has been able to argue they are extending the life of Medicare. Yet Senator GREGG so clearly pointed out yesterday on national television that is impossible because they are taking those savings to pay for a new entitlement program. At the end of the day, it really will not be extending the life in any way. We all wonder why those savings are not being utilized now to make Medicare more solvent.

I wonder what my friends on the other side of the aisle would argue in favor of the largest expansion of Medicaid. I think that would be a pretty hollow argument. I think everyone knows that it was all about money, that this was the cheapest way to try to meet some goals—by passing it off to States. I would love to hear somebody on the other side argue how health care reform, where 50 percent of the people being added are being thrown into the worst program that exists in America—I would love to hear somebody over there argue how that is good for our country.

I know Senator GREGG, myself, and others have signed on to legislation that would give low-income citizens choices among private companies and, with that, vouchers, nonrefundable tax credits, and then to be able to pay for that. That is health care reform. That is something that creates robust competition, and certainly we would not have these low-income individuals locked into the dungeon of the worst health care program that exists simply because it is cheap, making, in essence, the value of their health care less than the value of ours here in the Senate.

I would love to hear anybody on the other side of the aisle argue for expanding Medicaid—how that is a good thing for the citizens it covers.

I see we have someone from the other side of the aisle here. Mr. President, I don't know if we still have time to talk. I know Senator JOHANNIS has comments to make.

The ACTING PRESIDENT pro tempore. The time for the minority has expired.

The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I rise to speak about the ways in which small businesses will be helped in this bill.

Before my colleagues leave the floor, had some of them stayed at the negotiating table, perhaps some of the provisions they talked about could have been considered. Since they pretty much packed up their bags months ago and left the debate and they just come to the floor to talk, it is very difficult

to put any of their provisions in the legislation. There were some amendments that were accepted in the Finance Committee and in the HELP Committee.

The fact is, there is a lot of choice in this bill. There are a lot of choices for individuals and for small businesses. There is help for Americans and for businesses not only in the State of Louisiana, which I represent, but all the States in the Union.

As you can see on this chart, without reform, the cost for small businesses will rise from—or the jobs lost because of the lack of reform will rise from 39,000, to 70,000, to 103,000, to 137,000, and then to 178,000. These are jobs lost because small businesses are having a very difficult time affording premiums and because of a lack of reform in the private insurance market, which this bill also provides. This trendline will continue unless we do something. That is why many of us are here working early in the morning, through the middle of the day, and until late at night trying to figure out the way to reform this system.

I respect my colleagues. I know them all very well. They made their statements for the record this morning. But the fact is, we have been at this since Harry Truman was the President. We can't throw this bill away and start over again. There is choice and there is expansion of Medicaid and reform in the Medicaid system. There will be strengthening and reform of the Medicare system. In the middle, there is great strength and reform of the private insurance market.

I am a very strong supporter of choice and competition. I came to the floor to speak about a segment of our population—27 million, to be exact. That is the number of small businesses that are depending on us to do our very best work on the Patient Protection and Affordable Care Act pending before the Senate as we speak.

Our economic prosperity as a nation, as you know, Mr. President, as a former Governor of Virginia who helped bring millions of jobs to your State and now as a leader on small business yourself, the economic prosperity of our Nation relies, in large measure, on how we can help our small businesses become the economic engines we know they can be to help lift us out of this recession.

Entrepreneurs roll up their sleeves and go to work each and every day. They go early to work; they stay late. They create jobs. They push the envelope on technical advances, and they assume the risk necessary to succeed in the private marketplace. Small businesses created 64 percent of American jobs in the last 15 years, according to the Small Business Administration and others.

Yet as chair of the Senate Committee on Small Business and Entrepreneur-

ship, I have heard time and time again from these same business owners that they cannot afford to operate in the current broken health care system, and they desperately need us to fix it. That is what this effort underway is.

Small businesses have been hard hit by premiums that are regularly increasing at 15 percent, 25 percent and, in many cases, 45 percent. This is the cumulative cost of health benefits: You will see, in 2009, \$156 billion. Without reform, it is going to go to \$717 billion. Then, in 2015, it will exceed the \$1 trillion mark. This is what happens if we do what my colleagues are urging us to do and do nothing or to start again.

We have been, as I said, since Harry Truman was President, trying to figure out a way to provide each and every American with affordable health insurance, either through the public or the private sector or some combination of the above. That is why this bill is so important because, without reform, this is the price our small businesses will have to pay, and it is too steep, it is too high of a mountain for them to climb.

Without these reforms, as I said, costs are expected to more than double over the next 10 years. But this debate is not about numbers, it is about people—people such as Mike Brey, who owns Hobby Works in Laurel, MD, and who was here just last week in the Capitol to speak at a press conference. I have had hundreds of business owners from all over the country to come. Mike was one of the last ones to come and speak at a press conference last week. He said to us that his plan not too long ago cost only \$100 a person, most of which he was happy to cover as a company. Over the years, however, his premiums have tripled and his employees have seen their costs go five times higher as they pay more of their premiums, up to almost a \$1,200 deductible.

Mike said—and his words are echoed by business owners in my State and business owners around the country:

Those of us who do provide coverage are slowly being dragged down by these costs. Something that we once considered a benefit, a benefit I was proud to provide, has now come to be seen as a burden—a burden to be feared because you don't know what is coming next.

He went on to say:

After years of astonishing rate hikes and declining competition among providers, many small businesses, like mine, may be only one or two years away from having to cut their health care programs entirely. I'm not going to let [these premiums] put me out of business. I'm just going to say we can't do it anymore.

This is what is happening all across America. Only 15 years ago, 65 percent of small businesses in our country offered affordable health insurance, something they were proud to provide—full and comprehensive coverage, many of them picking up a majority of

the costs. Today that has dropped to 39 percent and dropping every week that we fail to act.

Small business owners, such as Mike from Maryland, hundreds in my State, need meaningful health care reform. The Senate health care bill contains measures that responsibly put in place both intermediate and long-term insurance reforms that are very important.

Let me start with the immediate benefits. I understand there are some, including myself, who would like to see more immediate benefits, but these are some that are important, substantial, and real.

Temporary reinsurance for early retirees will be available under this bill. This will help many in a very tough stage in their life.

States may establish exchanges to get a jump on, of course, the mandatory date that is in the bill.

No annual limits and restricted lifetime limits. This will be a very important benefit to small business.

Reporting medical loss ratios. For the first time, insurance companies will have to report information that will help keep the costs lower over time and bring more transparency and accountability to the system.

The bridge credit for small businesses will go into effect almost immediately. It will help businesses that have 10 employees or 25 employees provide health coverage for their workers.

Then, in the intermediate timeframe, there are some additional ones. The exchanges will be set up by 2014. When people on the other side talk about choice, there is going to be plenty of choice in this bill for uninsured individuals, for those who are in small businesses up to 100 employees. They will be able to access these exchanges and look for affordable options. That is going to be a major improvement over the current system.

There is a bridge credit—a credit I call a bridge credit—a bridge to the exchanges for small businesses. Once the exchanges are up and running, businesses with 10 and 25 employees or less will be able to get almost 35 percent credit for the insurance they provide. That is in addition to the deductibility they have in current law.

I ask unanimous consent to speak for another 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, one of the major criticisms of this bill has been the costs. The bill does show fiscal responsibility, cutting budget deficits by \$127 billion in the first decade and \$650 billion in the second decade. Anything we do is going to cost money upfront to fix the system, but the way this bill is being designed is that for every dollar that is spent, there is a dollar raised to pay for that change. That is a refreshing change of method,

considering the last 8 years, where bill after bill was put on this floor, whether for domestic or international priorities, and not paid for at all.

We can be criticized for trying to push major reform forward, but at least we are finding ways within the system to pay for these important changes that will hopefully drive down costs for everyone.

As Mike reminded me, the gentleman who spoke at our press conference:

It is even more important not to let one problem prevent you from solving another problem.

While we do have budget deficit problems and we are very sensitive to it, we cannot allow that to stop us from doing anything else. What we can do, as we work on the other problems, is to do it in the most fiscally responsible way possible. That is why I and many Members of the Senate have said we are not prepared to vote on anything until we get a final CBO score, to make sure not only can we afford it and not only have we paid for it but that, over time, premium costs will go down, costs to the government will go down, both at the Federal and State level, as well as to small businesses.

The Business Roundtable reports that these exchanges, both in the near term and the intermediate term, could reduce administrative costs for business owners by as much as 22 percent. If business owners are making shoes, they can get back to making shoes, not running around looking for insurance they cannot find and, if they can, it is too expensive for them anyway. If they are building high-tech equipment or electronic equipment, they can get back to the business of doing that, instead of being in the business of figuring out insurance actuarial tables.

Reducing administrative costs for small businesses is important. Twenty-two million self-employed Americans have even more unpredictable costs. Their premiums have risen 74 percent since 2001. These exchanges will help them also reduce administrative costs.

I am proud that one of the amendments I have pending on the Senate floor would give the self-employed a 50-percent tax deduction so they can be on a similar playing field, if you will, for the small businesses and large businesses that enjoy favorable tax treatment under the current Tax Code.

It has been mentioned before, but insurance companies will no longer be allowed to arbitrarily raise rates or drop coverage. Instead, companies will be forced to compete on the price and quality of their plans, not by underwriting the least risk.

The bill also has no employer mandate. Instead, we have a shared responsibility for businesses with more than 50 employees. Ninety-six percent of small businesses in America are exempt from the provision of required coverage, but we have come to terms

with a system that requires individuals to purchase insurance, as well as small businesses to provide insurance with proper tax credits and subsidies that help them make it possible.

To help small businesses more immediately bridge the affordability gap, these exchanges will not be up and running until 2014. Again, there is an amendment to push that up. I hope we will be able to do that.

In the bill, tax credits will help about 51,000 businesses in my State of Louisiana alone. There are hundreds of thousands of businesses that will benefit—51,000 in my home State of Louisiana alone—because of the credits that are in the bill, and through the amendment process, we are hoping to enrich and expand them.

While these provisions in the underlying bill are strong for small business, there is always room for improvement. That is why I, along with many of my colleagues, have submitted a series of amendments. Some have costs to them, such as the 50-percent deduction. It is a \$12 billion cost. But if we can find it in the bill, if the mark allows us to find \$12 billion, that would be a good place to spend it because these individuals, whether they are realtors, attorneys, accountants, sole contractors, or carpenters who are working out there creating a job for themselves and creating economic opportunity in their communities, could use a tax cut and a tax credit to help them.

There are a series of amendments that I have submitted that do not have any costs associated. They are just common sense and create more efficiency in the system. I trust the leadership will consider including those amendments.

In addition, Senator LINCOLN has an amendment to expand both the bridge credit and the tax credit. It is a \$9 billion provision. We are hoping the mark will allow for that addition as well.

I wish to mention a few other points in my closing. I thank the small business owners, organizations, and advocates who remained at the negotiating table. They did not pack up their bags and run away. They stayed here in Washington, in State capitals, on telephones, on conference calls, in public meetings, in the debates taking place in the many committee rooms to argue for this kind of reform—for choice, for transparency, for insurance market reform, the tax credits, more favorable tax treatment to help them afford the insurance they know is the right thing for them to do and it is the smart thing for them to do. Most small business owners want to provide good health insurance for their employees so they can compete for the best employees out there, which helps them keep their businesses strong.

I thank the small business owners, particularly the small business majority, many of the women business own-

ers, organizations that have stayed at the table to help negotiate this important bill.

In conclusion, as we move forward, I am prepared to work with my colleagues in the Senate to pass meaningful and responsible health care reform for small businesses. We have a historic opportunity in Washington to fix a system that is broken, that is in desperate need of repair. Let us not let this chance slip away.

In these final days of negotiation, let us come together to find a way forward, again, one that reforms the private insurance market, strengthens Medicare, and sustains its viability over a longer period of time, helps to improve the system of Medicaid, by hopefully providing poor, middle-class, and wealthy people with more choices of health care and by coming to terms that we are not going to have an all-public system and we are not going to have an all-private system. We are going to have to find a middle ground, where we take the best of both sides of the public and private system and put them together so every American can have insurance they can count on and, most important, that our small businesses can have insurance that help them create the jobs necessary to lead us out of this recession to start turning this deficit situation around and creating wealth and prosperity for all Americans.

Mr. President, I see my colleague here, the Senator from Vermont, and so I thank the Chair and I yield my time.

The ACTING PRESIDENT pro tempore, The Senator from Vermont.

Mr. SANDERS. Mr. President, as an Independent, let me try to give an independent assessment of where we are—which ain't easy, because this is a 2,000-page bill and different people have expressed different thoughts about it. I know my Republican friends are down here on the floor every day telling us that the world as we know it will rapidly come to an end if this legislation is passed, and yet I want to say to them: Where were they for 8 years? Where were they during the 10 years of President Bush? Some 7 million Americans lost their health insurance, health premiums soared, and tens of thousands of people died every single year because they couldn't get to a doctor. Where were they? It is very easy to be critical, but it might have been a good idea if 5 or 6 or 8 years ago they were down here before the crisis erupted to the level it is right now.

This bill, in my view, is far from perfect, and I am going to talk about some of the problems I have with it, but I also want to very briefly outline some of the real assets, positive provisions that are in this legislation. It is not insignificant that this bill provides insurance for 31 million Americans who have no insurance. That is a huge step

forward for our country. It is not insignificant that this legislation provides for major health insurance reform, finally outlawing some of the most outrageous behavior patterns of the private insurance companies—practices such as denying people coverage for preexisting conditions, behaviors such as not renewing health insurance because somebody committed the crime the preceding year of getting sick and running up a huge bill. It eliminates caps on the amount of money that people need. Well, you know what, if people need cancer surgery, it is expensive, and you can't tell them there is going to be a cap on what they receive. This bill, importantly, says to families with young people that young people will get coverage until they are 26 years of age. That is a very important provision. All of those are very important steps forward.

Having said that, let me also mention that this bill is strong on disease prevention. The Senator from Iowa, TOM HARKIN, has talked for years about the need to understand why we are seeing more and more people coming down with cancer or heart disease or diabetes or other chronic illnesses, which not only cause death and pain and suffering but huge expenditures for our health care system. It seems to me to make a lot more sense to get to the root of the causation of those problems, try to prevent them, and in the process keep people healthy, and save our system substantial sums of money. We have a lot of resources in there for disease prevention.

Those are a few of the positive elements that are in this bill, and I congratulate the people who have fought to make those provisions possible. But let me talk about some of the weaknesses in this bill and some of the areas where I have real concern.

Right now, today, we are spending almost twice as much per person on health care as any other major country on Earth, despite the fact our health care outcomes in many cases are not as good. Can I stand here with a straight face and say we have got strong cost-containment provisions in this legislation; that if you are an ordinary person who has employer-based health care your premiums are not going to go up in the next 8 years based on what is in this bill? I can't say that. It is not accurate. So we need to have in this bill, as we proceed on it, to make sure there are far stronger cost-containment provisions than currently exist.

To my mind, at the very least, we must have a strong public option to provide competition to the private insurance companies that are raising their rates outrageously every single year. What is to prevent them from continuing to do that under this legislation? Not a whole lot, frankly. So the fight must continue for strong public options, not just to give individuals a

choice about whether they have a public plan or a private plan but to also provide competition to the private insurance companies.

Second, let me tell you another concern I have. Right now, our primary health care system in this country is on the verge of collapse. There are people all over this country who cannot get in to see a doctor. In fact, we have some 60 million people in medically underserved areas. Most of them can't get to a doctor. What they end up doing is going to an emergency room. They get sicker than they should be and end up going to a hospital, at great expense to our system, and adding a lot of human suffering. What I worry about, if we add 15 more million into Medicaid, if we add another 16 million people into private health insurance, where are those people going to get the primary health care they desperately need? The system is inadequate now. It certainly does not have the infrastructure to address 31 million more people who are getting health insurance.

The good news is that in the House there is language put in there—and fought for by Congressman JIM CLYBURN—that would add \$14 billion over a 5-year period in order to see a significant expansion of community health centers and the National Health Service Corps. Community health centers today are providing primary health care, dental care, low-cost prescription drugs, mental health counseling to some 20 million people. What is in the House bill is language that greatly expands that program and also expands the National Health Service Corps, which provides debt forgiveness for medical students who are going to practice primary health care, dental care, or nursing in underserved areas.

We desperately need more primary health care physicians. Certainly we have to change reimbursement rates, but one way we can help is that when medical school students are graduating with \$150,000 in debt, debt forgiveness will help them be involved in primary health care. So this is an absolutely essential provision we have got to adopt. We have to do what the House did and provide at least \$14 billion more for primary health care, an expansion of community health centers and the National Health Service Corps.

There is another issue. I know there are not many people in this institution who agree with me—although there are millions of Americans who do—that at the end of the day we have to understand that one of the reasons our current health care system is so expensive, so wasteful, so bureaucratic, so inefficient is that it is heavily dominated by private health insurance companies whose only goal in life is to make as much money as they can. We have 1,300 private insurance companies administering thousands and thousands and thousands of separate plans,

each one designed to make a profit. The result is we are wasting about \$400 billion a year on administrative costs, profiteering, high CEO compensation packages, advertising, and all the other stuff that goes with the goal of private insurance companies to make as much money as they can. So I will be offering on the floor of the Senate, I believe for the first time in history, a national single-payer program, and I look forward to getting a vote on that.

I am not naive; I know we will lose that vote. But I will tell you, at the end of the day—not this year, not next year, but sometime in the future—this country will come to understand that if we are going to provide comprehensive quality care to all of our people, the only way we will do that is through a Medicare-for-all, single-payer system, and I am glad to be able to start that debate by offering that amendment.

But more importantly for the immediate moment, we have language in this legislation which must be improved which gives States—individual States—the right, if they so choose, to go forward with a great deal of flexibility in order to provide quality care to all of their people. Many States may look at a single payer, other States may look at other approaches. But I believe it is absolutely imperative—and I am working with Senator RON WYDEN on this issue—to give maximum flexibility to States to be able to take the money that otherwise would be coming in to their State to use for their own innovative health care programs designed to provide quality, universal, comprehensive health care in a cost-effective way. Some may choose to go single payer, some may choose to go in another direction. We have language in there which must be improved so that States can begin that process when the exchange comes into effect in 2014.

I want to touch on two other issues briefly. The House has very good language in determining how we are going to pay the \$800 billion to \$900 billion we are spending. What the House says is there should be a 5.4 percent surtax on adjusted gross income above \$2.4 million for individuals and \$4.8 million for couples. That means nobody in this country who is making less than \$2.4 million or less than \$4.8 million as a couple will pay one nickel.

What we have here in the Senate, unfortunately, is a tax on health insurance programs which, in fact, will result in the middle class paying, over a period of time, a not so insignificant amount of money as part of this process.

The ACTING PRESIDENT pro tempore. The Senator has used his time.

Mr. SANDERS. I ask unanimous consent for 5 more minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SANDERS. Mr. President, in joining me, Senators BROWN and FRANKEN are supporting this amendment, as well as the AFL-CIO, the National Education Association, the International Brotherhood of Teamsters, the Communication Workers of America, the United Steelworkers of America, the American Postal Workers Union, and many other organizations representing millions of Americans.

The bottom line here is that at a time when we are in the worst economic crisis since the Great Depression, do we want to ask the middle class to pay more in taxes as part of health care reform or should we ask the wealthiest people in this country to start paying their fair share of taxes? I think the evidence is overwhelming that we should do that.

I would point out that, according to the consultant group Mercer, the Senate tax on health insurance plans—despite what we are hearing about a so-called Cadillac plan—would hit one in five health insurance plans in 2013. The CBO has estimated that this tax would affect 19 percent of workers with employer-provided health coverage in 2016. So what we have got to do is junk the tax on health insurance plans, move to the House provision, which says let us ask the wealthiest people in this country to pay a modest amount in order to make sure many more Americans have health insurance.

The last point I want to make is that in the current bill being debated now there is a provision which deals with the reimportation of prescription drugs. This is an issue I have been involved in almost since I have been in the Congress. I was the first Member of the Congress to take Americans into Canada, across the dividing line, in order to purchase low-cost prescription drugs. I will never forget the reality that women who were with me from Franklin County, VT, ended up paying one-tenth the price for Tamoxifen—a widely used breast cancer drug—than they had been paying in the United States. They pay one-tenth the price in Montreal, Canada, for the same exact medicine.

We have to be bold. I know and you know that the drug companies are very powerful. They are delighted that the American people are paying by far the highest prices in the world for prescription drugs. That is good for them. They are making a lot of money. But it is not good for the average American who cannot afford to buy the prescription that his or her doctor is writing. So we have to pass prescription drug reimportation. We have to lower the cost of prescription drugs in this country significantly.

The bottom line here is that this bill has a number of very important features which I think will make life easier for a lot of our fellow Americans. There are problems remaining, and I

hope that in the coming weeks we will successfully address those problems.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that Senator NELSON from Florida be allowed to speak for 10 minutes; after that, that I be allowed to speak for 10 minutes; after that, that Senator MURKOWSKI speak for 10 minutes; and after that, Senator DODD. Following that—Senator MURKOWSKI for 20 minutes, I am sorry; and after that, Senator DODD.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, it is a wonder this health care bill has survived this far with so many people shooting at it. But survive it must and survive it will, because it is the right thing to do. With a country that has 46 million people who do not have health insurance, when they do get health care, it costs the rest of us a lot of money because they get it free in the most expensive place. That is not a system that is operating as it should and that is what this whole effort is about. This whole effort is about trying to help people who cannot get insurance get it—those who desperately want it, who cannot get it, to be able to get it—and those who have it to not have it canceled on them in the middle of their treatments.

It is all about people who desperately want insurance suddenly having an excuse from an insurance company: No, you can't get insurance because you have a preexisting condition. Some of those preexisting conditions are the flimsiest excuses. But what about those who have had a heart attack who definitely desperately need health insurance after that? This legislation is all about folks who desperately want insurance and they finally find an insurance company that will insure them and then they cannot afford it.

Why, in America, in the year 2009 and almost 2010, aren't we at the point of being able to give our people the confidence, the satisfaction, the loss of fright that they cannot take care of their families if they get sick? That is what this legislation is all about.

But everybody and his brother and sister are taking these potshots and every special interest that has their finger in the pie wants their share of the pie and to heck with anybody else. This is what we are trying to overcome. We are trying to overcome a system that has built up since World War II, over the last 60 years, that is inefficient and is not giving the health care to the people who desperately need it, unless they can afford it.

So despite all these potshots, survive this bill, it must and survive it will. We are going to pass this bill, and some-

how we are going to get 60 votes cobbled together to break this filibuster so we can get on to the final passage of this legislation.

I wish to give one example. You remember that story, that famous novel, "A Tale of Two Cities," about London and Paris? I am going to give you a story, a tale of two industries and what they are doing in this bill. One industry is the insurance industry, the other industry is the pharmaceutical industry—two industries that have an enormous interest in the outcome and high stakes in how this legislation comes out. On the one hand is the insurance industry. They are running TV ads all over this country, trying to torpedo this. If you watch those 30-second and 60-second ads, you would think this is the worst thing that is going to bankrupt America, and we are not going to have anybody given any insurance. Why are they doing this? Because they know they are going to have to suddenly act responsibly. They are not going to be able to have the excuse of a preexisting condition, they are not going to be able to cancel your policy in the middle of your treatment. You thought they would come to the table, when suddenly we were going to insure an additional 46 million people, that they were going to get all those premiums. But because the subsidies were not enough for the poor people or, if they did not buy that insurance in the health insurance exchange that the penalty wasn't enough, the insurance industry said: Forget it.

Contrast that with the pharmaceutical industry. The pharmaceutical industry, to their credit, is still supporting this bill. That is very good. They are one of the few deep-pocketed industries that can go out and buy TV time and support this bill. But remember when I said everybody has their finger in the pie? The pharmaceutical industry—I want them to know how much I appreciate what they have done, but they can do more. Let me give a case in point. They say in their so-called \$80 billion contribution that \$20 billion of that is to have a 50-percent discount on their brand-named drugs in the doughnut hole. The doughnut hole is that vast amount—of about \$3,000 that senior citizens, once Medicare helps them get up to it—it is about \$2,300—above that all the way up to about \$5,300 the Medicare recipient doesn't get any reimbursement. It is not until that higher level that catastrophic Medicare coverage kicks in.

What the pharmaceutical industry has said is they will come in and give a 50-percent discount. Of their \$80 billion contribution, that is worth \$20 billion. But here is what they didn't tell you. Again, I am speaking very favorably for them because they are supporting the legislation. But this is what they did not tell you. They did not tell you, with that 50-percent discount, that, No. 1, they are going to

have increased sales of their brand-name drugs to the tune of \$5 billion over this 10-year period in the doughnut hole because they are selling more drugs in the doughnut hole; and because that means more people get above that \$5,300 level and get it into catastrophic coverage, that they are going to be able to sell, incremental sales, another \$25 billion or a total of increased sales of \$30 billion.

They are going to contribute \$20 billion, but they are going to get \$30 billion additional. So they come out a net \$10 billion over 10 years to the good.

What I would ask the pharmaceutical industry—that we appreciate—to do is come in and give a 100-percent discount and, by their open numbers, they have come up with, in a study by Morgan Stanley—by their own numbers, a 100-percent discount would cost them \$40 billion over 10 years, but they would reap back, by Morgan Stanley's numbers, \$60 billion. They would be, the pharmaceutical industry would be \$20 billion to the good.

It is a tale of two industries. One is the insurance industry, which grabbed its bag of marbles and said you are not making the penalties severe enough, we are taking our bag of marbles and we are going home and we are going to try to defeat your bill.

No. 2, the pharmaceutical industry, which has still hung in there but which can do a lot more. I hope, as we get into these negotiations, they will be willing to step up and set the example of health care reform in America.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, let me talk for a moment about one aspect of the health care legislation that has been of great concern to our Nation's Governors. The Presiding Officer can certainly appreciate the problem since, among other Governors and former Governors, the Presiding Officer had the responsibility of balancing a State budget with one of the largest obligations, being the payment for the Medicaid patients.

My Governor, Jan Brewer, of Arizona, was in town last week. She talked to me about the problem. She sent me a letter which, in a moment, I will ask to be printed in the RECORD. But as a result of that conversation, I wish to point out some things to my colleagues and hope we can revisit the legislation that is on the floor.

Incidentally, before we do that, let me note the fact that my colleague from Florida referred a moment ago to a filibuster. I wish to be clear. I presume he was not referring to Republicans filibustering the bill, since we have been asking to have votes on the pending amendment, which is the Crapo amendment, since 6 days ago when that amendment was posited. As

a matter of fact, the Republican leader on Sunday finally had to file cloture on the Crapo amendment, which will ripen tomorrow morning, to end the filibuster the majority has been conducting.

I understand members of the majority have not been able to decide how to proceed. But in the meantime, we have not been able to vote on any pending amendments. Republicans would like to do that, would like to get some more amendments up and continue on with our debate on the bill. For a bill this important, we should have been able to dispose of a lot more amendments than we have. So lest anybody believe there is a Republican filibuster going on, I hasten to add that, of course, is not true.

Let me talk about the Medicaid features of this bill. It is against the backdrop of unemployment because, as you get more people on unemployment, you are going to have more people on the Medicaid rolls. Arizona's unemployment rate has risen 6 points just since June of 2007 and more and more of our people are, therefore, eligible for our Medicaid Program, which is known in Arizona as the AHCCCS Program.

Currently, one in five Arizonans is covered through AHCCCS; over 200,000 Arizonans have enrolled in AHCCCS since December 31. That is nearly 20,000 new enrollees every month. So we are talking about a substantial burden as a result of the recession we are in on our State government.

As my State and many others have had to deal with the challenges of the recession, declining State revenues, increasing need for certain State services, the last thing Washington should do is make things even harder for the States. Yet that is exactly what the Reid bill would do. The Reid bill would require States to expand Medicaid eligibility to all children, parents, and childless adults up to 133 percent of Federal poverty, beginning January 1, 2014, and there is even talk now of raising that to 150 percent of poverty. Moreover, the Federal government would only foot the bill for 3 years. In 2017, and in subsequent years, the States would have to help finance this expansion. The Congressional Budget Office estimates that \$25 billion in new State spending would result in the Reid bill.

The Arizona Governor's office estimates this bill would require the State of Arizona to increase its costs by almost \$4 billion, between now and 2020. The State of Arizona does not have that kind of money.

Just the so-called woodwork effect alone, meaning the number of currently eligible individuals who might enroll, would itself entail significant costs. There are about 200,000 Arizonans currently eligible but not all are enrolled in Medicaid. If only half those individuals would enroll, it would cost the State \$2 billion, from 2014 to 2019.

As I said, our State simply doesn't have the money to do that. Our Arizona Governor wrote to Chairman BAUCUS stating her strong opposition to the Medicaid expansion. I ask unanimous consent that her letter, dated October 6, to Chairman BAUCUS be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KYL. Let me read a few key excerpts.

First:

Arizona cannot afford our current Medicaid program, despite the fact that we have one of the lowest per member per year costs in the country. Arizona's General Fund spending on our Medicaid agency has increased by 230 percent over the past ten years, rising from 8 percent of total General Fund spending in fiscal year 1998-1999 to 16 percent ten years later. As part of the solutions for our current year's budget shortfall, we have had to reduce Medicaid provider reimbursement by over \$300 million and freeze institutional reimbursement rates, resulting in an additional loss of more than \$60 million.

Despite these reductions, we are sacrificing other state programs that impact the education, health and safety of our children and our seniors in order to cover the growing costs of Medicaid. Considering this, it is incomprehensible that Congress is contemplating an enormous unfunded entitlement mandate on the states. The disconnect between policymakers in Washington and the reality of State and local governments is disheartening.

Let me quote from some other colleagues of Governor Brewer's, Democratic and Republican Governors around the country who have made exactly the same point.

The newly elected chairman of the Democratic Governors Association chairman is Jack Markell of Delaware. He said:

We've got concerns . . . And we're doing our best to communicate them. We understand the need to get something done, and we're supportive of getting something done. But we want to make sure it is done in a way that state budgets are not negatively impacted. . . . But I believe all governors are certainly concerned about what the potential impact is of some of these bills.

Governor Rendell of Pennsylvania, who has been on television a lot and makes a lot of sense when he talks about this:

I don't think it's an accounting trick. I think it's an unfunded mandate. We just don't have the wherewithal to absorb that without some new revenue source.

Bill Richardson of New Mexico:

We can't afford that, and that's not acceptable.

Gov. Phil Bredesen of Tennessee said he feared Congress was about to bestow "the mother of all underfunded mandates."

He was referring to this Medicaid mandate.

Gov. Christine Gregoire of Washington State:



As a governor, my concern is that if we try to cost-shift to the states, we're not going to be in a position to pick up the tab.

Bill Ritter, Democrat of Colorado:

Our only point was that a significant Medicaid expansion should not operate as an unfunded mandate for the states.

Gov. Brian Schweitzer, Democrat of Montana:

The governors are concerned about unfunded mandates, another situation where the federal government says you must do X and you must pay for it.

Let me quote two more.

Gov. Ted Strickland of Ohio:

The states, with our financial challenges right now, are not in a position to accept additional Medicaid responsibilities.

Governor Perdue of North Carolina:

The absolute deal breaker for me as a governor is a federal plan that shifts costs to the States.

There are more and more I could quote. The point is, virtually all of the Nation's Governors have expressed a concern about this and have alluded in one way or another to the disconnect between Washington and the States. The point is, Washington seems to bark the orders but it is with no regard to the difficult financial challenge many of these States are in.

One final point. These new unfunded mandates generally mean higher taxes and significant payment cuts to safety net providers, just as Governor Brewer said, and ultimately the loss of jobs. This is the example I want to close with. Phoenix Children's Hospital was built to handle 20,000 emergency cases a year. It is a great hospital. It receives about 60,000 per year. Its capacity does not begin to match the need. To meet the demand—and by the way, more than half of these are Medicaid patients—the hospital built a new tower expected to open at the end of next year. Good news, right? Not exactly. The hospital has added up the State budget cuts Governor Brewer referred to, the payment cuts in the Reid bill I have referred to, and additional State cuts that will be needed to finance new Federal mandates, and concluded that the math doesn't add up. As a result, the Phoenix Children's Hospital informs me they will not be able to move into their new building. It would have generated 2,000 new jobs. What we do in Washington has real consequences. I submit the Reid bill spells disaster for States.

As we debate more and more features of this bill, each day we focus on something different in this legislation that creates a huge problem. Today's focus is on the problem that is focused on States because of the visit from our Governor. She is at her wit's end because they don't have the fiscal means of paying for this new unfunded mandate. She doesn't know what they will do if Congress ends up passing this. I urge colleagues, we have to find a way to not expand the Medicaid eligibility

in a way that adds this new mandate on our States. Incidentally, if the Federal Government were to pick it all up, it simply transfers it to the citizens in the form of higher taxes they would have to pay in order to pay for the mandate that is laid off on to the States themselves. One way or another, this element of the bill has to be rethought.

I encourage my colleagues on the other side, figure out what you need to do to reach a vote so that we can actually vote on these amendments. Republicans are ready. We have been ready for a long time now. Whatever it is that is causing a problem within your conference, figure it out so you can reach agreement with the Republican leader and we can begin to take votes starting on the Crapo motion and then move on through other amendments we have, one of which is the amendment by Senators HUTCHISON and THUNE, then an amendment by Senator SNOWE, and then an amendment I hope we will be able to offer at some time to remove this unfunded mandate which the States cannot afford to pay for about which I have been talking.

I yield the floor.

#### EXHIBIT 1

EXECUTIVE OFFICE,

STATE OF ARIZONA,

Phoenix, AZ, Oct. 6, 2009.

Hon. MAX BAUCUS,

U.S. Senate, Chairman, Senate Finance Committee, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN BAUCUS: I have been following the debate on federal healthcare reform with interest, and I have been working closely with members of Arizona's Congressional delegation to make sure they are well informed about the impact of the various proposals on our state. I am concerned that the proposals under consideration thus far do not consider the fiscal difficulties states are facing and are likely to continue to face over the next few years. Like many, I was particularly focused on the proposal that would emerge from the Senate Finance Committee, and I hoped that your plan would appropriately address state concerns. Given the continued lack of attention to state issues in the Chairman's Mark, I believe it is critical to provide you with my perspective on the state of my state, and how your proposal will impact Arizona.

By way of background, Arizona is wrestling with one of the most challenging economic downturns in state history. Arizona's economy is heavily focused on construction, real estate and the service sector, all of which have experienced declines that have combined to create a severe and lasting recession. While experts are expressing reserved optimism that the national economy may be turning the corner, it is likely that states—including Arizona—will not feel that turnaround for some time to come.

For example, the revenue collections during the most recent fiscal year for Arizona declined by 18 percent. Through the first quarter of the latest fiscal period, revenues from our three major tax sources have decreased an additional 10 percent. Our budget declines are contrasted with our rising Medicaid enrollment, which has grown by 18 percent over the past 12 months. At this time,

one in five Arizonans is covered through the Medicaid program and we expect Medicaid enrollment to remain at elevated and unsustainable levels through the near future.

Arizona cannot afford our current Medicaid program, despite the fact that we have one of the lowest per member per year costs in the country. Arizona's General Fund spending on our Medicaid agency has increased by 230 percent over the past ten years, rising from 8 percent of total General Fund spending in fiscal year 1998-1999 to 16 percent ten years later. As part of the solutions for our current year's budget shortfall, we have had to reduce Medicaid provider reimbursement by over \$300 million and freeze institutional reimbursement rates, resulting in an additional loss of more than \$60 million. However, budgetary savings cannot be achieved solely through provider reductions. Arizona also recently made the difficult decision to eliminate coverage for 9,500 parents of children enrolled in our Children's Health Insurance Program. Looking forward to fiscal year 2010-2011, we know that further reductions will be necessary.

Despite these reductions, we are sacrificing other state programs that impact the education, health and safety of our children and our seniors in order to cover the growing costs of Medicaid. Considering this, it is incomprehensible that Congress is contemplating an enormous unfunded entitlement mandate on the states. The disconnect between policymakers in Washington and the reality of state and local governments is disheartening.

These are realities that many states across the country are facing. Arizona's situation, however, is compounded by the fact that we have already expanded our Medicaid program to all residents with incomes under 100 percent of the federal poverty level (FPL). This decision means that, under your proposal, our state will be unable to take advantage of the higher level of federal funding that will be provided to states that have not enacted similar expansions. In essence, the Chairman's Mark penalizes Arizona for its early coverage of non-traditional Medicaid populations, like childless adults.

I must also point out my concern that estimates developed at the federal level do not accurately reflect the costs that states will ultimately bear. While I have great respect for the Congressional Budget Office (CBO), in this instance, its estimates are substantially below Arizona's fiscal estimates and I believe they understate the cost of expansion. For instance, the CBO analysis estimates the State cost of the Medicaid expansion and "woodwork" to be \$454 million. Arizona has an estimated 200,000 citizens below 100 percent of the FPL that are currently eligible for Medicaid, but not enrolled. If only half of those individuals enrolled, the cost of this "woodwork" effect alone would be over \$2.0 billion for FY 2014 through FY 2019, using the traditional Medicaid match. That is a significant difference for just one small state.

I want to reiterate my opposition to these unfunded mandates on states. I implore you to bear in mind the fiscal realities states are facing as we attempt to maintain responsible balanced budgets while preserving services for our most vulnerable residents. I hope you find this information useful as you consider the various proposals before you, and please do not hesitate to contact my office should you require additional information.

Sincerely,

JANICE K. BREWER,  
Governor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.



## CLIMATE CHANGE

Ms. MURKOWSKI. Mr. President, I know the Senate is focused on health care, but I have come to the floor to speak on another very important topic and that is climate change. I wish to discuss a recent action by the Environmental Protection Agency and the consequences that could entail for our economy and why Congress must prevent it from taking effect. I remind my colleagues that I have committed to a careful evaluation of all the options to address climate change in order to develop an approach that will benefit both our environment and our economy. Over time it has become increasingly apparent that some approaches are better than others. While we have not yet found that right approach, we have certainly identified the wrong approach: EPA regulation of greenhouse gases under the Clean Air Act. I believe this option should be taken off the table so we can focus our attention on more viable policies.

My concerns about this led me to file an amendment in September that would have limited EPA's ability to regulate certain greenhouse gas emissions for a period of 1 fiscal year. I offered my amendment for two reasons: first, to ensure that Congress had sufficient time to work on climate legislation and to ensure that the worst of our options, EPA regulation, did not take effect before that point. Even though Congress was and today remains nowhere close to completing legislation, the majority chose to block debate on my amendment. Since then the EPA has continued its steady march toward regulation. Last week the Administrator signed an endangerment finding for carbon dioxide and five other greenhouse gases. This finding is supposedly rooted in concerns about the public health and the public welfare. What it really endangers is jobs, economic recovery, and American competitiveness. Some have praised the endangerment finding as a step forward in our Nation's efforts to reduce emissions. They view it merely as an affirmation of the scientific assertion that human activities contribute to global climate change. Such a conclusion is within EPA's authority and appears to be appropriate given the years of research indicating that this is the case. Those same scientific findings underscore my desire to address this challenge in a proactive way.

Unfortunately, the endangerment finding is not just a finding. Despite what some in the administration have claimed, its effect is not limited to the science of global climate change. In reality, the finding opens the doors to a sweeping and convoluted process that will require the EPA to issue economywide command and control regulations. Once that finding is finalized, the EPA no longer has discretion over whether they can impose regula-

As the Administrator noted last week, the agency is now obligated and compelled to take action. This is where it becomes evident that EPA regulation is an awful choice for climate policy. If a pollutant is regulated under one section of the Clean Air Act, it triggers identical treatment in other sections of that statute. So while the EPA initially intends to address only mobile source emissions, meaning vehicles, the agency will also be required to regulate stationary source emissions as well.

Think of it this way: If the EPA attempts to control any greenhouse gas emissions, the agency will be required to control all greenhouse gas emissions. Because EPA regulations will consist of command and control directives rather than market-based decisions, this approach will increase the price of energy, add greatly to administrative costs, and create many new layers of bureaucracy that must be cut through.

This is why you often see EPA regulations described as intrusive or Byzantine or maze like. They are all of the above. While the permitting process that will be created is unclear, the consequences of imposing these regulations are not. The bottom line is, our economy will suffer. Businesses will be forced to cut jobs, if not close their doors for good. Domestic energy production will be severely restricted, increasing our dependence on foreign suppliers as well as threatening our national security. Housing will become less affordable and consumer goods more expensive, as we see the impacts of the EPA's regulations ripple and break their way across our economy.

In the wake of the majority's decision to block my effort to establish a 1-year timeout for this process, we now find ourselves in a bit of a bind. Even though Congress is working on climate legislation, the EPA is proceeding with a tremendously expensive regulatory scheme. It appears increasingly likely that the EPA will finalize its regulations before Congress has an opportunity to complete debate on climate legislation. That outcome is simply unacceptable as our Nation struggles to regain its economic footing.

Today I have come to announce that I intend to file a disapproval resolution under the provisions of the Congressional Review Act related to the EPA's endangerment finding. I have this resolution drafted. I will introduce it as soon as the EPA formally submits its rule to Congress or publishes it in the Federal Register, as is required by law. My resolution would stop the endangerment finding. In general terms, I am proposing that Congress veto it. Like my previous amendment, this one is also rooted in a desire to see Congress pass climate legislation because the policy is sound on its own merits and not merely as a defense

against the threat of harmful regulations.

While I know that passage of this resolution will be an uphill battle, I believe it is in our best interest. It is the best course of action available to us. This is a chance to ensure that Congress, not unelected bureaucrats, decides how our Nation will reduce its emissions.

To understand why my resolution is so critically important, we have to dig deeper into the economic consequences that will result from regulations based upon the endangerment finding. Because there are no regulations within the finding itself, the agency has omitted any projection of what they might cost our Nation.

Even though the EPA has not prepared projections of what these regulations will cost, I expect the totals would be staggering. The price tags attached to the climate bills pending in the Senate, which a majority of Members have concluded are too high, would almost certainly pale in comparison.

There are a few figures that can help us put the potential costs in perspective. In one of its recent proposals, the EPA noted that some 6 million "sources" could be required to obtain new operating permits if greenhouse gases are regulated. The word "sources" refers to the businesses, schools, hospitals, and other fixtures found in every town in America that would suddenly face scrutiny due to their carbon footprints. Farms, landfills, and any other "source" that emits more than 250 tons of greenhouse gases per year would be caught in the same net.

Facing the heaviest regulation will be the facilities that are subject to the Clean Air Act's "Prevention of Significant Deterioration" permitting process. This is referred to as "PSD." Today, 300 facilities are covered by that requirement. Under EPA regulation, that number would soar to 40,000. The PSD process prevents existing facilities from making certain modifications until the EPA has granted its approval. The same holds true for new construction as well. Any facility expected to emit more than 250 tons per year would not be allowed to break ground until their owners have secured the EPA's permission to proceed.

The PSD process is already hugely expensive and time-consuming for affected facilities. It can take years, and cost tens if not hundreds of thousands of dollars, to navigate the PSD process. And that is true today, well before the number of facilities it covers is increased by an order of magnitude.

Earlier this year, in sharing their reference for congressional action, the editors of the Washington Post provided a pretty good description of what EPA regulation would be like on a daily basis. They stated in their editorial:

The EPA in theory . . . could go shopping mall by shopping mall, apartment building by apartment building . . . But even plant by plant, how can you "limit" greenhouse gas? The short answer is, you can't. Or, no one knows. Or, you can't, yet. Take, for example, a coal-fired power plant. EPA regulation would be triggered only when someone wanted to build one or update an old one. At that point, the agency could demand that the plant use the "best available control technology" (BACT) to limit emissions.

The editorial goes on to state:

Right now, no such BACT exists for coal-fired plants beyond better efficiency measures. A lot of attention has been focused on carbon capture and sequestration, but it wouldn't be considered BACT until it was up and running successfully in a coal-fired power plant somewhere in the United States. Even then, its use would have to be weighed against a number of other factors, such as the amount of energy used, the environmental impact and the effect on the output of other regulated pollutants. If past practice applies, the issuance of the final permit would be followed by a series of lawsuits. The whole process could take a decade or more—and that would be multiplied hundreds or thousands of times across the country.

No one is more aware of how damaging these regulations could be than the EPA itself, so it is no surprise the agency has sought to dramatically increase the Clean Air Act's regulatory threshold—from 250 tons per year right now, to 25,000 tons per year for greenhouse gases. As the EPA admitted earlier this year, if the Clean Air Act's current threshold is not lifted, "the administrative burdens would be immense, and they would immediately and completely overwhelm the permitting authorities"—meaning, of course, the EPA and its State and local counterparts.

Now, I do give some credit to the EPA for recognizing that the 250-ton per year threshold is "not feasible" for greenhouse gases. While most pollutants are measured in much smaller amounts, greenhouse gases are far more abundant.

After all, nearly every form of economic activity results in at least some level of emissions. But I am also deeply disturbed that instead of recognizing and accepting that the Clean Air Act is simply not suited for this task, the agency attempted to make it so by ignoring its explicit, statutory requirements.

As we all know, whenever an executive agency fails to adhere to the laws passed by Congress, it opens itself up to litigation. The EPA's so-called tailoring rule is no exception, and I fully expect that lawsuits will be filed if the agency issues it. Once the rule is challenged, I expect the courts will reject it, as it has no legal basis, and restore the regulatory threshold to 250 tons per year. At that point, the agency will be mired in the regulatory nightmare it hopes to avoid.

In the meantime, it is also worth noting that the EPA is proceeding with

the regulation of greenhouse gases even though the tailoring proposal is not part of the existing statute. So for all of the agency's promises of regulatory relief, and a safety net to help minimize the pain associated with these regulations, there is nothing behind that yet. And given the larger conversation that needs to take place about amending the Clean Air Act, that relief may never materialize.

Given the tremendous economic, administrative, and bureaucratic drawbacks associated with EPA regulation, it should come as no surprise that Members of the majority, the administration, and environmental groups have expressed their preference for congressional legislation.

The Democratic chairman of the House Agriculture Committee declared that EPA regulation would result "in one of the largest and most bureaucratic nightmares that the U.S. economy and Americans have ever seen." He went on to add, "Let me be clear, this is not a responsibility we want to leave in the hands of EPA."

The most senior Member of the House of Representatives, a Democrat, who has served our country for more than half a century, has concluded that EPA regulation would create a "glorious mess." He has also said that, "As a matter of national policy, it seems to me to be insane that we would be talking about leaving this kind of judgment, which everybody tells us has to be addressed with great immediacy, to a long and complex process of regulatory action."

Shortly before I filed my amendment in September, the EPA Administrator herself insisted that "new legislation is the best way to deal with climate change pollution." You wouldn't guess that by looking at the efforts of some in her agency as they helped to defeat my amendment, but just last week, she reiterated the claim by stating, "I firmly believe . . . and the president has said all along that new legislation is the best way to deal with climate change."

With such widespread, high-level, and bipartisan agreement that EPA regulation is such a bad idea, you would think it would be easy to suspend the EPA's regulatory efforts. Unfortunately, you would be mistaken. Many seem convinced that the threat of EPA regulation will force Congress to work more quickly than it otherwise would.

This is not a conspiracy theory. It is an open and well-established strategy on the part of the administration, confirmed just this week when a senior White House economic official was quoted as saying "If you don't pass this legislation, then . . . the EPA is going to have to regulate in this area . . . And it is not going to be able to regulate on a market-based way, so it is going to have to regulate in a command-and-control way, which will

probably generate even more uncertainty."

An author of the House cap-and-trade bill has posed the question: "Do you want the EPA to make the decision or would you like your Congressman or Senator to be in the room and drafting legislation?" going on to say that, "Industries across the country will just have to gauge for themselves how lucky they feel if regarding EPA regulation." The Wall Street Journal has referred to this as the "'Dirty Harry' theory of governance."

This approach is often likened, rather starkly, to "putting a gun to Congress's head." Personally, I believe that is a terrible way to pursue climate policy, and beyond that, a terrible way to govern this country. It is difficult to grasp how or why Congress would feel compelled to enact economically damaging legislation in order to stave off economically damaging regulations. We are being presented with a false choice that should be rejected outright. The majority and the administration are saying: Don't make us do this. My answer to this is, simply: You don't have to.

Before concluding, I want to spend a few minutes putting to rest some of the criticism that will surely follow my decision to offer a disapproval resolution. During the debate over my last amendment, several baseless arguments were made. So I would like to challenge anyone who finds reason to oppose my resolution to keep their remarks, and thereby this debate, as substantive as possible.

First, I want to reiterate my desire to take meaningful action to reduce our Nation's greenhouse gas emissions. Such a policy can and should be drafted by Congress, and designed to both protect the environment and strengthen our economy. I was a cosponsor of a climate bill last Congress, and I am continuing to work on legislation that will lead to lower emissions. Senator BINGAMAN and I spent more than 6 months developing a comprehensive energy bill in committee, and have now held six hearings on our climate policy options.

Next, my resolution is not meant to run contrary to the Supreme Court's decision in *Massachusetts v. EPA*. Remember, I previously sought a 1-year delay of this process that would have allowed mobile source emissions to be regulated. That amendment was blocked by the majority from even being considered and, at this point, I am left with little choice but to raise the question of whether the Clean Air Act is capable of effectively regulating greenhouse gas emissions.

Finally, I am not interested in trying to embarrass the President, either here at home or on the international stage. I have stated publicly that I wish the President well in making progress on international issues. And I think it is

safe to acknowledge that I didn't choose to release the endangerment finding on the opening day of the Copenhagen climate conference; that was the EPA's decision. As Administrator Jackson reportedly said, the EPA "tried to make sure we had something to talk about" in Copenhagen.

Mr. President, I understand I may have come to the end of my 20 minutes. I ask unanimous consent for a minute and a half to conclude my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. MURKOWSKI. I thank the Chair.

If the administration truly wanted something to highlight in Copenhagen, it should have prioritized climate legislation over health care. The Senate majority could have devoted weeks spent on a tourism bill and other matters to working through a climate bill here on the floor. And even if climate legislation could not be agreed to, Congress has now had nearly 6 months to take up the comprehensive bill we reported from the Energy Committee. That bill would have allowed the President to highlight significant accomplishments on energy efficiency, clean energy financing, and renewable energy generation. Instead, he is left to tout regulations that his administration doesn't really want, that a wide range of stakeholders dread, and that many Members in both Chambers of Congress actively oppose.

We need to only look back to the development of the Clean Air Act itself for an example of how this process can, and should, work. The product of both Presidential leadership and congressional unity, the 1970 Clean Air Act was unanimously passed by the Senate. I hope the current administration will take note of that example. And should we ever reach a point where the President is able to sign climate legislation into law, I truly hope it will be the result of his administration having brought Congress together to complete this important task.

Right now, though, the administration and the majority in Congress continue to choose a different path. Threatening to disrupt the Nation's economy until Congress passes a bad bill by the slimmest of margins won't be much of an accomplishment, nor is that approach worthy of the institutions and people we serve. It isn't appropriate for a challenge of this magnitude. No policy that results from it will achieve our common goals or stand the test of time.

As I said earlier, I am submitting this resolution because it will help prevent our worst option for reducing emissions from moving forward. The threat of EPA regulations are not encouraging Congress to work faster, they are now driving us further off course and increasing the division over how to proceed.

I understand that some are comfortable with the threat of EPA regulations hanging over our heads. But, in closing, I would simply remind my colleagues of an observation once made by President Eisenhower:

Leadership is the art of getting someone else to do something you want done because he wants to do it.

What we are dealing with right now isn't leadership—is an attempt at leverage. The EPA's endangerment finding may be intended to help protect our environment, but the regulations that inevitably follow will only endanger our economy. That lack of balance is unacceptable. We can cut emissions, but we can't cut jobs. We can move to cleaner energy, but we can't force our businesses to move overseas. It is past time to remove the EPA's thinly veiled and ill-advised threat, and we can do that by passing my resolution and giving ourselves time to develop a real solution.

With that, I yield the floor, and I thank my colleague from Connecticut for his courtesy.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Connecticut is recognized.

#### HEALTH CARE REFORM

Mr. DODD. Madam President, I wish to resume the conversation about the pending health care proposal.

We have had a lot of talk, going back for 60 years, I guess, about health care. But in the last year, if we tried to calculate the number of times there have been meetings and conversations, not including the ones that occur here on the floor of the Senate but throughout the Capitol, both in the other body as well as here, between Members and staffs, it has been voluminous, to put it mildly. We are coming down to what appears to be the remaining few hours before we will decide as a nation whether to move forward or to leave things as they are with the hope that one way or the other things may correct themselves in terms of the cost, affordability, and quality of health care. So the next few days of debates could largely determine whether, once again, the Congress of the United States, Democrats and Republicans, as well as the administration and all of the others who have grappled with this issue now for many months, will succumb to what has afflicted every other Congress and every other administration and every other group of people since the 1940s. That is our inability to answer the question of whether we can do what almost every other competitor nation of ours around the world did decades ago—provide decent, affordable health care for our fellow citizens.

If nothing else, this debate has proven how complex this issue is and it has demonstrated the wide variety of viewpoints that exist among those not only

in this very Chamber but among people across the country. Certainly, that was evident during this summer's townhall meetings. I held four of them in my State earlier this year. I know most of my colleagues either did telemeetings or conducted them in their respective States. Because this issue affects one-sixth of our economy and 100 percent of our constituents, not only those here today but obviously the millions yet to come, our debates have been spirited and our disagreements at times emotionally charged, not only here in this Chamber but across the country.

So to my Democratic colleagues who still have concerns over aspects of the legislation, as all of us do; to any of my Republican colleagues who still desire to put people, as I know they do, ahead of partisanship; and to my fellow Americans who worry that politics will once again triumph over progress, which it has for six decades, let me offer some context for the debate that begins again this afternoon and will arrive at a closure in a matter of hours and days. The answer ultimately will be whether we move forward and do what I think the majority of our fellow citizens want us to do or fall back, once again, into the same paralysis that affected Congresses, administrations, and generations before us.

The consensus we have already reached as a Senate is that health care reform would represent a significant victory for the American people—I think we all agree on that point—and it would be a significant moment in our Nation's history.

I think all of us can agree that insurance companies should not be allowed to deny coverage because of a pre-existing condition, that these same companies shouldn't be able to ration the benefits a family receives, and that citizens of the United States should be guaranteed that the coverage they pay for will be there for them when they need it. I think all of us in this Chamber, regardless of party or ideology, agree that reform should make insurance more affordable; that it should protect Medicare and keep it solvent so that it will be there for future generations; and that it should improve the quality of health care for all Americans, focusing on preventing diseases, reducing medical errors, and eliminating waste from our system so that our health care dollars are used more effectively. I think all of us can agree as well, regardless of which side of this debate one is on, that reform should empower families to make good decisions about purchasing insurance; empower small businesses to create jobs; empower doctors to care for their patients instead of filling out paperwork; and empower the sick to focus on fighting their illnesses instead of fighting their insurance companies. These are the commonsense reforms that will make insurance a buyer's market, keep

Americans healthier, and save families and the government an awful lot of money in the years ahead. I think all of us share these views—at least that is what I have heard in the last year I have been so intensely involved in this debate and formulating the policy that is now before us.

If we listen to the distinguished minority leader, our good friend from Kentucky, we might be surprised to learn that his conference has decided to not just oppose our legislation but, unfortunately, to obstruct even further progress. After all, he called for a reform bill that incentivizes workplace wellness, allows people to purchase insurance across State lines, and reduces costs. Our bill does all three things. Let me be specific. On page 80, our bill includes a bipartisan proposal allowing employers to offer larger incentives for workplace wellness programs. On page 219 of our bill, it includes a Republican proposal allowing health plans to be sold across State lines. On page 1 of the Congressional Budget Office analysis of this bill, the Congressional Budget Office concludes that our bill would cut the deficit of our Nation by \$130 billion over the next 10 years—the single largest budget deficit reduction since 1997.

In a body of 100, as we are, in which both parties claim to agree on these principles, we should be able to achieve, one would think, a bipartisan consensus on a matter of this magnitude. But, sadly, it would seem our colleagues—many of them, again, on the other side of this divide—don't seem to care what is in this bill specifically.

I am reminded again, as others have been, of what is actually included in this bill—not that I would expect them or anyone on this side of the divide to agree with everything that is here. We don't. There is not a single Member of this body who would not write this bill differently if he or she could. There is no doubt in my mind whatsoever about that. But we serve in a collegial body of 100 where we have to come to consensus with each other even when we don't agree with every single aspect of this bill.

Yet, when I read the words of the chairman of the Republican National Committee—and again speaking on behalf of a party, this is why I find this so disheartening. At a time such as this, I expect there to be full debate and disagreement over various ideas. But read, if you will, the words of the national chairman of a major political party in this country. Here is what he is suggesting his party ought to be doing at this critical hour:

I urge everyone to spend every bit of capital and energy you have to stop this health care reform. The Democrats have accused us of trying to delay, stall, slow down, and stop this bill. They are right.

Let's hear that again:

The Democrats have accused us of trying to delay, stall, slow down, and stop this bill. They are right.

It is awfully difficult to hear my colleagues talk about wanting to get a bill done, wanting to come together, when the chairman of their national party is recommending they do everything in their power to stop a bill that, in fact, includes many of the very reforms they themselves embrace.

Make no mistake, if the status quo prevails, one thing I can say with absolute certainty—if we do what too many of our friends on the other side and clearly what the chairman of the Republican National Committee are recommending—I can predict with absolute certainty the outcome, and that is that premiums will go up dramatically, health costs will continue to wreak havoc on small businesses, our deficit will grow exponentially, and Americans will see premiums nearly double in the next 4 years. In my state of Connecticut, a family of four is paying \$12,000 a year right now. It is predicted that those premiums will jump to \$24,000 within 7 years if we do nothing. That much I can guarantee.

For those who argue for the so-called status quo or keeping things where they are, know that more and more people will lose their health insurance. More families will be forced into bankruptcy. Hundreds of thousands of Americans are going to die unnecessarily, in my view, in the name of that obstruction. I don't think we can let that happen. So it has fallen to the majority to do alone the job we are all sent here to do collectively—the hard and honest work of legislating, as difficult as it is.

The factors that make this work so hard are not new or unique to this debate, and, as history shows, they will not be what is remembered a generation from now. The words that have been spoken here in this Chamber, the charts, the graphs—all of these things are slowly forgotten by history.

Today, we hold Medicare up as an example of a program worth defending. How many speeches have been given in the last 2 or 3 weeks about the glories of Medicare? I only wish those Members who are here today had been present in 1965. We might have been able to pass that bill without the partisan debate that took place in those days.

Today, no one talks about the 50 years it took to bring Medicare to the floor of the Senate. No one talks about what the polls said in 1965 when it took a lengthy debate involving more than 500 amendments, by the way, to achieve consensus on Medicare. I might add, nobody attacks it as socialized medicine as they did in 1965.

It is always easier to envision the legislation we want than it is to pass legislation we need. Such is the case here this afternoon. We won't end up with a bill that I would have written if it were up to me, and it won't be the bill that any one of our colleagues would have written either.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. Madam President, I ask unanimous consent for 2 more minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. But it will be a bill that improves the health care of all Americans. It will be a bill that makes insurance more affordable, improves the quality of care, and helps create jobs in our Nation. It will be a bill that saves money and saves lives. And it will be a bill that decades from now we will remember not for the differences we had in this Chamber but for the differences it made in our Nation and for the differences it made for our fellow citizens.

To get there, we must build on the consensus we have already reached, not tear it down with the petty weapons of political gamesmanship. We must answer not the call of today's poll or tomorrow's election but the call of history that we have been asked to meet, that other generations, other Congresses have failed to meet but we are on the brink of achieving.

My hope is that all of us will come together in these closing hours and do that which many predicted we could not do: pass legislation that we need.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

#### CLIMATE CHANGE

Mr. THUNE. Madam President, I wish to start by referring briefly to the remarks made earlier by the Senator from Alaska. She indicated earlier on the floor that she is going to be offering a motion of disapproval for a set of regulations that are not final yet but have been announced by the EPA that they are coming forward with, the so-called endangerment finding. I wish to indicate that I intend to support her on that resolution.

I cosponsored the amendment she tried offering earlier this year to one of the appropriations bills that would have prevented the EPA from moving forward with the endangerment finding for a year, which would have allowed Congress an opportunity to examine this issue and perhaps approach it with a legislative solution as opposed to having the EPA move forward in a way even they acknowledge they don't have statutory authority to do.

I might say that the end result of what is being proposed at EPA—if they are successful—is they will implement a cap-and-trade program, only it will be a cap without the trade.

The reason they are moving forward, in my view, is because there isn't the political will in the Congress to pass a punishing cap-and-trade proposal this year. The House of Representatives passed it narrowly this year. There are a number of Members of the House who I think would like to have that vote

over again. I know there aren't the votes in the Senate because many Senators on both sides realize the impact it would have on the economy—the number of jobs that would be lost in our economy and how it would punish certain parts of our country with crushing energy costs, at a time when we don't need to pile costs on small businesses and consumers who are trying to come out of a recession.

This is a wrongheaded move by the EPA. It is something they should not be acting on independently. This should be resolved by the Congress of the United States. Honestly, if the EPA moves forward, there are a number of industries in South Dakota that will be impacted and a number of businesses in my State. If the litigation is successful—and, inevitably, there will be lots of lawsuits filed—and if the 25,000-ton number is reduced to the 250-ton number that is used as a threshold in the Clean Air Act, there will be literally millions of entities that will be covered—hospitals, churches, farmers, ranchers, and small businesses.

In South Dakota, we have a lot of farmers and ranchers who make their living in small businesses that would be adversely impacted were these regulations to be enacted and then move forward with regulating and putting the caps in place. If the litigation is successful, we know what will be subsequent to that.

I say that as a lead-in to talk about impacts on small businesses. There are so many things happening right now in Washington that have an adverse and detrimental impact on the ability of small businesses to create jobs. I have heard the President talk about creating jobs—that is his No. 1 priority—and we need to give incentives to small businesses to create jobs. I have heard my colleagues on the other side talk about how important job creation is. Yet everything coming out of Washington, whether it is in the form of heavyhanded regulation, such as this endangerment finding coming out of EPA, or in the form of a cap-and-trade proposal or whether it is this massive expansion of the Federal Government—the \$2.5 trillion expansion to create a new health care entitlement—all these things are raising clouds over the small business sector of our economy, which creates about 70 percent of the jobs.

We are essentially telling small businesses that you may end up with these massive new energy taxes or with this employer mandate that will cost you up to \$750 per employee if you don't offer the right kind of insurance; you are going to be faced with all these taxes imposed on health insurers and prescription drugs and medical device manufacturers that will be passed on to you.

Then we are saying go out and create jobs, in light of all this policy and un-

certainty in Washington, all these proposals to tax and spend and borrow more money by the Federal Government. You cannot blame small businesses for acting with a little bit of hesitancy when it comes to making major capital investments and when it comes to hiring new people.

Those are the very things we want small businesses to do. We want to encourage that type of behavior. We want to encourage that kind of investment. We want to encourage job creation. Unemployment is at 10 percent. We have lost 3.3 million jobs since the beginning of the year. Who will put people back to work? It will be the small businesses in our economy. In South Dakota, they are about 96 percent of the game, when it comes to employment in South Dakota. Here we are debating a health care reform bill which, in addition to spending \$2.5 trillion to create this new health care entitlement, raises taxes on small businesses, cuts Medicare, and at the end day, according to the experts—the CBO and the Chief Actuary at the CMS, which is the so-called referee in all this, who tells us what these things will cost and their impact—they have all said premiums will either stay the same or go up. So the best small business can hope for under this is the status quo.

I hear my colleagues on the other side coming down here, day after day, making statements, saying this is going to be good for small businesses, and this will help small businesses deal with the high cost of health care.

The problem with all their arguments is one thing: They are completely and utterly divorced from reality. You cannot look at this health care reform proposal and come away from it and say this is a good thing for small businesses, when small businesses are saying this will drive up their cost of doing business, it will raise health care costs, and these taxes you are going to hit us with will make it harder to create jobs.

Why do we proceed in the face of this and then deny what all these small businesses are saying, what the experts are saying, and what increasingly the American people are saying, which is that this is a bad idea. So why don't you reconsider this and start over again and do some things that will actually lower health care costs. That is what small businesses are saying.

We have people down here saying this is good for small business. What are small businesses saying—and large businesses, for that matter. The NFIB represents small businesses all over the country. They said:

This bill will not deliver the widely promised help to the small business community.

They say:

It will destroy job creation opportunities for employees, create a reality that is worse than the status quo for small businesses. It is the wrong reform at the wrong time, and

it will increase health care costs and the cost of doing business.

That is the National Federation of Independent Businesses, as I said.

How about large businesses? The Chamber of Commerce expressed their disappointment with the Senate health care bill and has weighed in with strong opposition against it. That includes the National Association of Wholesaler Distributors, the Small Business Entrepreneurship Council, the Association of Builders and Contractors, the National Association of Manufacturers, the Independent Electrical Contractors, and the International Franchise Association. The list goes on and on. The Small Business Coalition for Affordable Health Care—50 organizations around the country that are members of the group—including many that have members in South Dakota, not the least of which is the American Farm Bureau Federation. That represents farmers and ranchers who are still businesspeople out there trying to make ends meet. They said this:

Our small businesses and self-employed entrepreneurs have been clear about what they need and want: lower costs, more choices, and greater competition for private interests.

They say:

These reforms fall short of long-term, meaningful relief for small business. Any potential savings from these reforms are more than outweighed by the new tax, new mandates, and expensive, new government programs included in this bill.

That is what small businesses across the country are saying. The reason they are saying that is because, as I mentioned, not only are they hit with these taxes every year, there is a tax on health plans that will amount to \$60 billion over 10 years, which will be passed on to small businesses. There is a new payroll tax, Medicare tax, which incidentally, for the first time ever, instead of going to Medicare, will be used to create a new entitlement program. That will hit about one-third of small businesses in this country, we are told.

As I said earlier, they have the employer mandate, which is going to hit a whole lot of small businesses—another \$28 billion that will hit small businesses across this country. So you have all these new taxes heaped upon our small business sector. The small businesses are saying: What do we get out of this? What is this going to do to affect our health care costs?

I will show you. This chart represents what the CBO has said health care costs would do if this bill is enacted. The blue line represents the cost of essentially, if you will, doing nothing. In other words, the blue line represents what will happen if Congress does nothing, the year over year increases we are already seeing. It represents the status quo. We have heard people from the other side say we have to do better than the status quo. The President and

the Vice President say that and our Democratic colleagues say that. You cannot accept the status quo and then attack Republicans for being in favor of status quo. The blue line represents the status quo. The blue line is what will happen year over year, in terms of increases in health insurance premiums that small businesses and individuals will deal with.

It doesn't matter where you get your insurance—the small business group market or the large business employer group market or the individual market. If you get it in the individual market, your rates will be 10 to 13 percent higher. I ask unanimous consent to extend my remarks for another 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THUNE. It doesn't matter which market you get your insurance in, except if you are in the individual market, you will pay much higher insurance premiums than the status quo, which is locking in double the rate of inflation premiums for the foreseeable future.

The red line on the chart represents the spending under this bill. This is what the CBO says will happen. You will see the cost curve bent up, not down. You are going to have more money coming out of our economy to pay for health care than you do today. That is what small businesses are reacting to. That is why they are coming out strongly and adamantly opposed to this legislation. It bends the cost curve up, increases the cost of health care, rather than bending it down. We heard the same thing come out of the Actuary of the CMS just last week.

Again, the experts are saying—the referees, the people who don't have a political agenda—repeatedly, that this will increase the cost of health care. This will drive health insurance premiums higher.

The other point I wish to make, because after I have shown you how health care costs will go up under this legislation, the other amazing thing about it—this is, again, one of those phony accounting techniques or gimmicks that Washington uses, the same old business in Washington, the Washington smoke and mirrors, the ways of disguising what this really costs: In order to bring this thing in at about \$1 trillion, which is what the majority wanted to do, they had to use budget gimmicks.

The Senator from New Hampshire knows all about this because he has followed this closely as chairman of the Budget Committee for many years. He can attest to the fact that one of the things they will do is start the tax increases immediately. So on January 1 of next year—which is now 18 short days away—all these businesses across the country are going to see their taxes go up—in 18 days. But the amazing

thing about it is, many benefits don't get paid out for another 1,479 days. So they front-load all the tax increases; the tax increases will be passed on immediately. By 2013, every American family will be paying—starting next year—\$600 a year. So every American family will feel the brunt of the additional costs for taxes and the premium increases that will follow from those.

The remarkable thing about it is, they structured a bill that would punish small businesses and people who will pay these taxes on January 1 of 2010—18 days away. They don't pay out benefits for another 1,479 days. What does that do? In the 10-year window they use to measure what this will cost, it dramatically understates the cost of the legislation. So we are faced with not a \$1 trillion bill but a \$2.5 trillion bill, when it is fully implemented and when all the budgetary gimmicks and phony accounting is actually taken into consideration. This is a bad deal for small businesses. That is why all the small business organizations have come out opposed to it.

You cannot get up, day after day, and defy reality, logic, reason, and facts. That is what those who are trying to push this huge government expansion and huge takeover of health care in this country are trying to have the people believe. They are dead wrong.

I believe the American people are tuning in to that, which is why, increasingly, in public opinion polls, they are turning a thumbs down on this by majorities of over 60 percent.

I see the Senator from New Hampshire. I appreciate him indulging me for an extra few minutes.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Madam President, I ask unanimous consent to speak for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Madam President, I appreciate the explanation of the Senator from South Dakota of the effects of the bill on small business—especially the description of the gimmicks played in the bill in order to make it look fiscally responsible, which it is not—the fact they use 10 years of revenues in Medicare cuts to offset 5 to 6 years of spending and then they claim somehow it is in balance.

I wish to turn to another part of the bill. I think it is important to recognize it is not our side so much that is representing the failures of the bill. It is actually the administration itself. The administration's Actuary came forward with a letter analyzing the Reid bill. You have to remember the Reid bill isn't necessarily the bill. This is sort of like a "where is Waldo" exercise here. We have a bill called the Reid bill—it is 2,074 pages—which we

got 10 days ago. It took 8 weeks to develop it, in camera, by Senator REID and a few of his people.

Now we are told there is going to be a new bill. Nobody has seen it. Nobody on our side has it. I understand most Members on the other side have not seen it, but it is supposed to be a massive rewrite of the Reid bill. We can only project what that is through news reports. News reports are not very good. They represent they are going to expand Medicaid which will be a massively unfunded mandate to States and lead to letting people into a system that is fundamentally broken, and you are going to let people buy into Medicare age 55 and over.

Medicare is insolvent today. It has \$35 trillion of unfunded liabilities on the books, and they are going to let people buy into Medicare. What sort of sense does that make? It means that seniors who are on Medicare—and, by the way, Medicare gets cut significantly under this bill—will find Medicare under even more pressure when you put people into it.

Turning from those two obvious problems to the potential bill that we have not seen but will be asked to vote on before the week is out, it appears, I want to turn to this actuary report done by the CMS Actuary who works for the Department of HHS and whose job it is to evaluate this bill. He works for the President. He is a Federal employee. He is in the administration.

The CMS made a number of points. Remember, when we started down this road, the President said he wanted to do three things, all of which I agreed to: One, he wanted to expand coverage so uninsured would get covered. Two, he wanted to bend the outyears cost curve of Medicare and of health care generally in this country so we could afford it. And three, he wanted to make sure if you had insurance, you get to keep it. If you like your insurance, if you like the employer plan you have, you get to keep it.

What did the Medicare Actuary—this is not the Republican side, this is an independent, fair analysis of the Reid bill—what did they say on these three points the President held up as his test for what health care should be?

On the issue of whether this bill bends the outyears cost curve—which we have to do, by the way. If we do not get health care costs under control, there is no way we are going to get our Federal budgets under control. What did the Actuary say:

Total national health care expenditures under this bill would increase by an estimated \$233 billion during the calendar period 2010 to 2019.

Instead of going down, they go up. The chart that Senator THUNE showed is totally accurate. There is no bending down of the outyear health costs. There are a lot of reasons for that, and I will go into it in a second. Primarily



they did not put provisions in the bill I would support and should have been in this bill, such as malpractice abusive lawsuit reform, such as expanding HIPAA so companies can pay people to live healthier lifestyles—if you stop smoking, your company could pay you; if you lose weight, your company could pay you—which is not in this bill, which would have bent the cost curve down. Those were taken out of the bill because the trial lawyers opposed the first one and the unions opposed the second one.

On the second point the President set out as his test, which was there would be coverage for everybody who is uninsured, what did the Actuary say after he looked at this bill? There are 47 million people uninsured. Some people say there are 50 million. The Actuary said after this bill is completely phased in, there will still be 24 million people uninsured. So for \$2.5 trillion—that is what the cost of this bill is when it is totally phased in—for the creation of a brandnew entitlement, for cuts in Medicare which will be \$1 trillion over the 10-year period when the bill is fully phased in,  $\frac{1}{2}$  trillion in the first 10 years, \$1 trillion when phased in, \$3 trillion of Medicare cuts in the first 20 years—for that price, \$2.5 trillion, what do you get? You still get 24 million people uninsured. Why? Because they set the bar so high on the insurance level people still cannot afford to get into it and people will be pushed out of their private insurance. That is the third point.

The President said if you like your private plan, you get to keep it. That was his third test. I agree with that. I agree with all these tests. We should bend the outyear cost curve and get everybody covered. The third test is if you like your private insurance, you get to keep it.

What does the Actuary say? Once again, the Actuary works for the President through HHS. The Actuary says 17 million people will lose their existing employer-sponsored insurance; 17 million people will be pushed out of their private plans into this quasi-public plan. Why is that? Because the way this bill is structured, there is so much cost shifting that is going on as you put people in Medicaid, which only pays about 60 percent of the cost of health care of a person getting Medicaid, and you put more people into Medicare, which only pays about 80 percent of what it costs to take care of a Medicare recipient, that difference—that 40 percent in Medicaid, that 20 percent in Medicare—has to be picked up by somebody else. The hospitals have to charge the real rate of what it costs them. The doctors have to charge the real rate of what it costs them to see that patient. So they put that cost on to the private sector. They put it on to private insurance. So the private sector is subsidizing, the person who

gets their insurance through their company is subsidizing the cost of the person who goes into Medicaid or the cost of the person who goes into Medicare.

In fact, today, the private sector is subsidizing the Medicare recipient and the Medicaid recipient through the cost of their insurance by almost \$1,700 a year. Madam President, \$1,700 a year of your private insurance, if you are insured by an employer plan, is to pay that gap in reimbursements, that underreimbursement for people who are under Medicaid and under Medicare.

When you put more people into Medicaid—and this bill assumes 15 million people are going to go into Medicaid—and you put more people into Medicare and this bill puts people age 55 and over into Medicare, you end up with even more people being subsidized. Who pays for it? Private insurance. So private employers, especially small businesses, see their insurance price going up. They cannot afford it. They figure it is cheaper to pay a penalty, a tax, essentially, under this bill than to keep their insurance for their employees. They have to say to their employees: Sorry, folks, you have to go over to the quasi-public plan. Seventeen million people, the President's Actuary has estimated.

There is another point that the President's Actuary makes here. It is critical because this Reid proposal is devastating to a program which is also under severe stress, and that is Medicare. We know today that because of the retirement of the baby boom generation, which doubles the number of retired people in this country from 35 million to 70 million, which generation will be fully retired by 2016, 2017, 2019, we know today that because of the demands of that generation for health care there is a \$38 trillion—that is trillion with a "t"—unfunded liability in Medicare. In other words, there are \$38 trillion of costs we know we have to pay but have no idea how we are going to pay it. No idea. The insurance system does not support it.

That program is under a lot of stress right now as it stands. As it stands, it is under a lot of stress. But when you start cutting that plan even further, which is what is proposed in this bill—under this bill there is approximately a \$500 billion cut in the first 10 years for Medicare, \$1 trillion in the second 10-year period when it is fully phased in, and \$3 trillion over the 20 years. When you cut Medicare beneficiaries by those amounts and you eliminate essentially Medicare Advantage for probably a quarter of the people who get it today, providers can no longer afford to provide the benefits to their recipients, to the Medicare patient. They cannot make a profit.

Again, you are going to say, oh, that is just a Republican throwing out some

language here. No, it is not. That is the Chief Actuary of the President of the United States say saying that. Let me read to you: Because of the bill's severe cuts to Medicare, "providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and might end their participation in the program (possibly jeopardizing access to care for beneficiaries)."

That is a quote from the President's Actuary. The Actuary suggests that approximately 20 percent of all Part A providers—that is doctors, hospitals, and nursing homes—would become unprofitable as a result of the Reid bill. What happens when you become unprofitable? You close. People will not be available to deliver the care to the senior citizens under this proposal.

The representation from the other side of the aisle is, oh, we don't cut any Medicare benefits. They cut Medicare benefits from Medicare Advantage, but what they do is cut provider groups. If you don't have somebody who is going to see you, you can have all the benefits in the world and it is not going to do you any good. That is clearly a very significant cut in benefits. It is not me saying this. It is the Actuary saying this.

Madam President, how much time do I have remaining?

THE PRESIDING OFFICER. Four minutes.

MR. GREGG. So this is a critical point, that under this bill, the Medicare Actuary has said four major things: first, that it doesn't bend the cost curve down, it bends it up. Second, it leaves 24 million people uninsured when fully implemented. Third, 17 million people will lose their private insurance and be forced into quasi-public plans. And fourth, there are a lot of providers of Medicare who are going to go under and, therefore, will not be available to provide Medicare. That is not constructive to the health care debate.

How should we do this? I will tell you some things we should do that are not in this bill, things which are sort of a step-by-step approach, rather than this massive attempt written in the middle of the night, dropped on our desks for 8 days, 10 days, or for however long. Why don't we try to take a constructive, orderly approach? We know there are sections of insurance reform that can occur across State lines. We know we can do things if we set up the proper coverage scenario for preexisting conditions so people do not lose their insurance because of a preexisting condition. We know there is a lot of market insurance reform that can be done. We also know if we curtail or at least limit abusive lawsuits, we can save massive amounts of money. We know there is \$250 billion of defensive medicine practiced every year in this country. CBO scores it as a \$54 billion immediate savings just like the plans they have in



Texas and California, which work. Why isn't it in this bill? The trial lawyers didn't want it.

We know if we say to employers you can pay more to employees in the way of cash benefits if they stop smoking, get mammograms when they should, get colonoscopies when they should, reduce weight so they are not subject to obesity issues—if you do that, you get huge cost savings. Some employers, such as Safeway, have already proven that. Why don't we do that under this law? Because labor unions don't want that law, which was actually in the bill passed out of the HELP Committee, but it was out of this bill.

We know there are certain diseases that drive costs in this country—obesity, Alzheimer's. Why not target those diseases rather than this massive bill, \$2.5 trillion bill which our kids cannot afford? Change the reimbursement system so we reimburse doctors for quality and value rather than quantity and repetition. Things such as that can be done.

If you want to insure everyone, which I do, you can follow the suggestion I and other people have made around here. Let people buy into a catastrophic plan, especially the young and healthy, people between the ages of 20 and 45. They don't need these gold-plated plans or bronze-plated plans which have excessive amounts of mandated coverage in them. They don't need them. What they need is a plan that says if they are severely injured or they contract a very difficult disease, they are going to have coverage so their responsibility of care does not fall on the rest of the country. That can be done.

There are a lot of specific things that can be done to improve our health care system without this quasi-nationalization effort which is going to expand the size of the government so dramatically by \$2.5 trillion that there is no possible way our kids are going to be able to afford the debt that is going to come on to their backs as a result of this because this will not be fully paid for, in my opinion.

Certainly, we can at least look at the points made by the Actuary of the President who has disagreed with four of the core proposals in this bill, saying they do not meet the tests which were set out for good health care reform and say in those areas: Let's go back and take another look; let's start over again; let's do it right. That is our proposal. Let's do it right rather than rush this bill through.

Remember, most of the programs in this bill do not start until 2014. So why do we have to pass it before Christmas, especially when we have not even seen the final bill? It makes no sense at all.

Listen to the Actuary of the President and let's get this right.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Madam President, I ask unanimous consent to engage in a colloquy with my colleagues from Vermont and Ohio.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRANKEN. Madam President, I rise today to urge my colleagues in the Senate to support Senate amendment No. 3135 to replace the proposed excise tax with a surtax that would affect only those making literally millions of dollars a year. Senator BROWN and Senator SANDERS, with whom I will engage in this colloquy, have shown tremendous leadership on the issue, and I thank them and join them in their efforts.

Before I get into this, though, I want to answer a couple of things I have seen and heard on the Senate floor. I walked in and my colleague from South Dakota, Senator THUNE, had a chart up. He had a chart up that said when your taxes will kick in and when your benefits will kick in. So I didn't hear the whole speech, and I felt bad about that—not having heard his whole speech—and I went up to him and said: I didn't hear your whole speech.

And he said: Oh, man, that's too bad.

But I said: Did you actually happen to mention any of the benefits that do kick in right away?

And he said: No.

So I think we are entitled to our own opinions, but we are not entitled to our own facts. Benefits kick in right away. If you are going to hold up a chart that says when taxes kick in and when benefits kick in, and you say 1,800 days, you better include the benefits that do kick in right away.

Mr. THUNE. Madam President, will the Senator from Minnesota yield for a question?

Mr. FRANKEN. Absolutely.

Mr. THUNE. Did the Senator understand that what I was pointing out on the chart—the point I was making—was that the tax increases start 18 days from now, and the benefits—the spending benefits under the bill, which are the premium tax credits and the exchanges that are designed to provide the benefits delivered under this bill—don't start until 2014. Did the Senator miss that?

Mr. FRANKEN. Does the Senator understand that spending benefits start right away?

Mr. THUNE. If the Senator missed that point, I can get the chart out.

Mr. FRANKEN. I asked a question. I yielded to you for a question. I am asking you a question. Does the Senator—

The PRESIDING OFFICER. The Senator from Minnesota may only yield for a question, and the Senator from Minnesota has the floor.

Mr. FRANKEN. Has to what?

The PRESIDING OFFICER. Has the floor.

Mr. FRANKEN. I have the floor. The Senator from South Dakota said: Did I

realize he was talking about the spending doesn't start for 1,800 days on health care—that the benefits don't start. Well, here is one: \$5 billion in immediate Federal support starts immediately for a new program to provide affordable coverage to uninsured Americans with a preexisting condition.

I don't know about anyone else in this body—

Mr. THUNE. Will the Senator yield for an additional question?

Mr. BROWN. Will the Senator yield?

Mr. FRANKEN. I yield.

Mr. BROWN. That is exactly right, what Senator FRANKEN says. The \$5 billion is for the high-risk pool—people who have the most trouble because of preexisting conditions, because of the behavior of insurance companies. And this debate is really all about the insurance companies. My friends on the other side of the aisle always come down with the insurance companies. The insurance companies really are the ones that are driving so much waste and so much bad behavior in the system.

Another thing in this bill that is very important now is the Medicare buy-in. The Medicare buy-in we have been discussing is for somebody who is 58 to 62 years old and who can't get insurance. Maybe they have been laid off or maybe they have a preexisting condition or maybe they are a part of small business that doesn't insure them. At 58 to 62 years old, they simply can't get insurance. This legislation will allow them, so far, to buy into Medicare.

I know my Republican friends can't make up their minds what they think about Medicare. They have opposed it, mostly, for 40 years. They opposed its creation; they tried to privatize it in the mid-1990s. They succeeded in partially privatizing it. They have cut it. Now, when we are—at AARP's request, in part—pushing legislation which will cut some of the waste out of Medicare, all of a sudden they are big fans of Medicare. But then they don't like Medicare again because we are trying to do the Medicare buy-ins. I guess I am confused.

Mr. THUNE. Would the Senator from Ohio yield for a question?

Mr. BROWN. We gave the other side 30 minutes.

Mr. FRANKEN. We have our time now.

Mr. BROWN. Senator THUNE wants to sort of monopolize our 30 minutes.

Mr. FRANKEN. We have our time, and the Senator from South Dakota just said, when he gave his presentation, nothing that we are paying for starts until 1,800 days from now. There is a whole list of things that start. The Patient Protection Affordable Care Act—

Mr. THUNE. Will the Senator yield for a question?

The PRESIDING OFFICER. The Senator from Minnesota has the floor. He

may engage in a colloquy. He does not have to yield for any further questions.

Mr. FRANKEN. The Patient Protection and Affordable Care Act will prohibit insurance from imposing lifetime limits on benefits starting on day one—starting on day one, Senator. He doesn't want to hear it.

We are entitled to our own opinions, but we are not entitled to our own facts. The fact is, benefits kick in on day one and the large majority of benefits kick in on day one, and we shouldn't be standing up here with charts that say the exact opposite.

Senator McCAIN, a week ago, said: Facts are stubborn things. These are stubborn things. Small business tax credits will kick in immediately. The Senator from South Dakota just said that no payments, nothing that costs any money will kick in right away. That is not true. We are not entitled to our own facts.

I stand here day after day and hear my colleagues, my good friends from the other side, say things that are not based on fact.

We hear about this \$78 trillion unfunded liability. You know, I remember during the Social Security debate that we used to hear about this \$11 trillion unfunded mandate for Social Security. They asked the Actuary what that was about—Treasury Secretary Snow—because the American Actuarial Society got mad about this. You know what it was? It was into the infinite horizon, was the liability. It was into infinity. That was a figure used by the President of the United States—George Bush at the time—that we have an \$11 trillion unfunded mandate. What was the actuarial thinking behind it? Into infinity, and that people would live to be 150 years old.

Mr. SANDERS. Will the Senator from Minnesota yield?

Mr. FRANKEN. One second. I want to explain the end of this.

So this was the unfunded liability—assuming people lived to 150 and still retired at 67. That meant an 83-year retirement and that we would live to 150. I assume the first 50 years would be great, the next 50 years not so great, and the last 50 years horrible. Ridiculous stuff.

Let's have an honest debate, for goodness' sake. Let's not put up charts that contend one thing and that are just not true.

I yield to Senator SANDERS.

Mr. SANDERS. What I wanted to do is to get back to an issue that is of great importance to the American people, in addition to everything Senator FRANKEN appropriately pointed out; that is, as we proceed forward on this legislation, there is a provision in the Senate bill that I think needs to be changed. I have offered an amendment to do that. I am delighted Senator BROWN and Senator FRANKEN and Senator BEGICH, who is not here, and Sen-

ator BURRIS, who is also not on the Senate floor, are in support of that amendment, as I think the vast majority of the American people are.

Madam President, this bill is going to cost some \$800 billion to \$900 billion, and the American people want to know where that money is going to come from. Is it going to come from the middle class whose incomes in many ways are shrinking, who have lost their jobs, are having very serious financial problems, or is it going to come in a more progressive way?

The amendment that we are supporting would simply say we will get rid of the 40-percent excise tax on health care benefits above a certain limit and move toward a more progressive way of funding, which is close to what exists in the language in the House.

Essentially, what we would be doing is addressing the fact that the so-called Cadillac plan is not a Cadillac plan because in a relatively few years, millions of workers with ordinary health care benefits are going to be impacted by that. According to a major health care consultant, the Mercer Company, this tax would hit one in five health insurance plans by the year 2016—one in five. The Communications Workers of America have estimated that this would cost families with a Federal employees health benefit—Federal employees with a standard plan with dental and vision benefits—an average of \$2,000 per year over the 10-year course of this bill.

So what this issue is about is do we sock it to the middle class again, with the heavy tax that over a period of years is going to impact more and more ordinary families, or do we say that at a time when we have the most unequal distribution of wealth and income, when President Bush gave huge tax breaks to the wealthiest people, that maybe we ask people who have a minimum income of \$2 million a year to start picking up their fair share?

I yield to my friend from Ohio.

Mr. BROWN. Madam President, I thank my colleagues for kicking off this debate. My understanding is that this amendment would eliminate the tax on people's health insurance plans, even people who have pretty generous union-negotiated—obviously, not just union, but when a union negotiates a good plan, the white-collar workers in those same plants, those same companies often get decent plans too. It would take away the tax for them, and it would then tax 1 percent, ½ percent of wealthy people?

Mr. SANDERS. Interesting that the Senator asks that. What this amendment does is it imposes a 5.4-percent surtax on adjusted gross incomes above \$2.4 million for individuals and \$4.8 million for couples.

What that means, I would tell the Senator from Ohio, is that this impacts

the top two one-hundredths of 1 percent, which means 99.98 percent of the American people would not pay one penny in additional taxes. It is the top two one-hundredths of 1 percent, and I think that is in fact the proper thing to do.

Mr. BROWN. So that would be 2 out of 10,000—1 out of every 5,000 families would pay that or 1 out of 5,000 of the wealthiest families would pay that; is that what the Senator is saying?

Mr. SANDERS. That is true. Of the approximately 134 million individual tax returns filed in 2005, which is the latest data we have available, only two one-hundredths of 1 percent or about 26,000 individuals reported adjusted gross incomes over \$2.4 million.

Mr. BROWN. So 26,000 out of 134 million people would pay this.

Mr. SANDERS. That is right.

Mr. BROWN. As opposed to millions of families who have good health insurance that they have negotiated or been provided by their employer.

This brings me back to the discussion we had earlier this year; that when people talk about legacy costs, about pension and health care, which many people have, fortunately, almost always these health benefits and pensions people earn by giving up pay today. They say: I will take a little less pay today if I get a good pension and good health insurance. So that is why the Senator from Vermont is arguing that we shouldn't be taxing this insurance, I assume.

Senator FRANKEN.

Mr. FRANKEN. Let me go into this term "Cadillac." You know, I never had a Cadillac, but that was the thing, right?—a Cadillac? That was an incredible extravagance—a gold-plated extravagance. But, in fact, this would be taxing plans that provide basic comprehensive coverage for thousands of middle-class workers and their families. One of the problems with the excise tax is that it categorizes plans based on their actuarial cost, not solely on the generosity of their benefits. Plan characteristics explain only a small percentage of the differential in cost. Some reports suggest only 6 percent of the difference in cost is explained by generosity of benefits.

Let me give an example: A small business that employs many older workers is going to face—actuarially, it is going to be considered higher than a business with a young workforce. So even if both of these employers provide the exact same benefits, their costs will be different. The employer with the older workforce faces a higher risk of falling under this tax—not due to the richness of the benefits but due to the age of its employees.

The same goes for small workforces. If a small business offers one set of health benefits and a large company offers the exact same set of benefits, the cost for the smaller employer is higher because its risk pool is smaller.

Do we really want to penalize small businesses or workplaces that retain older workers?

Senator SANDERS.

Mr. SANDERS. Let me pick up on the point the Senator from Minnesota made. When you use the term "Cadillac," the implications are that maybe we will get some of those guys at Goldman Sachs who have this off-the-wall outlandish benefit package.

The reality is, the CWA—Communications Workers of America—has done a bit of work on this. What their estimate is, as health care costs continue to rise—and we are seeing 6 percent, 7 percent, 8 percent increases every year—obviously, the way the language of this legislation is written, it will impact more and more health care plans. By the year 2019, it will burden one out of three health care plans in this country. Does that sound like a Cadillac plan, one out of three plans? And eventually, as health care costs continue to rise, it will impact virtually every plan in this country.

The bottom line we are talking about is, yes, we need to raise money. How do you do it? Do you do it by socking it to the middle-class and working families? And as the Senator from Ohio has indicated, many of these workers have given up wage increases in order to maintain a strong health care benefit. Are those the people we are going to tax or do you tax the top two one-hundredths of 1 percent, many of whom have received generous tax breaks in recent years?

Mr. BROWN. If the Senator will yield, I want to talk for a moment about the people who will be paying more taxes. The Senator said their income is over a couple of million a year, those who will pay these taxes.

During the last 10 years—during the 8 years President Bush was in the White House, the tax system changed pretty dramatically during that time. It is my understanding—maybe the Senator can shed some light on this, either colleague—my understanding for sure is that the tax system, as it changed, had much more of a tilt toward the wealthy; that is, President Bush's tax cuts always included a few middle-class people, so a family making \$50,000 might get \$100 in tax savings over a year but, on the other hand, if you made millions of dollars, you got huge tax cuts.

I remember Warren Buffett, one of the most successful businesspeople in America, who generally likes what we are doing here and wants a fairer tax system, Warren Buffett said he pays a lower tax rate than his secretary and he said he pays a lower tax rate than a soldier coming back from Iraq.

Talk, if you would, either Senator, Senator FRANKEN or Senator SANDERS, about what happened over the last decade to taxes for the group of people, the wealthiest, who we think should pay a little more under this plan.

Mr. SANDERS. I think the evidence is overwhelming that one of the reasons we have seen recordbreaking deficits and we have a \$12 trillion national debt—it is not just the war in Iraq but also the huge tax breaks that have been given to the very wealthiest people in this country. As the Senator from Ohio indicated, the facts are very clear. Yes, the middle class may have gotten some benefit, but the lion's share of tax breaks went to the people on top.

What we are seeing in this country is a growing gap between the very wealthy and virtually everybody else. In many ways, the middle class is shrinking. Poverty is increasing. It makes zero sense to me that in the midst of all of that, we ask the middle class to pay more in taxes to provide health care to more Americans and we leave the top one-hundredth of 1 percent alone.

Let me also say this: There is a lot of support out there for the amendment Senator BROWN, Senator FRANKEN, Senator BEGICH, Senator BURRIS, and I are offering. Let me just read one. This is from the president of the Fraternal Order of Police. These are cops out on the street. Most people do not think the police are getting extravagant health care benefits.

This is what he said:

I am writing to you on behalf of the membership of the Fraternal Order of Police to express our support for your amendment which would eliminate the excise tax on high cost insurance plans.

Et cetera, et cetera.

This provision is intended to tax the health plans of the wealthiest Americans, but it will also tax the plans of many law enforcement officers who need high cost and high quality insurance due to the dangerous nature of their profession. The Fraternal Order of Police strongly supports your amendment, because health care reform legislation should not increase the tax burden for those who fearlessly risk their health, and even their lives, to keep our communities safe.

Mr. FRANKEN. Again, let's think about what these folks, these union folks who negotiated these health care policies and sacrificed in salary—what are they getting? They are getting affordable deductibles. They are getting affordable co-pays. Sometimes, they are getting vision and dental care. This is comprehensive health care we want Americans to get. That is who is going to get hit.

Over the last 20, 30 years, we have seen a squeeze on these people. We have seen a squeeze on the middle class, a shift in the risk to people. That is what this whole bill is about. We are trying to eliminate the risk of losing your health care if you have a preexisting condition; we are trying to lose the risk of going bankrupt. That is the whole point of this bill. Let's not shift more risk onto these folks who are doing these kinds of jobs and sup-

porting their families with their salaries and their benefits.

Mr. BROWN. Exactly right. Think about that. We want to give incentives for people to do the right thing. We are glad when people have good health insurance because then they do not rely on Medicaid or they don't show up in the hospital or the emergency room and get the care for free, while other people have to pay for that care—others who use the emergency room and have insurance, others who use the hospital. So the hospitals don't get stuck with the costs. If they have dental care, they are getting the right kind of preventive care so they do not have more expensive care later.

Ideally, we want everybody to have one of these "Cadillac" plans. We want people to have insurance that includes vision, that includes eye care, that includes catastrophic coverage, that includes preventive care. If more people had this, there would be a lot less burden on taxpayers to take care of everybody else.

It is clear the arguments here are not just it is the right thing for police officers, as Senator SANDERS said. It is the right thing for the person Senator FRANKEN talked about who is getting dental and vision care, but it is good for society as a whole, that people are willing to give up some of their wages to get a good medical plan.

Mr. SANDERS. If I could jump in, a moment ago Senator BROWN asked me a question about the extent of the tax breaks given to the wealthiest people, and I do have that information. Since 2001, I say to Senator BROWN, the richest 1 percent of Americans received \$565 billion in tax breaks. In 2010 alone, the most wealthy 1 percent of Americans are scheduled to receive an additional \$108 billion in tax breaks. That is point No. 1.

Point No. 2—let me be a little political here. In the Presidential election of 2008, one of the candidates said that it was a good idea to tax health care benefits. That candidate—Senator McCain—lost the election. The other candidate said it was a bad idea to tax health care benefits. That was Barack Obama; he won the election.

Let me quote from what then-Senator Obama said when he was running for President. On September 12, 2008, he said:

I can make a firm pledge, under my plan no family making less than \$250,000 will see their taxes increase, not your income taxes, not your payroll taxes, not your capital gains taxes, not any taxes. My opponent, Senator McCain, cannot make that pledge and here is why. For the first time in American history—

This is Senator Obama speaking about Senator McCain's plan.

For the first time in American history, he, Senator McCain, wants to tax your health benefits. Apparently, Senator McCain doesn't think it's enough that your health premiums have doubled. He thinks you

should have to pay taxes on them, too. That's his idea of change.

I agree with what Senator Obama said in 2008. I disagree with what Senator McCain said then. Right now, we are in a position to follow through on what Senator Obama said at that point and make sure the middle class of this country does not pay taxes on their health benefits.

Mr. BROWN. If the Senator will yield, I say thank you. I think that made it very clear.

Earlier, the Senator talked about what the tax cuts for the wealthiest citizens during the Bush years did to our national debt. He mentioned the war in Iraq, the trillion-dollar war in Iraq and Afghanistan, not to mention the huge cost it is going to be to continue to take care of the men and women who served us courageously with their physical and mental injuries from Iraq.

Senator FRANKEN is so familiar with this because of tours he made as a private citizen to battle zones, year after year, to talk to our troops and entertain our troops. He didn't get a lot of credit for that, but he didn't care about the credit for that. He was there, always doing that.

One of the things that is pretty interesting, listening to my Republican friends on the other side of the aisle talk about this bill now, which the Congressional Budget Office says is paid for and more, while they continue on their side to talk about the budget deficit, it was that group who passed—Senator SANDERS and I were both House Members at that time and voted against it—passed the Medicare Privatization Act, and the people who were on the floor talking to us voted for cloture for the Medical Modernization Act. That bill was not paid for. That bill was a giveaway to the drug industry and the insurance industry. It has added tens and tens of billions of dollars to our national debt.

On the one hand, they support these tax cuts that are not paid for, they support the Iraq war which was not paid for, and they now want us to go into Afghanistan and not pay for it, yet increase the number of troops. They continue down this road when we are on this bill doing the right thing. Even with our amendment here to eliminate the Cadillac—the taxing Cadillac plans, we are saying we are going to find another way to pay for it. We are not just going to eliminate that cut in taxes. We want to, but we are going to pay for it some other way.

I yield for Senator FRANKEN.

Mr. FRANKEN. We are actually addressing that doughnut hole that was in the Medicare Part D bill. We are closing it by half. Do you know when it starts? Next year.

Mr. BROWN. I thought Senator THUNE said none of the benefits started then.

Mr. FRANKEN. Senator THUNE did say none of the benefits started next year, but I guess he just hasn't read the bill. I have so many constituents come to me and say: Read the bill, read the bill. I ask—

Mr. BROWN. If the Senator will yield, perhaps if you are going to vote against it, you do not need to read it? Is that the way to think about it?

Mr. FRANKEN. I do find that many of my colleagues with whom I am very friendly have not read the bill and are not very familiar with it. I think if you are going to get on your feet and debate and make assertions, you should really be familiar with the content of the bill. That is what I thought. I have only been here a while, so maybe I am naive, but I think when you say none of the benefits are going to start next year, you should be right.

Mr. SANDERS. If I could just add to the point Senator BROWN and Senator FRANKEN have made regarding concern about the national debt, every day there is a Republican coming up here to say we have a \$12 trillion national debt and we have to cut this and cut that—all that. Yet I think virtually every one of them is in support of the repeal of the asset tax, which would benefit solely the top three-tenths of 1 percent and would cost the Treasury \$1 trillion over a 20-year period—\$1 trillion over a 10-year period. I am sorry, \$1 trillion over a 10-year period.

I am really concerned about the deficit, I am concerned about the national debt, but I am prepared to vote for repealing the entire estate tax which only impacts—gives \$1 trillion in tax breaks over a 10-year period to the top three-tenths of 1 percent.

Some may question the sincerity about their concern about the national debt.

Mr. FRANKEN. In fairness, I am not sure they are all for that. I think I have heard some soundings from the other side to extend what we have this year because this runs out on January 1 and we do not want to see a lot of plugs pulled.

Mr. SANDERS. I am talking about what happens now. Overall, the vast majority of our Republican friends—

Mr. FRANKEN. Yes, in theory.

Mr. SANDERS. Want to abolish the estate tax, which is \$1 trillion in tax breaks.

Mr. FRANKEN. I just want to bend over backward to be fair to my colleagues on the other side.

Mr. SANDERS. The Senator is so nice.

Mr. FRANKEN. Maybe I do that to a fault, and I apologize to our side.

Mr. SANDERS. Madam President, polls show there is overwhelming support among the American people for what we are discussing today. Organizationally, it has the support of the AFL-CIO, the National Education Association, the Fraternal Order of Po-

lice, the United Steelworkers of America, AFSCME, the American Postal Workers Union, and a number of other organizations representing millions of working people. This is not a complicated issue. Somebody will have to pay for this bill. Should it be the middle class and working families or should it be the people at the top two one-hundredths of 1 percent who, over the period of the last 8 or 9 years, have enjoyed huge tax breaks? This is kind of a no-brainer.

The good news here is that our friends in the House have moved correctly in this area. The bill before us in the Senate does not. What we are trying to do is to get an amendment to take out the tax on health care benefits and replace it with similar language, not exactly the same as exists in the House.

Mr. FRANKEN. Let's get back to the excise tax and what it is purportedly supposed to do. It is supposed to bring down costs and generate revenues. Those are both necessary objectives. I have been submitting stuff over and over again to bring down costs, including a 90-percent medical loss ratio, including uniform standardized insurance forms which will save billions of dollars. I don't think this excise tax is the best way to bring down costs and generate revenue. We should be focusing on actually bringing down the cost of services instead of trying to limit the availability of care.

One way to actually bring down the cost of services is the value index in the bill, which Senator CANTWELL introduced in the Finance Committee and which is still in this bill, and which Senator KLOBUCHAR fought for, and many of us from high-value States. That will change the Medicare reimbursement rates to incentivize value. Another unintended consequence of the excise tax is its effective penalty on comprehensive benefit packages secured for workers by their unions. Again, I come back to these unions who gave up salary benefits, who gave up earning benefits. As soon as this gets going, this is going to be returning year after year as we see medical inflation go up and up. This is the cost of living index plus 1; right?

Mr. SANDERS. Right.

Mr. FRANKEN. Plus 1 percent. That is not what we have seen from medical costs.

Mr. SANDERS. That is the point. The point is that medical costs are going up substantially more than inflation. In fact, general inflation is actually going down. There is no question but that as medical inflation continues to remain high, millions and millions more workers are going to be forced to pay this tax. One of the other side effects of this tax is that many employers, in order to avoid it, are going to start cutting the health care benefits that workers receive. Today it may be

dental; tomorrow it will be vision. The next day it will be more copayments, more deductibles. This is grossly unfair to working families.

Mr. BROWN. Again, it is making the choices. Unlike the Medicare Modernization Act, which Republicans pushed through in 2003—I know Senator ENSIGN voted against that although he voted for cloture, but he actually opposed that, to his credit—that was legislation that wasn't paid for. It was a giveaway to the drug insurance industry. It wasn't paid for. Our legislation is, and our amendment is. We made a choice. Do you charge the middle class? Do you say to the middle class, you are going to pay a tax on your health care benefits, or do we have someone else pay who has gotten a lot of advantages in the last few years? Since 2001, the richest 1 percent of Americans, because of the Bush tax cuts, got \$565 billion in tax breaks. This year that same wealthiest 1 percent of Americans are scheduled to receive an additional \$108 billion in tax credits. It is clear we want to go to the right place in this. We want to keep it fiscally sound. We want to keep it balanced. We want to pay for it, something my friends on the other side of the aisle rarely do when it comes to war, when it comes to tax breaks for the rich, when it comes to giveaways to the drug and insurance companies.

We are doing it that way. That is why the Sanders-Franken-Begich-Brown amendment makes so much sense.

Mr. FRANKEN. One last word on the deficit and the debt. May I remind everyone that when the Republicans were in the majority and President Bush came to Washington, we had a surplus, a record surplus. At the time the Chairman of the Fed, Alan Greenspan, testified to Congress that we had a new problem. The new problem was that because of the projected surpluses, we were, in a number of years, going to have too much money, that we were going to pay off the debt and the Federal Government would be forced to buy private equities and that this would not have a maximizing effect on our economy. That is what he said, after Bush became President. That was what he said. He said we were going to have too much money. That is what the Chairman of the Fed said. So we handed the ball off to President Bush, and we handed the ball off to these Republicans. The problem was, we were going to have too much money. That is not a problem anymore, is it? Now you hear them screaming about the deficit. Think about the deficit they left us. Think about the economic circumstances they left us in. We are talking about getting rid of this excise tax, but we are talking about paying for it. The CBO has scored this bill as cutting the debt in the next 10 years by \$179 billion and then \$500 billion in the next 10. That is responsible.

What we saw in the years that we had a Republican President and a Republican House and a Republican Senate was an explosion in the deficit. I don't want to hear lectures about the deficit. When I hear presentations from my colleagues, I want them to remember what Senator McCain said when he said facts are stubborn things.

When we debate in this Hall on this floor, let's stick to the facts. So many of the benefits in this bill start immediately. It is simply not fact to say they don't.

Mr. SANDERS. Madam President, how much time do we have remaining?

The PRESIDING OFFICER. There was no time limit on the colloquy.

Mr. SANDERS. I think we are coming to the end of it. I hope, focusing on the issue of the excise tax, the Senate is prepared to support our amendment. If that is not the case, certainly support what the House has done in the conference committee. Taxing middle-class workers is not the way we should fund health care reform.

Mr. FRANKEN. I thank the Senator. I thank both of my colleagues from Vermont and Ohio, and urge my colleagues to support amendment No. 3135.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I ask unanimous consent that I be allowed to engage in a colloquy with the senior Senators from Connecticut and Montana.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, when the American people demanded last November and throughout this year that we make it possible for every American to afford to live a healthy life, they did so because they know from personal experience how broken our country's health care system is. As the Senate has worked to answer that call this year, we have drafted a bill that will save lives, save money, and save Medicare. Many aspects of the current bill achieve that goal. But there is one more thing we could do, closing the notorious gap that arbitrarily charges seniors in Nevada and throughout the Nation thousands and thousands of dollars for prescription drugs.

As seniors know all too well, the prescription drug plan is called Medicare Part D, and the coverage gap is commonly known as the doughnut hole. Right now Medicare will help seniors afford their prescription drugs only up to a certain annual dollar limit, \$2,700 a year, then stop, then help it again only once their bills reach another much higher level, \$6,100. So from \$2,700 to \$6,100, that is the notorious, bad doughnut hole. Between these two points, seniors are stuck with the full bill. Imagine if you had car insurance

that covered you until you drove 2,700 miles in a given year, then stopped, then started covering you again once you hit 6,100 miles. From 2,700 to 6,100 miles would be pretty scary. That wouldn't work for drivers, and the doughnut hole doesn't work for seniors. The effects of this broken system are painfully simple. More and more seniors have to skip or split the pills they need to stay healthy. It means that in January someone will pay \$35 to fill a prescription, but by October he or she could be asked to pay thousands of dollars for the very same pills.

I was at CVS a day or two ago to pick up some stuff for my wife at the prescription counter. They had on the counter there where you were waiting a list of the cost of all drugs. I didn't fully understand it, but I looked at it. Some had values of thousands of dollars to fill a prescription. The only one I saw—I didn't want to flip through the pages—but the one page, \$9,800 for one prescription. I don't know if that was 30 pills or what, but it was striking.

If someone will pay \$35 to fill a prescription, that is fairly inexpensive. But by October, he or she would be asked to pay thousands of dollars. That is what it is. It is not an uncommon problem. Millions of seniors, a quarter of all in the Part D Program, reach that no man's land during the year, the doughnut hole. But only a small fraction get to the other side. Both numbers will only get worse if we don't act. Not surprisingly, those caught in the middle don't take the medicine they need at far greater rates than those who do have coverage. Like we see with uninsured Americans of all ages, those who can't afford the treatments they need to get healthy will get even sicker. Down the road that means more expensive doctor visits, more expensive hospital stays, and more expensive medicines. It means more sickness and more death.

We have already taken the first steps to fix this in the current bill, closing the gap by half and by an additional \$500 for 2010. Because I am committed to saving lives, saving money and saving Medicare, I personally am committed to fully closing the doughnut hole once and for all. Once we pass this bill out of the Senate, we will do so in the conference committee with the House, whose bill already closes the gap. The House legislation closes the doughnut hole. The legislation we will send to President Obama for signature will make good on his promise and ours to forever end this indefensible injustice for America's seniors.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I agree with my friend the majority leader that we must close the doughnut hole. I think it is something all of us appreciate. I second his commitment to doing so with this bill that we will send

to the President. As most seniors live on modest incomes, we all know it is imperative that they can afford the prescriptions they need. As the majority leader has noted, seniors who have trouble paying for prescription drugs are more likely to skip doses or stop taking their medications altogether which would lead to more serious health problems and higher long-term costs, both for them and our health care system as a whole. In my State of Connecticut, 25 percent, a quarter of all Part D enrollees fall into the doughnut hole. I understand the significance of delivering on the commitment to fixing this problem.

We have a responsibility, as all of us can appreciate, to protect and strengthen Medicare and to improve the lives of our seniors. If we fail to act, the doughnut hole, we are told, will continue to grow in size, doubling in less than 10 years. The size of the doughnut hole is directly tied to drug prices, prices that are rising at an alarming rate.

Seniors who have spent thousands and thousands of dollars—not including the cost of their premiums—before they get out of the doughnut hole and get the treatments they need cannot afford to wait any longer to close this costly gap.

Our historic reform effort must improve the quality and affordability of Medicare. Closing the doughnut hole is a very clear and concrete way to do that.

I understand we may not have the opportunity to fix this issue in the Senate bill before it leaves this Chamber, but I want it to be known that I support the idea of closing the doughnut hole in the conference committee that will meet with the other body.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, closing the doughnut hole is clearly the right thing to do. Medicare beneficiaries face extremely high out-of-pocket costs for outpatient prescription drugs. In fact, they face costs that are six times higher than out-of-pocket costs for those of us fortunate enough to have employer-sponsored coverage.

The doughnut hole contributes to these high out-of-pocket costs. As a result, the doughnut hole often results in seniors skipping vital medications.

Eliminating the coverage gap in the Medicare prescription drug program will save people with Medicare thousands of dollars every year. Lowering the costs for seniors will also keep them healthier by ensuring they can afford their medications.

In my home State of Montana, 33 percent of seniors enrolled in the Medicare prescription drug program fall into the doughnut hole every year—one-third. We all know what the consequences are when people cannot afford the medicines they need to stay healthy, both

for the affected individuals and for society at large.

Recognizing the scope of this problem, in his address to a joint session of Congress in September, President Obama promised to close the doughnut hole once and for all. It is our responsibility to make good on this promise and provide this needed relief to seniors. I join my colleagues in committing that we will send a bill to the President that closes the doughnut hole and fulfills his promise.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I wish to, if I could, ask my two colleagues, through the Chair, if it is their understanding that the President fully supports this action.

Mr. BAUCUS. Madam President, responding to the leader, that is my full understanding.

Mr. DODD. Madam President, I would add, that is my full understanding as well.

The PRESIDING OFFICER. (Mrs. HAGAN). The Senator from Nevada.

Mr. ENSIGN. Madam President, I want to address a few of the things that were mentioned on the floor just now. However, I want to start by talking about how this health care bill will affect small businesses.

Small businesses are the engine that drives our economy. We know they are struggling right now. The President met with some bankers today at the White House because many of the large banks are not loaning money to small businesses. We all know that. Many small businesses are struggling to keep their doors open.

One of the reasons small businesses are a little nervous right now is because they do not know if this bill goes into effect, what that massive effect is going to be on them. They are uncertain about the future.

Let me tell you a few things.

First of all, we all know that there is a \$500 billion tax increase contained in this 2,074-page bill that is before us today. In that bill, there is also an employer mandate of \$28 billion. This is what the nonpartisan Congressional Budget Office has said about that \$28 billion: Not only does it fall heavily on small businesses, but the CBO goes further to say that “workers in those firms would ultimately bear the burden of those fees” in the form of reduced compensation. That is a direct quote.

This bill also discourages small businesses from hiring folks. CBO went on to say: “. . . the employment loss would be concentrated among low-income workers.” Do we want to do that to folks out there who are struggling right now? We have heard across this country that record numbers of people are signing up for food stamps, welfare, unemployment insurance, and all of the various government subsidies that are out there to try to help people

through a tough time. Do we want to keep them from getting a job?

The Medicare payroll tax, that is \$54 billion in this bill, will hit one-third of all small business owners. Those small business owners that it will hit about 30 million people in the United States. If you put a tax on somebody, especially during a recession, you are going to inhibit them from investing in their business and creating jobs.

I have heard many people from the other side of the aisle say that it is not a good time to raise taxes, and yet they are raising taxes in this bill. Sometimes they call them fees, penalties, assessments, or different things, but they are taxes.

This bill will also require small businesses to buy a government-approved insurance plan. So even for those small businesses that currently have a plan that they like, one that works for them and their employees, and one that is affordable and even though these small businesses have tried to do the right thing, the plan that they have selected may not quite meet the government criteria. This may be because the plan they chose was a little more of a bare-bones type of plan—in any event, this bill will require them to spend more money for a higher level of coverage than maybe they can afford.

What will that do? Well, if the small business is barely getting by now, barely keeping its doors open, and the government requires it to spend more money on health insurance, some employees may be laid off or in some cases, small businesses may close and all its employees may lose their jobs.

Most people in this body have never operated a small business. I built, owned, and operated two different small businesses—veterinary clinics. I understand how difficult it is for a small business owner, especially when you are just starting out and you are investing, you are putting everything you have into it, with all your hard work, and the few profits you make you plow right back into the business. You are trying to expand. You are trying to hire the next person, and you are trying to grow your business. When the government comes along and puts extra taxes and extra burdens on you, it makes it tough. That is not what we should be doing, especially during a time of recession.

This bill before us also caps what are called flexible spending accounts at \$2,500. Flexible spending accounts are used by a lot of small businesses, but they are also used by a lot of Federal employees. They are used by a lot of people. They are especially used by a lot of people who have serious chronic diseases.

If you are a Federal employee, for instance, you can put \$5,000 in a flexible spending account, and then you can pay, for instance, for approved out-of-pocket health care expenses. This bill



caps that at \$2,500 a year. So for somebody who has multiple sclerosis or somebody who has diabetes or somebody who has a chronic disease that requires a lot of medical attention, you are hurting those people who need that money the most. That is not something we should be doing, but that is exactly what this bill does.

Let me talk about some of the general provisions in this bill and not just how it affects small businesses. We have talked about the Medicare provisions in the bill a lot on the floor. We know there is a \$500 billion cut in Medicare. Folks on the floor were just talking about the doughnut hole for senior citizens in the Part D prescription drug plan under Medicare. Under this bill, Medicare Advantage will be cut by \$120 billion. Most Medicare Advantage plans have no doughnut hole, yet this bill would take \$120 billion out of Medicare Advantage, cutting extra services. According to CBO, there will be a 64-percent reduction in extra benefits by the year 2016 for those seniors who have Medicare Advantage.

Ten million seniors in the United States today have Medicare Advantage. They have chosen it. They were not forced into it. As a matter of fact, Medicare Advantage is a relatively new program. Seniors do not like change that much, yet they saw an advantage in this program. They did not have pay to pay their Medigap insurance. They did not have a doughnut hole. Many of them get vision and dental services, yet their extra benefits are going to be cut by 64 percent because of this bill.

Overall, because of the smoke and mirrors that are used, it is said this bill only costs \$849 billion. But, the costs are hidden. First of all, \$849 billion is a huge number. But it is actually a \$2.5 trillion spending bill. The reason is because when you look at it fully implemented—right now, a lot of the benefits do not start right away but the taxes start right away—when you look at the full 10 years when taxes, benefits, and everything is implemented, it is a \$2.5 trillion bill. This is a massive increase in the Federal Government.

As an example, within the 2,074 pages of this bill there are almost 1,700 new places where authority is provided to the Secretary of Health and Human Services to make health care decisions for the American people. Madam President, this bill gives the Secretary of Health and Human Services the authority to make health care decisions for the American people 1,700 times. If that is not a massive government expansion into our health care field, I do not know what is.

There is also about \$500 billion in new taxes. I have this chart in the Chamber. This is a quote by President Obama on his health care promises. He said:

Let me be perfectly clear. . . if your family earns less than \$250,000 a year, you will

not see your taxes increased a single dime. I repeat: not one single dime.

He said:

Nothing in this plan will require you or your employer to change the coverage or the doctor that you have. Let me repeat this: nothing in our plan requires you to change what you have.

And thirdly, he said:

Under the plan, if you like your current health [care] insurance, nothing changes, except your costs will go down by as much as \$2,500 per year.

Let me focus on the first quote about the new taxes that are in this bill. The bill includes a 40-percent insurance plan tax. There is a separate insurance tax on top of the 40-percent insurance plan tax. This is the one, by the way, that several of my colleagues were talking about that the unions are all up in arms about. It is the Cadillac plans they were talking about that are going to be taxed. Most union members have a Cadillac plan, and their plans are going to be taxed at 40 percent above a certain dollar figure. Because this tax is not indexed to inflation, by the end of a decade, most Americans' plans will be subject to this 40-percent tax.

There is also an employer mandate tax. But as the Congressional Budget Office said, this tax actually gets shifted down to the workers. There is a drug tax. Every time you purchase drugs, taxes are passed onto you by the drug companies, so all of us are going to be paying more for drugs. There is a laboratory tax. Every time you go in, there is a tax on lab work. All of these taxes end up raising health care premiums. There is a medical device tax. There is a failure to buy insurance tax. There is a cosmetic surgery tax. And, there is an increased employee Medicare tax.

At this point, let's remember that first quote I showed where President Obama said he would not raise taxes on families making \$250,000 or less, and on individuals making \$200,000 a year or less. Well, 84 percent of the taxes in this bill will be paid by people making less than \$200,000 a year—84 percent of the taxes.

I would like to point out another problem with this bill. It contains a sense of the Senate on medical liability reform. In his September address on health care reform, the President talked about the need to do something about medical liability reform. The problem is that this bill before us today only includes a sense of the Senate on medical liability reform. Let me show you. As shown on this chart, this is how much money this health care bill saves with their sense of the Senate. Zero.

However, the Congressional Budget Office said that real medical liability reform would save \$100 billion in this country—between what the government spends and what the private sector spends, that is \$100 billion in total.

The problems with this bill are so numerous that we could go on and on discussing them, but we truly do need to start over. We need to start over and take more of a step by step approach. We need to develop an incremental approach, where both sides can agree on some of the reforms we need to do—without destroying our current health care system. We need to enact meaningful medical liability reform.

We need to agree on provisions about eliminating preexisting conditions. We need to agree on an incremental approach to reward people for engaging in healthy behaviors. It is cheaper to insure people who are nonsmokers and people who are not obese. It is about \$1,400 less to insure a non-smoker versus a smoker; and it is about \$1,400 less to cover someone who has the proper body weight versus somebody who is obese. Encouraging individuals to engage in healthy behaviors is a good thing. We can agree on that.

We also need to allow small businesses to join together to take advantage of purchasing power in the same manner that big businesses do. This is an incremental reform proposal that would not destroy the quality of our health care system and would not take the costs and put them on the backs of small businesses. This is something we should do. This is something we can do.

The only way to enact these incremental reforms is to stop the bill that is before us today. The only way for us to do that is to sit down together, not as Republicans or Democrats, but to sit down together and come up with ideas that we can all agree on that will actually help the health care system in America. That is what this body should do if we want to do what is right for the American people.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. McCONNELL. Madam President, I ask unanimous consent that Senator McCain and I be permitted to engage in a discussion regarding the health care matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. Madam President, last Friday, we heard from two entities. We heard from the Center for Medicare & Medicaid Services, indicating health care costs in this country would actually go up under the Reid bill. We also heard from CNN. We heard from CMS and from CNN. We heard from CNN about how the American people feel about this measure. At a time when all the polls indicate the American people do not favor this bill, do not want us to pass it, and when the government's Actuary indicates the bill will actually not cut health care costs, which we thought was what this debate was all about in the first place, we are being confronted with a procedure that is quite unusual: an effort to



restructure one-sixth of the economy through a massive bill that it appears almost no one has seen.

At what point, I would ask my friend and colleague from Arizona, could we expect that the American people would have an opportunity to see this measure that has been off in the conference room here and being turned into sausage in an effort to get 60 votes?

Mr. MCCAIN. I would say to my friend, the Republican leader, that I have seen a lot of processes around here and a lot of negotiations and a lot of discussions, but I must admit I have not seen one quite like this one, nor do I believe my leader has.

I was on the floor in a colloquy with the assistant Democratic leader a couple days ago, and I said: What is in the bill? He said: None of us know. Talk about being kept in the dark.

I would say to my friend from Kentucky, we have to put this into the context of what the President of the United States said in his campaign because the whole campaign, as I well know better than anyone, was all based on change. On the issue specifically surrounding health care reform, I quote then-Candidate Obama on October 18, 2009:

I am going to have all the negotiations around a big table televised on C-SPAN so that people can see who is making arguments on behalf of their constituents and who is making arguments on behalf of the drug companies or the insurance companies.

He went on to say that a couple more times.

I would ask my friend: Hasn't it been several days that we basically have been gridlocked over one amendment, which is the amendment by the Senator from North Dakota that would allow drug reimportation from Canada and other countries?

So then, guess what the reports are today:

PhRMA renegotiating its deal? Inside Health Policy's Baker, Pecquet, Lotven and Coughlin report: 'The pharmaceutical industry is negotiating with the White House and lawmakers on a revised health care deal under which the industry would ante up cuts beyond the \$80 billion it agreed to this summer, possibly by agreeing to policies that would further shrink the . . . doughnut hole. . . .'

I will not go into all the details of that.

Just a few minutes ago on the floor, guess what. They announced there would be some change made, an amendment that would be included in the managers' package.

I would ask my friend, is it maybe the case that the majority leader, who is having a meeting, as we speak, of all the Democratic Senators behind closed doors, without C-SPAN, has cut another deal along with the White House with—guess who—the pharmaceutical companies that have raised prices some 9 percent on prescription drugs this year?

This is a process the American people don't deserve, so I would ask my friend from Kentucky.

Mr. MCCONNELL. I would say to my friend from Arizona, that is a process that gives making sausage a bad name.

Mr. MCCAIN. So we were hung up—or should I say gridlocked—for 2 or 3 days, over the entire weekend. The Republican leader even agreed to a unanimous consent agreement that would allow a Democratic side-by-side amendment, and that was not agreed to—until over at the White House, according to this report, PhRMA renegotiated its deal and apparently they now have sufficient votes to defeat the Dorgan amendment which, as of last summer, according to the New York Times, said the last deal shortly after striking that agreement, the trade group—the Pharmaceutical Research Manufacturers of America, or PhRMA—also set aside \$150 million for advertising to support the health care legislation.

I ask my friend, is this changing the climate in Washington or is it not only business as usual but, in my opinion, I haven't seen anything quite like this one.

Mr. MCCONNELL. I would say to my friend, it certainly is not changing business as usual in Washington. Even more important than that, it is not changing American health care for the better, which is what we all thought this whole thing was about when we started down this path of seeing what we could do to improve America's health care, which almost everyone correctly understands is already the best in the world.

Mr. MCCAIN. Hadn't there been charge after charge that Republicans are "filibustering" and Republicans have been blocking passage of this legislation? I would ask my friend, hasn't the Republican leader offered a series of amendments we could get locked into and have votes on?

Mr. MCCONNELL. We have been trying to get votes on the Crapo motion, for example, since last Tuesday. It will be a week tomorrow. Maybe at some point we will be able to have amendments again.

We started off on this bill with each side offering amendments, and we went along pretty well until, I think, the majority decided it was not only better to write the bill in secret, it was better to not have any amendments to the bill. So they began to filibuster our efforts for Senators to have an opportunity to vote on aspects of this bill, such as the \$½ trillion worth of cuts in Medicare which we, fortunately, were able to get votes on; the \$400 billion in new taxes, which we would like to be able to get votes on.

This is the core of the bill. The American people have every right, I would say to my friend from Arizona, to expect us to debate the core of the bill—the core of the bill, the essence of

the bill—which is not, of course, going to be changed behind closed doors or during this meeting that is going on with Democrats only.

Mr. MCCAIN. As I understand it, there is a meeting going on behind closed doors, again, where there are no C-SPAN cameras.

According to the Washington Post this morning, it says:

The Senate will resume debate Monday afternoon on a popular proposal to allow U.S. citizens to buy cheaper drugs from foreign countries which led to a last-minute lobbying push by drug makers last week and bogged down negotiations over a health care reform bill.

It goes on to say:

The fight over the imported drugs proposal poses a particularly difficult political challenge for President Obama who cosponsored a similar bill when he was in Congress and who included funding for the idea in his first budget. But the pharmaceutical industry, which has been a key supporter of health care reform after reaching agreement with the White House earlier this year, has responded with a fierce lobbying campaign aimed at killing the proposal, focusing on Democratic Senators from States with large drug and research sectors.

So it will be interesting to watch the vote.

I would also point out to my friend, it is clear that if we allow drug reimportation, we will save \$100 billion, according to CBO, and the deal that was cut—the first deal that was cut with the White House was they would reduce it by \$80 billion, so they had a \$20 billion cushion. Now it will be very interesting to see what the latest deal is and how the vote goes.

But, again, I wish to ask my Republican leader, we get a little cynical around here from time to time and we see sometimes deals cut and things done behind closed doors. I am past the point of frustration; I am getting a little bit sad about this. Because I think we know we are now bumping up against Christmas. Sometime we are going to break for Christmas. So the pressures now are going to be even more intense because I think it is well known and reported that if they don't get a deal before we go out for Christmas, then it will be very much like a fish sitting out in the sun. After awhile, it doesn't smell very good, when people see a 2,000-page bill which has all kinds of provisions in it.

So I understand, without C-SPAN cameras, that all the 60 Democratic Members of this body are going to go down to the White House for another meeting tomorrow, and we will see what happens then.

Mr. MCCONNELL. I would say to my friend from Arizona, talk about an example of manufactured urgency. Is it not the case, I ask my friend from Arizona, that the benefits under this bill don't kick in until 2014?

Mr. MCCAIN. Well, my understanding is, if you go out and buy a car today

from any car dealer, you don't have to make payments for a year. You can get that kind of a deal if you want it. This deal is exactly upside down. You get to make the payments early, and then you get to drive the car after 4 years.

Mr. MCCONNELL. So the urgency, it strikes me, I would say to my friend from Arizona, is to get this thing out of the Congress before the American people storm the Capitol.

We know from the survey data, do we not, that the American people are overwhelmingly opposed to this bill? So what is the argument I keep hearing on the other side? I was going to ask my friend from Arizona: I hear the President and others say: Let's make history. Well, there has been much history made but much of it has actually been bad, right?

Mr. MCCAIN. I would also like to say, there is a history we should not ignore; that is, that every major reform ever enacted in the modern history of this country has been bipartisan, whether it be Medicare, whether it be Social Security, whether it be welfare reform, as we remember under President Clinton. Every major reform has been accomplished by Democrats and Republicans sitting down together and saying: OK, what is it we have to do? What kind of an agreement do we have to make?

Some of us have been around here long enough to remember that in 1983, Ronald Reagan and Tip O'Neill, a liberal Democrat from Massachusetts and the conservative Republican from California, sat down with their aides across the table and key Members of Congress when Social Security was about to go broke.

Why can't we, since there must be areas we agree on, now say to our Democratic friends and the President, rather than trying to ram 60 votes through the Senate, why can't we now sit down and proceed in a fashion—we will give things up. We are willing to make concessions to save a system of Medicare that is about to go broke in 6 years. We will make some concessions but get us in on the takeoff and don't expect us to be in on the landing when already the bill is written and the fix is in, as the fix apparently is in on the Dorgan amendment.

Mr. MCCONNELL. Could I say to my friend from Arizona, no one has done more in the Senate, in the time I have been here, to express opposition to and warn us about the perils of excessive spending.

As I recall, one of the things the Senator from Arizona told us after he came back following his campaign was, what the American people are concerned about is the cost of health care—the cost. Of course, we are also concerned about government spending—the cost to consumers of health care and the cost to government spending. Dr. Christina Romer, a part of the White House's economic team, said on one of the shows yesterday:

We are going to be expanding coverage to some 30 million Americans and, of course, that's going to up the level of health care spending. You can't do that and not spend more.

Maybe she didn't get the talking points for yesterday's appearances. But we have conflicting messages out of the White House on this very measure.

In short, it is safe to say this is a confused mess, a 2,100-page monstrosity of confusion and unintended consequences. Yet they are in this rush to enact a bill—the benefits of which don't kick in until 2014—before Christmas Day this year. I am astonished at the irresponsibility of it.

Mr. MCCAIN. Madam President, it is a remarkable process we are going through. I see that my friend from Tennessee is here. I know he, being the head of our policy committee and a major contributor to keeping us all informed and up to date, would also like to say something.

First, I will say something I had not planned on saying; that is, this has been a vigorous debate. I think we have been able to act in an effective way, which has been reflected in the polls of the American people who are largely opposed to this measure and greatly supportive of a process where we can all sit down together—with the American people in the room, to be honest—when we are talking about one-sixth of the GDP. The Republican leader's job has been compared by one of his predecessors to herding cats—I agree with that—or keeping frogs in a wheelbarrow. I have not seen the Republican Members on this side of the aisle as much together and as cohesive and working in the most cooperative and supportive fashion of each other since I have been in the Senate. For that, I congratulate the Republican leader.

Mr. MCCONNELL. I thank my friend.

Mr. ALEXANDER. I congratulate the Senator from Arizona for his comments and his own leadership on this issue. I want to add my commendations to the Republican leader.

My thought is that the reason we are working so well together is because we are afraid our country is about to make a historic mistake. There is a lot of talk about making history. There are a lot of ways to make history. Put aside all of the laws about race—don't talk about them. When we talk about race, that is often misunderstood. We didn't fail to make a historic mistake on laws about race until the 1960s, when we began to correct those laws. Let's put aside all the historic mistakes we might have made in failing to stop aggression before World War II. We know about those mistakes. We can remember historic mistakes.

I ask the Republican leader if the Smoot-Hawley tariff sounded like a good idea when President Hoover pushed it in the late 1920s. We were going to raise tariffs on 20,000 imported

goods, create more American jobs, and it created the Great Depression. The Alien and Sedition Act sounded like a great idea. That made a little history. Shortly after our country was founded, we made it a crime to publish false and scandalous comments about the government. It has never been repealed. Our Supreme Court said it was a historic mistake. Then there was the Medicare Catastrophic Coverage Act of 1988. I wonder if the Senators might have been here then.

So we are capable of making historic mistakes. As the Senator from Arizona has said very well, most Americans, if presented with a problem, would not try to turn the whole world upside down to solve it. They would say: What is the issue? The issue is reducing costs. We can all talk to family members and others—we know what they are paying monthly for premiums, and we would like that to be less, and we would like for the government's costs to be less.

Why don't we, as we have proposed day after day, and as the Senator from Arizona has said—why don't we go step by step in the direction of reducing costs.

I will not go into a long litany of proposals we have made. We can take five or six steps on small business health plans, reducing junk lawsuits against doctors, or buying health insurance across State lines. We should be able to agree on that instead of a 2,000-page bill that raises premiums, raises taxes, and seems to have a new problem every day.

I think the cohesion on the Republican side is not so partisan. I like to work across party lines to get results. That is why I am here. I am just afraid that our country is about to make a historic mistake, and we are trying to help and let the American people know what this bill does—what it does to them and their health care.

Mr. MCCONNELL. The fear is palpable. In addition to the public opinion polls we have all seen, we are each having experiences with individuals. I will cite three.

I ran into a police officer—a long-term police officer, an African American. He came up to me and said: Senator, you have to stop this health care bill.

Then there are the health care providers. I see Dr. BARRASSO from Wyoming. Within the last week, I spoke to one of the Nation's fine cardiovascular surgeons. He said: Please stop the health care bill. This is going to destroy the quality of our profession. He told me of a friend of his, a neurosurgeon, who called him with the same concern.

I get the sense that there are an enormous number of health care providers—physicians, hospitals, everybody involved in the health care provider business—apparently, with the

exception of the pharmaceutical industry, which seems to have cut a special deal—who are just apoplectic about the possibility that the finest health care in the world is going to be destroyed by this—as the Senator from Tennessee points out—“historic mistake.”

Mr. MCCAIN. I will mention, also, on the issue of PhRMA, again, here we are in the direst of economic times, with a Consumer Price Index that has declined by 1.3 percent this year, and they have orchestrated a 9-percent increase in the cost of prescription drugs—that is remarkable—laying on an additional burden, which naturally falls more on seniors than anybody else since they are the greatest users of pharmaceutical drugs. I don't blame them for fighting for their industry. But the point is, what they are doing is harming millions and millions of Americans.

Again, about contributing to the cynicism of the American people, whether you are for or against the issue of drug reimportation, to cut a deal behind closed doors and then, apparently, because of support of an amendment by Senator DORGAN, go down and negotiate another deal—how do you describe a process like that?

Mr. ALEXANDER. Well, “unsavory” would be a minimum word that comes to my mind. The problem I have is that Americans have a perfect right to their view, and the pharmaceutical industry has a perfect right to advocate its point of view.

As I hear the Senator describe what has been going on, am I hearing correctly? I mean, the pharmaceutical industry is saying we don't like drug reimportation. The White House says: OK, we will cut a deal with you behind closed doors—as far as we can tell—and we will change the law this way, and then—

Mr. MCCAIN. The original deal was published in every newspaper, and it was that they would close the so-called doughnut hole by some \$80 billion. CBO said their profits would be reduced by some \$100 billion if we allow reimportation. They had a \$20 billion cushion.

Mr. ALEXANDER. So it is a negotiation between the White House, the President, and big industry about profits: I will do this, you do that, and then you go out—and my understanding is that you write in as part of the deal that the industry spends \$150 million on television advertisements in support of the deal. Is that the deal?

Mr. MCCAIN. But then, incredibly, they counted the votes. The votes were there to pass the Dorgan amendment. According to published reports, the pharmaceutical industry is negotiating with the White House and lawmakers on a revised health care deal under which the industry would ante up cuts beyond the \$80 billion it agreed to this summer.

In other words, because that wasn't sufficient to get votes to kill the Dor-

gan amendment that would allow reimportation of drugs, they went down and renegotiated. What is that called?

Mr. ALEXANDER. Well, if I am remembering right, earlier this year the Republican leader made a talk on the Senate floor. The attitude of the White House toward a large company in Kentucky, as I remember, was: If you don't agree with us on health care, we will tax you. That was the attitude, it seems, to come out. If you don't agree with us, we will tax you, or we will make it difficult for you to do business. If you do agree with us, we will make a deal with you that affects your profits.

Mr. MCCONNELL. I say to my friends, beyond that, the administration basically told this company to shut up. They issued a gag order that was so offensive, even an editorial in the New York Times said it should not have been done. They could not communicate with their customers the impact of various parts of this bill on a product they buy, Medicare Advantage. The tactics have been highly questionable, it strikes me, from the beginning of the year up to the present. What Senator MCCAIN is talking about is just the most recent example.

Mr. MCCAIN. Can I also give you this to illustrate it graphically? In this news report, several lobbyists told Inside Health Policy—that is the organization that is reporting this—they have heard that the Pharmaceutical Research and Manufacturers of America may have already reached a deal with the White House and AARP to close the Senate bill's coverage gap by 75 percent versus the 50 percent under the current bill. PhRMA declined to confirm the reports that it may be agreeable to reforms that would further close the doughnut hole but signaled discussions were underway, and AARP said no agreement has been reached. We haven't seen a deal.

Here are our old friends at AARP at it again. They are at it again.

Mr. MCCONNELL. Will the Senator yield for this point?

Mr. MCCAIN. Yes.

Mr. MCCONNELL. Is that the same AARP that would, I am told, actually benefit from the decline of Medicare Advantage because they sell policies themselves that would be more likely to be purchased by seniors? Is that the same AARP?

Mr. MCCAIN. When you lose Medicare Advantage, as Dr. BARRASSO will fully attest, then you are almost forced into the so-called Medigap policies, which then cover the things that are no longer covered under Medicare Advantage, such as dental, vision, fitness, and other aspects of Medicare Advantage.

So if you destroy Medicare Advantage, then people will be forced into the Medigap policies. Who makes their money off Medigap policies? AARP.

Mr. SESSIONS. If the Senator will yield for a question about this deal with big PhRMA, a few days ago I made reference to and quoted from a scathing editorial by Robert Reich, who served as Secretary of Labor in the Clinton administration, who is a leading intellectual liberal Democrat who criticized these deals in the most scathing terms. He used words I was reluctant to use on the floor—as my colleague said, “unseemly,” whatever. I would say it goes beyond that. He used the word “extortion.” I don't think he used that word lightly.

I think it is the kind of process—the Senator has been here and many who are on the floor now have been here for a long time—but it seems to me this is pushing the envelope on dealmaking to the point that really is a dangerous step. It goes beyond anything we should countenance, in my view.

Mr. MCCAIN. I agree with the Senator. Again, I would like to ask Dr. BARRASSO because he has treated patients who are under Medicare Advantage. Before I do, I want to say again that the whole process has been wrong. The process of going behind closed doors; the process where, after nearly a year of addressing this issue, the distinguished—and he is a fine person, a fine Senator from Illinois—the No. 2 leader in the majority, in a colloquy I had with him just 2 days ago, said no one knows what is in the bill. He said no one knows what is in the bill. This is after a year. It is wrong. What it does is—this issue is vital, but it destroys the confidence of the American people to be truly represented here to have their interests overridden by the special interests, of which PhRMA and this deal that is going on right now is a classic example. I ask Senator BARRASSO.

Mr. ALEXANDER. Before Dr. BARRASSO speaks, just listening to the Senator from Arizona, it seems to me it puts the Democratic leadership in the extremely awkward position of even its leadership—proposing a bill that affects 17 percent of our economy and the leadership of the Democratic Senate doesn't yet know what is in the bill, we certainly don't know what is in the bill, and they are in the awkward position—at least they have been the last few days—of filibustering their own bill at a time when they are insisting that we pass the bill before Christmas, which we can hear the sleigh bells ringing. It is just a few days before that happens.

Mr. BARRASSO. It seems, as we are on the Senate floor talking—

Mr. MCCAIN. May I interrupt? I ask unanimous consent that the Senator from Tennessee take over this colloquy.

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

Mr. MCCAIN. Go ahead. I am sorry.

Mr. BARRASSO. It seems to me, as we are on the Senate floor discussing the issue wide open—any American can come in here and listen to us—hidden behind closed doors is the other party, maybe sharing what is in the secret negotiations, maybe not, because it sounds as if a number of their members don't know.

What I do know from practicing medicine for 25 years and taking care of families around the State of Wyoming is that people depend on Medicare for their coverage. There are seniors who depend on Medicare and Medicare Advantage. The reason they call it Medicare Advantage is because there are advantages to being in it. It coordinates care. It helps with preventative care, which is not part of the regular Medicare Program.

Yesterday, I heard my colleague from Arizona say there are those who want to shut down Medicare Advantage—AARP, he said—because they are the ones to benefit and profit if, in fact, Medicare Advantage is lost to the seniors in this country. Madam President, 11 million Americans depend on Medicare Advantage. Yet they are losing because of a vote this body took. This body voted to strip \$120 billion away from our folks who depend on Medicare Advantage.

I know the Senator from Arizona has another important point he wants to make.

Mr. MCCAIN. The point I want to make is this process has turned into something, again, like I have never seen before. I was just handed this FOX News, just-reported breaking news that HARKIN said—I guess referring to the Senator from Iowa—HARKIN said that Medicare buy-in and public option are now dead. I don't know what to say except it seems to me they are just throwing everything against the wall and seeing what sticks and what doesn't stick. This is really, again, one of the most astounding kinds of situations I have observed in the years I have been in the Senate. Medicare buy-in is dead, public option is now dead.

What I would like to see is that HARKIN would report that now Republicans and Democrats will sit down together and try to work out something of which the American people would heartily approve.

Mr. BARRASSO. I have great concerns about the health care availability for the people of our great country. This is a front-page story in the Wyoming Tribune Eagle on the 13th: "Doctor shortage will worsen." That is what I am worried about. I am worried about the patients at home. I am worried about the folks in Arizona, Alabama, and Tennessee. "Doctor shortage will worsen." "It is estimated that as many as one-third of today's practicing physicians will retire by 2020" and provider shortages will continue to increase. It says that based on health

care so-called reforms they are proposing, the strain on certainly Wyoming's physician shortage will even possibly lead to longer wait time for appointments as patients travel even farther for care.

As I look at this bill that raises taxes \$500 billion, cuts Medicare \$500 billion, and causes people who already have insurance—insurance they like but they are concerned about the cost—they will see the cost of their premiums going up. There is very little in this bill that I think the American people would be interested in having for themselves.

The President has made a number of promises. He said: I won't add a dime to the deficit. Eighty percent of Americans do not believe him. Recent poll, CNN: 80 percent of Americans don't believe the President on that point. How about taxes? With taxes, he said he won't add a dime to your taxes. Eighty-five percent of Americans don't believe him there. They believe their taxes are going to go up. Yet they don't believe the quality of their care will be better.

So when we talk about a bipartisan solution, we want to improve access to care, we want to get costs under control. This bill raises costs.

Mr. ALEXANDER. I see the Senator from Idaho is here. We both had the experience of being Governors, as did the Presiding Officer in her State of New Hampshire. We were talking the other day—and I hope he doesn't mind me repeating that—I worked with a Democratic legislature the whole time I was Governor. But what we always did on anything important was we sat down together. We had our different positions, we fought during elections, but we worked things out. We didn't go forward unless we found a way to agree. That meant I usually didn't get my way. I got some of my way, but I had to take into account that someone else—in this case, the Democratic legislature in Tennessee—might have a different idea. Sometimes it was a better idea.

I ask the Senator from Idaho, we talk a lot about bipartisanship around here. The reason for bipartisanship is that these big bills are tough bills. We are expected to make difficult decisions: Are we going to reduce the growth of Medicare? Are we going to expand Medicaid? Are people going to be required to buy insurance? What are we going to do about health care premiums? Many of these decisions are controversial.

When the American people look at Washington and they see that just one side of the political spectrum is pushing a bill through and the other side says: Absolutely not, what kind of confidence is that going to give the American people? On the other hand, if they look at Washington as they did with the civil rights legislation we talked about in the 1960s when Lyndon Johnson, a Democrat, was President and

Everett Dirksen was the Republican leader, they saw the Republican leader and the Democratic President saying: OK, this is a tough problem, but we have a solution with which we both agree. Then the American people had some confidence in that.

Bipartisanship is not just a nice thing; it is a signal to the American people that people of different points of view think a controversial decision is in the country's interest. Isn't that totally lacking here? Isn't that bipartisanship signal lacking across the country?

Mr. RISCH. I thank the Senator. I am astonished at the process that is involved here. If one steps back and has a look at this from 30,000 feet and you look at what we are doing here, what we are doing here is—and I say "we"—but it is actually the other side of the aisle—what the other side of the aisle is doing here is attempting to entirely revamp the health care system of this country and they are doing it all in one bill, which we think is a mistake. It should be broken into its component parts. The bill contains and attempts to address quality, cost, accessibility, and the insurance industry all put into one bucket and stirred and expected to resolve all of these problems at one time.

If you look at what has happened here, the House produced three bills, a multithousand-page bill. Those bills were stirred around over there, and eventually in the dead of night they finally got one of them passed with one or two votes to spare. Then it came over here. There were already two bills over here.

The two bills were produced through the committee process. The committee process is a very good process by which we produce bills. Admittedly, both of those bills were heavily skewed to the Democratic side, and all of the Republican amendments—or virtually all of the Republican amendments, certainly all the significant amendments—were voted down on a party-line basis.

Those two bills came out of those committees. One would expect that then they came to the floor and would go through the process. But, no, the two bills were taken over to the majority leader's office, doors shut, curtains closed, and various people were brought in. We don't know who, we don't know how, we don't know what the negotiations were, but at the end of the day, a third bill over here was produced, and it is 2,074 pages long. It is usually kicking around here on the desks. I see they removed most of them. I suspect they removed most of them because most people were afraid they were going to fall over and hurt somebody. These were 2,074 pages that were put together. Nobody really knows exactly what is in them. There are some generalities that we know, but we don't know all the specifics.

Then what happened is a week ago, they decide they will put 10 people in a room, leave the rest of the 90 of us out, and they will try to come up with some type of compromise. And they did. The next day, I got calls from home: I guess it is over; they put out an announcement; they have a compromise. I said: That is news to me. I don't know what is in it. I started to make some calls. Nobody would release the details of what this supposed compromise is.

Remember, in the last election we were promised things would be changed. Change we could believe in. These things would be done out in the open, without lobbyists coming and getting their input in the bill behind closed doors. That is exactly what has been produced. You have a secret document that has been produced that we have not even seen.

In spite of all this, the other side is saying: By golly, we are going to produce a bill before Christmastime. Christmas is coming, and Christmas is very close.

I can tell you, after looking at these 2,074 pages—not looking at the compromise because we are told we cannot see it—it would be reckless, absolutely reckless to shove down the throat of the American people something that has been put together in secret, something that has been put together in the dead of night, something they will not let us look at and examine, and to say: We are going to take this now and shove it down the American people's throats before Christmastime.

This is not a Christmas present the American people want. If you don't believe me, all you have to do is look at the polling. The polling shows every single day support for this bill deteriorates. It deteriorates amongst Republicans, amongst Democrats, and amongst Independents. The last poll, I think, was up to 61 percent of the American people said: Don't do this to us.

We need health care reform in this country. We want health care reform in this country. But this monstrosity that has been produced, and whatever it is they are going to drag out of the alley tomorrow and say: This is what we are going to vote on now, is not what the American people want.

I have a message for those on the other side from the American people: Don't do this to us. Stop. Bring some sanity into this. Do it right.

I yield the floor back to my good friend from Tennessee.

Mr. ALEXANDER. Madam President, may I ask the Senator from South Dakota, unless the Senator from Arizona wants to, to lead the colloquy.

Mr. MCCAIN. If I can speak for just about 10 seconds.

Mr. ALEXANDER. Let me ask the Senator from South Dakota to lead the colloquy on the Republican side.

Mr. MCCAIN. Very briefly, I say to my friends, apparently, if the news re-

ports are right, the public option and Medicare is out. That is an interesting twist, and again, I think affirmation that they are just throwing things against the wall to see if anything sticks. But it doesn't change the core of the bill, which the Senator from South Dakota has been so eloquent about, and that is the \$½ trillion in cuts from Medicare and increases in taxes.

So you can take the public option out or leave it in, and it still doesn't change the fundamental fact that it is going to restructure health care in America and do nothing to reduce the cost and nothing to improve the quality. I just wanted to make that comment and ask for comment from the Senator from South Dakota.

By the way, could I just mention, I haven't quite seen anything on the floor of the Senate as I saw when the Senator from South Dakota was challenged earlier today. I was watching the proceedings on the floor, and I wonder if the Senator from South Dakota would like to maybe respond to accusations of misleading information, I guess is the kindest way I could describe it.

Mr. THUNE. I appreciate the Senator from Arizona yielding and the discussion of all our colleagues on the Senate floor this evening, pointing out how flawed this process is and that it is being conducted behind closed doors in contradiction of all the promises and commitments that were made that this would become a transparent and open process. I think the Senator from Arizona has been great at holding the other side accountable when it comes to all these pronouncements about how this was going to be an open, transparent process, and that is just not the case. There is something going on right now that we are not privy to, and I think at some point they are going to throw something, as the Senator from Arizona said, at the wall, hoping that the latest thing will stick.

But I do want to make an observation with regard to the discussion held earlier today because a Member from the other side—the Senator from Minnesota—had indicated that he thought this chart was somehow inaccurate or misleading, and I want to point out again, Madam President, that the chart is very accurate. In fact, the taxes in the bill begin 18 days from now, on January 1 of next year. January 1, 2010, is when the taxes in this bill begin.

In fact, almost \$72 billion of taxes will have been collected before the benefits that start to kick in will be paid out—the premium subsidies that are going to support the exchanges, that are supposedly going to help those who don't have insurance get access to it. That is 1,479 days from now.

The Senator from Minnesota got up and said, and I quote: We are entitled

to our own opinions; we are not entitled to our own facts. The fact is, benefits kick in on day one. The large majority of benefits kick in on day one, and we shouldn't be standing up here with charts that say the exact opposite.

Well, Madam President, it is not me saying this; it is the Congressional Budget Office. The Congressional Budget Office has said that 99 percent of the coverage spending in this bill doesn't kick in until January 1, 2014—1,479 days from now.

Now, I ask my colleagues, and most Americans around this country: Do you think it is fair to construct a bill that in order to understate its total cost starts raising taxes in 18 days, but doesn't start delivering 99 percent of the coverage benefits until 1,479 days from now?

If the other side wants to have an argument about whether 99 percent of the coverage benefits kick in in the year 2014 or 100 percent, I am happy to have that argument. The point is simply this: Taxes start 18 days from now—tax increases—so that \$72 billion in taxes will have been imposed upon the American people, and the benefits 1,479 days from now.

So, Madam President, I want to make that point and refute the argument that was made by the Senator from Minnesota that a large majority of benefits kick in on day one. Ninety-nine percent of the benefits don't kick in until later.

Incidentally, I have an amendment on which I hope we will get a chance to vote that delays the taxes until such time as the benefits begin. We think it is only fair to the American people that we synchronize the tax increases with the benefits. Many of us don't support the tax increases in the first place, which is why we will be supporting the Crapo amendment to recommit the tax increases back to the committee to get rid of them. But if you are going to have tax increases and start raising revenue immediately, you ought to start paying out the benefits today, or at least delay the tax increases so the benefits and the tax increases are synchronized. That, to me, is a fair way to conduct and do public policy for the American people.

The reason it was done this way, let's be honest about it—and the newspapers have made it pretty clear in some of their statements—for instance, the Washington Post states:

The measure's effective date was also pushed back to the year 2014. That projection represents the biggest cost savings of any legislation to come before the House or Senate this year.

The measure's effective date was also pushed back. They keep pushing the date back to understate the cost. The reason they want to start collecting revenue right away and not start spending until later is because they

know if they start the spending early on, they are going to start inflating significantly the cost, and the goal was to try to keep it under \$1 trillion. We all know now, and they have acknowledged, the 10-year, fully implemented cost of this isn't \$1 trillion, it is \$2.5 trillion.

The American people deserve to know the facts. That is the fully implemented cost. The only reason they can say in the 10 years it comes in at \$1 trillion or thereabouts is because the tax increases started January 1, 2010, and the benefits—99 percent of the benefits—don't start kicking in until January 1, 2014.

So I thank the Senator from Arizona for giving me the opportunity to clarify that. It is important we make this debate about the facts. I have tried to do that when I speak, and I am happy to have the opportunity to restate the facts as they exist and as they have been presented to us by the experts—by the Congressional Budget Office and by the CMS Actuary, both of whom have concluded the same thing when it comes to the benefits and the impact this will have on premiums in the country. I think that is probably the most devastating blow to the argument the other side has made in support of this bill—when the CMS Actuary came out last week and said this is actually going to increase the cost of health care in this country by \$234 billion over the next 10 years.

So, Madam President, I am happy to yield. I see a number of our colleagues on the Senate floor, and the leader is here as well, and I would certainly yield time to the leader.

Mr. MCCONNELL. If I could, Madam President, Senator MCCAIN and I had an opportunity to talk off the floor about things that may be in or out of the current Reid bill. It is over there behind closed doors.

Whether things are popping up or being left out, and whether any of that is significant, I would say to my friend from Arizona, it doesn't make a whole lot of difference, does it? Because the core of the bill, that which will not change, has not changed in any of these various iterations of Reid that we have seen, with  $\frac{1}{2}$  trillion in cuts in Medicare, \$400 billion in new taxes, and higher insurance premiums for everyone else.

I would ask my friend from Arizona, if he thinks any of that is going to change?

Mr. MCCAIN. I would respond by saying whether the public option is in or out or whether expansion of Medicare is in or out, the core of this legislation will do nothing to reduce or eliminate the problem of health care in America, which is the cost of health care not the quality of health care. In fact, it will, in many ways, impact directly the quality of health care, increase the cost, as we all know, by some \$2.5 tril-

lion, according to the chairman of the Finance Committee.

But I also want to point out the back and forth of this—is it in there, is it out? Well, let's try this. Who, up until a week ago, ever heard we were going to expand Medicare? Now it is out, now it is in. We used to have hearings around here, proposals, witnesses, and then we would shape legislation, which would be amended in the committee, and then brought to the floor and amended on the Senate floor. Here we have to get news flashes to know whether the public option is in or out, whether Medicare expansion is in or out. Again, this is kind of a bizarre process.

But my friend is right; it doesn't affect the core problem with this legislation, which is that it does not reduce cost, and it increases the size and scope of government and the tax burden that Americans will bear for a long period of time, including, by the way—and, again, I don't mean to sound parochial, but there are 337,000 of my citizens in the Medicare Advantage Program. The other side has admitted that the Medicare Advantage Program will go by the wayside. That is affecting a whole lot of people's lives, I would say, and that is in the core of the bill. That will not be changed by expansion of Medicare or with a public option or with no public option.

Mr. THUNE. Would the Senator from Arizona yield? I see a number of our colleagues and the leader.

I would simply add that this idea of expanding Medicare, which just emerged last week, was a bad one, and one even I think a lot of the Democratic Senators have come out in opposition to, which is why we are now back to the drawing board. But this relentless effort to try to tweak this bill around the edges, to somehow get that 60th vote, doesn't do anything to change the fundamental features of the bill, which the leader and the Senator from Arizona have been talking about, and that is the tax increases and spending.

Mr. MCCAIN. If I could just mention this. Over the weekend, obviously people watched football games. I was obviously pleased to see my alma mater prevail over those great cadets at West Point. We have a tendency to divert our attention—even seeing, for a change, the Redskins winning a football game—but what we talked about late last week is vitally important. The Centers for Medicare and Medicaid Services had some devastating comments to make.

This is the organization that is tasked to provide us with the best estimates of the consequences of legislation—specifically Medicare and Medicaid.

The CMS, referring to this bill, said: . . . we estimate that total national health expenditures under this bill would increase

by an estimated total of \$234 billion during calendar years 2010 to 2019.

It goes on and on and talks about the devastating effects of this legislation, whether the public option is in or out, whether we expand Medicare or not. It is remarkable information that is in this study, a study being ignored by the other side. Clearly, what is happening on the other side is only one Senator is throwing proposals back and forth to the CBO until they get something that perhaps looks like it might be sellable. But the CMS has already made their judgment on this legislation.

Mr. CORKER. If I could respond to that, I have only been around here by about 3 years, but I passed an incredible scene—I think many of you coming to the floor may have seen it—a huge gaggle of journalists and reporters and folks waiting outside a room where our colleagues are meeting. There is reason this bill does not lower cost. I came from a world where if you had a problem, you identified what the problem was and then you had sort of a central strategy that you built out to try to lower cost, which I think is what all of us thought that health care reform should do—let's lower cost and create greater access for the American people.

Well, instead of that, we have had a process where it has been literally like 50 yellow stick-ums were put up on the wall to figure out how they could get 60 votes. There hasn't been an attempt to actually lower cost. There hasn't been an attempt to try to create a mechanism where Americans can actually choose, with transparency, the type of plans that work for them. Instead, it has been a game from the very beginning of trying to get 60 votes, and that is why none of the goals, except for one, has been achieved that they set out to achieve.

This is going to drive up premiums, it is going to add to the deficit, and it is going to make Medicare more insolvent, which is pretty incredible because when I got here there was a bipartisan effort to make Medicare more solvent. Instead we are using money from that to leverage a whole new program with unfunded mandates to States, new taxes, as the Senator from South Dakota was talking about.

So, again, what is happening in this room, and the reason I bring up the 50 yellow stick-ums on the wall, some of which were circled to try to get votes, that is what this has been about from day one. What is happening in the room right now is they are sitting around not dealing with the core of this bill, which is very detrimental to our country. But they are in this room trying to figure out which yellow stick-ums will get them the 60 votes. In the process, doing something that is going to be very detrimental to this country.

Mr. MCCONNELL. It could be the reason they are so anxious to do this

before Christmas is they think Americans will be too occupied with the holiday season and somehow they can sneak this unpopular bill through and everybody will be busy opening presents or taking care of their families and somehow the American people will not notice.

I suggest to my colleague, I think this is going to be a vote that will be remembered forever. This is going to be one of those rare votes in the history of the Congress that will be remembered forever.

Mr. MCCAIN. If I could, before my friend from Alabama, I wonder also, when we are talking about dropping expansion of Medicare as is reported by news reports—I don't know; we have not been informed—could it possibly have anything to do with the fact that the AMA came out in opposition to it? Could it have anything to do with the fact that the American Hospital Association came out in opposition to it? Of course, that the PhRMA situation is a parliamentary procedure that is awaiting action on the floor speaks for itself.

Mr. SESSIONS. I agree with the Senator completely. As Senator MCCAIN already said, it is baffling. Here we are, all these weeks, and now we are being told the public option is being dropped? Today? And maybe this expansion of Medicare? Oh, we just changed our mind on this? On a bill that is designed to reorganize one-seventh of the entire American economy? This is how we are being led here? I say to Senator MCCAIN, it is historic. I think the American people have rejected this plan.

The numbers do not add up. The money is not there to pay for these schemes. I think the American people know it. So I guess I would suggest—my colleague from Tennessee, Senator ALEXANDER, is not here—rather than jamming forward before Christmas, isn't it time to slow down and think this thing through and start over in a step-by-step process that might actually produce some positive change in health care in America?

Mr. MCCONNELL. Absolutely. That is what Senate Republicans have said for quite a while. Let's start over and go step by step to deal with the cost issue. Instead, there is this consuming desire on the other side of the aisle to transform one-sixth of our economy, to have the Government take it over and to make history and, as has been pointed out in this colloquy by many Senators: There are many things that happened in our history that we wish had not occurred. This is certainly going to be one of them.

I am optimistic. We just need one Democrat, just one to stand up and say: Mr. President, I am sorry, this is not the kind of history I want to make. I would love to listen to you but I also want to listen to my constituents and it is very clear where my constituents

are. If I have to choose between you and my constituents, with all due respect I am going to pick my constituents. Just one Democrat needs to stand up and say I am willing to listen to the American people rather than arrogantly assume that all the wisdom resides in Washington.

If we figure this out, we are going to do it for you whether you want us to or not.

Mr. RISCH. I want to add to what the Republican leader has said. I think there is this push to get this done before Christmas because they think people are not watching. People are watching. If you look at the poll, the poll is moving. It is moving in the wrong direction for them, but it is clearly moving.

More important, I have news for the people on the other side. If they think this is going to go away after Christmas, they have another "think" coming. This is one of the largest issues to be debated in this room for a long time. Every senior citizen in America is going to wake up after Christmas and say: Wait a minute, let me get this straight. Those people in Washington, DC cut \$500 billion out of Medicare? Don't they care about me? The system is already going broke and they took \$500 billion out of Medicare, benefits I have paid into all my working life, and transferred it over to start a new program, a new social program that also is not sustainable? What is wrong with those people?

This discussion is going to go on. Because of the complexity of this, because of the size of this bill, there are going to be news stories every single day from now until November 2 of 2010. My friends, November 2 of 2010 is coming a lot quicker than you think. By the time you get there you are not going to be able to run from this vote. The American people are wisely going to respond and they are going to tell Washington, DC, through their voting what they think of what happened in this debacle that is called health care reform. It is misnamed, health care reform. It is higher taxes, higher insurance premiums, it is stealing from the Medicare Program, and it is creating a new giant Washington, DC bureaucracy.

The American people do not want this.

I yield to my friend from Wyoming.

Mr. BARRASSO. It is interesting because what you are doing now is fundamentally talking about the core of the bill, the core that cannot be changed as they drop this or add that. It is the core that led the dean of Harvard Medical School to say this bill, the core, is going to make spending worse. It is going to drive up spending and it is going to not improve quality.

This physician at Harvard has said people who are supporting this are living in collective denial. It is no sur-

prise that the American people are very skeptical, very suspicious. It is why the dean at Johns-Hopkins Medical Center this past week wrote an editorial that said "this bill will have catastrophic effects" and it will do more harm than good. We are talking about the health care of the people of our country.

Mr. SESSIONS. Will the Senator yield? Those two deans are saying that the entire promises of this bill—that it would reduce cost and improve quality—both are not true?

Mr. BARRASSO. That is what we are hearing from the deans of medical schools. It is what I hear at home all the time. People in Wyoming read this and say this is wrong. This is going to make it harder for doctors to practice, harder for us to recruit doctors, harder for hospitals to stay open. We are saying in Wyoming—the Washington Post said it on Saturday, "Medicare Cuts Could Hurt Hospitals, Expert Warns." We are seeing that affecting the quality of care. We are seeing it in terms of will we have a doctor shortage? Will that worsen? We are going to deal with that at home, but people are seeing it all across the country because fundamentally this bill is flawed. It does not address the sort of concerns we have, and we are trying to get costs under control. This will drive up costs. We are trying to help improve the quality of care. This will not improve the quality of care. We are hoping to improve access for patients. This will make it harder. This will make longer waiting lines, this will limit people's choices, it will limit care in the rural community. I know about those in Wyoming. You know about them in Alabama.

When we read the report by the Actuaries from the committee that oversees Medicare—and they didn't rush to do this. They are talking about the bill that now has been out, the 2,000-page bill that has been out for people to read for 3 weeks. It took them 3 weeks to do the report because they wanted to do a very thorough evaluation and they looked at it, and they said we think one out of five hospitals in the United States will end up closing within 5 years and one out of five doctors offices will close if this goes through. This is what the Democrats are proposing, something that is going to lead to one in five hospitals closing, one in five doctors offices shutting their doors, saying we can't continue to keep the doors open under these circumstances.

This report has said the whole effort to drive down the costs of care is wrong. At its core it is wrong; that the cost of care is going up if we pass this bill that is ahead of us now, regardless of the little changes they may make at the periphery. At the core this is going to drive up the cost of care. At the core it is going to cut our seniors who depend on Medicare for their health care.



Medicare is going broke. This is not going in any way to help that. It is going to make it worse. Then if they try to put more people into that Medicare ship that is already sinking, that is going to make it worse as well.

Plus the way they try to solve this, to say we are going to cover all these new people, many of them, the majority of them are going to be put on Medicaid—Medicaid, a program that Governors across the political spectrum have all said is a failed program, a program that is driving the States into bankruptcy, a program that Governors call the mother of all unfunded mandates—that is the way they are trying to get the costs down, by putting the cost on the States.

It is still the same people of America who have to pay those bills, whether you are paying your taxes here or there. Plus they are going to raise taxes. This report from the Medicare Services Group looked at that and said all of those taxes are going to go up, \$500 billion in taxes. Of course those are going to get passed on, so people of all different income brackets in the United States, all people are going to get hit with those taxes. Some people may see a little benefit, but by 4 to 1, four times as many people are going to get taxed as people who are going to see any benefits.

We are looking at a program, a core fundamental of a bill that to me is fatally flawed—fatally flawed—that will raise prices, raise insurance premiums for people who have insurance, cut Medicare and raise taxes. And you say, how could people support that?

We need the solution to improve quality, get costs under control and improve access. This does not do any of those things. Plus it starts collecting taxes, as my friend from South Dakota said—it starts collecting taxes in 3 weeks but yet doesn't give services for 4 years.

Mr. CORKER. If the Senator will yield, I was listening to him talk about this bill being fundamentally flawed, which it is. I think back about the comments Senator MCCONNELL said on the floor, and I think ORRIN HATCH, from Utah, the other day expanded on it. Anything that is this major, this major of a reform that we are going to live with for generations, should be done in a bipartisan way. I know Senator HATCH talked about the fact that something of this size should have 70 votes, to pass a bill that will stand the test of time.

Earlier today I heard a friend on the other side of the aisle talk about the fact that Republicans walked away. I don't look at it that way. But I remember very early on when we saw the basic, fundamental building blocks of this bill, almost every Republican Senator wrote a letter to Senator REID, our majority leader, and told him if there were going to be Medicare cuts

that were used to leverage a whole new entitlement, we could not support the bill. So what did the majority leader and the finance chairman, MAX BAUCUS, do? They used that as one of the fundamental building blocks of this bill. That is paying for 50 percent of this bill—taking Medicare cuts, a program that is insolvent, and using it to leverage a new program.

What I would say—and I see the leader here on the floor—I agree a bill of this size has to have bipartisan support. I don't know how you get bipartisan support, though, when almost everyone in our caucus wrote a letter in the very preliminary stages of negotiation to let them know that we considered that to be a fundamental flaw; we considered that not to pass the commonsense test. Yet it has been the major building block in causing this bill to come to fruition or to come to where it is today.

Mr. MCCONNELL. The Senator from Tennessee is entirely correct. We made a major effort. Senator GRASSLEY and Senator ENZI, the two ranking members of the relevant committees, as well as Senator SNOWE, were in endless discussions with the majority. Then it became clear that they were not interested in doing anything short of this massive restructuring of one-sixth of our economy, which includes, as the Senator indicated—we expressed our concerns early about these \$½ trillion cuts in Medicare to start a program for someone else.

I would go so far as to suggest the reason the public's reaction to this has been so severe is because they have chosen such a partisan route. Had they chosen a different route, had we produced a bill in the middle, a bill much more modest in its intention rather than this audacious restructuring, the American people would see us behind it and they would be behind it.

By choosing this sort of narrow “my way or the highway” approach, “we are going to get the 60 votes and jam you,” they have made it impossible to make this a proposal that they could sell to the American people.

The American people are not foolish. The difference between this issue and most issues is everybody cares about health care regardless of age. The older you get the more you care about it, but everybody cares about health care. But they are paying attention and they see that this is not in any way a bipartisan proposal. So they have created for themselves not only a terrible bill, in my judgment, that should not pass and probably will not pass, but an enormous political problem for themselves along the way that would have been entirely avoidable had they chosen a different route from the beginning.

Mr. CORKER. I think the fact is the two parties certainly have differences. We are seeing that by the huge amount of spending that is taking place right

now. But the fact is, when we come together around bills, we do things that can stand the test of time.

When we do that, it is not about political victory, it is about us airing our differences and seeing those places where we have common ground. I have watched each of you in your deliberations on the floor. I know very early on we talked about the fact that if we could just focus on the 80 percent we agree upon, we could pass a piece of legislation that would stand the test of time. Maybe it wouldn't solve every problem in the world, maybe it wouldn't go from end zone to end zone, but maybe if we went 50 yards down the field, it was 50 yards of solid gain for the American people, something that would stand the test of time, then we could come back and maybe get another piece of it as we moved along.

I know almost everyone in this room has been a part of discussions to increase access, increase competitiveness, to drive down cost, to increase choices. This may be historic, if it passes. I actually still believe there is a chance that some of our friends on the other side of the aisle will realize that this is historic. But what is historic about it is this: If we pass this bill or if the Senate passes this bill, we will have missed a historic opportunity to work together and do something that will stand the test of time. All the energy would have been expended on a bill that does not pass the commonsense test, where the basic fundamentals are flawed.

This issue will not come up again for a long time. I know how the calendar on the floor is. I certainly know about the patience of the American people. But the history part of this, we will have missed a historic opportunity to do something that will be good for the American people. That is the part, I guess, that bothers me the most.

Mr. THUNE. Madam President, the Senator has been the mayor of a good-sized city, a small businessperson, actually probably bigger than a small businessperson. But if you were running a business and you were in an environment such as we are in today, a tough economy, trying to figure out ways to cut back on your costs and figure out a way to sell a little bit more of whatever it is you are making or doing, and somebody comes to you and says: We are going to reform health care and we want to do something that will get health care costs down and yet what they are selling is going to raise your taxes and, according to the referees—the Actuary at the Center for Medicare Services is sort of a referee in all this; they don't have a political objective; they simply want to get the facts out. Of course, that is the role that is played traditionally in Congress by the CBO, both of which now say—the CBO says it is going to increase health care spending by \$160 billion

over the first 10 years and the CMS Actuary is now saying it will increase health care costs by \$234 billion over the first 10 years. You also have now the CMS Actuary saying it could close 20 percent of the hospitals, that 17 million people who get their insurance through their employers are going to lose it, that the Medicare cuts are not sustainable on a permanent basis in this legislation, and that a lot of these tax increases are being passed on in the form of higher premiums which will mainly be borne by people trying to provide insurance. If you are sitting there as a businessperson—and you have been there—and you are looking at that balance sheet and that income statement and somebody is trying to sell you on an idea about health care reform that has the features I mentioned, how do you react to something such as that? I see what small business organizations are saying, but the Senator has been there. Tell me how you view it.

Mr. CORKER. I met with a businessman in Tennessee on one of my more recent trips. They have an annual payroll of \$4.2 million—their health care costs are \$4.2 million a year for their employees. They file their tax return as a sub S company. The income from the company actually ends up being attributed to the partners. So when they file an income tax return, they don't take the money out of the company. They leave the money in to invest and make sure it is productive and they have jobs for other people. But that income is attributed to them. So he was showing me what this bill did to them. First, their percentage of health care costs is 12 percent of their payroll. He is way above the minimums this bill has said you have to be. I think it is 7 percent or something such as that. By the time he looked at the taxes that were going to be assessed to them because they filed—in other words, it was, again, their individual income, even though the money stayed in the company itself. What he was saying is: This means not only will we not hire any additional employees, we are not going to do that. But in addition, we are going to seriously look at dropping our health care plan and paying the penalties that come with this bill. I do fear, one of the things people do when they see that the government—a lot of companies in this country do things because they think it is the right thing to do. But a lot of companies, when they see government sort of mandating what they have to do or if they don't do that, there is an option for them to opt out and pay a penalty, when they feel like the government is being intrusive, sometimes they decide: Look, I am not going to do this anymore.

What I would say, to answer the Senator's question is: No. 1, you end up depressing people's wages when you have these huge increases. Because at the

end of the day, you have to have a profit to operate. You encourage people who are trying to do the right thing. You tax people at a level that, because of the way our taxation system works, takes money out of the company which, again, is used for productive good and to hire employees. At the very time when we are trying to create jobs—and I know you have been out here a great deal talking about the fact that we need to create jobs—we have legislation. This legislation that is before us is a job killer. The uncertainty of American companies about health care and then the fiscal issues and then this whole notion of cap and trade is, in fact, what resoundingly people across the country are saying is keeping them from hiring people.

Mr. MCCONNELL. I hear—and I know my colleagues have—they are about to send us another stimulus bill. I think I hear the Senator from Tennessee saying the single most important thing we could do to jump-start this economy would be to stop this job-killing health care bill.

Mr. CORKER. There is no question—and return to certainty. The fact is, people, businesspeople—and I know sometimes it is hard for the other side of the aisle to see this, but it is all about the cost of delivering goods; secondly, understanding what the environment is going to be into the future. This body has been so active and this President so active producing legislation that is a job killer, No. 1, but also producing such uncertainty that they are afraid to hire. That is, again—I know I have said this before—resoundingly, that is the No. 1 reason people are not hiring people on Main Street.

I do hope we stop this. I do believe this directly will kill jobs. But I also hope we will stop it and the American people will see we are working on things that save money and not things that cost money and take money out of businesses' pockets, out of Americans' pockets, which, by the way, that works hand in hand from the consumption standpoint. But this body doesn't seem to have gotten that message yet. I am feeling that a few of my friends on the other side of the aisle are greatly concerned. I hope, as the leader has said, we can stop this but then work together on something that lowers cost so businesses will actually have a desire to hire even more people.

Mr. BARRASSO. I would like to ask my colleague, we are talking about a job-killing bill, and we are not talking about a couple of jobs. The National Federation of Independent Business estimates that mandating that employers provide health care will cost 1.7 million jobs over the next 4 years, between now and 2013. We are not talking about a couple jobs, 1.6 million jobs when our unemployment rate is already 10 percent. When I look at this as a job-killing bill, bad for our economy

at a time when the No. 1 issue I hear about at home are jobs and the economy, that is another fundamental reason to take a look at a bill that at its core is fatally flawed and say: Don't do that right now. Our economy can't afford it. The jobless rate, we cannot afford to see that number get worse.

Mr. CORKER. It is amazing the Senator brings that up. If he remembers, during the General Motors and Chrysler debate, which I know Americans equally paid attention to, there was this discussion about the fact—advocates for government funding talked about the fact that they had to compete against companies in other countries that may not provide health benefits. If you remember this whole discussion began around the fact that we wanted to lower costs, lower health care costs so our economy would be more productive. I think all of us said that is exactly what we need to do. So here we end up with a 2,074-page bill that does exactly the opposite. How we got here, it is kind of like you couldn't make this up—that a year ago here we were, as a matter of fact almost this exact time, having another historic vote around the whole issue of what might happen with these automotive companies and the big driving issue being, we can't be competitive because we have costs that they don't and all of us saying: Health care costs do make our country less competitive. So here we have a bill that is going to take us in exactly the opposite direction.

This is why so many people have lost, rightfully so, faith in our ability to solve problems.

Mr. THUNE. The Senator has made a payroll. He knows what this is like, how hard these decisions are when it comes to making decisions about whether you are going to hire somebody and to try and squeeze those costs down so you can buy a new piece of equipment. I think all small businesses are dealing with that. The Senator from Wyoming mentioned the National Federation of Independent Business which, of course, is a very business-oriented organization that represents a lot of small businesses across the country, indicating the employer mandate would cost about 1.6 million jobs so the job issue is so absolutely pertinent to this debate. That is why NFIB and the Chamber of Commerce and every business organization I think I know of in this country, including organizations such as the American Farm Bureau organization, which represents a lot of farmers and ranchers in my State, those are the organizations that speak for these various small businesses. They have all weighed in, and they weighed in heavily, in no uncertain terms, that this sets us back. This does not move us forward. You talked about getting that cost curve down. Every analysis that has been done, including by the referees—the Congressional

Budget Office, the Actuary at CMS—all come back with the same conclusion.

The Senator from Alabama also probably has a lot of small businesses in his State, members of the National Federation of Independent Business, the Chamber of Commerce, the Association of Wholesale Distributors, the National Association of Manufacturers, lots of these organizations that have weighed in. It seems to me they have looked at this carefully, and they have come to the same conclusion. I would be interested in what the Senator from Alabama might be hearing from the small businesses he represents, with regard to the impact this would have on jobs.

Mr. SESSIONS. I say to Senator THUNE, I think you have made the point about the cost curve. And I say to Senator CORKER, you hit it right on the head. There is a need for us to work together to help reduce the cost of health care and not hurt its quality at the same time. This bill does not do that. I say to Senator CORKER, what businesses tell me is that when you make it more expensive to hire a worker, that makes you less able to hire more workers. If this bill, in effect, is driving up the cost of health care—not to mention the new taxes that are out there—as an economic principle, it does mean we are jeopardizing jobs. Would you agree?

Mr. CORKER. Look, I do not think that could be debated in a real way. There is no question when you add these mandates, you add the taxes, you actually drive up one of the major costs around hiring an employee in a firm. Then you add all the government intrusion. There is just the whole hassle factor of having to meet all the obligations that are laid out in this type of legislation. All those things just cause people to not want to hire folks.

The thing is, it actually affects the most responsible companies most. The way this bill is written, if you are one of those companies that has not been providing health benefits, you can just pay a penalty, just pay a penalty and not cover them. But this bill actually does not just stymie job creation, it punishes the companies that are the most responsible smaller companies in our country.

So, again, you all said it over and over again: The core of this bill, regardless of all the accouterments—and maybe we get three votes if we do this and lose one vote. I am sure there is some scribe in there that is confused with all the vote counting that has been taking place over the last few weeks. But the fact is, regardless of all these accouterments, the core of this bill is detrimental to our country.

I certainly appreciate serving with all Senators, and I know all of us would love to see appropriate health care reform. I hope we are going to have the opportunity, after this bill is hopefully defeated, to be able to do that.

I thank everyone for the time and patience.

Mr. THUNE. I think we have to wrap up. But I just want to make one point in closing and say to the Senator from Tennessee, the Senator from Wyoming—the leader is here from Kentucky—that the citizens in my State of South Dakota, and I think most citizens, would expect that if we are going to reform health care, we do something about their cost, which clearly that point has been made very clear, repeatedly, here—that all the studies say that does not happen.

The other thing I will mention is, I cannot imagine any of our constituents would say that if you are going to implement public policy, you should raise taxes in 3 weeks and not start the benefits until 4 or 5 years later. It just seems to me the average American out there has to be saying: OK, that is like me going to the bank and taking out a mortgage, but I can't move into the house for another 4 or 5 years, and in the meantime I will be making payments.

Mr. CORKER. I would say to the Senator, if I could, his point is so good. So many businesses in my State are saying: I wish I could go to my local banker and use 6 years' worth of cost and 10 years' worth of revenues to get a loan. They are saying: We can't do that back home. I think it is that very thing the Senator pointed out so eloquently, it is that very thing, again, that builds the huge amount of distrust. They know it does not work. They know it does not pass the commonsense test in South Dakota and Tennessee. I think they continue to again wonder: You can't make this kind of stuff up. Certainly, you can't do it back home.

I thank the Senator.

Mr. THUNE. I thank my colleagues from Tennessee, Wyoming, Alabama, Kentucky, and Arizona, all who have been here.

In closing, I will quote the Associated Press:

In part to reduce costs, the legislation would delay until Jan. 1, 2014, creation of so-called insurance exchanges in which individuals and small businesses could shop for affordable coverage.

All done to disguise the bill's real cost of this, which it is being acknowledged now widely by the Democrats as well. This is not a \$1 trillion bill; this is a \$2.5 trillion bill. It is a job killer. It cuts Medicare, raises taxes, and raises premiums for most of the American people.

I yield back our time.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, we have heard this described as a historic moment. My friend from Iowa, Mr. HARKIN—we have served together on the Agriculture Committee and have worked closely on appropriations and

other issues—he has described this as a "historic moment." I think we can all agree on that, but that is about all we do agree on in regards to this issue.

I think we just have to come out and say it: This Patient Protection and Affordable Care Act is controversial. It sounds like it is just what the doctor ordered, until you look at it closely. If you look at it closely, doctors are not favorably impressed with it. Neither are the taxpayers, especially those who earn less than \$200,000 a year, they are not impressed with it.

Another issue that is troubling is Senator DORGAN's amendment on the reimportation of drugs. The Food and Drug Administration has concerns about the safety of the reimportation of drugs.

If the Senate tries to ignore these and other serious concerns about the bill before the Senate, it will be an act of hope over reality. It will be an act which this Senator cannot support.

The PRESIDING OFFICER. The majority leader.

#### UNANIMOUS CONSENT AGREEMENT—H.R. 3590

Mr. REID. Mr. President, I ask unanimous consent that immediately after the opening of the Senate tomorrow, Tuesday, December 15, and following the leader time, the Senate resume consideration of H.R. 3590, and there then be a period of 5 hours of debate, with the time divided as follows: 2 hours equally divided between Senators BAUCUS and CRAPO or their designees and 2 hours equally divided between Senators DORGAN and LAUTENBERG or their designees, and 1 hour under the control of the Republican leader or his designee or designees; that during this debate time, it be in order for Senator BAUCUS to offer a side-by-side amendment to the Crapo motion to commit; and Senator LAUTENBERG be recognized to offer amendment No. 3156 as a side-by-side to the Dorgan-McCain amendment No. 2793, as modified; that no further amendments or motions be in order during the pendency of this agreement, except as noted in this agreement; that upon the use or yielding back of all time, the Senate then proceed to vote in relation to the aforementioned amendments and motion in this order: Baucus, Crapo, Lautenberg, and Dorgan, with each subject to an affirmative 60-vote threshold, and that if they achieve that threshold, then they be agreed to and the motion to reconsider be laid upon the table; that if they do not achieve that threshold, they be withdrawn; further, that the cloture motion with respect to the Crapo motion be withdrawn; provided further that upon disposition of the above-referenced amendments and motion, the next two Senators to be recognized to offer a motion and amendment be Senator HUTCHISON to offer a

motion to commit regarding taxes and implementation and Senator SANDERS to offer amendment No. 2837; that no amendments be in order to the Hutchison motion or the Sanders amendment; that upon their disposition, the majority leader be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object, and I am not going to object, I would just want to confirm with the majority leader our understanding that even though it is not locked in in this consent agreement, we anticipate voting on both the Hutchison amendment and the Sanders amendment.

Mr. REID. Yes. And I say to my friend, either vote on them or have some kind of procedural motion.

Mr. MCCONNELL. Yes.

Mr. REID. Which I have no idea what it would be at this stage. But the answer is yes.

I would also say, I have spoken to the Senator's floor staff, and, as I indicated to the Republican leader, we have to be at the White House for a while tomorrow afternoon—we will give the Republican leader that time—for which we will probably have to be in recess because the whole caucus is called to go down there. But it is my desire to make sure we finish this tomorrow. I think that is to everyone's interest. That is what we are doing here, with 5 hours.

Mr. MCCONNELL. Would that include both Sanders and Hutchison?

Mr. REID. No. No. As I explained, again, to floor staff, I would like those to be offered tomorrow, but I think we would have a pretty good day's work if we have 5 hours of debate and then those four votes we have playing out.

Mr. MCCONNELL. During the time that Democratic Senators are at the White House, would we be in recess or would we be allowed to—

Mr. REID. Yes. I think we should be in recess.

Mr. MCCONNELL. Do you have any idea how long that meeting is going to be?

Mr. REID. The meeting is scheduled for 1 hour and 10 minutes.

Mr. MCCONNELL. And at what time is it?

Mr. REID. I think it is at 1:30.

So, Mr. President, I am glad we finally got the balancing back and forth, unanimous consent request finally settled on these matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

#### HEALTH CARE REFORM

Mr. BURRIS. Mr. President, I rise, of course, to speak on the health care legislation.

The Senate is the greatest deliberative body this world has ever known.

Since the inception of this body, its Members have practiced and perfected the art of compromise. It has been said that politics is the art of the possible—and this Chamber is teeming with experienced legislators who know how to work with Members of both parties to forge a more perfect bill. This means that individual Senators must inevitably give ground in the interest of achieving legislation that is built on consensus.

As a body of lawmakers—and particularly as a Democratic Party—we have compromised throughout our history to bring about the greatest legislative achievements this Nation has known. In the process, this Senate has made the country better.

Today, we find ourselves debating a measure that could overhaul the entire American health care system. We stand at this point after nearly 100 years of discussion and deliberation, stretching from Teddy Roosevelt to Barack Obama.

What has defined us across that century is our commitment as a party to the fundamental pillars of health care, all of which have been echoed in this recent debate. These values served us well in 1935, when the Senate took up a proposal called Social Security. History recalls that debate was fierce. It was not without struggle and was not without compromise. But in the end, we achieved one of the greatest, most enduring public policy successes in American history.

Thirty years later, these very same values led this party and this Senate to take up a bill known as the Medicare Act. Again, that fight was not easy, and compromise was necessary to realize our vision. But, once again, this body and this party brought historic change to America.

These hard-fought programs have been the valued cornerstone of our domestic policy for generations. They define the way we legislate and underlie the principle that this government's chief responsibility is to its citizens.

Today, a new generation of Americans and a new Congress find ourselves in the midst of another historic debate.

Earlier this year, a new President was swept into office, full of energy and ideas, and armed with a clear mandate to bring real reform to a health care system that was badly broken. So, once again, we took up the task of fighting for a more perfect health care system.

Americans all over the country, struggling and suffering, many in personal health crises, have looked to us. There is urgency there, and this body needs to act.

Those who need help the most need that help now.

So let's pass this health care reform legislation, but let's also do it right. Let's not pass something just to pass something.

Everyone in this room is a legislator. We approach our responsibilities with the knowledge that our most optimistic ideas must often be tempered with a pragmatic reality. In the process of this debate, we have all made concessions and we have all compromised.

My own preference was for a single-payer system. Some of my friends on the other side would like to see no reform bill at all. But as a body and at least as a Democratic Party, I hope we will stay true to those fundamental pillars that have determined our course for the last 100 years.

As Mohandas Gandhi once famously said:

All compromise is based on give and take, but there be no give and take on fundamentals. Any compromise on mere fundamentals is a surrender.

It was in the spirit of constructive compromise that 10 of our colleagues met and worked to forge the new compromise deal we have all heard about. I thank them for their hard work. We are all deeply invested in this issue. I applaud their willingness to come together at the table.

At this point, the specifics of this proposal are few. As are many in this Chamber, I am actually awaiting the chance to examine the full details of the proposal. I do have deep reservations, deep concerns, about what you have heard up to this point. Until I see more, I can only say again what I have said from the very first day of this debate so many months ago: I am committed to voting for a bill that achieves the goals of a public option, competition, cost savings, and accountability. I will not be able to vote for lesser legislation that ignores these fundamentals.

I will continue to fight every day to strengthen this legislation until its final moments on this floor. I fully realize how hard my colleagues have worked. I know how difficult it has been to get this far. My colleagues may have forged a compromise bill that can achieve the 60 votes that will be needed for its passage, but until this bill addresses cost, competition, and accountability in a meaningful way, it will not win my vote.

The American people most in need of help know we can do better, and we must do better.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I wish to share a few other thoughts in the 5 minutes I believe I have to speak on a different matter than we have been talking about earlier, but it is a very important matter. It is the procurement contract, the request for proposals the Defense Department has put out in order to request proposals for the Defense Department to purchase a

new tanker for the U.S. Air Force. It will be perhaps the largest contract purchase in the history of the Defense Department, certainly since World War II. I regret that I must come to the floor today to give this speech, but it is important that we do this right.

Earlier, one of our colleagues, Senator MURRAY, for whom I have great admiration, I understand told NPR:

All things considered, I have stood on the line in Everett, Washington, where we have thousands of workers who go to work every day to build these planes. I would challenge anybody to tell me that they stood on a line in Alabama and seen anybody build anything.

Well, we are prepared, as I will explain, to construct the finest aircraft for a tanker the world has ever known in Alabama, my area of Mobile, AL, at the old Brookley airfield, which was a fabulous, huge airfield. It was closed 40 years ago, but the runway and the capacity and the location and access by water and rail and interstate are all there. It is going to be a fabulous place, and already there is a significant engineering center constructed there, and there are plans to go forward if and when this contract is awarded.

I would note that the people of Alabama get a little bit offended when people suggest they are not able to produce anything of world-class quality. I would remind my colleagues that it was in Alabama that the Saturn V rocket was developed that took a man to the Moon and that virtually everything that goes into space goes through Alabama; that we have some of the finest automobile manufacturing plants in the history of the world, including Mercedes, Honda, Hyundai, Toyota, all producing large amounts of some of the best automobiles in the world. In Mobile, have built a new trimaran ship that can cruise at 40 knots and has fabulous capability for cargo. It is one of the finest new ships of its kind the world has ever known. We have a fabulous workforce second to none of which I am utterly proud.

I would just say one of the complaints I have about the Department of Defense's request for a proposal—I have four I plan to talk about, but one I am going to highlight now in light of the comment of my colleague is that I believe there is an inadequate government assessment of acquisition and performance risk. In other words, the government should assess how well we can believe the bidders are able to produce the product at the price and in the time frame in which they would like to see it produced.

I am so confident the plant in Alabama could be competitive with any other bidder, that I believe the government should give this aspect higher weight. In fact, they did so in the previous bid process, and the aircraft plant in Alabama came out with a better score on risk than the one in my colleague's State.

So there are other matters that are important, but I just wanted to emphasize that point. We are ready, able, willing, and anxious to produce the finest tanker the Air Force has ever seen. This tanker aircraft today is now 50 years old.

I regret we are having the kinds of difficulties we are in this bid process. I respect so much the men and women of the Department of Defense, but I do have to say this newly configured bid process is dramatically different from before, and I believe it is in the wrong direction. I believe it has failed our warfighters. I have to express my concerns about it, particularly as reflected in the request for proposal that has been sent out to the two bidders.

My intent here is simple. I will point out a few things that I think are significant.

In essence, the Department of Defense abandoned, out of the blue and without serious discussion, so far as I can tell, its decision to provide a transformational and game-changing aerial refueling tanker to the warfighter. Those were their words. And how has that resulted in or was the result of major changes in the request for proposals that have been sent out? The bidders are considering those proposals. In doing so, the result, I have to say, evidences a clear bias toward one aircraft over another. I hate to say that.

Let me provide a snapshot of what this new RFP does. I asked the Secretary of Defense about it at the hearing a few weeks ago. He indicated that this process for altering the RFP is still ongoing, but I am not sure the Air Force has been listening, so I am concerned about it.

Let me provide a snapshot of what our concerns are. Of the six key discriminating features that favored the KC-45 Northrop/EADS aircraft over the Boeing aircraft in the previous competition, five of the six features were either eliminated or changed to a non-mandatory status in the current draft RFP—a bias, I suggest. In contrast, eight features of the Boeing aircraft were upgraded in the new draft RFP, which resulted in seven of those eight areas favoring their aircraft.

So what is the bottom line? The very sad conclusion I have had to reach is that this closely watched competition was altered with a purpose, and that purpose was to favor one bidder over another.

So we are in a comment period now, and I hope the Department of Defense will listen to the concerns I believe are legitimate and to ensure fairness in this. Replacing the tanker is the Air Force's No. 1 procurement priority and has been for quite a number of years. In fact, the Department of Defense has indicated they understand this, and I think they understand their integrity and the whole acquisition process is at

stake in this so closely watched and so important bid.

So I will show this chart. I am going to point out something we call a spider chart. It looks a bit like a spider web.

The green lines, the inside circle lines, represent the capability of the existing 50-year-old KC-135 tanker in 11 different category areas, such as passengers, fuel offload at 1,000 nautical miles, fuel offload capacity, boom envelope, operational availability—all of these 11 factors.

The red represents the latest RFP requirements for this new—what used to be considered—transformational aircraft. It follows almost the same as the current capability. This is really unthinkable to me. It follows those capabilities on point after point after point. In some areas, it is less capable than the current aircraft that is 50 years old.

The black line represents the capabilities of the Boeing aircraft. For example, Boeing's offering would carry 190 passengers, whereas the other aircraft, the one that would be built in Alabama if it were to be the winner, would carry 226 passengers.

And so, let me say again that

I love and respect the men and women of our armed services. But, their leadership, at least so far, has failed them on this matter. All I have ever asked for is that the DOD choose fairly the aircraft that provides the best value.

Let me outline my concerns with the disturbing actions taken in the current tanker draft request for proposal, RFP.

My intent here is simple. I will outline, through a series of charts, how the Department of Defense abandoned, out of the blue without serious evaluation, its decision to provide a transformational and game changing aerial refueling tanker to the warfighter. This is clearly evidenced by the major changes in the request for proposal sent to the two potential bidders. Furthermore—and in doing so—the result has been a clear bias towards one aircraft over another.

Let me provide a snapshot of what the RFP does: Of the key discriminating features that favored the KC-45—Northrop/EADS aircraft—over the 767 Boeing aircraft in the previous competition, five of the six features, 83 percent were either eliminated or changed to nonmandatory in the current draft RFP. In other words, these features are less important to the outcome of the competition.

In contrast, eight features of the Boeing aircraft were upgraded in the new draft RFP which resulted in seven of those eight areas, 87.5 percent, favoring the 767—Boeing aircraft—over the KC-45.

What is the bottom line?

The very, very sad conclusion that one must reach is that this closely watched competition was altered with

a purpose, and that purpose was to favor one bidder over the other.

The DOD is now in a comment period for this draft RFP for a reason—to listen to concerns and to ensure fairness in the process.

Replacing the tanker is the Air Force's No. 1 acquisition priority and the Department of Defense's most critical acquisition program. In fact, the Department of Defense's integrity in acquisition and contracting are at stake.

This effort has stretched for over a decade and has been consumed by controversy, fraud, illegal activity, and political posturing. Let me remind my colleagues—both DOD and Boeing employees were prosecuted, punished, and some even went to jail over the failed attempt at a sole source lease arrangement that would have cost the taxpayers billions.

Our national security relies on this critical capability—the men and women in uniform who protect this country deserve the best value, and they deserve a transformational aircraft.

Let me now turn to some specific concerns.

DOD's latest acquisition strategy for the KC-X aerial refueling tanker replacement competition is, unfortunately, deeply flawed. Instead of the modern, multirole, game-changing, transformational aircraft that the Air Force has said it wants and needs for the past 10 years, the Department's draft RFP specifies an aircraft that is essentially the same as the existing 50-plus-year-old KC-135.

This acquisition strategy cannot be justified and the DOD must make changes to ensure fairness.

The draft RFP released by the Department of Defense on September 24 is significantly different than the previous RFP created by the Air Force and released in January of 2007. While the GAO sustained 8 of the 111 complaints Boeing raised regarding the previous source selection process, the Department's initial reaction, as stated to Congress, was to fix those 8 flaws, and release a modified RFP to keep the program on track.

So how exactly have we arrived at a completely new draft RFP that fundamentally not only changes the acquisition process for the tanker, but is unlike any major procurement in the history of Defense acquisition?

The first change is a paramount focus on cost.

While controlling costs is important, when it becomes the overwhelming discriminator it has a negative impact on the capability that is produced. Holding cost far above capability, as this draft RFP does, will result in an aircraft without the kind of game-changing capability the Air Force has consistently requested.

The new draft RFP has many flaws. While there isn't enough time for me to

list every single problem, the RFP's flaws can be summarized in four major themes:

1. The evaluation methodology does not consider best value, but rather lowest cost.

2. This results in a significant bias toward a smaller aircraft.

3. There is an inadequate government assessment of acquisition and performance risk.

4. The wrong contract mechanism is proposed.

Evaluation methodology is not best value.

The fundamental tenet of the RFP is the winner will be the lowest-priced offer that meets a minimum threshold of specified capabilities. This is a far cry from the "value-based acquisition," as the Department claims and as the warfighter deserves. Additionally, this strategy represents a departure from the normal DOD acquisition process and goes against the generally recognized public policy standards of DOD which seeks the best value and most capability at the best price for the warfighter.

Because the options for the tanker aircraft will be based on existing commercial platforms, the "low cost" approach provides an inherent advantage to the smallest and least-capable aircraft. Because no additional credit is offered for additional capability—beyond the minimum thresholds of the RFP—additional size and capabilities will almost certainly be a negative because they can only come with some higher price.

There is inherent bias in this procurement—beyond the low cost approach—that substantially favors a smaller less capable aircraft. It is extremely troubling that nearly every single key discriminator from the previous competition that would have given additional credit to an aircraft with greater than the minimum capability required has been neutralized or eliminated under this new RFP.

The primary measure of tanker effectiveness—the ability to offload fuel at range—will not even be considered in the evaluation beyond a minimum distance requirement that, incidentally, is equal to the current 50-plus-year-old KC-135 aircraft.

This defies logic.

The very reason for a tanker to exist, and a key discriminator in the previous competition, has now become a "non-mandatory" aspect of the aircraft. This change substantially benefits the less capable aircraft and will result in a fleet of tankers that is no better than what we are currently flying.

I cannot recall a time when the Department of Defense, instead of enhancing capability when purchasing a new weapons system, made a deliberate decision to procure a new system that is no more capable than the system it is meant to replace, in this case a 50-plus-year-old aircraft.

This is especially so where much more capability can be obtained for so little cost.

This RFP change defies previous statements of senior Air Force leaders. For example, on November 30, 2005, following his statement at the Defense Logistics Conference, current Air Force Chief of Staff General Schwartz, who at the time was Commander of the U.S. Transportation Command, told reporters that the next tanker "needs to be multi-mission, it cannot be a single-mission airplane."

On December 1, 2005, Mike Wynne, who was the Secretary of the Air Force, told reporters "Tankers are not only tankers any more. They are going to be multi-mission aircraft."

If 4 years ago the senior leadership of the Air Force recognized the need for more capable, multi-role tankers, why have we not been able to structure an acquisition that reflects that need?

General Duncan McNabb, Commander, US Transportation Command stated in a press briefing on December 11, 2009:

New KC-X tanker aircraft in the Air Force's inventory today would make the enormous task of surging more US troops into Afghanistan by mid 2010 and then sustaining the entire force there easier. As the Air Force envisions it, it would be "a very efficient cargo and passenger carrier" in the war zone, in addition to its primary aerial refueling tasks, due to its "floors, doors, and defensive systems." Instead of having to fly commercial aircraft, which lack defensive systems, into outlying places like Manas AB, Kyrgyzstan, and then transloading their passengers and palletized cargo onto military transports for delivery into Afghanistan, KC-X aircraft could move them directly there, thereby preserving C-17 transports for moving "rolling stock" military equipment."

The draft RFP does not require any government evaluation of price or schedule risk. Standard acquisition practice allows the government to adjust the proposed pricing and schedules of the offers based on an independent assessment, in order to protect the government's interest against an unreasonable "low-ball" offer.

This lack of a price and schedule risk evaluation in the new RFP is especially troubling considering that one company—Boeing—has its competitors pricing data from the previous competition and can consider Northrop's data when developing a competitive position.

The government should do the prudent thing and evaluate the potential price and schedule risk of each offering. A failure to include this provision, as was done previously without objection, is an abdication of fiduciary duty to the taxpayers, and will undoubtedly result in unreasonable bids that will haunt this program for years.

The business and contracting construct of this competition is simply unacceptable. The contracting mechanism used by the Department—an 18-



year firm fixed price contract—will require industry to assume many future risks, including inflation and the risk associated with developing a new tanker.

The new RFP incorrectly assumes that both tankers are fundamentally nondevelopmental items. While it is true that they are derived from commercial platforms, they are far from nondevelopmental.

In fact, this idea is inconsistent with the proposed structure of the program, which includes at least three years and several billion dollars for development. The new RFP will require both companies to make significant changes to the baseline commercial aircraft platforms, including redesigning the cockpits and fire-control equipment.

It sounds to me like the Department needs to make up its mind and either buy an off-the-shelf product at a fixed price or properly structure a development contract. Trying to do both will inevitably result in doing neither very well.

The bottom line is I am baffled as to why the Department changed the RFP so substantially.

Why am I baffled? Let me highlight a few quotes from DOD that illustrate my point: On February 29, 2008, at a DOD news briefing following the previous award to the Northrop Grumman/EADS tanker, General Art Lichte, Light-EE, then commander of the Air Force Air Mobility Command, explained why the Northrop tanker was selected:

From a warfighter's perspective, I can sum it up in one word: more. More passengers, more cargo, more fuel to offload, more patients that we can carry, more availability, more flexibility and more dependability.

On September 18, 2008, John Young, the Under Secretary of Defense for Acquisition, was quoted in the Washington Post as saying that the Northrop tanker was selected because it "provided more tanker capability and offload rate and was substantially cheaper to develop."

Since then, little has changed to suggest that the capabilities valued during the last competition are no longer necessary. It is even clearer today that we need an aircraft that is more than a tanker; one with enhanced multirole capabilities to meet global challenges, such as the President's decision to send an additional 30,000 U.S. troops to Afghanistan.

In fact, before the new and radically different RFP was released, very few people associated with the program had any idea that the needs had changed.

During his opening statement in his testimony before the Senate Armed Services Committee on March 17, 2009, General Duncan McNabb, Commander of U.S. Transportation Command, testified before Congress:

The KC-X will be a game changer. Its value as a tanker will be tremendous. Its value as

a multi-role platform to the mobility enterprise will be incomparable. . . . It will be an ultimate mobility force multiplier.

In fact, on September 24, 2009, the very same day DOD unveiled the new RFP, the Air Force Air Materiel Command released a white paper that stated the KC-X must be dual mission capable—able to perform airlift and air refueling missions.

Yet the new RFP values multirole capabilities far less than the previous RFP and will undoubtedly result in a less capable aircraft. In fact, Air Force Magazine recently quoted USAF General Duncan McNabb, Commander of the U.S. Transportation Command as he addressed defense reporters on December 9, 2009—just last week. General McNabb stated:

The KC-X, as the Air Force envisions it, would be a very efficient cargo and passenger carrier.

According to General McNabb, the Air Force still wants a game changing aerial refueling tanker. So not allowing additional credit for extra cargo and passenger capacity in the draft request for proposal, RFP, makes no sense.

During a DOD press conference after the new draft RFP was released on September 24, 2009, the Deputy Secretary of Defense, Bill Lynn assured everyone that the competition would not be a "Low-Price Technically Acceptable approach," and would in fact be a "Best Value competition, with both price and non-price factors taken into account."

Now that sounds good, and while they can argue its technically true, it isn't the whole story. While the RFP does allow for consideration of non-price factors, it is a far second to consideration of price. Most non-price factors, including the ability to deliver additional fuel and cargo, won't even be considered if the price difference in the two bids is less than 1 percent.

Let's think about that for one moment. Under the current RFP structure, if one aircraft costs 1.1 percent more than the other—even if—it delivers 20 times more fuel and cargo at twice the distance, it would not be selected.

This approach turns a blind eye toward providing the most capability to warfighters at the best value for taxpayers. A rational person certainly wouldn't use this approach for buying a family a car, so why is it being used to buy one of our most critical national security assets?

Is that the kind of approach we want to use to buy tankers that will be the backbone of our global posture for the next 50 years? The answer should be a resounding "no." Indeed, in the decades to come, the ability of this tanker fleet to transport people and cargo may become even more important than today. And it should prompt us to ask how we got such a bizarre and illogical RFP.

While the reasons for the dramatic changes have no rational explanation, their impact on the RFP is clear. The changes favor one company. Following its loss in the previous competition, Boeing filed 111 complaints about the selection process.

Although the GAO only upheld eight of these complaints, the Department addressed many more of their complaints in the new RFP to the disadvantage of the Northrop Grumman offering. These include:

Boeing complained the methodology used to estimate the refueling capability of each aircraft was flawed. The new RFP has adjusted that methodology to favor its smaller aircraft.

Boeing complained fuel costs should be considered over a 40-year time period, not the 25-year time period used in the previous competition. The new RFP has adjusted the time-period used to evaluate fuel costs to 40 years, again to favor its smaller aircraft.

Boeing complained about the schedule risk assessment. The new RFP does not include a schedule risk assessment.

Boeing complained that the bidders' past performance was too heavily weighted. The new RFP significantly diminishes past performance.

Boeing complained that additional credit was given for an aircraft that had much higher capability. The new RFP offers no real additional credit for exceeding minimum capability thresholds.

Finally, the price competition has been tainted by the Air Force releasing the Northrop Grumman team's pricing data to Boeing following the previous competition and now refusing to release Boeing's pricing data to Northrop Grumman.

For these reasons, I am deeply troubled by the Departments' approach for selecting the next tanker. If the Department continues down the path that it is currently on, warfighters and taxpayers will be done a great disservice.

Mr. President, in closing, I would like to return to my initial comment.

It is clear to me that the draft RFP abandons the Air Force's need to provide a transformational and game changing aerial refueling tanker to the warfighter.

And, furthermore, I must reluctantly conclude, it did so with a bias towards one aircraft over another. If we continue down the path of this draft RFP—without competition—we are moving headlong towards a sole source contract where the warfighter and the taxpayer ultimately pay the price.

This will be a stain on the integrity of DOD's procurement process that will not be removed for decades. It is not too late. Secretary Gates has said the purpose for the RFP comment period is to allow for the DOD to correct flaws. The DOD must listen and take action.

The PRESIDING OFFICER. The Senator's time has expired.



Mr. SESSIONS. This is a matter of such importance that I will need to speak about it again in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

#### HEALTH CARE REFORM

Mr. UDALL of New Mexico. Mr. President, this effort to reform our Nation's health care system is finding ways to make quality health coverage affordable and accessible to all Americans. I believe the bill we are considering in this Chamber as it currently stands goes a long way toward making that vision a reality. But even with this solid legislation, there is still a large group of Americans who continue to be left behind. I am talking about our country's first Americans, the 1.9 million American Indian and Alaska Natives who are suffering because the Federal Government isn't living up to its propositions.

The law that provides the framework under which the health care programs for Native Americans are delivered hasn't been reauthorized for more than 10 years.

This means that the Indian Health Services' delivery system is chronically underfunded and, given the rapid advance of health care technology, outdated. As a result, too many Native Americans are struggling to receive quality, timely health care.

This agency is supposed to be the principal health care provider and health advocate for Indian people. Yet every day, because we fail to act, the health care situation in Indian Country grows more urgent. Native Americans are diagnosed with diabetes at almost three times the rate of any other ethnic group. They often don't have access to preventive care. And Native American youth are attempting and committing suicide at devastating and alarming rates. Just 2 months ago, in New Mexico, a 14-year-old girl from the Mescalero Apache Reservation became the fourth young person from that tribe to take her own life—in a little more than 1 month. That is four young people in 1 month on one reservation. Tell me this doesn't cry out for action.

The Senate Indian Affairs Committee has reported the reauthorization bill. The House has put in its health care package the same kind of reauthorization bill. Both of these bills would bring us much-needed reform to the Indian health care system.

This legislation, the Senate must act upon it. We can no longer delay. For the past several years, Congress has failed to get this legislation across the finish line. It has passed both bodies in the last several years—the House at one point and the Senate at one point—but it is still not law. Now is the time to put this in the health care bill and get the job done.

I know my colleagues on both sides of the aisle are in agreement that our Nation's health care system needs reform. We know health care reform is needed now. We know the status quo is unacceptable. But what is missing is the same sense of urgency for our Native American community, this despite the alarming statistics from the Civil Rights Commission several years ago that the United States spent more than twice the amount on a Federal prisoner's health care than that of a Native American man, woman, or child; that is, \$3,800 per year per Federal inmate, versus \$1,900 per year per Native American. That is right, our inmates have better health care than the population with whom we signed treaties and made a promise to provide health services. American Indian and Alaskan Natives are three times as likely as Whites to be uninsured, and almost half of our low-income American Indians and Alaskan Natives lack health coverage.

The longer we wait, the more Native Americans suffer needlessly. The longer we wait, the more Native Americans go without treatment for chronic conditions such as diabetes and heart disease. The longer we wait, the more Native American teens who may take their own lives because they are not getting the help they need.

America has an obligation to provide quality, accessible health care for our country's first Americans. So I say again, it is time to act on this important piece of legislation. It is time to reform the Indian health care system and permanently reauthorize the Indian Health Care Improvement Act.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Mr. President, I rise today to support the health care reform legislation that is before us. I want to talk a little bit, specifically, about what the bill does to reform our health care delivery system. That is really health care jargon for the way we provide health care to people who need it.

I heard a lot of debate earlier this afternoon about the fact that the health care bill doesn't do anything to address costs. I think that is just wrong. The fact is, this health care bill does begin to address costs in our system. That is one of the reasons we have to pass it. In fact, we know that over the next 10 years it is going to reduce our deficit by \$130 billion.

But more important than that are the changes that I believe this is going to begin to make in how we provide health care for the people of this country. The fact is—we all know it, even our colleagues on the other side of the aisle—our current health care system is not working; it costs too much; and for too many families quality health

care is simply out of reach. One of the problems is that 30 percent of the \$2.5 trillion we spend right now each year on health care goes to unnecessary, inappropriate care and administrative functions that do little to improve our health.

Our health care system didn't get this way overnight. Years of perverse incentives have encouraged health care professionals to practice more medicine rather than better medicine. They struggle to see more patients and do more procedures to keep up. Hospitals race to build new wings and state-of-the-art units. As patients, we too often live unhealthy lifestyles, and we expect the newest high-tech services to fix it. In the meantime, we have undervalued things such as primary care, preventive care, and mental health services. Despite all of our spending, we are not any healthier.

Over the past few months, I have joined, as the Presiding Officer has, with all of our freshman colleagues on the floor to discuss why we can't continue this current system. It is too costly and too inefficient.

Last week, the freshman Senators introduced a package of amendments that emphasizes cost containment. The provisions contained in our package may not be those that are currently grabbing headlines, but I believe they really go to the crux of our reform efforts. They are the delivery system reforms that will improve quality and control costs over the long run. How are these going to work? Well, our delivery system reforms build upon the current underlying bill. They reward improvement in providing care for a better health outcome.

One way we can be more efficient in delivering care is through what are called accountable care organizations or ACOs. These ACOs allow medical providers to work in teams, to take responsibility for decisionmaking, and they offer financial rewards for better health outcomes. Our amendments allow medical providers to align Medicare, Medicaid, and private sector strategies for improving care. Doing this will help ensure all Americans receive high-quality care no matter how they are insured. ACOs provide the right kind of incentives and promote value over volume.

For years, the Dartmouth Institute of Health Policy and Clinical Practice has shown us that there are regional differences in the way care is delivered and how health care dollars are spent. Over the summer, Dr. Atul Gawande eloquently highlighted Dartmouth's findings in an article he wrote for New Yorker Magazine. He clearly made the case that higher quantity do not necessarily translate into higher quality, so that more procedures do not necessarily mean better care. Dr. Gawande's article has had a tremendous influence on the health care debate. It has been quoted frequently by

President Obama and referenced right here on the floor of the Senate.

In his latest article, which just came out recently, Dr. Gawande has once again made an important contribution to the health care reform dialog. In this article, he emphasizes the importance of delivery system reforms and fixing our health care system. He points out that there is not one single answer, there is no silver bullet to what we need to do to change our health care system.

While we can all agree that something must be done, what we can't agree on is what specific model or provision will be the best and have the most desirable outcomes.

Dr. Gawande pointed out that our country faced a similar challenge before. In the article, Dr. Gawande draws a parallel between our current health care system—one that is very costly, a money drain, one that is fragmented, disorganized, and inconsistent. He compares our current health care system to the agricultural system at the start of the 20th century. At that time, more than 40 percent of a family's income went to paying for food. The inefficiency of farms meant lower crop yields, higher prices, limited choice, and uneven quality. Agriculture was on an unsustainable path. Dr. Gawande points out that the Federal Government did not, however, offer a grand solution; rather, it provided incentives to change the way farmers produced crops. Through innovation, the promotion of best practices, and smart dissemination, today food only accounts for about 8 percent of a family's income compared to that 40 percent at the start of the last century.

As you know, as we have heard discussed on the floor, we have examples of great innovation and excellence in health care, such as Dartmouth in my State; the Mayo Clinic in Minnesota, which Senator KLOBUCHAR can speak to; Intermountain in Utah, and numerous other places of excellence around the country. These institutions have developed integrated health care systems that are patient focused. Their practices have promoted high value and excellent outcomes, best practices, which should be shared throughout the country.

The Patient Protection and Affordable Choices Act identifies some of these best practices and provides the types of incentives for doctors, nurses, and patients to change the status quo and to experiment with innovation and excellence. The many programs supported in the bill before us move us in the direction of delivery system reform, which is so important to our effort.

By promoting innovative practices, such as accountable care organizations, payment reform, and medical homes, we can move away from the current fee-for-service system that rewards volume over value. That is true reform.

I urge my colleagues to support the bill.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from New Hampshire for mentioning the Mayo Clinic, along with several other great facilities in this country that have done things a little differently. They have done it by focusing on the patient, by saying what is best for the patient is best for all of us. When you do what is best for the patient, you get higher quality care. When you get higher quality care, you actually get lower costs.

I think of people when they go in to pay for a hotel room and they say: If I pay more, I will get a better view and a bigger room. That is usually true. Not in health care. If you look at trends across the country, the States, the metropolitan areas that have the least efficient health care tend to cost the most. That is what we need to change if we want true cost reform. It is good in States such as Minnesota, New Hampshire, and Wisconsin. Why? Because we tend to have higher quality care at lower costs. We are rewarded for that.

It is also good for the States that need to get their quality of care up, so that we don't see massive readmissions to hospitals. Who, when they go to a hospital and are sick, wants to go back in because they get sick in the hospital? Who wants to have something go wrong in the hospital so they have to go back? Who wants to go to an area where they have massive fraud, so all this money gets drained in the amount of \$62 billion a year in Medicare fraud? That is what happens.

That is why, on delivery system reform, the courageous thing is to step back and say: How do we do this better? How do we do it so we are rewarding quality and not just quantity, so that we are putting the patients first?

That is what this bill is about. Why does this matter? I think anybody who has a checkbook understands what this means. At \$2.4 trillion a year, health care spending represents close to 17 percent of the American economy, and it will exceed 20 percent by 2018 if the current trend continues. Hospitals and clinics in every part of the country are providing an estimated \$56 billion in uncompensated care. That is taxpayer money going down the tubes—\$2.4 trillion per year. That is where we are now. Everybody knows it is costing them and making it very difficult for big businesses to compete against businesses from other countries that have more efficient health care systems. It is making it impossible for small businesses to keep all of their employees on health care. Why? Well, their costs are 20 percent more than big businesses.

The small businesses have created 64 percent of the jobs in the last decades

in this country. We have to allow them to continue to thrive, not with these health care costs that are a drag on these small businesses.

I always tell people to remember three numbers: 6, 12, and 24. Ten years ago, the average American family was paying about \$6,000 in premiums. Now they are paying \$12,000. That is average. We have a lot of small business owners all over our State paying \$20,000 a year, \$23,000 a year. If we do not do anything, if we do not do anything at all, 10 years from now it is going to cost between \$24,000 and \$36,000 average in this country for individual families to buy health care—\$24,000 to \$36,000 average per family. That is why we must act. We know inaction is not an option. If we do not act, costs will continue to skyrocket, and 14,000 Americans will continue to lose their health insurance every single day.

What does this bill do? First, it gives coverage to 31 million people who do not have coverage now. People are saying: Wow, where are they getting health care now? I will tell you where: the emergency room, such as in the hospital I used to represent when I was the county attorney for the biggest county in Minnesota. That was paid for by the taxpayers. When someone does not have insurance, when they don't have a doctor, they have diabetes, they are supposed to be doing their insulin and watching their diet and they wait and wait and they end up in the emergency room and they get their leg cut off and have big costs for all taxpayers, not to mention the disastrous quality of life for the person involved. That is going on in this country.

Last year, I was down in one of our smaller towns in southern Minnesota. I heard how one science hospital had three people come in with stomach problems, appendicitis attacks. Their appendixes burst. This was over a period of several months. They asked: How come you didn't come in earlier? Two of them said: We work at a small business; we didn't want the premiums to go up. It would hurt everyone at the small business. Another said: I had such high premiums I would have to pay I didn't want to come in and have it checked out.

If you do not have that kind of safety net in place for people, you get more expenses on the far end. That is what this bill does. It changes the delivery system, insuring 31 million more people.

What else does it do? It helps to reduce the deficit. That is what I said from the beginning. I do not want to support a bill that adds to the deficit. Actually, this bill we are talking about—some changes are being made—reduces the deficit by billions and billions of dollars.

A third thing: What does this bill have? Insurance reforms. What does that mean? It means if you have a sick

kid, you no longer are going to lose your insurance. You cannot be pushed off, put off in the deep end all by yourself if your kid gets sick. It means if you have a kid going to college, you can keep them on your insurance until they are 26 years old. That is what the bill does. It gives a safety net, consumer protections that people in this country have demanded.

Finally, with Medicare, it adds 9 years onto the life of Medicare. Right now, Medicare is scheduled to go into the red by 2017. No one wants to talk about it. We need to talk about it. What this bill does is keep it solvent for 9 more years.

I can tell you, my mom, who is 82, wants to stay on Medicare until she is way into her nineties. People in their fifties who want to get on Medicare at 65 want to make sure it is there for them, that it is solvent.

What this bill does with the reforms that are in it, with the promotion of high quality, closing that doughnut hole, which is difficult for seniors, it helps our seniors. This is an idea, someone said today—I was listening to other Members—whose time has come. This bill is not going to be perfect for everyone. I think about the people I heard from, such as the woman who wrote to me from northern Minnesota. She wrote this heartfelt letter about how she had gotten a call from her daughter whose husband worked at a small business. She said that husband, her son-in-law, had just found out they were not going to have insurance anymore at his small business. The woman who wrote, the mom, said she couldn't even understand her daughter. The daughter was sobbing, sobbing: What is wrong? What is wrong? What happened? I lost my insurance.

Do you know why this mattered so much for her family? Her daughter has cystic fibrosis. Her daughter needs this insurance every moment of her life. When that small business yanked that insurance coverage because they probably had to—I am sure they didn't want to, but they just couldn't afford it anymore—that daughter has to go on the open market now which, if you have a preexisting condition, is not an easy thing to do. She may not get insurance. That is what we are talking about when we talk about this bill.

At the end of the letter, the mom said: I need you to be my daughter's voice. She is not going to be able to go to Washington, DC, and lobby for this like all the companies that have come over here and lobbied for this thing and that thing. She needs us to be her voice, and that is what this is about.

The good thing here is that, as we look at some of the things in the bill, I didn't get everything I wanted to reduce costs, I can tell you that right now. But there are some great provisions in this bill.

Look at this. According to researchers at Dartmouth Medical School,

nearly \$700 billion per year is wasted on unnecessary or ineffective health care. That is 30 percent of total health care spending.

To rein in costs, we introduced a value index. I introduced a bill—Senator CANTWELL, Senator GREGG are co-authors of this bill. Senator CANTWELL got it on the Finance Committee bill and it is still in the merged bill today. What that does is it says, when you look at the Medicare fees, evaluate them on a lot of things but make sure you evaluate them on value. This indexing will help reduce unnecessary procedures because those who produce more volume will need to also improve care or the increased volume will negatively impact their fees.

Doctors will have a financial incentive to maximize quality and value of their services instead of quantity. My doctors in the State of Minnesota support this. They have supported this bill. They have endorsed this bill. They understand that if we want to get that high-quality care like we see in Minnesota in places such as the Mayo Clinic, the Cleveland Clinic, Intermountain, Kaiser—all over the country—you have to have those kinds of incentives in place.

This bill also focuses on bundling and integrated care. I was thinking, as I watched the Vikings game this weekend—I do not know if you noticed, but the Vikings won again; Brett Favre is quarterback—we are talking about a primary care provider who works with a team. We do not have 15 wide receivers running into each other. We have one person in charge—a quarterback in football, a primary care doctor in medicine—working with a team, with a wide receiver, with a tight end, with all the team they have working together, whether it is a cardiologist, whether it is a urologist, whether it is any kind of a doctor they want to work with as a team, depending on what the illness is. That is what integrated care is. You work as a team, share medical records. Patients do not get lost in the shuffle. They do not get sent to one specialist and another specialist without anyone watching over their care. That is what integrated care is about, a quarterback with a team.

The other thing about this bill is, we start to focus much more, as I mentioned, on reducing readmissions, on rewarding places such as Health Partners or St. Mary's in Duluth, places that work to have this integrated care, places that make sure we have less readmissions in the hospitals.

Finally—and I am pleased we got this in the freshman package that is coming out—there is a much bigger focus on fraud in the system. Mr. President, \$60 billion a year is going down the tubes, going to fraudsters, to con men, siphoning off the system by storefronts that are not doctors' clinics that claim they should get some of the reimburse-

ments that should be going to our seniors. That is \$60 billion in Medicare fraud alone every single year.

There are increased penalties with tools to make sure we are better enforcing the law. We can reclaim some of that money and give it to the American taxpayers, give it to our seniors.

Those are a few things. I will be talking more about this, this week, when we focus on and talk about cost control in this bill.

Thank you for allowing me to share some of my thoughts on cost. Again, remember 6, 12, 24. Ten years ago, the average American family was paying \$6,000 for their premiums. Now what are they spending? They are spending \$12,000. What are they going to spend 10 years from now if we don't do anything? They will spend \$24,000 to \$36,000 a year. We know this is not going to be easy to bend this cost curve. We know there are going to be bumps in the road. We know it is not going to automatically turn itself around. To do nothing, to put our heads in the sand at this moment in history is just plain wrong. The American people deserve to have better health care. They deserve to have that high-quality, low-cost care, and this bill is the beginning.

I yield the floor.

#### OMNIBUS APPROPRIATIONS

Mr. AKAKA. Mr. President, I want to express my strong support for the Omnibus appropriations act for fiscal year 2010, H.R. 3288. This bill combines six appropriations bills that provide funding for essential programs related to improving education, housing, and transportation; increasing research opportunities; providing justice; strengthening our foreign operations; constructing needed military facilities; and caring for our Nation's veterans. I thank the chairman and ranking member of the Senate Appropriations Committee, Senators INOUE and COCHRAN, as well as the various subcommittee chairmen and ranking members, for their efforts to bring this important bill to the floor.

I am pleased that included in this bill is funding for a number of K-12 and postsecondary educational initiatives, as well as cultural and financial literacy efforts. These programs will benefit Hawaii and the Nation and are especially critical now when States are facing increased financial pressure. These investments in education will aid individuals and society as a whole by helping to better prepare our keiki, our children, for tomorrow's challenges.

For elementary and secondary education, resources in the act support such areas as history, science, literacy, and college prep. I supported additional resources for National History Day, a program that encourages more than

half a million students each year to research, synthesize, and interpret primary and secondary sources in order to create an original work for the programs' annual contest. As science, technology, engineering, and math, STEM, are four subjects whose study is critical to national goals, the Maui Economic Development Board and Kauai Economic Development Board will work to advance STEM education and careers for students from underrepresented groups on Maui and Kauai using appropriations in this act. I also joined a number of my colleagues in working to fund Reach Out and Read, a nonprofit organization that makes use of pediatric doctor's visits as a teachable moment on the importance of parents reading to their children. Additionally, the Consolidated Appropriations Act will assist programs that prepare high school students for college at Hawaii Community College, Leeward Community College, and the Pacific Islands Center for Educational Development.

Included among the postsecondary initiatives in the bill are two programs at the Richardson School of Law at the University of Hawaii at Manoa, one of which comprehensively works to address issues relating to Native Hawaiians and the law and a second that will create a center on health policy. The bill will also allow the University of Hawaii at Hilo to expand programs at the Imiloa Astronomy Education Center and to establish a clinical training and applied science programs at the state's only pharmacy school.

I believe that historic preservation is necessary to ensure that future generations benefit from an understanding of their heritage and that cultural programs are integral to a broad-based education in a multicultural nation and interconnected world. Therefore, I am pleased that the Henry Giugni Kupuna Memorial Archives at the University of Hawaii, Bishop Museum, and Polynesian Voyaging Society will receive funding.

In addition, this bill includes vital financial education resources. My Excellence in Economic Education, EEE, Act program will receive \$1.447 million for fiscal year 2010. The Triple-E funds a range of activities such as teacher training, research and evaluation, and school-based activities to further economic principles and ensure that our students are more financially literate. Financial literacy in schools is essential to ensure that students are able to be prepared to effectively participate in the modern complex economy. Moreover, I was pleased to continue my efforts in championing financial literacy efforts by backing provisions for the Council for Economic Education and Center for Civic Education.

Additionally, the Department of Treasury's Office of Financial Education will have an increase of \$1 mil-

lion to further their efforts, revise the national strategy on financial literacy, and develop measurable goals and objectives for the Financial Literacy and Education Commission.

One of the fundamental causes of the financial crisis was that people were steered into mortgages with risks and costs they could not afford or even understand. The Financial Education and Pre-Home Counseling Pilot Program was authorized pursuant to section 1132 of the Housing and Economic Recovery Act of 2008, Public Law 110-289. I am proud that the chairman of the Appropriations Committee and I were able to secure \$3.15 million for a demonstration program in Hawaii. This program will strengthen the CDFI Fund's support for a range of financial education and counseling services to prospective homebuyers and address critical financial literacy needs of families.

This is a competitive grant that will be awarded by the Department of the Treasury's Community Development Financial Institutions Fund. Grants awarded through the Pilot Program will have the ultimate goal of identifying successful methods of financial education and counseling services that result in positive behavioral change for financial empowerment and establishing program models for organizations to deliver effective financial education and counseling services to prospective homebuyers.

The National Low Income Housing Coalition's Out of Reach report ranked Hawaii as the most expensive State for housing. As credit has become harder to obtain and downpayment requirements for home purchases have significantly increased, working families in Hawaii need assistance to better prepare for purchasing a home. These services can include credit counseling, assisting with savings planning, and educating potential home buyers about mortgage products and available programs intended to support home ownership. Pre-home ownership counseling helps prepare prospective homeowners to be better able to purchase a home and select an appropriate mortgage product and increases the likelihood that families will be able to remain in their homes. This project will focus on providing assistance to low- and moderate-income prospective home buyers in under served communities. The Government Accountability Office is required to study the impact and effectiveness of the demonstration grants authorized by section 1132.

Additionally, the legislation provides necessary resources for housing and transportation. Thirteen million dollars is provided for the Native Hawaiian Housing Block Grant, which is administered in the State of Hawaii by the Department of Hawaiian Home Lands, DHHL. These resources are extremely important to support additional home ownership opportunities

for residents throughout Hawaii. DHHL is the largest housing developer in the State of Hawaii.

In addition to having high housing costs, Honolulu has among the Nation's worst driving travel times. That is why I am pleased that this bill contains Federal dollars to supplement the substantial local investment in the Honolulu High-Capacity Transit Corridor Project. Furthermore, I am glad that the Neighbor Islands will receive needed resources for their rural bus service. These projects will help to reduce our reliance on imported fuels that pollute our islands, promote economic development and provide additional transportation options for our State's families.

A number of programs through the National Oceanic and Atmospheric Administration in the Consolidated Appropriations Act will also assist my State. Funding for Hawaiian monk seal recovery plan implementation furthers work to protect the less than 1,200 monk seals living today, while funds for coral reef maintenance are important to coastal communities in terms of supporting tourism, fisheries, biodiversity, carbon sequestration, and shoreline protection. The bill's funding of \$2 million facilitates a University of Hawaii, University of Mississippi, University of Alaska Fairbanks, and University of California San Diego consortium dedicated to employing infrasound, or low-frequency sound, as a warning tool for natural hazards, such as volcanic eruptions and tsunamis, having the potential for catastrophic human and economic impacts to taxpayers. Efforts at the International Pacific Research Center, IPRC, within the University of Hawaii School of Ocean and Earth Science and Technology are also supported by \$1.5 million in funding. The IPRC makes data resources readily accessible and usable to researchers and the general public and conducts data-intensive climate research activities.

The bill also includes provisions that will help to improve the effectiveness of State and local justice systems to enforce the laws, bring criminals to justice, address the needs of crime victims, and prevent crime and delinquency. In particular, this bill includes \$500,000 for the National Center for State Courts, NCSC, which serves as a think tank, forum, and voice for 30,000 judges, and 20,000 courthouses, in the State court system in the 50 States, DC, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa, where annually 98 percent of court filings are submitted. Funding in this bill will implement the NCSC's State Courts Improvement Initiative to provide increased support services to judges, administrators, and other personnel in the State court system as well as help to shape and bolster Americans' understanding of and confidence

in the Nation's judicial system. I am also pleased that this bill provides \$300,000 to the Hawaii Innocence Project, which provides pro bono assistance to Hawaii prisoners with credible claims of actual innocence who no longer have access to legal resources and whose innocence may now be proven by technology unavailable at the time of their trials.

To address the needs of victims and prevent crime and delinquency, I am pleased that the bill provides \$400,000 to enable both the Hawaii and Kauai YWCAs to continue their programs to address sexual and domestic violence and provide services for victims of such violence. It also provides \$500,000 for A Child Is Missing, ACIM, Hawaii, which will provide the critical rapid response that will assist Hawaii law enforcement agencies to locate missing children and adults. In addition, \$350,000 is provided for Ka Wili Pu—Native Hawaiian for “the blend”—which will provide 400 at-risk youth on Maui with adult guidance and adult role models and one-on-one instruction to encourage them to remain in school, fulfill their promise, avoid a problematic future with few meaningful options while promoting a healthy and stable society. To help provide cost-effective legal, medical, psychological, and social services to indigent immigrant women, the bill also provides \$200,000 for the Hawaii Immigrant Justice Center to help prevent violence against women.

In addition to providing for our domestic needs, the bill provides critical funding to improve our foreign relations. I am particularly pleased by two programs funded by this bill: the East West Center, which will receive \$23 million, and the U.S. Institute of Peace, which will receive \$19.2 million. The Hawaii-based East West Center is a premier U.S. public diplomacy program focusing on Asia and the Pacific and is a vital tool to promote U.S. values and interests in the region. The funding provided by this bill will allow existing programs to continue and provide additional funds for program enhancements and some facility upgrades.

The U.S. Institute of Peace, a national center of research, education, and training on conflict management, works to resolve international conflicts by peaceful means without violence and war. The USIP was championed by former Senator Spark Matsunaga, and I am pleased to see the vital work of this institution continue, especially in this current international climate.

Significant funding for military construction projects is also included in this bill, which will support the construction of troop barracks, mission critical operational facilities, support the construction needs of the Guard and Reserves, and the construction of military family housing, child care centers, and chapels. We must continue

to provide for our troops and their families as they sacrifice so much for this Nation.

I am particularly pleased that my request for a shipyard modernization project at the Pearl Harbor Naval Station was authorized and appropriated at \$25 million. Shipyard modernization is essential to give our workers the opportunity to most efficiently maintain and repair our fleet. The Production Services Support Facility is a much needed step in the right direction. In addition, my request for an additional runway at Kona was approved as funding was included for the planning and design of a C-17 short auxiliary airfield. Once completed, this will allow Hickam AFB C-17 aircrews to complete their required training in the local area instead of travelling the 16-hour round trip to the mainland.

In addition to ensuring that our military members have the facilities necessary to assist in the performance of their duties, this bill ensures that our military members are taken care of when they return home. As chairman of the Committee on Veterans' Affairs, I am pleased that the Omnibus appropriations bill includes strong funding for the Department of Veterans Affairs, VA, in recognition of the fact that caring for veterans is a cost of war and must be funded as such. Funding for VA would be substantially increased, billions of dollars above the previous budget. This funding will allow VA to improve care for veterans of all service-eras and further the administration's goal of opening enrollment for more than 500,000 veterans of modest incomes by providing VA with the resources to prepare for them in the coming years. The bill also fully funds VA's research programs, which are vital to improving the Department's ability to treat the signature wounds of the current conflicts and develop other improvements that will help veterans and nonveterans alike.

I am delighted that for the first time VA will receive advance appropriations for fiscal year 2011 for three VA medical care accounts. This coincides with the landmark legislation, Veterans Health Care Budget Reform and Transparency Act of 2009, which was signed into law as Public Law 111-81 by the President on October 22, 2009. Funding VA health care in advance will go a long way toward resolving the problematic underfunding of VA health care, which left so many of the Nation's veterans with unmet health care needs.

Importantly, this bill contains an amendment I offered that will extend VA's authority to operate the Manila VA Regional Office. I extend my deepest thanks to the staff of the Manila Regional Office who have continued to demonstrate unwavering dedication to their duty to assist Filipino World War II veterans and indeed all veterans who

apply for benefits from VA. Earlier this year, more than 60 years after the end of the World War II, surviving Filipino World War II veterans who served under U.S. military command received a measure of compensation for their service in the form of a one-time lump sum payment. Dispersing these payments has been a significant challenge as a series of steps are required to authenticate their World War II service. In addition, the Manila Regional Office administers Social Security in the Philippines while at the same time administering compensation, pension, vocational rehabilitation, employment, and education benefits to over 18,000 individuals. Without this extension, VA's authority to operate the Manila VA Regional Office would have expired on December 31, 2009.

These are just some of the projects and programs this important bill will fund for the 2010 fiscal year. Once again, I want to thank the hard work of the Appropriations Committee for bringing this bill before us today, and I urge my colleagues to support it.

#### VOTE EXPLANATION

Mr. DORGAN. Mr. President, the Senate voted Sunday on final passage of the conference report to accompany H.R. 3288, the Transportation, Housing and Urban Development and Related Agencies Appropriations Act for 2010. I was unable to vote because I was attending my son's college graduation ceremony at the University of Minnesota, which occurred at the same time as the Senate vote. Had I been present during the vote, I would have voted in favor of the legislation.

#### CRIMINAL SENTENCING

Mr. HARKIN. Mr. President, with over 2 million inmates, many who are in prison for nonviolent drug offenses, the United States has the highest rate of incarceration in the world. In recent years, we have rightly begun to question how our criminal justice system can better ensure our communities are safe and free of drugs and violence, while fostering healthy families and communities through drug treatment and rehabilitation for those who are not violent or a danger to society. That is why I cosponsored the Second Chance Act, which became law last Congress. It is also why I am a proud cosponsor of S. 714, the National Criminal Justice Commission Act of 2009, introduced by Senator WEBB.

As we engage in a dialogue regarding the criminal justice system, I strongly recommend to my colleagues recent remarks Chief Judge Robert W. Pratt of the Southern District of Iowa made before the U.S. Sentencing Commission. Chief Judge Pratt authored the trial court decision in *Gall v. United States*, where the Supreme Court provided for greater discretion for Federal court judges in imposing criminal sentences,

and he has become one of the leading legal thinkers in our country on criminal sentencing. While I do not necessarily endorse every idea Chief Judge Pratt discusses, I commend to my colleagues his incredibly thought-provoking speech on this complex and challenging topic.

Mr. President, I ask unanimous consent that the entire text of Chief Judge Pratt's statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### SENTENCING COMMISSION TESTIMONY

Judge Robert Pratt

Thank you for the invitation to testify regarding the work of the Sentencing Commission. Like almost every district judge with whom I have discussed the matter, I believe that sentencing is the single most important task performed by district court judges. According to the Sentencing Commission, federal district judges sentenced 72,865 criminal defendants in 2007. I would be remiss in my testimony if I did not remark upon the difficult emotional toll that sentencing places on a judge. Even when sentences are fair and appropriate, and even when a defendant "deserves" the particular term of imprisonment, it is not a pleasant task to pronounce the judgment of the law. I am not complaining about the job. Rather, I am just stating my personal belief, shared by many judges, that it is impossible for any human being to be confident that he or she has imposed the "correct" sentence. It is important to state this fact from the outset of my testimony because we too often lapse into a recounting of judicial statistics that fail to capture the enormity of the single act of pronouncing a sentence.

I want to begin by remarking that these hearings are very much in keeping with the Sentencing Reform Act of 1984, which advised that one of the purposes of the Sentencing Commission was to "establish sentencing policies and practices for the federal criminal justice system that" assure that the purposes of sentencing set forth in Title 18, United States Code, §3553(a)(2) are met. Section 991 of Title 28, which established the Sentencing Commission, goes on to state that the Commission was also intended to "provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices" and to "reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." The Commission is further charged with "develop[ing] means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code."

I will try and follow the questions that were posed to me when I was asked to come and testify, so as to properly limit the scope of my presentation. The federal sentencing system is not working well. Sentences are routinely more harsh and punitive than they need to be, especially in run-of-the-mill narcotics and pornography cases. The starting

point for this result, of course, is with the United States Attorneys and their general charging authority. "Prosecutors decide whether and how to charge an individual. They decide whether to offer a plea to a lesser charge, set the terms of the plea, and assess whether the conditions have been met." Angela Davis, *The American Prosecutor: Independence, Power, and the Threat of Tyranny*, 86 Iowa L. Rev. 393, 408 (2001); see also Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* 188 (1969) ("Viewed in broad perspective, the American legal system seems to be shot through with many excessive and uncontrolled discretionary powers but the one that stands out above all others is the power to prosecute or not to prosecute."). While "disparities," both warranted and unwarranted, are often discussed in the context of sentencing, the reality of federal sentencing today is that federal sentences are dramatically longer than state sentences for similar offenses. As well, the time that offenders actually serve is substantially longer in the federal system than in the state system. While federal sentences are categorically harsher, the unanswered question that remains is: What legitimate penological reasons exist that can account for the difference? With few exceptions, the Sentencing Guidelines advise sentences that are simply too punitive. The very first thing the Sentencing Commission should do is to advise Congress to eliminate all mandatory sentences. Mandatory sentences come in two types—the mandatory minimum, which requires a sentence of "x years" upon a plea of guilty or a conviction, and the sentencing enhancement, where a plea or conviction will trigger a specific sentence. The overly punitive Sentencing Guidelines and the mandatory minimum sentences (which include the enhancement statutes) all have their origins in the mistrust of judges. This mistrust of life-tenured judges does not find a similar mistrust of executive branch actions by politically appointed United States Attorneys serving at the pleasure of the President. Mandatory minimum sentences have the effect of letting the prosecutor determine the sentence. This is simply untenable in a sentencing regime that advises judges to render sentences that are "sufficient but not greater than necessary." For the very first time in our legal history, we now have a regime under the Booker advisory guideline system where the United States Attorney will be involved in sentencing justice. Under the pre-mandatory guideline system, the United States Attorney played virtually no part in the determination of the appropriate sentence. Indeed, in the indeterminate sentencing system, judges had almost unfettered discretion to individualize sentences for particular defendants. While prosecutors cared about what the ultimate sentence was, questions of sentencing justice could be left to the judge and to the parole board. With the advent of the Sentencing Reform Act and the mandatory Sentencing Guidelines, prosecutors merely needed to "prove up" sentencing facts and argue Guideline law in order to effectively restrain judicial discretion. The prosecutors, however, still were not concerned with the justice of the sentence—a matter left to the Sentencing Commission and, to a much lesser extent, to the judge. To quote from Professor Simons' article:

"Superficially, this limiting of the prosecutor's involvement at sentencing made sense and was consistent with traditional institutional roles: the prosecutor decided the charge, the jury decided guilt or innocence,

and the judge decided the sentence. This division of roles, however, had one major exception: mandatory sentences. At the same time it created the Sentencing Guidelines, Congress also began creating a variety of crimes that carried mandatory minimum sentences, typically for offenses involving drugs and guns. Because these mandatory sentences "trump" the Sentencing Guidelines, the charge often determined the sentence. In other words, by charging (or not charging) an offense with a mandatory minimum sentence, the prosecutor effectively became the sentencer. In a system in which sentencing is viewed as a judicial function and in which prosecutors are typically not asked to engage with questions of sentencing justice, this "sentencing by charge" increases the risk of unjust sentences."

Michael A. Simons, *Prosecutors as Punishment Theorists: Seeking Sentencing Justice*, 16 Geo. Mason L. Rev. 303, 305-06 (Winter 2009).

As a result of *Booker*, the Supreme Court has created a third system that merges some of the elements of the pre-Guidelines and post-Guidelines systems. The Supreme Court has decided that sentences should be decided based not only on the "advice" a judge receives from the Sentencing Commission, but also on the traditional purposes of punishment: retribution, deterrence, incapacitation, and rehabilitation. The Court also announced that a trial judge's decision would be reviewed based upon a concept of "reasonableness." Now, prosecutors not only prove up sentencing facts and argue guidelines law, but also are in the unfamiliar role of arguing both at sentencing and on appeal that a particular sentence is or is not reasonable. Within this framework, the Government and the Court, as well as defense counsel, should remember what the Supreme Court said about the role of the United States Attorney in *Berger v. United States*, 295 U.S. 78, 88 (1935):

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

If prosecutors thought and acted this way about sentencing, it would animate their charging decisions with respect to mandatory minimums, sentencing enhancements, and arguments about sentences that are considered to be "sufficient but not greater than necessary." The end result of a prosecution—"substantive justice" regarding the sentence—should be considered an integral part of the United States Attorney's job. This is the indirect result of *Booker* and its progeny. An oft-quoted inscription on the walls of the Department of Justice states: "The United States wins its point whenever justice is done its citizens." (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). Simply asking these questions before charging decisions are made can truly improve the sentencing system under the post-*Booker* advisory regime.



There is no question in my view that the now-advisory system of guideline sentencing has improved the quality of sentences that I have rendered. The entitlement that the defendant has at sentencing is to an "individualized assessment" based upon the facts presented has improved the ability of judges to consider factors that were not permitted to be taken into account pre-*Booker*. See *Gall v. United States*, 522 U.S. 38 (2007). This rationale, of course, built upon what the Supreme Court has called "the uniqueness of the individual case," as well as the following practice of the federal courts that Justice Kennedy referred to in *Koon*: "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Gall*, 522 U.S. at 598 (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)). Prior to *Booker*, federal district court judges were almost always prevented from considering the defendant's age, see U.S.S.G. 5H1.1, education and vocational skills, *id.* 5H1.2, mental and emotional condition, *id.* 5H1.3, physical condition, including drug or alcohol dependence, *id.* 5H1.4, employment record, *id.* 5H1.5, family ties and responsibilities, *id.* 5H1.6, socio-economic status, *id.* 5H1.10, civic and military contributions, *id.* 5H1.11, or lack of guidance as a youth, *id.* 5H1.12. These guideline prohibitions are directly at odds with many of the sentencing statute's directives contained in 18 U.S.C. §3553(a). While sentencing is now more complex and demanding than it was when courts merely had to plug in the numbers that Rule 32 required and impose the mandatory provisions of the Sentencing Guidelines severed in *Booker*, it now leads more frequently to a sentence that is "sufficient but not greater than necessary." Post-*Booker* sentencing has also led to more innovative and imaginative advocacy on the part of many defense lawyers. Courts are now presented with sentencing alternatives that can better suit offenders' needs and that will lead to more community based solutions. Such alternatives in sentencing are sometimes far more appropriate than imposing sentences of incarceration, where offenders are commonly deprived of familial and other support mechanisms. Breaking the cycle of parentless children, many of whom will fail in the same way as their parents, must be inculcated into sentencing practices.

The Sentencing Guidelines should continue to be advisory and should play a role in helping judges achieve the goals of sentencing. The preference of the Guidelines, however, for custodial sentences as opposed to non-custodial sentences should be eliminated by promulgating guidelines that encourage non-custodial sentences—particularly for first time and non-violent offenders. These new guidelines should be based upon empirical research into such emerging topics as the effects of brain maturity and should encourage analyzing the "whole person," which would include psychological and vocational evaluations, intelligence tests, and risk factor identification. This would require judges to look at the sentencing goal of rehabilitation, rather than mere retribution. The current preference in the Guidelines for custodial sentences also does not appropriately permit the sentencing judge to employ the "institutional advantages" that Justice Stevens referred to in *Gall*. Many times, a judge can "feel" or sense the sincerity of a defendant during allocution, and such a factor can

never be properly "conveyed by the record" of the proceedings. Some acknowledgment should be made in an advisory guideline or in a policy statement regarding the importance of a defendant's right of allocution, as well as to the right of allocution of any victims of the offense. Such an acknowledgment will add to the record available to counsel, to the sentencing judge, and to any reviewing court that must determine the reasonableness of a sentence. Indeed, it seems to me that offering this type of advice to sentencing judges would keep with the initial Congressional intent in passing the Sentencing Reform Act of 1984, which delegated to the Commission the responsibility of developing sentencing policies and practices that achieve certainty and assure fairness.

Another suggested advisory guideline or policy statement that could be added to the sentencing practices is one that I have used in my post-sentencing work. The opportunity to talk with ex-offenders about their incarceration experience, rehabilitative efforts, educational programs, and attitudes about their upcoming supervised release term is an "institutional advantage" that can only add to a judge's sentencing expertise. Seeing what a probationary sentence or a short or long sentence does to a defendant is a useful tool in knowing what sentence to give in a similar case. At a minimum, it provides insight to the sentencing judge that no one else has. These changes with respect to sentencing, while not mandatory, could certainly be useful to judges on some level. The Sentencing Commission currently issues reports that relate a statistical approach to sentencing and that continues to center judges' attentions on the Sentencing Guidelines, as if a certain percentage of "within Guidelines" sentences can be determinative of the quality of those sentences. While I do believe that these reports are helpful to judges in that they tell us something about sentencing, I also believe that these reports tend to erroneously "anchor" a judge into thinking that a guideline sentence is preferred or even that an unwritten presumption for the guideline sentence exists.

A final set of suggestions for the Sentencing Commission would be, first, to reconsider aforementioned Guideline provisions that all but dismiss an offender's family and community contributions. Our law should recognize and value those rare offenders who consistently provide financial support for their children, participate positively in their children's lives, and benefit the community through consistent charitable or public service. These traits speak not only to an offender's overall character but also to their ability to reintegrate into society. Moreover, the Sentencing Commission should reconsider the sheer number of enhancements that are applicable in many drug, firearm, and pornography cases, as they place many offenders' guideline ranges near the statutory maximum, despite the dramatic differences in culpability among the offenders. Perhaps, the Sentencing Commission should also reconsider utilizing a higher standard of proof, more in tune with other criminal law principles, for all enhancements. Indeed, the use of acquitted conduct, for example, proven only by a preponderance of the evidence, to dramatically increase an offender's guideline range serves to functionally undercut the jury system and discredit the Sentencing Commission and the larger criminal justice system in the eyes of the public.

With respect to the balance between uniformity and discretion, I believe that any

system that allows judges to individually assess a defendant within the broad parameters of the sentencing statute will necessarily sometimes appear to be "non-uniform or disparate" in terms of the ultimate sentence. This "unwarranted disparity" is a price worth paying because sentencing is inherently fact based and because human beings (including judges) are unique. Thus, any appearance of disparity, and indeed, any actual disparity, should be viewed as a necessary consequence of an appropriately individualized process. As in many arenas of the law where "discretion" is the rule, there will always be different results in different cases. While we should attempt to limit unequal results where all other factors are equal, no system can ever truly and adequately account for the disparate acts of police, prosecutors, probation officers, and judges—all players that interact in a system that will eventually result in an offender's conviction. The current perception in working-class and poor-America is that society has one set of rules that apply to well-to-do people, and another set of rules that impacts on them. Certainly, any statistical analysis of the impact of the Sentencing Reform Act on the federal prison population would show that incarceration rates have doubled or even tripled for poor people and minorities, but have remained steady for well-to-do people and non-minorities. The Supreme Court in *Gall* made reference to my own comment in the underlying sentencing of Mr. Gall that "respect for the law" has to mean something more than long sentences. Indeed, in sentencing Mr. Gall to 36 months of probation, I specifically found that "a sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing." *Gall*, 522 U.S. at 599 (quoting the district court decision). The current law overlooks, or at least gives less weight to, the collateral consequences of conviction in our country and in the majority of our states. The offender is deprived of the right to vote in most states, the right to serve on a jury, the right to run for elective office, and the right to possess firearms (whatever the eventual Supreme Court view of that right entails). Moreover, a conviction will inevitably forever harm an offender's employment opportunities, and in turn, the chances the offender's children will have to get an education and succeed on their own merits. The fact is that, unlike most, if not all, democracies, we condemn more than the conduct of the offender. We also condemn the convicted individual personally, telling them, in effect, that society no longer wants their contributions or values their existence. Limiting the stigma of conviction after a sentence is completed should be one of the primary goals of the sentencing commission.

With respect to analyzing a sentence within or outside the Sentencing Guideline range, I think determining a sentence with the Guideline as the "norm" gives too much weight to the Sentencing Guidelines which, after all, are just one of the §3553(a) factors to be considered. The Supreme Court has instructed us that the "overarching" provision of the Sentencing Reform Act that must be given effect is the "parsimony provision"—that is, the Court is charged with arriving at a sentence that is "sufficient but not greater than necessary." This provision has a long pedigree. As early as 1748, Baron Charles de Montesquieu wrote in *The Spirit of the Laws*, Bk. XIX. 14 (G. Bell & Sons 1914): "All



punishment which is not derived from necessity is tyrannical." I think a better approach is the sentencing statute itself, which allows the sentencing judge to gather evidence on each of the §3553(a) factors and to determine what, if any, incarceration is necessary, and then to determine, if the circumstances warrant, the length of confinement that would best serve the purposes set forth in the statute. While the Gall Court properly instructed sentencing judges to start with correctly calculating the advisory Sentencing Guideline range, it employed this starting point to aid in "secur[ing] nationwide consistency" in sentencing, not because Guideline calculations are entitled to greater weight than any other sentencing factor. While the Sentencing Guidelines attempt to render a "wholesale" overview to the sentencing considerations outlined in §3553(a), the Rita Court explained that guidelines certainly cannot routinely provide a "sufficient but not greater than necessary" sentence if the district court is engaged in an individualized assessment of the offender and the offense. See *Rita v. United States*, 551 U.S. 338 (2007). Accordingly, a sentencing judge must use his or her experience and common sense when determining what value the "starting point" should have in the final analysis. As Judge Cabranes and Professor Stith point out in their book, "the explosion of case law on federal sentencing contains almost no discussion of the purposes of sentencing generally or in the specific case—almost no articulated concern as to whether a particular defendant should be sentenced in the interest of general deterrence, rehabilitation, retribution, and/or incapacitation." Kate Stith & Jose Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (Univ. of Chicago Press 1998). Now that judges are free to discuss these purposes of sentencing within the context of the individualized facts of the offender and the case, an exchange among the courts, defenders, prosecutors, probation officers, victims, and the Sentencing Commission can take place and a "common law" of sentencing can and should emerge. A great example of this "common law" of sentencing that actually addresses the purposes of sentencing can be found in *United States v. Cole*, 622 F. Supp. 2d 632 (N.D. Ohio 2008), where the trial court discussed the purposes of sentencing in the following manner:

"We have long understood that sentencing serves the purposes of retribution, deterrence, incapacitation, and rehabilitation. Deterrence, incapacitation, and rehabilitation are prospective and societal—each looks forwards and asks: What amount and kind of punishment will help make society safe? In contrast, retribution imposes punishment based upon moral culpability and asks: What penalty is needed to restore the offender to moral standing within the community?"

The Cole court went on to describe how each of these purposes was consistent with the sentencing statute found at §3553, and how the law and the facts (which involved a financial crime) should be analyzed given these sentencing concerns.

With respect to appellate review, I believe that the "abuse of discretion" standard has worked well and will continue to do so. District court judges "live with a case" for a substantial period of time and have face-to-face interactions with the offender. Appellate courts do not have these advantages available to district judges in formulating an appropriate sentence, making a less deferential, "de novo" standard of review inappropriate. While district judges can and do get

it wrong from time to time, I believe the current "abuse of discretion" standard adequately allows appellate courts to determine the point at which the latitude afforded district court judges has been transgressed. If a Court of Appeals canvasses the entire record and is left with a "firm and abiding" conviction that the sentence is not "reasonable," then the Court of Appeals can and should intervene and reverse the district judge. I am not certain that this is a test which "shocks the judicial conscience," but I am confident that Court of Appeals judges will be able to identify an unreasonable sentence when they see it and articulate the reasons why the sentence is unreasonable in the context of the particular facts of a case.

Lastly, with respect to changes in either the sentencing statutes or the Federal Rules of Criminal Procedure, I would emphasize the necessity of eliminating all mandatory minimum statutes and sentencing enhancement statutes. These statutes unfairly and improperly shift the sentencing function of government from the judicial branch to the executive branch. With respect to Federal Rule of Criminal Procedure 32, it should be expanded to permit a broader exchange of information in advance of the actual sentencing proceedings. Additional authority should be provided within the Rules to allow medical, psychological, or vocational testing when such testing would aid the sentencing judge in formulating an appropriate sentence.

Thank you for the invitation to submit testimony before the commission. I look forward to the opportunity to verbally address any concerns or questions you may have about my testimony.

#### HONORING OUR ARMED FORCES

STAFF SERGEANT STEPHEN MURPHY

Mrs. SHAHEEN. Mr. President, today I wish to express my sincerest condolences and deepest sympathies to the family of SSG Stephen F. Murphy, who died in Al Asad, Iraq, on November 8. Staff Sergeant Murphy, a native of Troy, NH, served his country for 16 years as a member of the U.S. Marine Corps. The American people will forever be grateful for his service.

Staff Sergeant Murphy exemplified the best in America's long tradition of duty, sacrifice and service. Despite being turned away from a Marine recruiting station as a teenager for being too small and still lacking a high school diploma, Stephen was determined to enlist and rededicated himself to his studies and weight training until he could join the Corps. The selfless determination he displayed is what makes our Armed Forces the best in the world.

When he formally established Veterans Day in 1954, President Eisenhower described the importance of a national day of remembrance: "On that day let us solemnly remember the sacrifices of all those who fought so valiantly, on the seas, in the air, and on foreign shores, to preserve our heritage of freedom, and let us reconsecrate ourselves to the task of promoting an enduring peace so that their efforts shall not have been in vain."

In the town of Troy this past Veterans Day, those words undoubtedly took on a new poignancy as the community came together to honor the sacrifice of one of its own. Our nation can never fully repay this sacrifice, nor fully assuage the loss to Stephen's family. Through his years of service, he helped preserve the safety and security of the American people. It now falls to all of us to honor his memory by supporting our veterans and their families and ensuring America's continued security.

I ask my colleagues to join me and all Americans in honoring the life of SSG Stephen Murphy.

#### REMEMBERING AMBASSADOR THOMAS F. STROOCK

Mr. BARRASSO. Mr. President. Wyoming has lost a statesman. On Sunday, December 13, 2009, Ambassador Thomas F. Stroock passed away at the age of 84. Tom once said, "I don't know why God gave me this wonderful life. Good fortune, I guess." Those of us who had the benefit of knowing Tom are certain that his wonderful life was a result of his determination, toughness, and confidence.

Tom served our Nation as a marine in WWII. In 1948, he graduated from Yale University and then found his way to Wyoming. His first job was as a roughneck on an oil rig. The following year, the lovely Marta Freyre de Andrade agreed to be his wife.

Tom was a man who saw possibilities and opportunities. He started his own oil and gas properties firm in 1952, Stroock Leasing Corporation and Alpha Exploration, Inc. It grew to be one of Wyoming's most respected and successful oil and gas businesses.

While he was busy with his successful energy endeavors, Tom still had much to give Wyoming and our Nation. He served for 16 years in the Wyoming Legislature. He was chairman of the local school board, as well as the Wyoming School Boards Association and Wyoming Higher Education Council. Tom used his energy and business acumen to lead the industry though his service on the Wyoming Natural Gas Pipeline Authority and the Enhanced Oil Recovery Commission.

In 1989, his good friend and college classmate, President George H. W. Bush, tapped him to be the U.S. Ambassador to the Republic of Guatemala. It was a tough assignment. Guatemala was in the midst of a decades-long civil war. Tom approached this job as he did all of his other challenges—with forthrightness and courage. Ambassador Stroock provided challenge and support to our friends in Guatemala as they worked toward a more stable economy, a decrease in political violence and perhaps most notable to the outside world, increased internal safety measures. Tom helped bring about

changes that greatly impacted the daily lives of Guatemalans.

Tom Stroock's accomplishments were numerous. Throughout his lifetime of leadership and service, Marta was at his side. The couple, married for 60 years, served as a pillar of the Casper, WY, community. Their daughters Margie, Sandy, Betty, and Anne, are carrying on their father's commitment to business and public service.

Mr. President, while we are saddened by the passing of Ambassador Thomas F. Stroock, we are left with the example of a life well lived.

#### TRIBUTE TO ERNIE LOMBARD

Mr. RISCH. Mr. President, I rise today to give recognition to Ernie Lombard who has been at the forefront of preserving and recording Idaho's great past.

For more than 20 years, Ernie has had a vision of a State park that would showcase Idaho's mining history and allow for motorized recreation. In 2009, the vision was realized when thanks to Ernie's leadership, the Bayhorse ghost town in Custer County became the newest addition to Idaho's State park system.

It was not an easy task. Many parcels in the park needed to have century-old toxic mine waste removed. Bayhorse was one of the first sites in the country to use brownfields grant funds to accomplish that feat. The work was such a success the Bayhorse project was awarded the Partners in Conservation Award by the U.S. Department of the Interior for outstanding conservation results among many partners.

As an architect, Ernie has had a hand in designing several of Idaho's most significant buildings. His talents and passion for architecture and history, along with a strong interest in photography and art, have preserved Idaho's rugged and unique past. Ernie's photographic library includes more than 3,000 images of historic Idaho buildings. His presentation, "Ghost Towns of Idaho" has been presented to audiences more than 200 times. Every school district in the State has the video created from this presentation to use in teaching Idaho history.

His work on a county historical advisory board led to the preservation of the historic Guffey railroad bridge across the Snake River between Canyon and Owyhee Counties. This bridge is a centerpiece for Celebration Park.

Ernie also conducts historical "safaris" to ghost towns such as Silver City and teaches about Idaho ghost towns and photography in the Boise Community Education Program. He is the longest continuing education instructor in the history of the program having taught 27 years.

Recently, the Idaho State Historical Society awarded Ernie Lombard with their "Esto Perpetua" award for sig-

nificant contributions to the preservation of Idaho history.

It is indeed an honor for me to give recognition to Ernie Lombard for his vision and many years of work to preserve Idaho's significant history and his passion and willingness to educate Idahoans and others about our wonderful State. Future generations of Idahoans have received a great gift from Ernie Lombard, and we are very grateful.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO DALE HANINGTON

• Ms. COLLINS. Mr. President, I wish to congratulate the president and CEO of Maine Motor Transport Association, Dale Hanington, on his retirement. The men and women of Maine's trucking industry are grateful for his determined and effective leadership. I am grateful for his guidance and support on transportation legislation, and for his friendship.

Dale, a Maine native who earned his bachelor's degree in business administration, retired from the Maine State police at the rank of lieutenant after 20 years of service. After retiring from the Maine State police, he served as a safety engineer with a large construction company for 2 years. In 1989, Dale joined the Maine Motor Transport Association as assistant to the executive director, and he became the president and CEO of the association in 1993.

Dale has been a strong advocate for Maine's most important transportation needs, including raising the Federal truck weight limit in Maine, which we have worked together tirelessly to address. With Dale's help and support, we finally have made progress in securing a 1-year truck weight pilot project for Maine.

I am grateful for our strong working relationship over the years. I offer my sincerest appreciation to Dale for his service and congratulations on a well-deserved retirement. •

#### MESSAGES FROM THE HOUSE

##### ENROLLED BILLS SIGNED

At 2:04 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 4165. An act to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

H.R. 4218. An act to amend titles II and XVI of the Social Security Act to prohibit

retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators.

The enrolled bills were subsequently signed by the President pro tempore (Mr. BYRD).

At 5 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4284. An act to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes.

##### ENROLLED BILL SIGNED

At 7:24 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3288. An act making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

#### MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1471. An act to expand the boundary of the Jimmy Carter National Historic Site in the State of Georgia, to redesignate the unit as a National Historical Park, and for other purposes; to the Committee on Energy and Natural Resources.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-3995. A communication from the Assistant Chief Counsel for General Law, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines" (RIN2137—AE15) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3996. A communication from the Assistant Chief Counsel for General Law, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Pipeline Safety: Control Room Management/Human Factors" (RIN2137—AE28) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3997. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Worker Visibility" (RIN2125—AF28) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3998. A communication from the Staff Assistant, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Schedule of Fees Authorized by 49 U.S.C. 30141 Offer of Cash Deposits or Obligations of the United States in Lieu of Sureties on DOT Conformance Bonds" (RIN2127—AK10) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-3999. A communication from the Staff Assistant, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Federal Motor Vehicle Safety Standards, Child Restraint Systems" (RIN2127—AK36) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4000. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Oversales and Denied Boarding Compensation" (RIN2105—AD63) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4001. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Procedures for Non-Evidential Alcohol Screening Devices" (RIN2105—AD64) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4002. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (RIN2105—AD55) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4003. A communication from the Senior Regulations Analyst, Office of the Secretary of Transportation, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs: State Laws Requiring Drug and Alcohol Rule Violation Information" (RIN2105—AD67) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4004. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Television Broadcasting Services; Fort Meyers, Florida" (MB Docket No. 09—170) received in the Office of the President of the Senate on December 4, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4005. A communication from the Acting Assistant Administrator of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean in 2009, 2010, and 2011" (RIN0648—

AY08) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4006. A communication from the Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries" (RIN0648—XS77) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4007. A communication from the Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #8, #9, #10, #11, and #12" (RIN0648—XS52) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4008. A communication from the Acting Assistant Administrator of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders" (RIN0648—XS30) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4009. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska" (RIN0648—XT10) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4010. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Harvested for New Jersey" (RIN0648—XT09) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4011. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gear Restriction for the U.S./Canada Management Area" (RIN0648—XS87) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4012. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area" (RIN0648—XS96) received in the Office of the President of the

Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4013. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1A" (RIN0648—XT10) received in the Office of the President of the Senate on December 9, 2009; to the Committee on Commerce, Science, and Transportation.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. GILLIBRAND:

S. 2880. A bill to amend the Rural Electrification Act of 1936 to establish an Office of Rural Broadband Initiatives in the Department of Agriculture, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. SNOWE (for herself and Mr. WARNER):

S. 2881. A bill to provide greater technical resources to FCC Commissioners; to the Committee on Commerce, Science, and Transportation.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. LINCOLN (for herself, Mr. HARKIN, and Mr. CHAMBLISS):

S. Res. 374. A resolution recognizing the cooperative efforts of hunters, sportsmen's associations, meat processors, hunger relief organizations, and State wildlife, health, and food safety agencies to establish programs that provide game meat to feed the hungry; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. VOINOVICH (for himself and Mr. BROWN):

S. Res. 375. A resolution honoring the life and service of breast cancer advocate, Stefanie Spielman; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 428

At the request of Mr. DORGAN, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 428, a bill to allow travel between the United States and Cuba.

S. 448

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 448, a bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

S. 455

At the request of Mr. ROBERTS, the names of the Senator from New Jersey

(Mr. MENENDEZ) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. 455, a bill to require the Secretary of the Treasury to mint coins in recognition of 5 United States Army Five-Star Generals, George Marshall, Douglas MacArthur, Dwight Eisenhower, Henry "Hap" Arnold, and Omar Bradley, alumni of the United States Army Command and General Staff College, Fort Leavenworth, Kansas, to coincide with the celebration of the 132nd Anniversary of the founding of the United States Army Command and General Staff College.

S. 583

At the request of Mr. PRYOR, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 583, a bill to provide grants and loan guarantees for the development and construction of science parks to promote the clustering of innovation through high technology activities.

S. 825

At the request of Mrs. LINCOLN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 825, a bill to amend the Internal Revenue Code of 1986 to restore, increase, and make permanent the exclusion from gross income for amounts received under qualified group legal services plans.

S. 850

At the request of Mr. KERRY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 850, a bill to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

S. 891

At the request of Mr. BROWNBACK, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 891, a bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.

S. 1038

At the request of Mrs. FEINSTEIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1038, a bill to improve agricultural job opportunities, benefits, and security for aliens in the United States and for other purposes.

S. 1067

At the request of Mr. FEINGOLD, the names of the Senator from North Carolina (Mrs. HAGAN) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to success-

fully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1076

At the request of Mr. MENENDEZ, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1089

At the request of Mr. BAUCUS, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 1089, a bill to facilitate the export of United States agricultural commodities and products to Cuba as authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000, to establish an agricultural export promotion program with respect to Cuba, to remove impediments to the export to Cuba of medical devices and medicines, to allow travel to Cuba by United States citizens and legal residents, to establish an agricultural export promotion program with respect to Cuba, and for other purposes.

S. 1121

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1121, a bill to amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

S. 1584

At the request of Mr. MERKLEY, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1584, a bill to prohibit employment discrimination on the basis of sexual orientation or gender identity.

S. 1611

At the request of Mr. GREGG, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1611, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1857

At the request of Ms. STABENOW, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 1857, a bill to establish national centers of excellence for the treatment of depressive and bipolar disorders.

S. 1859

At the request of Mr. ROCKEFELLER, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Delaware (Mr. KAUFMAN) were added as cosponsors of S. 1859, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 2862

At the request of Ms. SNOWE, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 2862, a bill to amend the Small Business Act to improve the Office of International Trade, and for other purposes.

S. 2869

At the request of Ms. LANDRIEU, the names of the Senator from Pennsylvania (Mr. CASEY), the Senator from Arkansas (Mr. PRYOR), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Illinois (Mr. BURRIS), the Senator from Minnesota (Ms. KLOBUCHAR) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 2869, a bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

AMENDMENT NO. 2795

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of amendment No. 2795 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2869

At the request of Mr. NELSON of Florida, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2869 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2883

At the request of Ms. STABENOW, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of amendment No. 2883 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2991

At the request of Mr. MENENDEZ, the name of the Senator from Massachusetts (Mr. KIRK) was added as a cosponsor of amendment No. 2991 intended to

be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3014

At the request of Ms. LANDRIEU, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 3014 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3046

At the request of Mr. KERRY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 3046 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3047

At the request of Mr. KERRY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 3047 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3115

At the request of Mr. CASEY, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of amendment No. 3115 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3135

At the request of Mr. SANDERS, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of amendment No. 3135 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE (for herself and Mr. WARNER):

S. 2881. A bill to provide greater technical resources to FCC Commissioners; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today, along with Senator WARNER, to

introduce legislation that provides greater technical resources to the Commissioners of the Federal Communications Commission.

Specifically, this legislation simply proposes modifying existing law so that each Commissioner may hire an additional staff member—an electrical engineer or computer scientist—to provide in-depth technical consultation. Currently, the statute allows each Commissioner to appoint only three professional assistants and a secretary. Typically, these professional assistants have been legal advisors covering the wireline, wireless, and cable/media sectors. However, in order to properly regulate communications, Commissioners must be well-versed in both the legal and technical aspects of the issues.

With the rapid advancement of technologies and innovation within the telecommunications industry, it is imperative that Commissioners have the technical expertise on their staff to make well informed regulatory decisions. As one Commissioner recently remarked, “not one of us is an engineer. Do you really want us making these highly technical decisions?” We should not expect every Commissioner to be an engineer, but having one on staff is prudent. Having both technical and legal advisors provides the requisite complement of staff experience for the Commissioners to properly address increasingly complex technical and legal matters.

While the Office of Engineering and Technology, OET, has been and will continue to be a valuable resource, there has been concern in the technical community about the depletion of engineering expertise at the Commission. From 1995 to 2001, the FCC’s engineering staff dropped by more than 20 percent. And at the time, more than 40 percent of the engineering staff were to be eligible for retirement between 2001 and 2005. More recently, the FCC’s Managing Director has identified that the Commission has a shortage of network engineers.

In addition, several engineering membership and standards bodies have weighed in voicing concern about the lack of technical depth at the FCC. The Institute of Electrical and Electronics Engineers, IEEE, the largest technical professional organization in the world, sent a letter in June of 2008 to then-Chairman Martin writing “despite the generally excellent nature of its internal staff, given all of the technical issues within the FCC’s jurisdiction, it may be prudent to seek means to supplement the internal technical capabilities of the Commission.” The Society of Broadcast Engineers has outlined that one of its legislative goals for 2009–10 is “to promote the maintenance or increase of technical expertise within the FCC to ensure that decision-making by the FCC is based on technical investigation, studies and evalua-

tion rather than political expenditures.” I would like to thank these two organizations for supporting this beneficial legislation.

This bill takes a step towards properly addressing a glaring deficiency by ensuring each Commissioner has a technical expert on staff to provide individual technical advisement. This is absolutely critical given how rapidly technologies are changing and the implications that regulation could have on the underlying technical catalysts of innovation. That is why I sincerely hope that my colleagues join Senator WARNER and me in supporting this critical legislation.

## SUBMITTED RESOLUTIONS

SENATE RESOLUTION 374—RECOGNIZING THE COOPERATIVE EFFORTS OF HUNTERS, SPORTSMEN’S ASSOCIATIONS, MEAT PROCESSORS, HUNGER RELIEF ORGANIZATIONS, AND STATE WILDLIFE, HEALTH, AND FOOD SAFETY AGENCIES TO ESTABLISH PROGRAMS THAT PROVIDE GAME MEAT TO FEED THE HUNGRY

Mrs. LINCOLN (for herself, Mr. HARKIN, and Mr. CHAMBLISS) submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

## S. RES. 374

Whereas almost every State has a program in which hunters may donate game meat to feed the hungry;

Whereas hunters, sportsmen’s associations, meat processors, community hunger organizations, and State wildlife, health, and food safety agencies work together successfully to operate such programs whereby hunters feed the hungry; and

Whereas such programs have brought hundreds of thousands of pounds of game meat to homeless shelters, soup kitchens, and food banks: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the cooperative efforts of hunters, sportsmen’s associations, meat processors, hunger relief organizations, and State wildlife, health and food safety agencies to establish programs that provide game meat to feed the hungry across the United States; and

(2) recognizes the contributions of such programs to efforts to decrease hunger and feed individuals in need.

SENATE RESOLUTION 375—HONORING THE LIFE AND SERVICE OF BREAST CANCER ADVOCATE, STEFANIE SPIELMAN

Mr. VOINOVICH (for himself and Mr. BROWN) submitted the following resolution; which was considered and agreed to:

## S. RES. 375

Whereas Stefanie Spielman, a tremendous advocate and a true champion for the cause of breast cancer research, passed away on November 19, 2009, after a decade-long battle with breast cancer;

Whereas despite her constant battle with her own illness, Stefanie showed grace and compassion for others, touching countless lives in Ohio and beyond;

Whereas Stefanie tirelessly advocated for additional research into the prevention and treatment of breast cancer, and along with her husband, Chris, founded the Stefanie Spielman Fund for Breast Cancer Research at the Ohio State University Comprehensive Cancer Center—James Cancer Hospital and Solove Research Institute shortly after her diagnosis;

Whereas Stefanie and Chris later established the Stefanie Spielman Fund for Patient Assistance, which to date has generated more than \$6,500,000 to help translate laboratory discoveries into effective treatments for breast cancer patients;

Whereas Stefanie served as an active and vital member of the James Cancer Hospital and Solove Research Institute Foundation Board;

Whereas Stefanie was actively engaged in advocacy issues, including Ohio Mammography Day, which received the strong support of former Ohio First Lady Janet Voynovich and was designated by the Ohio General Assembly as the third Thursday in October;

Whereas in 2000, Stefanie and Chris established “Stefanie’s Champions” to honor one of the most important factors in cancer treatment—the loving and healing presence of a devoted caregiver;

Whereas Stefanie gave the first Champion award to her beloved husband after Chris put his professional football career on hold to care for her when she was first treated; and

Whereas Stefanie was a loving mother to her 4 children: Now, therefore, be it

*Resolved*, That the Senate—

(1) acknowledges the outstanding achievements and profound impact of Stefanie Spielman in the fight against breast cancer;

(2) commends Stefanie for her commitment to caring for others suffering from breast cancer; and

(3) celebrates her life as a wife, mother, and advocate for breast cancer awareness, research, and treatment.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3201. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3202. Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3203. Mr. BAYH (for himself, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. KOHL, Mr. KERRY, Ms. STABENOW, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3204. Mr. CARPER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3205. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3206. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3207. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3208. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3209. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3210. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3211. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3212. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3213. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3214. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3215. Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. SPECTER, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3216. Mr. NELSON, of Florida submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3217. Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3218. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 3201.** Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 377, between lines 14 and 15, insert the following:

#### SEC. 1562. CONSCIENCE PROTECTION.

(a) PERMISSIBLE ACCOMMODATIONS.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) require a health plan or health insurance issuer to provide coverage of any item or service to which the health insurance issuer, purchaser, or plan sponsor has a moral or religious objection, or require such coverage for the purpose of—

(A) qualifying as a qualified health plan or participating in an Exchange; or

(B) being eligible for a premium tax credit or cost-sharing reduction or avoiding an assessable payment under section 4980H of the Internal Revenue Code of 1986 (as added by section 1513) or any other tax, assessment, or penalty; or

(2) require an individual or institutional health care provider to provide, participate in, or refer for an item or service to which such provider has a moral or religious objection, or require such conduct as a condition of contracting with a qualified health plan.

(b) NONDISCRIMINATION.—No person implementing this Act (or an amendment made by this Act) shall discriminate against a health plan, health insurance issuer, purchaser, plan sponsor, or individual or institutional health care provider based in whole or in part on an accommodation permitted under subsection (a).

(c) EXCEPTION.—Nothing in this section authorizes a health plan, health insurance issuer, or individual or institutional health care provider to deny all medical care or to deny life-preserving care to an individual based on the view that, because of a disability or other characteristic of such individual, extending the life or preserving the health of such individual is less valuable than extending the life or preserving the health of another individual who does not have such disability or other characteristic.

**SA 3202.** Mr. BEGICH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:



**SEC. 9. DISALLOWANCE OF DEDUCTION FOR DIRECT TO CONSUMER ADVERTISING EXPENSES FOR PRESCRIPTION PHARMACEUTICALS.**

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items not deductible) is amended by adding at the end the following new section:

**“SEC. 280I. DISALLOWANCE OF DEDUCTION FOR DIRECT TO CONSUMER ADVERTISING EXPENSES FOR PRESCRIPTION PHARMACEUTICALS.**

“No deduction shall be allowed under this chapter for expenses relating to direct to consumer advertising in any media for the sale and use of prescription pharmaceuticals for any taxable year.”

(b) CONFORMING AMENDMENT.—The table of sections for such part IX of the Internal Revenue Code of 1986 is amended by adding after the item relating to section 280H the following new item:

“Sec. 280I. Disallowance of deduction for direct to consumer advertising expenses for prescription pharmaceuticals.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

**SEC. 9. PHYSICAL LIFESTYLES FOR AMERICA'S YOUTH (PLAY) DEDUCTION.**

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by redesignating section 224 as section 225 and inserting after section 223 the following new section:

**“SEC. 224. FEES FOR ORGANIZATIONS PROMOTING CHILDREN'S PHYSICAL ACTIVITY.**

“(a) GENERAL RULE.—There shall be allowed as a deduction under this chapter an amount equal to the lesser of—

“(1) the amount paid or incurred by the taxpayer during the taxable year for the participation of a qualifying child (as defined in section 152(c)) of the taxpayer in a qualified organization, or

“(2) \$500.

“(b) LIMITATIONS.—

“(1) IN GENERAL.—No deduction shall be allowed under subsection (a) with respect to any taxpayer whose adjusted gross income for the taxable year exceeds \$250,000.

“(2) ADJUSTED GROSS INCOME.—For purposes of this subsection, adjusted gross income shall be determined—

“(A) without regard to this section and sections 199, 911, 931, and 933, and

“(B) after the application of sections 86, 135, 137, 219, 221, 222, and 469.

“(c) QUALIFIED ORGANIZATION.—For purposes of this section, the term ‘qualified organization’ means any other organization the principal activities of which are designed to promote or provide for the physical activity of children, as determined under guidelines published by the Secretary in consultation with the Secretary of Health and Human Services.”

(b) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by redesignating the item relating to section 224 as relating to section 225 and inserting after the item relating to section 223 the following new item:

“Sec. 224. Fees for organizations promoting children's physical activity.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SA 3203.** Mr. BAYH (for himself, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. KOHL, Mr. KERRY, Ms. STABENOW, and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2046, after line 24, add the following:

**SEC. 9. MODIFICATION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS.**

(a) DELAY IN IMPOSITION OF FEE.—

(1) IN GENERAL.—Section 9009(i) of this Act is amended by striking “2008” and inserting “2011”.

(2) CONFORMING AMENDMENT.—Section 9009(a)(1) of this Act is amended by striking “2009” and inserting “2012”.

(b) INCREASE IN AGGREGATE FEE AMOUNT.—Section 9009(b)(1) of this Act is amended by striking “\$2,000,000,000” and inserting “\$3,800,000,000 (\$2,660,000 for calendar years after 2019)”.

(c) INCREASE IN GROSS RECEIPTS FROM SALES TAKEN INTO ACCOUNT.—The table in paragraph (2) of section 9009(b) of this Act is amended to read as follows:

“With respect to a covered entity's aggregate gross receipts from medical device sales during the calendar year that are:	The percentage of gross receipts takes into account is:
Not more than \$100,000,000.	0 percent
More than \$100,000,000 but not more than \$150,000,000.	50 percent
More than \$150,000,000 .....	100 percent.”.

(d) TAX TREATMENT OF FEES.—Subsection (e) of section 9009 of this Act is amended to read as follows:

“(e) TAX TREATMENT OF FEES.—For purposes of subtitle F of the Internal Revenue Code of 1986, the fees imposed by this section shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply.”

**SA 3204.** Mr. CARPER submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1783, between lines 2 and 3, insert the following:

**SEC. 6412. MANDATORY REPORTING OF FRAUD BY MEDICARE ADVANTAGE PLANS, PRESCRIPTION DRUG PLANS, AND PROVIDERS OF SERVICES AND SUPPLIERS.**

(a) MANDATORY REPORTING BY MEDICARE ADVANTAGE PLANS AND PRESCRIPTION DRUG PLANS.—Section 1857(d) of the Social Security Act (42 U.S.C. 1395w-27(d)) is amended by

adding at the end the following new paragraph:

“(7) REPORTING OF PROBABLE FRAUD.—

“(A) IN GENERAL.—Each Medicare Advantage organization and, in accordance with section 1860D-12(b)(3)(C), each PDP sponsor of a prescription drug plan shall, in accordance with regulations established by the Secretary under subparagraph (B), report to the Secretary and to the appropriate law enforcement or oversight agencies any matter for which the organization or sponsor has identified, from any source (including the organization or sponsor itself), credible evidence of fraud by subcontractors or others related to the program under this part or part D, whether self-identified or reported by another party.

“(B) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish regulations to carry out this paragraph.”

(b) MANDATORY REPORTING BY PROVIDERS OF SERVICES AND SUPPLIERS.—Section 1866(j)(7)(B) of the Social Security Act, as inserted by section 6401, is amended by adding at the end the following sentence: “Such core elements shall include, to the extent determined appropriate by the Secretary, internal monitoring and auditing of, and responding to, identified deficiencies. Such response shall include reporting to the Secretary and to the appropriate law enforcement or oversight agency credible evidence of fraud related to the program under this title, title XIX, or title XXI.”

(c) PROMPT AND APPROPRIATE ACTION BY THE SECRETARY.—The Secretary shall take prompt and appropriate action to forward information on fraud reported under sections 1857(d)(7) and 1866(j)(7)(B) of the Social Security Act, as added by subsection (a) and amended by subsection (b), respectively, to the appropriate agencies.

(d) ANNUAL REPORT TO CONGRESS.—Not later than October 1 of each year, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall submit to Congress a report on general trends and conditions that give rise to waste, fraud, and abuse, including identified patterns of incidents, and general actions taken to address such trends and conditions, together with recommendations for such legislation and administrative action as the Secretary determines as appropriate.

**SA 3205.** Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1542, between lines 10 and 11, insert the following:

(c) EXCEPTION FOR CERTAIN HOSPITALS.—Section 1877 of the Social Security Act (42 U.S.C. 1395nn), as amended by subsection (a), is further amended—

(1) in subsection (d)(2)(C), by striking “in the case” and inserting “except as provided in subsection (j), in the case”; and

(2) by adding at the end the following new subsection:

“(j) EXCEPTION FOR CERTAIN HOSPITALS.—The requirements of paragraph (3)(D) shall not apply to any hospital which is in development as of the date of enactment of the



Patient Protection and Affordable Care Act.”.

**SA 3206.** Mr. COBURN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1542, between lines 10 and 11, insert the following:

(c) **ADDITIONAL TIME FOR HOSPITALS TO MEET REQUIREMENTS.**—

(1) **IN GENERAL.**—Section 1877 of the Social Security Act (42 U.S.C. 1395nn), as amended by subsection (a), is further amended—

(A) in subsection (d)(3)(D), by striking “not later than 18 months after the date of the enactment of this subparagraph” and inserting “not later than January 1, 2014”; and

(B) in subsection (i)—

(I) in paragraph (1)—

(i) in subparagraph (A), by striking “February 1, 2010” and inserting “January 1, 2014”; and

(II) in subparagraph (D), by striking “the date of enactment of this subsection” and inserting “January 1, 2014”; and

(III) in subparagraph (F), by striking “the date of enactment of this subsection” and inserting “January 1, 2014”; and

(ii) in paragraph (3)—

(I) in subparagraph (A)—

(aa) in clause (iii), by striking “August 1, 2011” and inserting “January 1, 2014”; and

(bb) in clause (iv), by striking “July 1, 2011” and inserting “December 1, 2013”; and

(II) in subparagraph (C)(iii), by striking “the date of enactment of this subsection” and inserting “January 1, 2014”.

(2) **CONFORMING AMENDMENT REGARDING CONDUCT OF AUDITS.**—Subsection (b)(2) is amended by striking “November 1, 2011” and inserting “February 1, 2014”.

**SA 3207.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 268, after line 19, insert the following:

**SEC. 1403. FAIL-SAFE MECHANISM TO PREVENT INCREASE IN FEDERAL BUDGET DEFICIT.**

(a) **ESTIMATE AND CERTIFICATION OF EFFECT OF ACT ON BUDGET DEFICIT.**—

(1) **IN GENERAL.**—The President shall include in the submission under section 1105 of title 31, United States Code, of the budget of the United States Government for fiscal year 2013 and each fiscal year thereafter an estimate of the budgetary effects for the fiscal year of the provisions of (and the amendments made by) this Act, based on the information available as of the date of such submission.

(2) **CERTIFICATION.**—The President shall include with the estimate under paragraph (1)

for any fiscal year a certification as to whether the sum of the decreases in revenues and increases in outlays for the fiscal year by reason of the provisions of (and the amendments made by) this Act exceed (or do not exceed) the sum of the increases in revenues and decreases in outlays for the fiscal year by reason of the provisions and amendments.

(b) **EFFECT OF DEFICIT.**—If the President certifies an excess under subsection (a)(2) for any fiscal year—

(1) the President shall include with the certification the percentage by which the credits allowable under section 36B of the Internal Revenue Code of 1986 and the cost-sharing subsidies under section 1402 must be reduced for plan years beginning during such fiscal year such that there is an aggregate decrease in the amount of such credits and subsidies equal to the amount of such excess; and

(2) the President shall instruct the Secretary of Health and Human Services and the Secretary of the Treasury to reduce such credits and subsidies for such plan years by such percentage.

**SA 3208.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1783, between lines 2 and 3, insert the following:

**SEC. 6412. EXTENSION OF NUMBER OF DAYS IN WHICH MEDICARE CLAIMS ARE REQUIRED TO BE PAID IN ORDER TO PREVENT OR COMBAT FRAUD, WASTE, OR ABUSE.**

(a) **PART A CLAIMS.**—Section 1816(c)(2) of the Social Security Act (42 U.S.C. 1395h(c)(2)) is amended—

(1) in subparagraph (B)(ii)(V), by striking “with respect” and inserting “subject to subparagraph (D), with respect”; and

(2) by adding at the end the following new subparagraph:

“(D)(i) Upon a determination by the Secretary that there is a likelihood of fraud, waste, or abuse involving a particular category of providers of services or suppliers, categories of providers of services or suppliers in a certain geographic area, or individual providers of services or suppliers, the Secretary shall extend the number of calendar days described in subparagraph (B)(ii)(V) to—

“(I) up to 365 calendar days with respect to claims submitted by—

“(aa) categories of providers of services or suppliers; or

“(bb) categories of providers of services or suppliers in a certain geographic area; or

“(II) such time that the Secretary determines is necessary to ensure that the claims with respect to individual providers of services or suppliers are clean claims.

“(ii) During the extended period of time under subclauses (I) and (II) of clause (i), the Secretary shall engage in heightened scrutiny of claims, such as prepayment review and other methods the Secretary determines to be appropriate.

“(iii) Not later than 90 days after the date of enactment of this subparagraph and not

less than annually thereafter, the Inspector General of the Department of Health and Human Services shall submit to the Secretary a report containing recommendations with respect to the application of this subparagraph and section 1842(c)(2)(D). Not later than 60 days after receiving such a report, the Secretary shall submit to the Inspector General a written response to the recommendations contained in the report.

“(iv) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the implementation of this subparagraph by the Secretary.”.

(b) **PART B CLAIMS.**—Section 1842(c)(2) of the Social Security Act (42 U.S.C. 1395u(c)(2)) is amended—

(1) in subparagraph (B)(ii)(V), by striking “with respect” and inserting “subject to subparagraph (D), with respect”; and

(2) by adding at the end the following new subparagraph:

“(D)(i) Upon a determination by the Secretary that there is a likelihood of fraud, waste, or abuse involving a particular category of providers of services or suppliers, categories of providers of services or suppliers in a certain geographic area, or individual providers of services or suppliers, the Secretary shall extend the number of calendar days described in subparagraph (B)(ii)(V) to—

“(I) up to 365 calendar days with respect to claims submitted by—

“(aa) categories of providers of services or suppliers; or

“(bb) categories of providers of services or suppliers in a certain geographic area; or

“(II) such time that the Secretary determines is necessary to ensure that the claims with respect to individual providers of services or suppliers are clean claims.

“(ii) During the extended period of time under subclauses (I) and (II) of clause (i), the Secretary shall engage in heightened scrutiny of claims, such as prepayment review and other methods the Secretary determines to be appropriate.

“(iii) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise of the implementation of this subparagraph by the Secretary.”.

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall take effect on the day that is 6 months after the date of the enactment of this Act.

(2) **EXPEDITING IMPLEMENTATION.**—The Secretary shall promulgate regulations to carry out the amendments made by this section which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comment on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

**SA 3209.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 823, after line 22, insert the following:

**SEC. 3125A. ADJUSTMENT TO LOW-VOLUME HOSPITAL PROVISION; QUALITY REPORTING FOR PSYCHIATRIC HOSPITALS.**

(a) ADJUSTMENT TO LOW-VOLUME HOSPITAL PROVISION.—Section 1886(d)(12) of the Social Security Act (42 U.S.C. 1395ww(d)(12), as amended by section 3125, is amended—

(1) in subparagraph (C)(i), by striking “1,500 discharges” and inserting “1,600 discharges”; and

(2) in subparagraph (D), by striking “1,500 discharges” and inserting “1,600 discharges”.

(b) QUALITY REPORTING FOR PSYCHIATRIC HOSPITALS.—Section 1886(s) of the Social Security Act, as added by section 3401(f), is amended by adding at the end the following new paragraph:

“(4) QUALITY REPORTING.—

“(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

“(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

“(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

“(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

“(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

“(D) QUALITY MEASURES.—

“(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).

“(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

“(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

“(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit has the opportunity to review the data that is to

be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.”.

**SA 3210.** Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 309, strike lines 1 through 5, and insert the following:

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is an amount equal to 1.5 times such dollar amount.

On page 309, line 14, strike “twice” and insert “2.5 times”.

On page 314, line 3, strike “2-consecutive-taxable year” and insert “4-consecutive-taxable year”.

On page 318, line 6, strike “2-year” and insert “4-year”.

At the end of the amendment, insert:

**TITLE X—MEDICAL CARE ACCESS PROTECTION**

**SECTION 1001. SHORT TITLE.**

This title may be cited as the “Medical Care Access Protection Act of 2009” or the “MCAP Act”.

**SEC. 1002. FINDINGS AND PURPOSE.**

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for

which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this title to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

**SEC. 1003. DEFINITIONS.**

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service),

hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) **CONTINGENT FEE.**—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **HEALTH CARE GOODS OR SERVICES.**—The term “health care goods or services” means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) **HEALTH CARE INSTITUTION.**—The term “health care institution” means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) **HEALTH CARE LIABILITY ACTION.**—The term “health care liability action” means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) **HEALTH CARE LIABILITY CLAIM.**—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) **HEALTH CARE PROVIDER.**—

(A) **IN GENERAL.**—The term “health care provider” means any person (including but not limited to a physician (as defined by sec-

tion 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) **TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.**—For purposes of this Act, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) **MALICIOUS INTENT TO INJURE.**—The term “malicious intent to injure” means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

#### **SEC. 10004. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) **IN GENERAL.**—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) **GENERAL EXCEPTION.**—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) **MINORS.**—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6

years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) **RULE 11 SANCTIONS.**—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this Act applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

#### **SEC. 10005. COMPENSATING PATIENT INJURY.**

(a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) **ADDITIONAL NONECONOMIC DAMAGES.**—

(1) **HEALTH CARE PROVIDERS.**—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) **HEALTH CARE INSTITUTIONS.**—

(A) **SINGLE INSTITUTION.**—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) **MULTIPLE INSTITUTIONS.**—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as \$250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed \$500,000.

(c) **NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.**—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) **FAIR SHARE RULE.**—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

#### SEC. 10006. MAXIMIZING PATIENT RECOVERY.

(a) **COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.**—

(1) **IN GENERAL.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) **CONTINGENCY FEES.**—

(A) **IN GENERAL.**—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) **LIMITATION.**—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first \$50,000 recovered by the claimant(s).

(ii) 33½ percent of the next \$50,000 recovered by the claimant(s).

(iii) 25 percent of the next \$500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of \$600,000.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **MINORS.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) **EXPERT WITNESSES.**—

(1) **REQUIREMENT.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) **PHYSICIAN REVIEW.**—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) **SPECIALTIES AND SUBSPECIALTIES.**—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) **LIMITATION.**—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

#### SEC. 10007. ADDITIONAL HEALTH BENEFITS.

(a) **IN GENERAL.**—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) **PRESERVATION OF CURRENT LAW.**—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) **APPLICATION OF PROVISION.**—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

#### SEC. 10008. PUNITIVE DAMAGES.

(a) **PUNITIVE DAMAGES PERMITTED.**—

(1) **IN GENERAL.**—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) **FILING OF LAWSUIT.**—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) **SEPARATE PROCEEDING.**—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) **LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.**—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) **DETERMINING AMOUNT OF PUNITIVE DAMAGES.**—

(1) **FACTORS CONSIDERED.**—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) **MAXIMUM AWARD.**—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or \$250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) **LIABILITY OF HEALTH CARE PROVIDERS.**—

(1) **IN GENERAL.**—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) **MEDICAL PRODUCT.**—The term "medical product" means a drug or device intended for humans. The terms "drug" and "device" have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

#### SEC. 10009. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) **IN GENERAL.**—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding \$50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) **APPLICABILITY.**—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

**SEC. 10010. EFFECT ON OTHER LAWS.**

(a) **GENERAL VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) **SMALLPOX VACCINE INJURY.**—

(1) **IN GENERAL.**—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such part C shall not apply to such action.

(2) **EXCEPTION.**—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(c) **OTHER FEDERAL LAW.**—Except as provided in this section, nothing in this title shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

**SEC. 10011. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) **HEALTH CARE LAWSUITS.**—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) **PREEMPTION OF CERTAIN STATE LAWS.**—No provision of this title shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this title, notwithstanding section 10005(a).

(c) **PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.**—

(1) **IN GENERAL.**—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) **RULE OF CONSTRUCTION.**—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this title;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

**SEC. 10012. APPLICABILITY; EFFECTIVE DATE.**

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this title, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

**SA 3211.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 136, between lines 3 and 4, insert the following:

(6) **RESTRICTIONS ON ENROLLMENT.**—The following restrictions on enrollment in a qualified health plan offered through an Exchange, during any enrollment period described in paragraph (5), shall apply:

(A) During any enrollment period or upon any qualifying event (described in section 603 of the Employee Retirement Income Security Act of 1974), an individual who, in the previous year was enrolled in a qualified health plan through an Exchange, may not enroll in a qualified health plan offering a level of coverage (as defined in section 1302(d)(1)) that is more than one level greater than the level at which the individual received coverage in the previous year.

(B) If an individual misses the first enrollment period for which such individual is eligible to enroll in a qualified health plan offered through an Exchange, if such individual enrolls in a health plan through an Exchange during the next enrollment period, for a period of not more than 90 days after first enrolling in such plan, such individual shall not receive coverage for elective services that are not of urgent medical necessity, except where the denial of services could pose significant risk to the life of such individual, or could be reasonably assumed to exacerbate an underlying condition. At no time after an individual described in the preceding sentence enrolls in a qualified health

plan offered through an Exchange may such individual be denied coverage for preventive health services (as described in section 2713 of the Public Health Service Act, as added by section 1001) or the treatment of chronic conditions that otherwise are available under the health plan.

**SA 3212.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 18, strike “may” and insert “shall”.

**SA 3213.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 436, between lines 14 and 15, insert the following:

**SEC. 2008. APPLICATION OF MEDICAID PROMPT PAY REQUIREMENTS TO NURSING FACILITIES AND HOSPITALS.**

Section 1902(a)(37) of the Social Security Act (42 U.S.C. 1396a(a)(37)) is amended by striking “and (B)” and inserting “(B) insofar as nursing facilities or hospitals are paid under the State plan on the basis of submission of claims, ensure that 90 percent of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by all such facilities or hospitals that are paid on that basis are paid within 30 days of the date of receipt of such claims and that 99 percent of such claims are paid within 90 days of the date of receipt of such claims, and (C)”.

**SA 3214.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 34, line 16, insert before the semicolon the following: “operated by a non-profit consumer-based community group or groups”.

On page 35, strike lines 3 through 6, and insert the following:

“(2) **CRITERIA.**—The Secretary in collaboration with the Administrator of the Center for Medicaid & Medicare Services shall develop standards that must be met by all entities that provide consumer assistance, including standards relating to—

“(A) adequate capacity and training to respond to consumer concerns;

“(B) a review process for monitoring accuracy of responses;

“(C) cultural and linguistic competency to meet the needs of the community; and

“(D) documented experience working with the target population.”

On page 36, line 6, insert before the period the following: “, including regular and timely accounting of types of problems and inquiries; income, zip code, gender, race or ethnicity and language spoken by persons served; enrollment and outreach activities provided; and implementation issues encountered or identified, if any”.

On page 36, line 15, strike “\$30,000,000” and insert “\$100,000,000”.

**SA 3215.** Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. SPECTER, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1134, between lines 3 and 4, insert the following:

**Subtitle G—Additional Health Care Quality and Efficiency Improvements**

**SEC. 3601. REPORT ON DEMONSTRATION AND PILOT PROGRAMS.**

(a) **REPORT.**—Not later than 12 months after the date of enactment of this Act, and every 3 years thereafter, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a report that describes all pilot programs and demonstration projects that the Secretary has authority to carry out (regardless of whether such programs or projects are actually implemented), as authorized by law, during the period for which the report is submitted.

(b) **REQUIREMENTS.**—A report under subsection (a) shall—

(1) list all pilot programs or demonstration projects involved and indicate whether each program or project is—

- (A) not yet being implemented;
- (B) currently being implemented; or
- (C) complete and awaiting further determinations; and

(2) with respect to programs or projects described in subparagraphs (A) or (B) of paragraph (1), include the recommendations of the Secretary as to whether such programs or projects are necessary.

(c) **ACTIONS BASED ON RECOMMENDATIONS.**—Based on the recommendations of the Secretary under subsection (b)(2)—

(1) if the Secretary determines that a program or project is necessary, the Secretary shall submit to Congress a strategic plan for the implementation of the program or project and may transfer such program or project into the jurisdiction of the Innovation Center of the Centers for Medicare & Medicaid Services; or

(2) if the Secretary determines that a program or project is unnecessary, the Secretary may terminate the program.

(d) **ACTION BY CONGRESS.**—Congress may continue in effect any program or project terminated by the Secretary under sub-

section (c)(2) through the enactment of a Concurrent Resolution expressing the sense of Congress to continue the program or project involved.

**SEC. 3602. AVAILABILITY OF DATA ON DENIAL OF CLAIMS.**

Section 2715(b)(3) of the Public Health Service Act, as added by section 1001, is amended—

(1) in subparagraph (H), by striking “and” at the end;

(2) by redesignating subparagraph (I) as subparagraph (J); and

(3) by inserting after subparagraph (H) the following new subparagraph:

“(I) a statement relating to claims procedures including the percentage of claims that are annually denied by the plan or coverage and the percentage of such denials that are overturned on appeal; and”.

**SEC. 3603. ACCELERATION AND INCREASE OF THE PAYMENT ADJUSTMENT FOR CONDITIONS ACQUIRED IN HOSPITALS.**

Section 1886(p) of the Social Security Act (42 U.S.C. 1395(p)), as added by section 3008(a), is amended—

(1) in paragraph (1)—

(A) by striking “2015” and inserting “2013”; and

(B) by striking “99 percent” and inserting “98 percent”; and

(2) in paragraph (5), by striking “2015” and inserting “2013”.

**SEC. 3604. IMPROVEMENTS TO NATIONAL PILOT PROGRAM ON PAYMENT BUNDLING.**

Section 1866D of the Social Security Act, as added by section 3023, is amended—

(1) in subsection (a)(3), by striking “January 1, 2013” and inserting “January 1, 2012”; and

(2) by amending subsection (g) to read as follows:

“(g) **AUTHORITY TO EXPAND IMPLEMENTATION.**—

“(1) **IN GENERAL.**—Taking into account the evaluation under subparagraph (e), the Secretary may, through rulemaking, expand (including implementation nationwide on a voluntary basis) the duration and the scope of the pilot program, to the extent determined appropriate by the Secretary, if—

“(A) the Secretary determines that such expansion is expected to—

“(i) reduce spending under this title without reducing the quality of care; or

“(ii) improve the quality of care and reduce spending; and

“(B) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under this title.

“(2) **IMPLEMENTATION PLAN.**—In the case where the Secretary does not exercise the authority under paragraph (1) by January 1, 2015, not later than such date, the Secretary shall submit a plan for the implementation of an expansion of the pilot program if the Secretary determines that such expansion will result in improving or not reducing the quality of patient care and reducing spending under this title.”.

**SEC. 3605. PUBLIC REPORTING OF PERFORMANCE INFORMATION.**

(a) **IN GENERAL.**—

(1) **DEVELOPMENT.**—Not later than January 1, 2011, the Secretary shall develop a Physician Compare Internet website with information on physicians enrolled in the Medicare program under section 1866(j) of the Social Security Act (42 U.S.C. 1395cc(j)) and other eligible professionals who participate in the Physician Quality Reporting Initiative under section 1848 of such Act (42 U.S.C. 1395w-4).

(2) **PLAN.**—Not later than January 1, 2013, and with respect to reporting periods that begin no earlier than January 1, 2012, the Secretary shall also implement a plan for making publicly available through Physician Compare, consistent with subsection (c), information on physician performance that provides comparable information for the public on quality and patient experience measures with respect to physicians enrolled in the Medicare program under such section 1866(j). To the extent scientifically sound measures that are developed consistent with the requirements of this section are available, such information, to the extent practicable, shall include—

(A) measures collected under the Physician Quality Reporting Initiative;

(B) an assessment of patient health outcomes and the functional status of patients;

(C) an assessment of the continuity and coordination of care and care transitions, including episodes of care and risk-adjusted resource use;

(D) an assessment of efficiency;

(E) an assessment of patient experience and patient, caregiver, and family engagement;

(F) an assessment of the safety, effectiveness, and timeliness of care; and

(G) other information as determined appropriate by the Secretary.

(b) **OTHER REQUIRED CONSIDERATIONS.**—In developing and implementing the plan described in subsection (a)(2), the Secretary shall, to the extent practicable, include—

(1) processes to assure that data made public, either by the Centers for Medicare & Medicaid Services or by other entities, is statistically valid and reliable, including risk adjustment mechanisms used by the Secretary;

(2) processes by which a physician or other eligible professional whose performance on measures is being publicly reported has a reasonable opportunity, as determined by the Secretary, to review his or her individual results before they are made public;

(3) processes by the Secretary to assure that the implementation of the plan and the data made available on Physician Compare provide a robust and accurate portrayal of a physician's performance;

(4) data that reflects the care provided to all patients seen by physicians, under both the Medicare program and, to the extent practicable, other payers, to the extent such information would provide a more accurate portrayal of physician performance;

(5) processes to ensure appropriate attribution of care when multiple physicians and other providers are involved in the care of a patient;

(6) processes to ensure timely statistical performance feedback is provided to physicians concerning the data reported under any program subject to public reporting under this section; and

(7) implementation of computer and data systems of the Centers for Medicare & Medicaid Services that support valid, reliable, and accurate public reporting activities authorized under this section.

(c) **ENSURING PATIENT PRIVACY.**—The Secretary shall ensure that information on physician performance and patient experience is not disclosed under this section in a manner that violates sections 552 or 552a of title 5, United States Code, with regard to the privacy of individually identifiable health information.

(d) **FEEDBACK FROM MULTI-STAKEHOLDER GROUPS.**—The Secretary shall take into consideration input provided by multi-stakeholder groups, consistent with sections



1890(b)(7) and 1890A of the Social Security Act, as added by section 3014 of this Act, in selecting quality measures for use under this section.

(e) **CONSIDERATION OF TRANSITION TO VALUE-BASED PURCHASING.**—In developing the plan under this subsection (a)(2), the Secretary shall, as the Secretary determines appropriate, consider the plan to transition to a value-based purchasing program for physicians and other practitioners developed under section 131 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275).

(f) **REPORT TO CONGRESS.**—Not later than January 1, 2015, the Secretary shall submit to Congress a report on the Physician Compare Internet website developed under subsection (a)(1). Such report shall include information on the efforts of and plans made by the Secretary to collect and publish data on physician quality and efficiency and on patient experience of care in support of value-based purchasing and consumer choice, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(g) **EXPANSION.**—At any time before the date on which the report is submitted under subsection (f), the Secretary may expand (including expansion to other providers of services and suppliers under title XVIII of the Social Security Act) the information made available on such website.

(h) **FINANCIAL INCENTIVES TO ENCOURAGE CONSUMERS TO CHOOSE HIGH QUALITY PROVIDERS.**—The Secretary may establish a demonstration program, not later than January 1, 2019, to provide financial incentives to Medicare beneficiaries who are furnished services by high quality physicians, as determined by the Secretary based on factors in subparagraphs (A) through (G) of subsection (a)(2). In no case may Medicare beneficiaries be required to pay increased premiums or cost sharing or be subject to a reduction in benefits under title XVIII of the Social Security Act as a result of such demonstration program. The Secretary shall ensure that any such demonstration program does not disadvantage those beneficiaries without reasonable access to high performing physicians or create financial inequities under such title.

(i) **DEFINITIONS.**—In this section:

(1) **ELIGIBLE PROFESSIONAL.**—The term “eligible professional” has the meaning given that term for purposes of the Physician Quality Reporting Initiative under section 1848 of the Social Security Act (42 U.S.C. 1395w-4).

(2) **PHYSICIAN.**—The term “physician” has the meaning given that term in section 1861(r) of such Act (42 U.S.C. 1395x(r)).

(3) **PHYSICIAN COMPARE.**—The term “Physician Compare” means the Internet website developed under subsection (a)(1).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

**SA 3216.** Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2046, after line 24, add the following:

**SEC. \_\_\_\_\_, INCREASE IN MEDICAL DEVICE RECEIPTS EXEMPT FROM ANNUAL FEE.**

The table contained in paragraph (2) of section 9009(b) is amended—

(1) by striking “\$5,000,000” both places it appears and inserting “\$100,000,000”, and

(2) by striking “\$25,000,000” both places it appears and inserting “\$150,000,000”.

**SA 3217.** Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 131, between lines 2 and 3, insert the following:

(3) **PRESUMPTION FOR EXISTING SMALL EMPLOYER EXCHANGES.**—

(A) **IN GENERAL.**—Notwithstanding the requirements of subsection (d)(1), or other provisions of this Act, in the case of an entity that—

(i) was approved by the appropriate agency of a State to operate as the functional equivalent of a small employer health benefit exchange under State law;

(ii) was fully operational as of January 1, 2010; and

(iii) had enrolled a minimum of 50,000 covered lives through small business employers as of January 1, 2010, and offers and administers coverage on behalf of a minimum of 3 unaffiliated health plans;

the Secretary shall deem such exchange to be a SHOP Exchange for purposes of this title, unless the Secretary determines, after completion of the process established under subparagraph (B), that the exchange does not comply with the standards for SHOP Exchanges under this section.

(B) **PROCESS.**—The Secretary shall establish a process to work with an entity described in subparagraph (A) to assist the entity in achieving compliance with the requirements and standards applicable to SHOP Exchanges under this title as soon as practicable, but not later than January 1, 2014, including the requirements of a SHOP Exchange to offer all applicable private and public sector health care coverage products and programs described in this title, including, without limitation, the enrollment of small employers in all such products and programs, and to service the premium assistance and cost-sharing programs available under this title to eligible small employers and their employees.

**SA 3218.** Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 99, between lines 4 and 5, insert the following:

(e) **APPLICATION OF LIFETIME AGGREGATE LIMITS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this section, the provisions of section 2711 of the Public Health Service Act (as added by section 1001) that relate to lifetime limits shall apply to grandfathered health plans (including group health plans and individual health insurance coverage), except as provided for in paragraph (2).

(2) **PHASE-OUT.**—A grandfathered health plan—

(A) may not apply a lifetime limit that is less than \$5,000,000 during the first two plan years beginning after the date of enactment of this Act;

(B) may not apply a lifetime limit that is less than \$10,000,000 during the third and fourth plan years beginning after the date of enactment of this Act; and

(C) shall not apply any lifetime limit for plans years beginning on or after January 1, 2014.

#### PRIVILEGES OF THE FLOOR

Mr. DODD. Mr. President, I ask unanimous consent that Lia Lopez, an intern in my office, be granted floor privileges for the remainder of consideration of H.R. 3590.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNANIMOUS-CONSENT AGREEMENT—H.R. 3590

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the vote order with respect to the Lautenberg and Dorgan amendments to H.R. 3590 be reversed to Dorgan and then Lautenberg.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### AMATEUR RADIO EMERGENCY COMMUNICATIONS ENHANCEMENT ACT OF 2009

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 224, S. 1755.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1755) to direct the Department of Homeland Security to undertake a study on emergency communications.

There being no objection, the Senate proceeded to consider the bill.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1755) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1755

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*



**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Amateur Radio Emergency Communications Enhancement Act of 2009”.

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) Nearly 700,000 amateurs radio operators in the United States are licensed by the Federal Communications Commission in the Amateur Radio Service.

(2) Amateur Radio Service operators provide, on a volunteer basis, a valuable public sector service to their communities, their States, and to the Nation, especially in the area of national and international disaster communications.

(3) Emergency and disaster relief communications services by volunteer Amateur Radio Service operators have consistently and reliably been provided before, during, and after floods, hurricanes, tornadoes, forest fires, earthquakes, blizzards, train accidents, chemical spills and other disasters. These communications services include services in connection with significant examples, such as—

(A) hurricanes Katrina, Rita, Hugo, and Andrew;

(B) the relief effort at the World Trade Center and the Pentagon following the 2001 terrorist attacks; and

(C) the Oklahoma City bombing in April 1995.

(4) Amateur Radio Service has formal agreements for the provision of volunteer emergency communications activities with the Department of Homeland Security, the Federal Emergency Management Agency, the National Weather Service, the National Communications System, and the Association of Public Safety Communications Officials, as well as with disaster relief agencies, including the American National Red Cross and the Salvation Army.

(5) Section 1 of the joint resolution entitled “Joint Resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy”, approved October 22, 1994 (Public Law 103–408), included a finding that stated: “Reasonable accommodation should be made for the effective operation of amateur radio from residences, private vehicles and public areas, and the regulation at all levels of government should facilitate and encourage amateur radio operations as a public benefit.”.

(6) Section 1805(c) of the Homeland Security Act of 2002 (6 U.S.C. 757(c)) directs the Regional Emergency Communications Coordinating Working Group of the Department of Homeland Security to coordinate their activities with ham and amateur radio operators among the 11 other emergency organizations such as ambulance services, law enforcement, and others.

(7) Amateur Radio Service, at no cost to taxpayers, provides a fertile ground for technical self-training in modern telecommunications, electronic technology, and emergency communications techniques and protocols.

(8) There is a strong Federal interest in the effective performance of Amateur Radio Service stations, and that performance must be given—

(A) support at all levels of government; and

(B) protection against unreasonable regulation and impediments to the provision of the valuable communications provided by such stations.

**SEC. 3. STUDY OF ENHANCED USES OF AMATEUR RADIO IN EMERGENCY AND DISASTER RELIEF COMMUNICATION AND FOR RELIEF OF RESTRICTIONS.**

(a) **AUTHORITY.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall—

(1) undertake a study on the uses and capabilities of Amateur Radio Service communications in emergencies and disaster relief; and

(2) submit a report on the findings of the Secretary to Congress.

(b) **SCOPE OF THE STUDY.**—The study required by this section shall—

(1) include a review of the importance of amateur radio emergency communications in furtherance of homeland security missions relating to disasters, severe weather, and other threats to lives and property in the United States, as well as recommendations for—

(A) enhancements in the voluntary deployment of amateur radio licensees in disaster and emergency communications and disaster relief efforts; and

(B) improved integration of amateur radio operators in planning and furtherance of the Department of Homeland Security initiatives; and

(2)(A) identify impediments to enhanced Amateur Radio Service communications, such as the effects of unreasonable or unnecessary private land use regulations on residential antenna installations; and

(B) make recommendations regarding such impediments for consideration by other Federal departments, agencies, and Congress.

(c) **USE OF EXPERTISE AND INFORMATION.**—In conducting the study required by this section, the Secretary of Homeland Security shall utilize the expertise of stakeholder entities and organizations, including the amateur radio, emergency response, and disaster communications communities.

**CONVENING OF 2ND SESSION OF 111TH CONGRESS**

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 62, which was received from the House.

The PRESIDING OFFICER. The clerk will report the joint resolution by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 62) appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

There being no objection, the Senate proceeded to consider the joint resolution.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the joint resolution be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the joint resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (H.J. Res 62) was ordered to a third reading, was read the third time, and passed, as follows:

H.J. RES. 62

*Resolved by the Senate and House of Representatives of the United States of America in*

*Congress assembled, That the second regular session of the One Hundred Eleventh Congress shall begin at noon on Tuesday, January 5, 2010.*

**HONORING BREAST CANCER ADVOCATE STEFANIE SPIELMAN**

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 375, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A Resolution (S. Res. 375) honoring the life and service of breast cancer advocate Stefanie Spielman.

There being no objection, the Senate proceeded to consider the resolution.

Ms. KLOBUCHAR. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 375) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

**S. RES. 375**

Whereas Stefanie Spielman, a tremendous advocate and a true champion for the cause of breast cancer research, passed away on November 19, 2009, after a decade-long battle with breast cancer;

Whereas despite her constant battle with her own illness, Stefanie showed grace and compassion for others, touching countless lives in Ohio and beyond;

Whereas Stefanie tirelessly advocated for additional research into the prevention and treatment of breast cancer, and along with her husband, Chris, founded the Stefanie Spielman Fund for Breast Cancer Research at the Ohio State University Comprehensive Cancer Center—James Cancer Hospital and Solove Research Institute shortly after her diagnosis;

Whereas Stefanie and Chris later established the Stefanie Spielman Fund for Patient Assistance, which to date has generated more than \$6,500,000 to help translate laboratory discoveries into effective treatments for breast cancer patients;

Whereas Stefanie served as an active and vital member of the James Cancer Hospital and Solove Research Institute Foundation Board;

Whereas Stefanie was actively engaged in advocacy issues, including Ohio Mammography Day, which received the strong support of former Ohio First Lady Janet Voynovich and was designated by the Ohio General Assembly as the third Thursday in October;

Whereas in 2000, Stefanie and Chris established “Stefanie’s Champions” to honor one of the most important factors in cancer treatment—the loving and healing presence of a devoted caregiver;

Whereas Stefanie gave the first Champion award to her beloved husband after Chris put his professional football career on hold to care for her when she was first treated; and

Whereas Stefanie was a loving mother to her 4 children: Now, therefore, be it

*Resolved*, That the Senate—

(1) acknowledges the outstanding achievements and profound impact of Stefanie Spielman in the fight against breast cancer;

(2) commends Stefanie for her commitment to caring for others suffering from breast cancer; and

(3) celebrates her life as a wife, mother, and advocate for breast cancer awareness, research, and treatment.

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#### APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 106-398, as amended by Public Law 108-7, in accordance with the qualification specified under section 1238(b)(3)(E) of Public Law 106-398, and upon the recommendation of the Republican leader, in consultation with the ranking members of the Senate Committee on Armed Services and the Senate Committee on Finance, reappoints the following individual to the United States-China Economic Security Review Com-

mission: Daniel Blumenthal of Maryland, for a term beginning January 1, 2010, and expiring December 31, 2011.

The Chair, on behalf of the President pro tempore, pursuant to 22 U.S.C. 276n, as amended, appoints the following Senator as Vice Chairman of the U.S.-China Interparliamentary Group conference during the 111th Congress: the Honorable CHRISTOPHER BOND of Missouri.

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#### ORDERS FOR TUESDAY, DECEMBER 15, 2009

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, December 15; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 3590, the health care

reform legislation, as provided for under the previous order.

Finally, I ask the Senate recess from 12:45 p.m. until 3:15 p.m. to allow for the weekly caucus luncheons.

The PRESIDING OFFICER. Without objection, it is so ordered.

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#### PROGRAM

Ms. KLOBUCHAR. Mr. President, Senators should expect a series of four rollcall votes to begin around 6 p.m. tomorrow.

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#### ADJOURNMENT UNTIL 10 A.M. TOMORROW

Ms. KLOBUCHAR. If there is no further business to come before the Senate, I ask unanimous consent it adjourn until 10 a.m. tomorrow.

There being no objection, the Senate, at 8:15 p.m., adjourned until Tuesday, December 15, 2009, at 10 a.m.

## HOUSE OF REPRESENTATIVES—Monday, December 14, 2009

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (Ms. EDWARDS of Maryland).

### DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
December 14, 2009.

I hereby appoint the Honorable DONNA F. EDWARDS to act as Speaker pro tempore on this day.

NANCY PELOSI,  
Speaker of the House of Representatives.

### MORNING HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 6, 2009, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 30 minutes and each Member, other than the majority and minority leaders and the minority whip, limited to 5 minutes.

### THE REBUILDING AND RENEWING OF AMERICA

The SPEAKER pro tempore. The Chair recognizes the gentleman from Oregon (Mr. BLUMENAUER) for 5 minutes.

Mr. BLUMENAUER. Madam Speaker, this morning's New York Times had a column by John Harwood, entitled: Obama's Potential Quandary—Creating Jobs or Reducing the Deficit, which analyzed what is potentially a dilemma, but it doesn't have to be that way.

The rebuilding and renewing of America should be one issue that actually brings us together, where there are solutions that are clear and complementary in terms of creating jobs, protecting the environment and reducing the budget deficit.

We have serious needs all across America for water and transportation investments in every single community. There are estimates that up to 20 million Americans every year are sick needlessly from waterborne illness because of failures in water systems. There are millions of hours and billions of dollars that are wasted as Americans and American businesses are stuck in traffic. There are tens of thousands of

unsafe bridges. There are transit systems in desperate need of repair and revitalization.

What America needs, first and foremost, is a vision of investing in renewing and rebuilding America in this century. The plans for infrastructure for this century are available. As someone who has labored in this field for years, working around the country, I know that the vision is ready to be incorporated into the reauthorization of the Surface Transportation Act or in new water trust fund legislation, and it can be done not in years or in months but in a matter of weeks. This work is ready.

Next, we must commit to extracting more value out of existing and future investments. Luckily, here, too, reform is in the works. I have been deeply impressed with the work of Secretary Ray LaHood of Transportation, of Housing Secretary Shaun Donovan and of EPA administrator Lisa Jackson, where the Federal Government is in the process of creating a new partnership with our communities, businesses and families in terms of how the Federal Government does business and invests that money.

But even with bold vision and with more value being extracted, we actually are going to need to invest more money. The Chinese, for instance, are investing about nine times as much as the United States in their infrastructure needs. We are losing the race for global competitiveness while we see conditions deteriorating at home. The Society of Civil Engineers has graded American infrastructure at a D, and suggests that it requires at least \$2.2 trillion in the next 5 years to bring things up to standard.

If we act now, there are, in fact, areas of broad support for more investment—from business, local government and the American people—if this increased money goes to rebuild and renew our country.

There is a danger that our current direction will not be as effective as it could be. I am heartened that there appears to be a consensus that we will be spending, perhaps, \$50 billion or more in new infrastructure investment, but if this money is simply going to flow through existing channels with an imperative that it be spent as quickly as possible, it is not going to have as much long-term impact as it would if we were to do it right.

Doing it right means a reauthorization of the 6-year Transportation bill with a national purpose and reform

specified. It means the creation of a water trust fund to give money where it is needed. It is the reenactment of the Superfund tax so that polluters actually pay to clean up dangerous areas that are found in every single State. It would create tens of thousands of jobs while it would reduce environmental threats.

There are many contentious, complex and partisan issues that, understandably, divide Congress and the American people, but renewing and rebuilding America is not one of them. Done right, it will be deficit-neutral with a bold vision to revitalize the economy while strengthening our communities and protecting the planet. I hope we all start the new year with a commitment to invest in livable communities where our families are safer, healthier and more economically secure.

### RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 12 o'clock and 37 minutes p.m.), the House stood in recess until 2 p.m.

□ 1400

### AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. RAHALL) at 2 p.m.

### PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Our conversation with You, Lord, is so often born out of passing needs and events but always rooted in faith and Your faithful love. Through our prayer, things often become clearer, we recover focus or You give us strength to persevere.

We are confident, Lord, You will provide in the way You see best. When our personal efforts are stymied or our collective means fail us, we begin to face our own limitations.

It then remains for us only to lift up our eyes to You so that You might respond to our deepest needs as You see best. It is then and only then we say with free abandonment, "Amen."

### THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

#### PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Georgia (Mr. GINGREY) come forward and lead the House in the Pledge of Allegiance.

Mr. GINGREY of Georgia led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

#### MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3288) "An Act making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes."

#### CONGRATULATING A FEW OUTSTANDING HIGH SCHOOL FOOTBALL TEAMS

(Mr. GINGREY of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY of Georgia. Mr. Speaker, I would like to take this opportunity to congratulate a few outstanding high school football teams for their efforts in the State playoffs. These tremendous athletes are an exemplification of true dedication and remarkable talent.

The teams being recognized in the 11th District of Georgia are as follows: Bremen High School in Haralson County; Bowdon High School, Carroll County; the Darlington School in Troup County; Trion High School in Chattooga County; Armuchee High School in Floyd County; Pepperell High School in Floyd County; Chattooga High School, Chattooga County; Calhoun High School in Gordon County; Carrollton High School, again, Carroll County; Hiram High School in Paulding County; McEachern High School in Cobb County; and last but not least, Marietta High School in Cobb County.

Mr. Speaker, I applaud these young men, their bands, their dance teams, their cheerleaders, for proving themselves such sound competitors in the State playoffs. I am certainly proud of them for their achievements.

Congratulations to all on a great season.

#### RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 4 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1604

#### AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Ms. PINGREE of Maine) at 4 o'clock and 4 minutes p.m.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken after 6:30 p.m. today.

#### ANDEAN TRADE PREFERENCE EXTENSION ACT OF 2009

Mr. LEVIN. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4284) to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4284

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES.

Section 505 of the Trade Act of 1974 (19 U.S.C. 2465) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

#### SEC. 2. EXTENSION OF ANDEAN TRADE PREFERENCE ACT.

(a) EXTENSION.—Section 208(a) of the Andean Trade Preference Act (19 U.S.C. 3206(a)) is amended in paragraphs (1) and (2) by striking "December 31, 2009" each place it appears and inserting "December 31, 2010".

(b) TREATMENT OF CERTAIN APPAREL ARTICLES.—Section 204(b)(3) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) in subclause (II), by striking "7 succeeding 1-year periods" and inserting "8 succeeding 1-year periods"; and

(ii) in subclause (III)(bb), by striking "and for the succeeding 2-year period" and inserting "and for the succeeding 3-year period"; and

(B) in clause (v)(II), by striking "6 succeeding 1-year periods" and inserting "7 succeeding 1-year periods"; and

(2) in subparagraph (E)(ii)(II), by striking "December 31, 2009" and inserting "December 31, 2010".

(c) REPORT.—Section 203(f)(1) of the Andean Trade Preference Act (19 U.S.C. 3202(f)(1)) is amended by striking "April 30, 2003" and inserting "June 30, 2010".

#### SEC. 3. CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended—

(1) in subparagraph (A), by striking "February 14, 2018" and inserting "May 14, 2018"; and

(2) in subparagraph (B)(i), by striking "February 7, 2018" and inserting "June 7, 2018".

#### SEC. 4. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 in effect on the date of the enactment of this Act is increased by 1.5 percentage points.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. LEVIN) and the gentleman from Michigan (Mr. CAMP) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

#### GENERAL LEAVE

Mr. LEVIN. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. LEVIN. I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 4284. This bill extends two preference programs—the Generalized System of Preferences, known as GSP, and the Andean Trade Preference Act, known as ATPA—for 1 year. Without this extension, the two programs will expire in less than 3 weeks, on December 31.

Preferences, including GSP and ATPA, are important tools in U.S. trade policy. They are a means by which the U.S. can work with developing nations to help them capture the opportunities and to meet the challenges of trade and globalization.

Over many decades, the GSP and Andean programs have seen these results for developing nations: The GSP currently provides duty-free treatment to over 3,500 types of products coming into the U.S. from more than 130 developing countries. The program provides duty-free access to even more products from the 44 poorest, or least developed, countries. Last year, the GSP program facilitated \$31.7 billion in imports from all beneficiary nations. ATPA provided additional benefits to the Andean nations to help address their special circumstances, in particular, their efforts to fight the trade in narcotics. Under ATPA, imports grew from \$97 million in 1992, which was the first full year after enactment, to more than \$17 billion in 2008, including \$4 billion of nonfuel imports.

The programs have been crafted carefully so that they mirror the

complementarities of trade between the developing nations and the United States. The needs of developing nations have been matched to the needs here at home. As a result, both programs have provided significant benefits here in the United States as well:

ATPA has developed an important market for U.S. textiles in the Andean region, and both ATPA and GSP have improved the sourcing options that many U.S. businesses, including many small and medium enterprises, use to remain competitive in the global marketplace. In recent years, for example, the majority of U.S. imports—75 percent—using GSP were imports used to sustain U.S. manufacturing, including raw materials, parts and components, and machinery and equipment.

At the same time that they have been structured to foster increased trade, the preference programs have been shaped to encourage developing countries to implement the kinds of policies that are necessary for increased trade to achieve the goal of development. Specifically, the preference programs have incorporated key eligibility criteria, including conditions regarding respect of fundamental worker rights, the rule of law, basic rules protecting innovation and investment, and policies to fight corruption.

The preference programs confirm what many of us have been saying for a long time—trade must be shaped so as to spread its benefits widely. That is true whether we talk about unilateral preference programs or bilateral and multilateral trade agreements.

I do not mean to suggest, however, that our work is done when it comes to preference programs. Far from it. We need to ask whether the preference programs are working as well as they should. This requires taking a hard look at all aspects of the programs, including how present eligibility criteria are working. In addition to considering any improvements, we also need to look at whether there is a need to include additional eligibility criteria, including relating to the environment.

This also means taking a careful look at those countries that are in an especially vulnerable situation. One example is Cambodia, which has been hard hit by the global economic recession. As many of my colleagues may recall, Cambodia and the U.S. were partners in a pioneering project called Better Factories Cambodia. That project, which grew out of the U.S.-Cambodia Textile Agreement in the late 1990s, sought to promote labor standards through a trade agreement at a time when many in the world were demonizing such efforts as protectionism. The effort bore fruit, significantly improving the rights of and conditions for workers, which, in turn, can help expand other freedoms.

However, that industry is now under siege as a result of the global recession

and of competition, including from China and Vietnam. According to testimony provided in a recent Ways and Means hearing, nearly 1 quarter—80 of 340—of all exporting factories have been shut down, and nearly 80,000 workers—most of them women—have lost their jobs in Cambodia. We need to know whether the preference programs are doing enough to help these enormous challenges.

The extension we are voting on today gives us the time we need to look carefully at these important issues. The Ways and Means Committee and the Trade Subcommittee plan to hold hearings and to work with the administration next year in a comprehensive review of our preference programs. Today's bill also provides for a review, in the middle of next year, of the Andean Trade Preference Act and of all issues relating thereto with each of the countries covered by the act.

I want to take a moment to thank my Republican colleagues for working on this extension with Chairman RANGEL and me. I look forward to working with Ranking Members DAVID CAMP and KEVIN BRADY and with our other colleagues on both sides of the aisle to evaluate the preference programs over the course of next year as we together determine whether we can make them work better for all beneficiaries—for both the citizens of developing nations and for our citizens.

Madam Speaker, I reserve the balance of my time.

Mr. CAMP. I yield myself such time as I may consume.

Madam Speaker, let me be blunt. We can and should be doing much more to advance our trade agenda and to create much needed jobs for American workers.

This year, America's trade agenda has stalled, and it has had a chilling effect on our economy, on job creation and on global commerce, in some cases, even weakening our national security interests. The delay in considering the Colombia Trade Promotion Agreement alone has cost U.S. exporters and their workers over \$2.4 billion in unnecessary tariffs.

Last week, the President said there would be a renewed focus on trade next year. I welcome that commitment, and I stand ready to prepare our free trade agreements for congressional consideration. In the meantime, we still have valuable work to do. Although we are not dealing with any of our pending free trade agreements today, we are considering important trade programs which protect our own interests and which help advance developing nations—extensions of the Generalized System of Preferences and the Andean Trade Preference Act.

Make no mistake; the legislation before us is far from perfect, but it is a chance to ensure that the trade agenda does not slide further backward. By

supporting this bill, we are sending a signal to the world that America is ready and willing to engage.

I am a strong supporter of our trade preference programs. These programs are vital, particularly as we struggle with the global recession and with the collapse in international trade. Allowing these preference programs to lapse would be a mistake that would encourage the rest of the world, which is already passing us by when it comes to new trade agreements, to increase their lead on us, and we cannot allow that to happen.

□ 1615

As I noted, this legislation should have been stronger to provide greater certainty to American employers doing business in developing countries, something sorely needed in this economic climate.

I would have preferred to see a 2-year extension of that program instead of the 1-year extension before us, but I think we all agree that a 1-year extension is better than no extension at all.

I would also have preferred to see a continuation of the bipartisan provision in the current Andean Trade Promotion Act program that requires enhanced oversight over Ecuador's compliance with the eligibility criteria. Unfortunately, this legislation fails to recognize the serious questions that surround Ecuador's compliance with the eligibility criteria for this program.

The 2008 bipartisan extension of ATPA extended benefits for Ecuador but required the administration to issue a report on Ecuador's compliance with eligibility criteria. This report, released on June 30 of this year by the Obama administration, highlighted multiple concerns, which I share.

Specifically, the report raised questions about Ecuador's compliance with its international investment obligations. The report raised concerns about Ecuador's decision to increase certain import duties above their bound levels and impose quotas on imports. None of these issues have been resolved. In fact, they have gotten worse.

Despite failure by Ecuador to address the issues raised in the Obama administration report, the majority has inexplicably stripped out last year's reporting requirement. For all the talk from the other side about enforcement and compliance, this legislation fails to address legitimate concerns our workers and employers face in Ecuador. While the legislation requires reporting for all of the Andean countries, I am disappointed that the majority has decided not to engage in specific oversight of a country clearly falling short of our expectations.

As 2009 comes to a close, there will be many retrospectives on the year. One focus ought to be on whether Washington advanced a pro-growth, pro-job

trade agenda. The answer is clearly "no."

We started the year with the passage of a new Trade Adjustment Assistance program, showing what can be achieved when there is a bipartisan, bicameral commitment. We should all be very proud of what we have done for workers who are trying to adjust to the global economy.

But until today, there has been absolutely no positive movement on the trade agenda since TAA. While I am encouraged the majority decided to extend two trade preference programs, the failure to make this legislation as robust as it could have been shows the need to return next year to the sort of bipartisanship that we saw on TAA. I urge the majority to make that happen, and I am committed to doing my part.

Madam Speaker, we owe the American people a better result. Today's legislation gives us the first opportunity to build on the President's words to us at the White House last week, in which he acknowledged the importance of trade in creating jobs, but it represents the bare minimum.

I urge my colleagues to support a robust trade agenda that creates opportunities for American workers. For that reason, I support passage of this legislation.

With that, I reserve the balance of my time.

Mr. LEVIN. I now am privileged to yield 3 minutes to the very distinguished member of the committee and my colleague, Jim McDermott of Washington.

Mr. MCDERMOTT. Madam Speaker, I rise today to urge the passage of H.R. 4284 to extend the general system of preferences and the Andean trade preference program for 1 year. I have called for an extension to our preference programs in the past. We need to make these programs long and stable. This extension is only for a year, and that's okay in this instance, because we need to force more action on broader preference reform.

In difficult economic times like today, developed countries sometimes decide to pull back. But I think that in a globalized economy we need to push forward on improving trade with poorer countries of the world.

Our preference programs have done enormous good for the poor of the world and for American business. Now we need to make them even better.

For development to really accelerate, we need to get more countries involved in trading more products. I have introduced a bill with the support of Chairman RANGEL and Congressman LEVIN that will go far in modernizing our preference programs for American businesses and the poor of the world.

Now, while there are details to work out, there is broad agreement that our trade programs need to be stable, they

need to be simplified, they need to be more effective, and they need to help more people.

I think we agree that the stability of our programs is essential to them being effective. No one who has ever run a business would want to invest in a climate that is so unstable, that goes year by year, you are never sure can you plan on it next year. That simply is very difficult for businesses to deal with, and our programs, therefore, need to be long term.

Second, our programs are too complicated and too hard to use. Simplifying our programs and doing more to help our partners meet the important standards we set are keys to their success.

An interesting fact sort of clarifies it in your mind. Cambodia pays as much tariff on \$1.5 billion worth of exports in the United States as does Great Britain on \$50 billion. Now, if you are trying to help Cambodia, you ought to think about those kinds of numbers. We need to address the capacity building. We all know that the wisdom of trade, not aid, is obvious. Preferences help our trading partners quite a bit. But without thoughtful capacity building, we can only help them so much. We need to pool these efforts together to help poor countries grow and to give American businesses more customers.

Finally, we need to find a way to strengthen the programs we have while at the same time helping more people. Trade is not a zero-sum game. We can strengthen our current programs while also helping other desperately poor countries who right now get no benefits. We can help different countries like Lesotho, the Philippines, and Cambodia at the same time.

I think this is a good start, and the House ought to pass this bill, and next year we will deal with a larger bill.

Mr. CAMP. At this time, Madam Speaker, I yield 2 minutes to the distinguished member of the Ways and Means Committee, the gentleman from Washington State (Mr. REICHERT).

Mr. REICHERT. I thank the gentleman for yielding.

Madam Speaker, I rise today also in support of this legislation to extend our trade preference programs.

Trade is vital to creating jobs, growing our economy, and strengthening ties with key partners around the world. Preferences are a bridge for developing countries to enter the global market, to grow, and to achieve permanent trade relationships with America.

Look no further than South Korea and Colombia for great examples of preferences done right. Through successful preference programs, both allies now stand ready to enter into permanent trade agreements with the United States.

The failure to pass pending free trade agreements like those with Korea and Colombia is costing America thousands

of jobs and billions of dollars. President Obama did recently speak about how growing exports creates jobs, and I hope the Congress will soon prepare these agreements for consideration, because not only do these agreements create jobs, but also business relationships and partnerships and friendships.

It creates opportunities for cultural exchanges and the opportunities to help our friends across the globe educate each other and educate us. It also even affects our national security and our environment.

While I am disappointed that we could not extend these preference programs beyond just 1 year, they are too important to our partner countries to let them expire. I urge all of my colleagues to support this extension of our preference programs.

Mr. LEVIN. It's now my privilege to yield 3 minutes to my very distinguished colleague and member of the Ways and Means Committee from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. I appreciate the gentleman's courtesy in permitting me to speak on this, as I appreciate his thoughtful leadership in this area of trade and balancing the commitments that we have.

The extension of the system of preferences was not merely related to trade but is reflective of a Nation's social values. It was in that context that we inaugurated our program of preferences in 1974.

It's more than a trade agreement; it's a statement about what policies we find valuable in our trading partners and which policies we feel drive the development of nations. For this reason, it's often referred to as a tool of foreign policy as well as trade.

We appropriately judge our trading partners on eligibility for this program on protection of American commercial interests, protection of intellectual property, preventing the seizure of property belonging to United States citizens or businesses, as well as protection of individual rights such as the protection of commonly accepted labor rights and the elimination of child labor.

Madam Speaker, the United States has, I think, at times fallen short in our dealing with tariff barriers for poor nations and agriculture. My friend from Washington referenced the difference between Cambodia and Great Britain.

I am hopeful that we will be able to work in the year ahead dealing with some outmoded tariff dealing with footwear and outerwear that's no longer even manufactured in the United States, and I am confident that we can work through in this approach.

But I would hope, as we move forward, that we would add to the list of the criteria by which we are going to judge the extension of these preferences environmental criteria. They

are noticeably absent as we go through the list currently.

Making sure that agreements are required of our trading partners to enforce environmental laws already on the books and comply with various international environmental agreements, I think, is absolutely essential.

Concern for the environment is a core element of development. It reflects an appreciation of civil law for protection of individual and often indigenous people's rights and concern for the long-term sustainability of a state and society. Protection of the environment is not merely what rich nations do after they become wealthy, but it is what nations must do as they become wealthy.

Madam Speaker, at this moment the world is meeting in Copenhagen, and I am pleased the United States has not turned its back on these global climate negotiations. We are dealing with problems of energy demands and carbon pollution that may well be the most important for this century.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. LEVIN. I yield the gentleman an additional minute.

Mr. BLUMENAUER. These may be the most important discussions that we are going to have on the survival of human habitation as we know it, for the economies of countries rich and poor.

Being able to deal meaningfully with environmental protections through trade negotiations is perhaps the single most effective way that we are going to be able to establish a basis, a criteria, moving forward.

I hope that we will be able to have a more robust conversation in this next year. I hope that we will be successful in moving the world and this country forward in Copenhagen. I hope that as we move forward we can work together to strengthen the role of environmental protections that will be found as we extend these preferences in the future and our overall approach to trade.

Mr. CAMP. At this time, Madam Speaker, I yield 4 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Madam Speaker, here we go again. Another year, another Andean trade preference extension, another year of the Colombian trade agreement held up. Another missed opportunity.

Let's be clear: The Colombia agreement, which the majority is not moving, would be a job creator for Americans. If we passed it, Colombian tariffs, the tariffs that they place on U.S. exports, would be cut. If you reduced that export tariff, it would create more jobs here in the United States.

With the Colombia FTA, we could get two-way trade between the United States and Colombia. Right now, U.S. exporters sending to Colombia are mainly small- and medium-sized busi-

nesses. A lot of them are in my area in Southern California. They are our economic engine.

Let's help them. It's very ironic that many who routinely attack trade agreements are giving Colombia preferential treatment here today, asking for nothing in return, which is especially galling when there is a good agreement sitting on ice which would help our exporters in that market.

□ 1630

I think it's time to stand up for the American worker; certainly past time to get an agreement that's a two-way agreement here.

Of course, Colombia is our closest partner in an important region. It is locked in a very deadly struggle with well-financed forces, in this case terrorists and drug traffickers that are called the FARC. This bill today is better than nothing, but the majority is missing a good opportunity, an opportunity to help a friend in Colombia and to help American workers by passing the Colombia FTA.

This bill has another shortcoming that I wanted to speak on briefly, and that is Ecuador. A beneficiary, Ecuador is far, far from living up to this program's conditions. To be a beneficiary of this agreement, there should be certain requirements. Yet it hasn't been cooperative in combating narco-terrorism, and Ecuador is very close to the FARC, which is warring against the Colombian Government. Its independent media has come under government attack. Its government has corrupted its legal system, harming U.S. companies.

Just to go into some of the specifics, the President of Ecuador, President Correa, has dissolved the Parliament there, the Congress. He has replaced all the judges in the country. He's censored the media and seized control of the television stations there. The State Department's 2009 human rights report cites concerns with what the State Department calls corruption and the denial of due process within Ecuador's judicial system. Transparency International ranked this country as one of the worst surveyed for 2008 in terms of its corruption perceptions index, one of the worst in corruption. And it has announced that it will withdraw from its bilateral investment treaty with the United States.

This bill frankly would be better without Ecuador. Instead, the majority rejected using these benefits as leverage. I think that's also a missed opportunity. Rejecting this bill would hurt Colombia and our strategic interests there, so let's pass it; but it should be noted that we should have done so much better for American jobs.

Mr. LEVIN. I now yield 3 minutes to my very distinguished colleague and friend, Mr. DOGGETT of Texas.

Mr. DOGGETT. I thank the gentleman and I thank him for his leadership.

I certainly support more trade—where it most stands to benefit American consumers and to spur economic development in some of the world's least developed countries. During the last 2 years, there has been considerable talk about crafting a 21st century American trade policy that ensures we are not encouraging trade that depends upon degrading our environment and lowering labor standards. Unfortunately, talk is often about all that we've had. Upholding labor and environmental standards has been much more rhetoric than reality. Today's renewal of this GSP legislation does nothing to encourage participating countries to even enforce their own minimal environmental laws or to honor the multilateral environmental agreements that they have joined.

This is in significant contrast with the European Union. There, in order to enjoy the benefits of its GSP Plus program, beneficiary countries must fully implement major multilateral environmental agreements. There's no reason why we should not be doing the same and more. We should have led the European Union on the environment, but we can now at least follow its lead.

There are GSP labor standards, but under the Bush administration, naturally, there was very little interest in seeing them enforced. Why, for example, should the thuggish government of Uzbekistan enjoy any trade preferences? In addition to being one of the world's leading violators of human rights across the board, we have ample evidence of widespread labor abuses within Uzbekistan, including compulsory child labor. For over 2 years, the USTR has failed to act on a related petition about child labor, even after the Uzbeks failed to appear at a hearing to defend or explain their egregious child labor record.

This raises troubling questions about the integrity and effectiveness of the USTR review process. The Uzbek case is but one example of the significant problems with that enforcement mechanism of labor provisions in the GSP. Surely our trade policies here in the 21st century can aspire to do more than to bless practices that come right out of a 19th century Charles Dickens novel.

In the promised GSP review for this next year, as described by Chairman LEVIN, I think we have considerable work to do if we are to give full and complete meaning to the promises of President Barack Obama that our trade policy will reflect not only our desire for more commerce but our commitment to uphold our environment and our workers.

Mr. CAMP. Madam Speaker, I yield 4 minutes to the ranking member of the Trade Subcommittee, the gentleman from Texas (Mr. BRADY).

Mr. BRADY of Texas. Madam Speaker, I have long been a supporter of our



preference programs because they allow valuable inputs to enter the United States duty free, helping our manufacturers and their employees. At the same time, trade preference programs are an important tool to help developing countries break into the international market. Over many years, Congress has worked on a bipartisan basis to develop trade preference programs that have provided a vital economic boost to many developing countries.

But effective trade preferences are just one step on a developing country's journey to becoming a full player in the international market, which a country achieves through a permanent, reciprocal trade agreement with the United States. Chile, Singapore and the CAFTA countries all graduated from trade preferences into these more mature relationships, giving them full, permanent duty-free access to the U.S. market. This is a significant benefit over the partial, temporary access provided by our preference programs, sending a strong signal that helps attract necessary investment and capital into the partner country.

For the United States, the benefits of reciprocal trade are obvious. American workers and businesses get a level playing field as a result of these countries opening their markets to U.S. exports. As a result, U.S. exports to these countries surge and those growing exports support American jobs. We can quickly realize similar benefits by implementing the pending trade agreements with Colombia and Panama, two more countries that are anxious to move from a one-way relationship to one that levels the playing field for American workers. I am frustrated to once again be faced with extending preferences for these countries instead of voting on a more permanent relationship that benefits all of us.

Now there are many countries that aren't yet ready to take the step from preferences to a free trade relationship, and for these countries effective trade preference programs are the right policy. To that end, we must design our preference programs with eligibility criteria that challenge countries to improve their laws while encouraging investment. The current eligibility criteria provide the right balance, allowing the U.S. on many occasions to use these criteria to prompt improvements in conditions in several countries and further economic development.

At the same time, when a country does not abide by the criteria in the preference programs, we must take notice and even eliminate benefits if necessary. Otherwise, the effectiveness of the criteria is undermined.

In this regard, I have been watching the situation in Ecuador for several years, and I'm deeply troubled by what I am seeing. When Congress last extended ATPA in 2008, we added an addi-

tional statutory review requirement for Bolivia and Ecuador because of our concerns about their compliance with the eligibility criteria. This past June the Obama administration completed this review. The administration found that Bolivia was not complying with the eligibility criteria in the ATPA program, which is why Bolivia is no longer eligible for benefits. The administration also noted several serious concerns about Ecuador. In particular, the administration cited Ecuador's withdrawal from the International Convention on the Settlement of Investment Disputes and Ecuador's unilateral decision to raise many of its tariffs to levels above its WTO bindings.

Since the administration's report, there have been further troubling developments in Ecuador. The country has announced that it will withdraw from its bilateral investment treaty with the United States, and the investment climate continues to cause concern. In addition, President Correa has made questionable statements with regard to Ecuador's respect for intellectual property rights. Moreover, negotiations to replace U.S. access to the Manta air base are still unresolved. Together with many other Members, I remain extremely concerned about the situation in Ecuador.

Therefore, I am disappointed that the bill before us today does not retain the requirement in current law that the President report to Congress on the situation in Ecuador. I believe that this report provides us an opportunity to keep a careful eye on Ecuador and its compliance with the eligibility criteria. But just as important is the fact that the reporting requirement is enormously important as a signal to Ecuador—a message that this Congress is watching Ecuador closely.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. CAMP. I yield the gentleman an additional 30 seconds.

Mr. BRADY of Texas. I thank the gentleman from Michigan.

In addition, I am disappointed that today's bill doesn't do more to establish certainty for users of the program here and abroad through an extension that is longer than a mere year. I and Mr. CAMP have been seeking a 2-year extension.

Madam Speaker, I support this bill because I don't want the remaining preferences to lapse, but we can and should do better.

Mr. LEVIN. I reserve the balance of my time.

Mr. CAMP. Madam Speaker, I yield myself the balance of my time.

I urge my colleagues to support the Andean Trade Preference Extension Act of 2009, which will extend the Andean trade preferences, as we know as ATPA, and also the Generalized System of Preferences, we also refer to as

GSP, for an additional year. However, I do think it's important to note my disappointment that we did not put a message specifically putting Ecuador on notice that its behavior and its receipt of continued benefits is at serious risk. There is a deteriorating investment climate in Ecuador as well as their repudiation of the bilateral investment treaty. I think it's very important that while it is understood in this legislation that there is language maintaining a review, I am concerned that there is not specific language aimed at challenging Ecuador's actions. I do think this is a change from current law and it's a step backward. I think it's important to send a strong message that any central tenet of a preference program is that the participants uphold their commitments to the rule of law as well as their commitments to the U.S. on investment and other matters.

So as a result of this, I believe preference programs should not be viewed as an entitlement; that they are based upon meeting certain criteria as I mentioned, particularly, as others have said, the observance of labor and environmental laws, certainly actions to prevent the distortion of investment as well as the support and enforcement of intellectual property laws as well as reasonable access to markets.

However, I do think despite these concerns, this legislation is extremely important. It is essential that we extend this for another year. I think that this is an important step to take, and I will support its passage. I look forward to working with the administration as well as my colleagues on the Ways and Means Committee, Chairman RANGEL and Chairman LEVIN, as we continue to address trade issues in the coming year.

Ms. RICHARDSON. Madam Speaker, I rise in strong support of H.R. 4284, which would extend the Andean Trade Preferences Act, ATPA, and the Generalized System of Preferences, GSP, for an additional year. I would like to thank Chairman RANGEL for his leadership on this issue and for bringing this bill to the floor. It is critically important that we extend these trade preferences before they expire at the end of this calendar year. We have seen in the past the damage that a short lapse can do to cross border business relationships.

The trade preferences we seek to extend benefit both the United States and our South American trading partners. These preferences support economic growth both here in the United States and abroad in some of the poorest countries in the world. Almost 2 million jobs in the United States and the Andean region depend on ATPA preferences and the region has emerged an important market for U.S. exports. Because use of the programs is conditioned through eligibility criteria, such as labor, human rights, and intellectual property, the United States is able to advance both important economic and foreign policy goals.

I therefore urge all of my colleagues to join me in voting for H.R. 4284.

Ms. LINDA T. SÁNCHEZ of California. Madam Speaker, I rise in support of H.R. 4284, the Andean Trade Preference Extension Act of 2009 (ATPA), which would extend both the General System of Preferences (GSP) and the Andean Trade Preferences for one year.

It is important to extend these preference programs, which assist developing countries in their efforts to build up domestic industries, increase exports, and alleviate poverty. In some cases, these programs have worked well. South Korea, Singapore, and other nations have graduated from the GSP program, and no longer qualify for these special trade benefits.

Failure to extend these preferences would put even more pressure on impoverished populations in developing nations.

Make no mistake, my support for this extension is not an unqualified endorsement of their current structure. To be sure, our preferences programs need improvement.

One key improvement that is desperately needed is to change the prevailing view that trade preferences are a development strategy. Instead, we must recognize that trade preferences are only part of a comprehensive development strategy, which must also include investments in education, training, and infrastructure, as well as a consideration of targeted debt relief.

In addition, our preferences programs currently have inadequately-enforced labor standards and no environmental standards whatsoever.

The rationale for linking trade and labor rights is vital to avoiding a "race to the bottom." For American working families, we need to ensure that developing countries attract investment based on a competitive wage advantage, not by artificially suppressing wages through labor repression. For working families in developing countries, the opportunity to bargain collectively for better wages and working conditions will ensure that some of the benefits of trade go to them, not just to multinational corporations.

This one-year extension will give us the time we need to reform existing programs without disrupting the fragile economies of the lesser-developed nations that our preferences programs are designed to help.

Finally, I want to address the issue of Ecuador in particular. Unfortunately, it has come to my attention that Chevron Corporation has been urging Members of Congress and the Administration to punish Ecuador because its government refuses to intervene in a private lawsuit against the oil giant. The plaintiffs in the lawsuit contend that the company is responsible for polluting a vast area of the Amazon Basin, causing serious health and environmental consequences.

While I take no position on the lawsuit, I do believe that the plaintiffs should have their day in court. I also believe that, of all the legitimate reasons to oppose the U.S. trade preferences programs, doing the bidding of a single corporation is not one of them.

As the editors of the Los Angeles Times wrote in a recent editorial, "There are other factors for Congress to consider in determining whether to extend Ecuador's trade preferences: workers' rights and trade and investment policy also are important. And there

are issues that remain to be negotiated between the two countries. But in each of these areas, Ecuador has demonstrated a willingness to work with the U.S. That should be the test for an extension of trade benefits, not the private interests of one corporation."

To reiterate, while our trade preferences programs are not perfect, extending them for one year is vital, and I strongly support this legislation.

Mr. STUPAK. Madam Speaker, I urge my colleagues to vote "no" on H.R. 4284, a bill that would increase our trade deficit, compromise our labor laws, and delay a much-needed reform to our nation's trade policy.

Since the last extension, in October 2008, Congress has still not adequately addressed the fundamental problems in relation to agriculture and labor practices in this trade preference agreement.

With the on-going debate surrounding the Colombia Free Trade Agreement and the South Korea Free Trade Agreement, and the sharp economic recession, it would be irresponsible to simply extend these preferences without thorough discussions on the effects of our trade policy on American jobs.

Originally passed in 1991, the Andean Trade Preference Act (ATPA) was designed to develop economic alternates to narcotics production in Bolivia, Colombia, Ecuador, and Peru.

However, ATPA has failed to reduce cocaine production and it has harmed American farmers.

As a result of the ATPA, the U.S. had a \$7 billion trade deficit with the four ATPA countries in 2008.

Overall, the U.S. trade deficit has grown to more than \$738 billion and trade policies have cost America 3.2 million manufacturing jobs over the past 10 years.

Because both the Bush and Obama administrations deemed that Bolivia failed to meet eligibility criteria, H.R. 4284 would extend trade preferences only with Columbia, Ecuador, and Peru.

Before extending the Andean Trade Preferences Act for a fourth time, Congress should take a closer look at damage it has done to American farmers and how it has failed to reduce illegal drug production in Bolivia, Colombia, Ecuador and Peru.

Among the great economic challenges our nation faces is creating new trade and globalization policies that serve America's workers, consumers, farmers, and firms.

The Obama administration and Congress have an opportunity to rewrite our trade policy and to create a trade framework that supports American jobs.

Let's seize this opportunity to create a new framework for trade agreements.

New trade agreements must meet basic standards to protect labor rights, environmental standards, food safety regulations, financial regulations, and taxation transparency.

Most importantly, new trade agreements must protect American workers first.

I urge you to vote against H.R. 4284 when it comes to the House floor today so that we can focus on reforming America's trade laws.

Mr. CAMP. Madam Speaker, I yield back the balance of my time.

Mr. LEVIN. I urge passage, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. LEVIN) that the House suspend the rules and pass the bill, H.R. 4284.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## FEDERAL FINANCIAL ASSISTANCE MANAGEMENT IMPROVEMENT ACT OF 2009

Mr. LYNCH. Madam Speaker, I move to suspend the rules and pass the bill (S. 303) to reauthorize and improve the Federal Financial Assistance Management Improvement Act of 1999, as amended.

The Clerk read the title of the bill.

The text of the amendment is as follows:

Amendment:

Strike out all after the enacting clause and insert:

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Financial Assistance Management Improvement Act of 2009".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Reauthorization.
- Sec. 3. Website relating to Federal grants.
- Sec. 4. Report on implementation.
- Sec. 5. Strategic plan.
- Sec. 6. Data standard requirements.

### SEC. 2. REAUTHORIZATION.

Section 11 of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended—

(1) in the section heading, by striking "and sunset"; and

(2) by striking "and shall cease to be effective 8 years after such date of enactment".

### SEC. 3. WEBSITE RELATING TO FEDERAL GRANTS.

Section 6 of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended—

(1) by redesignating subsections (e) and (f) as subsections (g) and (h), respectively;

(2) by inserting after subsection (d) the following new subsections:

"(e) WEBSITE RELATING TO FEDERAL GRANTS.—

"(1) IN GENERAL.—The Director shall establish and maintain a public website that serves as a central point of information and access for applicants for Federal grants.

"(2) CONTENTS.—To the maximum extent possible, the website established under this subsection shall include, at a minimum, for each Federal grant—

- "(A) the grant announcement;
- "(B) the statement of eligibility relating to the grant;
- "(C) the application requirements for the grant;

"(D) the purposes of the grant;

"(E) the Federal agency funding the grant;

"(F) the deadlines for applying for and awarding of the grant.

"(G) all applications received for the grant, set forth in the single data standard adopted under section 9(b); and

"(H) all reports relating to the use of the grant, set forth in the single data standard adopted under section 9(b).

“(3) USE BY APPLICANTS.—The website established under this subsection shall, to the greatest extent practicable, allow grant applicants to—

“(A) use the website with any computer platform;

“(B) search the website for all Federal grants by type, purpose, funding agency, program source, and other relevant criteria;

“(C) apply for a Federal grant using the website;

“(D) manage, track, and report on the use of Federal grants using the website; and

“(E) provide all required certifications and assurances for a Federal grant using the website.

“(4) USE BY THE PUBLIC.—The website established under this subsection shall, to the greatest extent practicable, allow members of the public to—

“(A) view the items described in paragraph (2);

“(B) navigate easily among and between the items described in paragraph (2) and other supporting materials;

“(C) download grant applications and reports, in the single data standard adopted under section 9, individually or as a single data set; and

“(D) access individual grant applications and reports at web addresses that are distinct, permanent, unique, and searchable.

“(f) PUBLICATION OF INFORMATION.—Nothing in this section shall be construed as requiring the publication of information otherwise exempt under section 552 of title 5, United States Code (popularly referred to as the ‘Freedom of Information Act’).”; and

(3) in subsection (h), as so redesignated, by striking “All actions” and inserting “Except for actions relating to establishing the website required under subsection (e), all actions”.

#### SEC. 4. REPORT ON IMPLEMENTATION.

The Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended by striking section 7 and inserting the following:

#### “SEC. 7. EVALUATION OF IMPLEMENTATION.

“(a) IN GENERAL.—Not later than 9 months after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009, and every 2 years thereafter until the date that is 15 years after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009, the Director shall submit to Congress a report regarding the implementation of this Act.

“(b) CONTENTS.—

“(1) IN GENERAL.—Each report under subsection (a) shall include, for the applicable period—

“(A) a list of all grants for which an applicant may submit an application using the website established under section 6(e);

“(B) a list of all Federal agencies that provide Federal financial assistance to non-Federal entities;

“(C) a list of each Federal agency that has complied, in whole or in part, with the requirements of this Act;

“(D) for each Federal agency listed under subparagraph (C), a description of the extent of the compliance with this Act by the Federal agency;

“(E) a list of all Federal agencies exempted under section 6(d);

“(F) for each Federal agency listed under subparagraph (E)—

“(i) an explanation of why the Federal agency was exempted; and

“(ii) a certification that the basis for the exemption of the Federal agency is still applicable;

“(G) a list of all common application forms that have been developed that allow non-Federal entities to apply, in whole or in part, for multiple Federal financial assistance programs (including Federal financial assistance programs administered by different Federal agencies) through a single common application;

“(H) a list of all common forms and requirements that have been developed that allow non-Federal entities to report, in whole or in part, on the use of funding from multiple Federal financial assistance programs (including Federal financial assistance programs administered by different Federal agencies);

“(I) a description of the efforts made by the Director and Federal agencies to communicate and collaborate with representatives of non-Federal entities during the implementation of the requirements under this Act;

“(J) a description of the efforts made by the Director to work with Federal agencies to meet the goals of this Act, including a description of working groups or other structures used to coordinate Federal efforts to meet the goals of this Act; and

“(K) identification and description of all systems being used to disburse Federal financial assistance to non-Federal entities.

“(2) SUBSEQUENT REPORTS.—The second report submitted under subsection (a), and each subsequent report submitted under subsection (a), shall include—

“(A) a discussion of the progress made by the Federal Government in meeting the goals of this Act, including the amendments made by the Federal Financial Assistance Management Improvement Act of 2009, and in implementing the strategic plan submitted under section 8, including an evaluation of the progress of each Federal agency that has not received an exemption under section 6(d) towards implementing the strategic plan; and

“(B) a compilation of the reports submitted under section 8(c)(3) during the applicable period.

“(c) DEFINITION OF APPLICABLE PERIOD.—In this section, the term ‘applicable period’ means—

“(1) for the first report submitted under subsection (a), the most recent full fiscal year before the date of the report; and

“(2) for the second report submitted under subsection (a), and each subsequent report submitted under subsection (a), the period beginning on the date on which the most recent report under subsection (a) was submitted and ending on the date of the report.”.

#### SEC. 5. STRATEGIC PLAN.

(a) IN GENERAL.—The Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is further amended—

(1) by redesignating sections 8, 9, 10, and 11 as sections 9, 10, 11, and 12, respectively; and

(2) by inserting after section 7, as amended by this Act, the following new section:

#### “SEC. 8. STRATEGIC PLAN.

“(a) IN GENERAL.—Not later than 18 months after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009, the Director shall submit to Congress a strategic plan that—

“(1) identifies Federal financial assistance programs that are suitable for common applications based on the common or similar purposes of the Federal financial assistance;

“(2) identifies Federal financial assistance programs that are suitable for common reporting forms or requirements based on the

common or similar purposes of the Federal financial assistance;

“(3) identifies common aspects of multiple Federal financial assistance programs that are suitable for common application or reporting forms or requirements;

“(4) identifies changes in law, if any, needed to achieve the goals of this Act; and

“(5) provides plans, timelines, and cost estimates for—

“(A) developing an entirely electronic, web-based process for managing Federal financial assistance, including the ability to—

“(i) apply for Federal financial assistance;

“(ii) track the status of applications for and payments of Federal financial assistance;

“(iii) report on the use of Federal financial assistance, including how such use has been in furtherance of the objectives or purposes of the Federal financial assistance; and

“(iv) provide required certifications and assurances;

“(B) ensuring full compliance by Federal agencies with the requirements of this Act, including the amendments made by the Federal Financial Assistance Management Improvement Act of 2009;

“(C) creating common applications for the Federal financial assistance programs identified under paragraph (1), regardless of whether the Federal financial assistance programs are administered by different Federal agencies;

“(D) establishing common financial and performance reporting forms and requirements for the Federal financial assistance programs identified under paragraph (2), regardless of whether the Federal financial assistance programs are administered by different Federal agencies;

“(E) establishing common applications and financial and performance reporting forms and requirements for aspects of the Federal financial assistance programs identified under paragraph (3), regardless of whether the Federal financial assistance programs are administered by different Federal agencies;

“(F) developing mechanisms to ensure compatibility between Federal financial assistance administration systems and State systems to facilitate the importing and exporting of data;

“(G) developing common certifications and assurances, as appropriate, for all Federal financial assistance programs that have common or similar purposes, regardless of whether the Federal financial assistance programs are administered by different Federal agencies;

“(H) minimizing the number of different systems used to disburse Federal financial assistance; and

“(I) applying the single data standard adopted under section 9 to Federal grants and grant applications.

“(b) CONSULTATION.—In developing and implementing the strategic plan under subsection (a), the Director shall consult with representatives of non-Federal entities and Federal agencies that have not received an exemption under section 6(d).

“(c) FEDERAL AGENCIES.—

“(1) IN GENERAL.—Not later than 6 months after the date on which the Director submits the strategic plan under subsection (a), the head of each Federal agency that has not received an exemption under section 6(d) shall develop a plan that describes how the Federal agency will carry out the responsibilities of the Federal agency under the strategic plan, which shall include—

“(A) clear performance objectives and timelines for action by the Federal agency in furtherance of the strategic plan; and

“(B) the identification of measures to improve communication and collaboration with representatives of non-Federal entities on an on-going basis during the implementation of this Act.

“(2) CONSULTATION.—The head of each Federal agency that has not received an exemption under section 6(d) shall consult with representatives of non-Federal entities during the development and implementation of the plan of the Federal agency developed under paragraph (1).

“(3) REPORTING.—Not later than 2 years after the date on which the head of a Federal agency that has not received an exemption under section 6(d) develops the plan under paragraph (1), and every 2 years thereafter until the date that is 15 years after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009, the head of the Federal agency shall submit to the Director a report regarding the progress of the Federal agency in achieving the objectives of the plan of the Federal agency developed under paragraph (1).”

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 5(d) of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended by inserting “, until the date on which the Federal agency submits the first report by the Federal agency required under section 8(c)(3)” after “subsection (a)(7)”.

#### SEC. 6. DATA STANDARD REQUIREMENTS.

(a) DATA STANDARD REQUIREMENTS.—The Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is further amended—

(1) by redesignating sections 9, 10, 11, and 12 as sections 10, 11, 12, and 13, respectively; and

(2) by inserting after section 8, as added by this Act, the following new section:

#### “SEC. 9. DATA STANDARD REQUIREMENTS.

“(a) DATA STANDARD REQUIREMENTS.—

“(1) REQUIREMENT.—The Director of the Office of Management and Budget shall adopt a single data standard for the collection, analysis, and dissemination of business and financial information for use by private sector entities in accordance with subsection (b) for information required to be reported to the Federal Government, and a single data standard for use by agencies within the Federal Government in accordance with subsection (c) for Federal financial information.

“(2) CHARACTERISTICS OF DATA STANDARDS.—The single data standards required by paragraph (1) shall—

“(A) be common across all agencies, to the maximum extent practicable;

“(B) be a widely accepted, non-proprietary, searchable, computer-readable format for business and financial data;

“(C) be consistent with and implement—

“(i) United States generally accepted accounting principles or Federal financial accounting standards (as appropriate);

“(ii) industry best practices; and

“(iii) Federal regulatory requirements;

“(D) improve the transparency, consistency, and usability of business and financial information; and

“(E) be capable of being continually upgraded to be of maximum use as technologies and content evolve over time.

“(b) IMPLEMENTATION OF SINGLE DATA STANDARD FOR PRIVATE SECTOR.—

“(1) OMB GUIDANCE.—Not later than 180 days after the date of the enactment of the Federal Financial Assistance Management

Improvement Act of 2009, the Director of the Office of Management and Budget shall issue guidance to agencies on the use and implementation of the single data standard required by subsection (a) for information required to be reported to agencies by the private sector.

“(2) AGENCY REQUIREMENTS.—

“(A) REQUIREMENT.—To the maximum extent practicable and consistent with the guidance provided by the Office of Management and Budget under paragraph (1), the head of each agency shall require the use of the single data standard required by subsection (a) for business and financial information reported to the agency by private sector companies.

“(B) IMPLEMENTATION.—The head of the agency shall begin implementing the requirement of subparagraph (A) within one year after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009.

“(c) IMPLEMENTATION OF SINGLE DATA STANDARD FOR FEDERAL GOVERNMENT.—

“(1) OMB DEVELOPMENT.—Not later than 1 year after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009, the Director of the Office of Management and Budget shall develop the single data standard required by subsection (a) for use by agencies within the Federal Government for Federal financial information.

“(2) OMB GUIDANCE.—Not later than 18 months after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009, the Director shall issue guidance to agencies on the use and implementation of the single data standard developed under paragraph (1).

“(d) PUBLIC ACCESS TO DATA.—The head of each agency shall ensure that information collected using the single data standards required under this section is accessible to the general public in that format to the extent permitted by law.

“(e) REPORT.—Within one year after the date of the enactment of the Federal Financial Assistance Management Improvement Act of 2009, the Director of the Office of Management and Budget shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the status of the implementation of this section.

“(f) DEFINITIONS.—In this section:

“(1) AGENCY.—The term ‘agency’ means any executive department, military department, Government corporation, Government controlled corporation, independent establishment, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

“(A) the Government Accountability Office;

“(B) the Federal Election Commission;

“(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

“(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

“(2) EXECUTIVE DEPARTMENT, MILITARY DEPARTMENT, GOVERNMENT CORPORATION, GOVERNMENT CONTROLLED CORPORATION, INDEPENDENT ESTABLISHMENT.—The terms ‘Executive department’, ‘military department’,

‘Government corporation’, ‘Government controlled corporation’, and ‘independent establishment’ have the meanings given those terms by chapter 1 of title 5, United States Code.

“(3) INDEPENDENT REGULATORY AGENCY.—The term ‘independent regulatory agency’ has the meaning given that term by section 3502(5) of title 44, United States Code.”

(b) REQUIREMENT FOR USE OF SINGLE DATA STANDARD BY FEDERAL AGENCIES.—Section 5 of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended by adding at the end the following new subsection:

“(e) SINGLE DATA STANDARD REQUIREMENT.—To the maximum extent practicable and consistent with the guidance provided by the Director under section 9, each Federal agency shall require the use of the single data standard adopted under section 9(b) for—

“(1) all applications for Federal financial assistance; and

“(2) all reports on the use of Federal financial assistance that the agency requires non-Federal entities to submit.”

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. LYNCH) and the gentlewoman from Illinois (Mrs. BIGGERT) each will control 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

#### GENERAL LEAVE

Mr. LYNCH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to add any extraneous materials.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LYNCH. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, on behalf of the Committee on Oversight and Government Reform and Chairman ED TOWNS, I am proud to present S. 303, the Federal Financial Assistance Management Improvement Act of 2009, for consideration.

□ 1645

Senate 303 was introduced by Senator GEORGE VOINOVICH of Ohio on January 22, 2009, and passed by the United States Senate on March 17, 2009, by unanimous consent. The legislation was subsequently referred to the House Oversight Committee on March 18, 2009, and approved with a manager's amendment on December 10, 2009, by voice vote.

Madam Speaker, the legislation will reauthorize and enhance the Federal Financial Assistance Management Improvement Act of 1999. Specifically, Senate 303 reauthorizes and makes significant enhancements to the Web site, www.grants.gov, which serves as a central location for grant applicants to search and apply for Federal grants, as well as to submit the necessary financial reports. The Web site is a one-stop-shop for grant recipients, alleviating

much of the paperwork burden that has traditionally been associated with the grant application process and allowing recipients to focus their attention on serving the American public.

In addition to reauthorizing the grants.gov Web site, Senate 303 directs the Office of Management and Budget to improve the administration of Federal grants and submit corresponding reports to Congress on its progress towards this end.

I'd also like to note that the gentleman from California, Representative DARRELL ISSA, and the ranking member of the Committee on Oversight and Government Reform joined Chairman TOWNS in offering a manager's amendment to this legislation during our committee business meeting last week.

The amendment makes a number of important technical changes to the bill. Specifically, it incorporates the provisions of H.R. 2392, the Government Information Transparency Act, legislation directing the Office of Management and Budget to adopt a single data standard for the collection, analysis, and dissemination of business and financial information. The standard must be common across all Federal agencies and make the data widely available to the public.

This standard will also be applied to the data on Federal grants, making it easier to evaluate the use of grant funds. This will make Federal financial information much more accessible to the public, thereby improving the transparency of this data and allowing the public to analyze it more easily. It will also improve the availability and interoperability of financial data reported to the government by the private sector, addressing concerns that the Committee on Oversight and Government Reform raised in their hearings earlier this year.

Madam Speaker, Senate 303 will help strengthen a great resource for Federal grant recipients as well as improve the public's access to important financial data.

I'd like to close my statement by thanking Chairman ED TOWNS, the gentleman from Brooklyn, New York, and Ranking Member DARRELL ISSA, the gentleman from California, for their work on this measure, and I urge my colleagues to join both of those gentlemen in supporting S. 303.

And I reserve the balance of our time.

Mrs. BIGGERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this bill will bring some much-needed transparency to the Federal Government. Senate 303 reauthorizes and improves the Federal Financial Assistance Management Act of 1999, which sought to simplify the application and reporting requirements for Federal grants. It requires the OMB and Federal agencies to develop a strategic

plan for streamlining Federal grant processes, and it codifies grants.gov, the Federal Government's one-stop-shop for grant announcements and applications submission.

S. 303's new requirements are driven by a GAO assessment reporting that OMB and Federal agencies have made modest progress towards standardizing grant announcements and applications. The government has developed a standard format for grant announcements, began consolidating grant management systems, and set up a Web site, grants.gov. However, it, so far, has failed to develop a common system for a full-scale application, management, and reporting for financial assistance.

Madam Speaker, I appreciate Chairman TOWNS' willingness to work with us to incorporate language from H.R. 2392, the Government Information Transparency Act, which was introduced by Ranking Member ISSA. The provisions that were incorporated from the ranking member's bill will enhance the collection, analysis, and dissemination of business and financial information by the Federal Government through the use of a single data standard. Currently, the Federal Government mandates disclosure of large amounts of information in a multitude of ways. Financial reports in a uniform format will be more transparent and more easily analyzed and critiqued by the public, the media, and the oversight community.

In addition, S. 303 will require grant applications and reports to be made public and prepared according to a single, consistent data standard. For the first time, watchdog groups, journalists, and ordinary citizens will be able to see for themselves the promises and projections that grant applicants make in order to receive taxpayer dollars and then hold them directly accountable. A watchdog group publicizing waste or abuse of taxpayer money could put up a blog post linking directly to applications and reports describing how the money has been appropriated and spent.

A citizen or a news reporter searching for the name of a company might discover that the company had received taxpayer money to complete a local infrastructure project and be able to hold the company directly accountable for the use of public funds. Information about the amount of money requested, the amount of money spent, and progress on taxpayer-funded projects could be computed automatically and easily. Taxpayers could determine how much grant money had been awarded to a local business or nonprofit, and automatically compare the performance of different grant recipients and recognize disparities in grant funding between States or congressional districts.

Madam Speaker, I want to thank Chairman TOWNS and his staff for

working with the Republicans on this important legislation by incorporating bipartisan language to increase transparency in the Federal Government. I also want to commend Senator VOINOVICH for his hard work on this bill, and I ask my colleagues to support this legislation.

We have no further speakers, and I would yield back the balance of my time.

Mr. ISSA. Madam Speaker, earlier this year, I introduced H.R. 2392, the "Government Information Transparency Act," to make federal reporting of taxpayer dollars more accessible to the American people. In Committee, Chairman EDOLPHUS TOWNS and I were able to work on a bipartisan basis to get key provisions of this legislation into S. 303, which is now under consideration by the House.

The Government Information Transparency Act instructs the Office of Management and Budget to designate a single data standard for the collection, analysis, and dissemination of business and financial information required to be reported to the federal government.

The federal government mandates disclosure of large amounts of information: financial filings by public companies, call reports by financial institutions, various disclosures by federal contractors, reports by recipients of taxpayer-funded grant money, and the list goes on. Too often, these disclosures are in formats that don't permit electronic searches and comparisons. Some disclosures, in fact, are still made using paper. Moreover, the formats vary from agency to agency, and even within agencies. Unwieldy and incompatible data formats make reported information much less useful than it could be. Even worse, it creates complex and overlapping layers of reporting that serve as the breeding ground for wasteful government.

Information reported to the federal government needs to become both fully searchable and fully standardized. Modern information technology can bridge these two gaps. An interactive data standard that relies on electronic tags to individually identify each element of information can render every piece of data separately readable by software. This interactivity allows the creation of databases that are far more useful than sequential, plain-text financial reports. And if the same standard were applied to every federal agency's disclosure programs—securities, banking, grants, contracts, and so on—unprecedented searches and comparisons would become possible.

So, the Government Information Transparency Act requires the OMB to set up a single interactive data standard for reported information—a standardized, universal, and machine-readable format that will be made available to the general public. The use of a single data standard will still allow agencies to be flexible in how they require information to be submitted. Sophisticated companies might be asked to submit large data files; small companies and nonprofits could fill in Web-based forms that would automatically encode each element on their reports. The result: every report would be computer-readable, and the underlying data could be more easily extracted, searched, and analyzed.

Financial and business information in a uniform format will be more transparent, and thus more accessible for public critique. Fraudulent transactions and irresponsible risk-taking can be more easily detected, search costs are reduced, and companies will be put under greater pressure to explain the underpinnings of the financial statements they release. Instead of assigning an immense oversight responsibility to a handful of federal employees, we can now enable the public to act as citizen-regulators. And because information reported to different agencies will become compatible, investors, watchdog groups, and analysts will have powerful new searches at their disposal.

The Government Information Transparency Act also requires a single data standard for federal financial information, to bring the same interactivity and compatibility to the disclosures put out by federal agencies. By making this kind of information more accessible to the general public, we are unleashing the very best government watchdogs—the American people themselves—to expose waste, fraud, and abuse of their tax dollars.

For business and financial information, the sunlight of transparency has always been the best disinfectant. Our Government Information Transparency Act, added to S. 303, will make that sunlight brighter and clearer than ever.

Mr. LYNCH. Madam Speaker, in closing, I would just ask all Members to join with Senator VOINOVICH, Chairman TOWNS, and Ranking Member ISSA in support of this resolution, and I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and pass the bill, S. 303, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### RECOGNIZING IMPORTANCE OF YOUTH RUNAWAY PREVENTION

Mr. LYNCH. Madam Speaker, I move to suspend the rules and agree to the resolution (H. Res. 779) recognizing and supporting the goals and ideals of National Runaway Prevention Month, as amended.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

#### H. RES. 779

Whereas the prevalence of runaway and homelessness among youth is staggering, with studies suggesting that every year, between 1,600,000 and 2,800,000 youth live on the streets of the United States;

Whereas running away from home is widespread, and youth aged 12 to 17 are at a higher risk of homelessness than adults;

Whereas runaway youth most often are youth who have been expelled from their homes by their families; physically, sexually, and emotionally abused at home; discharged by State custodial systems without

adequate transition plans; separated from their parents by death and divorce; too poor to secure their own basic needs; and ineligible or unable to access adequate medical or mental health resources;

Whereas effective programs supporting runaway youth and assisting youth and their families in remaining at home succeed because of partnerships created among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations, and businesses;

Whereas preventing youth from running away from home and supporting youth in high-risk situations is a family, community, and national priority;

Whereas the future well-being of the Nation is dependent on the opportunities provided for youth and families to acquire the knowledge, skills, and abilities necessary for youth to develop into safe, healthy, and productive adults;

Whereas the National Network for Youth and its members advocate on behalf of runaway and homeless youth, and provide an array of community-based support to address their critical needs;

Whereas the National Runaway Switchboard provides crisis intervention and referrals to reconnect runaway youth to their families and link youth to local resources that provide positive alternatives to running away from home; and

Whereas the National Network for Youth and National Runaway Switchboard are cosponsoring National Runaway Prevention Month in November to increase public awareness of the life circumstances of youth in high-risk situations, and the need for safe, healthy, and productive alternatives, resources, and support for youth, families, and communities: Now, therefore, be it

*Resolved, That the House of Representatives—*

(1) recognizes the importance of youth runaway prevention; and

(2) urges support for greater public awareness efforts and effective runaway youth prevention programs.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. LYNCH) and the gentlewoman from Illinois (Mrs. BIGGERT) each will control 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

#### GENERAL LEAVE

Mr. LYNCH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and add any extraneous materials.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LYNCH. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, on behalf of the House Committee on Oversight and Government Reform, I am pleased to present House Resolution 779 for consideration. This resolution recognizes the importance of youth runaway prevention and at-risk youth programs. House Resolution 779 was introduced by my friend and colleague, Representative JUDY BIGGERT of Illinois, on September 25, 2009, and was favorably reported out of the Oversight Committee

December 10, 2009, by unanimous consent. Notably, this measure enjoys the support of 55 Members of Congress.

Madam Speaker, according to the National Runaway Switchboard, between 1.6 million and 2.8 million young people run away from home every year. As additionally noted by The New York Times in an October 25, 2009, article on this issue of runaway youth, this societal problem is growing. Specifically, The New York Times reported that the number of contacts made by federally financed outreach programs with runaways increased to 761,000 in 2008, and that was up from 550,000 in 2002, the year that the current methods of counting began.

Notably, National Runaway Switchboard reports that among those young people at greatest risk of running away and facing homelessness are those that have been expelled from school, those that have suffered domestic abuse, and those that have been discharged by State custodial systems without the benefit of an adequate transitional planning program. Additionally, young people who have separated from their parents by death or divorce, live in poverty, and/or are unable to access adequate or mental health resources are similarly at risk of running away and becoming homeless. And the National Runaway Switchboard also reports that youth homelessness affects males and females equally, although females are more likely to seek help through shelters and hotlines.

Despite these concerning reports and statistical programs, there are efforts, such as The National Network for Youth and the National Runaway Switchboard, that provide effective support to runaway youth and assist young people and their families in remaining together by developing partnerships with families, community-based agencies, schools, and faith-based organizations.

These two programs offer invaluable services, including advocacy on behalf of the runaway youth and their families, crisis intervention, and various forms of community-based support to address critical needs. In addition, the two programs have worked together to cosponsor National Runaway Prevention Month, which occurs in November, and attempts to increase public awareness of the life circumstances of youth in high-risk situations and the need for safe, healthy, and productive alternatives, resources and support for runaway youth and their families.

Madam Speaker, in light of the prevalence of the problem of runaway youth as well as youth homelessness, let us take this opportunity to join Mrs. BIGGERT of Illinois to pass House Resolution 779 and recognize the important role that youth runaway prevention and at-risk youth programs play in addressing these issues.

Accordingly, I urge my colleagues to join Mrs. BIGGERT in supporting H. Res.



779, and I reserve the balance of our time.

Mrs. BIGGERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today in strong support of House Resolution 779, the resolution recognizing the goals and ideals of National Runaway Prevention Month. This initiative is sponsored by my good friends at the National Runaway Switchboard and the National Network for Youth.

As the gentleman from Massachusetts mentioned, between 1.6 and 2.8 million youth run away from home each year. According to the National Runaway Switchboard, crisis calls citing economic distress have increased 200 percent since 2006. Incredibly, one in every 50 children will experience homelessness at some point in their lives. And although some youth will return within a few days of running away, others will remain on the streets, never to return. In far too many cases, these children will fall prey to the worst forms of exploitation, including the sex industry. In fact, 30 percent more youth are using the sex industry as a means of survival today than in the year 2000.

There are many reasons why children run away from home. Some are expelled from their homes by their families or separated from their parents because of death or divorce. In other cases, the child may be fleeing from physical, sexual, and emotional abuse at home. Having run away, these youths are now homeless, without means to secure their own basic needs, and are often ineligible or unable to access medical or mental health resources.

There are many individuals and organizations that are doing whatever they can to assist America's runaway youth by providing food, shelter, clothing, and counseling. Others are working with families to prevent a child from running away in the first place. And still others are intervening and advocating on behalf of the children and giving them options other than running away.

With congressional support, the National Runaway Switchboard provides crisis intervention and referrals to reconnect the runaway youth with their families.

□ 1700

It also helps link young people to local resources that provide positive alternatives to running away.

Founded in the Chicago area in 1971, the NRS now provides comprehensive crisis intervention services for at-risk youth nationwide, including a 24-hour crisis hotline.

In 1974, the National Network for Youth was founded to coordinate the work of community-based organizations that now represent hundreds of

youth-oriented organizations and advocate at the Federal level, provide information on available services, and train organizations in best practices.

I want to thank Mr. WOLF, Mr. STUPAK and Ms. LOFGREN, my fellow co-Chairs of the Congressional Caucus on Missing, Exploited and Runaway Children for joining me on this important effort, and I thank the gentleman from Massachusetts (Mr. LYNCH) for managing this bill. And I want to thank Mr. ISRAEL, who has worked with me on this important resolution for years.

It is fitting for Congress to endorse the goals and ideals of National Runaway Prevention Month and to highlight the effort of those organizations that work so hard to help the youth of America who have left or who are considering leaving their homes for a dangerous and uncertain life on the street.

I urge my colleagues to support this resolution.

If the gentleman has no further speakers, I yield back the balance of my time.

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise before you today in support of H. Res. 779, "Recognizing and supporting the goals and ideals of National Runaway Prevention Month." I would like to thank my colleague Representative JUDY BIGGERT for introducing this very important piece of legislation.

It is appalling that in the United States of America, the greatest country in the world, there is a staggering number of runaway and homeless youth. Studies suggest that every year, between 1,600,000 and 2,800,000 youth live on the streets of the United States. Running away from home is a widespread epidemic, and youth aged 12 to 17 are at a higher risk of homelessness than adults. What is terrifying is that traffickers exploit abused runaways or so-called "throwaways"—children abandoned by their parents and living on the streets.

Runaway youth most often are youth who have been expelled from their homes by their families; physically, sexually, and emotionally abused at home; discharged by State custodial systems without adequate transition plans; separated from their parents by death and divorce; too poor to secure their own basic needs; and ineligible or unable to access adequate medical or mental health resources.

There are effective programs supporting and assisting runaway youth. These programs succeed because of partnerships created among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations, and businesses. We must support and create more of these organizations in order to save the future of this nation.

Preventing youth from running away from home and supporting those in high-risk situations should be a family, community, and national priority. The future well-being of the Nation is dependent on the opportunities provided for youth and families to acquire the knowledge, skills, and abilities necessary for youth to develop into safe, healthy, and productive adults.

I want to recognize the National Network for Youth and its members for advocating on be-

half of runaway and homeless youth, and for providing an array of community-based support to address their critical needs. Additionally I would like to recognize the National Runaway Switchboard for providing crisis intervention and referrals to reconnect runaway youth to their families and link youth to local resources that provide positive alternatives to running away from home.

I urge my colleagues to support this legislation and to support National Runaway Prevention Month in November to increase public awareness of the life circumstances of youth in high-risk situations, and the need for safe, healthy, and productive alternatives, resources, and support for youth, families, and communities.

Mr. LYNCH. Madam Speaker, I want to thank Mrs. BIGGERT for her leadership on this very important issue, and I want to urge my colleagues to support House Resolution 779.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and agree to the resolution, H. Res. 779, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. LYNCH. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### COMMENDING THE REAL SALT LAKE SOCCER CLUB

Mr. LYNCH. Madam Speaker, I move to suspend the rules and agree to the resolution (H. Res. 942) commending the Real Salt Lake Soccer Club for winning the 2009 Major League Soccer Cup.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

#### H. RES. 942

Whereas the Real Salt Lake soccer club won the 2009 Major League Soccer Cup, defeating the Los Angeles Galaxy at Qwest Field in Seattle, Washington on November 22, 2009;

Whereas Real Salt Lake played through 2 sudden-death overtimes and a penalty-kick shootout to defeat the Galaxy;

Whereas forward Robbie Findlay scored a goal in the second half to tie the game and force an overtime period;

Whereas defender Robbie Russell scored the decisive fifth goal in the seventh round of the shootout to win the game;

Whereas goalkeeper Nick Rimando blocked 4 shots, including 2 in the shootout, and was named the Most Valuable Player of the game;

Whereas head coach Jason Kreis is the youngest coach to win a Major League Soccer Cup, and coached Real Salt Lake to its



second post-season appearance since joining the team in 2007; and

Whereas Real Salt Lake defeated the top 2 seeds in the Eastern Conference, the first-seeded Columbus Crew and the second-seeded Chicago Fire, to reach the championship game: Now, therefore, be it

*Resolved*, That the House of Representatives—

(1) commends the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup; and

(2) congratulates Real Salt Lake for winning the first Major League Soccer Cup in the franchise's history.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. LYNCH) and the gentlewoman from Illinois (Mrs. BIGGERT) each will control 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

#### GENERAL LEAVE

Mr. LYNCH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and add any extraneous materials.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LYNCH. Madam Speaker, at this time I would like to recognize the principal lead sponsor of this resolution, the gentleman from Utah (Mr. MATHESON), for 5 minutes.

Mr. MATHESON. I thank the gentleman from Massachusetts for yielding.

You know, often when we have a sporting event about to come up, a lot of people predict what's going to happen. But what's great about sports is you never really know what's going to happen. And while we often do a resolution to congratulate teams who have won a major championship, this is kind of special because the Real Salt Lake team went into the playoffs as the last team in. Eight teams made the playoffs for Major League Soccer this year. Real Salt Lake had the worst record, but it's a team that throughout the course of this year has evolved, and in fact there was a stretch of 17 days between two games toward the end of the regular season where the team kind of rededicated itself and went through sort of a mini-training camp again, and when it came out of that camp, it seemed to be a different team.

It got into the playoffs, and of course it was an underdog in its first round, and it won. It was an underdog in the semi-finals, and it won there, too. And then the championship against the L.A. Galaxy. In a shoot-out, the team was able to succeed.

And there's an interesting sign in the locker room of the Real Salt Lake team. The sign says, "The team is the star." And in an era where we often celebrate great individual performances—and there are a number of indi-

viduals that certainly deserve mention—still the concept of a team coming together in a team sport seems to be a pattern and a formula for success. And in terms of the Real Salt Lake soccer team, that is exactly what happened.

So I was thrilled to have the opportunity to offer this resolution. It was interesting going around to my colleagues to collect cosponsorships. This was something that was very accepted on both sides of the aisle. And again, I just think it's great that we have a chance as a Congress to at least congratulate this team on its great accomplishment in winning the Major League Soccer Cup in 2009.

Mrs. BIGGERT. I yield myself such time as I may consume.

I rise today in support of House Resolution 942 commending the Real Salt Lake Soccer Club for winning the 2009 Major League Soccer Cup.

Last month on November 22 in front of over 46,000 fans at Qwest Field—you'd think that we were in the UK with the popularity of soccer out there. But the Real Salt Lake Soccer Club won the 2009 Major League Soccer Cup, defeating the Los Angeles Galaxy, and the final victory of a remarkable five-game winning streak did not come easily. The Real Salt Lake Soccer Club outlasted a formidable opponent through two sudden-death overtimes and a penalty kick shoot-out en route to a brilliant 5-4 victory. Congratulations.

This victory marked the culmination of a remarkable session for a team that I guess barely made the playoffs and only 5 years ago was a lowly expansion team. In fact, this victory is the first major pro sports championship in Utah for almost 40 years.

Congratulations to the Real Salt Lake Soccer Club, their coach, Jason Kreis—the youngest coach to win a Major League Soccer Cup—and to Utah and their very many, many dedicated fans.

Madam Speaker, I reserve the balance of my time.

Mr. LYNCH. Madam Speaker, I just want to amplify what has been said by both the speakers. I think there's a certain magic about this championship, that it was totally unexpected, and I, too, want to congratulate Coach Jason Kreis, who became the youngest coach to win a Major League Soccer Cup, and goalkeeper Nick Rimando, the Most Valuable Player. The Real Salt Lake won their first Major League Soccer Cup in only their second appearance in the Major League Soccer playoffs. As a Red Sox fan who suffered forever, I envy the early success.

I do want to note that after compiling a regular season record of 11 wins, 12 losses, and 7 ties, Real Salt Lake narrowly earned the final spot on the 2009 Major League Soccer Playoffs. This is a Cinderella team if there ever was one.

Despite being the underdog, Real Salt Lake orchestrated a series of improbable victories against the defending champion Columbus Crew and the Chicago Fire before—as has been mentioned here—beating the favored Los Angeles Galaxy in the Major League Soccer Cup.

In the championship game, the Los Angeles Galaxy struck first with a goal by Mike Magee in the 41st minute of play, and many thought that might be it, but Real Salt Lake continued to play hard and managed to tie the game in the 61st minute of the game with a goal by Robbie Findley. The game ended in a tie and eventually went to penalty kicks, which Real Salt Lake won by a score of 5-4.

Real Salt Lake's victory in the MLS Cup stands as a testament to what can be achieved through hard work, dedication, and relentless team spirit. As USA Today wrote after the game, "Major League Soccer has its most improbable champion in its 14-year history."

Real Salt Lake's commitment to teamwork and perseverance in the face of adversity is both inspiring and commendable. Their achievement deserves our praise, and personally I want to applaud the team's players, coaches, management, and its fans who never gave up—all of those who helped in this unprecedented success in the Major League Soccer Cup.

Madam Speaker, let us, as a body, take this opportunity to commend this year's Major League Soccer Cup Champions through passage of House Resolution 942, join with Mr. MATHESON of Utah and congratulate Real Salt Lake on winning the 2009 Major League Soccer Cup.

I yield back the balance of my time.

Mrs. BIGGERT. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and agree to the resolution, H. Res. 942.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. LYNCH. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### HONORING THE AMERICAN KENNEL CLUB

Mr. LYNCH. Madam Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 160) honoring the American Kennel Club on its 125th anniversary, as amended.

The Clerk read the title of the concurrent resolution.

The text of the concurrent resolution is as follows:

H. CON. RES. 160

Whereas the American Kennel Club (AKC), headquartered in New York City, with an operations center in Raleigh, North Carolina, was founded in 1884, operates the world's largest registry of purebred dogs and is the Nation's leading not-for-profit organization devoted to the advancement, study, responsible breeding, care, and ownership of dogs;

Whereas the American Kennel Club approves, sanctions, and regulates the events of its 609 member clubs and monitors more than 4000 licensed and sanctioned clubs throughout the United States who hold events under American Kennel Club rules and regulations;

Whereas in 2008, the American Kennel Club sanctioned or regulated 22,630 sporting events that included breed conformation, agility, obedience, earthdog, herding, field trial, retrieving, pointing, tracking, and coonhound events;

Whereas the American Kennel Club honors the canine-human bond, advocates for the purebred dog as a family companion, advances canine health and well-being, works to protect the rights of all dog owners and promotes responsible dog ownership;

Whereas the American Kennel Club promotes responsible dog ownership and breeding practices and supports thousands of volunteers and teachers from affiliated clubs across the country who teach responsible dog ownership and safety around dogs;

Whereas the American Kennel Club founded and supports the AKC Humane Fund, which promotes the joy and value of responsible pet ownership by supporting breed rescue activities, educating adults and children about responsible dog ownership, and assisting human-services organizations that permit domestic abuse victims access to shelters with their pets;

Whereas the American Kennel Club trains and employs kennel inspectors and conducts over 5,200 kennel inspections each year;

Whereas the American Kennel Club promotes responsible dog ownership, care, and handling of dogs to over 21,000 youths ages 9 to 18 years old enrolled in its National Junior Organization;

Whereas the American Kennel Club is the largest purebred dog registry in the world and the only registry that incorporates health screening results into its permanent dog records;

Whereas the American Kennel Club offers the largest and most comprehensive set of DNA programs for the purposes of parentage verification and genetic identity to ensure reliable registration records;

Whereas the American Kennel Club created and supports the Canine Health Foundation (CHF), which funds research projects focusing on the genetics of disease, the canine genome map, and clinical studies, and has donated over \$22,000,000 to the CHF since 1995;

Whereas the American Kennel Club created and operates DOGNY: America's Tribute to Search and Rescue Dogs, which supports canine search and rescue organizations across the United States;

Whereas the American Kennel Club annually awards \$170,000 in scholarships to veterinary and veterinary technical students;

Whereas the American Kennel Club has reunited more than 340,000 lost pets and their owners through the AKC Companion Animal Recovery (CAR) program;

Whereas the American Kennel Club established the AKC Canine Good Citizen program, which certifies dogs with good manners at home and in the community;

Whereas the American Kennel Club maintains the world's largest dog library and the Museum of the Dog in St. Louis, which houses one of the world's largest collections of dog-related fine art and artifacts, both of which are open to the public; and

Whereas the American Kennel Club celebrates its 125th anniversary this year: Now, therefore, be it

*Resolved*, That Congress honors the American Kennel Club for its service to dog owners and the United States public.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. LYNCH) and the gentlewoman from Illinois (Mrs. BIGGERT) each will control 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

GENERAL LEAVE

Mr. LYNCH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and add any extraneous materials.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LYNCH. Madam Speaker, at this time, I would like to recognize the lead sponsor of this resolution, Representative DAVID PRICE, my friend from North Carolina, for 5 minutes.

Mr. PRICE of North Carolina. I thank the gentleman, Madam Speaker, and I rise today in support of House Concurrent Resolution 160, honoring the contributions of the American Kennel Club on its 125th anniversary.

Over the course of these 125 years, the AKC has established itself as our Nation's leading not-for-profit organization dedicated to the advancement, study, responsible breeding, care, and ownership of dogs. Today, dog owners throughout the United States can be proud of the work the club does to promote the responsible care that dogs deserve.

With offices employing 300 constituents in my district in Raleigh, North Carolina, and additional staff in New York City, the AKC has also become a major source of good-paying jobs.

Each year, the American Kennel Club sanctions and regulates over 20,000 sporting events. It is also a leader in training inspectors and inspecting dog kennels, conducting more than 5,200 kennel inspections each year.

Through its national junior organization, the AKC has enrolled over 21,000 children aged 9 to 18 to promote responsible dog ownership, care, and handling.

In addition to serving as the world's largest purebred dog registry, the AKC has also started a mixed breed program to allow all dogs to participate in a variety of AKC's sanctioned events. Var-

ious AKC programs support the advancement of canine health and well-being, and educate the public on responsible dog ownership.

□ 1715

Madam Speaker, I want to thank Mr. LYNCH, Mrs. BIGGERT, Chairman TOWNS, and Ranking Member ISSA for moving this resolution forward, and my colleague from North Carolina (Mr. COBLE) and 51 other cosponsors for their help as well.

I urge my colleagues to join in support.

Mrs. BIGGERT. Madam Speaker, I yield myself such time as I may consume.

I rise today in support of H. Con. Res. 160, honoring the American Kennel Club for its service to dog owners throughout the United States.

Founded in 1884, the Kennel Club operates the largest registry for purebred dogs in the U.S. and is the country's leading nonprofit organization dedicated to the study of dogs and their care. This organization has 609 member clubs and monitors 4,000 licensed and sanctioned clubs holding events under the American Kennel Club rules and regulations.

I have to say, I did show one dog that I had for a period of time, a basset hound, in Chicago, in the American Kennel Club at one of the shows, and it's quite an experience for anybody to do that. It's well run and well regulated.

The American Kennel Club has taken the lead in promoting responsible dog ownership and breeding practices as well as supporting thousands of volunteers across the country who teach safety to dog owners. In order to maintain the high standards for which the American Kennel Club is known, they conduct over 5,200 kennel inspections each year. And, as Mr. PRICE mentioned, youth ages 9 to 18 are enrolled in the National Junior Organization, which really helps to communicate the proper handling of dogs and allows them the opportunity to participate in shows at an early age.

It has also created a Canine Health Foundation, which funds research projects focused on the genetics of dog diseases and clinical studies. The club annually awards over \$170,000 in scholarships to veterinary students and veterinary technical students and has reunited thousands of dogs with their owners through its Companion Animal Recovery program.

The American Kennel Club has been a part of communities of the United States since 1884 and continues to be a model for teaching responsible breeding, care, and ownership of dogs. So we congratulate the American Kennel Club on its 125th anniversary.

I yield back the balance of my time.

Mr. LYNCH. Madam Speaker, I simply want to stand and join with Mr.

PRICE of North Carolina in honoring the American Kennel Club for its service on behalf of the study, the responsible breeding and ownership of dogs.

I do want to add that in addition to Mr. PRICE, who is the lead sponsor, this resolution has enjoyed the support of over 50 Members of Congress. As others have noted here, there's been a long and illustrious history of the AKC in the United States, and they sanction and regulate the events of its 609 member clubs as well as monitor over 400 licensed and sanctioned clubs located throughout the United States that hold events pursuant to AKC rules and regulations. And as has been noted, the American Kennel Club sanctioned or regulated nearly 23,000 individual events across the country last year.

Moreover, in promoting canine health and well-being, the American Kennel Club has implemented a variety of kennel inspector training initiatives, with AKC-employed kennel inspectors conducting over 5,200 inspections each year. This is all great work that needs to be done and is proudly done by the AKC, an organization that funds research projects focused on the genetics of canine disease and to which the AKC has donated over \$22 million since 1995.

So, in closing, I would simply ask Members on both sides of the aisle to support Mr. PRICE and his resolution.

Ms. LINDA T. SANCHEZ of California. Madam Speaker, I rise in strong support of H. Con. Res. 160, honoring the American Kennel Club on its 125th anniversary.

As someone who is proud to have three loveable four-legged members of my own family, Chavo, Baloo, and Pippin, I was eager to be an original cosponsor of this resolution. The American Kennel Club provides invaluable services to dog owners and breeders across the country. For the past one hundred and twenty-five years, this organization has been counted upon to promote best practices for training, regulation, inspection, and registration.

Most Americans know the club for its annual dog shows, but it does much more. The American Kennel Club awards nearly \$170,000 in scholarship money per year to veterinary students and has donated nearly \$22 million to the Canine Health Foundation. Younger owners also learn proper skills for treatment and care of their dogs through the National Junior Organization.

Every dog owner knows the bond that can develop between a family and its four-legged member. The American Kennel Club has worked to cultivate and encourage this relationship. The individuals of the AKC have selflessly worked to achieve high standards in each club function and for this they are to be commended.

I want to thank the bill sponsor, Representative PRICE and my fellow co-sponsors for their strong support of the American Kennel Club.

Mr. LYNCH. Madam Speaker, I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by

the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 160, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. LYNCH. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today.

Accordingly (at 5 o'clock and 19 minutes p.m.), the House stood in recess until approximately 6:30 p.m.

□ 1830

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mrs. HALVORSON) at 6 o'clock and 30 minutes p.m.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H. Res. 779, by the yeas and nays;

H. Res. 942, by the yeas and nays;

The first electronic vote will be conducted as a 15-minute vote. The second electronic vote will be conducted as a 5-minute vote.

## RECOGNIZING IMPORTANCE OF YOUTH RUNAWAY PREVENTION

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 779, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and agree to the resolution, H. Res. 779, as amended.

The vote was taken by electronic device, and there were—yeas 341, nays 0, not voting 93, as follows:

[Roll No. 969]

YEAS—341

Ackerman	Duncan	Lipinski
Aderholt	Edwards (MD)	LoBiondo
Adler (NJ)	Ehlers	Lofgren, Zoe
Akin	Ellison	Lowe
Altmire	Ellsworth	Lucas
Andrews	Emerson	Luetkemeyer
Arcuri	Engel	Lujan
Baca	Etheridge	Lummis
Bachmann	Fallin	Lungren, Daniel
Bachus	Farr	E.
Baird	Fattah	Lynch
Baldwin	Filner	Manzullo
Barrow	Flake	Markey (CO)
Bartlett	Fleming	Markey (MA)
Bean	Forbes	Marshall
Becerra	Fortenberry	Massa
Berkley	Foster	Matheson
Berry	Fox	Matsui
Biggert	Franks (AZ)	McCarthy (CA)
Bilbray	Frelinghuysen	McCaul
Bilirakis	Fudge	McClintock
Bishop (GA)	Galleghy	McCollum
Bishop (NY)	Garamendi	McCotter
Blackburn	Garrett (NJ)	McDermott
Blumenauer	Giffords	McGovern
Bocieri	Gingrey (GA)	McHenry
Boehner	Gonzalez	McIntyre
Boozman	Gordon (TN)	McKeon
Boren	Granger	McMahon
Boswell	Green, Al	McMorris
Boyd	Green, Gene	Rodgers
Brady (PA)	Griffith	McNerney
Brady (TX)	Hall (NY)	Meek (FL)
Bright	Hall (TX)	Melancon
Broun (GA)	Halvorson	Miller (FL)
Brown (SC)	Hare	Miller (MI)
Brown, Corrine	Harman	Miller (NC)
Brown-Waite,	Harper	Miller, Gary
Ginny	Hastings (FL)	Minnick
Buchanan	Hastings (WA)	Mitchell
Burgess	Heinrich	Mollohan
Burton (IN)	Heller	Moore (KS)
Butterfield	Hensarling	Moore (WI)
Buyer	Herger	Murphy (CT)
Calvert	Herseth Sandlin	Murphy (NY)
Camp	Hill	Murphy, Tim
Campbell	Himes	Nadler (NY)
Cantor	Hirono	Napolitano
Cao	Holden	Nunes
Capito	Holt	Nye
Capps	Honda	Oberstar
Capuano	Hoyer	Obey
Cardoza	Hunter	Olson
Carnahan	Inglis	Oliver
Carson (IN)	Inslee	Ortiz
Carter	Israel	Owens
Cassidy	Issa	Pallone
Castle	Jackson (IL)	Pastor (AZ)
Castor (FL)	Jackson-Lee	Payne
Chaffetz	(TX)	Pence
Chandler	Jenkins	Perlmutter
Clarke	Johnson (GA)	Perriello
Cleaver	Johnson, E. B.	Peters
Coffman (CO)	Johnson, Sam	Peterson
Cohen	Jones	Petri
Cole	Kagen	Pingree (ME)
Conaway	Kanjorski	Pitts
Connolly (VA)	Kaptur	Platts
Conyers	Kennedy	Poe (TX)
Cooper	Kildee	Polis (CO)
Costello	Kilpatrick (MI)	Pomeroy
Courtney	Kilroy	Posey
Crenshaw	Kind	Price (GA)
Cuellar	King (IA)	Price (NC)
Culberson	King (NY)	Putnam
Cummings	Kingston	Quigley
Dahlkemper	Kirk	Rahall
Davis (CA)	Kissell	Rangel
Davis (KY)	Kline (MN)	Rehberg
Davis (TN)	Kosmas	Reichert
DeFazio	Kratovil	Reyes
DeGette	Kucinich	Rodriguez
Delahunt	Lamborn	Roe (TN)
Dent	Lance	Rogers (AL)
Diaz-Balart, L.	Larsen (WA)	Rogers (KY)
Diaz-Balart, M.	Latham	Rogers (MI)
Dicks	LaTourette	Rooney
Dingell	Latta	Ros-Lehtinen
Doggett	Lee (CA)	Roskam
Donnelly (IN)	Lee (NY)	Ross
Doyle	Levin	Rothman (NJ)
Dreier	Lewis (CA)	Roybal-Allard
Driehaus	Linder	Royce

Ruppersberger  
Ryan (OH)  
Ryan (WI)  
Salazar  
Sánchez, Linda  
T.  
Sarbanes  
Scalise  
Schakowsky  
Schauer  
Schiff  
Schmidt  
Schock  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Shadegg  
Shea-Porter  
Sherman

Shimkus  
Shuster  
Sires  
Slaughter  
Smith (NE)  
Smith (TX)  
Snyder  
Space  
Speier  
Spratt  
Stearns  
Stupak  
Sullivan  
Sutton  
Tanner  
Teague  
Terry  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiahrt  
Tierney  
Titus

Tonko  
Towns  
Tsongas  
Turner  
Upton  
Van Hollen  
Velázquez  
Visclosky  
Walden  
Walz  
Waters  
Watson  
Watt  
Waxman  
Westmoreland  
Whitfield  
Wilson (OH)  
Wittman  
Woolsey  
Wu  
Yarmuth

The vote was taken by electronic device, and there were—yeas 347, nays 0, not voting 87, as follows:

[Roll No. 970]

YEAS—347

Ackerman  
Aderholt  
Adler (NJ)  
Akin  
Altmire  
Andrews  
Arcuri  
Baca  
Bachmann  
Bachus  
Baird  
Baldwin  
Barrow  
Bartlett  
Bean  
Becerra  
Berkley  
Berry  
Biggart  
Bilbray  
Bilirakis  
Bishop (GA)  
Bishop (NY)  
Blackburn  
Blumenauer  
Bocieri  
Boehner  
Boozman  
Boren  
Boswell  
Boyd  
Brady (PA)  
Brady (TX)  
Bright  
Broun (GA)  
Brown (SC)  
Brown, Corrine  
Brown-Waite,  
Ginny  
Buchanan  
Burgess  
Burton (IN)  
Butterfield  
Buyer  
Calvert  
Camp  
Campbell  
Cantor  
Cao  
Capito  
Capps  
Cardoza  
Carnahan  
Carson (IN)  
Carter  
Cassidy  
Castle  
Castor (FL)  
Chaffetz  
Chandler  
Clarke  
Cleaver  
Coffman (CO)  
Cohen  
Cole  
Conaway  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crenshaw  
Cuellar  
Culberson  
Cummings  
Dahlkemper  
Davis (CA)  
Davis (KY)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.

Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Dreier  
Driehaus  
Duncan  
Edwards (MD)  
Ehlers  
Ellison  
Ellsworth  
Emerson  
Engel  
Etheridge  
Fallin  
Farr  
Fattah  
Filner  
Flake  
Fleming  
Forbes  
Fortenberry  
Foster  
Fox  
Franks (AZ)  
Frelinghuysen  
Fudge  
Gallegly  
Garamendi  
Garrett (NJ)  
Giffords  
Gingrey (GA)  
Gonzalez  
Gordon (TN)  
Granger  
Green, Al  
Green, Gene  
Griffith  
Hall (NY)  
Hall (TX)  
Halvorson  
Hare  
Harman  
Harper  
Hastings (FL)  
Hastings (WA)  
Heinrich  
Heller  
Hensarling  
Herger  
Hereth Sandlin  
Hill  
Himes  
Hirono  
Holden  
Holt  
Honda  
Hoyer  
Hunter  
Inglis  
Inslee  
Israel  
Issa  
Jackson (IL)  
Jackson-Lee  
(TX)  
Jenkins  
Johnson (GA)  
Johnson, E. B.  
Johnson, Sam  
Jones  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kissell  
Kline (MN)  
Kosmas  
Kratovil

Price (NC)  
Putnam  
Quigley  
Rahall  
Rangel  
Rehberg  
Reichert  
Reyes  
Richardson  
Rodriguez  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rooney  
Ros-Lehtinen  
Roskam  
Ross  
Rothman (NJ)  
Roybal-Allard  
Royce  
Ruppersberger  
Ryan (OH)  
Ryan (WI)  
Salazar  
Sánchez, Linda  
T.  
Sarbanes  
Scalise  
Schakowsky

Schauer  
Schiff  
Schmidt  
Schock  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Shea-Porter  
Sherman  
Shimkus  
Shuster  
Sires  
Slaughter  
Smith (NE)  
Smith (TX)  
Snyder  
Space  
Speier  
Spratt  
Stearns  
Stupak  
Sullivan  
Sutton  
Tanner  
Teague

Terry  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiahrt  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Turner  
Upton  
Van Hollen  
Velázquez  
Visclosky  
Walden  
Walz  
Waters  
Watson  
Watt  
Waxman  
Westmoreland  
Whitfield  
Wilson (OH)  
Wittman  
Woolsey  
Wu  
Yarmuth

NOT VOTING—93

Abercrombie  
Alexander  
Austria  
Barrett (SC)  
Barton (TX)  
Berman  
Bishop (UT)  
Blunt  
Bonner  
Bono Mack  
Boucher  
Boustany  
Braley (IA)  
Carney  
Childers  
Chu  
Clay  
Clyburn  
Coble  
Costa  
Crowley  
Davis (AL)  
Davis (IL)  
Deal (GA)  
DeLauro  
Edwards (TX)  
Eshoo  
Frank (MA)  
Gerlach  
Gohmert  
Goodlatte  
Graves

Grayson  
Grijalva  
Guthrie  
Gutierrez  
Higgins  
Hinchey  
Hinojosa  
Hodes  
Hoekstra  
Johnson (IL)  
Jordan (OH)  
Kirkpatrick (AZ)  
Klein (FL)  
Langevin  
Larson (CT)  
Lewis (GA)  
Loebach  
Mack  
Maffei  
Maloney  
Marchant  
McCarthy (NY)  
Meeks (NY)  
Mica  
Michaud  
Miller, George  
Moran (KS)  
Moran (VA)  
Murphy, Patrick  
Murtha  
Myrick  
Neal (MA)

Neugebauer  
Pascarell  
Paul  
Paulsen  
Radanovich  
Richardson  
Rohrabacher  
Rush  
Sanchez, Loretta  
Sestak  
Shuler  
Simpson  
Skelton  
Smith (NJ)  
Smith (WA)  
Souder  
Stark  
Taylor  
Thompson (CA)  
Tiberi  
Wamp  
Wasserman  
Schultz  
Weiner  
Welch  
Wexler  
Wilson (SC)  
Wolf  
Young (AK)  
Young (FL)

□ 1858

So (two-thirds being in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A resolution recognizing the importance of youth runaway prevention and at-risk youth programs."

A motion to reconsider was laid on the table.

#### COMMENDING THE REAL SALT LAKE SOCCER CLUB

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 942, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and agree to the resolution, H. Res. 942.

This will be a 5-minute vote.

NOT VOTING—87

Abercrombie  
Alexander  
Austria  
Barrett (SC)  
Barton (TX)  
Berman  
Bishop (UT)  
Blunt  
Bonner  
Bono Mack  
Boucher  
Boustany  
Braley (IA)  
Carney  
Childers  
Chu  
Clay  
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Coble  
Crowley  
Davis (AL)  
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Deal (GA)  
Edwards (TX)  
Eshoo  
Frank (MA)  
Gerlach  
Gohmert  
Goodlatte  
Graves

Grayson  
Grijalva  
Guthrie  
Gutierrez  
Higgins  
Hinchey  
Hinojosa  
Hodes  
Hoekstra  
Johnson (IL)  
Jordan (OH)  
Kirkpatrick (AZ)  
Klein (FL)  
Langevin  
Loebach  
Mack  
Maffei  
Maloney  
Marchant  
McCarthy (NY)  
Meeks (NY)  
Mica  
Michaud  
Moran (KS)  
Moran (VA)  
Murphy, Patrick  
Murtha  
Myrick  
Neal (MA)  
Neugebauer

Pascarell  
Paul  
Paulsen  
Radanovich  
Rohrabacher  
Rush  
Sanchez, Loretta  
Sestak  
Shuler  
Simpson  
Skelton  
Smith (NJ)  
Smith (WA)  
Souder  
Stark  
Taylor  
Thompson (CA)  
Tiberi  
Wamp  
Wasserman  
Schultz  
Weiner  
Welch  
Wexler  
Wilson (SC)  
Wolf  
Young (AK)  
Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining on this vote.

□ 1906

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### PERSONAL EXPLANATION

Mr. BRALEY of Iowa. Madam Speaker, I regret missing floor votes on Monday, December 14, 2009 due to travel. If I was present, I would have voted: "Yea" on rollcall 969, agreeing to H. Res. 779—Recognizing and supporting the goals and ideals of National Runaway Prevention Month; "yea" on rollcall 970, agreeing H. Res. 942—Commending the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup.

## PERSONAL EXPLANATION

Mr. MICA: Madam Speaker, delays to US Airways flight 859 caused me to be unavoidably detained, and I was unable to vote on rollcalls 969 and 970. Had I been present, I would have voted "yea" on each of these measures.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. RES. 648

Ms. HIRONO: Madam Speaker, I ask unanimous consent to remove my name from H. Res. 648.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Hawaii?

There was no objection.

## KC-X COMPETITION

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS: Madam Speaker, America's workers and America's industries have never shied away from competition. Our readiness to compete is a part of who we are. It is a driver that has been fundamental to our Nation's success.

However, competition must be fair if it is to serve us well. This evening, I rise to draw attention to a fundamentally unfair competition that our Department of Defense seems intent on pursuing: the competition for the Air Force's KC-X tanker program.

One of the proposals for this solicitation will be based on an Airbus A330 aircraft. This aircraft received \$5.7 billion in government subsidies that the World Trade Organization has ruled to be in violation of the rules that the WTO nations have agreed to. In total, Airbus platforms have received over \$15 billion that the WTO has found to be illegal, agreeing with the complaint filed by the U.S. Government in 2004. These subsidies have contributed to a 40 percent decline in U.S. market share for commercial aircraft and the loss of thousands of jobs. Lockheed and McDonnell Douglas are no longer in the business.

In spite of this record, the Department of Defense stubbornly refuses to include any provision in the tanker solicitation that accounts for these subsidies. This simply isn't right.

## THE AIR REFUELING TANKER

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT: Madam Speaker, over the past several months, Airbus and their congressional allies have been pushing the Pentagon to change the requirements for the air refueling tanker so that the French company will win

the contract. Just last month, the Airbus team sent the Department of Defense a clear ultimatum: If you don't change your requirements, we won't bid. The Air Force needs an air refueling tanker that meets the needs of the warfighter, not the needs of the French.

Airbus is gambling that the threat of not having a competition will force the Air Force to change their requirements, the very same requirements that were determined by the Air Force to meet the needs of the warfighter. To change them to meet the needs of the competition does not serve the interests of our fighting men and women or the Nation.

If Airbus chooses not to offer the tanker in a bid that the Air Force needs, then that's their choice, and then the decision will be an easy one for the Pentagon. After 7 years of trying to recapitalize the KC-135 tanker fleet, we know what it takes to ensure that the warfighter gets the tanker they need and the taxpayer gets the protections we need, even in a sole-source award.

Our military and American workers shouldn't have to wait any longer for the tanker they both deserve: an American tanker built by American workers at an American company.

## WTO AIRBUS TANKER RULING

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO: Madam Speaker, after 23 straight months of job losses, we must do more to preserve and to create American jobs, and we must ensure a fair and a level playing field for U.S. manufacturers.

The World Trade Organization recently found that Airbus has been receiving illegal subsidies that violate global rules and stifle real competition in the aerospace industry. We should not reward these illegal trade practices. As such, the Pentagon should take into account this ruling when considering bids for the next generation air refueling tanker contract.

Awarding this contract to Airbus means the loss of at least 14,000 American jobs to Europe. In today's economy, we cannot afford any more job loss. We cannot continue to allow our foreign competitors an unfair economic advantage nor can we let our domestic defense manufacturing base erode as we have.

I strongly urge the Department of Defense to consider these billions of dollars in illegal European subsidies. When bidding the tanker contract, it is time to put our workers, American workers, and our security first.

## SHAKE-A-LEG MIAMI

(Ms. ROS-LEHTINEN asked and was given permission to address the House

for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN: Madam Speaker, I would like to recognize the noble work of a wonderful south Florida organization, Shake-A-Leg Miami. Founded in 1982 by Harry Horgan, Shake-A-Leg Miami helps children and adults who have physical, developmental, and economic challenges. How does it do that? Through the joy of sailing.

Harry, who was paralyzed in a tragic automobile accident at the age of 22, did not let his disability keep him from his lifelong love of sailing. With optimism and determination, Harry created Shake-A-Leg Miami. Its programs have made a difference in the lives of over 10,000 individuals. For the past 25 years, Shake-A-Leg has been instrumental in empowering individuals so that they can reach their highest potential for an independent life.

My youngest daughter volunteered at Shake-A-Leg, and the experience for both participants and volunteers is life-changing. Shake-A-Leg is a remarkable organization whose contributions have made the lives of countless children more fulfilling. I am honored to have such a fine organization in my congressional district.

## UNFAIR AIRBUS COMPETITION

(Mr. INSLEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INSLEE: Madam Speaker, we cannot allow a great injustice to the American worker, to the American warfighter and to the American taxpayer, which would happen if a contract for the Air Force tanker goes to the Airbus contractor without taking into consideration these massive illegal subsidies that the Airbus competitor has received.

We have decided and we have determined, the U.S. Government, that Airbus has received multibillion dollars of illegal subsidies, which have allowed them to develop a tanker with which they now have to bid against an American contractor, the Boeing Company.

We are calling upon the administration to do the right thing, which is in the contracting process, and figure into the respective bids the amount of the illegal subsidies that the Airbus company has received. And they can do that by having the countervailing duty section of the U.S. Department of Trade Representative determine the amount of that illegal subsidy. When that illegal subsidy is added to the Airbus bid, the right thing will happen, and we will have American jobs.

□ 1915

## WHITE HOUSE TRESPASSERS

(Mr. POE of Texas asked and was given permission to address the House for 1 minute.)

Mr. POE of Texas. Madam Speaker, in a purported letter to the editor, Alicia Church states, "I don't understand why the White House is so upset about two party crashers . . . Is it appropriate and politically correct to call them party crashers just because they trespassed?"

"Does that make them criminals? Isn't that discrimination? Shouldn't they be rewarded for such bold and brave behavior? Maybe they were just trying to feed their family? Isn't it more appropriate to call them undocumented guests? Just because they weren't officially invited guests doesn't mean they should be treated like criminals."

"Maybe they should get free health care, free housing, free legal services, and free White House green cards so next time they can enter legally. And they should be able to bring all of their relatives and family members, too."

"How can anyone be mad at them just because they crossed over some arbitrary man-made border? They were only doing things that regularly invited guests didn't want to do, like hang out with Vice President BIDEN. How can the White House punish these poor, oppressed, undocumented visitors?"

Madam Speaker, how ironic; the government panics about two White House trespassers while the thousands who illegally trespass across our borders are completely ignored.

And that's just the way it is.

COMMEMORATING THE LIFE OF  
EDWARD JOSEPH KELLY III

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute.)

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise with a very sad duty today. As the chairwoman of the Transportation Security and Infrastructure Protection Committee on Homeland Security, I rise to pay tribute to the late Edward Joseph Kelly III, who passed away this month.

He was born October 1, 1942, in New York. He joined the Navy and served his country and graduated from the University of Scranton in 1967, and he retired as vice president and controller of Emery Worldwide in 2000.

He truly is an American hero, for after 9/11 he could not sit still. In response to that horrific tragedy, Mr. Kelly left retirement to join the Department of Homeland Security, signing on as the first general manager of the air cargo security for the Federal Transportation Security Administration, whose mission is securing the Nation's transportation network.

Air cargo industry officials have indicated and gone on record to say he transformed the industry. If future airline passengers feel safe about what is carried in the belly of a cargo plane, then they should credit Mr. Kelly. Officials who worked with him said that he was an impeccable professional. He loved this country. Yes, a Navy man. And the president of the Cargo Security Alliance said that he was front and center on this work.

Madam Speaker, his contributions were immeasurable. He is a great American hero. I pay tribute to this distinguished American, Edward Joseph Kelly III. Thank you, and may you rest in peace.

Madam Speaker, I wish to take this time to commemorate the life of a great American, and an outstanding public servant—Edward Joseph Kelly III, who died Saturday at Inova Alexandria Hospital of Legionnaires' pneumonia.

He was born Oct. 1, 1942, in New York, the third child and oldest son of the late Edward and Jessie Cobane Kelly. Mr. Kelly completed service in the Navy before graduating from the University of Scranton in 1967, and retired as vice president and controller of Emery Worldwide in 2000.

In response to 9/11, Mr. Kelly left retirement to join the Department of Homeland Security, signing on as the first general manager of air cargo security for the Federal Transportation Security Administration, whose mission is securing the Nation's transportation network.

Air cargo industry officials have gone on record saying he had transformed their industry. If future airline passengers feel secure that the commercial cargo in the belly of their flight will not blow up or poison them, they should credit Mr. Kelly, officials said. Walt Beadling, president of the Cargo Security Alliance, a trade group, told reporters "He's been front and center in this work of implementing the plan to secure air cargo." Acting TSA administrator Gale D. Rossides wrote in an e-mail to employees, "Ed's contributions to TSA are immeasurable."

He was responsible for implementing a Federal law that requires screening of all cargo transported by flights originating in the United States by next August. The voluntary system established by Mr. Kelly and his team shifted screening responsibility to shippers before cargo reach airports. TSA certifies shippers and their facilities.

His friendships span the globe. He and his wife, Ann, enjoyed a network of family and friends on many continents and most loved returning home to Lake Ariel and Ireland. He loved the sea and spent his early retirement years traveling by boat from San Francisco, to Newport, R.I. On this trip, he and Ann bravely cruised the Pacific coasts of California, Mexico and Central America, passed through the Panama Canal into the Atlantic and crossed the Caribbean Sea.

He is survived by his wife and three sons, Edward IV and wife, Sasithorn, Bangkok, Thailand; Packy and wife, Robyn, Redwood Shores, Calif.; and Daniel and wife, Crissy, Fairfield, Conn.; three sisters, Maureen Kelly Dufour, Kathleen Kelly Hoban and Rosemary

Kelly Morgan; three grandchildren, Devin, Mairead and Catherine; several nieces and nephews.

That is why I stand here today—to offer my condolences to Mr. Kelly's family, and gratitude for his public service.

## DEBT CEILING

(Ms. GINNY BROWN-WAITE of Florida asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. GINNY BROWN-WAITE of Florida. Madam Speaker, it is a darn good thing that the credit reporting agencies don't factor in each American's share of the national debt when they calculate an individual's credit scores. If the agencies did, there would be quite a few otherwise-eligible borrowers who couldn't get a mortgage or a car loan.

Think about that. I wonder why they don't include the national debt? Perhaps it's because no one seems to think it's real. Madam Speaker, it is real.

Last year, America spent \$250 billion in interest payments alone, \$250 billion. That's \$250 billion a year we cannot invest in America's future. Yet, in spite of this situation, Congress is preparing to increase the debt again by another \$1.8 trillion. Attaching it to a must-pass Defense bill holds our troops hostage. And it might be convenient politics, but our country deserves much better.

Congress should use the TARP returns to pay down the debt and redirect the failed stimulus money to tax reforms that actually work. Wouldn't that be unique?

## GLOBAL WARMING

(Mr. QUIGLEY asked and was given permission to address the House for 1 minute.)

Mr. QUIGLEY. Madam Speaker, coal miners used to keep a canary with them to let them know when the air was getting dangerous. Today, we have much more sophisticated measurements, but the concept is still the same: The canary is dying.

Over 200 peer-reviewed studies have concluded that global warming is real and potentially catastrophic. No scientific peer-reviewed studies have found the opposite. None. But some of my colleagues have seized on a few illegally hacked e-mails to convince themselves that the little bird is fine. Well, that must be comforting, except it ignores the nasty case of asthma from increased emissions and the tiny bits of soot that thicken the canary's blood and boost harmful inflammation.

Watching my colleagues hold the canary like Monty Python's dead parrot would be funny if it were just an imaginary bird, but it's not a canary we're killing with increased emissions. It's our children.

And that's the way it will always be.

#### BREAST CANCER AWARENESS

(Mr. THOMPSON of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMPSON of Pennsylvania. Madam Speaker, breast cancer mammograms have been in the news with concern for Federal Government guidelines on who should have a mammogram and at what age.

More relevant is the fact that breast cancer is the most common cancer among American women next to skin cancers. The American Cancer Society estimates that 40,170 women will die from breast cancer in 2009.

As daunting as that figure is, there is another figure that tells the story. At this time, there are more than 2.5 million breast cancer survivors in the United States.

Death rates from breast cancer have been declining since about 1990. The decreases are believed to be the result of earlier detection through screening and increased awareness, as well as improved treatment.

Guidelines are simply that. Every woman should talk to her physician about her past history and current health to determine the frequency of mammogram exams.

This disease touches us all. I doubt there is anyone here who doesn't have a relative who has suffered from breast cancer. In this season of giving, encourage your loved ones to talk to their physicians and have screening tests as often as they suggest. It will save lives.

#### WHITE HOUSE CONSIDERS BUSINESSES THE ENEMY

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Madam Speaker, the White House considers business owners the opposition, but don't take my word for it. In his autobiography, Mr. Obama wrote that when he worked in the business world, he felt like a "spy behind enemy lines."

So it's no surprise that as President, he has appointed fewer people with business backgrounds to Cabinet positions than any other President in over a century, according to an analysis by J.P. Morgan. Maybe that explains why the President favors government control of the health care, energy, automobile, banking, insurance, and student loan industries.

Perhaps the administration has forgotten that without employers, there would be no employees, and that small businesses generate 65 percent of the new jobs in America. It is the private sector, not the government, that

makes America productive and prosperous. Business owners are our friends, not the enemy.

#### RUNAWAY SPENDING

(Mr. INGLIS asked and was given permission to address the House for 1 minute.)

Mr. INGLIS. Madam Speaker, this week follows a surreal week last week. Last week, we did an omnibus bill that spends \$446.8 billion. That's on top of the \$634.2 billion from other discretionary spending. Those are increases of 7.6 percent over 2009 levels and 16.8 percent over 2008 levels. This is on top of the mandatory spending programs like Social Security, Medicare, and Medicaid.

That is why this week the surrealness will continue as the majority will find it necessary to increase the debt limit from \$12 trillion, which is 20 percent of GDP. They will raise it by another \$2 trillion.

Madam Speaker, we must stop the runaway train. We must stop the runaway spending.

#### RECOGNIZING THE SACRIFICE OF OUR NAVY SEALS AND THE INJUSTICE CURRENTLY OCCURRING

(Mr. BOOZMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOOZMAN. Madam Speaker, I rise today to recognize the valor, sacrifice, and contribution of the United States Navy SEALs and to bring attention to a great injustice.

Our SEALs routinely defend our Nation in some of the most dangerous places in the world, sacrificing their lives for their mission and our country; yet recently, three of our SEALs have been forced to defend their honor.

The alleged mastermind of the brutal murder of four American security contractors claims that these SEALs punched him in the stomach while he was being detained under supervision. Despite reports that he was armed at the time, he was captured without the SEALs firing a shot. Because of the accusation, these SEALs opted to have a court martial rather than a nonjudicial punishment that would have essentially been an admission of guilt.

Rather than a trial, we should be giving these guys a medal. I am pleased that these men will have the opportunity to defend their honor and confident that justice will be served. At this time, we must not waste the time and resources of our Armed Forces on political correctness and facts based on hearsay of terrorists and other people who wish our country harm.

#### GIVING A VOICE TO TEA PARTY ACTIVIST

(Mr. McCAUL asked and was given permission to address the House for 1 minute.)

Mr. McCAUL. Madam Speaker, tonight I want to give a voice to one of my constituents by the name of Jennifer Heiden. She is a TEA party activist. She wrote me a letter. She said, "My name is Jennifer Heiden. I am a wife, a daughter, a mother, a sister, business professional, and grassroots leader."

"We are dismayed at this Congress and its proposed health care legislation. You stress accountability and transparency, but fail to disclose to the American people that its 20-year costs are in the \$4.9 trillion price range once you cut through the budget gimmicks. You avoid town halls and citizen gatherings since you found that we had questions you could not or would not answer. And you draft bills in secret and give no one sufficient time to read them or understand them."

"The majority of Americans do not want this bill, and you know it. Do what this country elected you to do. Scrap this legislation and give us health care reform that will help—not hurt—this country and its citizens."

#### WE MUST STOP UNNECESSARY SPENDING

(Mrs. SCHMIDT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHMIDT. Madam Speaker, I rise once again to remind this body that we must stop the unbridled spending that continues to raise our deficit.

We have been reminded by Moody's that we are in jeopardy of losing our AAA rating by 2013 if we do not get our spending under control. Today, Barron's echoed the same warning.

Our debt ceiling currently is \$12 trillion. It is my understanding we are going to be asked to raise it an additional \$2 trillion this week. Enough is enough. We must stop this unnecessary spending and stop it now before it is too late. We cannot spend our way into prosperity. I fear the results.

□ 1930

#### SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

#### PAYING TRIBUTE TO COACH BOBBY BOWDEN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. ALT-MIRE) is recognized for 5 minutes.



Mr. ALTMIRE. Madam Speaker, I rise tonight to pay tribute to Bobby Bowden, who will coach his last game on January 1. Coach Bowden will retire following the Gator Bowl, ending an amazing career as one of college football's most successful coaches.

Many of us may not realize that Bobby Bowden was an outstanding football player in his own right. He graduated from Woodlawn High School in Birmingham, and he achieved his dream of playing quarterback for the University of Alabama before transferring to Howard College, now Samford University.

After college, Bowden worked his way up to becoming head coach for 4 years at Samford, and he later was head coach for 6 years at West Virginia, but it's his 34 years as head coach at Florida State for which he will most be remembered.

In 1976, he took the reins of his Seminoles team that had gone winless the previous season. From that unlikely beginning, he built one of the powerhouses of modern college football. During his 34 years at the helm of Florida State, he led his teams to 31 bowl games, including the past 28 years in a row, during which he once went 14 consecutive bowl games without a loss. He was named coach of the year six times, and is already a member of college football's hall of fame. From 1987 to 2000, Bowden's Florida State teams compiled a streak of 14 consecutive years in the season-ending top 5. During that time, he coached two Heisman Trophy winners, and his Seminoles played in five national championship games, winning two.

It was in the beginning of that streak in the late 1980s that I first encountered Coach Bowden. As he did with so many, he left upon me an indelible impression. As a walk-on on the Seminole football team, I had the good fortune to see firsthand Coach Bowden's rare skill on the practice field, but it was his kindness and generosity away from football that I will most remember.

While serious about winning, with the results to prove it, what most stands out about Bobby Bowden is his love of people. Known for his down-to-Earth colloquialisms and disarming Southern drawl, he can charm even the most intense personality. He is never at a loss for words, and sportswriters across the country will surely miss his quick wit and accessibility.

On the Seminole practice squad, I occupied, perhaps, the lowest possible position on the team, yet Coach Bowden treated me and every player with respect. When you crossed paths with him, he never failed to ask about your schoolwork, your family, your hometown or about some other personal facts about you that he somehow remembered. I used to think that this was just coincidence or somehow related just to me, but what you quickly

learn in spending time around Bobby Bowden is that he is like that with everyone, not just on the team or on campus but anywhere he goes in the country, whether it be to an alumni meeting, to a business luncheon, or to a church service. He has that rare ability to make a personal connection with everyone he meets. It is why the National Citizenship Award, presented annually by the Fellowship of Christian Athletes, now bears his name.

So, for all of his success as a football coach, the true legacy of Bobby Bowden is the impact he has on people and on the lives he has touched. Just as much as his coaching record, the relationships that he built and the friends he made during his 80-plus years and counting will long be remembered. My best wishes and congratulations go out to Bobby and Ann Bowden as they now embark on this next chapter of their lives together.

#### CLIMATE CHANGE IN IRAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE of Texas. Madam Speaker, the whole world has been watching what has taken place in Copenhagen, Denmark last week and this week. All the talk is about climate change and how man is affecting the climate, but what we need in this world is a climate change in Iran. That's right. We need to change the atmosphere in Iran with what has taken place with the little man from the desert, Ahmadinejad.

Last week and even this week, thousands of students—and here is a photograph of some of them—have taken to the streets to protest the regime of Ahmadinejad and how oppressive it is. They are complaining in this peaceful protest against the tyranny against the people of Iran. Not only Ahmadinejad, but they are protesting the radical mullahs and the Iranian military.

You see, these young people want what everybody throughout the world wants—freedom. Somewhere down in the way that we are made there is this spark; there is this flame of freedom. The people in Iran don't have that, so the young people have taken to the streets—the sons of Iran, the daughters of democracy—and they are protesting the oppressive government. They are protesting the fraudulent elections that got Ahmadinejad elected last summer. They are protesting the fact that they have no freedom in their own country. They have suffered the consequences for these protests. They have been beaten. They have been teargassed. They have been hauled off to jail.

The press has been oppressed as well. In fact, what has occurred is that the Internet has been closed, and cell phones have been blocked—all in the

name of preventing young people and others from protesting this oppressive regime.

We all remember this past summer how numerous students were murdered in the streets just because they complained to their government about what was taking place. Already 80 of those protesters, political prisoners, have been tried by the star chamber—in secret, away from anybody in a public trial—and 80 of them have received sentences in an Iranian prison of 15 years or more, and 5 of them have received a sentence of the death penalty.

Why? What is their crime?

Their crime is objecting to the oppression of their own government, and for that, they are punished. Of course, others have been shot in the streets just because they have taken to the streets to protest their government.

You know, the students aren't the only ones who have been arrested. Journalists have been arrested. Clerics, who call themselves "reform clerics," and other people—all for the same reason—objecting to their government. They object to what has taken place.

By blocking the cell phones and Internet access, the government had hoped to keep the word from getting out to the rest of the world about this pollution, about this horrible climate in Iran, but the word has gotten out—photographs such as this one here. Here is another one of a young Iranian student having been beaten for taking to the streets to protest his government last week. This one also escaped the controlled press of the Iranian Government.

You know, Iran violates its own constitution by not allowing its people to protest and to lawfully assemble. They are standing for basic human rights. That's right—the right to peaceably assemble and to object to your government and what it's doing to you. It's the right of free speech—a basic human right. It's the right of a free press, which is a right we take for granted in this country.

So we need a regime change in Iran. The way to do that is to help these young people and the people who want to change their regime. We must support them. This country should support them in any way that we can.

Yes, President Ahmadinejad is the pollution of the world, and we need a change of climate in Iran. The students are sending a message to Iran's rogue government that you can beat us, you can arrest us, you can imprison us, but you will not stop us, and you will not intimidate us because we are not going away.

Good for them. We should be proud of those students. We should support them. We should have a climate change in Iran.

And that's just the way it is.

# THE LOSS OF AMERICA'S HEROES AND OF AMERICA'S ECONOMY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. MURPHY) is recognized for 5 minutes.

HONORING THE LIFE AND SERVICE OF UNITED STATES MARINE CORPORAL XHACOB LATORRE

Mr. MURPHY of Connecticut. Madam Speaker, before I address the issue which has brought me to the floor tonight, I want to recognize the ultimate sacrifice made by a young man from my district in the service of the United States Marine Corps.

I am sad to report that my office received news last week that Marine Corporal Xhacob LaTorre, from Waterbury, Connecticut died due to wounds received in combat in the Helmand province of Afghanistan. Corporal LaTorre's fatal injuries were the result of a roadside bomb.

I speak for myself and for my constituents in expressing my appreciation for this young man's service in the defense of his country. Corporal LaTorre, who would have turned 22 last weekend, is one of America's heroes. I send my prayers and my condolences to his family; to his wife, Frances; to his son; and to his brother, Corporal Daniel LaTorre, on this tragic loss. We will never forget the sacrifice he has made for us.

## MOMENT OF SILENCE

Mr. MURPHY of Connecticut. I ask those in this Chamber this evening to join me in a brief moment of silence. Thank you.

## THE AMERICAN ECONOMY IS BEING SENT OVERSEAS

Mr. MURPHY of Connecticut. Madam Speaker, I have come to the floor tonight to speak about an issue important to my home State. As you can see by the 1-minute speeches given here earlier tonight to this entire Nation, Connecticut pioneered America's shipbuilding and aerospace industries. Shops which were once bustling with workers are now silent. When those shops went away, thousands of good-paying jobs for hardworking people in my State went away with them. We just learned recently that Connecticut will lose another 1,000 jobs when a major defense supplier shuts two of its facilities and moves its operations to Singapore and Japan.

At this moment, 158,000 people in my State and almost 16 million across this country are out of work—many of those as a result of the transfer of military manufacturing jobs overseas. At the same time, the Department of Defense and other Federal agencies have created thousands of waivers of our domestic sourcing legislation, like the Buy American Act, which has resulted in billions of taxpayer dollars being sent to overseas companies.

Now, in working with a group of Members who is dedicated to shoring

up the rules that require the government to purchase domestically, I've been drafting legislation which will seek to address the growing number of loopholes that allow companies to take taxpayer dollars overseas. My legislation would begin to reorient and to build up our domestic manufacturing and construction base, which has been hit so hard in recent times, by using taxpayer dollars to do it. Taxpayer dollars are already going to buy, too often, overseas products.

We don't seek to interfere with the decisions of private businesses. We do, however, seek to make it clear that the U.S. Government values American-made products and that taxpayer money shouldn't be shipped off to a foreign country to contribute to the bottom line of that foreign company when American businesses can produce the same high-quality goods right here at home.

I believe strongly in international trade, and I accept the necessity of an interdependent global economy. However, what we are discussing here is not just economics, and it is not simply a race to find the lowest price. It is about national security. It is especially about national security with regard to the Department of Defense. A stable supply of domestically manufactured defense products is imperative to this Nation's long-term safety and common defense. We have a real opportunity here to both reinvigorate our domestic capacity for manufacturing while enhancing our national security.

With that in mind, I, along with a group of Members, am crafting legislation which will seek to assist firms that are victims of the loopholes in our current Buy American and Buy America regime. This legislation will target assistance to suppliers that manufacture or that could manufacture products that Federal agencies have deemed nonavailable from domestic sources, which is a misleading designation. Under current law, an agency can determine that an item is nonavailable in sufficient quantity or quality in the United States and then can just waive the Buy American restrictions. Therefore, the assistance in my legislation will target firms that make these nonavailable items right here in the United States but that might not have the capacity right now to meet the agency's needs.

These firms will use this assistance to increase their capacity so that they can be the suppliers to the American Government rather than ceding that ground to foreign firms. It will also assist suppliers that manufacture an item which is currently being bought through the Buy American provisions. If that firm is in danger of going out of business, then let's step up and help it stay in business because the only place that we are left to go after that firm folds is to a foreign supplier.

Madam Speaker, my colleagues came to this House floor earlier tonight to talk about the major Federal tanker contract which is going to a foreign supplier—Airbus. It is just one example. It is a major example of a growing trend in defense work going overseas. We have had enough. It is time for us as a Congress to deem this unacceptable, to strengthen the Buy American provisions, and to bring our taxpayer dollars back home.

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## THE LEANES FAMILY—MILITARY FAMILY OF THE YEAR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES. Madam Speaker, I have the distinct privilege of representing many of this Nation's wonderful military families. The Third District of North Carolina is home to Marine Corps Base Camp Lejeune, Seymour Johnson Air Force Base and Marine Corps Air Station Cherry Point.

Every year, the National Military Family Association honors the top families from each of the seven uniformed services: Army, Navy, Air Force, Coast Guard, Marine Corps, Public Health Service and the National Oceanic and Atmospheric Administration. One family is chosen from these seven as the National Military Family of the Year.

This year I am very pleased to say that the Leanes family from Camp Lejeune, North Carolina, is not only this year's Marine Corps Family of the Year but also the National Military Family of the Year.

Sergeant Dennis Leanes and his wife, Kristy, are dedicated and committed to serving this country as well as their community. The Leanes' six children, Jordan, Syvannah, Bethany, Marissa, Emily and Karianne are following their parents' example in giving back to their community as well.

In 2006, after 8 years of working in a civilian job, Dennis' love for his country led him to re-enlist in the Marine Corps, take a pay cut and uproot his family. The Leanes embraced life in the Camp Lejeune community and incorporated volunteering in their daily lives.

Dennis and Kristy run Scout meetings, coach sports teams, lead family readiness meetings and help their neighbors in any way they can. Kristy also dedicates a major portion of her time to home schooling all six of the Leanes children.

Jordan fixes bicycles and donates them to charity. Syvannah organized a wonderful "Wounded Warrior Thank You" project at church. Bethany volunteers her babysitting services for moms whose husbands are deployed.

The three younger children, Marissa, Emily and Karianne, help out by baking cookies and bread for various projects and are quick to share with their neighbors.

Dennis and Kristy have taught their children by example what it means to be brave and strong. They have taught their children the importance of volunteering and what it means to serve your neighbor and community. Our military families need to know that the Members of Congress and the people of this Nation appreciate them and all they do for our country.

May God continue to bless our troops, their families, and this great Nation.

#### FINANCIAL REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Ms. MOORE) is recognized for 5 minutes.

Ms. MOORE of Wisconsin. Madam Speaker, I could not resist coming to you and speaking to you about my experience when we passed the financial reform bill last Friday.

You know, Wall Street has provided an unparalleled life-style for Americans. The speculation and the brilliance and genius of futures and credit default swaps and derivatives have provided us with a life-style where every bride can have a diamond ring and every handsome groom can have a gold band. We can have two cars, one a gas-guzzling SUV, lobster dinners, McMansions, Madam Speaker, with six bedrooms, five fireplaces, 4½ baths but, of course, not enough closet space for all the shoes and designer clothes that we have.

Last fall, all of this balloon spending came to a crash. And it was amazing to me, Madam Speaker, that when we tried to rein in Wall Street and some of the speculation, that there was tremendous resistance from both parties with developing a Consumer Financial Protection Agency, putting together an assessment from all of these “too big to fail” companies to pay for an orderly dissolution of the mess that they created. I can tell you, Madam Speaker, it was amazing to me.

This bill that we passed, for those who have asked the question, what is government for, this bill demonstrates better than anything that I have seen what the purpose of government is, and that is to regulate unfettered greed and avarice that can bring our country and, indeed, the world to financial brink.

#### CONDEMNING THE ARREST OF JORGE LUIS GARCIA PEREZ “ANTUNEZ” AND YRIS PEREZ AGUILERA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. LINCOLN

DIAZ-BALART) is recognized for 5 minutes.

Mr. LINCOLN DIAZ-BALART of Florida. Madam Speaker, Senator BOB MENENDEZ gave an important speech last Thursday, December 10, opposing concessions to the dictatorship of Cuba.

In his speech Senator MENENDEZ read out loud an open letter which had been sent by one of Cuba's true heroes—a giant of the resistance to the Cuban tyranny—Jorge Luis Garcia Perez “Antunez,” here photographed with his wife, Yris Perez Aguilera, a letter to the titular Cuban dictator, Raul Castro, on Tuesday, December 8.

“Mr. Raul Castro,” Antunez wrote, “for months now my wife Yris Tamara Perez Aguilera and I have been kept in extrajudicial house arrest by your political police. Mr. Dictator, let me ask you some questions that may help clarify some doubts for those fellow countrymen of mine who may at some point have had hope your government would reduce the repression or even carry out democratic openings.

“What do you feel when you incite or allow people who call themselves men to beat and drag through the streets women like Damaris Moya Portieles, Maria Diaz Rondon, Ana Alfonso Arteaga, Sara Marta Fonseca, Yris Perez and now more recently the blogger Yoani Sanchez?

“How can you sleep after your subordinates cruelly beat, more than once, Idania Yanez Contreras while she was pregnant?

“How can you and your government talk about the battle of ideas, when ideas constantly face repression with beatings and arrests and years of imprisonment?

“Maybe your followers will not dare respond, but I who am in the long list of those who do not fear you, will answer:

“You act like that because you are a cruel man, insensitive to the pain and suffering of others; because, loyal to your anti-democratic and dictatorial vocation, you are convinced that dictatorships such as yours can only sustain themselves by fear and torture, and that even the most minimal of openings can end the only thing that interests you: staying in power.

“And finally, speaking of my case in particular, I will respond to you without the need to first ask of you the motives for such focused repression against my person.”

Antunez, by the way, Madam Speaker, now 45 years old, was a political prisoner for 17 years until 2007.

He continued to write, “Your government and its lackey-repressive forces cannot forgive my two great and only crimes. First, that for almost two decades of torture and cruelties during my unjust and severe imprisonment, you were not able to break my dignity and my position as a political prisoner.

Second, because despite all the violence and harassment—and above all the risk of returning to prison—I have decided to not abandon my country, where I will continue fighting for a change I believe to be as necessary as it is inevitable.”

Signed, in the City of Placetas, by Jorge Luis Garcia Perez “Antunez”, Tuesday, December 8.

On Friday, December 11, Antunez and his wife, Yris Perez Aguilera, she is a heroine, were violently arrested. The doctrine of Fidel Castro's hero Adolf Hitler was again devoutly followed: “The very first essential for success is a perpetually constant and regular employment of violence.”

“This is kidnapping,” yelled Yris. “Long live human rights,” shouted Antunez as they were being beaten and taken away by the Castros' political police on Friday.

I condemn the brutal arrest of these two heroes by the Castros' cowardly thugs. The days of the Castros' racist totalitarian tyranny in Cuba are coming to an end. Those who have collaborated with the violence and brutality of the racist regime will face justice and eternal shame. Antunez, Yris Perez Aguilera, her brother, Mario Perez Aguilera, Oscar Elias Biscet, Darsi Ferrer and many other heroic political prisoners of Cuba will be elected the leaders of free Cuba. That change is as necessary as it is inevitable. Because of heroes like Antunez and Yris Perez Aguilera, the day of freedom in Cuba is approaching.

#### MIAMI-DADE COUNTY MEMORY WALK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

Ms. ROS-LEHTINEN. Madam Speaker, I rise to recognize the success of the Miami-Dade Memory Walk sponsored by the Alzheimer's Association.

This event called on volunteers of all ages to be champions in the fight against the terrible disease of Alzheimer's, which impacts more than 5 million Americans and their families. Over 2,200 people participated in the Alzheimer's Association Memory Walk in my home county of Miami-Dade, and their efforts raised over \$130,000 for research into a cure.

I was encouraged by the wonderful outpouring of support and participation from our community in South Florida. I know from countless personal stories, as well as from my own family, just how devastating this disease of Alzheimer's is.

My mom, Amanda Ros, was diagnosed with Alzheimer's over a year ago. While I am blessed to have tremendous family support during this difficult time for her, I recognize how important it is to have organizations,

such as the Alzheimer's Association, that can step in and provide families with guidance on how to care for their loved one.

Tony Friguls is another individual who knows this terrible disease all too well. He participated in the Memory Walk in support of his wife of 37 years, Maria, who was diagnosed with Alzheimer's 4 years ago at the age of 55. Since that day, her life, Tony's life and the lives of their children, grandchildren and, indeed, their entire family, has never been the same. It has changed forever.

For Tony and his wife, there was no more hope to reach retirement, to travel, to enjoy life. Instead, they were both forced to retire from their jobs in order to cope with the new daily challenges of Alzheimer's. Determined to help his wife, Tony made a decision to help raise community awareness for this disease. His team for the Alzheimer's Memory Walk, Baba's Bunch, included over 400 members. He is also involved in an essay-writing contest in public schools to raise student awareness about Alzheimer's.

Today, Tony's wife is 59 years old. She can hardly speak. She cannot even sign her own name, and she is not who she used to be.

He continues the fight against Alzheimer's in honor of his wife and all of those who suffer and cope with this terrible disease. Unfortunately, as we all know, Alzheimer's has no survivors. It destroys brain cells. It causes memory changes, erratic behaviors and loss of body functions. It slowly and painfully takes away a person's identity, a person's ability to connect with others, to think, to eat, to talk, to walk, to find your way home. There is no treatment, no cure, no way to stop the progression of Alzheimer's disease.

This disease is widespread and growing. Every 70 seconds, Madam Speaker, someone new develops Alzheimer's, and it is not only the person diagnosed that is impacted, but also their family members. One in eight people aged 65 and older has Alzheimer's, an even higher number of those aged 85 and older, and 87 percent of that time it is the family members who are the primary caregivers.

The emotional stress of care giving is so high, and about one-third of caregivers develop symptoms of depression. Care giving also takes a financial toll, with many individuals having to quit work, reduce their work hours, or take time off because of their responsibilities.

Madam Speaker, we must continue the fight against this devastating disease before it claims more lives, more lives of our mothers, our fathers, our sisters, our brothers and our spouses. I again encourage all in our community to show solidarity in the fight we must win against Alzheimer's.

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#### HEALTH CARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Carolina (Mr. INGLIS) is recognized for 5 minutes.

Mr. INGLIS. Madam Speaker, the report by the chief actuary of Medicare is in and, as we thought, it shows real problems with the idea of expanding Medicare coverage to lower age groups. This summer, I had an opportunity to do a bunch of town hall meetings, and in those meetings we discussed the fact that what we're talking about really, in the public option, is adding more people to something like the SS Medicare which is already sinking in the harbor. But now over in the other body, there is specifically a proposal to literally add more people to the sinking SS Medicare in the harbor.

And so in the last several days, the chief actuary has provided a report that really should stop us in our tracks and cause us to realize that that's no solution, to add people to a program that is already unsustainable.

What that chief actuary of Medicare reports—and there are several items in his report, obviously, but one of them is the report cautions that savings needed to extend the trust fund cannot simultaneously be used to extend other health insurance coverage. In other words, if you're going to save money, you can't simultaneously expand coverage under the program. It seems fairly obvious to the folks I was talking to in town hall meetings. Unfortunately here in Washington, it seems not to be comprehended. We seem to think that here in Washington we can continue to add people to a program even though the people that are currently on the program have it on a trajectory that can't be sustained.

The actuary also points out that actually the Senate bill would increase the cost of health care; would not decrease the cost of health care. In fact, total spending on health care would increase by \$234 billion between 2010 and 2019. Also, total Federal expenditures on health care would increase \$365.8 billion during that period. The bill would extend coverage to 33 million Americans by 2019 but would still leave 24 million people uninsured, 5 million of which may be illegal immigrants. And the number of people with employer-sponsored health care would drop by 5 million by 2019.

What the chief actuary is telling us is that the solution that's being proposed is not a solution. In order to solve the challenge of Medicare, you have to figure out some way to change the underlying behavior. You have to figure out a way to get the patient invested in their care and caring how much it costs. That's what we've got to do for Medicare, Medicaid and for private insurance.

There are some very creative things going on in the private sector that are toward this end, to have this objective of changing the underlying behavior. What we're discussing here in the Congress under the majority here in the House and the apparent majority over in the Senate is not something that will change behavior. What it will do is simply add more people to a program that is already unsustainable. So rather than saving money, as the President suggests it will, actually what will happen, as the chief actuary says, is the costs rise; not everybody gets covered. It's clearly not a solution.

So what we have to do is scrap the current plans and go back to something that might actually work: by getting a change in behavior, by figuring out how to get people covered, by figuring out how to do medical malpractice reform and by getting 50-State competition among private insurance companies. Those, Madam Speaker, are the solutions we want to see in this country. We must stop this false solution that's being offered now.

#### THE CONGRESSIONAL BLACK CAUCUS HOUR

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentlewoman from Ohio (Ms. FUDGE) is recognized for 60 minutes as the designee of the majority leader.

Ms. FUDGE. Madam Speaker, it is my pleasure again to be the anchor for the Congressional Black Caucus Special Order Hour. I want to thank our chairwoman, BARBARA LEE, for talking with us the last week or two about jobs and how important jobs is going to be for this nation.

I would at this time like to welcome and ask our Chair, the Honorable BARBARA LEE from California, to please now join me. She has directed us in so many different ways over this year. I am just especially pleased to be a part of this caucus.

Ms. LEE. Thank you very much.

Let me take a moment to thank Congresswoman FUDGE for really consistently raising the alarm and setting forth what the agenda is every Monday night of the Congressional Black Caucus, which is an agenda that speaks not only to the issues in communities of color in the Congressional Black Caucus but issues which really will allow for the American Dream to be real for all.

So thank you, Congresswoman FUDGE, and I know you come from a State where the unemployment rate is critical. People are suffering, housing foreclosure rates are off the scale, and especially in the African American community. Communities of color have been hardest hit, I know, in Ohio. So thank you so much for your leadership.

Let me just talk for a few minutes about our economy. We all know that

the economic security of all Americans is extremely fragile. Communities of color, especially the African American community and Latino communities, have been disproportionately hit by this recession. Last week, we released a letter which we forwarded to President Obama, Speaker PELOSI and Chairman MILLER which outlined our priorities as members of the Congressional Black Caucus. We are continuing to work with House leaders and the administration to ensure that our priorities for job creation and economic growth are included in a jobs package which should be finalized hopefully before Congress adjourns this year.

After the release of our letter, it was interesting to read some of the bloggers, some of the pundits. They actually argued that targeted relief was unneeded. And what we propose is not based on race. I just want to be clear on that. It's based on need. We want to ensure that our resources are targeted to areas of greatest hardship.

For example, here are some of the facts regarding the African American community that are indisputable:

The unemployment rate for African Americans is nearly twice that of whites. 49.4 percent of African Americans 16 to 19 years of age were unemployed in November.

Nearly 28 percent of African Americans received food aid compared to 15 percent of Latinos and 8 percent of whites.

Recent African American college graduates are unemployed at higher rates than their white counterparts and African American workers remain unemployed an average of 5 weeks longer than the rest of Americans.

More than 24 percent of African Americans are living below the poverty line and African Americans are 55 percent more likely to be unemployed than white Americans.

African Americans have 2.3 times the infant mortality rate as non-Hispanic whites. They are four times as likely to die as infants due to complications related to low birthweight as compared to non-Hispanic white infants.

Additionally, African Americans have shorter life spans.

The Congressional Black Caucus in its continued role as the Conscience of the Congress is morally obligated to address these systemic inequalities. Moreover, as members who represent so many constituents who are disproportionately suffering, we have an obligation as policymakers to write legislation to address these moral gaps. That is why I convened a task force to develop targeted proposals to address the acutely unemployed and the crisis in our communities and throughout the country and also to spur job creation for the chronically unemployed who happen to be black and Latino, many are white, and many are Asian Pacific Islanders. This task force is

chaired by Congressman EMANUEL CLEAVER.

We must maintain support for vital extensions of unemployment insurance and the COBRA health insurance subsidies as millions of Americans continue to face job loss and extended periods of unemployment. We also must continue to invest in education and job training programs that fully support housing initiatives like the Affordable Housing Trust Fund and the Neighborhood Stabilization Program to bring some stability to our hardest hit communities.

We must raise and index the minimum wage so that every working person can be assured that they will earn a wage that will lift them up and out of poverty each and every year without having to rely on the legislature to keep up with increases in the cost of living. We need to ensure access to early education, guarantee a high quality public education for every American student, and make sure that every working family has access to the affordable, quality child care that they need so that they can get to their jobs. Also, we need to reconnect with our disconnected youth and the formerly incarcerated individuals with increased support for job training and education for a new wave of environmentally friendly and economically green jobs which are going to be competitive but also which will require skills and the knowledge and the qualifications to be able to be eligible for these jobs. That's why we suggested a strong training program for these jobs. And we must remove Federal barriers to provide for a second chance.

Last week, President Obama delivered a speech that was another sober reminder of the important work we must do and we must continue to work to grow our economy and create jobs. And we agree with the President that support for small businesses, infrastructure investment and green jobs is essential. We also believe that as Members of Congress we must do more.

In order to do this, the Congressional Black Caucus has outlined four areas of focus laid out in our letter. They are: Direct job creation and training; infrastructure; small businesses; and State and local relief. These areas are essential to create real and meaningful economic opportunities to provide pathways out of poverty and opportunities for all.

The Congressional Black Caucus remains committed to working with President Obama and our congressional leadership—Speaker PELOSI and Chairman MILLER—to address the real economic crisis gripping our nation. We will not shy away from the fight for targeted relief for the chronically unemployed. In our letter, we suggested that there be a requirement that the amounts appropriated shall allocate no less than 10 percent for assistance in

qualified areas of economic hardship, provided that for the purpose of these sections “qualified areas of economic hardship” means any census tract or block numbering area where 20 percent or more of the population is at or below the Federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

So let me be clear. What we propose is not based on race. It is based on need. We are asking for no more or no less than what Wall Street got. When there was a crisis on Wall Street, the Nation responded with a sense of urgency. We're asking for that same sense of urgency to the economic crisis that is gripping the hardest hit communities in America. There was no problem when that money was targeted to Wall Street. We're asking for the same targeted help for communities under the gun. It would be a tragedy if the economy recovers and we leave communities of color behind. We know money is going to be spent for jobs. The question is, where will the money be spent? And we want to make sure that we leave no community behind.

We will certainly become stronger as a nation if we ensure that a jobs bill recognizes these huge disparities. I believe strongly that it is our moral obligation to tackle poverty and unemployment and that in the richest country in the world, we simply have no excuse not to do so.

In conclusion, I would like to reiterate that the members of the Congressional Black Caucus are committed to continuing to work together with our President and our congressional leaders to fix our economy and to create jobs that address the true depth of this recession. There is no question that by our collective efforts, we can make a real difference in the lives of all Americans.

Thank you, Congresswoman FUDGE, for your leadership and for giving me a few minutes to speak tonight.

Ms. FUDGE. Thank you so much, Madam Chair. I want to thank you for your call to action.

GENERAL LEAVE

Ms. FUDGE. I would ask, Madam Speaker, that Members have 5 legislative days in which to revise and extend their remarks and include extraneous material for the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Ms. FUDGE. Madam Speaker, I would now like to yield to my friend and colleague from Wisconsin, Representative MOORE.

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Ms. MOORE of Wisconsin. Well, thank you, gentlelady from Ohio for yielding. And I can tell you that I found the remarks of our Chair very,

very compelling, and I guess I would agree with her. But I want to add that while a couple of the categories of the Congressional Black Caucus include infrastructure jobs and providing funds for local programs, and while I believe that there is a general call for these types of spending to stimulate our economy, I've heard on both sides of the aisle calls for moneys to be used for infrastructure improvements.

I would say, with a qualification, that we need to make sure the funds for infrastructure projects go directly to cities and counties and allow those governments the flexibility to determine where the greatest infrastructure needs are for their communities. I think that while the Recovery Act saved between 600,000 and 1.6 million jobs, we ought to learn from some of the mistakes that were made there, and I think that the Congressional Black Caucus, in its wisdom, has pointed out that we need to target our initiatives more and not just give the moneys to those States that don't necessarily target those funds, and make sure that it gets to the cities and States to work on infrastructure programs that are needed.

The other qualification that I would give, and I think that the Chair raised it in her comments, is that we need to make sure that the infrastructure projects include those people that—that they target them to those communities that are in need. And with that, I would say that we need to target, we need to create programs for pre-apprenticeship programs so that all of the moneys don't go to those, all of it doesn't go to those laborers and those folks who are typically building within our communities, those people who already have some of the skill sets and education that can transition them into the new energy-related initiatives, but that we ought to look at pre-apprenticeship programs so that we can expose individuals with low skill sets to other workers with family-supporting jobs by working alongside with them nearby and on the same projects.

From those experienced workers, the pre-apprentice participants can learn a pathway on how to move forward and develop those skill sets that will move them up the career ladder, and at the same time, provide them with sustainable income. To help enforce this, lady from Ohio, I believe that contractors could be required to include a certain percentage of pre-apprenticeship participants in their so-called Federal floor participation of women and minority workers that is already required by executive order.

The reality is that we cannot afford to wait while the unemployment rate for minorities continues to rise. Unemployment, reemployment is a lagging indicator, and we can't wait until we reduce these numbers. The unemployment rate among black males is cur-

rently 15.6 percent. And by April of 2009, the gap between black and white men grew to a 13-year high of 7 percent. The time is now. And I urge my colleagues to consider all proposals that present the American people with a jobs bill that not only creates jobs, but sets up training programs and education programs that will help dislocated workers gain new skills that will lead to sustainable employment.

Now, Madam Chairman, lady from Ohio, I have in fact, mentioned that we need to work toward helping women and minorities get into these infrastructure jobs and the new energy-related jobs. And there has been feedback that we ought not target this specifically toward a particular race, or perhaps toward a particular gender. But when you look at the framework that the Congressional Black Caucus has laid out, that we need to target it toward those census tracks where there is a dearth of persons who have these kinds of jobs, or who are unemployed, we will find, much to many people's amazement, that there's a great deal of poverty among minorities, and there certainly is a great deal of poverty among women who find themselves increasingly heading households and providing the greatest source of income.

I thought it was very interesting that Maria Shriver recently did a study that really elucidated the fact that women were providing a greater and greater amount of the family income. And so this is something that I think the Congressional Black Caucus is raising in a very timely manner. And with that I would yield back to the gentlelady from Ohio.

Ms. FUDGE. Thank you very, very much. At this time I want to—we've got obviously a lot of Members here tonight. I thank you all so much for being here. What I'd like to do just briefly is to have Representative JACKSON-LEE just introduce some points, and I'd like at that point for Representative ELLISON from Minnesota to join us in a brief discussion. Representative JACKSON-LEE from Texas.

Ms. JACKSON-LEE of Texas. Thank you very much to the distinguished convener, Congresswoman FUDGE from Ohio. I'm delighted to join the chairwoman of the Congressional Black Caucus, who has been just superb on gathering us together on what is an enormous crisis. I'm going to take the liberty of mixing a number of issues that I think are crucial to the topic that addresses this question of dealing with homelessness and hunger and joblessness. So I want to let the American people know that when the Congressional Black Caucus set out its multipoint plan, a letter that was sent to President Obama, interestingly enough, the broadness of our concepts dealt with the most deprived and devastated communities.

Those communities are American Indians, Native Americans. Those com-

munities are Hispanics, Latinos, African Americans, women. And I evidence this by the article in *The Washington Post* on Saturday—it was referred to in our recent caucus by one of my colleagues, "Missing More Than a Meal." And it cites the families, since they've been publicly noted, of Christina Koch, it cites the family of Anajyha Wright Mitchell, and it cites—these are children who are suffering because parents don't have work.

It cites the family, I guess Christina Koch is here noted. And the quote that I think is most potent says, "This more nuanced picture is emerging as the problem has become more widespread. With the economy faltering, the number of youngsters living in homes without enough food soared in 2008 from 13 million to nearly 17 million" children in America. If we can imagine—17 million children are going to bed or waking up or going to school hungry because these breadwinners, single parents, have no jobs.

And so my message today is that this is not a, if you will, an opportunity to do good legislative work. This is a crisis of insurmountable definition. This is at a pinnacle. This is the mountain top, and there must be nothing that stops us from focusing on the necessities of getting work. Let me lay out two or three points that I think are interwoven into this circumstance and the arguments that I think call for immediate action.

My focus has been in training, and I have, I think, a unique perspective to work with those who may be on unemployment. You say, well, they're on unemployment, leave them alone. Well, unemployment is at different levels. If you happen to have been a person who had a part-time job, you know the level of your unemployment. What I'd like to do is to get those people out of those cyclical jobs, one job after another, and put them in training, where they keep their unemployment and they get a stipend so that the electricity can be turned on, the food can be bought. And when they come out on the other end, one, they've been kept out of the unemployment lines for a year, and they come out as a nurses aid or a technician of some sort to get them eligible for these jobs. I think that is imperative.

This weekend, I met with a nonprofit that has about \$22 million in weatherization dollars. I gathered small businesses who had never heard of the opportunities for weatherization, which would create jobs in our community. We also had the General Services Administration, and I think it's important to note that that is such a complexity of getting jobs to small businesses. What happens is they have what they call GSA lists. I believe the Federal Government should be the great job maker, and therefore, we should make easy the ability for small businesses to access opportunities. So I



want to see legislation that demystifies the GSA list. I want to see legislation that tells the Federal Government that they cannot have one narrow way of presenting jobs to America, which is on the Web site.

If you have a job fair and you have the Federal Government there, they don't bring anybody to hire someone on the spot. They tell you to go to the Web site. Well, some people are homeless, are qualified, but they're in a predicament. Many people don't have access to the Web site. So these are simple administrative changes. Let me just add this on the Small Business Finance and Investment Act that the President has talked about.

One of the things in the meeting that I had over the weekend, my friends, on weatherization—and I know they meant well. They came to the meeting, and we had had a pre-meeting, and they came to the meeting, 30 or 40 or 50 people in the room, and they said, Here's the criteria: Your bank account must be secure, and must be, if you will, flourishing. They said that you must have Department of Energy experience, Congressman PAYNE. You must already have had that experience. Some of my people in Texas, no disrespect, DOE? They thought it was the Department of Education. Then they said that you must have, no disrespect to them, you must have past experience. Well, weatherization, these dollars are to build capacity. These dollars are to get small businesses so that they can build capacity, so they can become weatherizers in the future.

So we need to eliminate all these barriers of being able to work under Federal dollars. They're taxpayers dollars. Don't tell them to have Department of Energy experience. Tell them do they know how to put a window in? Do they have enough money to pay workers? And so this is, I think, a way of simplifying. I'm going to yield to the gentleman on these two points if I might. This idea of giving money to States is an abomination. Those of us who have diversity in state leadership, different from the majority party here, see that money going, and we never see it again in the hands of our constituents. That is a crisis.

And then I know that we are on jobs, but let me tell you that this issue is, as I yield to the gentleman, we now have a health care bill that is making its way through the Senate. In that bill, there is a provision about promoting jobs in the health profession, scholarships for doctors and nurses and physicians' assistants. I want to ask the question: How much longer do we have to wait for the distinguished Senator from Connecticut to block health care over and over again and block jobs? And so I'm calling today for reconciliation. If that is a procedure that can get us moving so that people can have jobs and good health care, I believe

they're intertwined together. And with that I would say, this is a time for a fight, a real fight.

And I'd be happy to engage the gentleman from Minnesota on some of the very points that he has raised. And I am delighted to be part of his legislation, which is a magnificent comprehensive jobs effort. And I hope he'll join me in the training aspect as well.

Madam Speaker, I salute my colleagues with the Congressional Black Caucus for tackling one of the most important issues of the day facing not just African Americans and Latino Americans, but all Americans. Let me share with you that in my District, which covers parts of the Nation's fourth largest city, Houston, TX, our unemployment rate stands at nearly 9 percent. While this rate is more than a full percentage point below the national average, we know at least anecdotally, the unemployment rates for African Americans and Latinos in Houston are much higher.

Yet, this "jobs disparity" is not limited to Houston, data from the Department of Labor indicates that African Americans throughout the Nation today, in the era of President Obama, are still the last hired and the first fired. Specifically, the Bureau of Labor Statistics reports that the unemployment rate for African American men, 20 and older, was 16.5 percent as of October of this year, and 12.4 percent for African American women at the same age level.

Historically, experts have suggested that the anecdote to unemployment is education. However, Labor Department statistics appear to indicate that education, alone, does not level the playing field. In fact, higher education amongst African Americans may strangely enough even make it more difficult to obtain a job. For the first 10 months of this year, as the recession has dragged on, unemployment for least educated workers was the same for African Americans and the general population. However, in 2009, the unemployment rate for African American college graduates 25 and older has been nearly twice that of their Caucasian American male counterparts, 8.4 percent compared with 4.4 percent. According to a New York Times article published on December 1, even African American college graduates with degrees from Ivy League schools such as Yale, my alma mater, are finding themselves in the ranks of the unemployed.

In addition to the racial dimension of this "jobs disparity," the recent economic downturn has focused a spotlight on a widening gap between employment rates amongst men and women, particularly in the African American community. It has been reported that since the Nation's slowdown has been most pronounced in the manual labor sectors, men with the lowest levels of education have suffered the brunt of the unemployment crisis. CNN commentators recently described our current economic condition as a "man-cession."

According to a recent Bureau of Labor Statistics report, the unemployment rate for African American men aged 20 and older was 4.1 percent higher than the unemployment rate for African American women of the same age group, which was 12.4 percent. This gender unemployment gap among African Americans mirrors a similar gap between Caucasian and

Latino Americans, thus demonstrating a nationwide trend.

Friends, we are in a battle for the hearts and souls of America, literally and figuratively. To win this battle, we must take bold action, like passing health care reform legislation in both chambers of Congress. Madam Speaker, I concur with the assessment that the health reform legislation voted out of this chamber last month in fact a "jobs bill."

As evidence of this, the Bureau of Labor Statistics reports that last month's slight dip in the unemployment rate was caused by the fact that for the third straight month, hospitals reported solid payroll additions, with 6,800 new jobs created. In the first 11 months of this year, the healthcare sector created 249,700 new jobs, an average of 22,700 new health care jobs each month, according to BLS' preliminary data. Since the start of the recession in December 2007, overall 7.9 million people in America have lost their jobs, while the healthcare sector has created 613,000 jobs.

In an article published in HealthLeaders Media, it was reported that the healthcare sector—from hospitals, to physicians' offices, to residential mental health homes, kidney dialysis centers, and blood and organ banks—grew by 21,000 payroll additions in November and 613,000 payroll additions since the start of the recession in December 2007. The home healthcare services sector reported 7,300 payroll additions in November, BLS preliminary data show.

Recognizing this Madam Speaker, I am working with health care and labor leaders to craft a jobs bill that create innovative new retraining programs in partnership with our Historically Black Colleges and Universities like Texas Southern University in my District or Howard University, here in Washington, DC. These training programs would focus on retooling workers for jobs in the growth sectors such as health, biotech, and information technology. In addition to funding for job training, I propose that we provide stipends to those who are unemployed and who participate in training programs to assist them in caring for their families. Along with this, my jobs bill would allow unemployed workers participating in job retraining to continue receiving unemployment benefits.

As a senior member of the Judiciary Committee, I am also working with the DOJ to incorporate into my jobs legislation a measure that would assist ex-offenders who are returning to the job market with strikes against them. In addition to eliminating any barriers for ex-offenders, I am also studying how we can encourage States to suspend criminal prosecution of fathers and other parents who are delinquent in child support so long as they are making good faith efforts to find jobs in this difficult employment market.

Madam Speaker, I also propose that we task the Department of Labor to expand its definition of the unemployed to cover not only those currently receiving unemployment compensation, but also those who have run out of unemployment insurance, known as the long term unemployed. I suspect that if we had accurate data that captured the entire unemployment picture, we would see jobless figures of upwards of 25–30 percent.



In addition, Madam Speaker, I also plan to propose we offer assistance to the underemployed, including thousands of lawyers and other professionals who work as part-timers or temp workers. Many of these professionals split their time between working for others and operating their own small firms. Furthermore, it has been noted that while larger firms are enjoying the benefit of government funded bailouts, our African American law firms, accounting firms, investment banking firms and media outlets are being left out of the funds directed at stimulating Wall Street. As Comcast and NBC Universal and other firms seek government permission to merge, I intend to work with these companies to ensure that our African American businesses are included, not left out of the deal flow.

Another jobs initiative would focus on creating apprentice and internship programs managed by cities and nonprofits like the Urban League. This is a take off of a Department of Labor that was very successful in the 1970s, which helped our Nation rebound from its last recession.

Madam Speaker, during the 1930s–40s, the FDR administration developed the Work Progress Administration, WPA. The WPA created thousands of jobs and helped lift our Nation from depression. I am drafting legislation that would create a WPA for the 21st century. This concept involves providing stimulus dollars to several Federal agencies such as Interior, Transportation, and HHS to fund large-scale projects.

Under my legislation, the new WPA would include modern-day infrastructure and other projects including making broadband wireless Internet service available for all Americans, not just in wealthier suburban and downtown districts. In addition, we should create high-speed rail and environmentally friendly highways and byways.

Finally, I plan that we work with HHS and the Energy Department to build new Green Hospitals across the country. This project would ensure that our Nation's healthcare facilities are themselves healthy.

Madam Speaker, many of our unemployed constituents in Houston and around the Nation are asking us a simple question: how long, how long before I can find a job? I say to them, not long . . . help is on the way. With the introduction and passage of jobs legislation offered by myself and the rest of the Congressional Black Caucus, help for the unemployed and underemployed, help for small businesses, is on the way.

I appreciate the leadership of the Congressional Black Caucus on this issue and dedicate to my constituents in the 18th Congressional District of Texas that it can count on me to work with my colleagues to deliver in this time of great need. How long, not long, with the help of the Almighty and hard work of my colleagues, help is on the way.

Mr. ELLISON. Let me just say that I just want to tell a story. You know, I was home this weekend, and I was walking along one of the trails that we have in Minneapolis. You know, we've got a lot of parks in Minneapolis. It was cold, and I wanted to get my legs stretched from working so hard last week, so I was walking a long one of

our many trails. And I decided to sit down at a park bench, and it looked like a pretty old-looking park bench. You could tell the rust was there.

And when I sat down I noticed that it was sturdy. And we sat there talking to a few friends. But when I got up to leave, I noticed that there was a little plaque about the size of this phone, and it said on it, WPA, 1934. For 75 years that park bench had been sitting there. For 75 years, that thing has been giving comfort to people who are just walking by. But 75 years ago we had a job crisis then. And our country, our Congress, responded to the needs of unemployed Americans.

□ 2030

We need to respond to the needs of Americans today as people are putting pressure on food shelves, as people don't have money for heat, for lights, as folks who had two and three jobs that were part time now have lost them; now they have no lifeline. We've got to respond to a generation of Americans looking for work today. And where there's extra hurt, there needs to be extra help.

And that means that the Congressional Black Caucus—and other caucuses as well—are focusing on a targeted-jobs bill calling for jobs now, calling attention to an appalling condition where people are unemployed at rates of 25, 30 percent in some communities.

I just want to ask the gentlelady—and I'll ask any of my colleagues. I like the dialogue. I'm not going to give a 20-minute speech.

I will ask the gentlelady, what have you heard as you were standing in the grocery store line? What have you heard when you were walking around your parks in places like Los Angeles, Milwaukee, Ohio, Cleveland? What have you heard? What have you gone through? And what are your folks telling you? Don't give me a bunch of stats. Tell me what your people are feeling. I'd like to know that.

I yield back to the gentlelady.

Ms. FUDGE. Thank you very much.

Does the gentlelady from Wisconsin or Texas or California wish to respond?

Ms. MOORE of Wisconsin. I just want to mention to the gentleman from Minnesota, we're neighbors in the Midwest, and of course you know there have been hundreds of thousands of manufacturing jobs that have been lost in the Midwest over the last 30 years. But since 2008, we have lost more jobs during 2008 than in any—for the last 70 years that these data and statistics have been collected. And so that, I think, is really telling about the attrition of jobs.

I hear people often talking about how horrific the 10.4 percent unemployment rate is. If there were a 10.4 percent unemployment rate within the confines of the city of Milwaukee, we would be dancing in the street with delight.

We have a researcher named Marc Levine from the University of Wisconsin, Milwaukee who has kept data of the discouraged workers—those people who are not officially unemployed because they're no longer standing there, discouraged workers. And among white men in my community, we have a 17 percent unemployment rate. And we have a 40 to 50 percent unemployment rate among white men, and of course a staggering statistic, about 30 percent among Hispanic men. But about 17 percent among white men in our community. So it's really a crisis of gargantuan proportions.

Mr. ELLISON. Will the gentlelady yield?

Ms. MOORE of Wisconsin. Yes.

Mr. ELLISON. Have you ever talked to somebody who's been unemployed for 12 months, 18 months? What does that do to their psyche? What does that do to their spirit? What does that do to their level of joy?

Can anybody answer the question for me?

Ms. JACKSON-LEE of Texas. If the gentleman will yield.

Mr. ELLISON. I will yield.

Ms. JACKSON-LEE of Texas. You are right. And statistics, of course, help to lay the framework for how devastating it is for so many of us who are listening may not have the broadness of it because our constituency goes across all lines.

And what I'll tell you is that people are more and more going to places where there are mass feasts and feeding. And when you go among those people, you hear the stories of mothers and fathers who have lost work. There are now more families coming into these broad feasts or open feeding that we've had. I just participated in one yesterday in my district. And you see the families with little children who you know are dependent—and you made a very good point. I heard it on this floor. These people may have had two and three jobs. That's the kind of person we're looking at when we see these parents whose children are now going to bed hungry, 17 million across America. And what they're saying is that not only can they not make ends meet, but they can't find the ends for the means.

So we have to bypass State governments to get funds directly into the hands of these individuals by way of work. They want work. We've got to break down the attitudes about not building capacity and small businesses, because they could hire these very mothers to do minimum work on weatherization. They could be skilled. We have to pass the health care bill that gives us the kind of work that is available for these mothers.

And I will conclude on this. Do you know, Congresswoman FUDGE, because you're from this area, there is some, I want to call it silliness—and I ask deference for any disrespect that using

the word “silly” on this floor might suggest. But we put a tax on steel that China is bringing in and, okay, that’s by America. Then we have black businesses who are in the business of transporting pipe or giving pipe to various companies—and when I say “pipe,” giving steel to various companies, steel pipe known as oil company tubular goods, pipes. And can you believe that these small businesses that have workers and truck drivers, minority companies that transport this steel, cannot buy any steel from American companies.

So what I would say to the gentlemen, Yes, I hear the pain in our houses of worship. I hear the pain in grocery stores, and I hear the pain when we go to these mass feedings that more people are coming to now in more numbers than I have ever seen before. It just re-emphasizes the fact: Are we going to answer the pain, the call that is being made upon us? And I would hope the Congressional Black Caucus will be front and center on doing that.

Ms. FUDGE. We have been joined by another one of our colleagues, LAURA RICHARDSON from California. I’d like to yield to the Congresslady.

Ms. RICHARDSON. I thank the gentlelady for yielding. I especially want to thank our chairwoman, Congresswoman BARBARA LEE, and Congresswoman FUDGE, who’s been leading, really, this delegation on an hourly basis weeks on end whether the issues are popular or not.

Tonight I’d like to talk about small business and the impacts of unemployment and what it means to our country and really where the jobs are in this country and why we must address small business.

The unemployment crisis is hurting every region of our country—not just one State, east coast, west coast. It’s everywhere. In the district that I represent, unemployment is ranging anywhere between 15 and 21 percent. That’s well above the national unemployment rate, and clearly we can no longer stand by idly waiting for someone, even if it’s in our other body, to act.

The American people need jobs now. They’ve already asked it, they’ve already helped to fund it, but unfortunately the jobs have not been seen on Main Street and on the side streets where many of our constituents live. So let’s talk a little bit about small business and why they’re so important in this equation.

There are 26.8 million small businesses in the United States accounting for more than 99.7 percent of all employer firms. Those are regular people like you and me who are trying to survive who didn’t get a bailout 6 months ago.

Small businesses employ just over half of all of our private sector employees. And likewise, in the second largest district in this United States—which is

California, where I’m from—small businesses are an integral part of our economy comprising 90 percent of all of the businesses in our State. More than 50 percent of the employees in California work for small businesses, and there’s an estimated 3.7 million small businesses in California.

So why would you ask that I would even talk about that? Let’s talk about women and how women are impacted with small business.

Privately held, women-owned businesses in California, where I’m from, generate more than \$406 billion in sales and employ over 2.8 million people. And when you look at those particular figures and then you break it down to minorities, minorities even further own 4.1 million firms and generate \$694 billion and employ 4.8 million people.

So what is the problem and what is it that I brought to the CBC to contribute in terms of a proposal of what we could do to help? We could help small businesses, and we already have the current framework to do so. It’s called the SBA. But unfortunately, as with many government agencies, just because something exists doesn’t mean it should stay that way. We can always work to make it better.

So when we consider the SBA that was really established in 1953, there are changes that have to occur. And the one that I’d like to talk about tonight is not all of the wonderful training, not all of counseling—all of that we desperately need—but there’s a program today that can change and it can be done now. That’s our section 8 services.

Section 8 was established to include access to business development opportunities for businesses within that particular financial area, but there’s a problem with it. As far back as 1992, magazines and other individuals have highlighted the problems with the section 8 program. The problem is, instead of creating multimillion-dollar business success stories, the section 8 program consistently graduates companies before they’re ready to flourish. It gives them a short period of time—7 years, 9 years—to begin to utilize contracts, and then it throws them out without an umbrella or without a safety net.

I would say if we could do a safety net for some of these other Wall Street firms and financial industries, why aren’t we holding our hands out to small business?

This has led to a surprising result that many of us have seen, that companies who were able and who were succeeding with the section 8 program, when they were then bumped out, of course, what were the results?

In 1991, SBA studied 645 former 8(a) companies that were doing fine, but prior to them being kicked off, after that point, 42 percent fell through. We can stop that, and we can change it today by four simple proposals that I have for you.

I propose that we reform and modernize the section 8 program to help more small disadvantaged business enterprises, DBEs, to remain in business and to hire more workers—we were talking about over 4 million workers—by doing the following:

One, extend at least 2 years the 9-year program in which section 8(a) certifies businesses to participate.

Number two, we can reinstate those who already did their 7 or 9 years, and they’re kind of at the brink, and with a couple more years of help, they could be back on a level ground. We should extend their time as well.

And then thirdly, we should create a new program that’s kind of in the middle ground, not of a major company that’s bringing in billions of dollars, but clearly a small business that’s hiring 10 people, 20 people in your neighborhood. We need for them to exist.

And finally, we should consider that under this program, eligible companies who are able to participate, we should really grow that revenue, because what was \$100,000 yesterday that somebody made is not nearly enough in terms of keeping a viable company going.

So, in closing, what I’d like to say to our Chair, Ms. BARBARA LEE, and also Ms. FUDGE from Ohio, I applaud the efforts that we’ve taken. The American people want to know what we’re doing. What we’re doing is caucuses like the CBC are coming together. We’re meeting. We’re talking about direct jobs. We’re talking about keeping teachers and police officers employed. We’re talking about helping small business owners stay alive. That’s what we’re doing, and we’re bringing those proposals to the Speaker, to the President of the United States, and we’re asking them to act now.

We’re ready to vote. We’re ready to do our part. But we need to make sure that these dollars go to the American people, which is where they started from.

Ms. FUDGE. Madam Speaker, my good friend and colleague, Representative RICHARDSON from California, did bring up some interesting points, and I can assure you that the passion she showed today is the same passion that the rest of this caucus has, and that is why, in fact, our caucus did indeed send a letter to the Speaker of the House to talk about our jobs initiatives, what we believe should be in a jobs bill.

CONGRESSIONAL BLACK CAUCUS OF  
THE 111TH UNITED STATES CON-  
GRESS,

Washington, DC, December 9, 2009.

Hon. BARACK OBAMA,  
President of the United States,  
The White House,  
Washington, DC.

DEAR PRESIDENT OBAMA: As you work with House and Senate Leadership to structure the jobs package, we respectfully request that you include and prioritize the following proposals in the legislation:

## DIRECT JOB CREATION AND TRAINING

Utilize language that states that the \$139.3 billion of unobligated funds authorized for expenditure by the Troubled Asset Relief Program should be reprogrammed to be used to create jobs for United States citizens.

Reauthorize language from the Humphrey Hawkins Act, Public Law 95-523, with a new provision establishing a “Green Jobs and Training Trust Fund.” The trust fund would be funded by a financial transaction tax similar to that proposed by Congressman DeFazio. If the targets established in the Economic Reports mandated in Title I are not met, funds would automatically be disbursed from two separate trust funds to a list of: (1) training programs enumerated in the bill; and (2) a direct public sector jobs program. The training programs would include, amongst other programs:

The Department of Labor’s Green Construction Careers Demonstration Program (not yet authorized).

The Department of Energy’s Labor’s Efficiency and Renewable Energy Worker Training Program (EEREWTP) (authorized in the Green Jobs Act of 2007)—specifically, the Pathways Out of Poverty Demonstration Program.

The Department of Energy’s Weatherization Program.

The Job Corps Program.

Grant programs that promote state and local hiring of police, firemen, and other public servants.

Additional programs identified by the Secretary of Labor that: (1) promote energy efficiency consistent with the EEREWTP Program or promote clean energy creation; and (2) provide sustainable employment in the public or private sector.

The government would provide grants to states and municipalities to set up “Green Corps,” “Urban Corps,” and/or a form of expanded Americorps. These jobs would be low human capital jobs where the ratio of government spending to job creation would be very low. Some activities these individuals would engage in include:

- Home and public building weatherization;
- Greening of public spaces;
- Municipal waste and recycling;
- Public building solar installation and maintenance;
- Forestry; and
- Tutoring or mentoring.

Utilize language throughout the bill that will provide a 10 percent for areas with high levels of poverty such as: Of the amounts appropriated in this [section] the following projects or programs, shall allocate at least 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

## JOB CREATION AND TRAINING

Increase funding for Youthbuild and the 2010 Youth Summer Jobs Program, to allow for the employment of 5 million teens, with a requirement that of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of

the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

Creation of a federal assistance program through the Department of Labor to prepare economically disadvantaged unskilled adults or adults needing retraining for full-time jobs, for a period of 12 to 24 months in public agencies or not-for-profit organizations. The intent is to impart a marketable skill that will allow participants to move to an unsubsidized.

Fully fund the Green Jobs Act, the Energy Efficiency and Conservation Block Grant Program, as authorized by the Energy and Independence Security Act, of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

Increase funding for the National Service Corps programs with an emphasis on current college students and recent college graduates.

Direct funding to career colleges, technical, and trade schools, community colleges, and universities to train Americans in high-growth industries and healthcare professions, particularly focused on entry-level training and nursing programs, which allow participants to be able to continue to collect unemployment benefits through the period of training and/or allow them to receive a livable wage stipend during the period of training, with a requirement that of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

Increase funding for High Growth Industries and/or grants for job creation in occupations identified by the Department of Labor as “the ‘fastest growing occupations and occupations projected to have the largest numerical increases in employment between 2006 and 2016,’ with a requirement that of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

Increase funding for Employment and Training Administration, Training and Employment Services, with a requirement that of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “quali-

fied area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

Increase funding for Welfare to Work program.

Increase funding for the Second Chance Act (replaced and expanded Prisoner Reentry Initiative) and include language that eliminates or mitigates the bar on ex-offenders from receiving Federal financial aid programs, job-related training, public benefits, and public housing.

Increase funding for pre-apprenticeship programs and the National Apprenticeship programs through the Department of Labor, Employment and Training Administration, with a requirement to that of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget. Language modification to allow for Americans to continue to collect unemployment benefits and/or TANF benefits while in an authorized job training program for up to 12 months.

Expand the Title V Senior Community Service Employment Program (SCSEP) under the Older Americans Act to provide job training and employment for older job seekers by lowering it to age 50, eliminate requirement of unemployment—allowing participants to be underemployed, and changing the cap to 35 weekly hour cap employment allowing.

## INFRASTRUCTURE

Provide for Hope VI, green projects through the Energy Efficiency and Conservation Block Grant.

Rehabilitation of housing through Neighborhood Stabilization Fund which provides for additional construction jobs.

Funding for the Department of Transportation-Federal Highway Administration to allow state and local agencies to move forward on infrastructure projects, of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

Discretionary funding for Clean Energy technology and manufacturing through the Department of Energy, with a requirement that of the amounts appropriated in this [section] the following projects or programs, shall allocate no less than 10 percent for assistance in qualified areas of economic hardship: Provided, that for the purposes of this [Title/Section], In general, the term “qualified area of economic hardship” means any census tract or block numbering area, where 20% or more of the population is at or below the federal poverty line. The term “poverty line” means the official poverty line defined by the Office of Management and Budget.

## SMALL BUSINESS

Language modification to allow the Community Development Financial Initiatives Fund to access capital markets via the Department of Treasury Guaranteed Bond Issuance program.

Expand and expedite the Small Business Administrations Community Express Loan program by reducing the interest rate to 1 percent, particularly focused on areas where local unemployment rates exceed the state and/or high rates of long-term unemployed.

Long-term extension of Build America Bonds, to result in liquidity and a lower interest rate.

Reform and modernize the Section (8) program to assist more small and disadvantaged business enterprises (DBE) remain in business and hire more workers by doing the following:

Extend by at least 2 years the 9-year period in which Section 8(a) certified businesses can participate in the program.

Reform the Section 8(a) program to permit reinstatement of companies who were graduated from the program after nine years.

Reform the Section 8 program to create a new program for small businesses that did not qualify for admission to the 8(a) program or were graduated from the program before the 9 year period expired because their financial resources exceeded maximum limits. Under this new program, an eligible company would be permitted to participate for a period of 7 years or until its financial resources exceeded 300 percent of the maximum amount allowable under Section 8(a).

Language modification to the Workforce Investment Act performance measures in entrepreneurial training to allow for microenterprises to receive Self Employment Training and Technical Assistance from Workforce Investment Boards with a "successful/positive outcome" in order to support and spur further growth of small businesses/microenterprises.

Language to support an appropriation to support payment of Black Farmers claims.

## STATE/LOCAL FISCAL RELIEF

With each provision, we would urge you to direct funding through the federal agencies directly to localities: county/city/municipality/college/university or nonprofit organizations, rather than through the state, to be quickly disbursed and used by most economically depressed communities.

Our Nation has suffered substantial unemployment and underemployment over a prolonged period which has imposed significant economic and social costs, particularly in communities of color. We appreciate your attention to these prescriptive measures and look forward to working with you.

Sincerely,

REP. BARBARA LEE,  
*Chairwoman, Congressional Black Caucus.*

REP. EMANUEL CLEAVER,  
*Chairman, CBC Task-force on Economic Recovery.*

Ms. FUDGE. At this time, I'd like to bring up a colleague, DONALD PAYNE from New Jersey. Representative PAYNE has joined us many evenings, and it's a pleasure to yield some time to him this evening.

Mr. PAYNE. Thank you very much.

Let me certainly begin by thanking the gentlelady from California, our distinguished Chair of the Congressional Black Caucus, Congresswoman BAR-

BARA LEE, for anchoring this evening's Special Order on job creation. And Ms. LEE continues her diligence in addressing issues that confront our Nation in general, but in particular, the African American community, which has been a laudable effort, and let me again commend her for her diligence.

Let me also commend the gentlelady from Cleveland who comes to us, Representative FUDGE, as a former mayor, and I look at her as the mayor of the CBC.

□ 2045

Why would I call her the mayor of the CBC? Well, because a mayor has to have hands on. The mayor has to deal with all the issues. The mayor has to listen to see what's going on in education and jobs. The mayor is concerned about health care. And it's where the rubber meets the road. And you need someone who has the understanding and the perseverance. And so I would like to commend you again for the outstanding work that you do.

To the Chair of this important job creations committee, Congressman EMANUEL CLEAVER from Kansas City, he does an outstanding job in this.

Since the time is relatively late, we have several more Members, it's a good thing to do, when you have too many, therefore I will cut my remarks short. But let me just say in November we approved a historic bill to reform our health insurance system to expand access to affordable quality health care for nearly every American. The Affordable Health Care for Americans Act offers security and stability to all Americans, reduces costs and improves our choice.

Let me say that you cannot hold a secure job if the fundamentals are not there for everyone to be able to benefit. And one of the great provisions in the health bill is that there will be an emphasis on job creation because of the expanded health care that will be provided.

After a White House jobs summit on December 3 and a trip to Pennsylvania to meet with citizens of this country who have been affected by this economy, on December 8, as you know, President Obama announced steps that he believed should be at the heart of our efforts to put Americans back to work, to get businesses hiring again. I commend the President's focus on small businesses, infrastructure, and clean energy to provide an influx of jobs in this economy, as well as his emphasis to not just create jobs in the short run, but to also shift America away from consumption-driven growth to a focus on enhancing the competitiveness of American businesses, encouraging investment and promoting exports.

I would, however, push further and urge the President and my colleagues in Congress to expand our focus to ad-

dress the portion of our population who were already in vulnerable economic positions before the onset of this recession. Prior to December, 2007, the African American unemployment rate was 8.9 percent. In this economy, it has climbed to a disproportionate 15.6 percent.

Madam Speaker, in the great State of New Jersey, unemployment has reached 9.7 percent. However, the largest concentration of unemployed falls in the cities of Trenton and Newark, New Jersey, where I live, where a large portion of our State's minorities live, and the unemployment rate surpasses 14 percent. While New Jersey reached its highest level of unemployment in 34 years, Newark, a part of my district, has experienced the same rate of over 14 percent since 1994.

These startling facts call attention to the need to not simply restore our Nation to its pre-recession state, but to create a stronger, more inclusive plan to address the intersection of unemployment and poverty, and develop long-term strategies to confront this.

Madam Speaker, I believe that the key to our strategy is education. I urge the development of a multipronged approach not only aimed at creating new jobs but infused with education and job training. We must work diligently and deliberately to harness the skills of all people. The absence of this particular focus will cause severe and lasting damage to generations of Americans, particularly of color.

And so therefore, as I just shorten my remarks, I think that education, training, and expansion of current programs like the Job Corps, where we have an infrastructure, where we can have intensive training, where we can have health care, where we can go on to have GEDs, would be one way to create jobs and train people.

I have much more, and I would hope that we can have the remainder put in the RECORD. But I will yield back the balance of my time in deference to my colleagues.

Madam Speaker, let me begin by thanking the gentlelady from California, our distinguished Chair of the Congressional Black Caucus, Congresswoman BARBARA LEE, for anchoring this evening's Special Order on job creation. Her continued diligence in addressing issues that confront our nation, in general, but in particular the African Americans communities and she has been laudable, and let me commend you again for your diligence.

Let me congratulate the gentlelady from Cleveland, Representative FUDGE, who comes to the Congress as a former major and knows well of everyday problems, where the rubber meets the road. Let me also congratulate Representative EMANUEL CLEAVER from Kansas City for his leadership as Chairman of the CBC jobs task force.

Madam Speaker, I am pleased to join the other Members tonight to talk

about job creation, specifically in the African American community.

In November, we approved a historic bill to reform the health insurance system to expand access to affordable, quality health care to nearly every American. The Affordable Health Care for America Act offers security and stability to all Americans, reduces costs, improves coverage and preserves our choice of doctors, hospitals and health plans, BUT holding a secure job is the foundation of many of the provisions decided upon in the bill. That being said, in addition to the nation's 10 percent unemployment rate, it is clear why the President has placed strong emphasis on job creation in the past few days. After a White House Job Summit on December 3rd and a trip to Pennsylvania to meet with citizens of this country who have been affected by this economy, on December 8th, as you know, President Obama announced steps that he believes should be at the heart of our efforts to help put Americans back to work and get businesses hiring again. I commend the President's focus on small businesses, infrastructure, and clean energy to provide an influx of jobs in this economy, as well as his emphasis to not just create jobs in the short run, but to also shift America away from consumption-driven growth to a focus on enhancing the competitiveness of America's businesses, encouraging investment, and promoting exports.

I would, however, push further and urge the President and my colleagues in Congress to expand our focus to address the portion of our population who were already in vulnerable economic positions before the onset of this recession. Prior to December 2007, the African American unemployment rate was 8.9 percent. In this economy, it has climbed to a disproportionate 15.6 percent.

Madam Speaker, in the great state of New Jersey, unemployment has reached 9.7 percent; however, the largest concentration of unemployment falls in the cities of Trenton and Newark, where a large portion of the state's minorities live and unemployment has surpassed 14 percent. While NJ has reached its highest level of unemployment in 34 years, Newark—part of my district—has experienced the same rate of 14.3 percent as recent as 1994.

These startling facts call attention to the need, to not simply restore our nation to its state pre-recession, but to create a stronger, more inclusive plan to address the intersection of unemployment and poverty and develop long-term strategies.

Madam Speaker, I believe that the key to this strategy is education! I urge the development of a multi-pronged approach, not only aimed at creating new jobs but infused with education and job training. We must work

diligently and deliberately to harness the skills of all people! The absence of this particular focus will cause severe and lasting damage to generations of Americans, particularly those of color, and the future of our workforce.

Madam Speaker, I look forward to working with my colleagues on both sides of the aisle to develop policies that will expand our focus to offer additional support for communities that have long been affected by high unemployment rates.

With that, thank you once again, Congresswoman LEE for the outstanding work that you are doing.

Ms. FUDGE. Thank you so much. And I want to commend Representative PAYNE, not just for his words, but the fact that he is indeed the historian of our caucus. And it's just always a pleasure to have him put things in perspective for us. Thank you so much.

At this time, I would like to yield to our friend and colleague from Georgia, DAVID SCOTT, Representative SCOTT.

Mr. SCOTT of Georgia. Thank you so much, Ms. FUDGE. I just want to say how proud we all are of you and your leadership that you are providing on the floor for this hour, that you have been going forward with all of this year. And I certainly want to single out for special praise our distinguished chairlady of the Congressional Black Caucus. The good Lord has surely brought us the right person at the right time to lead this caucus in a very serious sea of turbulent waters. And so, Ms. BARBARA LEE, I just want to personally thank you for that leadership as we go forward.

Let me start at the very beginning, because I think that we need to understand what we are referencing when we use the words "targeting" and "focus." Let me just say clearly, yes, we are the Congressional Black Caucus. But we are talking about targeting and focusing our efforts on the basis of need, no more, no less, than what they did for Wall Street. You all may remember, I serve on the Financial Services Committee, and it was Secretary Paulson, the Republican Secretary of the Treasury, who rushed over here to Capitol Hill with just two pieces of paper, two pieces of paper. And said that the sky is falling down on Wall Street, and we needed to target and focus \$700 billion or \$800 billion he said, on Wall Street.

And then he went on to say, not only targeted to Wall Street, but targeted to specifically 12 to 15 bank and financial houses. Targeted, because that was where the source of the problem he felt. And he analyzed that source of the problem by saying it's because the credit markets are frozen. There is no lending. And we have to move.

Well, we sent him back, and we said, well, we can't do that; we have to have something more moving. And he came back and said, Well, let's target it to troubled asset relief, or TARP, so that

we can relieve these troubled assets with these financial institutions. Again, targeted. The point I'm trying to make is that we know the value of targeting where the problem is.

All we are simply saying here is we have troubled assets. What more troubled assets in our financial institution can we have than the job and our homes? And it is more troubled assets than the 12 or 15 houses to unfreeze the credit, which we did, and which we moved to. We must do the same here. We are advocating strongly that we take the remaining \$200 billion of this TARP money and focus it on where these troubled assets are now, jobs, and to saving our homes. This is what the American people want and need.

Ladies and gentlemen, let me just say, we have a soaring economy. But we must understand that it, too, is targeted. We have roughly 300 million people in this country. Eighty percent of those are targeted at the bottom one-third of the economic wealth stream of our economy. That means roughly 80 percent of that 300 billion, that is 270 million people, are targeted there.

And I bring that point up because, simply, our economy runs on mass consumption. Stores require spending. And it means that you need as many people going in that store buying that carton of milk or going into that auto dealership buying that car as possible. That is why this effort now—we've taken \$700 billion, we've targeted the top; we need to take this \$200 billion and target it at the bottom, and target it for jobs, and target it related to housing because they are so interconnected.

The most immediate thing we can do is what, again, we in the Congressional Black Caucus, 10 of us stood firm on the Financial Services Committee and said, no, no. No more. You're going to have to respond to this. If we did no more than anchor our movement in terms of providing moneys and target it into those areas that have high foreclosure, high closed and abandoned buildings and homes, and target money into those communities to fix up those homes, get them back on the market, that will save the housing prices and stop them from falling but will also create jobs in the most meaningful way for the very people we are trying to target it for. We need to also target money to help people who are losing their jobs to stay in their homes.

And secondly, we've got to target jobs to those people who no matter what you say about a rising tide lifts all boats, it doesn't. Many people are left behind. And nowhere is that more specific than in the African American community of African American males.

I will just recall in my closing to you this evening, we realized this, and we put the Manpower Training Act, and we targeted that. We realized this point, and we put forth what was

known as the opportunities and industrialization centers into these communities where we paid for the salaries and the training, and for the individuals to go on to the jobs so that they not only are trained for the jobs that are existing, but they are actually placed in those jobs. There are new jobs coming, and they've got to be trained for them.

Madam Chairwoman, I just want to thank you again. I appreciate this opportunity, and again, I'm very proud of my colleagues and what we are doing. Thank you.

Ms. FUDGE. Thank you very, very much, Representative SCOTT. We so much appreciate your thoughtfulness, quite frankly, and showing a real difference between what is happening on Wall Street and Main Street.

I would like to now, Madam Speaker, yield to our chair, our Chairman RANGEL, to give us some words of wisdom which I'm sure he is going to do this evening.

Mr. RANGEL. Once again, I want to thank Judge Congresswoman FUDGE for taking the time out as well as our leader, BARBARA LEE, for showing the depth of commitment that we in the Congressional Black Caucus have not only for our communities, which traditionally, historically have borne the blunt of historic economic setbacks, but for the entire country, because in my experience, it appears as though our great Nation's national security is at stake.

We can talk about the terrorists, we can talk about those that are out to destroy our way of life, but we can destroy our own way of life because what made America great is not the bankers. It is those people that thought in this great country that they could aspire, that they could work hard and there would be no limits on what they can achieve.

But unemployment is more than a statistic. Loss of a job means more than losing your house and losing your health care. It also means losing your dignity. And I cannot foresee how it's possible to have an economic recovery and have a jobless state of the economy. It seems to me that more important than the exchange of stock showing that America is willing to take risk is, what does America think about its hope, its future for its children? It seems to me that what makes America so great is what we think we can achieve. And whether you talk about current unemployment, you have to consider those people who had no hope before the setback. What happens to a person that is not included in the statistic? What happens to a person that knows there's no job at the unemployment office? What happens to a person that has given up hope?

Even if the so-called economy recovers, where will their will be to exercise the skill that perhaps has been lost? And how do you regain hope once that is lost.

□ 2100

And so what I hope that we understand as a Nation is that it is not just those who are suffering out there, who are losing sometimes their family as well as their jobs, but it happens to be something that's going to affect the well-off, because the more we expand those people who have no money to spend, the more our small business people have no reason to be in existence.

And so we can talk about the stock market, but the world is not turning on the will of the American people. Internationally, if we begin to look, as we have in so many communities, as a developing nation, not having the will, not having the resources, not being able to feed our children, not being able to provide health care for our children, what is the difference in a mother or father's heart whether you are in a developing country, whether it's in the Middle East, whether it's in Africa; the love for your children has to be the same no matter what country you're in. If you can't feed your child, if you can't encourage your child, if you can't educate your child, if you can't point out how great your country is in terms of opportunity, then what makes us different as a great nation from those who are trying to achieve economic leverage?

And so, even though the hour is late, and I am late in getting here, make no mistake about it that you will be hearing from the Congressional Black Caucus every day, whether it's going to be on the floor, whether it's going to be in our districts, because there is something that brings us here more than just our conscience; it's that most of us know exactly what unemployment and the pain of unemployment is, the loss of dignity of unemployment. And then we have our families, and then we have our communities.

And so we really believe that for those people that believe that we don't understand, before this Congress ends, the President and this Congress, we truly understand that this is a threat to our national security, and as Americans, as patriots, and as those who advocate a strong economy and a strong workforce, we will be glad to let you know that we will be doing all and everything that we can, and we've got to get the job done.

Thank you so much for yielding me this time.

Madam Speaker, the recent November jobs report offers encouraging signs that the Recovery Act is indeed working and that the economy has started to grow. Over the last three months, job losses have come down to the lowest level in two years. But the report is also a sobering reminder of the need to continue to advance policies that stimulate job creation and support the needs of American families and businesses that are struggling.

Nearly 16 million Americans are jobless, up 558,000 from last month. Unemployment is

more than just a number—it's a measure of suffering. It's that many more children living in poverty. It's that many more families subsisting off of food stamps, which now feed 1 in every 8 Americans and nearly 1 in every 4 children.

An economic recovery plan focused on salvaging Wall Street, credit-frozen banks, and slumping American automakers—while all right and good—is not a meaningful recovery if it does not help struggling families.

That's why the Obama Administration, in addition to all of its great work in turning this economy around, hosted a jobs summit last week aimed at putting Americans back to work, and I am looking forward to working with the President to do just that. President Obama's Recovery Act has already resulted in as many as 1.6 million Americans gaining jobs.

But unemployment remains at crisis levels. In New York City, the jobless rate for people 16 and over has increased over the past year by 73.7 percent. Half of the city's residents who are near poverty report experiencing three or more hardships at once, including falling behind on rent, not filling a prescription, or being unable to purchase enough food. The President's efforts to stave off depression and economic collapse have helped, but millions of Americans are saying, "Tell that to my landlord." Rebounding economic statistics mean little when so many Americans are still struggling economically.

Over the course of the next few weeks, creating jobs will be my first and foremost priority. I look forward to working with the President and my colleagues in Congress, including members of the Congress Black Caucus.

African American and Latino families are among those that suffer the most from a recession because they are disproportionately impacted by a weak economy and do not have the safety net enjoyed by others. The unemployment rate for all African-Americans is about 50 percent higher than the nation as a whole, and more than 1 in 4 low-income Latinos in New York reported losing their jobs in the past year. We must offer fresh and bold solutions to cultivate an economy that works for us all. Not just the wealthy. Not just the politically connected. But all of us.

Not only is America hurting; so are our kids. New York City has 200,000 disconnected youth on its streets, kids ages 16 to 24 not in school and without employment. New York houses more kids in state prisons than it does on college campuses. Nowadays, it isn't just high school dropouts who are out of work. Americans from all economic groups are falling prey to a shrinking workforce, whether it's the hospital worker laid off after toiling at the same job for decades, or the college graduate having a tough time finding a job. In fact, Black college graduates are having a tougher time finding employment than their White counterparts, both those with and without a degree. We are all vulnerable, and we all deserve a helping hand in pulling through these difficult times.

There can be no excess of good ideas to combat this crisis sweeping our nation. One thing we can do, and do immediately, is extend unemployment insurance. It is urgent that we provide out-of-work Americans with instant



relief. Additionally, the White House has committed itself to expanding green job opportunities through the Recovery through Retrofit program. These are good green jobs that can't be outsourced.

We must enact aggressive measures aimed at employing our young people at this critical time. The Administration is launching its "Educate to Innovate" campaign to improve participation and performance in the sciences through partnerships with foundations, nonprofits, and science and engineering societies. National service programs must be well funded, and we must develop an ambitious strategy to urge our youth to participate in them.

In the House, I am working with my Democratic colleagues on a jobs package that would include additional funding for infrastructure projects, like highway construction and renovation, bonds for building schools, and the expansion of the successful Build America Bonds program, already funding several infrastructure projects across the country. These projects are designed to put Americans immediately to work, all while making America safer and stronger.

In an effort to boost small business creation and tackle credit-freeze, we are anticipating expanding small business loans, providing fixes for community banks, and extending small business and bonus depreciation provisions from the stimulus package. Even the creation of green empowerment zones—those areas where at least 50 percent of the population has an unemployment rate higher than the state average—would provide tax incentives to businesses that hire individuals who live and work in those areas that are most suffering.

We are in the midst of a national emergency, but as a unified people, looking after each other, we will get through this stronger and far more prosperous.

Ms. FUDGE. Thank you very much, Mr. Chairman. We so much appreciate your being with us.

Now I would like to yield to the person who has really gotten me through most of this year, our representative from the Virgin Islands, DONNA CHRISTENSEN.

Mrs. CHRISTENSEN. Thank you, Congresswoman FUDGE. And thank you for the great job you're doing in pulling us together every week.

We had a press conference last week—and I agree with AL GREEN when he said we shouldn't even have to call it, not when unemployment in our communities is over 15 percent, even over 30 percent in some, and 50 percent when we look at young African American males, not when our CBC foundation can tell us about the lack of jobs for black males who have not completed high school or who have just completed high school compared to other people with similar educational levels.

The stark gaps in unemployment for African Americans, American Indians, Latinos, and Asians cry out for a remedy, one that responds to those who are most in need and at risk. If no one else will answer tonight, the Congressional

Black Caucus is answering, and we will answer every day until we turn the unemployment rates and every other inequity in our communities around.

I've had the opportunity, on a small scale, to see what can happen with programs like these because we don't have to go through the State and the local distribution. We will soon graduate 26 formerly unemployed men and women who knew nothing about solar water heaters who can now build them from scratch and install them. They have an opportunity, through the ARRA, the program created by our government, our utility, and a not-for-profit to put their training to work in real jobs. And what these young men have told us is please continue these programs and expand them for us. That is what we are here to say on behalf of them and the millions of others who need work today.

I want to just say that the same thing applies to health care jobs; they are needed in all of our communities on every level. This is a job industry that is growing and will continue to grow as we pass health care reform. There is a great opportunity for our communities in health care to create jobs.

I want to take this opportunity to thank Rev. EMANUEL CLEAVER, Congressman, and our Chair, BARBARA LEE, for being so aggressive in working and moving the Congressional Black Caucus and using us to move our caucus towards the creation of these jobs, and to thank our President for making job creation a central part of his agenda. We are his strongest allies and supporters and advocates. And advocating, as we do for our community, we are working to ensure that the benefits of his Presidency reach everyone in this Nation.

Democrats don't plan to go home until we do something meaningful to create jobs. The Christmas, Hanukkah, and Kwanzaa season must be one of hope for everyone. That is our commitment as Democrats and as the Congressional Black Caucus; our commitment is to make sure that these benefits extend to everyone, especially those who are suffering most, especially those in the African American community and other communities of color, not just for a few, not just for some, but for everyone living in this country.

I yield back.

I am pleased to join our Chairwoman BARBARA LEE, Congresswoman FUDGE who does such a great job of organizing these special orders every week and my other CBC colleagues to speak to the critical importance of creating jobs for the American people, as we Democrats are poised to do, but particularly in the hardest hit African American communities who when America sneezes gets pneumonia, when a breeze blows elsewhere we get a hurricane, and when surf is high for everyone else we get a tsunami.

We had a press conference last week, that as Congressman AL GREEN said and I agree, we should not have had to call.

Not when the unemployment in African American communities is over 15 percent, even over 30 percent in some areas and higher in some age groups. Not when the projections are as they always have been that joblessness will continue longest for us—especially for African American males.

Not when the CBC foundation issued issues a very telling report that has clearly demonstrated the severe gaps in employment for black male high school graduates or who have not finished high school even in unskilled jobs compared to every other group with the same educational levels.

And not when universities and others across our country have reported studies that clearly demonstrate racial bias in hiring and all of this is only the tip of the iceberg.

The stark gaps in employment for African Americans and Latinos cry out for a remedy—one that responds to those who are most at need and at risk and, if no one else will answer, we the Congressional Black Caucus is answering today and every day until we turn around the unemployment rates and every other inequity in our communities.

There is just no way that we will stand by and let our community be left behind as the country recovers from the recession and the focus turns, as it must, to job creation. And, we are determined that our community will not be left behind as we turn the page to a new green economy and as we embark on a reform of our healthcare system. Both will require massive training programs and a major expansion of our workforce on every level. This is an opportunity that we cannot afford to let pass us by—we won't!

I have had the opportunity to see on a small scale what can happen with programs funded thru ARRA because in my district—the US Virgin Islands—state and local are treated as one entity, so I do not have to depend on the state to distribute funds at the local level.

We will soon graduate 26 formerly unemployed men and women who knew nothing about solar water heaters soon who can now build and install several models from scratch. They are now in their practicum installing them in government youth and senior facilities. I was so impressed as they explained things I will never understand. They have an opportunity now with a program created by government our utility and a not for profit to put their training to work in real jobs.

But what the student-trainees we met with Paul Larsen, Dean Doctrine and Kahlil Simone—begged us was that we continue this program and provide them with even greater opportunities.

This is what we—on their behalf and on behalf of millions of others—are asking this Congress and our President to do now.

And the same applies to health care jobs. They are needed in all of our communities. Community health workers, allied health techs and nurse techs will be needed to meet the demand of the newly insured, they will be the key to eliminating health disparities in our communities, and open a door to even more opportunities. Right now the Department of labor has 200 million dollars available for training for healthcare jobs out of the ARRA, we need to continue and expand that going forward in the jobs bill this body will pass and we



need to ensure that the communities that suffer the greatest disparities are targeted with these programs for job creation in this industry where the demand will only continue to grow.

Health care provides a great opportunity for the now un- or under-employed to lift themselves out of poverty, to improve the health of their communities and to raise our nation's standing for all of the health indicators for which—like infant and maternal mortality as well as general health status we lag behind everyone of our industrialized global partners.

I would like to thank the Jobs Taskforce led by our colleague, Reverend EMANUEL CLEAVER, and our Chair BARBARA LEE for aggressively moving to ensure that communities like ours which are distressed and the people who live there will not continue to be marginalized by post racial wannabees.

As was said at the press conference in response to those who would make this a racial issue—if it is, it is not because we made it so. It is made so by the fact that the communities with the highest unemployment and the highest rates of poverty are African American, American Indian and other communities of color.

And for those who want to make this a fight between the CBC and the President—nothing could be further from the truth!

The White House unfortunately has too many advisors to whom the distress and misery in our communities are if not invisible, are not clearly seen and definitely not felt!

It is our responsibility to be the advisors and the advocates on the other side, on the side of those who have felt and borne the brunt of every hard time, every recession or depression long before and a whole lot longer than anyone else in this country.

We are our President's allies, supporters and strongest advocates. In advocating, as we do for our community, we are working to ensure that the benefits of his presidency reaches every corner of this nation, and that his presidency surpasses every other through the prism, not just of history, but of what happens today to improve the lives of those most in need.

Ms. FUDGE. Mr. Speaker, we thank you for, once again, allowing the caucus to come and share with you our views. I want to thank all of the members of the caucus who came tonight. I think it was a very, very interesting and dynamic discussion.

Mr. Speaker, the Nation's unemployment rate is alarming—over 10 percent of our citizens are unemployed. However, African Americans have been hit harder by the recession. Nearly 15.6 percent of African Americans are unemployed. My congressional district has an even higher unemployment rate, of 17.1 percent, and is one of the poorest communities in the country. Many parts of the Greater Cleveland area suffer from abject poverty and unemployment. Nearly one in every four Cuyahoga County residents lives below the poverty line. These unemployment rates demonstrate that Americans need and deserve a more concerted federal effort to reduce poverty and create jobs. We must do more to help curb our Nation's problem and create jobs for our people.

One reason I came to Congress was to help struggling Americans in my district. My num-

ber one priority is to promote policies that create jobs and spur economic development. I have consistently advocated for such policies this year.

In the Student Aid and Fiscal Responsibility Act, Representative LOEBSACK and I introduced the sectors amendment, which helps individuals and businesses by bringing together multiple stakeholders with a common interest in developing and implementing workforce development strategies that contribute to local and regional growth. The purpose of Sectors is to prepare individuals for jobs that are available in their communities now. Sector approaches draw upon the expertise of many partners who improve worker training, retention, and advancement by developing cross-firm skill standards. It promotes career development, job redefinitions, and shared training, while supporting capacities that facilitate the advancement of workers at all skill levels, including the least skilled. An emerging body of research demonstrates that sector strategies can provide significant positive outcomes, including job attainment, increased wages, and greater job security.

As we work to ensure that all Americans have access to affordable health care, I authored an important provision in the Affordable Health Care Reform Act. This provision requires the Advisory Committee on Health Workforce Evaluation and Assessment, established by the bill, to monitor the adequacy of the health care workforce and report workforce shortages. This will ensure the creation of job opportunities, where necessary, for constituents of the Eleventh Congressional District of Ohio. My provision will guarantee a rapid response to shortages in the health care workforce, such as Health Information Technology, nursing, primary care physicians, pediatrics and other specialists.

The American Recovery and Reinvestment Act provides \$19 billion for the U.S. to take the lead in health information technology. It establishes standards for a nationwide electronic exchange and health information to improve quality and coordination of care by 2010. Earlier this year, I introduced the Health Information Technology Public Utility Act. This bill will assist all health facilities transition to computerized health records. Ursuline College, an all-women's school in my district has created a curriculum responding to this need. Sister Diana Stano, President of Ursuline, has a health IT program that facilitates the expansion of my district's health information technology workforce. This program is more important at a school like Ursuline, because nearly 30 percent of the population is comprised of students from lower socio-economic groups or first generation college students. These students will now have an opportunity to move straight from training to sustainable employment.

Currently I am working with Chairman TOWNS and Representative PATRICK MURPHY on legislation that will not only assist students with private education loans but also create jobs following college. The proposal allows college graduates to swap a portion of their private student loan debt for a federally subsidized loan with a lower interest rate. As a result of the conversion, the federal government would earn \$9 billion for school construction,

improvements for primary and secondary education facilities and institutions of higher education.

We must provide financial support for students to complete trade certifications or college degrees. Education is the only way to end the cycle of poverty.

We must encourage innovation in lending so small business and those in minority communities have access to capital.

We must aggressively advocate for loan modifications to reduce foreclosures and keep Americans in their homes.

In short, we need a concerted effort from the Federal government to expand access to the critical services and resources for minority communities. The exaggerated rate of Black unemployment is problematic for the entire Nation. These families, and those in disproportionately affected regions, need a solid pathway out of poverty.

By re-training workers in expanding industries, instead of those that are shrinking we can move people out of poverty.

Targeted assistance to Americans disproportionately suffering from the recession is crucial to reducing the unemployment rate for all.

#### PREVENTIVE SERVICES TASK FORCE

The SPEAKER pro tempore (Mr. MURPHY of New York). Under the Speaker's announced policy of January 6, 2009, the gentlewoman from Ohio (Mrs. SCHMIDT) is recognized for 60 minutes as the designee of the minority leader.

Mrs. SCHMIDT. Mr. Speaker, I rise tonight to speak about a very important issue, it's about breast cancer and my expressed disappointment and disagreement with the recent set of recommendations issued by the United States Preventive Services Task Force, this simple little 12-page study that, quite frankly, has angered millions of women across the United States. I highly recommend people to take the 15 minutes that it will take to read this report and see just how flawed it really is.

As most Americans know, especially women, breast cancer represents a major health threat both in this country and across the world. Breast cancer is one of the most frequently diagnosed forms of cancer for women, and it ranks second only to lung cancer in terms of cancer-related deaths.

In 2008, an estimated 250,000 cases of breast cancer were diagnosed in the United States, and 40,000 women lost their lives to this terrible disease. These 40,000 deaths represent, however, a significant reduction in mortalities compared to 20 years ago. In fact, since 1990, the mortality rate for breast cancer has decreased approximately 30 percent. Medical experts attribute this dramatic decrease to both improved treatment methods and to the widespread and regular use of early detection techniques such as mammograms.

Despite these positive gains and despite the thousands of lives that breast cancer screening has saved during the past two decades, the United States Preventive Services Task Force recently issued new recommendations advocating, get this, against routine mammograms for women younger than 50, biannual mammograms for women 50 to 75, no mammograms at all for women older than 75, and actually recommended against teaching women the proper and important method of self breast examinations; they don't want medical experts to show them how to do a self breast exam.

In coming to these conclusions, the Task Force—which, by the way, did not include a single expert in mammography or oncology—reasoned that the physical and psychological harms associated with breast cancer screening outweigh the benefits for women younger than 50 years of age. The task force then explained that the harms it was concerned about included unnecessary tests and biopsies, and the general inconvenience, stress, and—get this—anxiety caused by potentially false positive screening results.

Personally, I was appalled and shocked to think that we might have a little bit of anxiety thinking that we might have felt something in a self breast cancer exam or that a mammography might have showed a shadow that was a little inconclusive and that we might need follow up, that we might have anxiety with that. And since for most of us it will be a false positive, we really don't need to have that anxiety. I was appalled because, yeah, you have a little anxiety, but think of the joy that you have realizing it was a false positive. And think about the relief that you have knowing that you now have the ability to fight a disease when you find it at its earliest and most preventable stage.

My concern is what these recommendations will do for women who should be receiving annual breast exams both now and in the future. Because what the government report is essentially telling women is that they should forgo proven methods of detecting breast cancer because in the aggregate screening methods don't save enough lives to outweigh the discomfort, inconvenience, and yes, the report talks about the cost.

Quite frankly, this is not just bad advice, this is awful advice. And I believe it will result in countless unnecessary and preventable deaths for women who do not avail themselves of screening techniques that could and would detect breast cancer at its earliest and most treatable stages and, yes, save lives.

For example, the task force downplayed the importance of self breast examinations. In doing so, the task force reasons that having a medical professional demonstrate the proper method of self-examination is insignificant

to the cancer detection, and that too many women would suffer, again, anxiety from false positive results. But the report ignored a very important question; how many women have had their lives saved because of a simple self breast exam?

Perhaps the anxiety for those who don't understand what they have uncovered is less important than the one person who actually finds something and saves his or her own life because, yes, men also get breast cancer.

I also oppose the task force's recommendations because they represent an unfortunate and dangerous step back in the fight for health care equality for women. I was in the State legislature in Ohio for 4 years, and I uncovered this. It was through my insistence that insurance companies in Ohio pay the true cost for mammograms for women in Ohio. Recommendations like this task force's will serve to weaken State mandates like Ohio's, and they will ultimately lead to a rationing of preventative care across the country.

For example, according to language in the health care bill just passed by the House, the task force's recommendations could give the Secretary of Health and Human Services the power to exclude mammograms and other breast cancer screening techniques from any government-run health care plan or exchange. If you read pages 1317 and 1318 of the bill, you will see that the language in there suggests a slippery slope where this could occur.

Now, yes, it talks about testing and demonstration projects, but it says, the Secretary of Health and Human Services shall ensure that a subsidy or reward is provided only if a government task force recommendation is rated as A or B. Well, this task force only graded breast cancer screening for women 40 to 49, as a C, so this bill may not require the Federal Government to cover the cost of preventative care.

The Federal Government may not be required to cover annual screenings for women 50 and older. And the task force recommends that screening should be done biannually for this age group, and not for women over 75 at all. But the Senate bill is even more alarming. Comparable provisions were also included in the Senate proposed health care bill until an amendment was adopted last week.

For example, 2713 of the bill requires that private insurers cover only preventative services that receive a rating of A or B from the task force. Section 4105 of the bill granted the Secretary of Health and Human Services the ability to modify any government coverage of preventative services if consistent with recommendations of the task force. In fact, there were more than a dozen occasions in the Senate bill when recommendations from the task force would influence the availability of health care.

□ 2115

Now, not surprisingly, the Obama administration and the Secretary of Health and Human Services have attempted to deflect the public outcry about this task force's recommendations, stating that the task force does not set Federal policy, that it does not determine what services are covered by the Federal Government. They also have claimed that the Federal Government's policy concerning breast cancer screening coverage will not change as a result of the task force's recommendations. Insurance companies have made similar promises, assuring their customers that they will continue to pay for annual mammograms as well, but it begs the question:

For how long?

The language contained in the House and the Senate bill speaks for itself, and it speaks loud and clear. There is simply no guarantee that the administration, that the Secretary of Health and Human Services, and that the insurance companies won't change their positions in the future, and there is no guarantee that mammograms will continue to be covered.

Fortunately, the task force's recommendations have been strongly rejected by a litany of respected medical organizations, including, notably, the American Cancer Society and the American College of Radiology. The recommendations also run contrary to positions taken by the American Medical Association, the American College of Obstetrics and Gynecology, and the National Cancer Institute. I have some of these publications here, and in a little while, I will read from them.

Right now, I am really hopeful that women ignore this task force's recommendation. It is for their health and for their safety, and it is also for the health and the safety of their families. I would also hope that, as we debate this health care bill, that we ensure that we do not look at cost and then look at treatment and decide that cost outweighs treatment. Yes, there is a limited amount of money out there, but nobody's health should be put on the line because of the dollars that are involved.

So I hope that women tonight will listen to their doctors—not to the government, not to the insurance companies, and certainly not to this task force—and will make the right decisions for all of their health care. There simply is no room for a government bureaucrat in a woman's decision to screen for breast cancer.

Right now, I have my good friend from Pennsylvania's Fifth Congressional District, Congressman GLENN THOMPSON, who wants to weigh in on this.

Mr. THOMPSON of Pennsylvania. I thank the gentlelady from Ohio for yielding and for hosting this Special Order this evening on what is truly

such an important topic. I don't think there is anyone here in this Chamber or anyone across the United States who, through family or friends, has not been touched by breast cancer in their families or within their networks of friends.

I came here in January. Prior to that, I had worked in health care for 28 years, in rehabilitation services. I was a rehabilitation professional, working, actually, as a rehab services manager for most of that time. During that time, I had my staff. They were wonderful, caring, compassionate individuals who were true professionals. I worked with just a tremendous number of women who were breast cancer survivors postmastectomy. I was developing innovative rehabilitation techniques and exercises, and I really tried to touch the lives of people who were facing this devastating disease.

You had talked about these recommendations that were put out, and I'm sure you're going to go into detail on this, but I pulled a document, and it was one of those that you referenced.

Truly, when I think of cancer, I think of an organization such as the American Cancer Society, which just offers their expertise. Their researchers do just a tremendous job on awareness and on prevention and on treatment all across the board. In their 2009 Cancer Prevention and Early Detection Facts and Figures, just go to page 35. It talks about what their recommendations are. It is very specifically that mammographies begin at age 40, and it's annually. Those are not dated recommendations. Those are not dated screening guidelines. Those are 2009.

You know, breast cancer, as the gentlelady mentioned, is the second leading cause of death in American women. In 2008, there were over 40,000 deaths in this country. Certainly, breast cancer also touches the lives of men in much smaller numbers, but it does have a presence. In the United States, women get breast cancer more than any other type of cancer except for skin cancer. Breast cancer is only second to lung cancer as the cause of death in women. Breast cancer does occur in men, but as I said before, the numbers of cases are certainly small.

Now, age and health history certainly can have an effect on the risk of developing breast cancer. Anything increases your chance of getting a disease. It's called a "risk factor." Having a risk factor does not mean that you will get the cancer, but not having risk factors does not mean that you will not get the cancer.

People who think they may be at risk certainly need to talk to their doctors as the relationship between the patient and the physician is just so important. We've talked about that relationship so many times in this health care debate. One of my biggest fears isn't the cost of health care. Really,

my biggest fear is when the government or a bureaucrat becomes a wedge between the decisionmaking relationship of the patient and the physician. Certainly, when it comes to risk factors, touching base and communicating with one's physician is so important. People who think they may be at risk should discuss this with their doctors, and they should discuss all of the risk factors that are present.

Cancer prevention is certainly very important. Cancer prevention is an action taken to lower the chance of getting cancer. By preventing cancer, the number of new cases of cancer in a group or in a population is lowered. Hopefully, this will lower the number of deaths caused by cancer. To prevent new cancers from starting, scientists look at risk factors and protective factors. That's where the value of these regular screenings comes in. Anything that increases your chance of developing cancer is called a "cancer risk factor," and anything that decreases your chance of developing cancer is called a "cancer protective factor."

Now, some factors for cancer can be avoided, but many cannot. For example, smoking and inheriting certain genes are risk factors for certain types of cancer, but only smoking can be avoided. As for regular exercise and a healthy diet, neither of those really fit well into the lifestyle one has while working in Congress. I've found, since January, neither a healthy diet nor exercise, but both of those can be protective factors for some types of cancers. Avoiding risk factors and increasing protective factors may lower your risk, but it does not mean that you will not get cancer. Different ways to prevent cancer are being studied, including changing one's lifestyle, eating habits, avoiding things known to cause cancer, taking medication to treat a precancerous condition or to keep cancer from starting.

Certainly, breast cancer screenings have been shown to reduce breast cancer mortality. In the United States, death rates from breast cancer in women have been declining since 1990. I think that's a track record we can be very proud of, and it's a trend line that is just so important. Most of that has been due, in large part, to early detection by mammography screening and by improvements in treatment.

When you look at those trends, I find appalling the recommendations we've recently seen come out to not just move up the age of when mammographies would begin but the fact that they would go to every 2 years versus an annual basis. Currently, 61 percent of breast cancers are diagnosed at a localized stage for which the 5-year survival rate is 98 percent. Again, within the United States, I think that's a statistic we can be very proud of. Further reductions in breast cancer deaths are possible by not

spreading out but, rather, increasing mammography screening rates and by providing timely access to high-quality follow-ups and treatment.

Despite the relatively high prevalence of mammography screenings in the United States and within the document I made reference to previously—this is from 2006—I think that we've seen actual improvements in terms of access to screenings. Nationwide, for women 40 years of age and older, 61.2 percent have had mammography and clinical breast exams. Ages 40 to 64 is 59.7 percent; 65 years of age and older is 64.6 percent. These are good numbers. They could be better. We could improve upon them. I don't think we can improve upon them by following those recommendations that were just recently put out.

Recent studies suggest that many women are initiating mammographies later than recommended or are not having mammographies at all or are not having them at the recommended intervals or are not receiving appropriate and timely follow-ups of positive screening results. These indicators of inadequate screenings are associated with a more advanced tumor size and stage at diagnosis.

In accordance with the American Cancer Society screening guidelines, it is important for women aged 40 and older to receive mammography screenings on an annual basis at an accredited mammography screening facility. For women with increased risks of breast cancer, the society recommends annual screenings using MRIs, or magnetic resonance imaging, in addition to the mammograms.

I am very appreciative of my good friend from Ohio for, once again, taking the leadership on this very important topic and for allowing me to join in with you tonight.

I yield back.

Mrs. SCHMIDT. I thank you very much. This whole report concerns me on a multitude of levels.

A few weeks ago, I and a group of women got together, and we held a press conference. At the press conference, when it was my turn to speak, I actually had a reporter who questioned what we were saying because we were not "professionals" in the field.

I held up the report, and I said, Have you read it?

Well, he hadn't read it. So I handed it to him and suggested that he read it; but you know, I'm not a professional. I don't have a medical background. I'm just a woman, and I'm a woman concerned about my friends who have had to undergo the fear of having breast cancer. With treatment and especially with early diagnosis, they are living very, very normal lives. I could go on and on.

I have a friend who was 41. She missed her first mammography at the age of 40. She went, and she had a very,

very small tumor, and she had it out. That was 4 years ago. She has a little girl. She's going to live to be a ripe old age. Thank God she was able to have that mammography, because there is no breast cancer in her family. So, according to this report, she shouldn't have had it until age 50 because she's not at risk, but ah, indeed, 75 percent of people who get breast cancer do not have risk factors for cancer. Only 25 percent do.

I want to read right now the report from the American College of Radiology. It's dated November 24, 2009. I want to read it because they're the scientists; they're the professionals—I'm not. I think that what you will see in this is an unraveling of the inconsistencies of this report.

It says that several sections of the Senate health care reform legislation contain language stipulating that insurance entities, such as private insurers, Medicare and Medicaid, would only be required to cover services receiving a specific rate from the United States preventative service task force. Presently, this would exclude mammography services for the majority of women 40 to 49. It would only require coverage of biannual—that's every other year—coverage for women 50 to 74, and it would exclude coverage for those women 74 years of age and older. While the USPSTF recommendations may result in cost savings, a great many women will die unnecessarily from breast cancer as a result.

These are not my words. These are the words of the American College of Radiology.

It goes on to read that this is not a political argument. It is a matter of life and death. Congress needs to act to specifically protect annual mammography coverage for women ages 40 and older and for high-risk women under 40 as recommended by their physician, said James T. Thrall, M.D., FACR, Chair of the American College of Radiology Board of Chancellors.

If the cost-cutting USPSTF mammography recommendations are not excluded from health care reform legislation, the government or private insurers would be permitted to refuse women coverage for this lifesaving exam, turning back the clock on two decades of advances against the Nation's second leading cancer killer.

These aren't my words. This is the American College of Radiology. They go on.

The federally funded and staffed task force includes representatives from major health insurers, but it does not include a single radiologist, oncologist, breast surgeon or any other clinician with demonstrative expertise in breast cancer diagnosis or treatment.

□ 2130

Despite demonstrations by their own analysis that screening annually begin-

ning at age 40 saves most lives and most years of life, the task force recommended against mammography screening for women 40 to 49 years of age, annual mammograms for women between 50 and 74—in favor of only every other year—and all breast cancer screening in women over 74. These recommendations run counter to even the task forces own data and are out of touch with the long-proven policies of the American Cancer Society, the ACR, and other experts in the field.

I have to digress for a moment because my very, very dear friend, her mother is 90. Her mother did a self-breast exam and noticed a lump, had a mammography. They did a lumpectomy. That was a few months ago.

My very dear friend lost her father a couple of years ago. All she has is her mother and her brothers and sisters. She is delighted to know that her mother has a long life ahead of her and at least isn't at risk for this disease. But, again, according to what these recommendations are, she wouldn't have gotten a mammography and wouldn't have gotten a lumpectomy.

I will go back to the American College of Radiology's report that strongly urges those in Congress to exclude the USPSTF guidelines from health care legislation and make changes to the task force membership, an operating process that will guard against such unacceptable recommendations moving forward without any input from experts in breast cancer diagnosis and treatment, said W. Phil Evans MD, FACR, president of the Society of Breast Imaging, SBI.

This states that since the onset of regular mammography screening in 1990, the mortality rate from breast cancer, which has been unchanged for the preceding 50 years, has decreased by 30 percent. Ignoring direct scientific evidence from large clinical trials, the task force based their recommendations to reduce breast cancer screening on conflicting computer models—conflicting computer models—and the unsupported and discredited idea that the parameters of mammography screening change abruptly at the age of 50.

In truth, there are no data to support this premise.

Let me continue, that allowing a small number of people with no demonstrative expertise in the subject matter to make recommendations regarding diagnosis of a disease which kills more than 40,000 women a year makes no scientific sense and is a mistake that many women will pay for with their lives—these are not my words. This is the American College of Radiology's words—and that lawmakers need to require that the task force includes experts from the field on which they are making recommendations and that its recommendations be submitted for comment and review to outside stake-

holders in similar fashion to rules enacted by the Centers for Medicare and Medicaid Services, said Thrall.

Before I continue with this, I just want to say that if we are going to base health care on any task force's grading system of an "A" or a "B," my fear is what kind of experts are going to be doing the grading and what kinds of outcomes are going to be there, because clearly, according to the American College of Radiology, this report is not true science.

Let me continue, that it is well known that mammography has reduced the breast cancer death rate in the United States by 30 percent since 1990, hardly a small benefit. Based on data on the performance of screening mammography as it is currently practiced in the United States, one invasive cancer is found for every 556 mammograms performed in women in their forties.

I want to repeat that, because, you know, this report says that for women under the age of 50 they are going to have anxiety and fear—"Oh, my gosh, I might have breast cancer"—so why put them through it. Well, for 556 people that's true, but that one in 556 does have breast cancer. That one in 556 has the right to know it, know it in its earliest stages and get treated appropriately.

Let me continue, that mammography only every other year in women 50 to 74 would miss 19 to 33 percent of cancers that could be detected by annual screening.

Let me digress, that's my age group. I am in my fifties. So I am not supposed to have this every year, this mammography? I am supposed to have it every other year? But that means my chances for finding early detection and living a long time would be decreased instead of helped.

Then it continues that starting at age 50 would sacrifice 3 years of life per 1,000 women screened that could have been saved had screening started at the age of 40.

Okay. I don't want to be that one life in 1,000 and neither does any other woman in America, but let me continue.

Eighty-five percent of all abnormal mammograms would require only additional images to clarify whether cancer may be present or not. Only 2 percent of women who receive screening mammograms eventually require a biopsy, but the task force data showed that the rate of biopsy is actually lower among younger women.

The issue of overdiagnosis is controversial. By the task force's own admission, it is difficult to quantify and is less of a factor among younger women who have had many years of life expectancy.

Weighing the significance, documented benefits of annual mammography screening against possible anxiety and the need for additional imaging or biopsy, it is difficult to understand how the task force reached its recommendations.

Again, these aren't my words. These are the American College of Radiology, that these new recommendations have created a great deal of confusion among women, a situation that might have been avoided by consulting those of us in the field who actually care for women who are seeking detection, diagnosis, and treatment of breast cancer. The unfortunate result may be decreased utilization of this lifesaving tool.

I urge insurers and Congress not to compound the problem by allowing the possibility of denying coverage to women who seek routine annual mammography starting at the age of 40 and continue for as long as they are in good health, said Carol H. Lee, MD, Chair of the ACR Breast Imaging Commission. The task force is a panel funded and staffed by the Health and Human Services Agency for Health Care Research and Quality.

The Medicare Improvement for Patients and Providers Act of 2008 gave the U.S. Department of Health and Human Services the authority to consider the USPSTF recommendations in Medicare coverage determinations. Private insurers may also incorporate the task force recommendations as a cost-saving measure.

I want to repeat that, because I think that's the most chilling revelation that I have uncovered in this whole breast cancer debate. The Medicare Improvement for Patients and Providers Act of 2008 gave the U.S. Department of Health and Human Services the authority to consider this task force's recommendation in Medicare coverage determinations. Private insurers may also incorporate the USPSTF recommendations as a cost-saving measure.

I am quite alarmed, and I think most Americans are as well.

I have been joined by my colleague from Wyoming, Ms. CYNTHIA LUMMIS.

Mrs. LUMMIS. I would like to thank the gentlewoman from Ohio for bringing this issue to our attention once again this evening. You know, many of us have anecdotal information about friends, relatives, colleagues who have experienced the diagnosis of breast cancer in their forties simply because they went in to receive a routine mammogram.

That was certainly the case with my sister-in-law who, in her forties, went in for a routine mammogram, had none of the genetic or typical markers that reveal the need to have mammograms, but, of course, since they were regularly recommended for women in their thirties and forties, she went in for her

annual mammogram and was diagnosed with a very aggressive form of breast cancer. She was diagnosed, had her mastectomy, and began her chemotherapy all within the period of 30 days.

Without that routine mammogram, that aggressive breast cancer would have had an opportunity to spread in a way that would have caused or exacerbated the chance that that cancer would not have been treatable and would not have saved her life.

In fact, we learned during the health care debate in the House that in the United States both men and women have better rates of survivability for cancer in the United States than they do in Canada or in Europe. That is because cancer is routinely screened for and it is rapidly addressed following diagnosis. In fact, the opportunity in the United States to receive treatment quickly following diagnosis is directly related to the current health care system in the United States.

As the gentlewoman from Ohio indicated, there are opportunities, due to the findings of this panel, for insurers to use it as a basis to decide not to provide covered health care insurance for breast cancer mammography screening for women in their forties.

I believe that that is an indicator of how serious this issue is, and I want to particularly thank the gentlewoman from Ohio for calling it to our attention this evening.

Mrs. SCHMIDT. Thank you so much, and I hope that your sister is doing well.

Mrs. LUMMIS. She is doing very well. She is cancer free. And I would indicate, also, that it is, of course, just another example. But I am from Wyoming. One of our Senator's wives, Bobbi Barrasso, was also diagnosed with breast cancer in her forties as a result of a mammogram and is also doing well.

You look at our tiny little congressional delegation that consists of one Member of the House and two Senators, and of those three people, two have examples of breast cancer within their own families that was diagnosed in women in their forties due to a routine mammogram. That gives, even though anecdotal, a couple of examples that are repeated all over the country by people who may be tuning in tonight on C-SPAN. Many of you know women who have been diagnosed and successfully treated for breast cancer in the United States.

Part of the reason the prognosis has improved so dramatically in the United States for this very serious and, unfortunately, very common form of cancer is the fact that following routine screening, we have the opportunity to receive aggressive treatment in a health care system that, while in need of reform, is not in need of the kind of reform that would increase the period

of time between when we are diagnosed and when we are treated.

We know, from around the world, from systems of government in Europe and in Canada that have the form of health care that was being advocated in this body by the majority party and a form which, in fact, passed this body and is now being debated in the Senate, that, indeed, when you add more government to the health care system, you do add time lags between diagnosis and treatment. And that is something that we should be trying to encourage our colleagues to prevent and prevent especially because of the United States' superior record when compared to other nations around the world with regard to breast cancer.

Mrs. SCHMIDT. Thank you so much.

I want to continue to show that while I am not a medical professional and my dear colleague from Wyoming is not a medical professional, we are not just speaking from the heart and from our soul. We are also speaking from an intelligent position.

The Washington Post had an article by Otis W. Brawley. Who is Otis W. Brawley? Well, he is the writer, is the chief medical officer of the American Cancer Society.

Now I am not going to read this whole article that was in The Washington Post on November 19, but let me read some of the things from it.

□ 2145

Studying cancer deaths among women in their forties reveals some important trends. Death rates were dropping slightly in the 1970s, thanks to better awareness and better treatment. In 1983, the American Cancer Society began recommending that all women get screened beginning at the age of 40. By 1990, death rates began a steep decline that continues today. While some of that drop is due to improvements in treatment, conservative estimates are that about half is due to mammography. Without mammography, many women would not be candidates for breast-conserving therapy. You cannot treat a tumor until you find it, and we know that mammography has led to finding tumors when they're smaller and far more treatable.

We think the task force may underestimate mammography's lifesaving value.

It goes on.

In the end he wraps up by saying, In the meantime the American Cancer Society continues to recommend annual screening using mammography and clinical breast examination for all women beginning at the age of 40. The test is far from perfect, but it's the best way we have to find tumors early. How many lives are enough to make routine screening worth it? How many mothers, sisters, aunts, grandmothers, daughters and friends are we willing to lose to breast cancer while the debate

goes on about the limitations of mammography? Turning back the clock will add up to too many lives lost, and too many women finding their tumors later, when treatment options are limited. Our medical staff and volunteers overwhelmingly believe the benefits of screening women ages 40 to 49 outweighs its limitations. Let's not behave as though we lack a tool with proven benefits to women.

Again, these are not my words; these are the words a medical professional has written in the *Washington Post*. I could go on, because the *American Medical News*, I pulled this off line. I just want to read some of the things that it says in here.

It says, Taking its concern a step further, the American College of Radiology asked that the recommendations be rescinded to prevent the possibility of the new guidelines influencing policymakers as they shape health system reform legislation.

This was printed on November 30. This article goes on to say:

Washington, D.C. radiologist Rachel Brem dismissed the potential harm when compared to the value of detecting cancer. "Virtually all my patients would prefer the small anxiety of a false-positive with the possibility to diagnose an early breast cancer."

Oh, yes, Mr. Speaker, we women would prefer to have a little anxiety and find it early, find it, treat it appropriately, and live to a ripe old age.

It goes on to say, Researchers of one study found that annual mammography screening for women ages 50 to 79 resulted in an 8 percent median increase in breast cancer mortality reduction. For screening every 2 years, it was 7 percent. So we lose a percent if we wait every 2 years. For screening that begins at age 40 and continues to age 69, researchers found a 3 percent median breast cancer mortality reduction with either annual or biennial screening. Researchers concluded that greater mortality reductions could be achieved by stopping screening at an older age than by initiating screening at an earlier age. No recommendations were made for women 75 and older because, the task force said, there is insufficient evidence to assess the additional benefits and harms. But early detection is partially credited for the steadily falling breast cancer rate among women younger than 50, according to the American Cancer Society.

It goes on to say that they, too, debunk the findings of this study.

I also went through and looked at some of what was being said in my own hometown. On the editorial page on November 18, Krista Ramsey, I want to read this because it really has the sentiment of my heart:

Tell us why we shouldn't feel betrayed.

After decades of memorizing breast cancer's warning signs, training our-

selves to do monthly self-exams, and guilting ourselves into annual mammograms, we women are now being told the exams are useless and mammograms unreliable.

A Federal task force has reversed a decades-long campaign that trained women to make screenings a cornerstone of their self-care. It now recommends against routine mammograms for women in their forties, longer intervals between them for older women, and ditching the self-exams.

Intended or not, yanking away the tools we relied on to keep ourselves safe from this disease shakes the confidence that we can keep ourselves safe. And fear and confusion have always been breast cancer's best friend.

Now we are left to reconcile two utterly conflicting messages—the task force cautioning against the test the American Cancer Society still calls lifesaving.

As so often happens with debates over medical care, women can't help but feel like pawns. Experts told us to get smart about this disease and we did our homework. They told us to face it straight on—have the tests, entertain the thought it could happen to us—and we didn't flinch.

For decades, we have walked against breast cancer, run against it, shopped and marched against it. We devoted a whole month to raising our awareness, nagging other females we loved to schedule mammograms. We pinned on looped ribbons, we donned hot pink—and nobody looks good in hot pink.

Now it seems the message is sit back, don't worry and wait. The millions we raised for research on prevention went for this?

The dueling medical experts are going to be the ones to feel the pinch if they think they can, just like that, back women off of mammograms. And they should be very careful about warning against screenings because the results could make us worry our pretty little heads.

It's not that we shouldn't be disabused of reassuring but faulty medical advice. It's not that women have had a long history of being talked down to, and all around, when it comes to matters of their health. Still, our skepticism can kill us.

It's well known that we women take better care of others than ourselves. It doesn't take much for us to rationalize resetting our priorities—I'll get that tooth fixed after we pay off some bills, I'll schedule that test after we finish soccer season.

Leaving work for a mammogram has always been a hassle. Now we can justify waiting another year. And then, as our busy lives barrel on, that 1 year becomes 5. For many women, that 5-year gamble will do no harm. For some, it's a fatal bet. And nobody can say which one of us can afford to wait and which cannot.

How much less painful this would be if we all couldn't name women who needed a mammogram earlier than she got it. How many children wish their mom could have been diagnosed in time so she could see them graduate from high school? Do we suspect this whole debacle is more about saving on health care costs than sparing us anxiety? You bet we do.

Are we concerned that tightening the recommendations will, down the road, mean limiting our care? We're not stupid.

We're sophisticated enough to understand cancer is a wily opponent that doesn't follow anybody's rules. But we're savvy enough to know that when it comes to our health, we only get the care we demand.

Tell us the truth. Tell us what you don't know. Put our lives before cost savings. Bring us fully into this discussion. And imagine that women who will be undiagnosed or wrongly diagnosed by your miscalculations is your daughter, your mother or your wife.

I have now been joined by my very good friend, Dr. BURGESS from Texas, and yield you as much time as you need.

Mr. BURGESS. I thank the gentlelady for yielding. I thank you so much for taking the initiative to do this hour tonight. I think it is extremely important and extremely timely. Last month when the United States preventive service task force came out up with their guidelines, I went home from Congress to my desk and there was a copy of OB-GYN News that had just been delivered the week before these task force guidelines came out. This was the current state of the art, the current state of thinking just prior to these task force recommendations being made.

In the article, and I am quoting here, the most effective method for women to avoid death from breast cancer is to have regular mammographic screening, said Dr. Blake Cady at a breast cancer symposium sponsored by the American Society of Clinical Oncology. Interestingly, in their article they cite some statistics, and I'll be honest, these are statistics that I knew but I had forgotten. The rates of cancer deaths in the current study, 25 percent of them occurred in women who had regular screenings. Seventy-five percent occurred in women who did not. That's a 3-to-1 risk ratio of dying from breast cancer between those who were screened and those who were unscreened. In fact, they go on to say that amongst women who were unscreened, the 56 percent mortality is the same overall mortality we used to see in breast cancer up until 1970 prior to the onset of widespread mammographic screening.

Another piece of information I wanted to share tonight is from the American College of Obstetrics and Gynecology from their president, Gerald F.

Joseph, who wrote to me December 4 of this year:

As you know, the American College of OB-GYN expressed concern about the new breast cancer screening guidelines in a letter to the United States preventive service task force in May where we raised concerns that the C recommendation against routine screening mammography in women ages 40 to 49 would be misunderstood by clinicians, by patients, misunderstood by policymakers and insurers and ultimately this could prevent women in that age group from receiving important services. Immediately following the release of the new guidelines, the American College of OB-GYN instructed fellows of the college that it would continue to recommend routine screening for women in this age group.

Here is probably the most critical point of Dr. Joseph's letter. In his last paragraph, This is especially critical right now as we caution Congress against giving the United States preventive service task force authority over women's health in health care reform.

Today, these guidelines are simply that, they are just guidelines. Any doctor or patient is free to take them or disregard them, however it is their wish. Once this bill, as the gentlelady correctly pointed out, becomes law, no longer will that be an optional exercise. Those will be the mandated screening guidelines that will be established in law. And I will tell you as a physician, if an insurance company decides they're not going to cover something, the patient isn't going to get it done. It is just as simple as that. This is a step backward, as Dr. Cady pointed out. It is going back prior to 1970 when we had that 56 percent mortality prior to the institution of regular screenings. We don't need to do that. We don't need to do that as a country. We have the information, we need to act on the information, we need to keep patients involved in their own health care. I cannot tell you the number of people who came to me ultimately who had a diagnosis of breast cancer who found the cancer themselves. I didn't find it on a clinical exam. They found it on a breast self-exam. It wasn't detected on a mammogram. It may have occurred in that 2-year period between screens, but the patient found it herself. The earlier diagnosis was made possible by the patient's involvement in her own care. And to say that we are unnecessarily alarming patients by teaching them to be involved in their own care I think does women a great disservice.

So I thank the gentlelady for bringing this to the floor of the Congress tonight. I am going to submit the letter from the American College of OB-GYN president for the CONGRESSIONAL RECORD, and I thank you for providing this very valuable service for women tonight on the House floor.

THE AMERICAN COLLEGE OF  
OBSTETRICIANS AND GYNECOLOGISTS,  
Ponchatoula, LA, December 4, 2009.

Hon. MICHAEL BURGESS, M.D.FACOG,  
Cannon House Office Building,  
Washington, DC.

DEAR DR. BURGESS: On behalf of the American College of Obstetricians and Gynecologists (ACOG), representing over 53,000 physicians and partners in women's health, thank you for your remarks at the December 2nd Breast Cancer Screening Recommendations hearing held by the Energy and Commerce Subcommittee on Health. Your opening statement and questions to the United States Preventive Services Task Force (USPSTF) panel highlighted both the importance of the doctor-patient relationship in making medical decisions, and the flaws in the USPSTF recommendations process.

Once again, your medical knowledge and expertise are proving invaluable to Congress' development of good health policy.

As you know, ACOG expressed concern about the new breast cancer screening guidelines in a letter to the USPSTF in May, where we raised concerns that the C recommendation against routine screening mammography in women ages 40-49 would be misunderstood by clinicians, patients, policymakers, and insurers and that ultimately, this could prevent women in that age group from receiving important mammography services. Immediately following the release of the new guidelines, ACOG instructed its Fellows that the College would continue to recommend routine screening for women in this age group.

Your questions to the panel effectively highlighted the flaws in the process by which the USPSTF makes recommendations. Lack of transparency and public input are part of the problem; there is no formal mechanism for the public to comment on proposed guidelines, and comments that the Task Force receives from experts are not often taken seriously. We also appreciate your comment that the USPSTF is comprised mostly of primary care doctors and includes only a limited number of ob/gyns and other specialists. This point is especially critical right now, as we caution Congress against giving the USPSTF authority over women's health in health care reform.

Thank you again for your remarks and for always standing up for women's health.

Sincerely,

GERALD F. JOSEPH, M.D.,  
President, ACOG.

Mrs. SCHMIDT. Thank you so much because you are the medical expert in the field and I'm so glad that you came here to share your testimony this evening, my good friend from Texas. Because as we continue with this health care debate, the one underlying theme that I think the American public has is, will this interfere with their health. And I think what we're seeing from this task force's recommendations is that when the government takes over the health care, it has the potential ability to do just that—interfere with our health. This task force had a flawed document, it was driven to say that the risks for women were anxiety, but it also said in the report that costs outweighed, were looked at in looking at when you should have the mammographies and when you shouldn't have the mammographies.

This report clearly was driven by the fact that it costs money to have good health care, no matter where you are.

□ 2200

And so it showed if you eliminate mammography for women under the age of 50, you eliminate a whole lot of cost. And for 556 women, that is okay. But that unlucky one that's after 556, she's the one that is going to be missed.

And so as we debate health care in this country, we should never put a price on it, and we should never allow government to interfere with our lives, especially when it comes to the care of our health and our family.

So I hope that we take what's out there in the bills in the House, in the Senate, and we delete them and we start over with a commonsense approach to solving the problems with health care in this country because quite frankly, we have the best health care in the world. It needs tweaking, but what we're doing right now potentially would change it and change it in a fashion that I don't think any American wants.

My good friend from Texas, if you don't have anything more to say, I think we will yield back our time.

I yield back our time, Mr. Speaker.

#### HEALTH CARE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Iowa (Mr. KING) is recognized for 60 minutes as the designee of the minority leader.

Mr. KING of Iowa. Thank you, Mr. Speaker. It's my privilege to be recognized and address you here on the floor of the House and pick up—I think, transition from the discussion that has taken place in the previous hour by the gentlelady from Ohio—and I appreciate the presentation that's been made here—and to fit the breast cancer issue in with the larger health care debate is what I will seek to do, Mr. Speaker.

And that is this: that the question about how breast cancer is treated and how it's tested fits back into the broader question of what happens if we end up with a national health care act. What happens if we end up with socialized medicine? Do we get more of this or less of this? Do we get more government agencies that are laying out guidelines that are, as I believe—and I agree with the gentlelady from Wyoming and with the doctor from Texas—that do we get more government guidelines that cut down on the costs of the tests but raise the costs in lives? And do we get that in breast cancer, and do we get that on nearly every other aspect of health care?

This debate has gone on and on here on health care, and it reached its crescendo during the month of August in the aftermath of the cap-and-trade bill,



the bill that no one read, not one single person read, not one Member of Congress read. I know that no one read the bill—I don't have to ask everyone here—because the bill was not available. When the bill was passed, it was not available in a form that resembled final form.

And I remember Congressman LOUIE GOHMERT come to the floor, Mr. Speaker, and raising the question, parliamentary inquiry, Is there a bill in the well? Is there a copy of the final bill, the one that we're debating and the one that we're voting on? But it's not in the well. Not an integrated bill, not with the amendments that were included in that.

And so the final question he asked after a series of them, Can we message a bill that doesn't exist to the United States Senate? Apparently that is what we could do, and that is what happened. That bill, cap-and-trade, sits over there now before the United States Senate, as does a national health care bill. And they are, of course, taking it up and debating it and fitting it around some of these things that they're doing. And it looks like this is the week that the United States Senate turns the focus on their national health care act.

Now, we have taken this argument, policy-by-policy, ideology-by-ideology through this House, but it comes down to this just as a refresher, Mr. Speaker, what brought this all about: increasing costs in health care in the United States and, around the world, a growing focus on health care.

But I think that a lot of it emerged during the Democrat primary for President when Hillary Clinton looked at one point like she would win the nomination. She's the one that led the argument and led the meetings—both open and closed door—for what a lot of America still remembers as HillaryCare back in 1993, 1994, in that era. And since Hillary Clinton knew a lot about health care and that was the centerpiece of her campaign, she brought that to the debate and used that in the primary campaign.

And as the contest for the nomination on the Democrat side for the President shook down to one of two people, Barack Obama or Hillary Clinton, the pressure that Hillary brought into that campaign to raise the issue of health care made it a central issue in the Democrat primary. And it forced, in my opinion, Barack Obama—then-Senator Obama—to run a health care agenda of his own, something to match up to and counteract with and seek to win the debate on the Democrat side of the primary voting aisle. And I believe that the urgency that America has is not reflected exactly off of the data that's out there and the economics of it and the need.

But it's more reflected because there was a political gain to be had in the

nomination process for President, especially on the Democrat side, and as that debate emerged, and Barack Obama was successful in winning the nomination and then ultimately the presidency, he carried that mantle of health care reform through the entire process—inspired by Hillary Clinton, I believe—and pushed to a high level of a priority, which I'm convinced, Mr. Speaker, that they believe that it is the highest priority in America. They have made it that. They must believe that, and I'm not challenging that approach. I'm just suggesting that because it was a primary issue in the nominating process for President on the Democrat side, it gained some momentum that it wouldn't have had if we were going to step back and look at the health care issue.

And so it became something that the President, when he was elected, saw as a mandate, a mandate to go in and pass some kind of a national health care act.

Well, you would think that you could go right down through the logic line and flip the toggle switches and get down to something that makes sense. And the principles that were laid out by Barack Obama as a candidate—and later as a President—came down to this. Health care costs too much money. The economy is in a mess, and it's in a downward spiral. We have to fix the economy—this is the President's philosophy, and we can't fix the economy unless we first fix health care that costs too much money. That's the rationale. It's threaded through a number of his speeches.

It never seemed rational to me. I couldn't follow the logic of “the economy's in a mess; we have to fix health care to straighten out the economy; we spend too much on health care, therefore we're going to fix it.” I can get maybe that far, but then the rationale on my side of the aisle, among Republicans, would be, Well, if we spend too much money on health care, where are we spending it that we don't need to?

The President concludes it's a half-trillion dollars in Medicare, which would inappropriately punish many of the senior citizens in America—some of whom are being led by AARP, who will apparently make more money selling insurance if a bill is passed than they will serving their membership if it's not passed. So they have come out to support this bill.

But the President said, We're spending too much money; let's spend more. And he wants to keep the bill down under \$900,000 but the doc fix throws another \$243 billion, is the original number, at this and it takes it over a trillion. And if you look at some of the other numbers, if you evaluate this as JUDD GREGG did, Senator JUDD GREGG from New Hampshire, that they're doing the math on this bill in this fashion: 5½ or so years of expenses, 10 years

of tax increase and income. So it shows up to only be a number that at some place around or a little bit under a trillion dollars, Mr. Speaker, in extra costs.

JUDD GREGG says it's \$2½ trillion once you take an objective look at the math and at the accounting. If you look at actually 10 years of expenses and 10 years of revenue, it is about a \$2½ trillion dollar bill.

□ 2210

So if the President's statement is that we spend too much money on health care, about 14½, and some will even say 16 or more percent of our GDP on health care, we spend too much money on health care, therefore we have to solve the problem by spending a lot more. This diabolical, Orwellian logic is something that the American people are still breathlessly amazed that a President and leaders in this country can get by with such statements. Health care costs too much money, so we will spend 1 or 2 or maybe even approaching \$3 trillion more, that will solve the problem, Mr. Speaker. If we spend too much money, let's spend a lot more.

Another one of the points is there are too many uninsured in America. Now, over the last 3 or so years, there has been an intentional effort to conflate the two words of “health care” and “health insurance,” and the effort has been on the part of the people on the left to blur the subject matter of the difference between health care and health insurance. They will say we have too many people that don't have health care in America. But they don't take into account that what health care really means is, do you get treated by doctors and nurses in clinics, hospitals and emergency rooms or don't you? If you get sick or get injured, can you get treatment? The answer to that is yes, everywhere. That's essentially what the law says.

So, according to statute and practice, the health care providers provide everyone access to health care. What we don't have are everybody in America that has their own personal insurance policy. And a lot of people on this side of the aisle have conflated the two terms and said, “people don't have health care” when they really mean, “people don't own their own health insurance policy.” And so it has been morphed and blended into this idea that somehow there is a right, and some would even argue that within the Constitution there is some kind of a right that everyone would own their own health insurance policy.

And so they set about to grant or provide a health insurance policy to every American, legal or illegally, lawfully present or not, people that will take care of their own responsibilities and people even that have refused to take care of their own responsibilities,

and impose a health insurance policy on them all. And if they are not willing to write a check and pay for the premium or go to work for somebody that will do that or sign up for Medicaid, or, of course, those that are eligible for Medicare, if they are not willing to do that, the IRS will come in and audit them and levy a fine for not having health insurance.

And if this gets bad enough, you can end up in jail for the first time in the history of this country. The Federal Government is putting together a product called a health insurance exchange and approved health insurance policies or the public option, government-run health insurance plan, and if you fail to buy a policy within the statutory guidelines, those that are approved by the Health Choices Administration Commissioner, the czar, the IRS can come in and levy a fee against you, and eventually one could go to jail for tax evasion technically, but not buying a government-imposed health insurance policy actually. It would be the first time in the history of America that the government has produced a product, compelled its citizens to buy the product, and if they refused or failed to, then levy a fine, eventually lock them up in jail. It is the equivalent of debtors' prison for not buying the government-approved version of health insurance. It will be the first time in America.

And the President has said, and this is out of the House version, Mr. Speaker, and I understand the Senate has tweaked that a little bit and maybe taken the jail time out, so now they just put a lien on your house and sell your house. Never fear, though. There is a special way you can get a cheap mortgage in America that has been set up to take care of those people. The government has their fingers in everything.

This has been the most giant leap into socialism that we've had ever since the preparations for the transition that began on the 20th of January of this year. And the President has said, we have too many uninsured. And when you go through the list, they use the number 47 million uninsured. So from that 47 million, I begin to subtract the numbers of people who are eligible under their own employer but just don't opt in, or opt out; and those who are eligible under a government program like Medicaid, and subtract from that number those who are unlawfully present in the United States, where if ICE or the Department of Homeland Security had to deliver them their health insurance policy, they would be compelled to deport them to a foreign country, or those who are lawfully present in the United States but by law are barred for 5 years from having public benefits, and we keep subtracting out of that list those who make over \$75,000 a year and don't have

their own health insurance. And now with that list, we take the 47 million and we subtract all those in that list that I talked about, those eligible under their employer without it, those eligible for the government, those that make over \$75,000 a year, and those who are ineligible because they are illegal aliens or immigrants, and now that 47 million magically becomes 12.1 million, Mr. Speaker; and this 12.1 million Americans without affordable options for health insurance now isn't this massive number that tells us we have a national problem. What it really is, is less than 4 percent of the American population. And we are down to 4 percent of the American population, and the proposal is to change 100 percent of America's health insurance program and America's health care delivery, all of that to try to reduce this number of less than 4 percent down to something that may approach 2 percent after it takes over 100 percent of the program.

With the insurance competition that the President has called for, he said, well, the insurance companies are greedy. He always has to have a straw man to kick over. The insurance companies are greedy. Was it today or yesterday he said, the fat cat bankers, and then sat down and had a meeting with them today. Somebody has to be demonized before we can move forward here. We can't just simply have people with divergent interests that can be brought together that are altruistic and want to engage in the economy and help people. We have 1,300 health insurance companies in America and about 100,000 different policy varieties that can be purchased in the various 50 States, and that isn't exactly that many different companies and policies available to every American because we don't allow Americans, at this point, to buy health insurance across State lines.

It is an easy fix, we tweak that here, John Shadegg's bill that's been out here for about 4 or more years to allow people to buy health insurance across State lines, and magically all 1,300 companies compete against each other, unless they happen to be the same company that's operating in different States, and when that happens, and magically these 100,000 policy varieties become available to everybody in the United States.

And so the idea the President proposes of creating a government-run health insurance company and government-approved health insurance policies to produce more competition for the health insurance companies, if you want more competition, just let people buy insurance across State lines. Magically you've got 1,300 companies competing, 100,000 policies to choose from, and it is far more effective from a competition standpoint than it is to put the government involved and have the government limit, write, regulate and

control every health insurance policy in America. And when the President says, Don't worry, if you like your health insurance policy you get to keep it, have you noticed that he hasn't said that in a long time? It has been weeks and weeks, at least by my recollection, that the President has reiterated, if you like your health insurance policy, you get to keep it. The truth is, get ready to lose it. If you have a policy today, under the House version of the bill or anything that I understand under the Senate version of the bill, that policy would have to be cancelled some time between 2011, by 2011 or 2013. It would be cancelled, and there would be a new policy that would have to be issued that met the Federal guidelines. There is no policy in America that the President of the United States with confidence can look at and point to and say, you, Joe the plumber, or you, Sally the doctor, are going to be able to keep the health insurance policy that you have, that you love, that you paid for, because the government may decide that it doesn't have the right benefits to it, it doesn't have the right mandates, and maybe it doesn't cover all the things that they think government should cover.

And so that is just some of the basis for this, Mr. Speaker. There is so much more. And as this debate ensues down on the Senate side of the aisle, right down through those doors, straight across through the Capitol, we are watching a dramatic, and I think a titanic, colossal clash taking place in the Senate right now, and I mean in this period this week. As this unfolds, we need the American people to rise up. We need the American people to speak up. We need the American people to pick up their telephones. We need them to come to this Capitol building. We need them to fill up the Senate. We need them to surround this place and stand here and call out for freedom, call out for liberty, call out for the rights that are in the Constitution and not somebody else's idea of transferring wealth across America and putting it into the pockets of others and taking away the benefits of the people that have been industrious and have been personally responsible.

We take care of everybody in America. Jimmy Carter once said that the people that work should live better than those that don't. I caught that. When he said that, it seemed a little odd to hear that from him. And I don't know that he really ever lived by it, but he said it, and I believe that as well.

□ 2220

This bill is another class level, or it's another take from the rich and give to the poor. It's a class-envy bill. It's born out of spite and born out of class envy and it's driven by ideology and it's driven by the idea of socialized medicine.

Today I was asked to answer a series of questions that were requested by a publication here on the Hill, and it was, What is the biggest problem Republicans have? Mr. Speaker, my answer is fighting off Marxists and socialists that masquerade as liberals and progressives. That's the biggest problem Republicans have now. This is a Marxist and socialist agenda, and that's one of the reasons why the Blue Dogs have gone underground and become groundhogs. The shadow of socialism has pushed them underground. And they're not out here fighting for truth, justice, the American way and a balanced budget and personal responsibility and constitutionalism. They seem to have disappeared from the scene. But 40 or so of them will get a pass from the Speaker of the House and be able to vote "no" on this bill if it comes back to this House because there are enough votes stacked up on the Democrat side that about that many will get a pass.

I see that my good friend, Dr. BURGESS, who took a small hiatus from the previous Special Order, is here with a brain full of information, Mr. Speaker, for you to absorb and pass along to our colleagues.

I would be very happy to yield as much time as he may consume to the gentleman from Texas, Dr. BURGESS.

Mr. BURGESS. I thank the gentleman for yielding.

The gentleman has done an excellent job at delineating where we've been, what's been happening, and perhaps where we're going. You know, this summer was truly a remarkable time in this country when the beauty of participatory democracy was on display literally from sea to shining sea, from border to border. I certainly felt it in my district. I know it was felt in a number of congressional districts. We've seen the results of that.

The gentleman is quite correct, the Blue Dogs, who were so active during the summer months leading up to the August recess, have really been under enormous pressure by their leadership on their side. And now we've seen, in the past several days, I think by my count, four retirements from that group. I don't know whether we will be seeing more, but it certainly is something that you cannot fail to notice.

Now, the gentleman from Iowa has correctly identified this to be a fight about ideology. You will notice through the discussions going on in the other body right now, there is really very little that's going on about health care, *per se*. There is very little talked about as far as health care policy. It is all a question about, well, let's get the numbers right. Let's get the Congressional Budget Office. Let's get the actuaries over at the Center for Medicare and Medicaid Services. Let's get these numbers right so we can then present this to the American people and stay

within the President's prescription of delivering health care for all for under \$1 trillion.

Now, we know that to be a fantasy. The gentleman outlined the reasons why that is a fantasy. There are a number of things that have been taken out of this bill that will have to be added back at some point in the future, but this has become a fight about ideology just as the energy bill has been a fight about ideology. Cap-and-trade is no longer about the number of molecules of carbon dioxide in the atmosphere. This is about ideology. This is about holding the United States to \$3 trillion in ransom to the rest of the world and, oh, by the way, you've got to give up your ability to be in charge of our own future. You've got to give up your sovereignty along the way to Copenhagen. This is a fight about ideology.

The Financial Services bill that we passed on the floor of this House last week had nothing to do to prevent future problems with meltdowns in the financial industry. If it had, we would have seen something that would actually have made a difference. Instead, we got big carve-outs for big companies. The smaller community banks are still going to have to pay into a fund to bail out the big guys if they get in trouble again in the future. In fact, we've institutionalized the failure of those institutions who are too big to fail by this bill that we passed last week.

But again, it's not about what you know about financial policy; it's about ideology. That is where we are today over in the other body with this health care debate. Nobody is really interested in whether or not there is the right vaccine policy involved. No one is really interested in what the United States Preventive Services Task Force does. It's all about control of every facet of your life. And if we can control your health care, we can control more about you than we've ever been able to control in the past.

That is why it is so important that this be stopped. It's not because we want to prevent anyone from having health insurance. It's not that we want to prevent anyone from having health care, but we want to prevent this type of power grab that is going on at the level of the Federal Government over the lives of honest American citizens.

If we lose, if we are not successful in stopping this, ultimately it's not a Democratic win or a Republican loss. Ultimately, it's the American people who will lose in this transaction. It is transactional politics at its worst, and we've all seen that on display.

One year ago, we were faced, on our side, with the very stark realization that we had lost the White House, lost 20 seats in the House, lost a number of seats in the Senate, and in fact, when the eventual Senator from Minnesota was seated, the Democrats had a pro-

verbial unstoppable majority of 60 votes over on the Senate side. This all happened very early in the calendar year 2009.

I would have thought, facing that kind of harsh reality, that many of these things that we've talked about tonight—energy policy, health care policy, financial services policy—many of those things would have already been done; after all, what was to stop them? Were Republicans going to be able to stop much of anything? No. We didn't have the leadership, the money, or the ideas to put a stop to much of anything. In fact, I still believe to this day, had the President put health care ahead of the pork barrel spending that was present in the stimulus bill that they passed in February, if the President pushed health care to the front of that agenda, that would have been done in February. It would be the law of the land today, and there would have been nothing that anyone could have done to stop it. But they didn't. They didn't.

In fact, I still puzzle over why cap-and-trade was suddenly thrown into the mix at the end of June, sort of all at once. We passed it out of committee a month before and it sort of languished there. Everyone was uncomfortable about it, but it was never coming to the floor, after all, so we really didn't need to worry about it. Then suddenly, the last week of June, boom, here it is and it's going to pass, and Democrats' arms were twisted and hair was pulled and eyes were gouged in order to get this thing passed.

I don't know if the gentleman from Iowa recalls, but there was the instance where a Democratic Member from Florida sold his vote for \$30 million here on the floor of this House. The Democrats were going to usher in a new era of transparency. That was about as transparently transactional as I have ever seen on the floor of the House, but they got the bill passed.

And then what happened? We went home for 4th of July recess, marched in that 4th of July parade right behind the American Legion, just in front of the Cub Scouts. And from both sides of the parade route, people were yelling at their Member of Congress, What in the world were you thinking? Next time, read the bill. On and on it went along the parade route. By the end of the 4th of July parades, Members of Congress, both sides, Republicans and Democrats, were saying, Oh, my God, what have we done? What are we up against?

So we came back in July and said, We're not so anxious to pass this health care bill. In fact, the Blue Dogs, to their credit, ground things to a halt, starting about the 15th of July, when we finally got the bill—and remember, we got this 1,000-page bill and we were supposed to pass it before the August recess and go home and deal with the

consequences, but not so fast. The Blue Dogs did slow things down. We did not have a bill passed by the August recess.

And then, it was a beautiful thing to watch, the participatory democracy that we saw again across this country came to bear and brought pressure to every Member of Congress, whether conservative, liberal, Republican, Democrat. Every Member of Congress heard from their constituents.

Now, to be sure, the Speaker of the House labeled these individuals as Astroturf or rent-a-mob, but I've got to tell you, I had 2,000 people show up for a town hall in Denton, Texas, on a hot Saturday morning in August, and these were my friends and neighbors, a town where I grew up. I know most of the people in the town. And it was not an imported crowd to give grief to the poor Member of Congress. These were people who were legitimately concerned.

Just as the gentleman from Iowa accurately points out, we're trying to fix a problem for less than 5 percent of the American population and disrupt what 65, 70, or 73 percent of the American population sees as something that is working relatively well for them. Sure, they're concerned about costs for the future. Sure, they're concerned about what happens if they lose their job to their employer-sponsored insurance. But by and large, those that have insurance do want to keep it. That's why we don't hear that brought up anymore.

□ 2230

I thought we'd come back in September and hit the reset button—the pause, the replay. No. We hit the fast-forward button, and we pushed this thing through. Don't check the weather. We're going to fly anyway. The Speaker pushed it through in the early part of November, again, purely on a party-line vote, and now it's over in the Senate.

The people are asking, Well, what are you going to do to fix this? Sixty percent of the people do not want this to happen. So, Mr. Member of Congress, what are you going to do to stop this?

I do have to say that I am, once again, going to ask, going to call on, going to cajole, going to plead with Americans across the country who are looking at this happening right now: It's not hard to figure out who your Senators are as every State has got two. Most of the time, if you go to a search engine of choice and type in "Who is my United States Senator for the State of Iowa or Texas?" it will come back, and it will tell you. You can go to [Senate.gov](http://Senate.gov) and can put the name of your State in, and it will tell you who your Senators are. It will, in fact, tell you how to contact them. It will give you their Washington telephone numbers and their phone numbers back home in the State. Your Sen-

ators need to hear from you in these coming days that are immediately ahead of us.

You know, if you think back to the days in May of 2005, there were a couple of Senators who decided they were going to do something that fundamentally would have changed the way this country dealt with problems surrounding immigration. The American people rose up as one and said, Not so fast. Not so fast. We have a voice in this. We have a say in this. They stopped the Senate cold in its tracks.

The Senate, true to form, decided maybe that was a misnomer. Maybe they didn't really mean "not so fast." So they tried again. Once again, they heard "not so fast." Their switchboards shut down. Their servers crashed because of the volumes of information that were coming in, telling them "not so fast."

Well, I would submit to the gentleman from Iowa that he and I are going to be hard-pressed to stop this thing on the floor of the Senate in the days ahead. It is going to require participatory democracy on a level that we saw this summer, and then some, in order to bring this thing back to the realm of where, perhaps, we can actually deal with the problems that we're required to deal with.

Remember, it's all about ideology right now. It's about a hard left turn that has been taken by the administration and by the Democratic leadership in the House and in the Senate. That's where they want to go with this thing. If that's okay with you, stay silent. Have a nice Christmas. We'll see you next year. If that's not okay with you, if you feel like the gentleman from Iowa and I feel about this, your Senators do need to hear from you. Your Members in the other body need to hear from you. They need to hear from you straightaway.

I've got some other ideas which I'll be happy to share with the gentleman, but I've taken up enough of his time, and I'll yield back the time to the gentleman from Iowa.

Mr. KING of Iowa. Reclaiming my time, I thank the gentleman from Texas. He had me paying attention to those ideas.

From that standpoint on the immigration debate—and that's one that I've been engaged in for a long time—the effort that went out across this Nation to shut down the switchboard and to shut down the servers of the United States Senate sent a message. Yet, as the gentleman from Texas said, about 3 months later, they decided to try it again. They just didn't believe what the American people had told them, and they took another run at it.

On the immigration side of this, this was a bipartisan effort. It had the President of the United States—then President Bush—and significant numbers on the Republican and on the

Democrat sides of the aisle. There were more Democrats than Republicans significantly, but this was a bipartisan effort, and it was something that was strategically driven by the White House. It still failed in the face of that effort because the American people rose up.

There isn't any reason, Mr. Speaker, for anybody to believe that the American people can't kill this socialized medicine bill. If they can kill comprehensive amnesty and do so twice in 1 year and do so in the United States Senate, as difficult as it may seem and as determined as the President seems to be, this scenario is doable.

They have learned a few things, too, over there, down that hallway in the United States Senate and off into their office buildings on the side. They've learned how to shut their phones off, and they've learned how to shut down their fax machines, and they've learned how to, essentially, plug their ears and wait for the noise of the American people to settle down, and then we'll try to pass something.

I'm suggesting this, that the Senators need to have a personal experience. They and their staffs need to have a personal experience—a respectful, polite and nonthreatening personal experience. Especially if you're a Senator, you probably have your finger on the political barometer, and have a real sense of what the public's mood is. You can run a poll, and you can hire a pollster to find out where the American people are or you can make a lot of phone calls and can send out emails and can send out letters. You can listen to people or you can put the data together, but you also have to measure the intensity. The intensity is the other part.

If we have an issue out here that I'm ambivalent about—and I really haven't found that issue yet, Mr. Speaker, on which I am. Hypothetically, if I'm ambivalent about an issue and if, on the one hand, I'm for it and if, on the other hand, I'm against it and if half of the public is for it and if half of them is against it, how would one decide then which side of the issue to come down on?

You have to pay attention to the people who have intensity. I pay attention to the people in this Congress who come in who have intensity—to people like Dr. BURGESS who have intensity and to the people who have been elected to this Congress who are vocal and aggressive and who know what they believe because they've lived it. I pay attention to that level of intensity.

As to the level of intensity that needs to come from the American people, this is the week. This is the week for that intensity. So, if you're ambivalent, fine. You can sit home and send an email. If you care, you can make a phone call. If you care more, you can go down to your Senators' district offices. If you care more yet, you can

come to Washington, D.C. At 1:30 tomorrow, there will be a large gathering in the park just north of the Senate Chamber. From there, we are going to see how much the American people care.

They've been called to rally to defend their liberty a number of times this year. We saw it on April 15 in a big way. We saw it on September 12 in a big way. We saw it here on November 5 and on November 7. On November 5, there were 20,000 to 50,000 or more people here outside this Capitol building, who came here and said, Don't take my liberty. Let me own my own health insurance policy. Don't tell me the standards by which I can buy it. Let me have my own freedom, my own liberty. I don't need government-run health care in America.

That was the message. Of that whole group of people who was there—tens of thousands—any one of them would have fit just perfectly at my own church picnic. They are salt-of-the-Earth, American, liberty-loving, constitutionalist, fiscally responsible, family people from across America. They are the people who are this American family who don't want to see a socialized America. They understand we are a unique people and that we are not social democracy Europe.

The socialists, for the most part, stayed in Europe. Freedom-loving people came here. There is a certain vitality in Americans which is unique to the rest of the world. It was hard to get here. You had to take a chance and maybe be an indentured servant; but earn your way across the Atlantic, and you could settle in and maybe drive a stake in Iowa and homestead 160 acres. One of my great-grandparents was an indentured servant who worked in a stable in Baltimore for 7 years before he got his passage worked off. These were people with a dream, who just wanted to have a start because we had economic opportunity. We had liberty, and they could shape their own lives.

So we got the vitality from every donor civilization in the world. As for everybody who sends people here—every country—whatever would be the particular characteristics of their cultures, there is always that skim off the top, the cream off the top, which is the vitality of a culture, the vitality of a civilization.

One of the reasons America has such vitality is that we skimmed the cream, and they came here. They arrived in America with almost unlimited natural resources, low-income or no taxation, no regulation, manifest destiny, a Protestant work ethic—and Catholics got with it pretty good—and with a foundation rooted in Christian morality and work ethic. That giant petri dish created this teeming America that settled the continent from sea to shining sea in the blink of a historical eye.

We are not anybody else in the world. We are a unique people. We live in the

unchallenged greatest nation on Earth, that the Earth has ever seen. I'm watching it be torn apart by people who don't understand what I've just said, by people who get out of bed every day and look around. They see these beautiful marble pillars of American exceptionalism, and they can't wait to get out their jackhammers and chisel away at those pillars of American exceptionalism, which are the foundation that made this a great nation.

So now we've seen eight huge entities nationalized, most of it under this administration but not all of it. There are three large investment banks; Fannie Mae and Freddie Mac, General Motors, Chrysler, AIG, all of that was nationalized. According to a Wall Street Journal article, one-third of the private sector profits have been nationalized, mostly by this administration, without an exit strategy.

□ 2240

Right away they set up the payroll czar to go in and tell the banks and the other institutions that they are paying too much to their executives. Now we have BARNEY FRANK's Financial Services bill, which is about ideology, as the gentleman from Texas said, as much as socialized medicine is about ideology and not about a practical application. In that bill it looks like they are going to be able to regulate all the financial institutions they take an interest in—with a little carve-out there—and tell those institutions what they are going to pay their people probably right on down to the person that scrubs the floor at night.

This freedom in this country has been dramatically diminished by the Pelosi Congress and the Obama presidency. This liberty that America needs to maintain our vitality is being quashed by the socialization, the nationalization of our economy, and the intentional creation of a dependency class of people that are designed to be the political base that will support those who will continue to do class-environment politics, share the wealth, so to speak.

By the way, that "share the wealth" phrase that came out of President Obama's mouth as a candidate in speaking to Joe the Plumber is in the mission statement of ACORN.

I am happy yield to the gentleman from Texas.

Mr. BURGESS. Well, I think the gentleman has summed things up very well. I cannot be nearly as eloquent as he is, delineating the history and what created greatness in this country. All I know is the people who seem to be making the decisions today are the people who have never held a job in the private sector. For those of us who signed more paychecks on the front than on the back, it is a startling thing to watch as we see, once again, the ad-

ministration is going to lurch forward with a jobs-creation strategy when a jobs-creation strategy exists right before our eyes.

It's the small businessmen and women in America who have the capabilities of creating those jobs that we desire. What's happened to them today? They are scared to death. They are scared to death of this 8 percent payroll tax that we are going to slap on them for health care. They don't know what we are going to do in energy.

This Financial Services bill, they are going to be another several weeks trying to figure out what we just did to them last Friday night, late. Is it any wonder why small businesses across this country are holding back. They know about taking risk. That's what brought them to where they are now.

But when so many things are in flux, tax policy, health care, energy, financial service regulation, when so many things were in flux, what's in it for them to go out on a limb and go out and hire that extra one or two people that they might hire.

The problem is, not those one or two jobs in that one business, it's the vast number of jobs across the greater and broader economy that that one or two job hold-back that small business is making right now—that's where the jobs are. That's why this has been a jobless recovery, and why it will remain a jobless recovery until Congress, until Congress and the administration, stop making the environment and the prospects for the future seem so threatening that small businesses again feel comfortable in taking on the role of being the leader of job creation.

We don't need another Federal program to stimulate jobs. We just need to get out of the way.

I just have to reference an exchange I had with the Secretary of the Treasury a few weeks ago on our Joint Economic Committee when I asked him that very question. Wouldn't it be better if we, instead of making it a more challenging economic environment, brought some stability for small businesses in America, allowed them the freedom to do what they have done every time in the past with every other recession, which is create the jobs which provided the prosperity which allowed us to get out of the recession? Wouldn't it be better to do that?

The Secretary of the Treasury looked at me and said, That is the same broad economic philosophy that brought this country to the brink of ruin. Mr. Secretary, I just described market capitalism to you, and I am just a simple country doctor. You are the Secretary of the Treasury, you are supposed to know this stuff.

I was dumbfounded by the Secretary's response, the Secretary not understanding what it is that made this country great in the first place, has no clue, then, about how to do, how

to set the tone and set the environment so this country can, indeed, recover from this economic downturn.

Of course, very famously, in that exchange earlier the other gentleman from Texas (Mr. BRADY) had encouraged the Secretary to resign for the sake of our jobs. I said I didn't think he should resign; I didn't think he ever should have been hired in the first place. It was a mistake a year ago. It was apparently a mistake today. Not only does he not know how to fill out his tax form, he doesn't know what creates jobs and wealth in economy and what makes this country great.

I appreciate the gentleman from Iowa letting me be here. I appreciate him doing this hour. I think it is so important to set the tone. These next couple of days are going to be extremely important in this country and the American people do need to be engaged. They do need to be paying attention. They do need to be responding to the cues that are being given to them by the gentleman in the other body.

Mr. KING of Iowa. I thank the gentleman from Texas.

It strikes me that the Secretary of the Treasury, I believe, is a natural-born citizen, not a naturalized citizen. Had he been a naturalized citizen, he would have had to pass the test. There are flash cards that are made available by USCIS, United States Citizenship Immigration Services. It's a stack of these glossy flash cards to train with so you can learn to pass a naturalization test.

In these flash cards it will be, for example on one side, when was the Declaration of Independence signed? Flip it over to the other side, July 4, 1776.

Who is the Father of our country? Flip it over. George Washington.

What is the economic system of the United States? Flip it over. Free enterprise capitalism.

You can't even be naturalized as a citizen of the United States unless you can pass that test. Apparently the Secretary of the Treasury says that free enterprise capitalism is what brought us to the brink of ruin.

It's an astonishing, breathtaking thing. It's no wonder we can't get this economy sorted out. I sent a letter to the Secretary of the Treasury after a hearing that we had, a joint hearing between Financial Services and the Department of Agriculture to deal with derivatives and credit default swaps. His question was this, that President Obama has been elected at least in part because he criticized President Bush for not having an exit strategy in Iraq.

Now, here is a list of the companies that have been nationalized by this administration and initiated in the previous administration, to be fair. I would like to know with each of these companies, Mr. Secretary, what is your exit strategy? How do you go about divesting the taxpayers' investment in

these companies that were formerly private and get them, they are now managed and controlled, with influence control, if not majority control, how do you get them back into the private sector so that they can be allowed to succeed and fail?

It was a long time getting the answer back, and it took a long time to analyze the answer, but it boiled down to well, there really isn't a plan, but the Secretary will know when the time is right and take those steps when it's appropriate. That, I think, Mr. Speaker, tells us what's going on here.

If the Secretary of the Treasury believes that free enterprise capitalism brought us to the brink of ruin, I can't believe that he would be willing then to divest the Federal Government from the private sector, of their shares of investment in these formerly private-sector companies. That is, it is the socialization of our economy.

The 33 and so percent, as The Wall Street Journal said of the private-sector profits, and if they take on this health care industry, that's going to be another, another one-sixth of our economy. If that, if that goes on, that's going to take us up to or greater than half of the private sector that we had in the past.

Mr. Speaker, I think it's important that we understand that there are a couple of different sectors to the economy. One of them is the private sector. It's the growth sector. It's where people produce goods and services that have value. There are about three different levels of the value that an economy needs to produce. First, the economy needs to produce things that people must have for survival. I mean, we have talked about it for more than 50 years and called it food, clothing, and shelter, the things that are necessary for the survival of mankind; you have to have food, clothing and shelter. They come from generally out of the Earth, one way or another. So that's the number one level of our economy, those necessities for survival.

The second level, and that's private sector. Government produces hardly anything that's necessary for survival. They regulate, and they slow down the actual efficient production of those things that we need for survival.

The second level, those things that improve our efficiency, technology, for example, information technology, industrial technology, that caused us to be more efficient. Those efficiencies help us produce more of the necessities of life. The second part of the economy that's gotten the most important value is the second level that produces the efficiencies in our economy.

The third level of the private-sector economy is the disposable income. That's the income that we use to go do the things that we enjoy, to give our life relaxation and travel on vacation, do those things, or we buy the things

that we don't have to have, not necessities, but the extras in life.

Those three levels, all private sector, all rooted back in, if you chase them back, you cannot go on vacation, and you can pass up buying that fancy pair of shoes or that nice car or the cabin at the lake or the boat or whatever it might be, and then those are eliminating the things that are not necessities of life.

□ 2250

And you can actually sacrifice some of the things out of the second level of our economy that help with our efficiency, but when get down to the necessities, it's life itself. All of this is rooted in the private sector. The other side of this economy, the public sector of the economy, is where government comes in and they decide that they're going to redistribute wealth and they're going to provide services that they think that people need, and for some degree people have decided they would like to have government provide some of those services. But government regulates, government slows down and intimidates private sector commerce, and once you get to a certain place over the things that are necessary for government. For example, we build roads with user fees and less so with general fund tax fees. So if you drive on the road, you pay the tax for your gallon of gas that goes in the tank and you help build the road. That's a user fee. But things that government provides that are necessary, military, for example, Department of Defense, that provides our safety and our security. Without it, we can't function. We can't have legitimate forms of government. Government provides other things that are legitimate; the judicial branch of government, for example, so that we can have law and order. And law enforcement, while I'm on the subject matter.

As we look down through government, the list becomes less and less of a necessity and more and more of a redistribution of wealth. At a certain point when your safety and security are there and they're secured and a line goes across to providing government services so we don't have to worry about them ourselves, every time we pay a tax dollar, we also give up a measure of our liberty, a measure of our freedom, because government makes the decision and the people that are producing in the private sector make less of a decision.

So I'll say these two sectors of the economy, the private sector, from which all new wealth emanates, and the public sector—when I'm in a crankier mood, I call it the parasitic sector—of government, the sector of government that sucks the lifeblood out of the private sector economy. The public sector—the parasitic sector—is

growing and it's growing by leaps and bounds, by the trillions of dollars, and there are less and less decisions made by capital which always is rational and more and more decisions made by government. We had a car czar that had neither made a car nor sold one. I don't even know that he owned one. He's not with us anymore. But we have a government of people that haven't written out paychecks, that have not started a business, have not operated a business. If they've operated in the private sector, they started in up near the top of a department and never saw the inner workings of the bottom of what small business is like that we've got to have to grow us into the larger businesses.

We need to have the underpinnings of American exceptionalism put back underneath us again. We've got to refurbish those beautiful marble pillars of American exceptionalism. We've got to promote liberty and encourage the freedom that's necessary; and people have to be willing to take risks. Capital has got to be able to make a rational decision but capital also has to know—that's investors' money, Mr. Speaker—has to know that they will also, if they fail, they're going to lose their investment, and someone else will pick up a bargain and build it on what was left of the company that went under. I've stared that in the eye. I went through the eighties with my construction company. We had our ups and downs. I know what it's like to live with a knot in my gut for 3½ years, to hold the company together. And we succeeded. Others around me did not. Some people got drug down and the load was heavy. And others succeeded significantly beyond a level where I did; and I'm glad that everybody had the opportunity to do that. And if the government comes in and then appoints an overseer, which is what the Barney Frank Financial Services bill does, and they go in and look at capital investments and business management and they decide who's going to make how much money with another regulator for our financial institutions, we have given up a big piece of our liberty, a big piece of our freedom.

But what we're focused on, Mr. Speaker, we're focused on this week, this national health care act, this socialized medicine act that barely passed out of the House of Representatives, that is down there now being debated in the United States Senate, and the issues as set before the Senate seem to be a couple of big ones:

One of them is the pro-life amendment. Here it was the Stupak amendment where 64 Democrats had the opportunity to vote, to put up a pro-life vote that they didn't believe that the taxpayers of America should be compelled to fund abortions through money that is extracted from them unwillingly. So, therefore, the Stupak amendment came up, and 64 Democrats

voted for it. Sixty-four Democrats and, I believe, every Republican are on record saying I am pro-life and I don't believe, or at least we should not compel American taxpayers to fund abortion when they're funding a socialized medicine program. That was what the Stupak amendment actually was. Even though it made exceptions for rape and incest, even though it doesn't fit with the tenets of the Catholic Church, it was a subject that was raised and pushed through here.

Now with the Stupak amendment passing, now these 64 Democrats have cover. Now if a bill comes back down this hallway through the center of the Capitol, it's had that language, not necessarily stripped out. When Senator BEN NELSON offered similar and some said identical language to the Stupak pro-life amendment, it was defeated in the Senate. And so the Senate bill doesn't have a pro-life amendment in it. And if it comes back to this House, we will see, I think, a conference committee that is appointed and stacked by Speaker PELOSI and HARRY REID and I think they are likely to strip the Stupak amendment out and drop it back in here to the House; and what I think will happen will be some of those 64 Democrats that said, I'm pro-life, here's my vote for the Stupak amendment. I think they'll roll over and they'll say, I voted for the Stupak amendment, but on balance I think this bill is good, even though we're going to compel Americans to fund abortions in the United States. That's what they're set up to do and that's the dynamics; and we need people in the Senate to kill this bill, so that this scenario doesn't play out here in the House.

Another piece is this public option, the public option that seems to be, or the government option that seems to be rejected by the Senate, but the liberals in the House insist that there be a government health care option; so they're trying to configure a way that they can define something that isn't necessarily a government option that can come to conference and be merged together. And right now the staff in the House and the staff in the Senate are merging these two bills, trying to get ready to drop something on and give America a Christmas that will be the least merry of anything in my lifetime. It will be something that dramatically erodes the liberty in America.

But those are the two big issues: Is it going to be a pro-life bill? And is it going to have in it a government option? I suggest that they will put together and construct a scenario by which they will be trying to compel taxpayers to fund abortions and compel taxpayers to buy government insurance because, as the gentleman from Texas said, it is about ideology, it's not about policy, it's not about producing the best result because if they did that,

if they were for that, they would be for reforming medical malpractice abuse in America, lawsuit abuse reform, they would be for selling insurance across State lines, providing full deductibility for everybody's health insurance, transparency in billing.

The list of things that we can do that are constructive, that don't cost money, is long indeed. But tomorrow, Mr. Speaker, and every day this week until somebody loses their nerve, the United States Senate needs to be jammed, it needs to be filled up with people that come here respectfully and politely and follow the rules and follow the law. But give the Senators and their staff in Washington, D.C., in their district offices at home and their offices here a personal experience. It needs to happen this way, Mr. Speaker—the American people need to let these Senators know that there will be a reckoning if their liberty is taken from them and this socialized medicine bill is imposed upon them. I don't want to see it, I don't want to see it for my children, I don't want to see it for my grandchildren. I don't want to see it for America's destiny. I don't want to see America's destiny, the vitality of America's destiny stripped away piece by piece as we leap off the abyss into socialism and embrace the European version of a social democracy and more, a managed economy, managed health care, very limited freedom. The only budget that they didn't grow was the Department of Defense budget. Everything else has to have a 10 percent or more up. The idea that you can borrow from your grandchildren that have not yet been born and compel them to pay debts today and spend money without any sense of responsibility, believing that that grows the economy, when we've established that even the Secretary of the Treasury believes that free enterprise capitalism is what brought this economy to the brink of ruin.

□ 2300

Mr. Speaker, we need new people with clear thought and a respect for America and the strength of America. We need the right people in charge in this country, because, as I have often said, you don't take a poodle to a coon hunt. You want to take a registered coonhound along. He's got it in his blood, he understands it. You can train a poodle to bark treed, but his heart's not in it. These people won't even bark treed, and we need the right people in charge. And tomorrow we're going to see the American people step up to this Capitol, and they're going to demand that we preserve their liberty.

With that, Mr. Speaker, I thank you for your attention, and I yield back the balance of my time.



## ENROLLED BILLS SIGNED

Lorraine C. Miller, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3288. An act making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

H.R. 4165. An act to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

H.R. 4218. An act to amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, and probation or parole violators.

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ABERCROMBIE (at the request of Mr. HOYER) for today and until 3 p.m. on December 15.

Mrs. BONO MACK (at the request of Mr. BOEHNER) for today on account of flight delays.

Mr. DAVIS of Illinois (at the request of Mr. HOYER) for today.

Mr. MACK (at the request of Mr. BOEHNER) for today on account of flight delays.

Mr. WOLF (at the request of Mr. BOEHNER) for today on account of a dental emergency.

Mr. YOUNG of Florida (at the request of Mr. BOEHNER) for today on account of a death in the family.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. ALTMIRE) to revise and extend their remarks and include extraneous material:)

Mr. ALTMIRE, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. MURPHY of Connecticut, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. MASSA, for 5 minutes, today.

(The following Members (at the request of Mr. JONES) to revise and extend their remarks and include extraneous material:)

Mr. INGLIS, for 5 minutes, today.

Mr. POE of Texas, for 5 minutes, December 21.

Mr. JONES, for 5 minutes, December 21.

Mr. LINCOLN DIAZ-BALART of Florida, for 5 minutes, today.

Ms. ROS-LEHTINEN, for 5 minutes, today and December 15.

Mr. FRANKS of Arizona, for 5 minutes, December 15, 16, 17 and 18.

(The following Member (at her request) to revise and extend her remarks and include extraneous material:)

Ms. MOORE of Wisconsin, for 5 minutes, today.

## ADJOURNMENT

Mr. KING of Iowa. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 1 minute p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, December 15, 2009, at 9 a.m., for morning-hour debate.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5026. A letter from the Regulatory Liaison, Department of Agriculture, transmitting the Department's final rule — McGovern Dole International Food for Education and Child Nutrition Program and Food for Progress Program (RIN: 0551-AA78) received November 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5027. A letter from the Managing Associate General Counsel, Government Accountability Office, transmitting a report entitled "Farm Storage Facility Loan and Sugar Storage Facility Loan Programs"; to the Committee on Agriculture.

5028. A letter from the Secretary, Department of Education, transmitting the Department's final rule — Race to the Top Fund Catalog of Federal Domestic Assistance (CFDA) Number: 84.395A [Docket ID: ED-2009-OESE-006] (RIN: 1810-AB07) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and Labor.

5029. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Implementation Plans; Tennessee; Clean Air Interstate Rule [EPA-R04-OAR-2009-0765; FRL-8984-6] received November 23, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5030. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; Georgia; Revisions to State Implementation Plan [EPA-R04-OAR-2006-0649-200918; FRL-8984-7] received November 23, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5031. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Illi-

nois; Indiana; Chicago and Evansville Non-attainment Areas; Determination of Attainment of the Fine Particle Standards [EPA-R05-OAR-2009-0664; FRL-8985-2] received November 23, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5032. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Clean Air Interstate Rule [EPA-R04-OAR-2009-0454; FRL-9086-2] received November 23, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5033. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Finding of Failure to Submit State Implementation Plans Required for the 1997 Particulate Matter Less Than 2.5 Micrometer (PM2.5) National Ambient Air Quality Standards (NAAQS) [EPA-HQ-OAR-2009-0670; FRL-8985-6] received November 23, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5034. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Indiana [EPA-R05-OAR-2009-0771; FRL-8980-4] received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5035. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Maryland, Ohio and West Virginia; Determinations of Attainment for the 1997 Fine Particulate Matter Standard [EPA-R03-OAR-2009-0199; EPA-R03-OAR-2009-0547; FRL-8982-6], pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5036. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Virginia; Transportation Conformity Regulations [EPA-R03-OAR-2009-0674; FRL-8983-1] received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5037. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval of the Clean Air Act, Section 112(1), Authority for Hazardous Air Pollutants: Perchloroethylene Air Emission Standards for Dry Cleaning Facilities: Commonwealth of Massachusetts Department of Environmental Protection [EPA-R01-OAR-2009-0031; A-1-FRL-8974-5] received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5038. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Fuel Economy Regulations for Automobiles; Technical Amendments and Corrections [EPA-HQ-OAR-2005-0169; FRL-8982-1] (RIN: 2060-A036) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5039. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants for Area

Sources; Asphalt Processing and Asphalt Roofing Manufacturing [EPA-HQ-OAR-2009-0027 ; FRL-8983-6] (RIN: 2060-A094) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5040. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants; Area Source Standards for Paints and Allied Products Manufacturing [EPA-HQ-OAR-2008-0053; FRL-8983-5] received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5041. A letter from the Deputy Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-60, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5042. A letter from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting report prepared by the Department of State concerning international agreements other than treaties entered into by the United States to be transmitted to the Congress within the sixty-day period specified in the Case-Zablocki Act; to the Committee on Foreign Affairs.

5043. A letter from the Assistant Secretary, Department of State, transmitting the 2009 annual report on the Benjamin A. Gilman International Scholarship Program, pursuant to Public Law 106-309, section 304; to the Committee on Foreign Affairs.

5044. A letter from the Secretary, Department of the Treasury, transmitting as required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and pursuant to Executive Order 13313 of July 31, 2003, a six-month periodic report on the national emergency with respect to the stabilization of Iraq that was declared in Executive Order 13303 of May 22, 2003; to the Committee on Foreign Affairs.

5045. A letter from the Administrator and Chief Executive Officer, Bonneville Power Administration, Department of Energy, transmitting submission of Bonneville Power Administration's (BPA) 2009 Annual Report, pursuant to Public Law 89-448 Public Law 101-576; to the Committee on Oversight and Government Reform.

5046. A letter from the President, African Development Foundation, transmitting a letter fulfilling the annual requirements contained in the Inspector General Act of 1978, as amended, covering the period October 1, 2008 to September 30, 2009, pursuant to 5 U.S.C. app. (Insp. Gen. Act), section 5(b); to the Committee on Oversight and Government Reform.

5047. A letter from the Chairman, Broadcasting Board of Governors, transmitting in accordance with the requirements of the Accountability of Tax Dollars Act of 2002 (Pub. L. 107-289), the Board's FY 2009 Performance and Accountability Report; to the Committee on Oversight and Government Reform.

5048. A letter from the Secretary, Department of Housing and Urban Development, transmitting the Fiscal Year 2009 Performance and Accountability reports for the Department of Housing and Urban Development, the Federal Housing Administration, and the Government National Mortgage Association; to the Committee on Oversight and Government Reform.

5049. A letter from the Assistant Attorney General for Administration, Department of Justice, transmitting the Department's FY 2009 Performance and Accountability Report; to the Committee on Oversight and Government Reform.

5050. A letter from the Director, Congressional Affairs, Federal Election Commission, transmitting a copy of the Commission's Performance and Accountability Report for FY 2009; to the Committee on Oversight and Government Reform.

5051. A letter from the Chairman, Federal Energy Regulatory Commission, transmitting the Commission's fiscal year 2009 Performance and Accountability Report; to the Committee on Oversight and Government Reform.

5052. A letter from the Executive Director, Federal Retirement Thrift Investment Board, transmitting a list of the four audit reports issued during fiscal year 2009 regarding the Agency and the Thrift Savings Plan, pursuant to 5 U.S.C. 8439(b); to the Committee on Oversight and Government Reform.

5053. A letter from the Chairman, Holocaust Memorial Museum, transmitting the Museum's FY 2009 Report on Audit and Investigative Activities, pursuant to the Inspector General Act of 1978; to the Committee on Oversight and Government Reform.

5054. A letter from the Chairman, Merit Systems Protection Board, transmitting a report entitled "Job Simulations: Trying Out for a Federal Job"; to the Committee on Oversight and Government Reform.

5055. A letter from the Deputy Archivist, National Archives and Records Administration, transmitting the Administration's final rule — Federal Records Management; Revision [FDMS Docket NARA-08-0004] (RIN: 3095-AB16) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Oversight and Government Reform.

5056. A letter from the Chairman, Nuclear Regulatory Commission, transmitting the Commission's 2009 Performance and Accountability Report; to the Committee on Oversight and Government Reform.

5057. A letter from the General Counsel and Senior Policy Advisor, Office of Management and Budget, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

5058. A letter from the Director, Office of Personnel Management, transmitting the Office's FY 2009 Agency Financial Report; to the Committee on Oversight and Government Reform.

5059. A letter from the Acting President, Overseas Private Investment Corporation, transmitting the Corporation's annual Management Report for FY 2009, pursuant to 31 U.S.C. 9106; to the Committee on Oversight and Government Reform.

5060. A letter from the Acting Director, Trade and Development Agency, transmitting the Agency's Performance and Accountability Report including audited financial statements for fiscal year 2009; to the Committee on Oversight and Government Reform.

5061. A letter from the Chairman, U.S. International Trade Commission, transmitting the Commission's Performance and Accountability Report for FY 2009; to the Committee on Oversight and Government Reform.

5062. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Depart-

ment's final rule — Special Regulations; Areas of the National Park System (RIN: 1024-AD73) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5063. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Special Regulations; Areas of the National Park System (RIN: 1024-AD82) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5064. A letter from the Attorney General, Department of Justice, transmitting the Department's decision not to appeal the decision of the district court in the case of the United States v. Lori Drew, No. CR 08-582-GW (C.D. Cal.), WL 2872855, pursuant to 28 U.S.C. 530D; to the Committee on the Judiciary.

5065. A letter from the Attorney General, Department of Justice, transmitting advising of the proceedings in the case of United States v. Robert Solomon, No. 5:09-CR-04024-DEO (N.D. Iowa), pursuant to 28 U.S.C. 530D; to the Committee on the Judiciary.

5066. A letter from the Corporation Agent, Legion of Valor of the United States of America, Inc., transmitting a copy of the Legion's annual audit as of April 30, 2009, pursuant to 36 U.S.C. 1101(28) and 1103; to the Committee on the Judiciary.

5067. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; McDonnell Douglas Corporation Model DC-10-10 and DC-10-10F Airplanes, Model DC-10-15 Airplanes, Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) Airplanes, Model DC-10-40 and DC-10-40F Airplanes, Model MD-10-10F and MD-10-30F Airplanes, and Model MD-11 and MD-11F Airplanes [Docket No.: FAA-2009-1071; Directorate Identifier 2009-NM-160-AD; Amendment 39-16100; AD 2008-06-21 R1] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5068. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier Model DHC-8-102, DHC-8-103, DHC-8-106, DHC-8-201, DHC-8-202, DHC-8-301, DHC-8-311, and DHC-8-315 Airplanes [Docket No.: FAA-2009-1072; Directorate Identifier 2009-NM-169-AD; Amendment 39-16099; AD 2008-09-21 R1] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5069. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Rolls-Royce Corporation AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A1E, AE 3007A1P, AE 3007A3, AE 3007C, and AE 3007C1 Turbofan Engines [Docket No.: FAA-2009-0246; Directorate Identifier 2009-NE-04-AD; Amendment 39-16091; AD 2009-24-04] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5070. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; General Electric Company (GE) CF34-8E Series Turbofan Engines [Docket No.: FAA-2009-0821; Directorate Identifier 2008-NE-20-AD; Amendment 39-16094; AD 2009-24-06] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5071. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 Airplanes [Docket No.: FAA-2009-1070; Directorate Identifier 2009-NM-180-AD; Amendment 39-16089; AD 2008-06-20 R1] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5072. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; SOCATA Model TBM 700 Airplanes [Docket No.: FAA-2009-0557; Directorate Identifier 2009-CE-031-AD; Amendment 39-16086; AD 2009-23-12] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5073. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category [EPA-HQ-OW-2008-0465; FRL 9086-4] (RIN: 2040-AE91) received November 23, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5074. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Employee Stock Purchase Plans under Internal Revenue Code Section 423 [TD 9471] (RIN: 1545-BH68) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5075. A letter from the Acting Chair, Social Security Advisory Board, transmitting a report entitled "The Unsustainable Cost of Health Care"; jointly to the Committees on Education and Labor and Ways and Means.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMPSON of Mississippi: Committee on Homeland Security. H.R. 1517. A bill to allow certain U.S. customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service; with an amendment (Rept. 111-373 Pt. 1). Referred to the Committee of the Whole House on the State of the Union.

Mr. WAXMAN: Committee on Energy and Commerce. H.R. 1084. A bill to require the Federal Communications Commission to prescribe a standard to preclude commercials from being broadcast at louder volumes than the program material they accompany; with an amendment (Rept. 111-374). Referred to the Committee of the Whole House on the State of the Union.

Mr. WAXMAN: Committee on Energy and Commerce. H.R. 1147. A bill to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service; with an amendment (Rept. 111-375). Referred to the Committee of the Whole House on the State of the Union.

#### DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XIII the Committee on Oversight and Govern-

ment Reform discharged from further consideration. H.R. 1517 referred to the Committee of the Whole House on the State of the Union, and ordered to be printed.

#### PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. MORAN of Virginia (for himself, Mr. INGLIS, and Mr. DELAHUNT):

H.R. 4301. A bill to support the democratic aspirations of the Iranian people by enhancing their ability to access the Internet and communications services; to the Committee on Foreign Affairs.

By Mr. ABERCROMBIE (for himself and Mrs. LOWEY):

H.R. 4302. A bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes; to the Committee on Small Business.

By Mr. ELLISON (for himself and Mr. DELAHUNT):

H.R. 4303. A bill to enhance United States sanctions against Iran by targeting Iranian governmental officials, prohibiting Federal procurement contracts with persons that provide censorship or surveillance technology to the Government of Iran, providing humanitarian and people-to-people assistance to the Iranian people, and for other purposes; to the Committee on Foreign Affairs, and in addition to the Committees on the Judiciary, Oversight and Government Reform, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ISSA:

H.R. 4304. A bill to designate certain Federal lands in San Diego County, California, as wilderness, and for other purposes; to the Committee on Natural Resources.

By Mr. MEEK of Florida:

H.R. 4305. A bill to amend the Internal Revenue Code of 1986 to provide the energy tax credit for transformers designed to use soybean-based electrical transformer fluid; to the Committee on Ways and Means.

By Mr. MEEK of Florida (for himself, Mr. TIBERI, Ms. BERKLEY, Mr. CROWLEY, Mr. DAVIS of Alabama, and Mr. HERGER):

H.R. 4306. A bill to amend the Internal Revenue Code of 1986 to permanently extend the 15-year recovery period for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property; to the Committee on Ways and Means.

By Mr. TEAGUE:

H.R. 4307. A bill to name the Department of Veterans Affairs community-based outpatient clinic in Artesia, New Mexico, as the "Alejandro Renteria Ruiz Department of Veterans Affairs Clinic"; to the Committee on Veterans' Affairs.

By Mr. PRICE of Georgia:

H.J. Res. 63. A joint resolution proposing an amendment to the Constitution of the United States to limit the number of years Representatives and Senators may serve; to the Committee on the Judiciary.

By Mr. KILDEE (for himself, Mr. DAVIS of Alabama, Mr. BACHUS, and Mr. DINGELL):

H. Res. 969. A resolution congratulating Flint native, University of Alabama Sophomore and running back Mark Ingram on winning the 2009 Heisman Trophy and honoring both his athletic and academic achievements; to the Committee on Education and Labor.

#### ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 13: Mr. GRIFFITH.  
H.R. 442: Mr. HEINRICH and Mr. GALLEGLY.  
H.R. 537: Mr. HIGGINS.  
H.R. 558: Mr. VAN HOLLEN and Mr. GRIF-FITH.

H.R. 571: Mr. KLEIN of Florida.  
H.R. 600: Mr. JACKSON of Illinois.  
H.R. 745: Mr. MCNERNEY.  
H.R. 930: Mr. CALVERT.  
H.R. 1020: Mr. FATTAH and Ms. TSONGAS.  
H.R. 1067: Mr. CUMMINGS and Mr. BUCHANAN.

H.R. 1079: Ms. WOOLSEY, Mr. HOLT, and Mr. CUMMINGS.

H.R. 1177: Ms. LINDA T. SÁNCHEZ of California.

H.R. 1203: Mr. BOUCHER, Mrs. EMERSON, and Mr. WALDEN.

H.R. 1210: Mr. COHEN.

H.R. 1521: Mr. KLINE of Minnesota, Mr. RYAN of Ohio, Mr. CALVERT, Mr. SHULER, and Ms. LORETTA SANCHEZ of California.

H.R. 1721: Ms. SLAUGHTER.  
H.R. 1806: Ms. BERKLEY, Mr. FRANK of Massachusetts, and Mr. SHIMKUS.

H.R. 1826: Mr. WATT.

H.R. 1879: Mr. COURTNEY, Mr. MILLER of Florida, and Mr. LAMBORN.

H.R. 1964: Mr. JOHNSON of Georgia.

H.R. 2135: Mr. CHILDERS.

H.R. 2161: Mr. HEINRICH.

H.R. 2324: Mr. SIRES and Ms. SUTTON.

H.R. 2342: Mr. STUPAK.

H.R. 2387: Mr. SCHOCK, Mr. TERRY, Mrs. MYRICK, Mr. BURGESS, Mr. LINDER, Ms. FOXX, Mr. HOEKSTRA, Mr. COBLE, Mr. KINGSTON, and Mr. CARTER.

H.R. 2450: Mr. GRIJALVA and Ms. NORTON.

H.R. 2528: Mr. PLATTS.

H.R. 2546: Mr. RAHALL.

H.R. 2578: Mr. CARSON of Indiana.

H.R. 2866: Mr. HIMES.

H.R. 2906: Mr. PITTS.

H.R. 2923: Mr. CUMMINGS and Mr. BACA.

H.R. 3010: Ms. WOOLSEY and Mr. VAN HOLLEN.

H.R. 3050: Mr. PITTS.

H.R. 3078: Mr. HALL of Texas.

H.R. 3339: Mr. WU.

H.R. 3359: Ms. SPEIER and Mr. FILNER.

H.R. 3380: Mr. BISHOP of Georgia, Ms. CAS-

TOR of Florida, Ms. SUTTON Mr. ROTHMAN of New Jersey, Mr. PAYNE, and Mr. SIMPSON.

H.R. 3421: Mr. KENNEDY, Ms. JACKSON-LEE of Texas, and Mr. BOSWELL.

H.R. 3578: Mr. PETERSON.

H.R. 3592: Mr. BLUMENAUER.

H.R. 3662: Mr. SCHIFF.

H.R. 3691: Mr. CALVERT.

H.R. 3731: Ms. SUTTON and Mr. KLEIN of Florida.

H.R. 3746: Ms. LINDA T. SÁNCHEZ of California.

H.R. 3758: Mr. TIM MURPHY of Pennsylvania and Mr. PAYNE.

H.R. 4034: Mr. PRICE of North Carolina.

H.R. 4140: Mr. KUCINICH, Mr. SABLÁN, and Ms. SLAUGHTER.

H.R. 4179: Mr. GRIJALVA.

H.R. 4196: Mr. STARK, Mr. LUJÁN, Ms. CHU, and Ms. MATSUI.

H.R. 4202: Mr. BLUMENAUER and Mr. KUCINICH.

H.R. 4233: Mr. ALEXANDER, Mr. COBLE, Mr. BARTON of Texas, and Mr. REHBERG.

H.R. 4247: Mr. HARE, Mr. COURTNEY, Mr. ELLISON, and Mr. DAVIS of Illinois.

H.R. 4255: Mr. McCAUL, Mr. GRAVES, Mr. ADLER of New Jersey, Mr. BARTLETT, Mr. MORAN of Kansas, Mr. ROONEY, Mr. BURTON of Indiana, and Mrs. BLACKBURN.

H.R. 4262: Mr. BURTON of Indiana, Mr. JOHNSON of Illinois, Mr. WOLF, and Mr. SCHOCK.

H.R. 4263: Ms. BERKLEY.

H. Con. Res. 22: Mr. SCHOCK, Mr. TERRY, Mr. BARTLETT, Mrs. MYRICK, Mr. GALLEGLY, Mr. BUYER, Mr. KINGSTON, Mr. CARTER, and Mr. PENCE.

H. Con. Res. 157: Mr. TIAHRT.

H. Con. Res. 200: Mrs. MYRICK and Mr. LINDER.

H. Con. Res. 220: Ms. BORDALLO, Mr. BURTON of Indiana, Mr. HEINRICH, Mr. KENNEDY, and Mr. TIERNEY.

H. Res. 252: Ms. LINDA T. SÁNCHEZ of California.

H. Res. 713: Mr. FATTAH, Ms. WASSERMAN SCHULTZ, and Ms. CHU.

H. Res. 748: Mr. GOODLATTE.

H. Res. 857: Mr. HEINRICH.

H. Res. 874: Mr. PITTS.

H. Res. 898: Mr. SOUDER, Mr. SCHOCK, and Mr. ELLISON.

H. Res. 932: Ms. SCHAKOWSKY, Mr. ABERCROMBIE, and Ms. JACKSON-LEE of Texas.

H. Res. 951: Mr. WITTMAN, Mr. HERGER, Mr. DAVIS of Kentucky, Mr. CULBERSON, Mr. MCCARTHY of California, and Mr. FORBES.

H. Res. 958: Mrs. LOWEY, Mr. GORDON of Tennessee, and Mr. PENCE.

H. Res. 959: Mr. SAM JOHNSON of Texas.

H. Res. 966: Mr. KING of Iowa.

H. Res. 967: Mr. AL GREEN of Texas, Mr. ELLISON, and Ms. SCHAKOWSKY.

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#### DELETION OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H. Res. 648: Ms. HIRONO.

## EXTENSIONS OF REMARKS

RECOGNIZING THE SERVICE AND ACHIEVEMENTS OF COLONEL VENETIA E. BROWN, UNITED STATES AIR FORCE

**HON. JEFF MILLER**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. MILLER of Florida. Madam Speaker, I rise to honor Colonel Venetia E. Brown for 30 years of exceptional service and dedication to the United States Air Force and enduring contributions to our great Nation. She will retire from active duty on March 31, 2010.

Colonel Brown grew up in Niceville, Florida and entered the United States Air Force in 1980 as a graduate of the distinguished Officers' Training School at Lackland Air Force Base, Texas. She has served in a variety of personnel assignments at the unit and headquarters level both stateside and overseas, and has excelled in all leadership positions throughout her career. Her unique leadership and managerial talents were evident early in her career, affirmed by her selection as a captain to organize and direct the wing survival and recovery center, a function normally performed by a colonel. As a testament to her leadership skills, Colonel Brown has been the commander of a military personnel flight, mission support squadron, and deputy commander of a large support group and has produced outstanding results during inspections as well as motivated her subordinates to achieve their dreams. Additionally, she is a distinguished alumnus of Legislative Liaison, Office of the Secretary of the Air Force, directing manpower and personnel legislative matters.

Prior to her current assignment, Colonel Brown served as the Chief, Compensation and Legislation Division, Deputy Chief of Staff for Personnel, Headquarters United States Air Force. She developed the first-ever Air Force Bonus Review Board resulting in \$125M savings during fiscal year 2006 and \$1B in out-years. Additionally, Colonel Brown secured \$20.7M from the Air Force Board for compensation legislative initiatives and ramrodded Transformation legislation on civilian pay/hiring flexibility. A powerhouse crusader and remarkable leader, Colonel Brown was consistently given the tough issues and never failed the men and women of the Air Force.

In her most recent assignment, Colonel Brown served as the Director of the Secretary of the Air Force Personnel Council, Air Force Review Boards Agency, Andrews Air Force Base, Maryland. Over the past 5 and half years Colonel Brown guided the Secretary of the Air Force's Personnel Council through over 10,000 Board actions. Her excellent decisions ensured due process, equity, consistency, and fairness. Colonel Brown has the distinct honor of being consistently ranked as the

number one of five directors in the Air Force Review Boards Agency. She has always upheld the highest standards of professional conduct and her warrior ethos has ensured complete success at every juncture and will be truly missed. I ask my Colleagues to join me in expressing our sincere thanks to Venetia, her spouse Michael, and their son Damone for their unwavering support of our country and the freedom we hold so dear. We congratulate Colonel Brown on the completion of an exemplary active-duty career and wish her well in the next phase of her life.

### EARMARK DECLARATION

**HON. JO BONNER**

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. BONNER. Madam Speaker, I submit the following:

Project Name: Buses and Bus Facility Improvement, Baldwin County, AL

Requesting Member: Congressman JO BONNER

Bill: Department of Transportation, and Housing and Urban Development and Related Agencies Appropriations Act, 2010

Account: Buses & Bus Facilities

Legal Name of Requesting Entity: Baldwin County Commission

Address of Requesting Entity: 312 Courthouse Square, Suite 12, Bay Minette, AL 36507

Description of Request: Provide an earmark of \$275,000 to provide additional buses and security fencing for the Baldwin Rural Area Transportation System (BRATS). Two additional buses will help meet the growing demand of BRATS that currently provides public transit services in Alabama's largest county covering 1,500 square miles. The high cost of living in Baldwin County has also increased the demand for BRATS as area workforce is moving further away from tourist attracting coastal areas. Baldwin County is currently the 65th fastest growing county in the country (U.S. Census Bureau). Approximately, \$200,000 [or 73%] will be used to acquire two new buses; \$50,000 [or 18%] will be used for security fencing; and \$25,000 [or 9%] will be used to provide bike racks for buses. The Baldwin County Commission will provide the required matching funds.

RECOGNIZING THE EXTRAORDINARY PUBLIC SERVICE OF VICKIE WALLING

**HON. JOHN S. TANNER**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. TANNER. Madam Speaker, I rise today to ask you and our colleagues to join me in recognizing and thanking Vickie Walling for her years of distinguished work on Capitol Hill. Vickie is retiring at the end of this year after 35 years of public service to the 8th District of Tennessee and to our country.

Vickie and I are from the same hometown, Union City, though she is fortunate to be a number of years younger. She attended Union City High School and the University of Tennessee-Martin, where, incidentally, she was roommates with another woman many of us greatly respect, UT Lady Vols Head Coach Pat Summitt.

Vickie came to work in the House of Representatives in 1974 and soon after joined the staff of Congressman Ed Jones, my predecessor in representing the 8th District in this chamber. She immediately began to distinguish herself as a dedicated staff member and a leader among her peers on Capitol Hill.

Fortunately, Vickie and other members of Mr. Jones' superb staff agreed to continue their service to the 8th District when Betty Ann and I were honored to come to DC in 1989 following Mr. Jones' retirement. In fact, many of Mr. Jones' former staff members—Kathy Becker, Margaret Black, Betty Hardin, Doug Thompson and Vickie—still serve alongside us to assist and represent West and Middle Tennesseans.

Over the years, Vickie has become a true leader not just within our office but across Capitol Hill. Her dedication, tireless work ethic and keen understanding of legislative issues such as health care, bipartisan welfare reform and strategic demobilization have put her in a class all her own. Vickie has also been instrumental in helping us form and develop the Blue Dog Coalition, having been there when we first began meeting almost 15 years ago. Since then, with Vickie's help, we have been able to grow the Coalition to more than 50 Members, and the Coalition has become an important voice in representing millions of Americans.

Many of us in this chamber and others have sought Vickie's guidance and counsel over the years. Her insight and honesty are invaluable.

I often tell our constituents that serving in elected office is similar to a turtle finding itself on top of a fence post; one simply cannot get there alone. Vickie and the others serving in the 8th District offices are dedicated public servants whose work is crucial to ensuring our constituents are well-represented. Though

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

they may not know her as well as we do, Tennesseans have been very well served by Vickie's many efforts on their behalf.

Madam Speaker, please join Betty Ann, our staff, our colleagues and me in expressing gratitude to Vickie Walling for her commitment to service and helping enact effective public policy. We wish Vickie all the best in her retirement and know her daily presence here will be greatly missed.

#### STATEMENT ON IRANIAN DIGITAL EMPOWERMENT ACT

**HON. JAMES P. MORAN**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. MORAN of Virginia. Madam Speaker, I rise today to introduce the Iranian Digital Empowerment Act.

In the aftermath of Iran's disputed 2009 presidential elections, millions of Iranians flooded the streets to stand-up to their government and make their voices heard. Empowered by communication services like Twitter and Facebook, Iranians were able to organize and communicate freely outside of the watchful eye of their government in what has become the first popular democratic uprising of the social media age.

The Iranian people are among the most pro-Western people in the Middle East, and despite suffering under a totalitarian regime, their struggle to create a freer and democratic Iran continues to this day. This weekend marked the 6-month anniversary of fraudulent presidential elections. Once again, the Iranian people took to the streets in non-violent protest. The government of Iran has sought to counter the peaceful efforts of the Iranian people, launching unprecedented efforts to block access to Internet technology, infiltrate electronic social networks, and restrict Iranians from communicating freely. Unfortunately, due to outdated language in provisions regarding information services, U.S. sanctions have had the unintended consequence of denying the Iranian people the tools necessary to communicate freely and circumvent government monitors online.

In an effort to assist the Iranian people fighting for a change in leadership, I am introducing the Iranian Digital Empowerment Act. This legislation will clarify that U.S. laws are not intended to prohibit the export of software that would enable the Iranian people to communicate freely by circumventing their government's censorship efforts. U.S. sanctions intended to change the behavior of the Iranian government must not have the effect of stamping out the voice of the Iranian people.

#### TRIBUTE TO MARTHA TWARKINS

**HON. JOHN T. SALAZAR**

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. SALAZAR. Madam Speaker, I rise today to honor Martha Twarkins, a Legis Congress-

sional Fellow from the Brookings Institute, a specialist with the United States Forest Service and, for the past year, a dedicated and invaluable member of my staff.

Throughout the year, Ms. Twarkins has contributed her considerable expertise and ability to legislative responsibilities in my office, and I could not be more grateful for or appreciative of her hard work.

Throughout her tenure in my office, Ms. Twarkins has worked diligently to mitigate the effects of the bark beetle epidemic on communities in Colorado and across the western United States. She has also provided oversight and direction to many of my legislative priorities concerning the Forest Service, including securing an additional \$40 million to help with the emergency bark beetle crisis.

She was an important resource on grazing and water rights, and a key advisor in the consideration and proposal of many new wilderness designations to forever protect our most beautiful public lands.

Additionally, Ms. Twarkins was my key liaison to the House Select Committee on Energy Independence and Global Warming. Ms. Twarkins advised me on the committee's work on issues from fighting climate change in developing countries to creating a roadmap to Copenhagen. I truly appreciate her guidance on this committee.

Ms. Twarkins will always have a special place in my heart. My entire staff joins me in wishing her the best of luck as she resumes her position with the Forest Service, and with all her future endeavors.

#### BIPARTISAN CONGRESSIONAL DELEGATION TO NATO PARLIAMENTARY ASSEMBLY MEETINGS

**HON. JOHN S. TANNER**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. TANNER. Madam Speaker, during the period November 8–16, 2009, I led a bipartisan House delegation to NATO Parliamentary Assembly (NATO PA) meetings in Edinburgh, Scotland, and to additional bilateral meetings in Belfast, Northern Ireland. The delegation also conducted bilateral meetings in Edinburgh. Joining me as Ranking Member of the NATO PA delegation was the Hon. JOHN SHIMKUS. The delegation included Representatives JOHN BOOZMAN, JO ANN EMERSON, BARON HILL, CAROLYN MCCARTHY, JEFF MILLER, DENNIS MOORE, MIKE ROSS, DAVID SCOTT, ALBIO SIRE, MIKE TURNER and staff. The NATO PA delegation had a highly successful trip that examined a wide range of political, economic and security issues on NATO's agenda, as well as issues involving U.S. relations with Northern Ireland and Scotland.

The NATO Parliamentary Assembly consists of parliamentarians from all 28 NATO member states. The NATO PA meets twice yearly in plenary session in a member state and provides a unique forum for elected officials to analyze and debate challenging issues facing the Alliance. The NATO PA, through its deliberations, also provides guidance to the NATO leadership in Brussels. In addition to the 28

member states, parliamentarians from countries such as Russia, Georgia, Afghanistan, and others participate in the sessions as associate states or observers. Through these sessions, delegates have the opportunity to learn first-hand the views and concerns that other countries have over the key security issues of the day. An invaluable aspect of the meetings is the chance to meet and come to know members of parliaments who play important roles in their own countries in shaping the security agenda that their governments pursue at NATO. These contacts endure, and can provide an invaluable private avenue to Congress and the Administration for insights into each ally's particular approaches to an issue.

The key issues on the agenda of the NATO Alliance as well as on the NATO PA agenda include the conflict in Afghanistan, the future of NATO and the writing of its new strategic concept, as well as more specific issues including relations with Russia, energy security, missile defense, and emerging challenges such as piracy and cyber security. Each of these issues was vigorously debated by the parliamentarians. Relations with Russia and the new strategy towards Afghanistan and Pakistan were two of the issues that dominated the session. Many members of the Alliance continue to question whether Russia is intent on pursuing an increasingly assertive security policy including efforts to intimidate neighboring states, through the threat of force. There was also concern expressed that Russia would continue to use its energy supplies as a political lever to influence European policy. It was clear from our meetings that not only the United States and NATO, but the European Union as well, are concerned about Moscow's posture on a variety of issues. And, while there were differences of opinion over how to structure future relations between NATO, the NATO PA and the Russian delegates to the Assembly, most felt that dialogue between NATO, the NATO PA, and Russia was important and should continue. Many delegates referenced the U.S. commitment to a new, constructive relationship with Moscow and expressed hope that through those promising relations, Russia's attitude toward NATO could become more positive.

On Afghanistan, there was continued support for the ISAF mission among the allies and a willingness to provide the additional civilian and financial support necessary for the reconstruction effort there. However, there was great interest in knowing how the Obama Administration will re-adjust U.S. and NATO strategy and how many additional U.S. military forces will be committed to the conflict. Our delegation was clear that this was not a U.S. war and that NATO's role in Afghanistan continues to be a critical factor.

Before the opening sessions of the Assembly's plenary the U.S. delegation received a detailed briefing from our Deputy U.S. Ambassador to NATO, John Heffern, who addressed several of the issues that would be debated during the NATO PA sessions, particularly regarding Russia and NATO's ongoing role in Afghanistan. Mr. Heffern also reviewed the recent Administration decision on European missile defense and the alternative plans being discussed with our allies.

Over two days of the NATO PA session, extensive meetings of the Assembly's committees took place. There are five NATO PA committees. In each, parliamentarians presented reports on issues before the Alliance. The reports were debated by all members of the committee who often made counter-arguments or suggestions for amending a report. Members of the U.S. delegation were present and active in each committee meeting.

The Political Committee heard three very interesting presentations. Former German General Klaus Naumann focused on the future relevancy of transatlantic security relations. A second presentation on the recent elections in Iran and their implications generated some interesting questions and debate. The third presentation addressed the challenge of international terrorism. Our colleague Rep. CAROLYN MCCARTHY asked if the al-Qaeda terrorist organization was developing new training and planning bases outside of the Afghanistan/Pakistan region that the west should be watching. The Committee received presentations on three reports including one from our colleague, Rep. MIKE ROSS, a committee rapporteur, who discussed possible transatlantic cooperation with Pakistan. Mr. Ross's presentation was well received by the Committee. Other reports debated included "Resetting Relations with Russia" that featured several interesting comments from the Russian delegates, and "NATO's relationship with Georgia" that included a discussion on the current situation in Georgia and where relations between Georgia and NATO now stands. There were still differences of opinion on who was responsible for starting the war in Georgia and how to deal with Georgia's aspirations for eventual membership in NATO.

The Committee on the Civil Dimension of Security is currently chaired by our colleague, Rep. JO ANN EMERSON. This committee discussed reports prepared by committee rapporteurs addressing security challenges and cooperation in Central Asia, and Moldova's internal challenges and prospects for Euro-Atlantic integration. The Committee also heard a presentation on lessons learned in the U.K. from the London terrorist bombing and an address from Georgian Vice Prime Minister Baramidze. The focus of the committee's work in this session was on the growing challenge of piracy off the coast of Somalia, which included a formal report on the subject. The Committee also approved a resolution recognizing this challenge and calling for a more coordinated international approach.

The Defense and Security Committee discussed three reports which reexamined NATO's ongoing operations in Afghanistan, addressed NATO's territorial defense capabilities, and covered the issue of cyber security. The Committee also conducted a joint session on the threat of piracy with the Committee on the Civil Dimension of Security. The Defense Committee adopted a resolution on Afghanistan, which among other things urged NATO governments and parliaments to: reaffirm their commitment to assisting the Afghan government to provide a secure and stable environment; to endorse the resource and approach advocated by the ISAF Commander; and to supply, as a matter of absolute priority, the personnel, equipment, and funding necessary

to speed the development of the Afghan National Security forces, in order to promote a transition to Afghan leadership. Our colleague Rep. JOHN SHIMKUS urged more commitment by NATO members to the mission in Afghanistan and stressed the need to reassure Eastern European allies about their security. Our colleague Rep. MIKE TURNER stressed the need to move forward with an all-NATO missile defense program.

The Economics and Security Committee debated three reports focused on food prices and their implications for security, on energy production in Central Asia and its potential contribution to transatlantic energy security, and a long discussion on the global financial crisis and its impact on member nations. In that third discussion, a number of members suggested that it would be useful to explore how the financial crisis was impinging on national defense budgets in allied countries. The Committee also heard presentations on the security aspects of food-related crises, global energy market trends, and managing defense budgets in times of global recession.

Finally, the Science and Technology Committee discussed three extremely timely reports. One interesting report addressed climate change and its relationship to national security. This was followed by a presentation on the Arctic by the British Ambassador to Norway. Another report addressed the current efforts being used to combat the spread of weapons of mass destruction. This was preceded by a presentation on Iran's nuclear ambitions by Professor Ali Ansari from the University of St. Andrews. A third report provided a look at the resurgence of nuclear power as a source of clean energy and was accompanied by a presentation on the role of nuclear energy in the U.K.'s energy strategy.

On Tuesday, the final day of the plenary, the general assembly had the opportunity to hear a presentation from NATO Secretary General Anders Fogh Rasmussen in his first formal address to the Assembly as Secretary General. Rasmussen urged the Parliamentarians to help re-build understanding between NATO and the publics of each member state especially with respect to the NATO mission in Afghanistan and the relevance of NATO itself. The Assembly also heard from Admiral James Stavridis, Supreme Allied Commander in Europe who asked NATO Parliamentarians to help the Alliance deal with the pace and complexity of the challenges the Alliance faces from a dynamic and constantly changing international environment. The SACEUR urged the NATOPA to help provide political input and guidance to NATO as the Alliance re-writes the strategic concept that will define NATO's future roles and missions. We also heard from the Honorable David Miliband, the UK's Foreign Minister who reaffirmed that the commitment of European military forces to Afghanistan, now under intense questioning throughout Europe, need not be an endless exercise as long as the international community and the Afghan government step up and provide the necessary resources and political will to develop a stable, reliable government in Kabul that can rid itself of corruption and provide the necessary security and public services that its citizens demand. Finally, the delegates heard from Lord Robertson, former Secretary Gen-

eral of NATO and the current President of Chatham House.

Finally, Madam Speaker I am pleased to report that Rep. JO ANN EMERSON was re-elected Chairperson of the Committee on the Civil Dimension of Security along with DENNIS MOORE, JOHN SHIMKUS, JEFF MILLER, JOHN BOOZMAN, BEN CHANDLER, and CAROLYN MCCARTHY who were all re-elected as Vice-Chairpersons of their respective Committees. Our colleague MIKE ROSS was also re-elected as the Rapporteur for the Political Committee's subcommittee on Transatlantic Relations. Our newest additions to the officer list include MIKE TURNER who was elected Vice-Chairperson of the Science and Technology Committee and DAVID SCOTT who was elected as a Rapporteur also on the Science and Technology Committee.

In sum, Madam Speaker, the fall session of the NATO Parliamentary Assembly in Edinburgh was a success and as President of the Assembly, I took pride in the deliberations and participation of the delegates from all 28 member nations and our associate and observer members. For Members of the House or Senate interested in reading the Committee reports or presentations mentioned in this statement, they are all available on the NPA web site at [www.nato-pa.int](http://www.nato-pa.int). I also want to take this opportunity to thank Dana Linnert, and Don Pena and all of the fine men and women of our embassy in London and Consulate in Edinburgh for the wonderful job they did assisting the delegation.

BELFAST

Prior to the NATO PA plenary, the U.S. delegation traveled to Belfast, Northern Ireland. The delegation received a country briefing, which included a general overview of the history and the current political and economic situation in North Ireland, from our Consul General Kamala Lakshmi and Deputy Consul General Kevin Roland. One of the main issues discussed was the need to resolve remaining challenges related to policing and justice. The briefers expressed the hope that more progress will be made on those fronts in the next few months. The delegation held bilateral meetings in Belfast in order to demonstrate support for the fragile peace process and assess growing economic development opportunities. At the Northern Ireland Policing Board, the delegation spoke with senior officials, police officers, and politicians regarding its work overseeing the Police Service of Northern Ireland. We discussed the increasing participation of Catholic police officers, efforts to improve community policing as a means of building trust within all neighborhoods, and remaining challenges regarding the contentious issue of devolving policing and justice issues from London to Belfast.

The delegation spent several hours at the Stormont Assembly holding discussions with First Minister Peter Robinson, Deputy First Minister Martin McGuinness, and Speaker William Hay. These political leaders were frank about the challenges still facing Northern Ireland, particularly as regards policing matters. However, they also stressed the importance of economic development, jobs and infrastructure for enabling future progress. The delegation then observed a plenary debate in the Assembly.



Members saw first-hand efforts to stimulate economic development, including the attraction of foreign direct investment, in Northern Ireland. They visited Titanic Quarter, the largest commercial development site in Europe. The 186 acres will be developed as a blue-chip technology district, including apartments, a film studio, an entertainment section, and an exhibition of the ship's history. The delegation also spoke with officials at the Northern Ireland Science Park who are working to bring together venture capitalists and entrepreneurs.

In addition, the delegation observed a community event which included a basketball game between Catholic and Protestant teenage girls organized by an American NGO called Peace Players. Sponsored by the Belfast Lord Mayor on the 20th anniversary of the fall of the Berlin Wall, the event was held at the Peace Walls that still divide the communities of Belfast. The Members also visited a cultural center in West Belfast (Catholic/Nationalist area), where Gerry Adams (MP-Sinn Fein party) stopped by and made brief remarks. Normandy

Madam Speaker, as has been a tradition with the U.S. delegation to the NATO Parliamentary Assembly when we travel to Europe over either Veteran's Day or Memorial Day, the delegation makes an effort to visit a U.S. cemetery to pay our respects to our service men and women. On this occasion, we visited Normandy, holding a solemn commemorative ceremony and laying a wreath at the memorial in the American Cemetery. These visits are perhaps the most memorable and poignant moments of the delegation's trip. As our colleagues know, the critical WWII European campaign was launched on the bloody beaches of Normandy and eventually resulted in the defeat of the Nazi regime. The delegation visited the resting place of almost 9,400 U.S. soldiers, sailors, and airman who died in the liberation of France, and Europe, on Omaha and Utah beaches. The beautiful cemetery and visitors' facility overlooking Omaha Beach and the Ranger monument at Pointe du Hoc are managed by the U.S. American Battle Monuments Commission. We were deeply honored to visit the cemetery and want to thank Mr. Dan Neese, the Cemetery Superintendent, for his hospitality and the fine job he and his staff do to preserve the memory of those U.S. servicemen who gave their lives in such a noble cause. We also wish to recognize and thank Anaëlle Ferrand, our Control Officer, and Walter Frankland, Deputy Chief of Staff, European region of the American Battle Monuments Commission for their fine assistance during our brief stay.

#### SCOTLAND

The delegation was pleased to receive a briefing by U.S. Consul General Dana Linnert (Principal Officer). Linnert gave a brief overview of some of the economic and political issues relating to Scotland, including the issue of devolution. The delegation also held several bilateral meetings in Edinburgh. We met with Scottish Justice Minister Kenny MacAskill to discuss his decision to grant compassionate release to Abdel Basset al-Megrahi, the convicted bomber of Pan Am flight 103 that exploded over Lockerbie, Scotland. We expressed our deep disappointment regarding the Minister's decision, raising numerous

issues regarding his handling of the case. We discussed U.S.-Scottish trade and cultural links with officials from the Scottish government, and we spoke about current political developments with the Scottish Parliament's Presiding Officer Alex Fergusson. The delegation was particularly interested to learn about the legislation that called for a referendum on Scotland's independence from the U.K. In addition, the delegation met senior Scottish military officials to discuss challenges facing the NATO alliance in Afghanistan including public support for the mission in Afghanistan which is low in the U.K. and for which more must be done to strengthen public support for the efforts there.

Madam Speaker, the NATO Parliamentary Assembly provides a unique opportunity for Members of Congress to engage in serious discussions on critical issues with our colleagues from other NATO member states, associate and observer states. I believe our delegation, and thus this Congress, benefits greatly from the information we exchange and the personalities we meet during these meetings. I look forward to our next NATO PA session in February in Brussels, Belgium.

In conclusion, I would like to again acknowledge the hard work and dedication of our Consular staffs in both Belfast and Edinburgh, for their hard work and dedication. I especially want to thank our entire military escort group from the United States Air Force, and Air Force Reserves, including our very fine pilots. Our diplomatic corps and military personnel provide a quiet but invaluable service in ensuring our safety and the success of our delegation business. This group of diplomats, service men and women was no exception. I thank them for their hard work and their dedication to duty.

#### REMEMBERING JODI ESQUIVEL

#### HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. POE of Texas. Madam Speaker, on Friday October 30, 2009 Jodi Esquivel passed away after a two-year long battle with kidney cancer.

Jodi, a middle school English teacher in Nederland, Texas touched many lives in her short 27 years of life. Her smile was infectious and her unwavering strength and endless faith touched all those she met.

In 2007, after suffering months of back pain, Jodi was diagnosed with kidney cancer. She was in the early stages of her second pregnancy when results of an MRI showed a cancerous tumor in her kidney that had spread to her spine in three places.

Jodi leaves behind husband Justin and three year old daughter Hallie. Her family and friends celebrate Jodi for the love she shared with them and the lessons she taught them throughout her life.

#### IN HONOR AND RECOGNITION OF ADA MARIE HAGAN

#### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and recognition of Ada Marie Hagan, beloved mother, grandmother, great-grandmother and friend, whose lived her life with grace, wit, love and passionate commitment to family, community and social justice issues.

The matriarch of her family, Mrs. Hagan grew up in Youngstown, Ohio, the daughter of Italian immigrants. Her parents instilled in her a strong sense of faith, family, hard work and community. She met and married the love of her life, State Representative and comedian, the late Robert Emmet Hagan, also from the Youngstown area. Together, they raised fourteen children, teaching them the values of hard work, dedication to family and giving to others—all by example.

Ahead of her time, Mrs. Hagan became a champion on behalf of social justice issues early on, and involved herself and her children in several activist movements, including the civil rights movement and worker's rights movement. Inspired by the Catholic worker's movement, Mrs. Hagan volunteered on behalf of unions and became involved in many social causes. She regularly marched with her young children down the main streets of Youngstown in support of fair housing, civil rights, peace and other causes. In addition, she volunteered her time and talents on behalf of those seeking public office, including her children. Her dedication to community service was life-long; at the age of 80, Mrs. Hagan led a group of friends and family in Washington, DC, in the Million Mom March to protest against guns.

Madam Speaker and Colleagues, please join me in honor and remembrance of Mrs. Ada Marie Hagan, whose joyous life, framed by devotion to family, friends and service to community, will always be celebrated and remembered. I extend my deepest condolences to her children: Katie, Maggie, Jim, Tim, Bill, Bob, Jack, Chris, Anne, Elaine, Monica, Susan, Mary Therese and Jeff; to her 28 grandchildren and six great-grandchildren; and also to her extended family members and many friends. Mrs. Hagan's youthful spirit, great sense of humor, boundless energy and strong convictions inspired countless people of all ages and backgrounds, promoted positive change, and helped to lift our community and our nation into the light of human rights and social justice—and she will never be forgotten.

#### PERSONAL EXPLANATION

#### HON. BEN RAY LUJÁN

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. LUJÁN. Madam Speaker, due to scheduling conflicts, I was unable to be present for rollcall votes Nos. 889, 890, and 891. Had I been present, I would have voted "yes" on all three votes.

## PERSONAL EXPLANATION

**HON. DORIS O. MATSUI**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. MATSUI. Madam Speaker, on the afternoon of December 11, 2009, I was unavoidably detained and failed to record my vote on rollcall vote 966. Had I been present, I would have voted "nay" on the Bachus substitute amendment to H.R. 4173.

IN HONOR AND REMEMBRANCE OF  
IDELL "SCOTTY" MILLER**HON. DENNIS J. KUCINICH**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and remembrance of the beloved Idell "Scotty" Miller, devoted wife of the late John Miller; loving mother of John Jr. (deceased), Frank, Tyrone, Stanley, Czerny, and Linda; cherished grandmother of 17, devoted great-grandmother of 44, and loving great-great grandmother of 18; loving aunt and dear friend to many.

Mrs. Miller devoted her life to her faith. Her family was the foundation and joy of her life. She and Mr. Miller created a loving home to raise their children. She never missed the special events in the lives of her children and grandchildren and she would prepare wonderful family dinners for them. Mrs. Miller, also known for her wonderful laugh, great sense of humor and generous heart, lived life with great joy and love. She was a true matriarch within her family.

Madam Speaker and colleagues, please join me in honor of Mrs. Idell Miller, whose joyous spirit and love for others will exist forever within the hearts and memories of those who knew her best—her family and friends. I extend my deepest condolences to her family.

50TH ANNIVERSARY OF THE  
RUTHE B. COWL REHABILITATION CENTER**HON. HENRY CUELLAR**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. CUELLAR. Madam Speaker, I rise today to honor the 50th anniversary of the Ruthe B. Cowl Rehabilitation Center serving Laredo, Texas, Webb County, and surrounding areas. This center is nationally renowned and serves a wide range of comprehensive services including physical therapy, occupational therapy, speech pathology, ideological assessment, counseling, and social services.

The late Mrs. Ruthe B. Cowl founded the Center in 1958 with a mission to establish a treatment center for people with disabilities of all kinds. Formerly known as the Laredo Rehabilitation Center, the Ruthe B. Cowl Rehabilitation Center assists to the needs of dis-

abled, physically challenged and handicapped individuals through a series of treatments and services. This grand initiative started on modest means of two small rooms of an old Health Department in 1959. Since 1966, the Center has continued to expand. The Center was renamed by Board Resolution to the Ruthe B. Cowl Rehabilitation Center in 1970 to honor Mrs. Cowl for her tireless efforts for disabled services. Today, the Center stands as a beautiful, modern facility of nearly 33,000 square feet.

The Ruthe B. Cowl Rehabilitation Center has been acclaimed at the State and National levels for being a pacesetter in the services provided in the area of rehabilitation. The Center is responsible for bringing many firsts to the Laredo and surrounding areas. The Center plays a unique role in the community for achieving its mission to provide specialized services to those with birth defects, strokes, brain injuries, amputations, emotional problems and other physical conditions that impact quality of life. For 50 years, the Center has ensured that the certified, dedicated staff equipped with the best equipment and services are able to serve the community. The Center is a nonprofit organization which serves an average of 135 patients per day. It has provided millions of therapy visits to all in need regardless of the patient's ability to pay. The dedication, passion, and commitment that the Ruthe B. Cowl Rehabilitation Center has provided for the past 50 years have been a great service to the community.

Madam Speaker, I am honored to recognize the 50th anniversary of the Ruthe B. Cowl Rehabilitation Center. The Center is celebrating 50 years of service and continuing its mission to assist all disabled, handicapped and physically challenged individuals who deserve quality life and treatment. I thank you for this time.

## EARMARK DECLARATION

**HON. JERRY MORAN**

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. MORAN of Kansas. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding an earmark I received as part of H.R. 3288, the Consolidated Appropriations Act for FY 2010.

Requesting Member: Congressman JERRY MORAN

Bill Number: H.R. 3288

Account: Military Construction/VA, Department of Defense, Army

Legal Name of Requesting Entity: Fort Riley, Kansas

Address of Requesting Entity: 500 Huebner Road, Fort Riley, KS 66442

Description of Request: Provide \$7,100,000 to upgrade the Estes Road access control point at Fort Riley, KS to a primary use gate, to include new guard booths for new entry and exit lanes, perimeter fencing, visitor's center, gatehouse with over-watch position, and additional road extensions for the intersections of Victory Drive, Armistead Road, and Kitty Drive.

IN HONOR AND REMEMBRANCE OF  
STEPHEN JOHN KOVACIK III**HON. DENNIS J. KUCINICH**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and remembrance of Stephen John Kovacik III, beloved son, brother, uncle and friend. He lived with great joy and a passionate commitment to the arts, to his family and friends, and to issues of social justice.

Mr. Kovacik had an engaging personality. He was extremely well-read and could spark an interest and a smile from everyone he met. He followed politics, and he was a long-time supporter of progressive candidates and issues. He had a special interest in issues related to unions and the rights of workers. Mr. Kovacik was known for his compassionate heart and could always be counted on to lend a helping hand.

I extend my deepest condolences to his mother, Landa; to his sister, Lisa; to his brothers, David and Robert; to his niece and nephews, Elizabeth, Walker and Thomas; to his brother-in-law David and sister-in-law Magaly; and to his extended family members and many friends.

Madam Speaker and colleagues, please join me in honor and remembrance of Mr. Stephen John Kovacik III. Stephen John Kovacik's love for life, generous heart and kind demeanor lifted the lives of others. His soulful spirit will live on forever in the hearts and memories of his family and friends.

TRIBUTE TO HARRISON HIGH  
SCHOOL MARCHING BAND**HON. PHIL GINGREY**

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. GINGREY of Georgia. Madam Speaker, I would like to congratulate the Harrison High School marching band for being selected to participate in this year's Macys' Thanksgiving Day Parade. The Hoyas were one of 8 high school marching bands chosen nationwide to participate in this once in a lifetime experience.

Being awarded this prestigious distinction for the Macy's Thanksgiving Day Parade is recognition of being one of the very best high school bands in the country. The Hoyas' selection is a testament to their dedication, devotion and hard work. The parade was a perfect opportunity for them to showcase their skills and countless hours of practice, and anyone who saw the parade on TV on Thanksgiving Day knows they did us proud.

I'd also like to commend the parents, faculty, and entire community who worked to make this possible by supporting the 193-member band.

Madam Speaker, on behalf of all my constituents, I am proud to congratulate the Hoyas on their selection and for their success at the parade.

IN HONOR OF MAYOR CHARLES E.  
MOYER

### HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. MURTHA. Madam Speaker, I rise today to honor the service of Charles E. Moyer, the mayor of Ebensburg, Pennsylvania. He is retiring after 16 years as mayor. His hard work and dedication have had an immense impact on his community.

Mr. Moyer was born and raised in Ebensburg, where he attended Holy Name Grade School and Central Cambria High School before taking classes at Saint Francis University. He lives with his loving wife, Rose, and together they raised their daughter Denise and their late son David.

Mr. Moyer began serving Ebensburg in 1963 as a member of the Dauntless Fire Company and was its captain from 1973 to 1983. He first joined the Ebensburg Borough Council in 1974 and became council president in 1984, an office he held until he became mayor in 1994.

Mr. Moyer has been an officer of the Cambria County Boroughs Association since 1986, is a member of the Pennsylvania State Association of Boroughs Board of Trustees and Directors, and represents the association on the Pennsylvania Department of Transportation's New Product Evaluation Committee. Since 1997, Mr. Moyer has served on the Cambria County Conservation and Recreation Authority, working to develop recreational resources, including playgrounds and trail projects, in Cambria County. For the past 5 years, Mr. Moyer has also been a member of the Cambria County Airport Authority and has served on the board of directors for the Cambria Somerset Council of Governments for 15 years, including 2 years as the president.

Madam Speaker, during his distinguished career, Mr. Moyer received the Thomas F. Chrostwaite Award in 1993, the Distinguished Service Award in 2002, the Board of Directors Award in 2003, and the A.C. Scales Award from the Pennsylvania State Association of Boroughs in 2007 for exceptionally outstanding service.

As mayor and councilman, Mr. Moyer has been instrumental in the many improvements in Ebensburg. Most recently, the borough enacted a \$1.3 million Streetscape program to revitalize the downtown, which has allowed for the construction of Penn Eben Park with a gazebo-style band shell, new sidewalks, street lights, benches and trees as well as renovations of many buildings. New businesses have nearly filled all the storefronts in downtown Ebensburg.

Madam Speaker, I conclude my remarks by commending Charles E. Moyer for his service to his community. Through his years as a volunteer fireman, a councilman and finally as mayor, he has continually worked to make Ebensburg Borough a better place. His retirement closes a chapter on a long and fruitful career and the people of Ebensburg, along with those of us who have worked with Charles, will surely miss him.

IN HONOR AND RECOGNITION OF  
JEAN ELSNER

### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and recognition of Jean Elsner, age 90, whose youthful spirit and lifelong quest for learning is being recognized at Cleveland State University's fall commencement ceremony, where she will be awarded the coveted President's Medal.

Mrs. Elsner grew up in Cleveland's Buckeye neighborhood during the Great Depression. Her parents were hardworking and resourceful, despite the harsh economic times. Even when they lost their home to foreclosure, and during a time when young women were not encouraged to further their education, her parents always stuck to their plan for her to go to college. In 1941, she graduated magna cum laude with bachelor's degrees in English and Sociology from Ohio University, and her quest for learning, sparked early on by her parents, never diminished.

In 1982, Mrs. Elsner and a friend signed up to take a class at Cleveland State University, and she has been enrolled ever since. For nearly thirty years, she has taken two to three classes every semester. She holds the record for the most classes taken by any one student at Cleveland State—more than 100. Whether rain, sleet or snow, Mrs. Elsner walks to the bus stop every day she has a class and takes the bus downtown from her home in South Euclid. Mrs. Elsner's positive attitude and boundless energy continue to inspire. Her love of life and devotion to family and friends continues to frame each day. Together, she and her beloved husband, the late Sidney Elsner, raised three sons and instilled within them the same values of hard work and the significance of a solid college education.

Madam Speaker and Colleagues, please join me in honor and recognition of Jean Elsner, whose exuberance for life, quick smile, caring heart and love for learning continues to enrich and inspire students, professors, friends and family. We wish her continued health, peace and happiness in all the years to come.

#### EARMARK DECLARATION

### HON. GREG WALDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. WALDEN. Madam Speaker, consistent with the House Republican Leadership's policy on earmarks, to the best of my knowledge the requests I have detailed below are (1) not directed to an entity or program that will be named after a sitting Member of Congress; and (2) not intended to be used by an entity to secure funds for other entities unless the use of funding is consistent with the specified purpose of the earmark. As required by earmark standards adopted by the House Republican Conference, I submit the following information on projects I requested and that were

included in the Consolidated Appropriations Act, 2010, H.R. 3288.

Account: Transportation & Community & System Preservation

Project Name: 5th and 6th Street Reconstruction, OR

Legal Name and Address of Requesting Entity: City of Redmond, 716 SW., Evergreen Avenue, Redmond, Oregon 97756

Project Location: Madras, Oregon

Description of Project: H.R. 3288 appropriates \$779,200 for the 5th and 6th Street Reconstruction project located in Redmond, Oregon. According to the requesting entity, funding would be used to remove and replace existing pavement surfacing and sub-grade material and restore the street section to minor arterial standard. According to the City of Redmond, this is a valuable use of taxpayer funds because it will encourage local use and the 5th/6th Street Couplet cannot be properly maintained without reconstruction, as the existing condition cannot accommodate additional maintenance treatments.

Account: Surface Transportation Priorities

Project Name: U.S. Highway 97 and J Street Intersection Project, OR

Legal Name and Address of Requesting Entity: City of Madras, 71 SE "D" Street, Madras, Oregon, 97741

Project Location: Madras, Oregon

Description of Project: H.R. 3288 appropriates \$681,800 for the U.S. Highway 97 and J Street Intersection Project located in Madras, Oregon. According to the requestor, funds would be used to modernize and realign the intersection of J Street where it bisects U.S. Highways 26 and 97 within the city limits of Madras, Oregon. According to the City of Madras, this is a valuable use of taxpayer funds because it will improve transportation safety and efficiency, create and preserve jobs, and enable further economic development.

Account: Surface Transportation Priorities

Project Name: Brett Way Extension, OR

Legal Name and Address of Requesting Entity: City of Klamath Falls, 500 Klamath Avenue, Klamath Falls, OR 97601

Project Location: Klamath Falls, Oregon

Description of Project: H.R. 3288 appropriates \$292,200 for the Brett Way Extension, OR Project located in Klamath Falls, Oregon. According to the requestor, funds would go towards closure of an unsafe intersection located at Summers Lane and the South Side Bypass and the extension of Brett Way from Summers Lane to Homedale Road, as well as installation of water line and sanitary sewer, construction of a bridge over an existing canal, and elimination of an uncontrolled rail crossing on Summers Lane. According to the City of Klamath Falls, this is a valuable use of taxpayer dollars because it would open access to the underutilized airport industrial park area as well as provide much needed alternate access to the airport.

Account: Economic Development Initiatives

Project Name: For the reconstruction and construction needs of facilities which are critical to the local economy

Legal Name and Address of Requesting Entity: Pendleton Round-Up, 1114 SW Court Avenue, Pendleton, OR, 97801

Project Location: Pendleton, Oregon

Description of Project: H.R. 3288 appropriates \$487,000 for the Pendleton Round-Up and Happy Canyon Facilities Improvements located in Pendleton, Oregon. According to the requestor, funds would be used to construct the Centennial Grandstand facility to replace an aging structure that has outlived its useful life and to complete the reconstruction of the four-phase project at Happy Canyon. According to the Pendleton Round-Up, this is a valuable use of taxpayer funds because this project would preserve a world renowned rodeo and Native American cultural event.

**RECOGNIZING THE VILLAGE OF  
HOFFMAN ESTATES' 50TH ANNIVERSARY**

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the Village of Hoffman Estates, a town in my district that is celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of Hoffman Estates is celebrating its 50th anniversary. Located in Cook County, Hoffman Estates was established in 1954 when a local farmer sold his 160 acre farm to Sam and Jack Hoffman, owners of the Father and Son Construction Company. The Hoffmans built a development and in 1959, the residents of the subdivision voted to incorporate as the village of Hoffman Estates. In the following decades, Hoffman Estates continued to annex surrounding areas and developments. Business also came to Hoffman Estates including the Sears, Roebuck and Company in 1992.

Madam Speaker, the Village of Hoffman Estates is unique in its history and adds greatly to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the Village of Hoffman Estates for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Hoffman Estates for reaching their 50th anniversary and I wish them continued success in the future.

**OUR UNCONSCIONABLE NATIONAL  
DEBT**

**HON. MIKE COFFMAN**

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. COFFMAN of Colorado. Madam Speaker, today our national debt is \$12,081,709,382,532.35.

On January 6th, 2009, the start of the 111th Congress, the national debt was \$10,638,425,746,293.80.

This means the national debt has increased by \$1,443,283,636,238.55 so far this year.

According to the non-partisan Congressional Budget Office, the forecast deficit for this year

is \$1.6 trillion. That means that so far this year, we borrowed and spent an average \$4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

**RECOGNIZING THE 20TH ANNIVERSARY OF THE VILLAGE OF  
BEACH PARK**

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the village of Beach Park, a town in my district celebrating a milestone anniversary this year. Each of these communities has made a unique contribution to district I represent, and to the State of Illinois.

The village of Beach Park is celebrating its 20-year anniversary. Located on Lake Michigan, Beach Park was a stop on the Chicago-Milwaukee Electric Railroad named "Beach Depot" in the early 1900s. In 1928, F.H. Bartlett Co. of Chicago purchased land near the rail station and sold parcels of land to city residents looking to escape to the country. In 1949, the community adopted the name of Beach Park and put a school district and fire department in place. But it was not until 1989 that the village of Beach Park was incorporated.

Madam Speaker, the village of Beach Park is unique in its history and adds to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the village of Beach Park for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Beach Park reaching their 20th anniversary and I wish them continued success in the future.

**RECOGNIZING THE VILLAGE OF  
FOX RIVER GROVE'S 90TH ANNIVERSARY**

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the Village of Fox River Grove, a town in my district that is celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of Fox River Grove is celebrating its 90th anniversary. Located along the Fox River in both Lake and McHenry Counties, Fox River Grove was the winter home of the Ojibwa Indians until the 1860s. In 1869, Frank Opatrny purchased 80 acres along the Fox River. In 1905, the Norge Ski Club purchased land in Fox River Grove and erected a ski jump and in the 1950s the site was host to America's first international ski-jumping contest. Today, the Norge Ski Club is the oldest, continuously open ski club in the United States. Since incorporation in 1919, Fox River

Grove has grown from a ski destination to a year-round residential community.

Madam Speaker, the Village of Fox River Grove is unique in its history and adds to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the Village of Fox River Grove for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Fox River Grove for reaching their 90th anniversary and I wish them continued success in the future.

**EARMARK DECLARATION**

**HON. JOHN J. DUNCAN, JR.**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: OJP—Juvenile Justice

Project Amount: \$250,000

Legal Name of Requesting Entity: Childhelp of East Tennessee, 2505 Kingston Pike, Knoxville, Tennessee 37919

Description of Request: The funding would assist Childhelp in expanding its services to more children in Knox County and the surrounding region who have suffered abuse. Specifically, the Children Center of East Tennessee will expand its forensic interview capacity and related services to more Knox County children who have, in the past, been turned away, as well as its community based forensic interview and medical examination services.

**RECOGNIZING THE 50TH ANNIVERSARY OF THE VILLAGE OF LAKE  
BARRINGTON**

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the Village of Lake Barrington, a town in my district celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of Lake Barrington is celebrating its 50-year anniversary. Believed to be first populated by the Potowanami Indians, recent discovery of burial grounds suggest an established Native American presence in the Lake Barrington area. Lake Barrington remained rural and minimally populated until the 20th century when Chicago businessmen began turning the farms into estates. Incorporated in 1959, local residents voted Jorgen Hubschman as the first village president. Lake Barrington has grown over the past 50 years

from a community of just 200 residents to a village of 5,000. Recently, the Village of Lake Barrington established a Tree Preservation Code and is currently recognized by the Arbor Day Foundation as a "Tree City U.S.A" community. Though the village has grown, Lake Barrington has sought to preserve its scenic charm that continues to make the village an attractive place to live.

Madam Speaker, the Village of Lake Barrington is unique in its history and adds greatly to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the Village of Lake Barrington for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Lake Barrington for reaching their 50th anniversary and I wish them continued success in the future.

#### EARMARK DECLARATION

**HON. JOHN J. DUNCAN, JR.**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: Salaries and Expenses

Project Amount: \$750,000

Legal Name of Requesting Entity: City of Alcoa, 223 Associates Boulevard, Alcoa, Tennessee 37701

Description of Request: The funding will be utilized to develop infrastructure servicing the new Pellissippi Research Center on the Oak Ridge Corridor.

#### RECOGNIZING THE 50TH ANNIVERSARY OF THE VILLAGE OF NORTH BARRINGTON

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the Village of North Barrington, a town in my district celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of North Barrington is celebrating its 50-year anniversary. Located 35 miles northwest of Chicago, North Barrington's first settlers arrived in the 1830s. In 1854, the Chicago & Northwestern Railroad built its first station in the Village of Barrington, just south of the community. The first homes in North Barrington include Kimberly House, built in 1857, which was visited on several occasions by President Theodore Roosevelt, cousin of the Kimberly's daughter-in-law. North Bar-

ington continued to develop and in 1959 area residents voted to incorporate as the Village of North Barrington.

Madam Speaker, the Village of North Barrington is unique in its history and adds greatly to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the Village of North Barrington for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate North Barrington for reaching their 50th anniversary and I wish them continued success in the future.

#### EARMARK DECLARATION

**HON. JOHN J. DUNCAN, JR.**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: COPS Law Enforcement Technology

Project Amount: \$750,000

Legal Name of Requesting Entity: City of Maryville, 404 W. Broadway Avenue, Maryville, Tennessee 37801

Description of Request: The Blount County Communications System will provide interoperable communications of all departments in Blount County; interoperable communications with surrounding counties; an increase in range covering parts of Blount County that is currently deficient; portable radio coverage within buildings; and, reduced maintenance costs by operating one instead of many independent systems.

#### RECOGNIZING THE 50TH ANNIVERSARY OF OLD MILL CREEK

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize Old Mill Creek, a town in my district that is celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The town of Old Mill Creek is celebrating its 50-year anniversary. Located five miles south of the Wisconsin border, Old Mill Creek was first settled by Scottish immigrants as a small agricultural community in the 1830s. One immigrant, Jacob Miller, built a sawmill along the Des Plaines River naming it Millburn, "burn" being the Scottish word for creek. The village of Old Mill Creek was incorporated in 1959. Old Mill Creek remains a rural community with a population of 251.

Madam Speaker, Old Mill Creek is unique in its history and adds greatly to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the town of Old Mill Creek for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Old Mill Creek for reaching their 50th anniversary and I wish them continued success in the future.

#### EARMARK DECLARATION

**HON. JOHN J. DUNCAN, JR.**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: Health Resources and Services Administration (HRSA)—Health Facilities and Services

Project Amount: \$1,350,000

Legal Name of Requesting Entity: UT Medical Center, 1924 Alcoa Highway, Knoxville, TN 37920

Description of Request: The funding would be used for renovation and expansion of the Family Medicine Building and Clinic at the UT Medical Center.

#### RECOGNIZING THE VILLAGE OF ROUND LAKE'S 100TH ANNIVERSARY

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize Round Lake, a village in my district celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of Round Lake is celebrating its 100th anniversary. In the 1890s, when officials of the Chicago, Milwaukee, & St. Paul Railroad announced an extension of the Milwaukee-Chicago line, landowners near Hainesville, IL knew a railroad station would increase property values. One such resident, Amarias White, offered the railroad free land in exchange for a station. White succeeded and Round Lake, named after the nearby lake, became the area station. In 1909, the village incorporated with White as the first village president. Through the beginning of the 20th Century, Round Lake's population remained predominately agricultural and the lake acted as a summer retreat for Chicago residents. Today, Round Lake continues to develop as a suburban community.

Madam Speaker, the Village of Round Lake is unique in its history and adds to the vibrant

community of the Eighth District of Illinois. I thank all the past leaders of the Village of Round Lake for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Round Lake for reaching their 100th anniversary and I wish them continued success in the future.

#### PERSONAL EXPLANATION

### HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA  
IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. NORTON. Madam Speaker, on December 11, 2009, I was not able to be present for votes on four amendments to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. Had I been present, I would have voted "aye" rollcall vote 963 and rollcall vote 964, and I would have voted "no" on rollcall vote 965 and rollcall vote 966.

#### HONORING TONY PINI

### HON. LYNN C. WOOLSEY

OF CALIFORNIA  
IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. WOOLSEY. Madam Speaker, I rise with sadness today to honor Tony Pini, a popular leader and a family man, who served as Fire Chief in Santa Rosa, California, for 18 years. Tony passed away December 8, 2009, at the age of 62.

Born in San Francisco and raised in that city and in South San Francisco, Tony joined the Navy after high school. He served aboard the destroyer USS *Radford* off Vietnam, and while still in the service, met his future wife Elaine in Honolulu where she was vacationing.

He returned to the Bay Area and, in 1970, became a firefighter in South San Francisco. He was soon promoted to captain, moved on to a division chief position in Campbell, CA, and became fire chief in Santa Cruz in 1981 at the age of 34.

During this time, Tony married Elaine; they had 2 daughters; and Tony earned degrees at the College of San Mateo, the University of San Francisco, and San Jose State University (Masters of Public Administration). Despite his hectic schedule, he made sure he had time for traveling and camping with his family.

In 1985, Tony was hired as Santa Rosa Fire Chief, a job he loved. He worked hard to develop solid relationships with union firefighters, upgrade the engines and equipment, and promote diversity in the department. His friendly, outgoing style suited the city, and he stayed till he retired at the age of 55.

After retirement, Tony continued to enjoy time with family, which grew to include 5 grandchildren. He was a man of wide ranging interests and active disposition who learned languages, played guitar, and studied art through both books and visits to museums.

He is survived by his mother Florene and his brother Rick, as well as his wife, 2 daughters and 5 grandchildren.

Madam Speaker, Tony Pini's passing has left an empty space in the Santa Rosa community, and for his wide circle of friends and his family. We thank Tony for his years of inspirational leadership and appreciate all he has given.

#### RECOGNIZING THE 50TH ANNIVERSARY OF THE VILLAGE OF SOUTH BARRINGTON

### HON. MELISSA L. BEAN

OF ILLINOIS  
IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the Village of South Barrington, a town in my district celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of South Barrington is celebrating its 50-year anniversary. Into the late 1950s, the area was still largely agricultural. In 1959, a group of property owners saw the need for a local government and came together to form a village. Following incorporation, South Barrington continued to build and develop. A parcel of land was donated to the Audubon Society of Chicago by Alex Stillman in 1976, creating the 80-acre Stillman Nature Center.

Madam Speaker, the Village of South Barrington is unique in its history and adds greatly to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the Village of South Barrington for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate South Barrington for reaching their 50th anniversary and I wish them continued success in the future.

#### EARMARK DECLARATION

### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE  
IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: Buses & Bus Facilities

Project Amount: \$500,000

Legal Name of Requesting Entity: Knoxville-Knox County Community Action Committee, Post Office Box 51650, Knoxville, TN 37950

Description of Request: The funding would be used to purchase transit vehicles in order to provide reliable transportation to the residents of Knox County.

#### EARMARK DECLARATION

### HON. TOM COLE

OF OKLAHOMA  
IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. COLE. Madam Speaker, as per the requirements of the Republican Conference Rules on earmarks, I secured the following earmark in H.R. 3288.

Requesting Member: Rep. TOM COLE (OK-4)

Bill Number: H.R. 3288

Account: Air Force, Military Construction

Legal Name of Requesting Entity: Vance AFB

Address of Requesting Entity: Vance, AFB, OK

Description of Request: Construct an air traffic control tower for \$10.4 million. The current control tower at Vance AFB was constructed in 1972. The tower is in need of critical upgrades to remain effectively operational and to comply with base architectural standards. New upgrades will allow Vance AFB to continue safe and efficient aerial military operations. The current control tower at Vance AFB was constructed in 1972. The tower is in need of critical upgrades to remain effectively operational and to comply with base architectural standards. New upgrades will allow Vance AFB to continue safe and efficient aerial military operations.

#### RECOGNIZING THE VILLAGE OF THIRD LAKE'S 50TH ANNIVERSARY

### HON. MELISSA L. BEAN

OF ILLINOIS  
IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the Village of Third Lake, a town in my district celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of Third Lake is celebrating its 50-year anniversary. The area of Third Lake first saw growth with the development of Sunshine Subdivision in the late 1920s. In 1959, residents of the subdivision incorporated to control the pollution of the lake. Development emerged once again in the 1980s and continues today as Third Lake has grown into a suburban community. Uniquely, Third Lake is also home to the North American headquarters for the Free Serbian Orthodox Church.

Madam Speaker, the Village of Third Lake is unique in its history and adds greatly to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the Village of Third Lake for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Third Lake for reaching their 50th anniversary and I wish them continued success in the future.

## TRIBUTE TO MS. LYNDA DIXON

**HON. MARION BERRY**

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. BERRY. Madam Speaker, I rise here today to pay tribute to Lynda Dixon. Her successes are many, but it is her outstanding service to our beloved state that truly sets her apart. I am proud to honor Lynda Dixon for her lifetime of service to her community, our state and our country.

Lynda Dixon was born in Tulare, California and her family moved to Atkins, Arkansas when she was two years old. She is the youngest of four children. She attended Atkins Public Schools and graduated in 1961.

Dixon is retiring from her current position as the Director of Special Services at the Clinton Presidential Library Foundation. Throughout her career, Lynda has been involved in politics. She began her political career in 1976 in Russellville, Arkansas, working for a Prosecuting Attorney. In 1983, she left to serve as personal secretary to Governor Bill Clinton. In 1992 when Governor Clinton was elected President of the United States, she managed his Arkansas office and served as travel companion to his mother, the late Virginia Kelley. Lynda began working for the Clinton Presidential Foundation in 2001.

Dixon remains active with the Arkansas Democratic Party and is a lifetime member of the Arkansas Democratic Women and Senior Democrats of Arkansas. She is also a past-member of the Board of Directors of United Cerebral Palsy; volunteers with the Arkansas Foodbank Network; is a member of Volunteers in Public Schools; served on the Partners in Education Committee sponsored by the Little Rock Chamber of Commerce; mentors at Clinton Elementary Magnet School and is often fundraising for political and charitable organizations she supports. She is a member of Second Baptist Church and McKinney/Maloch Sunday School Class.

Lynda Dixon embodies the values of service, leadership and commitment to community that has made our state and our nation the great place it is today. She has dedicated her life to serving people and we are grateful for the impact she has made. On behalf of the United States Congress I ask my colleagues to join me in celebrating and honoring the lifetime and career achievements of Lynda Dixon.

## EARMARK DECLARATION

**HON. JOHN J. DUNCAN, JR.**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: Buses & Bus Facilities  
Project Amount: \$750,000

Legal Name of Requesting Entity: Blount County, 341 Court Street, Maryville, TN 37804

Description of Request: The project seeks to improve 2.23 miles of Morganton Road by widening the road to 12 foot wide travel lanes with 3 feet wide improved shoulders on either side, to make intersection improvements at certain roads to enhance sight distance and to facilitate turning movements, to add acceleration and turn lanes at specific intersections, to make needed drainage improvements, and to improve rideability and safety by restructuring.

RECOGNIZING THE CITY OF  
WAUKEGAN'S 150TH ANNIVERSARY**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize Waukegan, a city in my district that is celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The City of Waukegan is celebrating its 150 year anniversary. Located 36 miles north of Chicago, Waukegan was first established in 1725 as a trading post known as Little Fort. In 1849, residents approved the name of Waukegan, the Potawatomi equivalent of Little Fort and incorporated in 1859. Waukegan continued to grow through the 19th century as a center of industry—Waukegan harbor was one of the busiest on the Great Lakes and several major railroads traveled through the city. These railroads became indispensable to the larger industries which appeared in Waukegan in the later part of the century. Today, Waukegan is largely a residential community, though has continued its tradition of industry with companies such as Abbott Laboratories, Baxter International, and National Gypsum.

Madam Speaker, this city is unique in its history and adds to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the City of Waukegan for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Waukegan for reaching their 150th anniversary and I wish them continued success in the future.

RECOGNIZING A. PHILIP RANDOLPH,  
A LEADER IN THE CIVIL RIGHTS MOVEMENT**HON. CHARLES B. RANGEL**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. RANGEL. Madam Speaker, I rise today to recognize A. Philip Randolph for his great life's work, demonstrating an unyielding struggle for human rights that impacted all marginalized groups in society during his time. He was an influential leader who had a hand in the civil rights and labor movements.

A. Philip Randolph firmly believed that workers' rights and civil rights went hand in hand. He was influential in speaking out for African American rights during the 1930s and 1940s, focused particularly on labor and employment issues, and he was the leading force behind the March on Washington for Jobs and Freedom.

Not only did he lead a 10-year campaign to organize the Pullman Porters and served as the organization's first president, but Randolph directed the March on Washington movement to end employment discrimination. He was also elected a vice president of the newly merged AFL-CIO in 1955. Mr. Randolph was instrumental in changing the way Black Americans were treated in the workplace, and workers today are still benefiting from his efforts. A. Philip Randolph realized the importance of organizing Black workers and used this position to advocate for desegregation and respect for civil rights inside the labor movement.

It is only fitting that we recognize Randolph for his contributions as a founding father of the early civil rights movement. A. Philip Randolph struggled for social, political, and economic justice for all working Americans, and recognizing him in Congress is a long overdue honor that Randolph's legacy deserves.

## EARMARK DECLARATION

**HON. JOHN J. DUNCAN, JR.**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: Higher Education (includes FIPSE)  
Project Amount: \$300,000

Legal Name of Requesting Entity: Maryville College, 502 E. Lamar Alexander Parkway, Maryville, TN 37804

Description of Request: Maryville College proposes to develop an innovative, experiential-based program in science education that will benefit undergraduate students, faculty, pre-secondary/secondary students and their teachers throughout the Southern Appalachian region. Through initiatives that range from tightly focused out-reach programming to summer research-based opportunities for students and teachers, the college will significantly expand involvement in basic research, the education of undergraduate scientists, and the education of younger students and their teachers.

## PERSONAL EXPLANATION

**HON. ZOE LOFGREN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, December 14, 2009*

Ms. ZOE LOFGREN of California. Madam Speaker, last week I was unavoidably absent



due to the health condition of a family member in California. Had I been present I would have voted:

Thursday, December 10, 2009: rollcall No. 952 "yea"; rollcall No. 953 "yea"; rollcall No. 954 "no"; rollcall No. 955 "yea"; rollcall No. 956 "no"; rollcall No. 957 "yea"; rollcall No. 958 "yea"; rollcall No. 959 "yea."

Friday, December 11, 2009: rollcall No. 960 "yea"; rollcall No. 961 "no"; rollcall No. 962 "yea"; rollcall No. 963 "yea"; rollcall No. 964 "yea"; rollcall No. 965 "no"; rollcall No. 966 "no"; rollcall No. 967 "no"; rollcall No. 968 "yea."

#### CAMP ASHRAF DISPLACEMENT

### HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, December 14, 2009

Mr. POE of Texas. Madam Speaker, on December 10, 2009 the Iraqi government announced that it is going to forcibly displace thousands of Iranian dissidents living in Camp Ashraf to a remote prison in the Iraqi desert. The Iraqi government knows the world recognizes Camp Ashraf as a refuge for those who stand tall for freedom and democracy, so it is demolishing their homes they have lived in for over 20 years and moving them to southern Iraq, where the Iraqi government thinks it can do whatever it wants to them and the world won't notice.

The families in Camp Ashraf's biggest crime is that they love freedom and oppose the oppressive Iranian regime. Tehran has for months now pressured the Iraqi government to hand over Camp Ashraf residents so it can imprison and torture them just like they do to all who dare speak out against the regime. This is no secret: Iranian Parliament Speaker Ali Larijani explicitly asked Iraqi lawmakers in early November to expel these dissidents from Iraqi soil.

Iraqi Prime Minister Nouri Al-Maliki, wanting to better relations with Iran, sent Iraqi government forces to brutally attack Camp Ashraf residents in July. It was a humanitarian catastrophe leaving 11 unarmed residents dead, 500 wounded, and 36 abducted.

We cannot ignore any perpetrator, whether friend or foe, who seeks to violently and brutally oppress innocent people. America cannot forget the people of Camp Ashraf.

Prime Minister Al-Maliki should stand by repeated and written assurances he has given to the United States and the United Nations to respect the fundamental rights of the residents of Ashraf. These are "protected persons" under the Fourth Geneva Convention. President Obama should honor the U.S. government's repeated promises to protect these people.

The President and Secretary Clinton should undertake whatever steps necessary to ensure the safety and well-being of the residents of Camp Ashraf. The increasingly vulnerable regime in Tehran must not be allowed to extend its repressive tentacles beyond Iran's border and crack down on its principal opposition. Someone must stand up for those who cannot stand up for themselves.

It's bad enough that Iran brutalizes Iranian dissidents in Iran; the world cannot ignore Iran's intent to brutalize its own people in Camp Ashraf in the foreign country of Iraq as well.

And that's just the way it is.

#### EARMARK DECLARATION

### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Monday, December 14, 2009

Mr. DUNCAN. Madam Speaker, consistent with House Republican Earmark Standards, I am submitting the following earmark disclosure information for project requests that I made and which were included within H.R. 3288, the "Consolidated Appropriations Act for FY2010."

Requesting Member: Congressman JOHN DUNCAN

Account: Health Resources and Services Administration (HRSA)—Health Facilities and Services

Project Amount: \$200,000

Legal Name of Requesting Entity: Clinics of Hope, USA, 1064 Hayslope Drive, Knoxville, TN 37919

Description of Request: The funding would be used to develop three free medical clinics in the Knoxville, Tennessee area. The clinics would serve those who are under two-times the federal poverty level. The requested funds will be used for initial start-up of the three clinics and for the first year of operation.

#### SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, December 15, 2009 may be found in the Daily Digest of today's RECORD.

#### MEETINGS SCHEDULED

DECEMBER 16

Time to be announced

Veterans' Affairs

Business meeting to consider the nominations of Robert A. Petzel, of Minnesota, to be Under Secretary for Health, and Raul Perea-Henze, of New

York, to be Assistant Secretary for Policy and Planning, both of the Department of Veterans Affairs.

Room to be announced

10 a.m.

Homeland Security and Governmental Affairs

Business meeting to consider S. 1102, to provide benefits to domestic partners of Federal employees, S. 1830, to establish the Chief Conservation Officers Council to improve the energy efficiencies of Federal agencies, S. 2868, to provide increased access to the General Services Administration's Schedules Program by the American Red Cross and State and local governments, H.R. 2711, to amend title 5, United States Code, to provide for the transportation of the dependents, remains, and effects of certain Federal employees who die while performing official duties or as a result of the performance of official duties, S. 2865, to reauthorize the Congressional Award Act (2 U.S.C. 801 et seq.), S. 2872, to reauthorize appropriations for the National Historical Publications and Records Commission through fiscal year 2014, H.R. 1345, to amend title 5, United States Code, to eliminate the discriminatory treatment of the District of Columbia under the provisions of law commonly referred to as the "Hatch Act", H.R. 2877, to designate the facility of the United States Postal Service located at 76 Brookside Avenue in Chester, New York, as the "1st Lieutenant Louis Allen Post Office", H.R. 3667, to designate the facility of the United States Postal Service located at 16555 Springs Street in White Springs, Florida, as the "Clyde L. Hillhouse Post Office Building", H.R. 3788, to designate the facility of the United States Postal Service located at 3900 Darrow Road in Stow, Ohio, as the "Corporal Joseph A. Tomci Post Office Building", H.R. 1817, to designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the "John S. Wilder Post Office Building", H.R. 3072, to designate the facility of the United States Postal Service located at 9810 Halls Ferry Road in St. Louis, Missouri, as the "Coach Jodie Bailey Post Office Building", H.R. 3319, to designate the facility of the United States Postal Service located at 440 South Gulling Street in Portola, California, as the "Army Specialist Jeremiah Paul McCleery Post Office Building", H.R. 3539, to designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the "Patricia D. McGinty-Juhl Post Office Building", H.R. 3767, to designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the "W. Hazen Hillyard Post Office Building", and the nominations of Grayling Grant Williams, of Maryland, to be Director of the Office of Counternarcotics Enforcement, and Elizabeth M. Harman, of Maryland, to be an Assistant Administrator of the Federal Emergency Management Agency, both of the Department of Homeland Security.

SD-342

- 10:30 a.m.  
Judiciary  
Human Rights and the Law Subcommittee  
To hold hearings to examine United States implementation of human rights treaties.  
SD-226
- 11:30 a.m.  
Energy and Natural Resources  
Business meeting to consider pending calendar business.  
SD-366
- 1:30 p.m.  
Armed Services  
To hold hearings to examine the assessment by the Joint Estimating Team of the F-35 Joint Strike Fighter Program.  
SDG-50
- 2:30 p.m.  
Homeland Security and Governmental Affairs  
Federal Financial Management, Government Information, Federal Services, and International Security Subcommittee  
To hold hearings to examine tools to combat deficits and waste, focusing on enhanced rescission authority.  
SD-342
- 3 p.m.  
Judiciary  
To hold hearings to examine the nominations of James A. Wynn, Jr., of North Carolina, and Albert Diaz, of North Carolina, both to be United States Circuit Judge for the Fourth Circuit.  
SD-226
- DECEMBER 17  
Time to be announced  
Small Business and Entrepreneurship  
Business meeting to consider S. 2826, to amend the Internal Revenue Code of 1986 to extend the renewable production credit for wind and open-loop biomass facilities, and S. 2869, Small Business Job Creation and Access to Capital Act of 2009.  
SR-485
- 9:30 a.m.  
Armed Services  
To hold hearings to examine the nominations of Douglas B. Wilson, of Arizona, to be Assistant Secretary for Public Affairs, Malcolm Ross O'Neill, of Virginia, to be Assistant Secretary of the Army for Acquisition, Logistics and Technology, Mary Sally Matiella, of Arizona, to be Assistant Secretary of the Army for Financial Management and Comptroller, Paul Luis Oostburg Sanz, of Maryland, to be General Counsel of the Department of the Navy, and Jackalyne Pfannenstiel, of California, to be Assistant Secretary of the Navy for Installations and Environment, all of the Department of Defense, and Donald L. Cook, of Washington, to be Deputy Administrator for Defense Pro-grams, National Nuclear Security Administration, Department of Energy.  
SD-G50
- Banking, Housing, and Urban Affairs  
Business meeting to consider the nominations of Ben S. Bernanke, of New Jersey, to be Chairman of the Board of Governors of the Federal Reserve System, Eric L. Hirschhorn, of Maryland, to be Under Secretary of Commerce for Export Administration, Marisa Lago, of New York, to be Assistant Secretary of the Treasury, and Steven L. Jacques, of Kansas, to be Assistant Secretary of Housing and Urban Development.  
SD-538
- 10 a.m.  
Commerce, Science, and Transportation  
Business meeting to consider pending calendar business.  
SR-253
- Homeland Security and Governmental Affairs  
To hold hearings to examine prospects for our economic future and proposals to secure it.  
SD-342
- Judiciary  
Business meeting to consider S. 714, to establish the National Criminal Justice Commission, S. 1624, to amend title 11 of the United States Code, to provide protection for medical debt homeowners, to restore bankruptcy protections for individuals experiencing economic distress as caregivers to ill, injured, or disabled family members, and to exempt from means testing debtors whose financial problems were caused by serious medical problems, S. 1765, to amend the Hate Crime Statistics Act to include crimes against the homeless, S. 678, to reauthorize and improve the Juvenile Justice and Delinquency Prevention Act of 1974, S. 1554, to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to prevent later delinquency and improve the health and well-being of maltreated infants and toddlers through the development of local Court Teams for Maltreated Infants and Toddlers and the creation of a National Court Teams Resource Center to assist such Court Teams, S. 1789, to restore fairness to Federal cocaine sentencing, S. 1376, to restore immunization and sibling age exemptions for children adopted by United States citizens under the Hague Convention on Intercountry Adoption to allow their admission to the United States, H.R. 1741, to require the Attorney General to make competitive grants to eligible State, tribal, and local governments to establish and maintain certain protection and witness assistance programs, and the nominations Barbara L. McQuade, to be United States Attorney for the Eastern District of Michigan, Christopher A. Crofts, to be United States Attorney for the District of Wyoming, Michael W. Cotter, to be United States Attorney for the District of Montana, Mark Anthony Martinez, to be United States Marshal for the District of Nebraska, and James L. Santelle, to be United States Attorney for the Eastern District of Wisconsin, all of the Department of Justice, and O. Rogerie Thompson, of Rhode Island, to be United States Circuit Judge for the First Circuit.  
SD-226
- 2 p.m.  
Homeland Security and Governmental Affairs  
Contracting Oversight Subcommittee  
To hold hearings to examine an overview of Afghanistan contracts.  
SD-342
- Commission on Security and Cooperation in Europe  
To receive a briefing on Russia's Muslims.  
1539, Longworth Building
- 2:15 p.m.  
Indian Affairs  
Business meeting to consider pending calendar business; to be immediately followed by an oversight hearing to examine the Cobell v. Salazar settlement agreement.  
SD-628
- 2:30 p.m.  
Commerce, Science, and Transportation  
Consumer Protection, Product Safety, and Insurance Subcommittee  
To hold hearings to examine carbon monoxide poisoning.  
SR-253
- Energy and Natural Resources  
Public Lands and Forests Subcommittee  
To hold hearings to examine S. 1470, to sustain the economic development and recreational use of National Forest System land and other public land in the State of Montana, to add certain land to the National Wilderness Preservation System, to release certain wilderness study areas, to designate new areas for recreation, S. 1719, to provide for the conveyance of certain parcels of land to the town of Alta, Utah, S. 1787, to reauthorize the Federal Land Trans-action Facilitation Act, H.R. 762, to validate final patent number 27-2005-0081, and H.R. 934, to convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands.  
SD-366
- Intelligence  
To hold closed hearings to consider certain intelligence matters.  
SH-219

**SENATE—Tuesday, December 15, 2009**

The Senate met at 10 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Loving God, You know our weaknesses and the extent of our failure to love You and one another. Look upon us with mercy and use us to heal the hurt in our world. Establish the labor of our lawmakers, strengthening them to honor You by serving others. Let Your life-giving Spirit move them to feel greater compassion for those in need. Use them to remove barriers that divide us, as they help all to live in greater justice and peace. Lord, give our Senators a daily respect and submission to Your will and commands.

We pray in Your sovereign Name. Amen.

**PLEDGE OF ALLEGIANCE**

The Honorable ROLAND W. BURRIS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE**

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 15, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. BURRIS thereupon assumed the chair as Acting President pro tempore.

**RECOGNITION OF THE MAJORITY LEADER**

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

**SCHEDULE**

Mr. REID. Mr. President, following leader remarks, the Senate will resume

consideration of H.R. 3590, the health reform bill. There will be 5 hours for debate prior to votes in relation to the following amendments and motion: Baucus, Crapo, Dorgan, Lautenberg. We can never determine for sure, Mr. President, but it appears the votes should start between 5 and 6 o'clock. The Senate will be in recess from 12:45 until 3:15 p.m. today for the weekly caucus luncheons.

**RECOGNITION OF THE MINORITY LEADER**

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

**HEALTH CARE REFORM**

Mr. MCCONNELL. Mr. President, with Americans now really focusing in on the health care debate, it is important to take a step back and recall where we started because somewhere along the way, Democratic leaders took their eyes off the ball.

It is a good time to remember what this reform debate was all about. The goal of this legislation, by all accounts—everyone agreed—the goal was to lower the cost of health care. This is what the President had to say. It is a direct quote:

The bill I sign—

According to the President—

must . . . slow the growth of health care costs in the long run.

That was on July 22 of this year. Yet here we are, nearly 5 months later, and the administration's own scorekeeper, the CMS Actuary—the Centers for Medicare and Medicaid Services Actuary—says the Democratic bill will actually drive costs up, exactly the opposite of what the debate was all about in the beginning, and exactly opposed to what the President indicated on July 22, that he would not sign such a bill.

Now, remember, the purpose of reform was to lower people's insurance premiums as well. Here is what the President had to say about that, a direct quote:

I have made a solemn pledge—

Said the President—

that I will sign a universal health care bill into law by the end of my first term as President that will . . . cut the cost of a typical family's premiums by up to \$2500 a year.

That was the President campaigning for President on June 24, 2007, "a solemn pledge that I will sign a universal health care bill into law . . . that will . . . cut the cost of a typical family's premiums by up to \$2500 a year."

Yet now we are being told by the administration's own nonpartisan scorekeeper—again the CMS Actuary—that new fees for drugs, devices, and insurance plans will drive up insurance premiums.

The purpose of reform was also to ease the burden on taxpayers. Here is what the President had to say about that:

No family making less than \$250,000 a year will see any form of tax increase.

That was the President on September 12, 2008: "No family"—not a one—"no family making less than \$250,000 a year will see any form of tax increase."

Yet now we are told by the independent analysts, such as the Joint Committee on Taxation, that taxes will actually go up on those same taxpayers, those making under \$250,000 a year.

People who like the plans they have were told they would be able to keep them. Here is what the President had to say about that:

If you like your current plan—

"If you like your current plan"—

you will be able to keep it.

Then he said:

Let me repeat that: If you like your plan, you'll be able to keep it.

That was July 21, 2009, just this summer. Yet now we are told by the independent analysts, such as the Congressional Budget Office, that millions of Americans will lose their employer-based coverage and that millions of seniors will see their extra benefits cut by about half.

Americans are looking at this, and they are truly outraged. The American people are outraged at what is happening. They cannot understand what we are doing. The latest CNN poll says 61 percent of Americans oppose this bill; 61 percent of the American people are saying don't pass this bill.

This bill is completely out of touch with the American public. Think about it: 1 out of 10 working Americans is looking for a job, and Democratic leaders in Washington want to spend \$2.5 trillion on a bill that makes existing problems worse. Mr. President, 1 out of 10 Americans is out of work, and yet the majority seeks to pass a bill that makes the existing problems worse. Yet Democratic leaders in Washington are still insisting that we pass this bill.

Even as opposition grows, supporters of the bill are drafting plans and cutting deals to make this bill the law of the land by Christmas—ignoring the wishes of the American people, off in a room somewhere, cutting plans and making deals, trying to figure out

some way to jam the American people when they are asking us, overwhelmingly: Please don't pass this bill.

You get the impression that the supporters of this bill think it is about them, about them and their legacies. Well, this is not about them. This is about the American people. This is not about making history. This is about doing the right thing for every single American's health care.

Americans have a message: Higher premiums, higher taxes, higher health care costs are not what they signed up for. This is not what they were promised. This is not reform. Yes, doing nothing is not an option, but making current problems worse is worse.

#### TRIBUTE TO JACKIE HAYS

Mr. McCONNELL. Mr. President, I rise to wish a fond farewell to one of the Nation's finest television news anchors, Louisville's own Jackie Hays. After more than three decades in broadcasting, most of it spent in Louisville, Jackie will be retiring, and people throughout Louisville and across Kentucky are sorry to see her go.

The level of respect Jackie has earned in the community is reflected in the many awards she has won over the years. She has received 16—16—Best of Louisville awards, including numerous honors as Best Female News Anchor.

In 2005, she was named "Best of the Best" by Louisville Magazine. She has also received the Star Awards from the Women in Radio and Television, and Emmy nominations for her work both in Louisville and Philadelphia.

Jackie has had a lot of wonderful experiences in her career, all in pursuit of getting the best story for her viewers. She reported live from the scene of the bombing at the 1996 Summer Olympics in Atlanta. She interviewed two Presidents; one of them was Ronald Reagan over lunch. And, of course, she has been a fixture in many Louisville homes on the first Saturday of every May, as she has anchored coverage of the Kentucky Derby 25 times.

Once she went up in an F/A-18 Hornet with the Blue Angels, a U.S. Navy flying acrobatic team that has performed in the Kentucky Derby Festival. She flew at 600 knots—that is nearly 700 miles an hour—and was subjected to seven times the normal force of gravity. She may have blacked out briefly with all that force—as the instructor told her most people do—but for the thrill of the ride, and to better tell the story to her viewers, she says it was worth it.

Jackie was born in Paris, TN, right over the border from Murray, KY, and she attended Murray State University on a special Presidential academic scholarship. She was named the outstanding senior in radio and television and began her broadcasting career at a

Paducah station while still a senior in college.

After graduating with highest honors, she went on to a full-time position, until moving to Louisville in 1980 to work for WHAS Television. After 5 years, she briefly went to work in Philadelphia, but in 1988 she returned to Kentucky and River City where she has stayed ever since.

For the last 21 years, since returning to Louisville, Jackie has been with WAVE-3 News. She is currently the anchor of that channel's 5 p.m. and 6 p.m. newscasts.

After 32 years in broadcasting, Jackie has earned a well-deserved rest, and I know she is looking forward to spending more time with her husband Paul, their two daughters, and their dogs. Jackie and Paul are avid horse riders, and I hear they just got a new horse named Chipper.

But Jackie will be greatly missed by the people of Louisville and the surrounding area. Every day, through the television, viewers have welcomed her into their homes. Now we should stop and recognize that we have welcomed her into our community and our lives as well. So I just wanted to take this moment to thank her for her incredible career on behalf of Kentuckians everywhere.

Mr. President, I yield the floor.

#### SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time home buyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Dorgan modified amendment No. 2793 (to amendment No. 2786), to provide for the importation of prescription drugs.

Crapo motion to commit the bill to the Committee on Finance, with instructions.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 5 hours for debate, with 2 hours equally divided between the Senator from Montana, Mr. BAUCUS, and the Senator from Idaho, Mr. CRAPO, or their designees, 2 hours equally divided between the Senator from North Dakota, Mr. DORGAN, and the Senator from New Jersey, Mr. LAUTENBERG, or their designees, and 1 hour under the control of the Republican leader or his designee.

Who yields time?

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, for the benefit of all Senators, let me lay out today's program.

It has been more than 3½ weeks since the majority leader moved to proceed to the health care reform bill. This is the 14th day the Senate has considered it. The Senate has considered 18 amendments and motions. We have conducted 14 rollcall votes.

Today, the Senate will continue debating the Dorgan amendment on prescription drug reimportation and the Lautenberg alternative amendment to that amendment and we will continue debating the Crapo motion on taxes, for which I have filed a side-by-side amendment as well.

Under the previous order, there will be 5 hours of debate, with each of the following Senators controlling 1 hour: The Senator from Idaho, Mr. CRAPO; the Senator from North Dakota, Mr. DORGAN; the Senator from New Jersey, Mr. LAUTENBERG; the Republican leader and this Senator.

The Senate will recess from 12:45 to 3:15 for party conferences.

Upon the use or yielding back of the 5 hours of debate, which is likely to be between 5 o'clock and 6 o'clock this evening, the Senate will proceed to vote in relation to four amendments in this order: First, my side-by-side amendment on tax cuts; second, the Crapo motion to commit on taxes; third, the Dorgan amendment No. 2793 on drug reimportation; and the Lautenberg side-by-side amendment No. 3156 on drug reimportation.

Each amendment will need to get 60 votes or else be withdrawn.

Upon disposition of these amendments and the motion, the next two Senators to be recognized to offer a motion and an amendment will be, first, the Senator from Texas, Mrs. HUTCHISON, to offer a motion to commit regarding taxes; and, second, the Senator from Vermont, Mr. SANDERS, to offer amendment No. 2837 on single payer.

AMENDMENT NO. 3183 TO AMENDMENT NO. 2786

Mr. President, under the previous order, it is in order for this Senator to offer a side-by-side amendment to the motion to commit, offered by the Senator from Idaho, Mr. CRAPO, and pursuant to that order, I call up my amendment No. 3183.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS] proposes an amendment numbered 3183.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect middle class families from tax increases)

At the appropriate place, insert the following:

# SEC. \_\_\_\_ . PROTECTING MIDDLE CLASS FAMILIES FROM TAX INCREASES.

It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.

Mr. BAUCUS. Mr. President, during the Presidential campaign, President Obama promised not to raise taxes on Americans who earn less than \$200,000 a year or American families who earn less than \$250,000 a year. That was his promise. This bill keeps his promise.

This bill will provide tax credits to help American families, workers, and small businesses to buy quality health insurance plans through new fair and competitive marketplaces called insurance exchanges.

The Congressional Budget Office expects that by the year 2019, 25 million Americans will buy health insurance plans through the new exchanges. The vast majority of those Americans—about 19 million—will receive tax credits; that is, tax reductions, or help paying their copays and other out-of-pocket costs. These tax credits will reduce their health insurance costs by nearly 60 percent.

This bill does not raise taxes on the middle class. This bill is a tax cut for Americans.

Over the next 10 years, the health care reform bill will provide \$441 billion in tax credits to buy health insurance for American families, workers, and small businesses—\$441 billion in tax credits. Americans affected by the major tax provisions of this bill will receive an overall tax cut of 1.3 percent in the year 2017. That is a total of \$40 billion. That is an average of almost \$450 for every taxpayer affected. That same year, 2017, low- and middle-income taxpayers who earn between \$20,000 and \$30,000 a year will see an average Federal tax decrease of nearly 37 percent. I will repeat that. I think it is astounding. People with incomes between \$20,000 and \$30,000 a year will receive an average Federal tax decrease of nearly 37 percent. In that same year, 2017, the average taxpayer making less than \$75,000 a year will receive a tax credit of more than \$1,300. In 2019, 2 years later, that tax credit will grow to more than \$1,500.

Without this tax cut, many individuals and families will continue to forgo health care because it costs too much. We make it easier for people to buy health care with those tax cuts.

In addition to a tax cut, this bill also represents increased wages in the pockets of millions of Americans. Even my colleague from Idaho agrees that as a result of this bill, Americans will see increased wages. He said that exact thing on the floor last week. As a result of this bill, many Americans will see increased wages.

Senator CRAPO gave the example of an employee, the value of whose health insurance decreased but whose overall compensation did not decrease. As a result, the employee would receive additional wages.

Why are workers going to complain that they are paying more in wages because they have more money in their pocket? If incomes are going up, their wages are going up. Clearly, their taxes are going to go up correspondingly, but obviously the taxes are not going to go up by as much as the wages.

I have a letter from the Congressional Budget Office, dated November 18, that states just that. On page 18, the Congressional Budget Office says:

If employers increase or decrease the amount of compensation they provide in the form of health insurance (relative to current law projection), the Congressional Budget Office and the Joint Committee on Taxation assume that offsetting changes will occur in wages and other forms of compensation—which are generally taxable—to hold total compensation roughly the same.

I have a chart behind me that shows that very point for each of the years this bill is in effect. Looking, first, over to the left—the chart shows from 2013 up to 2019, but on the far left, the green is the percent of total tax revenue due to increased wages. That is wages increasing. The white is the percent of total tax revenue due to excise taxes, the increased taxes the person will have to pay. Wages far outstrip the taxes. The increase in wages is far greater, according to the Congressional Budget Office and the Joint Committee on Taxation.

Just to repeat, as that chart illustrates, the overwhelming majority of revenue raised from the high-cost insurance excise tax will come from increased wages. Only 17.5 percent of the revenue will be attributable to the excise tax. The rest, more than 82 percent, will come from employees getting more than their compensation wages and less in inefficient health coverage.

I urge my colleagues to recognize the Crapo motion to commit for what it is—and what is that? It is an attempt to kill health care reform. That is all it is all about, nothing more, nothing less. Senator GRASSLEY said as much last week. Senator GRASSLEY asked us to vote in favor of the motion to commit “to stop this process right now.” That is a direct quote.

We must not stop this process. We must not stop moving forward in our efforts to reform health care. Indeed, we must move forward aggressively. Every day we delay, 14,000 Americans lose their health insurance. Every day we delay, 14,000 Americans lose their health insurance. In just a 2-week period, one in three Americans will go without health care coverage at some point. We cannot afford to stop working toward reform. We must reject any attempt to eliminate the very provisions from this bill that provide Ameri-

cans with a tax cut in an attempt to stop health care reform. Despite Republican claims that they are trying to protect Americans from tax increases in this bill, the facts are this bill is a tax cut for most Americans.

On a related matter, there has been some discussion about the Office of the Actuary analysis of the Senate bill. Let me cover two very key points from that letter.

The Actuary at HHS concludes that this legislation extends the life of the Medicare trust fund by 9 years—9 years. We know the Medicare trust fund is in a precarious position until, roughly, 2017. There are some estimates that this underlying bill would increase the solvency of the trust fund for 4 to 5 more years, say to 2022, roughly. The Actuary, the person who number crunches over at HHS, concluded this legislation will extend the life of the Medicare trust fund by 9 years. That is no small matter. Seniors, near seniors, are very concerned about the solvency of the health care trust fund. This legislation extends the solvency of the health care trust fund by 9 years.

So just think, if this legislation is not passed, the solvency of the health care trust fund will not be extended by 9 years. The Actuary says, the Medicare trustees say it will probably start to become insolvent, the Medicare trust fund, the Medicare trust fund will become insolvent in just a few years—2017. Clearly, it is very important to extend the solvency of the Medicare trust fund. How does this legislation extend the solvency of the trust fund? It is very simple. We cut out a lot of the waste. We cut out a lot of the inefficiency. We make the system work better so the fund is extended for 9 more years.

In addition, the Actuary says this legislation, by the year 2019, will result in about a \$300-per-couple reduction in Part B premiums. In addition to that, the Actuary concludes the legislation will result in about a \$400-per-couple deduction in cost sharing. If you add the two together, that is about \$700. So by the year 2019, as a result of this legislation, according to the Actuary—it is in black and white there—it says right there, in print, there will be about a \$700 reduction in premium Part B and out-of-pocket costs for seniors. That is no small matter. It is a reduction.

On the other side of the floor, we sometimes hear all this rhetoric about increases. It is just that—it is rhetoric. The actual analysis shows a reduction.

I also hear rhetoric on the other side about this legislation resulting in increased premiums for people. Not true. The Congressional Budget Office has concluded that for 93 percent of Americans, there will be a reduction in premiums—a reduction in premiums. To be fair, for those who are already employed, the reduction is not huge, but

it is a reduction, nevertheless. It is about a 3-percent reduction in premiums. That is a reduction. We have to keep working to make it an even greater reduction. I daresay—in fact, I know as sure as I am standing here—the reduction will be greater. Why will it be greater? Because a lot of the provisions in this legislation—in my view, the Congressional Budget Office hasn't fully analyzed provisions such as delivery system reforms. We start to bundle competent care organizations. We start pilot projects. The result of that will be a reduction in costs and therefore a reduction in premiums.

Also not calculated is the Commission which will look at productivity. That is not included in the CBO analysis. If that were included in the CBO analysis, the reduction would be even greater. We are talking about the remaining 7 percent—remember, I said 93 percent would get a reduction in premiums according to CBO. The remaining 7 percent don't get a reduction, but what do they get in return? They get much better insurance because we have insurance market reform in this legislation. No more preexisting conditions. No more rescissions. No more denial based on health status. No more company limitations on annual losses. No more limitations on lifetime losses. So for the same premium, they are going to get a lot better quality. Instead of buying a used car, they are going to get a new car for roughly the same price.

So the analysis of this legislation is very clear: Reduction of premiums, CBO says so; extension of solvency of the trust fund, CBO and the Actuary say so; a reduction in premiums and out-of-pocket costs for a couple by \$700 by the year 2019. That is what the Actuary says.

So this legislation lives up to the promise we made earlier. It does not raise taxes for people making under \$200,000. I think the legislation should clearly be passed.

Let me say this too. Someone once said—and I will conclude here—that the status quo is really not the status quo. If this legislation is not passed, the result is not the status quo; the result is we move backward. We have two choices. Either we move forward as a country and seize this opportunity to tackle health care reform and do our very best to get it right or we don't; we do nothing, and we keep sliding backward. Think of the repercussions of not passing this legislation. Think of it. First of all, tens of millions of people will not have health insurance. That, in itself, is pretty profound. Second, we will not have health insurance market reform. We will still have denial based on preexisting conditions, which is basically what the other side is arguing for.

We would not cut down health care costs, which our businesses need so

much, and families need so much, and our budgets need so much. Remember, I mentioned the legislation extends the solvency of the Medicare trust fund.

That is emblematic of some of the savings that we have in other government programs, too, because health care costs are rising so much. Medicare is in tough shape, and so is Medicaid because health care costs are rising so much. The CBO and the Actuary say we are controlling health care costs.

The PRESIDING OFFICER (Mr. BEGICH). The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, I ask unanimous consent to speak for up to 40 minutes and to use that time in a colloquy with other colleagues.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. I also ask to be notified when there are 5 minutes remaining.

The PRESIDING OFFICER. The Chair will do so.

Mr. CRAPO. Mr. President, I am going to engage in a colloquy about the pending motion on which we will vote later this afternoon or early this evening. It is a motion to commit the bill to the Finance Committee and have the Finance Committee make the bill comply with the President's pledge. Here is the pledge:

I can make a firm pledge . . . no family making less than \$250,000 will see their taxes increase . . . not your income tax, not your payroll tax, not your capital gains tax, not any of your taxes.

. . . you will not see any of your taxes increase one single dime.

I heard my colleague from Montana say the bill complies with this pledge. If that were true, then there would be no harm in having the Finance Committee scour through it and make sure it does and refer the bill back to make sure it doesn't tax the middle class.

The reality is, it is very clear this legislation violates this pledge of the President. As a matter of fact, there are over \$493 billion of new taxes in this bill meant to offset the \$2.5 trillion during the first full 10 years of implementation of spending in the bill.

If you will look at the next chart, at the graph on taxes, the first 10 years—this includes the fees also imposed that CBO and Joint Tax said will be passed right on through to the consumer. There are \$704 billion of taxes and fees in the first 10 years of the bill. If you look at the 10 years of full implementation, meaning when the spending actually starts, the taxes and fees are actually \$1.28 trillion.

My colleague says this is a net tax cut bill, and it complies with the President's pledge because when you take all of the refundable tax credits in the bill and offset against the tax increases, there is a net reduction in tax. In the first place, that is not true when you take into account the fees. I don't think that is what the President was

talking about. He didn't mean, did he, that you will not see your taxes go up more than someone else's taxes go down? No, he told people in America they would not see their taxes go up.

Yet what this bill does, according to the Joint Tax analysis, is, by 2019, at least 73 million American households earning below \$200,000 will face a tax increase.

If that is not violating the President's pledge, I don't know what is—even if you take the numbers that the majority is trying to use and claim that those are tax cuts.

Here is the next chart. What my colleague from Montana is talking about is about \$400 billion of what are called refundable tax credits. He wants to offset these tax credits in the bill against the hundreds of billions of dollars of tax increases, and then say there is a net tax cut and, therefore, no problem.

First of all, that is a problem. Secondly, what is a refundable tax credit? The \$288 billion, or 73 percent of the so-called tax credit—or tax cuts that my colleague from Montana is talking about—are payments by the Federal Government to individuals or families who do not have tax liability. It is a direct government subsidy. The CBO scores these payments as a Federal outlay, as spending, not as tax relief, and that is exactly what it is. I think it is a little bit less than credible to say that we have a tax cut bill when three-fourths of the so-called tax cuts don't even go to reduce tax liability for taxpayers.

Mr. ENSIGN. Will my colleague yield?

Mr. CRAPO. Yes.

Mr. ENSIGN. Would the CBO—which is nonpartisan—score a welfare payment the same as these so-called tax credits?

Mr. CRAPO. Yes, that is right. A payment of a subsidy to an individual in the United States would be scored as a Federal outlay, or spending, as is a refundable tax credit paid to an individual who has no tax liability.

Let's assume we even accept the argument that is a tax cut. Even if you offset all of that, remember the chart a minute ago that said 73 million people would pay taxes. Even if you give them credit for that argument, there are still going to be 42 million people making less than \$200,000 a year who will face a net tax increase. That is a violation of the President's pledge.

All this motion does is send the bill back to the Finance Committee, which writes tax policy, to correct that. The motion helps this bill comply with the President's pledge.

The Senator from Montana also used another example, trying to say some of these people who are paying more taxes are getting higher wages. This is the game that is going on. The employer of these people the Senator was talking about today provides a salary and

health care to that employee. In this example, it is \$50,000 of wages and \$10,000 of health care benefits. This bill will now impose a hefty 40- or 45-percent tax on this health care plan because it is too good of a health care plan.

What CBO and Joint Tax tell us is that because of that immense tax—40- to 45-percent tax—the employer is just going to cut the health care plan down to where it is not taxed anymore and provide those dollars with an increased wage. So this young lady will get maybe \$53,000 in wages instead of \$50,000 and only \$7,000 of health insurance, and her net employment compensation will still be the same, \$60,000—except she will pay taxes on an extra \$3,000. So her net employment package will go down not up, and 73 million Americans like her will end up with a smaller employment package, less health care benefits, and increased Federal tax liability. That is the way the bill works.

For issue after issue, there are taxes after taxes in this bill that will be paid by the people in this country who earn less than those on the threshold the President identified. That is why we simply ask that the bill be sent to the Finance Committee to have this violation of the President's pledge, this bad policy of increasing taxes on the middle class in America to pay for a huge new government entitlement program, be removed from the bill.

Mr. BARRASSO. Mr. President, I ask my colleague this: I was reading a national publication yesterday, and the headline is "Making Nightmare Out Of Health Care." It says taxes will go up. This also says the proposed overhaul contains, at last count, 13 different tax hikes. It goes on to say the Joint Tax Committee said that for any one person who may end up paying lower taxes, there will be nearly four times as many—close to 70 million people—who will pay higher taxes.

That is why I have been waiting for a week now to vote for the Crapo motion. This was introduced last Tuesday. A whole week has passed, and the Democrats have been filibustering and preventing us from voting on this very important amendment, which the American people agree with—that we ought to eliminate these taxes and stick with what the President promised the American people.

As a result of the President's promises, I read a recent CNN poll. It says that 61 percent of Americans oppose this bill the Democrats are proposing. It gets to the specific question of tax increases and the President's promise. It says:

Do you think your taxes would or would not increase if this bill passes?

And 85 percent of the Americans polled said they believe their taxes will go up.

I ask my friend from Idaho—it seems to me the American people get it; they

realize they are going to be hit hard with this \$500 billion of tax increases, 13 different taxes, which will get put on the backs of the hard-working people of our country.

Why is it that we are not allowed to vote on this motion? I will vote for it. I appreciate the Senator from Idaho bringing this motion forward because, clearly, the support of the American people is behind him.

Mr. CRAPO. I thank my colleague. I will give some statistics on the point. The Joint Tax Committee analyzed just the four biggest tax provisions—not all of them—and they concluded that only 7 percent of Americans would be receiving these so-called tax cuts, which are really spending subsidies but have been characterized as a tax cut in order to argue that the bill doesn't increase taxes. Only 7 percent of Americans will receive those, which represents about 19 million people, but 157 million people—almost 8 times that amount—who get health insurance through their employer will not be eligible for these credits. They will pay, on average, somewhere between \$593 to \$670 a year, depending on their income categories, in new taxes that are put on their shoulders in this bill.

I notice that my colleague from Tennessee wants to say something.

Mr. ALEXANDER. Mr. President, I congratulate the Senator from Idaho for his amendment to help the President keep his commitment. That is basically what it is. I would think our friends on the other side would all want to join us in that. The President said he would not raise taxes on people making less than \$250,000 a year.

It is amazing to hear the comments that I have just heard. The whole construction of the bill—when we think about it, regardless of whatever the Democrats decide to do about the so-called public option, they still seem determined—at least the majority leadership seems determined—to engage in this political kamikaze mission toward a historic mistake. There is all this talk about history. But there are lots of different kinds of history.

A lot of historic mistakes have been made about taxes. For example, there was the Smoot-Hawley tariff of 1930, which was a big tax. It sounded like a good idea. President Hoover, a Republican, recommended it to protect American jobs by keeping out cheaper foreign products. That led us into the Great Depression. It was a historic mistake. More recently, there was the boat luxury tax. This sounds good. It was part of the budget deal of 1990. Congress put a 10-percent luxury tax on boats costing more than \$100,000. Sound familiar? We were going to hit the rich people. But it got the working people, not the rich people. The unintended consequence was that it sank the boat industry, costing 7,600 jobs, according to the Joint Economic Commission,

and Congress repealed that historic mistake. There was also the Medicare Catastrophic Coverage Act of 1988, another good-sounding goal, to help older people reduce the risk for illness-related catastrophic financial losses. But a lot of our senior Americans resented the idea of paying additional taxes for that coverage, and they revolted. Congress, less than a year and a half later, repealed it.

We all remember the millionaires tax. That is a matter of history. In the late 1960s, there were 155 high-income Americans who weren't paying any Federal income taxes, so Congress imposed something called the alternative minimum tax. Last year, that affected 28 million American taxpayers.

I say to my friend from Idaho, I think he is doing the country and the President a great service by offering this amendment to help keep the promise because whatever the majority leader decides to do about the government option, this legislation—when fully implemented—still contains \$1 million in Medicare cuts 5 years before Medicare is scheduled to go broke, according to their trustees.

It is nearly \$1 trillion in new taxes over 10 years when fully implemented, as the Senator from Idaho has pointed out. There is no question about that, it is an increase in premiums for most Americans, according to the Congressional Budget Office. And yesterday on this floor, we talked about the huge bill we are about to send to States to help pay for this in the Medicaid Program.

It is important to support the Crapo motion. It is important for our country not to have this historic mistake thrust upon them.

Mr. ENSIGN. I would like to jump in here and ask the Senator from Idaho a question. From what I understand, the taxes go into effect—actually, this is from yesterday, so I think it would be in 17 days from now based on the current bill before us. All of these taxes the Senator from Idaho has on his chart are all the taxes the President said he would not violate. The article yesterday said 13 taxes. We know of at least nine absolute taxes that would go into effect. But the tax subsidies, these payments to folks who do not have a tax liability, those are not received for 1,479 days; isn't that correct?

Mr. CRAPO. The Senator from Nevada is correct. The fact is, the taxes start on day one of the bill. The spending, which is what these alleged tax cuts are that my colleague from the other side was talking about, does not start until the fourth year or 2014. And that is just one of the gimmicks in the bill in order to claim it does not drive up the budget—have 10 years of tax increases and only 6 years of spending to offset against it. I think that is how they started the spending days. They figured out how long they had to delay



it so they could claim it would not drive up the deficit.

Mr. ENSIGN. I want to address one of these taxes, the so-called Cadillac tax that the Democrats have put into this bill. The problem is, they did not index it for inflation. As time goes forward, with the red line as the threshold, the Democrats indexed it for what is called the consumer price index plus 1 percent. That goes up a little bit. The problem is, medical inflation is going up much faster. What happens is—the blue line is the average plan in the United States—that is how fast it is going up. We can see that is much higher. At this point, it starts catching most of the plans in the United States.

This 40-percent tax the unions are running ads against right now is going to start getting almost all Americans' plans in the future. That is the reason a lot of people do not realize this is a tax. It may not get them today, but it is going to get them eventually. What is going to happen is this tax will be passed on to them in lower benefits.

Mr. CRAPO. The Senator from Nevada is correct.

Before I toss the floor to the Senator from Texas who wants to make some comments, I point out that the point the Senator from Nevada made is statistically made by Joint Tax:

By 2019, at least 73 million American households—

That is not 73 million Americans, that is 73 million American households—

earning below \$200,000 are going to face these tax increases.

Mrs. HUTCHISON. If I may respond to the Senator from Idaho. I was thinking, when the Senator from Tennessee was talking, about the luxury taxes and how everyone thought that felt so good to have a tax against luxury boats. And who suffered? The workers. Then there was the catastrophic Medicare coverage which resulted in a tax on seniors who had that coverage. Seniors erupted, and that was repealed. Then that is followed on by what the Senator from Nevada talks about—the Cadillac plan, which is the high-end plan of coverage.

I thought, maybe Congress has learned something. Maybe the Democrats are on to something. They have listened to the history of all of these good-sounding taxes on rich people or people who buy expensive things. As the Senator from Nevada has pointed out, they have now learned they probably ought to go ahead and tax both ends instead of just the high end because in this bill, you have a tax on the high-end plans. You have a tax on employers who provide too much coverage. Oh, but we also tax the people who do not have any coverage. If it is too small, you get taxed, and if it is too big, you get taxed. It seems that maybe the Democrats learned the wrong lesson. It is not that you tax

just the rich or the people who buy expensive things, it is that you tax both ends to make sure you get every little drop of taxpayer dollars.

I think we have shown on this floor from the endless hours of debate that everyone in America is going to be taxed because the taxes that take effect in 3 weeks' time under this bill, January of 2010—the major tax increase takes place, and that is the tax increase on prescription drugs; on insurance companies that are going to have to raise their premiums; the drug costs are going to go up; and medical equipment, which is essential for seniors, especially for everyone who needs some form of equipment, the equipment manufacturers are going to have a tax. Mr. President, \$100 billion in new taxes starts next January, 3 weeks from now. Every person in America is going to pay taxes in the form of higher prices starting in 3 weeks.

The Senator from South Dakota and I are sponsoring legislation because the next question will be: Oh, my goodness, if we are going to be taxed in 3 weeks, surely we are going to have some sort of benefit offered in 3 weeks, some sort of low-cost health plan or option. Three weeks, surely. Oh, no, we are not going to have any of the plan that would offer options to people—not in 2010, not in 2011, no, not in 2012, not in 2013, but 2014.

So all these higher prices are going to start kicking in in January, and then we are going to have the Cadillac plan that the Senator from Nevada mentioned in 2013, all being paid before one supposed benefit would be available. If this is not a bait-and-switch, I have never seen one.

The Senator from South Dakota and I are going to offer the next amendment after the ones that are in the tranche right now to very simply say: Whatever the bill is in the end, there will be no taxes until there is a plan. Not one dime of taxes could take effect until there is actually some sort of plan available that would, hopefully, give some sort of benefit to people, which is what is being promised.

I ask the Senator from South Dakota if that is his understanding, that we would at least draw a line. Whereas Senator CRAPO's motion, which I support and I know everyone on the floor talking this morning supports, is to say there will be no taxes to anyone who makes under \$200,000. But even if there are taxes in the end, they will not take effect until there is some sort of plan available for people that is going to help Americans who do not have coverage and for whom we are not able to lower the cost, which is what the Republicans are trying to do. At least we would set that deadline.

I ask the Senator from South Dakota what he has been hearing about this bill.

Mr. THUNE. My colleague from Texas is exactly right. Her motion and

the motion I am cosponsoring, which we hope to vote on next, will be a follow-on motion to the motion the Senator from Idaho is offering.

It seems a basic principle and a matter of fairness to the American people that if you are going to create public policy, that you do it in a way that treats people fairly and does not raise their taxes before a single dollar of the premium tax credits and the exchanges that are designed to create the new insurance product for people would take effect. That is what this bill does.

The motion of the Senator from Idaho commits all of the tax increases—and I will support that wholeheartedly, and I hope my colleagues in the Senate will do the same because these tax increases are the absolute worst thing we can do at a time when we have an economy in recession and we are asking small businesses to lead us out of the recession. Seventy percent of jobs in the country are created by small businesses. It is much higher in my State of South Dakota. These tax increases could not be more poorly timed in terms of getting the economy restarted and creating jobs for Americans and getting them back to work. Since most people get their insurance—at least currently—through their employer, one of the best things you can do to provide insurance is to put people back to work. This bill has the opposite effect. It is a job killer because of all of the tax increases. Every small business organization has said that. That is why it is so important we support the motion of the Senator from Idaho.

Senator HUTCHISON and I will also offer a motion—hopefully, we will get a vote on it later—that at least will delay the tax increases until such time as the benefits begin. It essentially aligns the revenue increases and the benefits so they are synchronized and you do not have this period of 10 years where you are taxing people for 10 but only delivering a benefit for 6. Again, I think that violates a basic principle of fairness most Americans should expect when it comes to their elected leaders making public policy which will have a profound impact on them and their lives. I certainly hope we get a vote on that motion, and I hope our colleagues will support it. To me, it is unconscionable that you would raise taxes by \$72 billion, which is what this does, up until the year 2014 before the premium subsidies and the exchanges kick in which would deliver the benefits that are supposed to be delivered under this bill. The Senator from Texas and I look forward to getting a vote on that motion.

I hope we can win on the Crapo motion later today.

I appreciate my colleagues being here to point out how important it is that we have public policy that is fair and also that we not do things that are

counter to job creation at a time when we are asking small businesses to get out there and create jobs and make investments.

Mr. BARRASSO. The Senator from Idaho had a picture of a woman making \$50,000 and the health benefits that resulted. My concern is not just her taxes; my concern is also her job. It is also a fact that she would still have a job.

What I hear from the people of Wyoming is: Don't raise my taxes, don't cut my Medicare, don't make matters worse than they are right now in this economy where we have 10-percent unemployment.

Like the Senator from South Dakota, I am a member of the National Federation of Independent Business. I have been a member for years. They are telling us that as these taxes are raised and collected in 2010, 2011, 2012, 2013, in 2010 we are going to lose 400,000 jobs in America, and in 2011 another 400,000, and another 400,000 after that, and another 400,000, as the taxes continue to be collected. So we would be losing in this country 1.6 million jobs as a result of these increased taxes all Americans are going to have to pay.

I ask the Senator from Idaho, isn't it even more critical that we pass his motion in addition to the fact that we do not want these taxes? They are going to hurt our economy across the board.

Mr. CRAPO. The Senator from Wyoming is exactly right. It is the wrong thing to do when our economy needs to be strengthened and restarted, if you will, to apply a huge amount of new taxes.

Let's take the example we talked about earlier. This young lady, under the bill in the Senate right now, will not only see her health benefits go down, but the net value of her compensation package will go down. She will get a little extra wages in order to offset the reduction of her health care benefits, but those will be taxed and her net compensation package will go down.

The point here is this—and it is a little bit ironic that today the Democratic caucus is going to be meeting with the President at the White House in yet one more closed-door meeting where they are going to be trying to redraft the bill in order to get around some of the problems, which I hope they will let the American people see to debate before they try to vote on it again.

It is ironic, as Democrats come out of that caucus, if they do not support this motion, they will be violating two of the President's pledges. One, after meeting with him, they will be violating his pledge not to tax Americans who make less than \$200,000—\$250,000 for a family—as well as his pledge: If you like it, you can keep it.

This young lady, if she likes her package, cannot keep it. She will not

have that option. Her \$10,000 health care package will be reduced at least \$2,000 to the minimum new government-designed acceptable policy and probably a little more than that. She will see a 20- to 30-percent reduction in her health care package against her will. I would be willing to bet she would prefer to keep the one she has now. Most Americans like the insurance they are getting through their employers.

Mr. ENSIGN. I would like to ask the Senator from Idaho a question. These are the nine taxes we know for sure that are being raised: 40 percent Cadillac plan, a separate insurance tax, an employer tax, a drug tax, a lab tax, a medical device tax, a failure to buy insurance tax, the cosmetic surgery tax, and the increased employee Medicare tax.

In our States, people think we will pass a sales tax, and the business will just pay the sales tax. I ask the Senator from Idaho, who actually pays the sales tax? Who have the Congressional Budget Office and the Joint Committee on Taxation, which are both non-partisan, said are going to pay these taxes?

Mr. CRAPO. The Senator was there when the Joint Tax and CBO experts were asked this question. They squarely and directly said these taxes and fees will be passed on, virtually 100 percent, to consumers, which means two things. First, the ones that are taxes will just be taxes passed on to the consumer, as shown in the example of the young lady we looked at. The ones that are fees will simply be passed on in the form of higher costs for medical services or higher premiums, which is one of the reasons why, contrary to the assertions by the other side, this bill will drive up the cost of health care and will drive up the cost of premiums, not down.

Mr. ENSIGN. The last thing I would like to point out goes along with the Senator's chart. This is what the Joint Committee on Taxation has said: 84 percent of all the taxes being paid in this bill are being paid by those making less than \$200,000 a year. If this is not a direct violation of the President's promise not to raise one dime of their taxes, I don't know what is. I don't understand how the President can sign this bill and keep to the promise he made during the campaign.

Mr. CRAPO. I agree with the Senator from Nevada. It is disturbing to see the responses. First, the response that this bill actually doesn't increase taxes; it cuts taxes. That flies right in the face of the reports and analysis by Joint Tax and CBO. I encourage everybody to read this bill. It is available on my Web site and on the Republican Web site and on the C-SPAN Web site. In addition, we will put up a reference to where you can find the bill to read it if you want to parse through it to deter-

mine who is telling the truth. The bottom line is, this bill increases taxes in the first 10 years by \$493 billion. When you add fees to that, it is more like \$700 billion. If you counted the first full 10 years of implementation, it is over \$1 trillion of new taxes. The only response to that is to try to say that the subsidies for health insurance for those who are not able to purchase their own insurance are tax cuts, even though three-fourths of them go to those who are not, at this point, at a level where they are incurring a tax liability.

Mr. THUNE. My understanding is, those premium tax credits actually go to the taxpayer. When you say this is a tax cut for people, does it end up in the pockets of the average taxpayer?

Mr. CRAPO. The Senator from South Dakota is correct. In fact, this subsidy is not paid to the individual. It is paid directly to the insurance company. Of the one-quarter of people receiving this subsidy who do actually pay income taxes, their income taxes will, in fact, stay the same. They are not actually getting a tax cut. What they are getting is a subsidy for the purchase of insurance that is managed through the Tax Code but is paid directly to the insurance company.

Mr. THUNE. That is precisely why the arguments made by the other side that somehow this is a tax cut sort of defy what I think most Americans have come to expect when they get a tax cut; that is, that they get to keep more of what they earn. What we are talking about is a payment that will be made to an insurance company, a tax credit for premium subsidies that will go to an insurance company. There will be very few Americans, as a percentage of the total population, who will actually derive any sort of benefit. My understanding is, about 10 percent of all Americans will get some benefit from the premium subsidies that will go to the insurance company, not directly to the taxpayer; is that correct?

Mr. CRAPO. It is actually 7 percent.

Mr. THUNE. So we have a very small number of Americans who will derive a benefit. But you have a whole lot of Americans who will actually be paying the freight. The Senator mentioned earlier—I saw his chart—that 73 million Americans are going to end up with higher taxes as a result. Many of the premium tax credits, if you could give credit to the taxpayers receiving this, which you can't because it goes to the insurance company, but if you could, three-quarters of that will go to people who currently have no income tax liability. It seems as if the advertising on this is very inconsistent with reality and the facts. The fact is, most Americans will see taxes and premiums go up. Very few Americans are going to get some premium tax credit to help subsidize their premium cost, and that will go directly to the insurance company. I understand the Senator from

Idaho and the Senator from Nevada are both members of the Finance Committee. They have been involved with this from the beginning. That is my understanding of this, which is hard to fathom how that constitutes a tax cut.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Idaho has consumed 35 minutes.

Mr. ALEXANDER. I agree with the Senator from South Dakota. People who might be watching this must be thinking: Wait a minute. Let me ask the two members of the Finance Committee: What the Democrats are trying to say is, a Medicare cut is not a Medicare cut and that a tax increase is not a tax increase and that a premium increase is not a premium increase. Isn't it true that when the bill is fully implemented, there will be nearly \$1 trillion in Medicare cuts, and isn't it true that there will be nearly about \$1 trillion, when fully implemented, in new taxes? Isn't it true the Congressional Budget Office has said that will all be passed on to people? Isn't it true that all the taxes start in January, if the bill passes? Isn't it also true the Congressional Budget Office has said premiums are going to continue to go up and, for people in the individual market, they will go up even more? Isn't that all true?

Mr. CRAPO. I will respond first. The Senator from Tennessee is exactly right. Again, on this chart, these are the tax increases for the first 10 years of the bill, and this chart includes the fees and penalties that are charged as well. The total there is \$704 billion. If you start when the bill becomes implemented or is started to be implemented, in 2014, to compare taxes to spending, the actual taxes and fees that will be collected are almost \$1.3 trillion.

Mr. ENSIGN. There is no question. I can answer the Senator's question: True, true, true, and true. The old saying, if it walks like a duck and it quacks like a duck, it is a duck. These taxes sometimes are called fees. The Supreme Court has ruled that a fee that acts like a tax is, in fact, a tax. Most of the provisions we talked about before, we call them a tax, and that is what they are. These nine new taxes are a tax. You are exactly right. The Joint Committee on Taxation and the CBO have said these are going to be passed on to the consumer. What they have also said—and I thought this was significant—is that 84 percent of all these taxes are going to be passed on to people who make less than \$200,000 a year. That is what we have been saying. The other side says: We are just going to tax the rich. When 84 percent of that tax burden is paid by people making less than \$200,000 a year and the vast majority is also paid by people making less than \$100,000, the vast majority is being paid by people who make less than \$100,000 a year, the

same as sales taxes. The sales tax has been called a regressive tax. These are regressive taxes the Democrats are passing on to the American people.

Mr. CRAPO. I thank my colleagues for coming over and speaking today and discussing this issue with me. I would like to conclude by pointing out, once again, the President said he could make a firm pledge, no family making less than \$250,000 will see their taxes increase, not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes. You will not see any of your taxes increase one single dime. But there are hundreds of billions of dollars in tax increases in this bill that are going to fall squarely to the backs of the middle class.

Our motion simply says: Let's fix that and take it out. The bottom line is, those who are saying that is not the case are trying in the first case to say there are subsidies in the bill that almost equal the amount of these taxes and, therefore, it is a net tax cut. First, subsidies are not tax cuts. Three-quarters of them go to individuals who have no tax liability. The other one-quarter does not reduce the tax liability of the individuals who are getting the insurance subsidy. Even if you accept all of that argument, the President was not saying you will not see net taxes go up in America. The President was not saying: We will not cut or not increase your taxes by more than we will cut someone else's taxes. I don't think anybody expected that was what he was saying. The President was saying he would not raise taxes in this bill. This bill violates that pledge.

Therefore, Members should support the motion to send this bill back to the Finance Committee to fix that glaring problem.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I suggest the absence of a quorum and ask unanimous consent that the time be divided equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak on the time allotted to the chairman of the Finance Committee relative to his amendment.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DURBIN. Mr. President, there has been a lot of talk about taxes and health care. What we are discussing is this bill. It is a large bill, over 2,000

pages, but we needed all these pages because we are tackling one of the biggest problems facing America. How can we take a health care system that consumes \$1 out of every \$6 or \$7 in our economy and change it for the better, keeping what is good but changing those things that are not so good? One of the things that concerns most of us is the cost of health insurance premiums. Ten years ago, an average family of four paid \$6,000 a year for health insurance. Now that is up to \$12,000. If we are not careful, in 8 years it is projected to double again to \$24,000 a year for health care premiums. Think about that, trying to earn \$2,000 a month in 8 years just to pay for your health insurance, nothing else. That is beyond the reach of individuals and beyond the reach of a lot of businesses. Even today, businesses are dropping people from coverage.

We now have some 50 million Americans without health insurance, and more and more businesses are just putting their hands up and saying: We can't go any further in paying higher premiums.

Individuals who go out on the open market know what they run into. You know you will run into the highest possible premiums and rank discrimination. Try to buy a health insurance policy if you have any history of illness. They will tell you: We are not covering that. Cancer in your background; we will not cover it. That is what people face. This current system is unsustainable. We have tackled it, and we said we are going to put the time in to change it for the better. This is our bill.

I would like to hold up in my other hand the Republican plan for health care reform, but it doesn't exist. They don't have a plan. They have speeches. They have press releases. They have charts. But they don't have a plan. I am talking about a plan that has gone through the rigors of being carefully reviewed by the Congressional Budget Office, a plan that is comprehensive, something that addresses all the problems in this system in a responsible way.

They have bills. They have ideas. I don't want to say anything negative about them, though I may disagree with them. But they don't even come close to being a comprehensive plan. Many of the critics on the other side come to the floor every day and give speeches about what is wrong with the Democratic health care plan because they don't have one. If they did, we would have heard about it. You would have thought it would have been the first amendment offered by the Republican side, if they truly have such a plan. Of course, they don't.

What does this plan do? First, it makes health insurance more affordable. We have the Congressional Budget Office telling us: Yes, the projected

increase in health insurance premiums is going to flatten; it is going to come down a little. It doesn't mean that automatically people are going to see their premiums coming down next year, but they may not go up as fast. And over time, we won't see them doubling as quickly as had been predicted.

Secondly, this is a plan which is going to mean that 31 million Americans who currently have no health insurance will have health insurance. That is pretty important. In all the criticism I have heard from the other side of the aisle, there has not been a single proposal from the Republican side that would expand in any significant way the amount of coverage for Americans when it comes to health insurance. But here are 31 million Americans who will at least have the peace of mind of knowing when they go to bed in the evening that if tomorrow there is a bad diagnosis or a terrible accident, they will be covered; they will have peace of mind they can go to the best doctors and hospitals in America. That is significant.

There is another element too. We know that right now the health insurance companies really have the upper hand when it comes to negotiating for coverage. You know what I am talking about. Your doctor says: I think you need the following procedure, but I have to check with your insurance company. Think about that. We may be the only Nation on Earth where a clerk working for an insurance company has the last word about life-or-death medical care. That is what is going on today.

This bill makes significant changes when it comes to health insurance. It protects individuals from being discriminated against because of pre-existing conditions, makes sure the companies can't run away from coverage when you need them the most, and extends the coverage and protection for children and families. These are important things that are going to mean a lot to people across America.

But now comes the Republican side of the aisle and says: Oh, but they didn't tell you the real story. It is all about your taxes going up. Well, I am afraid that is not quite right. The criticism I have heard on the floor about this bill ignores the obvious: this bill provides the most significant tax cuts in the history of this country—\$440 billion in cuts over the next 10 years. What kind of tax cuts? If you are making less than \$80,000 a year, this bill says: We will be there to help you pay the premiums. That doesn't exist today. If you don't have coverage under Medicaid and you are buying health insurance and your income is below \$80,000 a year—we are providing tax cuts to millions of Americans so they can afford their health insurance, the biggest tax cut, I think, in the last 20 years or more. In addition, there are

tax breaks for smaller businesses. If you have 25 or fewer employees, we will help you and your business provide health insurance for your employees. That is significant.

In fact, the Joint Committee on Taxation takes a look at the new taxes charged and the tax cuts that are in the bill, and they say Americans will pay 1.3 percent less in taxes in 2017 as a result of the bill. So the tax burden on Americans starts to come down while insurance coverage goes up.

But don't forget the hidden tax we pay today. When people show up at the hospital without health insurance, they get care. They see a doctor, they may have x rays and all the procedures and all the medicines. But if they can't pay, the hospital charges the other patients. We all pay. About \$1,000 a year is paid by families now for those who have no health insurance. As more and more Americans are covered, that burden stops shifting over to those who have insurance, and that is a good thing. That hidden tax is largely ignored by the other side of the aisle, but we know it is a reality.

We also think these tax credits will make insurance more affordable. The Joint Committee on Taxation says that by 2017, these tax credits in the bill will reduce taxes by \$40 billion a year for millions of Americans.

We also hear a lot said about the excise tax on insurance policies at the higher levels. That is a tax not on individuals but on the insurance companies as a disincentive to keep running up the cost of premiums and instead try to bring efficiency and cost-effectiveness into quality care.

Health reform is good for our economy too. A lot of businesses that are trying to offer health insurance find that they lose their competitive edge as the cost goes up. So as we start bringing cost down, it means more competition, more job creation, and a greater economy.

I can understand why the other side of the aisle has spent most of their time finding fault with this bill. In fact, that is part of their responsibility in the Senate. But I had hoped, at the end of the day, they would have offered their substitute, their idea on how we can truly achieve health care reform. The fact they have not reflects one of two things: It is a very tough job to do. This is a big bill, it took a lot of work, and perhaps they couldn't come up with a bill themselves. As an alternative, maybe they like the current system. They may like the health insurance companies and the way they treat Americans. They may think it is okay that the cost of premiums will continue to skyrocket beyond our reach. Most Americans disagree, and I do too.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I ask unanimous consent to speak on time under the control of the Senator from New Jersey.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, let me follow up on some of the comments of my colleague from Illinois.

I am always struck, when I am back home—and I addressed the homebuilders in our State yesterday—by the extent of the misinformation and confusion. When I actually talk to people about the underlying legislation before us, as our deputy leader has done here again today, there is a lot to like about the legislation—a lot to like about the legislation.

One of the pieces that hasn't been focused on a whole lot and that I want to mention deals with how do we better ensure that people who are sick get well and people who are not sick don't become sick as it applies to the use of pharmaceutical medicines.

Our legislation calls for doing a number of things.

First, if people could actually be healthy, stay healthy, or get well by taking certain pharmaceuticals, we would all save money in the end. But under the current system, unfortunately, too many people in this country who would be helped by pharmaceuticals don't actually get to see a primary care doctor. We don't do a very good job in primary care in this country.

One of the things that will flow from our legislation is better access to primary care for everybody. Let me give one example of that. Currently, if you are Medicare eligible, you have one lifetime physical from Medicare. That is it, and that occurs when you sign up for Medicare. You don't get a physical every 5 years or 10 years or 20 years; you get one physical in your life that is paid for by Medicare. That will change in the legislation we will be voting on in the days ahead. We will provide annual physicals as a benefit under Medicare.

When we have more regular doctor visits from the primary care doctor, one of the things that will come about is a better understanding of the health conditions of people in this country and the notion that some of us might actually be healthier, if we have a high blood pressure reading, if we take medicine for it or if we have high cholesterol, if we take medicine for that. So the idea is to identify problems that can be treated with medicine. Not everyone can be helped but some can.

So the first key is, let's make sure folks who will benefit from having access to a primary care doctor have that access.

Secondly, if there are medicines a person can be taking that will help them, let's hope the primary care doctor will do his job, refer the patient to

a specialist, if needed, in order to identify the medicines needed.

The third point would be to make sure that when those medicines are identified, they are actually prescribed and made available to the person.

As we all know, we have the Medicare prescription drug program, the Part D Program, which is a pretty good program, and about 85 percent of the people who use it actually like it. The program has been underbudget now for each of the 4 years it has been in existence. That is pretty good. But when the drug costs of a senior citizen who participates in the Medicare drug program exceed I think about \$2,200 a year, instead of Medicare paying for 75 percent of the medicine and the individual paying 25 percent—which is the case from zero to about \$2,200 over the course of the year—Medicare basically says: We are out of this, and so from \$2,200 to \$5,200, it is all on the individual unless they happen to be very low income.

So the challenge is to make sure more folks who need access to primary care get that; if they need medicines, make sure they are available, which can be determined by the doctor or doctors as to what people should be taking; No. 3, make certain people get the medicines they are prescribed, that they can afford them, and that they actually take them; No. 4, make sure that once we have the access to primary care, we have made a determination as to what medicines can be helpful to a person and that those medicines are prescribed; and then we want to make certain the person for whom they are prescribed can actually afford them. Part of that is making sure, as we are trying to do in our legislation, we take that hole, if you will, that exists from the roughly \$2,200 to \$5,200 and begin to fill it in so that Medicare covers more and more of the cost.

There has been an agreement with the pharmaceutical industry to cover a portion of that hole, which will take care of about half of it, and I understand from our leadership in the House and in the Senate and the President that there is a firm commitment to close it entirely. So the range from \$2,200 to \$5,200 per year would actually be treated just as the first \$2,200 is: Medicare would cover 75 percent of the cost, and for most people, unless they are very poor, will be responsible for paying the other 25 percent. That will help a lot of people, and that will make sure folks who were doing OK taking their medicines until they hit that \$2,200 gap and stopped will keep taking their medicines and they will stay out of emergency rooms and hospitals and they will be healthier as a result.

The last piece involves something new. It is called personalized medicine. I had not heard the term before, although I have been interested in the issue for a while. As it turns out, there are some medicines for certain condi-

tions that will help one group of people—because of the way God made them, because of their genetic makeup—and there is another group of people with a different genetic makeup that will not be helped by the same medicine even though they have the same condition.

Part of what flows from our legislation will be an ever-improving ability to determine who will be helped by a particular medicine given a certain condition and who will not be, with the same condition, simply because of their genetic makeup. So the idea of making medicines available to people who will be helped, we want to do that, and we are gaining the knowledge to be able to say this group will be helped but this group will not, and we can then spend the money where it is going to make a difference but stop spending the money where it will not make a difference. We are close to being able to do that, and we need to do that.

All this flows from this legislation, and when you put it together, I think it is actually a very attractive and very smart policy.

So overall, how do we provide better health care, better outcomes for less money? There is real potential for doing it in the ways I have just described.

I want to stay on the issue of pharmaceuticals, if I can, but I want to pivot and take a somewhat different tack now.

I wrote a letter to the administration a week or so ago, maybe 2 weeks ago, and I asked the administration for some clarification on the issue of reimportation. That is the issue before us today. We have been debating it for some time, and we will be voting later today on a proposal by the Senator from North Dakota, Mr. DORGAN, and then we will be voting on an alternative to that offered by the Senator from New Jersey, Mr. LAUTENBERG, which I support. If that amendment were actually incorporated into the Dorgan amendment, I would support the underlying Dorgan amendment.

Anyway, I wrote to the administration, and I got a letter back dated December 8. I don't think I have ever stood on the floor and read a letter, but this is one I am going to read. I want my colleagues and their staff and anyone else who is listening to actually hear what I am about to say and what the administration had to say on this subject of reimportation. It is a little—well, “awkward” may be the wrong word, but it has to be a little awkward for the administration because the President, when he was then-Senator Obama, was a cosponsor of the Dorgan amendment. When he campaigned for Presidency, on the campaign trail he spoke favorably of the reimportation legislation offered by Senator DORGAN. Now that he is President and he leads an administration, he is asked: What is

the position of your administration on that legislation you cosponsored as a Senator and spoke in favor of as a candidate? Now that you are running the country and you are the Chief Executive of the country and you have a whole Department—the Department of Health and Human Services—whose job it is to look out for our safety and health, how do you feel about it?

So I wrote a letter basically asking the question, and here is what I received in response, dated December 8. This is from the head of the FDA, the Food and Drug Administration:

Dear Senator CARPER: Thank you for your letter requesting our views on the amendment filed by Senator Dorgan to allow for the importation of prescription drugs. The administration supports a program to allow Americans to buy safe and effective drugs from other countries and included \$5 million in its 2010 budget request for the Food and Drug Administration to begin working with various stakeholders to develop policy options relating to drug importation.

The letter goes on to say:

Importing non-FDA approved prescription drugs presents four potential risks to patients that must be addressed:

(1) the drug may not be safe and effective because it was not subject to a rigorous regulatory review prior to approval;

(2) the drug may not be a consistently made, high quality product because it was not manufactured in a facility that complies with appropriate good manufacturing practices;

(3) the drug may not be substitutable with the FDA-approved product because of differences in composition or manufacturing; and

(4) the drug may not be what it purports to be, because it has been contaminated or is a counterfeit due to inadequate safeguards in the supply chain.

In establishing an infrastructure for the importation of prescription drugs, there are two critical challenges in addressing these risks. First, FDA does not have clear authority over foreign supply chains. One reason the U.S. drug supply is one of the safest in the world is because it is a closed system under which all the participants are subject to FDA oversight and to strong penalties for failure to comply with U.S. law.

Second, FDA review of both the drugs and the facilities would be very costly. FDA would have to review data to determine whether or not the non-FDA approved drug is safe, effective, and substitutable with the FDA-approved version. In addition, the FDA would need to review drug facilities to determine whether or not they manufacture high quality products consistently.

The Dorgan importation amendment seeks to address these risks. It would establish an infrastructure governing the importation of qualifying drugs that are different from U.S. label drugs, by registered importers and by individuals for their personal use. The amendment also sets out registration conditions for importers and exporters as well as inspection requirements and other regulatory compliance activities, among other provisions.

We commend [“We” being the FDA on behalf of the administration] the sponsors for their efforts to include numerous protective measures in the bill that address the inherent risks of importing foreign products and other safety concerns relating to the distribution system for drugs within the U.S.

However, as currently written, the resulting structure would be logistically challenging to implement and resource intensive. In addition, there are significant safety concerns related to allowing the importation of non-bioequivalent products, and safety issues related to confusion in distribution and labeling of foreign products and the domestic product that remain to be fully addressed in the amendment.

The letter concludes by saying:

We appreciate your strong leadership on this important issue and would look forward to working with you as we continue to explore policy options to develop an avenue for the importation of safe and effective prescription drugs from other countries:

It is signed "Sincerely, Margaret Hamburg." She is the Commissioner of Food and Drug.

I suspect this was not an easy letter for Ms. Hamburg to write or an easy letter for the administration to sign off on. Given the position of the President in the past on this issue and now being confronted with the actual possibility that this legislation would become law, it has to be a struggle. I commend Senator DORGAN and others who have worked with him—I think Senator SNOWE and, I believe, Senator MCCAIN—over the years to try to address the earlier criticisms of the legislation.

What the FDA says in this letter to me, and really to us, is that progress has been made. Some of the concerns have been addressed. Unfortunately, some have not been.

What I hope we do when we vote later today is accept the offer of the administration. They have been willing to put their money where their mouth is, to actually put money in their budget request to say before we go down this road as proposed in the Dorgan amendment, let's see if we can't work this out in a way that addresses some of the remaining safety and soundness concerns. I am not sure, if I were the author of the amendment, if I would have accepted that offer from maybe an earlier administration whose motives were not maybe as pure—frankly, whose Chief Executive was not committed to addressing this issue.

Our President is committed to addressing this issue. The Department of Health and Human Services and the FDA are committed to addressing this issue. They are anxious, I believe, to work it out. Not only that, they are anxious and willing to provide some of the funding needed to come to an acceptable resolution and compromise. I hope by our votes later today we will accept that offer from the administration, and I hope in the weeks and months ahead we will actually take the steps, not necessarily proposed exactly by Senator DORGAN, that will allow us to move in that direction and do so in a way that does not unduly harm or put at risk the citizens of this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I understand I will be yielded time off the leader's time?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I want to speak a little today about this issue of the tax burden the Reid bill is putting on people with incomes under \$250,000, \$200,000. We all know the President said he was not going to allow taxes to increase for people who have incomes under those numbers. We know there are all sorts of proposals in the Reid bill which significantly increase taxes. We also know there are a lot of proposals in the Reid bill that significantly increase fees. We also know there are a lot of proposals in the Reid bill which will significantly increase premiums—all of which people under \$200,000 pay.

Why is this? Primarily it is because, if you look at the Reid bill, it exponentially increases spending and grows the size of government. Government is increased by \$2.5 trillion under the Reid bill when it is fully phased in. It goes from 20 percent of our gross national product—that is what government takes out today in spending—up to about 24 percent of our gross national product, a huge increase in the size of government.

When spending increases like this, at this type of explosive rate, there are a couple of things that occur. One of them is that taxes also go up. It is like day following night. If you are going to increase the size of the government at this rate, you are going to have to significantly increase taxes—whether you call them fees or whether you call them premium increases or whether you call them outright taxes. That is what is happening. That is because the goal is to grow the government dramatically. That is the goal. When you grow the government, you inevitably increase the taxes. In fact, in this bill it is estimated, when it is fully put into place, that there will be about \$1.6 or \$1.7 trillion in new taxes.

There is also, when it is fully phased in, about \$1 trillion of reduction in Medicare spending. We have had a lot of discussion on that matter on the Senate floor. I have been here a number of times talking about that. But the burden of taxation goes up in order to allegedly pay for these new entitlements.

Why do the taxes have to go up? Because when you increase spending this way you have to pay for it—or you should pay for it. This bill attempts to do that by raising taxes dramatically. But the presentation that you can get all this tax revenue out of people who are making more than \$200,000 a year simply doesn't fly. It doesn't pass the commonsense test. It is like saying when you cut Medicare \$1 trillion you are not going to affect benefits.

We heard for a week from the other side of the aisle that no Medicare ben-

efit cuts would occur with \$1 trillion of Medicare cuts. Of course, that is not true. We just heard yesterday from the Actuary—the President's Actuary, by the way, the Actuary of CMS—that when you make these significant reductions in provider payments under Medicare, which is where most of the savings occur, that means there are fewer providers who are going to be able to be profitable. In fact, 20 percent of providers will be unprofitable under the Reid bill as scored by the Actuary for CMS, and, as a result, providers will drop out of the system. Clearly, that will affect benefits to seniors because they will not be able to see providers because they will not exist anymore.

It is like telling somebody—someone said; the Senator from Nebraska, I think, said—you can have keys to the car, but there is no car. In this instance there will be no providers or many fewer providers.

Along with that problem there is this claim—along with that claim that was totally inaccurate, which is that Medicare benefits will not be cut—there is this claim that these new revenues to pay for this massive expansion in spending are going to come from just the wealthy.

Again, we have independent sources that have taken a look at this, in this case the Joint Tax Committee. They have concluded that is not the case. That is not the case at all. The argument from the other side of the aisle is we have all these tax credits in here which, when you balance them out against the tax increases, meaning that people earning under \$200,000—because some will get tax credits, some will get tax increases, but they balance out so there is virtual evenness, so that the tax credits in the bill to subsidize people who do not have insurance today mostly are balanced by the tax increases on people earning under \$200,000.

Of course, if you are one of the people earning under \$200,000 who doesn't get the tax credit, that doesn't mean a whole lot. Your taxes are going up. But more importantly, Joint Tax has taken a look at this, and by our estimate, what Joint Tax has said is essentially this: 73 million families, or about 43 percent of all returns under the number of \$200,000, people with incomes of under \$200,000, will, in 2019, have their taxes go up.

So there is a tax increase in this bill, and it is very significant on people earning under \$200,000. In fact, if you compare that to those people who will benefit from the tax credit, what it amounts to is for every one person who is going to benefit from the tax credit, three people earning under the income of \$200,000 will see their taxes go up. That is a real problem, first, because it significantly violates the pledge of the President when he said:



I can make a firm pledge no family making less than \$250,000 will see their taxes increase—not your income taxes, not your payroll taxes, not your capital gain taxes—not any of your taxes.

That is what the President said. That pledge is violated by the Reid bill, violated very fundamentally for the 73 million people whose incomes are under \$200,000 and whose taxes go up.

So it clearly is not a tax-neutral event for middle-income people. It is a tax increase event for a large number of middle-income people. Forty-three percent of all people paying taxes whose income is under \$200,000 will have their taxes increased.

What is the thought process behind this? The thought process essentially seems to be we are going to explode the size of government, we are going to dramatically increase the taxes on the American people, and somehow that is going to make life better for Americans. I do not see that happening. I don't see that happening. We know from our experience as a government that growing the government in this exponential way probably is going to lead to people having a tougher time making ends meet because their tax burden is going to go up.

Discretionary dollars they might have used to send their kids to college or they might have used to buy a new house or they might have used to buy a new car or they might have just simply saved—those discretionary dollars they don't have anymore because they come to the government to fund this massive explosion in programs and this increase in the size of government.

I think we do not need to look too far to see how this model does not work. All we have to do is look at our European neighbors.

This idea that you can Europeanize the economy, that somehow if you grow the government you create prosperity, that is what is basically behind this philosophy: You grow the government, you create prosperity. That does not work. We know that does not work. All we have to do is look at our neighbors in Europe who have used that model to find out and conclude that does not work.

It would make much more sense to put in place an affordable plan, one which did not raise the taxes of 73 million people who file income taxes under the income of \$200,000, 43 percent of the people paying taxes. It would make much more sense not to grow the government in this extraordinary way that we know we cannot afford and that we know ends up passing on to our kids a country which has less of a standard of living than we received from our parents.

So I hope we take another look at all the taxes in the bill, recognizing that the commitment the President made on the issue of taxes is not being fulfilled by this bill, and go back to the

drawing board and reorganize it so we can come closer to what the President wanted, which was a bill that did not raise taxes; which was a bill that did insure everyone; which was a bill that did create an atmosphere where if you wanted to keep your present insurance, you could keep it; and which was a bill that turns the curve of health care costs down.

None of those four goals of the President are now met in the bill. In fact, according to his own Actuary and according to Joint Tax, for all four of those goals, just the opposite occurs. The number of people uninsured remains at 24 million people, the cost curve goes up by \$235 billion, taxes go up for 73 million people, and we end up with 17 million people who have insurance today in the private sector losing that insurance. So I believe we should take another look at this bill and try to do a better job.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. FRANKEN). The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield up to 20 minutes to the Senator from Alabama out of the leader time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I rise today in disbelief. The American public is searching for commonsense answers from its leaders on health care, and yet they are poised to receive an expensive, wholly inadequate, and simply illogical so-called solution.

After weeks behind closed doors—including now—the majority has produced a bill thus far that raises taxes, makes drastic cuts in Medicare, and increases premiums to create a new government program, the so-called public option.

I believe the public option is nothing more than socialized medicine and expanded government disguised as greater choice. Thus, I am adamantly opposed to this bill as it is written.

I believe any legislation seeking to effectively address health care reform should have as its dual aims cutting costs and increasing access to quality care. But, amazingly, this bill just does the opposite on both counts.

This proposed legislation is not going to solve our Nation's health care problems and yet likely will exacerbate them. The administration, it seems to me, seems to be determined to force the health care bill on the American people, which the majority of citizens do not want or need.

I believe we have the best health care system in the world in the United States of America. While many have scoffed at such a suggestion, the United States, as we know, has the finest doctors, first-rate treatments, cutting-edge innovation, and low wait times.

Think about it. People come from all over the world to take advantage of

our revolutionary medicine and state-of-the-art treatments. The United States develops new drugs and medical devices years before the rest of the world, and American doctors are usually pioneers of new techniques in surgery and anesthesia.

As a cancer survivor myself, I am especially proud of the great strides the United States has made in screening and treating cancer. The United States has one of the highest survival rates for cancer in the world and dwarfs survival statistics in Europe. In 2007, U.S. cancer survival was 66.3 percent, while Europe's was 47.3 percent. I believe the answer as to where to receive treatment in the world is clear: the United States of America.

However, our current system, I would admit, is not perfect, and I have never said it was. But I believe we must seek to build upon rather than tear down these strengths we have. We need a bill that reduces costs and improves quality and level of care for the American people.

Here, I believe, we get the exact opposite: a bill that grows big government by creating a costly new entitlement program, drives up private health care costs, and subsequently lowers overall quality and access to care.

According to the Congressional Budget Office's Long Term Budget Outlook, the coming tsunami of Social Security, Medicare, and Medicaid costs is projected to push the Federal public debt to 320 percent of GDP by 2050 and over 750 percent by 2083.

Does anyone truly believe this new legislation will not further add to our Nation's debt? When has history proven that our government can regulate more effectively than private industry or the marketplace, much less doing so without adding to the deficit? The reason: we simply overspend and overpromise.

The Congressional Budget Office estimates that the Senate Democrats' health care proposal, as now written, will cost \$849 billion over 10 years.

While Americans will be hit immediately with new taxes and government mandates, the actual services and coverage promised in this legislation will not be implemented until 2014—a clear attempt to mask the true cost of reform. The proposal before us delays government subsidies for yet an additional year to hide the real cost of the bill and show so-called additional savings.

Stalling implementation on a program set to run for an indefinite time horizon and calling it "savings" is nothing more than fiscal sleight of hand. Therefore, the Senate Budget Committee estimates the true 10-year cost of the proposal to be \$2.5 trillion once fully implemented—\$2.5 trillion once fully implemented. Let me say that again: \$2.5 trillion—a lot of money.



To pay for this \$2.5 trillion worth of legislation, the government, I believe, will have no choice but to raise taxes to European welfare state levels or impose drastic restrictions on patient care or, most likely, both.

The bill includes over \$493 billion in new tax increases, as written, and probably another \$464 billion in Medicare cuts, placing the burden of reform squarely on the shoulders of the middle class, small businesses, and the elderly.

For the middle class, the proposal is a direct hit. The Joint Committee on Taxation estimates that in 2019, 73 percent of the so-called wealthy taxpayers paying the proposed excise tax on high premiums will earn less than \$200,000 a year. I think the time is now to stop heaping debt obligations on the backs of the able bodied.

The proposed tax on the so-called Cadillac plans—plans with high annual premiums—will not only be passed on to the consumer through higher premiums but will creep its way into the lives of many middle-class Americans.

I have a little story. Mrs. Melanie Howard, of Pelham, AL, raised this point when discussing the idea of who actually receives Cadillac health care. Mrs. Howard spoke to me of the small nonprofit where she worked, which had to raise premium prices to offset a few workers who were battling cancer. In effect, she was paying for a Cadillac but still just getting a basic car. Because the tax is based on cost of coverage and not quality and breadth of coverage, many Americans could fall into this category.

I believe it is a simple actuarial fact that smaller risk pools result in higher premiums. Thus, small businesses, such as Mrs. Howard's employer, are naturally going to bear the brunt of this ill-conceived Cadillac health insurance tax.

As taxes increase to pay for the public option, so does the cost of premiums on health care plans. The Congressional Budget Office analysis on premium impacts estimates that family premiums would increase 28 percent—from \$11,000 per family to over \$14,000 per family by 2019. This is more than a \$3,000 increase per family.

The bill also imposes \$28 billion in new taxes on employers who do not provide government-approved health plans, and it charges a penalty of \$750 per uninsured individual—a form of double taxation.

Furthermore, any opportunity to allow individuals to self-manage their care and plan for future health care costs has been eradicated from this proposal as now written. Flexible spending accounts help individuals and families pay for out-of-pocket medical expenses that are not covered by their health insurance plans with tax-free dollars. These are particularly important for individuals and families who have high medical expenses, such as

seniors and those with chronic health conditions or disabilities.

The current proposal before us will not only limit allowable flexible spending account contributions, but the limit is not indexed for inflation, which means the inflation-adjusted or real value of a flexible spending account will decline steadily over time until virtually worthless.

What is also truly concerning about the current legislation is a massive reduction in care our seniors will face under this legislation. The proposal includes \$120 billion in cuts to Medicare Advantage, nearly \$135 billion in Medicare cuts for hospitals that care for seniors, more than \$42 billion in cuts from home health agencies, and nearly \$8 billion in cuts from hospices, of all places. I believe this nearly  $\frac{1}{2}$  trillion in Medicare reductions simply must result—has to result—in vast reductions in the quality of our seniors' care.

I do not believe massive tax increases, a rise in the cost of health care premiums, reduced flexibility in self-management of care, and cuts to seniors' health care is what the American people have in mind as a way to improve access and create affordable quality health care.

We have already seen how this legislation will significantly increase costs and reduce coverage of care. But let's, for a minute, turn our attention to the quality of care because there is, indeed, a big difference between government-run health care coverage and actual access to medical care.

As Margaret Thatcher once said:

The problem with socialism is that eventually you run out of other people's money to spend.

Medical rationing is inevitable under government-run health care. It has to be. Supporters of government-run medicine often cite Canada or Great Britain as models for the United States to follow. Yet medical rationing, such as is common in those countries, is inevitable under a government-run health care system as now proposed. These countries are forced to ration care or, in the alternative, have long waiting lists for medical treatments that lead to the same result.

More than 750,000 Britons are currently awaiting admission to the National Health Service hospitals. Last year, over half of Britons were forced to wait more than 18 weeks for care or treatment. The Fraser Institute, an independent Canadian research organization, reported in 2008 that the average wait time for a Canadian awaiting surgery or other medical treatment was 17 weeks, an increase of 86 percent since 1983.

Access to a waiting list is not access to health care.

A study by the Organization for Economic Co-Operation and Development showed that the number of CT scanners per million in population was 7.5 in

Britain, 11.2 in Canada, and 32.2 in the United States.

For magnetic resonance imaging—MRIs—there was an average of 5.4 MRI machines per million in population in Britain, 5.5 in Canada, and 26.6 in the United States.

Government-run health care will undermine patients' choice of care.

Citizens in those countries are told by government bureaucrats what health care treatments they are eligible to receive and when they can receive them. I believe Americans need to understand that all countries with socialized medicine ration health care by forcing their citizens to wait in lines to receive scarce treatments. Simply put, government financing means government control, and government control means less personal freedom.

While we need to enact reforms to our health care system that will reduce cost and improve access, our Nation cannot withstand the deep deficits this colossal health care entitlement program, I believe, would create. Instead, we need a system that restores the patients and doctors as the center of every health care decision, rather than the government and insurance companies.

By making insurance portable, expanding health care savings accounts, reducing frivolous lawsuits, emphasizing preventive care, reducing administrative costs, and making insurance more affordable to small business and individuals, I believe we can efficiently decrease the costs that currently burden Americans while expanding coverage. The result would be improved quality and affordable care.

It appears that no matter how many thousands of letters my office receives in the Senate asking Congress to stop this legislation, this administration is determined to pass something—anything—no matter what the cost or how damaging the result. The latest CNN poll shows 64 percent of Americans oppose this health care reform as now written. The Associated Press reports that over 60 percent of Americans are against this type of reform.

It has been said we would be committing Senatorial malpractice to pass legislation such as this. I agree. I simply do not believe the American people desire or deserve what government-run health care would result in: higher taxes, larger deficits, and rationed lower quality care.

While we need to enact reforms to our health care system that will reduce costs and improve access to all Americans, our Nation cannot withstand the massive cost this colossal health care entitlement program will create.

The health of this Nation will not be helped by risking our Nation's financial well-being. It has been said if you think health care is expensive now, wait until it is free.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 2793

Mr. DORGAN. Mr. President, I yield myself such time as I may consume under the hour I control.

We are going to have people trotting onto the floor of the Senate this afternoon—and some have this morning—talking about this issue of prescription drug reimportation and saying there are safety problems with it—safety problems. I wish to talk about one small piece of health care reform without which you can't call it health care reform, because at least with respect to the issue of pricing of prescription drugs, there will be no reform unless my amendment is passed.

My amendment is bipartisan. It includes support from Senator SNOWE, Senator MCCAIN, Senator GRASSLEY on that side and many Democratic Senators as well and it says: Let's put the brakes on these unbelievable increases in the price of prescription drugs; a 9-percent increase this year alone in brand-name prescription drugs.

Why is this an important issue? How about let's talk about the price of Nexium—the price of Nexium. You buy it, if you need it: \$424 for an equivalent quantity in the United States. If you want to buy it elsewhere, not \$424; you pay \$37 in Germany, \$36 in Spain, \$41 in Great Britain. We are charged the highest prices in the world for prescription drugs.

We are going to have a lot of people come out and say: Well, there will be safety problems if we reimport FDA-approved drugs from other countries—absolute rubbish.

Here is Dr. Rost, a former vice president for marketing for Pfizer Corporation, and this is what he said:

During my time I was responsible for a region in northern Europe. I never once—not once—heard the drug industry, regulatory agencies, the government, or anyone else saying that this practice was unsafe. Personally, I think it is outright derogatory to claim that Americans would not be able to handle reimportation of drugs when the rest of the educated world can do it.

They have been doing this in Europe for 20 years, reimporting lower priced prescription drugs from other countries, and they do it safely. Our consumers pay the highest prices in the world because there is no competition for prescription drugs. When a drug is sold for a fraction of the price elsewhere—one-tenth the price for Nexium in Germany and Great Britain—the American people can't access it. Even though it is made in the same plant, the same pill put in the same bottle, the American people are told: It is off-limits to you.

Dr. Rost also said this: Right now, drug companies are testifying that imported drugs are unsafe. Nothing could be further from the truth. This from a former executive of Pfizer Corporation.

When the pharmaceutical industry goes around the Hill today and tells you that importing medicine is going to be unsafe—and by the way, our bill only allows the importation from Australia, New Zealand, Japan, and the European countries, where they have an identical chain of custody and where we require pedigree and we require batch lots that will make the entire drug supply much safer, including the domestic drug supply—when the pharmaceutical industry goes around the Hill today saying: If you vote for the Dorgan-Snowe-McCain, et al. amendment, you are voting for less safety, ask the pharmaceutical industry this: What about the fact that you get 40 percent of your active ingredients for drugs from India and China and from places in India and China in many circumstances that have never been investigated or inspected by anyone? Answer that, and then tell us that reimporting FDA-approved prescription drugs from other countries is unsafe. What a bunch of rubbish.

My understanding is, sometime yesterday—maybe late last night—somebody made a deal. I don't know what the deal is, but I guess the deal is to say we are going to have this amendment—it has been 7 days since we started debating this amendment—we are going to have this amendment vote and then we are going to have another vote on another amendment that nullifies it. It is the amendment I call: I stand up for the American people paying the highest prices in the world for prescription drugs.

If you want to support that amendment, go right ahead. What you are doing is nullifying any ability of the American people to have the freedom to access lower priced drugs where they are sold elsewhere in the world. I am talking about FDA-approved drugs made in FDA-approved plants. It doesn't matter what the fancy wrapping and the bright ribbons are on this package.

This package to nullify what we are trying to do is a package that comes directly from the pharmaceutical industry. Why? To protect their interests. This year they will sell \$290 billion worth of drugs, 80 percent brand-name prescription drugs. On brand-name drugs, the price increased 9 percent this year and on generic drugs it fell by 9 percent. Now I understand why they want to protect those interests.

Here are two pill bottles, both contain Lipitor, both made in a plant in Ireland by an American corporation. This sent to Canada, this sent to the United States. The American consumer gets the same pill made in the same bottle made in the same plant by the same company. The American consumer also gets the privilege of paying nearly triple the price and can't do a thing about it because this Congress, vote after vote after vote, has said: We

stand with the pharmaceutical industry and against competition and against freedom for the American worker.

If I sound a bit sick and tired of it, I am. We have been going after this for 8 to 10 years, to give the American people the freedom to access the identical FDA-approved drugs for a fraction of the price where they are sold everywhere else in the world, and we are told again and again and again there is this phony excuse about safety, completely phony.

I will have more to say about it later, but I did want to say we are going to see a lot of people trotting out here with such a shop-worn, tired, pathetic argument to try to keep things as they are and try to keep saying to the American people: You pay the highest prices in the world for brand-name drugs and that is OK. That is the way we are going to leave it. We will call it health care reform, and at the end of the day, that is what you end up with: The highest prices in the world, a 9-percent increase just this year alone. Over the next 10 years, that 9-percent increase, just this year, nets the pharmaceutical industry \$220 billion, but that is OK. That is the way you are going to end up, American consumer, because we don't want to give you the freedom to access those lower priced drugs where they are sold for a fraction of the price.

One final point. I have mentioned often an old codger who sat on a straw bale at a farm once where I had a meeting, and he said: I am 80 years old. Every 3 months we have to drive to Canada across the border because my wife has been fighting breast cancer. Why do we drive to Canada? To buy Tamoxifen. Why do we have to go there to buy it? We paid—I think he said—one-tenth the price in Canada. We couldn't have afforded it otherwise.

Is that what we want the American people to have to do? Most people can't drive across the border someplace. Why not establish a system like they have had in Europe for 20 years, to allow the American people the freedom to access reasonably priced drugs, FDA-approved drugs.

So this is a day in which we will vote on my amendment and then we will vote on an amendment that nullifies it and we will see whether enough of a deal has been made so the fix is in. So, once again, the American people end this day having to pay the highest prices in the world. Pay, pay, pay, pay, soak the American consumer, keep doing it. That has been the message here for 10 years.

A group of us, Republicans and Democrats, 30 who have cosponsored this legislation, have said, you know what. We are sick and tired of it. Give the American people the freedom. If this is a global economy, how about a global economy for real people? How

about let them have the advantages of a global economy?

Once again, I will have a lot more to say this afternoon. It is apparently a day for deal-making and we will see who made what deals, but we are going to have votes. I know one thing. I know the pharmaceutical industry has a lot of clout. I know that. I hope the American people have the ability to expect some clout on their behalf in the Chamber of the Senate this afternoon.

I yield the floor, and I make a point of order that a quorum is not present. The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, my understanding is there is a desire by some to have a quorum call in which the quorum call time is charged against all sides. My understanding is, there are, I think, 5 hours allocated with respect to today: 1 hour for the Baucus amendment, 1 hour for the Crapo amendment, and 3 hours distributed as follows: 1 hour for me, 1 more Mr. LAUTENBERG, and 1 hour for the Republican leader on the prescription drug reimportation; am I correct?

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. So I ask unanimous consent that the quorum call be allocated against the 4 hours and not against the hour I control.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. Reserving the right to object, we have had constant speakers over here, so we have used a lot of our time. If we had known there was more vacant time, and if we could have had some of the majority's time, we could have had a steady stream of speakers over here the whole time. So we would reluctantly agree to the time being divided between the two sides, as we have done that in all the times in the past, but we want to reserve some time for our speakers as well. We could have easily had people over here to speak.

Mr. DORGAN. Well, Mr. President, did the Senator object?

The PRESIDING OFFICER. I think he reserved his right to object.

Does the Senator object?

Mr. ENZI. Yes, the Senator objects.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. Mr. President, my understanding is I will put in a quorum call, the time is equally divided, apparently, between the sides, in a circumstance where the other side has 3 hours and our side has 2 hours and especially on the subject I have just discussed, the other side has 2 hours and I have 1 hour.

I will put us into a quorum call, and I guess it will be equally divided between the two sides.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CARPER). Is there objection?

Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I want to speak in favor of the Crapo motion, which we will be voting on in a few hours.

The Crapo motion would essentially protect the American middle class from tax increases in this bill. The President promised that nobody making under \$200,000 a year, or families making under \$250,000 a year, would see tax increases under the bill. But they do.

The Crapo motion would simply send the bill back to the Finance Committee and make sure that they don't. It is a fairly straightforward amendment, and we should support it.

In supporting the motion, I will discuss other things related to it. There is this notion that somehow or other the health care bill will save money for the government and for taxpayers and patients. That is where it is wrong. That is why we need things such as the Crapo motion.

How does the expenditure of trillions of dollars in new spending save anybody money? That is counterintuitive. The answer is, of course, that it doesn't.

Jeffrey Flier, dean of the Harvard Medical School, gives this bill a failing grade. He wrote in the Wall Street Journal:

The Democrats' health care bill wouldn't control the growth of costs or raise the quality of care.

I think that is the fact. So let me point out a couple of the bill's provisions that undermine this savings argument, one of which is the new taxes, which the Crapo motion would explicitly address. The new subsidies that fail to address costs, and finally this inclusion of the CLASS Act, which is a massive new expenditure and entitlement that would grow out of control over time.

First, though, let me focus on these new taxes, 12 in total. They go into effect immediately. In fact, the Internal Revenue Service estimates it would need between \$5 billion and \$10 billion over the next 10 years just to oversee the collection of these new taxes. Think about that.

These new taxes include, but are not limited to, a new payroll tax on small businesses. What better way to kill job creation. We will impose another ½

percent tax if you hire somebody or all the people you retain on the payroll. That is crazy at a time when we are trying to create new jobs. There is a tax on seniors and the chronically ill. I discussed that yesterday. There are new limits on health savings accounts which will increase taxable income for middle-class families, and a new medical device tax which will be paid for by American families, according to the Congressional Budget Office. In other words, if you need a health or life-saving device, such as a diabetes pump or stent for your heart, why do you want to tax that if it provides better health care for you and your family? The reason is they need more revenue to pay for the expenses of the bill. They increase the taxes. CBO says they will be passed right through to the patients which are then passed through in the form of higher premium costs.

As I said, most of these taxes would start immediately and many would hit middle-income families despite the President's famous campaign pledge.

Washington, for a period of 4 years, piles up the money before it pays any of the money out. That is supposed to lower costs because for the first 4 years there are not any expenses. We are collecting all this revenue and somehow or another that is portrayed as a savings for the Federal Government.

Over the next 10 years that money is spent out, it is \$2.5 trillion in spending, and that is not sustainable. This is part of the bill's gimmickry to create this idea that somehow the bill is deficit neutral. As I said, when you take a look at the true 10-year cost beginning in 2014 once the bill is fully implemented, you have a whopping \$2.5 trillion pricetag.

Colleagues on the other side say: It is necessary to raise all this money to subsidize the increased cost of health care. I get it. We are going to raise premiums under the bill and then we are going to need to raise taxes to subsidize so people can afford those increased premiums. What sense does that make? I ask, do Americans want to pay more taxes in order to get a subsidy because of the increase in costs that are the result of this legislation? Would they rather not have the premiums go up in the first place, as the ideas that Republicans have proposed would ensure? But that is what the bill does. It raises premiums so then you have to raise taxes to subsidize the cost of insurance.

What the Crapo motion would do is to say the President needs to keep his promise. Those making less than \$200,000 a year should be relieved of this tax burden.

Secondly, if the government subsidizes insurance for 30 million more Americans, obviously costs have to rise. As the respected columnist Robert Samuelson wrote in a recent Washington Post column—the way, the

title was "The Savings Mirage on Health Care":

The logic is simple. . . . Greater demand will press on limited supply; prices will increase. The best policy: Control spending first, then expand coverage.

That is what Republicans have been proposing. We would like to target specific solutions to the problems of cost which would then allow more Americans to gain access to affordable health care and, thus, avoid a hugely expensive Washington takeover of the entire system.

Our solution includes medical liability reform—that does not cost anything; it saves money—allowing Americans to purchase insurance policies across State lines, allowing small businesses to pool their risks and purchase insurance at the same rates corporations do. These solutions would bring down costs and, at the same time, enhance accessibility.

Third—and the reason I raise this is because several colleagues on the other side of the aisle have made pretty firm statements about not being able to support this legislation as long as it included what is called the CLASS Act. This is a new government-run, government-funded program for long-term care. It is intended to compete with private insurers' long-term care plans. Notice the pattern of government wanting to compete with private entities. That is what the CLASS Act does.

Participants would pay into this new government system for 5 years before they would be allowed to collect any benefits. Naturally, you have some increased revenues for a while, and that is what the bill counts on in order to allegedly be in balance. Of course, the payouts occur later, and then it is not in balance. Participants would have to be active workers. So this new entitlement would not benefit either seniors or the disabled.

We are talking about a brandnew entitlement. If a worker begins making payments in 2011, he or she could not collect benefits until the year 2016. That is why supporters of the CLASS Act say this would reduce the deficits in between 2010 and 2019. Sure, if you don't spend money in those years and you collect a lot of tax revenues, of course you are going to have more of a surplus of revenues. What happens, though, when the claims on that money occur? It is like Medicare today: It is very soon out of money and then broke and then in a hole and then you have a big debt on your hands. That is precisely what happens here. No government program has ever reduced budget deficits, we know that.

The Congressional Budget Office confirms that this program will, indeed, add—add—to future budget deficits. Here is what the CBO writes:

The program would add to future federal budget deficits in large and growing fashion.

It does not get any simpler than that. The CLASS Act would add to future

deficits. That is why several of my colleagues on the other side of the aisle have said they cannot support the bill as long as the CLASS Act is in it. But the last time I checked, it is still in it.

I want to also refer to the chairman of the Budget Committee who has obviously spoken out on this issue because he understands the effect. I speak of Senator CONRAD. He said it is like a Ponzi scheme because it offers returns that payments made into the system cannot cover in the long run.

As I said, it would generate generous surpluses for the government while Americans pay in and are not collecting benefits. And then later on, it reaches a point where payments made into the program cannot sustain the promised benefits.

Here is what CBO tells us about the program:

It would lead to net outlays when benefits exceed premiums. . . .

"Net outlays" means you are spending more than you are taking in.

[By 2030] the net increase in federal outlays is estimated to be "on the order of tens of billions of dollars for each [succeeding] ten-year period."

Over time, this program adds substantially to the deficit and to the debt. It is an entitlement that is not self-sustaining but has to be propped up in some fashion by additional revenues. It is another way, in addition to the first two ways I mentioned, of how costs go up in this legislation, how savings do not result, and how the American public has to end up making up the difference. You have new taxes to cover subsidies for increased premiums, government subsidies for 30 million Americans that increased demand without addressing costs, and finally, the inclusion of the CLASS Act.

As I said, I support the Crapo motion because it would assure that none of these burdensome new taxes would hit middle-income families as they are set to do. This amendment must pass if President Obama is going to keep his campaign pledge to not raise taxes "one dime" on middle-income Americans.

I also support the soon-to-be-pending Hutchison-Thune motion which says that no taxes at all should be levied until Americans see some benefits. This addresses that problem I noted where you collect the taxes up front and then you start paying benefits at a later date. This is an expression of disapproval for the budget gimmickry contained in the bill.

Americans want us to bring costs down. They could not be more clear about that. But the provisions of this bill disobey the wishes of the American people. That is why in public opinion surveys—it does not matter who takes them—they are increasingly showing that the American people are opposed to this legislation. The latest one by CNN just a few days ago—and CNN is

not noted to be a big conservative organization—shows that 61 percent of the American public oppose the health care plan. And now only 36 percent support it. That is getting close to two to one in opposition.

An earlier poll showed that among Independent voters, by more than three to one, they oppose what is in this legislation. The point here is not some peripheral issue—and I do not mean to demean the importance of the issue when I talk about, for example, the public option for the government-run insurance plan. The abortion language certainly is a key issue to many. Even if you could somehow fix those problems, you still have the core of the bill that the American people object to: the \$½ trillion in cuts in Medicare, the \$½ trillion in increases in taxes that are meant to be addressed by the motion I am speaking of, the requirement that because premiums go up under the legislation, you have to raise taxes to create a subsidy so you can give it to people so they can afford the increased premiums.

Something we are going to be talking about in the future and have hardly addressed but to me is probably the most pernicious thing of all—you can talk about the government takeover, you can talk about the additions to the debt, the taxes, the increased premiums, all of these things, the cuts in Medicare—to me the most pernicious thing of all is the fact that it is unsustainable. The promises exceed the revenues with the net result that over time, care will have to be rationed.

This is what I think the American people fear most of all because they know you cannot sustain a program this costly and not have to at some point begin to delay care, delay appointments so they do not occur as rapidly and gradually begin to denying care. That is why this big kerfuffle about the commission that made recommendations on breast cancer screening and mammograms was so frightening to people. They could see this was the way rationing begins. Some panel says we don't think people need as much medical care as they have been getting, never mind what has been recommended in the past. Yes, by the way, it will save money.

Of course, when politicians have to find a way to reduce benefits, they do not go to their constituents and say: We are going to cut your benefits. What they do is reduce the payments to people who provide the health care—the doctors, hospitals, home health care, hospice care, these folks. They reduce payments so that the providers have no choice but to reduce the amount of their care.

They have to see more patients, there are not as many of them, and they are getting paid less. So naturally they cannot provide the same level and quality of care. That is how rationing

begins. Ask people in Canada, ask people in Great Britain how long it takes to get in to see the doctor. Eventually even that does not cut it. So they set a budget and say: We cannot afford to pay any more than that.

You better hope you get sick early in the year. That is, unfortunately, what you can see to an extent in our veterans care but even more in our care for our Native Americans. I did not make this up. Others have said in the Indian Health Care Service, get sick early in the year because they run out of money if you get sick late in the year.

Our first obligation ought to be to ensure our Native American population receives the care we have promised them. I personally have gone throughout Indian reservations in Arizona. We have more than any other State. I made a tour of the Navajo reservations, including a lot of the health care clinics and facilities that try to take care of folks under the Indian Health Service. None has enough money to do what they are supposed to. They are understaffed. The people who are there are wonderful, dedicated health care providers. They are doing their best. But you ask any of the Native Americans whether they believe they are getting the care they are supposed to get under the program, and the answer is uniformly no. They have to wait forever. The care is not there when they need it.

This is the perfect example of rationing of care, what happens when you have a government-run system. That is what I fear most of all will result from this because we have taken on much more than we can afford.

The end result of that inevitably is the reduction in the amount of care that is provided and the quality of care that is provided.

I urge my colleagues to think very carefully about what we are getting our constituents into. We can start to turn this back by supporting the Crapo motion which at least says that folks who are middle-class families, who the President promised would not see a tax increase, will not see a tax increase under the legislation. That is what the Crapo motion would provide, and I certainly hope my colleagues support it.

#### RECESS

Mr. KYL. Mr. President, if there are no other Senators seeking recognition at this time, I ask that the Senate stand in recess under the previous order.

Thereupon, the Senate, at 12:45 p.m., recessed until 3:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. CRAPO).

#### SERVICE MEMBERS HOME OWNER-SHIP TAX ACT OF 2009—Resumed

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I rise to strongly support and urge all of my colleagues, Republicans and Democrats, to support the upcoming Dorgan reimportation amendment which we will be voting on later today and, just as important, to oppose the Lautenberg amendment which, as everyone knows, is a poison pill to reimportation and is simply and surely a way to absolutely kill for all practical purposes the real Dorgan reimportation language.

To me, this is a crystal-clear choice, and it is the sort of choice the American people are really interested in and really watching. It is a choice between doing something that can make a difference in people's lives, something that can help people, that can solve a real problem in health care by doing something in a focused way or we can choose to keep to the big political deal that was made inside the beltway, inside the White House with the pharmaceutical industry. That is the choice. This is really a choice between voting for the American people or voting for politics as usual in Washington. That is what it all comes down to.

On the positive side, reimportation is a very real and very effective solution to a real problem. The problem is obvious. The problem is sky-high prescription drug prices—the highest in the world—that we as Americans pay. These same drugs are sold around the world, and in many different cases—in virtually every case—we pay the highest prices in the world right here in the United States even though we have the biggest marketplace for prescription drugs. That is the system we are trying to break up. So I want and supporters of this amendment want a true free market in prescription drugs, a world price that will lower the U.S. price and dramatically help U.S. consumers.

It is not just supporters of this amendment and this concept who are making these arguments; it is unbiased sources such as the Congressional Budget Office and others. The Congressional Budget Office says this amendment—this reimportation concept will save the Federal Government money, significant money, some \$18 billion or more. And besides the savings to the Federal Government, the savings to the U.S. consumer are much greater—\$80 billion or more.

So that is the positive choice—doing something real about a real problem. That is what the American people want us to do. They want us to focus on the real problems that exist in health care and attack those real problems in a focused way.

The other alternative is to keep the political deal, to vote yes for politics as usual in Washington. Tragically, that is what is represented by the political deal that was struck on this global health care bill between the White House and the White House's allies here in the Senate and the big

pharmaceutical industry. It has been widely reported—it is no secret—that there was a deal between these bodies. The pharmaceutical industry agreed to support the President's initiative, putting as much as \$150 million of TV advertising cash behind that support, if the White House would completely change its position on reimportation and other key points.

The record is clear: When President Obama served right here with us in the U.S. Senate, he was completely for reimportation. As a Presidential candidate, he campaigned vigorously for reimportation. Rahm Emanuel, the White House Chief of Staff, when he served in the U.S. House, was strongly for reimportation. But now, all that is off because Washington politics as usual has stepped in the way. They have reversed their position through this deal with PhRMA. Tragically, that has crept into the Senate Chamber as well. Key Senators on the Democratic side—MAX BAUCUS and JAY ROCKEFELLER and others—have reversed their position and apparently now are urging “no” votes for a policy they have long supported.

Well, we will know in a few hours who will be the winner—the American people, being given lower prescription prices, or PhRMA and politics as usual in Washington. Make no mistake about it, that is the choice. It couldn't be laid out in a clearer way. And to choose for the American people, to make real progress for lower prescription drug prices, we need to do not one but two things: first, to pass the Dorgan amendment, and second, and just as important, to defeat the Lautenberg amendment side-by-side, which would clearly, by all acknowledged sources, be a poison pill to reimportation—an easy way for the administration to ensure reimportation never happens.

I urge all of my colleagues, Democrats and Republicans, to vote for lower prescription drug prices, to vote for the American people, and certainly to vote against Washington politics as usual, which the American people are so completely disgusted and fed up with. I urge that vote. Americans all around the country, in all our home States, will remember it and will thank us for it because we will actually be providing a real solution to a real problem and bringing them significantly lower prescription drug prices.

With that, Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAPO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Mr. CRAPO. Mr. President, I believe I have 20 minutes remaining; is that correct?

The PRESIDING OFFICER. The Senator from Idaho has 17½ minutes remaining.

Mr. CRAPO. Mr. President, I ask that the Chair notify me when I have 2 minutes remaining.

The PRESIDING OFFICER. The Chair will so notify.

Mr. CRAPO. Later today, Mr. President, we are going to vote on my motion to refer the bill to the Finance Committee and have the Finance Committee simply make the bill comply with the President's promise with regard to taxes.

As I have said a number of times on the floor, this bill does not correct so many of the problems we need to deal with in health care. It drives the cost of health care in premiums up, not down; it raises hundreds of billions in taxes; it cuts Medicare by hundreds of billions of dollars; it grows the Federal Government by over \$2.5 trillion in the first 10 years of full implementation; it forces the needy uninsured into a failing Medicaid system and does not give them access to insurance; it imposes damaging unfunded mandates on our struggling States; it still leaves millions of Americans uninsured; and it establishes massive government control over our health care. Frankly, even if the so-called government option or government health care insurance company that is created by the bill were to be removed, there would still be massive government intrusion into the control and management of our health care system.

Well, as we were facing the prospect of dealing with this bill, the President made a pledge to the American people, and in his terms the pledge was:

I can make a firm pledge, no family making less than \$250,000 will see their taxes increase; not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes. You will not see any of your taxes increased one single dime.

Yet what we have in this legislation is a whole array of new taxes—about \$493 billion in new taxes to start with. And that is assuming you just start with the beginning of the bill and go for the first 10 years. If you actually compare the number of taxes that will be charged by this bill to the American people with that first full 10-year implementation period, that is \$1.28 trillion in new taxes.

This chart shows taxes and fees, not just the specific taxes but taxes and fees—fees which our Congressional Budget Office and our Joint Tax Committee have said repeatedly will be passed on to the American consumer. Yet the President said nobody's taxes will be increased.

Let's see the next chart. Here we have further analysis of just four of the major tax provisions in the bill. There

are many more, but if you look at the four major tax provisions in the bill, the Joint Committee on Taxation has said that by 2019 at least 73 million American households earning below \$200,000 will face a tax increase, and when you break these numbers down further, it is not just the people making between \$100,000 and \$200,000, or the upper income earners, but massive tax increases falling upon people who are making well under \$100,000 a year.

The response has been: Wait a minute, this bill also has some tax cuts in it, and when you offset the tax cuts against the tax increases, there are more tax cuts than there are tax increases.

I dispute that in a couple ways. First of all, even if you accept as fact that there are tax cuts in this bill, which is arguable and I will point that out in a minute, they do not offset all the taxes and fees, so it is still a net increase in taxes. But there is a subsidy in this bill to provide insurance to a group of Americans who do not have the financial capacity today to purchase their own insurance. As I mentioned earlier, the most needy of this group did not get access to insurance. They got put on Medicaid. But some in America will get some access to insurance and that subsidy will be provided by the Federal Government. The other side is saying that is a tax cut.

I disagree with that for a couple reasons. First of all, it is called, in the bill, a refundable tax credit and it is administered by the Internal Revenue Service—which, by the way, is going to need to grow by 40 to 50 percent in order to accommodate these new roles in managing the health care system. But it is a refundable tax credit in only the way Congress could put it together. It is nothing other than a government payment to individuals, most of whom pay no taxes. In fact, between 2014 and 2019, 73 percent of the people receiving the subsidy, or \$288 billion of the subsidy, goes to taxpayers who pay no taxes. You can call that a tax cut if you want, but CBO, our Congressional Budget Office, does not call it a tax cut. The Congressional Budget Office scores it as Federal spending, as exactly what it is, spending by the Federal Government. It is a subsidy being provided by the Federal Government. You can argue about whether it should be provided, but to call it a tax cut is a stretch.

Even if you accept that is a tax cut, there are still 42 million American households earning below \$200,000 per year who will pay more taxes. No matter how you cut it and no matter how you define tax cut, the reality is this bill imposes hundreds and hundreds of billions of dollars of new taxes squarely on the middle class in violation of the President's promise that nobody in America who makes less than \$250,000 as a family or \$200,000 as an individual,

in order to fund this bill, would be required to pay more taxes.

Some of those who have responded to this have said this is our opportunity and, if we support this amendment, we will be killing a bill that provides tax relief to the American people. As I have pointed out, the amendment does not do anything to the subsidy that is called a tax cut. The amendment leaves the subsidy in place. So it is simply wrong to say the motion I have asked to have passed would do anything to remove this so-called tax relief—or properly called subsidy—from the bill. What my motion does is simply to say the bill should be referred to the Finance Committee so the Finance Committee can make sure it complies with the President's pledge that it does not raise taxes on those who are in what the President has described as the middle class. It is very simple and straightforward. If there are no such taxes, then the motion is irrelevant. But we all know there are—Joint Tax, Congressional Budget Office, many private organizations have squarely pointed it out. In fact, we are still studying it. If we get past the first four big taxes in the bill, these numbers I have talked about, the 42 million net or the 73 million in reality, in America—and those are households, not individuals, who will be paying more taxes—are squarely going to be hit by this bill.

Let me give a different perspective on it. If you take all those who are supposedly getting tax relief but are really getting a direct subsidy, accept the fact that this is truly a tax cut, they represent 7 percent of the American public. The rest of the American public does not get a subsidy. The rest of the American public pays the taxes for the establishment of a huge \$2.5 trillion new entitlement program that will bring that much more of the Federal Government into control of the health care economy.

We are coming back now from a 2½-hour break because the Democrats were at the White House meeting with the President. We do not know what was said there. There was apparently a negotiation behind closed doors, yet once again, of some other new changes in the legislation, some other new portions of the bill. No C-SPAN cameras were there, to my knowledge. But we now have an opportunity to talk in the next few hours about what will happen with regard to this amendment.

The President could have asked his friends in the Democratic caucus to support this amendment, which simply requires that the bill comply with his pledge. I hope he did. I hope it can be accepted. But the reality is, this legislation violates not only this pledge but a number of the President's other pledges—for example, the pledge that if you like what you have, you can keep it. Americans all over this country



have heard that pledge repeated a number of times. If you are one of the employees who has employer-provided insurance and that insurance happens to fit in the so-called higher insurance packages that are taxed 45 percent by this plan, you are not going to get to keep it. Both CBO and Joint Tax have made it very clear that you are going to see your health care cut by your employer in order to avoid this tax. Then what is going to happen is your employer might—probably will—give you a little bit more wages to compensate for the cut in your employment benefits. Your net package of compensation will not change in value, but you will get at more of it in wages and a little less in health care. But the kicker is, the wage portion is taxed but the health portion is not so your taxes are going to go up and your net package is going to go down. You are going to have a less-robust health care plan and you will have a lower overall compensation package. Does that comply with the President's promise that if you like what you have, you can keep it? What about the 11 million Americans, I believe it is, who have Medicare Advantage policies today who clearly are going to lose about half of that extra Medicare Advantage benefit under the Medicare cuts in the bill? If they like what they have, can they keep it? No.

What I am asking is simply that the Senate vote to require that the President's pledge in this one case be honored; namely, let's send the bill to the Finance Committee, it can be turned around in the Finance Committee overnight, take out the provisions that impose taxes on people in America earning less than \$250,000 as a family or \$200,000 as an individual and bring it back to the floor.

You will hear it said this is a killer amendment, that it will kill the bill. It will not kill the bill unless it is necessary in the bill to tax Americans to the tune of the hundreds of billions of dollars that are included in this bill. What it will do is expose that this bill cannot be claimed to be deficit neutral or to even reduce the deficit unless three things happen: the Medicare cuts of hundreds of billions of dollars are imposed; the tax increases of hundreds of billions of dollars are imposed, and the budget gimmicks are implemented.

Let me tell you about the most significant of those budget gimmicks. In order to make it so they could say this bill does not increase taxes or does not increase the deficit, the crafters of the bill have had the taxes go into effect on day one, the Medicare cuts go into effect by day one, but the subsidy program or the spending part of the bill is delayed for 4 years. So we have 10 years of revenue and 6 years of spending.

I, personally, think the way they picked 2014 to be the year in which they implement the spending part of

the bill is they said: How many years do we have to delay the spending impact until we can claim there is a deficit-neutral bill? It turned out they had to delay it for 4 years out of the 10. If it took 5, they would have delayed it 5 years. That is a budget gimmick. The reality is we all know if you have the spending go into place on day one and the taxes go into place on day one and the Medicare cuts go into place on day one and took the gimmicks out, this bill would generate a deficit, another promise the President pledged not to do.

There are so many problems with this bill. But most important today, as we will have an opportunity around 6 o'clock, is to vote to at least have the bill comply with the President's pledge.

I ask how much time remains.

The PRESIDING OFFICER. The Senator from Idaho has 3 minutes remaining.

Mr. CRAPO. Mr. President, I would like to reserve the remainder of my time, and I will hold that until later in the day.

The PRESIDING OFFICER. Who yields time? The Senator from Washington.

Ms. CANTWELL. Mr. President, I ask unanimous consent for 3 minutes out of Senator BAUCUS's time to make a statement.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington is recognized.

(The remarks of Ms. CANTWELL are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I wish to make a point. I know my colleague from Arizona wishes to engage in a brief colloquy on this point. The amendment we are offering, a bipartisan amendment dealing with the price of prescription drugs, is a very important amendment. We are going to get our vote on that, but then there is also going to be a vote on a poison pill amendment that nullifies it. It says if you pass the second amendment, it means nothing happens and prescription drug prices keep going through the roof.

I wish to say quickly there have been very few bipartisan amendments on the floor of the Senate during this health care debate. That is regrettable. This, in fact, is bipartisan. A wide range of 30 Senators, including Republicans JOHN MCCAIN, CHUCK GRASSLEY and OLYMPIA SNOWE and so on support this effort and the effort is simple, trying to put the brakes on prescription drug prices by giving the American people freedom and the ability to find competition among drug prices where they are sold in other parts of the world for a fraction of what we are charged as American consumers.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. I ask for unanimous consent to engage in a colloquy with the Senator from North Dakota.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. I think it is important for us to recognize what the Dorgan amendment is all about. It is about an estimated—according to the Congressional Budget Office, and we love to quote the Congressional Budget Office around here—\$100 billion or more in consumer savings. That is what the Dorgan amendment does.

It cuts the cost of the legislation before us as much as \$19.4 billion over 10 years. We are always talking about bending the cost curve, saving money, particularly for seniors who use more prescription drugs than younger Americans, and yet there is opposition.

I would like to ask my colleague from North Dakota, one, how long has he been fighting this issue; and, two, why in the world do we think anybody would be opposed to an amendment that would save \$100 billion for consumers?

Mr. DORGAN. We have been working on this for 10 years—myself, the Senator from Arizona, and others. He knows because he was chairman of the Commerce Committee. We held hearings on this in the committee. The fact is, we have gotten votes on it before. In each case, the pharmaceutical industry, which has a lot of muscle around here, prevailed on those votes with an amendment that is a poison pill amendment saying somebody has to certify with respect to no additional safety risk and so on.

These safety issues are completely bogus, absolutely bogus. They have done in Europe for 20 years what we are proposing to do in this country, parallel trading between countries. What we are trying to do is save the American people \$100 billion in the next 10 years because we are charged the highest prices in the world for prescription drugs, and there is no justification for it.

I want to show the Senator from Arizona one chart. This is representative. If you happen to take Nexium, for the same quantity you pay \$424 in the United States, if you were in Spain, you would pay \$36; France, \$67; Great Britain, \$41; Germany, \$37. Why is it the American consumer has the privilege of paying 10 times the cost for exactly the same drug put in the same bottle made by the same company in the same plant? Justify that.

Mr. MCCAIN. Could I also ask my friend, has he seen this chart? This chart shows that the pharmaceutical companies in America increased wholesale drug costs, which doesn't reflect the retail drug cost, by some 8.7 percent just this year, while the Consumer Price Index—this little line here, inflation—has been minus 1.3 percent.



How in the world do you justify doing that? These are lists of the increases over a year in the cost of some of the most popular or much needed prescription drugs. Why would pharmaceutical companies raise costs by some 9 percent unless they were anticipating some kind of deal they went into?

I don't want to embarrass the Senator from North Dakota, but isn't it true that the President, as a Member of this body, cosponsored this amendment?

Mr. DORGAN. That is the case. The President was a cosponsor of this legislation when he served last year. I do want to say as well the American consumer gets to pay 10 times the cost for Nexium. Nexium is for acid reflux, probably a condition that will exist with some after this vote because my understanding is, after 7 days on the floor of the Senate, there is now an arrangement by which the pharmaceutical industry will probably have sufficient votes to beat us, once again, which means the American people lose.

I also want to make this point. Anyone who stands up and cites safety and reads the stuff that has come out of a copying machine for 10 years, understand this: Dr. Peter Rost, former vice president of marketing for Pfizer, formerly worked in Europe on the parallel trading system, said:

The biggest argument against reimportation is safety. What everyone has conveniently forgotten to tell you is that in Europe reimportation of drugs has been in place for 20 years.

It is an insult to the American people to say: You can make this work in Europe for the benefit of consumers to get lower prices, but Americans don't have the capability to make this happen, don't have the capability to manage it. That is absurd. This safety issue is unbelievably bogus.

Mr. MCCAIN. Haven't we seen this movie before? The movie I am talking about is that we have an amendment or legislation pending before the body or in committee that will allow for drug reimportation, as the Senator pointed out from that previous chart, in a totally safe manner. Then there is always, thanks to the pharmaceutical lobbyists—of which there are, I believe, 635 pharmaceutical industry lobbyists, a lobbyist and a half for every Member of Congress—an amendment that then basically prohibits the reimportation of drugs.

Haven't we seen this movie before? Apparently another deal was made so that they are now going to have sufficient votes to again cost the consumers \$100 billion more in cost for the pharmaceutical drugs. Their representatives are here on the Senate floor ready to tout the virtues of an amendment which, as we all know, is a killer amendment. Let's have no doubt about that.

Mr. DORGAN. Mr. President, the Senator from Arizona is right. If this is

"Groundhog Day" for pharmaceutical drugs, the clock strikes 6 and the pharmaceutical industry wins. They have been doing it for 10 years. We just repeat the day over and over again. My hope is that we will not have to repeat it today. My hope is that after a lot of work on a bipartisan piece of legislation, the American people will have sufficient support on the floor of the Senate to say it is not fair for us to be paying double, triple and 10 times the cost of prescription drugs that others in the world are paying.

I wonder if we might be able to yield some time to the Senator from Iowa, 5 minutes, unless the Senator from Arizona wishes to conclude.

Mr. MCCAIN. My only conclusion is that what we are seeing is really what contributes to the enormous cynicism on the part of the American people about the way we do business. This is a pretty clear-cut issue. As the Senator from North Dakota pointed out, it has been around for 10 years. For 10 years we have been trying to ensure the consumers of America would be able to get lifesaving prescription drugs at a lower cost. And the power of the special interests, the power of the lobbyists, the power of campaign contributions is now being manifest in the passage of a killer amendment which will then prohibit—there is no objective observer who will attest to any other fact than the passage of the follow-on amendment, the side-by-side amendment, will prohibit the reimportation of prescription drugs into this country which we all know can be done in a safe fashion and could save Americans who are hurting so badly \$100 billion a year or more and cut the cost of the legislation before us by \$19.4 billion. To scare people, to say that these drugs that are being reimported are not done in a safe manner to ensure that the American people's health is not endangered is, of course, an old saw and an old movie we have seen before. It is regrettable that the special interests again prevail at the power of the pharmaceutical lobby.

Of the many traits the Senator from North Dakota has that I admire, one of them is tenacity. I want to assure him that I will be by his side as we go back again and again on this issue until justice and fairness is done and we defeat the special interests of the pharmaceutical industry which have taken over the White House and will take over this vote that will go at 6 o'clock. It is not one of the most admirable chapters in the history of the Senate or the United States Government.

Mr. DORGAN. Mr. President, I yield 5 minutes to the Senator from Iowa.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, we have two key votes this afternoon on drug reimportation. These votes mean that today is the day we can show the American people whether we can pass

drug importation or whether the Senate will give it lipservice and nothing else.

We have heard on the Senate floor the concerns that some have about drug importation and whether it can be safe. Everyone who knows me knows I care deeply about drug safety. The fact is, an unsafe situation is what we have today. Today consumers are ordering drugs over the Internet from who knows where, and the FDA does not have the resources, in fact, to do much of anything about it. The fact is, legislation to legalize importation would not only help to lower the cost of prescription drugs for all Americans but also should shut down the unregulated importation of drugs from foreign pharmacies, the situation we have today. The Dorgan amendment, in fact, would improve drug safety, not threaten it. It would open trade to lower cost drugs.

In 2004, my staff was briefed about an investigation that the Permanent Subcommittee on Investigations of the Senate Governmental Affairs Committee conducted. That subcommittee conducted this investigation into what we would call going on right now, current drug importation. They found about 40,000 parcels containing prescription drugs come through the JFK mail facility every single day of the year, 40,000 packages each day.

Now the JFK airport houses the largest international mail branch in the United States, but even then that is the tip of the iceberg. According to this subcommittee, each day 30,000 packages of drugs enter the U.S. through Miami, 20,000 enter through Chicago. That is another 50,000 more packages each and every day.

What is worse, about 28 percent of the drugs coming in are controlled substances. So we have a situation where we need the basic approach in this amendment to assure that imported drugs are safe. That is what the Dorgan amendment is all about, to give FDA the ability to verify the drug pedigree back to the manufacturer, to require FDA to inspect frequently, and to require fees to give the FDA the resources to do that.

The bottom line is, the Dorgan amendment gives the FDA the authority and the resources it needs to implement drug importation safely.

Certainly, the President knows that a great way to hold drug companies accountable is to allow safe, legal drug importation. I would like to quote this President not when he was a candidate for President but a candidate for the Senate. This is what President Obama said then:

I urge my opponent to stop siding with the drug manufacturers and put aside his opposition to the reimportation of lower priced prescription drugs.

Now we are hearing about the secret deal with big PhRMA. That was revised

just this week to solidify support with PhRMA's allies for killing this very important Dorgan amendment. The drug companies will stop at nothing to keep the United States closed to other markets in order to charge higher prices.

With the Dorgan amendment, we are working to get the job done. What we need is to make sure Americans have even greater, more affordable access to wonder drugs by further opening the doors to competition in the global pharmaceutical industry.

Americans are waiting. Too often this thing has been stymied, and it looks like there is another chance to stymie it. Only I am surprised. Most of the time in the past that I have been for the importation of drugs, it was my colleagues over here who were trying to stymie it. But now it looks as though it is the other side. We ought to have a vast majority for this amendment. I would be surprised. It would be a crime, if we didn't.

I yield the floor.

Mr. ROBERTS. Mr. President, I rise today to talk about prescription drug importation and patient safety. Senator DORGAN's amendment to allow for the importation of prescription drugs into the United States could have grave consequences for patient safety in America.

In a recent letter to my good friend and home State colleague Senator BROWNBACK, the Commissioner of the Food and Drug Administration, Dr. Margaret Hamburg, identified the four risks to patient safety that drug importation schemes pose: No. 1, the drug may not be safe or effective; No. 2, the drug may not be a consistently made, high quality product; No. 3, the drug may not be substitutable with an FDA-approved product; and No. 4, the drug may be contaminated or counterfeit.

That is a lot of risk to expose already-vulnerable patients to. And think about this: Malta. Cyprus. Latvia. Estonia. Slovakia. Greece. Hungary. Romania. These are just a few of the countries that could be exporting prescription drugs to the United States if the Dorgan amendment passes. As a former chairman of the Senate Intelligence Committee, I have grave concerns about the ability of these countries to adequately protect their drug supplies.

Our Food and Drug Administration, the FDA, is the gold standard for drug and product safety in the world, and even it has not been one hundred percent effective in preventing contaminated and counterfeit products from entering our supply chain. The recent scandals involving imported heparin, infant formula, and toothpaste have demonstrated the unfortunate limitations of the FDA's ability to conduct foreign inspections of food, drugs and cosmetics manufacturers abroad. If our own safety watchdog can't guarantee

our protection, how can we expect that protection from Malta or Slovakia?

There is a real risk that these countries will be vulnerable to importing drugs from countries that are known for high rates of counterfeiting. In the European Union last year, 34 million counterfeit drugs were seized at border crossings in just 2 months. The World Health Organization estimates that drug counterfeiting rates in Africa and parts of Asia and Latin America are 30 percent or more. And up to 50 percent of medicines purchased from Internet sites that conceal their address are found to be counterfeit. Do we really want an HIV or cancer patient in Ohio, or Arizona or Kansas to rely on imported medicines that may have zero effectiveness, or which may even be harmful?

According to FDA Commissioner Hamburg, the Dorgan amendment does not adequately address these potential risks. In fact, the Commissioner says that the amendment "would be logistically challenging to implement and resource intensive" and that "significant safety concerns . . . and safety issues" remain.

Senator LAUTENBERG has introduced a side-by-side amendment to Senator DORGAN's, requiring that, before any law allowing the importation of prescription drugs into the United States can become effective, the Secretary of Health and Human Services must certify that such a scheme will both pose no additional risk to the public's health and safety, AND result in a significant reduction in costs for consumers.

I think that this amendment just makes sense. We must protect the prescription drug supply in America.

Mr. LEAHY. Mr. President, making medicine affordable is part of what health reform should be. Today we have the opportunity to include a measure long-championed by Senator DORGAN, which makes affordable prescription drugs more widely available to Americans.

Americans pay some of the highest prices for prescription drugs of any country in the world despite the fact that many of these drugs are made right here, and they are often made with the benefit of taxpayer supported research. Prescription drugs are a lifeline, not a luxury. The issue boils down to access: A prescription drug is neither safe nor effective if you cannot afford to buy it.

We have to recognize that this imposes real dangers on American consumers when they cannot follow their doctor's treatment plan because they can't afford their medicine. While we must do more to bring affordable healthcare to the millions of Americans who are currently uninsured or who do not have good coverage, we cannot continue to deny them this immediate market-based solution.

I am proud to be a cosponsor of the Dorgan-Snowe amendment to allow pharmacies and drug wholesalers in the United States to import the very same medications that are FDA-approved in the United States from Canada, Europe, Australia, New Zealand, and Japan where prices are 35-55 percent lower than in the United States. Consumers will be able to purchase the very same prescription medications from their local pharmacies at a third or half of the cost. Additionally, the legislation would also allow individuals to purchase prescription drugs from FDA-inspected Canadian pharmacies—something Vermonters have crossed the border to do many times before.

For many Vermonters today, purchasing drugs from Canada literally means the difference between following their doctors' orders and having to throw the dice with their health and sometimes even with their lives by doing without their prescription medicines. It makes the difference for the woman who has maxed out her health plan's annual prescription drug benefit only three months into the year and is then faced with purchasing the other nine months worth of medicine at U.S. prices on her own. It makes the difference for the elderly man on a fixed income who is unable to afford both the heart medicine he needs to live, and the gas bill he needs to keep warm. Are we prepared to tell those in dire need that they must go back to choosing between paying gas, food, and heating bills, or their medicine?

Of course not, and I urge my fellow Senators to support the Dorgan-Snowe amendment.

Mr. ENZI. Mr. President, I rise today to talk about prescription drug importation. As my colleagues know, I oppose this proposal.

It is our job as Senators to debate the issues, put forward our ideas, and show where we stand. I was disappointed that Democratic leadership chose to prevent the Senate from voting on amendments to improve this bill for the past 6 days. I am, however, glad the impasse has finally been resolved.

I am not afraid to show where I stand on this issue. Some of my colleagues on both sides of the aisle support importation. Some, like me, oppose it. But my position is clear, and does not change with the political winds.

The winds I am referring to include the arrangement that was reportedly negotiated with the drug manufacturers. Under the terms of this backroom deal, the drug manufacturers have reportedly agreed to \$80 billion in price cuts and provided a commitment to spend \$150 million in ads supporting the Reid bill.

In exchange, Senate Democratic leadership and President Obama have reportedly agreed to block efforts to enact drug importation from Canada.

According to one Wall Street analyst's report, the Reid bill is expected

to increase drug company profits by more than \$137 billion over the next 4 years. Let's do the math on that: \$80 billion in cuts, leading to \$137 billion in increased profits.

While this may be a good deal from the drug manufacturers and Senate Democrats, it certainly is not a good deal for the American people. Part of the reported deal will actually increase Medicare costs to the taxpayer, because it creates an incentive for Medicare beneficiaries to continue using brand-name drugs.

According to the Congressional Budget Office, Federal Medicare costs will be increased by \$15 billion over the next decade as a result of this deal. In the last few days, there have been new press reports highlighting how the drug manufacturers may have agreed to provide even deeper discounts on their brand-name drugs. No one knows how much more this deal will cost the taxpayers.

In addition to increasing the price Americans will pay for the Reid bill, this deal appears to have also undermined Democratic support for a drug importation amendment.

My colleagues who believe importation is the right way to lower drug costs say that it will save the government \$19 billion and consumers \$80 billion over the next 10 years.

The majority leader has previously voted for drug importation. President Obama supported drug importation when he was in the Senate. The supporters of drug importation should be able to easily pass this amendment without any limitations.

Yet it looks like the supporters of drug importation will not succeed today. It appears likely that safety certification language, similar to language included in prior years, will be added to this proposal.

My colleagues each know where they stand on the issue. But the deal with the drug manufacturers is apparently so important that supporters of drug importation are going to vote against the proposal.

It is important for the American people to understand why there has been this change of heart on this issue. The drug manufacturers are one of the few remaining health care groups that still support the Reid bill. They have committed to spend \$150 million to buy television ads to support the Democrats efforts on health reform.

If my Democratic colleagues fail to adopt drug importation without the safety language, it is because the Senate Democratic leadership and the White House have decided they will do whatever it takes to keep the support of the drug manufacturers. They believe that the money these companies will spend will be enough to convince the American people to support their efforts.

The American people already understand that the Reid bill is not a good

deal for them. They understand how this bill will raise their taxes, increase their insurance premiums and cut Medicare benefits for millions of seniors.

That is why over 60 percent of Americans now oppose the Democratic health reform proposals. No amount of advertising, funded by the drug companies or anyone else, is going to change that reality.

Mr. LEVIN. Mr. President, it has become apparent that passage of this Dorgan amendment relative to importation of prescription drugs, an amendment which I have long supported, could threaten passage of broader health care reform. If so, the perfect would become the enemy of the good. For that reason, I will vote "no" on the Dorgan amendment on this bill.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 3156 TO AMENDMENT NO. 2786

(Purpose: To provide for the importation of prescription drugs)

Mr. LAUTENBERG. Mr. President, I offer time to my colleague from New Jersey, Senator MENENDEZ—up to 11 minutes.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, I appreciate my distinguished senior colleague from New Jersey yielding time. I know he is going to call up his amendment shortly, and that is what I want to speak to.

Mr. President, before I get to the core of my remarks, I want to tell my colleague who left the floor, I was tempted to rise under rule XIX that says:

No Senator in debate shall, directly or indirectly, by any form or words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

I could impute, if I wanted to, I guess, that maybe there are some who really do not care about this plan as much as they care about killing health care reform, but I would not do that. I would not do that. So I hope in the context of the debate I am not forced to rise under rule XIX.

Mr. President, I rise in favor of the amendment of Senator LAUTENBERG, who is going to offer it shortly, because it does two things that underscore the entire debate about health care reform: It protects the American people by putting the safety of families first—and there is a lot of brushing aside of safety here; safety is paramount; safety is paramount—and it lowers costs. At its core, that is what this health care debate is all about.

I appreciate the intentions of the amendment that has been offered on the floor, but in my view it is regressive. It harkens back to a time when the lack of sufficient drug regulation allowed people to sell snake oil and magic elixirs that promised everything

and did nothing. To allow the importation of untested, unregulated drugs made from untested and unregulated ingredients from 32 countries into the medicine cabinets of American families without serious safety precautions flies in the face of protecting the American people, and it is contrary to the context of health care reform.

The amendment by Senator LAUTENBERG brings us around to the real purpose of why we have been here on the floor, which is to create the type of reform that ultimately gives greater health insurance and greater safety to the American people.

They care about honest, real reform that makes health care affordable and protects American families, protects them from the potential of counterfeit drugs that promise to cure but do absolutely nothing, just as we are here to protect them from insurance policies that promise to provide health care for a premium and then deny coverage and provide no health care at all.

Basically, what Senator LAUTENBERG's amendment is going to do is modify the Dorgan amendment to allow reimportation but to do it when basic safety concerns to keep our prescription medications safe are complied with. It includes the Dorgan importation amendment but adds one fundamental element of broader health care reform: It protects the American people from those who would game the system for profits at the expense of the health and safety of American families. That is what this reform is all about. Specifically, when it comes to the importation of prescription medication, this amendment will help us be sure that what we think we are buying in the bottle is, in fact, what is in that bottle.

I want to make reference to a letter. We talk about safety, and there is a lot of pooh-poohing that, oh, there are no safety concerns. Well, there is one entity in this country that is responsible for safety when it comes to food and drugs, and it is called the FDA, the Food and Drug Administration. In a letter from FDA Commissioner Hamburg, she mentions four potential risks to patients that, in her opinion, must be addressed:

First, she is concerned that some imported drugs may not be safe and effective because they were not subject to a rigorous regulatory review prior to approval.

Second, the drugs "may not be a consistently made, high quality product because they were not manufactured in a facility that complied with appropriate good manufacturing practices."

Third, the drugs "may not be substitutable with the FDA approved products because of differences in composition or manufacturing . . ."

Fourth, the drugs simply "may not be what they purport to be" because inadequate safeguards in the supply

chain may have allowed contamination or, worse, counterfeiting.

It addresses FDA Commissioner Hamburg's statement about the amendment of my colleague from North Dakota:

that there are significant safety concerns related to allowing the importation of non-bio-equivalent products, and safety issues—

“Safety issues”—

related to confusion in distribution and labeling of foreign products and the domestic product that remain to be fully addressed in the amendment.

Senator LAUTENBERG's amendment addresses this concern. It allows importation, but it protects the American people by requiring that before any drug is imported to the United States, it must be certified to be safe and to reduce costs. So it does what the FDA Commissioner is talking about here, the agency responsible for protecting the American people. People may just want to not believe it, they may want to ignore it, but the fact is, this is the entity responsible in this country to protect the food supply and the drug supply.

We want to be as certain as we possibly can be of the conditions under which imported drugs are manufactured, that they are safe to use and we know where their ingredients originated before they are imported. We want to be absolutely certain patients are getting the prescription medications that are the same in substance, quality, and quantity that their doctor has prescribed. This amendment requires the Secretary of Health and Human Services to certify that all imported drugs are safe and will reduce costs before they are allowed into America's medicine cabinets.

I have heard a lot about the European Union here. Well, let's look at what the European Union is now saying. They are constantly being offered on the floor for the reason why, in fact, we should follow what the European Union is saying. Well, let's see what happens if we allow unregulated importation. Let's look at the European Union.

Last week, the European Union Commissioner in charge of this issue said:

The number of counterfeit medicines arriving in Europe . . . is constantly growing. The European Commission is extremely worried.

In just two months, the EU seized 34 million—

Hear me: “million”—

fake tablets at customs points in all member countries. This exceeded our worst fears.

I do not want American families to see those fears come to life here. I believe that if we do not pass the Lautenberg amendment and if we were to pass the Dorgan amendment, we would open the floodgates. The European Union's experience only proves my concerns, not alleviates them as the other side would suggest.

Here is the problem: a \$75 counterfeit cancer drug that contains half of the

dosage the doctor told you you needed to combat your disease does not save Americans' money and certainly is not worth the price in terms of dollars or risk to life.

Let's not now open our national borders to insufficiently regulated drugs from around the world. It seems to me real health reform—particularly for our seniors and those who are qualified under the Medicare Program who receive their prescription coverage under that—comes by filling the doughnut hole in its entirety, which we have declared we will do in the conference, as we are committed to do, that provides for the coverage of prescription drugs that AARP talks about on behalf of its millions of members. That is what we want to see—not by unregulated reimportation.

We should have no illusions, keeping our drug supply safe in a global economy, in which we cannot affect the motives and willingness of others to game the system for greed and profit, will be a monumental but essential task. It will require a global reach, extraordinary vigilance to enforce the highest standards in parts of the world that have minimum standards now, so we do not have to ask which drug is real and which is counterfeit.

Let me just show some examples of those. People say: Oh, no, this safety issue is not really the case.

Tamiflu. We saw a rush, when the H1N1 virus came. People wanted to buy Tamiflu. As shown on this chart, which is the real one and which is the counterfeit one? There actually is one that is approved and one that is counterfeit, but the average person would not know the difference. Or if it is Aricept, a drug to slow the progression of Alzheimer's disease, which one is the real one and which one is the counterfeit one? If I did not tell you from the labels, you probably would not know, but there is an approved one and there is a counterfeit one. As someone who lost his mother to Alzheimer's, I can tell you that having the wrong drug in the wrong dosage would not have helped her slow the progression of her illness. It makes a difference.

Let's look at others. Lipitor; very important. You are walking around with a real problem with cholesterol, and you think you are taking the appropriate dosage and the appropriate drug. But, as shown on this chart, which is the real one and which is the counterfeit one? There is a counterfeit one and there is an approved one, a real one, but if you are taking the counterfeit one and you think you are meeting your challenges, you might have a heart attack as a result of not having the real one. By the time you figure it out, it could be too late to reverse the damage. That is the problem. That is the global economy opening up possibilities at the end of the day.

Mr. President, I ask the Senator from New Jersey for an additional minute.

Mr. LAUTENBERG. Mr. President, I yield 1 more minute to the Senator.

Mr. MENENDEZ. Finally, this is a gamble we cannot afford to take: To open up the potential for these drugs—or the ingredients used in these drugs—to find their way from nation to nation, from Southeast Asia, where the problem is epidemic, to one of the 32 nations listed in this amendment and then into the homes of American families. That is a gamble we cannot take. That is not about protecting our citizens. That is not about providing prescription drugs that ultimately meet the challenge of a person's illness. Filling the doughnut hole totally, which is what we are going to do, is the way to achieve it.

So I do hope that is what we will do. I do hope we will adopt Senator LAUTENBERG's amendment and defeat the Dorgan amendment, for I fear for the safety of our citizens, and I fear as to whether we can ultimately achieve filling that doughnut hole if this amendment, ultimately, gets adopted, and I fear what that means for health care reform at the end of the day.

With that, Mr. President, I yield back the remainder of my time and thank the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I call up amendment No. 3156—it is at the desk—and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself, Mr. CARPER, and Mr. MENENDEZ, proposes an amendment numbered 3156 to amendment No. 2786.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in the RECORD of Thursday, December 10, 2009, under “Text of Amendments.”)

Mr. LAUTENBERG. Mr. President, I rise today because one thing we have to do as we progress with this health care reform bill is to make sure prescription medicine in our country is safe and affordable. I thank my colleague from New Jersey for his excellent review of the conditions that cause us to add this amendment to Senator DORGAN's amendment that would allow potentially unsafe prescription drugs to be shipped across our borders and directly into the medicine cabinets of homes throughout America.

I want to be clear, the effect of this plan Senator DORGAN has offered could be catastrophic. That is why President Obama's administration has written to the Congress expressing its serious concerns with the Dorgan amendment.

I appreciate the efforts to try to lower prescription drug prices. After

all, that is what we are doing with the whole health reform review—trying to get costs reduced so everyone can have safe and affordable health care. We want to make sure people do not harm their health with any shortcuts.

We all want Americans to stay healthy and still have some money left in their pockets. But as much as we want to cut costs for consumers, we cannot afford to cut corners and risk exposing Americans to drugs that are ineffective or unsafe.

The fact is, this is a matter of life and death. The European Commission just discovered that counterfeit drugs in Europe are worse than they feared. In just 2 months—and I know Senator MENENDEZ made reference to this as well—the EU seized 34 million fake tablets, including antibiotics, cancer treatments, and anticholesterol medicine.

As the industry commissioner of the EU said:

Every faked drug is a potential massacre. Even when a medicine only contains an ineffective substance, this can lead to people dying because they think they are fighting their illnesses with a real drug.

Americans buy medicine to lower their cholesterol, fight cancer, and prevent heart disease. Imagine what would happen to a mother or a child if they start relying on medicine imported from another country only to find out years later that the drug was a fake. Imagine the heartbreak that might ensue if the medicine Americans were taking was found to be harmful. The fact is that drugs from other countries have dangerously high counterfeit rates and importation could expose Americans to those drugs.

Under the Dorgan amendment, drugs would be imported from former Soviet Union countries where the World Health Organization estimates that over 20 percent of the drugs are counterfeit. Under the Dorgan amendment, drugs that originate in China could find their way into our homes. We know that China has been the source of many dangerous products in recent years, from toys laced with lead to toothpaste made with antifreeze.

If we are going to trust drugs from other countries, we need to be absolutely certain we are not putting Americans' lives at risk. That is why the Food and Drug Administration went on record to express its concerns with the Dorgan amendment. They say:

There are significant safety concerns related to allowing the importation of non-bio-equivalent products, and safety issues related to confusion in distribution and labeling of foreign products and the domestic product that remain to be fully addressed in the amendment.

That is from the FDA Commissioner Margaret Hamburg.

There are problems associated with the possibility of drugs coming to this country that are way different than that which is expected to be used in the treatment of sickness.

President Obama's FDA Commissioner also wrote and said that importing drugs presents a risk to patients because the drug may not be safe and effective, may not have been made in a facility with good manufacturing practices, and may not be the drug it claims to be.

In light of the serious concerns raised by the Obama administration, I am offering an amendment to require that the Department of Health and Human Services certify that the drugs are safe and will reduce costs before they are imported. My amendment is a commonsense bipartisan alternative to the Dorgan amendment. In fact, it is the exact same language as the Dorgan importation amendment, but with the certification requirement that is so important to ensure safety.

If we are going to allow the importation of drugs from other countries, we have to be certain they are safe and affordable. With this amendment, I would be in support of the Dorgan amendment. Only certification by health experts will provide that assurance. I urge my colleagues to support my amendment and oppose the Dorgan amendment.

We have no way of knowing what the working conditions might be like in a plant or a facility, or the sanitary conditions, in other countries, or whether in the process of packing and shipping temperatures might not be appropriate for the product to arrive without deterioration. Thusly, again, I stress—bring in what you want, just make sure it is safe for the people. There is no moment in the discussion we have had about the health care reform bill that says, Look, you can save money by taking a chance on a shortcut here or a shortcut there. Absolutely not. We wouldn't think of proposing anything such as that, and we ought not to be proposing it here now.

I yield 5 minutes to my colleague from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. HAGAN. Mr. President, I rise today to speak about drug reimportation. With millions of seniors balancing drug regimens that entail taking several medicines per day on a fixed income, I believe we need to find a way to ensure that they have access to affordable drugs. If we could reduce the cost of drugs with reimportation and guarantee the safety of those drugs, I would be very supportive. However, I have serious doubts that we can adequately ensure the safety of our drug supply with the drug reimportation amendment proposed by my colleague from North Dakota.

Even without reimportation, the United States has had trouble with counterfeit drugs. At the height of the H1N1 epidemic this fall, the FDA was warning consumers to be wary of counterfeit H1N1 treatments. These coun-

terfeits came from foreign online pharmacies. In one instance, the FDA seized so-called H1N1 treatment tablets from India and found them to contain talc and acetaminophen. Last month, the Washington Post reported on a coordinated global raid of counterfeit drugs from the United States to Europe to Singapore. The United States discovered about 800 alleged packages of fake or suspicious prescription drugs, including Viagra, Vicodin, and Claritin, and shut down 68 alleged rogue online pharmacies.

Counterfeit pharmaceutical drugs are appearing on the market at increasingly alarming rates. In 2007, drugs comprised 6 percent of the total counterfeit product seizures. In 1 year, they have now jumped to 10 percent of all counterfeit product seizures.

This growing problem is all about unscrupulous criminals preying on the sick and the elderly who are in desperate need of cheaper drugs. But the consequences are harmful and, in some cases, deadly.

Officials estimate that some of these counterfeit drugs contain either a dangerous amount of active ingredients or were placebos. Some counterfeits include toxic chemicals such as drywall material, antifreeze, and even yellow highway paint.

According to a recent Washington Post article, tracing the origins of drugs such as Cialis and Viagra took investigators across the globe and back again. Supposedly these drugs came from a warehouse in New Delhi, though the online company selling the drug was headquartered in Canada and was licensed to sell medicine in Minnesota. However, when Federal officials investigated the drug origins further, they actually found that the online Web site was registered in China, its server was hosted in Russia, and its headquarters had previously been listed in Louisiana.

On a local level near our capital, the Baltimore Sun yesterday reported on the death of a University of Maryland pharmacologist, Carrie John. Ms. John suffered an allergic reaction to a counterfeit version of a legal drug in the United States but purchased illegally from the Philippines. Apparently, the counterfeit drug so closely resembled the legal version that two pharmacologists conducting the analysis after Ms. John's death could not tell the difference. Local police have yet to identify the contents of the counterfeit drug.

A few of my colleagues have already mentioned the letter sent last week by FDA Commissioner Margaret Hamburg outlining the safety concerns the FDA has about reimportation. Specifically, the FDA stated that importing non-FDA-approved prescription drugs posed four potential risks to patients. Let me go over those four risks.

No. 1: The drug may not be safe and effective because it did not undergo the

rigorous FDA regulatory review process.

No. 2: The drug may not be a consistently made, high quality product because the facility in which it was manufactured was not reviewed by the FDA.

No. 3: The drug may not be substitutable with the FDA-approved product because of differences in composition or manufacturing.

No. 4: The drug could be contaminated or counterfeit as a result of inadequate safeguards in the supply chain.

If the agency that oversees drug safety is saying it would have difficulty guaranteeing the safety of our Nation's drug supply with reimportation, I have grave concerns, particularly since the FDA is already underfunded and understaffed.

But let's take a moment to examine how Europe, which does allow reimportation, has fared in terms of safety.

British authorities say counterfeit drugs often exchange hands between middlemen and are repackaged multiple times before reaching a legitimate hospital or pharmacist. This creates opportunities for counterfeit products, often produced in China and shipped through the Middle East, to penetrate the European market.

The PRESIDING OFFICER. The Senator has used her 5 minutes.

Mrs. HAGAN. Mr. President, I ask unanimous consent for 3 additional minutes.

Mr. LAUTENBERG. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HAGAN. In 2008, British authorities identified 40,000 doses of counterfeit Casodex, a hormone treatment for men with advanced prostate cancer, and Plavix, a blood thinner.

More recently, the European Union seized 34 million fake tablets at customs points in all member countries. In other countries around the world, the World Health Organization estimates that up to 30 percent of the medicines on sale may be counterfeit. As a result, numerous people have died.

Earlier this year, 80 infants in Nigeria died from teething medicine that contained a toxic coolant. In July, 24 children in Bangladesh died from the consumption of poisonous acetaminophen syrup.

The Dorgan amendment does not require imported drugs to be FDA approved or meet FDA misbranding standards. Furthermore, it does not prevent criminals in other countries from repackaging imported drugs.

Although our safety system is not perfect, we have a thorough FDA review system for drug safety that actively involves physicians, pharmacists, and patients. As a result, Americans can be generally confident that our medications are safe and contain the ingredients on the bottle.

Supporters of reimportation argue that the sick and elderly need an alternative way to obtain affordable drugs. However, a study by the London School of Economics found that in the European Union, middlemen reaped most of the profits with relatively little savings passed down to the consumer. Nothing in the Dorgan amendment requires the savings to be passed on to the consumer, leaving the door wide open for unscrupulous, profit-seeking third parties to get into the reimportation game.

In the United States, we are already trying to reduce the cost of prescription drugs through the use of generics. This is one of the most effective ways for customers to reap savings, and the generic dispensing rate at retail pharmacies is close to 65 percent. The FDA is already working with stakeholders to develop drug reimportation policy. With the FDA looking into this and significant outstanding safety concerns, I cannot in good conscience support the amendment offered by my colleague from North Dakota. Instead, I will support the amendment offered by my colleague from New Jersey. The Lautenberg amendment will allow the importation of drugs only if the Secretary of Health and Human Services certifies that doing so would save money for Americans and would not adversely affect the safety of our drug supply.

While it is critical that all Americans, especially our Nation's seniors, have access to affordable drugs, it is imperative that we not compromise the safety of U.S. drugs on the market. After all, what good are cheap drugs if they are toxic or ineffective?

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I believe my colleague from North Dakota intends to make further remarks. How much time do we have on our side, please?

The PRESIDING OFFICER. The Senator from New Jersey controls 13 minutes.

Mr. LAUTENBERG. Thirteen minutes.

Mr. President, if Senator DORGAN is here, then we are trying to accommodate a colleague who wishes to speak on this. How much time is left on the Dorgan side?

The PRESIDING OFFICER. The Senator from North Dakota has 28 minutes remaining.

Mr. LAUTENBERG. Mr. President, we heard about what is happening in the EU having to do with the question of whether drugs are counterfeit and the serious consequences of having people take medication that is not what it is supposed to be—the consequences of something like that, especially interlarded with other products.

There was a news report last week that was printed in Yahoo News. They quote the Industry Commissioner of the European Union—the program in Europe that controls drug safety or at least attempts to. We see that the European Union has expressed concern about the situation they see there. The Commissioner, Mr. Verheugen, said he expected the EU to take action to fight the menace of fake pharmaceuticals. Then he said he thought the EU would agree, in 2010, that a drug's journey from manufacture to sale should be scrutinized carefully and there will be special markings on the packages.

There is a lot of concern about this, and we ought not to dash willy-nilly through here without understanding what the consequences of fake medication might be. I wish to see our people pay as little as they can to get the medicines they need. Part of that has to include a safety factor. As I said earlier, we would not suggest anything in the health reform bill that would take a shortcut and disregard safety. I have a letter that was sent from the Department of Health and Human Services, which I quoted a little bit ago. They say the letter is being sent on the amendment filed by Senator DORGAN. The administration supports this program, which I agree to, to buy safe and effective drugs from other countries and included \$5 million in our 2010 budget.

They go on to say—and this is from the Commissioner of Food and Drugs—that:

Importing non-FDA-approved prescription drugs presents four potential risks to patients that must be addressed: (1) the drug may not be safe and effective because it was not subject to a rigorous regulatory review prior to approval; (2) the drug may not be consistently made, high quality product because it was not manufactured in a facility that complies with appropriate good manufacturing practices; (3) the drug may not be substitutable with the FDA-approved product because of differences in composition or manufacturing; and (4) the drug may not be what it purports to be, because it has been contaminated or is a counterfeit due to inadequate safeguards in the supply chain.

I ask unanimous consent that this letter, sent to Senator TOM CARPER, from the Department of Health and Human Services, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION,

*Silver Spring, MD, December 8, 2009.*

Hon. TOM CARPER,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR CARPER: Thank you for your letter requesting our views on the amendment filed by Senator Dorgan to allow for the importation of prescription drugs. The Administration supports a program to allow Americans to buy safe and effective drugs from other countries and included \$5



million in our FY 2010 budget request for the Food and Drug Administration (FDA or the Agency) to begin working with various stakeholders to develop policy options related to drug importation.

Importing non-FDA approved prescription drugs presents four potential risks to patients that must be addressed: (1) the drug may not be safe and effective because it was not subject to a rigorous regulatory review prior to approval; (2) the drug may not be a consistently made, high quality product because it was not manufactured in a facility that complies with appropriate good manufacturing practices; (3) the drug may not be substitutable with the FDA-approved product because of differences in composition or manufacturing; and (4) the drug may not be what it purports to be, because it has been contaminated or is a counterfeit due to inadequate safeguards in the supply chain.

In establishing an infrastructure for the importation of prescription drugs, there are two critical challenges in addressing these risks. First, FDA does not have clear authority over foreign supply chains. One reason the U.S. drug supply is one of the safest in the world is because it is a closed system under which all the participants are subject to FDA oversight and to strong penalties for failure to comply with U.S. law. Second, FDA review of both the drugs and the facilities would be very costly. FDA would have to review data to determine whether or not the non-FDA approved drug is safe, effective, and substitutable with the FDA-approved version. In addition, the FDA would need to review drug facilities to determine whether or not they manufacture high quality products consistently.

The Dorgan importation amendment seeks to address these risks. It would establish an infrastructure governing the importation of qualifying drugs that are different from U.S. label drugs, by registered importers and by individuals for their personal use. The amendment also sets out registration conditions for importers and exporters as well as inspection requirements and other regulatory compliance activities, among other provisions.

We commend the sponsors for their efforts to include numerous protective measures in the bill that address the inherent risks of importing foreign products and other safety concerns relating to the distribution system for drugs within the U.S. However, as currently written, the resulting structure would be logistically challenging to implement and resource intensive. In addition, there are significant safety concerns related to allowing the importation of non-bioequivalent products, and safety issues related to confusion in distribution and labeling of foreign products and the domestic product that remain to be fully addressed in the amendment.

We appreciate your strong leadership on this important issue and would look forward to working with you as we continue to explore policy options to develop an avenue for the importation of safe and effective prescription drugs from other countries.

Sincerely,

MARGARET A. HAMBURG,  
*Commissioner of Food and Drugs.*

Mr. LAUTENBERG. Mr. President, I will now suggest the absence of a quorum and ask unanimous consent that it be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Reserving the right to object, Mr. President. You can't do

that to us because we only have 8½ minutes left on our side.

Mr. LAUTENBERG. You have considerably more based on—

Mr. GRASSLEY. We only have 8½ minutes.

Mr. DORGAN. Mr. President, I ask the Senator to withhold his request for a quorum.

Mr. LAUTENBERG. Yes, I withdraw the request.

Mr. DORGAN. Mr. President, back in the mid-1800s, when Lincoln and Douglas were having their famous debates, at one point Lincoln was exasperated because he could not get Douglas to understand something he was saying. He said to Douglas: Listen, how many legs does a horse have? Douglas said: Four, of course. Lincoln said: If you call the tail a leg, how many legs would he have? Douglas said: Five. Lincoln said: There is where you are wrong. Simply calling a tail a leg doesn't make it a leg at all.

Yes, that is exactly what my colleagues have done, suggesting the amendment we are offering is for untested, unregulated drugs. It is not true. The only drugs we are talking about are FDA-approved drugs that are made at an FDA-inspected plant, part of a chain of custody equal to the U.S. chain of custody. It is simply not true that we are talking about untested, unregulated drugs. That is not true. Simply saying that doesn't make it true.

Here is why we are on the floor of the Senate. We are reforming health care. That is what the bill is. Part of health care is prescription drugs. A lot of people take prescription drugs to keep them out of a hospital bed. It manages their disease. Prescription drugs are very important.

Here is what happened to the prices year after year. As you can see on this chart, the rate of inflation is in yellow and the prescription drug prices are in red. This year alone, it is up 9 percent, at a time when inflation is below zero.

Well, why do we want to be able to access the same FDA-approved drug where it is sold elsewhere at a fraction of the price? Because the American people will pay in the next decade—if we don't pass this legislation—\$100 billion in excess prescription drug prices. If you need to take Nexium for acid reflux—maybe after this vote we will all need it. But if you are going to buy Nexium, it costs \$424 for an equivalent quantity in the United States. You can buy it for \$41 in the UK, \$36 in Spain—but it is \$424 here. Sound fair? Not to me.

Lipitor is the most popular cholesterol-lowering drug in the world. It is \$125 in the United States for an equivalent quantity. You get the same thing for \$40 in the UK or one-third of the price. It is \$32 in Spain, one-fourth the price. It is \$33 in Canada. The American people get to pay triple or quadruple the price. By the way, it comes in

these bottles. I ask unanimous consent to use the bottles.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. They both contained Lipitor that is made in Ireland by an American corporation. They have different colored labels, but they are made in the same plant, FDA approved, and they are sent to different places—this one to Canada and this one to the United States. But we have the privilege of paying triple the price. Sound fair? Not to me it doesn't.

Here is a sample. Boniva, for osteoporosis, is up 18 percent this year. Singulair, for asthma, is up 12 percent. Enbrel, for arthritis, is up 12 percent. Here is Plavix—the list goes on.

The question is, Is there something we ought to do about this or should we say let's pass health care reform and ignore what is happening to the price of prescription drugs? This amendment I offered, along with Senators McCain and GRASSLEY and other colleagues on this side—30 cosponsors—is all about freedom for the American people. If this is a global economy, how about giving the American people the freedom to access identical prescription drugs, which we know are identical because we require safety if it doesn't even exist in our own supply. Those who talk about safety, I remind them 40 percent of the active ingredients in prescription drugs of the United States come from India and China—from places that have never been inspected.

The Wall Street Journal did terrific expose about this. There were over 60 people who died from Heparin in this country. It was contaminated. Here is where they were making it. This picture was in the investigation. Here is a rusty old pot being stirred with a limb from a tree. Those are active ingredients for American drugs. This guy is working with pig intestines—guts from a hog. This old man here, with a wooden stick—it looks unsanitary doesn't it? That is the source of Heparin. These are the photographs by the Wall Street Journal investigative reporter. They are telling us FDA-approved drugs coming from other countries, with a chain of custody identical to ours, would pose some sort of threat. Are you kidding? You can make that charge without laughing out loud?

Let's talk about the existing drug supply for a moment. This is a young man named Tim Fagan. He was a victim of counterfeit domestic drugs in this country—not imported FDA-approved drugs. Do you know where this guy's drug came from? Here is the report done on that. It is made by Amgen. It went through all these places. It ended up at a place called Playpen, which is a south Florida strip club—in a cooler in the back room of a south Florida strip club. At one point it was stored in car trunks. Finally, it was prescribed and administered to



this young man named Tim Fagan. He survived, but he was getting medicine with one-twentieth the necessary strength for a serious disease that his doctor intended for him.

Don't talk to me about the issue of prescription drug safety. We are talking about safety that doesn't now exist in the domestic drug supply, but safety standards are included in this amendment. Every drug should have a pedigree to track where it came from and, in every respect, between manufacture and consumption. There ought to be batch lots and tracers for every drug. There ought to be pedigree for the domestic drug supply as well.

I wish to quote a former vice president of Pfizer Corporation, a prescription drug manufacturer, Dr. Peter Rost:

Right now, drug companies are testifying that imported drugs are unsafe. Nothing could be further from the truth.

This is from a vice president of one of the major drug companies—"nothing can be further from the truth." He was fired, to be sure. You can't say that if you are working for a drug company. Their business is to try to keep the pricing strategy the way it is.

I might say, I don't have a beef with the drug industry. I have a beef with their pricing policy that says we will sell the same drug everywhere in the world at a fraction of the price we charge the American consumer. How do you make that stick? By a sweetheart deal in law that says the American consumer cannot import the drug. The Spanish can import drugs from Germany. The French can import drugs from Italy. But the American consumer is told you don't have the freedom to shop for that same FDA-approved drug—approved because the place where it is produced is inspected by the FDA, in a country with an identical chain of custody, but the U.S. consumer doesn't have the freedom to make that purchase.

If I might, Dr. Peter Rost, the same guy just I quoted, said:

During my time responsible for a region in northeastern Europe, I never once—not once—heard the drug industry, regulatory agencies, the government, or anyone else say this practice was unsafe, and I personally think it is outright derogatory to claim that the Americans would not be able to handle the reimportation of drugs, when the rest of the educated world can do this.

Dr. Peter Rost also said:

The biggest argument against reimportation is safety. What everyone has conveniently forgotten to tell you is that, in Europe, reimportation of drugs has been in place for 20 years.

Hank McKinnell, a former Pfizer CEO, said:

Name an industry in which competition is allowed to flourish—computers, telecommunications, small package shipping, retailing, entertainment, and I'll show you lower prices, higher quality, more innovation, and better customer service. There is

nary an exception. OK, there is one. So far, the health care industry seems immune to the discipline of competition.

Nowhere is that more evident with respect to pharmaceutical drugs.

The question today is, Will we once again offer a prescription drug importation bill that will save consumers and the Federal Government \$100 billion; that contains safety standards that do not exist even in the domestic drug supply; that will not pose risk but, in fact, reduces risk, reduces prices for the American people, provides fair pricing for American consumers? Will we be able to vote for that legislation that I and Senator MCCAIN, Senator GRASSLEY, Senator STABENOW, Senator KLOBUCHAR, and so many others have brought to the floor of the Senate? The answer is, yes; we are going to vote on that.

The question is, In the 7 days since I have offered this amendment, has the pharmaceutical industry been able to pry enough people away from this amendment because they are raising all kinds of issues of safety?

How many votes will we get? By the way, the side-by-side amendment is a killer amendment. We will have a second vote. A lot of people will say: We will vote for the Dorgan amendment and then vote to nullify it by voting for the Lautenberg amendment.

Let me read the AARP letter which was sent yesterday:

On behalf of the AARP's nearly 40 million members, we urge you to support the Dorgan-Snowe importation amendment to . . . H.R. 3590, the Senate health care reform legislation. This amendment provides for the safe, legal importation of lower-priced prescription drugs from abroad. CBO has scored the amendment as saving taxpayers more than \$19 billion.

That is just for the Federal Government. There is much more for consumers.

We also urge you to vote against an alternative importation amendment proposed by Senators Lautenberg, Carper, and Menendez. AARP strongly opposes this amendment because it includes the unnecessary addition of a certification requirement which is simply a thinly veiled effort to undermine importation and preserve the status quo of high drug prices.

So there it is. We are always told this bill is a finely crafted piece; it is like embroidering with some sophisticated colors. This is a finely crafted piece and don't mess with it because if you adopt your amendment, somehow the whole thing is going to come apart. It is like pulling a thread on a cheap suit. You pull the thread and an arm falls off. God forbid anybody should adopt an amendment such as this.

Here we are 7 days after I offered this amendment, and we have a circumstance where we now have a side-by-side in order to try to nullify it. We have had all kinds of dealing going on. I have not been a part of it. I don't know what the deals are. I don't know

what time they were consummated. Somebody told me late last night. I am like an old Senator who served long ago. I am not part of any deal. I am not part of it. This deal is for the American people.

We are going to pass some health care legislation, and then we are going to shuffle around with our hands in our pockets, maybe thumbing our suspenders, sticking out our shined shoes, and say: We did this all right. We feel really good about it, but we couldn't do a thing about prescription drug prices. We couldn't do that. We didn't have the support because the pharmaceutical industry wouldn't let us. Oh, really? Maybe at last—at long, long last—there will be sufficient friends on this vote on behalf of the American people to say: We stand with the consumer. We are standing with the American consumers today. We like the pharmaceutical industry. We want them to produce prescription drugs. We want them to make profits. We just don't want them to charge us 10 times, 5 times, 3 times, or double what is being charged others in the world for the identical prescription drug because we don't think it is fair to the American people.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 13½ minutes.

Mr. DORGAN. Mr. President, let me at this point yield the floor. I suggest the absence of a quorum. I don't know whether the Senator from New Jersey has other speakers. I believe we have a couple other speakers who will be here. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I ask unanimous consent that the quorum call be charged against both sides.

The PRESIDING OFFICER. Is there objection?

Mr. LAUTENBERG. Mr. President, there was an objection to having the time equally divided expressed by the Senator from Iowa before.

How much time is available on our side, Mr. President?

The PRESIDING OFFICER. The Senator from New Jersey has 7 minutes.

Mr. LAUTENBERG. Seven?

The PRESIDING OFFICER. Yes, 7 minutes.

Mr. LAUTENBERG. Mr. President, I, too, have people who want to speak to the issue. If we can equally divide the quorum call, that is all right with me. I have no objection.

Mr. DORGAN. I believe the quorum call will be momentary. We have people coming to speak. If not, I will take some additional time, as perhaps will

the Senator from New Jersey. I suggest the absence of a quorum and ask unanimous consent that it be charged to all sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I did not speak about the letter from the Food and Drug Administration. My colleagues have described this letter, which I said could have come out of a copying machine. A similar letter has come each time we consider this legislation. It is interesting to me that we export a lot of American jobs. All kinds of jobs are leaving our country. Then we import contaminated wallboard, children's toys that kill kids. And, yes, that has happened. We import contaminated pet food and contaminated toothpaste. We import 85 percent of the seafood into this country every day—85 percent of the seafood—and 1 percent is inspected, by the way. One percent of that seafood is inspected. The rest is not.

We import fruits and vegetables. I am wondering if the Food and Drug Administration is sending letters around with concern about the risk to health of fruits and vegetables and seafoods that are not inspected.

In many places, these products are produced with insecticides and various things that would not be permitted in this country. I am wondering where the FDA's letter is with respect to that.

I called the Food and Drug Administration. I talked with the head of the FDA. I said: I understand there are rumors around that you are going to send a letter here. This was 24 hours before the letter came.

The head of the FDA said: I know nothing of such a letter.

My question is, Where did the letter come from? Who prompted the letter? I think I know.

I find it interesting, I don't see anybody at the FDA sending letters here about the issue of safety on fruits, vegetables, and fish. They raise the issue of safety with respect to a drug importation bill which has the most specific and the most rigorous safety standards not only for imported drugs but for the existing domestic drug supply, the kind of safety standards that the pharmaceutical industry has objected to for many years.

Mr. LAUTENBERG. Will the Senator yield for a question?

Mr. DORGAN. Of course, I will be happy to yield.

Mr. LAUTENBERG. I know Senator DORGAN very well. He is a man of great principle and skill, I might say. But I

say the list of aberrations, the lack of care about the various products—the toys, wallboards, and food—I have had a great interest in those items. It is interesting that it is being suggested by the Senator from North Dakota that is an acceptable standard and we ought to go ahead and continue it.

Mr. DORGAN. The Senator is not asking a question. I yielded to the Senator for a question. If he would truncate it, I would appreciate it.

Mr. LAUTENBERG. The question is whether, if you think that casual standard for bringing in food and other products is acceptable—

Mr. DORGAN. Reclaiming my time.

Mr. LAUTENBERG.—therefore, we ought to do the same with drugs?

Mr. DORGAN. Reclaiming my time, the answer is self-evident by the question. Of course, we would benefit from stricter standards for fish, vegetables, and fruits. That was the point I was making. But what we have done with respect to importation of prescription drugs is we have included batch lots and pedigrees and tracers that do not exist in the existing drug supply. Why? The existing drug supply does not have those provisions because they have been objected to over the years by the pharmaceutical industry.

We have put in place procedures that will make this safe. You cannot say the same thing about fruits, vegetables, and seafood, unfortunately. A lot of work needs to be done there. But we do not bring a bill to the floor of the Senate, a bipartisan group of legislators, a bill that would in any way injure or provide problems with respect to safety.

What we do is bring to the floor of the Senate legislation that dramatically enhances the margin of safety for prescription drugs. But I understand, I understand completely. If I were trying to protect, and I were the drug industry trying to protect billions, boy, I understand the exertion of effort to try to protect that.

My only point is this: I have a beef with an industry that decides they are going to overcharge the American people, in some cases 10 times more, in some cases 5, double the price that is paid in other parts of the world for the identical drug. I don't think that is fair, and I don't think we should allow it to continue. The way to prevent it is to give the American people the freedom—every European has that freedom.

Let me end with how I began. For somebody to come out here and say this is about unregulated, untested drugs is absolute sheer nonsense. It is not. We do not have to debate what words mean and what words say. That is not a debate we ought to take time to have. All we have to do is read it and then represent it accurately, which has not been the case on the floor of the Senate, regrettably.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, is it the case when a quorum call is requested it is equally charged?

The PRESIDING OFFICER. No.

Mr. DORGAN. Mr. President, I ask unanimous consent that the quorum call be equally charged on both sides. I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I would like to remind us why we are here—health care reform—and why health care reform is so important. I would like to go through the costs of inaction, what the consequences are if we do not pass health care reform.

First of all, rising health care costs are wrecking the lives of Americans. In 2007, 62 percent of bankruptcies were due to medical costs. This legislation will help reduce the rate of growth of health care costs. In fact, the President's Council on Economic Advisers and the President just announced today or yesterday there will be a 1-percent reduction in national health care costs. CBO basically said this bill is deficit neutral, and it will have an effect on reducing health care costs. This bill will reduce health care costs.

A Harvard study found, in addition, when people do not have health insurance, they are more likely to be much more ill.

Harvard found every year in America lack of health insurance leads to 45,000 deaths. If Americans do not have health insurance, it leads to 45,000 deaths in our country. That is intolerable. How can we in the United States of America—we pride ourselves as the biggest, the strongest, the most moral country on the globe. How can we allow 45,000 deaths just because somebody does not have health insurance? People without health insurance have a 40-percent higher risk of death than those with private health insurance.

How does this bill affect Medicare? According to the CMS Actuary, Medicare is projected to go broke in about the year 2017. CMS has estimated this will actually extend solvency to the year 2026.

That is very important, Mr. President. It is an important message to seniors—that the Medicare trust fund solvency will be extended under this legislation for at least 9 more years, beyond 2017. I wish it were further, but that is a lot better than not extending solvency—extending solvency for that period of time.

The bill also would increase the percentage of people who have health insurance from about 83 percent to 94 percent. That, too, is no small matter.

Our legislation would reform the insurance market to protect those with preexisting conditions. It would prevent insurance companies from discriminating and capping coverage, and it would require insurance companies to renew policies as long as policyholders pay their premiums.

Let me just say a bit more, with a little more precision, about premium costs. The Centers for Medicare & Medicaid Services, the Office of the Actuary, confirmed this. They confirmed that this legislation will cover 33 million Americans who are currently uninsured and will do so while significantly reducing Medicare costs and Medicaid spending. Think of that. This legislation will cover 33 million Americans who are currently not covered at the same time reducing Medicare and Medicaid costs.

Don't take my word for it. That is the projection of the Chief Actuary of CMS. In addition, as I mentioned, the Chief Actuary says this will extend the life of the trust fund for 9 years.

Moreover, this legislation reduces the cost to seniors, to a family, by \$300 by 2019. Medicare Part B premiums, according to the Actuary, will be \$300 lower than it otherwise would be. The out-of-pocket costs would be, for a couple—I think it is roughly \$400. That is a total of about a \$700 reduction for a couple in 2019. So a reduction in Medicare Part B premium costs and a reduction in out-of-pocket costs.

Essentially, the Actuary concludes, and I will read the quote:

The proposed reductions in Medicare payment updates for providers, the actions of the Independent Medicare Advisory Board, and the excise tax on high-cost employer-sponsored health insurance would have a significant downward impact on future health care cost growth rates.

Again, a "significant downward impact on future health care cost growth rates." The Actuary says the bend in the cost curve is evident. The Actuary also concludes that in 2019 health expenditures are projected to rise by 7.2 percent with no change but 6.9 percent under the proposal. That is, under the proposal, health care costs will rise at a lower rate than they will if this legislation does not pass.

In addition, this report shows how health insurance costs for millions of Americans will reduce premiums by 14 to 20 percent for people in the indi-

vidual market. Actually, that was the Congressional Budget Office that reached that conclusion and not the Actuary. The Congressional Budget Office has basically concluded that for 93 percent of Americans premiums will be lowered. For 93 percent of Americans premiums will be lower.

It is true that for those who are employed—the five-sixths of persons who now have health insurance—their premiums would not go down a heck of a lot, but they will start going down due to this legislation. For the 7 percent whose premiums are not reduced, they get a better deal. That 7 percent will have much higher quality health insurance than they now have, basically because of no more denial of care for preexisting conditions, market reform, rating reform, no more rescissions, et cetera. So this is a very good deal.

I would like to say one word, too, on health care cost reduction. A lot of Senators have quoted an article by Dr. Gawande from *The New Yorker* magazine—I think it was dated June 2—explaining the phenomenon of geographic variations in this country and why health care costs are much higher in some parts of America and much lower in other parts of America, which is due mostly to the way we pay health care providers and doctors in the system, therefore explaining the basic reason there is so much waste in the American health care system.

Dr. Gawande published another article in *The New Yorker* a week or 2 ago, and in that article he basically says of all the ideas that have been suggested by economists, by practitioners, by providers, and people worried about the rise of health care costs in America, all of the ideas are in this legislation. They are all in here. All the ways to work to start to lower health care costs are in this legislation.

He also says the pilot projects and the demonstration projects in this legislation are good because you have to work a little bit, you have to experiment a little, you have to try this and try that to see where bundling works and see where it does not work. But the provisions are there.

We can all be quite confident that this administration is going to do its level best to make sure these projects work—that is the bundling, the moving toward quality as a basic reimbursement in the way of quantity. The administration is going to work very hard to make sure they work. I will say, too, as chairman of the Finance Committee, the committee of primary jurisdiction over these subjects, that we are going to have a lot of oversight hearings next year because it is very much in the interest of the American people to make sure this legislation works and works very well. Clearly, with aggressive oversight hearings next year we can help make sure that happens.

One other point. This bill represents a net tax cut, not a tax increase—a net tax cut for individuals, not a tax increase. Why do I say that? I say that because that is what the Joint Committee on Taxation says. What is the Joint Committee on Taxation? It is a committee, an organization in Washington that serves both the House and the Senate. It serves Republicans and Democrats. There is not one iota of partisanship in it. It is totally objective, very solid, very confident. They are the outfit we rely on when we write tax legislation.

Basically, they say by the year 2019, Americans will see a net tax cut of \$40 billion, and that tax cut is equal to an average tax decrease of more than \$440 per affected taxpayer. And for low- and middle-income taxpayers making less than \$200,000, this cut is even greater. The average tax credit is equal to more than \$640 per affected taxpayer in the year 2019.

To repeat: This bill, according to the Joint Committee on Taxation, is a net tax cut for individuals—a cut, not an increase but a cut—almost as great as the 2001 tax cut. Many of us know how great that was. This is the biggest tax cut since 2001—this legislation.

I also want to discuss a couple other points. A lot of people say: Well, gee, some of this does not take effect for several years. Let's go through what takes effect right away, in 2010. What are the provisions that take effect right away? I will read the list.

The first is—the fancy term is "pools"—to help people with preexisting conditions get access to health insurance even before the actual denial of preexisting conditions kicks in. There is \$5 billion of Federal support for higher risk pools providing affordable coverage to uninsured persons with preexisting conditions. That takes effect right away.

Second, reinsurance for retiree health benefit plans. Basically, that means there is immediate access to Federal reinsurance for employer plans providing coverage for early retirees—for ages between 55 and 64. Essentially, that means extra dollars are available for the outliers. That is a fancy term for saying the high-cost people in that age group—55 to 64.

In addition, we extend dependent coverage for young adults. Today, a young couple buys health insurance for themselves and their kids, and once the child is 21 there is no more health insurance. We raise that level to the age of 26 so that person can stay with the family and have the family's health insurance.

Moreover, this legislation requires that health insurers must provide prevention and wellness benefits but no deductibles and no cost-sharing requirements. That, too, will help quite a bit. That takes effect right away.

Moreover, right away, in 2010, the legislation prohibits insurers from imposing annual and lifetime caps. Not later but right away there is a prohibition against insurers from imposing annual lifetime dollar limits—a big problem today.

Moreover, right away, this legislation will stop insurers from nullifying or rescinding health insurance policies when claims are filed. Rescissions are a big problem today. In 2010, when this legislation passes, no more rescissions of health care policies.

Moreover, this legislation sets minimum standards for insurance overhead costs to ensure that most premium dollars are spent on health benefits, not costly administration or executive compensation and profits. We also require public disclosure of overhead and benefit spending and premium rebates. That is right away.

What about small business persons—small businessmen? This legislation offers tax credits to small businesses with low wages to make covering their workers more affordable. It takes effect in 2010, and credits of up to 50 percent of insurance premiums will be available to firms that choose to offer coverage.

I might also say there are stronger small business provisions, too, that I am quite certain will be in the managers' amendment. Greater incentives to the tune of about \$12 billion to \$13 billion for small businesses will be in this legislation and will also be in the managers' amendment.

Moreover, what will take effect next year, not later, is we have closed the coverage gap for the Medicare drug benefit. Basically, that means we have closed the doughnut hole—we are starting to close the doughnut hole. Seniors pay very high prices for brand-name drugs if they are in that so-called doughnut hole. We close it so that seniors don't have to pay those high prices anymore.

There is public access to comparable information, more transparency, and I could go on and on and on. There are many provisions which take effect right away and not at a later date.

Mr. President, I believe that debate is drawing to a conclusion on the four matters under consideration. We may be able to have votes as soon as 5:30.

I see my colleagues from Kansas and Iowa on the Senate floor, and I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I ask unanimous consent to use 5 minutes of Senator MCCONNELL's time—the Republican leader's time.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I thank my colleagues for this opportunity to address the Lautenberg amendment and speak in favor of the Lautenberg amendment.

I oppose the base bill. I oppose the bill overall. I have spoken a number of times in opposition to the overall bill. It is way too expensive, it cuts Medicare, raises taxes, and inserts the funding of abortion, which is something we haven't looked at in 30 years. The Hyde language has not allowed funding of abortion, and instead this does and puts it in, and I think it will result in poorer health care for a number of Americans.

But the issue I rise on today is on the Lautenberg amendment, and in support of the Lautenberg amendment. This is an amendment we have seen in this body four times previously over the last 10 years. Each time the Lautenberg amendment has passed overwhelmingly, and that is because of the safety concerns for drugs coming into the United States.

I would note that Secretary Sebelius, Secretary of HHS—Health and Human Services—who before being named to this position was the Governor of the State of Kansas for 6 years, with whom I worked over the years, through her office has stated they cannot basically certify the safety of these drugs.

There is a letter that has been gone over in some depth and length from the Food and Drug Commissioner saying that it is going to be very difficult for them to certify the safety of these drugs. Yet what the Lautenberg amendment does is it says: OK, if you can certify safety, and this is going to reduce the price, then they can be admitted.

That seems to make sense. That is why 4 times over the last 10 years this body has passed the Lautenberg amendment, or an equivalent, and I think that is appropriate.

I would also note there is a huge industry in the United States—the pharmaceutical industry—that is quite concerned about the safety and efficacy of what this bill would do in not allowing the safety of the drugs if you don't pass a Lautenberg amendment. They are very concerned about that. And toward that regard, I will read pieces of a letter sent to me by Kansas Bio. It is the Kansas Biosciences Organization. They sent this letter to me saying:

On behalf of the members of Kansas Bio, please accept this letter in opposition to Senator Dorgan's drug importation amendment to the health care reform legislation which may be voted on by the Senate. We believe that the promotion of drug importation is an extremely risky endeavor which threatens the livelihood of one of Kansas' fastest growing bioscience industry sectors—the service providers to our Nation's and our world's drug development and delivery companies.

KansasBio is an industry organization representing over 150 bioscience companies, academic institutions, State affiliates, and related economic development organizations in the State of Kansas, throughout the Kansas City region. . . . Senator DORGAN's amendment opens up the risk of allowing foreign drugs that do not have FDA approval into

the United States and thereby posing significant health and safety risks to the patients.

It is signed by the president and CEO, Angela Kreps, of KansasBio.

I am ranking member on the Senate Appropriations Subcommittee on Agriculture, Rural Development, and the Food and Drug Administration, so I am keenly interested in the committee structure in this issue.

In addition, the University of Kansas in my State, in addition to having the top-ranked basketball team in the country, has the top-ranked pharmaceutical school in the country. They are a part of KansasBio and concerned about the Dorgan amendment in place. That is why they support things like the Lautenberg amendment which assure two things: that you have safety and that any value in this proposal is passed along to the consumer.

The FDA has been tasked with the responsibility of safeguarding this country's prescription drug supply and has executed that responsibility, I believe, quite well. It would be unwise for this body, then, to not value their opinions in regard to this matter. The Lautenberg amendment counts on the FDA expertise and proven track record and permits legal importation of prescription drugs into the United States only if Secretary of Health and Human Services, Secretary Sebelius in this administration, as head of the FDA, can certify to Congress that prescription drug importation will do two things: No. 1, pose no additional risk to the public health and safety; and, No. 2, result in a significant reduction in the cost of covered products to the American consumer. The safety and cost savings certification amendment would restore this language.

The Lautenberg amendment does that. This Congress must require a safety and cost savings certification from the Secretary of HHS before opening the floodgates of drug importation. Requiring this certification is the responsible way to ensure that American citizens will be protected from potentially life-threatening counterfeit, contaminated, or diluted prescription drugs.

As I mentioned, the Senate has voted on this previously four times, each time overwhelmingly adopting something like the Lautenberg amendment. As many of my colleagues may remember, the safety and cost savings certification was first signed into law when the Senate passed the Medicine Equity and Drug Safety Act of 2000. During that debate, concerns were raised by many in this body that drug importation would expose Americans to counterfeit and polluted prescription drugs. To alleviate these well-documented fears, the Senate passed this second-degree amendment then unanimously.

To date, as noted earlier, no HHS Secretary has been able to certify that drug importation will not pose a significant health and safety threat. For

those reasons, I support the Lautenberg amendment.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I think we have some time available. I wish to continue with some remarks. I thank the Senator from Kansas for his remarks and his concern also about the efficacy and the safety of drugs that might reach our citizens.

I listened carefully to the remarks of my colleague from North Dakota. He said the principal focus of our amendment is to protect the profits of the drug companies. No, I want to protect the health and well-being of American citizens. I look at an industry that has prolonged life expectancy, has made life more productive and pleasant for many whose disabilities may have them imprisoned in their homes.

We look at what has happened over the years, where treatment for conditions such as malaria, polio, smallpox were discovered, and antibiotics and chemotherapy have continued to be developed, primarily by American drug companies. Those are the companies that have the reputation for bringing the best products to market, the most carefully scrutinized, and most effective. What I want is for those companies to continue to be developing drugs that will extend wellness and will continue to improve longevity. I want these products to be available more reasonably, more cheaply—more affordably.

I had an experience in my life—people have heard me talk about this at times—whereby my father got cancer, was disabled with cancer when he was 42 years old. Our family was virtually bankrupt as a result of the cost for drugs and hospital services and physicians, so I know how costly they are. My father had cancer then, and I have seen what has happened now, with the opportunities for some optimism in situations where cancer develops. We are looking to make these drugs more available, more affordable.

The thing that strikes me, as we review where we are in the development of a new health plan or a reform of the existing health programs, and I hear the criticism coming from people who have indicated they do not support more available health products, I think about what happens when votes come about that move the health care bill along. There is absolute obstinacy that prevails with many of our friends on the Republican side.

I look at what good, proper products can do and the hope we have for childhood diseases that are so painful to see. We look for improvements in those—whether it is autism or diabetes or other conditions. We want desperately for companies in this country of ours

to continue to develop drugs to treat them—or companies anywhere. But when they come to this country we have to know they are safe because there is nothing that can excuse the sacrifice of safety, for whatever discounts you might get on the product, products that, as has been noted, can kill you if they are the wrong formula or contaminated product.

Our differences between the Dorgan and Lautenberg amendments boil down to one word: safety. Knowing that when you open the bottle, that when you take the liquid, you are not doing something or your children or your loved ones are not doing something that harms their health. We owe them that feeling of security and comfort as they try to cure themselves from sickness or disease. That is what we are looking at here. I hope my colleagues will stand up and say no, don't let these products come in without the tightest scrutiny that can be developed; without the most secure process of production and shipment that can be exercised.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask how many minutes I have remaining.

The PRESIDING OFFICER. The Senator has 15 minutes remaining.

Mr. BAUCUS. I yield 5 minutes to my good friend from Iowa who I think is going to be speaking against my position but he is a good fellow so I think he should have 5 minutes.

Mr. GRASSLEY. This is typical of the comity of the Senate. I thank my good friend for doing that. I have a little different view on some of the things he said about taxes here. I respect him giving me some time because we don't have time on this side. It is nice, his doing that.

Republicans and Democrats are working off of the same data provided by the Joint Committee on Taxation. For some reason my friends on the other side of the aisle seem to want to read this data selectively, so I wish to look at this data. I want to stress this data is from the nonpartisan Joint Committee on Taxation. They are experts. They are nonpolitical people who tell it like it is.

My friends on the other side are correct in one thing: This bill provides a tax benefit to a small group of Americans. You can see right here that this benefit is to the people here where the minus sign is in front of the numbers. These numbers are in white.

As I pointed out previously, when you see a negative number on this chart, the Joint Committee on Taxation is telling us these people are receiving a tax benefit. This income category—the income categories where you see these negative numbers begin at zero and stretch to \$50,000 for indi-

viduals and \$75,000 for families. That will be \$50,000 to \$75,000. I give my Democratic friends credit for being right on this part of the data. But I want to show you where I disagree with them and their choosing to overlook other parts of the data, the data I will soon refer to here on this chart.

When we see negative numbers on this chart, as I have said, the Joint Committee on Taxation is telling us that there is a tax benefit. So, conversely, where there are positive numbers—this will be an example of positive numbers—the Joint Committee on Taxation is telling us these taxpayers are seeing a tax increase. Those numbers I have already pointed to begin at \$50,000 for an individual and go up to \$200,000 for an individual.

When we see a positive number, then, it is the reverse. The Joint Committee on Taxation is telling us these taxpayers are in fact seeing tax increases. So if we see positive numbers for individuals making more than \$50,000 and we see positive numbers for families making more than \$75,000, it is just this simple: We know these people's taxes are going to go up.

The Joint Committee on Taxation is telling us that taxes for these individuals, once again, for a third time, will go up under this 2,074-page Reid bill.

These individuals and families are making less than \$200,000. What is significant about less than \$200,000 is that this violates what the President promised in his campaign, that individuals who are middle class, under \$200,000, are not going to see one dime of tax increase.

To come to any different conclusion is saying that the data on this chart—and of course the professionals at the Joint Committee on Taxation—both are wrong. To come to any different conclusion is saying the chart produced by the Joint Committee on Taxation is wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. How much time remains?

The PRESIDING OFFICER. There is 11 minutes.

Mr. BAUCUS. On this side? Does anyone have remaining time?

The PRESIDING OFFICER. The Senator from Idaho has 3 minutes. The Republican leader has 3½ minutes. The Senator from North Dakota has 7½ minutes. The Senator from New Jersey has 1 minute.

Mr. BAUCUS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. I would like to make it clear, essentially this legislation does several things. This is the core part of this legislation. What is it? First, this legislation very significantly reforms the health insurance industry, especially for people who individually buy

insurance and also for people who buy for a small company and even buy insurance for a large company. It is insurance market reform. It stops insurance companies from, frankly, under-taking practices which are un-American; that is, denying people coverage based on preexisting conditions, denying them health insurance because they have some kind of preexisting something—that is ridiculous—or saying: You can't have health insurance because you have some other health care status or saying: Sure, we will give you a policy, then a month, 2 months later, rescind it willy-nilly or putting in restrictive limits on what the company will pay during your lifetime or what the company might pay in health insurance benefits for a year.

In addition, this legislation reforms what are called rating provisions that States have. States basically allow companies to charge whatever they want, if you are a little older compared to if you are younger, if you are a woman compared to a man. There are lots of different ways States allow insurance companies to charge based upon different categories. So, No. 1, insurance market reform. This legislation stops some outrageous practices that insurance companies practice today.

No. 2, this legislation begins to get control over health care costs. We have to start to get control over health care costs. This legislation does so. It also is deficit neutral. It does not cost one thin dime for us to enact this legislation. It is all paid for. It provides health insurance coverage. About 31 million Americans who currently do not have health insurance will have health insurance, if this legislation passes. I don't have to remind my colleagues of the importance of health insurance. Insurance market reform that lowers the cost of health care in this country, provides full coverage and, equally important, begins to put in place delivery system reforms. That is kind of wonkish, but it is one of the most important parts of this bill, starting to change the way we pay doctors and hospitals, pay based more on quality rather than quantity, start putting into effect different systems that sound kind of wonkish but will be important over 3, 4, 5 years. It is bundling, group homes. It is lowering the practice of hospitals that readmit too quickly after a patient is discharged.

There are so many reforms here. I strongly urge everyone to keep their eye on the ball. Insurance market reform in this legislation, lowering costs in this legislation, insurance coverage for 31 million Americans who today do not have it, and starting to put in place payment reforms which will help get this country on the right path so, after several years, we have a health care system we are all proud of, one that

gets rid of all the waste we have in the country today. We pay \$2.5 trillion a year in health care, about half public and half private. People who study this say we waste as much as \$800 billion a year—not million, billion—in fraud, waste, dollars that don't go directly to health care. This legislation starts to get a handle on that. It stops all the waste. You get a better handle on fraud so after 2 or 3 years, we will have something we are very proud of. Let us remind ourselves, again, if we don't pass this legislation, we will rue the day we didn't because we will have to start all over again, 2 or 3 or 4 or 5 years from now, and the problem will be much worse. The cost for families is going to be much greater, the cost to American businesses much greater. Our budgets are going to be in much worse shape, Medicare and Medicaid. This legislation extends the solvency of the Medicare trust fund for another 9 years.

Remember the bottom line, remember the basics. Let's not get too caught up in the details of the weeds and get distracted by a lot of stuff that is not the core of this bill. The provisions I outlined are compelling reasons why this legislation must pass and why it would be so good for America.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. I ask unanimous consent to use the remainder of my time as well as that of the Republican leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. Mr. President, I would like to respond to a couple of the points made about whether this bill truly does address what the American people are asking it to address. If you ask most people in America what they want out of health care reform—and they do want reform—they will tell you they want to see control of the skyrocketing cost of health care, particularly the cost of insurance premiums. They would like to see increased access to quality medical care. It has been said a number of times by the proponents of this legislation that this bill accomplishes those objectives, but let's look at exactly what the Congressional Budget Office has told us on the core issue; namely, what is going to happen to your insurance premiums if this bill is passed.

What the Congressional Budget Office very clearly said, which is also backed by 7, 8, 9 or 10 other studies from the private sector as well as the Joint Committee on Taxation and backed by the Chief Actuary for the Center for Medicare and Medicaid Services, is that for at least 30 percent and the most vulnerable people in America, if you are looking at whether your insurance premiums are going to go up or down, they are going to go up, not down. If you are a member of the 17 percent of Americans who get your in-

surance in the individual market, your insurance is going to go way up. In fact, it is going to go up by as much as 10 to 13 percent in addition to what it would have gone up without the bill. If you are someone who gets your business from small groups, from a small group market, your insurance costs are going to go up from 1 to 3 percent. If you are one of the Americans who is able to get your insurance in the large group market, then you can basically expect that the bill will have no significant impact on you. There is a possibility of a slight reduction, but the potential is, it is going to have no impact at all.

What does the bill do? For 17 percent of Americans in the individual market and for 13 percent of Americans in the small group market, it clearly makes your health care premiums go up. For those who are in the remainder of the market, it basically doesn't achieve the objective of health care reform—and at what price? We often hear we need to bend down the cost curve. As I have indicated, this legislation doesn't bend down the cost curve Americans are talking about; namely, the price of their health care or their health insurance. What does it do with regard to the Federal Government? It is going to increase the cost to the Federal Government on health care by \$2.5 trillion in a massive new entitlement program. So that price curve is not bent down.

Then what are we left with? Some say the deficit will go down under this bill. There is only one way the deficit can go down under this bill; that is, if you take away the budget gimmicks, massive tax increases, and massive Medicare cuts. But I will just talk about the budget gimmicks because of a lack of time. The spending side of this bill is delayed for 4 years. The taxing and cutting Medicare side of the bill is implemented on day one. So we have 10 years of tax increases to offset 6 years of spending. I think that is the way the number was reached. You have to figure out how many years to delay the spending start before you can say there was a deficit-neutral bill. The reality is, this bill doesn't deal with any of those spending curves.

The matter we will be voting on in a few minutes is my motion that would address the tax side of the bill. All it says is: Let's change the bill to comply with the President's promise; namely, that people making less than \$200,000 a year or \$250,000 as a couple would not pay more taxes. What we found from the Joint Tax Committee is, 73 million Americans in that category will pay more taxes. In fact, it is not 73 million Americans, it is 73 million American households who will pay more taxes and see a tax increase under this bill and not just a small one. It is massive, hundreds of billions of dollars of new taxes that will be imposed by this bill.

In response, the proponents of this bill say: But this bill is a tax cut. The



only way they can say this bill is a tax cut is by looking at the subsidy that is going to be provided as a tax cut. It is called a refundable tax credit, although three-fourths of it, 73 percent to be accurate, goes to people who do not pay taxes. Yet it is called tax relief because it is administered through the Tax Code and is described as a refundable tax credit. The CBO gets this and Americans get it. The Congressional Budget Office says these aren't tax cuts. This is spending, and it is scored that way by the CBO as it analyzes the bill. The only way you can say this bill involves these kinds of tax cuts is if you say that a provision that will simply result in the payment of a check by the Federal Government to an individual who has no tax liability to assist them with their health care costs is a tax cut. Let's accept that.

Even in that case, only 7 percent of Americans qualify for that subsidy, and the rest qualify for the tax increases. To say the President's promise was that I will not cut your taxes more or I will not increase your taxes more than I will cut someone else's taxes and, by the way, I will call a direct subsidy a tax cut, is not exactly what I think the President meant. It is not what the American people thought he meant when he said Americans making less than \$200,000 or \$250,000 as a family would not pay more taxes under this bill.

My proposal simply says send this bill back to the Finance Committee. They can turn it around quickly, if they want to. Have them take out the provisions that violate the President's pledge on taxes.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I yield 3 minutes to the Senator from Ohio.

Mr. BROWN. Mr. President, I rise in support of the Dorgan amendment on reimportation. This is not about importing drugs from China or India or Mexico, where drug safety standards are not up to par. Although American companies have outsourced a lot of their manufacturing to those countries and found a lot of problems with the ingredients they import into American drugs, that is not the issue. That underscores the hypocrisy of U.S. drug companies in opposing the Dorgan amendment.

This is about importing drugs from countries such as Canada and Germany and Australia and New Zealand and Japan, countries with highly developed drug safety regimes. Patients in England and France and Germany and New Zealand and Canada have the same protections we do. I have been in drugstores in Canada just 2 hours from Toledo, less than that, and you see the same drug and the same dosage, the same packaging, the same company making them. In Canada, it is 35 to 55

percent lower than in the United States. One drug, the cholesterol-lowering drug Lipitor, is \$33 in Canada, \$53 in France, \$48 in Germany, \$63 in the Netherlands, \$32 in Spain, \$40 in the United Kingdom. Same packaging, same company, same dosage, same drug is \$125 in the United States. We pay more, even though, in most cases, these drugs are either manufactured in the United States or developed, in some cases, by U.S. taxpayers, developed certainly in the United States for Americans, but we pay two and three times more.

A 2009 Consumer Reports survey found that due to high drug prices, one out of six consumers failed to fill a prescription, one out of six consumers skipped doses.

Mr. President, 23 percent of consumers cut back on groceries. They choose between do I get my groceries or pay for this drug? Consumer after consumer will cut their pill in half and take one part today and one part the next day, which is not what their doctor says they should do. We know this is not good for Americans' health. We know this is not good for Americans' pocketbooks. We know this is not good for taxpayers. It is not good for small business. It is not good for big business, large American companies that are paying the freight, that are paying these costs. American consumers and taxpayers and businesses are suffering from these high costs.

Pharmaceutical companies hike up prices, rake in massive profits. They are one of the three most profitable industries in this Nation and have been for decades. The pharmaceutical industry, in 2008, recorded sales in excess of \$300 billion, with a 19-percent profit margin. This is in a bad year—a bad year for most of us in this country, in 2008. In the last year alone, the brand-name prescription drug industry raised their prices by more than 9 percent.

I ask my colleagues to support the Dorgan amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that at 6 p.m. today, the Senate proceed to vote in relation to the amendments and motion specified in the order of December 14 regarding H.R. 3590; that prior to each vote, there be 2 minutes of debate, equally divided and controlled in the usual form; that after the first vote in the sequence, the succeeding votes be limited to 10 minutes each; further, that all provisions of the December 14 order remain in effect.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, some issues we deal with here in the Senate are unbelievably complicated. This one

is not. This is painfully simple, the question of whether the American people should be charged and continue paying the highest prices in the world for brand-name prescription drugs—my amendment says no—from other countries in which there is a safe chain of custody that is identical to ours. The American people ought to have the freedom to shop for those lower priced FDA-approved drugs that are sold there at a fraction of the price.

I especially wish to thank Senator BEGICH from Alaska for his work. This is bipartisan, with a broad number of Democrats and Republicans working on this importation of prescription drugs bill, giving the American people the freedom to acquire lower priced drugs. Senator BEGICH has been a significant part of that effort. I want to say thanks to him for his work on this amendment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. BEGICH. Mr. President, if I could ask a question of the Senator from North Dakota.

I say to the Senator, I appreciate his comments, and I think he is right. Of all the complexity of this bill, this seems so simple. I know when I was mayor, we worked on this issue. It seems logical for Alaska. Since we border so much of Canada, it seems logical to do what we can in this arena.

I know the Senator stated these comments before, but I think it is important for especially my viewers who are now watching from Alaska, with the 4-hour difference. But the Senator talked about the savings. There are savings to the taxpayers that are very clear, and there are savings to the consumer, which is even more significant. Can the Senator remind me what those numbers are? I think I have them. I want to be sure, as I talk about this bill.

Mr. DORGAN. Mr. President, this amendment will save \$100 billion in 10 years, nearly \$20 billion for the Federal Government and nearly \$80 billion for the American consumers.

Mr. BEGICH. That is what this health care bill is about, not only getting good-quality care but also finding those opportunities, as we just heard one Senator talk about, bending that cost curve—I hate that term—but it is impacting the consumers in a positive way by \$80 billion.

The other thing I have heard a lot about on the floor—and the Senator talked quickly about it—is the chain of control, which I drove here for 19 days with my family through Canada, and 5 days we bought some drugs when I had a cold, but I am still here. I am standing. I am healthy. Remind me of that chain of control for these drugs and where they are produced.

Mr. DORGAN. I would say to the Senator from Alaska, these prescription drugs would be able to be reimported from Australia, New Zealand, Japan,



and the European countries that have identical chains of custody to our chain of custody so that there is safety.

It is also the case that we are in politics, so the floor of the Senate is the place of a lot of tall tales. I understand that. I have been in politics for a long time.

Mr. BEGICH. Yes, I have learned that as a new Member.

Mr. DORGAN. But early on, one of my colleagues said this is about untested, unregulated drugs coming from, oh, parts of the Soviet Union. That is so unbelievable. It is not describing the amendment I have offered. We are talking about a chain of custody that is identical to the United States. When that is the case—if it is the case—why would the American people not have the freedom to acquire that same drug when it is sold at one-tenth the price, one-fifth, one-third, or one-half the price? Why not give the American people that freedom?

Mr. BEGICH. The Senator from North Dakota and I have just one last question. Even though we did not ask for a colloquy, this is kind of a colloquy, and I appreciate the back-and-forth.

This is one reason I support this bill—not only today but many months ago—for all the reasons the Senator just laid out. The control is there. The protection to the consumer is there. The savings to the consumer and the taxpayer are enormous, as we deal with these issues. If there is one thing I have heard over and over through e-mails and correspondence to my office, it is: Help us save on prescription drugs.

To emphasize that point once more, to make sure I have the numbers right, over 10 years, between the Federal Government and the consumer, it is over \$100 billion.

Mr. DORGAN. Mr. President, the savings is over \$100 billion. Look, I want the pharmaceutical industry to do well, to make profits, to make prescription drugs. I just want fair pricing for the American people. I do not have a beef with the industry. I want them to do well. I want them, however, to give the American people a fair price because we are paying the highest prices in the world for brand-name prescription drugs, and I think it is flat out unfair. This amendment will fix that.

There is a competing amendment that nullifies it, that simply says all this is going to go away and we are done with this bill and nothing has happened to put the brakes on prescription drug prices.

I hope my colleagues will stand with me and with the American people saying: We support fair drug prices for the American people. That is what we are going to vote on in a few minutes.

I appreciate the questions from the Senator from Alaska.

Mr. BEGICH. Thank you, Mr. President. And I thank the Senator from North Dakota for allowing me these questions and again clarifying for my residents in Alaska how important this bill is. Thank you.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, parliamentary inquiry: The order that was just entered provided for 2 minutes, equally divided, before, I suppose, the vote on each of the amendments. Is that in addition to or is that a part of the time that has been allocated to Senators?

The PRESIDING OFFICER. In addition to.

Mr. BAUCUS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Montana has 5 minutes remaining.

Mr. BAUCUS. So, Mr. President, if the Senator from Montana wishes to speak on his amendment, he has 5 minutes, plus 2 minutes.

The PRESIDING OFFICER. Five minutes plus 1 minute.

Mr. BAUCUS. Excuse me. The time is equally divided. Thank you.

Mr. President, I just want to make it as clear as I can that the Congressional Budget Office essentially says that premiums will go down for about 93 percent of Americans. I say that because I think my good friend from Idaho was leaving a different impression.

But let me just summarize what CBO says. I would put a chart that CBO provided in the RECORD, but under the Senate rules we cannot put charts in the RECORD. So I am just going to summarize what this chart says.

OK. Seventy percent of Americans will get their health insurance in what is called the large group market. That is people who work for larger employers—70 percent. CBO said for that 70 percent of Americans, premiums will go down a little bit. It will be about a 3-percent reduction in premiums.

The next group of Americans getting health insurance are in what is called the small group market. Those are people in small companies, small businesses, primarily. That is where 13 percent of Americans get their insurance. CBO says for that 13 percent, maybe the premiums will go up between 1 percent or down 2 percentage points overall. But for those folks, those small businesspeople who get tax credits—and there are some very significant tax credits in this bill, and I think it will be even more significant when the managers' amendment is out—CBO says, even with modest tax credits, those premiums will go down 8 to 11 percent.

That is, for 13 percent of Americans who have insurance, their premiums will go down 8 to 11 percent, among those who have credits.

Let's look at what is called the nongroup market, the individual mar-

ket. That is 17 percent of Americans. For those folks, if you compare their current insurance with what they will have in the future, those premiums will go down 14 to 20 percent—down 14 to 20 percent—according to CBO.

In addition, though, CBO says that persons who have tax credits—we are talking now about the individual market—those people will find, on average, their premiums will go down 56 to 59 percent. Remember, 17 percent of Americans buy insurance individually. Of that 17 percent, 10 percent, because of tax credits in this bill, will find their premiums go down 56 to 59 percent.

The 7 percent that are remaining—remember I started off by saying for 93 percent, there will be a reduction. The 7 percent remaining will find that because of better benefits, their premiums will go up 10 to 13 percent, but they will have a lot better benefits. They will have a lot higher quality insurance than they have today. Frankly, my judgment is, the higher quality insurance they have, because of this legislation, will outweigh the increase in the premiums.

But anyway, for 93 percent, premiums will go down.

AMENDMENT NO. 3183

Mr. President, let me speak a little bit on my amendment which, as I understand it, is going to be the first amendment voted on.

I remind my colleagues that the underlying legislation is a tax cut bill. It cuts taxes. It cuts taxes very significantly. Over the next 10 years, for example, this bill will provide Americans with a \$441 billion tax cut to buy health insurance—\$441 billion in tax credits to buy health insurance. Credits are tax reductions.

In the year 2017, taxpayers who earn between \$20,000 and \$30,000 a year will see an average tax cut of nearly 37 percent. These are people who have a hard time making ends meet. People who earn between \$20,000 and \$30,000 will see an average tax cut of 37 percent. That is according to the Joint Committee on Taxation.

In addition, 2 years later, the average taxpayer making less than \$75,000 a year will receive a tax credit of \$1,500. Just to repeat, the average taxpayer making less than \$75,000 a year will receive a tax reduction—a tax credit—of more than \$1,500.

The Crapo motion to commit is really an attempt to kill health care reform. It is, thus, a plan to keep Americans from getting these tax cuts. I think we want Americans to get these tax cuts. If the Crapo motion is successful, Americans will not get any of these tax cuts. We want them to. The underlying bill gives Americans these tax cuts. Therefore, I think we should reject this procedural maneuver designed to kill the tax cuts in this health care bill.

That is what my side-by-side amendment says—that is going to be the first

amendment voted on—and that is, let's vote to keep our current tax cuts. I urge a positive vote on my amendment and a "no" vote on the Crapo motion, which eliminates the tax cuts, which is not what I think most Americans want. So I urge my colleagues to vote for the side-by-side amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to a vote on the Baucus amendment.

Who yields time?

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, the legislation that we are discussing today, the Patient Protection and Affordable Care Act, could have a profound impact on the United States for decades to come. I am especially concerned about the tax implications of the legislation. We need to take a thorough look at these tax provisions before approving this legislation.

It is plain to see that if you have insurance, you get taxed; if you don't have insurance, you get taxed; if you need prescription drugs, you get taxed; if you need a medical device, you get taxed; if you have high out-of-pocket health expenses, you get taxed. Everyone gets taxed under this proposal.

This legislation also changes the core principle of Social Security and Medicare financing, a model called "social insurance." Since Social Security was created in the 1930s and the Medicare Program in 1965, payroll tax revenues have been dedicated to financing these programs. In current tax law, all funding from the Medicare payroll tax finances the Medicare Program. This legislation proposes to increase the hospital insurance portion of the payroll tax on wages from 1.45 percent to 1.95 percent and uses the revenues to fund programs outside of Medicare. If this proposal becomes law, future Congresses will have the ability to take payroll tax revenues and use them for highways or defense or other nonsocial insurance spending. This will be a serious precedent, a long-term game-changer in how we finance our government, and I do not think it is wise to do this today.

Additionally, individuals who fail to maintain government-approved health insurance coverage would be subject to a penalty of up to \$2,250 in 2016. This individual mandate tax is regressive and will largely be strapped on the backs of those who can least afford such a penalty.

Analysis by the Joint Committee on Taxation reveals that while a relatively small group of middle-class individuals, families, and single parents may benefit under this bill, a much larger group of middle-class individuals, families and single parents will be disadvantaged. According to the analysis by the Joint Committee on Tax, this legislation increases taxes by a 3

to 1 ratio on people making less than \$200,000 a year, in other words for every one individual or family that gets the tax credit, three middle-income individuals and families are taxed. Roughly 42 million individuals and families, or 25 percent of all tax returns under \$200,000 will, on average, pay higher taxes under this bill, even with the tax credits factored in.

There are only about 17,000 Mississippi tax filers who earn more than \$200,000, so we are looking at over 2.5 million people who earn less than \$200,000 and could easily be forced to pay higher taxes. This legislation will affect a large majority of our tax base.

Tax spending as proposed in the legislation before us provides credits for health insurance to individuals and families between 100 percent and 400 percent of the Federal poverty level, FPL. For example, a family at 100 percent of the Federal poverty level can pay no more than 2 percent of their income on premiums, and the government would pick up the rest of the cost. Although this furthers the goal of trying to get everyone insured, only 7 percent of Americans will be eligible for a tax credit and 91 percent of Americans will experience an increase in taxes. This hardly seems like a solution.

The health care industry, including many small businesses in my state, would be subject to fees imposed by this legislation. Health insurance companies that administer a self-insured policy on behalf of employers would be subject to fees imposed on the industry. This \$6.7 billion annual fee will undoubtedly be passed on to consumers.

This legislation imposes a nondeductible \$2.3 billion fee on manufacturers of prescription drugs, which is an example of yet another fee that will be passed on to consumers.

Medical device manufacturers will be on the hook for \$2 billion in annual fees. Again, this will be passed on to consumers.

Of additional concern is the "free-rider" penalty for employers with more than 50 employees that do not offer health insurance coverage. These employers would be required to pay a fee for each employee. Businesses that pay any amount greater than \$600 to corporate providers of services would have to file an information report with the IRS, adding further regulatory burdens on business and on an agency that does not traditionally deal in health care.

According to a recent study, taxes in this proposal will place approximately 5.2 million low-income workers at risk of losing their jobs or having their hours reduced. An additional 10.2 million workers could see lower wages and reduced benefits. Why would we want to put people at risk of losing their jobs? A small business owner in my State told me that 8 percent of his income goes to pay for health insurance

for his employees. If this amount is increased, he will be forced to reduce the size of his staff. Why would we want to hurt small businesses at a time like this?

We all remember President Obama's campaign promise that he would not raise taxes on families earning less than \$250,000 a year. The Joint Committee on Taxation conducted an analysis that shows that in 2019—when the bill is in full effect—on average individuals making over \$50,000 and families making over \$75,000 would have seen their taxes go up under this legislation. In other words, 42 million individuals and families earning less than \$200,000 would pay higher taxes.

Arguably millions more middle-class families and individuals could be hit with a tax increase from the health care industry "fees" or taxes proposed. According to testimony of the Congressional Budget Office before the Senate Finance Committee, these fees would be passed through to health care consumers and would increase health insurance premiums and prices for health care-related products. If the President signs this legislation in its current form, he would break his pledge not to raise taxes on people making less than \$250,000 a year.

My distinguished friend from Idaho, Senator CRAPO, offered an amendment in the Senate Finance Committee markup providing that "no tax, fee or penalty imposed by this legislation shall be applied to any individual earning less than \$200,000 per year or any couple earning less than \$250,000 per year." The amendment was rejected.

Small businesses in my State do not support this legislation. With unemployment at a 26-year high and small business owners struggling to simply keep their doors open, this kind of reform is not what we need to encourage small businesses to thrive. Small businesses need reform that will lower insurance costs. They need a bill that will decrease the overall cost of doing business. If a bill increases the cost of doing business or fails to reduce costs, then the bill fails to meet its intended goal of reigning in health care costs.

I would submit that the bill fails to lower national health expenditures; it fails to lower the amount of money the federal government spends on health care; and it does not bend the cost curve of rapidly increasing national health care costs. If we were running a large company, this would be an unsuccessful business proposal.

In Mississippi, we could insure a majority of the uninsured if we enrolled all eligible children in the State Children's Health Insurance Program: If more small businesses offered health insurance, and if people who could afford health insurance purchased health insurance, this would be reform.

Mr. President, I would like to see our Nation's health system reformed, but

these reforms cannot be on the backs of individuals and businesses that we need to succeed. Reform should not add to the already high costs of doing business.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I will just take 1 minute on this, and then I think we will probably be ready to vote.

Again, I think there are two contrasting amendments here. The Senator from Montana has indicated that my motion, which would simply ask the Finance Committee to make this bill comply with the President's pledge, would somehow kill the bill—that is not at all true—and, secondly, that it would stop the tax relief in the bill that the Senator from Montana has identified, the refundable tax credits. The bottom line is, my amendment does not even address the refundable tax credits. They remain in the bill.

All my amendment does is say: Let's have the President's pledge to the American people honored in this legislation. Let's take out the taxes that 73 million American households will pay under this legislation—hundreds of billions of dollars of new taxes.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Madam President, essentially, the Crapo motion to commit the underlying bill, the pending bill, is to the Finance Committee to take out all the tax cuts. That is what it is, so I oppose it.

I urge Senators to vote for my amendment, which is a sense of the Senate that the Senate should reject such procedural motions, basically, because we want to keep the tax cuts that are in this bill.

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Indiana (Mr. LUGAR).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 375 Leg.]

#### YEAS—97

Akaka	Bayh	Bingaman
Alexander	Begich	Bond
Barrasso	Bennet	Boxer
Baucus	Bennett	Brown

Brownback	Hagan	Murray
Bunning	Harkin	Nelson (FL)
Burr	Hatch	Pryor
Burriss	Hutchison	Reed
Cantwell	Inhofe	Reid
Cardin	Inouye	Risch
Carper	Isakson	Roberts
Casey	Johanns	Rockefeller
Chambliss	Johnson	Sanders
Coburn	Kaufman	Schumer
Cochran	Kerry	Sessions
Collins	Kirk	Shelby
Conrad	Klobuchar	Shaheen
Corker	Kohl	Shelby
Cornyn	Kyl	Snowe
Crapo	Landrieu	Specter
DeMint	Lautenberg	Stabenow
Dodd	Leahy	Tester
Dorgan	LeMieux	Thune
Durbin	Levin	Udall (CO)
Ensign	Lieberman	Udall (NM)
Enzi	Lincoln	Vitter
Feingold	McCain	Voinovich
Feinstein	McCaskey	Warner
Franken	McConnell	Webb
Gillibrand	Menendez	Whitehouse
Graham	Merkley	Wicker
Grassley	Mikulski	Wyden
Gregg	Murkowski	

#### NAYS—1

Nelson (NE)

#### NOT VOTING—2

Byrd

Lugar

The PRESIDING OFFICER. On this vote, the yeas are 97, the nays are 1.

Under the previous order, requiring 60 votes for the adoption of the amendment, amendment No. 3183 is agreed to.

Mr. BAUCUS. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

#### MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to the Crapo motion to commit.

Mr. CRAPO. Madam President, this is a very simple vote we are going to have. This is a vote that will correct the bill to comply with the President's promise not to tax anyone who makes under \$200,000 as an individual or \$250,000 as a family.

I think the vote we just had was a unanimous vote for it. It said not to take tax relief out of the bill. We have had plenty of debate about tax relief—whether it is in the bill or not in the bill. This motion says let's fix the bill and take out the hundreds of billions of dollars of taxes that will fall squarely on the middle class.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Madam President, the Crapo motion to commit is an attempt to kill health care reform. If it succeeds, we will keep 31 million Americans from getting health care coverage. If it succeeds, it will keep Americans from getting the tax cuts in the bill. If the motion succeeds, over the next 10 years, Americans will get \$441 billion less in tax credits to buy health insurance.

I urge that we not vote in favor of the Crapo motion, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 54, as follows:

[Rollcall Vote No. 376 Leg.]

#### YEAS—45

Alexander	Crapo	Lincoln
Barrasso	DeMint	Lugar
Bayh	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Nelson (NE)
Bunning	Gregg	Risch
Burr	Hatch	Roberts
Cantwell	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Collins	Klobuchar	Vitter
Corker	Kyl	Voinovich
Cornyn	LeMieux	Wicker

#### NAYS—54

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown	Kerry	Sanders
Burriss	Kirk	Schumer
Cardin	Kohl	Shaheen
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Conrad	Leahy	Tester
Dodd	Levin	Udall (CO)
Dorgan	Lieberman	Udall (NM)
Durbin	McCaskey	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden

#### NOT VOTING—1

Byrd

The PRESIDING OFFICER. On this vote, the yeas are 45, the nays are 54. Under the previous order requiring 60 votes for the adoption of this motion, the motion is withdrawn.

#### AMENDMENT NO. 2793, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relationship to amendment No. 2793, as modified, offered by the Senator from North Dakota, Mr. DORGAN.

The Senator from North Dakota.

Mr. DORGAN. Madam President, this amendment is about fair pricing for prescription drugs for the American people. A colleague of mine just came up to me and said: My daughter takes Nexium. It costs her \$1,000 a month. I said: I happen to have a chart about Nexium here. This illustrates better than I know how to illustrate the difference in pricing.

Here is what Nexium costs: \$424 worth of Nexium in the United States is sold for \$40 in Great Britain, \$36 in Spain, \$37 in Germany, \$67 in France. If you like this kind of pricing where the American people pay the highest prices in the world for prescription drugs, if you like this kind of pricing, then you ought to vote against this amendment. But this amendment is bipartisan—Republicans and Democrats. Over 30 Members of this Senate have supported this approach, saying let's provide fair pricing for a change for the American people.

We should not be paying the highest prices in the world for prescription drugs. All I ask is that you support this amendment to give the American people the opportunity for fair pricing for a change.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from New Jersey.

Mr. MENENDEZ. Madam President, I rise to oppose the Dorgan amendment. Let's be clear, there are those who want to deminimize safety. But the one entity in this country that is responsible for the food and drugs is the FDA, and Commissioner Hamburg has mentioned in her letter all of the potential risks of the Dorgan amendment.

Secondly, we have heard about the European Union as an example why we should permit reimportation. What did we hear from the European Community last week? In 2 months, they seized 34 million fake tablets at customs points in all member countries, and this was beyond their greatest fears.

Thirdly, how do we create affordability? By closing the doughnut hole. And this amendment will not do that, it will undermine that.

And finally, Senator LAUTENBERG's amendment, which comes up after this amendment, is the one that permits reimportation but takes care of the safety issues that the FDA has said are critical.

We want to make sure when you buy Nexium that what you get is the substance and the quality and the quantity that you want, not something less that can undermine your health care. Vote against the Dorgan amendment.

Mr. DORGAN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 48, as follows:

[Rollcall Vote No. 377 Leg.]

YEAS—51

Alexander	Franken	Nelson (NE)
Begich	Graham	Nelson (FL)
Bennet	Grassley	Pryor
Bingaman	Harkin	Risch
Bond	Hutchison	Sanders
Boxer	Johanns	Sessions
Brown	Johnson	Shaheen
Coburn	Klobuchar	Shelby
Collins	Kohl	Snowe
Conrad	Leahy	Specter
Corker	LeMieux	Stabenow
Cornyn	Lincoln	Thune
Crapo	McCain	Udall (NM)
DeMint	McCaskill	Vitter
Dorgan	McConnell	Webb
Feingold	Merkley	Wicker
Feinstein	Murkowski	Wyden

NAYS—48

Akaka	Durbin	Levin
Barrasso	Ensign	Lieberman
Baucus	Enzi	Lugar
Bayh	Gillibrand	Menendez
Bennett	Gregg	Mikulski
Brownback	Hagan	Murray
Bunning	Hatch	Reed
Burr	Inhofe	Reid
Burr	Inouye	Roberts
Cantwell	Isakson	Rockefeller
Cardin	Kaufman	Schumer
Carper	Kerry	Tester
Casey	Kirk	Udall (CO)
Chambliss	Kyl	Voinovich
Cochran	Landrieu	Warner
Dodd	Lautenberg	Whitehouse

NOT VOTING—1

Byrd

The PRESIDING OFFICER. On this vote, the yeas are 51, the nays are 48. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.

AMENDMENT NO. 3156

Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 3156, offered by the Senator from New Jersey, Mr. LAUTENBERG.

Mr. LAUTENBERG. Madam President, this is a simple solution to a complicated problem. My amendment contains the Dorgan amendment. The work done by our friend from North Dakota is significant. But what it did not have is a guarantee, as much as possible, that the product was safe; that there were no counterfeits, that there were no mixtures of things that might not work well with other drugs.

My amendment adds a simple requirement that imported drugs be certified as safe by the Health and Human Services Secretary. I hope we will be able to pass this, which will include the Dorgan amendment, to make sure the products that get here are safe, no matter what the price will be. If it is not safe, it is worthless. We want to be sure every product that reaches our shore is safe to take and will be sold at a more reasonable cost.

Mr. BAUCUS. Madam President, I have long supported measures that allow Montanans to buy safe and effective drugs from foreign countries. This is why I support the Lautenberg amendment.

Currently, the Food and Drug Administration is required to review the safe-

ty and effectiveness of domestically produced drugs. FDA is also required to ensure the safety and effectiveness of legally imported drugs. Through FDA's robust inspection and other regulatory compliance activities, consumers can have a high degree of confidence in the quality of the drugs.

The Lautenberg amendment allows importation of drugs manufactured outside the United States and includes numerous protective measures in addition to these activities. These measures address the health and safety risks of importing foreign drugs.

Most importantly, it requires the Secretary of Health and Human Services to certify that the imported drugs do not pose any additional risk to the public's health and safety and create savings for American consumers.

With recent increased awareness of potentially dangerous food and drug products, it is more important than ever to protect American consumers.

This amendment ensures that consumers are protected from the risk of unsafe drugs. And it ensures Americans have access to consistent, reliable medicines.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time in opposition?

The Senator from North Dakota?

Mr. DORGAN. Madam President, we have all seen this movie before. We have had these votes before. All I say is this: The pharmaceutical industry flexes its muscles and defeats an attempt for fair prescription drug prices for the American people so we can keep paying the highest prices in the world. And then there is another amendment offered that makes it seem like something is being done when, in fact, nothing is going to be done, nothing will change.

Do not vote for this amendment and go home and say you have done something about the price of prescription drugs because your constituents will know better. This amendment does nothing. If you believe, at the end of the evening, we should do nothing, by all means vote for it. Don't count me in on that vote.

Mr. HARKIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

The PRESIDING OFFICER (Mr. UDALL of Colorado). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 378 Leg.]

## YEAS—56

Akaka	Crapo	Lugar
Alexander	Dodd	Menendez
Barrasso	Durbin	Mikulski
Baucus	Ensign	Murkowski
Bayh	Enzi	Murray
Bennett	Gillibrand	Nelson (NE)
Bond	Hagan	Reed
Boxer	Hutchison	Reid
Brownback	Inhofe	Risch
Bunning	Isakson	Roberts
Burr	Johnson	Rockefeller
Burris	Kaufman	Schumer
Cantwell	Kerry	Shelby
Cardin	Kirk	Specter
Carper	Landrieu	Tester
Casey	Lautenberg	Udall (CO)
Chambliss	LeMieux	Voinovich
Cochran	Lieberman	Warner
Cornyn	Lincoln	

## NAYS—43

Begich	Gregg	Pryor
Bennet	Harkin	Sanders
Bingaman	Hatch	Sessions
Brown	Inouye	Shaheen
Coburn	Johanns	Snowe
Collins	Klobuchar	Stabenow
Conrad	Kohl	Thune
Corker	Kyl	Udall (NM)
DeMint	Leahy	Vitter
Dorgan	Levin	Webb
Feingold	McCain	Whitehouse
Feinstein	McCaskill	Wicker
Franken	McConnell	Wyden
Graham	Merkley	
Graessley	Nelson (FL)	

## NOT VOTING—1

Byrd

The PRESIDING OFFICER. On this vote the yeas are 56, the nays are 43. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.

The Senator from Texas.

## MOTION TO COMMIT

Mrs. HUTCHISON. Mr. President I have a motion at the desk, and I ask that it be brought forward.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] moves to commit the bill H.R. 3590 to the Committee on Finance with instructions to report the same back to the Senate with changes to align the effective dates of all taxes, fees, and tax increases levied by such bill so that no such tax, fee, or increase take effect until such time as the major insurance coverage provisions of the bill, including the insurance exchanges, have begun. The Committee is further instructed to maintain the deficit neutrality of the bill over the 10-year budget window.

Mrs. HUTCHISON. Mr. President, this is a motion that Senator THUNE and I are putting forward. It is a very simple motion. A lot of people don't realize that the taxes in the bill we are discussing actually start in about 3 weeks. They start in January of 2010. The effect of the bill, whatever the proposals are going to be in the bill, whatever programs are available, will not come into play until 2014. The taxes will start this next year, and they will be paid for 4 years before any of the programs the bill is supposed to put forward will be there. The motion Senator THUNE and I put forward merely says that taxes start being collected

when the bill is implemented. So whatever programs are being offered to the people, whatever insurance programs, whatever kinds of benefits there might be in the bill would start at the same time as the taxes start. So you are not going to be paying taxes before you have any options that you would be able to take in this bill.

It is simple. It is clear. We believe that if you pay taxes for 4 years before you see any of the programs in this bill, the American people can't be sure there will ever be a program, because there will be intervening Congresses and intervening Presidential elections that will occur before this bill is designed to start in 2014. We have congressional elections in 2010. We have a Presidential election plus congressional elections in 2012. And 2 years following that, 2014, is when this bill will be implemented.

I hope everyone will look at this motion and support the amendment we are putting forward. It is a motion to commit the bill to fix this issue, that America should not be looking at higher drug prices, higher medical device prices, and higher costs of insurance, all of which are the first taxes that will take effect.

Let's walk through it. Starting next year in January, 3 weeks from today, there will be \$22 billion in taxes on prescription drug manufacturers that will start. The price of prescription drugs, aspirin, anything that people take will go up because the drug manufacturers are going to start paying a tax. There is \$19 billion in taxes on medical device manufacturers. So medical devices we use, hearing aids, things we use to treat ailments will be taxed to the tune of \$19 billion next January. There is \$60 billion on insurance companies starting next month. That is about \$100 billion in taxes that start in about 3 weeks. So the insurance companies have probably already priced in the negotiations that they are having now with people about their insurance premiums. I am sure they realize that they are going to have to be locked in for a year or two or three and, therefore, these rises in insurance premiums are probably part of this bill we are dealing with right now. And \$60 billion will be passed on to every person who has health care coverage right now.

Here we are, health care reform that is supposed to bring down the price of health care so that more people can afford it. And what is the first thing we do? It is not to offer a plan. It is not to offer any kind of program that would help people who are struggling right now because they don't have insurance. It is certainly not going to help people struggling to pay their prescription drug prices. We are going to raise the price by taxing the manufacturers of drugs, of medical devices, and the companies that are giving insurance today.

It is time that we talk about the high taxes in this bill. What we are going to

talk about in the Hutchison-Thune proposal, the motion to commit, is to say at the very least, the least we can do is not ask people to pay taxes for 4 years when you are going to have three intervening congressional elections before this bill takes effect. Things could change mightily. All these taxes that are going to go into place might never bring forward the proposals that are in the underlying bill.

In 2013, 1 year before the bill is to take effect, the taxes on high benefit plans go into effect. What is a high benefit plan? A high benefit plan is one that is a good plan. Many unions have these, and many people who work for big corporations have everything paid for. They have all of the employer regular, in the order that most companies do, payments, but they also allow in these plans to have most of the deductibles also paid for. They are very good plans. This bill will excise for those plans \$149 billion, cut it right out and have an excise tax on those good plans, \$149 billion. That starts in 2013. That is 1 year before the bill takes effect.

In 2013, 1 year before there is any new plan put forward, those who have very good coverage—whether it be someone who works for a big company or whether it is a union member—will start getting a 40-percent tax on that benefit. So all of the things that have been negotiated are going to have a big 40-percent tax. That starts in 2013.

In addition, in 2013, 1 year before the bill takes effect, there is a limitation put on itemized deductions for medical expenses. Today, if you spend more than 7.5 percent of your income on medical expenses, you get to deduct everything over that. So if you have a catastrophic accident or you have a very expensive disease to treat or you are in a clinical trial—something that is expensive—if you go above 7.5 percent of your income, you can deduct that. In 2013, under the bill that is before us, you would have to spend 10 percent of your income before you could deduct those expenses. That is another \$15 billion that will be collected in taxes that are not collected today.

The new Medicare payroll tax, which impacts individuals who earn over \$200,000 or couples who earn \$125,000 each, would take effect in 2013. That is \$54 billion in taxes.

These are all the taxes that take effect before the bill does, before there is any plan offered. You would have the tax that starts next month on insurance companies, pharmaceutical companies, and medical device companies. Then, in 2013, you would have a tax on high-benefit plans, a 40-percent tax on that plan. Then, in 2013, the itemized deductions will not be allowed until you have paid 10 percent of your salary in medical expenses. Then there is the Medicare payroll tax, which is going to impact individuals. All of this is before there is a program in place.

In 2014, when the bill does come forward so there are plans to be offered to people, then you start the mandates on employers and the taxes if people are not covered. So you have \$28 billion in taxes on employers that start in 2014. These are the employers who cannot afford to give health care to their employees or they do not give the right kind of health care to their employees, so it is not the right percentage, and if it is not the right percentage, then the employer pays a fee of \$750 to \$3,000 per employee. That is their fine.

Then there is the tax on individuals who do not have health insurance, and that is \$750 per adult.

My colleague from South Dakota and I will certainly want to spend more time talking about this and hope very much that our colleagues will also. I do not think this is what the American people thought they would be getting in health care reform. Of course, what we would hope the American people would get in health care reform would be lower cost options that do not require a big government plan. They would not require big taxes. They would not require big fees. If we had a lowering of the cost, by allowing small businesses to have bigger risk pools, that would not cost anything. It would allow bigger risk pools that would provide lower premiums and employers would be able to offer more to their employees.

Most employers want to offer health care to their employees. It is just a matter of the expense. The bill we are debating now is going to put more expenses and burdens on employers, at the time when we are asking them to hire more people to get us out of this recession.

Everywhere I go in Texas, when I am on an airplane, when I am in a store, a grocery store—I have not been able to do any Christmas shopping, I must admit, so I have not been in a department store, but nevertheless I do go to the grocery store—everyone who I am talking to is saying: I can't afford this. What are you all doing? And I am saying, of course: Well, we are trying to stop this because we agree with you that small businesspeople cannot afford this.

I was a small businessperson. I know how hard it is because we do not have the margins of big business, and it is very hard to make ends meet when you have all the mandates and the taxes, and when you are trying to increase your business and hire people, which is what we want them to do. You cannot do it if you are burdened with more and more expenses, as this bill will do.

What Senator THUNE and I are doing is making a motion to commit this bill back with instructions, to come back with the changes that will assure that when the implementation of this bill starts, that will trigger whatever programs are in the bill at the same time

as whatever taxes and fees are going to be in this bill.

I would hope there would be fewer taxes and fees. But whatever your view is on that issue, it is a matter of simple fairness that you would not start the taxes before you start the implementation of the program. It would be like saying: I want to buy a house, and the realtor says: Well, fine, you can start paying for the house right now, and in 4 years you will be able to move in. The house might be stricken by lightning. It might fall apart. It might blow up. It might have a fire. And that is exactly what could happen in this bill.

This bill may not make it for 4 years, when people see what is in it. There will be elections, and I cannot imagine we would establish a policy of taxing people for 4 years, raising costs, leading down this path that will eventually go to a public plan that will end up doing what was originally introduced in the bill; and that is, to end up with one public plan. It will take a little longer the way the bill is being reconfigured, but it is going to end up in the same place, unless we can stop it by showing people that the mandates and the taxes are not good for our economy and they are not good for the health care system we know in this country.

We have choices in this country. We have the ability to decide who our doctor is and what insurance coverage we want, whether we want a high deductible or a low deductible. That is not a choice that should be taxed. We should not have someone tell us what procedures we can have. We should have the option of deciding that for ourselves with our doctors. That is what we want in health care reform. But that is not what is in the bill before us.

I hope we can discuss the Hutchison-Thune motion to commit. We are going to work to try to make sure everyone knows we want fairness in this bill and that people know what is in it. I hope we will get whatever the new version of the bill is very soon so we will have a chance to see if maybe there are some changes that are being made. But in the bill before us, the taxes start next month, and the bill is implemented in 2014. On its face, that is fundamentally unfair. I hope our motion is adopted so we can change it.

Mr. President, I yield the floor.

Mr. KOHL. Mr. President, today I would like to talk about health care costs. We began this endeavor to fix our broken health care system a year ago for two reasons: to move toward universal coverage, and to reduce the unacceptably high cost of health care that is threatening to ruin our country.

It is vital that in our quest to cut costs, we do not leave money on the table that could be going back into the pockets of the American people. This process is not over and while we still have time, we need to more strongly

address the rising costs of prescription drugs. The cost of brand-name drugs rose nine percent last year. That is an unprecedented, unacceptable hike. In contrast, the cost of generic drugs fell by nearly nine percent over the same time period.

For years, we have tried to make it easier for Americans to have access to affordable drugs. We have worked to ease the backlog of generic drug applications at the FDA. We support comparative effectiveness studies and academic detailing to diminish the influence of brand-name drug manufacturers. And we must continue to break down the barriers to help generic drug companies get their products on the market.

Therefore it is imperative that we pass legislation to fight the backroom deals between brand name drug companies and generic drug companies that keep generics off the market and out of reach for consumers. The Kohl-Grassley amendment to stop what we call these "reverse payments" is based on a bill that was passed with bipartisan support by the Judiciary Committee last month, and I thank Senator GRASSLEY for working together with me on it.

Let me be clear about what these deals are: brandname drug companies pay generic drug companies—their competition to not sell their products. The brandname drug companies win because they get rid of the competition. Generic drug companies win because they get paid without having to manufacture a product. And consumers lose because they have been robbed of a competitive marketplace.

How much do American consumers lose in these backroom deals? Thirty-five billion dollars over 10 years, according to the Federal Trade Commission. And the Congressional Budget Office estimates these anticompetitive deals cost the Federal Government nearly \$2 billion on top of that, because we end up paying more for branded drugs through Medicare and Medicaid. We cannot afford to leave this money on the table, and our bill—which we hope will be included in the final health reform legislation—will make sure we do not.

We are pleased that the current bill includes a provision that Senator GRASSLEY and I hope will slow the rising cost of drugs and medical devices. Our policy aims to make transparent the influence that industry gifts and payments to doctors may have on medical care. As we look to reform the health system, it is imperative that every dollar is spent wisely.

In closing, I urge my colleagues to support my amendment to end these collusive drug company settlements and to find additional ways to reduce the cost of this bill. This proposal would save billions of dollars and reduce consumer costs by billions more.

This is what we said we would do, and this is what we must do.

Mr. JOHNSON. Mr. President, I rise today to recognize that the rising health care costs plaguing our health care system are disproportionately harming small business in South Dakota and across the Nation. Over the last decade, health care costs have been rising four times faster than wages, eating into the profits of small businesses and the pocketbooks of families. Many small businesses avoid hiring new employees because the cost of providing benefits is too great, and in some cases are forced to lay off employees or drop health care coverage entirely.

A small business owner in northeastern South Dakota shared with me the impact of rising health care costs on his business. He cited a strong conviction and moral obligation to provide his employees and their families with benefits, including quality, affordable health insurance. Despite his best intentions, rising health care costs are threatening his ability to maintain those benefits.

As the employees of this small business aged and used more of their health benefits, the insurance company steadily raised rates 10 to 20 percent each year. When the rates were affordable the small business owner paid the full cost of premiums, but has since been forced to shift more and more of the costs onto his employees. If rates continue to rise, he is worried he will no longer be able to afford to offer any coverage.

And he has concrete cause for concern. Current trends paint a bleak picture of future health care costs for all Americans, but they have particular implications for small businesses. In 2000, employer-sponsored health insurance in the large group market for a family in South Dakota cost on average \$6,760. In 2006, the same family health insurance plan cost \$9,875. That is a 72-percent increase in 6 years and, unless action is taken to alter this unsustainable course, it is projected this same coverage will cost \$16,971 in 2016. Because they lack bargaining leverage, small businesses pay on average 18 percent more than larger businesses for the same health insurance. Despite their best intentions to provide quality, affordable benefits to their employees, the unsustainable trends in our current health care system have already forced many small businesses to make tough decisions.

The Senate health care reform bill addresses the main challenges facing small businesses—affordability and choice. The Patient Protection and Affordable Care Act will increase quality, affordable options in the small group market. The Small Business Health Options Program, SHOP, Exchange will give small businesses the buying power they need to get better deals and re-

duce administrative burdens. And small businesses providing health insurance to their employees will be eligible for a tax credit to improve affordability. The bill will also end the discriminatory insurance industry practices in the small group market of jacking up premiums by up to 200 percent because an employee gets sick or older, or because the business hired a woman.

The Senate health reform bill will give a new measure of security to those with health insurance and extend this security to more than 30 million Americans who are currently uninsured. It will lower premiums, protect jobs and benefits, and help small businesses grow.

Mr. GRASSLEY. Mr. President, yesterday afternoon, a few of my friends on the other side made some assertions about congressional history, fiscal policy, and the role of bipartisan tax relief for the period of 2001–2006. The speakers were the distinguished junior Senators from Vermont, Ohio, and Minnesota. They are all passionate Members. They are articulate voices of the progressive, as they term it, or very liberal wing, as those of us on this side term it, portion of the Senate Democratic Caucus.

I respect the passion they bring to their views. But, as one of them has said frequently in his early months of Senate service, we are entitled to our opinions, but not entitled to our own facts. I couldn't agree more with that notion. In order to insure an intellectually honest standard of debate, both sides need to correct the record when they feel the other side has misstated the facts. It is in that spirit that I respond today.

I won't take this time to debate the merits of the surtax that they propose as a substitute revenue raiser in this bill. That can wait till we debate their amendment. I am going to focus on their assertions about recent fiscal history and the role of bipartisan tax relief.

Before I address the revisionist fiscal history we heard, I would like to set the record straight on congressional history.

It was said yesterday afternoon that there were 8 years of a George W. Bush administration and Republican Congress. If the Members making these assertions would go back and check the records of the Senate, they would find that during that 8-year period Republicans controlled the Senate when it was evenly divided for a little over 5 months. For almost half the month of January 2001, Democrats held the majority because outgoing Vice President Gore broke ties. For the balance of the period from January 20, 2001, through June 6, 2001, the Senate was evenly divided, but Republicans held because of Vice President Cheney's tie breaking vote.

On June 6, 2001, the Democrats regained the majority when Senator Jef-

fords, previously a Republican, began caucusing with Senate Democrats. For the balance of 2001, 2002, and in early 2003, Democrats held the majority.

For two Congresses, half of President Bush's term, Republicans held a majority. For the last 2 years of the George W. Bush Presidency, Democrats controlled both Houses of Congress.

When you add it up, with the exception of a little over 4 months when the Senate was equally divided, Democrats controlled the Senate for about half the period of the George W. Bush administration.

When you hear some of our friends on the other side debate recent fiscal history, these basic facts regarding political power and accountability are obscured. Perhaps it is their opinion that Democrats were not exercising majority power during that period, but the fact is that Democrats controlled the Senate for almost half the period of the George W. Bush administration.

Now let's turn to the fiscal history assertions from my friends on the other side. The revisionist history basically boils down to two conclusions:

1. That all of the bipartisan tax relief enacted during that period was skewed to the top 1 percent or top two-tenths of 1 percent of taxpayers; and

2. That all of the "bad" fiscal history of this decade to date is attributable to the bipartisan tax relief plans.

Not surprisingly, nearly all of the revisionists who spoke generally oppose tax relief and support tax increases. The same crew generally support spending increases and oppose spending cuts.

On the first point, two of the three speakers from the other side voted for the conference report for fiscal year 2010 budget resolution. The third speaker was not a Member of this body at that time the conference report was adopted. I am not aware, however, of his opposition to that budget which was drawn up by the Senate Democratic Caucus.

That budget was similar to President Obama's first budget. A core portion of that budget, much ballyhooed by the Democratic leadership, was an extension of the major portion of the bipartisan tax relief enacted during the period of 2001–2006. As a matter of fact, roughly 80 percent of the revenue loss from that legislation, much criticized by the three speakers yesterday afternoon, is contained in the budget that two of them voted for. Eighty percent is usually a pretty fair endorsement of any policy. Again, I have not heard the third speaker, the junior Senator from Minnesota, indicate that he doesn't support the tax relief included in the Democratic budget. Perhaps I missed something. In addition, the three speakers need to pay attention to analyses from the nonpartisan Joint Committee on Taxation.

If they did examine those analyses, they would find that, in terms of the



burden of taxation, the 2001 legislation redistributed the burden from lower income taxpayers to higher income taxpayers.

Now, I turn to the second fiscal revisionist history point. That point is that all of the "bad" fiscal history of this decade to date is attributable to the bipartisan tax relief plans.

In the debate so far, many on this side have pointed out some key, undeniable facts. We agree with the President on one key fact. The President inherited a big deficit and a lot of debt.

The antirecessionary spending, together with lower tax receipts, and the TARP activities has set a fiscal table of a deficit of \$1.2 trillion. That was on the President's desk when he took over the Oval Office on January 20, 2009. That is the highest deficit, as a percentage of the economy, in Post World War II history.

Not a pretty fiscal picture. And, as predicted several months ago, that fiscal picture got a lot uglier with the \$787 billion stimulus bill. So for the folks who saw that bill as an opportunity to "recover" America with government taking a larger share of the economy over the long term, I say congratulations.

For those who voted for the stimulus bill, including two of the three speakers to which I refer, they put us on the path to a bigger role for the government. Over a trillion dollars of new deficit spending was hidden in that bill. The Congressional Budget Office concluded that the permanent fiscal impact of that bill totaled over \$2.5 trillion over 10 years. It caused some of the extra red ink. Supporters of that bill need to own up to the fiscal course they charted.

Now, to be sure, after the other side pushed through the stimulus bill and the second half of the \$700 billion of TARP money, CBO reestimated the baseline. A portion of this new red ink, upfront, is due to that reestimate.

The bottom line, however, is that reestimate occurred several weeks after the President and robust Democratic majorities took over the government. Decisions were made and the fiscal consequences followed.

Some on the other side who raises this point about the March CBO reestimate. That is fine. But, if they were to be consistent and intellectually honest, then they would have to acknowledge the CBO reestimate that occurred in 2001 after President Bush took office. The surplus went south because of economic conditions. The \$5.6 trillion number so often quoted by those on the other side was illusory.

The three members should go back and take a look at what CBO said at the time. According to CBO, for the first relevant fiscal year, the tax cut represented barely 14 percent of the total change in the budget. For instance, for the same period, increased

appropriations outranked the tax cut by \$6 billion. So, spending above baseline, together with lower projected revenues, accounted for 86 percent of the change in the budget picture. Let me repeat that. Bipartisan tax relief was a minimal, 14-percent factor, in the change in the budget situation.

Over the long term, the tax cut was projected to account for 45 percent of the change in the budget picture. Stated another way, the 10-year surplus declined from \$5.6 trillion to \$1.6 trillion. Of that \$4.0 trillion change, the tax cut represented about \$1.7 trillion of the decline.

Let's take a look at the fiscal history before the financial meltdown hit. That conclusion is, again, in this decade, all fiscal problems are attributable to the widespread tax relief enacted in 2001, 2003, 2004, and 2006.

In 2001, President Bush came into office. He inherited an economy that was careening downhill. Investment started to go flat in 2000. The tech-fueled stock market bubble was bursting. Then came the economic shocks of the 9/11 terrorist attacks.

Add in the corporate scandals to that economic environment. And it is true, as fiscal year 2001 came to close, the projected surplus turned to a deficit. I referred to the net effects of some of these unforeseen events on the projected \$5.6 trillion surplus.

Now, yesterday afternoon's three speakers may so oppose bipartisan tax relief that they want to attribute all fiscal problems to the tax relief. The official scorekeepers show the facts to be different.

Those on this side of the aisle have a different view than the revisionists. In just the right time, the 2001 tax relief plan started to kick in. The fiscal facts show as the tax relief hits its full force in 2003, the deficits grew smaller. They grew smaller in amount. They grew smaller as a percentage of the economy. This pattern continued up through 2007.

If my comments were meant to be partisan shots, I could say this favorable fiscal path from 2003 to 2007 was the only period, aside from 6 months in 2001, where Republicans controlled the White House and the Congress.

But, unlike the fiscal history revisionists, I am not trying to make any partisan points. I am just trying to get to the fiscal facts.

So, let's get the fiscal history right.

In this decade, deficits went down after the tax relief plans were put in full effect. Deficits did start to trend back up after the financial meltdown hit. I doubt the fiscal history revisionists who spoke yesterday would say that bipartisan tax relief was the cause of the financial meltdown. So, aside from that unrelated bad macroeconomic development, the trend line showed revenues on the way back up.

But that is the past. We need to make sure we understand it. But what

is most important is the future. People in our States send us here to deal with future policy. This budget debate should not be about Democrats flogging Republicans and vice-versa. The people don't send us here to flog one another, like partisan cartoon cut-out characters, over past policies. They don't send us here to endlessly point fingers of blame. Now, let's focus on the fiscal consequences of the budget that is before the Senate.

President Obama rightly focused us on the future with his eloquence during the campaign. I'd like to take a quote from the President's nomination acceptance speech:

We need a President who can face the threats of the future, not grasping at the ideas of the past.

President Obama was right.

We need a President, and I would add Congressmen and Senators, who can face the threats of the future. The legislation before us, as currently written, poses considerable threats to our fiscal future. It is too important to dodge. It is a bill that restructures one-sixth of the economy. It affects all of us and, more importantly, all of our constituents.

Grasping at ideas of the past or playing the partisan blame game will not deal with the threats to our fiscal future. Let's face the honest fiscal facts. Let's not revise fiscal history as we start this critical debate about the fiscal choices ahead of us. The people who send us here have a right to expect nothing less of us.

#### ORDER AUTHORIZING SIGNATURE

Mr. PRYOR. Mr. President, I ask unanimous consent that the majority leader be authorized to sign any duly enrolled bill and joint resolution today, December 15.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. PRYOR. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### UNANIMOUS CONSENT REQUEST— H.R. 4154

Mr. PRYOR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4154 just received from the House and at the desk; that the Baucus substitute amendment be considered and agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid

upon the table; that any statements relating to the measure be printed in the RECORD, without further intervening action or debate.

Mr. President, I understand the Republican leader will object, so I will withdraw this request.

The PRESIDING OFFICER. Without objection, the request is withdrawn.

#### MORNING BUSINESS

Mr. PRYOR. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### BOEING DREAMLINER

Ms. CANTWELL. Mr. President, I know we are in the middle of a health care debate and I know we are focused on health care and we will be talking about that for several days, but I rise to congratulate the people of Washington State and the country on the 787 Dreamliner flight that took off from Paine Field, WA, just a few hours ago. Some people might think of that as just going to YouTube and looking at the video and seeing a plane take off and what is the significance. I tell you, there is great significance, not just for the State of Washington but for the country because this plane is a unique plane. It is a game changer as far as the market is concerned. But it is American innovation at its best. This plane, built now with 50 percent composite materials, is going to be a 20-percent more fuel-efficient plane. That is significant for our country. It is significant because it means the United States can still be a leader in manufacturing and it can still deal with something as complex as fuel efficiency in aviation.

What is prideful for us as Americans is, this is about American innovation at its best. What would Bill Boeing say about today? He would say we achieved another milestone, where we faced international competition. Yet the United States can still be a manufacturer. We can still build a product, still compete, and still win because we are innovating with aviation.

To the thousands of workers in the Boeing Company and in Puget Sound I say: Congratulations for your hard work—for the planning and implementation of taking manufacturing from aerospace with aluminum that had been the status quo for decades, to developing an entirely new plane, 50 percent with the new material.

I want the United States to continue to be a manufacturer, to still build products, to still say we can compete. So I applaud the name Dreamliner. Somebody in that company had a dream, and today it got launched when

it took off from that runway. I wish to say that is the innovative spirit that has made this country great and that is the innovative spirit in which we need to invest.

#### HUMAN RIGHTS ENFORCEMENT ACT

Mr. DURBIN. Mr. President, I rise today to speak in support of the Human Rights Enforcement Act of 2009, which the U.S. Senate approved unanimously on November 21, 2009, and which the House of Representatives will consider today. This narrowly tailored, bipartisan legislation would make it easier for the Justice Department to hold accountable human rights abusers who seek safe haven in our country.

I would like to thank the lead Republican cosponsor of the Human Rights Enforcement Act, Senator TOM COBURN of Oklahoma. This bill is a product of the Judiciary Committee's Subcommittee on Human Rights and the Law. I am the Chairman of this Subcommittee and Senator COBURN is its ranking member. I also want to thank Judiciary Committee Chairman PAT LEAHY of Vermont and Senator BEN CARDIN of Maryland for cosponsoring this bill.

For decades, the United States has led the fight for human rights around the world. Over 60 years ago, following the Holocaust, we led the efforts to prosecute Nazi perpetrators at the Nuremberg trials. We have also supported the prosecution of human rights crimes before the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone.

The world watches our efforts to hold accountable perpetrators of mass atrocities closely. When we bring human rights violators to justice, foreign governments are spurred into action, victims take heart, and future perpetrators think twice. However, when human rights violators are able to live freely in our country, America's credibility as a human rights leader is undermined.

Throughout our history, America has provided sanctuary to victims of persecution. Sadly, some refugees arrive from distant shores to begin a new life, only to encounter those who tortured them or killed their loved ones.

Two years ago, the Human Rights and the Law Subcommittee heard compelling testimony from Dr. Juan Romagoza, who endured a 22-day ordeal of torture at the hands of the National Guard in El Salvador. Dr. Romagoza received asylum in our country but later learned that two generals who were responsible for his torture had also fled to the United States. We also learned that our government was investigating over 1,000 suspected human

rights violators from almost 90 countries who were in the United States.

The Human Rights and the Law Subcommittee has worked to ensure our government has the necessary authority and resources to bring perpetrators to justice and to vindicate the rights of people like Dr. Romagoza.

In the last Congress, the Subcommittee on Human Rights and the Law held hearings which identified loopholes in the law that hinder effective human rights enforcement. In order to close some of these loopholes and make it easier to prosecute human rights abuses, Senator COBURN and I introduced the Genocide Accountability Act, the Child Soldiers Accountability Act and the Trafficking in Persons Accountability Act, legislation passed unanimously by Congress and signed into law by President George W. Bush that denies safe haven in the United States to perpetrators of genocide, child soldier recruitment and use, and human trafficking.

We also examined the U.S. government agencies which bear responsibility for investigating human rights abusers and how to increase the likelihood that human rights violators will be held accountable.

There are two offices in the Justice Department's Criminal Division with jurisdiction over human rights violations. The first, the Office of Special Investigations, also known as OSI, which was established by Attorney General Richard Civiletti in 1979, has led the way in investigating, denaturalizing and removing World War II-era participants in genocide and other Nazi crimes. I want to commend OSI for its outstanding work tracking down and bringing to justice Nazi war criminals who have found safe haven in our country. Since 1979, OSI has successfully prosecuted 107 Nazis.

Just this year, OSI deported John Demjanjuk to Germany, where he is on trial for his involvement in the murder of more than 29,000 people at the Sobibor extermination camp in Nazi-occupied Poland. Demjanjuk came to the United States in 1952 and lived in Seven Hills, OH. During World War II, Demjanjuk allegedly served as a guard at a number of concentration camps. Lanny Breuer, the Assistant Attorney General of the Criminal Division, said, "The removal to Germany of John Demjanjuk is an historic moment in the federal government's efforts to bring Nazi war criminals to justice. Mr. Demjanjuk, a confirmed former Nazi death camp guard, denied to thousands the very freedoms he enjoyed for far too long in the United States."

In 2004, Judiciary Committee Chairman PAT LEAHY's Anti-Atrocity Alien Deportation Act, enacted as part of the Intelligence Reform and Terrorism Prevention Act, further strengthened the Office of Special Investigations by statutorily authorizing it and expanding its jurisdiction to include serious

human rights crimes committed after World War II.

The Domestic Security Section, which was established more recently, prosecutes major human rights violators and has jurisdiction over the criminal laws relating to torture, genocide, war crimes, and the use or recruitment of child soldiers. In 2008, the Domestic Security Section and the United States Attorney's Office for the Southern District of Florida obtained the first federal conviction for a human rights offense against Chuckie Taylor, son of former Liberian president Charles Taylor, for committing torture in Liberia when he served as the head of the Anti-Terrorist Unit. Taylor and other Anti-Terrorist Unit members engaged in horrific acts of torture, including shocking victims with an electric device and burning victims with molten plastic, lit cigarettes, scalding water, candle wax and an iron. Then-Attorney General Michael Mukasey said, "Today's conviction provides a measure of justice to those who were victimized by the reprehensible acts of Charles Taylor Jr. and his associates. It sends a powerful message to human rights violators around the world that, when we can, we will hold them fully accountable for their crimes."

The Human Rights Enforcement Act would seek to build on the important work carried out by the Office of Special Investigations and the Domestic Security Section by creating a new streamlined human rights section in the Criminal Division. My bill would combine the Office of Special Investigations, which has significant experience in investigating and denaturalizing human rights abusers, with the Domestic Security Section, which has broad jurisdiction over human rights crimes. Consolidating these two sections would allow limited law enforcement resources to be used more effectively and ensure that one section in the Justice Department has the necessary expertise and jurisdiction to prosecute or denaturalize perpetrators of serious human rights crimes.

This consolidation will also enable more effective collaboration between the Department of Justice and the Department of Homeland Security's Immigration and Customs Enforcement in identifying, prosecuting, and removing human rights violators from the United States. Immigration and Customs Enforcement has been at the forefront of the federal government's efforts to bring war criminals to justice and is currently handling over 1,000 human rights removal cases involving suspects from about 95 countries.

Immigration and Customs Enforcement and the Justice Department have complementary jurisdiction over human rights violations and partner closely in their efforts to hold accountable human rights violators. In some

instances, where prosecution for a substantive human rights criminal offense is not possible, Immigration and Customs Enforcement can bring immigration charges. For example, Immigration and Customs Enforcement recently filed administrative charges against the two El Salvadoran generals who are responsible for the torture of Dr. Romagoza, which took place before the enactment of legislation prohibiting torture in the United States.

With the creation of a new streamlined human rights section in the Criminal Division of the Justice Department, Immigration and Customs Enforcement will have a stronger partner in the Justice Department to collaborate with on human rights violator law enforcement issues. This bill would require the Attorney General to consult with the Secretary of Homeland Security as appropriate, which means the Attorney General shall consult with the Secretary of Homeland Security on cases that implicate the Department of Homeland Security's jurisdiction and competencies.

The consolidation of the two sections in the Criminal Division of the Justice Department with jurisdiction over human rights violations would not affect or change Immigration and Customs Enforcement's existing jurisdiction over human rights violators. Immigration and Customs Enforcement will continue to have primary authority for removing human rights violators from the United States through the immigration courts.

At a hearing of the Human Rights and the Law Subcommittee on October 6, 2009, the Justice Department and Immigration and Customs Enforcement expressed strong support for combining the Office of Special Investigations and the Domestic Security Section. However, since the Office of Special Investigations is statutorily authorized, the Justice Department needs Congressional authorization to move forward on merging these two sections.

The Human Rights Enforcement Act also includes a number of technical and conforming amendments, including: 1) technical changes to the criminal law on genocide (18 U.S.C. 1091) that the Justice Department requested in 2007 to make it easier to prosecute perpetrators of genocide; 2) clarifying that the immigration provisions of the Child Soldiers Accountability Act apply to offenses committed before the bill's enactment; 3) a conforming amendment to the Immigration and Nationality Act required by the enactment of the Genocide Accountability Act; and 4) a conforming amendment to the material support statute, made necessary by the enactment of the Genocide Accountability Act and the Child Soldiers Accountability Act, making it illegal to provide material support to genocide and the use or recruitment of child soldiers. These tech-

nical changes will facilitate the government's ability to prosecute perpetrators who commit genocide or use child soldiers.

Dr. Juan Romagoza survived horrible human rights abuses, and had the courage to flee his home and find sanctuary in the United States, where he became an American and made great contributions to our country. We owe it to Dr. Romagoza, and countless others like him, to ensure that America does not provide safe haven to those who violate fundamental human rights. From John Demjanjuk, who helped massacre over 29,000 Jews during World War II, to the Salvadoran generals responsible for torturing Dr. Juan Romagoza, we have a responsibility to bring human rights violators to justice.

I thank my colleagues for supporting this legislation and hope it will be enacted into law soon.

#### PENDING NOMINATIONS

Mr. LEAHY. Mr. President, two weeks ago, I challenged Senate Republicans to do as well as Senate Democrats did in December 2001 when we proceeded to confirm 10 of President Bush's nominees as Federal judges. Regrettably, my plea has been ignored. Senate Republicans are failing the challenge. The Senate has been allowed to confirm only one judicial nominee all month. On December 1, after almost 6 weeks of unexplained delays, the Senate was allowed to consider the nomination of Judge Jacqueline Nguyen to fill a vacancy on the Federal Court for the Central District of California. When finally considered, she was confirmed unanimously by a vote of 97 to 0. Since then, not a single judicial nominee has been considered. It is now 2 weeks later, December 15.

Judicial nominees have been and are available for consideration. This lack of action is no fault of the President. He has made quality nominations. They have had hearings and have been considered by the Senate Judiciary Committee and favorably reported to the Senate. Indeed, the logjam has only grown over the last 2 weeks. Five additional judicial nominations have been added to the Senate calendar since December 1, bringing the total number of judicial nominations ready for Senate action, yet delayed by Republican obstruction, to 12. One has been ready for Senate consideration for more than 13 weeks, another more than 10 weeks, and the list goes on. The majority leader and Democratic Senators have been ready to proceed. The Republican Senate leadership has not.

There are now more judicial nominees awaiting confirmation on the Senate's Executive Calendar than have been confirmed since the beginning of the Obama administration. Due to delays and obstruction by the Republican minority, we have only been able

to consider 10 judicial nominations to the Federal circuit and district courts all year, and for one of them, although supported by the longest serving Republican in the Senate, we had to overcome a full-fledged filibuster led by the Republican leadership. As a result, we will not only fall well short of the total of 28 judicial confirmations the Democratic Senate majority worked to confirm in President Bush's first year in office, but we threaten to achieve the lowest number of judicial confirmations in the first year of a new Presidency in modern history.

It is clear that the Republican leadership has returned to their practices in the 1990s, which resulted in more than doubling circuit court vacancies and led to the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created eventually led even to public criticism of their actions by Chief Justice Rehnquist during those years. Their delays this year may leave us well short even of their low point during President Clinton's first term, when the Republican Senate majority would only allow 17 judicial confirmations during the entire 1996 session. That was a Presidential election year and the end of President Clinton's first term. By contrast, this is just the first year of the Obama administration.

We need to act on the judicial nominees on the Senate Executive Calendar without further delay. This year, we have witnessed unprecedented delays in the consideration of qualified and non-controversial nominations. We have had to waste weeks seeking time agreements in order to consider nominations that were then confirmed unanimously. We have seen nominees strongly supported by their home State Senators, both Republican and Democratic, delayed for months and unsuccessfully filibustered.

The 12 judicial nominations that have been given hearings and favorable consideration by the Senate Judiciary Committee and that remain stalled before the Senate are Beverly Martin of Georgia, nominated to the Eleventh Circuit; Joseph Greenaway of New Jersey, nominated to the Third Circuit; Edward Chen, nominated to the District Court for the Northern District of California; Dolly Gee, nominated to the District Court for the Central District of California; Richard Seeborg, nominated to the District Court for the Northern District of California; Barbara Keenan of Virginia, nominated to the Fourth Circuit; Jane Stranch of Tennessee, nominated to the Sixth Circuit; Thomas Vanaskie of Pennsylvania, nominated to the Third Circuit; Louis Butler, nominated to the District Court for the Western District of Wisconsin; Denny Chin of New York, nominated to the Second Circuit; Rosanna Malouf Peterson, nominated to the District Court for the Eastern

District of Washington; and William Conley, nominated to the District Court for the Western District of Wisconsin.

Acting on these nominations, we can confirm 13 nominees this month. In December 2001, a Democratic Senate majority proceeded to confirm 10 of President Bush's nominees and ended that year having confirmed 28 new judges nominated by a President of the other party. We achieved those results with a controversial and confrontational Republican President after a midyear change to a Democratic majority in the Senate. We did so in spite of the attacks of September 11; despite the anthrax-laced letters sent to the Senate that closed our offices; and while working virtually around the clock on the PATRIOT Act for 6 weeks.

At the end of the Senate's 2001 session, only four judicial nominations were left on the Senate Executive Calendar, all of which were confirmed soon after the Senate returned in 2002. At the end of the first session of Congress during President Clinton's first term, just one judicial nominee was left on the Senate Executive Calendar. At the end of the President George H.W. Bush's first year in office, a Democratic Senate majority left just two judicial nominations pending on the Senate Executive Calendar. At the end of the first year of President Reagan's first term—a year in which the Senate confirmed 41 of his Federal circuit and district court nominees—not a single judicial nomination was left on the Senate Executive Calendar.

In stark contrast, there are now 12 judicial nominees on the Senate Executive Calendar and no agreement from Senate Republicans to consider a single one. That is a significant change from our history and tradition of confirming judicial nominations that have been reported favorably by the Senate Judiciary Committee by the end of a session.

The record of obstruction of the Senate Republicans is just as disappointing when we consider the executive nominations that have been reported by the Judiciary Committee. There are currently 15 executive nominations that have been reported favorably by the Senate Judiciary Committee pending on the Senate Executive Calendar, including nominations for Assistant Attorneys General to run three of the 11 divisions at the Department of Justice. Each of these nominations has been pending 4 months or longer.

The President nominated Dawn Johnsen to lead the Office of Legal Counsel on February 11. Her nomination has been pending on the Senate Executive Calendar since March 19. That is the longest pending nomination on the calendar by over 2 months. We did not treat President Bush's first nominee to head the Office of Legal Counsel the same way. We confirmed

Jay Bybee to that post only 49 days after he was nominated by President Bush, and only 5 days after his nomination was reported by the Senate Judiciary Committee.

Mary Smith's nomination to be the Assistant Attorney General in charge of the Tax Division has been pending on the Senate's Executive Calendar since June 11—more than 6 months. We confirmed President Bush's first nomination to that position, Eileen O'Connor, only 57 days after her nomination was made and 1 day after her nomination was reported by the Senate Judiciary Committee. Her replacement, Nathan Hochman, was confirmed without delay, just 34 days after his nomination.

Among the nominations still waiting for consideration is that of Christopher Schroeder, nominated on June 4 to be Assistant Attorney General for the Office of Legal Policy, OLP. Mr. Schroeder's nomination has been pending before the Senate since July of this year when he was reported by the Senate Judiciary Committee by voice vote and without dissent. There was no objection from the Republican members of the committee on his nomination, so it puzzles me why we cannot move to a vote.

President Bush appointed four Assistant Attorneys General for the Office of Legal Policy. Each was confirmed expeditiously by the Senate. In fact, his first nominee to that post, Viet Dinh, was confirmed by a vote of 96 to 1 just 1 month after he was nominated and only a week after his nomination was reported by the Senate Judiciary Committee. Professor Schroeder's nomination has been pending for over 4 months. President Bush's three subsequent nominees to head OLP—Daniel Bryant, Rachel Brand, and Elisebeth Cook—were each confirmed by voice vote in a shorter time than Professor Schroeder's nomination has been pending.

Senate Republicans should not further delay consideration of these important nominations.

Returning to judicial nominations, I hope that instead of withholding consent and threatening filibusters of President Obama's nominees, Senate Republicans will treat President Obama's nominees fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. I want to continue that progress, but we need Republican cooperation to do so. I urge them to turn away from their partisanship and begin to work with the President and the Senate majority leader.

President Obama has reached out and consulted with home State Senators from both sides of the aisle regarding his judicial nominees. Instead of praising the President for consulting with Republican Senators, the Senate Republican leadership has doubled back

on what they demanded when a Republican was in the White House. No more do they talk about each nominee being entitled to an up-or-down vote. That position is abandoned and forgotten. Instead, they now seek to filibuster and delay judicial nominations. When President Bush worked with Senators across the aisle, I praised him and expedited consideration of his nominees. When President Obama reaches across the aisle, the Senate Republican leadership delays and obstructs his qualified nominees.

Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better. As I have noted, there are 12 more qualified judicial nominations awaiting Senate action on the Senate Executive Calendar. Another nomination should be considered by the Judiciary Committee this week. I hope that with the session drawing to a close Judge Rogerie Thompson of Rhode Island will not be needlessly delayed. The Senate should do better and could if Senate Republicans would remove their holds and stop the delaying tactics.

During President Bush's last year in office, we had reduced judicial vacancies to as low as 34, even though it was a Presidential election year. As matters stand today, judicial vacancies have spiked, and we will start 2010 with the highest number of vacancies on article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. While it has been nearly 20 years since we enacted a Federal judgeship bill, judicial vacancies are nearing record levels, with 97 current vacancies and another 23 already announced. If we had proceeded on the judgeship bill recommended by the U.S. Courts to address the growing burden on our Federal judiciary and provide access to justice for all Americans, vacancies would stand at 160, by far the highest on record. I know we can do better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

There is still time to act on these nominations before the Senate recesses this year. I hope Senate Republicans will lift their objections and allow us to proceed on the 27 nominations reported by the Judiciary Committee. Absent cooperation to confirm nominations, this Congress will be recorded in history as one of the least productive in the confirmation of judicial nominations. I hope the New Year will bring a renewed spirit of cooperation.

#### RECEIPT OF ASYLUM

Mr. LEAHY. Mr. President, I am pleased to learn that, after 14 years of

legal struggle, Ms. Rody Alvarado has finally received asylum in the United States. The details of Ms. Alvarado's case are shocking. She suffered from horrific domestic violence in her home country of Guatemala and sought protection in the United States under our asylum laws. Because persecution of this type had not previously been recognized as a basis for refugee or asylum protection, Ms. Alvarado was forced to fight a long legal battle to win her case.

The administrations of three different Presidents—Clinton, Bush and Obama—have grappled with how to handle gender-based asylum claims, but the resolution of this case brings us closer to the end of this journey. Ms. Alvarado can finally feel safe here in the United States because she is no longer at risk of being deported to Guatemala. The Obama administration must now issue regulations to ensure that other victims of domestic violence whose abuse rises to the level of persecution can obtain the same protection as refugees or asylees.

Ms. Alvarado fled Guatemala in 1995 after being beaten daily and raped repeatedly by her husband. When she became pregnant but refused to terminate her pregnancy, her husband kicked her repeatedly in the lower spine. Ms. Alvarado had previously tried to escape the abuse, seeking protection in another part of Guatemala, but her husband tracked her down and threatened to kill her if she left their home again. We know that Ms. Alvarado notified Guatemalan police at least five separate times, but the police refused to respond, telling her that her desperate situation was a domestic dispute that needed to be settled at home.

Over the past 14 years, Ms. Alvarado's case has been considered by immigration judges, the Board of Immigration Appeals, BIA, five different Attorneys General, and three Secretaries of Homeland Security. Throughout this extensive consideration, the core facts of her case have never been disputed. All parties have agreed that Ms. Alvarado suffered extreme abuse at the hands of her husband and that the Guatemalan Government would not protect her. All parties agreed that she has a well-founded fear that she would be abused again if she was forced to return to Guatemala.

The dispute in Ms. Alvarado's case centered on whether the abuse she suffered was persecution under the terms of the Refugee Convention and applicable U.S. law. To obtain protection in the United States, an asylum seeker must demonstrate that they have a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group.

I first wrote to Attorney General Janet Reno in December 1999, when the BIA reversed Ms. Alvarado's grant of

asylum, concluding that her abuse was not persecution on account of membership in a particular social group. This decision was particularly troubling because it left unclear what grounds, if any, could be applied to a victim of severe domestic abuse who cannot obtain the protection of her country of origin. I wrote to Attorney General Reno again in February and September 2000 asking her to exercise her authority to review the case, called *Matter of R-A-*, and to reverse the BIA's decision. Unfortunately, the case was not reversed at that time, and it then languished for years. I wrote to Attorney General Ashcroft in June 2004 asking him to work with the Department of Homeland Security, DHS, to issue regulations to govern cases such as Ms. Alvarado's and to then decide her case in accordance with such rules. When he was a nominee to be Attorney General in January 2005, I asked Mr. Alberto Gonzales to commit to taking up the case and resolving it if he was confirmed. Mr. Gonzales promised to work with DHS to finalize regulations but did not take any action during his years as Attorney General.

Ten years after I and other Members of Congress first sought appropriate action and the fair resolution of this case, we celebrate the long-overdue outcome. While I am dismayed at the length of time Ms. Alvarado has lived with fear and uncertainty, the final resolution of this case gives me hope that abuse victims like Ms. Alvarado who meet the other conditions of asylum will be able to find safety in the United States.

The Obama administration has laid out a welcomed, new policy in its legal briefs in this case, and I thank the President, Secretary Napolitano, and Attorney General Holder for bringing this case to such a positive resolution. Yet the administration's work is not done. It must issue binding regulations so that asylum seekers whose cases have been held in limbo for years can also be resolved and that future cases are not delayed in adjudication. I urge the administration to immediately initiate a process of notice and comment rulemaking so that asylum seekers, practitioners, and other experts can contribute to the formulation of new rules.

Today, I commend Ms. Alvarado on the courage she has demonstrated over many years while seeking protection in the United States. I congratulate her and wish her all the best as she finally experiences true freedom from persecution and the full scope of liberties enjoyed by Americans.

#### A TRIBUTE TO ROBERT B. HEMLEY

Mr. LEAHY. Mr. President, last week, the Senate Judiciary Committee approved the media shield bill in a bipartisan vote of 14 to 5. This legislation

would establish a qualified privilege for journalists to protect their confidential sources and the public's right to know. At a time when the Senate is working to recognize the importance of protecting Americans' first amendment rights, I am proud to recognize a Burlington lawyer who was recently recognized by the Vermont Press Association for his lifetime commitment to the first amendment and the public's right to know.

On December 3, 2009, Robert B. Hemley was awarded the Matthew Lyon Award during the Association's annual awards banquet in Montpelier, Vermont. As a fellow Matthew Lyon Award recipient, I share with Robert a passion about the need for each generation to defend the first amendment rights that are so crucial to all Vermonters and to every American. Robert has worked to bring greater transparency and accountability to our government by representing journalists and newspapers in instances in which they were improperly forced to testify in violation of the first amendment, and by helping to create the Vermont Coalition for Open Government.

In each era there will always be much to do to bring greater openness and accountability to government of, by, and for the people. I am pleased to know Robert Hemley will continue to bring his expertise and dedication to this fight.

I ask unanimous consent to have printed in the RECORD an article from the St. Albans Messenger.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the St. Albans Messenger, Dec. 1, 2009]

**BURLINGTON LAWYER WINS RECOGNITION FOR COMMITMENT TO FIRST AMENDMENT**

**MONTPELIER.**—Burlington lawyer Robert B. Hemley has been selected to receive the Matthew Lyon Award for his lifetime commitment to the First Amendment and public's right to know the truth in Vermont.

The Vermont Press Association is scheduled to present the award to Hemley during its annual awards banquet at noon Thursday (Dec. 3) at the Capitol Plaza in Montpelier.

VPA President Bethany Dunbar, editor of the Chronicle in Barton, said Hemley has been a First Amendment leader in the fight against sealed public records, closed courtrooms and improper attempts to force reporters to testify in violation of the First Amendment. Hemley also has successfully defended the media against defamation and invasion-of-privacy lawsuits and other false claims.

The VPA created the award to honor people who have an unwavering devotion to the five freedoms within the First Amendment and to the belief that the public's right to know the truth is essential in a self-governed democracy.

The First Amendment award is named for the former Vermont congressman, who was jailed in 1798 under the Alien and Sedition Act for sending a letter to the editor criticizing President John Adams.

While Lyon was serving his federal sentence in a Vergennes jail, Vermonters re-

lected him to the U.S. House of Representatives. Hemley, who is a shareholder in the Gravel and Shea law firm, has been recruited to write the Vermont section of the national guides on libel, privacy, and access for both the media Libel Resource Center and the Reporters' Committee for Freedom of the Press for more than 20 years.

He has shared his expertise and participated in various training sessions for judges, lawyers, the media and the public. He helped create the Vermont Coalition for Open Government and has been invited through the years by the Vermont Legislature to offer testimony on several First Amendment issues.

Hemley has represented: St. Albans Messenger, Burlington Free Press, Rutland Herald, Times Argus, Valley News, Bennington Banner, the Associated Press, United Press International, USA Today, New York Times, New York Daily News, along with WCAX-TV, Vermont Public Radio and several weekly newspapers, including in Randolph, Stowe, Waitsfield and Burlington.

Before arriving in Vermont in 1976, Hemley was an assistant U.S. Attorney for the Southern District of New York and also worked for a Wall Street law firm. He earned degrees from Amherst College and New York University Law School and is listed in the Best Lawyers in America. Hemley has chaired the District Court Advisory Committee for Vermont since 1993.

He lives in Burlington with his wife, Marcia, and they have three children: Amanda, an assistant state's attorney for Dade County, Fla.; Mark, who lives in Boston, and Ian, who attends school in Atlanta.

Previous Matthew Lyon winners include Patrick J. Leahy for his work as a state prosecutor and as a U.S. senator; and Edward J. Cashman for his efforts as Chittenden Superior Court clerk, a state prosecutor and state judge.

## IRAN

Mr. LEVIN. Mr. President, I want to take a few moments today to comment on recent events in Iran, the continuing protests against that nation's ruling regime, the brutal response of that regime to the legitimate protests of Iran's people, and one small step the United States can and should take to aid the people of Iran in exercising the basic human right to protest and hold their own government accountable.

As my colleagues know well, student protests in Tehran and other cities took place on Dec. 7, Student Day, the anniversary of the 1953 attacks by the shah's security services that left three student protesters dead. Just as those students sought to protest against an unjust and repressive government, so did today's students. And again, Iran's government responded with intimidation, violence and repression.

Iranian security forces, and paramilitary militias allied with government hard-liners, used teargas, batons and beatings to attack nonviolent protesters on the campus of Tehran University and at other universities. The government's chief prosecutor told the state-controlled news agency—apparently without irony—"So far we have shown restraint," and threatened even harsher methods to end the protests.

Sadly, this is a recurring theme in Iran. Outraged by overwhelming evidence of fraud designed to keep President Ahmadinejad in power last June, students and other Iranians took to the streets. These nonviolent protests were met by the regime with escalating levels of brutality. According to a recent report from the human rights group Amnesty International, government-sponsored violence and repression in Iran since the election has reached the highest level in 20 years. Hundreds of people have been rounded up and imprisoned, often under appalling conditions, without access to legal representation or indeed any contact with the outside world. Iranian citizens, according to the report, were charged with vague offenses unconnected to any recognizable criminal charge under Iranian law.

More than 100 were paraded before cameras in show trials, with visible signs of abuse. The Amnesty International report includes evidence that the pace of executions by the Iranian government has increased, a clear and chilling message to the regime's critics. And citizens released from detention made credible and horrific charges of abuse while in custody, including allegations of the widespread use of rape.

This deplorable record is why I and six colleagues introduced a resolution last month, approved by this body, expressing the sense of the Senate that the government of Iran has routinely violated the human rights of its citizens, and calling on the Iranian government to fulfill its obligations under international law and its own constitution to honor and protect the fundamental rights to which its citizens, and all human beings, are entitled. We recognized the need for a strong statement of condemnation of the regime's behavior, and of solidarity with those Iranians seeking to exercise their right to protest. The Iranian government must know that the world is watching.

Mr. President, there is more the United States can do. I draw my colleagues' attention to a notice from the State Department that the administration will waive certain provisions of the Iran-Iraq Arms Nonproliferation Act of 1992 with respect to the export of personal, Internet-based communications tools to Iran. This is an important response to the Iranian government's crackdown on its people. The regime has sharply curtailed the actions of foreign media representatives in Iran, making independent observations of the situation there difficult or impossible to report. Much of what we know about the regime's repression has come from first-hand accounts by Iranian citizens, distributed via Internet tools such as YouTube and Twitter. These media outlets have become vital, not only to those of us outside Iran seeking information about events within the country, but to Iranian citizens



seeking to communicate with one another. And they are especially important given the near total absence of independent news media in Iran. The regime has undertaken, even before the June election, a systematic effort to eliminate newspapers or broadcasters that report critically on the government's activities. And Iran's Revolutionary Guards, closely connected to government hardliners, have sought to add media and communication companies to its growing commercial empire, tightening the regime's grip on communications within Iran.

The State Department recently notified Congress that it intends to waive provisions of our sanctions against Iran to allow Iranians to download free, mass-market software used in activities such as e-mail, instant messaging and social networking. According to the State Department, "U.S. sanctions on Iran are having an unintended chilling effect on the ability of companies such as Microsoft and Google to continue providing essential communications tools to ordinary Iranians. This waiver will authorize free downloads to Iran of certain nominally dual-use software (because of low-level encryption elements) classified as mass market software by the Department of Commerce and essential for the exchange of personal communications and/or sharing of information over the internet."

Granting of this waiver is an important step in ensuring that our actions here do not impede the attempts by Iranians to exercise their human rights. I applaud the administration for its decision, and hope the people of Iran will view this as one more sign of the solidarity between them and the people of the United States. I ask that a letter to me from Richard R. Verma, assistant secretary of state for legislative affairs, informing the Senate Armed Services Committee of this waiver decision, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF STATE,  
Washington, DC, December 15, 2009.

Hon. CARL LEVIN,  
Chairman, Committee on Armed Services,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report is being provided consistent with Section 1606 of the Iran-Iraq Arms Non-Proliferation Act of 1992 (P.L. 102-484) (the "Act"). The Under Secretary of State has determined that the issuance of a license for a proposed export to Iran is "essential to the national interest of the United States." The attached report provides a specific and detailed rationale for this determination. The waiver authority under Section 1606 of the Act will not be exercised until at least 15 days after this report is transmitted to the Congress.

The Department of State is recommending that the Department of Treasury's Office of Foreign Assets Control (OFAC) issue a general license that would authorize downloads

of free mass market software by companies such as Microsoft and Google to Iran necessary for the exchange of personal communications and/or sharing of information over the Internet such as instant messaging, chat and email, and social networking. This software is necessary to foster and support the free flow of information to individual Iranian citizens and is therefore essential to the national interest of the United States.

Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

RICHARD R. VERMA,  
Assistant Secretary, Legislative Affairs.

REPORT UNDER THE IRAN-IRAQ ARMS NON-  
PROLIFERATION ACT OF 1992

This report is being provided consistent with Section 1606 of the Iran-Iraq Arms Non-Proliferation Act of 1992 (P.L. 102-484) (the "Act"). Section 1603 of the Act applies with respect to Iran certain sanctions specified in paragraphs (1) through (4) of Section 586G(a) of the Iraq Sanctions Act of 1990 (P.L. 101-513) (the "ISA"). This includes the requirement under Section 586G(a)(3) of the ISA to use the authorities of Section 6 of the Export Administration Act of 1979 ("EAA") to prohibit the export to Iran of any goods or technology listed pursuant to Section 6 of the EAA or Section 5(c)(1) of the EAA on the control list provided for in Section 4(b) of the EAA, unless such export is pursuant to a contract in effect before the effective date of the Act (October 23, 1992).

Pursuant to Section 1606 of the Act, the President may waive the requirement to impose a sanction described in Section 1603 of the Act by determining that it is essential to the national interest of the United States to exercise such waiver authority. On September 27, 1994, the President delegated his authorities under the Act to the Secretary of State. Subsequently, on January 12, 2007, the Secretary of State delegated these authorities to the Under Secretary for Arms Control and International Security (DA 293-1).

Personal Internet-based communications are a vital tool for change in Iran as recent events have demonstrated. However, U.S. sanctions on Iran are having an unintended chilling effect on the ability of companies such as Microsoft and Google to continue providing essential communications tools to ordinary Iranians. This waiver will authorize free downloads to Iran of certain nominally dual-use software (because of low-level encryption elements) classified as mass market software by the Department of Commerce and essential for the exchange of personal communications and/or sharing of information over the Internet. The waiver will enable Treasury's Office of Foreign Assets Control to issue a broader general license covering these downloads and related services. This general license will be comparable to exemptions which already exist for the exchange of direct mail and phone calls. The new general license will specifically exclude from its authorization the direct or indirect exportation of services or software with knowledge or reason to know that such services or software are intended for the Government of Iran.

The Under Secretary has determined that it is essential to the national interest of the United States to exercise the authority of Section 1606 of the Act not to impose the sanction described in Section 1603 of the Act and Section 586(a)(3) of the ISA and to permit the issuance of a general license for this kind of software.

SLOVAKIA AND HUNGARY  
RELATIONS

Mr. CARDIN. Mr. President, in 1991, then-Czechoslovak President Vaclav Havel brought together his counterparts from Poland and Hungary. Taking inspiration from a 14th century meeting of Central European kings, these 20th century leaders returned to the same Danube town of Visegrad with a view to eliminating the remnants of the communist bloc in Central Europe; overcoming historic animosities between Central European countries; and promoting European integration.

Today, the Czech Republic, Hungary, Poland and Slovakia are together known as the Visegrad Group, and all four have successfully joined NATO and the European Union. They are anchors in the Trans-Atlantic alliance, and I am pleased to have had the opportunity to travel to all four of these countries where I have met with public officials, non-governmental representatives and ethnic and religious community leaders.

Unfortunately, it appears that some additional work is necessary to address one of the principal goals of the Visegrad Group; namely, overcoming historic animosities. In recent months, relations between Hungary and Slovakia have been strained. Having traveled in the region and having met with leaders from both countries during their recent visits to Washington, I would like to share a few observations.

First, an amendment to the Slovak language law, which was adopted in June and will enter into force in January, has caused a great deal of concern that the use of the Hungarian language by the Hungarian minority in Slovakia will be unduly or unfairly restricted. Unfortunately, that anxiety has been whipped up, in part, by a number of inaccurate and exaggerated statements about the law.

The amendment to the state language law only governs the use of the state language by official public bodies. These state entities may be fined if they fail to ensure that Slovak—the state language—is used in addition to the minority languages permitted by law. The amendment does not allow fines to be imposed on individuals, and certainly not for speaking Hungarian or any other minority language in private, contrary to what is sometimes implied.

The OSCE High Commissioner on National Minorities has been meeting with officials from both countries and summarized the Slovak law in his most recent report to the OSCE Permanent Council:

The adopted amendments to the State Language Law pursue a legitimate aim, namely, to strengthen the position of the State language, and, overall, are in line with international standards. Some parts of the law, however, are ambiguous and may be



misinterpreted, leading to a negative impact on the rights of persons belonging to national minorities.

Since the law has not yet come into effect, there is particular concern that even if the law itself is consistent with international norms, the implementation of the law may not be.

I am heartened that Slovakia and Hungary have continued to engage with one of the OSCE's most respected institutions—the High Commissioner on National Minorities—on this sensitive issue, and I am confident that their continued discussions will be constructive.

At the same time, I would flag a number of factors or developments that have created the impression that the Slovak Government has some hostility toward the Hungarian minority.

Those factors include but are not limited to the participation of the extremist Slovak National Party, SNS, in the government itself; the SNS control of the Ministry of Education, one of the most sensitive ministries for ethnic minorities; the Ministry of Education's previous position that it would require Slovak-language place names in Hungarian language textbooks; the handling of the investigation into the 2006 Hedvig Malinova case in a manner that makes it impossible to have confidence in the results of the investigation, and subsequent threats to charge Ms. Malinova with perjury; and the adoption of a resolution by the parliament honoring Andrei Hlinka, notwithstanding his notorious and noxious anti-Hungarian, anti-Semitic, and anti-Roma positions.

All that said, developments in Hungary have done little to calm the waters. Hungary itself has been gripped by a frightening rise in extremism, manifested by statements and actions of the Hungarian Guard, the "64 Counties" movement, and the extremist party Jobbik, all of which are known for their irredentist, anti-Semitic, and anti-Roma postures. Murders and other violent attacks against Roma, repeated attacks by vandals on the Slovak Institute in Budapest, attacks on property in Budapest's Jewish quarter in September, and demonstrations which have blocked the border with Slovakia and where the Slovak flag is burned illustrate the extent to which the Hungarian social fabric is being tested.

Not coincidentally, both Hungary and Slovakia have parliamentary elections next year, in April and June respectively, and, under those circumstances, it may suit extremist elements in both countries just fine to have these sorts of developments: nationalists in Slovakia can pretend to be protecting Slovakia's language and culture—indeed, the very state—from the dangerous overreach of Hungarians. Hungarian nationalists—on both sides of the border—can pretend that Hungarian minorities require their sin-

gular protection—best achieved by remembering them come election day. Meanwhile, the vast majority of good-natured Slovaks and Hungarians, who have gotten along rather well for most of the last decade, may find their better natures overshadowed by the words and deeds of a vocal few.

In meetings with Slovak and Hungarian officials alike, I have urged my colleagues to be particularly mindful of the need for restraint in this pre-election season, and I have welcomed the efforts of those individuals who have chosen thoughtful engagement over mindless provocation. I hope both countries will continue their engagement with the OSCE High Commissioner on National Minorities, whom I believe can play a constructive role in addressing minority and other bilateral concerns.

#### ADDITIONAL STATEMENTS

##### REMEMBERING PIERRE PELHAM

• Mr. SHELBY. Mr. President, I pay tribute to Pierre Pelham, a former colleague of mine in the Alabama State Senate, who recently passed away. He was a personal friend and, along with his family, I mourn his passing.

A native of Chatom, AL, and a resident of Mobile, AL, Pierre was born on July 20, 1929, to Judge and Mrs. Joe M. Pelham, Jr. An incredibly bright student, he graduated Phi Beta Kappa from the University of Alabama and received his J.D. cum laude from Harvard Law School. During the Korean war, Pierre served as a captain in the Army and received both the Combat Infantryman Badge and Expert Infantryman Badge.

After his service in the Army, Pierre returned to Alabama and began to practice law. Described by many as brilliant, Pierre often took on cases that other lawyers did not want. One of his more interesting cases involved representing Aristotle Onassis' wife in her divorce from the wealthy shipping magnate.

In the 1960s, Pierre began to pursue his interest in politics. He served as the national campaign coordinator for Governor George Wallace and later as a delegate to the Democratic National Convention from Alabama's 1st Congressional District in 1960 and 1964. In 1966, Pierre was elected to serve in the Alabama State Senate. It was there that I had the distinct pleasure of working with him.

In 1970, Pierre was elected to serve as president pro tempore of the Senate. Pierre was renowned by our colleagues as an excellent orator and an exceptionally persuasive State senator. When word would spread around the State capitol that Pierre was speaking on the senate floor, it was not uncommon for the gallery to fill with spec-

tators and for members of the House to cross over to the Senate to watch what would surely be an extraordinary speech. His articulation and command of the English language were simply captivating.

Although Pierre eventually retired from public life, as a fellow of Harvard's Kennedy Institute of Politics, he remained interested in national, State, and local affairs his entire life. Most people in Mobile will remember Pierre for his many contributions as a State senator to South Alabama, most notably his support for the creation of the University of South Alabama College of Medicine. I knew him to be honest, hardworking, and a committed State senator. He remained dedicated to his family and the people of Alabama throughout his life.

Pierre is loved and respected and will be missed by his wife Eva Pelham; his sons Marc Pelham and Joseph Pelham, IV; his daughters Pierrette Prestridge and Patrice Pelham; and 12 grandchildren. I ask the entire Senate to join me in recognizing and honoring the life of my friend, Pierre Pelham. •

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

##### ENROLLED BILL SIGNED

The President pro tempore (Mr. BYRD) reported that he had signed the following enrolled bill, which was previously signed by the Speaker of the House:

H.R. 3288. An act making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

At 3:39 p.m., a message from the House of Representatives delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 303. A bill to reauthorize and improve the Federal Financial Assistance Management Improvement Act of 1999.

##### ENROLLED JOINT RESOLUTION SIGNED

At 6:13 p.m., a message from the House of Representatives, delivered by

Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 62. Joint resolution appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

The enrolled joint resolution was subsequently signed by the Acting President pro tempore (Mr. REID).

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-4014. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of the Atlantic Low Offshore Airspace Area; East Coast United States" ((RIN2120-AA66)(Docket No. FAA-2008-1170)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4015. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of the South Florida Low Offshore Airspace Area; Florida" ((RIN2120-AA66)(Docket No. FAA-2008-1167)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4016. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class D and E Airspace; Fort Stewart (Hinesville), GA" ((RIN2120-AA66)(Docket No. FAA-2009-0959)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4017. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Jackson, AL" ((RIN2120-AA66)(Docket No. FAA-2009-0937)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4018. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Mountain City, TN" ((RIN2120-AA66)(Docket No. FAA-2009-0061)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4019. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Fort A.P. Hill, VA" ((RIN2120-AA66)(Docket No. FAA-2009-0739)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4020. A communication from the Program Analyst, Federal Aviation Administration,

Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revocation of Class E Airspace; Hinesville, GA" ((RIN2120-AA66)(Docket No. FAA-2009-0960)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4021. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Bombardier Model DHC-8-400 Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0784)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4022. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S-92A Helicopters" ((RIN2120-AA64)(Docket No. FAA-2009-1130)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4023. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Airbus Model A300 B2-1C, A300 B2-203, A300 B2K-3C, A300 B4-103, A300 B4-203, and A300 B4-2C Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0055)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4024. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Bombardier Model DHC-8-400, DHC-8-401, and DHC-8-402 Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-1106)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4025. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Honeywell International Inc. LTS101 Series Turbo-shaft and LTP101 Series Turboprop Engines" ((RIN2120-AA64)(Docket No. FAA-2008-1019)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4026. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Saab AB, Saab Aerosystem Model SAAB 2000 Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0654)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4027. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; DG Flugzeugbau GmbH Models DG-500 MB, DG-808C and DG-800B Gliders" ((RIN2120-AA64)(Docket No. FAA-2009-1103)) received

in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4028. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; General Electric Company (GE) CF34-1A, CF34-3A, and CF34-3B Series Turbofan Engines" ((RIN2120-AA64)(Docket No. FAA-2009-0328)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4029. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; SOCAT Model TBM 700 Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0886)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4030. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Cessna Aircraft Company Model 525A Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-1096)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4031. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-500 Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0870)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4032. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Model TAE 125-01 Reciprocating Engines" ((RIN2120-AA64)(Docket No. FAA-2009-0753)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4033. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Vulcanair S.p.A. Models P 68, P 68B, P 68C, P 68C-TC, and P 68 "OBSERVER" Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0869)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4034. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; AVOX Systems and B/E Aerospace Oxygen Cylinder Assemblies, as Installed on Various Transport Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0915)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4035. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled "Airworthiness Directives; Bombardier Inc. Model CL-600-2C10 (Regional Jet Series 700, 701 and 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-1075)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4036. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Pratt and Whitney JT8D-7, -7A, -7B, -9, -9A, -11, -15, and -17 Turbofan Engines" ((RIN2120-AA64)(Docket No. FAA-2009-0317)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4037. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Scheibe-Flugzeugbau GmbH Models Bergfalke-III, Bergfalke-II/55, SF 25C, and SF-26A Standard Gliders" ((RIN2120-AA64)(Docket No. FAA-2009-0800)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4038. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Airbus Model A318-111 and -112 Series Airplanes, and Model A319, A320, and A321 Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-1073)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4039. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Rolls-Royce plc RB211-Trent 800 Series Turbofan Engines" ((RIN2120-AA64)(Docket No. FAA-2009-0674)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4040. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Boeing 737-600, -700, -700C, and -800 Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0411)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4041. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; General Electric Company CF6-50C Series Turbofan Engines" ((RIN2120-AA64)(Docket No. FAA-2006-24171)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4042. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Boeing Model 777-200, -200LR, -300, and -300ER Series Airplanes" ((RIN2120-AA64)(Docket No.

FAA-2009-0571)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4043. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Hawker Beechcraft Corporation Models 58, 58A, 58P, 58PA, 58TC, 58TCA, 95-B55, 95-B55A, A36, A36TC, B36TC, E55, E55A, F33A, and V35B Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0797)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4044. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F, Airplanes; and McDonnell Douglas Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0658)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4045. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; ZLT Zeppelin Luftschifftechnik GmbH and Co KG Model LZ N07-100 Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0868)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4046. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Airbus Model A320 Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0379)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4047. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Bombardier Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A, CL-601-3R, and CL-604) Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0565)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4048. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-200B, 747-200C, and 747-200F, and 747SR Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0553)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4049. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700 and 701) Airplanes and CL-600-2D24 (Regional Jet Series 900) Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0436))

received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4050. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Learjet Inc. Model 45 Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0719)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4051. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Twin Commander Aircraft LLC Models 690, 690A, and 690B Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-0778)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4052. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; 328 Support Services GmbH (Dornier) Model 328-100 Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-1074)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4053. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Lockheed Model L-1011 Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-1022)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4054. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Honeywell International Inc. LTS101 Series Turbo-shaft and LTP101 Series Turbo-prop Engines" ((RIN2120-AA64)(Docket No. FAA-2008-1019)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4055. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Airbus Model A330-200 and -300 Series Airplanes; and Model A340-200 and -300 Series Airplanes" ((RIN2120-AA64)(Docket No. FAA-2009-1092)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

EC-4056. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Removal of Regulations Allowing for Polished Frost" ((RIN2120-AA64)(Docket No. FAA-2007-29281)) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Commerce, Science, and Transportation.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KERRY, from the Committee on Foreign Relations, without amendment:

S. 705. A bill to reauthorize the programs of the Overseas Private Investment Corporation, and for other purposes (Rept. No. 111-107).

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute:

S. 1067. A bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes (Rept. No. 111-108).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. KERRY (for himself, Mr. DURBIN, Mr. HARKIN, Mr. SCHUMER, Mr. MENENDEZ, Mr. BROWN, and Mr. KIRK):

S. 2882. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the treatment of individuals as independent contractors or employees, and for other purposes; to the Committee on Finance.

By Mr. JOHANNIS:

S. 2883. A bill to amend the Internal Revenue Code of 1986 to provide for the distribution of remaining balances in flexible spending arrangements upon termination from employment; to the Committee on Finance.

By Mr. LIEBERMAN (for himself, Mr. COLLINS, Mr. VOINOVICH, and Mr. AKAKA):

S. 2884. A bill to amend title 5, United States Code, to provide for the transportation of the dependents, remains, and effects of certain Federal employees who die while performing official duties or as a result of the performance of official duties; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LEMIEUX:

S.J. Res. 22. A joint resolution proposing an amendment to the Constitution of the United States relative to requiring a balanced budget and granting the President of the United States the power of line-item veto; to the Committee on the Judiciary.

## ADDITIONAL COSPONSORS

S. 418

At the request of Ms. KLOBUCHAR, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 418, a bill to require secondary metal recycling agents to keep records of their transactions in order to deter individuals and enterprises engaged in the theft and interstate sale of stolen secondary metal, and for other purposes.

S. 471

At the request of Mrs. MURRAY, the name of the Senator from Vermont

(Mr. SANDERS) was added as a cosponsor of S. 471, a bill to amend the Education Sciences Reform Act of 2002 to require the Statistics Commissioner to collect information from coeducational secondary schools on such schools' athletic programs, and for other purposes.

S. 571

At the request of Mr. MENENDEZ, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 571, a bill to strengthen the Nation's research efforts to identify the causes and cure of psoriasis and psoriatic arthritis, expand psoriasis and psoriatic arthritis data collection, and study access to and quality of care for people with psoriasis and psoriatic arthritis, and for other purposes.

S. 583

At the request of Mr. PRYOR, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 583, a bill to provide grants and loan guarantees for the development and construction of science parks to promote the clustering of innovation through high technology activities.

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 619, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 765

At the request of Mr. NELSON of Nebraska, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 765, a bill to amend the Internal Revenue Code of 1986 to allow the Secretary of the Treasury to not impose a penalty for failure to disclose reportable transactions when there is reasonable cause for such failure, to modify such penalty, and for other purposes.

S. 941

At the request of Mr. CRAPO, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 1067

At the request of Mr. FEINGOLD, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1121

At the request of Mr. HARKIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1121, a bill to amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

S. 1389

At the request of Mr. NELSON of Nebraska, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1389, a bill to clarify the exemption for certain annuity contracts and insurance policies from Federal regulation under the Securities Act of 1933.

S. 1535

At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1535, a bill to amend the Fish and Wildlife Act of 1956 to establish additional prohibitions on shooting wildlife from aircraft, and for other purposes.

S. 1611

At the request of Mr. GREGG, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1611, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1749

At the request of Mrs. FEINSTEIN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1749, a bill to amend title 18, United States Code, to prohibit the possession or use of cell phones and similar wireless devices by Federal prisoners.

S. 2729

At the request of Ms. STABENOW, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 2729, a bill to reduce greenhouse gas emissions from uncapped domestic sources, and for other purposes.

S. 2760

At the request of Mr. UDALL of New Mexico, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2760, a bill to amend title 38, United States Code, to provide for an increase in the annual amount authorized to be appropriated to the Secretary of Veterans Affairs to carry out comprehensive service programs for homeless veterans.

S. 2781

At the request of Ms. MIKULSKI, the names of the Senator from Alaska (Mr. BEGICH) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 2781, a bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an

individual with an intellectual disability.

S. 2812

At the request of Mr. BINGAMAN, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Idaho (Mr. RISCHE) were added as cosponsors of S. 2812, a bill to amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out programs to develop and demonstrate 2 small modular nuclear reactor designs, and for other purposes.

S. 2847

At the request of Mr. WHITEHOUSE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2847, a bill to regulate the volume of audio on commercials.

S. 2853

At the request of Mr. GREGG, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2853, a bill to establish a Bipartisan Task Force for Responsible Fiscal Action, to assure the long-term fiscal stability and economic security of the Federal Government of the United States, and to expand future prosperity growth for all Americans.

S. 2869

At the request of Ms. LANDRIEU, the names of the Senator from California (Mrs. BOXER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 2869, a bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

S. RES. 316

At the request of Mr. MENENDEZ, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Res. 316, a resolution calling upon the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide, and for other purposes.

AMENDMENT NO. 2790

At the request of Mr. CASEY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2790 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2804

At the request of Mr. CORNYN, the name of the Senator from Nebraska (Mr. JOHANNES) was added as a cosponsor of amendment No. 2804 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other

Federal employees, and for other purposes.

AMENDMENT NO. 2827

At the request of Mr. TESTER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of amendment No. 2827 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2878

At the request of Mr. CARDIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of amendment No. 2878 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2903

At the request of Ms. SNOWE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2903 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2947

At the request of Ms. KLOBUCHAR, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of amendment No. 2947 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3037

At the request of Mr. JOHNSON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 3037 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3119

At the request of Mr. WARNER, the names of the Senator from Arkansas

(Mr. PRYOR), the Senator from Maryland (Ms. MIKULSKI), the Senator from Missouri (Mrs. MCCASKILL) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of amendment No. 3119 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3136

At the request of Mr. UDALL of New Mexico, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of amendment No. 3136 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3156

At the request of Mr. LAUTENBERG, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 3156 proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3203

At the request of Mr. BAYH, the names of the Senator from Massachusetts (Mr. KIRK) and the Senator from California (Mrs. BOXER) were added as cosponsors of amendment No. 3203 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY (for himself, Mr. DURBIN, Mr. HARKIN, Mr. SCHUMER, Mr. MENENDEZ, Mr. BROWN, and Mr. KIRK):

S. 2882. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the treatment of individuals as independent contractors or employees, and for other purposes; to the Committee on Finance.

Mr. KERRY. Mr. President, today I am introducing the Taxpayer Responsibility, Accountability and Consistency Act of 2009 which will provide a level playing field to America's workers to ensure they are afforded protections already in the law, such as workers' compensation, Social Security, Medicare, payment of overtime, unemployment compensation, and the minimum wage. This legislation is cosponsored by Senators DURBIN, HARKIN, SCHUMER, BROWN, MENENDEZ, and KIRK.

Under current law, employers are required to take certain actions on behalf of their employees including withholding income taxes, paying Social Security and Medicare taxes, paying for unemployment insurance, and providing a safe and nondiscriminatory workplace. Employers are not required to undertake these obligations for independent contractors. When workers are misclassified, businesses that play by the rules lose business to competitors that do not play by the rules and workers lose valuable rights and protections.

The Internal Revenue Service, IRS, currently uses a common law test to determine whether a worker is an employee or independent contractor. Unfortunately, a loophole exists which allows a business to escape liability for misclassifying employees as independent contractors. Furthermore, there is statutory prohibition on the IRS providing guidance through regulation on employee classification.

Federal and State revenue is lost when businesses misclassify their workers as independent contractors. A study estimated that, between 1996 and 2004, \$34.7 billion of Federal tax revenues went uncollected due to the misclassification of workers and the tax loopholes that allow it. Recent GAO and Treasury Inspector General reports have cited misclassification as posing significant concerns for workers, their employers, and government revenue.

A study commissioned by the U.S. Department of Labor in 2000 found that up to 30 percent of firms misclassify their employees as independent contractors. State studies also show that misclassification is on the rise. In Massachusetts, the rate of misclassification has grown from 8.4 percent in 1995 through 1997 to a rate of 13.4 percent in 2001 through 2003.

Misclassification is more rampant than studies indicate. Studies cannot adequately capture the "underground economy," where workers are paid off the books, often in cash. Unreported cash is one aspect of this problem and it is difficult for the IRS to discover because employers have no record of pay.

States have been leading the way in documenting and recovering taxes related to the misclassification of workers. In the Commonwealth of Massachusetts, Governor Deval Patrick has tackled this issue head on and created an interagency task force on the underground economy and employee misclassification. The purpose of the task force is to gather information and assess current enforcement resources in an effort to improve current enforcement methods.

The Federal Government needs to follow the lead of the States by addressing the current safe harbor. The determination of whether an employer-

employee relationship exists for federal tax purposes is made under a common-law test that has been incorporated into specific provisions of the Internal Revenue Code or is required to be used pursuant to Treasury regulations.

In 1987, based on an examination of cases and rulings, the Internal Revenue Service developed a list of 20 factors for determining whether an employer-employee relationship exists. The IRS recognizes that there may be relevant factors in addition to the 20 factors. Most recently, the IRS has structured its inquiry into three groupings: behavioral control, financial control, and the relationship of the worker and firm.

Section 530 of the Revenue Act of 1978 generally allows taxpayers to treat a worker as not being an employee for employment tax purposes, regardless of the worker's actual status under the common law test, unless the taxpayer has no reasonable basis for such treatment or fails to meet certain requirements. Section 530 is commonly referred to as a "safe harbor." This provision was initially enacted for a year to give Congress time to resolve these complex issues. In 1982, the safe harbor provision was made permanent.

The Taxpayer Responsibility, Accountability and Consistency Act of 2009 would address the current loophole by requiring information reporting and making changes to the safe harbor. It would require businesses that pay any amount greater than \$600 during the year to corporate providers of property and services to file an information report with each provider and with the IRS. A similar provision has been proposed by both Presidents Obama and Bush. This provision will ensure that contractor income is accurately reported in order to prevent fraudulent underpayment of taxes.

The Taxpayer Responsibility, Accountability and Consistency Act of 2009 revises the safe harbor and makes it part of the Internal Revenue Code of 1986. The safe harbor would continue to be available to employers for purposes of shielding them from liability, but it will be narrowed to reduce abuses and to ensure they had a genuinely reasonable basis for not treating such individual as an employee. Under the Taxpayer Responsibility, Accountability and Consistency Act of 2009, an employer shall be treated as having a reasonable basis for treating an individual as an independent contractor only if the decision was based on a written determination by the IRS to the taxpayer addressing the employment status of such individual or another individual holding a substantially similar position with the taxpayer, or a concluded employment tax examination by the IRS.

The current safe harbor would continue to apply to services rendered up to one year after the date of enactment; after that, the new safe harbor

would apply to services rendered more than one year after the date of enactment.

I urge my colleagues to cosponsor the Taxpayer Responsibility, Accountability and Consistency Act of 2009 which will provide valuable protections to workers who are erroneously misclassified and help combat the underground economy.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3219. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3220. Mr. RISCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3221. Mr. WYDEN (for himself and Mr. DURBIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3222. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3223. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3224. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3225. Mr. LEMIEUX submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3226. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3227. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3228. Ms. LANDRIEU (for herself, Mr. WARNER, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3229. Mr. CRAPO submitted an amendment intended to be proposed to amendment



SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3230. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3231. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3232. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3233. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3234. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3235. Mr. CASEY (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3236. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3237. Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3238. Mr. ROCKEFELLER (for himself, Mr. KOHL, Mr. CARPER, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3239. Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3240. Mr. ROCKEFELLER (for himself, Mr. LIEBERMAN, Mr. WHITEHOUSE, and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3241. Mr. CARPER (for himself, Mr. CONRAD, and Mrs. SHAHEEN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 3219.** Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 396, between lines 8 and 9, insert the following:

### Subtitle H—Patient Protections

#### PART I—IMPROVING MANAGED CARE

##### Subpart A—Utilization Review; Claims

#### SEC. 1601. PROCEDURES FOR INITIAL CLAIMS FOR BENEFITS AND PRIOR AUTHORIZATION DETERMINATIONS.

(a) PROCEDURES OF INITIAL CLAIMS FOR BENEFITS.—

(1) IN GENERAL.—A group health plan, or health insurance issuer offering health insurance coverage, shall—

(A) make a determination on an initial claim for benefits by a participant, beneficiary, or enrollee (or authorized representative) regarding payment or coverage for items or services under the terms and conditions of the plan or coverage involved, including any cost-sharing amount that the participant, beneficiary, or enrollee is required to pay with respect to such claim for benefits; and

(B) notify a participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional involved regarding a determination on an initial claim for benefits made under the terms and conditions of the plan or coverage, including any cost-sharing amounts that the participant, beneficiary, or enrollee may be required to make with respect to such claim for benefits.

(2) ACCESS TO INFORMATION.—

(A) TIMELY PROVISION OF NECESSARY INFORMATION.—With respect to an initial claim for benefits, the participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional (if any) shall provide the plan or issuer with access to information requested by the plan or issuer that is necessary to make a determination relating to the claim. Such access shall be provided not later than 5 days after the date on which the request for information is received

(B) LIMITED EFFECT OF FAILURE ON PLAN OR ISSUER'S OBLIGATIONS.—Failure of the participant, beneficiary, or enrollee to comply with the requirements of subparagraph (A) shall not remove the obligation of the plan or issuer to make a decision in accordance with the medical exigencies of the case and as soon as possible, based on the available information, and failure to comply with the time limit established by this paragraph shall not remove the obligation of the plan or issuer to comply with the requirements of this section.

(3) ORAL REQUESTS.—In the case of a claim for benefits involving an expedited or concurrent determination, a participant, beneficiary, or enrollee (or authorized representative) may make an initial claim for benefits orally, but a group health plan, or health insurance issuer offering health insurance coverage, may require that the participant, beneficiary, or enrollee (or authorized representative) provide written confirmation of such

request in a timely manner on a form provided by the plan or issuer. In the case of such an oral request for benefits, the making of the request (and the timing of such request) shall be treated as the making at that time of a claims for such benefits without regard to whether and when a written confirmation of such request is made.

(b) NOTICE OF A DENIAL OF A CLAIM FOR BENEFITS.—Written notice of a denial made under an initial claim for benefits shall be issued to the participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 2 days after the date of the determination.

(c) REQUIREMENTS OF NOTICE OF DETERMINATIONS.—The written notice of a denial of a claim for benefits determination under subsection (b) shall be provided in printed form and written in a manner calculated to be understood by the participant, beneficiary, or enrollee and shall include—

(1) the specific reasons for the determination (including a summary of the clinical or scientific evidence used in making the determination); and

(2) the procedures for obtaining additional information concerning the determination.

(d) DEFINITIONS.—For purposes of this part:

(1) AUTHORIZED REPRESENTATIVE.—The term “authorized representative” means, with respect to an individual who is a participant, beneficiary, or enrollee, any health care professional or other person acting on behalf of the individual with the individual's consent or without such consent if the individual is medically unable to provide such consent.

(2) CLAIM FOR BENEFITS.—The term “claim for benefits” means any request for coverage (including authorization of coverage), for eligibility, or for payment in whole or in part, for an item or service under a group health plan or health insurance coverage.

(3) DENIAL OF CLAIM FOR BENEFITS.—The term “denial” means, with respect to a claim for benefits, a denial (in whole or in part) of, or a failure to act on a timely basis upon, the claim for benefits and includes a failure to provide benefits (including items and services) required to be provided under this part.

(4) TREATING HEALTH CARE PROFESSIONAL.—The term “treating health care professional” means, with respect to services to be provided to a participant, beneficiary, or enrollee, a health care professional who is primarily responsible for delivering those services to the participant, beneficiary, or enrollee.

#### Subpart B—Access to Care

#### SEC. 1611. CHOICE OF HEALTH CARE PROFESSIONAL.

(a) PRIMARY CARE.—If a group health plan, or a health insurance issuer that offers health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer shall permit each participant, beneficiary, and enrollee to designate any participating primary care provider who is available to accept such individual.

(b) SPECIALISTS.—

(1) IN GENERAL.—Subject to paragraph (2), a group health plan and a health insurance issuer that offers health insurance coverage shall permit each participant, beneficiary, or enrollee to receive medically necessary and appropriate specialty care, pursuant to appropriate referral procedures, from any



qualified participating health care professional who is available to accept such individual for such care.

(2) **LIMITATION.**—Paragraph (1) shall not apply to specialty care if the plan or issuer clearly informs participants, beneficiaries, and enrollees of the limitations on choice of participating health care professionals with respect to such care.

(3) **CONSTRUCTION.**—Nothing in this subsection shall be construed as affecting the application of section 114 (relating to access to specialty care).

#### SEC. 1612. ACCESS TO EMERGENCY CARE.

(a) **COVERAGE OF EMERGENCY SERVICES.**—

(1) **IN GENERAL.**—If a group health plan, or health insurance coverage offered by a health insurance issuer, provides or covers any benefits with respect to services in an emergency department of a hospital, the plan or issuer shall cover emergency services (as defined in paragraph (2)(B))—

(A) without the need for any prior authorization determination;

(B) whether the health care provider furnishing such services is a participating provider with respect to such services;

(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee—

(i) by a nonparticipating health care provider with or without prior authorization; or

(ii) (I) such services will be provided without imposing any requirement under the plan for prior authorization of services or any limitation on coverage where the provider of services does not have a contractual relationship with the plan for the providing of services that is more restrictive than the requirements or limitations that apply to emergency department services received from providers who do have such a contractual relationship with the plan; and

(II) if such services are provided out-of-network, the cost-sharing requirement (expressed as a copayment amount or coinsurance rate) is the same requirement that would apply if such services were provided in-network;

(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of the Public Health Service Act, section 701 of the Employee Retirement Income Security Act of 1974, or section 9801 of the Internal Revenue Code of 1986, and other than applicable cost-sharing).

(2) **DEFINITIONS.**—In this section:

(A) **EMERGENCY MEDICAL CONDITION.**—The term “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act.

(B) **EMERGENCY SERVICES.**—The term “emergency services” means, with respect to an emergency medical condition—

(i) a medical screening examination (as required under section 1867 of the Social Security Act) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition, and

(ii) within the capabilities of the staff and facilities available at the hospital, such further medical examination and treatment as

are required under section 1867 of such Act to stabilize the patient.

(C) **STABILIZE.**—The term “to stabilize”, with respect to an emergency medical condition (as defined in subparagraph (A)), has the meaning give in section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)).

(b) **REIMBURSEMENT FOR MAINTENANCE CARE AND POST-STABILIZATION CARE.**—A group health plan, and health insurance coverage offered by a health insurance issuer, must provide reimbursement for maintenance care and post-stabilization care in accordance with the requirements of section 1852(d)(2) of the Social Security Act (42 U.S.C. 1395w-22(d)(2)). Such reimbursement shall be provided in a manner consistent with subsection (a)(1)(C).

(c) **COVERAGE OF EMERGENCY AMBULANCE SERVICES.**—

(1) **IN GENERAL.**—If a group health plan, or health insurance coverage provided by a health insurance issuer, provides any benefits with respect to ambulance services and emergency services, the plan or issuer shall cover emergency ambulance services (as defined in paragraph (2)) furnished under the plan or coverage under the same terms and conditions under subparagraphs (A) through (D) of subsection (a)(1) under which coverage is provided for emergency services.

(2) **EMERGENCY AMBULANCE SERVICES.**—For purposes of this subsection, the term “emergency ambulance services” means ambulance services (as defined for purposes of section 1861(s)(7) of the Social Security Act) furnished to transport an individual who has an emergency medical condition (as defined in subsection (a)(2)(A)) to a hospital for the receipt of emergency services (as defined in subsection (a)(2)(B)) in a case in which the emergency services are covered under the plan or coverage pursuant to subsection (a)(1) and a prudent layperson, with an average knowledge of health and medicine, could reasonably expect that the absence of such transport would result in placing the health of the individual in serious jeopardy, serious impairment of bodily function, or serious dysfunction of any bodily organ or part.

#### SEC. 1613. TIMELY ACCESS TO SPECIALISTS.

(a) **TIMELY ACCESS.**—

(1) **IN GENERAL.**—A group health plan or health insurance issuer offering health insurance coverage shall ensure that participants, beneficiaries, and enrollees receive timely access to specialists who are appropriate to the condition of, and accessible to, the participant, beneficiary, or enrollee, when such specialty care is a covered benefit under the plan or coverage.

(2) **RULE OF CONSTRUCTION.**—Nothing in paragraph (1) shall be construed—

(A) to require the coverage under a group health plan or health insurance coverage of benefits or services;

(B) to prohibit a plan or issuer from including providers in the network only to the extent necessary to meet the needs of the plan's or issuer's participants, beneficiaries, or enrollees;

(C) to override any State licensure or scope-of-practice law; or

(D) to override the normal community standards, taking into account the geographic location of such community, regarding timely access to specialists.

(3) **ACCESS TO CERTAIN PROVIDERS.**—

(A) **IN GENERAL.**—With respect to specialty care under this section, if a participating specialist is not available and qualified to provide such care to the participant, beneficiary, or enrollee, the plan or issuer shall provide for coverage of such care by a nonparticipating specialist.

(B) **TREATMENT OF NONPARTICIPATING PROVIDERS.**—If a participant, beneficiary, or enrollee receives care from a nonparticipating specialist pursuant to subparagraph (A), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee beyond what the participant, beneficiary, or enrollee would otherwise pay for such specialty care if provided by a participating specialist.

(b) **REFERRALS.**—

(1) **AUTHORIZATION.**—Subject to subsection (a)(1), a group health plan or health insurance issuer may require an authorization in order to obtain coverage for specialty services under this section. Any such authorization—

(A) shall be for an appropriate duration of time or number of referrals, including an authorization for a standing referral where appropriate; and

(B) may not be refused solely because the authorization involves services of a nonparticipating specialist (described in subsection (a)(3)).

(2) **REFERRALS FOR ONGOING SPECIAL CONDITIONS.**—

(A) **IN GENERAL.**—Subject to subsection (a)(1), a group health plan or health insurance issuer shall permit a participant, beneficiary, or enrollee who has an ongoing special condition (as defined in subparagraph (B)) to receive a referral to a specialist for the treatment of such condition and such specialist may authorize such referrals, procedures, tests, and other medical services with respect to such condition, or coordinate the care for such condition, subject to the terms of a treatment plan (if any) referred to in subsection (c) with respect to the condition, if such specialist agrees otherwise to adhere to such plan's or issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan or issuer.

(B) **ONGOING SPECIAL CONDITION DEFINED.**—In this subsection, the term “ongoing special condition” means a condition or disease that—

(i) is life-threatening, degenerative, potentially disabling, or congenital; and

(ii) requires specialized medical care over a prolonged period of time.

(c) **TREATMENT PLANS.**—

(1) **IN GENERAL.**—A group health plan or health insurance issuer may require that the specialty care be provided—

(A) pursuant to a treatment plan, but only if the treatment plan—

(i) is developed by the specialist, in consultation with the case manager or primary care provider, and the participant, beneficiary, or enrollee, and

(ii) is approved by the plan or issuer in a timely manner, if the plan or issuer requires such approval; and

(B) in accordance with applicable quality assurance and utilization review standards of the plan or issuer.

(2) **NOTIFICATION.**—Nothing in paragraph (1) shall be construed as prohibiting a plan or issuer from requiring the specialist to provide the plan or issuer with regular updates on the specialty care provided, as well as all other reasonably necessary medical information.

(d) **SPECIALIST DEFINED.**—For purposes of this section, the term “specialist” means, with respect to the condition of the participant, beneficiary, or enrollee, a health care professional, facility, or center that has adequate expertise through appropriate training

and experience (including, in the case of a child, appropriate pediatric expertise) to provide high quality care in treating the condition.

#### SEC. 1614. ACCESS TO PEDIATRIC CARE.

(a) **PEDIATRIC CARE.**—In the case of a person who has a child who is a participant, beneficiary, or enrollee under a group health plan, or health insurance coverage offered by a health insurance issuer, if the plan or issuer requires or provides for the designation of a participating primary care provider for the child, the plan or issuer shall permit such person to designate a physician (allopathic or osteopathic) who specializes in pediatrics as the child's primary care provider if such provider participates in the network of the plan or issuer.

(b) **CONSTRUCTION.**—Nothing in subsection (a) shall be construed to waive any exclusions of coverage under the terms and conditions of the plan or health insurance coverage with respect to coverage of pediatric care.

#### SEC. 1615. PATIENT ACCESS TO OBSTETRICAL AND GYNECOLOGICAL CARE.

(a) **GENERAL RIGHTS.**—

(1) **DIRECT ACCESS.**—A group health plan, or health insurance issuer offering health insurance coverage, described in subsection (b) may not require authorization or referral by the plan, issuer, or any person (including a primary care provider described in subsection (b)(2)) in the case of a female participant, beneficiary, or enrollee who seeks coverage for obstetrical or gynecological care provided by a participating health care professional who specializes in obstetrics or gynecology. Such professional shall agree to otherwise adhere to such plan's or issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan or issuer.

(2) **OBSTETRICAL AND GYNECOLOGICAL CARE.**—A group health plan or health insurance issuer described in subsection (b) shall treat the provision of obstetrical and gynecological care, and the ordering of related obstetrical and gynecological items and services, pursuant to the direct access described under paragraph (1), by a participating health care professional who specializes in obstetrics or gynecology as the authorization of the primary care provider.

(b) **APPLICATION OF SECTION.**—A group health plan, or health insurance issuer offering health insurance coverage, described in this subsection is a group health plan or coverage that—

(1) provides coverage for obstetric or gynecologic care; and

(2) requires the designation by a participant, beneficiary, or enrollee of a participating primary care provider.

(c) **CONSTRUCTION.**—Nothing in subsection (a) shall be construed to—

(1) waive any exclusions of coverage under the terms and conditions of the plan or health insurance coverage with respect to coverage of obstetrical or gynecological care; or

(2) preclude the group health plan or health insurance issuer involved from requiring that the obstetrical or gynecological provider notify the primary care health care professional or the plan or issuer of treatment decisions.

#### SEC. 1616. CONTINUITY OF CARE.

(a) **TERMINATION OF PROVIDER.**—

(1) **IN GENERAL.**—If—

(A) a contract between a group health plan, or a health insurance issuer offering

health insurance coverage, and a treating health care provider is terminated (as defined in subsection (e)(4)), or

(B) benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in such plan or coverage,

the plan or issuer shall meet the requirements of paragraph (3) with respect to each continuing care patient.

(2) **TREATMENT OF TERMINATION OF CONTRACT WITH HEALTH INSURANCE ISSUER.**—If a contract for the provision of health insurance coverage between a group health plan and a health insurance issuer is terminated and, as a result of such termination, coverage of services of a health care provider is terminated with respect to an individual, the provisions of paragraph (1) (and the succeeding provisions of this section) shall apply under the plan in the same manner as if there had been a contract between the plan and the provider that had been terminated, but only with respect to benefits that are covered under the plan after the contract termination.

(3) **REQUIREMENTS.**—The requirements of this paragraph are that the plan or issuer—

(A) notify the continuing care patient involved, or arrange to have the patient notified pursuant to subsection (d)(2), on a timely basis of the termination described in paragraph (1) (or paragraph (2), if applicable) and the right to elect continued transitional care from the provider under this section;

(B) provide the patient with an opportunity to notify the plan or issuer of the patient's need for transitional care; and

(C) subject to subsection (c), permit the patient to elect to continue to be covered with respect to the course of treatment by such provider with the provider's consent during a transitional period (as provided for under subsection (b)).

(4) **CONTINUING CARE PATIENT.**—For purposes of this section, the term "continuing care patient" means a participant, beneficiary, or enrollee who—

(A) is undergoing a course of treatment for a serious and complex condition from the provider at the time the plan or issuer receives or provides notice of provider, benefit, or coverage termination described in paragraph (1) (or paragraph (2), if applicable);

(B) is undergoing a course of institutional or inpatient care from the provider at the time of such notice;

(C) is scheduled to undergo non-elective surgery from the provider at the time of such notice;

(D) is pregnant and undergoing a course of treatment for the pregnancy from the provider at the time of such notice; or

(E) is or was determined to be terminally ill (as determined under section 1861(dd)(3)(A) of the Social Security Act) at the time of such notice, but only with respect to a provider that was treating the terminal illness before the date of such notice.

(b) **TRANSITIONAL PERIODS.**—

(1) **SERIOUS AND COMPLEX CONDITIONS.**—The transitional period under this subsection with respect to a continuing care patient described in subsection (a)(4)(A) shall extend for up to 90 days (as determined by the treating health care professional) from the date of the notice described in subsection (a)(3)(A).

(2) **INSTITUTIONAL OR INPATIENT CARE.**—The transitional period under this subsection for a continuing care patient described in subsection (a)(4)(B) shall extend until the earlier of—

(A) the expiration of the 90-day period beginning on the date on which the notice under subsection (a)(3)(A) is provided; or

(B) the date of discharge of the patient from such care or the termination of the period of institutionalization, or, if later, the date of completion of reasonable follow-up care.

(3) **SCHEDULED NON-ELECTIVE SURGERY.**—The transitional period under this subsection for a continuing care patient described in subsection (a)(4)(C) shall extend until the completion of the surgery involved and post-surgical follow-up care relating to the surgery and occurring within 90 days after the date of the surgery.

(4) **PREGNANCY.**—The transitional period under this subsection for a continuing care patient described in subsection (a)(4)(D) shall extend through the provision of post-partum care directly related to the delivery.

(5) **TERMINAL ILLNESS.**—The transitional period under this subsection for a continuing care patient described in subsection (a)(4)(E) shall extend for the remainder of the patient's life for care that is directly related to the treatment of the terminal illness or its medical manifestations.

(c) **PERMISSIBLE TERMS AND CONDITIONS.**—A group health plan or health insurance issuer may condition coverage of continued treatment by a provider under this section upon the provider agreeing to the following terms and conditions:

(1) The treating health care provider agrees to accept reimbursement from the plan or issuer and continuing care patient involved (with respect to cost-sharing) at the rates applicable prior to the start of the transitional period as payment in full (or, in the case described in subsection (a)(2), at the rates applicable under the replacement plan or coverage after the date of the termination of the contract with the group health plan or health insurance issuer) and not to impose cost-sharing with respect to the patient in an amount that would exceed the cost-sharing that could have been imposed if the contract referred to in subsection (a)(1) had not been terminated.

(2) The treating health care provider agrees to adhere to the quality assurance standards of the plan or issuer responsible for payment under paragraph (1) and to provide to such plan or issuer necessary medical information related to the care provided.

(3) The treating health care provider agrees otherwise to adhere to such plan's or issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan or issuer.

(d) **RULES OF CONSTRUCTION.**—Nothing in this section shall be construed—

(1) to require the coverage of benefits which would not have been covered if the provider involved remained a participating provider; or

(2) with respect to the termination of a contract under subsection (a) to prevent a group health plan or health insurance issuer from requiring that the health care provider—

(A) notify participants, beneficiaries, or enrollees of their rights under this section; or

(B) provide the plan or issuer with the name of each participant, beneficiary, or enrollee who the provider believes is a continuing care patient.

(e) **DEFINITIONS.**—In this section:

(1) **CONTRACT.**—The term "contract" includes, with respect to a plan or issuer and a

treating health care provider, a contract between such plan or issuer and an organized network of providers that includes the treating health care provider, and (in the case of such a contract) the contract between the treating health care provider and the organized network.

(2) **HEALTH CARE PROVIDER.**—The term “health care provider” or “provider” means—

(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State; and

(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

(3) **SERIOUS AND COMPLEX CONDITION.**—The term “serious and complex condition” means, with respect to a participant, beneficiary, or enrollee under the plan or coverage—

(A) in the case of an acute illness, a condition that is serious enough to require specialized medical treatment to avoid the reasonable possibility of death or permanent harm; or

(B) in the case of a chronic illness or condition, is an ongoing special condition (as defined in section (b)(2)(B)).

(4) **TERMINATED.**—The term “terminated” includes, with respect to a contract, the expiration or nonrenewal of the contract, but does not include a termination of the contract for failure to meet applicable quality standards or for fraud.

#### **Subpart C—Protecting the Doctor-Patient Relationship**

#### **SEC. 1621. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.**

(a) **GENERAL RULE.**—The provisions of any contract or agreement, or the operation of any contract or agreement, between a group health plan or health insurance issuer in relation to health insurance coverage (including any partnership, association, or other organization that enters into or administers such a contract or agreement) and a health care provider (or group of health care providers) shall not prohibit or otherwise restrict a health care professional from advising such a participant, beneficiary, or enrollee who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan or coverage, if the professional is acting within the lawful scope of practice.

(b) **NULLIFICATION.**—Any contract provision or agreement that restricts or prohibits medical communications in violation of subsection (a) shall be null and void.

#### **Subpart D—Definitions**

#### **SEC. 1631. DEFINITIONS.**

(a) **INCORPORATION OF GENERAL DEFINITIONS.**—Except as otherwise provided, the provisions of section 2791 of the Public Health Service Act shall apply for purposes of this part in the same manner as they apply for purposes of title XXVII of such Act.

(b) **SECRETARY.**—Except as otherwise provided, the term “Secretary” means the Secretary of Health and Human Services, in consultation with the Secretary of Labor and

the term “appropriate Secretary” means the Secretary of Health and Human Services in relation to carrying out this part under sections 2706 and 2751 of the Public Health Service Act and the Secretary of Labor in relation to carrying out this part under section 713 of the Employee Retirement Income Security Act of 1974.

(c) **ADDITIONAL DEFINITIONS.**—For purposes of this part:

(1) **APPLICABLE AUTHORITY.**—The term “applicable authority” means—

(A) in the case of a group health plan, the Secretary of Health and Human Services and the Secretary of Labor; and

(B) in the case of a health insurance issuer with respect to a specific provision of this part, the applicable State authority (as defined in section 2791(d) of the Public Health Service Act), or the Secretary of Health and Human Services, if such Secretary is enforcing such provision under section 2722(a)(2) or 2761(a)(2) of the Public Health Service Act.

(2) **ENROLLEE.**—The term “enrollee” means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

(3) **GROUP HEALTH PLAN.**—The term “group health plan” has the meaning given such term in section 733(a) of the Employee Retirement Income Security Act of 1974, except that such term includes a employee welfare benefit plan treated as a group health plan under section 732(d) of such Act or defined as such a plan under section 607(1) of such Act.

(4) **HEALTH CARE PROFESSIONAL.**—The term “health care professional” means an individual who is licensed, accredited, or certified under State law to provide specified health care services and who is operating within the scope of such licensure, accreditation, or certification.

(5) **HEALTH CARE PROVIDER.**—The term “health care provider” includes a physician or other health care professional, as well as an institutional or other facility or agency that provides health care services and that is licensed, accredited, or certified to provide health care items and services under applicable State law.

(6) **NETWORK.**—The term “network” means, with respect to a group health plan or health insurance issuer offering health insurance coverage, the participating health care professionals and providers through whom the plan or issuer provides health care items and services to participants, beneficiaries, or enrollees.

(7) **NONPARTICIPATING.**—The term “nonparticipating” means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage, a health care provider that is not a participating health care provider with respect to such items and services.

(8) **PARTICIPATING.**—The term “participating” means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage offered by a health insurance issuer, a health care provider that furnishes such items and services under a contract or other arrangement with the plan or issuer.

(9) **PRIOR AUTHORIZATION.**—The term “prior authorization” means the process of obtaining prior approval from a health insurance issuer or group health plan for the provision or coverage of medical services.

(10) **TERMS AND CONDITIONS.**—The term “terms and conditions” includes, with re-

spect to a group health plan or health insurance coverage, requirements imposed under this part with respect to the plan or coverage.

#### **SEC. 1632. PREEMPTION; STATE FLEXIBILITY; CONSTRUCTION.**

(a) **CONTINUED APPLICABILITY OF STATE LAW WITH RESPECT TO HEALTH INSURANCE ISSUERS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), this part shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers (in connection with group health insurance coverage or otherwise) except to the extent that such standard or requirement prevents the application of a requirement of this part.

(2) **CONTINUED PREEMPTION WITH RESPECT TO GROUP HEALTH PLANS.**—Nothing in this part shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 with respect to group health plans.

(3) **CONSTRUCTION.**—In applying this section, a State law that provides for equal access to, and availability of, all categories of licensed health care providers and services shall not be treated as preventing the application of any requirement of this part.

(b) **APPLICATION OF SUBSTANTIALLY COMPLIANT STATE LAWS.**—

(1) **IN GENERAL.**—In the case of a State law that imposes, with respect to health insurance coverage offered by a health insurance issuer and with respect to a group health plan that is a non-Federal governmental plan, a requirement that substantially complies (within the meaning of subsection (c)) with a patient protection requirement (as defined in paragraph (3)) and does not prevent the application of other requirements under this subtitle (except in the case of other substantially compliant requirements), in applying the requirements of this part under section 2720 and 2754 (as applicable) of the Public Health Service Act (as added by part II), subject to subsection (a)(2)—

(A) the State law shall not be treated as being superseded under subsection (a); and

(B) the State law shall apply instead of the patient protection requirement otherwise applicable with respect to health insurance coverage and non-Federal governmental plans.

(2) **LIMITATION.**—In the case of a group health plan covered under title I of the Employee Retirement Income Security Act of 1974, paragraph (1) shall be construed to apply only with respect to the health insurance coverage (if any) offered in connection with the plan.

(3) **DEFINITIONS.**—In this section:

(A) **PATIENT PROTECTION REQUIREMENT.**—The term “patient protection requirement” means a requirement under this part, and includes (as a single requirement) a group or related set of requirements under a section or similar unit under this part.

(B) **SUBSTANTIALLY COMPLIANT.**—The terms “substantially compliant”, “substantially complies”, or “substantial compliance” with respect to a State law, mean that the State law has the same or similar features as the patient protection requirements and has a similar effect.

(c) **DETERMINATIONS OF SUBSTANTIAL COMPLIANCE.**—

(1) **CERTIFICATION BY STATES.**—A State may submit to the Secretary a certification that a State law provides for patient protections that are at least substantially compliant

with one or more patient protection requirements. Such certification shall be accompanied by such information as may be required to permit the Secretary to make the determination described in paragraph (2)(A).

(2) REVIEW.—

(A) IN GENERAL.—The Secretary shall promptly review a certification submitted under paragraph (1) with respect to a State law to determine if the State law substantially complies with the patient protection requirement (or requirements) to which the law relates.

(B) APPROVAL DEADLINES.—

(i) INITIAL REVIEW.—Such a certification is considered approved unless the Secretary notifies the State in writing, within 90 days after the date of receipt of the certification, that the certification is disapproved (and the reasons for disapproval) or that specified additional information is needed to make the determination described in subparagraph (A).

(ii) ADDITIONAL INFORMATION.—With respect to a State that has been notified by the Secretary under clause (i) that specified additional information is needed to make the determination described in subparagraph (A), the Secretary shall make the determination within 60 days after the date on which such specified additional information is received by the Secretary.

(3) APPROVAL.—

(A) IN GENERAL.—The Secretary shall approve a certification under paragraph (1) unless—

(i) the State fails to provide sufficient information to enable the Secretary to make a determination under paragraph (2)(A); or

(ii) the Secretary determines that the State law involved does not provide for patient protections that substantially comply with the patient protection requirement (or requirements) to which the law relates.

(B) STATE CHALLENGE.—A State that has a certification disapproved by the Secretary under subparagraph (A) may challenge such disapproval in the appropriate United States district court.

(C) DEFERENCE TO STATES.—With respect to a certification submitted under paragraph (1), the Secretary shall give deference to the State's interpretation of the State law involved and the compliance of the law with a patient protection requirement.

(D) PUBLIC NOTIFICATION.—The Secretary shall—

(i) provide a State with a notice of the termination to approve or disapprove a certification under this paragraph;

(ii) promptly publish in the Federal Register a notice that a State has submitted a certification under paragraph (1);

(iii) promptly publish in the Federal Register the notice described in clause (i) with respect to the State; and

(iv) annually publish the status of all States with respect to certifications.

(4) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing the certification (and approval of certification) of a State law under this subsection solely because it provides for greater protections for patients than those protections otherwise required to establish substantial compliance.

(5) PETITIONS.—

(A) PETITION PROCESS.—Effective on the date on which the provisions of this subtitle become effective, as provided for in section 1652, a group health plan, health insurance issuer, participant, beneficiary, or enrollee may submit a petition to the Secretary for an advisory opinion as to whether or not a standard or requirement under a State law

applicable to the plan, issuer, participant, beneficiary, or enrollee that is not the subject of a certification under this subsection, is superseded under subsection (a)(1) because such standard or requirement prevents the application of a requirement of this part.

(B) OPINION.—The Secretary shall issue an advisory opinion with respect to a petition submitted under subparagraph (A) within the 60-day period beginning on the date on which such petition is submitted.

(d) DEFINITIONS.—For purposes of this section:

(1) STATE LAW.—The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) STATE.—The term “State” includes a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any political subdivisions of such, or any agency or instrumentality of such.

**SEC. 1633. REGULATIONS.**

The Secretaries of Health and Human Services and Labor shall issue such regulations as may be necessary or appropriate to carry out this part. Such regulations shall be issued consistent with section 104 of Health Insurance Portability and Accountability Act of 1996. Such Secretaries may promulgate any interim final rules as the Secretaries determine are appropriate to carry out this part.

**SEC. 1634. INCORPORATION INTO PLAN OR COVERAGE DOCUMENTS.**

The requirements of this part with respect to a group health plan or health insurance coverage are deemed to be incorporated into, and made a part of, such plan or the policy, certificate, or contract providing such coverage and are enforceable under law as if directly included in the documentation of such plan or such policy, certificate, or contract.

**PART II—APPLICATION OF QUALITY CARE STANDARDS TO GROUP HEALTH PLANS AND HEALTH INSURANCE COVERAGE UNDER THE PUBLIC HEALTH SERVICE ACT**

**SEC. 1641. APPLICATION TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE.**

(a) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act, as amended by section 1001, is further amended by adding at the end the following new section:

**“SEC. 2720. PATIENT PROTECTION STANDARDS.**

“Each group health plan shall comply with patient protection requirements under part I of subtitle H of title I of the Patient Protection and Affordable Care Act, and each health insurance issuer shall comply with patient protection requirements under such part with respect to group health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this subsection.”.

(b) CONFORMING AMENDMENT.—Section 2721(b)(2)(A) of such Act (42 U.S.C. 300gg-21(b)(2)(A)) is amended by inserting “(other than section 2720)” after “requirements of such subparts”.

**SEC. 1642. APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.**

Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2753 the following new section:

**“SEC. 2754. PATIENT PROTECTION STANDARDS.**

“Each health insurance issuer shall comply with patient protection requirements

under part I of subtitle H of title I of the Patient Protection and Affordable Care Act with respect to individual health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this subsection.”.

**SEC. 1643. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.**

Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-91 et seq.), as amended by section 1002, is further amended by adding at the end the following:

**“SEC. 2795. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.**

“(a) AGREEMENT WITH STATES.—A State may enter into an agreement with the Secretary for the delegation to the State of some or all of the Secretary's authority under this title to enforce the requirements applicable under part I of subtitle H of title I of the Patient Protection and Affordable Care Act with respect to health insurance coverage offered by a health insurance issuer and with respect to a group health plan that is a non-Federal governmental plan.

“(b) DELEGATIONS.—Any department, agency, or instrumentality of a State to which authority is delegated pursuant to an agreement entered into under this section may, if authorized under State law and to the extent consistent with such agreement, exercise the powers of the Secretary under this title which relate to such authority.”.

**PART III—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974**

**SEC. 1651. APPLICATION OF PATIENT PROTECTION STANDARDS TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.**

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by section 1562, is further amended by adding at the end the following new section:

**“SEC. 716. PATIENT PROTECTION STANDARDS.**

“(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of part I of subtitle H of title I of the Patient Protection and Affordable Care Act (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this subsection.

“(b) PLAN SATISFACTION OF CERTAIN REQUIREMENTS.—

“(1) SATISFACTION OF CERTAIN REQUIREMENTS THROUGH INSURANCE.—For purposes of subsection (a), insofar as a group health plan provides benefits in the form of health insurance coverage through a health insurance issuer, the plan shall be treated as meeting the following requirements of part I of subtitle H of title I of the Patient Protection and Affordable Care Act with respect to such benefits and not be considered as failing to meet such requirements because of a failure of the issuer to meet such requirements so long as the plan sponsor or its representatives did not cause such failure by the issuer:

“(A) Section 1611 (relating to choice of health care professional).

“(B) Section 1612 (relating to access to emergency care).

“(C) Section 1613 (relating to timely access to specialists).

“(D) Section 1614 (relating to access to pediatric care).

“(E) Section 1615 (relating to patient access to obstetrical and gynecological care).

“(F) Section 1616 (relating to continuity of care), but only insofar as a replacement issuer assumes the obligation for continuity of care.

“(2) APPLICATION TO PROHIBITIONS.—Pursuant to rules of the Secretary, if a health insurance issuer offers health insurance coverage in connection with a group health plan and takes an action in violation of section 1621 of the Patient Protection and Affordable Care Act (relating to prohibition of interference with certain medical communications), the group health plan shall not be liable for such violation unless the plan caused such violation.

“(3) CONSTRUCTION.—Nothing in this subsection shall be construed to affect or modify the responsibilities of the fiduciaries of a group health plan under part 4 of subtitle B.

“(4) TREATMENT OF SUBSTANTIALLY COMPLIANT STATE LAWS.—For purposes of applying this subsection, any reference in this subsection to a requirement in a section or other provision in subtitle H of title I of the Patient Protection and Affordable Care Act with respect to a health insurance issuer is deemed to include a reference to a requirement under a State law that substantially complies (as determined under section 1632(c) of such Act) with the requirement in such section or other provisions.

“(c) CONFORMING REGULATIONS.—The Secretary shall issue regulations to coordinate the requirements on group health plans and health insurance issuers under this section with the requirements imposed under the other provisions of this title.”

(b) SATISFACTION OF ERISA CLAIMS PROCEDURE REQUIREMENT.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting “(a)” after “SEC. 503.” and by adding at the end the following new subsection:

“(b) In the case of a group health plan (as defined in section 733) compliance with the requirements of subpart A of part I of subtitle H of title I of the Patient Protection and Affordable Care Act, and compliance with regulations promulgated by the Secretary, in the case of a claims denial shall be deemed compliance with subsection (a) with respect to such claims denial.”

(c) CONFORMING AMENDMENTS.—(1) Section 732(a) of such Act (29 U.S.C. 1185(a)) is amended by striking “section 711” and inserting “sections 711 and 716”.

(2) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 715 the following new item:

“Sec. 716. Patient protection standards”.

(d) EFFECT ON COLLECTIVE BARGAINING AGREEMENTS.—In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before the date of enactment of this title, the provisions of this section (and the amendments made by this section) shall not apply until the date on which the last of the collective bargaining agreements relating to the coverage terminates. Any coverage amendment made pursuant to a collective bargaining agreement relating to the coverage which amends the coverage solely to conform to any requirement added by this section (or amendments) shall not be treated as a termination of such collective bargaining agreement.

#### SEC. 1652. EFFECTIVE DATE.

This subtitle (and the amendments made by this subtitle) shall become effective for plan years beginning on or after the date that is 6 months after the date of enactment of this Act.

**SA 3220.** Mr. RISCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 182, strike line 20 and all that follows through line 4 on page 183, and insert the following:

(3) STATE OPTION TO OPT-OUT OF NEW FEDERAL PROGRAM AND REQUIREMENTS.—

(A) IN GENERAL.—In accordance with this paragraph, a State may elect for the provisions of this Act to not apply within such State to the extent that such provisions violate the protections described in subparagraph (B).

(B) EFFECT OF OPT-OUT.—In the case of a State that makes an election under subparagraph (A)—

(i) the residents of such State shall not be subject to any requirement under this Act, including tax provisions or penalties, that would otherwise require such residents to purchase health insurance;

(ii) the employers located in such State shall not be subject to any requirement under this Act, including tax provisions or penalties, that would otherwise require such employers to provide health insurance to their employees or make contributions relating to health insurance;

(iii) the residents of such State shall not be prohibited under this Act from receiving health care services from any provider of health care services under terms and conditions subject to the laws of such State and mutually acceptable to the patient and the provider;

(iv) the residents of such State shall not be prohibited under this Act from entering into a contract subject to the laws of such State with any group health plan, health insurance issuer, or other business, for the provision of, or payment to other parties for, health care services;

(v) the eligibility of residents of such State for any program operated by or funded wholly or partly by the Federal Government shall not be adversely affected as a result of having received services in a manner consistent with clauses (iii) and (iv);

(vi) the health care providers within such State shall not be denied participation in or payment from a Federal program for which they would otherwise be eligible as a result of having provided services in a manner consistent with clauses (iii) and (iv); and

(vii) States that elect to opt out shall not be subject to the taxes and fees enumerated in the amendments made by title IX.

(C) PROCESS.—

(i) IN GENERAL.—A State shall be treated as making an election under subparagraph (a) if—

(I) the Governor of such State provides timely and appropriate notice to the Secretary of Health and Human Services notifying the Secretary that the State is making such election; or

(II) such State enacts a law making such election.

Such notice shall be provided at least 180 days before the election is to become effective.

(ii) REVOCATION OF ELECTION.—A State shall be treated as revoking an election

made by the State under subparagraph (A) if—

(I) the Governor of such State provides timely and appropriate notice to the Secretary of Health and Human Services of such revocation; or

(II) such State repeals a law described in subparagraph (i)(II).

Such notice of revocation shall be provided at least 180 days before the date the revocation is to become effective. As of such effective date the State and the residents, employers, and health insurance issuers of such State, shall be treated as if the election under subparagraph (A) had not been made.

**SA 3221.** Mr. WYDEN (for himself and Mr. DURBIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1203, between lines 16 and 17, insert the following:

#### SEC. 4109. IMPROVING ACCESS TO CLINICAL TRIALS.

(a) FINDINGS.—Congress finds the following:

(1) Advances in medicine depend on clinical trial research conducted at public and private research institutions across the United States.

(2) The challenges associated with enrolling participants in clinical research studies are especially difficult for studies that evaluate treatments for rare diseases and conditions (defined by the Orphan Drug Act as a disease or condition affecting fewer than 200,000 Americans), where the available number of willing and able research participants may be very small.

(3) In accordance with ethical standards established by the National Institutes of Health, sponsors of clinical research may provide payments to trial participants for out-of-pocket costs associated with trial enrollment and for the time and commitment demanded by those who participate in a study. When offering compensation, clinical trial sponsors are required to provide such payments to all participants.

(4) The offer of payment for research participation may pose a barrier to trial enrollment when such payments threaten the eligibility of clinical trial participants for Supplemental Security Income and Medicaid benefits.

(5) With a small number of potential trial participants and the possible loss of Supplemental Security Income and Medicaid benefits for many who wish to participate, clinical trial research for rare diseases and conditions becomes exceptionally difficult and may hinder research on new treatments and potential cures for these rare diseases and conditions.

(b) EXCLUSION FOR COMPENSATION FOR PARTICIPATION IN CLINICAL TRIALS FOR RARE DISEASES OR CONDITIONS.—

(1) EXCLUSION FROM INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

(A) by striking “and” at the end of paragraph (24);

(B) by striking the period at the end of paragraph (25) and inserting “; and”; and

(C) by adding at the end the following:

“(26) the first \$2,000 received during a calendar year by such individual (or such spouse) as compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition (as defined in section 5(b)(2) of the Orphan Drug Act), but only if the clinical trial—

“(A) has been reviewed and approved by an institutional review board that is established—

“(i) to protect the rights and welfare of human subjects participating in scientific research; and

“(ii) in accord with the requirements under part 46 of title 45, Code of Federal Regulations; and

“(B) meets the standards for protection of human subjects as provided under part 46 of title 45, Code of Federal Regulations.”.

(2) **EXCLUSION FROM RESOURCES.**—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)) is amended—

(A) by striking “and” at the end of paragraph (15);

(B) by striking the period at the end of paragraph (16) and inserting “; and”; and

(C) by inserting after paragraph (16) the following:

“(17) any amount received by such individual (or such spouse) which is excluded from income under section 1612(b)(26) (relating to compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition).”.

(3) **MEDICAID EXCLUSION.**—

(A) **IN GENERAL.**—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)), as amended by section 2002(a), is amended by adding at the end the following:

“(15) **EXCLUSION OF COMPENSATION FOR PARTICIPATION IN A CLINICAL TRIAL FOR TESTING OF TREATMENTS FOR A RARE DISEASE OR CONDITION.**—The first \$2,000 received by an individual (who has attained 19 years of age) as compensation for participation in a clinical trial meeting the requirements of section 1612(b)(26) shall be disregarded for purposes of determining the income eligibility of such individual for medical assistance under the State plan or any waiver of such plan.”.

(B) **CONFORMING AMENDMENT.**—Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)), as amended by section 2002(b), is amended by inserting “(e)(15),” before “(1)(3)”.

(4) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date that is the earlier of—

(A) the effective date of final regulations promulgated by the Commissioner of Social Security to carry out this section and such amendments; or

(B) 180 days after the date of enactment of this Act.

(5) **SUNSET PROVISION.**—This section and the amendments made by this section are repealed on the date that is 5 years after the date of the enactment of this Act.

(c) **STUDY AND REPORT.**—

(1) **STUDY.**—Not later than 36 months after the effective date of this section, the Comptroller General of the United States shall conduct a study to evaluate the impact of this section on enrollment of individuals who receive Supplemental Security Income benefits under title XVI of the Social Security Act (referred to in this section as “SSI beneficiaries”) in clinical trials for rare diseases or conditions. Such study shall include an analysis of the following:

(A) The percentage of enrollees in clinical trials for rare diseases or conditions who

were SSI beneficiaries during the 3-year period prior to the effective date of this section as compared to such percentage during the 3-year period after the effective date of this section.

(B) The range and average amount of compensation provided to SSI beneficiaries who participated in clinical trials for rare diseases or conditions.

(C) The overall ability of SSI beneficiaries to participate in clinical trials.

(D) Any additional related matters that the Comptroller General determines appropriate.

(2) **REPORT.**—Not later than 12 months after completion of the study conducted under paragraph (1), the Comptroller General shall submit to Congress a report containing the results of such study, together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

**SA 3222.** Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1525, between lines 21 and 22, insert the following:

(iv) **USE OF EXISTING DATA AND STATISTICS AND NEW DATA AND METHODOLOGIES.**—In carrying out the responsibilities described in subclauses (I) through (III) of clause (iii), the Institute designated under clause (i)(II) shall identify, select, and incorporate existing data and statistics as well as new data and methodologies that would synthesize, expand, augment, improve, and modernize statistical measures to provide more accurate, transparent, coherent, and comprehensive assessments.

**SA 3223.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 553, between lines 14 and 15, insert the following:

**SEC. 2721. INCREASED PAYMENTS TO PRIMARY CARE PRACTITIONERS UNDER MEDICAID.**

(a) **IN GENERAL.**—

(1) **FEE-FOR-SERVICE PAYMENTS.**—Section 1902 of the Social Security Act (42 U.S.C. 1396b), as amended by section 2001(b)(2), is amended—

(A) in subsection (a)(13)—

(i) by striking “and” at the end of subparagraph (A);

(ii) by adding “and” at the end of subparagraph (B); and

(iii) by adding at the end the following new subparagraph:

“(C) payment for primary care services (as defined in subsection (hh)(1)) furnished by

physicians (or for services furnished by other health care professionals that would be primary care services under such section if furnished by a physician) at a rate not less than 80 percent of the payment rate that would be applicable if the adjustment described in subsection (hh)(2) were to apply to such services and physicians or professionals (as the case may be) under part B of title XVIII for services furnished in 2010, 90 percent of such adjusted payment rate for services and physicians (or professionals) furnished in 2011, or 100 percent of such adjusted payment rate for services and physicians (or professionals) furnished in 2012 and each subsequent year;”; and

(B) by adding at the end the following new subsection:

“(hh) **INCREASED PAYMENT FOR PRIMARY CARE SERVICES.**—For purposes of subsection (a)(13)(C):

“(1) **PRIMARY CARE SERVICES DEFINED.**—The term ‘primary care services’ means evaluation and management services, without regard to the specialty of the physician furnishing the services, that are procedure codes (for services covered under title XVIII) for services in the category designated Evaluation and Management in the Health Care Common Procedure Coding System (established by the Secretary under section 1848(c)(5) as of December 31, 2009, and as subsequently modified by the Secretary).

“(2) **ADJUSTMENT.**—The adjustment described in this paragraph is the substitution of 1.25 percent for the update otherwise provided under section 1848(d)(4) for each year beginning with 2010.”.

(2) **UNDER MEDICAID MANAGED CARE PLANS.**—Section 1932(f) of such Act (42 U.S.C. 1396u-2(f)) is amended—

(A) in the heading, by adding at the end the following: “; ADEQUACY OF PAYMENT FOR PRIMARY CARE SERVICES”; and

(B) by inserting before the period at the end the following: “and, in the case of primary care services described in section 1902(a)(13)(C), consistent with the minimum payment rates specified in such section (regardless of the manner in which such payments are made, including in the form of capitation or partial capitation)”.

(b) **INCREASED FMAP.**—Section 1905 of such Act (42 U.S.C. 1396d), as amended by sections 2006 and 4107(a)(2), is amended

(1) in the first sentence of subsection (b), by striking “and” before “(4)” and by inserting before the period at the end the following: “, and (5) 100 percent for periods beginning with 2015 with respect to amounts described in subsection (cc)”;

(2) by adding at the end the following new subsection:

“(cc) For purposes of section 1905(b)(5), the amounts described in this subsection are the following:

“(1)(A) The portion of the amounts expended for medical assistance for services described in section 1902(a)(13)(C) furnished on or after January 1, 2010, that is attributable to the amount by which the minimum payment rate required under such section (or, by application, section 1932(f)) exceeds the payment rate applicable to such services under the State plan as of June 16, 2009.

“(B) Subparagraph (A) shall not be construed as preventing the payment of Federal financial participation based on the Federal medical assistance percentage for amounts in excess of those specified under such subparagraph.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to services furnished on or after January 1, 2010.



**SA 3224.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 510, between lines 9 and 10, insert the following:

**SEC. 2504. SUBMISSION OF DATA FOR PHYSICIAN ADMINISTERED DRUGS.**

(a) EXTENSION FOR IMPLEMENTATION OF REQUIREMENT FOR HOSPITALS TO SUBMIT UTILIZATION DATA.—Section 1927(a)(7) of the Social Security Act (42 U.S.C. 1396r-8(a)(7)) is amended—

(1) in subparagraph (A), by inserting “in non-hospital settings and on or after August 1, 2010, in hospitals” after “January 1, 2006,”;

(2) in subparagraph (B)(ii), by inserting “in non-hospital settings and on or after August 1, 2010, in hospitals” after “January 1, 2008,”; and

(3) in subparagraph (C), by inserting “(August 1, 2010, in the case of hospital information),” after “January 1, 2007.”

(b) PROPORTIONAL REBATES FOR DUAL ELIGIBLE CLAIMS.—Section 1927(a)(7) of the Social Security Act (42 U.S.C. 1396r-8(a)(7)) is amended by adding at the end the following new subparagraph:

“(E) TEMPORARY ADJUSTMENT TO REBATE CALCULATION FOR DUAL ELIGIBLE CLAIMS.—Only with respect to claims for rebates submitted by States to manufacturers during the 2-year period that begins on the date of enactment of this subparagraph, for purposes of calculating the amount of rebate under subsection (c) for a rebate period for a covered outpatient drug for which payment is made under a State plan or waiver under this title and under part B of title XVIII, the total number of units reported by the State of each dosage form and strength of each such drug paid for under the State plan or waiver under this title during such rebate period is deemed to be equal to the product of—

“(i) such total number of units of such drug for which payment is made under the State plan or waiver under this title and under part B of title XVIII; and

“(ii) the proportion (expressed as a percentage) that the amount the State paid for each dosage form and strength of such drug under the State plan or waiver under this title during such rebate period bears to the amount that the State would have paid for each dosage form and strength of such drug under the State plan or waiver under this title during such rebate period if the State were the sole payer for such dosage form and strength of such drug.”.

**SA 3225.** Mr. LEMIEUX submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title VI, insert the following:

**SEC. —. ESTABLISHMENT OF OFFICE OF DEPUTY SECRETARY FOR HEALTH CARE FRAUD PREVENTION IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES; APPOINTMENT AND POWERS OF DEPUTY SECRETARY.**

(a) IN GENERAL.—There is hereby established in the Department of Health and Human Services the Office of the Deputy Secretary for Health Care Fraud Prevention (referred to in this section as the “Office”).

(b) DUTIES OF THE OFFICE.—The Office shall—

(1) direct the appropriate implementation within the Department of Health and Human Services of health care fraud prevention and detection recommendations made by Federal Government and private sector antifraud and oversight entities;

(2) routinely consult with the Office of the Inspector General for the Department of Health and Human Services, the Attorney General, and private sector health care antifraud entities to identify emerging health care fraud issues requiring immediate action by the Office;

(3) through a fixed fee for implementation and maintenance plus results-based contingency fee contract entered into with an entity that has experience in designing and implementing antifraud systems in the financial sector and experience and knowledge of the various service delivery and reimbursement models of Federal health programs, provide for the design, development, and operation of a predictive model antifraud system (in accordance with subsection (d)) to analyze health care claims data in real-time to identify high risk claims activity, develop appropriate rules, processes, and procedures and investigative research approaches, in coordination with the Office of the Inspector General for the Department of Health and Human Services, based on the risk level assigned to claims activity, and develop a comprehensive antifraud database for health care activities carried out or managed by Federal health agencies;

(4) promulgate and enforce regulations relating to the reporting of data claims to the health care antifraud system developed under paragraph (3) by all Federal health agencies;

(5) establish thresholds, in consultation with the Office of the Inspector General of the Department of Health and Human Services and the Department of Justice—

(A) for the amount and extent of claims verified and designated as fraudulent, wasteful, or abusive through the fraud prevention system developed under paragraph (3) for excluding providers or suppliers from participation in Federal health programs; and

(B) for the referral of claims identified through the health care fraud prevention system developed under paragraph (3) to law enforcement entities (such as the Office of the Inspector General, Medicaid Fraud Control Units, and the Department of Justice); and

(6) share antifraud information and best practices with Federal health agencies, health insurance issuers, health care providers, antifraud organizations, antifraud databases, and Federal, State, and local law enforcement and regulatory agencies.

(c) DEPUTY SECRETARY FOR HEALTH CARE FRAUD PREVENTION.—

(1) ESTABLISHMENT.—There is established within the Department of Health and Human Services the position of Deputy Secretary for Health Care Fraud Prevention (referred to in this section as the “Deputy Secretary”). The

Deputy Secretary shall serve as the head of the Office, shall act as the chief health care fraud prevention and detection officer of the United States, and shall consider and direct the appropriate implementation of recommendations to prevent and detect health care fraud, waste, and abuse activities and initiatives within the Department.

(2) APPOINTMENT.—The Deputy Secretary shall be appointed by the President, by and with the advice and consent of the Senate, and serve for a term of 5 years, unless removed prior to the end of such term for cause by the President.

(3) POWERS.—Subject to oversight by the Secretary, the Deputy Secretary shall exercise all powers necessary to carry out this section, including the hiring of staff, entering into contracts, and the delegation of responsibilities to any employee of the Department of Health and Human Services or the Office appropriately designated for such responsibility.

(4) DUTIES.—

(A) IN GENERAL.—The Deputy Secretary shall—

(i) establish and manage the operation of the predictive modeling system developed under subsection (b)(3) to analyze Federal health claims in real-time to identify high risk claims activity and refer risky claims for appropriate verification and investigative research;

(ii) consider and order the appropriate implementation of fraud prevention and detection activities, such as those recommended by the Office of the Inspector General of the Department of Health and Human Services, the Government Accountability Office, MedPac, and private sector health care antifraud entities;

(iii) not later than 6 months after the date on which he or she is initially appointed, submit to Congress an implementation plan for the health care fraud prevention systems under subsection (d); and

(iv) submit annual performance reports to the Secretary and Congress that, at minimum, shall provide an estimate of the return on investment with respect to the system, for all recommendations made to the Deputy Secretary under this section, a description of whether such recommendations are implemented or not implemented, and contain other relevant performance metrics.

(B) ANALYSIS AND RECOMMENDATIONS.—The Deputy Secretary shall provide required strategies and treatments for claims identified as high risk (including a system of designations for claims, such as “approve”, “decline”, “research”, and “educate and pay”) to the Centers for Medicare & Medicaid Services, other Federal and State entities responsible for verifying whether claims identified as high risk are payable, should be automatically denied, or require further research and investigation.

(C) LIMITATION.—The Deputy Secretary shall not have any criminal or civil enforcement authority otherwise delegated to the Office of Inspector General of the Department of Health and Human Services or the Attorney General.

(5) REGULATIONS.—The Deputy Secretary shall promulgate and enforce such rules, regulations, orders, and interpretations as the Deputy Secretary determines to be necessary to carry out the purposes of this section. Such authority shall be exercised as provided under section 553 of title 5, United States Code.

(d) HEALTH CARE FRAUD PREVENTION SYSTEM.—



(1) IN GENERAL.—The fraud prevention system established under subsection (b)(3) shall be designed as follows:

(A) IN GENERAL.—The fraud prevention system shall—

- (i) be holistic;
- (ii) be able to view all provider and patient activities across all Federal health program payers;
- (iii) be able to integrate into the existing health care claims flow with minimal effort, time, and cost;
- (iv) be modeled after systems used in the Financial Services industry; and
- (v) utilize integrated real-time transaction risk scoring and referral strategy capabilities to identify claims that are statistically unusual.

(B) MODULARIZED ARCHITECTURE.—The fraud prevention system shall be designed from an end-to-end modularized perspective to allow for ease of integration into multiple points along a health care claim flow (pre- or post-adjudication), which shall—

- (i) utilize a single entity to host, support, manage, and maintain software-based services, predictive models, and solutions from a central location for the customers who access the fraud prevention system;
- (ii) allow access through a secure private data connection rather than the installation of software in multiple information technology infrastructures (and data facilities);
- (iii) provide access to the best and latest software without the need for upgrades, data security, and costly installations;
- (iv) permit modifications to the software and system edits in a rapid and timely manner;
- (v) ensure that all technology and decision components reside within the module; and
- (vi) ensure that the third party host of the modular solution is not a party, payer, or stakeholder that reports claims data, accesses the results of the fraud prevention systems analysis, or is otherwise required under this section to verify, research, or investigate the risk of claims.

(C) PROCESSING, SCORING, AND STORAGE.—The platform of the fraud prevention system shall be a high volume, rapid, real-time information technology solution, which includes data pooling, data storage, and scoring capabilities to quickly and accurately capture and evaluate data from millions of claims per day. Such platform shall be secure and have (at a minimum) data centers that comply with Federal and State privacy laws.

(D) DATA CONSORTIUM.—The fraud prevention system shall provide for the establishment of a centralized data file (referred to as a “consortium”) that accumulates data from all government health insurance claims data sources. Notwithstanding any other provision of law, Federal health care payers shall provide to the consortium existing claims data, such as Medicare’s “Common Working File” and Medicaid claims data, for the purpose of fraud and abuse prevention. Such accumulated data shall be transmitted and stored in an industry standard secure data environment that complies with applicable Federal privacy laws for use in building medical waste, fraud, and abuse prevention predictive models that have a comprehensive view of provider activity across all payers (and markets).

(E) MARKET VIEW.—The fraud prevention system shall ensure that claims data from Federal health programs and all markets flows through a central source so the waste, fraud, and abuse system can look across all markets and geographies in health care to

identify fraud and abuse in Medicare, Medicaid, the State Children’s Health Program, TRICARE, and the Department of Veterans Affairs, holistically. Such cross-market visibility shall identify unusual provider and patient behavior patterns and fraud and abuse schemes that may not be identified by looking independently at one Federal payer’s transactions.

(F) BEHAVIOR ENGINE.—The fraud prevention system shall ensure that the technology used provides real-time ability to identify high-risk behavior patterns across markets, geographies, and specialty group providers to detect waste, fraud, and abuse, and to identify providers that exhibit unusual behavior patterns. Behavior pattern technology that provides the capability to compare a provider’s current behavior to their own past behavior and to compare a provider’s current behavior to that of other providers in the same specialty group and geographic location shall be used in order to provide a comprehensive waste, fraud, and abuse prevention solution.

(G) PREDICTIVE MODEL.—The fraud prevention system shall involve the implementation of a statistically sound, empirically derived predictive modeling technology that is designed to prevent (versus post-payment detect) waste, fraud, and abuse. Such prevention system shall utilize historical transaction data, from across all Federal health programs and markets, to build and re-develop scoring models, have the capability to incorporate external data and external models from other sources into the health care predictive waste, fraud, and abuse model, and provide for a feedback loop to provide outcome information on verified claims so future system enhancements can be developed based on previous claims experience.

(H) CHANGE CONTROL.—The fraud prevention system platform shall have the infrastructure to implement new models and attributes in a test environment prior to moving into a production environment. Capabilities shall be developed to quickly make changes to models, attributes, or strategies to react to changing patterns in waste, fraud, and abuse.

(I) SCORING ENGINE.—The fraud prevention system shall identify high-risk claims by scoring all such claims on a real-time capacity prior to payment. Such scores shall then be communicated to the fraud management system provided for under subparagraph (J).

(J) FRAUD MANAGEMENT SYSTEM.—The fraud prevention system shall utilize a fraud management system, that contains workflow management and workstation tools to provide the ability to systematically present scores, reason codes, and treatment actions for high-risk scored transactions. The fraud prevention system shall ensure that analysts who review claims have the capability to access, review, and research claims efficiently, as well as decline or approve claims (payments) in an automated manner. Workflow management under this subparagraph shall be combined with the ability to utilize principles of experimental design to compare and measure prevention and detection rates between test and control strategies. Such strategy testing shall allow for continuous improvement and maximum effectiveness in keeping up with ever changing fraud and abuse patterns. Such system shall provide the capability to test different treatments or actions randomly (typically through use of random digit assignments).

(K) DECISION TECHNOLOGY.—The fraud prevention system shall have the capability to monitor consumer transactions in real-time

and monitor provider behavior at different stages within the transaction flow based upon provider, transaction and consumer trends. The fraud prevention system shall provide for the identification of provider and claims excessive usage patterns and trends that differ from similar peer groups, have the capability to trigger on multiple criteria, such as predictive model scores or custom attributes, and be able to segment transaction waste, fraud, and abuse into multiple types for health care categories and business types.

(L) FEEDBACK LOOP.—The fraud prevention system shall have a feedback loop where all Federal health payers provide pre-payment and post-payment information about the eventual status of a claim designated as “Normal”, “Waste”, “Fraud”, “Abuse”, or “Education Required”. Such feedback loop shall enable Federal health agencies to measure the actual amount of waste, fraud, and abuse as well as the savings in the system and provide the ability to retrain future, enhanced models. Such feedback loop shall be an industry file that contains information on previous fraud and abuse claims as well as abuse perpetrated by consumers, providers, and fraud rings, to be used to alert other payers, as well as for subsequent fraud and abuse solution development.

(M) TRACKING AND REPORTING.—The fraud prevention system shall ensure that the infrastructure exists to ascertain system, strategy, and predictive model return on investment. Dynamic model validation and strategy validation analysis and reporting shall be made available to ensure a strategy or predictive model has not degraded over time or is no longer effective. Queue reporting shall be established and made available for population estimates of what claims were flagged, what claims received treatment, and ultimately what results occurred. The capability shall exist to complete tracking and reporting for prevention strategies and actions residing farther upstream in the health care payment flow. The fraud prevention system shall establish a reliable metric to measure the dollars that are never paid due to identification of fraud and abuse, as well as a capability to effectively test and estimate the impact from different actions and treatments utilized to detect and prevent fraud and abuse for legitimate claims. Measuring results shall include waste and abuse.

(N) OPERATING TENET.—The fraud prevention system shall not be designed to deny health care services or to negatively impact prompt-pay laws because assessments are late. The database shall be designed to speed up the payment process. The fraud prevention system shall require the implementation of constant and consistent test and control strategies by stakeholders, with results shared with Federal health program leadership on a quarterly basis to validate improving progress in identifying and preventing waste, fraud, and abuse. Under such implementation, Federal health care payers shall use standard industry waste, fraud, and abuse measures of success.

(2) COORDINATION.—The Deputy Secretary shall coordinate the operation of the fraud prevention system with the Department of Justice and other related Federal fraud prevention systems.

(3) OPERATION.—The Deputy Secretary shall phase-in the implementation of the system under this subsection beginning not later than 18 months after the date of enactment of this Act, through the analysis of a limited number of Federal health program claims. Not later than 5 years after such

date of enactment, the Deputy Secretary shall ensure that such system is fully phased-in and applicable to all Federal health program claims.

(4) NON-PAYMENT OF CLAIMS.—The Deputy Secretary shall promulgate regulations to prohibit the payment of any health care claim that has been identified as potentially “fraudulent”, “wasteful”, or “abusive” until such time as the claim has been verified as valid.

(5) APPLICATION.—The system under this section shall only apply to Federal health programs (all such programs), including programs established after the date of enactment of this Act.

(6) REGULATIONS.—The Deputy Secretary shall promulgate regulations providing the maximum appropriate protection of personal privacy consistent with carrying out the Office’s responsibilities under this section.

(e) PROTECTING PARTICIPATION IN HEALTH CARE ANTIFRAUD PROGRAMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, no person providing information to the Secretary under this section shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew, or had reason to believe, that such information was false.

(2) CONFIDENTIALITY.—The Office shall, through the promulgation of regulations, establish standards for—

(A) the protection of confidential information submitted or obtained with regard to suspected or actual health care fraud;

(B) the protection of the ability of representatives of the Office to testify in private civil actions concerning any such information; and

(C) the sharing by the Office of any such information related to the medical antifraud programs established under this section.

(f) PROTECTING LEGITIMATE PROVIDERS AND SUPPLIERS.—

(1) INITIAL IMPLEMENTATION.—Not later than 2 years after the date of enactment of this Act, the Secretary shall establish procedures for the implementation of fraud and abuse detection methods under all Federal health programs (including the programs under titles XVIII, XIX, and XXI of the Social Security Act) with respect to items and

services furnished by providers of services and suppliers that includes the following:

(A) In the case of a new applicant to be such a provider or supplier, a background check, and in the case of a supplier a site visit prior to approval of participation in the program and random unannounced site visits after such approval.

(B) Not less than 5 years after the date of enactment of this Act, in the case of a provider or supplier who is not a new applicant, re-enrollment under the program, including a new background check and, in the case of a supplier, a site-visit as part of the application process for such re-enrollment, and random unannounced site visits after such re-enrollment.

(2) REQUIREMENT FOR PARTICIPATION.—In no case may a provider of services or supplier who does not meet the requirements under paragraph (1) participate in any Federal health program.

(3) BACKGROUND CHECKS.—The Secretary shall determine the extent of the background check conducted under paragraph (1), including whether—

(A) a fingerprint check is necessary;

(B) a background check shall be conducted with respect to additional employees, board members, contractors or other interested parties of the provider or supplier; and

(C) any additional national background checks regarding exclusion from participation in Federal health programs (such as the program under titles XVIII, XIX, or XXI of the Social Security Act), including conviction of any felony, crime that involves an act of fraud or false statement, adverse actions taken by State licensing boards, bankruptcies, outstanding taxes, or other indications identified by the Inspector General of the Department of Health and Human Services are necessary.

(4) LIMITATION.—No payment may be made to a provider of services or supplier under any Federal health program if such provider or supplier fails to obtain a satisfactory background check under this subsection.

(5) FEDERAL HEALTH PROGRAM.—In this subsection, the term “Federal health program” means any program that provides Federal payments or reimbursements to providers of health-related items or services, or suppliers of such items, for the provision of such items or services to an individual patient.

(g) USE OF SAVINGS.—Notwithstanding any other provision on law, amounts remaining

at the end of a fiscal year in the account for any Federal health program to which this section applies that the Secretary of Health and Human Services determines are remaining as a result of the fraud prevention activities applied under this section shall remain in such account and be used for such program for the next fiscal year.

(h) DEFINITION.—The term “Federal health agency” means the Department of Health and Human Services, the Department of Veterans Affairs, and any Federal agency with oversight or authority regarding the provision of any medical benefit, item, or service for which payment may be made under a Federal health care plan or contract.

**SA 3226.** Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 2027, strike line 20 and all that follows through page 2029, line 4, and insert the following:

(2) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)—

(A) NET PREMIUMS WRITTEN.—

(i) IN GENERAL.—The net premiums written with respect to health insurance for any United States health risk that are taken into account during any calendar year with respect to any covered entity shall be the sum of—

(I) the net premiums written with respect to Medicaid business that are taken into account during the calendar year, plus

(II) the net premiums written with respect to non-Medicaid business that are taken into account during the calendar year.

(ii) NET PREMIUMS WRITTEN WITH RESPECT TO MEDICAID BUSINESS.—

(I) IN GENERAL.—The net premiums written with respect to Medicaid business that are taken into account during the calendar year shall be determined in accordance with the following table:

With respect to a covered entity’s net premiums written with respect to Medicaid business during the calendar year that are:	The percentage of net premiums written that are taken into account is:
Not more than \$100,000,000 .....	0 percent
More than \$100,000,000 but not more than \$150,000,000 .....	25 percent
More than \$150,000,000 but not more than \$200,000,000 .....	50 percent
More than \$200,000,000 .....	100 percent.

(II) MEDICAID BUSINESS.—For purposes of this section, net premiums written with respect to Medicaid business means, with respect to any covered entity, that portion of the net premiums written with respect to health insurance for United States health risks which are written with respect to indi-

viduals who are eligible for medical assistance under, and enrolled in, a State plan under title XIX of the Social Security Act or a waiver of such plan. Such amounts shall be reported separately by each covered entity in the report required under subsection (g).

(iii) NET PREMIUMS WRITTEN WITH RESPECT TO NON-MEDICAID BUSINESS.—

(I) IN GENERAL.—The net premiums written with respect to non-Medicaid business that are taken into account during the calendar year shall be determined in accordance with the following table:

With respect to a covered entity’s net premiums written with respect to non-Medicaid business during the calendar year that are:	The percentage of net premiums written that are taken into account is:
Not more than \$25,000,000 .....	0 percent
More than \$25,000,000 but not more than \$50,000,000 .....	50 percent

With respect to a covered entity's net premiums written with respect to non-Medicaid business during the calendar year that are:	The percentage of net premiums written that are taken into account is:
More than \$50,000,000 .....	100 percent.

  

(II) NON-MEDICAID BUSINESS.—For purpose of this section, the net premiums written with respect to non-Medicaid business means, with respect to any covered entity, the total amount of net premiums written	with respect to health insurance for United States health risks less the net premiums written with respect to Medicaid business. (B) THIRD PARTY ADMINISTRATION AGREEMENT FEES.—The third party administration	agreement fees that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:
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With respect to a covered entity's third party administration agreement fees during the calendar year that are:	The percentage of third party administration agreement fees that are taken into account is:
Not more than \$5,000,000 .....	0 percent
More than \$5,000,000 but not more than \$10,000,000 .....	50 percent
More than \$10,000,000 .....	100 percent.

(3) SECRETARIAL DETERMINATION.—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity's net premiums written with respect to any United States health risk and third party administration agreement fees on the basis of reports submitted by the covered entity under subsection (g) and through the use of any other source of information available to the Secretary.

(C) PERFORMANCE ADJUSTMENT TO ANNUAL FEE.—

(1) IN GENERAL.—The Secretary shall—

(A) in the case of a penalized covered entity, increase the fee determined under subsection (b) for a calendar year as provided in paragraph (3), and

(B) in the case of any other covered entity, reduce the fee determined under subsection (b) for a calendar year as provided in paragraph (4).

(2) PENALIZED COVERED ENTITY DESCRIBED.—

(A) IN GENERAL.—For purposes of this paragraph, the term "penalized covered entity" means a covered entity that the Secretary determines has failed to meet the key performance thresholds (established under subparagraph (B)) for the calendar year involved.

(B) KEY PERFORMANCE THRESHOLDS.—The key performance thresholds established under this subparagraph are as follows:

(i) MEDICAL LOSS RATIO THRESHOLD.—The covered entity has a medical loss ratio, as reported under section 2718(a)(1) of the Public Health Service Act, of not less than 85 percent. The Secretary, in consultation with the Secretary of Health and Human Services may increase, but not decrease, such percentage by regulation.

(ii) MAXIMUM FINANCIAL RESERVE THRESHOLD.—

(I) IN GENERAL.—The covered entity has a financial reserve which is not greater than the amount established under regulations by the Secretary, in consultation with the Secretary of Health and Human Services. The Secretary may establish different thresholds for different categories of covered entity under this section. The Secretary, in consultation with the National Association of Insurance Commissioners, shall establish a uniform methodology for reporting financial reserve levels and determining maximum financial reserve thresholds under this subparagraph.

(II) REPORTS.—Each covered entity shall annually submit a report (in a manner to be established by the Secretary through regula-

tion) to the Secretary and the Secretary of Health and Human Services containing such information about the financial reserves of the entity as the Secretary may require. The rules of subsection (g)(2) shall apply to the information required to be reported under this subclause.

(3) AMOUNT OF FEE INCREASE.—

(A) IN GENERAL.—In the case of a penalized covered entity, the fee determined under subsection (b) for the calendar year shall be increased by the penalty amount.

(B) PENALTY AMOUNT.—

(i) IN GENERAL.—The penalty amount shall be the product of—

(I) the amount determined under subsection (b), and

(II) the sum of the amounts determined under subparagraphs (C) and (D).

(ii) LIMITATION.—The penalty amount shall not exceed 20 percent of the amount determined under subsection (b).

(C) MEDICAL LOSS RATIO COMPONENT.—The amount determined under this subparagraph is the amount equal to the excess of—

(i) the medical loss ratio threshold established under paragraph (2)(A), over

(ii) the medical loss ratio (expressed in decimal form) of the penalized covered entity.

(D) FINANCIAL RESERVE COMPONENT.—The amount determined under this subparagraph is the amount equal to the ratio of—

(i) the excess of—

(I) the financial reserves of the penalized covered entity, over

(II) the maximum financial reserve threshold established under paragraph (2)(B)(ii), to

(ii) such maximum financial reserve threshold.

(4) REDUCTION IN FEE.—

(A) IN GENERAL.—

(i) AMOUNT OF REDUCTION.—In the case of any covered entity that is not a penalized covered entity, the fee determined under subsection (b) for the calendar year shall be reduced by an amount equal to the product of—

(I) the sum of all penalty amounts assessed in the calendar year under paragraph (3), and

(II) the fee redistribution ratio.

(ii) LIMITATION.—The reduction under this paragraph shall not exceed 20 percent of the amount determined under subsection (b).

(B) FEE DISTRIBUTION RATIO.—For purposes of this paragraph, the fee redistribution ratio is the ratio of—

(i) the weighted net written premium amount of the covered entity, to

(ii) the aggregate of the weighted net written premium amount of all covered entities.

(C) WEIGHTED NET WRITTEN PREMIUM AMOUNT.—For purposes of this paragraph, the weighted net written premium amount with respect to any covered entity is the amount described in subsection (b)(1)(A)(i) with respect to such covered entity, increased by the product of—

(i) such amount, and

(ii) the product of 0.05 and the sum of the amounts determined under subparagraphs (D) and (E).

(D) MEDICAL LOSS RATIO COMPONENT.—The amount determined under this subparagraph is the amount equal to the excess of—

(i) the medical loss ratio (expressed as a percentage) of the covered entity, over

(ii) the medical loss ratio threshold established under paragraph (2)(A).

(E) FINANCIAL RESERVE COMPONENT.—The amount determined under this subparagraph is the amount equal to the ratio of—

(i) the excess of—

(I) the maximum financial reserve threshold established under paragraph (2)(B)(ii), over

(II) the financial reserves of the covered entity, to

(ii) such maximum financial reserve threshold.

**SA 3227.** Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 731, strike line 17 and all that follows through line 10 on page 732 and insert the following:

“(xix) Using commonly available and inexpensive technologies, including wireless and Internet-based tools, that have a demonstrated ability to improve patient outcomes or reduce health care costs, to simplify the complex management and treatment of chronic diseases for patients and health care providers.

“(C) ADDITIONAL FACTORS FOR CONSIDERATION.—In selecting models for testing under subparagraph (A), the CMI may consider the following additional factors:

“(i) Whether the model includes a regular process for monitoring and updating patient

care plans in a manner that is consistent with the needs and preferences of applicable individuals.

“(ii) Whether the model places the applicable individual, including family members and other informal caregivers of the applicable individual, at the center of the care team of the applicable individual.

“(iii) Whether the model provides for in-person contact with applicable individuals.

“(iv) Whether the model utilizes technology, such as electronic health records, wireless and Internet-based tools.”.

**SA 3228.** Ms. LANDRIEU (for herself, Mr. WARNER, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 396, between lines 8 and 9, insert the following:

**SEC. 1563. PROVISIONS RELATED TO VISION BENEFITS.**

(a) EXEMPTION FROM COMPREHENSIVE COVERAGE REQUIREMENT.—Section 2707 of the Public Health Service Act, as added by section 1201, is amended by adding at the end the following:

“(e) VISION ONLY.—This section shall not apply to a plan described in section 1311(d)(2)(B)(iii) of the Patient Protection and Affordable Care Act.”.

(b) ESSENTIAL HEALTH BENEFITS.—Section 1302 of this Act is amended—

(1) in subsection (b)(4)—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively;

(B) by inserting after subparagraph (F) the following:

“(G) provide that if a plan described in section 1311(d)(2)(B)(iii) (relating to stand-alone vision benefits plans) is offered through an Exchange, another health plan offered through such Exchange shall not fail to be treated as a qualified health plan solely because the plan does not offer coverage of benefits offered through the stand-alone plan that are otherwise required under paragraph (1)(J);” and

(C) in subparagraph (I), as so redesignated, by striking “(G)” and inserting “(H)”; and

(2) by striking “paragraph (4)(H)” each place such term appears and inserting “paragraph (4)(I)”.

(c) OFFERING OF COVERAGE.—Section 1311(d)(2)(B) of this Act is amended by adding at the end the following:

“(iii) OFFERING OF STAND-ALONE VISION BENEFITS.—Each Exchange within a State shall allow an issuer of a plan that only provides limited scope vision benefits meeting the requirements of section 9832(c)(2)(A) of the Internal Revenue Code of 1986 to offer the plan through the Exchange (either separately or in conjunction with a qualified health plan) if the plan provides pediatric vision benefits meeting the requirements of section 1302(b)(1)(J).”.

(d) REFUNDABLE CREDIT.—Section 36B(b) of the Internal Revenue Code of 1986, as added by section 1401, is amended by adding at the end the following:

“(F) SPECIAL RULE FOR PEDIATRIC VISION COVERAGE.—For purposes of determining the

amount of any monthly premium, if an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(iii) of the Patient Protection and Affordable Care Act for any plan year, the portion of the premium for the plan described in such section that (under regulations prescribed by the Secretary) is properly allocable to pediatric vision benefits which are included in the essential health benefits required to be provided by a qualified health plan under section 1302(b)(1)(J) of such Act shall be treated as a premium payable for a qualified health plan.”.

(e) REDUCED COST-SHARING.—Section 1402(c) of this Act is amended by adding at the end the following:

“(6) SPECIAL RULE FOR PEDIATRIC VISION PLANS.—If an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(iii) for any plan year, subsection (a) shall not apply to that portion of any reduction in cost-sharing under subsection (c) that (under regulations prescribed by the Secretary) is properly allocable to pediatric vision benefits which are included in the essential health benefits required to be provided by a qualified health plan under section 1302(b)(1)(J).”.

**SA 3229.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 510, strike line 10 and all that follows through page 515, line 11.

**SA 3230.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 436, between lines 14 and 15, insert the following:

**SEC. 2008. NON-APPLICATION OF MEDICAID EXPANSION MANDATES.**

Notwithstanding any other provision of this Act (or an amendment made by this Act), with respect to a State, any provision of this Act or amendment made by this Act that imposes on the State an expansion of coverage under the Medicaid program shall not apply to the State if such expansion would result in the State incurring costs for providing medical assistance to individuals enrolled under the State Medicaid program that are greater than the costs the State would have incurred if this Act and such amendments had not been enacted.

**SA 3231.** Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R.

3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 828, between lines 3 and 4, insert the following:

**SEC. 3130. ENHANCED FMAP TO PROVIDE INCREASED PAYMENTS FOR PHYSICIANS' SERVICES AND INPATIENT HOSPITAL SERVICES FURNISHED IN RURAL AREAS.**

Notwithstanding any other provision of law, if at any time after January 1, 2014, a State increases, by not less than the rate applicable under the Medicare program, the payment rates under its State Medicaid program for medical assistance consisting of physician services or inpatient hospital services that are furnished in rural areas (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))) of the State, the Federal medical assistance percentage otherwise applicable to such expenditures shall be increased by an amount equal to 100 percent of the increase in such rates from the rates applicable under the State Medicaid program for fiscal year 2009.

**SA 3232.** Mr. BYRD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1356, strike line 3 and insert the following:

“(2) PRIORITY.—In awarding grants under paragraph (1), the Secretary shall give priority to eligible entities that are located in States that have high rates of dental health care disparities.

**SA 3233.** Mr. BYRD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 94, between lines 3 and 4, insert the following:

“(4) SELECTION.—In selecting States to participate in the demonstration project under this subsection, the Secretary shall give priority to States that have populations with high rates of—

“(A) chronic diseases, with particular emphasis on inclusion of States that have populations with high rates of diabetes, hypertension, and cardiovascular disease;

“(B) smoking and use of tobacco products; or

“(C) obesity.”.

**SA 3234.** Mr. CASEY submitted an amendment intended to be proposed to

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 764, between lines 2 and 3, insert the following:

“(i) APPLICATION OF PILOT PROGRAM TO CONTINUING CARE HOSPITALS.—

“(1) IN GENERAL.—In conducting the pilot program, the Secretary shall apply the provisions of the program so as to separately pilot test the continuing care hospital model.

“(2) SPECIAL RULES.—In pilot testing the continuing care hospital model under paragraph (1), the following rules shall apply:

“(A) Such model shall be tested without the limitation to the conditions selected under subsection (a)(2)(B).

“(B) Notwithstanding subsection (a)(2)(D), an episode of care shall be defined as the full period that a patient stays in the continuing care hospital plus the first 30 days following discharge from such hospital.

“(3) CONTINUING CARE HOSPITAL DEFINED.—In this subsection, the term ‘continuing care hospital’ means an entity that has demonstrated the ability to meet patient care and patient safety standards and that provides under common management the medical and rehabilitation services provided in inpatient rehabilitation hospitals and units (as defined in section 1886(d)(1)(B)(ii)), long term care hospitals (as defined in section 1886(d)(1)(B)(iv)(I)), and skilled nursing facilities (as defined in section 1819(a)) that are located in a hospital described in section 1886(d).”.

**SA 3235.** Mr. CASEY (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 923, between lines 7 and 8, insert the following:

**SEC. 3211. IMPROVEMENTS TO TRANSITIONAL EXTRA BENEFITS UNDER MEDICARE ADVANTAGE.**

Section 1853(p) of the Social Security Act, as added by section 3201, is amended—

(1) in paragraph (3)—

(A) by redesignating subparagraph (C) as subparagraph (D);

(B) in subparagraph (D), as so redesignated, by striking “(A) or (B)” and inserting “(A), (B), or (C)”;

(C) by inserting after subparagraph (B) the following new subparagraph:

“(C) A county—

“(i) where the percentage of Medicare Advantage eligible beneficiaries in the county who are enrolled in an MA plan for the year is greater than 45 percent (as determined by the Secretary); and

“(ii) that is located in a State in which the percentage of residents over the age of 65 is

greater than 14 percent (as determined by the Secretary).”;

(D) by inserting after subparagraph (C) the following flush sentence:

“Such term shall not include any MA local area identified under subsection (o)(1).”; and

(2) in paragraph (5), by striking “\$5,000,000,000” and inserting “\$7,000,000,000”.

**SA 3236.** Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 731, between lines 16 and 17, insert the following:

“(xix) Implementing the lean methodology through a network of provider systems across the country in varying geographic areas and across sites of care that offer a patient-centered approach to improving quality, reducing medical errors, and enhancing value to patients.

**SA 3237.** Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title III, insert the following:

**SEC. \_\_\_\_ . PERMITTING PHYSICAL THERAPY TO BE FURNISHED UNDER THE MEDICARE PROGRAM UNDER THE CARE OF A DENTIST.**

(a) IN GENERAL.—Section 1861(p)(1) of the Social Security Act (42 U.S.C. 1395x(p)(1)) is amended by inserting “(2),” after “(1).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items and services furnished on or after the date of the enactment of this Act.

**SA 3238.** Mr. ROCKEFELLER (for himself, Mr. KOHL, Mr. CARPER, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

**TITLE X—COVERAGE OF ADVANCE CARE PLANNING**

**SEC. 10001. MEDICARE, MEDICAID, AND CHIP COVERAGE.**

(a) MEDICARE.—

(1) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x), as amended by section 4103, is amended—

(A) in subsection (s)(2)—

(i) by striking “and” at the end of subparagraph (EE);

(ii) by adding “and” at the end of subparagraph (FF); and

(iii) by adding at the end the following new subparagraph:

“(GG) voluntary advance care planning consultation (as defined in subsection (iii)(1));” and

(B) by adding at the end the following new subsection:

**“Voluntary Advance Care Planning Consultation**

“(iii)(1) Subject to paragraphs (3) and (4), the term ‘voluntary advance care planning consultation’ means an optional consultation between the individual and a practitioner described in paragraph (2) regarding advance care planning, if, subject to subparagraphs (A) and (B) of paragraph (3), the individual involved has not had such a consultation within the last 5 years. Such consultation shall include the following:

“(A) An explanation by the practitioner of advance care planning, including key questions and considerations, important steps, and suggested people to talk to.

“(B) An explanation by the practitioner of advance directives, including living wills and durable powers of attorney, and their uses.

“(C) An explanation by the practitioner of the role and responsibilities of a health care proxy.

“(D) The provision by the practitioner of a list of national and State-specific resources to assist consumers and their families with advance care planning, including the national toll-free hotline, the advance care planning clearinghouses, and State legal service organizations (including those funded through the Older Americans Act).

“(E) An explanation by the practitioner of the continuum of end-of-life services and supports available, including palliative care and hospice, and benefits for such services and supports that are available under this title.

“(F)(i) Subject to clause (ii), an explanation of orders regarding life sustaining treatment or similar orders, which shall include—

“(I) the reasons why the development of such an order is beneficial to the individual and the individual’s family and the reasons why such an order should be updated periodically as the health of the individual changes;

“(II) the information needed for an individual or legal surrogate to make informed decisions regarding the completion of such an order; and

“(III) the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decisionmaker (also known as a health care proxy).

“(ii) The Secretary may limit the requirement for explanations under clause (i) to consultations furnished in States, localities, or other geographic areas in which orders described in such clause have been widely adopted.

“(2) A practitioner described in this paragraph is—

“(A) a physician (as defined in subsection (r)(1)); and

“(B) a nurse practitioner or physician’s assistant who has the authority under State law to sign orders for life sustaining treatments.

“(3)(A) An initial preventive physical examination under subsection (ww), including any related discussion during such examination, shall not be considered an advance care planning consultation for purposes of applying the 5-year limitation under paragraph (1).

“(B) A voluntary advance care planning consultation with respect to an individual shall be conducted more frequently than provided under paragraph (1) if there is a significant change in the health condition of the individual, including diagnosis of a chronic, progressive, life-limiting disease, a life-threatening or terminal diagnosis or life-threatening injury, or upon admission to a skilled nursing facility, a long-term care facility (as defined by the Secretary), or a hospice program.

“(4) A consultation under this subsection may include the formulation of an order regarding life sustaining treatment or a similar order.

“(5)(A) For purposes of this section, the term ‘order regarding life sustaining treatment’ means, with respect to an individual, an actionable medical order relating to the treatment of that individual that—

“(i) is signed and dated by a physician (as defined in subsection (r)(1)) or another health care professional (as specified by the Secretary and who is acting within the scope of the professional’s authority under State law in signing such an order) and is in a form that permits it to stay with the patient and be followed by health care professionals and providers across the continuum of care, including home care, hospice, long-term care, community and assisted living residences, skilled nursing facilities, inpatient rehabilitation facilities, hospitals, and emergency medical services;

“(ii) effectively communicates the individual’s preferences regarding life sustaining treatment, including an indication of the treatment and care desired by the individual;

“(iii) is uniquely identifiable and standardized within a given locality, region, or State (as identified by the Secretary);

“(iv) is portable across care settings; and

“(v) may incorporate any advance directive (as defined in section 1866(f)(3)) if executed by the individual.

“(B) The level of treatment indicated under subparagraph (A)(ii) may range from an indication for full treatment to an indication to limit some or all or specified interventions. Such indicated levels of treatment may include indications respecting, among other items—

“(i) the intensity of medical intervention if the patient is pulseless, apneic, or has serious cardiac or pulmonary problems;

“(ii) the individual’s desire regarding transfer to a hospital or remaining at the current care setting;

“(iii) the use of antibiotics; and

“(iv) the use of artificially administered nutrition and hydration.”

(2) PAYMENT.—Section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w-4(j)(3)), as amended by section 4103(c)(2), is amended by inserting “(2)(GG),” after “(2)(FF)” (including administration of the health risk assessment),”

(3) FREQUENCY LIMITATION.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)(1)), as amended by section 4103(d), is amended—

(A) in paragraph (1)—

(i) in subparagraph (O), by striking “and” at the end;

(ii) in subparagraph (P) by striking the semicolon at the end and inserting “, and”; and

(iii) by adding at the end the following new subparagraph:

“(Q) in the case of advance care planning consultations (as defined in section 1861(iii)(1)), which are performed more frequently than is covered under such section;”

(B) in paragraph (7), by striking “or (P)” and inserting “(P), or (Q)”.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to consultations furnished on or after January 1, 2011.

(b) MEDICAID.—

(1) MANDATORY BENEFIT.—Section 1902(a)(10)(A) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)), as amended by section 2301(b), is amended in the matter preceding clause (i) by striking “and (28)” and inserting “, (28), and (29)”.

(2) MEDICAL ASSISTANCE.—Section 1905 of such Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3), 2006, and 2301(a)(1), is amended—

(A) in subsection (a)—

(i) in paragraph (28), by striking “and” at the end;

(ii) by redesignating paragraph (29) as paragraph (30); and

(iii) by inserting after paragraph (28) the following new paragraph:

“(29) advance care planning consultations (as defined in subsection (z));”

(B) by inserting after subsection (y) the following new subsection:

“(z)(1) For purposes of subsection (a)(28), the term ‘voluntary advance care planning consultation’ means an optional consultation between the individual and a practitioner described in paragraph (2) regarding advance care planning, if, subject to paragraph (3), the individual involved has not had such a consultation within the last 5 years. Such consultation shall include the following:

“(A) An explanation by the practitioner of advance care planning, including key questions and considerations, important steps, and suggested people to talk to.

“(B) An explanation by the practitioner of advance directives, including living wills and durable powers of attorney, and their uses.

“(C) An explanation by the practitioner of the role and responsibilities of a health care proxy.

“(D) The provision by the practitioner of a list of national and State-specific resources to assist consumers and their families with advance care planning, including the national toll-free hotline, the advance care planning clearinghouses, and State legal service organizations (including those funded through the Older Americans Act).

“(E) An explanation by the practitioner of the continuum of end-of-life services and supports available, including palliative care and hospice, and benefits for such services and supports that are available under this title.

“(F)(i) Subject to clause (ii), an explanation of orders for life sustaining treatments or similar orders, which shall include—

“(I) the reasons why the development of such an order is beneficial to the individual and the individual’s family and the reasons why such an order should be updated periodically as the health of the individual changes;

“(II) the information needed for an individual or legal surrogate to make informed

decisions regarding the completion of such an order; and

“(III) the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decisionmaker (also known as a health care proxy).

“(ii) The Secretary may limit the requirement for explanations under clause (i) to consultations furnished in States, localities, or other geographic areas in which orders described in such clause have been widely adopted.

“(2) A practitioner described in this paragraph is—

“(A) a physician (as defined in section 1861(r)(1)); and

“(B) a nurse practitioner or physician’s assistant who has the authority under State law to sign orders for life sustaining treatments.

“(3) A voluntary advance care planning consultation with respect to an individual shall be conducted more frequently than provided under paragraph (1) if there is a significant change in the health condition of the individual including diagnosis of a chronic, progressive, life-limiting disease, a life-threatening or terminal diagnosis or life-threatening injury, or upon admission to a nursing facility, a long-term care facility (as defined by the Secretary), or a hospice program.

“(4) A consultation under this subsection may include the formulation of an order regarding life sustaining treatment or a similar order.

“(5) For purposes of this subsection, the term ‘orders regarding life sustaining treatment’ has the meaning given that term in section 1861(iii)(5).”

(c) CHIP.—

(1) CHILD HEALTH ASSISTANCE.—Section 2110(a) of the Social Security Act (42 U.S.C. 1397jj) is amended—

(A) by redesignating paragraph (28) as paragraph (29); and

(B) by inserting after paragraph (27), the following:

“(28) Voluntary advance care planning consultations (as defined in section 1905(z)).”

(2) MANDATORY COVERAGE.—

(A) IN GENERAL.—Section 2103 of such Act (42 U.S.C. 1397cc), is amended—

(i) in subsection (a), in the matter preceding paragraph (1), by striking “and (7)” and inserting “(7), and (9)”; and

(ii) in subsection (c), by adding at the end the following:

“(9) END-OF-LIFE CARE.—The child health assistance provided to a targeted low-income child shall include coverage of voluntary advance care planning consultations (as defined in section 1905(z) and at the same payment rate as the rate that would apply to such a consultation under the State plan under title XIX).”

(B) CONFORMING AMENDMENT.—Section 2102(a)(7)(B) of such Act (42 U.S.C. 1397bb(a)(7)(B)) is amended by striking “section 2103(c)(5)” and inserting “paragraphs (5) and (9) of section 2103(c)”.

(d) DEFINITION OF ADVANCE DIRECTIVE UNDER MEDICARE, MEDICAID, AND CHIP.—

(1) MEDICARE.—Section 1866(f)(3) of the Social Security Act (42 U.S.C. 1395cc(f)(3)) is amended by striking “means” and all that follows through the period and inserting “means a living will, medical directive, health care power of attorney, durable power

of attorney, or other written statement by a competent individual that is recognized under State law and indicates the individual's wishes regarding medical treatment in the event of future incompetence. Such term includes an advance health care directive and a health care directive recognized under State law."

(2) **MEDICAID AND CHIP.**—Section 1902(w)(4) of such Act (42 U.S.C. 1396a(w)(4)) is amended by striking "means" and all that follows through the period and inserting "means a living will, medical directive, health care power of attorney, durable power of attorney, or other written statement by a competent individual that is recognized under State law and indicates the individual's wishes regarding medical treatment in the event of future incompetence. Such term includes an advance health care directive and a health care directive recognized under State law."

(e) **RULE OF CONSTRUCTION.**—A voluntary advance care planning consultation described under any provision of this section or amendment made by this section shall be provided solely at the option of the applicable individual. Nothing in this section shall be construed to—

(1) require an individual to complete an advance directive, an order for life-sustaining treatment, or other advance care planning document;

(2) require an individual to consent to restrictions on the amount, duration, or scope of medical benefits that such individual is entitled to receive through any program under titles XVIII, XIX, or XXI of the Social Security Act; or

(3) encourage or promote suicide or assisted suicide.

(f) **EFFECTIVE DATE.**—The amendments made by this section take effect January 1, 2010.

#### **SEC. 10002. DISSEMINATION OF ADVANCE CARE PLANNING INFORMATION.**

(a) **IN GENERAL.**—A health insurance issuer offering a qualified health plan—

(1) shall provide for the dissemination of information related to end-of-life planning to individuals seeking enrollment in qualified health plans offered through the Exchange;

(2) shall present such individuals with—

(A) the option to establish advanced directives and physician's orders for life sustaining treatment according to the laws of the State in which the individual resides; and

(B) information related to other planning tools; and

(3) shall not promote suicide, assisted suicide, euthanasia, or mercy killing.

The information presented under paragraph (2) shall not presume the withdrawal of treatment and shall include end-of-life planning information that includes options to maintain all or most medical interventions.

(b) **CONSTRUCTION.**—Nothing in this section shall be construed—

(1) to require an individual to complete an advanced directive or a physician's order for life sustaining treatment or other end-of-life planning document;

(2) to require an individual to consent to restrictions on the amount, duration, or scope of medical benefits otherwise covered under a qualified health plan; or

(3) to promote suicide, assisted suicide, euthanasia, or mercy killing.

(c) **ADVANCED DIRECTIVE DEFINED.**—In this section, the term "advanced directive" includes a living will, a comfort care order, or a durable power of attorney for health care.

(d) **PROHIBITION ON THE PROMOTION OF ASSISTED SUICIDE.**—

(1) **IN GENERAL.**—Subject to paragraph (3), information provided to meet the requirements of subsection (a)(2) shall not include advanced directives or other planning tools that list or describe as an option suicide, assisted suicide, euthanasia, or mercy killing, regardless of legality.

(2) **CONSTRUCTION.**—Nothing in paragraph (1) shall be construed to apply to or affect any option to—

(A) withhold or withdraw of medical treatment or medical care;

(B) withhold or withdraw of nutrition or hydration; and

(C) provide palliative or hospice care or use an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(3) **NO PREEMPTION OF STATE LAW.**—Nothing in this section shall be construed to preempt or otherwise have any effect on State laws regarding advance care planning, palliative care, or end-of-life decision-making.

**SA 3239.** Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

#### **TITLE X—ADVANCE CARE PLANNING AND COMPASSIONATE CARE**

##### **SECTION 10001. SHORT TITLE.**

This title may be cited as the "Advance Planning and Compassionate Care Act of 2009".

##### **SEC. 10002. DEFINITIONS.**

In this title:

(1) **ADVANCE CARE PLANNING.**—The term "advance care planning" means the process of—

(A) determining an individual's priorities, values and goals for care in the future when the individual is no longer able to express his or her wishes;

(B) engaging family members, health care proxies, and health care providers in an ongoing dialogue about—

(i) the individual's wishes for care;

(ii) what the future may hold for people with serious illnesses or injuries;

(iii) how individuals, their health care proxies, and family members want their beliefs and preferences to guide care decisions; and

(iv) the steps that individuals and family members can take regarding, and the resources available to help with, finances, family matters, spiritual questions, and other issues that impact seriously ill or dying patients and their families; and

(C) executing and updating advance directives and appointing a health care proxy.

(2) **ADVANCE DIRECTIVE.**—The term "advance directive" means a living will, medical directive, health care power of attorney, durable power of attorney, or other written

statement by a competent individual that is recognized under State law and indicates the individual's wishes regarding medical treatment in the event of future incompetence. Such term includes an advance health care directive and a health care directive recognized under State law.

(3) **CHIP.**—The term "CHIP" means the program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(4) **END-OF-LIFE-CARE.**—The term "end-of-life care" means all aspects of care of a patient with a potentially fatal condition, and includes care that is focused on specific preparations for an impending death.

(5) **HEALTH CARE POWER OF ATTORNEY.**—The term "health care power of attorney" means a legal document that identifies a health care proxy or decisionmaker for a patient who has the authority to act on the patient's behalf when the patient is unable to communicate his or her wishes for medical care on matters that the patient specifies when he or she is competent. Such term includes a durable power of attorney that relates to medical care.

(6) **LIVING WILL.**—The term "living will" means a legal document—

(A) used to specify the type of medical care (including any type of medical treatment, including life-sustaining procedures if that person becomes permanently unconscious or is otherwise dying) that an individual wants provided or withheld in the event the individual cannot speak for himself or herself and cannot express his or her wishes; and

(B) that requires a physician to honor the provisions of upon receipt or to transfer the care of the individual covered by the document to another physician that will honor such provisions.

(7) **MEDICAID.**—The term "Medicaid" means the program established under title XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(8) **MEDICARE.**—The term "Medicare" means the program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(9) **ORDERS FOR LIFE-SUSTAINING TREATMENT.**—The term "orders for life-sustaining treatment" means a process for focusing a patients' values, goals, and preferences on current medical circumstances and to translate such into visible and portable medical orders applicable across care settings, including home, long-term care, emergency medical services, and hospitals.

(10) **PALLIATIVE CARE.**—The term "palliative care" means interdisciplinary care for individuals with a life-threatening illness or injury relating to pain and symptom management and psychological, social, and spiritual needs and that seeks to improve the quality of life for the individual and the individual's family.

(11) **SECRETARY.**—The term "Secretary" means the Secretary of Health and Human Services.

#### **Subtitle A—Consumer and Provider Education**

##### **PART I—CONSUMER EDUCATION**

###### **Subpart A—National Initiatives**

##### **SEC. 10101. ADVANCE CARE PLANNING TELEPHONE HOTLINE.**

(a) **IN GENERAL.**—Not later than January 1, 2011, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish and operate directly, or by grant, contract, or interagency agreement, a 24-hour toll-free telephone hotline to provide consumer information regarding advance care planning, including—



(1) an explanation of advanced care planning and its importance;

(2) issues to be considered when developing an individual's advance care plan;

(3) how to establish an advance directive;

(4) procedures to help ensure that an individual's directives for end-of-life care are followed;

(5) Federal and State-specific resources for assistance with advance care planning; and

(6) hospice and palliative care (including their respective purposes and services).

(b) **ESTABLISHMENT.**—In carrying out the requirements under subsection (a), the Director of the Centers for Disease Control and Prevention may designate an existing 24-hour toll-free telephone hotline or, if no such service is available or appropriate, establish a new 24-hour toll-free telephone hotline.

**SEC. 10102. ADVANCE CARE PLANNING INFORMATION CLEARINGHOUSES.**

(a) **EXPANSION OF NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.**—

(1) **DEVELOPMENT.**—Not later than January 1, 2010, the Secretary shall develop an online clearinghouse to provide comprehensive information regarding advance care planning.

(2) **MAINTENANCE.**—The advance care planning clearinghouse, which shall be clearly identifiable and available on the homepage of the Department of Health and Human Service's National Clearinghouse for Long-Term Care Information website, shall be maintained and publicized by the Secretary on an ongoing basis.

(3) **CONTENT.**—The advance care planning clearinghouse shall include—

(A) any relevant content contained in the national public education campaign required under section 10104;

(B) content addressing—

(i) an explanation of advanced care planning and its importance;

(ii) issues to be considered when developing an individual's advance care plan;

(iii) how to establish an advance directive;

(iv) procedures to help ensure that an individual's directives for end-of-life care are followed; and

(v) hospice and palliative care (including their respective purposes and services); and

(C) available Federal and State-specific resources for assistance with advance care planning, including—

(i) contact information for any State public health departments that are responsible for issues regarding end-of-life care;

(ii) contact information for relevant legal service organizations, including those funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); and

(iii) advance directive forms for each State; and

(D) any additional information, as determined by the Secretary.

(b) **ESTABLISHMENT OF PEDIATRIC ADVANCE CARE PLANNING CLEARINGHOUSE.**—

(1) **DEVELOPMENT.**—Not later than January 1, 2011, the Secretary, in consultation with the Assistant Secretary for Children and Families of the Department of Health and Human Services, shall develop an online clearinghouse to provide comprehensive information regarding pediatric advance care planning.

(2) **MAINTENANCE.**—The pediatric advance care planning clearinghouse, which shall be clearly identifiable on the homepage of the Administration for Children and Families website, shall be maintained and publicized by the Secretary on an ongoing basis.

(3) **CONTENT.**—The pediatric advance care planning clearinghouse shall provide advance care planning information specific to

children with life-threatening illnesses or injuries and their families.

**SEC. 10103. ADVANCE CARE PLANNING TOOLKIT.**

(a) **DEVELOPMENT.**—Not later than July 1, 2010, the Secretary, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop an online advance care planning toolkit.

(b) **MAINTENANCE.**—The advance care planning toolkit, which shall be available in English, Spanish, and any other languages that the Secretary deems appropriate, shall be maintained and publicized by the Secretary on an ongoing basis and made available on the following websites:

(1) The Centers for Disease Control and Prevention.

(2) The Department of Health and Human Service's National Clearinghouse for Long-Term Care Information.

(3) The Administration for Children and Families.

(c) **CONTENT.**—The advance care planning toolkit shall include content addressing—

(1) common issues and questions regarding advance care planning, including individuals and resources to contact for further inquiries;

(2) advance directives and their uses, including living wills and durable powers of attorney;

(3) the roles and responsibilities of a health care proxy;

(4) Federal and State-specific resources to assist individuals and their families with advance care planning, including—

(A) the advance care planning toll-free telephone hotline established under section 10101;

(B) the advance care planning clearinghouses established under section 10102;

(C) the advance care planning toolkit established under this section;

(D) available State legal service organizations to assist individuals with advance care planning, including those organizations that receive funding pursuant to the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); and

(E) website links or addresses for State-specific advance directive forms; and

(5) any additional information, as determined by the Secretary.

**SEC. 10104. NATIONAL PUBLIC EDUCATION CAMPAIGN.**

(a) **NATIONAL PUBLIC EDUCATION CAMPAIGN.**—

(1) **IN GENERAL.**—Not later than January 1, 2011, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, directly or through grants, contracts, or interagency agreements, develop and implement a national campaign to inform the public of the importance of advance care planning and of an individual's right to direct and participate in their health care decisions.

(2) **CONTENT OF EDUCATIONAL CAMPAIGN.**—The national public education campaign established under paragraph (1) shall—

(A) employ the use of various media, including regularly televised public service announcements;

(B) provide culturally and linguistically appropriate information;

(C) be conducted continuously over a period of not less than 5 years;

(D) identify and promote the advance care planning information available on the Department of Health and Human Service's National Clearinghouse for Long-Term Care Information website and Administration for Children and Families website, as well as any other relevant Federal or State-specific advance care planning resources;

(E) raise public awareness of the consequences that may result if an individual is no longer able to express or communicate their health care decisions;

(F) address the importance of individuals speaking to family members, health care proxies, and health care providers as part of an ongoing dialogue regarding their health care choices;

(G) address the need for individuals to obtain readily available legal documents that express their health care decisions through advance directives (including living wills, comfort care orders, and durable powers of attorney for health care);

(H) raise public awareness regarding the availability of hospice and palliative care; and

(I) encourage individuals to speak with their physicians about their options and intentions for end-of-life care.

(3) **EVALUATION.**—

(A) **IN GENERAL.**—Not later than July 1, 2013, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall conduct a nationwide survey to evaluate whether the national campaign conducted under this subsection has achieved its goal of changing public awareness, attitudes, and behaviors regarding advance care planning.

(B) **BASELINE SURVEY.**—In order to evaluate the effectiveness of the national campaign, the Secretary shall conduct a baseline survey prior to implementation of the campaign.

(C) **REPORTING REQUIREMENT.**—Not later than December 31, 2013, the Secretary shall report the findings of such survey, as well as any recommendations that the Secretary determines appropriate regarding the need for continuation or legislative or administrative changes to facilitate changing public awareness, attitudes, and behaviors regarding advance care planning, to the appropriate committees of the Congress.

(b) **REPEAL.**—Section 4751(d) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1396a note; Public Law 101-508) is repealed.

**SEC. 10105. UPDATE OF MEDICARE AND SOCIAL SECURITY HANDBOOKS.**

(a) **MEDICARE & YOU HANDBOOK.**—

(1) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act, the Secretary shall update the online version of the "Planning Ahead" section of the Medicare & You Handbook to include—

(A) an explanation of advance care planning and advance directives, including—

(i) living wills;

(ii) health care proxies; and

(iii) after-death directives;

(B) Federal and State-specific resources to assist individuals and their families with advance care planning, including—

(i) the advance care planning toll-free telephone hotline established under section 10101;

(ii) the advance care planning clearinghouses established under section 10102;

(iii) the advance care planning toolkit established under section 10103;

(iv) available State legal service organizations to assist individuals with advance care planning, including those organizations that receive funding pursuant to the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); and

(v) website links or addresses for State-specific advance directive forms; and

(C) any additional information, as determined by the Secretary.

(2) **UPDATE OF PAPER AND SUBSEQUENT VERSIONS.**—The Secretary shall include the

information described in paragraph (1) in all paper and electronic versions of the Medicare & You Handbook that are published on or after the date that is 60 days after the date of enactment of this Act.

(b) SOCIAL SECURITY HANDBOOK.—The Commissioner of Social Security shall—

(1) not later than 60 days after the date of enactment of this Act, update the online version of the Social Security Handbook for beneficiaries to include the information described in subsection (a)(1); and

(2) include such information in all paper and online versions of such handbook that are published on or after the date that is 60 days after the date of enactment of this Act.

**SEC. 10106. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the period of fiscal years 2010 through 2014—

(1) \$195,000,000 to the Secretary to carry out sections 10101, 10102, 10103, 10104 and 10105(a); and

(2) \$5,000,000 to the Commissioner of Social Security to carry out section 10105(b).

**Subpart B—State and Local Initiatives**

**SEC. 10111. FINANCIAL ASSISTANCE FOR ADVANCE CARE PLANNING.**

(a) LEGAL ASSISTANCE FOR ADVANCE CARE PLANNING.—

(1) DEFINITION OF RECIPIENT.—Section 1002(6) of the Legal Services Corporation Act (42 U.S.C. 2996a(6)) is amended by striking “clause (A) of” and inserting “subparagraph (A) or (B) of”.

(2) ADVANCE CARE PLANNING.—Section 1006 of the Legal Services Corporation Act (42 U.S.C. 2996e) is amended—

(A) in subsection (a)(1)—

(i) by striking “title, and (B) to make” and inserting the following: “title;

“(C) to make”; and

(ii) by inserting after subparagraph (A) the following:

“(B) to provide financial assistance, and make grants and contracts, as described in subparagraph (A), on a competitive basis for the purpose of providing legal assistance in the form of advance care planning (as defined in section 10002 of the Patient Protection and Affordable Care Act, and including providing information about State-specific advance directives, as defined in that section) for eligible clients under this title, including providing such planning to the family members of eligible clients and persons with power of attorney to make health care decisions for the clients; and”;

(B) in subsection (b), by adding at the end the following:

“(2) Advance care planning provided in accordance with subsection (a)(1)(B) shall not be construed to violate the Assisted Suicide Funding Restriction Act of 1997 (42 U.S.C. 14401 et seq.).”.

(3) REPORTS.—Section 1008(a) of the Legal Services Corporation Act (42 U.S.C. 2996g(a)) is amended by adding at the end the following: “The Corporation shall require such a report, on an annual basis, from each grantee, contractor, or other recipient of financial assistance under section 1006(a)(1)(B).”.

(4) AUTHORIZATION OF APPROPRIATIONS.—Section 1010 of the Legal Services Corporation Act (42 U.S.C. 2996i) is amended—

(A) in subsection (a)—

(i) by striking “(a)” and inserting “(a)(1)”;

(ii) in the last sentence, by striking “Appropriations for that purpose” and inserting the following:

“(3) Appropriations for a purpose described in paragraph (1) or (2)”;

(iii) by inserting before paragraph (3) (as designated by clause (ii)) the following:

“(2) There are authorized to be appropriated to carry out section 1006(a)(1)(B), \$10,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.”; and

(B) in subsection (d), by striking “subsection (a)” and inserting “subsection (a)(1)”.

(5) EFFECTIVE DATE.—This subsection and the amendments made by this subsection take effect July 1, 2010.

(b) STATE HEALTH INSURANCE ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—The Secretary shall use amounts made available under paragraph (3) to award grants to States for State health insurance assistance programs receiving assistance under section 4360 of the Omnibus Budget Reconciliation Act of 1990 to provide advance care planning services to Medicare beneficiaries, personal representatives of such beneficiaries, and the families of such beneficiaries. Such services shall include information regarding State-specific advance directives and ways to discuss individual care wishes with health care providers.

(2) REQUIREMENTS.—

(A) AWARD OF GRANTS.—In making grants under this subsection for a fiscal year, the Secretary shall satisfy the following requirements:

(i) Two-thirds of the total amount of funds available under paragraph (3) for a fiscal year shall be allocated among those States approved for a grant under this section that have adopted the Uniform Health-Care Decisions Act drafted by the National Conference of Commissioners on Uniform State Laws and approved and recommended for enactment by all States at the annual conference of such commissioners in 1993.

(ii) One-third of the total amount of funds available under paragraph (3) for a fiscal year shall be allocated among those States approved for a grant under this section that have adopted a uniform form regarding orders regarding life sustaining treatment (as described in section 10002) or a comparable approach to advance care planning.

(B) WORK PLAN; REPORT.—As a condition of being awarded a grant under this subsection, a State shall submit the following to the Secretary:

(i) An approved plan for expending grant funds.

(ii) For each fiscal year for which the State is paid grant funds under this subsection, an annual report regarding the use of the funds, including the number of Medicare beneficiaries served and their satisfaction with the services provided.

(C) LIMITATION.—No State shall be paid funds from a grant made under this subsection prior to July 1, 2010.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to the Centers for Medicare & Medicaid Services Program Management Account, \$12,000,000 for each of fiscal years 2010 through 2014 for purposes of awarding grants to States under paragraph (1).

(c) MEDICAID TRANSFORMATION GRANTS FOR ADVANCE CARE PLANNING.—Section 1903(z) of the Social Security Act (42 U.S.C. 1396b(z)) is amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

“(G) Methods for improving the effectiveness and efficiency of medical assistance provided under this title by making available to individuals enrolled in the State plan or under a waiver of such plan information regarding advance care planning (as defined in section 10002 of the Patient Protection and Affordable Care Act), including at time of

enrollment or renewal of enrollment in the plan or waiver, through providers, and through such other innovative means as the State determines appropriate.”;

(2) in paragraph (3), by adding at the end the following new subparagraph:

“(D) WORK PLAN REQUIRED FOR AWARD OF ADVANCE CARE PLANNING GRANTS.—Payment to a State under this subsection to adopt the innovative methods described in paragraph (2)(G) is conditioned on the State submitting to the Secretary an approved plan for expending the funds awarded to the State under this subsection.”; and

(3) in paragraph (4)—

(A) in subparagraph (A)—

(i) in clause (i), by striking “and” at the end;

(ii) in clause (ii), by striking the period at the end and inserting “; and”; and

(iii) by inserting after clause (ii), the following new clause:

“(iii) \$20,000,000 for each of fiscal years 2010 through 2014.”; and

(B) by striking subparagraph (B), and inserting the following:

“(B) ALLOCATION OF FUNDS.—The Secretary shall specify a method for allocating the funds made available under this subsection among States awarded a grant for fiscal year 2010, 2011, 2012, 2013, or 2014. Such method shall provide that—

“(i) 100 percent of such funds for each of fiscal years 2010 through 2014 shall be awarded to States that design programs to adopt the innovative methods described in paragraph (2)(G); and

“(ii) in no event shall a payment to a State awarded a grant under this subsection for fiscal year 2010 be made prior to July 1, 2010.”.

(d) ADVANCE CARE PLANNING COMMUNITY TRAINING GRANTS.—

(1) IN GENERAL.—The Secretary shall use amounts made available under paragraph (3) to award grants to area agencies on aging (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)).

(2) REQUIREMENTS.—

(A) USE OF FUNDS.—Funds awarded to an area agency on aging under this subsection shall be used to provide advance care planning education and training opportunities for local aging service providers and organizations.

(B) WORK PLAN; REPORT.—As a condition of being awarded a grant under this subsection, an area agency on aging shall submit the following to the Secretary:

(i) An approved plan for expending grant funds.

(ii) For each fiscal year for which the agency is paid grant funds under this subsection, an annual report regarding the use of the funds, including the number of Medicare beneficiaries served and their satisfaction with the services provided.

(C) LIMITATION.—No area agency on aging shall be paid funds from a grant made under this subsection prior to July 1, 2010.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to the Centers for Medicare & Medicaid Services Program Management Account, \$12,000,000 for each of fiscal years 2010 through 2014 for purposes of awarding grants to area agencies on aging under paragraph (1).

(e) NONDUPLICATION OF ACTIVITIES.—The Secretary shall establish procedures to ensure that funds made available under grants awarded under this section or pursuant to

amendments made by this section supplement, not supplant, existing Federal funding, and that such funds are not used to duplicate activities carried out under such grants or under other Federally funded programs.

**SEC. 10112. GRANTS FOR PROGRAMS FOR ORDERS REGARDING LIFE SUSTAINING TREATMENT.**

(a) IN GENERAL.—The Secretary shall make grants to eligible entities for the purpose of—

(1) establishing new programs for orders regarding life sustaining treatment in States or localities;

(2) expanding or enhancing an existing program for orders regarding life sustaining treatment in States or localities; or

(3) providing a clearinghouse of information on programs for orders for life sustaining treatment and consultative services for the development or enhancement of such programs.

(b) AUTHORIZED ACTIVITIES.—Activities funded through a grant under this section for an area may include—

(1) developing such a program for the area that includes home care, hospice, long-term care, community and assisted living residences, skilled nursing facilities, inpatient rehabilitation facilities, hospitals, and emergency medical services within the area;

(2) securing consultative services and advice from institutions with experience in developing and managing such programs; and

(3) expanding an existing program for orders regarding life sustaining treatment to serve more patients or enhance the quality of services, including educational services for patients and patients' families or training of health care professionals.

(c) DISTRIBUTION OF FUNDS.—In funding grants under this section, the Secretary shall ensure that, of the funds appropriated to carry out this section for each fiscal year—

(1) at least two-thirds are used for establishing or developing new programs for orders regarding life sustaining treatment; and

(2) one-third is used for expanding or enhancing existing programs for orders regarding life sustaining treatment.

(d) DEFINITIONS.—In this section:

(1) The term “eligible entity” includes—

(A) an academic medical center, a medical school, a State health department, a State medical association, a multi-State taskforce, a hospital, or a health system capable of administering a program for orders regarding life sustaining treatment for a State or locality; or

(B) any other health care agency or entity as the Secretary determines appropriate.

(2) The term “order regarding life sustaining treatment” means, with respect to an individual, an actionable medical order relating to the treatment of that individual that—

(A) is signed and dated by a physician (as defined in section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1))) or another health care professional (as specified by the Secretary and who is acting within the scope of the professional's authority under State law in signing such an order) and is in a form that permits it to stay with the patient and be followed by health care professionals and providers across the continuum of care, including home care, hospice, long-term care, community and assisted living residences, skilled nursing facilities, inpatient rehabilitation facilities, hospitals, and emergency medical services;

(B) effectively communicates the individual's preferences regarding life sustaining

treatment, including an indication of the treatment and care desired by the individual;

(C) is uniquely identifiable and standardized within a given locality, region, or State (as identified by the Secretary);

(D) is portable across care settings; and

(E) may incorporate any advance directive (as defined in section 1866(f)(3) of the Social Security Act (42 U.S.C. 1395cc(f)(3))) if executed by the individual.

(3) The term “program for orders regarding life sustaining treatment” means, with respect to an area, a program that supports the active use of orders regarding life sustaining treatment in the area.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2014.

**PART II—PROVIDER EDUCATION**

**SEC. 10121. PUBLIC PROVIDER ADVANCE CARE PLANNING WEBSITE.**

(a) DEVELOPMENT.—Not later than January 1, 2010, the Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services and the Director of the Agency for Healthcare Research and Quality, shall establish a website for providers under Medicare, Medicaid, the Children's Health Insurance Program, the Indian Health Service (include contract providers) and other public health providers on each individual's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

(b) MAINTENANCE.—The website, shall be maintained and publicized by the Secretary on an ongoing basis.

(c) CONTENT.—The website shall include content, tools, and resources necessary to do the following:

(1) Inform providers about the advance directive requirements under the health care programs described in subsection (a) and other State and Federal laws and regulations related to advance care planning.

(2) Educate providers about advance care planning quality improvement activities.

(3) Provide assistance to providers to—

(A) integrate advance directives into electronic health records, including oral directives; and

(B) develop and disseminate advance care planning informational materials for their patients.

(4) Inform providers about advance care planning continuing education requirements and opportunities.

(5) Encourage providers to discuss advance care planning with their patients of all ages.

(6) Assist providers' understanding of the continuum of end-of-life care services and supports available to patients, including palliative care and hospice.

(7) Inform providers of best practices for discussing end-of-life care with dying patients and their loved ones.

**SEC. 10122. CONTINUING EDUCATION FOR PHYSICIANS AND NURSES.**

(a) IN GENERAL.—Not later than January 1, 2012, the Secretary, acting through the Director of Health Resources and Services Administration, shall develop, in consultation with health care providers and State boards of medicine and nursing, a curriculum for continuing education that States may adopt for physicians and nurses on advance care planning and end-of-life care.

(b) CONTENT.—

(1) IN GENERAL.—The continuing education curriculum developed under subsection (a) for physicians and nurses shall, at a minimum, include—

(A) a description of the meaning and importance of advance care planning;

(B) a description of advance directives, including living wills and durable powers of attorney, and the use of such directives;

(C) palliative care principles and approaches to care; and

(D) the continuum of end-of-life services and supports, including palliative care and hospice.

(2) ADDITIONAL CONTENT FOR PHYSICIANS.—The continuing education curriculum for physicians developed under subsection (a) shall include instruction on how to conduct advance care planning with patients and their loved ones.

**Subtitle B—Portability of Advance Directives; Health Information Technology**

**SEC. 10131. PORTABILITY OF ADVANCE DIRECTIVES.**

(a) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting “and if presented by the individual, to include the content of such advance directive in a prominent part of such record” before the semicolon at the end;

(B) in subparagraph (D), by striking “and” after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(D) by inserting after subparagraph (E) the following new subparagraph:

“(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.”;

(2) in paragraph (3), by striking “a written” and inserting “an”; and

(3) by adding at the end the following new paragraph:

“(5)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider of services, a Medicare Advantage organization, or a prepaid or eligible organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

“(B)(i) The definition of an advanced directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

“(ii) For purposes of clause (i), the term ‘actual knowledge’ means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

“(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.”

(b) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by striking “in the individual's medical record” and inserting “in a prominent part

of the individual's current medical record"; and

(ii) by inserting "and if presented by the individual, to include the content of such advance directive in a prominent part of such record" before the semicolon at the end;

(B) in subparagraph (D), by striking "and" after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting "; and"; and

(D) by inserting after subparagraph (E) the following new subparagraph:

"(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.";

(2) in paragraph (4), by striking "a written" and inserting "an"; and

(3) by adding at the end the following paragraph:

"(6)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider or organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

"(B)(i) The definition of an advance directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

"(ii) For purposes of clause (i), the term 'actual knowledge' means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

"(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes."

(c) CHIP.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)), as amended by sections 2101(d)(2), 2101(e), and 6401(c), is further amended—

(1) by redesignating subparagraphs (G) through (N) as subparagraphs (H) through (O), respectively; and

(2) by inserting after subparagraph (F) the following:

"(G) Section 1902(w) (relating to advance directives)."

(d) STUDY AND REPORT REGARDING IMPLEMENTATION.—

(1) STUDY.—The Secretary shall conduct a study regarding the implementation of the amendments made by subsections (a) and (b).

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a), (b), and (c) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42

U.S.C. 1396 et seq.) and State child health plans under title XXI of such Act (42 U.S.C. 1397aa et seq.), on or after such date as the Secretary specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act or a State child health plan under title XXI of such Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsections (b) and (c), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

#### SEC. 10132. STATE ADVANCE DIRECTIVE REGISTRIES; DRIVER'S LICENSE ADVANCE DIRECTIVE NOTATION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g) is amended by adding at the end the following:

##### "SEC. 399X. STATE ADVANCE DIRECTIVE REGISTRIES.

"(a) STATE ADVANCE DIRECTIVE REGISTRY.—In this section, the term 'State advance directive registry' means a secure, electronic database that—

"(1) is available free of charge to residents of a State; and

"(2) stores advance directive documents and makes such documents accessible to medical service providers in accordance with Federal and State privacy laws.

"(b) GRANT PROGRAM.—Beginning on July 1, 2010, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants on a competitive basis to eligible entities to establish and operate, directly or indirectly (by competitive grant or competitive contract), State advance directive registries.

"(c) ELIGIBLE ENTITIES.—

"(1) IN GENERAL.—To be eligible to receive a grant under this section, an entity shall—

"(A) be a State department of health; and

"(B) submit to the Director an application at such time, in such manner, and containing—

"(i) a plan for the establishment and operation of a State advance directive registry; and

"(ii) such other information as the Director may require.

"(2) NO REQUIREMENT OF NOTATION MECHANISM.—The Secretary shall not require that an entity establish and operate a driver's license advance directive notation mechanism for State residents under section 399Y to be eligible to receive a grant under this section.

"(d) ANNUAL REPORT.—For each year for which an entity receives an award under this section, such entity shall submit an annual report to the Director on the use of the funds received pursuant to such award, including the number of State residents served through the registry.

"(e) AUTHORIZATION.—There is authorized to be appropriated to carry out this section \$20,000,000 for fiscal year 2010 and each fiscal year thereafter.

#### "SEC. 399Y. DRIVER'S LICENSE ADVANCE DIRECTIVE NOTATION.

"(a) IN GENERAL.—Beginning July 1, 2010, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants on a competitive basis to States to establish and operate a mechanism for a State resident with a driver's license to include a notice of the existence of an advance directive for such resident on such license.

"(b) ELIGIBILITY.—To be eligible to receive a grant under this section, a State shall—

"(1) establish and operate a State advance directive registry under section 399X; and

"(2) submit to the Director an application at such time, in such manner, and containing—

"(A) a plan that includes a description of how the State will—

"(i) disseminate information about advance directives at the time of driver's license application or renewal;

"(ii) enable each State resident with a driver's license to include a notice of the existence of an advance directive for such resident on such license in a manner consistent with the notice on such a license indicating a driver's intent to be an organ donor; and

"(iii) coordinate with the State department of health to ensure that, if a State resident has an advance directive notice on his or her driver's license, the existence of such advance directive is included in the State registry established under section 399X; and

"(B) any other information as the Director may require.

"(c) ANNUAL REPORT.—For each year for which a State receives an award under this section, such State shall submit an annual report to the Director on the use of the funds received pursuant to such award, including the number of State residents served through the mechanism.

"(d) AUTHORIZATION.—There is authorized to be appropriated to carry out this section \$50,000,000 for fiscal year 2010 and each fiscal year thereafter."

#### SEC. 10133. GAO STUDY AND REPORT ON ESTABLISHMENT OF NATIONAL ADVANCE DIRECTIVE REGISTRY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility of a national registry for advance directives, taking into consideration the constraints created by the privacy provisions enacted as a result of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation and administrative action as the Comptroller General of the United States determines to be appropriate.

#### Subtitle C—National Uniform Policy on Advance Care Planning

#### SEC. 10141. STUDY AND REPORT BY THE SECRETARY REGARDING THE ESTABLISHMENT AND IMPLEMENTATION OF A NATIONAL UNIFORM POLICY ON ADVANCE DIRECTIVES.

(a) STUDY.—

(1) IN GENERAL.—The Secretary, acting through the Office of the Assistant Secretary for Planning and Evaluation, shall conduct a thorough study of all matters relating to the establishment and implementation of a national uniform policy on advance directives for individuals receiving items and services under titles XVIII, XIX, or XXI of the Social

Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.; 1397aa et seq.).

(2) **MATTERS STUDIED.**—The matters studied by the Secretary under paragraph (1) shall include issues concerning—

(A) family satisfaction that a patient's wishes, as stated in the patient's advance directive, were carried out;

(B) the portability of advance directives, including cases involving the transfer of an individual from 1 health care setting to another;

(C) immunity from civil liability and criminal responsibility for health care providers that follow the instructions in an individual's advance directive that was validly executed in, and consistent with the laws of, the State in which it was executed;

(D) conditions under which an advance directive is operative;

(E) revocation of an advance directive by an individual;

(F) the criteria used by States for determining that an individual has a terminal condition;

(G) surrogate decisionmaking regarding end-of-life care;

(H) the provision of adequate palliative care (as defined in paragraph (3)), including pain management;

(I) adequate and timely referrals to hospice care programs; and

(J) the end-of-life care needs of children and their families.

(3) **PALLIATIVE CARE.**—For purposes of paragraph (2)(H), the term "palliative care" means interdisciplinary care for individuals with a life-threatening illness or injury relating to pain and symptom management and psychological, social, and spiritual needs and that seeks to improve the quality of life for the individual and the individual's family.

(b) **REPORT TO CONGRESS.**—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(c) **CONSULTATION.**—In conducting the study and developing the report under this section, the Secretary shall consult with the Uniform Law Commissioners, and other interested parties.

#### **Subtitle D—Compassionate Care Workforce Development**

#### **SEC. 10151. EXEMPTION OF PALLIATIVE MEDICINE FELLOWSHIP TRAINING FROM MEDICARE GRADUATE MEDICAL EDUCATION CAPS.**

(a) **DIRECT GRADUATE MEDICAL EDUCATION.**—Section 1886(h)(4)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(F)), as amended by section 5503(a)(1), is amended—

(1) in clause (i), by inserting "clause (iii) and" after "subject to"; and

(2) by adding at the end the following new clause:

"(iii) **INCREASE ALLOWED FOR PALLIATIVE MEDICINE FELLOWSHIP TRAINING.**—For cost reporting periods beginning on or after January 1, 2011, in applying clause (i), there shall not be taken into account full-time equivalent residents in the field of allopathic or osteopathic medicine who are in palliative medicine fellowship training that is approved by the Accreditation Council for Graduate Medical Education."

(b) **INDIRECT MEDICAL EDUCATION.**—Section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)), as amended by sections 5503(b)(2) and 5505(b), is further amended by adding at the end the following new clause:

"(xi) Clause (iii) of subsection (h)(4)(F) shall apply to clause (v) in the same manner and for the same period as such clause (iii) applies to clause (i) of such subsection."

#### **SEC. 10152. MEDICAL SCHOOL CURRICULA.**

(a) **IN GENERAL.**—The Secretary, in consultation with the Association of American Medical Colleges, shall establish guidelines for the imposition by medical schools of a minimum amount of end-of-life training as a requirement for obtaining a Doctor of Medicine degree in the field of allopathic or osteopathic medicine.

(b) **TRAINING.**—Under the guidelines established under subsection (a), minimum training shall include—

(1) training in how to discuss and help patients and their loved ones with advance care planning;

(2) with respect to students and trainees who will work with children, specialized pediatric training;

(3) training in the continuum of end-of-life services and supports, including palliative care and hospice;

(4) training in how to discuss end-of-life care with dying patients and their loved ones; and

(5) medical and legal issues training.

(c) **DISTRIBUTION.**—Not later than January 1, 2011, the Secretary shall disseminate the guidelines established under subsection (a) to medical schools.

(d) **COMPLIANCE.**—Effective beginning not later than July 1, 2012, a medical school that is receiving Federal assistance shall be required to implement the guidelines established under subsection (a). A medical school that the Secretary determines is not implementing such guidelines shall not be eligible for Federal assistance.

#### **Subtitle E—Additional Reports, Research, and Evaluations**

#### **SEC. 10161. NATIONAL MORTALITY FOLLOWBACK SURVEY.**

(a) **IN GENERAL.**—Not later than December 31, 2010, and annually thereafter, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall renew and conduct the National Mortality Followback Survey (referred to in this section as the "Survey") to collect data on end-of-life care.

(b) **PURPOSE.**—The purpose of the Survey shall be to gain a better understanding of current end-of-life care in the United States.

(c) **QUESTIONS.**—

(1) **IN GENERAL.**—In conducting the Survey, the Director of the Centers for Disease Control and Prevention shall, at a minimum, include the following questions with respect to the loved one of a respondent:

(A) Did he or she have an advance directive, and if so, when it was completed.

(B) Did he or she have an order for life-sustaining treatment, and if so, when was it completed.

(C) Did he or she have a durable power of attorney, and if so, when it was completed.

(D) Had he or she discussed his or her wishes with loved ones, and if so, when.

(E) Had he or she discussed his or her wishes with his or her physician, and if so, when.

(F) In the opinion of the respondent, was he or she satisfied with the care he or she received in the last year of life and in the last week of life.

(G) Was he or she cared for by hospice, and if so, when.

(H) Was he or she cared for by palliative care specialists, and if so, when.

(I) Did he or she receive effective pain management (if needed).

(J) What was the experience of the main caregiver (including if such caregiver was

the respondent), and whether he or she received sufficient support in this role.

(2) **ADDITIONAL QUESTIONS.**—Additional questions to be asked during the Survey shall be determined by the Director of the Centers for Disease Control and Prevention on an ongoing basis with input from relevant research entities.

#### **SEC. 10162. INSPECTOR GENERAL INVESTIGATION OF FRAUD AND ABUSE.**

In accordance with the recommendations of the Medicare Payment Advisory Commission for additional data (as contained in the March 2009 report entitled "Report to Congress: Medicare Payment Policy"), the Secretary shall direct the Office of the Inspector General of the Department of Health and Human Services to investigate, not later than January 1, 2012, the following with respect to hospice benefit under Medicare, Medicaid, and CHIP:

(1) The prevalence of financial relationships between hospices and long-term care facilities, such as nursing facilities and assisted living facilities, that may represent a conflict of interest and influence admissions to hospice.

(2) Differences in patterns of nursing home referrals to hospice.

(3) The appropriateness of enrollment practices for hospices with unusual utilization patterns (such as high frequency of very long stays, very short stays, or enrollment of patients discharged from other hospices).

(4) The appropriateness of hospice marketing materials and other admissions practices and potential correlations between length of stay and deficiencies in marketing or admissions practices.

#### **SEC. 10163. GAO STUDY AND REPORT ON PROVIDER ADHERENCE TO ADVANCE DIRECTIVES.**

Not later than January 1, 2012, the Comptroller General of the United States shall conduct a study of the extent to which providers comply with advance directives under the Medicare and Medicaid programs and shall submit a report to Congress on the results of such study, together with such recommendations for administrative or legislative changes as the Comptroller General determines appropriate.

**SA 3240.** Mr. ROCKEFELLER (for himself, Mr. LIEBERMAN, Mr. WHITEHOUSE, and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1053, between lines 2 and 3, insert the following:

#### **SEC. 3403A. IMPROVEMENTS TO THE INDEPENDENT MEDICARE ADVISORY BOARD.**

Section 1899A of the Social Security Act, as added by section 3403, is amended—

(1) in subsection (c)—

(A) in paragraph (2)(A), by striking clause (iii) and inserting the following new clause:

"(iii) As appropriate, the proposal may include recommendations to adjust payments with respect to all providers of services (as defined in section 1861(u)) and suppliers (as defined in section 1861(d)).";

(B) in paragraph (3)(A)(ii)—  
(i) in subclause (I), by inserting “or” at the end;

(ii) in subclause (II), by striking “; or” at the end and inserting a period; and

(iii) by striking subclause (III);

(C) in paragraph (7)(C), by striking clause (i) and inserting the following new clause:

“(i) in the case of implementation year 2015 or any subsequent implementation year, 1.5 percent; and”;

(D) by striking paragraph (8);

(2) in subsection (e), by striking “August 15” each place it appears and inserting “June 1”;

(3) in subsection (f)(3)(B), by striking “or advisory reports to Congress” and inserting “, advisory reports, or other reports”;

(4) by redesignating subsections (g) through (m) as subsections (i) through (o), respectively; and

(5) by adding at the end the following new subsections:

“(g) PROPOSALS IN NON-DETERMINATION YEARS.—

“(1) IN GENERAL.—In any proposal year in which the Board is not required to transmit a proposal to the President by reason of the application of subclause (I) or (II) of subsection (c)(3)(A)(ii), the Board shall transmit a proposal under this section to the President on January 15 of the year. Except as provided in paragraph (2), such a proposal shall be treated as a proposal under this section and all of the provisions of this section with respect to proposals, including the requirements under paragraphs (2) and (4) of subsection (c) and the required Congressional consideration under subsection (d), shall apply to the proposal.

“(2) EXCEPTIONS.—The following rules shall apply to a proposal transmitted pursuant to paragraph (1):

“(A) RECOMMENDATIONS FOR ACHIEVING TARGET.—The requirement under subsection (c)(2)(A)(i) shall not apply.

“(B) REQUIRED INFORMATION.—The proposal shall not include—

“(i) recommendations described in subsection (c)(2)(A)(i), pursuant to subsection (c)(3)(B)(i); or

“(ii) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the proposal meets the requirements of subsection (c)(2)(A)(i), pursuant to subsection (c)(3)(B)(iii);

“(C) CONTINGENT SECRETARIAL PROPOSAL.—The Secretary shall not submit a proposal if the Board fails to submit a proposal pursuant to subsection (c)(5).

“(D) CONGRESSIONAL CONSIDERATION.—

“(i) Subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting ‘subsection (c)(2)(C)’ for ‘subparagraphs (A)(i) and (C) of subsection (c)(2)’.

“(ii) Subparagraphs (D) and (E) of subsection (d)(3) and subsection (d)(4)(B)(v) shall be applied by requiring a simple majority rather than three-fifths of the Members duly chosen and sworn.

“(iii) Subsection (d)(4)(B)(iv) shall not apply.

“(iv) Subsection (d)(4)(C)(v)(II) shall be applied by substituting ‘subsection (c)(2)(C)’ for ‘subparagraphs (A)(i) and (C) of subsection (c)(2)’.

“(v) Subsection (d)(4)(E)(iv)(II) shall be applied by substituting ‘subsection (c)(2)(C)’ for ‘subparagraphs (A)(i) and (C) of subsection (c)(2)’.

“(E) SECRETARIAL IMPLEMENTATION.—Subsection (e) shall not apply and the Secretary shall not implement the recommendations contained in the proposal unless the Sec-

retary otherwise has the authority to implement such recommendations.

“(h) ANNUAL REPORT WITH RECOMMENDATIONS WITH RESPECT TO THE PRIVATE SECTOR.—

“(1) IN GENERAL.—Not later than July 1, 2014, and January 15, 2015, and annually thereafter, the Board shall submit to Congress, the Secretary, and the Medicaid and CHIP Payment and Access Commission a report that includes recommendations on—

“(A) requirements under the program under this title (or requirements included in the proposal submitted under this section in the year); and

“(B) in the case of any report submitted in a year after a determination year (beginning with determination year 2017) in which the Chief Actuary of the Centers for Medicare & Medicaid Services has made a determination described in subclause (I) or (II) of subsection (c)(3)(A)(ii), other requirements determined appropriate by the Board;

that should be included in the requirements established under section 1311(c) of the Patient Protection and Affordable Care Act for a health plan to be certified as a qualified health plan, such as requirements that improve the health care delivery system and health outcomes (including by promoting integrated care, care coordination, prevention and wellness, and quality and efficiency), decrease health care spending, and other appropriate improvements

“(2) INCORPORATION INTO CERTIFICATION REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary shall review the recommendations contained in the report submitted to the Secretary by the Board under paragraph (1). The Secretary may, if determined appropriate, incorporate such recommendations into the requirements for certification under such section 1311(c).

“(B) REPORT TO CONGRESS.—Not later than December 31, 2014, and June 15, 2015, and annually thereafter, the Secretary shall submit to Congress a report on the application of subparagraph (A). Such report shall include, with respect to each recommendation contained in a report submitted by the Board in that year, a description of whether or not the Secretary incorporated the recommendation into the requirements for certification under such section 1311(c), and if not, the reasons why.

“(3) MACPAC.—The Medicaid and CHIP Payment and Access Commission shall—

“(A) review whether or not recommendations contained in a report submitted to the Commission by the Board under paragraph (1) would improve the Medicaid program under title XIX and the Children’s Health Insurance Program under title XXI if implemented under such programs; and

“(B) include in the Commission’s annual report to Congress the results of such review.”.

**SA 3241.** Mr. CARPER (for himself, Mr. CONRAD, and Mrs. SHAHEEN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 722, after line 20, insert the following:

**SEC. 3016. INTEGRATED HEALTH CARE SYSTEM COLLABORATION INITIATIVE.**

(a) IN GENERAL.—In order to improve health care quality and reduce costs, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall develop, in consultation with major integrated health systems that have consistently demonstrated high quality and low cost (as determined by the Secretary and verified by a third party) a collaboration initiative (referred to in this section as “the Collaborative”). The Collaborative shall develop an exportable model of optimal health care delivery to apply value-based measurement, integrated information technology infrastructure, standard care pathways, and population-based payment models, to measurably improve health care quality, outcomes, and patient satisfaction and achieve cost savings.

(b) PARTICIPATION.—Prior to January 1, 2010, the Secretary shall determine 5 initial participants who will form the Collaborative and at least 6 additional participants who will join the Collaborative beginning in the fourth year that the Collaborative is in effect.

(1) INITIAL PARTICIPANTS.—Initial participants selected by the Secretary shall meet the following criteria:

(A) Be integrated health systems organized for the purpose of providing health care services.

(B) Have demonstrated a record of providing high value health care for at least the 5 previous years, as determined by the Secretary in consultation with the Medicare Payment Advisory Commission.

(C) Agree to participate in the Medicare shared savings program under section 1899 of the Social Security Act, as added by section 3022, the National pilot program on payment bundling under section 1866D of such Act, as added by section 3023, or a program under the Center for Medicare and Medicaid Innovation under section 1115A of such Act, as added by section 3021.

(D) Any additional criteria specified by the Secretary.

(2) ADDITIONAL PARTICIPANTS.—Beginning January 1, 2013, the Secretary shall select 6 or more additional participants who represent diverse geographic areas and are situated in areas of differing population densities who agree to comply with the guidelines, processes, and requirements set forth for the Collaborative. Such additional participants shall meet the following additional criteria:

(A) Be organized for the provision of patient medical care.

(B) Be capable of implementing infrastructure and health care delivery modifications necessary to enhance health care quality and efficiency, as determined by the Secretary in consultation with the Medicare Payment Advisory Commission.

(C) The participant’s cost and intensity of care do not meet the definition of high value health care.

(D) Agree to participate in the Medicare shared savings program under section 1899 of the Social Security Act, as added by section 3022, the National pilot program on payment bundling under section 1866D of such Act, as added by section 3023, or a program under the Center for Medicare and Medicaid Innovation under section 1115A of such Act, as added by section 3021.

(E) The participant would benefit from such participation (as determined by the

Secretary, based on the likelihood that the participant would improve its performance under section 1886(p) of the Social Security Act, as added by section 3008, section 1886(q) of such Act, as added by section 3025, or any similar program under title XVIII of the Social Security Act).

(3) **ADDITIONAL CRITERIA.**—In addition to the criteria described in paragraphs (1) and (2), the participants in the Collaborative shall meet the following criteria:

(A) Agree to report on quality, cost, and efficiency in such form, manner, and frequency as specified by the Secretary.

(B) Provide care to patients enrolled in the Medicare program.

(C) Agree to contribute to a best practices network and website, that is maintained by the Collaborative for sharing strategies on quality improvement, care coordination, efficiency, and effectiveness.

(D) Use patient-centered processes of care, including those that emphasize patient and caregiver involvement in shared decision-making for treatment decisions.

(E) Meet other criteria determined to be appropriate by the Secretary.

(c) **COLLABORATIVE INITIATIVE.**—

(1) **IN GENERAL.**—Beginning January 1, 2010, the Collaborative shall begin a 2 year development phase in which initial participants share the quantitative and qualitative methods through which they have developed high value health care followed by a dissemination of that learning model to additional participants of the Collaborative.

(2) **COORDINATING MEMBER.**—In consultation with the Secretary, the Collaborative shall select a coordinating member organization (hereafter identified as the Coordinating Organization) of the Collaborative.

(3) **QUALIFICATIONS.**—The Coordinating Organization will have in place a comprehensive Medicare database and possess experience using and analyzing Medicare data to measure health care utilization, cost, and variation. The Coordinating Organization shall be responsible for reporting to the Secretary as required and for any other requirements deemed necessary by the Secretary.

(4) **RESPONSIBILITIES.**—The Coordinating Member shall—

(A) lead efforts to develop each aspect of the learning model;

(B) organize efforts to disseminate the learning model for high value health care, including educating participant institutions; and

(C) provide administrative, technical, accounting, reporting, organizational and infrastructure support needed to carry out the goals of the Collaborative.

(5) **DEVELOPMENT OF LEARNING MODEL.**—

(A) **IN GENERAL.**—Initial participants in the Collaborative shall work together to develop a learning model based on their experience that includes a reliance on evidence based care that emphasizes quality and practice techniques that emphasize efficiency, joint development and implementation of health information technology, introduction of clinical microsystems of care, shared decision-making, outcomes and measurement, and the establishment of an e-learning distributive network, which have been put into practice at their respective institutions.

(B) **RESPONSIBILITIES.**—The Coordinating Member shall do the following:

(i) Partner with initial participants to comprehensively understand each institution's contribution to providing value-based health care.

(ii) Provide and measure value-based health care in a manner that ensures that

measures are aligned with current measures approved by a consensus-based organization, such as the National Quality Forum, or other measures as determined appropriate by the Secretary, while also incorporating patient self-reported status and outcomes.

(iii) Create a replicable and scalable infrastructure for common measurement of value-based care that can be broadly disseminated across the Collaborative and other institutions.

(iv) Implement care pathways for common conditions using standard measures for assessment across institutions, targeting high variation and high cost conditions, including but not limited to—

(I) acute myocardial infarction (AMI) and angioplasty;

(II) coronary artery bypass graft surgery and percutaneous coronary intervention;

(III) hip or knee replacement;

(IV) spinal surgery; and

(V) care for chronic diseases including, but not limited to, diabetes, heart disease, and high blood pressure.

(v) Deploy and disseminate the comprehensive learning model across initial participant institutions, achieving improvements in care delivery and lowering costs, and demonstrating the portability and viability of the processes.

(6) **ADDITIONAL BEST PRACTICES.**—As additional methods of improving health care quality and efficiency are identified by members of the Collaborative or by other institutions, Initial Participants in the Collaborative shall incorporate those practices into the learning model.

(d) **IMPLEMENTATION OF LEARNING MODEL.**—Beginning January 1, 2013, as additional participants are selected by the Secretary, Initial Participants in the Collaborative shall actively engage in the deployment of the learning model to educate each additional participant in the common conditions that have been identified.

(1) **DISSEMINATION OF LEARNING MODEL.**—Dissemination methods shall include but not be limited to the following methods:

(A) Specialized teams deployed by the Initial Participants to teach and facilitate implementation on site.

(B) Distance-learning, taking advantage of latest interactive technologies.

(C) On-line, fully accessible repositories of shared learning and information related to best practices.

(D) Advanced population health information technology models.

(2) **EVALUATION OF PARTICIPANTS.**—

(A) **IN GENERAL.**—Evaluation of initial participants shall be based on documented success in meeting quality and efficiency measurements. Specific statistically valid measures of evaluation shall be determined by the Secretary.

(B) **PERFORMANCE TARGETS.**—The Secretary shall develop performance targets for participants. Performance targets developed under the preceding sentence shall be based on whether participants have improved their performance under section 1886(p) of the Social Security Act, as added by section 3008, section 1886(q) of such Act, as added by section 3025, or any similar program under title XVIII of the Social Security Act (as determined by the Secretary).

(e) **MEASUREMENT OF LEARNING MODEL.**—Participants shall implement techniques under the comprehensive learning model. The Secretary shall determine whether such implementation improves quality and efficiency, including cost savings relative to baseline spending for the common conditions

specified under subsection (c)(5)(B)(iv) and quality measures endorsed by a consensus-based organization or otherwise chosen by the Secretary. The Collaborative shall prepare a report annually on each participant's performance with respect to the efficiency and quality measurements established by the Secretary. Such report shall be submitted to the Secretary and Congress and shall be made publicly available.

(f) **ADMINISTRATIVE PAYMENT.**—For purposes of carrying out this section, there are authorized to be appropriated \$228,000,000, to remain available until expended. Amounts appropriated under the preceding sentence shall be distributed in the following manner:

(1) The Coordinating Organization shall receive \$10,000,000 per year for program development related to the Collaborative, including for health information technology and other infrastructure, project evaluations, analysis, and measurement, compliance, audits and other reporting. Not less than \$5,000,000 of such funds shall be provided for education and training, including for support for the establishment of training teams for the Collaborative, to assist in the integration of new health information technology, best practices of care delivery, microsystems of care delivery, and a distributive e-learning network for the Collaborative.

(2) Each Initial Participant shall receive \$4,000,000 per year for internal program development for health information technology and other infrastructure, education and training, project evaluations, analysis, and measurement, and compliance, auditing, and other reporting.

(3) Beginning in 2013, the Secretary may provide funding to additional participants in the Collaborative in an amount not to exceed \$4,000,000 per participant per year under the same use guidelines as apply to the Initial Participants.

(g) **CONTINUATION OR EXPANSION.**—

(1) **TERMINATION.**—Subject to paragraph (2), the Collaborative shall terminate on the date that is 6 years after the date on which the Collaborative is established.

(2) **EXPANSION.**—The Secretary may continue or expand the Collaborative if the Collaborative is consistently exceeding quality standards and is not increasing spending under the program.

(h) **TERMINATION.**—The Secretary may terminate an agreement with a participating organization under the Collaborative if such organization consistently failed to meet quality standards in the fourth year or any subsequent year of the Collaborative

(i) **REPORTS.**—

(1) **PERFORMANCE RESULTS REPORTS.**—The Secretary shall provide such data as is necessary for the Collaborative to measure the efficacy of the Collaborative and facilitate regular reporting on spending and cost savings results relative to a value-based program initiative.

(2) **REPORTS TO CONGRESS.**—Not later than 2 years after the date the first agreement is entered into under this section, and annually thereafter, the Secretary shall submit to Congress and make publicly available a report on the authority granted to the Secretary to carry out the Collaborative under this section. Each report shall address the impact of the use of such authority on expenditures for, access to, and quality of, care under title XVIII of the Social Security Act.

(j) **DEFINITIONS.**—In this section:

(1) **BENEFICIARY.**—The term “beneficiary” means a Medicare beneficiary enrolled under part B and entitled to benefits under part A who is not enrolled in Medicare Advantage



under Part C or a PACE program under section 1894, and meets other criteria as the Secretary determines appropriate.

(2) **HIGH VALUE HEALTH CARE.**—The term “high value health care” means the care delivered by organizations shown by statistically valid methods to meet the highest quality measures established by the Secretary as of or after the date of enactment of this Act and to be delivering low-cost care with high patient satisfaction and clinical outcomes.

(3) **LEARNING MODEL.**—The term “learning model” means a standardized model developed by the Initial Participants in the Collaborative and based on best practices, as jointly developed and put into practice at the Initial Participant’s respective institutions.

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(k) **ADDITIONAL MONITORING.**—The Secretary may monitor data on expenditures and quality of services under title XVIII of the Social Security Act with respect to a beneficiary after the beneficiary discontinues receiving services under the Collaborative.

(l) **OTHER PROVISIONS.**—

(1) **LIMITATIONS ON REVIEW.**—There shall be no administrative or judicial review under this section or otherwise of—

(A) the elements, parameters, scope, and duration of the Collaborative, including the selection of participants in the Collaborative;

(B) the establishment of targets, measurement of performance;

(C) determinations with respect to whether savings have been achieved and the amount of savings; and

(D) decisions about the extension or expansion of the Collaborative.

(2) **ADMINISTRATION.**—Chapter 35 of title 44, 4 United States Code shall not apply to this section.

(3) **MONITORING.**—The Inspector General of the Department of Health and Human Services shall provide for monitoring of the operation of the Collaborative with regard to violations of section 1877 of the Social Security Act (popularly known as the “Stark law”).

(4) **ANTI-DISCRIMINATION.**—The Secretary shall not enter into an agreement with an entity to provide health care items or services under the Collaborative, or with an entity to administer the Collaborative, unless such entity guarantees that it will not deny, limit, or condition the coverage or provision of benefits under the Collaborative for beneficiaries to participate in the Collaborative, based on any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

## NOTICE OF HEARING

### COMMITTEE ON INDIAN AFFAIRS

Mr. DORGAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, December 17, 2009, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building to conduct a business meeting on pending committee issues, to be followed by an oversight hearing on the Cobell v. Salazar Settlement Agreement.

Those wishing additional information may contact the Indian Affairs Committee at 202-224-2251.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on December 15, 2009, at 2:30 p.m. in room 253 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a hearing on December 15, at 10 a.m., in room SD-366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON THE JUDICIARY

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on December 15, 2009, at 10 a.m., in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled “Ensuring the Effective Use of DNA Evidence to Solve Rape Cases Nationwide.”

The PRESIDING OFFICER. Without objection, it is so ordered.

### SELECT COMMITTEE ON INTELLIGENCE

Mr. DORGAN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on December 15, 2009, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

### SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. DORGAN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs’ Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on December 15, 2009, at 10 a.m. to conduct a hearing entitled “One DHS, One Mission: Efforts to Improve Management Integration at DHS.”

The PRESIDING OFFICER. Without objection, it is so ordered.

### NEAR EASTERN AND SOUTH AND CENTRAL ASIAN AFFAIRS SUBCOMMITTEE

Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 15, 2009, at 10 a.m., to hold a Near Eastern Subcommittee hearing entitled “Reevaluating U.S. Policy in Central Asia.”

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. CRAPO. Mr. President, I ask unanimous consent that Rachel Johnson and Amanda Critchfield, two staffers from my office, be granted the privilege of the floor for the remainder of the consideration of H.R. 3590.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that Megan Moreau, a fellow in my office, be given floor privileges for the remainder of debate on H.R. 3590, the health care reform legislation currently pending.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDERS FOR WEDNESDAY, DECEMBER 16, 2009

Mr. PRYOR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. Wednesday, December 16; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 3590, the health care reform legislation, with the first hour equally divided and controlled between the leaders or their designees, with the majority leader controlling the first half and the Republicans controlling the second half.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. PRYOR. Mr. President, we expect votes tomorrow in relation to the Hutchison motion to commit regarding taxes and implementation and the Sanders amendment regarding a national single-payer system. Senators will be notified when any votes are scheduled.

## ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. PRYOR. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 7:56 p.m., adjourned until Wednesday, December 16, 2009, at 10 a.m.

## NOMINATIONS

Executive nominations received by the Senate:

### IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED AND FOR APPOINTMENT AS THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 8037:

*To be lieutenant general*

BRIG. GEN. RICHARD C. HARDING

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203(A):

*To be colonel*

LAWRENCE W. STEINKRAUS, JR.

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

*To be major*

KRISTI L. JONES  
JAMES A. OBESTER, JR.  
PAVEENA POSANG  
BRUNO A. SCHMITZ

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADES INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

*To be lieutenant colonel*

RAYMOND KING

*To be major*

LISA B. BROWNING  
BERNHARD K. STEPKE

IN THE ARMY

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

DAWN Y. TAYLOR

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

WALTER COFFEY  
RUSSELL P. REITER

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

DEAN A. AMBROSE  
RONALD R. DURBIN  
THOMAS R. PRINCE  
JOHN W. TROGDON

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO

THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

*To be colonel*

PATRICK R. BOSSETTA  
WILLIAM J. COFFIN  
DENNIS C. DEELEY  
HAMILTON D. RICHARDS  
HELEN E. ROGERS  
JOHN R. WHITFORD

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

WILLIAM J. MITCHELL

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

SAM B. CLONTS, JR.  
JAMES C. FAILMEZGER  
CAROLINE P. FERMIN  
HENRY E. MULL, JR.  
RALPH L. PRICE III

**HOUSE OF REPRESENTATIVES—Tuesday, December 15, 2009**

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. CUELLAR).

**DESIGNATION OF SPEAKER PRO TEMPORE**

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
December 15, 2009.

I hereby appoint the Honorable HENRY CUELLAR to act as Speaker pro tempore on this day.

NANCY PELOSI,  
*Speaker of the House of Representatives.*

**MORNING-HOUR DEBATE**

The SPEAKER pro tempore. Pursuant to the order of the House of January 6, 2009, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 25 minutes and each Member, other than the majority and minority leaders and the minority whip, limited to 5 minutes, but in no event shall debate continue beyond 9:50 a.m.

**DECISION TO PROSECUTE GUANTANAMO BAY TERRORISTS IN NEW YORK CITY**

The SPEAKER pro tempore. The Chair recognizes the gentleman from North Carolina (Mr. COBLE) for 5 minutes.

Mr. COBLE. Mr. Speaker, I previously came to the well of the House to voice my disappointment in the then recently announced decision to prosecute certain Gitmo detainees, Gitmo terrorists, in New York City.

I return today, Mr. Speaker, to reiterate my concern and disappointment about this ill-advised decision, which, in my opinion, will cause our prosecutorial ship of state to sail directly into the tide of procedural reefs, rocks and shoals. When ships steam near reefs, rocks and shoals, collisions and/or groundings become imminent, if not inevitable.

The commanding officer of this ship, President Obama, and his executive officer for this issue, the Attorney General, should bring this ship about, terminate the course now pursued and formulate a better course that will serve good purposes. The present decision, in my opinion, serves no good purpose and is seriously flawed.

My disappointment regarding this matter, Mr. Speaker, is shared by thousands and thousands of New Yorkers specifically and Americans generally. New Yorkers should not be forced to endure 9/11 yet again.

What about the costs that will be inevitably incurred to conduct these prosecutions? Thousands upon thousands of dollars will be spent, thousands upon thousands of dollars we simply do not have.

Mr. Speaker, furthermore, many of us fear that the decision to prosecute in New York City has the trappings of converting the courtroom into a three-ring circus to the detriment of America, public relations-wise. I have earnestly tried to detect something positive about this decision, and I have come up empty time and time again.

I fear President Obama and Attorney General Holder are so rigidly inflexible in defending their decision. This aside, I respectfully urge them to reconsider and reexamine the decision, hopefully reject it and subsequently embrace a policy that is more sound and that will attract more support from the American people.

This is a terrible decision, Mr. Speaker, and I hope it can be rectified.

**GLOBAL WARMING**

The SPEAKER pro tempore. The Chair recognizes the gentleman from Oregon (Mr. BLUMENAUER) for 5 minutes.

Mr. BLUMENAUER. Mr. Speaker, this morning, listeners to NPR Marketplace heard the insurance industry dealing with the problems of global warming. Extreme weather events, actually, is why they were concerned. That term global warming actually means drought, flood, heat waves, intense storms, breaking seasonal patterns. In my region of the Pacific northwest, it means long, slow trends, like the increase in spring temperatures over the last 70 years, that lead to a significant decline in the snow pack that we rely upon for drinking water and hydropower.

As our congressional delegation heads to Copenhagen this week to join with parliamentarians from around the world, we will be able to be involved with a critical discussion on how we are going to meet those challenges. Our delegation is going to be somewhat unique because, while other groups of parliamentarians in other countries are of different parties and disagree on the best solution to deal with climate

change and extreme weather events, ours, with the possible exception of Saudi Arabia, will be the only one where there are some people who actually question the science and the need for action.

This is unfortunate, because the facts are clear. Even regarding the recent dust up over stolen e-mails of some of the climate scientists, it doesn't change the scientific consensus that we are involved in a period of significant global warming and that human activity is the cause. Despite some dispute over whether this year is the fourth, fifth or sixth warmest in history, there is no question but that the current decade will be the hottest since we began recording temperatures.

Even with the consensus on science, there still is a great deal of real controversy in Copenhagen about how we are going to move forward.

I think it's very important for us to highlight the encouraging dynamic that is taking shape, because there is a consensus for taking action. The question is in implementation both of speed and scale.

There is good news that the United States is no longer missing in action. As the world's largest economy, the second largest emitter this year and still the leader in the history of the world in total emissions, it's important that the United States finally joins with the rest of the developed world to deal with this question. It is encouraging that the Obama administration and the new Congress has been acting from the very beginning of this session of Congress with an \$80 billion investment in clean energy.

After years of delay, the Obama administration acted on what we passed in the last Congress to increase the long overdue improvement in automobile fuel efficiency. The EPA has finally announced that it is going to follow the law dealing with carbon pollution, as the Bush administration was directed by the Supreme Court but refused to do.

We have had the historic passage of the Waxman-Markey legislation, for the first time in history putting Congress on record supporting comprehensive climate legislation. The administration will use the House bill as the basis for targeted reductions in greenhouse gases. We have emerging in the Senate a bipartisan framework with Senator KERRY, Senator LIEBERMAN and Senator GRAHAM providing the leadership in that area.

It's exciting to see the pieces come together, Mr. Speaker. It is frustrating

to see it slow, and time is of the essence, but finally it's clear that action is in everybody's interest. The United States can no longer afford to waste more energy than anybody in the world. It's exciting to see the European Union, China and India all acting, at least in their own way, moving in this direction. The dominos are falling for new, clean, energy economies, managing forests to protect the planet and new sustainable agriculture.

All this will happen. The question is when. I am encouraged that in Copenhagen there is a process that the United States can help move us forward.

#### TIME FOR A NEW APPROACH TO RESTORE OUR ECONOMY

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from Florida (Ms. ROS-LEHTINEN) for 5 minutes.

Ms. ROS-LEHTINEN. Mr. Speaker, it is time for a new approach to bring our country back to where it was for most of the two centuries, the land of hope and opportunity.

Unfortunately, there is a growing fear about our Nation's future among many in my congressional district, as well as throughout the Nation. The economic recession continues, according to many constituents with whom I speak every day.

My constituents tell me how they have personally felt the constant drumbeat of rising unemployment, the ballooning cost of college tuitions, the reality of postponing retirement and the continuing credit implosion that has hurt so many homeowners and small businesses. No doubt our Nation continues to struggle and people need help.

But the congressional majority and the administration have spent the last year on an agenda that grows big government, that escalates the deficit, that borrows billions from adversarial foreign governments. As a result of this unprecedented government spending spree, our national debt will reach uncharted levels, doubling over the next 5 years and tripling in just 10 years.

Not surprisingly, as our debt doubles and revenues plunge, creating jobs has taken a back seat to other issues. The \$800 billion stimulus bill has failed to create or save the millions of jobs that it promised. Since it was passed, in fact, we have actually lost 3.3 million jobs while the unemployment rate remains at 10 percent nationally, and in my home State of Florida it has now reached 11 percent. The question now is can we still grow our economy, create jobs and help struggling families without further mortgaging our children's future.

First, we should agree to block any Federal tax increases until unemploy-

ment drops below 5 percent. Americans of all political persuasions can agree that the government should never raise taxes during periods of high unemployment.

Second, we need to restore confidence in America's economic future. Record deficits and debt, combined with runaway spending, have shaken our confidence in our economic future. One proposal is to freeze domestic discretionary spending at last year's level without raising taxes. Proponents state that this would save U.S. taxpayers \$53 billion immediately, but, more importantly, it would send a signal that we are committed to lowering the deficit.

Third, we need to approve three promising free trade agreements with Colombia, South Korea and Panama that have stalled under this administration. Recently the President stated that increasing U.S. exports by just 1 percent would create over 250,000 jobs. Sure enough, the independent International Trade Commission estimates that these three deals would boost U.S. exports by over 1 percent.

Well, I look forward to hearing from the constituents of my congressional district in South Florida about how we can bring back economic growth and ensure that America will once again be the land of opportunity that I knew when I first came to this country almost five decades ago.

It's time to get our economy back on track.

#### FISCAL RESPONSIBILITY AND USING TARP TO REDUCE THE DEFICIT

The SPEAKER pro tempore. The Chair recognizes the gentleman from Virginia (Mr. CONNOLLY) for 5 minutes.

Mr. CONNOLLY of Virginia. Mr. Speaker, I am intrigued to hear my good friend from Florida talk about deficits as if the Republican Party, when it was in the majority and controlling the White House, had nothing to do with creating record deficits after inheriting record surpluses.

Mr. Speaker, as we continue on the path to economic recovery, and as we maintain our focus on putting millions of Americans back to work, we must reduce long-term deficits, I agree. The actions we have taken to stabilize the economy and to spur economic and job growth will be for naught if our long-term economic health is imperiled by ever-rising budget deficits.

I stand here today in favor of a significant tool for deficit reduction, the dedication of unused TARP funds.

□ 0915

When first proposed by the previous administration, TARP was a \$700 billion program designed to prevent the financial sector from collapse. In its own way it's had measured success.

The bank stress tests applied earlier this year indicated that the financial sector was, in fact, stabilizing. A number of banks, most recently the Bank of America and Citigroup, have, in fact, begun to pay back their TARP loan funds.

The unused TARP funds represent hundreds of billions of dollars potentially in deficit reduction. In fact, they represent what would be the largest single deficit reduction in American history. As we stand at an economic crossroads, I believe we must seize advantage of this prospect and dedicate a significant portion of those remaining TARP funds to deficit reduction.

This would build on the actions we already have undertaken to reduce the deficit. In March, Congress passed the concurrent resolution on the budget for fiscal year 2010 that lowers the budget deficit to a third of the current amount within 4 years. This summer the House of Representatives passed legislation to reinstitute one of the most significant deficit reduction tools in recent memory, statutory pay-as-you-go, or PAYGO, legislation. PAYGO requires all reductions in revenue or increases in entitlement spending to be offset with other spending cuts or alternative sources of funding, a mechanism the Republican Congress let expire in 2002.

Yearly deficits, unfortunately, are not a new phenomenon. In fact, starting with fiscal year 1970, we had 28 straight deficits. But Congress took action and enacted statutory PAYGO in 1990. Starting in fiscal year 1998, President Clinton presided over four straight budget surpluses. The last time we had that many surpluses in a row was in the 1920s. Sustained surpluses are the result of sound economic policy and fiscal responsibility, which, quite frankly, had been sorely lacking these last past 8 years, Mr. Speaker.

Make no mistake. As this Congress took office in January, we were handed a deficit that was \$1 trillion. How is that possible? How could we go from four straight surpluses with projected future surpluses totaling \$5.6 trillion to an inherited \$1 trillion deficit this year? How could record surpluses become record deficits? Fiscal irresponsibility.

The current recession, which began in 2007 and accounted for \$479 billion of the fiscal year 2009 deficit, was the result of a concerted effort to avoid reasonable oversight of the financial sector. The risky and destructive behavior engaged in by a number of financial institutions was long ignored and in some ways subtly encouraged by a culture of deregulation on the other side of the aisle. The ensuing recession threw millions of Americans out of work and exacerbated the deficit.

Fiscal irresponsibility was a hallmark of the Bush administration. Three of President Bush's signature policies—his tax cuts, his prescription

drug program, and his decision to start the Iraq War—resulted in further yearly debt of more than \$670 billion. None of these policies were paid for. How could such gross fiscal irresponsibility occur by conservative Republicans?

It occurred in large part because President Bush and the Republican-controlled Congress allowed statutory PAYGO to lapse in 2002, perhaps the most intellectually honest budgetary action they, in fact, took during that time period. And what should have come as no surprise to anyone, because of that action, or lack of action, budget deficits returned the very next year. By allowing PAYGO to die, the Republicans were no longer constrained in their spending habits. They coupled reckless behavior with reckless disregard for the consequences and now expect the American people to believe their newfound concern for deficits. Where was that concern when we voted this year to reinstitute statutory PAYGO? Only 24 Republicans in this House of Representatives voted in favor of returning fiscal responsibility to the Congress.

Mr. Speaker, long-term financial stability depends on the continuance of our fiscal responsibilities. Long-term job growth depends upon a stable and growing economy. Long-term economic stability depends upon sustainable Federal budgets. Now, Mr. Speaker, is the time for the dedication of a significant portion of unused TARP funds for deficit reduction. The American people count on us.

#### RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 10 a.m. today.

Accordingly (at 9 o'clock and 19 minutes a.m.), the House stood in recess until 10 a.m. today.

□ 1000

#### AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 10 a.m.

#### PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord of the law and the prophets, in the days of Isaiah, the people expected "All nations to stream toward the temple of the Lord. Many peoples shall come and say, 'Come, let us climb the Lord's mountain to the house of our God that we may be instructed in the right direction, and we may walk the paths of justice.'"

In the days of Jesus, the people went out to hear the prophetic voice crying in the desert, "Prepare the way for the Lord. Listen to him."

Why is it, Lord, that people in our day do not seek You or Your wisdom as they face the complicated issues of law and government? Do their problems or their enemies seem to them stronger and more powerful than You?

Perhaps they do not want to turn to You because they fear how You will answer their prayer, and then they will not be able to say, "Amen."

#### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

#### PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from West Virginia (Mrs. CAPITO) come forward and lead the House in the Pledge of Allegiance.

Mrs. CAPITO led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

#### MESSAGE FROM THE SENATE

A message from the Senate by Ms. CURTIS, one of its clerks, announced that the Senate has passed without amendment a joint resolution of the House of the following title:

H.J. Res. 62. Joint resolution appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1755. An act to direct the Department of Homeland Security to undertake a study on emergency communications.

The message also announced that pursuant to section 276a of title 22, United States Code, as amended, the Chair, on behalf of the President pro tempore, appoints the following Senator as Vice Chairman of the United States-China Interparliamentary Group conference during the One Hundred Eleventh Congress:

The Senator from Missouri (Mr. BOND.)

The message also announced that pursuant to Public Law 106-398, as amended by Public Law 108-7, in accordance with the qualifications specified under section 1238(b)(3)(E) of Public Law 106-398, and upon the recommendation of the Republican Leader, in consultation with the Ranking Members of the Senate Committee on Armed Services and the Senate Committee on Finance, the Chair, on behalf of the President pro tempore, reappoints the following individual to

the United States-China Economic Security Review Commission:

Daniel Blumenthal of Maryland, for a term beginning January 1, 2010, and expiring December 31, 2011.

#### IS THIS REALLY THE BEST WE CAN DO?

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. The word is that, with over 15 million Americans out of work and desperately in need of extended unemployment benefits, Congress will put unemployment compensation benefits into a bill which will give another \$130 billion for war. Remember, our Democratic Party took control of Congress based on widespread opposition to the Iraq war. Unfortunately, we're now telling the American people the only way they'll get their unemployment compensation is to support another \$130 billion to keep wars going.

What a cruel choice Congress is forcing on people out of work: Put your sons and daughters on the firing line, and we'll pay you for being in the unemployment line. What a message to young Americans. No jobs for young people except to go to war. No chance for young people to go to college and have health care unless they learn to kill or be killed. Support this war, we tell the people, the war, which creates death, war which creates poverty, and war which creates unemployment, and we'll pay you for being unemployed.

Is this really the best we can do?

#### MORE JOB CREATION ALTERNATIVES

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, there are many jobs creation proposals that have been presented but have been ignored. Many will help promote jobs immediately, provide a 5 percent across-the-board tax cut, increase the child tax credit from \$1,000 to \$5,000, repeal the alternative minimum tax on individuals, permanently repeal required distributions on retirement accounts, increase by 50 percent the tax deduction on student loans and tax deduction on qualified higher education expenses, make unemployment benefits tax free so those individuals between jobs can focus on providing for their families, and, to encourage responsible buyers to enter the housing market and stabilize prices, offer a homebuyer's tax credit of \$15,000.

Both parties should consider positive alternatives that offer tax relief to small businesses and families to promote job creation.

In conclusion, God bless our troops, and we will never forget September the

11th in the global war on terrorism. Our prayers are with Wayne Dell and his family.

#### THE BEST SOCIAL PROGRAM IS A JOB

(Mr. COURTNEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COURTNEY. Mr. Speaker, the best social program is a job. It provides individuals and families with the means to support themselves. It also provides dignity and confidence to know that they actually have a viable future. That's why in eastern Connecticut we were very pleased a couple of weeks ago that the stimulus bill released money for the incumbent worker training program, a program which will provide 800 new jobs with funds directly sent to small- and medium-sized businesses, which is part of, again, the tried and true program that the stimulus bill expanded.

The president of Willimantic Savings Institute, Rheo A. Brouillard, who's going to have 200 new workers as a result of this program, said, the grants have assisted us in hiring of entry-level employees and enabled us to provide them with new skills needed to more readily advance their banking careers. The Norwich Bulletin, the largest newspaper in New London County, indicated that this is an excellent program, and this is what the stimulus package was intended to do.

Putting people to work is the best way to build a strong and vibrant economy. We need to build on the stimulus bill with these types of programs: first-time homebuyer tax credit, Cash For Clunkers, incumbent worker training programs. Steadily but surely we are turning this economy around, and we need a new jobs package to build on that success.

#### NANCY SHOBE'S RETIREMENT

(Mrs. CAPITO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CAPITO. Mr. Speaker, I rise today to honor Nancy Shobe on her 41 years of service to the constituents of Buckhannon, West Virginia, and to congratulate her on her upcoming retirement.

Nancy has served as the secretary to the mayor, computer systems manager, human resource manager, recorder, treasurer, and acting mayor during her 41 years of service to the city of Buckhannon. She's served as president of the Municipal Clerks and Records Association and was selected as Clerk of the Year in 1997 and 1998. She also received a Certificate of Highest Merit from West Virginia University's Local Government Leadership Academy. And

most recently, she was awarded the Quiet Strength Award for her outstanding leadership.

Nancy's leadership was proven during the difficult times after the Sago Mine disaster. Being the closest incorporated city to the Sago Mine, the city of Buckhannon was able to provide grief counseling for the families of the Sago miners, largely due to her efforts.

She has proven herself to be a true leader and a dedicated public servant whose positive impact in our community will be felt for many years to come.

I join with the residents of Buckhannon, West Virginia, in commending Nancy Shobe for her outstanding leadership and commitment over the past 41 years, and I urge my colleagues to join me in honoring her.

#### A NEW DEAL FOR A NEW ECONOMY

(Mr. HARE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HARE. The unemployed don't want another benefits check. They want a job. And I'm proud to say that on Friday, I introduced H.R. 4290, the New Deal for a New Economy Act, which would tackle this problem by creating and helping retain millions of jobs. It will reach that goal by investing \$60 billion per year over 3 years in TARP money.

First, it would invest heavily in the creation of public works and public interest jobs through the creation of the new economy grant program. The jobs could be filled by persons of all skill levels, specifically in the areas of public works projects on the State and local level, and public interest work with community-based nonprofit organizations.

Secondly, it would provide a direct line of funding to states and localities to help alleviate their financial woes. The funding would protect and allow for the expansion of our current workforce and would be channeled directly to local governments through the popular grants programs for COPS hiring, for SAFER Grants for our firefighters, and a public works and economic development grant program. Further, my bill would provide much-needed funding to our Nation's schools to protect our teachers and hire more to meet the needs of our children.

The third and final piece of this bill is one that is critical to restoring our Nation's lands for future generations. It's a direct line of funding to our national forests and national parks to address some of their many high-needs projects that have been neglected for decades.

Mr. Speaker, Wall Street got its bailout. It's time for Main Street to get theirs. Again, I ask my colleagues to join me in supporting this bill.

#### TOO MANY PRIORITIES

(Mrs. SCHMIDT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHMIDT. Mr. Speaker, if we don't heed Moody's warning, our Nation's AAA credit rating is likely to be downgraded due to unsustainable deficits by 2013. And what does this President and this majority do to answer this serious issue? Spend more money we don't have at record levels.

The President and the majority party have no interest in reining in the budget deficit. Just this weekend, top White House advisers said that tackling the deficit was not a priority. This administration has a lot of priorities. A frequent criticism has been that it has too many priorities. Apparently everything is a priority except for deficit reduction. I guess this shouldn't be a surprise coming from an administration that, in its first year in office, tripled the budget deficit to an all-time record high of \$1.4 trillion.

The President just graded his job performance on the Oprah show as a B-plus. I can only imagine, and with fear, the kind of deficit the President would have run-up if he had given himself an A.

#### IRAN REFINED PETROLEUM SANCTIONS ACT

(Mr. QUIGLEY asked and was given permission to address the House for 1 minute.)

Mr. QUIGLEY. Mr. Speaker, despite its claims of pursuing only a peaceful nuclear program, Iran's actions clearly show that it's developing a nuclear bomb. You only need three elements to create a bomb: material, a delivery system, and a warhead. Iran has or almost has all three of these elements.

According to the International Atomic Energy Agency, Tehran has developed 1¾ tons of low-enriched uranium, enough to make two bombs. As for a delivery system, we know Iran has missiles and in May, tested a new long-range missile that can reach Israel, our other allies, and our troops in the region.

Regarding a warhead, the IAEA has evidence that Iran is working on fitting a bomb inside a missile cone. And this week it was reported that Iran has a plan to test a neutron initiator, a component that is used only to trigger a nuclear bomb and has no possible civilian applications.

As we stand here debating, Iran is making a nuclear bomb. The Iran Refined Petroleum Sanctions Act will send a signal to Tehran that we will not stand by silently while they develop a nuclear weapon and threaten the entire region.

### MEDICARE SENIORS CANNOT AFFORD THE REID-PELOSI PLAN

(Mr. FLEMING asked and was given permission to address the House for 1 minute.)

Mr. FLEMING. Mr. Speaker, Democrats in the Senate are desperately looking for 60 votes for health care, so desperate that, in a new report released last week, the chief actuary of Medicare found the Reid-Pelosi bill would cause many physicians to stop treating seniors because of \$465 billion in cuts to the Medicare program.

Unfortunately for Medicare beneficiaries, the CMS actuary also found that 20 percent of hospitals and nursing homes would go into the red within the next 10 years due to these cuts, seriously threatening the ability of seniors to rely on these institutions for their care.

As if that were not enough, the Reid bill would also cut payments to Medicare Advantage plans by roughly \$120 billion, plans that 11 million seniors enjoy today. These cuts, according to the actuary, will result in 3.7 million seniors losing benefits under Medicare, causing many to pay more out of pocket each month for the drugs and services they lost. The.

Reid-Pelosi bill will make it harder for seniors to find treatment or afford care when they are sick.

□ 1015

### HONORING ERIE HERO CLARA WARD

(Mrs. DAHLKEMPER asked and was given permission to address the House for 1 minute.)

Mrs. DAHLKEMPER. Mr. Speaker, I rise today to honor one of my constituents, an extraordinary woman in Erie, Pennsylvania. Clara Ward, the founder of the Youth Development and Family Center in Erie, was the star of "Extreme Makeover: Home Edition" this week, where her dedication to children in need was rewarded with an amazing renovation to her home.

With the help of her daughter Cynthia and son Benny, Clara Ward offers her neighborhood's children a safe haven from the streets. Every year, Clara gives 300 children presents for the holidays, and every day, she provides food to children who otherwise would go to bed hungry.

We all have so much to learn from Clara and her spirit of generosity. It is my hope that we carry this lesson through the holiday season and into the new year.

### A BOX OF DOUGHNUTS

(Mr. POE of Texas asked and was given permission to address the House for 1 minute.)

Mr. POE of Texas. Mr. Speaker, requiring Americans to buy health insur-

ance or pay a fine or even go to jail if the fine tax is unpaid is utterly without constitutional authority. Under the Constitution, a citizen has no affirmative duty to purchase a mandated congressional product. Citizens have the right to do nothing.

The bruisers of the Constitution claim people must buy car insurance. That analogy is flawed. First, States, not Congress, have authority under the 10th Amendment that is not given to Congress. Second, driving is a privilege, not a right, and to exercise that privilege, a driver must buy insurance. But no one is forced to drive a car. Third, car insurance is to protect a third party from the driver. No State requires a driver to buy insurance for themselves.

A better analogy would be, in the name of promoting commerce, forcing all people to buy a car whether they wanted to or not, whether they could afford it or not, or be punished. Congress, by force, requiring all people to buy a product, whether it's health insurance or a car or even a box of doughnuts is unconstitutional and abuse of congressional authority.

And that's just the way it is.

### THE STIMULUS BILL

(Mr. HIMES asked and was given permission to address the House for 1 minute.)

Mr. HIMES. Mr. Speaker, we are looking at the last week perhaps of our session, and I think we can look back at some accomplishments. I think we can take some comfort in the fact that when this Congress sat in January, 11 months ago, Americans were losing their jobs at 20,000 every single day.

Because of the stimulus bill, that has slowed and almost stopped. The stimulus bill is rebuilding bridges in my district, rebuilding highways, and rebuilding community health clinics. But slowing the rate at which Americans lose their job is nobody's idea of a Christmas present. We have hard work to do.

I had occasion in church this weekend to hear the words of Handel's "Messiah," "and the government shall be upon his shoulders." That is prophetic, meaning in the future. Right now, the government is on our shoulders. And I hope that when we reconvene in January, we set aside the partisanship, the misinformation, and the anger to get back to the serious business of creating jobs for the American people.

### THE DEBT CEILING AND DEFENSE SPENDING

(Mr. OLSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OLSON. Mr. Speaker, in what has become a familiar move, House

Democrats have decided to increase spending yet again. But sadly, they have opted to shut out debate on this matter by attaching a \$300 billion increase in our Nation's debt ceiling to the Defense appropriations bill. They know they will have serious trouble getting support to increase our Nation's debt limit, so they are using our troops to carry them.

This is one of the reasons the American people are fed up with Congress. And as a Navy veteran, I can assure you that exploiting funding for our troops is both deplorable and demoralizing, and I will continue to oppose such actions.

We owe the American people, our children, our grandchildren, and the men and women risking their lives in defense of our freedom better than this. At Christmas, we should be hanging ornaments on a tree, not massive spending bills on the back of our troops.

### THE WALL STREET REFORM BILL

(Mr. ARCURI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARCURI. Mr. Speaker, last week, I was proud to stand up with many of my colleagues and hold Wall Street accountable for their reckless actions that led us into the biggest financial collapse in the last 50 years. For too long, Wall Street banks were allowed to put short-term profits ahead of long-term stability under the Bush administration and reaped record profits as a result of their risky and out-of-control behavior.

When the markets collapsed out from under them, this country's hard-working citizens were forced to suffer the consequences. The Wall Street reform bill we passed increases enforcement and makes necessary reforms to hold Wall Street accountable so that it can never again recklessly gamble with our financial health and safety.

The bill also creates a new Consumer Financial Protection Agency to prevent borrowers from taking loans that they can't afford and holding risky lenders liable for their practices. The CFPA will also protect families and small businesses from irresponsible lending practices by ensuring that bank loans, mortgages, and credit cards are fair and easy to understand.

Finally, this bill makes it clear that Wall Street will no longer be receiving any sort of taxpayer-funded bailouts. The American people have pulled together and selflessly acted to help this great country. It is time for Wall Street to step up and do the same.

### GET THE GOVERNMENT OFF OUR BACKS

(Mr. GINGREY of Georgia asked and was given permission to address the



House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY of Georgia. Mr. Speaker, the Democratic Member from Connecticut just said it's prophetic that the government should be on our shoulders. Unfortunately, the government is on our backs, and it shouldn't be. And no better example of that is this massive health care reform bill, a complete government takeover of health care, bureaucrats coming between doctors and patients.

People in this country have spoken loudly, but the Democratic majority is not listening.

In my 11th Congressional District of Georgia, Mr. Speaker, there are 95,000 people on Medicare, and 13,000 of them, 14 percent of the total, get their coverage under Medicare Advantage. That will be taken away from them as we strip \$120 billion out of the Medicare Advantage program.

What that means, Mr. Speaker, is that those 13,000 people in my district will have to pay an additional \$180 a month for the Medicare fee-for-service coverage if they can find a doctor that will take them. They will have to buy a prescription drug plan at \$30 a month and buy a supplemental Medigap plan to cover many of the things that are covered under Medicare Advantage without additional cost. That policy will cost them \$150 a month. That's why the American people are outraged over this plan.

Listen up, Members. Vote "no."

#### REGULATORY REFORM

(Mr. ALTMIRE asked and was given permission to address the House for 1 minute.)

Mr. ALTMIRE. Mr. Speaker, it was not long ago that our economy bottomed out and we were on the brink of an economic catastrophe. We avoided a complete collapse, but that is little consolation to the Americans who lost trillions of dollars in retirement savings due to the years of reckless behavior on Wall Street.

As we continue to show positive signs in our economy, this House last week passed legislation to make sure that we never again find ourselves in such a dire situation. The regulatory reform bill we passed creates an orderly process through which large, failing financial institutions can effectively be dismantled. No more "too big too fail." We end taxpayer bailouts by ensuring that in the future, Wall Street, not the taxpayers, will pay to dismantle endangered firms. And we end the predatory lending practices that helped cause the crisis by requiring banks to ensure that they only lend to borrowers who can actually repay the loans.

These changes are long overdue but come just in time for the American taxpayer.

#### RECOVERY ACT DIAGNOSIS

(Mr. BROUN of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROUN of Georgia. Mr. Speaker, I'm a family doctor. I have examined the Pelosi and Reid health care bills, and I have made a diagnosis, and the American people need to listen up to this diagnosis.

If you like your health insurance today, the price is going to skyrocket, and you're not going to be able to keep it eventually. If you're on Medicare, you're going to have a hard time finding a doctor that will accept Medicare because of the massive cuts. If you're a veteran and dependent upon TRICARE, forget it.

Mr. Speaker, my prescription is that we need to trash the Reid and Pelosi health care bills, work in a bipartisan manner, do this in an incremental way to lower the cost to everybody, and work to make something that makes sense for the American public and keeps the good quality health care we have in America.

#### RECOVERY ACT REPORT

(Mrs. KIRKPATRICK of Arizona asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KIRKPATRICK of Arizona. Mr. Speaker, last week, I released a report outlining how the American Recovery and Reinvestment Act has benefited greater Arizona and identifying where improvements can be made. I surveyed communities receiving recovery funds across my district to bring more transparency and oversight into the process.

I found significant progress has been made in bringing jobs to greater Arizona with 1,098 jobs created or saved in District One. Support to our State also prevented deep cuts in Arizona's education and public safety funding.

However, delays were reported on more than 40 percent of projects, despite the hard work of local officials. Our rural communities are finding the bureaucracy to be an obstacle.

I will continue working with local officials and Federal agencies to allow greater Arizona to take full advantage of the Recovery Act so they can create more jobs and get folks back to work.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. CUELLAR). The Chair will remind all Members not to traffic the well while another Member is under recognition.

#### THE NATIONAL DEBT

(Mr. SMITH of Nebraska asked and was given permission to address the

House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Nebraska. Mr. Speaker, since 2007, our national debt has increased 39 percent from nearly \$9 trillion to more than \$12 trillion. This works out to be \$39,000 for every man, woman, and child in America just to pay off our country's debt. Now there is a push to increase our Nation's debt ceiling to \$13.9 trillion, despite warnings this increase will be harmful to the U.S. economy.

At a time of double-digit unemployment and with more than 2.6 million jobs lost since the so-called stimulus was passed by Congress, isn't it time we institute fiscally sound policies?

Over the last 11 months, the American people have seen unprecedented spending from Washington, D.C. They are certainly not impressed. They know any economic recovery starts with tax relief for working families and small businesses and fiscal discipline from Washington.

#### TRANSPARENT HEALTH CARE REFORM

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me say that when Democrats gather, good things happen for the American people. Our health care bill is a bill that will bring down premiums, save lives, and create a magnificent reform comparable to saving lives when Medicare was passed in 1965. It is only those who are scared and apprehensive and not ready to go forward for the American people that won't allow us to move forward on the health care reform.

Just as when we gather together behind closed doors, Democrats, again, are promoting transparent legislation and creating jobs for Americans. We stand with the small businesses in providing them more resources and credits because they are the backbone of America. We realize that job training, and specifically a bill that I am offering that says that if you're unemployed and get unemployment compensation, you can be in a scholarship program that will train you for the jobs of the future.

The health care bill will be providing jobs on top of jobs: health care jobs, nursing, doctors, and physician assistants. Americans need jobs, and Democrats are not afraid to take the risks that are necessary to provide for them.

As we pass the appropriations bill, we are creating jobs for America, and, therefore, I'm asking my colleagues to assist and not cast about the fears of doom. We are moving this economy. We are helping health care. We are providing the opportunities for America. And I am glad to be a Democrat serving on behalf of the American people.

## UNITED NATIONS SOVEREIGNTY

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, what is the proper function of the United Nations? Is it a forum for countries to come together to promote peace, security, and human rights? Or is it an independent entity that determines and establishes the law and regulations to govern member states?

General Secretary Ban Ki-moon has made it clear in recent comments that the U.N. Climate Summit in Copenhagen will not be successful unless a firm deadline for a legally binding agreement is in place.

In Copenhagen, the U.N. is advocating for U.N. bureaucrats with the legal power to regulate the actions of member states. We should not let the health of our economy rest on the collective decisions of a group containing antagonistic and autocratic governments who do not have the American people's interests at heart, let alone the interests of their own citizens.

Do we really want Burma, Iran, and North Korea and other despotic governments setting the rules that govern how American businesses operate? I certainly do not.

100-YEAR ANNIVERSARY OF  
MCALLEN MONITOR

(Mr. HINOJOSA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HINOJOSA. Mr. Speaker, I, together with Congressman HENRY CUELLAR, rise to honor the McAllen Monitor newspaper in McAllen, Texas, on its 100-year anniversary. Since its first issue on December 11, 1909, the McAllen Monitor has been a round-the-clock operation.

It began as a weekly newspaper. Its reporters recorded the events when McAllen became incorporated in 1911. The Monitor was there to record the history of the Rio Grande Valley and its people. The names of the pioneering families leave a roadmap all across the Rio Grande Valley, families like the Canales, the Guerras, the Lopezes, the Cuellars, the de la Garzas, the McAllens, the Youngs, the Closners, the Sharys, the Hinojosas, and the Bentsens.

Now a daily paper, the McAllen Monitor takes pride in telling the success stories of homegrown people who have become famous, from Narciso Martinez, el Huracan del Valle's accordion sounds to Kris Kristofferson singing and acting; from Bobby Morrow's Olympic Gold Medal to the distinguished political career of the late Senator Lloyd Bentsen.

The McAllen Monitor has covered the good and bad, the sad and the joyous

news for 100 years. Congratulations to the McAllen Monitor on its 100-year anniversary.

□ 1030

## DEMOCRATS' ABSURD AGENDA

(Mr. DANIEL E. LUNGREN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, some days ago, when we were discussing and debating and voting on the health care bill, I got a call in my office from one of my constituents. After we had spoken for some time, he said, I have a confession to make. He said, I voted for President Obama because I thought that he would bring us together and that there was hope. But then he said these words, But I did not vote for this madness.

What did he mean? I guess maybe he was talking about a health care bill that's going to cost more money, going to raise taxes, and not going to take care of all Americans. I guess he was talking about a cap-and-trade bill that will put a burden on every single American. I guess he was talking about a proposal that comes to us that says, oh, we have a huge deficit and we're going to work our way out by spending more. And I suppose he may have been here to hear one of my colleagues just a moment ago who said, When Democrats meet behind closed doors, they come out for transparency. It seems absurd, perhaps because it is.

## JOBS AND THE ECONOMY

(Ms. WATSON asked and was given permission to address the House for 1 minute.)

Ms. WATSON. Mr. Speaker, the 111th Congress has made historical progress working with President Obama to take America in a new direction. We are working to turn our economy around and create good jobs, to make common-sense reforms to how Wall Street does business, to make quality health insurance affordable to every American, and to launch a clean-energy jobs revolution that makes America more secure. These efforts are being tackled with fiscal discipline and accountability.

You just heard about the American Recovery and Reinvestment Act; and then there is the Worker, Homeownership, and Business Assistance Act, stimulating growth and creating jobs with up to 20 additional weeks of unemployment benefits. And then there is the Job Creation Through Entrepreneurship Act to give established small businesses and entrepreneurial start-ups the needed tools and resources to thrive, create jobs, and drive economic growth.

GITMO DETAINEES COMING TO  
THE HEARTLAND

(Mr. KIRK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KIRK. Mr. Speaker, this morning, we read reports that the administration will announce that a prison in Illinois will be home to over 70 al Qaeda core detainees. After spending \$275 million on a state-of-the-art facility in Cuba, we will walk away from that investment.

The new plan poses an unnecessary risk on the American people. Administration briefings revealed that we are not ending Gitmo, just moving it to the heartland.

Members of Congress posed over one dozen questions on this plan 1 month ago—with no answer. Here is one of the key unanswered issues: In his archives speech, the President announced that approximately 75 of the detainees are "too dangerous for trial or release." They are to be held indefinitely without civil or military trial.

It is illegal under our Constitution for the executive to hold a person inside the United States indefinitely without trial. Question: How will the President suspend our Constitution's writ of habeas corpus once he brings these 75 detainees to the heartland? Courts will force him to answer, and the American people should know right now.

THE AMERICAN PEOPLE WANT  
DEMOCRATIC SOLUTIONS

(Mr. YARMUTH asked and was given permission to address the House for 1 minute.)

Mr. YARMUTH. Mr. Speaker, many in the media and some of our Republican colleagues are trying to raise the specter of 1994 when we are talking about health care reform saying, oh, the Democrats are going to lose control of the House if they pass health care reform just like they lost the House after trying to get HillaryCare through.

Well, there are a few differences between 1994 and 2009. For one, in 1994, 11,000 people weren't losing their health insurance every day, premiums had not nearly tripled in the prior 10 years, we weren't 7 years away from facing bankruptcy in Medicare, more than 700,000 people were not going bankrupt every year because of health care costs, and, finally, nearly 40,000 people every year weren't dying because of a lack of health care coverage.

You know, the people in America have seen what the Republican response for health care is. They saw one move in 12 years of their control, and that was to pass an unfunded prescription drug plan that the Social Security trustees now say may raise the deficit by \$1.2 trillion over the next 10 years.

We've seen the Republican solutions. The American people want the Democratic solutions.

#### MR. PRESIDENT, RECONSIDER GUANTANAMO BAY

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I was here at the Capitol on September 11. I watched the smoke rise from the Pentagon. I walked in the ashes of Ground Zero 1 week later. Terrorism is not theoretical to me. That's why, like most Americans, I was astonished to read this morning press reports that the Obama administration is about to transfer over 70 known dangerous terrorists from the military detention facility at Guantanamo Bay outside the United States to a prison inside the United States, in the heartland of America, in the State of Illinois.

By moving known terrorists to American soil, the Obama administration is putting international public relations ahead of public safety. How does closing Guantanamo Bay make us safer? How does moving over 70 known terrorists to a facility in my beloved heartland of this country make our families safer? And how does it even make sense?

Mr. President, rescind this order. Reconsider your decision. Put the safety and security of the American people ahead of international public opinion.

#### SUPPORT GLOBAL CLIMATE AGREEMENT IN COPENHAGEN

(Mrs. CAPPS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CAPPS. Mr. Speaker, the scientific consensus about whether humans are causing global warming is clear. Reports from the United Nations IPCC underscore the need for all countries to take action to reduce global warming pollution.

As I speak, world leaders are meeting in Copenhagen to negotiate a new global climate treaty. This is a tremendous opportunity for the United States to lead the world in coalescing around a fair, ambitious, and binding climate agreement.

We must confront the causes of global warming and manage the impacts of climate change, such as rising sea levels, and help developing countries benefit from clean energy technologies.

Mr. Speaker, the United States has a lot to gain in Copenhagen. Currently, European countries generate more of their electricity than we do from clean alternative sources, while China is on track to become the world's leading maker of wind turbines by the end of this year.

The United States can lead the world in growing a clean energy economy. We can create new American jobs and strengthen our national security while we protect our planet. We can, and we must, be the global clean energy leader again.

Let's all support a fair, ambitious, and binding climate agreement in Copenhagen.

#### DEMOCRATS AT WORK PUTTING AMERICA BACK TOGETHER

(Ms. SHEA-PORTER asked and was given permission to address the House for 1 minute.)

Ms. SHEA-PORTER. Mr. Speaker, the 111th Congress and the President have pulled the economy back from the brink. After 8 years of the previous administration's lax oversight of Wall Street, tax cuts for the very rich, and dishonest budgets that hid the true costs, this Congress and President Obama are busy reversing the damage.

The House passed a Wall Street reform bill that will protect consumers and ensure that taxpayers are never again on the hook to bail out big Wall Street banks. We also passed Cash for Clunkers, which helped to jump-start the U.S. auto industry and get new, cleaner cars on the road. And the American Recovery and Reinvestment Act has invested in Main Street America, creating jobs and building infrastructure projects. These projects will serve their communities for decades to come.

When the President took office in January, the economy was shedding over 700,000 jobs a month. Last month, there were 11,000 job losses. Every job loss is a tragedy, though; and that is why we have been working to create jobs while we also extended unemployment benefits to those still seeking work.

We are still turning America around, but in just 1 year we have come a long way.

#### END THE WAR IN AFGHANISTAN NOW

(Mr. GRAYSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GRAYSON. Mr. Speaker, I rise today in favor of peace. I am joined in that by nearly 100,000 people who have signed a petition urging Congress to stop the escalation of the war in Afghanistan. This is the petition from the group Rethink Afghanistan.

President Obama has decided to send more than 30,000 extra troops to Afghanistan at a cost of more than \$100 billion a year, but America cannot afford a war that does not make us safer; and Congress has the power to stop that escalation. Vote "no" on any spending bill that would send more troops to Afghanistan.

I agree with that petition. It took only about 1,000 Special Forces troops to overthrow the Taliban in 2001. Why would we need 100 times that many to keep them out now? This occupation is an 18th-century strategy against a 14th-century enemy.

We have done enough to help and secure the Pashtuns, the Tajiks and the Hazara. It's about time we start to think of ourselves. Instead of spending billions on the war, we need to spend it on America. End the war now.

#### DEMOCRATS ARE COMMITTED TO JOBS PROGRAM

(Mr. ELLISON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ELLISON. Mr. Speaker, after nearly a decade of handing over middle class tax dollars to the wealthiest 1 percent, after nearly a decade of policy that encouraged million-dollar CEO bonuses over raises for American workers, we are witnessing the results of nearly a decade of complete Republican control of the Federal Government.

They handed President Obama and this Congress two wars, hundreds of billions of dollars in debt, crumbling national infrastructure, a home mortgage crisis—one in eight mortgages in default or foreclosure—a global climate crisis, and a financial sector ravaged by greed and lax regulation.

In short, this greatest economic and financial crisis since the Great Depression should be called the "Republican recession." And then, they handed it all off to President Obama and now have the audacity to ask, Where are the jobs? Well, the jobs are coming. The jobs are being built right now because Democrats are focusing on jobs. Democrats are committed to a jobs program that talks about our infrastructure, retaining public employees, and building America's future again.

#### WE NEED TO HELP THE UNEMPLOYED

(Mr. COHEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COHEN. Mr. Speaker, The New York Times and CBS released a poll recently that showed what the feelings are and the effects of unemployment on Americans. We've had 10 percent unemployment and many people that are long-term unemployed. The effects are devastating.

People who are unemployed are more likely not to have health insurance and have difficulty and give up getting medical care. That costs the public later with emergency room visits and costs us more money. They have more problems with depression and anxiety, and yet can't afford medical treatment.

Again, problems arise. They have lost their homes, neighborhoods suffer, crime increases, neighborhood values decrease.

The loss of jobs has hurt millions of Americans and others because of the effects on the economy, on government, and on neighborhoods. But the people who have lost their jobs know why they have lost their jobs. Twenty-six percent specifically say the reason they've lost their jobs is because of President Bush and the policies that were brought about during the time he was President. That is obvious. The second largest group is Wall Street bankers. We need to help the unemployed. We need to find jobs.

#### WALL STREET REFORM PACKAGE

(Mr. WALZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALZ. Mr. Speaker, among the speakers who have just addressed this House are a high school teacher, a nurse, a social worker, a small business owner, and a criminal prosecutor. And they stood hand in hand for working families on Main Street to restore responsibility and accountability to Wall Street last week.

After years of recklessness and unchecked greed that have now cost millions their jobs, their homes, and their life savings, we finally passed long-overdue commonsense reforms. These reforms protect investors and consumers from the excesses of those who will gamble other people's hard-earned money and closed loopholes in existing laws. They bring about an end to taxpayer bailouts and a belief that a firm is too big to fail.

Financial markets work best when they are transparent, allowing investors to make smart decisions and our capital system to flourish; but they also require cops on the beat to protect consumers from fraud and abuse. The Wall Street reform package we passed strengthens our markets and our economies, giving people confidence again to invest in America and our growth towards prosperity.

□ 1045

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. DRIEHAUS). Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

#### AUTHORITY TO CONVERT CERTAIN OVERSEAS LIMITED APPOINTMENTS TO PERMANENT APPOINTMENTS

Mr. CUELLAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1517) to allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service, as amended. The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1517

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. DEFINITIONS.

For purposes of this Act—

(1) the term "Commissioner" means the Commissioner of U.S. Customs and Border Protection;

(2) the term "U.S. Customs and Border Protection" means U.S. Customs and Border Protection of the Department of Homeland Security;

(3) the term "competitive service" has the meaning given such term by section 2102 of title 5, United States Code; and

(4) the term "overseas limited appointment" means an appointment under—

(A) subpart B of part 301 of title 5 of the Code of Federal Regulations, as in effect on January 1, 2008; or

(B) any similar antecedent or succeeding authority, as determined by the Commissioner.

#### SEC. 2. AUTHORITY TO CONVERT CERTAIN OVERSEAS LIMITED APPOINTMENTS TO PERMANENT APPOINTMENTS.

(a) IN GENERAL.—Notwithstanding chapter 33 of title 5, United States Code, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Commissioner may convert an employee serving under an overseas limited appointment within U.S. Customs and Border Protection to a permanent appointment in the competitive service within U.S. Customs and Border Protection, if—

(1) as of the time of conversion, the employee has completed at least 2 years of current continuous service under 1 or more overseas limited appointments; and

(2) the employee's performance has, throughout the period of continuous service referred to in paragraph (1), been rated at least fully successful or the equivalent.

An employee whose appointment is converted under the preceding sentence acquires competitive status upon conversion.

(b) INDEMNIFICATION AND PRIVILEGES.—

(1) INDEMNIFICATION.—The United States shall, in the case of any individual whose appointment is converted under subsection (a), indemnify and hold such individual harmless from any claim arising from any event, act, or omission—

(A) that arises from the exercise of such individual's official duties, including by reason of such individual's residency status, in the foreign country in which such individual resides at the time of conversion,

(B) for which the individual would not have been liable had the individual enjoyed the same privileges and immunities in the foreign country as an individual who either was

a permanent employee, or was not a permanent resident, in the foreign country at the time of the event, act, or omission involved, and

(C) that occurs before, on, or after the date of the enactment of this Act, including any claim for taxes owed to the foreign country or a subdivision thereof.

(2) SERVICES AND PAYMENTS.—

(A) IN GENERAL.—In the case of any individual whose appointment is converted under subsection (a), the United States shall provide to such individual (including any dependents) services and monetary payments—

(i) equivalent to the services and monetary payments provided to other Customs and Border Protection employees in similar positions (and their dependents) in the same country of assignment by international agreement, an exchange of notes, or other diplomatic policy; and

(ii) for which such individual (including any dependents) was not eligible by reason of such individual's overseas limited appointment.

(B) APPLICABILITY.—Services and payments under this paragraph shall be provided to an individual (including any dependents) to the same extent and in the same manner as if such individual had held a permanent appointment in the competitive service throughout the period described in subsection (a)(1). The preceding sentence shall, in the case of any individual, be effective as of the first day of the period described in subsection (a)(1) with respect to such individual.

(C) GUIDANCE ON IMPLEMENTATION.—The Commissioner shall implement the conversion of an employee serving under an overseas limited appointment to a permanent appointment in the competitive service in a manner that—

(1) meets the operational needs of the U.S. Customs and Border Protection; and

(2) to the greatest extent practicable, is not disruptive to the employees affected under this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. CUELLAR) and the gentleman from Alabama (Mr. ROGERS) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

#### GENERAL LEAVE

Mr. CUELLAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and insert extraneous materials on the bill that is under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. CUELLAR. Mr. Speaker, I rise in support of this bill and yield myself such time as I may consume.

H.R. 1517 would help fix a previous hiring error for a select number of employees serving overseas in positions for Customs and Border Protection. Through no fault of their own, there are about 35 employees in several CBP pre-clearance locations across the globe that were hired under a limited term appointment by the Immigration and Naturalization Service.

Some of those workers have been employed, Mr. Speaker, since 1987, with

the majority hired in the mid-1990s. Mr. Speaker, they have been, for the most part, treated the same way as other CBP officers and personnel, regardless of their initial appointment status. However these employees, these hardworking employees, unbeknownst to them, were in personnel limbo for the past 15 years to 20 years and were not covered by the protections and immunities afforded to permanent CBP employees engaged in similar work.

This personnel situation was initially brought to the employees' attention in 2005. Since then, the CBP, OPM, and the Department of State have been trying to fix this glitch, but they realize that they need the help of Congress. This is why H.R. 1517 will give the CBP Commissioner the authority to noncompetitively convert these 35 employees to full-time permanent civil service positions.

Doing so would not only ensure that these employees continue to receive their appropriate benefits but also will provide them with the protections they deserve as dedicated employees serving the CBP mission abroad. This ability to convert these employees will also ensure that CBP and that the United States honor the agreements between our countries and others such as Ireland.

Going forward, it is our hope that the Commissioner will take the past histories of these dedicated 35 individuals into account when determining their future. As I had mentioned, through no fault of their own, these employees find themselves in this very difficult situation.

Other employees assigned to work overseas rotate back to the U.S. after a period of time. The majority of these employees affected by the bill, however, have been at their posts for many years and have put down roots in these locations.

In light of these employees' unique circumstances, the bill provides guidance to the Commissioner, stating that the implementation of the bill shall, number one, meet the operational needs of CBP and, number two, to the greatest extent practicable, not be disruptive to this discrete number of affected employees.

In our attempt to right the system, CBP should not unduly disrupt the lives of these dedicated individuals who have provided a very valuable service to our country.

HOUSE OF REPRESENTATIVES, COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,

Washington, DC, December 2, 2009.

Hon. BENNIE THOMPSON,  
Chairman, Committee on Homeland Security,  
Ford House Office Building, Washington,  
DC.

DEAR CHAIRMAN THOMPSON: I am writing to confirm our mutual understanding with respect to the consideration of H.R. 1517, a bill to allow certain U.S. Customs and Border Protection employees to be converted to a

permanent appointment in the competitive service.

I appreciate your effort to consult with the Committee on Oversight and Government Reform regarding those provisions of H.R. 1517 that fall within the Oversight Committee's jurisdiction.

Given the importance of moving this bill forward promptly, I do not intend to object to its consideration in the House. However, I do so only with the understanding that this procedure should not be construed to prejudice this Committee's jurisdictional interest or prerogatives in the subject matter of H.R. 1517, or any other similar legislation.

I would also request your support for the appointment of conferees from the Oversight Committee should H.R. 1517 or a similar Senate bill be considered in conference with the Senate.

Finally, I request that you include our exchange of letters on this matter in the Congressional Record during consideration of this legislation on the House floor.

Sincerely,

EDOLPHUS TOWNS,  
Chairman.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
Washington, DC, December 2, 2009.

Hon. EDOLPHUS TOWNS,  
Chairman, Committee on Oversight and Government Reform, House of Representatives,  
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN TOWNS: Thank you for your letter regarding H.R. 1517, a bill to allow certain U.S. Customs and Border Protection employees to be converted to a permanent appointment in the competitive service, introduced by Congressman Eliot L. Engel on March 16, 2009.

I acknowledge that H.R. 1517 contains provisions within the jurisdictional interest of the Committee on Oversight and Government Reform. I appreciate your agreement to forgo further consideration or action on this legislation to ensure the timely consideration of this legislation, and acknowledge that your decision to do so does not affect the jurisdiction of the Committee on Oversight and Government Reform.

Further, I recognize that your Committee reserves the right to seek appointment of conferees on the bill for the portions of the bill that are within the jurisdiction of the Committee on Oversight and Government Reform, and I agree to support such a request.

I will ensure that this exchange of letters is included in the legislative report on H.R. 1517 and in the Congressional Record during floor consideration of the bill. I look forward to working with you on this legislation and other matters of great importance to this nation.

Sincerely,

BENNIE G. THOMPSON,  
Chairman.

Mr. Speaker, I reserve the balance of my time.

Mr. ROGERS of Alabama. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1517 to correct the hiring status of approximately 30 Customs and Border Protection officers stationed overseas under the wrong hiring appointments.

I appreciate the opportunity to stand in support of this legislation in the place of Ranking Member PETER KING, the Republican sponsor of the bill.

H.R. 1517 grants special authority to the Commissioner of Customs and Border Protection to noncompetitively convert about 30 CBP employees mistakenly hired under an overseas limited deployment to permanent status stationed at the overseas pre-inspection posts.

CBP operates pre-clearance stations at 15 foreign airports where travelers to the U.S. are able to undergo entry inspections before boarding their planes. This initiative facilitates travel while adding an important security benefit.

Unfortunately, this hiring error, if not addressed, could force these employees to transition into locally hired staff, much like Foreign Service nationals at embassies, or to return to the United States and compete for domestic CBP positions. Through no fault of their own these employees are now facing the problems with their employment status due to a mistake made years ago when they were initially hired. The Congressional Budget Office analysis shows no significant impact from this legislation, as these are existing employees who only need a category adjustment to their employment records.

I would like to highlight and express appreciation for the bipartisan manner in which this legislation was developed. Congressman ENGEL and Ranking Member KING worked together to develop this bill, and both Chairwoman SANCHEZ and Chairman THOMPSON sponsored this bill as it moved unanimously through our committee.

I urge my colleagues to support this bill.

I reserve the balance of my time.

Mr. CUELLAR. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. ENGEL) who is the author of this bill and has been working with the ranking member, Mr. KING of New York.

Mr. ENGEL. I thank the gentleman, my good friend from Texas, for yielding to me. I appreciate the comments made by Mr. ROGERS as well.

Mr. Speaker, this bill rights a wrong. It's a very technical bill, but the bottom line is that 35 loyal and hardworking Federal employees stationed overseas, working for America, are being treated unfairly, and the bill corrects this. When I was in Ireland at the Customs post, I had a chance to speak with some of these employees, and I became convinced that they were not being treated fairly.

I rise today in support of my legislation, H.R. 1517, for the conversion of certain overseas Customs and Border Protection employees. I would also like to give special recognition to my colleague and friend, Representative PETER KING of New York, for the hard work that he has put into this legislation as well.

H.R. 1517 would grant the Commissioner of the U.S. Customs and Border

Protection the authority to non-competitively convert employees serving on overseas limited appointments into permanent employees. The need for this legislation was brought to my attention by 15 U.S. CBP employees serving at pre-clearance centers in Ireland, who were incorrectly hired by the Immigration and Naturalization Service. These employees were hired on overseas temporary appointments, but the work requirement evolved into a permanent basis.

There are two ways for a Federal agency to fill permanent overseas positions: one, by hiring locally engaged staff or, two, by U.S. direct hire. Yet because an agreement between the United States and Ireland requires that all pre-clearance employees be permanent employees, and, by definition, employees on overseas appointments are limited employees, albeit it in this case limited for an indefinite duration, CBP is technically in violation of the two countries' agreement.

More troubling to me, the 15 employees on overseas limited appointments are not covered by the protections and immunities afforded by the agreement to permanent U.S. pre-clearance employees.

Later, I learned the number of employees in similar positions included over 30 other CBP employees in Aruba, the Bahamas, Bermuda, and Canada. It has been through no fault of their own that these loyal employees, some of whom have been protecting our country for almost 20 years, are now in limbo.

Without this legislation, they will either have to become locally engaged staff, who are compensated by and receive benefits from the Irish government, or be placed into competitive positions that will require a return to the U.S. Some of them have families and have been living in Ireland working for the U.S. as American citizens, a choice that would destroy an established way of life in Ireland if they were forced to come to the United States, or a career with the U.S. Customs and Border Protection. They would have to choose, and that's not right. This was done through no fault of their own.

This bill, H.R. 1517, would allow these employees to stay close to their families and keep their positions protecting our country.

I would like to applaud the Homeland Security Committee for including language encouraging the CBP Commissioner not to be too disruptive to the employees when implementing this legislation. I recognize the standard CBP policy is for employees serving at overseas positions to rotate back to the United States after 5 years. However, in this extreme circumstance, it would be best for the CBP to allow the employees to continue to serve where they are currently with the years of experience they bring to their positions.

Let me say in closing, H.R. 1517 is a bipartisan bill. It is supported by the U.S. Customs and Border Protection and the National Treasury Employees Union, which represents the employees.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. CUELLAR. I yield an additional 1 minute to the gentleman from New York.

Mr. ENGEL. I thank the gentleman. This is a bipartisan bill. I repeat: It is supported by the U.S. Customs and Border Protection and the National Treasury Employees Union, which represents the employees. Each has had the opportunity for input into the final legislation.

I would strongly encourage my colleagues to join with me in support, again, of this bipartisan legislation. Continued employment of these individuals is in the best interest of CBP and the best interest of our country as the work requirement remains, and it's critical to CBP protecting our Nation's borders.

Mr. ROGERS of Alabama. Mr. Speaker, I have no additional speakers. At this time I would urge Members to support the bill.

I yield back the balance of my time.

Mr. CUELLAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I encourage my colleagues to support this important legislation that Mr. ENGEL has been working on, along with the ranking member, Mr. PETER KING of New York. This is a piece of legislation that will help those employees that have been working for our country. I would ask all Members to support this important legislation.

Ms. RICHARDSON. Mr. Speaker, as a member of the Homeland Security Committee, I rise today in strong support of H.R. 1517. This legislation will allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service.

I would like to acknowledge Speaker PELOSI and Chairman THOMPSON for their leadership in bringing this important bill to the floor. I would also like to thank my colleague Congressman ENGEL, who worked so hard authoring this important legislation.

Mr. Speaker, H.R. 1517 would correct a longstanding classification problem among a small group of Customs and Border personnel that were hired before DHS was created. These 35 people are working overseas, mostly in Ireland, and need to be properly classified as CBP staff. I am pleased that the Homeland Security Committee has taken action to correct this problem and that this bill has come before the full Congress today.

I support H.R. 1517 because it is an efficient fix to this classification issue. Our Customs and Border personnel work so hard every day to keep us safe, and they deserve prompt action by this body to correct any

problems in classification that could prevent them from receiving any appointments they may deserve.

Mr. Speaker, I urge my colleagues to join me in supporting H.R. 1517.

Mr. THOMPSON of Mississippi. Mr. Speaker, I rise today in support of H.R. 1517, a bipartisan bill authored by Representative ENGEL and the ranking member on the Committee of Homeland Security, Representative KING.

As chairman of the Committee on Homeland Security, I am grateful to these members for putting before us today a bill that aims to fix a discrete but important issue at Customs and Border Protection.

In short, this bill gives the Commissioner the authority to noncompetitively convert approximately 35 overseas CBP employees into full-time permanent civil service positions.

These employees were originally hired by the Immigration and Naturalization Service under "limited overseas appointment" authority between 1987 and 2003.

Over time, the nature of their work changed, but their employment designation did not.

Since 2005, CBP, the Office of Personnel Management and the Department of State have been trying to fix the glitch, but realize they need the help of Congress.

Doing so will not only ensure that the employees continue to receive the appropriate benefits, but will also provide them with the protections they deserve as dedicated employees serving the CBP mission abroad.

Further, this conversion of employment status will ensure that CBP and the United States honor agreements between our country and our foreign counterparts, such as Ireland, governing U.S. personnel overseas.

Going forward, using the authorities provided to the Commissioner in H.R. 1517, it is my hope that the Commissioner will take the histories of these dedicated 35 individuals into account when applying CBP's rotation policy.

In our attempt to "right the system," CBP should not unduly disrupt the lives of these dedicated individuals, who provide a valuable service to this country.

Mr. CUELLAR. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. CUELLAR) that the House suspend the rules and pass the bill, H.R. 1517, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. CUELLAR. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.



# FIRST RESPONDER ANTI-TERRORISM TRAINING RESOURCES ACT

Mr. CUELLAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3978) to amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to authorize the Secretary of Homeland Security to accept and use gifts for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for and response to terrorism, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3978

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "First Responder Anti-Terrorism Training Resources Act".

## SEC. 2. ACCEPTANCE OF GIFTS FOR FIRST RESPONDER TERRORISM PREPAREDNESS AND RESPONSE TRAINING.

Section 1204 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1102) is amended by adding at the end the following new subsection:

### "(f) ACCEPTANCE OF GIFTS.—

"(1) AUTHORITY.—Notwithstanding section 873(b) of the Homeland Security Act of 2002 (6 U.S.C. 453(b)), the Secretary may accept and use gifts of property, both real and personal, and may accept gifts of services, including from guest lecturers, for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for and response to terrorism.

"(2) REPORT.—The Secretary shall report annually to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate—

"(A) any gifts that were accepted under this subsection in the preceding year;

"(B) how such gifts contribute to the mission of the Center for Domestic Preparedness; and

"(C) the amount of Federal savings that were generated from the acceptance of such gifts."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. CUELLAR) and the gentleman from Alabama (Mr. ROGERS) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

### GENERAL LEAVE

Mr. CUELLAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and insert extraneous materials on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. CUELLAR. Mr. Speaker, I rise in support of this bill and yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of H.R. 3978, which is sponsored by my friend from Alabama (Mr. ROGERS).

I am pleased to serve with Mr. ROGERS on the Emergency Communications, Preparedness, and Response Subcommittee. He is the ranking member and works with us in a very bipartisan manner. I thank him for his service.

Mr. ROGERS' district is home to the Center For Domestic Preparedness. It is the premier training site for our Nation's first responders, and it is the Department of Homeland Security's only federally chartered weapons of mass destruction training center.

DHS has facilitated training at the center for thousands of first responders from all 50 States, territories and the District of Columbia. Given the center's prominence in the first responders' community, it often receives offers of gifts and donations from a variety of sources. These donations and services include training, displays, emergency response equipment, and offers of guest lectures.

□ 1100

These donations and gifts would strengthen the center's ability to offer high-quality emergency response training.

Unfortunately, the center currently lacks the legal authority at this time to accept these types of services. H.R. 3978 will permit the Secretary of Homeland Security to accept and use gifts for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for and in response to terrorism.

The legislation further directs DHS to report annually to the Congress on any gifts that were accepted in the preceding year and how they have contributed to the center's mission. Other DHS-supported training centers are permitted to accept gifts and donations, and it is past due to give the Center for Domestic Preparedness the same authority.

I urge all my colleagues to support H.R. 3978.

Mr. Speaker, I reserve the balance of my time.

Mr. ROGERS of Alabama. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of the First Responder Anti-Terrorism Training Resources Act.

H.R. 3978, which I introduced last month, ensures that first responders who train at East Alabama's Center for Domestic Preparedness have access to even better training resources. As many here know, the Center for Domestic Preparedness, located in my district in Anniston, Alabama, delivers one-of-a-kind training to America's emergency responders. It's our Nation's premier all-hazards training center. It's also the only federally chartered weapons of mass destruction training center in the Nation. Responders from all 50 States, the District of Columbia, and the U.S. territories have

trained at the CDP. In fact, this year the CDP celebrated its 500,000th graduate.

Like other first responder training centers, often the CDP receives offers of donations, such as railcars, trailers, and emergency response equipment, to assist their training courses. However, since the CDP's activities are conducted under the 9/11 Act of 2007 rather than the Stafford Act, the CDP lacks the legal authority to accept donations that could further training resources.

My bill fixes that problem. It amends the 9/11 Act so that the CDP may accept donations of property and services for antiterrorism and training activities. It's a win-win for our first responders, the taxpayer, and this important east Alabama training facility.

I would like to thank my good friend from Texas (Mr. CUELLAR) for supporting this bill and holding a markup in the subcommittee last month. I would also like to thank the full committee chairman, Mr. THOMPSON, for holding a markup in the full committee.

I urge my colleagues to support this important measure.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Speaker, I rise in support of H.R. 3978, legislation that would permit the Center for Domestic Preparedness to accept gifts and donations in order to better train our Nation's first responders. As Chairman of the Committee on Homeland Security, I am pleased that the House is considering this legislation today, and I urge my colleagues to support its passage.

Mr. Speaker, the Federal Emergency Management Agency's Center for Domestic Preparedness, Center, is the Nation's leading all-hazards first-responder training center. Located in Anniston, Alabama, the Center has provided emergency response training to first responders in all fifty States and territories, as well as Federal Government employees, foreign officials, and private entities. The Center is especially well-known internationally for its weapons of mass destruction training facility.

The Center often receives offers of donated goods and services, such as training displays, response equipment, and trailers. These donations would allow the Center to offer stronger training opportunities at a lower cost to the Department of Homeland Security, DHS, and the American taxpayer. Regrettably, the Center does not have the legal authority to accept gifts that would enhance its ability to deliver superior training.

H.R. 3978 would amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to permit the Center to receive donated gifts and services that are related to preparedness for and response to terrorism. The legislation further calls on the Secretary of Homeland Security to annually report to Congress on gifts accepted and how such gifts contribute to the mission of the Center.

Other DHS training centers, such as the Federal Law Enforcement Training Center, already have the authority to accept gifts and



donations. It is only appropriate that the Center also have this authority.

Mr. Speaker, H.R. 3978 is a straight-forward piece of legislation that will pay immediate dividends for our first responder community. I support its passage and encourage my colleagues to support it as well.

Mr. CUELLAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I encourage my colleagues to support this important Homeland Security legislation. The gentleman from Alabama has worked very hard, has been very dedicated in this piece of legislation, and I would ask all my colleagues to support this important legislation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. CUELLAR) that the House suspend the rules and pass the bill, H.R. 3978.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. CUELLAR. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

#### PRIVILEGED REPORT ON RESOLUTION OF INQUIRY TO SECRETARY OF HOMELAND SECURITY

Mr. CUELLAR, from the Committee on Homeland Security, submitted a privileged report (Rept. No. 111-377) on the resolution (H. Res. 922) directing the Secretary of Homeland Security to transmit to the House of Representatives all information in the possession of the Department of Homeland Security relating to the Department's planning, information sharing, and coordination with any state or locality receiving detainees held at Naval Station, Guantanamo Bay, Cuba on or after January 20, 2009, which was referred to the House Calendar and ordered to be printed.

#### HONORING 50TH ANNIVERSARY OF THE RECORDING OF "KIND OF BLUE"

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 894) honoring the 50th anniversary of the recording of the album "Kind of Blue" and reaffirming jazz as a national treasure.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

#### H. RES. 894

Whereas, on August 17, 1959, Miles Davis, Jimmy Cobb, Bill Evans, Wynton Kelly, Paul Chambers, John Coltrane, and Julian "Cannonball" Adderley collaborated to record the album "Kind of Blue";

Whereas "Kind of Blue" ranks 12th on the list of the "500 Greatest Albums of All Time" published by Rolling Stone magazine;

Whereas "Kind of Blue" was recorded in 1959, the year Columbia Records declared "jazz's greatest year";

Whereas "Kind of Blue" marked the beginning of the mass popularity of jazz in the United States;

Whereas in 2008, the Recording Industry Association of America awarded "Kind of Blue" quadruple-platinum status, meaning 4,000,000 copies of the album had been sold;

Whereas in 2002, the Library of Congress added "Kind of Blue" to the National Recording Registry;

Whereas "Kind of Blue" was recognized as the bestselling record in the history of jazz;

Whereas 50 years after the release of "Kind of Blue", MOJO magazine honored the Legacy Edition of the album by giving it the "Best Catalogue Release of the Year" award;

Whereas "Kind of Blue" both redefined the concept of jazz for musicians and changed the perceptions of jazz held by many fans;

Whereas today, the sole surviving member of the Miles Davis Sextet, Jimmy Cobb, is performing and touring with his So What Band in tribute to the 50th anniversary of "Kind of Blue"; and

Whereas "Kind of Blue" continues to be the standard masterpiece of jazz for American musicians and audiences: Now, therefore, be it

*Resolved*, That the House of Representatives—

(1) honors the 50th anniversary of "Kind of Blue" and recognizes the unique contribution the album has made to American jazz;

(2) directs the Clerk of the House of Representatives to transmit enrolled copies of this resolution to Columbia Records;

(3) encourages the United States Government to take all appropriate steps to preserve and advance the art form of jazz music;

(4) recommit itself to ensuring that musical artists such as Miles Davis and his Sextet receive fair protection under the copyright laws of the United States for their contributions to culture in the United States; and

(5) reaffirms the status of jazz as a national treasure.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

#### GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Today we honor Miles Davis, the trumpet player, and his sextet, recog-

nizing the 50th year of the recording of one of the legendary jazz tunes, one of the most important too of the 20th century, that was an album called "Kind of Blue." It was recorded in New York, a Manhattan church turned recording studio—and there were six other people with Miles Davis: John Coltrane; Julian "Cannonball" Adderley; Bill Evans and Wynton Kelly, pianists; Paul Chambers, bass; Jimmy Cobb, the drummer—and made musical history and changed the artistic landscape of this country and in some ways the world.

At the Congressional Black Caucus event this past September, we honored the only living artist of that recording date, Jimmy Cobb, the drummer, who was there and who performed, as a matter of fact. It was a great time for a great event that occurred 50 years ago.

The reason that it was great was that each one of these artists—Coltrane, Adderley, Davis, Bill Evans, Wynton Kelly, Paul Chambers, and Jimmy Cobb—all became musical leaders in their own right. And they were experimenting with what was once called bebop, now progressive jazz, and some went on to modal jazz, which I'm still finding out what that's all about. They'd usually take chords of a song, sometimes a ballad or a popular song, and then substitute chords, and then you'd get this creative improvisation of what their interpretation of a song means to them. And that's what modern jazz is, of course, all about.

So with the event that the Congressional Black Caucus had with the only living musician from that historic recording, this gives us a chance and an opportunity to understand what this contribution to music means to the American cultural scene.

Jazz is celebrated all over the world. I introduced a concurrent resolution on jazz, H. Con. Res. 57—I have forgotten what year now, but it was passed in both the House and the Senate—and it celebrated this contribution, this musical contribution that's been appreciated, reinterpreted all over the world. Whenever and wherever I travel, I always try to locate the musicians, whether it's in Norway or Jamaica or Germany. This music is still going on and it's something that we celebrate, and I'm glad to bring before the House today this resolution, 894, for passage.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support Chairman CONYERS' sponsorship of House Resolution 894, which honors the 50th anniversary of the album "Kind of Blue" and reaffirms jazz as a national treasure.

I thank Chairman CONYERS for his excellent work over many years to honor and support jazz not only in

music halls but in the Halls of Congress.

In 1987, Chairman CONYERS' House Concurrent Resolution 57 designated jazz a national American treasure. Taking its name from this resolution, the HR-57 Center for the Presentation of Jazz and Blues later established itself on 14th Street in Washington, D.C., to educate aspiring musicians on the history and culture of jazz and blues.

In 1990, Chairman CONYERS won passage of appropriations legislation awarding the Smithsonian Institute with funding to establish a comprehensive jazz program, including the Smithsonian Jazz Masterworks Orchestra.

Chairman CONYERS has long supported efforts to present live jazz to the public in Washington, D.C. He has served on the board of directors of such organizations as Capital City Jazz Festivals, Inc., the National Jazz Service Organization, and the Rhythm and Blues Foundation. His love of jazz is shared by many. Jazz is an historic American creation, and as such, it certainly should be honored and supported by Congress today.

This year marks the 50th anniversary of the famous jazz album "Kind of Blue." On August 17, 1957, Miles Davis and his ensemble sextet collaborated to record "Kind of Blue." This album popularized jazz like never before. It led Columbia Records to declare 1959 as "jazz's greatest year." Today, "Kind of Blue" is recognized as the best-selling jazz album of all time. Its influence on music beyond jazz alone has led music writers to view it as one of the most influential albums ever. In 2002, it was one of 50 recordings chosen by the Library of Congress to be added to the National Recording Registry. In 2003, "Kind of Blue" was ranked No. 12 on Rolling Stone magazine's list of the 500 greatest albums of all time.

One reviewer called "Kind of Blue" a defining moment of 20th century music. Ashley Kahn, the author of the book "Kind of Blue: The Making of a Miles Davis Masterpiece," called it "the premier album of its era, jazz or otherwise." Pianist Chick Corea, one of Miles Davis' acolytes, said, "It's one thing to just play a tune or play a program of music, but it's another thing to practically create a new language of music, which is what 'Kind of Blue' did."

As a distinctly American language of music, jazz is rightfully honored by Chairman CONYERS' resolution today. So it is with great pleasure that I join him in supporting this resolution, and I urge our colleagues to support the resolution as well.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

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Mr. CONYERS. Mr. Speaker, I yield as much time as he may consume to

one of the people who knows a little about this music and who has come a long way from Memphis, Tennessee. He is the distinguished gentleman from Tennessee (Mr. COHEN).

Mr. COHEN. I thank the chairman.

Mr. Speaker, we all start as a tabula rasa in all areas of life. Then we grow, and we have the opportunity to learn. In my fewer number of years here on Earth than the chairman, I have learned quite a bit about jazz myself.

It has been my honor to have friends who have been involved in jazz in Memphis—particularly, the late Phineas Newborn, Jr., who was a great pianist, one of the great jazz pianists of all time. He was a Memphian, and he was known by jazz musicians all over the world as a great jazz pianist. Others have come from Memphis and have gone to New York, which is oftentimes where jazz is played.

Marvin Stamm, a great flugelhorn player, performed with different orchestras throughout the country as a Memphian. He went to North Texas State University for his education where he got a degree in jazz band, which is one of the few places in the world, Mr. SMITH's State, that has jazz band distinction.

In New York, there are Bradley's, Village Vanguard and all of those wonderful places where you historically have been able to hear people like Art Blakey. I was able to see Max Roach in Baltimore once at a jazz festival. I am a fan of Charlie Parker's and of Miles Davis. They are great jazz musicians. I think all musicians respected Miles Davis as one of the greatest influences on their lives regardless of whether they were rockers or whether they were blues musicians or jazz performers.

I thank the chairman for his appreciation of what is a uniquely American cultural achievement, one that the world holds dear and respects America for. The appreciation of jazz is an art form that is being lost to our students. It is one that needs to be taught in our schools and that needs to be maintained as a living and breathing expression of the American art industry.

Mr. CONYERS. Mr. Speaker, I yield myself 1 minute merely to say that I appreciate the gentleman from Tennessee because an earlier jazz started in his State, in Memphis and in Nashville. The roots of it were embedded in the modern jazz of the music that we reaffirm today as a national treasure.

Before I yield back the balance of my time, because I studied music as a young person, I owe these musicians a debt of gratitude because it was they who recommended that I go to law school, so I am grateful to them for helping my career.

Mr. JOHNSON of Georgia. Mr. Speaker, I rise today to applaud the actions of the House in recognizing the 50th anniversary of Miles Davis' ground breaking recording, Kind of

Blue. I would also like to thank Representative CONYERS for his spirited commitment to preserving the American art form known as jazz. I urge my colleagues to support this important resolution.

Mr. Speaker, 50 years ago, Miles Davis brought together six gifted musicians, Bill Evans, Cannonball Adderley, Paul Chambers, John Coltrane, Wynton Kelly, and Jimmy Cobb. These men, who we now revere as jazz legends, under Davis' lead, fashioned the best selling jazz album of all time. It is no wonder that Kind of Blue is ranked as the 12th greatest albums of all time by Rolling Stone Magazine. Selling more than 4 million copies to date, Kind of Blue changed the shape of jazz through the buzz of Davis' trumpet and his focus on musical modes. The album's influence on popular music throughout the years cannot be overstated. Musicians including Quincy Jones, Duane Allman, Q-tip, and Pink Floyd have cited the jazz standards of Kind of Blue as a musical inspiration, and as a musician, I was also inspired by the stylistic melodies of Kind of Blue.

Mr. Speaker, as Kind of Blue continues to introduce listeners around the world to jazz music and the genius of Miles Davis, let us not forget the importance of jazz education and music appreciation.

Mr. CONYERS. I yield back the balance of my time, Mr. Speaker.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and agree to the resolution, H. Res. 894.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. CONYERS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### HUMAN RIGHTS ENFORCEMENT ACT OF 2009

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1472) to establish a section within the Criminal Division of the Department of Justice to enforce human rights laws, to make technical and conforming amendments to criminal and immigration laws pertaining to human rights violations, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 1472

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Human Rights Enforcement Act of 2009".

#### SEC. 2. SECTION TO ENFORCE HUMAN RIGHTS LAWS.

(a) REPEAL.—Section 103(h) of the Immigration and Nationality Act (8 U.S.C. 1103(h)) is repealed.

(b) SECTION TO ENFORCE HUMAN RIGHTS LAWS.—Chapter 31 of title 28, United States Code, is amended by inserting after section 509A the following:

**“§ 509B. Section to enforce human rights laws**

“(a) Not later than 90 days after the date of the enactment of the Human Rights Enforcement Act of 2009, the Attorney General shall establish a section within the Criminal Division of the Department of Justice with responsibility for the enforcement of laws against suspected participants in serious human rights offenses.

“(b) The section established under subsection (a) is authorized to—

“(1) take appropriate legal action against individuals suspected of participating in serious human rights offenses; and

“(2) coordinate any such legal action with the United States Attorney for the relevant jurisdiction.

“(c) The Attorney General shall, as appropriate, consult with the Secretary of Homeland Security and the Secretary of State.

“(d) In determining the appropriate legal action to take against individuals who are suspected of committing serious human rights offenses under Federal law, the section shall take into consideration the availability of criminal prosecution under the laws of the United States for such offenses or in a foreign jurisdiction that is prepared to undertake a prosecution for the conduct that forms the basis for such offenses.

“(e) The term ‘serious human rights offenses’ includes violations of Federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code.”

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 31 of the title 28, United States Code, is amended by inserting after the item relating to section 509A the following:

“Sec. 509B. Section to enforce human rights laws.”

**SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) GENOCIDE.—Section 1091 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “, in a circumstance described in subsection (d)”; and

(B) by striking “or attempts to do so.”;

(2) in subsection (c), by striking “in a circumstance described in subsection (d)”; and

(3) by striking subsection (d) and (e); and

(4) by inserting after subsection (c) the following:

“(d) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit an offense under this section shall be punished in the same manner as a person who completes the offense.

“(e) JURISDICTION.—There is jurisdiction over the offenses described in subsections (a), (c), and (d) if—

“(1) the offense is committed in whole or in part within the United States; or

“(2) regardless of where the offense is committed, the alleged offender is—

“(A) a national of the United States (as that term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101));

“(B) an alien lawfully admitted for permanent residence in the United States (as that term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101));

“(C) a stateless person whose habitual residence is in the United States; or

“(D) present in the United States.

“(f) NONAPPLICABILITY OF CERTAIN LIMITATIONS.—Notwithstanding section 3282, in the

case of an offense under this section, an indictment may be found, or information instituted, at any time without limitation.”

(b) IMMIGRATION AND NATIONALITY ACT.—Section 212(a)(3)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)(ii)) is amended by striking “conduct outside the United States that would, if committed in the United States or by a United States national, be”.

(c) APPLICABILITY.—The amendments made by subsections (b), (c), and (d) of the Child Soldiers Accountability Act of 2008 (Public Law 110-340) shall apply to offenses committed before, on, or after the date of the enactment of the Child Soldiers Accountability Act of 2008.

(d) MATERIAL SUPPORT FOR GENOCIDE OR CHILD SOLDIER RECRUITMENT.—Section 2339A(a) of title 18, United States Code, is amended by—

(1) inserting “, 1091” after “956”; and

(2) striking “, or 2340A” and inserting “, 2340A, or 2442”.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

**GENERAL LEAVE**

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. I yield myself as much time as I may consume.

Mr. Speaker, Members of the House, S. 1472 is an effort to improve our ability to identify and prosecute human rights abusers. It enhances the Justice Department's efforts to hold perpetrators of atrocities accountable, and it will help ensure that war criminals do not find a safe haven in our country.

This act would combine the two offices in the Justice Department with jurisdiction over human rights to create a new, consolidated human rights section. It would merge the Office of Special Investigations with the domestic security section, which has jurisdiction over human rights crimes. This would allow more efficiency and effective enforcement in a combination that would improve the use of our resources and that would give one section the necessary expertise and jurisdiction to prosecute or to denaturalize perpetrators of serious human rights crimes. It also amends a section of the Immigration and Nationality Act, and it makes several technical and conforming amendments needed in light of the enactment of other laws.

I commend the authors of this legislation, Senators DICK DURBIN and TOM COBURN, who are the chairman and the ranking member of the Senate Human Rights and the Law Subcommittee, and

the ranking member of the Judiciary Committee in the House, Mr. SMITH.

I reserve the balance of my time.

Mr. SMITH of Texas. I yield myself such time as I may consume.

Mr. Speaker, I support S. 1472, the Human Rights Enforcement Act of 2009. This bipartisan legislation was recently passed by unanimous consent in the Senate. The bill is now before this body for consideration.

The first goal of this legislation is to provide technical corrections to the Genocide Accountability Act, which was signed into law by President Bush in 2007.

Before that act passed, genocide was only a violation of Federal criminal law if it was committed within the United States or by a U.S. national outside the United States. The act closed this loophole by allowing the prosecution of non-U.S. nationals found in the United States for genocide perpetrated outside the U.S.

The second goal of this legislation is to create a new section at the Department of Justice to consolidate prosecutorial authority over most Federal criminal and immigration human rights offenses.

Currently, the responsibility for enforcing these statutes rests within the Office of Special Investigations, or OSI; OSI was created in 1979 to hunt down Nazi war criminals who secretly lived in the United States. After discovering war criminals within the U.S., OSI used administrative procedures to denaturalize, deport or remove them. In 1994, Congress statutorily directed OSI to also investigate and denaturalize individuals who participated in genocide, torture or extrajudicial killings.

Right now, OSI does not have prosecution authority. Instead, it works with attorneys and other components of the Department to prosecute those cases in which a violation of Federal criminal law can be shown. This legislation expands OSI's jurisdiction to enable it to prosecute and enforce Federal criminal human rights laws and to consolidate those efforts into one office.

I urge my colleagues to support this legislation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am pleased to stand before you today in support of S. 1472 to establish a section within the Criminal Division of the Department of Justice to enforce human rights laws, to make technical and conforming amendments to criminal and immigration laws pertaining to human rights violations, and for other purposes.

This bipartisan legislation would make it easier for the Justice Department to hold accountable human rights abusers who seek safe haven in the United States. The end of the 20th century and the beginning of the current 21st century have seen ongoing human rights atrocities all over the globe, such as Burma, Sudan, and Bosnia. While an increasing number of perpetrators of such human

rights abuses are held accountable in international or state tribunals, many have escaped accountability for their crimes. Some of these human rights abusers have even fled to the United States.

As a representative of the state of Texas, I understand the urgency of creating an effective mechanism for investigating human rights violators that seek to hide out here in the United States. In a 2008 report, retired five-star General Barry McCaffrey warned of a refugee catastrophe that could greatly affect the state of Texas. General McCaffrey warns that "Mexico is on the edge of abyss" and that "it could become a narco-state in the coming decade." According to General McCaffrey's report, there could be a surge of millions of refugees crossing the U.S. border. Those millions will almost certainly include individuals who have committed human rights violations in Mexico. And those individuals must be held accountable for their actions.

How the United States treats suspected perpetrators of human rights abuses sends an important message to the world about our commitment to human rights and the rule of law.

The United States has a rich history of protecting human rights and holding violators of such rights accountable. Over 60 years ago, the U.S. led efforts to prosecute Nazi perpetrators at the Nuremberg Trials. The U.S. also supported the prosecution of human rights crimes before the International Criminal Tribunal for the former Yugoslavia, the Special Court of Sierra Leone, and the International Criminal Tribunal for Rwanda. But, the United States must do more. The U.S. must make a stronger effort to hold those human rights violators who have found safe haven in the United States accountable for their atrocities.

The Human Rights Enforcement Act would seek to build on the foundations already laid by creating a section inside the Department of Justice's Criminal Division that would focus entirely on enforcing human rights laws. The bill combines the Office of Special Investigations, whose work includes investigating and denaturalizing human rights offenders and the Domestic Security Section, which has broad jurisdiction over human rights violations. This consolidation allows for the Department of Justice to more effectively utilize law enforcement resources to investigate and, where necessary, prosecute, denaturalize, or deport human rights offenders.

The rule of law and human rights are fundamental American values. In accordance with those values, the United States has a rich history of leading the promotion of human rights worldwide. We have a responsibility to set an example for the rest of the world by demonstrating our commitment to end human rights atrocities and hold perpetrators accountable.

Mr. Speaker, I strongly encourage all of my colleagues to join me in support of S. 1472.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, S. 1472.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

#### RECOGNIZING A. PHILIP RANDOLPH FOR HIS LIFELONG LEADERSHIP AND WORK TO END DISCRIMINATION

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 150) expressing the sense of the House of Representatives that A. Philip Randolph should be recognized for his lifelong leadership and work to end discrimination and secure equal employment and labor opportunities for all Americans.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

##### H. RES. 150

Whereas A. Philip Randolph was born April 15, 1889;

Whereas A. Philip Randolph was in New York during the height of the Harlem Renaissance and was a student in politics and economics at City College, which served as the intellectual center of the movement;

Whereas A. Philip Randolph was the co-founder of *The Messenger* in 1917, a widely read and respected magazine known for its radical persuasion;

Whereas A. Philip Randolph was the leader of the successful movement to organize the Pullman Company (one of the most powerful businesses in the Nation) which led to the formation of the Brotherhood of Sleeping Car Porters (BSCP), an organization that advanced the claims of African-Americans to dignity, respect, and a decent livelihood;

Whereas A. Philip Randolph was selected by the porters at the Pullman Company as a representative because he was a good orator and a tireless fighter for the rights of African-Americans and was dedicated to the porters' cause for over a decade;

Whereas A. Philip Randolph was able to gain an international charter from the American Federation of Labor (now AFL-CIO) after Franklin Roosevelt's New Deal legislation forced the Pullman Company to negotiate with the Brotherhood, and was able to successfully negotiate the first-ever contract between a company and a black union, in 1937;

Whereas A. Philip Randolph was one of the central figures speaking out for African-American rights during the 1930s and 1940s and focused on labor and employment issues;

Whereas A. Philip Randolph was a leader in the movement challenging discrimination in defense industry jobs and used the threat of a march on Washington as part of an effort to lobby President Roosevelt to sign an

executive order banning discrimination within the Government and the defense industries;

Whereas A. Philip Randolph was, in 1947, a leader in the movement to end segregation in the military and called for African-Americans to refuse to register for the draft until these practices were ended and was successful in this effort, which saw President Truman issue an executive order barring discrimination in the military on July 26, 1948;

Whereas A. Philip Randolph was the leading force behind the March on Washington for Jobs and Freedom and worked with many old friends and foes of his earlier labor struggles to ensure the success of the event, which took place on August 28, 1963, drew a crowd of over 250,000 people, and was the occasion of a meeting with President Kennedy and Dr. Martin Luther King, Jr.; and

Whereas A. Philip Randolph died in 1979 as an elder statesman of the civil rights movement, a much admired figure and role model for the young people of this Nation: Now, therefore, be it:

*Resolved*, That it is the sense of the House of Representatives that A. Philip Randolph should be recognized for his lifelong leadership and work to end discrimination and secure equal employment and labor opportunities for all Americans.

The SPEAKER pro tempore (Mr. CUELLAR). Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

##### GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. I yield myself as much time as I may consume.

Mr. Speaker, I am especially pleased to rise in support of this resolution honoring the life and work of A. Philip Randolph, whom I have had the privilege of meeting and working with indirectly.

I am pleased to be a cosponsor of the resolution with the chairman of the Ways and Means Committee, the gentleman from New York (Mr. RANGEL), who introduced it.

A. Philip Randolph was a towering figure in the movement for social justice in this country, particularly in the fields of labor and civil rights. He is principally noted for his efforts in organizing the Brotherhood of Sleeping Car Porters on trains, porters who were all African Americans in the middle 20th century and earlier. There were nearly 10,000 of them who had never been unionized before. He was able to do that. Finally, he worked out a contract in 1937 with Pullman, and then went to the AFL-CIO where they were able to gain an international charter. That was his major contribution.

Yet, to me, what was so important was the work that he did with Dr. Martin Luther King, Jr., because it was he who, with Bayard Rustin, organized the march on Washington for jobs and freedom on August 28, 1963. I was a lawyer who was at that march. It was the first one which drew over 200,000 people and which had a great effect on our moving to enact the Civil Rights Act of 1964.

There are books about him, but the story that I like to tell is about the time that he challenged President Roosevelt to end the desegregation in the military and in the military factories, which were the industries that were making war materials. In a historic meeting with President Roosevelt, President Roosevelt acknowledged the validity of his struggle, but then he said something prophetic. He said, Make me do it.

Amazingly, Randolph, after a period of time, assembled a huge number of people to march on Washington. As they got ready to march, word came from the White House that the President would accede to his demand, and he gave an executive order banning racial discrimination in the government and in the factories. That has been told many times over.

□ 1130

I am indebted to the chairman of the Ways and Means Committee. Randolph worked out of New York and I am hopeful that Chairman RANGEL may have met him and knew him as well.

Mr. Speaker, I reserve the balance of my time and urge support for the resolution.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support House Resolution 150, which recognizes Asa Philip Randolph for his lifelong leadership and work to end discrimination and secure equal employment and labor opportunities for all Americans.

Mr. Randolph was a leading champion of fairness in the 20th century. He is one of the most well-known trade unionists of his time and he helped found the modern civil rights movement.

Mr. Randolph moved to the Harlem district of New York City in 1911, where he organized black voters in favor of labor rights. In 1917 he co-founded a magazine, *The Messenger*, calling for more positions for black Americans in the war industry and the Armed Forces.

In 1925, Mr. Randolph organized the Brotherhood of Sleeping Car Porters. This was the first serious effort to form a labor institution for the employees of the Pullman Company, which was one of America's most powerful companies and a major employer of black Americans. The Pullman Company later negotiated with the Brotherhood in 1935 and agreed to a contract with them in

1937, winning pay increases, shorter workweeks and overtime pay for their employees.

In 1941, Mr. Randolph proposed a march on Washington to protest racial discrimination in war industries and to propose the desegregation of the American Armed Forces. The march was canceled after President Franklin Roosevelt issued Executive Order 8802, which called for an end to discrimination in defense industries and government on the basis of race, creed, or national origin.

Mr. Randolph's nonviolent efforts led to the signing of another executive order on July 26, 1948, this time signed by President Truman to ban discrimination and segregation in the Armed Forces.

In addition to these accomplishments, Mr. Randolph was an active participant in a number of organizations and causes, including the Leadership Conference on Civil Rights, which he cofounded, and the Workmen's Circles. He also formed the A. Philip Randolph Institute for community leaders to study the causes of poverty.

Mr. Randolph has been called "the towering civil rights figure of the period" in which he lived, "the dean of American civil rights leaders" and "among the first leadership of the Labor movement." He fought for more than a half-century on behalf of the poor and deprived, securing rights not just for black workers but for employees of all races and nationalities.

I urge my colleagues to join me in supporting this resolution.

Mr. JOHNSON of Georgia. Mr. Speaker, I rise today to applaud the actions of the House of Representatives in recognizing the life and work of intellectual, activist and community organizer A. Philip Randolph. As a member of the House Judiciary Committee, I strongly support H. Res. 150, which provides Congress with an opportunity to recognize important issues such as civil rights, labor rights, and the struggle for racial equality, to which A. Philip Randolph devoted his life, and which continue to have relevance today. I encourage my colleagues to support this important resolution.

A. Philip Randolph was born on April 15, 1889 in Crescent City, Florida. He was a student of politics and economics at City College during the Harlem Renaissance. In 1917, Randolph co-founded "The Messenger," a widely respected political and literary magazine which campaigned against the horrors of lynching and segregation. Deeply concerned not only with African American rights, but also labor and employment issues, he organized a union of elevator operators in New York in the same year. In 1925 he organized the Brotherhood of Sleeping Car Porters, a labor union which advanced African American claims to respect, dignity and a decent livelihood. He used the threat of a march on Washington as part of a successful lobbying effort to abolish racial discrimination in the national defense industry which led President Roosevelt to sign Executive Order 8802, or the Fair Employment Act

in 1941—the first Federal Law to prohibit employment discrimination in the United States. In 1947, Randolph led a successful movement to end segregation in the armed forces, which prompted President Truman to issue Executive Order 9981 on July 26, 1948, establishing equality of treatment and opportunity in the Armed Services. In 1963, Randolph initiated and organized the March on Washington for Jobs and Freedom where Martin Luther King, Jr. of my home State of Georgia delivered his "I Have a Dream" speech, and which helped pass the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Throughout his life, A. Philip Randolph demonstrated the kind of moral courage worthy of our gratitude and support. His activism and his commitment to social justice consisted not in holding society to a moral standard that is external to it, but rather in demanding that society take seriously its own idea of freedom on which it intrinsically depends. Although much progress has been made since Randolph's death in 1979, the gap which he fought to overcome, between what we are and what we can be, between society and its potential, remains today as it did in his lifetime. His leadership in the civil rights movement and his lifelong efforts to secure equal labor opportunities for all Americans make him a positive role model, not only for young people, but for all of the citizens in this great Nation.

Mr. DAVIS of Illinois. Mr. Speaker, no one can start a new beginning, but anyone can start today and make a new ending. A. Philip Randolph was one of the many to make a new ending for not just himself, but the world around him. A. Philip Randolph was a prominent twentieth-century African-American civil rights leader and the founder of both the March on Washington Movement and the Brotherhood of Sleeping Car Porters, a landmark for labor and particularly for African-American labor organizing. Inspired from the writing of W.E.B. Dubois, *Souls of Black Folk*; this graduate of Bethune-Cookman College and son of an A.M.E. preacher took his beliefs and made them manifest through serving others.

Randolph had some experience in labor organization, having organized a union of elevator operators in New York City in 1917. In 1925 Randolph organized the Brotherhood of Sleeping Car Porters. This was the first serious effort to form a labor institution for the employees of the Pullman Company, which was a major employer of African-Americans. With amendments to the Railway Labor Act in 1934, porters were granted rights under federal law, and membership in the Brotherhood jumped to more than 7,000. After years of bitter struggle, the Pullman Company finally began to negotiate with the Brotherhood in 1935, and agreed to a contract with them in 1937, winning \$2,000,000 in pay increases for employees, a shorter workweek, and overtime pay. Randolph maintained the Brotherhood's affiliation with the American Federation of Labor through the 1955 AFL-CIO merger.

Randolph was also responsible for the organization of the March on Washington for Jobs and Freedom on August 28, 1963 with the help of Rustin and Martin Luther King, Jr. The Civil Rights Act of 1964 is often attributed in part to the success of the March on Washington, where Black and White Americans

stood united and witnessed King's "I Have a Dream" speech. As the U.S. civil rights movement gained momentum in the early 1960s and came to the forefront of the nation's consciousness, his rich baritone voice was often heard on television news programs addressing the nation on behalf of African-Americans engaged in the struggle for voting rights and an end to discrimination in public accommodations. He was also an active participant in many other organizations and causes, including the Workmen's Circle and others.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am pleased to stand before you today in support of H. Res. 150, expressing the sense of the House of Representatives that A. Philip Randolph should be recognized for his lifelong leadership and work to end discrimination and secure equal employment and labor opportunities for all Americans.

A. Philip Randolph was born on April 15, 1889, in Crescent City, Florida. In 1917, Randolph co-founded *The Messenger*, a widely read and respected magazine known for its radical persuasion.

Randolph was perhaps most widely known for his work advocating for the rights of workers, and working to end employment discrimination. Randolph worked tirelessly on behalf of African American workers in forming the "Brotherhood of Sleeping Car Porters" (BSCP), an organization designed to advance the claims of African Americans to dignity, respect and a decent livelihood. After Franklin Roosevelt's New Deal forced the Pullman Company to negotiate with the BSCP in 1937, Randolph successfully negotiated the first-ever contract between a company and a black union.

Randolph became one of the most widely known spokespersons for the African American working class in America. In 1940, after Franklin Roosevelt refused to issue an executive order banning discrimination against black workers in the defense industry, Randolph called for 100,000 African Americans to march on Washington, DC. Support for Randolph's march grew so wide that President Roosevelt was forced to issue an executive order on June 25, 1941 declaring "there shall be no discrimination in the employment of workers in defense industries or government because of race, creed, color or national origin."

Randolph's legacy of working for labor opportunities and employment justice is alive and thriving today. In my home town of Houston, Texas, students at the University of Houston have carried on the torch of justice for laborers in founding the University of Houston Students Against Sweatshops. These students organized the largest boycott of modern student activism against Russell Athletic, due to labor violations in their factory in Honduras. Thanks to the student effort, Russell has recently agreed to meet worker demands and improve labor conditions for its 1200 workers.

The above example is a testament to the lasting and widespread effects of Randolph's work. As a champion for African American laborers, Randolph was able to shape our nation's values on employment and equality. Today, students from all over the country, including my home state of Texas, have picked up the torch in support of labor rights worldwide.

I ask my colleagues to stand with me in support of H. Res. 150.

Mr. AL GREEN of Texas. Mr. Speaker, today I express my support for H. Res. 150, introduced by my colleague Chairman CHARLES RANGEL, which recognizes the accomplishments of the great civil rights leader, A. Philip Randolph.

Mr. Randolph not only made great strides in shaping the civil rights movement during the turn of the 20th century, but he also impacted the growth of the labor movement and the rise of union labor.

A. Philip Randolph had a significant effect on political discourse in the African-American community during the 1930s with the founding of *The Messenger*, a political and literary magazine which documented several of the greatest injustices of our history. Through this magazine, Randolph advocated civil disobedience and membership in labor unions.

Mr. Randolph championed the cause of African-American men in labor, from sleeping car porters to elevator operators. He organized and founded the Brotherhood for Sleeping Car Porters, which fought for overtime pay and pay increases for sleeping car porters, a majority of which were African-American, at a time when sharecropping in the South was still widespread.

We also honor Mr. Randolph for his leadership in organizing the March on Washington, which will be remembered as one of the most important political rallies of the twentieth century.

A. Philip Randolph personified the idea of a renaissance man, as a writer, actor, political activist and union organizer. He achieved the unachievable during a time when education was unattainable for most African-Americans, even most Americans.

Mr. Randolph has received numerous awards, namely, the Congressional Medal of Honor, one of the highest honors for civilians in the United States of America. His contributions to our great Nation are undeniable, and the path that he forged will be traversed by generations to come.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and agree to the resolution, H. Res. 150.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

#### PHONE ACT OF 2009

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1110) to amend title 18, United States Code, to prevent caller ID spoofing, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1110

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Preventing Harassment through Outbound Number Enforcement Act of 2009" or the "PHONE Act of 2009".

#### SEC. 2. CALLER ID SPOOFING.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

##### "§ 1041. Caller ID spoofing

"(a) OFFENSE.—Whoever, in or affecting interstate or foreign commerce, knowingly uses or provides to another—

"(1) false caller ID information with intent wrongfully to obtain anything of value; or

"(2) caller ID information pertaining to an actual person or other entity without that person's or entity's consent and with intent to deceive any person or other entity about the identity of the caller;

shall be punished as provided in subsection (b).

"(b) PUNISHMENT.—Whoever violates subsection (a) shall—

"(1) if the offense is a violation of subsection (a)(1), be fined under this title or imprisoned not more than 5 years, or both; and

"(2) if the offense is a violation of subsection (a)(2), be fined under this title or imprisoned not more than one year, or both.

"(c) LAW ENFORCEMENT EXCEPTION.—This section does not prohibit lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

"(d) FORFEITURE.—

"(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

"(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

"(B) any equipment, software or other technology used or intended to be used to commit or to facilitate the commission of such offense.

"(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

"(e) DEFINITIONS.—In this section—

"(1) the term 'caller ID information' means any identifying information regarding the origination of a telephone call, including the name or the telephone number of the caller, that is transmitted with the telephone call;

"(2) the term 'telephone call' means a call made or received using any real time voice communications service, regardless of the technology or network used; and

"(3) the term 'State' includes a State of the United States, the District of Columbia,



and any commonwealth, territory, or possession of the United States.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

“1041. Caller ID spoofing.”.

**SEC. 3. OTHER SPECIFIED UNLAWFUL ACTIVITIES FOR MONEY LAUNDERING.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “section 1037 (relating to fraud and related activity in connection with electronic mail), section 1041 (relating to caller ID spoofing),” before “section 1111”.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

**GENERAL LEAVE**

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker and Members, this measure is aimed at the deceptive telephoning practice called “spoofing,” where a fake caller ID is used to hide one’s true identity. Sometimes it can mean simply using the caller ID of another person or business without permission, but sometimes the purpose is to commit fraud or identity theft. Call recipients are sometimes tricked into divulging private, personal information to the spoofer. For example, the AARP has reported cases in which people received calls falsely telling them that they missed jury duty and they were told to avoid prosecution they needed to provide their Social Security number. The phone number that appeared on their caller ID was from the local courthouse, so people assumed that the call was made truthfully.

Recently, the technology needed to spoof has become readily available through the purchase of Internet telephone equipment, or through Web sites specifically set up for that purpose.

The measure before us today prevents this activity on two levels, with penalties that fit the seriousness of the offense. For providing the caller ID information of another person without consent with the intent to deceive, the penalties are fines and up to 1 year in prison; for providing false caller ID information with the intent to wrongfully obtain something of value, the penalties are fines and up to 5 years imprisonment. In addition, the bill provides for forfeiture of equipment used and proceeds gained by those involved in this activity.

Because it can be used for legitimate law enforcement and intelligence purposes, the bill allows spoofing for lawfully authorized activities of law enforcement. It also does not prohibit the simple use of a fake number to hide the caller’s number. Many businesses have opted to use this feature to protect against abusive call-backs. As a matter of fact, the House uses this feature on calls to outside lines. This non-malicious practice is not intended to be reached by the legislation before us.

Finally, I note that the bill was developed in previous Congresses on a bipartisan basis, and I commend my ranking member and the entire Judiciary Committee for the work that has gone into this measure. I urge its support, and I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1110, the Preventing Harassment Through Outbound Number Enforcement Act, or PHONE Act, addresses caller ID spoofing.

Spoofing is a ploy for obtaining a victim’s personal and financial information to commit identity theft and other similar fraud. It involves masking caller ID information to make a fraudulent telephone call to a recipient. Those who engage in spoofing use incorrect, fake or fraudulent caller identification to hide their identity and then obtain personal information from the victim. Call recipients unwittingly divulge their names, addresses or Social Security numbers under the mistaken belief that the caller represents a bank, a credit card company or even a court of law. All too often, a person does not know that their identity has been stolen until it’s too late and the damage has been done. This legislation will help law enforcement officials stop identity thieves by cutting off their means of obtaining personal information.

Spoofing not only victimizes the phone call recipient but also invades the privacy of those individuals whose caller ID is used to mask the fraudulent calls. To address this, the PHONE Act specifically prohibits the use of an actual person’s caller ID information for spoofing.

Although the technology needed to spoof has been available for some time, it previously required specialized equipment. Now an identity thief can simply purchase Internet telephone equipment or use a Web site specifically set up for spoofing.

The PHONE Act imposes penalties for modifying a caller ID with the intent to deceive the recipient of a telephone call as to the identity of the caller. This legislation will help deter telephone fraud, protect consumers from harassment, and protect consumers and their personally identifiable information from identity thieves.

Similar legislation passed the House with bipartisan support in the last two Congresses. I urge my colleagues to join all of us in supporting this bill.

Mr. JOHNSON of Georgia. Mr. Speaker, I rise today in support of H.R. 1110, the Preventing Harassment through Outbound Number Enforcement, “PHONE,” Act of 2009. I strongly support this important piece of legislation that aims to protect Americans from spoofing.

Spoofing involves the use of a false caller ID to hide the caller’s true identity in order to commit fraud or some other abusive act. The PHONE Act of 2009 targets spoofing by prohibiting the use of caller ID information to hide the caller’s true identity in order to wrongfully obtain anything of value or to commit other abusive acts. In recent years, spoofing technology has become readily available through Internet telephone equipment and Web sites specifically set up to spoof. Because call recipients are under the impression that the telephone call is legitimate, they sometimes divulge personal and private information to the spoofer. Identity thieves have used spoofing to mislead call recipients into revealing personal financial information to commit identity theft, fraudulently authorize stolen credit cards, and to arrange for fraudulent money transfers.

According to the Federal Trade Commission’s 2008 Identity Theft Consumer Complaint Data, Georgia ranked 7, out of the 50 States, for identity theft complaints. Last year, Georgians made 10,748 identity theft complaints. The Federal Trade Commission calculated that 111 complaints were made for every 100,000 Georgia residents.

I join the Chairman in urging my colleagues to support this bill. This legislation can protect constituents in my district from identity thieves who use spoofing as their vice.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 1110, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair’s prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

**RECOGNIZING 70TH ANNIVERSARY OF RETIREMENT OF JUSTICE LOUIS D. BRANDEIS**

Mr. COHEN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 905) recognizing the 70th



anniversary of the retirement of Justice Louis D. Brandeis from the United States Supreme Court.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

#### H. RES. 905

Whereas the United States Supreme Court has played a fundamental role in interpreting the Nation's laws;

Whereas Louis D. Brandeis, born in Louisville, Kentucky, on November 13, 1856, led a selfless career as a practicing lawyer helping to create the pro bono tradition in the United States through his devotion to public causes, becoming known as the "people's lawyer" for challenging the power of railroad, bank, and insurance company monopolies;

Whereas Justice Brandeis was nominated an Associate Justice of the Supreme Court by appointment of President Woodrow Wilson and confirmed by the United States Senate in 1916 as the first Jewish Justice of the Supreme Court;

Whereas Justice Brandeis vastly contributed to constitutional jurisprudence, particularly in the areas of free speech, right to privacy, labor relations, and women's suffrage;

Whereas through the marshalling of evidence and development of the doctrine of judicial notice, Justice Brandeis concerned himself as a citizen, attorney, and Justice of the Supreme Court with the power and role of education in the Nation's democracy;

Whereas Justice Brandeis supported the University of Louisville and its law school (named the Louis D. Brandeis School of Law in 1997) by contributing funding and his personal papers and ensuring that the law school library received Supreme Court briefs for its archives;

Whereas Justice Brandeis provided the role model for public service which served as the inspiration for the University of Louisville adopting a public service requirement for all students;

Whereas Justice Brandeis resigned from the Supreme Court 70 years ago in 1939; and

Whereas, to this day, schools, universities, the United States Postal Service, and other institutions remember the name of Justice Brandeis and commemorate his service: Now, therefore, be it

*Resolved*, That the House of Representatives—

(1) recognizes the 70th anniversary of Justice Louis D. Brandeis's retirement from the United States Supreme Court and the significant contribution he made in United States Supreme Court jurisprudence; and

(2) directs the Clerk of the House of Representatives to make available enrolled copies of this resolution to the University of Louisville Louis D. Brandeis School of Law for appropriate display.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. COHEN) and the gentleman from California (Mr. DANIEL E. LUNGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee.

#### GENERAL LEAVE

Mr. COHEN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. COHEN. I yield myself such time as I may consume.

Mr. Speaker, this resolution honors Louis D. Brandeis, one of America's greatest jurists and legal minds, on the occasion of the 70th anniversary of his retirement from the United States Supreme Court.

In any listing of great Supreme Court justices, Brandeis would have to be among one of the top three. Among his lasting accomplishments, he has greatly influenced constitutional jurisprudence, especially in the areas of labor relations, free speech, right to privacy, and women's suffrage.

Louis Brandeis was born in Louisville, Kentucky, to Jewish parents who had emigrated from Europe, having come from Bohemia after the Bohemian Revolution trying to create Bohemia as an independent state in the 1850s.

After graduating from Harvard Law School at age 20 with the highest grade average in the college's history, he embarked on a legal career in which he devoted so much of his time and energy to important social justice causes—often pro bono—that he became widely known as "the people's lawyer." Indeed, he pioneered the pro bono legal tradition. In a ranking of lawyers in America, he would have to rank among the top 10, independent of his 23-year service on the United States Supreme Court. He was allowed to enter Harvard Law School even though he wasn't a high school graduate, and he graduated prior to the requisite age of 21 and he was given his degree by special resolution.

His significant contributions are so numerous that it would be impossible to discuss them all, but I will mention a few. In 1890, he and his law partner, Samuel Warren, published an article in the Harvard Law Review entitled *The Right to Privacy*, which is credited with creating the foundation for that right in American constitutional law. Brandeis felt one of the most significant parts of the American experience was people's right to be left alone and that's where the right to privacy came into his thinking as he expressed it in his law work.

He took on the life insurance industry and J.P. Morgan's railroad monopoly. He was a leading advocate for stronger labor protections. He was a strong advocate for States having the opportunity to go into new endeavors and said that the States were the laboratories of democracy; that we had a number of States—today 50, less when he was serving on the Supreme Court—but that each had the opportunity to try some particular new idea and see if it worked so the other States could rely on the work of that State to see

whether it should expand and be used throughout the country.

□ 1145

The laboratories of democracy were important as States, such as California, looked at medical marijuana and the other States could then learn, and that spread throughout 12 or 13 other States, but there was an opportunity to learn, rather than doing it all at one time and seeing if one policy fit the whole Nation. He was a chief economic adviser to President Woodrow Wilson, and helped develop the Federal Reserve Act and the Federal Trade Commission Act. In 1916 President Wilson nominated him for the Supreme Court. He became the first Jewish Supreme Court Justice, where he continued his work on great legal issues and left a lasting legacy in American jurisprudence.

Unfortunately, in his confirmation hearing, anti-Semitism was one of the issues that came about and was raised in the Senate. But our country overcame that, and he became the first Jewish Supreme Court Justice.

Through this resolution we recognize and celebrate the 70th anniversary of the retirement of Justice Brandeis from the United States Supreme Court, and remember, with deep gratitude, his many contributions to our Nation's life and to the founding also of the State of Israel.

I reserve the balance of my time.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 905, which recognizes the 70th anniversary of the retirement of Justice Louis Brandeis from the U.S. Supreme Court. There is no doubt he was a brilliant man, and he believed the law was best served as a vehicle to correct injustices, rather than a gateway to make money.

Justice Brandeis was born in Louisville, Kentucky, in 1856, the son of Jewish immigrants from Prague, now in the Czech Republic. He excelled in the public schools of his hometown and later studied in Germany. He grew up in a refined and engaged household in which history, politics, and culture were discussed regularly at the dinner table. I might add that one of his early influences was his uncle, Lewis Dembitz, who I'm proud to note attended the Republican Party Convention in 1860 that nominated Abraham Lincoln as President of the United States.

He enrolled in Harvard Law School at age 19, studied so hard that his eyesight failed. Rather than quit school, he paid fellow students to read his textbooks out loud so he could memorize their content. He graduated with the highest grade point average in the history of Harvard Law School at that time. He was best known for his work

as a lawyer and justice, and while he eventually earned good money practicing law, he devoted most of his professional life to public causes.

He argued cases and wrote treatises on privacy, labor relations and anti-trust matters, and he assisted the Wilson administration in crafting the Federal Reserve Act and the Federal Trade Commission. He served on the Supreme Court for 23 years and issued seminal opinions on many of the subjects that consumed him as a lawyer.

And yes, he did believe in States being the laboratories of democracy. I enjoyed the gentleman's comments of reference to my home State of California and, I might say, rather than choose the subject he chose as an example of California being one of those laboratories, I would suggest Proposition 13, or perhaps three strikes and you're out, as guiding lights to the rest of the Nation as to how we ought to organize ourselves. Unfortunately, my home State has forgotten some of those messages in the recent past.

Mr. Speaker, Justice Brandeis was not without his critics, but this is not the time nor the place to air old grievances. Rather, we're here to honor a man, and so I would use somebody else as a reference point, William O. Douglas, who described Justice Brandeis as being "dangerous because he was incorruptible."

I urge the Members to support H. Res. 905.

I reserve the balance of my time.

Mr. COHEN. Mr. Speaker, I yield as many minutes as the gentleman from Kentucky (Mr. YARMUTH) needs. Mr. YARMUTH is the genesis of this particular resolution. He hails from the same city that Justice Brandeis did and brings this to memorialize this man's great talents.

Mr. YARMUTH. Mr. Speaker, in Louisville we are proud of many of the great things our most legendary residents have achieved. From Muhammad Ali's success in and out of the boxing ring to Diane Sawyer's groundbreaking work in journalism to Harlan Sanders' achievements as an entrepreneur, there's evidence of their legacies throughout our community. It's in the stories we tell, it's found in the history embedded in our neighborhoods, and it's seen on the banners hung in their honor throughout town. We are proud that our city has been home to people who have changed the world in the realms of athletics, literature, art, music, business, and, in the case of the man we are celebrating today, law.

Louis D. Brandeis was born in Louisville, Kentucky, in 1856, the son of immigrants, and it was to Louisville that he would return throughout his life. It was from the cradle of the burgeoning immigrant communities of 19th-century Louisville that Brandeis began his distinguished career. He excelled first at Louisville's Male High School and

then Harvard Law before beginning a successful career as a lawyer and academic. That led, in 1916, to the bench of the United States Supreme Court, when he was nominated by Woodrow Wilson as the first Jewish Justice.

The achievements of Justice Brandeis, however, go far beyond breaking that ground. His legacy as a jurist and litigator has had a long-standing impact, not just in the courtrooms and law books but in the lives of every American citizen. His accomplishments were far-ranging, and their influence resonates today and will do so far into the future.

To those of us who treasure the First Amendment and its protection of free speech, we can thank the work of Louis Brandeis. To those who value the extension of equal rights to all Americans, we can thank Louis Brandeis. The right to privacy, groundbreaking work in the field of labor relations, successful challenges to once powerful corporate monopolies, the list is long and establishes Justice Brandeis' career as one well-deserving of our recognition in this House, a recognition he has not yet received in the 70 years since he retired from the Supreme Court.

The work of Louis Brandeis deserves not just our honor but our attention. Though the battles we fight today may have changed from those of Brandeis' era, his work is rich and relevant for all of us involved in lawmaking. When few others would, Brandeis took on the powerful monopolies that caused economic havoc during the first half of the 20th century. He was continuously skeptical of large banks and their relationship to corporations whose failure could threaten the entire economy, and he helped develop the Federal Reserve Act of 1913 which clamped down on the banking industry's most egregious practices.

In his book, "Other People's Money: And How the Bankers Use It," and in a series of columns, Brandeis warned his contemporaries of the dangers posed by massive financial corporations accumulating resources and using them irresponsibly, lessons that forewarned the economic crisis we faced in this country just last year. As a litigator, educator, philanthropist, and jurist, Louis Brandeis did nothing short of ensuring that the rights we now regard as commonplace would endure. His contributions are those for which the entire country should be grateful, and his legacy is something for which all of us in Louisville can be proud. In fact, his legacy in Louisville lives on at the University of Louisville, where the law school now bears the name of Justice Louis Brandeis.

I join Justice Brandeis' grandson, Frank Gilbert, and the rest of his family in urging my colleagues to support H. Res. 905, recognizing the 70th anniversary of the retirement of this leg-

endary American educator, litigator, and jurist.

Mr. COHEN. I appreciate Mr. YARMUTH bringing this resolution and his comments. I reserve my time.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I yield myself such time as I may consume.

It is interesting that we have heard of Justice Brandeis' commitment to the First Amendment. One can only wonder what he would think of the current state of interpretation of the First Amendment where, unfortunately, it appears that we give greater protection to nude dancing than we do to political speech.

One would hope that the Supreme Court, as we anticipate its decision in the most recent challenge to aspects of McCain-Feingold, might listen to some of the interpretations and wisdom of Louis Brandeis with respect to the essence of the First Amendment.

One would hope that we would, once again, regain the notion that protection of political speech is at the forefront of the First Amendment, not an afterthought to the First Amendment, and that when we have gone so far as to have someone representing the Solicitor General of the United States, responding to a question in the Supreme Court, saying in response to the question, So, the law would give you the right to ban books if they said what is contained in the script of the movie that the FEC believes it has the right to stop during the period of time before an election, the response from the representative of the executive branch was, yes. If we have come so far that banning books is seen as something allowed under the First Amendment because of the pursuit of purity in political campaigns, then we have lost sight of the First Amendment as understood and expressed by Louis Brandeis.

And so I would hope that as we look forward to the end of this year that we could look forward to a Supreme Court that comes to its senses and understands the essence of the First Amendment.

Once again, I would urge my colleagues to unanimously support this recognition on the 70th anniversary of the retirement from the Supreme Court of Louis Brandeis.

I yield back the balance of my time.

Mr. COHEN. Mr. Speaker, indeed, Justice Brandeis had a great impact on this country, not only as a jurist, as we've mentioned, but as a lawyer. And one of his innovations was something called the Brandeis Brief, where not only were precedents used to make an argument but social data, factual data about changes in society to support the Court's positions.

Brandeis was not alive at the time of *Brown v. Board of Education of Topeka*, one of the great decisions of our Supreme Court, but it was a Brandeis Brief argument that was used to win

that case, for there was little law on the subject that was favorable, but there was much social analysis and facts that helped the Court make its decision that separate, in fact, was not equal, and that we needed a change in this country that we had in 1954 that we're continuing to experience today.

Justice Brandeis had many quotes which were of great significance, one of which is inscribed in the walls of Congress, I think just beneath this Chamber on the first floor. If you look up towards the ceiling, The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding. That quote, which is inscribed on the walls of Congress, is one that I've long thought about, and people making arguments that sometimes are well meant but they take away from the rights that people should have in this country and freedoms.

□ 1200

Brandeis also said we can have democracy in this country or we can have great wealth concentrated in the hands of the few, but we can't have both. And that thought permeates much of what we debate in this Congress today and see as the differences in wealth grow greater and greater.

Indeed, Georgia O'Keeffe, one of my favorite painters, and Warren Zevon, one of my favorite songwriters, singers and friends, would appreciate this resolution today, for the right to be alone, the most comprehensive of rights and the right most valued by civilized man, was something Louis Brandeis espoused, as did O'Keeffe and Zevon. Justice Brandeis said the most political office is that of a private citizen. And I think we should all remember that.

Mr. Speaker, I yield back my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and agree to the resolution, H. Res. 905.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. COHEN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### LAW STUDENT CLINIC PARTICIPATION ACT OF 2009

Mr. COHEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4194) to amend title 18, United States Code, to exempt qualifying law school students participating in legal clinics or externships from the applica-

tion of the conflict of interest rules under section 205 of such title.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4194

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Law Student Clinic Participation Act of 2009".

#### SEC. 2. LAW STUDENT CONFLICT OF INTEREST EXEMPTION.

Section 205 of title 18, United States Code, is amended by adding at the end the following:

"(j) Subsections (a) and (b) do not apply to a law student or legal clinic staff member participating in the legal clinic or externship of an accredited law school, with respect to a matter within the scope of the clinic or externship, unless—

"(1) the student or staff has participated personally and substantially in the matter as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

"(2) the matter is pending in the department or agency of the Government in which the student is serving."

#### SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect upon the expiration of the 60-day period beginning on the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. COHEN) and the gentleman from California (Mr. DANIEL E. LUNGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee.

#### GENERAL LEAVE

Mr. COHEN. I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. COHEN. I yield myself such time as I may consume.

Mr. Speaker, H.R. 4194 would address an unfortunate consequence of current law that hinders participation by law students in pro bono clinics, which limits the provisions of these needed services to the community. It is appropriate that this resolution follow that of Justice Brandeis, who really was the father of pro bono work.

Title 18, section U.S.C. 205 makes it a crime for a Federal Government employee to provide legal assistance to anyone bringing a case adverse to the United States or in bringing a case adverse to a substantial U.S. interest. Section 205(b) applies the same rule to employees of the District of Columbia.

For law school students or legal clinic staff who hold government jobs, this criminalizes participation in a wide range of political programs, including those funded by the Federal Govern-

ment. Law students or legal clinic staff who are full- or part-time government employees face criminal penalties if they participate in law school pro bono clinics that represent plaintiffs whose claims are adverse to the Federal or D.C. Governments. Yet this opportunity is important for students to learn their craft and become lawyers.

This disqualifies the law students from participation in many service activities that benefit both the students and the wider community, among them juvenile justice clinics, death penalty appeal projects, advocacy programs on behalf of parents with special needs children, and low-income taxpayer clinics.

This also has the perverse effect of forcing law students to choose between government service and community service. It also needlessly deprives government employees of a range of real-world educational experiences that would be particularly beneficial to them when they become lawyers. Just this year, this Congress passed the Edward Kennedy Service Act encouraging people to participate in public service, and this is another area where we should encourage it.

This is a misguided choice to force on law students, for they should be able to have both government and community service and be encouraged to do so. This bill will stop the law from forcing them to have this conflict.

Section 205 already contains an exemption that narrows the definition of "conflict of interest" to those instances of actual conflict: cases in which a government attorney substantially and personally participated as a government employee, and cases in which the employee's department or agency is currently directly participating.

By applying this exemption to law students and legal clinic staff, the bill will eliminate the pernicious effects of section 205 while retaining its safeguards against true conflict of interest. Law students and legal clinic staff would be able to participate in law school clinics that are, by their nature, adverse to the Federal or D.C. Government while continuing to prohibit actual conflicts of interest involving specific parties.

Law students and staff who choose government service would remain subject to governmental conflict of interest rules while also being permitted to enjoy the same clinical resources and opportunities as their peers.

I commend our colleague Congressman DAN LUNGREN from California for his leadership on this important bill, and I urge my colleagues to support it.

I reserve the balance of my time.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I yield myself such time as I may consume.

H.R. 4194, the Law Student Clinic Participation Act of 2009, makes a simple yet important change to Federal

law so as to increase law students' access to clinics and other law school programs.

Nearly 44,000 law students nationwide will graduate this year from more than 200 law schools across this country. During their time in school, each of these students will study property, criminal, constitutional, and contract law, just to name a few. And these classes not only instruct the students on the relevant case law or statutes but also attempt to teach them how to think like a lawyer; that is, to analyze cases from a lawyer's perspective.

As important as that is, equally important are the clinical programs offered by virtually every law school in the country that teach students how to practice law. Clinical programs include prosecution and defense, appellate advocacy, including death penalty appeals projects, juvenile justice, and even tax assistance clinics. Yet, a little-known provision in Federal criminal law—Federal criminal law; that is, it makes it a crime—prevents certain law students from participating in these clinics. In other words, they would be subject to criminal penalties if they participated in these clinics. That is because section 205 of title 18 prescribes criminal penalties for government employees who provide outside legal assistance in a case against the United States or adverse to a substantial U.S. interest. Therefore, law school students, or even staff, who are also employed by the Federal Government, full time or part time, may be barred from participating in these valuable clinical programs.

The impact of this provision is perhaps no greater than right here in our Washington, D.C., metropolitan area, which is the home to over half a dozen law schools. It comes as no surprise that many of these schools' students are also Federal Government employees. Some of the schools have night programs, so the students work full time during the day and take classes at night. Many times they do work for the Federal Government or the D.C. Government, but because of their employment, they are, therefore, disqualified from participating in these extremely beneficial programs. This was most certainly not Congress' intent when it enacted section 205.

H.R. 4194, remedies this problem by extending an existing exemption within the statute to include Federal employee law students. The bill, therefore, appropriately allows students and staff to participate in clinics, including those that are adverse to the Federal or D.C. Governments; however—and this is important—the bill continues to prohibit any actual conflict of interest involving specific parties. Therefore, if the student or staff member is involved in a matter which would be a direct conflict of interest, they are not covered by this waiver. It would seem that

this is a commonsense solution to provide those students employed by the government the same opportunities as other students.

I might say, Mr. Speaker, when this came to my attention, I thought that perhaps we could have a relatively simple, straightforward waiver or exemption to take care of this problem, which was unanticipated by the Congress when it passed the relevant law, and, therefore, I would urge my colleagues to join me in supporting this bill.

And if the gentleman from Tennessee has no other speakers, I would yield back the balance of my time.

Mr. COHEN. Mr. Speaker, we have no further speakers.

Mr. Speaker, I just want to thank Mr. LUNGREN for bringing this to us. It is important that the law students do have this opportunity and that the conflicts be real and not imagined. I would like to encourage a "yes" vote and would move that we pass the bill at this time.

I yield back the balance of my time. The SPEAKER pro tempore (Mr. BLUMENAUER). The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and pass the bill, H.R. 4194.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. COHEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

House Resolution 894, by the yeas and nays;

H.R. 1517, de novo;

H.R. 3978, de novo.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

#### HONORING 50TH ANNIVERSARY OF THE RECORDING OF "KIND OF BLUE"

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to

the resolution, H. Res. 894, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and agree to the resolution, H. Res. 894.

The vote was taken by electronic device, and there were—yeas 409, nays 0, not voting 25, as follows:

[Roll No. 971]

YEAS—409

Ackerman	Coble	Grijalva
Aderholt	Coffman (CO)	Guthrie
Adler (NJ)	Cohen	Gutierrez
Akin	Cole	Hall (NY)
Alexander	Conaway	Hall (TX)
Altmire	Connolly (VA)	Halvorson
Andrews	Conyers	Hare
Arcuri	Cooper	Harman
Austria	Costa	Harper
Baca	Costello	Hastings (WA)
Bachmann	Courtney	Heinrich
Bachus	Crenshaw	Hensarling
Baird	Crowley	Herseth Sandlin
Baldwin	Cuellar	Higgins
Barrow	Culberson	Hill
Bartlett	Cummings	Himes
Barton (TX)	Dahlkemper	Hinojosa
Bean	Davis (AL)	Hirono
Becerra	Davis (CA)	Hoekstra
Berkley	Davis (IL)	Holden
Berman	Davis (KY)	Holt
Berry	Davis (TN)	Honda
Biggert	DeFazio	Hoyer
Bilbray	DeGette	Hunter
Billakis	Delahunt	Inglis
Bishop (GA)	DeLauro	Inslee
Bishop (NY)	Dent	Israel
Blackburn	Diaz-Balart, L.	Issa
Blumenauer	Diaz-Balart, M.	Jackson (IL)
Blunt	Dicks	Jackson-Lee
Boccheri	Dingell	(TX)
Boehner	Doggett	Jenkins
Bono Mack	Donnelly (IN)	Johnson (GA)
Boozman	Doyle	Johnson, E. B.
Boren	Dreier	Jones
Boswell	Drieaus	Jordan (OH)
Boucher	Duncan	Kagen
Boustany	Edwards (MD)	Kanjorski
Boyd	Edwards (TX)	Kaptur
Brady (PA)	Ehlers	Kennedy
Brady (TX)	Ellison	Kildee
Braley (IA)	Ellsworth	Kilpatrick (MI)
Bright	Emerson	Kind
Brown (GA)	Engel	King (IA)
Brown (SC)	Eshoo	King (NY)
Brown, Corrine	Etheridge	Kingston
Brown-Waite,	Fallin	Kirk
Ginny	Farr	Kirkpatrick (AZ)
Buchanan	Fattah	Kissell
Burgess	Filner	Klein (FL)
Burton (IN)	Flake	Kline (MN)
Butterfield	Fleming	Kosmas
Buyer	Forbes	Kratovil
Calvert	Fortenberry	Kucinich
Camp	Foster	Lamborn
Campbell	Fox	Lance
Cantor	Frank (MA)	Langevin
Cao	Franks (AZ)	Larsen (WA)
Capito	Frelinghuysen	Larson (CT)
Capps	Fudge	Latham
Capuano	Gallely	Latta
Cardoza	Garamendi	Lee (CA)
Carnahan	Garrett (NJ)	Lee (NY)
Carney	Gerlach	Levin
Carson (IN)	Giffords	Lewis (CA)
Carter	Gingrey (GA)	Lewis (GA)
Cassidy	Gohmert	Linder
Castle	Gonzalez	Lipinski
Castor (FL)	Goodlatte	LoBiondo
Chaffetz	Gordon (TN)	Loebach
Chandler	Granger	Lofgren, Zoe
Childers	Graves	Lowey
Chu	Grayson	Lucas
Clarke	Green, Al	Luetkemeyer
Cleaver	Green, Gene	Lujan
Clyburn	Griffith	Lummis

Lungren, Daniel E.  
Lynch  
Mack  
Maloney  
Manzullo  
Marchant  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (CA)  
McCarthy (NY)  
McCaul  
McClintock  
McCollum  
McCotter  
McDermott  
McGovern  
McHenry  
McIntyre  
McKeon  
McMahon  
McMorris  
Rodgers  
McNerney  
Meek (FL)  
Meeks (NY)  
Melancon  
Mica  
Michaud  
Miller (FL)  
Miller (MI)  
Miller (NC)  
Miller, Gary  
Miller, George  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moore (WI)  
Moran (KS)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Murphy, Tim  
Myrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Neugebauer  
Nunes  
Nye  
Oberstar  
Obey  
Olson  
Oliver  
Ortiz  
Owens  
Pallone  
Pastor (AZ)

Paul  
Paulsen  
Payne  
Pence  
Perlmutter  
Perriello  
Peters  
Peterson  
Petri  
Pingree (ME)  
Pitts  
Platts  
Poe (TX)  
Polis (CO)  
Pomeroy  
Posey  
Price (GA)  
Price (NC)  
Putnam  
Quigley  
Rahall  
Rangel  
Rehberg  
Reichert  
Reyes  
Richardson  
Rodriguez  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Ross  
Rothman (NJ)  
Roybal-Allard  
Royce  
Ruppersberger  
Rush  
Visclosky  
Ryan (OH)  
Ryan (WI)  
Sánchez, Linda T.  
Sarbanes  
Scalise  
Schakowsky  
Schauer  
Schiff  
Schmidt  
Schock  
Schradler  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Sestak  
Shea-Porter  
Sherman  
Shimkus

Shuster  
Simpson  
Sires  
Skelton  
Slaughter  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Space  
Speier  
Spratt  
Stark  
Stearns  
Stupak  
Sullivan  
Sutton  
Tanner  
Taylor  
Teague  
Terry  
Thompson (CA)  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Turner  
Upton  
Van Hollen  
Velázquez  
Visclosky  
Walden  
Walz  
Wamp  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Westmoreland  
Wexler  
Whitfield  
Wilson (OH)  
Wilson (SC)  
Wittman  
Wolf  
Woolsey  
Wu  
Yarmuth  
Young (AK)

## NOT VOTING—25

Abercrombie  
Barrett (SC)  
Bishop (UT)  
Bonner  
Clay  
Deal (GA)  
Hastings (FL)  
Heller  
Herger

Hinchey  
Johnson (IL)  
Johnson, Sam  
Kilroy  
LaTourette  
Maffei  
Moran (VA)  
Murtha

Pascarell  
Radanovich  
Roskam  
Salazar  
Sanchez, Loretta  
Shuler  
Young (FL)

□ 1237

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. HELLER. Mr. Speaker, on rollcall No. 971, had I been present, I would have voted "yea."

# AUTHORITY TO CONVERT CERTAIN OVERSEAS LIMITED APPOINTMENTS TO PERMANENT APPOINTMENTS

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill, H.R. 1517, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. CUELLAR) that the House suspend the rules and pass the bill, H.R. 1517, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

## RECORDED VOTE

Mr. CONNOLLY of Virginia. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 414, noes 1, not voting 19, as follows:

[Roll No. 972]

## AYES—414

Ackerman  
Aderholt  
Adler (NJ)  
Akin  
Alexander  
Altmire  
Andrews  
Arcuri  
Austria  
Baca  
Bachmann  
Bachus  
Baird  
Baldwin  
Barrow  
Bartlett  
Barton (TX)  
Bean  
Becerra  
Berkley  
Berman  
Berry  
Biggart  
Bilbray  
Bilirakis  
Bishop (GA)  
Bishop (NY)  
Blackburn  
Blumenauer  
Blunt  
Boccheri  
Boehner  
Bono Mack  
Boozman  
Boren  
Boswell  
Boucher  
Boustany  
Boyd  
Brady (PA)  
Brady (TX)  
Braley (IA)  
Bright  
Broun (GA)  
Brown (SC)  
Brown, Corrine  
Brown-Waite,  
Dent  
Ginny  
Buchanan  
Burgess  
Burton (IN)  
Butterfield  
Buyer  
Calvert  
Camp  
Campbell

Cantor  
Cao  
Capito  
Capps  
Capuano  
Cardoza  
Carnahan  
Carney  
Carson (IN)  
Carter  
Cassidy  
Castle  
Castor (FL)  
Chaffetz  
Chandler  
Childers  
Chu  
Clarke  
Cleaver  
Clyburn  
Coble  
Coffman (CO)  
Cohen  
Cole  
Conaway  
Connolly (VA)  
Conyers  
Cooper  
Costa  
Costello  
Courtney  
Crenshaw  
Crowley  
Cuellar  
Culberson  
Cummings  
Dahlkemper  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (KY)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dent  
Diaz-Balart, L.  
Diaz-Balart, M.  
Dicks  
Dingell  
Doggett  
Donnelly (IN)  
Doyle  
Dreier  
Driehaus

Duncan  
Edwards (MD)  
Edwards (TX)  
Ehlers  
Ellison  
Ellsworth  
Emerson  
Engel  
Eshoo  
Etheridge  
Fallin  
Farr  
Fattah  
Filner  
Flake  
Fleming  
Forbes  
Fortenberry  
Foster  
Fox  
Frank (MA)  
Franks (AZ)  
Frelinghuysen  
Fudge  
Gallegly  
Garamendi  
Garrett (NJ)  
Gerlach  
Giffords  
Gingrey (GA)  
Gohmert  
Gonzalez  
Goodlatte  
Gordon (TN)  
Granger  
Graves  
Grayson  
Green, Al  
Green, Gene  
Griffith  
Grijalva  
Guthrie  
Gutierrez  
Hall (NY)  
Hall (TX)  
Halvorson  
Hare  
Harman  
Harper  
Hastings (FL)  
Hastings (WA)  
Heinrich  
Hensarling  
Herger  
Herseth Sandlin  
Higgins

Hill  
Himes  
Hinojosa  
Hirono  
Hoekstra  
Holden  
Holt  
Honda  
Hoyer  
Hunter  
Inglis  
Inslee  
Israel  
Issa  
Jackson (IL)  
Jackson-Lee  
(TX)  
Jenkins  
Johnson (GA)  
Johnson, E. B.  
Jones  
Jordan (OH)  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
King (IA)  
King (NY)  
Kingston  
Kirk  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)  
Kline (MN)  
Kosmas  
Kratovil  
Kucinich  
Lamborn  
Lance  
Langevin  
Larsen (WA)  
Larson (CT)  
Latham  
Latta  
Lee (CA)  
Lee (NY)  
Levin  
Lewis (CA)  
Lewis (GA)  
Linder  
Lipinski  
LoBiondo  
Loeb sack  
Lofgren, Zoe  
Lowey  
Lucas  
Luetkemeyer  
Luján  
Lummis  
Lungren, Daniel E.  
Lynch  
Mack  
Maffei  
Maloney  
Manzullo  
Marchant  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (CA)  
McCarthy (NY)  
McCaul  
McClintock  
McCollum  
McCotter  
McDermott

McGovern  
McHenry  
McIntyre  
McKeon  
McMahon  
McMorris  
Rodgers  
McNerney  
Meek (FL)  
Meeks (NY)  
Molancon  
Mica  
Michaud  
Miller (FL)  
Miller (MI)  
Miller (NC)  
Miller, Gary  
Miller, George  
Minnick  
Mitchell  
Mollohan  
Moore (KS)  
Moore (WI)  
Moran (KS)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Murphy, Tim  
Myrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Neugebauer  
Nunes  
Nye  
Oberstar  
Obey  
Olson  
Oliver  
Ortiz  
Owens  
Pallone  
Pastor (AZ)

Ryan (OH)  
Ryan (WI)  
Sánchez, Linda T.  
Sarbanes  
Scalise  
Schakowsky  
Schauer  
Schiff  
Schmidt  
Schock  
Schradler  
Schwartz  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Sestak  
Shea-Porter  
Sherman  
Shimkus

## NOES—1

Paul

## NOT VOTING—19

Abercrombie  
Barrett (SC)  
Bishop (UT)  
Bonner  
Clay  
Deal (GA)  
Hastings (FL)  
Heller  
Hinchey  
Hodes  
Johnson (IL)

Deal (GA)  
Heller  
Hinchey  
Hodes  
Johnson, Sam  
LaTourette  
Murtha

Radanovich Salazar Shuler  
Rangel Sanchez, Loretta Young (FL)

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1245

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. HELLER. Mr. Speaker, on rollcall No. 972, had I been present, I would have voted "aye."

## FIRST RESPONDER ANTI-TERRORISM TRAINING RESOURCES ACT

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill, H.R. 3978.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. CUELLAR) that the House suspend the rules and pass the bill, H.R. 3978.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

## RECORDED VOTE

Mr. HARE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 413, noes 1, not voting 20, as follows:

[Roll No. 973]

AYES—413

Ackerman Boehner Carnahan  
Aderholt Bono Mack Carney  
Adler (NJ) Boozman Carson (IN)  
Akin Boren Carter  
Alexander Boswell Castle  
Altmire Boucher Castor (FL)  
Andrews Boustany Chaffetz  
Arcuri Boyd Chandler  
Austria Brady (PA) Childers  
Baca Brady (TX) Chu  
Bachmann Braley (IA) Clarke  
Bachus Bright Cleaver  
Baird Broun (GA) Clyburn  
Baldwin Brown (SC) Coble  
Barrow Brown, Corrine Coffman (CO)  
Bartlett Brown-Waite, Cohen  
Barton (TX) Ginny Cole  
Bean Buchanan Conaway  
Becerra Burgess Connolly (VA)  
Berkley Burton (IN) Conyers  
Berman Butterfield Cooper  
Berry Buyer Costa  
Biggert Calvert Costello  
Bilbray Camp Courtney  
Bilirakis Campbell Crenshaw  
Bishop (GA) Cantor Crowley  
Bishop (NY) Cao Cuellar  
Blackburn Capito Culberson  
Blumenauer Capps Cummings  
Blunt Capuano Dahlkemper  
Bocieri Cardoza Davis (AL)

Davis (CA) Jordan (OH)  
Davis (IL) Kagen  
Davis (KY) Kanjorski  
Davis (TN) Kaptur  
DeFazio Kennedy  
DeGette Kildee  
Delahunt Kilpatrick (MI)  
DeLauro Kilroy  
Dent Kind  
Diaz-Balart, L. King (IA)  
Diaz-Balart, M. King (NY)  
Dicks Kingston  
Dingell Kirk  
Doggett Kirkpatrick (AZ)  
Donnelly (IN) Kissell  
Doyle Klein (FL)  
Dreier Kline (MN)  
Driehaus Kosmas  
Duncan Kratovil  
Edwards (MD) Kucinich  
Edwards (TX) Lamborn  
Ehlers Lance  
Ellison Langevin  
Ellsworth Larsen (WA)  
Emerson Larson (CT)  
Engel Latham  
Eshoo Latta  
Etheridge Lee (CA)  
Fallin Lee (NY)  
Farr Levin  
Fattah Lewis (CA)  
Filner Lewis (GA)  
Flake Linder  
Fleming Lipinski  
Forbes LoBiondo  
Fortenberry Loebsack  
Foster Lofgren, Zoe  
Foxy Lowey  
Frank (MA) Lucas  
Franks (AZ) Luetkemeyer  
Frelinghuysen Lujan  
Fudge Lummis  
Gallegly Lungren, Daniel  
Garamendi E.  
Garrett (NJ) Lynch  
Gerlach Mack  
Giffords Maffei  
Gingrey (GA) Maloney  
Gohmert Manzullo  
Gonzalez Marchant  
Goodlatte Markey (CO)  
Gordon (TN) Markey (MA)  
Granger Marshall  
Graves Massa  
Grayson Matheson  
Green, Al Matsui  
Green, Gene McCarthy (CA)  
Griffith McCarthy (NY)  
Grijalva McCaul  
Guthrie McClintock  
Gutierrez McCollum  
Hall (NY) McCotter  
Hall (TX) McDermott  
Halvorson McGovern  
Hare McHenry  
Harman McIntyre  
Harper McKeon  
Hastings (FL) McMahon  
Hastings (WA) McMorris  
Heinrich Rodgers  
Hensarling McNeerney  
Herger Meek (FL)  
Herseth Sandlin Meeks (NY)  
Higgins Melancon  
Hill Mica  
Himes Michaud  
Hinchey Miller (FL)  
Hinojosa Miller (MI)  
Hirono Miller, Gary  
Hoekstra Miller, George  
Holden Minnick  
Holt Mitchell  
Honda Mollohan  
Hoyer Moore (KS)  
Hunter Moore (WI)  
Inglis Moran (KS)  
Inslee Moran (VA)  
Israel Murphy (CT)  
Issa Murphy (NY)  
Jackson (IL) Murphy, Patrick  
Jackson-Lee (TX) Murphy, Tim  
Jenkins Nadler (NY)  
Johnson (GA) Napolitano  
Johnson, E. B. Neal (MA)  
Jones Neugebauer

Nunes Thompson (CA)  
Nye Thompson (MS)  
Oberstar Thompson (PA)  
Obey Thornberry  
Olson Tiahrt  
Oliver Tiberi  
Ortiz Tierney  
Owens Titus  
Pallone Tonko  
Pascrell Towns  
Pastor (AZ) Tsongas  
Paulsen Turner  
Payne Upton  
Pence  
Perlmutter  
Perrillo  
Peters  
Peterson  
Petri  
Pingree (ME)  
Pitts  
Platts  
Poe (TX)  
Polis (CO)  
Pomeroy  
Posey  
Price (GA)  
Price (NC)  
Putnam  
Quigley  
Rahall  
Rangel  
Rehberg  
Reichert  
Reyes  
Richardson  
Rodriguez  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Ross  
Rothman (NJ)  
Roybal-Allard  
Royce  
Ruppersberger  
Rush  
Ryan (OH)  
Ryan (WI)  
Sanchez, Linda  
T.  
Sarbanes  
Scalise  
Schakowsky  
Schauer  
Schiff  
Schmidt  
Schock  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Sestak  
Shadegg  
Shea-Porter  
Sherman  
Shimkus  
Simpson  
Sires  
Skelton  
Slaughter  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Space  
Speier  
Spratt  
Stark  
Stearns  
Stupak  
Sullivan  
Sutton  
Tanner  
Taylor  
Teague  
Terry

NOES—1

Paul

NOT VOTING—20

Abercrombie Heller Radanovich  
Barrett (SC) Hodes Salazar  
Bishop (UT) Johnson (IL) Sanchez, Loretta  
Bonner Johnson, Sam Shuler  
Cassidy LaTourette Shuster  
Clay Miller (NC) Young (FL)  
Deal (GA) Murtha

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1252

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. HELLER. Mr. Speaker, on rollcall No. 973, had I been present, I would have voted "aye."

Mr. CASSIDY. Mr. Speaker, on rollcall No. 973, I was unavoidably detained. Had I been present, I would have voted "aye."

## LOCAL COMMUNITY RADIO ACT OF 2009

Mr. BOUCHER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1147) to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1147

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Local Community Radio Act of 2009".

## SEC. 2. AMENDMENT.

Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (Public Law 106-553; 114 Stat. 2762A-111), is amended to read as follows:

"SEC. 632. (a) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to—

"(1) prescribe protection for co-channels and first- and second-adjacent channels; and  
"(2) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section

301 of the Communications Act of 1934 (47 U.S.C. 301).

“(b) Any license that was issued by the Federal Communications Commission to a low-power FM station prior to April 2, 2001, and that does not comply with the modifications adopted by the Commission in MM Docket No. 99-25 on April 2, 2001, shall remain invalid.”.

### SEC. 3. MINIMUM DISTANCE SEPARATION REQUIREMENTS.

The Federal Communications Commission shall modify its rules to eliminate third-adjacent minimum distance separation requirements between—

- (1) low-power FM stations; and
- (2) full-service FM stations, FM translator stations, and FM booster stations.

### SEC. 4. PROTECTION OF RADIO READING SERVICES.

The Federal Communications Commission shall comply with its existing minimum distance separation requirements for full-service FM stations, FM translator stations, and FM booster stations that broadcast radio reading services via an analog subcarrier frequency to avoid potential interference by low-power FM stations.

### SEC. 5. ENSURING AVAILABILITY OF SPECTRUM FOR LOW-POWER FM STATIONS.

The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure—

- (1) that licenses are available to FM translator stations, FM booster stations, and low-power FM stations; and
- (2) that such decisions are made based on the needs of the local community.

### SEC. 6. PROTECTION OF TRANSLATOR INPUT SIGNALS.

The Federal Communications Commission shall modify its rules to address the potential for predicted interference to FM translator input signals on third-adjacent channels set forth in section 2.7 of the technical report entitled “Experimental Measurements of the Third-Adjacent Channel Impacts of Low-Power FM Stations, Volume One—Final Report (May 2003)”.

### SEC. 7. ENSURING EFFECTIVE REMEDIATION OF INTERFERENCE.

The Federal Communications Commission shall modify the interference complaint process described in section 73.810 of its rules (47 CFR 73.810) as follows:

- (1) With respect to those low-power FM stations licensed at locations that do not satisfy third-adjacent channel spacing requirements under section 73.807 of the Commission’s rules (47 CFR 73.807), the Federal Communications Commission shall provide the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in section 74.1203 of its rules (47 CFR 74.1203) as in effect on the date of enactment of this Act.
- (2) For a period of 1 year after a new low-power FM station is constructed on a third-adjacent channel, such low-power FM station shall be required to broadcast periodic announcements that alert listeners that interference that they may be experiencing could be the result of the operation of such low-power FM station on a third-adjacent channel and shall instruct affected listeners to contact such low-power FM station to report any interference. The Federal Communications Commission shall require all newly constructed low-power FM stations on third-adjacent channels to—

(A) notify the Federal Communications Commission and all affected stations on third-adjacent channels of an interference

complaint by electronic communication within 48 hours after the receipt of such complaint; and

(B) cooperate in addressing any such interference.

(3) Low-power FM stations on third-adjacent channels shall be required to address complaints of interference within the protected contour of an affected station and shall be encouraged to address all other interference complaints, including complaints to the Federal Communications Commission based on interference to a full-service FM station, an FM translator station, or an FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station. The Federal Communications Commission shall provide notice to the licensee of a low-power FM station of the existence of such interference within 7 calendar days of the receipt of a complaint from a listener or another station.

(4) To the extent possible, the Federal Communications Commission shall grant low-power FM stations on third-adjacent channels the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.

(5) The Federal Communications Commission shall—

(A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission;

(B) accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station; and

(C) accept complaints of interference to mobile reception.

### SEC. 8. FCC STUDY ON IMPACT OF LOW-POWER FM STATIONS ON FULL-SERVICE COMMERCIAL FM STATIONS.

(a) IN GENERAL.—The Federal Communications Commission shall conduct an economic study on the impact that low-power FM stations will have on full-service commercial FM stations.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Federal Communications Commission shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives on the study conducted under subsection (a).

(c) LICENSING NOT AFFECTED BY STUDY.—Nothing in this section shall affect the licensing of new low-power FM stations as otherwise permitted under this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. BOUCHER) and the gentleman from Nebraska (Mr. TERRY) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

#### GENERAL LEAVE

Mr. BOUCHER. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and insert extraneous material into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BOUCHER. Mr. Speaker, I yield such time as he may consume to the chairman of the Energy and Commerce Committee, the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I rise in strong support of H.R. 1147, the Local Community Radio Act of 2009, and I want to thank Chairman BOUCHER for his leadership in guiding this bipartisan bill through the committee.

I also want to recognize and thank Mr. DOYLE and Mr. TERRY, the original sponsors of the bill, for their efforts to expand diversity, localism, and competition in our media landscape. Mr. DOYLE has been a tireless advocate of local community radio, and I greatly appreciate his leadership, flexibility, and persistence.

I’m pleased that the House is taking up this important measure, as I have long supported expanding low-power FM radio services. The bill removes a statutory barrier to the creation of potentially thousands of new low-power stations across the country. The creation of these stations will further the overriding national policy goals of promoting broadcast localism and diversity.

I’m pleased that the bill includes strong protections against unreasonable interference for incumbent radio broadcasters, as well as a clear dispute resolution process should such interference occur. I want to thank National Public Radio for working with the Energy and Commerce Committee in a constructive manner. I also want to commend the Prometheus Radio Project, the United Church of Christ, and other supporters of low-power FM services for their valuable input.

I urge my colleagues to support H.R. 1147.

Mr. TERRY. Mr. Speaker, I yield myself such time as I may consume.

As coauthor with Mr. DOYLE, I too rise in support of H.R. 1147, and it was my pleasure to come to this floor to discuss legislation that is the product of great bipartisanship. Congressman DOYLE and I teamed up in working on this low-power FM legislation, and the product that we have today here on the floor is a good one. We do believe this bill has the potential to revolutionize what Americans hear on their radios and that it will provide an exciting new platform for citizens to communicate with one another within their own local communities and neighborhoods.

Low-power FM radio offers people at the local community level the opportunity to broadcast when otherwise they may not afford to do so. This is extremely important for noncommercial groups like schools, churches, neighborhood organizations. The ability of those groups to broadcast their



message contributes greatly to the overall betterment of our community and society as a whole.

Many local and statewide organizations are interested in obtaining low-power FM licenses, including the following two in my district in Omaha, Nebraska.

Wes Hall, who is the CEO of Suntaman Communications, says this legislation is a dream come true. "You cannot build a community without a cohesive voice, and this will give a voice to the voiceless." He went on to say: "Low-power FM is the beacon that lights up the future for us, and bravo to Lee for championing"—well, I don't have to read that part. But Wes Hall has been involved in the LPFM issue for years and believes this legislation is the light that allows communities to come together.

"This is very exciting news," said 100 Black Men of Omaha, Nebraska, President Tim Clark. "Communities across the country will now have a real opportunity to increase the ability to effectively communicate issues, concerns, awareness campaigns, and to provide sensitive programming. North and South Omaha will benefit positively from this challenge to develop unified efforts for the betterment of their constituents."

I appreciate both Wes' and Tim's work on this issue as well as other groups devoted to fulfilling the interests and needs of our community.

I do believe this legislation is about empowering individuals who are making a difference in Nebraska. As a Member who, back in 2000, voted in favor of legislation to require a minimum of four intervals between radio stations, I'm proud today to be able to stand by my friend from Pennsylvania as well as all LPFM advocates in a bipartisan way in support of this legislation.

□ 1300

The authorization of the MITRE study really was important, and now we definitively know that there will be no interference caused by reducing the required separation between new LPFM broadcasts and existing full-power broadcasts.

I encourage all of my colleagues to support this important community-based legislation, and I am looking forward to it being enacted into law.

I reserve the balance of my time.

Mr. BOUCHER. I yield myself such time as I may consume.

Mr. Speaker, the bill before the House is the Local Community Radio Act of 2009. It was introduced by Representatives DOYLE and TERRY, and it will provide additional opportunities to create new low-power FM radio stations by allowing their operation on third adjacent channels to the full-power radio stations.

Low-power stations, which are community-based nonprofits which operate

at 100 watts or less of power and which have a broadcast reach, typically, of only a few miles, play a unique role in our media. They are far more likely than their full-power counterparts to be owned by women or minorities, and they are an important forum for local clergy, for educational institutions, and for a wide array of community leaders to have a say on important local issues.

I want to commend the cooperative work of our colleagues Mr. DOYLE and Mr. TERRY and of radio broadcasters who are significant stakeholders in this matter, as we have resolved the concerns of local public broadcasting stations that have a special need to protect the numerous translator stations that they operate from any local channel interference. Amendments that we adopted in the subcommittee consideration of the bill achieve that protection.

Among other provisions, the bill directs the Federal Communications Commission to allow the operation of low-power FM stations on third channel adjacencies to the full-power FM stations and FM translator and booster stations. It retains the FCC's existing minimum distance separation requirements for FM stations that provide radio reading services for the visually impaired.

At the same time, the bill provides for remediation of interference complaints between low-power FM stations and full-power stations as well as FM translator and booster stations. The measure directs the FCC to conduct an economic study of the effect of low-power FM stations on full service commercial stations and to submit those findings to the Congress within 1 year.

I want to thank Mr. DOYLE for his tireless work on this measure. He has introduced this bill several times, and this is the first Congress in which it has been brought to the House floor. I tremendously appreciate his work and the work of Mr. TERRY, his partner in this exercise. With the various stakeholders and with members of our subcommittee, collectively, their work has resulted in our being able to present this bill to the House today.

I also want to commend the bipartisan approach that we have taken in our subcommittee and full committee in processing this measure. I commend Chairman WAXMAN and Ranking Members BARTON and STEARNS for the highly cooperative manner in which we have altogether advanced this measure.

Mr. Speaker, I reserve the balance of my time.

Mr. TERRY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. I do thank the gentleman from Nebraska, and I am thrilled to stand today in support of the Local Community Radio Act.

Mr. Speaker, this is an issue that I've been engaged in since my days in the

Tennessee State Senate. In an age of consolidating radio stations and a competitive marketplace for airtime, this legislation will allow smaller groups to be heard. Indeed, Chairman BOUCHER has mentioned this, as has Mr. TERRY; and it is an important reason for having this low-power radio act available for our communities.

Whether we are talking about the aspiring blues performer in Memphis or whether we are talking about an up-and-coming country star in Nashville or whether we are talking about one of our colleges or universities which is getting on the air and showcasing some of its local talent or some of its personalities—or maybe it is some of our religious organizations or churches—it is a way for them to spread their messages. This legislation does give a crucial voice to these communities.

I was pleased that Mr. BOUCHER mentioned small businesses that are owned by women and the number of women that we have seen move into the communications field because they had the ability to get to low-power stations and to develop formats in programming that will help them to launch a dream and actually innovate for our airwaves.

We have heard from a wide range of groups. They do stand in support of this. It is a pleasure to stand and support the bill. I urge this Chamber to move forward on passing this legislation.

Mr. BOUCHER. Mr. Speaker, I yield such time as he may consume to the sponsor of the bill, the gentleman from Pennsylvania (Mr. DOYLE).

Mr. DOYLE. I want to thank Chairman BOUCHER and Chairman WAXMAN for strongly supporting my bill, which will give local communities across this country access to their airwaves. I am grateful for the support that this bill has from both sides of the aisle, including from the bill's lead cosponsor, my good friend LEE TERRY from Omaha.

When the Federal Communications Commission created the low-power FM radio service, they sought to create opportunities for new voices on the airwaves and to allow local schools, churches and other community-based organizations to provide programming that would be responsive to local community needs and interests.

Congress, however, passed the Radio Broadcasting Preservation Act in 2000, and many of those organizations were prevented from communicating to their members, supporters, and residents on the FM radio dial. That bill called for a field study performed by the MITRE Corporation and for the FCC to recommend to Congress what we should do.

In 2004, on a unanimous, bipartisan basis and for a second time in November 2007 and for a third time, once again, in September of 2009, all five FCC commissioners agreed that Congress should lift the restrictions on

LPFM stations and should allow the FCC to license new stations in more communities. The bill we debate today, the Local Community Radio Act of 2009, does just that.

Where they are allowed to exist under current law, LPFM stations have proved to be a vital source of information during local or national emergencies. These stations promote the arts and education from religious organizations, community groups, organizations promoting literacy, and from many other civically oriented organizations.

Stations like KOCZ in Opelousas, Louisiana, which is operated by the Southern Development Foundation, is a group active in the African American community. This station broadcasts public affairs shows, religious programming, hip-hop, and zydeco music 24 hours a day. Zydeco music is central to the cultural heritage of the Acadiana region, but it has recently disappeared from the airwaves that have been dominated by commercial radio.

WQRZ, in Bay St. Louis, Mississippi, remained on the air during Hurricane Katrina and served as the emergency operations center for Hancock County during the worst storm there in a century.

Congress has to act on the commission's recommendations; otherwise, similar stations will be prevented from operating in communities across America—in communities like mine, which are too large to have any slots for new LPFM stations at fourth adjacent, but could fit several at third adjacent.

Stations like Lightning Community Radio and WMKP's "The Roar" at Penn State's Greater Allegheny campus wanted to serve the McKeesport area in my district. The current law relegates them to Webcasting, but they want to simulcast on the air as well. We must pass this bill today to make sure that that can happen.

My bill has undergone some changes from the full committee, and the National Association of Broadcasters, as well as National Public Radio, have removed their objections and do not oppose the bill. This bill has broad support, and I will be adding into the RECORD these letters from almost a dozen leaders from Catholic and Protestant faiths, like the United Church of Christ and the National Association of Evangelicals; a letter from two dozen national and local public interest, civil rights and local groups; another letter from the Leadership Conference on Civil Rights; and, finally, a letter from the National Federation of Community Broadcasters and the Prometheus Radio Project, all of whom strongly support the Local Community Radio Act.

Mr. Speaker, the time has come for Congress to rewrite the law. The time has come to make the airwaves available to the people they serve. The time

has come to bring low-power to the people. I ask my colleagues to support the Local Community Radio Act.

My legislation makes a number of changes from the version reported out of the House Energy and Commerce Committee. Some of these changes clarified intent, others came at the request of large commercial broadcasters. Indeed, this version of the bill did not draw the opposition of the largest group of commercial broadcasters because they contributed several ideas that are included in this legislation. While I believe that the previous versions of the bill already provided strong protections for incumbent broadcasters, I accepted this compromise language because it will finally lay their objections to rest.

In exchange for dropping their opposition to my bill, incumbent broadcasters received a significant new form of protection for their signals. This compromise requires LPFM stations to fix any instance of interference to full power stations on the third adjacent channel, even outside an incumbent station's legally protected coverage area, also known as their contour.

I accepted this extremely unusual obligation to remediate interference outside of the broadcaster's legal coverage area, working with experts at the FCC, I know that harmful interference is extremely unlikely to occur in the real world.

I would not have accepted them if I believed they harmed the Low-Power FM radio service, and I will be sincerely disappointed if the Commission does so with mistaken interpretations.

Among the several changes, I'd like to explain two of them. I accepted a request that the FCC complete a study looking into the low-power FM radio service's financial impact on full-power commercial broadcasting. I know that the FCC has already looked into this issue and I understand that the Senate sponsor's intent is not to let this study delay implementation of the bill and licensing LPFM stations while this study is underway.

Second, in Section 5, I added the word "new" to make clear that that section applies to new licensing. While this refers to licensing new stations, I do not believe that this language should discourage the FCC from re-addressing the relationship between LPFMs and translators should it conclude that it is in the public interest.

I have to thank the many people who have worked on this issue for over a decade. First, and foremost, this bill would not have happened without the work of Pete Tridish and Hannah Sassaman and Cory Fischer Hoffman of the Prometheus Radio Project, Cheryl Leanza now at the United Church of Christ, Office of Communications, Michael Bracy of the Future of Music Coalition, and Carol Pierson of the National Federation of Community Broadcasters.

Additionally, I must also thank the dozens of dedicated people who have long cared about their community's ability to access their airwaves. That so many different groups support the bill is a testament to their dedication. Their hard work will hopefully reap true rewards. Thanks are due to Katherine Grincewich of the US Conference of Catholic Bishops, Amanda Huron, Diane Foglizzo, Sakura Saunders,

Brandy Doyle, Jeanette Forman, Autumn Chacon, John Wenz, Sara Cederburg, Halimah Marcus, Ian Smith, Anthony Mazza, and Scott Pinkelman of the Prometheus Radio Project, artists Kendall Nordin and Nicole Atkins, and Amy Ray and Emily Saliers of The Indigo Girls, Gary Galloway, Director of the Newton County Mississippi Emergency Management Agency, Tim Stone of Portsmouth Community Radio, Parul Desai, Kamilla Kovacs and Andy Schwartzman of the Media Access Project, Beth McConnell, Chance Williams and Hannah Miller of the Media and Democracy Coalition, Candace Clement, Ben Scott and Joe Torres at Free Press, Corrine Yu at the Leadership Conference on Civil Rights and all others who have worked so hard to get the Local Community Radio Act so far.

#### LOW-POWER FM RADIO: SUPPORTING MEDIA DIVERSITY 2009 LOCAL COMMUNITY RADIO ACT (H.R. 1147)

DEAR COLLEAGUE: We urge you to join us in support of media diversity by supporting H.R. 1147, the Local Community Radio Act of 2009. This bipartisan legislation will increase the diversity of voices on our nation's radio airwaves by creating hundreds of low-power, community radio stations in cities, towns and suburbs across the United States.

According to a report released by the non-partisan media advocacy group Free Press, people of color own just 7.7 percent of all full-power AM and FM stations, yet they make up 33 percent of the U.S. population. Currently, African Americans own 3.4 percent; Latinos, 2.9 percent; Asian Americans, 0.9 percent; and Native Americans, 0.3 percent of all full-power stations. In addition, despite making up 51 percent of the U.S. population, women only own 6 percent of all radio stations. The study found the more concentrated a local market, the less likely there will be a minority or female owner. In 2008, the Minority Media & Telecommunications Council (MMTC) Road Map for Telecommunications Policy found that minority employment at non-minority owned, English language radio news operations is about 0.4% or statistically zero, which is about where it stood in 1950. As a uniquely local outlet, low-power FM (LPFM) stations directly serve the needs of their communities by making stations possible for churches, schools, civil rights organizations and other community groups. LPFMs provide a forum to discuss local issues and provide essential emergency services during times of crisis. The following LPFMs have shown their potential to bring vibrant, diverse programming to the airwaves:

On WSBL-LP (98.1), in South Bend, Indiana the local League of United Latin American Citizens (LULAC) chapter broadcasts Spanish-language programming and music, public safety announcements, and English vocabulary lessons.

In Sacramento, KDEE-LP (97.7), licensed to the California Black Chamber of Commerce, broadcasts extensive local news and community affairs, providing an opportunity for local community leaders to get on the air.

Marianne Knorzer, station manager at KRBS-LP in Oroville, California coordinates 50 volunteers to offer local programming to its rural community, including everything from Hmong language programming to Reggae.

KAPU-LP (104.7), in Watsonville, CA, prides itself on being the only radio station

on the U.S. mainland that broadcasts Hawaiian music 24 hours a day.

Additional examples include: Radio Sur Sangam, in Hayward, CA south of Oakland, which broadcasts using shortwave radio signals to South Asians. The community hoped for a LPFM but Congress limited the service from densely populated areas such as Hayward. The Society for the Preservation of Korean Culture and Language wanted a LPFM in the Chicago area.

LPFM offers an important alternative to the narrow terms of public debate that are all too often promoted by large broadcasters. Given these trends, LPFM is an important means of transmitting the views of historically underrepresented voices. A recent report by the Leadership Conference on Civil Rights titled, *Low Power Radio: Lost Opportunity or Success on the Dial*, concluded that LPFM "represents the best opportunity in years for diversity in radio broadcasting and ownership."

In 2003, a congressionally authorized study by the FCC determined that LPFM service could be expanded without causing significant interference to full-power FM radio stations. As a result, the FCC urged Congress to repeal the restrictions it placed on licensing LPFM stations and recently voted unanimously in support of this position.

Supporters of H.R. 1147 include: the National Association of Evangelicals; United Church of Christ; U.S. Conference of Catholic Bishops; NAACP; National Hispanic Media Coalition; National Bar Association; AFL-CIO; and emergency management agency directors.

We encourage you to support the Local Community Radio Act (H.R. 1147) when it comes to the floor for a vote. By doing so, you will support localism, choice, and diversity on the radio. If you have any questions, please contact Kenneth DeGraff with Rep. Mike Doyle at 5-2135 or Brad Schweer with Rep. Lee Terry at 5-4155.

NYDIA M. VELÁZQUEZ.

DECEMBER 7, 2009.

DEAR REPRESENTATIVE: The undersigned organizations urge you to vote in support of H.R. 1147, the Local Community Radio Act of 2009. H.R. 1147, introduced by Representatives Mike Doyle and Lee Terry will help increase the number of Low Power FM radio stations in our country. Passage of this bill will result in the creation of hundreds—if not thousands—of new local radio stations in towns and cities across the country. We are particularly grateful for the strong bipartisan support this measure has received in the House Energy & Commerce Committee and we look forward to its ultimate passage into law. We ask you to support the compromise bill that will be on the floor on Tuesday, December 15.

Low Power FM (LPFM) stations are non-commercial stations that operate at 100 watts or less—with a broadcast radius of approximately three to five miles. As uniquely local outlets, LPFM stations directly serve their communities.

LPFM licenses are granted to high schools, churches, labor unions, nonprofits and civic organizations—local institutions that understand the needs of their communities. LPFM stations give political, religious and civil rights leaders a forum to discuss local issues. LPFM stations also provide essential emergency services during times of crisis.

The Federal Communications Commission created LPFM stations in 2000 to serve the news and informational needs of local communities. But Congress voted to limit the

number of LPFM stations after claims were made that these outlets might interfere with the signals of full-power FM stations.

In 2003, the FCC commissioned a \$2 million taxpayer-funded study that found LPFM stations cause no significant interference with full-power stations. The FCC, in a unanimous bi-partisan vote, called on Congress to lift the restrictions it placed on licensing LPFM stations. But the legislation has not yet become law.

For this reason, we are calling on Congress to act quickly to authorize the FCC to license more LPFM stations. We respectfully ask you to support H.R. 1147 when it is scheduled for a full floor vote.

Thank you,

American Association of People with Disabilities, (AAPD), Access Humboldt, American Federation of Musicians, Capitol Community TV—OR, CCTV—Vermont, Chicago Media Action, Consumers Union, Free Press, Future of Music Coalition, Industry Ears, Institute for Local Self-Reliance, Intercollegiate Broadcast System, and Media Access Project.

Media Alliance, Media Bridges, National Hispanic Media Coalition, National Federation of Community Broadcasters, National Organization for Women, Native Public Media, New America Foundation, Prometheus Radio Project, Public Knowledge, Reclaim the Media, Rainbow PUSH, United Church of Christ, Office of Communication, Inc., and U.S. PIRG.

DECEMBER 14, 2009.

DEAR REPRESENTATIVES: We, as leaders representing many diverse religious traditions, urge you to vote in support of H.R. 1147, the Local Community Radio Act of 2009. H.R. 1147, introduced by Representatives Mike Doyle and Lee Terry will help increase the number of Low Power FM radio stations in our country. We are particularly grateful for the strong bipartisan support this measure has received in the House Energy & Commerce Committee and we look forward to its ultimate passage into law. The compromise version of H.R. 1147 coming to the House floor this week is the one that should be adopted by the House and ultimately passed into law.

Low power FM (LPFM) stations are uniquely local outlets that directly serve their communities. LPFM licenses are granted to churches, high schools, labor unions, non-profits, and civic organizations that understand and serve the needs of their local communities. LPFM stations give local leaders, including politicians, clergy, community elders and young people a uniquely local forum to discuss local issues. Moreover, LPFM stations have a track record of providing essential emergency services during times of crisis. Since its inception in 2000, approximately 800 LPFM stations have been authorized around the country. But the FCC requires Congressional action to fully implement the program.

People of faith are well-known for their strong participation in civic society—playing an important role in making our communities stronger and lifting up those who are suffering or who need a little help to succeed. Churches and communities of faith have taken significant advantage of low power radio as part of this mission—approximately half of all low power radio stations are licensed to churches or other houses of worship. In addition to allowing more opportunities for people of faith operate a radio

station, low power radio will also add new voices to the radio dial. It will allow for more equitable representation of people of color and women, and at the same time preserve opportunities for everyone—no matter their views—to be heard.

For this reason, we are calling on Congress to act quickly to authorize the FCC to license more LPFM stations. We respectfully ask you to support H.R. 1147 when it is scheduled for a full floor vote.

Sincerely,

Kristi S. Bangert, Executive Director for Communication Services, Evangelical Lutheran Church in America; Burton Buller, Director, Third Way Media; Galen Carey, Director of Government Affairs, National Association of Evangelicals; The Rev. J. Bennett Guess, Executive Director, Office of Communication, Inc., United Church of Christ; The Rev. Larry Hollan, General Secretary, United Methodist Communications; Most Reverend Gabino Zavala, Auxiliary Archbishop, Archdiocese of Los Angeles, Chairman, Communications Committee of the United States Conference of Catholic Bishops; Wesley M. Pattillo, Senior Program Director for Communication, National Council of Churches; The Rev. Jerry L. Van Marter, Presbyterian News Service, Chair, NCC Communications Commission; Linda Walter, Director, The AMS Agency, Seventh-day Adventist Church.

DECEMBER 14, 2009.

DEAR REPRESENTATIVES: The Prometheus Radio Project and the National Federation of Community Broadcasters write to endorse the version of the Local Community Radio Act, H.R. 1147, which will come to a floor vote in the House of Representatives this week. The Local Community Radio Act will allow for hundreds of new, low power non-commercial radio stations nationwide, operated by churches, schools, non-profit organizations, and public safety agencies.

Incumbent commercial broadcasters have agreed to drop their opposition to the bill in exchange for a significant new form of protection for their signals. This compromise fully protects full power stations from interference by new low power radio stations, even outside an incumbent station's legally protected coverage area. As representatives of low power radio broadcasters, we have accepted this extremely unusual obligation to remediate interference because we know that such interference is extremely unlikely to occur in the real world. A Congressionally-mandated independent technical study has shown that the low power radio stations authorized by this legislation would not cause harmful interference, and all five FCC Commissioners have reaffirmed the FCC's longstanding confidence in this legislation as safe for the existing FM service.

While the latest changes are superfluous, since earlier versions of the bill already provided appropriate protections for incumbent broadcasters, we support this compromise language because it will finally put to rest the objections of the National Association of Broadcasters. The bill also includes considerable changes made during the House subcommittee markup to address the concerns of National Public Radio. With the latest compromise, low power radio advocates have addressed every remotely plausible issue raised by low power radio's former opponents.

We would like to thank the offices of Representatives Mike Doyle and Lee Terry, as

well as Chairman Rick Boucher and Chairman Henry Waxman, for their tireless work in bringing both sides to a final version of the legislation that everyone can accept.

Communities across the country have been waiting for more than a decade for the opportunity to apply for their stations. The time for compromise and delay is over. We urge support for the bill in the House and full passage—without change—by the Senate.

Sincerely,

PETE TRIDISH,  
*Executive Director,  
Prometheus Radio  
Project.*

CAROL PIERSON,  
*President & CEO National Federation of  
Community Broad-  
casters.*

LEADERSHIP CONFERENCE  
ON CIVIL RIGHTS,  
Washington, DC, December 14, 2009.

Re Support the Local Community Radio Act of 2009 (H.R. 1147)

DEAR REPRESENTATIVE: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition with nearly 200 member organizations, we urge you to support H.R. 1147, the bipartisan Local Community Radio Act of 2009, when it comes to the floor to a vote. The version being considered by the House of Representatives should be adopted into law.

H.R. 1147, introduced by Representatives Mike Doyle (D-PA) and Lee Terry (R-NE), will help increase the number of Low Power FM (LPFM) stations in our country by authorizing the Federal Communications Commission (FCC) to license thousands of LPFM radio stations in cities, towns, and suburbs across the country. In an era of mass media consolidation, LCCR believes that it is important to preserve this avenue through which diverse viewpoints can be represented over the public airwaves.

LPFM refers to community-based, non-profit radio stations that operate at 100 watts or less and have a broadcast reach of only a few miles. Since 2000, the FCC has awarded more than 800 LPFM licenses to civil rights organizations, schools, and church groups. By authorizing even more LPFM licenses, H.R. 1147 will help ensure that all segments of society have the opportunity to participate fully in the broadcast communications environment in two important ways: by enhancing diverse viewpoints and by enhancing diverse ownership.

LCCR has long regarded expanding minority and female ownership in media as an important goal because of the powerful role the media plays in the democratic process, as well as in shaping perceptions about who we are as individuals and as a nation. By providing community leaders the opportunity to have a voice on the public airwaves where no such opportunity previously existed, LPFM radio will help promote greater diversity on the public airwaves.

While Latino Americans, African Americans, Asian Americans, and Native Americans make up one-third of the U.S. population, they own only 7.2 percent of all full-power radio and TV stations. Women make up 51 percent of the U.S. population, yet own less than 6 percent of full-power commercial radio and TV stations. We believe there is a direct connection between those who own these stations and the content they produce.

If you have any questions, please contact Corrine Yu, LCCR Senior Counsel, or Nancy Zirkon regarding this or any issue.

Sincerely,

WADE HENDERSON,  
*President & CEO.  
NANCY ZIRKIN,  
Executive Vice President.*

Mr. TERRY. I appreciate your efforts, Mr. DOYLE.

Mr. Speaker, Mr. DOYLE mentioned a variety of religious organizations that support this, and I found the same thing in my community.

I want to yield 2 minutes to the gentleman from South Carolina (Mr. WILSON) who, in fact, wants to speak on that aspect of our low-power community radio.

Mr. WILSON of South Carolina. Mr. Speaker, I rise today in support of H.R. 1147, the Local Community Radio Act of 2009.

I appreciate the leadership of Congressman LEE TERRY of Nebraska on this important issue.

Passage of this bipartisan legislation is vital to expanding the availability of noncommercial, low-power—LPFM—radio stations to towns and cities across our country. This legislation repeals certain restrictions which limit broadcast capabilities for low-power FM stations. Expanding LPFM licenses will make owning a radio station possible for churches, synagogues, schools, emergency responders, and other community groups that best understand the needs of their local communities.

These stations give civic, clergy, and community leaders a forum to discuss local issues and to provide essential emergency services during times of crisis. Hundreds of churches and ministries already rely on LPFM stations to get their messages out; but, unfortunately, service is currently limited only to rural areas and is frequently limited to property lines.

I urge Members to pass H.R. 1147, which will move to expand low-power FM radio for churches, synagogues, schools, community groups, and emergency responders in the United States.

Mr. BLUMENAUER. Mr. Speaker, I'm pleased to support H.R. 1147, the "Local Community Radio Act," a bipartisan measure to revitalize the local, public interest radio programming that is so important to communities nationwide.

The broadcast spectrum, after all, belongs first and foremost to the American people. I continue to believe that public access to these resources and quality, local programming should be readily available to all. In the 106th Congress, we established the bipartisan Public Broadcasting Caucus to highlight the unique and invaluable contributions of public radio and television stations and programs. Public Broadcasters provide valuable commercial-free educational, informational, and cultural programming for communities all across the country, as well as emergency alerts.

Complementing these efforts are our country's local, low-power FM radio stations. These stations, whose signals only operate in a

three-to-five mile radius, serve as vibrant community resources. These small operators include all manner of local politicians, clergy, civil rights, and community leaders. In times of crisis, like public radio stations, they may also provide essential emergency services. I am pleased Congress is acting to strengthen the ability of these stations to operate responsibly.

This bill is the result of years of negotiations between commercial broadcasters, public broadcasters, and Congress. I appreciate the efforts of all, including National Public Radio (NPR) and the National Association of Broadcasters, NAB, to work together to craft this product. The result is a bill that balances the needs of incumbent stations to protect their signals with an opening up of the airwaves to smaller, more diverse operators.

I look forward to moving this compromise forward, and to strengthened programming in our communities.

Mr. TERRY. Mr. Speaker, I have no further speakers, so I yield back the balance of my time.

Mr. BOUCHER. Mr. Speaker, we also have no further requests for speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. BOUCHER) that the House suspend the rules and pass the bill, H.R. 1147, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BOUCHER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

#### COMMERCIAL ADVERTISEMENT LOUDNESS MITIGATION ACT

Mr. BOUCHER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1084) to require the Federal Communications Commission to prescribe a standard to preclude commercials from being broadcast at louder volumes than the program material they accompany, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1084

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Advertisement Loudness Mitigation Act" or the "CALM Act".

#### SEC. 2. RULEMAKING ON LOUD COMMERCIALS REQUIRED.

(a) REGULATION REQUIRED.—Within 1 year after the date of enactment of this Act, the

Federal Communications Commission shall prescribe pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.) a regulation that is limited to incorporating by reference and making mandatory (subject to any waivers the Commission may grant pursuant to subsection (b)(2)) the "Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television" (A/85), and any successor thereto, approved by the Advanced Television Systems Committee, only insofar as such recommended practice concerns the transmission of commercial advertisements by a television broadcast station, cable operator, or other multichannel video programming distributor.

(b) IMPLEMENTATION.—

(1) EFFECTIVE DATE.—The Federal Communications Commission shall prescribe that the regulation adopted pursuant to subsection (a) shall become effective 1 year after the date of its adoption.

(2) WAIVER.—For any television broadcast station, cable operator, or other multichannel video programming distributor that demonstrates that obtaining the equipment to comply with the regulation adopted pursuant to subsection (a) would result in financial hardship, the Federal Communications Commission may grant a waiver of the effective date set forth in paragraph (1) for 1 year and may renew such waiver for 1 additional year.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "television broadcast station" has the meaning given such term in section 325 of the Communications Act of 1934 (47 U.S.C. 325); and

(2) the terms "cable operator" and "multichannel video programming distributor" have the meanings given such terms in section 602 of Communications Act of 1934 (47 U.S.C. 522).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. BOUCHER) and the gentleman from Florida (Mr. STEARNS) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. BOUCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to insert extraneous material into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. BOUCHER. I yield myself such time as I may consume.

Mr. Speaker, the bill before the House is the Commercial Advertisement Loudness Mitigation Act, or in short, the CALM Act. It sets standards on the permissible volume levels for commercials aired on television, and it is patroned by our colleague on the Energy and Commerce Committee, the gentlewoman from California (Ms. ESHOO). It addresses in an appropriate manner a major consumer complaint.

We have all experienced the frustration of TV commercials blaring well above the volume levels of the programs that accompany them on broad-

cast television. After scrambling for the remote control and after turning down the volume on the commercials, we then have to pick up the remote again in order to restore the volume when the program that the commercial attends resumes. It is very frustrating. It's an annoying experience, and something really should be done about it.

□ 1315

Other countries, including Australia, Brazil, Israel, the United Kingdom and France all have regulations addressing the volume on television commercials, and with the bill that is now before the House, we have the opportunity to confer on American TV viewers a similar benefit.

We can take this step in a way that the industry finds acceptable. The television industry-based Advanced TV Systems Committee has developed the technical standards that are appropriate to control variations in commercial loudness. The industry has approved that standard and the bill before us directs the Federal Communications Commission to incorporate that standard in a rulemaking.

A waiver from the rule is available for any television station that can show financial hardship in making the changes to its equipment needed in order to comply with the terms of the rule.

Some may say that there is no need to take this step, but I think that the American public is going to react very differently and in a very supportive way. In fact, I think that the CALM Act has the potential to rival in popularity the Do Not Call List that was adopted by this Congress several years ago. That act, as most will recall, protected against unwanted commercial telephone calls. This will protect against intrusive higher volume levels that attend television commercials.

I want to commend the gentlewoman from California. She has shown great leadership in bringing this measure before the House. She has worked with the industry and the members of our subcommittee as we have revised the bill in order to achieve the broad consensus that it enjoys today.

It is my privilege to encourage approval by the House of the CALM Act, and I reserve the balance of my time.

Mr. STEARNS. Mr. Speaker, I yield myself such time as I may consume.

This bill, H.R. 1804, the Commercial Advertisement Loudness Mitigation Act, or the CALM Act, is a bill whose time has come and perhaps because the transition to digital has created the perfect opportunity for industry to take care of this. But they did not take care of this for some 40 years. The bill would require the Federal Communications Commission to issue regulations, based on industry standards, for loud commercial advertisements within 1 year of enactment. The regulation

would take effect 1 year after adopted by the FCC.

According to testimony at a June Energy and Commerce hearing, consumer complaints about loud commercials have been streaming into the FCC as far back as 1960 and are among the most common complaints. Complaints continue to come into the FCC today. In fact, in the 25 quarterly reports on consumer complaints that have been released since 2002, 21 have listed complaints about the, quote, abrupt changes in volume during transition from regular programming to commercials as among the top consumer grievances regarding radio and television broadcasting. So as we can tell, this is a top issue for consumers.

Now this issue is a little bit more complex than it appears. Many different entities are responsible for producing and distributing the content that consumers hear and see in their living rooms. Each element may be recorded and provided at a different respective volume level. Moreover, shows and movies have a dynamic sound range to cover everything from a quiet scene to a huge explosion. Commercials, meanwhile, tend to have a narrow sound range. Volume levels are typically set for the programming, which can simply throw off the volume levels for the commercial. But as I pointed out earlier, now we have a solution in place because the transition to digital has made that possible.

Two years ago, the Advanced Television Systems Committee established a Subgroup on Digital Television Loudness. Now it is this subgroup, consisting of leading experts in audio technology who participated together from all the major broadcast networks, cable, production and post-production companies, manufacturing and education; all these very bright, talented, highly technical people got together in this subgroup. They established a way to solve the problem. And since it was established, these audio technology experts have crafted a hard-fought consensus on a recommended practice that should be employed across the TV industry to deal with the complaint that consumers have made for almost 50 years. I trust the collective wisdom of these technical experts—it is done by the private sector—and Subgroup's hard work to craft a solution to the TV loudness issue should be commended.

Let me say a few more comments about this. There are going to be some small cable companies, broadcasters, who are going to have a difficult time complying with this. Remember, now, after 1 year, the FCC is going to take this directive that the Advanced Television Systems Committee established and is going to make it industry-wide. Now some of these small companies are going to complain that they can't afford to implement it. In the bill, there is a 1-year extension for those small

companies, and if it turns out they still can't make it, there is another extension. So now we have the majority of the industry able to do this, but we have set aside within the bill a safety hardship in which they just demonstrate they can't do it for financial reasons and they will be left to have another year to meet the standards.

So in a sense, Mr. Speaker, I think we have a solution to a problem that has been one of the biggest complaints with the FCC all these years; and so with that in mind, I urge my colleagues to support H.R. 1804, and I reserve the balance of my time.

Mr. BOUCHER. Mr. Speaker, at this time I am pleased to yield such time as she may consume to the sponsor of the bill, the gentlelady from California (Ms. ESHOO).

Ms. ESHOO. I would like to begin by thanking the chairman of our subcommittee, Mr. BOUCHER, for his consistent support and cooperation to help bring the bill through the committee. I doubt that we would be here today were it not for that. And I want to recognize and thank the ranking member of our subcommittee for the work that he has put into this as well and the suggestions that he made in order to bolster the bill and to make it imminently workable. I also want to thank, of course, the chairman of the full committee, the gentleman from California (Mr. WAXMAN), for his support.

Mr. Speaker, I rise today to ask my colleagues to vote in favor of this bill which is designed to eliminate the ear-splitting levels of television advertisements and return control of television sound modulation to the American consumer. I first introduced the Commercial Advertisement Loudness Mitigation Act, called the CALM Act, more than 3 years ago. This is something that many of our constituents now refer to in their shorthand as the Loud Commercial Law. I have heard loud and clear from people across the country. We have consumers across the country that are with us and would like to see this accomplished.

The premise of the bill then, as now, was really simple; and in an era of 1,000- or 1,800-page bills, this is a 2-page bill, and it is to make the volume of commercials and programming uniform so that consumers control the sound. The problem has existed for more than 50 years, when television advertisers first realized that consumers often left the room when commercials were playing. They used the loud commercials as a gimmick to grab the attention of consumers, even as they moved to other parts of their home. But for anyone who can't get to the mute button fast enough, we know that we are all subjected to blasting ads. For those with sensory difficulties, the loud commercials are more than just an annoyance. Sound spikes can harm hearing and sometimes they are painfully loud.

This issue, as my colleagues have referenced, is also one of the top complaints, consistently one of the top complaints, from consumers across the country to the Federal Communications Commission. This bill is going to bring a measure of relief to the American consumer. It is also, I think, an important step in identifying the need to make broadcasters and video providers responsible for answering to consumers at the most basic level. I created this bill taking into account the economic health of licensees and the importance of smaller stations and providers. The Advanced Television Systems Committee, or the ATSC, a body that sets technical standards for digital television, has developed a solution to the problem of the varied volume between commercials and programming, with one stream that keeps the volume uniform.

The bill directs the FCC to adopt these engineering standards as mandatory rules within 1 year. These standards were not in the works until we introduced this legislation in the last Congress, so I am pleased to have encouraged the industry to find the answer to this problem so we don't have to wait another 50 years for a solution.

I look forward to voluntary and immediate adoption of the standards by broadcasters, cable, satellite and all multichannel program providers. But the bill exists because we know that voluntary compliance or adherence to consumer needs has been a failure and we need to assure enforcement to protect the rights of consumers. The bill also requires cable and satellite operators to install the engineering fix necessary to ensure that the sound is modulated.

The bill is not inflexible. It heeds the call by industry for a compliance grace period. Those affected, and I think it's very reasonable, will have 1 year after the FCC adopts the rule for purchase and installation of the ATSC standard-based equipment, and the FCC may grant up to two successive 1-year waivers for financial hardship. Small stations and cable operators certainly should be able to comply within 3 years, plus the amount of time it takes the FCC to adopt and release the rules.

I have read the minority comments that have been filed relative to the bill, and I want to answer directly the concerns of some of my colleagues about the necessity of the bill, so I want to reiterate the following:

First, I think the bill is necessary because we need a mandatory enforcement tool, and I stated that earlier. Volunteerism hasn't worked for 50 years.

Second, the bill makes the ATSC standards applicable to all FCC licensees, and that includes satellite and cable providers as well as broadcasters. The voluntary standards as written only apply to broadcasters.

Thirdly, the bill matters to our constituents, and I think that that's what really matters the most, and it stands as proof that Congress can listen to their concerns.

Fourthly, it has been said that Congress has better things to do. I have never suggested that this solves the great challenges that face our country today. As I said, it's a 2-page bill, but it is something that has been left unattended to for half a century and I think the time has come that we end the practice of consumers being blasted out of their seats when they're listening to their favorite programming.

The technical fix is long overdue and under the CALM Act, as amended, consumers will be in the driver's seat. I look forward to the passage of this bill, and most importantly so do millions of other consumers and our constituents across the country.

Mr. STEARNS. Mr. Speaker, I yield myself such time as I may consume.

Let me just perhaps move a little further. The gentlelady from California mentioned that a lot of people had said, well, why does Congress have to get involved? That has been brought before me before. And I would say—and this is a compliment to the lady from California—what she did with her bill.

Her bill originally directed the FCC to write its own rules, but she reached out to industry and engaged them, which is a commendation for her, and asked them, Well, how can we solve this? So for those people who say, Why can't industry solve it?, she was an impetus to do this, and her bill is furthermore an impetus to do this, because now industry developed a subgroup, the subgroup came up with the technology to be able to solve the problem, and now she's saying basically, let industry solve the problem and let the FCC adopt what they've come up with.

□ 1330

Another thing that I think came through the process which is also, I think, a compliment to her was that she was willing to realize that some in the industry, some of the smaller companies, might have a financial problem with this, so she was willing to change the bill to allow this, I'll call it a safety valve, for those small companies that can't make it, that petition the SEC to get a delay so that they have 1 year and possibly another year.

So I think what this bill shows to those people who say why can't we just let the industry solve it, I think the simple fact that she went out and engaged them, they developed a subgroup working with the industry, as she did, works it in a way that industry is solving their own problem, but they also realize, after all these years, going back to the 1960s, and these complaints, something's got to be done. And I think many of us, in the last weekend watching football games, can



remember that time we had to get up with the remote and turn it off. And you can say, well, that's fine; just turn it off. But it's constantly an irritant when you have to do it. And we've got all the new bowl games coming up.

So I think the aspect about that we all should realize is that Ms. ESHOO also was willing to change the bill and reach out and work with industry to get this done, and to also provide the safety valve. So I think that's an important aspect to bring to the attention of my colleagues, how this bill works I think in a way to help industry.

Mr. Speaker, I have no further speakers, so I yield back the balance of our time.

Mr. BOUCHER. Mr. Speaker, I yield to myself 30 seconds.

Mr. Speaker, I simply want to take this time to thank the gentleman from Florida (Mr. STEARNS) for the bipartisan way in which we have processed this measure through our committee, and for his strong support of the measure that we bring to the floor this afternoon. The work on this bill is reflective of the best traditions of our committee, where we work out problems, we resolve concerns within the confines of the committee process, and we do so in a collaborative way, with people on both sides of the aisle participating in that effort. And in no matter has that spirit of cooperation been better reflected than in the way we have processed and handled this bill today. So I want to thank Mr. STEARNS and his colleagues on the Republican side for that outstanding bipartisan cooperation.

Mr. BARTON of Texas. Mr. Speaker, I rise in opposition to the CALM Act.

While I, too, would like to have someone turn down the TV when it gets loud, I've already given that job to my thumb. As a result, I only need one Member of Congress at work on this vital problem, not 435. I appreciate Ms. ESHOO's efforts to protect America's ears from loud commercials and our thumbs from arthritis brought on by overuse, but writing a law to do so seems a stretch.

The bill adopts into Federal law the industry-developed standards that are already being implemented, and consumers do not need the government to function as remote volume controls for them. Simply put, the private sector already has acted on this noisy nuisance.

If you're not convinced that having a reliable and fully functioning thumb is better for both you and the Nation than having a fully functioning bureaucracy to adjust your TV's sound, there's also this: Many entities are responsible for producing and distributing the content that we all see and hear. Broadcast affiliates, networks, and cable, satellite, and phone companies then transmit the content. Each element of the programming may be recorded and provided to the distributors at different volume levels. Moreover, shows and movies have a broad, dynamic sound range to cover everything from explosions in a car chase to lawyers whispering to juries. Commercials, mean-

while, tend to have a narrow sound range, and they can blare and annoy when they suddenly follow a movie scene that was putting you to sleep.

The technical challenges presented by these facts are significant, but with the transition to digital television, industry has responded. On November 5, the Advanced Television Systems Committee, ATSC, announced the approval of the "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television." These standards provide guidance to the industry, and focus on audio measurement, production and postproduction monitoring techniques, and methods to control loudness for content delivery.

I want to commend my friend, Ms. ESHOO, for working with all the relevant parties and for amending her bill to acknowledge the industry's work. In my opinion, however, there is no reason for Congress to get between me and my remote control. On those grounds, I have to give this measure a thumbs down.

Mr. BOUCHER. Mr. Speaker, we also have no further requests for time. I yield back the balance of our time and urge passage of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. BOUCHER) that the House suspend the rules and pass the bill, H.R. 1084, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### BREAST CANCER SCREENING GUIDELINES

Mrs. CAPPS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 971) expressing the sense of the House of Representatives regarding guidelines for breast cancer screening for women ages 40 to 49.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

##### H. RES. 971

Whereas the United States Preventive Services Task Force (USPSTF), an independent panel of experts in primary care prevention and evidence-based medicine, issued guidelines on November 16, 2009, regarding mammography screening for women, including women age 40 to 49;

Whereas these guidelines reflect a change from USPSTF mammography recommendations issued in 2002;

Whereas the new guidelines have caused concern among many health providers and confusion among many women age 40 to 49;

Whereas the Department of Health and Human Services has stated that while the USPSTF has presented some new evidence for consideration, the policies of the Department remain unchanged; and

Whereas the Department of Health and Human Services has stated that there is a great need for more evidence, more research, and more scientific innovation to help

women prevent, detect, and fight breast cancer: Now, therefore, be it

*Resolved*, That it is the sense of the House of Representatives that—

(1) the guidelines of the United States Preventive Services Task Force ("USPSTF") would not prohibit an insurer from providing coverage for mammography services in addition to those recommended by the USPSTF and should not be used by insurers to deny coverage for services that are not recommended on a routine basis; and

(2) the National Cancer Institute should continue to invest and provide leadership regarding research to develop more effective screening tools and strategies for improving detection of breast cancer.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from California (Mrs. CAPPS) and the gentleman from Tennessee (Mrs. BLACKBURN) each will control 20 minutes.

The Chair recognizes the gentlewoman from California.

##### GENERAL LEAVE

Mrs. CAPPS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend remarks and include extraneous material in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Mrs. CAPPS. Mr. Speaker, I yield to myself such time as I may consume.

Mr. Speaker, I rise today in support of House Resolution 971. This resolution expresses the sense of the House of Representatives that the U.S. Preventive Services Task Force guidelines would not prohibit an insurer from providing coverage for mammography services beyond those recommended by the task force.

It further states that these guidelines should not be used by insurers to deny coverage for these services.

It also expresses the sense of the House that the National Cancer Institute should continue to invest and provide leadership regarding research to develop more effective screening tools and strategies for improving the detection of breast cancer.

On November 16, 2009, the U.S. Preventive Services Task Force issued a series of six recommendations regarding breast cancer screening, three of which pertain to mammography screening among women of various age groups. At a recent hearing in our Energy and Commerce Committee's Health Subcommittee, the task force representatives acknowledged that they should have done a better job communicating their findings to the public. Unfortunately, this failure in communication has led to much concern and confusion about what their findings and recommendations are and what the implications would be.

Mr. Speaker, this task force is not suggesting that women in their forties forego mammography. The task force is recommending that women in their



forties determine when to begin screening and base this decision on a conversation with their doctors or health providers. And we can all agree that women in their forties should have access to mammography if these women and their physicians decide it's right for them. I think we can also agree that while mammography is still the best tool that we have to detect breast cancer in its earliest stages, it is, by every means, an imperfect tool. We need continued research into more effective screening tools and strategies to improve the detection of breast cancer.

Breast cancer is the second most common cancer among United States women, and it is the leading cause of cancer death for women between the ages of 29 and 59. This year, new cases of breast cancer among American women will reach an estimated 192,370, and over 40,000 women will die from breast cancer this year. The American Cancer Society estimates that one in 8 women will have invasive breast cancer at some point in her lifetime. These statistics illustrate that breast cancer continues to be a major health issue, despite recent declines in breast cancer mortality rates.

But beyond these statistics, cancer is a very personal situation for many of us in this Chamber, whether it has affected a mother, a daughter, a wife, a friend, a colleague or, as it has for me, my own sister. I want to commend my colleague, **DEBBIE WASSERMAN SCHULTZ**, for introducing this resolution and for being so forthcoming about her very personal experience being diagnosed with and treated for breast cancer.

I reserve the balance of my time.

**Mrs. BLACKBURN.** Mr. Speaker, I do rise in support of the resolution, and I yield myself such time as I may consume.

I am pleased to see this resolution before us, and I want to commend Congresswoman **WASSERMAN SCHULTZ** and also Congresswoman **CAPPS** for their work on this issue. I appreciate their leadership to raise awareness, and I have grave concerns, very grave concerns on how this issue translates into the health reform bills that are currently before us. While I do rise in support of this, I do think that it is important, it is imperative, as a matter of fact, that we revisit why we are here and why we are having this discussion today. And it's important that we realize that, even with the resolution before us, it is not going to get to the crux of the issue, but it is a good, solid first step.

With or without a government-run health plan, H.R. 3962 would still be a massive takeover of health care. Government bureaucrats will be charged with making decisions of what can be in your health plan, and they can make it illegal for a health plan to cover

anything not approved by the government. In the House version of the Democrats' health reform, the U.S. Preventive Services Task Force and its successor organization are cited over a dozen times and given disturbing new authority over coverage decisions regarding breast cancer screening.

For example, on page 1,762 of the Democrat health reform bill, the U.S. Preventive Services Task Force is given the authority to determine, and I'm quoting, "the frequency" and "the population to be served." And quoting again from the bill, "The procedure or technology to be used for breast cancer screenings covered under the Indian Health Service Act." Section 303 of H.R. 3962 states that the, and I'm quoting again, "Commissioner shall," which is a mandate, Mr. Speaker, "shall specify the benefits to be made available under exchange participating health plans."

In plain English, that means the new health choices commissioner will determine what preventive services, including mammography, are covered under your health insurance based on what the task force says is right. Passing a resolution and passing this resolution before us, as I said, is a good, solid first step. However, I do believe to strike at the heart of the problem we, indeed, need to move forward on a motion to instruct conferees to make certain that we revisit this issue.

Under the Democrats' bill, the task force will set government policy and will determine what is covered and make it illegal for plans to cover other items. All recommendations of the Preventive Services Task Force and the Task Force on Community Preventive Services as in existence on the day before the date of the enactment of this act—which would be H.R. 3962—shall be considered to be recommendations of the Task Force on Clinical Preventive Services.

**Mr. Speaker,** in order to prevent any type of rationing, that is why we need to take even further steps. I commend my colleagues for their diligent work on this issue. It is the right first step, and I encourage all of us to continue to work to resolve the issue.

I reserve the balance of my time.

**Mrs. CAPPS.** Mr. Speaker, I wish to remind my colleagues that in the health reform bill, as it was considered in the House of Representatives, once the essential benefits package is established, it acts as a floor, not as a ceiling. And with regard to preventive services, the bill says that recommended items and services with a grade of A or B from the U.S. Preventive Services Task Force shall be covered as part of the essential benefits package, with no cost-sharing, and that the Secretary may approve such coverage, regardless of what the task force or the benefits advisory committee says.

And at this point I'm very pleased to yield to Representative **WASSERMAN SCHULTZ**, the sponsor of this legislation, 5 minutes.

**Ms. WASSERMAN SCHULTZ.** Mr. Speaker, today I rise to support House Resolution 971, which underscores the importance of access to breast cancer screening for all women.

As many of you know, last month the United States Preventive Services Task Force issued guidelines regarding mammography screening for women. These guidelines reflect a change from USPSTF mammography recommendations that were issued in 2002, in that they recommend against routine screening mammography for women ages 40 to 49. But the new guidelines conflict with many of the well-established recommendations from the American Medical Association, the National Comprehensive Cancer Network, the American Cancer Society, and Susan G. Komen for the Cure.

In addition, numerous studies and scientific research over the past 20 years have confirmed that annual mammograms are of value to women ages 40 to 49. In fact, the task force itself concluded that screening women in their forties would reduce their risk of death from breast cancer by 15 percent, while finding that screenings for women in their fifties would reduce their risk of death from breast cancer by 14 percent. As a result, many young women and health care providers have been left feeling uncertain and concerned.

Recommendations like those the task force made are supposed to provide clarity for doctors and their patients. Unfortunately, the guidelines issued by the task force left most women and oncologists baffled. Currently, there is no available breast cancer screening tool that is perfect, but what is clear is that intervention through routine screening for breast cancer using mammography can save the lives of women at a time when medical science is unable to prevent this disease.

□ 1345

At the end of the day, mammography screening saves lives. And I offer this resolution to underscore the House's commitment to expanding access to preventive health care for women. This resolution underscores the sense of the House that the task force recommendations must not be used by insurers who are, at the end of the day, getting in between women and their doctors and getting women the access that they need to preventive services, and that they must not be used by insurers to deny women coverage for routine screenings.

It also urges the National Cancer Institute to invest and provide leadership to provide research to develop more effective research tools and strategies for

improving the detection of breast cancer.

While we develop better tools for screening, we cannot leave certain women, particularly young women, with nothing, which is what the task force recommendations essentially did.

To be sure, while we have come a long way in the fight against breast cancer, we still have a long way to go. This year, in the United States alone, over 190,000 women will be diagnosed with breast cancer; 40,000 of them will not survive. That is why we cannot rest in our efforts to fund research and find a cure for this vicious disease, and it is why we cannot rest in our efforts to provide education and awareness for all women. We must ensure that they have access to screening and treatment, and we must ensure that we do all we can to support the more than 2½ million survivors that live in our country alone today.

As many of you know, and has been gratefully acknowledged, I recently had my own battle with breast cancer, and I am so grateful and humbled to count myself among this growing group of survivors. I was fortunate to have the access to the treatment and support that I needed to win my own fight. I urge my colleagues to vote in favor of this resolution to make sure that everyone has that same opportunity.

Mr. Speaker, since the task force issued these guidelines, I have spoken to so many young survivors who have been left feeling so frustrated and as if their lives somehow mattered less than the lives of older women. And this resolution sends a message to those young women across America today that that is not so, that the House of Representatives, that the United States Government, cares about all women's lives.

And with all due respect to my good friend, Mrs. BLACKBURN, whom I greatly respect and I appreciate your support for this resolution, what this resolution does not do, and what the task force guidelines do not do, and what our health care reform bill does not do, is it does not ration health care. The gentlelady, if she reads the text of the health care reform legislation more clearly, will see that our language in our health care reform bill is a floor. The gentlelady should know that the Secretary of Health and Human Services can go beyond the task force's recommendations, that they can go further, and that at the very least the health care reform bill that we passed off the floor of this House ensures that women get access, all women get access to the appropriate preventive screening that they need and ensures that that coverage is free. And the Health and Human Services Secretary can go even further than those task force recommendations that are labeled at an A and at a B level.

And with that, Mr. Speaker, I appreciate the indulgence of the leadership

and the support of my colleagues. And I want to particularly single out the colleague that sits to the left of me for being a leader on issues that are important to young women who are diagnosed with breast cancer. He has been an incredible advocate for young women survivors, and I greatly appreciate it.

Mrs. BLACKBURN. Mr. Speaker, at this time, I am pleased to yield 2 minutes to the gentlewoman from North Carolina (Mrs. MYRICK), who has been a true champion of women and breast cancer issues and has really led on our side of the aisle as we have worked to deal with so many of these issues.

Mrs. MYRICK. Mr. Speaker, I thank my friend for yielding. I also thank my friends on the other side of the aisle, DEBBIE WASSERMAN SCHULTZ and LOIS CAPPS in particular. The two of them have been very, very up front and aggressive in leading the charge on these issues, and I'm grateful for it.

As you have already heard, the government's Preventive Services Task Force recently advised that women under 50 don't need mammograms, that those over 50 don't need them every year, and that doctors shouldn't encourage breast self-exams due to false positives. This is really shocking, because what message does that send to women?

We all know mammograms aren't perfect, and we hope that before long we are going to have better technology that will do the job. But cancer is a tricky disease, and breast cancer exams, sure, could lead to some tests that maybe aren't necessary, and the same with mammograms, and some people can say it's all nerve-racking to do it. But as a breast cancer survivor, I know that screening works. It saves lives.

And it's not always easy. I had to go to several doctors before my cancer was detected. If I hadn't been persistent and sought the timely screening which did find mine, I might not be standing here today. The simple truth is that screening does save lives. It makes a difference for many women, whether they are 40 years old, 65 years old, or 70 years old. It doesn't matter. Many women look for excuses anyway. They don't want to get screened for cancer. They really don't like to do it. And some of them say, I don't even want to know. Well, this recommendation certainly doesn't help that problem.

Statistically, maybe mammograms are a bit more likely to save your life if you're over 50, but they save lives for those under 50 every day, and we know that. What if your 45-year-old sister or daughter or your mother doesn't know she has cancer until it's too late? And as I said before, the recommendation even advised doctors to discourage breast self-exams. Come on. What more sensible, simple tool do women have to

guard against what can be a very aggressive disease? After all, we don't know what causes cancer. And women need to pay close attention.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mrs. BLACKBURN. I yield the gentlewoman 30 additional seconds.

Mrs. MYRICK. Women need to pay close attention to their bodies, because if something is wrong, they need to be aggressive about testing and finding the answers, and it doesn't matter how old you are. As was mentioned, too, so many younger women are getting cancer today, so many more than ever did before, and we need to find out why. But in the meantime, we need to give them the options that they need.

And this resolution is a sense of Congress that these new recommendations shouldn't be used to deny women coverage or screening tests, and I urge my colleagues to support it.

Mrs. CAPPS. Mr. Speaker, may I inquire of the remaining time on this side?

The SPEAKER pro tempore. The gentlewoman from California has 11½ minutes remaining, and the gentlewoman from Tennessee has 14 minutes remaining.

Mrs. CAPPS. At this time, it's my pleasure to acknowledge and I yield to the Congressman from New York (Mr. ENGEL) 2½ minutes.

Mr. ENGEL. Mr. Speaker, I want to thank my colleague from the Health Subcommittee on the Energy and Commerce Committee, LOIS CAPPS, who is always a leader in issues like this. And I want to commend DEBBIE WASSERMAN SCHULTZ, the gentlewoman from Florida, for her courage in talking personally, as well as Congresswoman SUE MYRICK from North Carolina for speaking personally. This is obviously a disease that affects so many Americans and their families personally, so I rise in strong support of this resolution on the U.S. Preventive Services Task Force breast cancer screening guidelines.

As the second most common cancer among women in the U.S. and a leading cause of cancer death for women under 60, breast cancer is an issue that resonates with us all. The recent changes in recommendations for breast cancer screenings made by the U.S. Preventive Services Task Force on November 16 have been met with considerable attention and consternation nationwide. I can say quite frankly that I was extremely concerned that news reports related to these screenings would cause some women in their forties to no longer get mammograms annually for breast cancer.

I think what was announced was a mistake. This would really be a travesty if women were prevented from getting mammograms annually. We know that declines in breast cancer death rates since 1990 are primarily attributed to early detection and improvement in treatment. In fact, about 15,000

breast cancer deaths this year were prevented in part due to an expanded access to mammography. While our screening tools are not perfect, they are valuable, and leading medical advocacy groups, including the American Cancer Society, the American Medical Association, and Susan B. Komen for the Cure, continue to recommend annual mammography for women starting at age 40, not 50.

The USPSTF has since clarified that it never meant to send the message that women shouldn't get breast cancer screenings, but that in certain age groups women should consult with their personal physician about the benefits, risks, and limitations of mammography. Unfortunately, and the task force admitted this at a hearing in our Energy and Commerce Committee, this message has largely been lost in the media.

I therefore again commend the gentlewoman from Florida for her resolution today and really her work all year, guided by her personal experience, to improve education and awareness of the benefits of breast cancer screening. The guidelines of the USPSTF should certainly not be interpreted as prohibiting a health care insurer from providing coverage for mammography services and should not be used by insurers to deny coverage for services that are not recommended on a routine basis.

We recently marked the 25th anniversary of the National Breast Cancer Awareness Month, which celebrated great strides. We must continue that, and I urge support of the resolution.

Mrs. BLACKBURN. Mr. Speaker, at this time, I yield 3 minutes to the gentleman from Michigan (Mr. ROGERS), who has been a leader in the health care debate on our Energy and Commerce Committee.

Mr. ROGERS of Michigan. Mr. Speaker, I want to thank DEBBIE WASSERMAN SCHULTZ for her courage to get up here and talk about her ailment. I, too, am a cancer survivor, and it is a difficult process. But my concern is greater than even our own personal experiences. It is what is the actual result of that health care reform bill that leads us to this resolution.

We are scrambling around on the floor today to say that a government-appointed commission, this task force, has made a recommendation based on quality of year lives and cost, not good science, not that what saves lives, that women between 40 and 49 need not get mammograms. And you say, listen, that doesn't mean rationing. It doesn't mean anything. It doesn't have any weight of law. But guess what? The health care reform bill that passed this House makes those recommendations law.

Let me read a couple of quick things, Mr. Speaker, if I may. By the way, you have to go to three different sections,

two different complete books, to understand how this impacts real women in America, some 2,000 pages into it.

One section: Limitation on individual health insurance coverage may only be offered on or after the first day of year one as an exchange-participating health care plan. Pretty fancy Washingtonspeak.

Let me tell you what it means in another section of the bill about 1,000 pages later: A health plan is prohibited from offering coverage for benefits not included in the essential benefits package.

And you say, Oh, no that's a floor.

It's not a floor. The language in the bill goes on further. And do you know what it does? It says that the only difference between the levels of plans is the amount of cost sharing, not what it covers.

Here is the scary part, of which I don't think you all realize that you did to about 47,000 women in America: All recommendations of the Preventive Services Task Force and the Task Force on Community Preventive Services as in existence on the day before the date or the enactment of this Act shall be considered to be recommendations.

The bill goes on to say that they must use that in the calculation of benefits. Guess what? Forty-seven thousand women who are under the age of 50 today will be diagnosed with late-stage breast cancer because of your bill. It's in your bill. It's in your language. Do you know what that means? Eighty percent of them will die because of their diagnosis.

Do you realize that more women will die because of this bill than we lost men in the Korean War? And I know you think, Oh, scare tactics.

No. It's the bill. But do you know what? You can't read it on page 1 or 2. You have to keep going back and forth in 2,000 pages to understand the full impact of what will happen to women who are 40 to 49 years old.

You did it in your bill.

I am going to plead with you. For the lives of 37,000 women who will die and 47,000 women, according to the recommendations of this task force which you make law—

The SPEAKER pro tempore. The time of the gentleman has expired.

Mrs. BLACKBURN. I yield the gentleman 30 additional seconds.

Mr. ROGERS of Michigan. I am going to plead with you, please read the bill, not just 1 to 2,000. Go back to the other sections and understand its full impact.

And you say, It won't happen in America. Guess what? This task force recommendation resulted on December 2 in California prohibiting low-income women under the age of 50 from receiving mammograms. It is happening today. This task force is doing it today. With your bill, it becomes law.

They are prohibited. And it is illegal for them to get coverage other than what the government says they can get. And guess what? Mammograms don't qualify for women 40 to 49. Please think of those women and those families.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair reminds Members that they are to address their comments to the Chair.

Mrs. CAPPS. Mr. Speaker, I would remind my colleague that at the hearing 2 weeks ago at the Energy and Commerce Committee, the breast cancer stakeholders were asked a simple question: Would H.R. 3962, the health reform bill, help women with breast cancer? Every witness on that panel, including the American Cancer Society, Komen, the National Breast Cancer Coalition, the American College of Physicians, every witness on the panel agreed that this bill, the health reform bill, will help women to prevent and women who already have breast cancer.

And at this point, I'm very pleased to yield 2 minutes to my colleague and a big supporter of the Breast Cancer Caucus, JERRY NADLER.

□ 1400

Mr. NADLER of New York. I thank the gentlelady for yielding.

Mr. Speaker, I rise today in support of the resolution offered by our colleague, Representative WASSERMAN SCHULTZ.

With this resolution, which should have the full support of every Member of the House, we will be on record with our commitment not to allow women over 40 to go without the life-saving tests currently available to root out breast cancer at early stages. This resolution states our support for continued research into developing better tests so that no woman will face a death sentence due to a diagnosis of breast cancer.

I thank my colleague, Representative WASSERMAN SCHULTZ, for bringing this resolution to the floor; but, unfortunately, this resolution won't cure the potential problem created by, or actually highlighted by, or dampen the frustration sparked by the U.S. Preventive Services Task Force's decision a few weeks ago.

Even before the recommendations of the task force, and having nothing to do with the recommendations of the task force, many insurance companies today deny coverage for screening mammograms to women over 40. To deal with this problem, we should pass a bill that I introduced, H.R. 955, the Mammogram and MRI Availability Act, which would give assurance to women over 40 which would legally mandate that any insurance policy that covers diagnostic mammograms must also cover screening mammograms for all women over 40. Women

over 40 would have legal assurances that no insurance company would be allowed to deny her coverage for a mammogram.

I hope this resolution will serve as a first step toward attaining adoption of mandatory legislation to guarantee annual mammography coverage to all women over 40 and MRIs to women who need it because they have a particular genetic or other family history indicating a specific susceptibility to breast cancer.

I ask my colleagues to show their commitment to women's health by voting "yes" on this resolution and by joining me as a cosponsor of H.R. 995.

Mrs. BLACKBURN. Mr. Speaker, at this time, I yield 3 minutes to Dr. GINGREY, the gentleman from Georgia who has practiced medicine, obstetrics and gynecology, has worked with women and women's health care issues, and joins us on the Energy and Commerce Committee.

Mr. GINGREY of Georgia. I thank the gentlewoman for yielding.

I do rise in full support of my good friend and colleague from Florida, Representative DEBBIE WASSERMAN SCHULTZ, for introducing this resolution. I certainly encourage all of my colleagues to support it. I am sure if we have a recorded vote, the vote will be 100 percent in favor of this resolution.

But, Mr. Speaker, as my colleague from Tennessee (Mrs. BLACKBURN) and my colleague from Michigan (Mr. ROGERS), both members of the Energy and Commerce Committee, both, as well as myself, at that hearing when we heard from the American Cancer Society and when we heard from the other witnesses, such as Susan G. Komen for the Cure organization, and in talking with my own specialty society, the American College of Obstetrics and Gynecology, they will continue to recommend very strongly that women in their 40s continue to be screened, to have mammogram screening, maybe even digital mammogram screening, because they are at high risk.

Mr. Speaker, as our colleagues have pointed out, the two in our body, our colleagues that are victims of breast cancer, God forbid if they had not gotten early detection, maybe their outcome would not be so great. I think that because of early detection their cure is probably almost 100 percent.

So we are in a situation where physicians practicing across this country, they are sort of in a catch-22. If they don't follow these guidelines that will be passed in this bill, in the Senate version, when this United States Preventive Services Task Force will no longer be an organization making recommendations, but they will be making law, they will be issuing mandates, if a physician decides, well, my patient is in their 40s, I'm going to go ahead and order a mammogram anyway and that mammogram is suspicious and it

leads to a needle biopsy, which may turn out to be negative, but it results in a complication, such as a breast abscess, that physician, Mr. Speaker, could be sued for practicing below the standard of government health care as established by this new massive bill that the Democrats want to force on the American public.

So I stand here commending Representative DEBBIE WASSERMAN SCHULTZ and this resolution; I am in favor of it. But I would also recommend that my colleagues on the Democratic side of the aisle instruct their conferees, if this massive health care reform bill goes to conference, to take this resolution with them and say, look, these are our concerns, change the language. That's my recommendation. That's what my colleagues can do for the women in this country, the 47,000 that Congressman MIKE ROGERS from Michigan was talking about.

I think my colleagues on this side of the aisle are absolutely right as they point out in this legislation what the danger is.

Mrs. CAPPS. Mr. Speaker, I am very pleased at this point to yield 1 minute to our colleague from Indiana (Mr. DONNELLY).

Mr. DONNELLY of Indiana. Mr. Speaker, I want to support the resolution of my colleague, DEBBIE WASSERMAN SCHULTZ, and support the importance of annual mammograms for women age 40 to 49. I, unfortunately, lost my mom to breast cancer when she was very young and when I was very young.

These mammograms save lives. There is nothing more important than the health of our moms, our daughters, our wives, our friends, and our sisters. So I support this resolution. I support these annual mammograms so that we lose no more of our loved ones.

Mrs. BLACKBURN. Mr. Speaker, at this time, I yield 1½ minutes to the gentleman from New Jersey (Mr. LANCE).

Mr. LANCE. Mr. Speaker, I rise today in support of the resolution offered by the gentlewoman from Florida, and I thank the gentlewoman from Tennessee for her leadership on this issue as well.

I recently met with New Jersey cancer survivors, cancer care advocates for the Susan G. Komen for the Cure in New Jersey, and medical professionals at the Steeplechase Cancer Center at Somerset Medical Center in Somerset County, New Jersey. Constituents voiced their objections with the task force recommendations, including Kathleen Petrozelli of Whitehouse Station, Hunterdon County, who shared her personal story of being diagnosed in her 40s with breast cancer.

I strongly oppose the task force recommendations against yearly screening in women 40 to 49. My mother died

of breast cancer when my twin brother and I were 12. Her cancer was diagnosed when she was 47.

Most disappointing about the task force conclusions is the fact that they come on the heels of the fall 2009 report published by the American Cancer Society indicating a large decline in breast cancer deaths in women under 50.

Breast cancer continues to be the most common form of cancer in women. We should be promoting a Federal health policy of encouraging, not discouraging, mammography screening and self-examination for women 40 to 49 years of age.

Mrs. CAPPS. Mr. Speaker, I am now pleased to yield 1 minute to our colleague from Pennsylvania (Mrs. DAHLKEMPER).

Mrs. DAHLKEMPER. Mr. Speaker, I rise today in support of this resolution.

I thank Congresswoman DEBBIE WASSERMAN SCHULTZ for her leadership on this issue, an issue that defends women across the United States and advocates for their health and well-being.

Breast cancer is a real danger to women and their families; it is not an adversary to be underestimated. All in all, nearly 150,000 women will be diagnosed with breast cancer this year, and more than 40,000 women will sadly succumb to the disease; but some of these deaths can be prevented by mammograms and regular breast cancer screenings.

Let me tell you one story of a woman from my own district whose mammogram saved her life. Sue Kilburn of Meadville, Pennsylvania, was diagnosed with breast cancer when she was in her late 40s after an annual mammogram. Her doctor told her she had to choose between a lumpectomy and a mastectomy to treat the disease. Sue shared her journal with the Meadville Tribune newspaper. She writes: "The words ring out unlike anything I have ever experienced before. I find no anger, just feel numb, dumbfounded, and questioning . . . how . . . when? It was just a routine mammogram."

Sue survived her battle with breast cancer because she had a mammogram.

The SPEAKER pro tempore. The gentlewoman's time has expired.

Mrs. CAPPS. I am pleased to yield the gentlewoman an additional 30 seconds.

Mrs. DAHLKEMPER. If she was one of the thousands of women in my district without health care coverage, would she still be with us today?

Through this resolution and through passage of health care reform, we can ensure that the decision for mammogram testing remains between a woman and her doctor.

I urge my colleagues to support this resolution.

Mrs. BLACKBURN. At this time, I yield 1½ minutes to our ranking member on International Affairs, Ms. ROSELEHTINEN from Florida.

Ms. ROS-LEHTINEN. I thank my good friend for the time.

I strongly support the resolution before us, Mr. Speaker, put forth by my good friend from Florida, Congresswoman DEBBIE WASSERMAN SCHULTZ, related to breast cancer screening. It is through more effective screening strategies that we will save lives. Early detection makes the difference in surviving this terrible disease.

As proven by the heroic fight that we heard this morning, the incredible stories of will and perseverance of our colleagues, Congresswomen DEBBIE WASSERMAN SCHULTZ and SUE MYRICK, screening must remain a priority; it must be our mission.

Almost everyone in this country, unfortunately, knows someone who has suffered from breast cancer. But, as is becoming more and more likely, we also know someone who has survived breast cancer, and they have survived breast cancer due to routine screening and early screening and screening for young women.

We must remain vigilant in our efforts to educate, to diagnose, and to treat. Let us make sure that our efforts to defeat this terrible disease is not put in jeopardy because insurance companies do not want to pay for routine screening for young women, screenings that could save their lives.

Thank you, my good friend from Tennessee.

Mrs. CAPPS. Mr. Speaker, may I inquire again as to the time that remains on our side.

The SPEAKER pro tempore. The gentlewoman from California has 4 minutes remaining, and the gentlewoman from Tennessee has 4½ minutes remaining.

Mrs. CAPPS. Mr. Speaker, at this point, I am very pleased to yield 1 minute to our colleague from Florida (Ms. KOSMAS).

Ms. KOSMAS. Mr. Speaker, I would like to thank my good friend, DEBBIE WASSERMAN SCHULTZ, for her personal courage, but also for her focus on this very important issue and to commend her for introduction of this important resolution.

Each of us knows, whether in our own personal lives or in that of our family and friends, how important it is that people get early detection and intervention for any type of cancer, but we know that breast cancer steals the lives of our women in this country—mothers, friends, sisters, and daughters.

Despite the task force report, we need to listen to commonsense and scientific-based guidelines that tell us that breast cancer screening for women ages 40 to 49 is extremely important and should not be ignored, despite the recommendation of the task force. Because we know these things to be true, the resolution states that the task force would not be used for insurers to deny coverage for routine screenings.

So through our support here of this resolution, my colleagues and I encourage all women to remain vigilant and to protect their health by getting regular mammograms at early ages.

Mrs. BLACKBURN. At this time, I yield 1½ minutes to Mrs. MCMORRIS RODGERS from Washington State, who is vice chair of our conference.

Mrs. MCMORRIS RODGERS. I thank the gentlewoman for yielding.

I, too, rise in support of this resolution and really do want to applaud the leadership of Representative DEBBIE WASSERMAN SCHULTZ, Representative LOIS CAPPS, and Representatives MARSHA BLACKBURN and SUE MYRICK.

Last month, many of us stood and voiced concern over these recommendations by the U.S. Preventive Services Task Force because we believed that they would turn back the clock on the war on breast cancer, recommendations that would no doubt impact the United States' 98 percent 5-year breast cancer survivability rate.

Republicans over and over have expressed our concern that health care reform would shortchange women. Well, through these recommendations made by the United States Preventive Services Task Force, you start to see what rationed care looks like; and in this example the potential impact on women when the government is making health care decisions for them, how the doctor-patient relationship is jeopardized, how bureaucrats, using computer software and statistics, will be making critical life-and-death decisions for women. This is wrong.

These recommendations mirror policies in single-payer nations like England, where women over 50 are invited once every 3 years to be screened. We cannot go down this same path. Yet this task force, which doesn't even include any oncologists or radiologists, recommended that women between ages 40 and 50 not get mammograms because saving one woman for every 2,000 screened was not worth the cost. Well, if you're that one woman, you might not see it that way. For that woman saved by early detection, the mammogram is well worth the cost.

America's health care system has been based on saving lives. It's Great Britain's health care system that is based on saving cost.

□ 1415

Mrs. CAPPS. I am pleased now to introduce and to acknowledge my colleague from Virginia, Congressman CONNOLLY, for 1 minute.

Mr. CONNOLLY of Virginia. Mr. Speaker, I want to join in with my colleagues on the other side in rejecting the findings of the task force, all 16 members who were appointed by Republican President George Bush.

Although the incidence of breast cancer in young women is much lower than that of older women, young wom-

en's cancers are generally more aggressive, are diagnosed at a later stage, and result in lower survival rates. In 2008 the American Cancer Society estimated there would be 182,460 new cases of breast cancer in women. Of these, more than 11,000 of these women would be under 40 years of age.

While no currently available breast cancer tool is perfect, we know that intervention, through routine screening for breast cancer, using mammography, can save lives of women at a time when medical science is still unable to prevent the disease. This resolution expresses the sense of the House of Representatives regarding guidelines for breast cancer screening for women ages 40 to 49 and supports the importance of women's access to mammography screening.

I urge my colleagues on a bipartisan basis to support the resolution and commend Representative DEBBIE WASSERMAN SCHULTZ and Representative LOIS CAPPS for their leadership.

Mrs. BLACKBURN. I have an inquiry, Mr. Speaker. Is the gentlewoman from California prepared to close or does she have additional speakers?

Mrs. CAPPS. I have two additional speakers.

Mrs. BLACKBURN. I reserve the balance of my time.

Mrs. CAPPS. I am very pleased to yield 1 minute to our colleague from Colorado, Congresswoman MARKEY.

Ms. MARKEY of Colorado. Mr. Speaker, I rise today in support of mothers, daughters, sisters, aunts, nieces, and women across the country. Every person in this Chamber can name someone they know who has had breast cancer.

I am honored to support the resolution by my good friend and colleague, Congresswoman WASSERMAN SCHULTZ. DEBBIE's own courage and tenacity serve as an inspiration for all of us.

Recently released guidelines regarding breast cancer screening for women between the ages 40 and 49 have caused confusion and concern. The U.S. Preventive Services Task Force has an important role in researching health care policies that will lower costs and improve results across the country.

However, when early diagnosis and treatment has been proven to greatly reduce the risk of cancer, it's important that these decisions be made by women and their doctors, not a government task force. An early diagnosis of breast cancer can save a woman's life, and it's important that women can afford these screenings.

For that reason, I urge my colleagues to support this resolution.

Mrs. BLACKBURN. I continue to reserve the balance of my time.

Mrs. CAPPS. I am now pleased, Mr. Speaker, to yield to our colleague from Illinois, Congresswoman HALVORSON, 1 minute.

Mrs. HALVORSON. Mr. Speaker, I rise today in support of women across

the country and protecting their access to cancer screenings. As the daughter of a breast cancer survivor—my mother got breast cancer under the age of 50—I understand the importance of regular mammograms and know they save lives.

I have met so many women across my district who are still with us today because of preventive care. We should always encourage women to get screened, and we should never allow insurance companies to stand between a woman, her doctor, and a procedure which may save her life. This is a disease that has affected so many of us in this Chamber and so many of our constituents back home.

I call on my colleagues to support this resolution and support women's health.

Mrs. BLACKBURN. Mr. Speaker, I think that all of us come here because of our concern, great concern, about women and mammography and the health care issues that are found before us.

When it comes to breast cancer, we are very grateful for early detection. We know it's important. Because of that, it is with great sadness that we have read what is in this bill.

In H.R. 3962, it clearly shows how the recommendations will limit America's choices and women's choices. Reading through the bill, section 2301 does establish the Task Force on Clinical Preventive Services, and it clearly says that A and B are priority levels for these treatments. You can read on page 1,318, and I do, Mr. Speaker. It says in line 2, the Commissioner shall ensure—shall ensure—that A and B is going to be the rating that is covered, but C is not.

What we are discussing in this 40 to 49 age group is those C ratings, and the Commissioner will not have the power to downgrade that decision. Section 222 of the bill—what you have in this resolution is going to be negated by section 222 of the bill that says the services designated A or B priority are part of the essential benefits package. So just saying that the guidelines would not prohibit an insurer from providing coverage, your own legislation is going to end up negating that, if that is signed into law.

The language of this bill is clear. All insurance providers must offer A and B priority services. They have no incentive or a mandate to offer priority C or below. That is where it affects women under 50 and women over age 75, and those, indeed, are valuable lives.

Mr. Speaker, we do look at this legislation. We look at section 2301 where it says that, All recommendations of the Preventive Services Task Force and the Task Force on Community Preventive Services, as in existence on the day before the date of the enactment of this Act, shall be considered to be the recommendations of the Task Force on Clinical Preventive Services.

At that point, Mr. Speaker, unfortunately, they are going to have the full weight of law behind them. It is in the bill.

Yes, we look at this, and we see the bureaucrat in the exam room right here. We look at it, and we all know and have loved and have held family members in our arms that have been affected and would have lost their lives had they not had access to early detection. It concerns us.

Do not ration health care. Support the resolution, but let's go further in getting out of the bill.

I yield back the balance of my time.

Mrs. CAPPS. Mr. Speaker, in yielding back our time, I remind our colleagues that the truth is, when enacted into law, H.R. 3962 will result in millions of uninsured Americans receiving their first mammogram and will no longer face being dropped by their insurance company if they are diagnosed with cancer.

I wish to acknowledge and thank the leader of this resolution for her hard work, our colleague, Representative WASSERMAN SCHULTZ.

Ms. DELAURO. Mr. Speaker, I urge my colleagues to support this resolution, H.R. 971, which helps to clarify much of the unnecessary furor over mammograms we have experienced of late.

The recent breast cancer recommendations by the U.S. Preventive Services Task Force effectively said that women ages 40 to 49 should have a conversation with their doctors before deciding to have a screening mammogram. In other words, they were to attempt to put as much information as possible in the hands of women and their doctors, so they can assess their own risk and benefit.

Now, whatever decision women come to on this important matter, they need two things to ensure they have access to mammography should they decide to get screened: One is a quality health coverage so they have a doctor they can go speak to. And the second is coverage for mammograms and other important preventative services. And, of course, some women will need coverage for treatment if a cancer is found.

This is why I support this resolution, which argues that insurers should not deny coverage for mammograms for women ages 40 to 49 who decide to get screened. This is also why I support comprehensive health insurance reform, so that women can afford health care in the first place, and get coverage for that mammograms and any follow-up treatment they might need.

We must redouble our efforts across the board to ensure that Americans are getting the appropriate preventive screenings. Right now, according to the Centers for Disease Control and Prevention, only 25.9 percent of women ages 50 to 64 have received all the recommended preventive care for breast, cervical, and colorectal cancer, as well as influenza. Under health reform, women would finally get the preventive care they need.

In the meantime, there is a great need for more information, more research, and more scientific innovation to help women prevent,

detect, and fight breast cancer, the second leading cause of cancer deaths among women. This resolution also urges the National Cancer Institute to continue to invest in research toward more effective screening tools and strategies for improving detection of breast cancer.

For all of these reasons, I strongly urge my colleague to support this resolution. Mammography is not perfect, but right now it is the best method we have to detect this killer in our midst. We need to make sure that as many women as possible have access to this important, life-saving procedure, and that better, safer screening procedures will soon be forthcoming.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H. Res. 971, expressing the sense of the House of Representatives regarding guidelines for breast cancer screening for women ages 40 to 49. I appreciate the leadership of the bill's author, my Judiciary Committee colleague Representative WASSERMAN SCHULTZ.

This resolution was introduced on the heels of new breast cancer screening guidelines issued last month by the U.S. Preventive Services Task Force (the "Task Force"), an independent panel of medical experts. These new guidelines have created cause for concern by some due to the change from the Task Force's 2002 mammography recommendations concerning mammography screening for women age 40–49.

In light of this concern, this resolution underscores the sense of the House that the Task Force recommendations should not prohibit insurance companies from providing mammography services in addition to those in the Task Force recommendations, and should not be used by insurers to deny women coverage for routine screenings. This resolution also urges the National Cancer Institute to continue to invest and provide leadership regarding research to develop more effective screening tools and strategies for improving detection of breast cancer.

This is not the first time recommendations about the use of mammography and breast self exams have been revisited—by the Task Force or NIH or any number of cancer-related research or advocacy groups. Just as we have seen with prostate cancer screening, immunization schedules, and other preventative care measures, new interpretations often result in a change in what experts tell us works most effectively. As the science of medicine evolves, so too, should the recommendations on the best use of that science.

Evolution and improvement are what the U.S. Preventive Services Task Force set out to achieve in undertaking a review of its 2002 mammography guidelines. The Task Force sought to take a fresh look of what has been learned over the last several years, and based upon that body of work, to provide its best professional judgment on what doctors and their patients should consider when they are making decisions about breast cancer screening. Despite the contention on this issue, I trust that the Task Force's deliberations and conclusions were driven by science and not by cost or insurance coverage.

Notwithstanding the scientific basis for these new guidelines, I share the concern of



Ms. WASSERMAN SCHULTZ and others such as the Susan G. Komen for the Cure Advocacy Alliance who point out that one-third of all American women do not undergo regular screening. Many of those who go without screening are African American and younger women. According to the Susan G. Komen for the Cure Advocacy Alliance the failure of age-appropriate women to undergo mammography costs lives and reflects problems with access to care and breast cancer education.

Mr. Speaker, we need to work as rapidly as possible to correct these deficiencies, and continue to fund research and education designed to eliminate health care disparities. We want to eliminate any impediments to regular mammography screening for women age 50 and below. While there may be disagreement about the exact timing of breast cancer assessments, I believe there is unanimous consensus over the importance of guaranteeing access to screening.

New screening approaches and more individualized recommendations for breast cancer screening are urgently needed. I support research initiatives designed to improve screening, and believe that it is imperative that this research move forward rapidly. Furthermore, I encourage African American and other women with unresolved questions about breast cancer screening to engage in discussion with their health care providers.

If the new guidelines have done nothing else, I believe it has at least raised awareness, not only amongst women, but amongst all Americans. As such, I encourage my colleagues to support this bill.

Mrs. CAPPS. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the resolution, H. Res. 971.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mrs. CAPPS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

#### DANIEL PEARL FREEDOM OF THE PRESS ACT OF 2009

Mr. BERMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3714) to amend the Foreign Assistance Act of 1961 to include in the Annual Country Reports on Human Rights Practices information about freedom of the press in foreign countries, establish a grant program to promote freedom of the press worldwide, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3714

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Daniel Pearl Freedom of the Press Act of 2009".

#### SEC. 2. INCLUSION OF ADDITIONAL INFORMATION RELATING TO FREEDOM OF THE PRESS WORLDWIDE IN ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

The Foreign Assistance Act of 1961 is amended—

(1) in section 116(d) (22 U.S.C. 2151n(d)), as amended by section 333(c) of this division—

(A) in paragraph (10), by striking "and" at the end;

(B) in paragraph (11)—

(i) in subparagraph (B), by striking "and" at the end; and

(ii) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(12) wherever applicable—

"(A) a description of the status of freedom of the press, including initiatives in favor of freedom of the press and efforts to improve or preserve, as appropriate, the independence of the media, together with an assessment of progress made as a result of those efforts;

"(B) an identification of countries in which there were violations of freedom of the press, including direct physical attacks, imprisonment, indirect sources of pressure, and censorship by governments, military, intelligence, or police forces, criminal groups, or armed extremist or rebel groups; and

"(C) in countries where there are particularly severe violations of freedom of the press—

"(i) whether government authorities of each such country participate in, facilitate, or condone such violations of the freedom of the press; and

"(ii) what steps the government of each such country has taken to preserve the safety and independence of the media, and to ensure the prosecution of those individuals who attack or murder journalists."; and

(2) in section 502B (22 U.S.C. 2304), by adding at the end the following new subsection:

"(i) The report required by subsection (b) shall include, wherever applicable—

"(1) a description of the status of freedom of the press, including initiatives in favor of freedom of the press and efforts to improve or preserve, as appropriate, the independence of the media, together with an assessment of progress made as a result of those efforts;

"(2) an identification of countries in which there were violations of freedom of the press, including direct physical attacks, imprisonment, indirect sources of pressure, and censorship by governments, military, intelligence, or police forces, criminal groups, or armed extremist or rebel groups; and

"(3) in countries where there are particularly severe violations of freedom of the press—

"(A) whether government authorities of each such country participate in, facilitate, or condone such violations of the freedom of the press; and

"(B) what steps the government of each such country has taken to preserve the safety and independence of the media, and to ensure the prosecution of those individuals who attack or murder journalists.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. BERMAN) and the gentlewoman from Florida (Ms. ROSELEHTINEN) each will control 20 minutes.

The Chair recognizes the gentleman from California.

#### GENERAL LEAVE

Mr. BERMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BERMAN. Mr. Speaker, I rise in strong support of this legislation and yield myself as much time as I may consume.

H.R. 3714 reinforces and broadens our country's commitment to media freedom around the world. Dedicated to the memory of a prominent U.S. journalist who lost his life in the pursuit of truth, the Daniel Pearl Freedom of the Press Act will ensure that our embassies and consulates overseas bring word to Washington in a timely and regular fashion about those parts of the world where journalists face obstacles, harassment and physical harm merely for doing their job.

I want to particularly congratulate my colleague and recognize him, ADAM SCHIFF of California, for authoring this legislation which will enshrine in law the practice of including information about media freedom in the annual Country Reports on Human Rights Practices written by the Department of State.

With passage of this legislation, our embassies and consulates will be required to report every year on the status of press freedom in each country, both the good and the bad. Where media freedom is threatened in a country, our diplomats will report on what steps that government has taken to preserve journalists' safety and independence and to ensure the prosecution of those who commit violence against journalists.

Mr. Speaker, the dangers faced by the media worldwide continue to mount. On World Press Freedom Day this past May, Freedom House reported a seventh straight year of decline in global media freedom, with twice as many losses as gains and with deterioration occurring in every region of the world. Of the 195 countries and territories that Freedom House monitors, 36 percent have a free press while 31 percent are rated partly free and 33 percent not free at all. As the organization noted, "The press is democracy's first defense, and its vulnerability has enormous implications for democracy if journalists are not able to carry out their traditional watchdog role."

Daniel Pearl was one such watchdog. A long-standing correspondent for The Wall Street Journal and its South Asia bureau chief, he was investigating possible terrorism links in Pakistan in early 2002 when he was kidnapped, held hostage, tortured, and killed. His murder was videotaped and released on the Internet.



Although the circumstances of this horrific crime were meant to send a chilling message to the U.S. government and the world's media, it served instead to strengthen our resolve.

A number of initiatives have been established in his name to promote intercultural understanding and freedom of the press. We should let the legislation before us today, Mr. SCHIFF's bill, become part of this legacy in the interests of ensuring that those who would seek to extinguish the light of truth around the world will instead be dragged out of the shadows and defeated.

Mr. Speaker, I urge my colleagues to support this legislation.

I reserve the balance of my time.

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to yield myself such time as I may consume.

I rise in support of House Resolution 3714, the Daniel Pearl Freedom of the Press Act of 2009.

□ 1430

I want to thank the gentleman from California (Mr. SCHIFF), my good friend, and also my friend from Indiana (Mr. PENCE), our conference Chair, for introducing this important legislation on an issue of growing international concern.

A free press is indispensable to an informed public, to government accountability, and to the efficiency and integrity of public and commercial institutions. Here in the United States we enjoy the benefits of a robust free press, protected by the First Amendment to our Constitution. But in many other parts of the world, telling the truth as a journalist is dangerous and an even deadly calling.

Sadly, this fact was underscored by the life and death of the person for whom this bill is named, the brave and accomplished Wall Street Journal reporter Daniel Pearl. In 2002, while reporting in Pakistan, Pearl was kidnapped by violent Islamic extremists who chose to murder him on videotape, after compelling him to recite the fact of his Jewish religion on camera.

Whether the cause is extremism, corruption, political repression, or the dangers of reporting from conflict zones, journalists around the world face a rising tide of threats. So far this year, 68 journalists have been confirmed killed in the line of duty or because of their reporting. Nearly half of those, sadly, at least 30 journalists, were killed in the shocking election-related massacre in the southern Philippines on November 23. According to the Committee to Protect Journalists, there has been a 9 percent increase over the 2008 levels in the imprisonment of journalists worldwide. The one-party regime in China continues to imprison the largest number of reporters of any one nation.

But the Iranian regime runs a very close second, and its closure of yet an-

other newspaper last week is another sad reminder of the extent to which it has targeted independent and foreign media in the aftermath of the widespread election-related protests by the Iranian people.

And rounding out the shameful top three, Cuba suffers perhaps the greatest per capita levels of press repression. Even though it has only one-twelfth of the population of China, the Cuban regime imprisons roughly the same number of journalists. Just last month, state security agents detained and beat Cuban bloggers Yoani Sanchez, Claudia Cadelo, and Omar Luis Pardo Lazo as they were on their way to a peaceful march in Havana. What a sad irony that is.

To help address these and other outrages, the bill before us today would beef up press-related reporting in the State Department's annual Country Reports on Human Rights Practices. Among other issues, the expanded reports would describe the extent to which foreign governments are complicit in attacks on press freedoms and what steps are being taken to protect the media and to prosecute those who attack and murder journalists. This new reporting will help focus the sunlight of public scrutiny even more powerfully on these violators of basic rights.

I want to thank, again, Mr. SCHIFF and Mr. PENCE for bringing forward this important legislation, which deserves our unanimous support.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I am very pleased to yield such time as he may consume to the author of this legislation, the gentleman from California (Mr. SCHIFF), my friend, colleague, and neighbor.

Mr. SCHIFF. At the outset, let me extend my thanks to my friend and fellow Californian, the distinguished chairman of the Foreign Affairs Committee, who has been such a forceful advocate on the issue of media freedom around the world.

By passing the Daniel Pearl Freedom of the Press Act today, the House brings much-needed attention to a critical human rights issue. It is especially auspicious that we do it today, December 15, which is Bill of Rights Day in honor of the first 10 amendments to our Constitution. The First Amendment, which guarantees freedom of speech and freedom of the press, is considered by many historians and legal scholars to be the single most important of our constitutional liberties.

We all remember when Daniel Pearl, a highly respected reporter from The Wall Street Journal, was kidnapped and murdered by terrorists in Pakistan just 4 months after 9/11. Although four of the kidnappers were convicted in July of 2002, seven other suspects, including those who allegedly helped murder Daniel, remain at large.

This past year has been particularly deadly for journalists. According to the Committee to Protect Journalists, a total of 89 journalists and media workers have been killed this year. More than a third of these victims, 30, were gunned down in one horrific incident in the Philippines when 29 journalists and at least one media support worker were ambushed and brutally slain on November 23 as they traveled with a convoy of people who intended to file gubernatorial candidacy papers for a provincial politician.

Unbelievable stories of physical harassment and acts of violence against journalists contribute to this grim picture. In Mexico, there has been a dramatic increase in attacks on media workers who try to cover corruption or gang activities. Very few of these attacks result in prosecution. As a result, journalists are driven towards censoring their own reporting out of fear for their personal safety and the lives of their families.

Legal mechanisms are also increasingly being used to restrict the media, both through overt censorship and through the use of repressive legislation. This past April, the Sudanese Parliament began consideration of a bill that grants unprecedented authority to impose strict disciplinary measures against journalists and allows the government to both confiscate printing equipment and determine journalists' suitability for their profession. Sudanese security officers visit newspapers nightly to determine what can be printed and what will be censored.

Freedom of expression cannot exist where journalists and the media are not independent and safe from repression, persecution, and physical attacks. And I believe freedom, accountability, and democracy cannot flourish without a free press. It is the essential check on the power of the state. Sadly, that power has tempted too many governments, drug cartels, arms smugglers, and others to target journalists in an effort to silence them. Sadder still is the indifference of governments worldwide who have failed to recognize that by failing to protect the media, we are endangering fragile, young democracies and buttressing autocratic regimes and criminal syndicates.

To highlight the work of journalists worldwide and to document the dangers they confront, my colleague from Indiana (Mr. PENCE) and I introduced the Daniel Pearl Freedom of the Press Act to focus the world's attention on those countries in which journalists are killed, imprisoned, kidnapped, threatened, or censored. I couldn't have a better partner in this legislation than Mr. PENCE, and I greatly appreciate his advocacy of the freedom of the press.

The legislation calls upon the Secretary of State to greatly expand its examination of the status of freedom of

the press worldwide in the State Department's annual Country Reports on Human Rights Practices. The Daniel Pearl Act requires the State Department to identify countries in which there were violations of freedom of the press and whether the government authorities in those countries participate in, facilitate, or condone the violations. This report will spotlight those governments which seek to silence media opposition. It is my fervent hope that by spotlighting media repression in the human rights reports, American diplomats, Members of Congress, and journalists will press for greater protections and for the capture and punishment of those who abuse or kill reporters. We cannot and we must not remain silent in the face of these purposeful atrocities.

Again, I thank Chairman BERMAN for his leadership on human rights issues and his support for the Daniel Pearl Freedom of the Press Act. I also offer my gratitude again to my colleague from Indiana, who has been such a leader on this issue.

I urge all Members to support this legislation.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana (Mr. PENCE), the chairman of our Republican Conference, a member of the Committee on Foreign Affairs. Mr. PENCE is the primary cosponsor of this measure, and I hope that he takes the time to talk about our next bill, the Iran Sanctions Act, as well.

Mr. PENCE. I thank the gentleman for yielding.

Mr. Speaker, today I rise in support of H.R. 3714, the Daniel Pearl Freedom of the Press Act. I do so with a profound sense of privilege and gratitude to those who have gone before me on the floor today.

To Chairman BERMAN of California, to the ranking member, Ms. ROS-LEHTINEN of Florida, your partnership on behalf of a free and independent press on the world stage should be an inspiration to every American looking on these proceedings.

I especially want to express my appreciation for the visionary leadership of Congressman ADAM SCHIFF, who brought this legislation and who invited us to partner in his vision for expanding awareness of the people of the United States and the people of the world of the repression of the free press. Congressman SCHIFF and I were elected in the same year. We have undoubtedly followed different paths and usually voted differently on things. We occasionally disagree, but we always agree on freedom and a free and independent press, and I commend the gentleman from California for his singular leadership on this issue and the privilege of working with him.

It is altogether fitting, as the gentleman referred earlier, though, that I

should do so not only during this debate but also in anticipation of the debate on the next legislation, a bipartisan measure known as the Iran Refined Petroleum Sanctions Act, to specifically point out the abuses of the regime in Iran and express my strong support for H.R. 2194 as well in the midst of this debate.

The reason why the Iran Refined Petroleum Sanctions Act has broad bipartisan support, and that will be reflected on the floor this day, is, among other reasons, the support for terrorism by Iran, the pursuit of weapons of mass destruction, the deception to the world community again and again. But to the point of this debate, it is also imperative that the people of the United States of America send a message to Iran that the aggressive repression of a free press in Iran will not be tolerated in the form of normal relations with the United States of America either diplomatically or economically.

At this point, the Committee to Protect Journalists reports there are some 23 journalists in prison in Iran. Last week, we received word that another opposition newspaper was closed in Iran. And, of course, the world watched in horror in the aftermath of the blatantly fraudulent elections of this past June in Iran, as not only did the secret police stream into the streets to silence, oftentimes by billy club and violence, the dissidents, but we also watched in horror as the Internet was silenced, as YouTube videos were cut off, as access to the free flow of information was stymied by the brutality of the regime in Iran. So I endorse the legislation that will be brought up, but I see a nexus here between the two and can't help but reference it.

The legislation that Congressman SCHIFF and I have brought to the floor will serve two purposes:

Number one, it will remember the extraordinary sacrifice and courage of one Daniel Pearl, kidnapped and murdered by terrorists in Karachi, Pakistan just 4 months after the attacks of September the 11th, 2001. He was serving as a South Asia Bureau Chief for The Wall Street Journal that, at the time, was based in Mumbai, India. He went to Pakistan as part of an investigation into the alleged links between Richard Reid, the convicted would-be shoe bomber of American Airlines flight 63, and al Qaeda and Pakistan's Inter-Services Intelligence Agency. Tragically, Mr. Pearl was brutally executed by his captors. The legislation today is named in his memory, and I hope his family may well be looking on today and know that his memory, his courage, and his example of what it means to advance the practice of journalism on the world stage will never be forgotten in this body.

But the legislation today is not simply a tribute. The Daniel Pearl Free-

dom of the Press Act also will result in an effort to highlight and promote freedom of the press by including such reports in the State Department's annual Country Reports on Human Rights Practices information.

□ 1445

As we consider this legislation, we remember Daniel Pearl's legacy, and we think of the stories of so many others on the front lines of freedom.

Gustavo Azocar is a political talk show host, newspaper correspondent and blogger in Venezuela, and he is a vocal critic of Hugo Chavez. Azocar was jailed in 2009 after posting information about his court case online. Amnesty International's 2009 "Report on Human Rights in Venezuela" noted the physical attacks and imprisonment of journalists by this corrupt and despotic regime.

As a conservative who believes in limited government, I believe the only check on government power in real-time is a free and independent press. I don't believe our Founders put the First Amendment, freedom of the press, in our Bill of Rights because they got good press. I believe it's because they believed in limited government and believed in the need to constrain consolidations of power.

A free and independent press ensures the free flow of information to the public. It serves as a vital check on such abuses during a time when the role of government in our lives and in our enterprises here at home seems to grow every day. Yet taking a stand today for the principle of a free press, not only home but in making the means available to hold the lamp of liberty high and to shine it deep into the crevices of this world to expose abuses of the freedom of the press, is a noble task, indeed. So I rise today in support of this legislation.

I commend Chairman BERMAN and Ranking Member ROS-LEHTINEN for their bipartisan leadership. I commend the gentleman from California, Congressman ADAM SCHIFF, for his visionary leadership in bringing this legislation to the floor.

More importantly than that, I salute the bravery of reporters like Daniel Pearl and Gustavo Azocar and of press outlets around the world which, day in and day out, stand in the gap, oftentimes risking their liberty and, in the case of Daniel Pearl, in fact, risking his life to do the work of a free and independent press in the world.

I urge those in that service to stand firm, to take heart and to know that those of us in public life, that those of us in public service, also understand that those who serve in the world of journalism are also in the business of public service.

I urge this Congress to stand in solidarity with those on the front lines of the worldwide fight for the freedom of

the press, and I urge support for the Daniel Pearl Freedom of the Press Act and for the legislation that will follow.

Ms. ROS-LEHTINEN. I am very pleased to yield 5 minutes to the gentleman from Texas, Judge POE, a member of the Committee on Foreign Affairs and a cosponsor of this measure. I hope that he will address not only this resolution but the one that follows it, the Iran Refined Petroleum Sanctions Act.

Mr. POE of Texas. I appreciate the gentlewoman for yielding. I totally support this legislation.

Mr. Speaker, the First Amendment to our Constitution is first for a reason. The items stated in the First Amendment—the right of freedom of religion, the right of freedom of speech and of a free press and the right to peaceably assemble—are in the First Amendment because they are the most important. Without those four, the rest of the amendments that follow are meaningless, especially the two which deal with freedom of speech and with the freedom of press.

You will notice the amendment to our Constitution guarantees a free press. It does not guarantee a fair press, as “fair” is always in the eyes of the beholder; but it guarantees the right that a press may exist and communicate, first, through the written word about what is taking place in a free society, in a democracy, in a republic. Iran is a perfect example of a nation that does not believe in a free press or in a press of any kind. It does not want to have its illegitimate regime exposed to the world in order to let the world know what is taking place in that country.

We have all seen the students who protested last summer and, more recently, in the last week and a half. We have all seen how the regime in Iran blocked Internet access and blocked cell phone usage so that photographs of what took place could not be transmitted somewhere else. We have seen that journalists were hauled off to jail and were tried before the star chamber in secret and that some of them were sentenced to the penitentiary. Speech is silenced in Iran, both that of the oral word and the written word. A free press is the enemy of a dictator.

President Ahmadinejad is in defiance of world peace. He is determined to build nuclear weapons, and he is determined to build missiles that are capable of delivering those nuclear weapons. Of course, he has made those plans of his clear to destroy Israel and to be a constant threat to the West, especially to Europe and to the United States. He oppresses his own people. That is why those people, those young people, including journalists and reform clergy members, are opposing his legitimacy to be ruler over them.

My own opinion is that, in that nation, the more the world hears about

what takes place there, the more the world will support the people of Iran and a regime change. I hope that we stand by the people of Iran, who desire to have self-determination and to rule their country in spite of their rogue dictator.

Of course, now before us today is another bill regarding sanctions of Iran. I, personally, am not a big fan of sanctions. Historically, they haven't worked. Some countries have always figured out a way to get around it. To me, sanctions usually mean that we kick the problem on down the road with the intention of maybe dealing with it later. However, preventing refined gasoline from getting to Iran is a good idea, and that is what this sanction that we will talk about later and vote on is all about. It may have the result of helping the people of Iran change their illegitimate government.

Mr. Speaker, dictators hate a free press, but a free press is essential to a free people whether those free people are in the United States or whether those free people are in the nation of Iran.

And that's just the way it is.

Mr. BERMAN. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. I thank the gentleman. I will be very brief.

Mr. Speaker, I wanted to add to the comments that my colleagues have made in their segue to the bill that follows the Daniel Pearl Freedom of the Press Act, which is the Iran Refined Petroleum Sanctions Act.

I am a strong supporter of this legislation. I commend my colleagues, Chairman BERMAN and Ranking Member ROS-LEHTINEN, for their leadership on this issue.

One of the most serious threats facing our country is the prospect of a nuclear-armed Iran. This is an oppressive regime, one that has threatened to wipe one of its neighbors off the map. The possession of a nuclear bomb by Iran is enormously dangerous in its own regard, but it is all the more destabilizing in its potential of starting a nuclear arms race in the Middle East.

The President has offered carrots and the international community has offered carrots to Iran to step back from its pursuit of nuclear weapons. The Congress today takes an important step to make sure that there are sticks which are offered as well if Iran refuses the very generous offer by the international community to reprocess uranium—to provide it for peaceful energy purposes, to have Iran send its uranium out of the country so that it can be put in a form where it cannot be used for nuclear weapons.

This legislation, which will potentially crack down on Iran's ability to refine its petroleum, will put the most severe pressure on the Iranian regime to back away from a program that

time and again we have seen it pursue, as much as it has declared to the contrary. So this legislation, I think more so than any other, will put teeth in a regime of sanctions, will put pressure on Iran to back away from its nuclear bomb-making efforts, and in so doing, will inure to the safety of our own country, to the safety of Israel and to the entire region.

So I thank the chairman for his leadership on this. I urge my colleagues to support the Iran Refined Petroleum Sanctions Act.

Ms. ROS-LEHTINEN. I yield myself such time as I may consume.

Mr. Speaker, I would like to take the time to talk about the problems of media control in Venezuela as ruled by Hugo Chavez.

As we know, there was a new intelligence report that outlined the schemes of Hugo Chavez, who is the supposed President of Venezuela, to control media. It is a sign of further deterioration of the freedom of expression, of democracy and of human rights in Venezuela under the Chavez rule.

He ratcheted up his rhetoric against free speech and against political opponents by shutting down broadcast stations across the country. These are assaults on the pillars of a democratic society, and they will continue unabated unless responsible nations stand up to Chavez and send a clear message to him and to others in the region that this behavior will not be tolerated.

There is a list that I would like to read of five journalists who were killed in Venezuela: Orel Sambrano of ABC de la Semana and Radio America, who was killed on January 16, 2009, in Valencia; Jorge Aguirre of Cadena Capriles, who was killed on April 5, 2006, in Caracas; Jorge Ibrain Tortoza Cruz, who was killed on April 11, 2002, in Caracas; Maria Veronica Tessari of Colombian Media, who was killed on January 15, 1993, in Caracas; and Virgilio Fernandez of El Universal, who was killed on November 27, 1992, in La Carlota, Venezuela.

Just a little while ago, the Committee to Protect Journalists gave us the news of a journalist who was critical of the Venezuelan Government. He was arrested on contempt of court charges. Journalist Gustavo Azocar was arrested with trumped-up charges. Azocar is the host of a news and political commentary show on local TV station Televisora del Tachira, and is a correspondent for the national daily El Universal in the western city of San Cristobal.

These are just more examples of the repression and suppression of free press by Hugo Chavez of Venezuela.

Mr. ENGEL. Would the gentlewoman yield?

Ms. ROS-LEHTINEN. Yes, I yield to the chairman of the Western Hemisphere Subcommittee, my good friend from New York (Mr. ENGEL).

Mr. ENGEL. I thank the gentlewoman for yielding.

Mr. Speaker, as she was mentioning Venezuela, quite wisely, I agreed with everything she said about the lack of freedom of the press and about the shutting down of opposition newspapers. Because the next bill we will be talking about involves sanctions against Iran, as Subcommittee chairman of the Western Hemisphere, I want to raise a concern about Venezuela, which arose at my October hearing, on Iran's role in the Western Hemisphere.

Venezuelan leader Hugo Chavez recently agreed to provide 20,000 barrels per day of refined gasoline to Iran. It's anyone's guess as to whether this will be implemented, but the deal may be covered by the bill that we consider now and that we are considering next. While some question whether Venezuela has the ability to provide gasoline to Iran, since it imports some gasoline to meet its own domestic demand, President Chavez is clearly approaching a perilous area. I hope that Chavez reconsiders this unwise step.

I thank the gentlewoman, as always, for pointing out what is going on.

Ms. ROS-LEHTINEN. I thank the gentleman.

Mr. Speaker, he makes excellent points also about the tie-in between Chavez and Ahmadinejad as they seek to suppress any dissidents and any free press.

I yield back the balance of my time.  
Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of H.R. 3714, the Daniel Pearl Freedom of the Press Act of 2009. This legislation amends the Foreign Assistance Act of 1961 by expanding the Annual Country Reports on Human Rights Practices to include information about freedom of the press in foreign countries and establishing a grant program to promote freedom of the press worldwide. I support this resolution because I believe that freedom of the press is an important pillar of democracy and should be actively promoted in our foreign policy.

I would like to first thank my colleague, Congressman ADAM SCHIFF, for introducing this valuable legislation. Freedom of the press is essential to a functioning democracy. In 1823, Thomas Jefferson said, "The only security of all is in a free press. The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary, to keep the waters pure." Unfortunately, the truth of that statement, which is codified in the United States Constitution, is not universally recognized and the freedom of the press is not universally protected.

In Iran, for example, the government assiduously monitors the press and journalists and media outlets face government repression if protocol is not followed. An Iranian journalist, Fariba Pajooh, has been detained since August of this year without being told of her charge. That is merely the tip of the iceberg: according to Reporters without Borders, since

the June Presidential election, the Iranian government has arrested more than 100 reporters and sentenced those reporters to more than 65 years in prison.

Not coincidentally, those governments that refuse to recognize the freedom of the press are the same governments who have the most to fear from democracy. Governments that suppress, intimidate, or oppress journalists do so because their regimes do not have the full legitimacy that marks democratic governments. It is understandable but not forgivable that a government afraid of the destabilizing influence of the truth would restrict the press. The long-term best interest of any country is protected, though, when a country is allowed to know the truth about its government and the world.

H.R. 3714 provides the United States and the world with a powerful tool to advocate for freedom of the press. Under this legislation, the State Department will be required to include freedom of the press in the Annual Country reports on Human Rights Practices. The State Department will describe the positive and negative steps that governments have taken with regards to freedom of the press. Additionally, H.R. 3714 establishes a grant program whereby the U.S. State Department can fund activities by nonprofit and international organizations to strengthen independent journalism, promote laws protecting the freedom of the press, and provide training to professionalize journalists.

This legislation will raise the profile of freedom of the press around the world. By enumerating the abuses committed as well as the positive steps taken towards a free press, the world will see plainly the status of democracy in every country. Additionally, it will allow the United States to help foster independent journalism in countries in every region that do not have the tradition or the capacity for a professional free press.

In addition to the foreign policy benefits, I support this legislation, because I believe that it is a fitting tribute to a great American, Daniel Pearl. Mr. Pearl was a Wall Street Journal correspondent who was abducted and beheaded in Karachi, Pakistan in early 2002. His life was spent in the pursuit of spreading truth through professional journalism and in his death he has become a symbol of the free press. This bill adds to the legacy he built with his life.

The SPEAKER pro tempore (Mr. PERRIELLO). The question is on the motion offered by the gentleman from California (Mr. BERMAN) that the House suspend the rules and pass the bill, H.R. 3714, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BERMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

□ 1500

# IRAN REFINED PETROLEUM SANCTIONS ACT OF 2009

Mr. BERMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2194) to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2194

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Iran Refined Petroleum Sanctions Act of 2009".

## SEC. 2. FINDINGS; SENSE OF CONGRESS; STATEMENT OF POLICY.

(a) FINDINGS.—Congress finds the following:

(1) The illicit nuclear activities of the Government of Iran—combined with its development of unconventional weapons and ballistic missiles, and support for international terrorism—represent a serious threat to the security of the United States and U.S. allies in Europe, the Middle East, and around the world.

(2) The United States and other responsible nations have a vital interest in working together to prevent the Government of Iran from acquiring a nuclear weapons capability.

(3) The International Atomic Energy Agency (IAEA) has repeatedly called attention to Iran's unlawful nuclear activities, and, as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the Government of Iran to suspend those activities and comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (commonly known as the "Nuclear Non-Proliferation Treaty").

(4) As a presidential candidate, then-Senator Obama stated that additional sanctions, especially those targeting Iran's dependence on imported refined petroleum, may help to persuade the Government of Iran to abandon its illicit nuclear activities.

(5) On October 7, 2008, then-Senator Obama stated, "Iran right now imports gasoline, even though it's an oil producer, because its oil infrastructure has broken down. If we can prevent them from importing the gasoline that they need and the refined petroleum products, that starts changing their cost-benefit analysis. That starts putting the squeeze on them."

(6) On June 4, 2008, then-Senator Obama stated, "We should work with Europe, Japan, and the Gulf states to find every avenue outside the U.N. to isolate the Iranian regime—from cutting off loan guarantees and expanding financial sanctions, to banning the export of refined petroleum to Iran."

(7) Major European allies, including the United Kingdom, France, and Germany, have advocated that sanctions be significantly toughened should international diplomatic efforts fail to achieve verifiable suspension of Iran's uranium enrichment program and an end to its nuclear weapons program and other illicit nuclear activities.

(8) The serious and urgent nature of the threat from Iran demands that the United States work together with U.S. allies to do everything possible—diplomatically, politically, and economically—to prevent Iran from acquiring a nuclear weapons capability.

(9) The human rights situation in Iran has steadily deteriorated in 2009, as punctuated by the transparent fraud that occurred on June 12, 2009, the brutal repression and murder, arbitrary arrests, and show trials of peaceful dissidents, and ongoing suppression of freedom of expression.

(10) The Iranian regime has been unresponsive to, and at times contemptuous of, the Obama Administration's unprecedented and serious efforts at engagement, revealing that Tehran is not interested in a diplomatic resolution, as made clear, for example, by the following:

(A) Iran's apparent rejection of the Tehran Research Reactor plan, generously offered by the United States and its partners, of potentially great benefit to the Iranian people, and endorsed by Iran's own negotiators in October, 2009.

(B) Iran's ongoing clandestine nuclear weapons program, as evidenced by its work on the secret uranium enrichment facility at Qom, its subsequent refusal to cooperate fully with IAEA inspectors, and its announcement that it would build 10 new uranium enrichment facilities.

(C) Iran's ongoing arms exports and support to terrorists in direct contravention of United Nations Security Council resolutions.

(D) Iran's absurd claims that the West, and specifically the United States, have fomented the waves of anti-regime protests that followed the June 12, 2009, election in Iran.

(E) Iran's July 31, 2009, arrest of three young Americans on spying charges.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) international diplomatic efforts to address Iran's illicit nuclear efforts, unconventional and ballistic missile development programs, and support for international terrorism are more likely to be effective if the President is empowered with the explicit authority to impose additional sanctions on the Government of Iran;

(2) the concerns of the United States regarding Iran are strictly the result of the actions of the Government of Iran;

(3) the revelation in September 2009 that Iran is developing a secret uranium enrichment site on an Islamic Revolutionary Guard Corps base near Qom, which appears to have no civilian application, highlights the urgency for Iran to fully disclose the full nature of its nuclear program, including any other secret locations, and provide the International Atomic Energy Agency (IAEA) unfettered access to its facilities pursuant to Iran's legal obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and Iran's Safeguards Agreement with the IAEA;

(4) because of its involvement in Iran's nuclear program and other destabilizing activities, the President should impose sanctions, including the full range of sanctions otherwise applicable to Iran, on any individual or entity that is an agent, alias, front, instrumentality, representative, official, or affiliate of the Islamic Revolutionary Guard Corps or is an individual serving as a representative of the Islamic Revolutionary Guard Corps, or on any person that has conducted any commercial transaction or financial transaction with such entities;

(5) Government to Government agreements with Iran to provide the regime with refined petroleum products, such as the September 2009 agreement under which the Government of Venezuela committed to provide 20,000 barrels of gasoline per day to Iran, undermine efforts to pressure Iran to suspend its

nuclear weapons program and cease all enrichment activities; and

(6) the people of the United States—

(A) have feelings of friendship for the people of Iran; and

(B) hold the people of Iran, their culture, and their ancient and rich history in the highest esteem.

(c) STATEMENT OF POLICY.—It shall be the policy of the United States—

(1) to prevent Iran from achieving the capability to make nuclear weapons, including by supporting international diplomatic efforts to halt Iran's uranium enrichment program;

(2) to fully implement and enforce the Iran Sanctions Act of 1996 as a means of encouraging foreign governments to—

(A) direct state-owned entities to cease all investment in, and support of, Iran's energy sector and all exports of refined petroleum products to Iran; and

(B) require private entities based in their territories to cease all investment in, and support of, Iran's energy sector and all exports of refined petroleum products to Iran;

(3) to impose sanctions on—

(A) the Central Bank of Iran, and any other financial institution in Iran that is engaged in proliferation activities or support of terrorist groups, and

(B) any other financial institution that conducts financial transactions with the Central Bank of Iran or with another financial institution described in subparagraph (A),

including through the use of Executive Orders 13224, 13382, and 13438 and United Nations Security Council Resolutions 1737, 1747, 1803, and 1835;

(4) to persuade the allies of the United States and other countries to take appropriate measures to deny access to the international financial system by Iranian banks and financial institutions involved in proliferation activities or support of terrorist groups;

(5) to support all Iranian citizens who embrace the values of freedom, human rights, civil liberties, and the rule of law; and

(6) for the Secretary of State to make every effort to assist United States citizens held hostage in Iran at any time during the period beginning on November 4, 1979 and ending on January 20, 1981, and their survivors in matters of compensation related to such citizens' detention.

### SEC. 3. AMENDMENTS TO THE IRAN SANCTIONS ACT OF 1996.

(a) EXPANSION OF SANCTIONS.—Section 5(a) of the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note) is amended to read as follows:

“(a) SANCTIONS WITH RESPECT TO THE DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN AND EXPORTATION OF REFINED PETROLEUM TO IRAN.—

“(1) DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN.—

“(A) INVESTMENT.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6(a) if the President determines that a person has knowingly, on or after the date of the enactment of this Act, made an investment of \$20,000,000 or more (or any combination of investments of at least \$5,000,000 each, which in the aggregate equals or exceeds \$20,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Iran's ability to develop petroleum resources of Iran.

“(B) PRODUCTION OF REFINED PETROLEUM PRODUCTS.—Except as provided in subsection

(f), the President shall impose the sanctions described in section 6(b) if the President determines that a person knowingly sells, leases, or provides to Iran any goods, services, technology, information, or support, or enters into a contract to sell, lease, or provide to Iran any goods, services, technology, information, or support, that would allow Iran to maintain or expand its domestic production of refined petroleum products, including any assistance in the construction, modernization, or repair of refineries that make refined petroleum products, if—

“(i) the value of the goods, services, technology, information, or support provided in such sale, lease, or provision, or to be provided in such contract, exceeds \$200,000; or

“(ii) the value of the goods, services, technology, information, or support provided in any combination of such sales, leases, or provision in any 12-month period, or to be provided under contracts entered into in any 12-month period, exceeds \$500,000.

“(2) EXPORTATION OF REFINED PETROLEUM PRODUCTS TO IRAN.—

“(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose the sanctions described in section 6(b) if the President determines that a person knowingly provides Iran with refined petroleum products or knowingly engages in any of the activities described in subparagraph (B), if—

“(i) the value of such products or of the goods, services, technology, information, or support provided or to be provided in connection with such activity exceeds \$200,000; or

“(ii) the value of such products, or of the goods, services, technology, information, or support, provided or to be provided in connection with any combination of providing such products or such activities, in any 12-month period exceeds \$500,000.

“(B) ACTIVITIES DESCRIBED.—The activities referred to in subparagraph (A) are the following:

“(i) Providing ships, vehicles, or other means of transportation to deliver refined petroleum products to Iran, or providing services relating to the shipping or other transportation of refined petroleum products to Iran.

“(ii) Underwriting or otherwise providing insurance or reinsurance for an activity described in clause (i).

“(iii) Financing or brokering an activity described in clause (i).”

(b) DESCRIPTION OF SANCTIONS.—Section 6 of such Act is amended—

(1) by striking “The sanctions to be imposed on a sanctioned person under section 5 are as follows:” and inserting the following:

“(a) IN GENERAL.—The sanctions to be imposed on a sanctioned person under subsections (a)(1)(A) and (b)(1) of section 5 are as follows:”;

(2) in paragraph (4), by striking “section 5” each place it appears and inserting “subsections (a)(1)(A) and (b) of section 5”; and

(3) by adding at the end the following:

“(b) ADDITIONAL MANDATORY SANCTIONS.—The sanctions to be imposed on a sanctioned person under paragraphs (1)(B) and (2) of section 5(a) are as follows:

“(1) FOREIGN EXCHANGE.—The President shall prohibit any transactions in foreign exchange by the sanctioned person.

“(2) BANKING TRANSACTIONS.—The President shall prohibit any transfers of credit or payments between, by, through, or to any financial institution, to the extent that such transfers or payments involve any interest of the sanctioned person.

“(3) PROPERTY TRANSACTIONS.—The President shall prohibit any acquisition, holding,

withholding, use, transfer, withdrawal, transportation, importation, or exportation of, dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which the sanctioned person has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.

“(c) ADDITIONAL MEASURE RELATING TO REFINED PETROLEUM PRODUCTS.—

“(1) IN GENERAL.—The head of each executive agency shall ensure that each contract with a person entered into by such executive agency for the procurement of goods or services, or agreement for the use of Federal funds as part of a grant, loan, or loan guarantee to a person, includes a clause that requires the person to certify to the contracting officer or other appropriate official of such agency that the person does not conduct any activity described in paragraph (1)(B) or (2) of section 5(a).

“(2) EXCLUSION.—Paragraph (1) shall not apply to a loan or other program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), or to any payment of educational assistance by the Secretary of Veterans Affairs under title 38, United States Code.

“(3) REMEDIES.—

“(A) IN GENERAL.—If the head of the executive agency determines that such person has submitted a false certification under paragraph (1) after the date on which the Federal Acquisition Regulation is revised to implement the requirements of this subsection, the head of an executive agency may terminate a contract, or agreement described in paragraph (1), with such person or debar or suspend such person from eligibility for Federal contracts or such agreements for a period not to exceed 3 years. Any such debarment or suspension shall be subject to the procedures that apply to debarment and suspension under the Federal Acquisition Regulation under subpart 9.4 of part 9 of title 48, Code of Federal Regulations.

“(B) INCLUSION ON LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT AND NONPROCUREMENT PROGRAMS.—The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation issued under section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) each person that is debarred, suspended, proposed for debarment, or declared ineligible by the head of an executive agency on the basis of a determination of a false certification under subparagraph (A).

“(C) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under paragraph (1).

“(4) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—Not later than 120 days after the date of the enactment of the Iran Refined Petroleum Sanctions Act of 2009, the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) shall be revised to provide for the implementation of the requirements of this subsection.

“(5) CLARIFICATION REGARDING CERTAIN PRODUCTS.—Section 5(f)(2) applies with respect to the imposition of remedies under paragraph (3) to the same extent as such section applies with respect to sanctions under subsection (a) or (b) of section 5.”.

(c) ADDITIONAL MANDATORY SANCTIONS RELATING TO TRANSFER OF NUCLEAR TECHNOLOGY.—Section 5(b) of the Iran Sanctions Act of 1996 is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving such paragraphs 2 ems to the right;

(2) by striking “The President shall impose” and inserting the following:

“(1) IN GENERAL.—The President shall impose”;

(3) by striking “section 6” and inserting “section 6(a)”;

(4) by adding at the end the following:

“(2) ADDITIONAL SANCTION.—

“(A) RESTRICTION.—In any case in which a person is subject to sanctions under paragraph (1) because of an activity described in such paragraph that relates to the acquisition or development of nuclear weapons or related technology or of missiles or other advanced conventional weapons that are capable of delivering a nuclear weapon, then notwithstanding any other provision of law, the following measures shall apply with respect to the country that has jurisdiction over such person, unless the President determines and notifies the appropriate congressional committees that the government of such country has taken, or is taking, effective actions to penalize such person and to prevent a recurrence of such activity in the future:

“(i) No agreement for cooperation between the United States and the government of such country may be submitted to the President or to Congress pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), or may enter into force.

“(ii) No license may be issued for the export, and no approval may be given for the transfer or retransfer, directly or indirectly, to such country of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to an agreement to cooperation.

“(B) CONSTRUCTION.—The restrictions in subparagraph (A) shall apply in addition to all other applicable procedures, requirements, and restrictions contained in the Atomic Energy Act of 1954 and other laws.

“(C) DEFINITION.—In this paragraph, the term ‘agreement for cooperation’ has the meaning given that term in section 11 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(b)).”.

(d) STRENGTHENING OF WAIVER AUTHORITY AND SANCTIONS IMPLEMENTATION.—

(1) INVESTIGATIONS.—Section 4(f) of the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note) is amended—

(A) in paragraph (1)—

(i) by striking “should initiate” and inserting “shall immediately initiate”;

(ii) by inserting “or 5(b)” after “section 5(a)”;

(iii) by striking “as described in such section 5(a)(1) or other activity described in section 5(a)(2) or 5(b) (as the case may be)”;

(B) in paragraph (2), by striking “should determine, pursuant to section 5(a), if a person has engaged in investment activity in Iran as described in such section” and inserting “shall determine, pursuant to section 5(a) or (b) (as the case may be), if a person has engaged in investment activity in Iran as described in section 5(a)(1) or other activity described in section 5(a)(2) or 5(b) (as the case may be)”.

(2) GENERAL WAIVER AUTHORITY.—Section 9(c) of the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note) is amended—

(A) in paragraph (1)—

(i) by inserting after “on a person described in section 5(c),” the following: “or on a country described in section 5(b)(2)(A) (if the President certifies to the appropriate congressional committees that the President is unable to make the determination described in such section 5(b)(2)(A) with respect to the government of that country),”; and

(ii) by striking “important to the national interest of the United States” and inserting “vital to the national security interest of the United States”;

(B) in paragraph (2)—

(i) in subparagraphs (A), (B), and (D), by striking “or (b)” each place it appears and inserting “or (b)(1)”;

(ii) by amending subparagraph (C) to read as follows:

“(C) an estimate of the significance of the provision of the items described in paragraph (1) or (2) of section 5(a) or section 5(b)(1) to Iran’s ability to develop its petroleum resources, to maintain or expand its domestic production of refined petroleum products, to import refined petroleum products, or to develop its weapons of mass destruction or other military capabilities (as the case may be); and”.

(e) REPORTS ON UNITED STATES EFFORTS TO CURTAIL CERTAIN BUSINESS AND OTHER TRANSACTIONS RELATING TO IRAN.—Section 10 of such Act is amended—

(1) in subsection (a), by amending paragraph (4) to read as follows:

“(4) Iran’s use in the Middle East, the Western Hemisphere, Africa, and other regions, of Iranian diplomats and representatives of other government and military or quasi-governmental institutions or proxies of Iran, including, but not limited to, Hezbollah, to promote acts of international terrorism or to develop or sustain Iran’s nuclear, chemical, biological, and missile weapons programs.”;

(2) by adding at the end the following:

“(d) REPORTS ON CERTAIN BUSINESS AND OTHER TRANSACTIONS RELATING TO IRAN.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of the Iran Refined Petroleum Sanctions Act of 2009, and every 6 months thereafter, the President shall submit a report to the appropriate congressional committees regarding any person who has—

“(A) provided Iran with refined petroleum products;

“(B) sold, leased, or provided to Iran any goods, services, or technology that would allow Iran to maintain or expand its domestic production of refined petroleum products; or

“(C) engaged in any activity described in section 5(a)(2)(B).

“(2) DESCRIPTION.—For each activity set forth in subparagraphs (A) through (C) of paragraph (1), the President shall provide a complete and detailed description of such activity, including—

“(A) the date or dates of such activity;

“(B) the name of any persons who participated or invested in or facilitated such activity;

“(C) the United States domiciliary of the persons referred to in subparagraph (B);

“(D) any Federal Government contracts to which the persons referred to in subparagraph (B) are parties; and

“(E) the steps taken by the United States to respond to such activity.

“(3) ADDITIONAL INFORMATION.—The report required by this subsection shall also include a list of—



“(A) any person that the President determines is an agent, alias, front, instrumentality, representative, official, or affiliate of the Islamic Revolutionary Guard Corps or is an individual serving as a representative of the Islamic Revolutionary Guard Corps;

“(B) any person that the President determines has knowingly provided material support to the Islamic Revolutionary Guard Corps or an agent, alias, front, instrumentality, representative, official, or affiliate of the Islamic Revolutionary Guard Corps; and

“(C) any person who has conducted any commercial transaction or financial transaction with the Islamic Revolutionary Guards Corps or an agent, alias, front, instrumentality, representative, official, or affiliate of the Islamic Revolutionary Guard Corps.

“(4) FORM OF REPORTS; PUBLICATION.—The reports required under this subsection shall be—

“(A) submitted in unclassified form, but may contain a classified annex; and

“(B) published in the Federal Register.

“(e) REPORTS ON GLOBAL TRADE RELATING TO IRAN.—Not later than one year after the date of the enactment of the Iran Refined Petroleum Sanctions Act of 2009 and annually thereafter, the President shall submit to the appropriate congressional committees a report, with respect to the immediately preceding 12-month period, on the dollar value amount of trade, including in the energy sector, between Iran and each country maintaining membership in the Group of Twenty Finance Ministers and Central Bank Governors.”.

(f) CLARIFICATION AND EXPANSION OF DEFINITIONS.—Section 14 of such Act is amended—

(1) in paragraph (13)(B)—

(A) by inserting “financial institution, insurer, underwriter, guarantor, any other business organization, including any foreign subsidiary, parent, or affiliate of such a business organization,” after “trust,”; and

(B) by inserting “, such as an export credit agency” before the semicolon at the end;

(2) by redesignating paragraphs (15) and (16) as paragraphs (17) and (18), respectively; and

(3) by striking paragraph (14) and inserting the following:

“(14) KNOWINGLY.—The term ‘knowingly’ means—

“(A) having actual knowledge; or

“(B) having the constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

“(15) PETROLEUM RESOURCES.—The term ‘petroleum resources’ includes petroleum, oil or liquefied natural gas, oil or liquefied natural gas tankers, and products used to construct or maintain pipelines used to transport oil or compressed or liquefied natural gas.

“(16) REFINED PETROLEUM PRODUCTS.—The term ‘refined petroleum products’ means gasoline, kerosene, diesel fuel, residual fuel oil, and distillates and other goods classified in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States.”.

(g) TERMINATION OF CERTAIN PROVISIONS.—Section 8 of the Iran Sanctions Act of 1996 is amended—

(1) by striking “The requirement under section 5(a)” and inserting “(a) SANCTIONS RELATING TO INVESTMENT.—The requirement under section 5(a)(1)(A)”;

(2) by striking “with respect to Iran”; and

(3) by adding at the end the following:

“(b) REFINED PETROLEUM PRODUCTS.—The requirements under paragraphs (1)(B) and (2)

of section 5(a) and section 6(b) to impose sanctions shall no longer have force or effect if the President determines and certifies to the appropriate congressional committees that Iran—

“(1) has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology; and

“(2) has ceased nuclear-related activities, including uranium enrichment, that would facilitate the efforts described in paragraph (1).”.

(h) EXTENSION OF ACT.—Section 13(b) of the Iran Sanctions Act of 1996 is amended by striking “2011” and inserting “2016”.

(i) TECHNICAL AMENDMENTS.—

(1) MULTILATERAL REGIME.—Section 4 of such Act is amended—

(A) in subsection (b)(2), by striking “(in addition to that provided in subsection (d))”; and

(B) by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) REFERENCE TO COMMITTEE ON FOREIGN AFFAIRS.—Section 14(2) of such Act is amended by striking “International Relations” and inserting “Foreign Affairs”.

(3) CONFORMING AMENDMENTS.—(A) Section 5(c)(1) of such Act is amended by striking “or (b)” and inserting “or (b)(1)”. (B) Section 9(a) of such Act is amended by striking “or 5(b)” each place it appears and inserting “or 5(b)(1)”.

**SEC. 4. EFFECTIVE DATE; RULE OF CONSTRUCTION.**

(a) IN GENERAL.—The amendments made by this Act shall take effect upon the expiration of the 60-day period beginning on the date of the enactment of this Act, except that—

(1) paragraphs (1) and (2) of section 5(a), section 5(b)(2), and section 6(b), of the Iran Sanctions Act of 1996, as amended by this Act, shall apply to conduct engaged in on or after October 28, 2009, notwithstanding section 5(f)(3) of the Iran Sanctions Act of 1996; and

(2) the amendments made by subsection (d) of section 3 of this Act shall apply with respect to conduct engaged in before, on, or after the date of the enactment of this Act.

(b) RULE OF CONSTRUCTION.—

(1) EXISTING SANCTIONS NOT AFFECTED.—The amendments made by subsections (a) and (b) of section 3 of this Act shall not be construed to affect the requirements of section 5(a) of the Iran Sanctions Act of 1996 as in effect before the date of the enactment of this Act, and such requirements continue to apply, on and after such date of enactment, to conduct engaged in before October 28, 2009.

(2) WAIVER AUTHORITY.—The amendments made by subsection (d) of section 3 of this Act shall not be construed to affect any exercise of the authority under section 4(f) or section 9(c) of the Iran Sanctions Act of 1996 as in effect on the day before the date of the enactment of this Act.

Mr. KUCINICH. Mr. Speaker, I claim time in opposition.

The SPEAKER pro tempore. Is the gentlewoman from Florida opposed to the motion?

Ms. ROS-LEHTINEN. No, I do not oppose the motion.

The SPEAKER pro tempore. The gentleman from Ohio will control the 20 minutes in opposition.

Pursuant to the rule, the gentleman from California (Mr. BERMAN) and the gentleman from Ohio (Mr. KUCINICH) each will control 20 minutes.

The Chair recognizes the gentleman from California.

Mr. BERMAN. Mr. Speaker, I ask unanimous consent to split the time evenly, the 20 minutes, in support of the bill with my colleague, the ranking member from Florida (Ms. ROS-LEHTINEN).

The SPEAKER pro tempore. Without objection, the gentlewoman from Florida will control 10 minutes.

There was no objection.

Mr. BERMAN. Mr. Speaker, I ask unanimous consent to extend the time of the debate on H.R. 2194 by an additional 20 minutes, with my control of 10 of those additional 20 minutes and the gentleman from Ohio's control in opposition of 10 of those 20 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. KUCINICH. Mr. Speaker, reserving the right to object, what we are saying is that in my friend's interest of making sure that there is an opportunity for Members to speak on the various sides here, you want to make sure the time is evenly divided for the underlying bill and also for the extension of time?

Mr. BERMAN. Perhaps, more accurately, you want to make sure the time is divided, and I am prepared to say the rules require that; and the extension of time I have in mind of an additional 20 minutes—

Mr. KUCINICH. The additional time is going to be evenly distributed.

Mr. Speaker, I withdraw my reservation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BERMAN. Mr. Speaker, I have a further unanimous consent request: that the 10 additional minutes of time on behalf of the supporters of this legislation be split, 5 minutes for the majority and 5 minutes for the ranking member.

The SPEAKER pro tempore. Without objection, the gentlewoman from Florida will control an additional 5 minutes.

There was no objection.

PARLIAMENTARY INQUIRY

Mr. BERMAN. Point of parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. BERMAN. Is it correct we are now in a situation where we will have a 1-hour debate on this bill in which I will have 15 minutes to yield, the ranking member will have 15 minutes to yield, and the gentleman from Ohio will have 30 minutes under his control?

The SPEAKER pro tempore. The gentleman is correct.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. BERMAN. Mr. Speaker, I ask unanimous consent that all Members



may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BERMAN. Mr. Speaker, I yield myself 4½ minutes.

Mr. Speaker, this bill has one overriding goal: to prevent Iran from achieving a nuclear weapons capability. The prospect of a nuclear-armed Iran is the most serious and urgent strategic challenge faced by the United States, and we must use all of the diplomatic means at our disposal—including tougher sanctions—to prevent that from becoming a reality.

A nuclear-armed Iran would spread its influence by intimidating its neighbors; it would, with near impunity, continue to support terrorists and destabilize the Middle East; it would spark an arms race in the region that would tear the Nuclear Nonproliferation Treaty to shreds; and, most frightening of all, it could, in the light of Iran's repeated threats to wipe another nation off the map, result in the actual use of nuclear weapons.

When one considers the regime's ideological nature, the fact that it sent thousands of children to their deaths in the Iran-Iraq war, and its current disregard for the human rights of its own citizens, it is clear the Iranian regime is anything but a rational actor, and we certainly cannot take the chance that a nuclear Iran would behave responsibly.

With each passing day, the situation becomes more urgent as Iran takes additional steps to develop its nuclear weapons capability. By many estimates, it would have that capability by sometime next year, and even the predictions that they could not be ready to deliver a bomb within 5 years have to be reevaluated on a shorter time frame based on recent revelations about Iran's nuclear program.

In September, Iran's efforts to construct a new secret uranium enrichment facility were exposed to the world. And what was Tehran's response when the international community rightly condemned it for that action? To declare that it will build 10 more.

The Iranian nuclear issue could have been resolved without further sanctions. President Obama has offered Iran an outstretched hand, but regrettably Iran has not unclenched its fist. The regime has refused to endorse even a confidence-building measure—agreed to by its negotiators in Geneva—that would have seen Iran ship most of its low-enriched uranium abroad to be further enriched for use in Iran's civilian nuclear medical research reactor. That deal would have bought everyone significant time, delaying Iran's nuclear-arms clock for up to a year as nego-

tiators dealt with the heart of the issue: Iranian compliance with the U.N. Security Council requirement that it suspend its enrichment program altogether. By rejecting the deal, Iran retains its full stock of low-enriched uranium, enough to serve as the basis for one nuclear bomb, and it forces the world to respond urgently.

The bill before us today is an important part of that response. It would take advantage of Iran's considerable dependency on refined-petroleum imports. It would sanction foreign companies that sell refined petroleum to Iran, or help Iran with its own domestic refining capacity, by depriving those companies of access to the United States market. And in so doing, we are asking no more of foreign companies than we currently demand of American firms. I believe the passage and implementation of this act would have a powerful effect on the Iranian economy, and I believe it would force unpalatable budgetary choices on the Iranian regime, vastly increasing the domestic political cost of pursuing its nuclear program.

That said, I want to reiterate that my overriding goal in moving forward with this legislation is to prevent Iran from developing a nuclear weapons capability. As we move toward a likely conference with the Senate, most likely early next year, and as the administration continues its efforts to pursue stronger multilateral sanctions, I am open to making adjustments to the bill that would make it as effective as possible in meeting that objective, including providing incentives to other nations to join us in supporting a strong multilateral sanctions regime. One possibility would be to provide an exemption for companies whose host nations are already enforcing robust sanctions in their national law.

But for now, it is sufficient to say that Iran has had ample time to respond positively to President Obama's generous engagement offer. Regrettably, the response has been only one of contempt. It is time for this body to act.

I urge the support of this legislation.

DECEMBER 14, 2009.

Hon. HOWARD L. BERMAN,  
*Chairman, Committee on Foreign Affairs, 2170 Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing regarding the Iran Refined Petroleum Sanctions Act of 2009 (H.R. 2194, 111th Congress). As you know, the bill was referred to the Committee on Ways and Means based on the Committee's jurisdiction over international trade.

There have been some productive conversations between the staffs of our Committees, during which we have proposed some changes to H.R. 2194 that I believe help to clarify the intent and scope of the bill, particularly with respect to U.S. international trade obligations. I appreciate your commitment to address the concerns raised by the Committee on Ways and Means as this legislation moves forward.

In order to expedite this legislation for floor consideration, the Committee on Ways and Means will forgo action on this bill and will not oppose its consideration on the suspension calendar, based on our understanding that you will work with the Committee on Ways and Means as the legislative process moves forward in the House of Representatives and in the Senate, to ensure that our concerns are addressed. This is done with the understanding between our Committees that it does not in any way prejudice the Committee on Ways and Means with respect to the appointment of conferees or the full exercise of its jurisdictional prerogative on this bill or similar legislation in the future.

I would appreciate your response to this letter, confirming our understanding with respect to H.R. 2194, and would ask that a copy of our exchange of letters on this matter be included in the CONGRESSIONAL RECORD.

Sincerely,

CHARLES B. RANGEL,  
*Chairman, Committee on Ways and Means.*

DECEMBER 14, 2009.

Hon. CHARLES B. RANGEL,  
*Chairman, Committee on Ways and Means, 1102 Longworth House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 2194, the Iran Refined Petroleum Sanctions Act of 2009.

I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Ways and Means. I agree that the inaction of your Committee with respect to the bill does not in any way prejudice the Committee on Ways and Means regarding the appointment of conferees or the full exercise of its jurisdictional prerogative on this bill or similar legislation in the future.

I also appreciate the strong concerns raised by the Committee on Ways and Means regarding certain provisions of the bill and the proposals your Committee has offered to help to clarify the bill's intent and scope, particularly with respect to U.S. international trade obligations. As to any House-Senate conference on the bill, I understand that your Committee reserves the right to seek the appointment of conferees for consideration of portions of the bill that are within the Committee's jurisdiction, and I agree to support a request by the Committee with respect to serving as conferees on the bill, consistent with the Speaker's practice in this regard. As the bill moves through the legislative process, I look forward to working with you to address the trade-related concerns raised by the Committee on Ways and Means.

I look forward to working with the Committee on Ways and Means as this bill moves through the legislative process. I will ensure that our exchange of letters is included in the CONGRESSIONAL RECORD.

Sincerely,

HOWARD L. BERMAN,  
*Chairman.*

DECEMBER 2, 2009.

Hon. HOWARD L. BERMAN,  
*Chairman, House Foreign Affairs Committee, Rayburn House Office Building, Washington, DC.*

DEAR CHAIRMAN BERMAN: I am writing in regards to H.R. 2194, the Iran Refined Petroleum Sanctions Act of 2009, which was introduced into the House on April 30, 2009.

I appreciate your efforts to work with the Committee on Oversight and Government

Reform on the provisions of H.R. 2194 that fall within the Oversight Committee's jurisdiction. These provisions include issues related to the federal procurement process.

In the interest of expediting consideration of H.R. 2194, the Oversight Committee will not request a sequential referral of this bill. I would, however, request your support for the appointment of conferees from the Oversight Committee should H.R. 2194 be considered in conference with the Senate. This letter should not be construed as a waiver of the Oversight Committee's jurisdiction over subjects addressed in H.R. 2194 that fall within the jurisdiction of the Oversight Committee.

Finally, I request that you include our exchange of letters on this matter in the Foreign Affairs Committee Report on H.R. 2194 and in the Congressional Record during consideration of this legislation on the House floor.

Thank you for your attention to these matters,

Sincerely,

EDOLPHUS TOWNS,  
*Chairman.*

DECEMBER 8, 2009.

Hon. EDOLPHUS TOWNS,  
*Chairman, Committee on Oversight and Government Reform, Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 2194, the "Iran Refined Petroleum Sanctions Act of 2009."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Oversight and Government Reform. I acknowledge that your Committee will not formally consider the bill and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in the bill which fall within the Committee's Rule X jurisdiction.

Further, as to any House-Senate conference on the bill, I understand that your Committee reserves the right to seek the appointment of conferees for consideration of portions of the bill that are within the Committee's jurisdiction, and I agree to support a request by the Committee with respect to serving as conferees on the bill, consistent with the Speaker's practice in this regard.

I will ensure that our exchange of letters is included in the Congressional Record, and I look forward to working with you on this important legislation.

Sincerely,

HOWARD L. BERMAN,  
*Chairman.*

DECEMBER 4, 2009.

Hon. HOWARD BERMAN,  
*Chairman, Committee on Foreign Affairs, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing concerning H.R. 2194, the Iran Refined Petroleum Sanctions Act of 2009. This bill was referred to the Committee on Foreign Affairs, and in addition, to this Committee, among others.

There is an agreement with regard to this bill, and so in order to expedite floor consideration, I agree to forego further consideration by the Committee on Financial Services. I do so with the understanding that this decision will not prejudice this Committee with respect to its jurisdictional prerogatives on this or similar legislation. I request your support for the appointment of con-

ferees from this Committee should this bill be the subject of a House-Senate conference.

Please place this letter in the Congressional Record when this bill is considered by the House. I look forward to the bill's consideration and hope that it will command the broadest possible support.

BARNEY FRANK,  
*Chairman.*

DECEMBER 9, 2009.

Hon. BARNEY FRANK,  
*Chairman, Committee on Financial Services, Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 2194, the "Iran Refined Petroleum Sanctions Act of 2009."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Financial Services. I acknowledge that your Committee will not formally consider the bill and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in the bill which fall within the Committee's Rule X jurisdiction.

Further, as to any House-Senate conference on the bill, I understand that your Committee reserves the right to seek the appointment of conferees for consideration of portions of the bill that are within the Committee's jurisdiction, and I agree to support a request by the Committee with respect to serving as conferees on the bill, consistent with the Speaker's practice in this regard.

I will ensure that our exchange of letters is included in the CONGRESSIONAL RECORD, and I look forward to working with you on this important legislation.

Sincerely,

HOWARD L. BERMAN,  
*Chairman.*

Mr. Speaker, I reserve the balance of my time.

Mr. KUCINICH. I yield 4 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. I thank the gentleman from Ohio for permitting me to speak on this.

I have great respect for the Chair and ranking member, and I deeply share their concern about a nuclear-armed Iran. It is something that I think we are all deeply opposed to, we're deeply concerned about, in terms of the potential instability in that delicate region and frankly around the world. But I have a deep concern that the approach that is being offered here is not calculated to reach that objective.

First and foremost, there is correspondence, a letter from the Deputy Secretary of State, Mr. Steinberg, talking about the problems of sanctions legislation on the Senate side, that talks about how we are entering a critical period of intense diplomacy to impose significant international pressure on Iran.

It is not at all clear, Mr. Speaker, that moving forward right now with new sanctions on companies of other countries that are involved with the petroleum activities is actually going to be helpful at a time when the administration is ramping up its inter-

national efforts to deal with Iran; I think efforts that we all support and feel need to be as productive as possible.

I think there is also a very real question about whether the focus of this legislation is going to have its intended use, because there is nobody in the Iranian Government, in the Revolutionary Guard, in the inner circle of either the President or the Supreme Ruler that's not going to get their gasoline. The extent to which it is successful, and that remains questionable, it's going to be impactful on the people of Iran, common people who in the main are amongst the few Middle Eastern countries where they still have a favorable view of the United States. Sanctioning those people, not the leadership is not helpful.

I found it interesting on the front page of today's Washington Post, they discuss the evidence of Iran's nuclear-armed being expedited, despite sanctions. In fact, there is evidence in this article that it is the sanctions themselves that have spurred the indigenous development of that capacity in Iran. One of them said, "thank God for the sanctions" against us.

We need to be very careful about the application of sanctions and how they're going to be worked. I think we have a shortsighted view for dual use technology and dealing with export controls that have actually developed other countries' capacity, including those that aren't friendly to us, along with all companies from other competitor nations around the world. I think we need to be very careful here.

Last but by no means least, Mr. Speaker, I am concerned that the United States is really the only major country in the world that doesn't have a thoughtful sanctions policy—when to impose them, how to impose them, and, most important, when to take them off. I would respectfully suggest that this is not the right time. This is an instrument that's not likely to be successful, and it may complicate our efforts against Iran. While I agree with the gentleman's objective, I don't agree with the legislation and urge its rejection.

THE DEPUTY SECRETARY OF STATE,  
*Washington, DC, December 11, 2009.*

Hon. JOHN F. KERRY,  
*Chairman, Committee on Foreign Relations, U.S. Senate.*

DEAR MR. CHAIRMAN: I wanted to follow up on our conversations regarding Iran, and possible sanctions legislation to be taken up by the Senate (S. 2799). We share Congress's concerns on Iran and its nuclear program, and the need to take decisive action. One of the top national security priorities for the Obama Administration is to deny Iran a nuclear weapons capability. As we discussed, we are pursuing this objective through a dual track strategy of engagement and pressure; and we are engaged in intensive multilateral efforts to develop pressure track measures now. It is in the spirit of these shared objectives that I write to express my

concern about the timing and content of this legislation.

As I testified before the Congress in October, it is our hope that any legislative initiative would preserve and maximize the President's flexibility, secure greater cooperation from our partners in taking effective action, and ultimately facilitate a change in Iranian policies. However, we are entering a critical period of intense diplomacy to impose significant international pressure on Iran. This requires that we keep the focus on Iran. At this juncture, I am concerned that this legislation, in its current form, might weaken rather than strengthen international unity and support for our efforts. In addition to the timing, we have serious substantive concerns, including the lack of flexibility, inefficient monetary thresholds and penalty levels, and blacklisting that could cause unintended foreign policy consequences.

I have asked Department staff to prepare for and discuss with your staff revisions that could address these concerns on timing and content. I am hopeful that we can work together to achieve our common goals.

I hope that consideration of this bill could be delayed to the new year so as not to undermine the Administration's diplomacy at this critical juncture. I look forward to working together to achieve our common goals, and I will stay in close contact with you as our diplomatic efforts proceed.

Sincerely,

JAMES B. STEINBERG.

Ms. ROS-LEHTINEN. Mr. Speaker, I yield myself such time as I may consume.

Since its secret nuclear weapons program was publicly exposed in 2002, Iran has manipulated nations, world leaders and the United Nations on its march toward possessing the capacity to unleash nuclear havoc on the world. Current and past regime leaders have made their intentions quite clear—the destruction of the State of Israel, the extinction of the Jewish people, a world without the United States.

Iran has already produced over 1,400 kilograms of low-enriched uranium, which can easily be used for a so-called "dirty bomb." New Iranian documents have been revealed reportedly detailing a program to produce and test the trigger for an actual nuclear weapon.

□ 1515

Nuclear experts note that there is no other possible use for such nuclear technology, except for a nuclear bomb. And in September of this year, media quoted international inspectors saying, they "believe that Tehran has the ability to make a nuclear bomb and is working to develop a missile system that can carry an atomic warhead." And U.S. officials have calculated that Iran already has stockpiled enough uranium to produce one nuclear weapon, even as it expands its enrichment capabilities.

We have arrived at the precipice, and we are staring into darkness. In February of 2006 the Congress adopted a concurrent resolution citing the Iranian regime's repeated violations of its nonproliferation obligations, underscoring that as a result of these viola-

tions Iran no longer had the right to develop any aspect of a nuclear fuel cycle and urging responsible nations to impose economic sanctions to deny Iran the resources and the ability to develop nuclear capabilities. Three years later, the idea that we could rely on the so-called international community to handle this problem has been shown to be a mirage.

But we, too, have failed to act quickly and decisively, failing to fully implement the range of U.N. sanctions that are already on the books. Now we must use the limited time remaining to impose sanctions so painful that they should threaten the Iranian regime's survival. Only when faced with the loss of power will the regime be compelled to abandon its destructive policies.

The bill we are considering today, Mr. Speaker, the Iran Refined Petroleum Sanctions Act, which I joined Chairman BERMAN in introducing, ratchets up the pressure on the regime by targeting a key vulnerability, Iran's inability to produce sufficient gasoline and other refined petroleum products.

In recent years, Iran has estimated to have imported gasoline directly or indirectly from at least 16 countries, including China, India, the Netherlands, France, and the UAE, as well as global oil companies such as TOTAL and Shell. To stop this trade, the sanctions we're considering today must also be adopted by our allies, who continue to talk about the need to act but hide behind the claim that the U.N. Security Council must act first. But the U.N. Security Council, due in part to Russian and Chinese opposition, has demonstrated that it will never impose meaningful costs on the Iranian regime.

There is no shortage of measures available. What is lacking is the will. Beyond this bill today, Mr. Speaker, the broader question is whether we will be bystanders, complicit in our own destruction. As Churchill warned, "If you will not fight for the right when you can easily win without bloodshed, if you will not fight when your victory will be sure, you may come to the moment when you will have to fight with all the odds against you and only a precarious chance for survival." For our survival, and for that of our friend and ally, Israel, render your full support to this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. KUCINICH. Mr. Speaker, I yield 5 minutes to the gentleman from Texas, RON PAUL.

Mr. PAUL. The chairman states that the main purpose of this bill is to prevent the Iranians from getting a nuclear weapon. That isn't even as powerful a statement as was made that enticed us into the Iraq war. There was the claim that they already had them. But now, this is a pretense, and yet here we are taking these drastic steps.

My main reason for opposing this bill is that I think it's detrimental to our national security. There's no other reason. It doesn't serve our interests. So I am absolutely opposed to it.

In the late 1930s and the early 1940s the American people did not want to go into war, but there were some that were maneuvering us into war, and they used the argument that you needed an event. So, in June of 1941, sanctions were put against Japan, incidentally and ironically, to prohibit oil products from going into Japan. Within 6 months there was the bombing of Pearl Harbor. And there is now talk, there's been talk in the media, and we've heard about it, we need to bomb Iran. And that's what the people hear.

The sanctions are a use of force. This is just not modest. This is very serious. And the way this is written, it literally could end up with a blockade. It could be trying to punish our friends and cut off trade, and this cannot help us in any way. We would like to help the dissidents. We'd like to encourage them to overthrow their government. But hardly should we have our CIA, with U.S. funded programs, going in there with a policy of regime change. They know these kind of things happen. We've been involved in this business in Iran since 1953. And it doesn't serve us well. It backfires on us, comes back to haunt us.

One of the goals explicitly expressed by al Qaeda and their leaders has been they would like to draw us into the Middle East because it would cost us a lot of money and it could hurt us financially. And the second reason they want us over there is to get us bogged down in an endless war. And for the last decade, that is what we've been doing. We are bogged down to the point where it's very discouraging to the American people, very frustrating, no signs of victory, no signs of peace. But we're bogged down. These were the precise goals of the al Qaeda leadership.

And also, one of the purposes of enticing us over there and being involved is to give a greater incentive to recruit those individuals who become violent against us. And this has been unbelievably successful. So we've been involved in Iraq. We've been involved in Afghanistan. We're bombing Pakistan and almost, this is like another bonus for those who want us to be attacked, is that we're over there and just fomenting this anger and hatred toward us.

That is why I believe this is not in our best interest. It actually hurts us. Once we say that we're going to do something like using force and prevent vital products from going in, it means that we've given up on diplomacy. Diplomacy's out the window. And they're not capable of attacking us. You know, this idea that they are on the verge of a bomb, you know, our CIA said they haven't been working on it since 2003. And the other thing is, if you want to

give them incentive to have a bomb, just keep pestering like this, just intimidate them. Provoke it. This is provocative. They might have a greater incentive than ever.

They can't even make enough gasoline for themselves. I mean, they are not a threat. They don't have an army worth anything. They don't have a navy. They don't have an air force. They don't have intercontinental ballistic missiles. So it is not a threat to our national security. I see the threat to our national security with this type of policy which could come and backfire and hurt us.

I want to read number 5 in the bill, that particular item, because it makes my case, rather than making the case for those who want these sanctions. I think this literally makes my case. Number 5 says, on October 7, 2008, then-Senator Obama stated Iran right now imports gasoline, even though it's an oil producer, because its oil infrastructure has broken down. If we can prevent them from importing the gasoline that they need and the refined petroleum products, that starts changing their cost-benefit analysis, that starts putting the squeeze on them.

The squeeze on whom? On the people. This will unify the dissent. This will unify the Iranian people against us. If we want to encourage true dissent and overthrow that government, which is more spontaneous and honest, I would say this is doing exactly the opposite.

Mr. BERMAN. Mr. Speaker, a few unanimous consent requests. I first recognize the Chair of the Foreign Operations Subcommittee of Appropriations, the gentlelady from New York (Mrs. LOWEY) for a unanimous consent request.

Mrs. LOWEY. Mr. Speaker, I rise in strong support of the bill's expansion of economic sanctions against Iran and businesses and the refined petroleum and energy sectors collaborating with the regime.

I strongly support this bill's expansion of economic sanctions against Iran and businesses in the refined petroleum and sectors collaborating with the regime.

Iran's relentless pursuit of nuclear weapons technology and defiance of international law are a great threat to world stability. This bill sends a critical message: the American people and this Congress have little patience for Iran's foot-dragging, and there will be serious consequences for the Iranian government if its nuclear efforts are not halted.

The 2010 foreign aid bill includes a measure to curtail Ex-Im's cooperation with foreign companies that significantly contribute to Iran's refined petroleum industry.

And passage of H.R. 2194 will lay the groundwork for even tougher sanctions on Iran.

I thank the Gentleman from California for his efforts, and I urge my colleagues to vote in support of this bill.

Mr. BERMAN. Mr. Speaker, I'm pleased to recognize a distinguished

member of our committee, the gentlewoman from Nevada (Ms. BERKLEY) for a unanimous consent request.

Ms. BERKLEY. Mr. Speaker, I rise expressing my strong support for H.R. 2194.

I thank the gentleman for yielding me the time and for his leadership on this issue. He has successfully navigated a very difficult terrain and I believe he has found the right moment to bring this bill forward.

It is now abundantly clear once again that Iran is not serious about negotiation: a new U.S. president tried to take a different approach, extending his hand in friendship to the Iranian regime. In exchange, the Iranians continued to show their clenched fist of deception and dishonesty. All the while, evidence mounts that Iran gets closer each day to developing a nuclear weapon.

A nuclear Iran poses as much of a threat to the U.S., to Europe, to the Middle East, as it does to Israel. With this bill today, we show the Iranians that we will use every tool we have to stop them from obtaining a nuclear weapon. We want to avoid war, but we must not take any option off the table.

And to my colleagues I say: if you want to avoid war, support this bill. If it succeeds, the military option won't be necessary. But without this bill, without sanctions, and without an Iranian regime that is willing to negotiate, I fear a nuclear Iran will be inevitable as will a far stronger option to eliminate its threat.

I thank the gentleman again.

Mr. BERMAN. Mr. Speaker, I yield for a further unanimous consent request to a distinguished member of the committee, the gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY of Virginia. Mr. Speaker, I rise voicing my strong support for H.R. 2194 because America's patience is not limitless.

Mr. Speaker, it is time to strengthen the hand of the Administration and our allies to address the threat of a nuclear Iran. I proudly cosponsored the Iran Refined Petroleum Sanctions Act, which gives the President the authority to impose stiffer economic sanctions targeting Iran's oil production. The bill adds such activities as selling refined gasoline or supplying equipment for construction of oil refineries to the list of prohibited activities under the Iran Sanctions Act.

In January President Obama made a fundamental shift in our diplomatic strategy with Iran. He extended an olive branch with the hope of initiating the first serious talks with Tehran in decades, but that approach was conditioned on the Iran leaders being willing and equal partners.

Unfortunately, those leaders have consistently rejected our overtures and continue to develop Iran's nuclear capabilities in defiance of repeated demands from the United Nations that it suspend such activities. Missile tests in the spring and fall of this year, coupled with the recent revelation of a secret enrichment facility brings new urgency—as evidenced by the growing support within the international community for further action. Just this week, we learn of yet another secretive program to develop the technological components for triggering a nuclear device.

These new sanctions can and will bring additional pressure to bear on the Ahmedinejad regime. Iran's insistence on enrichment, along with its ties to groups like Hezbollah, is cause for great concern not just in the Middle East. This bill states firmly that U.S. patience is not limitless. I urge my colleagues to support it.

Mr. BERMAN. Mr. Speaker, I'm pleased to yield 2½ minutes to the chairman of the Middle East and South Asia Subcommittee, someone who has been very focused on this issue, the gentleman from New York (Mr. ACKERMAN).

Mr. ACKERMAN. Mr. Speaker, I rise in strong support of a sanctions bill that I believe will strengthen the Obama administration's ability to conduct effective diplomacy. The world, and I mean both our allies and others, needs to know that the U.S. Congress is dead serious about sanctions should diplomacy fail to resolve the real concerns about Iran's nuclear program. For those who worry that sanctions may lead to conflict, I would suggest that the opposite is true. With Iranian proliferation on the horizon, what is feckless is reckless. If you don't want war, it seems to me that you absolutely must back the toughest possible political and economic sanctions.

It is true that sanctions alone are almost certainly not going to be sufficient to force the Iranian regime to change course. But if we are serious about stopping Iran's race for nuclear capability, we must apply the maximum possible pressure by enhancing our capacity for unilateral sanctions, as we're doing today, by implementing crippling multilateral sanctions, and by developing a strategy that applies more comprehensive pressure than just diplomatic engagement followed by sanctions.

President Obama's offer of direct engagement with Iran already helped to heal a variety of political woes, but by itself, diplomacy and political and economic sanctions may still leave too much initiative in Iranian hands. If the Iranians remain recalcitrant and sanctions are applied, no matter how crippling—and I want to make it perfectly clear that I want them to be absolutely suffocating for the regime—the initiative is still left to the ayatollahs to decide when they've had enough.

Tragically, I suspect President Obama is soon going to have to decide whether an Iranian nuclear weapon is truly unacceptable in the full meaning of that word and with the full knowledge of what that means. The best thing that we can do to help avoid that terrible moment of truth is to act affirmatively on the bill before us today.

Mr. KUCINICH. I'll reserve the time.

Ms. ROS-LEHTINEN. Mr. Speaker, I'm so pleased to yield 2 minutes to the gentleman from Virginia (Mr. CANTOR), the esteemed minority whip and a member of the Committee on Ways and Means, a true leader who understands

the clear and present danger that Iran presents for the State of Israel and for the United States.

Mr. CANTOR. I thank the gentlelady, as well as the gentleman from California, for their leadership, and bringing this bill to the floor.

Mr. Speaker, a nuclear Iran would be a game-changing development that poses irreparable damage to global security and stability. Yet, with each passing day, the regime in Tehran brazenly forges ahead to make this nightmare scenario a reality.

□ 1530

These are times of sharp partisan rancor in our Nation's Capitol. But today we have the chance to come together to take a major step forward in the interests of world peace. The time for decisive action to head off Iran's nuclear program is now. By passing the Iran Refined Petroleum Sanctions Act, we send the overdue message that the cost of doing business with Iran is too much to bear.

Mr. Speaker, this legislation leverages our economic muscle to punish any individual or company who sells or ships gasoline to Iran. It offers one of our best chances to convince Iran that it is firmly in its interest to abandon its nuclear ambitions.

As Iran takes a more belligerent approach to its nuclear program, the United States will not fall asleep at the wheel. We must lead. With the passage of this bill, we must, and will, rally the international community in order to stop the Middle East from moving irreversibly toward nuclearization.

Mr. Speaker, I urge passage of the Iran Refined Petroleum Sanctions Act.

Mr. KUCINICH. I yield 3 minutes to the gentleman from Massachusetts (Mr. LYNCH).

MR. LYNCH. I thank the gentleman. I also come here with enormous respect for Mr. BERMAN, Ms. ROS-LEHTINEN, and my friends. And if I thought for 1 minute that this bill would help the United States or protect Israel or undermine Mr. Ahmadinejad, I would support it. But I do not. I do, however, take great comfort in the chairman's and the chief sponsor's earlier comments that in the conference process he is open and willing to adjust the bill. And perhaps if these adjustments and improvements are made, I can support it at that time, but I am faced with the bill before me.

And let me just say that I think that this bill will help Ahmadinejad, that this will have the same effect as we have seen with other embargoes and other sanctions. I point to a couple of examples, one being the example in Cuba where we put in an embargo there, and ever since then, the Castro regime has been able to blame everything that has gone wrong in Cuba, including tropical storms and hurricanes, on the U.S. embargo. It has helped that

regime stay in power. We see the same effect happening in Gaza. I have been there a couple of times. The fact that we've got an embargo there and a blockade has caused many in Gaza to rally around the flag—in this case, Hamas—and the blockade has helped them. That is the effect that this bill will have in Iran.

We have watched very closely. This past week, tens of thousands of students in Iran in the Green Revolution have come to oppose and call for the ousting of Ahmadinejad and his regime. What this will do, however, is this will undermine that opposition. This bill is focused on cutting off gasoline supply to the poor, to the working class, to the middle class and families, the very people who are supporting the revolutionary movement there to get rid of Ahmadinejad.

We are, in a way, I think, substituting a plan that will not work for one that could very well work. We are snatching defeat from the jaws of victory with this bill. I hope earnestly that as the sponsor of this bill has indicated, the chairman, Mr. BERMAN, that there will be important changes perhaps made during the conference process. I hope that does happen, and I hope that I am able to support this bill when it comes back from conference based on those changes.

Ms. ROS-LEHTINEN. I would like to yield 1 minute to the gentleman from New Jersey (Mr. SMITH), the ranking member on the Foreign Affairs Subcommittee on Africa and Global Health.

Mr. SMITH of New Jersey. Mr. Speaker, Chairman BERMAN's Iran Refined Petroleum Sanctions Act, cosponsored by the ranking member, Ms. ROS-LEHTINEN, significantly ratchets up strong bipartisan pressure on Iran to end their nefarious quest for nuclear weapons.

Given Ahmadinejad's extreme hostility toward Israel, his outrageous threats to annihilate Israel from the face of the Earth, and his obsessive hatred of Jews worldwide, this bill strengthens penalties on those who not only sell, lease, or provide to Iran any goods, services, technology, information, or support that would allow Iran to maintain or expand its domestic production of refined petroleum resources, it has other sanctions as well.

Mr. Speaker, any serious effort to peacefully stop Iran from acquiring weapons of mass destruction, which I believe they will use if they acquire them, requires the strongest political and economic pressure that we can muster. H.R. 2194 is a step, the right step in that direction.

Mr. KUCINICH. I yield myself 3 minutes.

This legislation obstructs the Obama administration's ongoing negotiations with Iran, amounts to economic warfare against the Iranian people, and

brings us closer to an unnecessary military confrontation. I would like to delineate point by point the objections to this bill.

First of all, I agree with Mr. PAUL that the bill is opposed to our national security. I have a letter here, as Mr. BLUMENAUER submitted to the RECORD, from the Deputy Secretary of State which points out the "serious substantive concerns of the administration, including the lack of flexibility, inefficient monetary thresholds and penalty levels, and blacklisting that could cause unintended foreign policy consequences." This letter is from the Obama administration, December 11, 2009. I would like it be included in the RECORD.

Second, I would like to include an article from the National Journal Online, dated November 2, 2009, in the record of debate. In this article, it points out that a gas shortage will be created in Iran, that Iran subsidizes its gasoline, and that the regime wants to shrink the program. So here the U.S. will be creating the gas shortage, and the regime, which wanted to shrink the program, is going to blame the U.S.

Third, the Revolutionary Guard has already been able to build its coffers by being able to sell things on the black market. It's widely understood that these sanctions would put the Revolutionary Guard in a position where they can make more money selling oil on the black market.

Number 4, this proposal would throw energy politics of the region into chaos, and the broader geopolitical landscape is thrown into chaos. Russia, Venezuela, and our European allies all come into play in ways at odds with stated U.S. policies.

Number 5, it undermines our diplomacy. It isolates us from our allies. It isolates us from our trading partners.

Number 6, it undercuts international energy companies who work in a back-channel role to try to help us with our diplomacy.

Number 7, it undermines democracy in Iran. All of us have seen those pictures. They have been all over the TV and the Internet in the last few months about a growing democratic movement in Iran. This sanction will force all people to close around the Iran's leadership. It will strengthen the hard-liners and will undermine democracy.

Next, it will make the U.S. presence in Iraq, Afghanistan, and Pakistan even more dangerous for our troops.

Number 9, it's a path to military escalation, and I will be discussing that later.

THE DEPUTY SECRETARY OF STATE,  
Washington, December 11, 2009.

Hon. JOHN F. KERRY,  
Chairman, Committee on Foreign Relations,  
U.S. Senate.

DEAR MR. CHAIRMAN: I wanted to follow up on our conversations regarding Iran, and possible sanctions legislation to be taken up by the Senate (S. 2799). We share Congress's

concerns on Iran and its nuclear program, and the need to take decisive action. One of the top national security priorities for the Obama Administration is to deny Iran a nuclear weapons capability. As we discussed, we are pursuing this objective through a dual track strategy of engagement and pressure; and we are engaged in intensive multilateral efforts to develop pressure track measures now. It is in the spirit of these shared objectives that I write to express my concern about the timing and content of this legislation.

As I testified before the Congress in October, it is our hope that any legislative initiative would preserve and maximize the President's flexibility, secure greater cooperation from our partners in taking effective action, and ultimately facilitate a change in Iranian policies. However, we are entering a critical period of intense diplomacy to impose significant international pressure on Iran. This requires that we keep the focus on Iran. At this juncture, I am concerned that this legislation, in its current form, might weaken rather than strengthen international unity and support for our efforts. In addition to the timing, we have serious substantive concerns, including the lack of flexibility, inefficient monetary thresholds and penalty levels, and blacklisting that could cause unintended foreign policy consequences.

I have asked Department staff to prepare for and discuss with your staff revisions that could address these concerns on timing and content. I am hopeful that we can work together to achieve our common goals.

I hope that consideration of this bill could be delayed to the new year so as not to undermine the Administration's diplomacy at this critical juncture. I look forward to working together to achieve our common goals, and I will stay in close contact with you as our diplomatic efforts proceed.

Sincerely,

JAMES B. STEINBERG.

[From the National Journal Online, Nov. 2, 2009]

#### COULD A GASOLINE EMBARGO BEND TEHRAN?

(By David Gauvey Herbert)

With Iran still refusing to play ball with the West over its nuclear program, lawmakers are turning up the heat by targeting oil companies that import gasoline to Iran. But critics of new House and Senate legislation cite a laundry list of reasons why targeting gas imports won't work—and why it could even strengthen Mahmoud Ahmadinejad's government.

Despite being the fourth-largest exporter of crude oil in the world, Iran's limited refining capacity forces it to import 40 percent of its gasoline. The government also subsidizes the price of gasoline, driving demand even amidst an economic downturn and making the country's reliance on foreign imports even more costly.

A new bill—the Iran Refined Petroleum Sanctions Act, which passed the House Foreign Affairs Committee Wednesday—looks to exploit that weakness. It would bolster the Iran Sanctions Act of 1996 and prohibit companies that import gasoline to Iran from contracting with the U.S. government. Similar sanctions are part of a larger Iran bill approved unanimously Thursday by the Senate Banking Committee.

Rep. Howard Berman, D-Calif., who chairs the House Committee on Foreign Affairs and sponsored the House bill, defended the timing of the legislation against protests from some lawmakers that the president be given more time to work out a diplomatic solu-

tion. Tehran last week rejected a deal with the International Atomic Energy Agency that would have sent its uranium stockpile to Russia to enrich for medical purposes.

The bill, Berman said at a markup hearing Wednesday, "will take the first key step to ensure that President Obama is empowered with the full range of tools he needs to address the looming nuclear threat from Iran, even as he pursues diplomacy and, if necessary, the multilateral sanctions track. Given the length of time it ordinarily takes the House and Senate to move a significant piece of legislation to the president's desk, it is important that we initiate this process today."

But critics warn that, timing aside, the proposed sanctions could easily backfire.

For starters, it's unclear whether the legislation will be enough to dissuade Iran's main suppliers—Royal Dutch Shell, France's Total, China's state-run Zhuhai Zhenrong Corp. and Russia's Lukoil, among others—from continuing to import gasoline. Tehran has said it will cut off any company that complies with U.S. sanctions, a threat that will keep some companies in line.

And even if some gasoline exports to Iran can be curtailed, Russia and Venezuela have the excess refining capacity to plug the gap, according to Fariborz Ghadar, a trade expert at the Center for Strategic and International Studies. Hugo Chavez is already bringing Venezuela's considerable refining capabilities to bear: In September, Caracas pledged to supply Iran with 20,000 barrels of gasoline a day.

And what will happen if the sanctions are successful and oil majors stop selling Iran gasoline? The result might be the worst scenario of all, Ghadar argued. Iranians currently get 100 liters of discounted petrol every month, but at great expense to the government. The ruling government has been looking for ways to shrink the subsidy program and the U.S. sanctions would give them cover to do so. That would hurt everyday Iranians, cast Washington (once again) as a villain and perhaps rally citizens around Ahmadinejad, who is still politically weak after post-election rioting this summer.

The idea that more expensive gas will spur average Iranians to confront the government is misguided, Ghadar argued.

"The problems in June, July after the election had nothing to do about them not being able to buy an HP printer or gasoline," he said. "It was about not being able to speak, basically seeing that the system is not a meritocracy."

Rep. Ron Paul, R-Texas, echoed those worries at the hearing Wednesday.

"The theory is, if we really punish the people, take their gasoline from them, then they're going to get angry," he said. "And they will. They're going to get angry at us. They're not going to get angry at the Ayatollah. What you're doing is deliberately undermining the dissidents there."

Berman acknowledged that the legislation would likely have "a significant impact on the Iranian economy, including quite possibly on average Iranians."

"While that is a distasteful prospect, the urgency of dealing with the Iranian nuclear project—and the immense danger that a nuclear-armed Iran would pose to tens, if not hundreds, of millions of people who will fall within the range of its missiles—compels us to go forward with this legislation," he argued.

The Revolutionary Guard Corps, which was central in putting down the summer protests, might benefit from the bill as well. For

one, they are well-situated to take advantage of sanctions: The corps smuggled oil during the 1990s when Iraq was under embargo, and it continues to be involved in the underground economy, said Alireza Nader, an Iran expert with the RAND Corporation. "Any sort of sanctions regime targeting fuel imports is going to be difficult to enforce because there is a black market, which the Revolutionary Guard is very much involved in," he said.

More fundamentally, Washington has struggled to sanction energy-rich Iran in part because oil-hungry countries are tough to corral into a unified front. American sanctions against Sudan have been similarly ineffective, as Chinese state-owned oil companies have been all too eager to fill the void.

Targeting gasoline imports is just one facet of the U.S. assault on the Iranian economy. The Treasury Department has spent the last three years blacklisting Iranian banks and encouraging international banks to avoid doing business with Iran. Ghadar argued that banking sanctions have worked well and should continue, since they hurt Iranian elites more than "Average Joes."

The Treasury Department has also put Iran's national maritime carrier in its cross hairs, citing the company's "denial and deception" regarding its shipments of arms. And the House last month passed the Iran Sanctions Enabling Act, which would allow state and local governments to divest from companies doing business in Iran's energy sector, by a 414-6 vote.

The Senate Banking Bill passed Thursday incorporates a number of the above options, tightening sanctions on financial transactions, targeting companies that export gasoline to Iran and authorizing state and local governments to divest.

Sanctions on investment and technology transfer have been effective at crippling investment in Iran's natural gas industry, according to Greg Priddy, an energy analyst with the Eurasia Group. But keeping Iranian gas offline has meant that the Nabucco pipeline, which would connect Iran to Europe, may remain a pipe-dream—and make our Eastern European allies more vulnerable to Russia's whims.

I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, could we get a little summary of the time remaining on this complicated issue.

The SPEAKER pro tempore. The gentleman from California has 8½ minutes remaining. The gentleman from Ohio has 15 minutes remaining. The gentleman from Florida has 8½ minutes remaining.

Mr. BERMAN. Mr. Speaker, I'm very pleased to yield to the chairman of the Terrorism, Nonproliferation, and Trade Subcommittee on our House Foreign Affairs Committee, the gentleman from California (Mr. SHERMAN), 1 minute.

Mr. SHERMAN. As one of the six original cosponsors of this legislation, I rise in support.

The gentleman from Texas (Mr. PAUL) attacks the whole concept of the use of sanctions saying that American sanctions against Japan led to our involvement in World War II. If you think that America should have remained neutral in World War II, you should vote with the gentleman from Texas (Mr. PAUL).



Iran has been found to have violated the nonproliferation treaty and its commitments under that treaty by the United Nations Security Council with the votes of Russia and China, who also voted to impose some limited sanctions against Iran.

My district contains, I believe, more Iranian Americans than any other in the country, and let me tell you that those who support the students and the effort for democracy in their homeland support the idea of sanctions. This bill is but one step that we need to take in ratcheting the economic power on the regime in Tehran. This bill amends the Iran Sanctions Act. It is important that that act be enforced both before and after we adopt these amendments.

Mr. KUCINICH. I will yield to Mr. PAUL 3 minutes.

Mr. PAUL. I thank the gentleman.

If the gentleman from California didn't like my analogy about how we were maneuvered into war in World War II, I think it might be much more appropriate to compare it to the sanctions on Iraq. There were those in the 1990s that wanted us to go to war with Iraq. We were looking for an excuse, and we put strong sanctions, continued flying over their country and bombing. Thousands, if not hundreds of thousands, of kids died because of those sanctions, and eventually they got their war. We ended up in the war.

Anybody who believes that taking gasoline away from the common person in Iran is going to motivate them to get rid of their Ayatollah—it's the Ayatollah that carries the power—that's not going to happen. It just does exactly the opposite. So this is why I believe this is a much greater threat to our national security. It does not help us. It doesn't achieve the goals that are set out.

For instance, we now commonly say that the Iranians have no right to enrich. Well, they signed a nonproliferation treaty, and they have not ever been told that they are making a bomb. And what we are saying in this bill is that they can't enrich anymore. So in a way, you're violating international law by saying they can't enrich, period. So that is just looking for trouble.

Now, what else this bill will do:

It is going to push the support of the Iranians in another direction. It's going to push them towards India, China, and Russia, and these countries have special associations with Iran. So we are going to separate us. We will be isolated from that, and they are going to have a much closer alliance with these countries. That will not serve our interests.

It's going to serve the interest of one country mostly, and that's China. China acts only almost like capitalists. They take our dollars they have earned from us and they are spending the dollars over there. They would like to buy

the oil, refine the oil, and drill the oil. But here, we assume that we have to do it through force, through sanctions, threats, intimidation, and secret maneuvers to overthrow their regime. It just doesn't work. It sounds good. It sounds easy, but it does backfire on us. You get too many unintended consequences.

And besides, our national security does not depend on what we do in the Middle East. Our national security is threatened by this. We are overstretched. We're broke. And this is part of the strategy, as I mentioned before. Our archenemies in that region want to bankrupt us. They want to stir up hatred toward us, and they want to bog us down. And they're achieving what their goals are.

Ms. ROS-LEHTINEN. Mr. Speaker, I'm pleased to yield 2 minutes to the gentleman from Illinois (Mr. KIRK), a member of the Committee on Appropriations and a cosponsor of this measure from early on.

Mr. KIRK. Mr. Speaker, Congressman ANDREWS and I are the two grandfathers of this bill and its policy. After 4½ years of working on this legislation, I strongly support this bill, especially its underlying policy, which is the last best hope for diplomatically ending Iran's nuclear weapons program.

In January of 2005, I wrote to the Secretary of Defense with a comprehensive analysis of Iran's economy, discovering a critical weakness. Despite its status as a leading oil exporter, Iran has so mishandled her domestic energy supply that the regime relies on foreign sources of gasoline for 40 percent of its needs.

In 2005 and again in 2006, Congressman ANDREWS and I introduced the congressional resolutions calling for a multilateral restriction of gasoline deliveries to Iran as the most effective sanction to bring their leaders into compliance with their commitments under the Nuclear Non-Proliferation Treaty.

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In 2007, we introduced the Iran Sanctions Enhancement Act to extend current sanctions to the provision of gasoline to Iran. This year, Congressman BRAD SHERMAN and I re-introduced the Iran Diplomatic Enhancement Act. This bill today is modeled after our bipartisan legislation.

A restriction of gasoline deliveries to Iran administered through multilateral sanctions and enforced by the world's most powerful navies will pit our greatest strength against Iran's greatest weakness, all without a shot being fired. For the bill to succeed, the Iranians must believe also that it will be enforced, otherwise we will go down a failed policy of diplomacy in the absence of effective sanctions. My hope is that the Senate quickly takes up action on this bill, and then the administration provides needed enforcement.

I want to truly thank the chairman of the Foreign Affairs Committee, Chairman BERMAN; our ranking member, ILEANA ROS-LEHTINEN; Congressman ANDREWS and Congressman BRAD SHERMAN for all working with me. This has been 5 years of my life working on this legislation. This is bipartisan legislation which offers the last best diplomatic hope to resolve this problem.

Mr. KUCINICH. Mr. Speaker, I yield myself 3 minutes.

I would like to point out that the organization of Iranians in the United States known as the National Iranian American Council have issued a statement in a staff report dated Monday, the 14th of December, 2009 that this sanctions act "will only contribute to the Iranian people's suffering by seeking to restrict Iran's supply of heating oil and gasoline. Prominent members of Iran's opposition movement, such as Mir Hossein Mousavi and Mehdi Karubi, as well as human rights defenders like Shirin Ebadi and Akbar Ganji, have all spoken out strongly against such sanctions that punish innocent Iranians."

I enter this report from the National Iranian Council into the RECORD.

IRPSA HURTS IRANIAN PEOPLE, UNDERMINES INTERNATIONAL UNITY ON IRAN

NIAC released the following statement today in response to yesterday's news that the Iran Refined Petroleum Sanctions Act (H.R. 2194) will be brought up for a floor vote on the suspension calendar within the next two weeks.

The National Iranian American Council is deeply concerned that the House of Representatives' plan to bring H.R. 2194, the Iranian Refined Petroleum Sanctions Act, IRPSA, to a vote the week of December 14, 2009, is a move in the direction of punishing the Iranian people instead of the Iranian government.

NIAC supports the Obama Administration's ongoing engagement efforts and, though the Iranian government's response has thus far been frustrating, the U.S. must remain committed to working in concert with its international partners. Considering unilateral sanctions at this time threatens to preempt and undermine the President's multilateral efforts.

A successful strategy for dealing with Iran must have diplomatic engagement as its basis. Sanctions can play a constructive role within that process, but in order to be effective they must target the Iranian government and the individuals responsible for the government's reprehensible behavior, with a special emphasis on those guilty of human rights violations.

As Congress moves forward, NIAC encourages Congressional action to meet the following standards:

Do not harm the Iranian people—No one has suffered under the repressive rule of the Iranian Government more than the Iranian people. Unilateral sanctions such as those included in IRPSA will hurt the people of Iran immensely and do little to target the actions such as the Iranian Revolutionary Guard who have consolidated power under the shadow of outside threats and profited under the sanctions economy.

As the Iranian people continue to stand up to their government, prominent members of



Iran's opposition movement, such as Mir Hossein Mousavi and Mehdi Karubi, along with human rights defenders like Shirin Ebadi and Akbar Ganji, have all spoken out strongly against broad, untargeted sanctions such as those contained in IRPSA.

Do not undermine the President—The Obama Administration has invested in a strategy of engagement with Iran because it is the best option to change the Iranian Government's behavior. While this process has been predictably difficult, Congress must not rush to pass legislation that will undermine multilateral efforts and tie the President's hands. The President has been consistent in stating that he will evaluate progress on the engagement process once the year has ended. This commitment was reiterated on December 3 by White House spokesman Robert Gibbs, who stated that the Administration's deadline for Iran is the end of the year. If the House passes IRPSA now, they send the world a signal that the U.S. Congress does

not support the President's plan and is taking steps to preempt it.

Do not undermine the unity among U.S. partners—On November 26, the IAEA voted overwhelmingly to approve a resolution censuring Iran. Significantly, all five veto-wielding members of the Security Council voted in favor of the measure, which opens up the potential for another round of Security Council sanctions. The significant progress is uniting the Security Council is attributable to President Obama's investment in diplomacy. If Congress moves forward with sanctions that target our allies, that unity will collapse. Trying to coerce the support of the rest of the world with threats and penalties will not isolate Iran; in fact, it may only isolate the United States.

I have here an analysis that has been done by Americans for Peace Now, which is a strong group in support of Israel. At the same time, they did an analysis and summary of concerns

about H.R. 2194. One of the points that they make is that "the focus on crippling refined petroleum sanctions leads to the very problematic conclusion that the U.S. is seeking to inflict widespread suffering on the Iranian people in order to force them to put pressure on their government. It is an approach few believe will achieve the desired goal and many believe could well backfire to the benefit of the regime and sow anger at the U.S., not the Iranian Government."

I will submit this analysis for the RECORD.

PROPOSED AMENDMENTS TO H.R. 2194—THE IRAN REFINED PETROLEUM SANCTIONS ACT—DECEMBER 2009

For further information, go to [www.peacenow.org](http://www.peacenow.org).

SUMMARY OF CONCERNS ABOUT H.R. 2194

Section(s)	Problem	Suggested remedy
Section(s) 1: 2(b), 2(c), 3(a), 3(c).	The focus on "crippling" refined petroleum sanctions leads to the very problematic conclusion that the U.S. is seeking to inflict widespread suffering on the Iranian people in order to force them to put pressure on their government. It is an approach that few believe will achieve the desired goal and that many believe could well backfire, to the benefit of the regime and sow anger at the U.S., not the Iranian government.	The focus of the bill should be enhanced sanctions authority in general, not the refined petroleum sector in particular.—
Section 2(a) .....	Obama statements quoted in the bill were made prior to the Iranian elections and prior to the launch of the current negotiating effort. As such, they have clearly been overtaken by events. They should be updated to correctly represent the Administration's positions.	Quotes in the bill should be updated to correctly represent the Administration's positions.
Sections 3(a), 3(b), and 3(d).	At the outset of H.R. 2194 is the finding that "international diplomatic efforts to address Iran's illicit nuclear efforts, unconventional and ballistic missile development programs, and support for international terrorism are more likely to be effective if the President is empowered with the explicit authority to impose additional sanctions on the Government of Iran." As written, these sections do not empower the President with the authority to impose additional sanctions—they dis-empower him by removing his authority regarding the imposition of sanctions, in effect limiting his authority—.	Textual changes should be incorporated to bring the legislative impact of the bill into conformity with the stated goal of the legislation's i.e., giving the President additional authority to act.—
Section 3(c) .....	The restrictions laid out in this section have potentially far-reaching implications for U.S. vital national security interests. It is unreasonable and possibly unconstitutional to place such restrictions on the President's relations with other countries without providing a clear national security waiver.	A clear national security waiver should be added to this section.
Section 3(g) .....	This certification requirement is so categorical that it would be difficult if not impossible for a President to make, under any circumstances. It could also conflict with a potential future agreement with Iran over its nuclear program.	Changes should be made to make the certification requirement reasonable and to take into account the possibility of an international agreement with Iran on its nuclear program.
Section 3(h) .....	The Iran Sanctions Act (ISA) is major legislation in its own right. As such, it should be considered and debated openly before a decision is made to extend it for 5 years. Moreover, the ISA does not expire until 2011—there is no justification for rushing through its extension as part of this bill.	This section should be deleted and ISA dealt with separately at an appropriate time.
New Section 3(x) .....	At this juncture, the absence of positive measures in what will be the single most important piece of Iran legislation in years is striking.	This new section offers constructive support for the people of Iran.

In the legislation that we are presented with, it speaks to the purpose of H.R. 2194 as advancing along feelings of friendship for the Iranian people. We are telling the Iranian people, we have feelings of friendship for you, we like you so much, but we're going to cut off your home heating oil. So we are asking the people, when they're freezing, to remember these warm feelings of friendship. I think people will find that the expression of friendship isn't to be believed, and that, in fact, what's happening here is an effort to punish the people of Iran for the policies of their government, which the Obama administration is trying to still find a way to deal with diplomatically.

I reserve the balance of my time.  
Mr. BERMAN. Mr. Speaker, I am very pleased now to yield 1 minute to one of the great supporters of this legislation, the Speaker of the House, the gentlelady from California (Ms. PELOSI).

Ms. PELOSI. I thank the gentleman for yielding.

I rise in strong support of the Refined Petroleum Sanctions Act. I would like to acknowledge the great leadership of our chairman, Chairman BERMAN, and the ranking member, Congresswoman

ROS-LEHTINEN, for their efforts and leadership to bring this legislation to the floor.

All Members of Congress, regardless of party, agree a nuclear Iran is simply unacceptable; it is a threat to the region, to the United States, and to the world. The American people have great hopes for our friendship with the people of Iran. We look forward to a day when Iran is a much more productive member of the community of nations. Until that day, though, we must ensure that Iran is prevented from obtaining nuclear weapons that would threaten the security of the world.

Iran must take the necessary steps to demonstrate its willingness to live as a peaceful partner in the international community. And we must use all of the tools at our disposal, from diplomacy to sanctions, to stop Iran's march toward nuclear capability.

Today, with this legislation, we give the President a new option, a new tool, the power to impose sanctions against companies that supply Iran with or support its domestic production of gasoline and other refined petroleum products. By targeting Iran's ongoing dependence on largely imported refined petroleum, we reduce the chance that

Iran will acquire the capacity to produce nuclear weapons.

A pillar, Mr. Speaker, of our national security is diplomacy; and in the case of Iran, we must use it. We must exhaust every diplomatic remedy. I commend President Obama for standing with other U.N. Security Council leaders earlier this year to condemn Iran and to work toward an agreeable diplomatic solution to end Iran's proliferation of weapons of mass destruction.

However, as we have seen, Iran has refused to accept a reasonable offer that was put on the table a couple of months ago. Instead, it has reiterated its resolve to continue its uranium enrichment program, the cornerstone of its nuclear program. The international community must, therefore, consider stronger options. We have that opportunity today to give the President the option with a waiver to use in the best possible way.

Now, I have heard mention of the State of Israel in some of the debate here today, and Israel certainly has proximity to Iran. Iran is increasing its capability both to develop a weapon of mass destruction and the delivery system to deliver that bad news. But this isn't about Israel. Israel, again, is

close, and this development of a weapon of mass destruction is a threat to the region. But the development of a weapon of mass destruction anywhere in the world is a threat to the entire world, and it is not in the national security interest of the United States. So while Israel may bear the brunt or be the closest target—or target of words, if, hopefully, not anything else—they have carried this fight, but it's not just their fight. The fight is all of ours.

I mentioned diplomacy as a pillar of our national security. Another pillar of our foreign policy and of our national security is stopping the proliferation of weapons of mass destruction. Imagine what the reaction would be if Iran had a nuclear weapon, what that would evoke in the Arab world in terms of their interest in having weapons of mass destruction. It simply cannot happen. With this legislation today, we strengthen the President's hand to use or to withhold this particular sanction, but to have the capability to use diplomacy in a stronger way.

I urge all of my colleagues to support the Iran Refined Petroleum Sanctions Act.

Mr. KUCINICH. I yield 2 minutes to the gentleman from Texas (Mr. PAUL).

Mr. PAUL. I thank the gentleman for yielding.

I talked to somebody today that will be voting for these, but admitted that they won't work and it is mere symbolism. So already they don't think these will do much good, even those who will vote for it. They're impossible to enforce, is one reason, and it will create a black market. And these particular sanctions are most difficult to enforce just because of the nature of the way it's written.

One must understand a little bit about the pressures put on this country to act in a defensive way. They happen to be surrounded by a lot of nuclear bombs. And they don't have a history, the Iranians. As bad as they are for their leadership and how bad their regime is, they're not expansionists territorially. I mean, how many years has it been since they invaded another country for the purpose of taking over another country? It is just not in recent history at all. But the countries around them, India—India has nuclear weapons, China has nuclear weapons, Pakistan, Israel, the United States. I mean, they're all around them, so I'm sure they feel like a cornered rat.

What I see here is propaganda, propaganda to build fear into people, to prepare the people for what is likely to come, just as we did in the 1990s, fear that there were weapons of mass destruction, but this one is, well, someday they might get a weapon of mass destruction. Unfortunately, I am just really concerned that this is going to lead to hostilities because this is the initiation. The fear is building up. Too often in this country we talk of peace

at the same time that we pursue war. We pursue war, and we use these efforts to push our policies on others.

And quite frankly, we don't have any more money to pursue this policy, whether it's used by the militarism or even to try to buy friends by giving them a lot of money. It just doesn't work.

I urge a “no” vote on this resolution in the interest of United States security.

Mr. Speaker, I would like to make a few more points as to why I oppose this new round of sanctions on Iran, which is another significant step toward a U.S. war on that country. I find it shocking that legislation this serious and consequential is brought up in such a cavalier manner. Suspending the normal rules of the House to pass legislation is a process generally reserved for “non-controversial” business such as the naming of post offices. Are we to believe that this House takes matters of war and peace as lightly as naming post offices?

This legislation seeks to bar from doing business in the United States any foreign entity that sells refined petroleum to Iran or otherwise enhances Iran's ability to import refined petroleum such as financing, brokering, underwriting, or providing ships for such. Such sanctions also apply to any entity that provides goods or services that enhance Iran's ability to maintain or expand its domestic production of refined petroleum. This casts the sanctions net worldwide, with enormous international economic implications.

Recently, the Financial Times reported that, “[i]n recent months, Chinese companies have greatly expanded their presence in Iran's oil sector. In the coming months, Sinopec, the state-owned Chinese oil company, is scheduled to complete the expansion of the Tabriz and Shazand refineries—adding 3.3 million gallons of gasoline per day.”

Are we to conclude, with this in mind, that China or its major state-owned corporations will be forbidden by this legislation from doing business with the United States? What of our other trading partners who currently do business in Iran's petroleum sector or insure those who do so? Has anyone seen an estimate of how this sanctions act will affect the US economy if it is actually enforced?

As we have learned with U.S. sanctions on Iraq, and indeed with U.S. sanctions on Cuba and elsewhere, it is citizens rather than governments who suffer most. The purpose of these sanctions is to change the regime in Iran, but past practice has demonstrated time and again that sanctions only strengthen regimes they target and marginalize any opposition. As would be the case were we in the U.S. targeted for regime change by a foreign government, people in Iran will tend to put aside political and other differences to oppose that threatening external force. Thus this legislation will likely serve to strengthen the popularity of the current Iranian government. Any opposition continuing to function in Iran would be seen as operating in concert with the foreign entity seeking to overthrow the regime.

This legislation seeks to bring Iran in line with international demands regarding its nuclear materials enrichment programs, but what

is ironic is that Section 2 of H.R. 2194 itself violates the Nuclear Non Proliferation Treaty (NPT) to which both the United States and Iran are signatories. This section states that “[i]t shall be the policy of the United States . . . to prevent Iran from achieving the capability to make nuclear weapons, including by supporting international diplomatic efforts to halt Iran's uranium enrichment program.” Article V of the NPT states clearly that, “[n]othing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty.” As Iran has never been found in violation of the NPT—has never been found to have diverted nuclear materials for non-peaceful purposes—this legislation seeking to deny Iran the right to enrichment even for peaceful purposes itself violates the NPT.

Mr. Speaker, I am concerned that many of my colleagues opposing war on Iran will vote in favor of this legislation, seeing it as a step short of war to bring Iran into line with U.S. demands. I would remind them that sanctions and the blockades that are required to enforce them are themselves acts of war according to international law. I urge my colleagues to reject this saber-rattling but ultimately counterproductive legislation.

Ms. ROS-LEHTINEN. Mr. Speaker, I am very pleased to yield 2 minutes to my good friend from Indiana (Mr. BURTON), the ranking member on the Foreign Affairs Subcommittee on the Middle East and South Asia. He deals with this issue every day.

Mr. BURTON of Indiana. I thank the gentlelady for yielding, and I thank the chairman for bringing this to the floor. God bless you, my son.

Let me just say that I have heard the arguments from the opponents of this legislation. And my question to them would be, well, what is the alternative? You mentioned one, two, three, four, five, six—seven reasons why we shouldn't do this, but Iran is developing a nuclear weapons system.

If you look at The Times and the BBC, they say very clearly that confidential intelligence documents obtained by The Times showed that Iran is working on testing a key final component of a nuclear bomb, and it is the mechanism that explodes the nuclear bomb. Now, we've been waiting and waiting and waiting for years for them to stop the development of a nuclear weapon, and they keep giving us all these reasons why they shouldn't be stopped and why they're not doing it and all kinds of chicanery; but the fact of the matter is they continue on the path toward a nuclear weapon.

Now, we get a large percentage of our energy from the Middle East. Israel is not going to sit by and let their country be threatened with annihilation. They're not going to let Iran develop a nuclear weapon, especially since Ahmadinejad said he wants to wipe them off the face of the Earth. So if

they develop a nuclear weapon and a detonating device, like they're working on right now, Israel is going to do something about it. Now, do we want a major conflagration in the Middle East that would threaten the energy that we get in this country? We get about 40 percent of our energy from the Middle East. If you mess up the Persian Gulf, if you have that whole area explode, you're going to see all kinds of problems in getting oil from the Middle East. And we're not energy independent. Everybody in this country is going to suffer because it's going to hurt our economy from top to bottom.

So I wish my colleagues would stop and think, do we let them just go on and not do anything about it, or do we start ratcheting up the pressure on them, put a little pressure on them, make them stop developing this nuclear weapon system? Because if they don't, the alternative is unthinkable.

Mr. KUCINICH. Could I ask how much time remains.

The SPEAKER pro tempore. The gentleman from Ohio has 7 minutes.

Mr. KUCINICH. I yield 2 minutes to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. I thank the gentleman for yielding.

The gentleman from Indiana has mentioned, what do the opponents of this resolution have in mind. If not these sanctions, then what, what do we do? I think you are hard pressed to find anyone who will rationally say that this measure will have any real effect. This is a statement resolution more than anything.

And to the extent that it does bite, right now we don't export any refined petroleum products to Iran, but some of our allies do, those allies that we need for real sanctions that may or will bite. If we hope to get them on board, the last thing we want to do is get out in front and take measures where there will be punitive action on our allies that we need for sanctions that actually might have an impact.

So the notion that we have to do this or nothing is simply false. We need to address this situation there, but we need to do it in a way where we don't alienate the people of Iran who, when you're on the streets of Iran, people are not virulently anti-American, gratefully. We need to keep it that way. We shouldn't have sanctions that target the people, hoping that they will somehow revolt and then get mad at their leadership rather than the U.S.

I think that when you look at the history of sanctions, you're hard pressed to find examples where that kind of action works, where you try to entice some kind of rebellion among the people that you want to help and that somehow they will blame their government rather than those who are imposing the sanctions.

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Again, multilateral sanctions can work. Multilateral action can work, and it needs to work. But in order to do that, you need to give the administration the flexibility, through a combination of diplomacy and other measures, to work with our allies, to bring measures that will work.

I am glad the gentleman has stood up to oppose this. I want people to know that we aren't all in agreement here, that there are other measures that can be taken.

Mr. BERMAN. Mr. Speaker, I am very pleased to yield 1 minute to the gentlewoman from Maryland (Ms. EDWARDS) on behalf of the legislation.

Ms. EDWARDS of Maryland. I would like to thank Chairman BERMAN for yielding.

I rise today disappointed that I am here to support the Iran Refined Petroleum Sanctions Act. I am disappointed because it's the extraordinary lack of cooperation and duplicity on the part of the leadership in Iran that brings us to that point.

Though I share many of the concerns expressed by the opposition, like many, I was hopeful at the beginning of the year with the new President and administration that we would approach Iran differently and that the leaders in Iran would respond likewise. Sadly, the leadership of Iran, particularly following their flawed elections, has been anything but forthcoming and cooperative. They have thwarted the international community. They rebuffed a viable plan for transfer of low-grade uranium and materials for a true civilian nuclear capacity.

They have led the world community along with the belief that they were negotiating fairly and with integrity. Instead, they are pursuing enrichment. This posture on the part of the Iranian government is both unfortunate and misguided, attempting to test President Obama's resolve and commitment to transparency, deterrence and accountability.

It's my hope that our actions today will enable additional leverage for President Obama and his team within the governing multilateral institutions and negotiating countries. I think the Iranian leadership has to understand that the United States is both serious about engagement and accountability.

Mr. KUCINICH. I yield myself 2 minutes.

Though this bill claims to express international diplomatic efforts to halt Iran's uranium enrichment program, it actually undermines those efforts. Passing legislation effectively forces our President's hand in one direction, diminishing the power of the President and his diplomatic team by significantly limiting the tools the administration can utilize.

Furthermore, it projects a negative image of the United States in a region

at a time when we need broad international support to succeed in our negotiations.

Former International Atomic Energy Agency Director General Mohamed ElBaradei has repeatedly stated that sanctions against Iran will be ineffective in forcing Iran to halt its uranium enrichment program. In a speech to the Board of Governors in September of this year, Mohamed ElBaradei recognized the important developments with respect to Iran's compliance with IAEA inspections, stating that, We are not in a state of panic because we have not seen diversion of nuclear material. We have not seen components of nuclear weapons.

In addition, he states, We went through this during the time of Iraq, when the Agency went exactly through that hype, fabrication, and it took a war based on fiction and not fact. It took a war and thousands of people dying for the Agency to become strong and more credible because we were sticking to the facts.

Subsection A(1) of section 2 of this bill says, The illicit nuclear activities of the government of Iran, combined with its development of unconventional weapons and ballistic missiles in support of international terrorism, represents a serious threat to the security of the United States and allies in Europe, the Middle East, and around the world.

This language makes dangerous accusations that have been repudiated by the IAEA and paves the way for the same mistakes we have made in Iraq. We cannot afford to make the same mistakes at the cost of the innocent lives of the people in Iran.

Ms. ROS-LEHTINEN. I am very pleased to yield 1 minute to the gentleman from Texas (Mr. HENSARLING), a member of the Budget Committee and Committee on Financial Services, a cosponsor of this bill, and a former chairman of the Republican Study Committee, and my friend.

Mr. HENSARLING. I thank the gentlewoman for yielding.

Given the state of Iran's nuclear ambitions and its poor record at transparency, it continues to be clear that the United States must lead the world in pressuring Iran to give up these ambitions. There is no option.

Iran's energy sector is the backbone of its economy and provides the majority of its government's revenue. Iran's energy infrastructure is deteriorating badly. It is in need of modernization. Without this modernization, its energy sector very well may deteriorate and, along with it, consequently, its economy and possibly even its regime.

The Iran Refined Petroleum Sanctions Act gives the President an important tool to help persuade the Iranian regime to peacefully give up its nuclear ambitions. A nuclear-armed Iran is unacceptable. It could provide rogue

nations and terrorists with nuclear technology. It constitutes the looming threat to the national security of the United States.

Iran's behavior not only jeopardizes the stability of the region but threatens the very existence of many of our allies in the Mideast, particularly the state of Israel.

I enthusiastically encourage all of my colleagues to support the Iran Related Petroleum Sanctions Act.

Mr. KUCINICH. May I ask how much time is remaining for all sides?

The SPEAKER pro tempore (Ms. JACKSON-LEE of Texas). The gentleman from Ohio has 4 minutes, the gentleman from California has 5½ minutes, and the gentlewoman from Florida has 3½ minutes.

Mr. KUCINICH. I yield myself 2 minutes.

One of our colleagues talked about, well, what are our alternatives here, as though the only alternative we have is to impose sanctions. We know from a report 2 days ago in *The New York Times* that Iran's foreign minister has said that his country was willing to exchange most of the uranium for processed nuclear fuel from abroad, as the United Nations has proposed. The article goes along to say, but only according to the timetable Western powers appear to have rejected.

Well, we need to get back into those negotiations. I have some points here I want to share with Members of Congress. Here is what we can do.

The debate in Iran is focused on two shipments of 400 kilograms each of low-enriched uranium. What is being proposed by Tehran is a phased delivery to the IAEA control of Iran's low-enriched uranium within 3 to 5 months of each other, for a total of 800 kilograms.

Officially, we know Iran's foreign minister said they would put 400 kilograms of low-enriched uranium in Kish Island—that's in the Persian Gulf—under IAEA custody. The Iranians want objective guarantees, the guaranteed delivery of highly enriched uranium from Russia and France.

Once it's delivered to Iran for medical purposes, they would then send another 400 kilograms of low-enriched uranium to the IAEA control at Kish Island. The simultaneous shipment of high-enriched uranium to Iran and low-enriched for medical purposes, and low-enriched uranium from Iran to Kish Island, are confidence-building measures which can form the basis for further cooperation.

Second, we need to pledge a guaranteed delivery by the U.S. and other P-5-plus-1 participants.

Third, the U.S. offer of assistance with modernizing the instruments for the Tehran reactor.

Fourth, Iran's willingness to continue with its nuclear transparency and full-scope IAEA safeguards, including short-notice inspections.

Five, Iran's willingness to participate in Geneva II.

Six, Iran's willingness to participate in multilateral expert meetings on nuclear, non-nuclear, that is, regional issues, and consideration of a broad range of confidence-building steps.

We don't need these sanctions. We need diplomacy.

Ms. ROS-LEHTINEN. Madam Speaker, I am so happy to yield 2½ minutes to the gentleman from California (Mr. ROYCE) ranking member on the Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade.

Mr. ROYCE. Madam Speaker, time is not on our side. Today's Washington Post reports that Iran has learned how to make virtually every bolt and switch in a nuclear weapon. It is mastering the technology to enrich uranium which would fuel that weapon. A secret nuclear facility located on an Iranian military base was recently revealed. For years, Iran has been slapping away all of our diplomatic overtures. "Our outreach has produced very little," Secretary Clinton's words, not mine.

Today, the world's top terrorist state has its tentacles throughout the region. Its tentacles are Yemen, Iraq, Lebanon, Gaza, Afghanistan, Syria, Sudan. Its agents and proxies are practically everywhere in its aspiration for regional dominance, not to mention our own backyard. Tomorrow's nuclear Iran would have a compounding effect with severe consequences for regional security and for U.S. security. The time for action is long past. This bill would help address this threat, targeting the regime's Achilles' heel.

But we need a broad-based Iran policy that focuses not just on Iran's nuclear program, but one that aims to protect the U.S. and our allies from the Iranian missile threat and speaks out against its human rights abuses and bolsters its democracy supporters.

Disturbingly, this administration has backed away from missile defense in Europe and the democratic movement inside Iran. The administration must realize that promoting democracy in Iran and improving our national security go hand-in-hand.

I would just mention that sanctions helped bring down apartheid in South Africa and ended the South African program to develop nuclear weapons.

As ranking member of the Subcommittee on Terrorism, Nonproliferation, and Trade, I strongly support the passage of this legislation, of which I am an original cosponsor.

Ms. ROS-LEHTINEN. I am proud to yield 1 minute to the gentlewoman from Washington (Mrs. MCMORRIS RODGERS), the vice chair of the Republican Conference, a member of the Armed Services Committee, Education and Labor Committee, and Natural Resources Committee, and the mom of Cole.

Mrs. MCMORRIS RODGERS. Thank you, Ranking Member ILEANA ROS-LEHTINEN.

Madam Speaker, I rise in strong support of H.R. 2194 and urge my colleagues to pass this important security bill.

As I have mentioned before, in August my husband and I visited Israel. The people of Israel want nothing more than to live in peace with their neighbors, many of whom have said repeatedly that they want Israel wiped off of the map.

But the Israelis are realistic about peace. They know it comes from strength, from clear military superiority, from letting your enemies know that they cannot defeat you. That is a hard, realistic peace. It's clear Iran wants to break that peace, to destabilize the whole region and make Israel live in fear.

After years of Iranian delays and deception, we must now back our words with action. Iran must be held accountable.

As Iran takes one step after another towards nuclear weapons, it edges towards war. A vote in favor of this bill is a vote in favor of continuing a hard peace in the Middle East and showing the rest of the world that a nuclear Iran is not an option.

When I left Israel, I pledged to do all I could to support their work to maintain and expand a difficult peace. I urge my colleagues to join me in this quest. A strong first step is passing H.R. 2194.

Mr. BERMAN. I am pleased to yield 1 minute to the gentleman from New York, the chairman of the Western Hemisphere Subcommittee, Mr. ENGEL.

Mr. ENGEL. I thank the gentleman.

Madam Speaker, only a few short months ago the world learned of the secret Iranian nuclear enrichment facility near the city of Qom. If there was any doubt that Iran was trying to build nuclear weapons, this revelation dispelled any shred of that doubt.

The facility, kept secret from the International Atomic Energy Agency, was built deep in a mountain on a protected military base. This is how a country conceals a nuclear weapons program and defies U.N. Security Council resolutions, not how it develops peaceful energy technologies.

Although Iran is a leading producer of crude oil, it has limited refining capability. This bill will increase leverage against Iran by penalizing companies that export refined petroleum products to Iran or finance Iran's domestic refining capabilities. It's my hope that the administration will apply these additional sanctions to make absolutely clear to the Ahmadinejad regime that the world will not accept its nuclear ambition.

The U.S. and our allies in the U.N. Security Council have recognized that a nuclear-armed Iran would be a danger

to the Middle East, to our ally, Israel, and to the nuclear nonproliferation regime. A nuclear-armed Iran is simply unacceptable, and we must support this sanction. To my colleagues who say that sanctions don't work, it only hurts the local population, the same argument, discredited argument, was made against South African sanctions. That worked. These sanctions will, too. Support the legislation.

□ 1615

Mr. BERMAN. Madam Speaker, I yield for the purpose of making a unanimous consent request to the gentleman who first introduced legislation on this subject, who I worked closely with, the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Madam Speaker, I thank the ranking member and the chairman for their guidance.

I rise in strong support of the legislation.

Mr. BERMAN. Madam Speaker, I now yield for the purpose of making a unanimous consent request to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Madam Speaker, I rise today in reluctant support of the Iran Refined Petroleum Sanctions Act, IRPSA.

President Obama has extended a hand to the Iranian government, offering a mutually beneficial deal that would severely limit Iran's ability to develop a nuclear weapon. This confidence building measure is intended to give us the space and time to reach a more comprehensive agreement that would seek to integrate Iran back into the international community as a responsible actor and to impose strong, verifiable safeguards to ensure that Iran cannot build a nuclear weapon. After agreeing in principle to an initial agreement to send Iran's enriched uranium to Russia, Iran has since backed away from it and even refused to provide the International Atomic Energy Agency a formal response to the proposal.

Because of the seriousness of the challenges we face, I reluctantly support the IRPSA. It sends the clear message that Iran can either work cooperatively and beneficially with the international community or it can choose further international isolation.

However, for sanctions to succeed, they must impose a cost on Iran's ruling regime. I am concerned that it is the Iranian people—rather than the Iranian regime—that will suffer the most under IRPSA. If we are able to limit Iran's ability to import refined petroleum, the Iranian government will simply deflect this cost onto the Iranian people, by eliminating petroleum subsidies and blaming the United States for the hardship such actions will cause the general public.

A democratic uprising against the Iranian regime is currently under way. I believe we need to stand with the Iranian people as they fight for their freedoms. The Iranian government by contrast has brutally oppressed peaceful demonstrators. For that reason, Congress and the Obama administration should work to craft sanctions that affect the leaders of Iran and

the IRGC. Only sanctions that hurt these decision makers will influence Iran's decision-making process.

While we must make the Iranian regime aware of our displeasure with their rejection of our positive advances, we must also provide a helping hand to Iranian citizens. That is why it is important for Congress, in addition to these punitive sanctions, to also provide assistance to the democracy movement in Iran by aiding their access to the internet, in order to provide the Iranian people unfettered access to information, free of government censorship. Congress should also take steps to increase the ability of non-governmental organizations in the U.S. to work with their counterparts in Iran, so that the Iranian people can benefit from better health services, educational opportunities, the promotion of equal rights, and the facilitation of people to people exchanges.

The Iranian people are among the most pro-American people in the Middle East. With passage of today's sanctions legislation, it is all the more important to reach out to, and around the Iranian government, to this pro-American society. This is the time to redouble our efforts to support the Iranian people and their courageous fight for democracy by increasing their access to information and communication both in country and internationally.

Ms. ROS-LEHTINEN. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, sanctions, when fully enforced, weaken the oppressors and express support for the opposition. They send a clear message to the dissidents and those who are hungry for freedom that we stand with them. The refined petroleum sanctions bill will force the regime to use its resources to take care of the Iranian people, something that they have not done, instead of using its funding to develop nuclear weapons and the missiles to deliver them.

Support the Iranian people. Support peace and security. Support this bill.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. BERMAN. Madam Speaker, I am very pleased to yield 1 minute to the majority leader of the House, the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. I thank the chairman for yielding. I want to thank the chairman, and I want to thank Congresswoman ROS-LEHTINEN for her leadership as well.

Madam Speaker, every Member of this Chamber understands the deep danger inherent in a nuclear Iran. That danger includes a new nuclear arms race as Iran's regional rivals scramble to build competing arsenals, plunging the Middle East into an ever-greater instability and the world into a new era of proliferation.

The danger includes as well a "nuclear umbrella" for groups like Hamas and Hezbollah, terrorist organizations who may take any advantage of their state sponsor's protection to stage more brazen and deadly attacks on Israel, certainly, but on all the rest of us as well.

And the danger includes on a more basic level a new era of fear for all those in range of Iran's missiles, fear that could equal or surpass what we ourselves experienced during the worst days of the Cold War. And all of those consequences, Madam Speaker, will be felt even if Iran's missiles remain on the launch pad or if its nuclear weapons remain buried. Could we imagine those weapons being used? We would be foolish not to as long as those weapons are in the hands of a regime whose President denies the Holocaust, stokes hatred, and openly threatens its neighbors and the United States of America.

In the months since last summer's election, we have seen the character of the Iranian regime more clearly than ever. We have seen it in the dissent silenced, in opposition leaders threatened and jailed, in peaceful protesters beaten and shot for the crime of demanding that their votes be counted. We have seen a regime founded on violence and on violent disregard for the opinion of its people and the opinion of the world community.

Even so, our administration has, and I think correctly, in my view, pursued a policy of engagement with Tehran. That engagement reversed years of diplomatic silence that did little to slow Iran's growing nuclear program. It showed the world our patience and our commitment to addressing the common threat through diplomacy. And it gauged Tehran's honest willingness to resolve the crisis at the negotiating table. America's policy of engagement always came with a time limit, time for Tehran to negotiate in good faith or, as so many Members have said on this floor today, to show that it was only using talks as a cover for continuing enrichment of uranium.

Sadly, time is running short and there is still no diplomatic agreement. The enrichment continues and the threat grows. The past months have brought revelations of secret Iranian facilities, a lack of cooperation with the International Atomic Energy Agency, and a refusal to comply with Security Council demands to suspend enrichment.

Just today The Washington Post reported that "Iran has learned how to make virtually every bolt and switch in a nuclear weapon, according to assessments by U.N. nuclear officials, as well as Western and Middle Eastern intelligence analysts and weapons experts." That language is in the paper today. That is why this is the right time to bring strong economic pressure to bear on the Iranian regime.

None of us want military conflict. Economic sanctions are not as effective as we would like them to be. But we just recently heard from a leader, the Chancellor of Germany, that a nuclear armed Iran was unacceptable. Angela Merkel spoke from this rostrum. This is not only a perception of the

United States; it's a perception also of those who live in Europe, even more proximate to the nuclear threat that would be caused by Iran armed with nuclear weapons.

The bill was designed by Chairman BERMAN and his committee to target Iran's economy at one of its weakest points by penalizing companies that help Iran import or produce refined petroleum products. Even though it is an oil producer, Iran imports a great deal of the refined petroleum that powers its economy.

So these sanctions that are proposed will increase the high cost of Iran's self-imposed isolation from the international community. They are also a proportional response because they're exclusively tied to Iran's nuclear program. We should never take sanctions like these lightly.

Even as we stand with the protesters facing down repression at the hands of their own government, we understand that these sanctions will affect the lives of many ordinary Iranians for the worse. But we know that economic pressure has worked before to alter the behavior of outlaw regimes, especially when such pressure is widely supported by the international community, as certainly we must hope these sanctions are. We know that these sanctions are our best tool against the nuclear proliferation that risks the security of millions in the Middle East. And let me say that we have 250,000 or more Americans within range of Iranian missiles.

We know that Tehran can choose at any point to negotiate in good faith, abandon its aggressive nuclear pursuit, and rejoin the community of nations. We shouldn't hope for a change of heart from that regime, but we can hope for a change of behavior: a cold understanding that as long as Iran builds the capacity to catastrophically attack its neighbors, its economy will suffer deeply. These sanctions have the power to force that choice.

I therefore urge my colleagues to adopt this resolution. It is time. It is time to do more than talk. We are willing to talk. We want to talk. But talk without action is not acceptable. Let us pass this resolution, support the administration in moving ahead with the international community on imposing sanctions that will make not only the Middle East but the international community safer.

I thank the gentleman for the time.

Mr. BERMAN. Madam Speaker, I am very pleased to yield 1 minute to the gentleman from Florida (Mr. KLEIN), vice chairman of the Subcommittee on the Middle East and South Asia of the House Foreign Affairs Committee.

Mr. KLEIN of Florida. I thank the gentleman for yielding.

Madam Speaker, I rise today to support the Iran Refined Petroleum Sanctions Act.

It is deeply disappointing that the Iranian government continues to

choose to isolate itself. The Iranian government has chosen its clandestine nuclear program and its support for global terrorism over joining the community of nations in allowing its economy to thrive.

That is why I worked to include an important provision in today's legislation that requires companies applying for contracts with the United States Government to affirmatively certify that they do not conduct business with Iran.

The legislation gives companies a single choice: do business with the United States or do business with Iran. We cannot allow the U.S. Government to be a financial crutch of this rogue regime, not on our watch and not on our dime. And with the passage of this legislation, Iranian businesses will have a choice as well: support a regime that chooses economic isolation or work to change the behavior of the Iranian government.

I urge my colleagues to support this legislation.

Mr. KUCINICH. Madam Speaker, I yield myself 1 minute.

One of my colleagues cited *The Washington Post*, but if you read *The Post* article, they couldn't authenticate where the information came from. So after a while it has the ring of uranium from Niger.

We have to be careful that this sanctions debate doesn't put us on the path of a military escalation. We have to think why is the Obama administration, as has been quoted several times in this debate, expressing concern about this legislation, that this legislation might weaken, rather than strengthen, international unity and support for our efforts, that there are serious substantive concerns, the lack of flexibility that this would put on our President in his negotiations?

I submit for the RECORD Mohamed ElBaradei's September 9 comments as Director General about the Iran situation.

We've got to be careful that we're not making a situation worse and we're not giving our President the time that he says he needs for diplomacy.

SUMMARY OF THE DIRECTOR GENERAL'S COMMENTS MADE AT THE END OF THE BOARD OF GOVERNORS' DISCUSSION ON AGENDA ITEM 6(d)

("Implementation of the NPT safeguards agreement and relevant provisions of Security Council resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1835 (2008) in the Islamic Republic of Iran")

Vienna, September 9, 2009.

Thank you, Chairperson.

A few comments on the debate this morning and on what has been transpiring over the past few days. Clearly, we all need to break the logjam. Merely giving speeches here is not going to do that. We have to put our heads together. There is stalemate, as I have said. Iran has made some positive progress and I recognize that. It was partly, I hope, as a result of my private and public

appeal to them to move in a positive direction. That is the only way to move.

I don't think that talking about formalities—whether the work plan has been fully implemented or not, how we should write our reports, or whether to have an annex, or whether something is routine or not routine—that is not the issue. The issue is to clarify the substance and to make sure that all outstanding issues are dealt with. It has been six years and I don't want this to continue, as in the case of the DPRK, for 17 years. One lesson I learned from the DPRK is that it is only through dialogue that you can move forward. There is no other way.

There is a positive development. Iran has agreed to our visiting the heavy water reactor and to strengthen verification in Natanz. These are all positive. But there is a lot more Iran can do. As Ambassador Soltanieh knows, I put a lot of premium on the Additional Protocol. I know it is not considered legally binding. But for us at the Secretariat, as we have repeatedly said, the Protocol is key for us to build confidence, not only about declared activities, but also about undeclared activities. And you (Iran) have implemented the Protocol before. I know Iran can do it again. I know you have been reacting to others, but frankly, you are not penalizing others, you are penalizing yourself. The Protocol will help us to move forward with the process.

Iran implemented the Code (3.1), before. I don't see any impediment to Iran doing it again.

There are a number of checkable facts, such as procurements by military establishments, and production by military establishments. These are issues, as Iran has said before, that Iran can help work with us to clarify. I hope you will do that because we need, both of us, to work together in a constructive, positive direction.

Coming to the alleged studies: they are alleged because the whole question is not really about assessment or analysis, it is about the accuracy and authenticity of the information about the alleged studies. That it is the 64,000 dollar question, frankly, and that is where we are stuck. We have limited ability to authenticate the allegations. It is one word against another. When we deal with nuclear material, we are very comfortable; we know the litmus test. We do measurements, we do environmental sampling. When it comes to paperwork, that is quite different for us because we have very limited tools.

We need Iran to help us to clarify these issues. We have said that we are not in a position to say these allegations are real, but we have serious concerns, because of what we've described—the detail, the different sources. We need to work with you to clarify these issues. I would be the first one to want to bring this issue to closure. I would hope that you would work with us and try to help us.

I would also hope that the suppliers of the information would help us by providing us the authority to share with you as much information as possible.

People talk about assessments. I am not a scientist, but I can tell you this: if this information is real, there is a high probability that nuclear weaponization activities have taken place. But I should underline "if" three times.

With nuclear material, we can give you full assurance. With certain documentation, it is quite difficult unless one side or the other will help us to establish the facts. However, there are other issues like procurement, like manufactures, where Iran can work with us.



These are checkable facts and we need simply to clarify them.

We have in our reports always tried not to understate the facts and not to overstate the facts. We have serious concerns, but we are not in a state of panic because we have not seen diversion of nuclear material, we have not seen components of nuclear weapons.

We do not have any information to that effect. But I need the Protocol in order to be on more solid ground to make such a statement. That is why I say a Protocol is absolutely essential for us to verify the absence of undeclared activities.

When I hear Ambassador Davies and Ambassador Soltanieh, I don't see where the problem is. The U.S. is making an offer without preconditions on the basis of mutual respect. Ambassador Soltanieh said they are ready to have a comprehensive dialogue. The offer by the U.S. is an offer that should not and cannot be refused, because it has no conditions attached. I hope your response to that is positive. We can spend days and nights talking about the issues, but unless we talk to each other and not at each other, we will not move forward. Dialogue is key. The Agency can provide some confidence, but there are many other issues that need to be addressed in a comprehensive manner and there have been a lot of opportunities lost over the past six years. We should not lose any more opportunities.

Finally, I will talk about this issue which has come to the media about withholding information. I mentioned that in my opening speech. Obviously, people are trying to undermine the Agency, but they are really undermining an institution that is absolutely essential to the maintenance of international peace and security. All the information we got came from people sitting in this room. If anybody has any information that we have not shared, that has passed muster, that has been critically assessed in accordance with our practice, please step forward today. Otherwise, as a preacher would say, "You should forever hold your peace."

This is where we are. If you have information, please step forward. We have no more information. The assessment is in our report. As I said, if this information on alleged studies is true, the likelihood is high that military activities have taken place in Iran. But, that hinges on the word "if," which is where we are stuck right now.

As for the idea that we did not share all the information and that we only gave information in a briefing—I can't for the life of me understand how we can share information in a briefing with 150 Member States and at the same time be told that we have not shared information. That briefing is open to all Member States, every single one. But the briefing is simply to explain the report. It had nothing different from what is in the report.

We went through this, I'm sorry to say, during the time of Iraq, when the Agency went exactly through that—hype, fabrication. And then it took a war based on fiction and not fact, a war President Obama called euphemistically "a war of choice". It took a war and hundreds of thousands of people dying for the Agency to become stronger and more credible because we were sticking to the facts. I don't want to go through that process again; you do not want to go through that process again.

So let us all work together on the basis of diplomacy, on the basis of facts to be able to resolve the issues as early as possible.

MOHAMED ELBARADEI,  
Director General.

Mr. BERMAN. Madam Speaker, I am pleased to yield 1 minute to a very patient member of the Committee on Homeland Security, the gentleman from Texas (Mr. AL GREEN).

Mr. AL GREEN of Texas. Madam Speaker, today we will impose sanctions. We will sanction with this legislation or we will sanction the unacceptable status quo, to which I say not on my watch.

Let history record that even if I could not do enough, I did do all that I could. I support sanctions to avert a tyrant from acquiring nuclear weapons of mass destruction capable of creating an inferno unlike that which even the mind of Dante could imagine. To act later may be to act too late.

I rise in support of the Iran Refined Petroleum Sanctions Act (H.R. 2194). This legislation will restrict refined petroleum imports to Iran by strengthening the President's authority to impose sanctions on companies that provide refined petroleum or help Iran maintain or expand its domestic refining capabilities.

While Iran is one of the largest producers of crude oil, it lacks adequate refining capability to meet its own domestic needs for gasoline and is forced to import 25 to 40 percent of its refined petroleum needs.

This legislation will prevent Iran from importing the gasoline it needs as a way to put pressure on the Iranian government to suspend its uranium enrichment program.

For over a decade, the United States has played a central role in diplomatic, political and economic efforts within the international community to deter Iran from gaining nuclear weapons capabilities.

H.R. 2194 continues those efforts and is particularly important in light of recent intelligence indicating that Iran continues to advance its nuclear program.

The latest International Atomic Energy Agency, IAEA, resolution adopted by the Board of Governors on November 27, 2009, notes with serious concern how Iran has constructed an enrichment facility at Qom in breach of its obligation to suspend all uranium enrichment related activities.

Many experts believe that with further processing of low-enriched uranium, Iran could have the capability to produce a nuclear weapon by the end of this year, reinforcing the sense of urgency to address this threat.

A nuclear-armed Iran would lead to a nuclear arms race and increase the likelihood that such weapons might actually be used against the United States and our allies.

As such, it is a threat not only to the Middle East, but to the entire world.

I urge my colleagues to support this legislation and hope that it will be an effective step towards preventing such a threat.

□ 1630

The SPEAKER pro tempore. The gentleman from Ohio has 1 minute remaining. The gentleman from California has 2 minutes remaining.

Mr. KUCINICH. I will use the balance of my time.

Madam Speaker, this is starting to sound like the debate over Iraq.

My concerns are that this resolution is opposed to our national security, that it undermines diplomatic initiatives, that it creates a gas shortage in Iran which, in a sense, the regime would blame on the United States. It will benefit the Revolutionary Guard in its effort to gain profit off of a black market. It will throw the energy politics of the world into chaos with Russia, Venezuela and our European allies all coming in to play. It will undermine our diplomacy. It will isolate us from our allies. It will isolate us from trading partners. It will undercut international energy companies which try to work with the United States in back channels in diplomacy. It will undermine democracy efforts in Iran, and it will strengthen the hardliners. It will make U.S. presence in Iraq, Afghanistan, and Pakistan more dangerous for our troops.

This sanctions resolution is, unfortunately, a path towards military escalation. As such, it should be defeated.

I yield back the balance of my time.

Mr. BERMAN. I yield myself the remaining time.

Madam Speaker, I have heard, I guess, three reasons put forth about why people should not support this legislation.

The first is some hint of a belief that Iran is not pursuing a nuclear weapons capability. Our report lists activity after activity that Iran has undertaken to hide its activities from the IAEA to build enrichment facilities that have no purpose in the uranium enrichment program and to talk about neutron triggers, which only have one purpose, which is to detonate a nuclear weapon. It is a country that has been offered by Russia, with the support of the P5, a chance for a nuclear energy program, and it has spurned all of those offers to pursue this. To me, there can be no serious doubt about that.

The second argument is that they get a nuclear weapon, and we can contain them. For the reasons I gave in the beginning and because I believe it totally destroys the nonproliferation regime, containment is not the right policy.

The third argument is that these sanctions are going to hurt the Iranian people. Well, I was here in 1986 when we took up a prohibition on any new investment, not investment in the energy sector, but any new investment in the apartheid regime of South Africa.

What was the argument against it? Banning new investment, curtailing economic growth, hurting the majority of the population in South Africa. Don't do it. Don't wreak havoc on the poor people.

We did not listen to that argument. We enacted those new sanctions. Europe soon followed in banning new investment. The South African business community went to the regime in South Africa and pointed out the economic devastation they faced if they



continued with their apartheid policies.

It is ludicrous to think that the people who are risking their lives and their liberty and their limbs and who are doing everything they can to express their opposition to this regime in Iran are going to turn into a unifying force behind that regime because the price of oil gets higher. We are working with them to weaken that regime and to stop this nuclear weapons program.

Ms. LEE of California. Madam Speaker, as one who has worked for nuclear disarmament and nonproliferation efforts throughout my life, I share my colleagues concern regarding the prospect of a nuclear armed Iran.

I strongly believe Congress must support the Administration's diplomatic efforts and provide tools to help that diplomacy succeed in curbing Iran's belligerent and deceptive activities as related to their nuclear program, as well as put an end to the unjust and inhumane tactics used by the Iranian government to suppress democratic dissent amongst their own people.

I have serious concerns regarding Iran's violation of its obligations under the Nuclear Non-Proliferation Treaty, NPT.

I believe strongly that the international community must work in a united collaboration to compel Iran to renounce and cease all activities that are in violation of the NPT, and submit fully to the international inspection regime.

Let me also be clear that I strongly oppose the use of military force and while sanctions, particularly, with international support, can be utilized effectively if designed appropriately and in the right circumstances, they cannot be viewed as a checkmark on the path to war.

Madam Speaker, there certainly may come a time for additional unilateral sanctions against Iran and those that would do business with them.

Iran's recent rejection of international overtures and threats of expanding their nuclear enrichment program without allowing for improved transparency demand that Congress work with the administration to effectively increase pressure on Iran should multilateral diplomacy fail.

But let us do everything we can to support the Obama administration during this very critical juncture.

Iran's failure to-date to grasp this opportunity for engagement has opened the door to a multilateral sanctions regime that will be necessary to compel Iran to change course.

I have grave concerns that H.R. 2194, as currently written may jeopardize these efforts by:

Setting inefficient monetary thresholds and penalty levels

Risking unintended foreign policy consequences as a result of potential punitive measures against the very international partners from which we are seeking cooperation on this issue; and

Narrowing the President's waiver authority in a manner that may undermine the President's flexibility as he pursues a dual track of engagement coupled with increasingly unified international pressure.

Madam Speaker, after decades of levying unilateral measures against Iran with little ef-

fect, and in recognition of the essential support of our international partners, I cannot fully support moving forward with this bill in its current form.

In placing my vote today, I recognize that this bill is not in its final form-but in its current form it does not meet the test of efficacy for achieving our non-proliferation goals with respect to Iranian behavior.

It is my hope that changes to address these concerns will be reflected in the bill when it returns to the House floor.

While we are not able to make changes to this legislation here today, I plan to work with, and in support of Chairman BERMAN and the Administration, to ensure any sanctions package ultimately signed into law most effectively serves U.S. interests in preventing a nuclear armed Iran.

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise in support of H.R. 2194, the Iran Refined Petroleum Sanctions Act of 2009. This legislation provides another tool for the President to prevent Iran from developing nuclear weapons by allowing the administration to sanction foreign firms who attempt to supply refined gasoline to Iran or provide them with the materials to enhance their oil refineries. These sanctions would further restrict the government of Iran's ability to procure refined petroleum. Currently, the availability of petroleum products is stagnant in Iran. Private firms have decided that the government of Iran's refusal to cooperate with the multilateral community on nuclear proliferation generates a significant risk to doing business with Iran.

I would like to thank Chairman BERMAN, for incorporating my concerns about the human rights situation in Iran into the findings of this legislation. It is important that we acknowledge that, throughout 2009, the government of Iran has persistently violated the rights of its citizens. The government of Iran's most overt display of disregard for human rights happened in the Presidential elections on June 12, 2009. As I said on June 19, 2009, "we must condemn Iran for the absence of fair and free Presidential elections and urge Iran to provide its people with the opportunity to engage in a Democratic election process." The repression and murder, arbitrary arrests, and show trials of peaceful dissidents in the wake of the elections were a sad reminder of the government of Iran's long history of human rights violations. The latest violations were the most recent iteration of the government of Iran's wanton suppression of the freedom of expression.

It is important that we are clear that our concerns are with the government of Iran and not its people. The State Department's Human Rights Report on Iran provides a bleak picture of life in Iran. The government of Iran, through its denial of the democratic process and repression of dissent has prevented the people from determining their own future. Moreover, it is the government of Iran that persecutes its ethnic minorities and denies the free expression of religion. As we proceed with consideration of this legislation, we should all remember that the sole target of these sanctions is the Iranian government.

Madam Speaker, the government of Iran has repeatedly shown its disdain for the international community by disregarding international nonproliferation agreements. Iran's

flagrant violation of nonproliferation agreements was evidenced most recently in the discovery of the secret enrichment facility at Qom. The government of Iran's continued threats against Israel, opposition to the Middle East peace process, and support of international terrorist organizations further demonstrate the necessity for action.

Iran's recent actions towards the international community reflect a very small measure of progress. Iran's decision to allow International Atomic Energy Agency, IAEA, inspectors to visit this facility was a positive sign, but not a sufficient indication of their willingness to comply with international agreements. The recent announcement that Iran will accept a nuclear fuel deal is also indicative of their willingness to engage in dialogue, though it remains to be seen what amendments that they will seek to the deal. While these actions indicate a small degree of improvement in Iran's position, the legislation before us today demonstrates that only continued dialogue and positive actions will soften the international community's stance towards Iran.

I would also like to emphasize that the legislation before us provides only one tool for achieving Iran's compliance with international nonproliferation agreements. I continue to support the Administration's policy of engagement with Iran and use of diplomatic talks. I believe that diplomacy and multilateralism are the most valuable tools we have to create change in Iran. After those tools fail, I believe that the sanctions are an appropriate recourse.

Mr. PAULSEN. Madam Speaker, I rise today in strong support of H.R. 2194, the Iran Refined Petroleum Sanctions Act.

A few months ago, a second nuclear enrichment site was discovered in Iran. The Iranian regime had withheld the disclosure of this facility from the International Atomic Energy Agency for quite some time—yet another violation of Iran's obligations under the Nuclear Nonproliferation Treaty. Furthermore, this second facility will allow Iran to produce more enriched uranium and at an even faster rate.

There is no doubt that a nuclear Iran poses a dangerous threat to the United States and its allies throughout the Middle East and across the entire globe. We cannot allow the Iranian regime to continue threatening its neighbors and thumbing its nose at the world. And we certainly cannot let a regime that has threatened to wipe Israel off the map even come close to obtaining a nuclear weapon.

Madam Speaker, the Iran problem is getting worse, not better. It is time we take action.

Currently, Iran relies on foreign suppliers for 40 percent of its refined petroleum. The legislation before us would sanction foreign companies that sell refined petroleum to Iran, or help Iran with its own domestic refining capacity, by depriving those companies of access to the U.S. market. This will help put needed pressure on Iran to suspend its program and allow for verification of that action.

Time and time again, Iran has been given the opportunity to prove they are not pursuing nuclear weapons and each time they have failed to do so. It is time for the U.S. to take action and send a message that the world will not sit idly by as tyrants in Iran buy time to enrich uranium and ultimately amass a nuclear weapon.

Madam Speaker, I would be remiss if I did not mention the brave Iranian people who are peacefully going to the streets to protest the actions of the current regime. It is not only for our own security but also for these people—the students and dissidents who desire a better future for their nation—that this legislation should be passed.

The status quo when it comes to Iran is no longer a viable option. This bill offers a peaceful, significant course of action that will set the world on a safer course when it comes to Iran. I urge adoption of this important legislation.

Mr. JOHNSON of Georgia. Madam Speaker, nuclear weapons are a plague.

If we are to control their spread, international law must mean something. Words must be supported by action.

In recent months, the United States and our allies have engaged in vigorous multilateral diplomacy in an attempt to break through an impasse with Iran over its nuclear program.

Rather than engaging in good-faith diplomacy, Iran has stalled and played games.

So today we must authorize President Obama to impose sanctions on Iran's petroleum sector. Iran's leaders must understand that life will become more difficult every day they defy the lawful will of the international community. I urge the President to use this authority carefully, patiently, and effectively.

I commend Chairman BERMAN for his diligence and determination in bringing this legislation through Committee and to the floor. I am also proud to have a small claim of co-authorship. I contributed language that highlights Iran's construction of a secret uranium enrichment facility at Qom and demands that Iran disclose any additional covert enrichment facilities.

Iran's acquisition of nuclear weapons will beget similar programs by Iran's neighbors. A nuclearized Middle East is bad for international security, bad for the global economy, bad for the United States and bad for our allies.

Nuclear weapons are a plague. Here we must draw a red line and stop their spread.

Mr. OLSON. Madam Speaker, I rise in strong support of the Iran Refined Petroleum Sanctions Act.

The threat from Iran is real. Just last month, the IAEA censured Iran for its secret nuclear facility. In response, Iran vowed to no longer cooperate with the IAEA and, soon after, announced their plans for 10 additional nuclear enrichment sites. Iran is also the leading state sponsor of terrorism and is supporting extremist organizations in the Middle East and beyond.

It is time for this Congress to say "enough is enough." This legislation sends a clear message: foreign entities selling petroleum to Iran will pay a price and will not enjoy the benefits of having the United States as a customer.

I commend Mr. BERMAN for this fine piece of legislation and urge my colleagues to support H.R. 2194.

Ms. LORETTA SANCHEZ of California. Madam Speaker, I am a strong supporter of H.R. 2194, the Iran Refined Petroleum Sanctions Act. I believe Iran remains the number one national security concern for the international community. Iran's continued pursuit of

nuclear capabilities is extremely concerning and remains a serious threat to the United States of America and the entire world. Iran's refusal to respond to the United States' diplomatic engagement is especially disconcerting. I'd like to thank Chairman BERMAN for his willingness to add language to this legislation at my request, highlighting Iran's unwillingness to cooperate with the international community and the government's insistence on rejecting the United States' efforts at engagement.

When Iran's secret nuclear facility was revealed in September, my colleagues and I demanded that the Government of Iran immediately disclose the existence of any additional nuclear-related facilities, and provide open-access to its Qom enrichment facility. The Obama Administration set a deadline for Iran to open the facility for inspection. However, Iran did not meet this deadline. Iran was also required to ship its low-enriched uranium stockpile to Russia and France for conversion. Yet again, Iran refused to accept this deal. Iran has systematically refused to live up to any of its promises of transparency and cooperation with the international community. Instead, Iran decided to act against our efforts at engagement by announcing that it would enrich its own uranium to 20 percent, and that it would build 10 new enrichment plants for purportedly civilian purposes.

These actions are unacceptable and the U.S. House of Representatives must ensure that our country is not investing in companies and institutions that enhance Iran's petroleum resources, which may be used to fund their nuclear ambitions and terrorist groups. However, I also believe the international community must come together to help neutralize the threat Iran poses to the rest of the world. All states must take responsibility for maintaining peace and security in the region through multilateral sanctions and efforts to force Iran to denuclearize. In order to be successful, I believe these efforts must be international in scope.

The passage of H.R. 2194 is an important step towards continuing to show Iran that we will not stand by idly while they continue to threaten the peace and security of the rest of the world. I regret that I am unavoidably detained in California. However, as a cosponsor and strong supporter of H.R. 2194, I would have voted "aye" on this critical legislation.

Mr. FALEOMAVAEGA. Madam Speaker, I rise in strong support of H.R. 2194, the Iran Refined Petroleum Sanctions Act of 2009, aimed at checking the government of Iran's clandestine effort to acquire a nuclear weapons capability.

That effort is particularly troublesome given the country's ongoing support of international terrorism and its programs to develop ballistic missiles. An Iranian regime armed with nuclear weapons and the systems to deliver them, and no compunction about targeting innocents, will present a grave security threat to the United States, the Middle East and the entire globe. And make no mistake: Iran has global ambitions, now encompassing the Pacific Islands. Last year, for example, Iran provided a \$200,000 scholarship fund to the Solomon Islands for students living there to study medicine in Cuba. This year, the Solomons voted in favor of a U.N. resolution regarding

the seriously-flawed Goldstone Report on the Gaza conflict.

Meanwhile, today's Washington Post reports that Iran's indigenous scientific and technical capabilities appear to have put Teheran on the threshold of becoming a nuclear weapons state. And as Secretary of State Hillary Rodham Clinton noted yesterday, diplomatic engagement with Iran over its nuclear activities, "has produced very little in terms of any kind of a positive response from the Iranians."

H.R. 2194, sponsored by the Chairman of the House Foreign Affairs Committee, the distinguished gentleman from California, Mr. BERMAN, provides the Administration one more instrument for its diplomatic tool kit: explicit authority to impose additional sanctions on the Iranian regime if it fails to abandon its quest for nuclear weapons.

While I hope that the President will not have to exercise that authority, I believe having it available will increase his diplomatic leverage. It is time for the government of Iran to heed the call of the international community and abandon its nuclear ambitions. I ask my colleagues in the House to reinforce that call by supporting H.R. 2194.

Mr. CAMP. Madam Speaker, I rise in support of H.R. 2194.

I am deeply concerned that Iran continues to pursue nuclear capabilities in defiance of the international community. The Iranian leader's abhorrent statements against America and Israel are outrageous.

Both current and previous Administrations view Iran as a profound threat to U.S. national security interests, a view that reflects my position as well.

We must address the situation. I have continually supported efforts to give U.S. Presidents the tools and capabilities needed to prevent Iran from acquiring nuclear weapons, and I continue to do so today.

I wholeheartedly agree with the goal of H.R. 2194. I believe we need to expand sanctions to refined petroleum resources to prevent Iran's nuclear proliferation. However, while domestic sanctions are critical, it is also important that our allies participate in an international coalition so that combating Iran's nuclear proliferation is a multilateral effort.

This bill, like other Iran sanctions bills that have preceded it in this chamber, was referred to the Ways & Means Committee. Usually on Iran bills, Foreign Affairs and Ways & Means discuss and agree jointly on the provisions in the bill that fall within the jurisdiction of my Committee. These conversations have always been very productive in the past. This process provides the best possible outcome, because it respects the strength and thrust of the bill, as well as positions the legislation to give our Administration the best chance at continuing to cultivate and maintain international multilateral pressure.

We are still in the midst of that process for the bill now under consideration, and the bill we are voting on reflects the starting point of that process, not the end result. The aspects of the bill within the jurisdiction of Ways & Means that the two Committees are still discussing include the bill's provisions addressing the President's waiver authority, the structure and content of the additional mandatory sanctions, and certain definitions.

Although we have not completed our discussions, I can nevertheless offer my full support to this bill because of the Foreign Affairs Chairman's commitment to continue working with the Ways & Means Committee on these outstanding issues.

In light of that commitment, it is my expectation that bona fide, good-faith discussions between Ways & Means and Foreign Affairs will continue as this legislation proceeds in the legislative process.

Mrs. MILLER of Michigan. Madam Speaker, I rise today in strong support of H.R. 2194—the Iran Refined Petroleum Sanctions Act.

This bill requires the President to impose sanctions on any entity that provides Iran with refined petroleum resources, or engages in activity that could contribute to Iran's ability to import such resources.

Because Iran lacks sufficient domestic petroleum refining capability, a restriction of gasoline deliveries to Iran will become a painful sanction designed to bring Iran's leaders into compliance with their commitments under the Nuclear Non-Proliferation Treaty.

The government of Iran must verifiably suspend, and dismantle its weapons-applicable nuclear program and stop all uranium enrichment activities.

There can be no doubt that Iran poses a significant threat to the United States and our allies in the Middle East and elsewhere. Iran is proceeding with an aggressive nuclear weapons program, despite its claim that the Iranian nuclear program is for peaceful uses.

Preventing Iran from acquiring nuclear weapons and ending its support for international terrorism are vital United States national security interests.

We know that Iran has engaged in stonewalling, deception and deceit when it comes to its nuclear program. Several weeks ago, a secret uranium enrichment facility near the city of Qom was revealed—a facility the Iranians failed to disclose to the International Atomic Energy Agency.

Yesterday, British intelligence revealed that it has discovered documents which indicate that Iran has been testing nuclear bomb triggers since at least 2007.

This Administration is engaged in some wishful thinking if they believe that the threat posed by Iran's nuclear weapons program can be negotiated away through engagement and concessions.

Mohammad El-Baradei, the former head of the IAEA said, "Investigations into military aspects of Iran's nuclear program had reached a 'dead end.'"

We have tried negotiations and inspections to convince the Iranian regime to end its weapons program and we are getting no results.

So, the time has come to take decisive, concrete action and nothing less than overwhelming and crippling sanctions will compel Iran to end the pursuit of nuclear weapons.

This bill provides a powerful stick to force the Iranians to end its illicit nuclear weapons program.

I urge my colleges to support this bill.

Mr. LIPINSKI. Madam Speaker, I rise today in strong support of H.R. 2194, the Iran Refined Petroleum Sanctions Act. I am proud to be a cosponsor of this important bill, and urge

my colleagues in the House, as well as the Senate, to enact this legislation into law without delay.

Iran has for decades presented a serious threat to the security of the United States, our allies, the region, and the international community. Its support for terrorism and other belligerent activities has been a particular challenge to the security of Israel and the entire Middle East. Iran's more recent efforts to develop nuclear weapons elevate these security threats, and must be resisted by all the diplomatic and security institutions of the United States. Furthermore, the reports this week that Iran is pursuing technology specific to nuclear weapons should remove any doubts about Iran's intentions with regard to uranium enrichment, and make clear to me that we must contain this threat immediately.

The Iran Refined Petroleum Sanctions Act will provide the United States with a new lever against the Iranian regime in order to deter its dangerous behavior. Specifically, this bill would allow the President to impose sanctions on any business or individual that makes an investment that contributes to Iran's ability to develop its petroleum resources or to import petroleum goods. Iran relies on its oil exports to derive income, and must also import 30–40 percent of its gasoline to meet its needs. Sanctions on petroleum development and the fuel needs of Iran will further cripple its economic development—focused primarily on the elite class that is closest to the regime, and help to increase the costs of its threatening activities. These far-reaching sanctions, capturing all those who provide a range of associated support to Iran's petroleum needs, will send an important message to the regime that its nuclear weapons ambitions are unacceptable, and that they will be met with serious consequences.

It is very important that Congress pass this bill quickly in order to provide the President the necessary options and legal remedies to deter Iran. There is a point of no-return with nuclear weapons development, and we must engage all available options to prevent Iran from developing those capabilities. Furthermore, as we have learned with Iran's support for terrorist groups like Hezbollah, should Iran acquire nuclear weapon capabilities, it is all too likely that they will share their weapons and knowledge with any number of dangerous actors. Nuclear weapons proliferation, particularly to non-state actors and those who pose the greatest threats to the security of America, Israel, and other allies, must be stopped at all costs.

At the same time, it is vital that we seek the support of the international community to pressure Iran to stop its nuclear weapons pursuit. We must work with our allies in Europe, as well as with China, Russia, and others to address the threat that a nuclear-armed Iran presents to the world. But international efforts should not be an alternative to the United States pursuing the strongest sanctions options possible against Iran.

It will be very important in the upcoming year that we continue to proceed with both U.S. sanctions, and also international diplomatic efforts and sanctions to prevent Iran from proceeding with its dangerous and insular nuclear weapons ambitions. Iran must not

be allowed to become a nuclear weapons state, and we must pursue all available options to prevent that from occurring. It is essential to that goal that we pass the Iran Refined Petroleum Sanctions Act.

Mr. MACK. Madam Speaker, today I rise in strong support of the Iran Refined Petroleum Sanctions Act of 2009 (H.R. 2194). I would like to thank Chairman BERMAN and Ranking Member ROS-LEHTINEN for their leadership and work to bring this legislation to the floor. I would especially like to thank them for working with me to ensure that language related to Venezuela and Iran was included.

Madam Speaker, Iran is not wasting any time in its pursuit of nuclear weapons, and this body must also not waste any time in making sure that this bill becomes law.

Today in the Western Hemisphere, Iran and its proxies, such as Hezbollah, are working hard to promote acts of terrorism.

Iran is also working diligently across the Western Hemisphere to acquire uranium. This would, of course, not be possible without the help of Venezuelan leader Hugo Chavez.

Madam Speaker, my subcommittee held a hearing in which we addressed Iran's rising influence in the Western Hemisphere. All experts point to Venezuela when it comes to Iran's threat in our region.

Hugo Chavez has not only facilitated Iran's influence, but is a co-conspirator with Iranian leader Mahmoud Ahmadinejad in both evading sanctions and procuring nuclear technology.

This bill targets Iran. And we should target Iran. But we must also be mindful of who is helping Iran avoid sanctions and who is helping Iran achieve its ultimate goals.

This bill rightfully adds the sale of gasoline to the list of sanctions for Iran. It should come as no surprise to this body that just a few months ago, Chavez and Ahmadinejad signed a deal that allows Venezuela to sell 20,000 barrels of gasoline each day to Iran.

Chavez's actions clearly undermine our efforts and bolster Ahmadinejad's ability to acquire a nuclear weapon. We in Congress must not stand for it. We must stem Ahmadinejad's growing influence in Latin America, and we can start by passing this important legislation.

I urge my colleagues to support the Iran Refined Petroleum Sanctions Act.

Mr. ROONEY. Madam Speaker, I rise today in strong support of H.R. 2194, the Iran Petroleum Sanctions Act. Not only has Iran repeatedly refused to engage in international diplomatic efforts to halt their ongoing nuclear program, it is resolute in its plans to expand it. Just today, Israel's Military Intelligence Chief Major General Amos Yadlin stated that Iran has enough nuclear material for a warhead and is close to being able to build one. This announcement reinforces the urgency of strengthening the United States economic sanctions against Iran.

The United States must defend the security of Israel and the Middle East, as well as our citizens here at home from Iran's dangerous threats. This bill sends a clear message that the United States takes Iran's actions and threats seriously and that we will not sit idly by. I urge my colleagues to vote in favor of this critical legislation and I am thankful it has finally been brought before the House for consideration.

Mr. PENCE. Madam Speaker, I rise in support of H.R. 2194, the Iran Refined Petroleum Sanctions Act, and I commend the chairman and ranking member of the House Foreign Affairs Committee for their leadership in bringing this legislation to the floor.

In June of this year, it was a great privilege for me to partner with Chairman BERMAN in bringing a bipartisan resolution to the floor of the House that expressed the American people's solidarity with dissidents in Iran and condemned the violence taking place there. That resolution was met with overwhelming support. So should this Iran sanctions legislation.

Iran has deceived the world community time and again, and any assurance that their nuclear program is peaceful should be seen for what it is, just another lie. Iran's support for terrorism and pursuit of weapons of mass destruction have long threatened global peace and security. It is time to impose meaningful sanctions on the Iranian government, and send a strong signal that these dangerous acts will not stand.

President Obama promised during his campaign that he would extend an open hand to Iran and has expended precious time and resources towards that goal. However, the international community and this country have talked long enough about Iran's nuclear ambitions; it is time for deeds.

I urge my colleagues to come together in a bipartisan way to support this important legislation.

Ms. EDDIE BERNICE JOHNSON of Texas. Madam Speaker, today I will vote against H.R. 2194, the Iran Refined Petroleum Sanctions Act. This legislation seeks to expand economic sanctions against Iran. I believe that the foundation of this act reflects a misguided and self-defeating approach to United States foreign policy. Economic sanctions will target the Iranian people not just the Iranian government. These sanctions seek to make the Iranian people miserable enough so they will pressure their government to change course. We have seen from the past Iranian Presidential elections that public pressure directed at the government has, and did not, work. We have seen from the past with countries, such as Cuba and Iraq, that these sanctions harm the people and not the ruling government. I believe that these economic sanctions take authority away from the President and States of Department by tying their hand from achieving a diplomatic national security strategy. Let me be clear, I do not approve of Iran's nuclear program or of this governments human rights record. I believe that we must trust in our President and State Department to lead international pressures on Iran.

Madam Speaker, I have always promoted diplomacy, peace, and human rights. In 2001, I created "A World of Women for World Peace" to bring greater visibility to peacemaking and peace-building activities in communities around the world. I firmly believe that the burden of peacemaking, peace building, and nation building cannot be left to one institution, gender or political party. It must be a shared responsibility that encompasses all, regardless of race, class, gender and religion. If these sanctions are passed, they will block Americans and Iranians from working together promoting peace, nation building, and human rights.

Mr. PETERS. Madam Speaker, I rise today in strong support of the Iran Refined Petroleum Sanctions Act, legislation that I co-sponsored because of my concerns about the Iranian nuclear threat. We in Congress must act swiftly to make sure a nuclear Iran is never a reality.

I know how destabilizing a nuclear Iran would be to the region. While serving on duty with the U.S. Navy reserve in the United Arab Emirates, I could look out each day over the Straights of Hormuz. I could see the line of oil tankers waiting to transit the straights and I saw what a choke point that was for the world's economy. This year, I traveled to Israel, a trip which reinforced just how critical and grave the threat from Iran is to Israel's security and America's interests in the region.

Despite being a leading producer of crude oil, Iran cannot adequately meet its own needs for refined petroleum products. Enacting sanctions to restrict the imports of those products into Iran is important leverage we must have to ensure the security of the United States, Israel, and our allies around the world.

Passing tough sanctions today will show Iran, and the global community, that the United States will not stand idle as Iran attempts to amass a nuclear arsenal.

Madam Speaker, the threat is real and the time to act is now. I strongly urge passage.

Mr. McMAHON. Madam Speaker, the Iran Refined Petroleum Sanctions Act of 2009, an historic, bipartisan piece of legislation, smartly targets investment in Iran's hydrocarbon sector.

Outside of the oil and natural gas industry, Iran has practically no economy and any international company that chooses to invest and assist Iran in importing or producing refined petroleum, enables Iran to buy time as it masters the nuclear cycle. This perilous cat and mouse game, ultimately endangers the security of the U.S. Israel and the global community.

For those who question the effectiveness of stricter sanctions, I would point out the fact that already, due to U.S. pressure, at least 40 banks, including Deutsche Bank, UBS, Credit Suisse, and Commerzbank AG, have reduced business with Iran.

Yet, despite increased pressure from the international community and 5 UN Security Council Resolutions, Iran still refuses to suspend its enrichment program and has pledged to build even more enrichment facilities.

For this reason, H.R. 2194 is a necessary instrument in the tool box of international diplomacy that the United States can use to pressure Iran to engage in serious negotiations.

While I commend the Obama Administration for its willingness to engage with Iran and offer new solutions, I fear that their dialogue and discussion isn't being met with true partnership by the Iranian regime. The Iranian Government continues to drag their feet and refuse to commit to honest dialogue.

Madam Speaker, nuclear nonproliferation is a global responsibility.

Through my position on the House Committee on Foreign Affairs, I included a provision in this bill to the President to issue a timely report on the trade and sales of petroleum extraction equipment between Iran and members of the G20.

Sanctions by the United States alone will not put the pressure on the Iranian regime unless they are met with equal restrictions by our friends and allies.

I have devoted much of my efforts on the committee to promoting transatlantic relations and nonproliferation efforts, and I feel that there is no better way to engage with allies and foes-alike than to promote a nuclear nonproliferation regime and ending Iran's nuclear ambitions once and for all.

This reporting requirement will allow the U.S. to weigh the efforts of the G20 members in the fight against nuclear proliferation and will ultimately further secure the United States, Israel and the global community.

I am confident that this measure will undoubtedly give the Administration the leverage that it needs to negotiate with the Ahmadinejad regime, but the United States will need the support of the international leaders in trade and the energy sector to wear Iran off its nuclear ambitions.

Ms. MOORE of Wisconsin. Madam Speaker, I am concerned about Iran's irresponsible violations both of its commitments under the Nuclear Nonproliferation Treaty, NPT, and its agreements which it signed with the International Atomic Energy Agency, IAEA.

I share my colleague's conviction to stop an Iranian regime headed by Ahmadinejad from getting nuclear weapons. However, I think we should do so without crippling the Iranian people (as is noted in this legislation towards whom the people of the United States have feelings of friendship and hold in the highest esteem) or crippling efforts to raise a unified and international response to Iran's continuing noncompliance.

While we all recognize that the intention of this act is not to punish the Iranian people, it does not escape me that the impact of these sanctions will result in more suffering for them nonetheless. Upon introducing this bill in April, the Chairman of the Foreign Affairs Committee noted his belief "that this measure could have a powerfully negative impact on the Iranian economy." For sanctions to be truly crippling to Iran, they have to "cripple" the people first.

At a time when the Iranian people have courageously challenged the mullahs and the rulers in Iran by taking to the streets after the elections and recently again this month, there is concern that this unilateral approach may end up benefitting, not hindering, the regime and sowing the anger of the Iranian people at the U.S., not the Iranian government.

Unilateral sanctions can have unintended consequences. In a recent Dear Colleague, it was noted that "in two recent instances, Microsoft and Google each determined that they must deny instant messaging services to the Iranian people that were previously available, citing their duty to comply with U.S. sanctions." Apparently, this medium had become a popular way for protesters to get around increasing efforts by the Iranian government to monitor their communications. As a result, my colleagues warned that "Congress must act quickly to ensure that we are not unwittingly doing the repressive work of the Iranian government on its behalf."

The President is currently working with our international partners not only as part of a renewed diplomatic outreach effort but also to

fashion a strong multilateral response if Iran continues to refuse to cooperate with the international community.

In testimony in October, the State Department told Congress that it believes it has “the authorities necessary to take strong action alone and together with our international partners, should they prove necessary” to squeeze off financing of Iran’s nuclear weapons efforts.

For example, the Treasury Department can continue to use the authority that it has used for over three years now to blacklist Iranian banks and encourage international banks to avoid doing business with Iran.

As a result, since 2006, the U.S. has taken action against over 100 banks, government entities, companies, and people involved in Iran’s support for terrorism and its proliferation activities including freezing assets and preventing U.S. persons, wherever located, from doing business with them.

Recently, the Department wrote to express its concerns about companion Senate legislation to the bill before us today warning that “during this crucial period of intense diplomacy to impose significant international pressure on Iran” it was concerned that such legislation, “in its current form, might weaken rather than strengthen international unity and support for” these efforts.

In this letter, the Administration appealed for a delay of that bill in order not to undermine “its diplomacy at this critical juncture.”

Israeli officials have also made clear that broad-based international efforts, including for sanctions, are better than the unilateral approach before us today. Very recently, Israeli Defense Minister Ehud Barak noted that “There is a need for tough sanctions . . . Something that is well and coherently coordinated to include the Americans, the EU, the Chinese, the Russians, the Indians.”

I also share the concerns that some have that the legislation before the House today will “disempower”—not empower—the President to bring this multination coalition together by taking away or limiting his flexibility to use sanctions as necessary to assist diplomatic efforts. That’s a very curious definition of “empowerment.”

It’s as curious as saying that it is in the U.S. national security interest and helps diplomacy to make it harder for the President—any President—to use and waive sanctions when he thinks the timing best serves our efforts to put pressure on Iran.

The President’s flexibility to conduct foreign relations and diplomatic efforts to achieve a strong international consensus against Iran is not a loophole that needs to be closed but a vital tool that needs to be supported. I am concerned that this bill as written would keep our allies from working with us to address the threat from Iran.

Earlier this year, Nicholas Burns, who served under the Administrations of George H.W. Bush, Bill Clinton, and as George W. Bush’s top State Department negotiator in efforts to thwart Iran’s nuclear program, testified in dealing with Iran, “My main recommendation for this committee and the Congress, however, is to permit the President maximum flexibility and maneuverability as he deals with an extraordinarily difficult and complex situa-

tion in Iran and in discussions with the international group of countries considering sanctions. It would be unwise to tie the President’s hands in legislation when it is impossible to know how the situation will develop in the coming months.”

An action taken against Iran—including sanctions—should have the broadest possible support in the international community. According to the Administration, “with wide international support, sanctions regimes can be enforced, pressure can be sustained, and Iran’s leaders are less able to shift the blame from themselves to the U.S. for the pains caused by their behavior.” Even the Senate version of this same legislation recognizes the limits of more U.S. only sanctions. In section 111 of S. 2799, it is noted that “in general, multilateral sanctions are more effective than unilateral sanctions at achieving desired results from countries such as Iran.”

International pressure for Iran to act or to face more forceful international action is building, as evidenced by the recent IAEA vote condemning Iran for its Qom enrichment facilities.

All five veto-wielding members of the Security Council (China and Russia included) voted for that measure, which opens up the potential for another round of Security Council sanctions.

The progress in uniting the Security Council is attributable to President Obama’s investment in diplomacy. If Congress moves forward with sanctions that target our allies, that unity may very well collapse.

Sanctions have a place. I am a cosponsor of H.R. 1327, the Iran Enabling Sanctions Act of 2009, which passed the House with my support by a vote of 414–6 on October 29th. There are even provisions of this legislation which are worthwhile and which I have supported in the past as stand-alone legislation (H.R. 957 in the 110th Congress) that make clear that current U.S. sanctions can be used against financial institutions, insurers, underwriters, guarantors, and any other business organizations, including foreign subsidiaries, that aid investment in Iran’s energy sector.

However, the less united the international community is in applying pressure against Iran, the greater the risk our measures will not have the impact we seek. And given the gravity of the stakes at risk here, that would be truly regrettable.

As noted by Secretary of State Clinton just yesterday, “we have pursued, under President Obama’s direction, a dual-track approach to Iran. We have reached out. We have offered the opportunity to engage in meaningful, serious discussions with our Iranian counterparts . . . The second track of our dual-track strategy is to bring the international community together to stand in a united front against the Iranians.”

I hope that as this legislation moves forward in the legislative process, further changes will be made to strengthen this bill in a way that will truly enhance, and not hobble, strong diplomatic efforts to diplomatically engage with Iran as well as to enact multilateral sanctions.

Mr. WAXMAN. Madam Speaker, each week brings more disturbing evidence of Iran’s nuclear advances, its defiance of UN Security Council demands and its refusal to comply

with the requirements of the International Atomic Energy Agency.

The latest news, since the revelation earlier this year of an undisclosed nuclear enrichment site in Qom, is Iran’s work on technology to set off a nuclear bomb. The regime is already believed to have enough low-enriched uranium available to, with further enrichment create at least one nuclear bomb. Together with its ongoing work on ballistic missiles to deliver a nuclear warhead, Iran could have a nuclear weapon within months.

In an attempt to stop the Iranian program from moving ahead, President Obama has made a concerted effort to engage Iran in direct talks. Together with the permanent members of the UN Security Council and Germany, the United States has offered a clear path for Iran to end its status as a pariah state.

So far, Iran remains intransigent. If international concern over the Iranian nuclear program is to be resolved diplomatically, we must increase pressure on Iran to come to the table. The bill before us does exactly that by establishing stringent sanctions to limit Iran’s ability to import refined petroleum. It also provides waiver authority that preserves the Obama Administration’s flexibility as it moves forward in its diplomatic efforts.

Iran imports up to 40 percent of its refined petroleum supplies to power cars, planes, factories and other key economic infrastructure. With a disruption in supply, the Iranian government will be forced to grapple with the serious cost of its reckless choices. I regret that the Iranian people, already victims of a tyrannical government, could also face economic repercussions as the result of these sanctions. But I believe it is imperative to do everything possible to bring about a successful diplomatic resolution of this crisis and avert the need for military action.

The danger of a nuclear-armed Iran is only underscored by President Ahmadinejad’s unstable regime, its belligerence toward the United States, its calls for the destruction of Israel, its robust support for terror groups like Hamas and Hezbollah and its blatant disregard for its own citizens.

I urge my colleagues to vote yes and take serious action to pressure Iran to change course.

Mr. GENE GREEN of Texas. Madam Speaker, I rise today in strong support of H.R. 2194, the Iran Refined Petroleum Sanctions Act of 2009.

Since the U.S. first placed sanctions on commercial relations with Iran in 1996, the Iranian government has not only failed to comply with its international obligations, but has further intensified its efforts to develop nuclear weapons. Most recently, Iran has rejected demands from the International Atomic Energy Agency to halt construction of a previously undisclosed uranium enrichment facility near Qom. It has also announced plans to build ten additional enrichment facilities.

While I fully support the President’s efforts to engage the Iranian government diplomatically, Congress must show Iran that failure to reach an agreement will not be without consequence. H.R. 2194 facilitates this goal by weakening Iran’s energy sector, which the Iranian government relies on for 80 percent of its revenue. This legislation specifically targets

Iran's petroleum refining industry due to its heavy reliance on foreign assistance and trade. The choice for Iran will be either to meet the demands of the international community or risk diplomatic and economic isolation.

The risk of nuclear weapons proliferation and its accompanied threat to regional stability in the Middle East lends increased urgency to passing this legislation. I urge my colleagues to support House Resolution 2194 and supply the President with the tools he needs for reaching a diplomatic solution with Iran.

Ms. KILPATRICK of Michigan. Madam Speaker, the U.S. House of Representatives voted and passed H.R. 2491, the Iran Refined Petroleum Sanctions Act. While Iran has been noncompliant with both United States and United Nations demands that it stop nuclear enrichment efforts, I could not, in good faith, support this initiative. My vote of "present" on this measure should not be interpreted nor misunderstood about a lack of concern regarding the prospect of a nuclear armed Iran. It does not.

Like many of my colleagues, I have significant reservations regarding Iran's violations of its obligations under the Nuclear Non-Proliferation Treaty. The recent rejection by Iran of international organizations to inspect their nuclear capabilities and the threat of expanded nuclear enrichment programs continuing unchecked practically mandate that Congress and President Obama continue to work together. This combined effort must be toward increasing pressure on Iran if multilateral diplomacy reaches no reward. Congress must support President Obama's diplomatic efforts to help curb Iran's activities relating to their nuclear program. Congress must also support this administration's efforts to guarantee human rights and democracy for all people, especially women, in Iran. Congress must continue to forge with the President an all-out effort for diplomacy that is often difficult, but necessary.

H.R. 2491, as enacted, could very well threaten the diplomacy sought by the President. If enacted, the bill could punish the people of Iran who are suffering from its denial of democracy. Over the past few months, we have seen firsthand the discontent amongst Iranians with their government. As a nation, we have a responsibility to ensure that our policy decisions, particularly sanctions, are implemented in a manner which does not detrimentally impact those not at fault. Broad, wide-reaching sanctions on gasoline will not only hit the people of Iran the hardest, but are unlikely to directly impact the government at all. I am not against sanctions. In fact, I think sanctions in light of Iran's dissonance are not only appropriate but needed. However, targeted sanctions that impact those with whom we are at odds versus those that target an entire country are the best way to approach such an important decision.

While it is essential to curtail nuclear threats world-wide, sanctions must be seen as an option only after diplomacy has failed. In his letter to the Senate Foreign Relations Committee last week, Deputy Secretary of State James Steinberg stated that the Obama Administration was "entering a critical period of intense diplomacy to impose significant international pressure on Iran," and that sanctions, "might

weaken rather than strengthen international unity and support for our efforts." As we proceed in these important times, we must do so carefully, and in a manner that achieves the desired short-term effect while remaining in accord with our long-term goals.

The decision whether to levy sanctions, particularly in the face of potential threat to peace, is of the utmost importance. Today, H.R. 2194 was brought to the floor under expedited procedures that limit debate and bar amendments reserved for non-controversial legislation. While the bill received overwhelming support, it does not make the subject matter any less controversial.

Iran has had decades of unilateral measures with practically no effect. In order for any sanctions to fully take effect, it must be multilateral. The unilateral approach of this legislation, combined with the potential unintended consequence it may have for the people, and the legislation's curtailing the waiver authority of President Obama so as to undermine the President's flexibility and pursuit of a dual track of diplomacy and unified multilateral pressure, are my reasons for my vote of present on this measure.

I look forward to working with my colleagues to improve this legislation. My goal is to ensure that any sanction bill, signed into law, protects the interests of the United States, ensures that the President can negotiate from a position of strength along our international partners, ensures that human rights and democracy grow for the people of Iran, and prevents another nation from being armed with nuclear weapons.

Mr. ANDREWS. Madam Speaker, the Iran Refined Petroleum Sanctions Act offers the Iranian regime a clear choice; either Iran can discontinue its nuclear weapons program or the Iranian economy will be severely disrupted by these tough new economic sanctions. As we have seen over recent months, the Iranian regime has proven to be openly and appallingly despotic. After falsifying election results, the Iranian leadership crushed the political opposition with brutal violence which was broadcast to every corner of the world. We have seen what this regime is capable of, and these tyrannical leaders cannot be trusted with nuclear weapons. Now, as this brutal regime comes ever closer to the development of a nuclear weapon the international community, acting through the United Nations Security Council, must use sanctions to pressure Iran to stop their nuclear program. This is in the self-interest of all the permanent members of the Security Council. The stability of the entire region would be threatened if Iran were to develop a nuclear weapon as other leaders would certainly decide that a nuclear Iran on their doorstep would necessitate a nuclear program of their own. Iran has been given until the end of this year by President Obama to negotiate in good faith. The clock is ticking down, and when we reach midnight on December 31st, billions around the world will celebrate the dawning of a new year. For the brutal Iranian regime, it will mean that their window of opportunity has slammed shut. They will have sealed their fate. Either they will have joined the nations of the world to create a more peaceful 21st century, or they will be facing the political and economic consequences of their own actions.

Mr. BERMAN. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. BERMAN) that the House suspend the rules and pass the bill, H.R. 2194, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BERMAN. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

#### --- HOUR OF MEETING ON TOMORROW

Mr. BERMAN. Madam Speaker, pursuant to clause 4 of rule XVI, I move that when the House adjourns today, it adjourn to meet at 9 a.m. tomorrow.

The motion was agreed to.

#### --- ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H. Res. 971, by the yeas and nays;

H.R. 2194, de novo;

H. Res. 150, de novo;

S. 1472, de novo.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

#### --- BREAST CANCER SCREENING GUIDELINES

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 971, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the resolution, H. Res. 971.

The vote was taken by electronic device, and there were—yeas 426, nays 0, not voting 8, as follows:

[Roll No. 974]

YEAS—426

Abercrombie Cummings Issa  
Ackerman Dahlkemper Jackson (IL)  
Aderholt Davis (AL) Jackson-Lee  
Adler (NJ) Davis (CA) (TX)  
Akin Davis (IL) Jenkins  
Alexander Davis (KY) Johnson (GA)  
Altmire Davis (TN) Johnson (IL)  
Andrews DeFazio Johnson, E. B.  
Arcuri DeGette Johnson, Sam  
Austria Delahunt Jones  
Baca DeLauro Jordan (OH)  
Bachmann Dent Kagen  
Bachus Diaz-Balart, L. Kanjorski  
Baird Diaz-Balart, M. Kaptur  
Baldwin Dicks Kennedy  
Barrow Dingell Kildee  
Bartlett Doggett Kilpatrick (MI)  
Barton (TX) Donnelly (IN) Kilroy  
Bean Doyle Kind  
Becerra Dreier King (IA)  
Berkley Driehaus King (NY)  
Berman Duncan Kingston  
Berry Edwards (MD) Kirk  
Biggart Edwards (TX) Kirkpatrick (AZ)  
Bilbray Ehlers Kissell  
Bilirakis Ellison Klein (FL)  
Bishop (GA) Ellsworth Kline (MN)  
Bishop (NY) Emerson Kosmas  
Blackburn Engel Kratovil  
Blumenauer Eshoo Kucinich  
Blunt Etheridge Lamborn  
Bocciari Fallin Lance  
Boehner Farr Langevin  
Bonner Fattah Larsen (WA)  
Bono Mack Filner Larson (CT)  
Boozman Flake Latham  
Boren Fleming LaTourette  
Boswell Forbes Latta  
Boucher Fortenberry Lee (CA)  
Boustany Foster Lee (NY)  
Boyd Foxx Levin  
Brady (PA) Frank (MA) Lewis (CA)  
Brady (TX) Franks (AZ) Lewis (GA)  
Braley (IA) Frelinghuysen Linder  
Bright Fudge Lipinski  
Broun (GA) Gallegly LoBiondo  
Brown (SC) Garamendi Loeb sack  
Brown, Corrine Garrett (NJ) Lofgren, Zoe  
Brown-Waite, Gerlach Lowey  
Ginny Giffords Lucas  
Buchanan Gingrey (GA) Luetkemeyer  
Burgess Gohmert Lujan  
Burton (IN) Gonzalez Lummis  
Butterfield Goodlatte Lungren, Daniel  
Buyer Gordon (TN) E.  
Calvert Granger Lynch  
Camp Graves Mack  
Campbell Grayson Maffei  
Cantor Green, Al Maloney  
Cao Green, Gene Manzullo  
Capito Griffith Marchant  
Capps Grijalva Markey (CO)  
Capuano Guthrie Markey (MA)  
Cardoza Gutierrez Marshall  
Carnahan Hall (NY) Massa  
Carney Hall (TX) Matheson  
Carson (IN) Halvorson Matsui  
Carter Hare McCarthy (CA)  
Cassidy Harman McCarthy (NY)  
Castle Harper McCaul  
Castor (FL) Hastings (FL) McClintock  
Chaffetz Hastings (WA) McCollum  
Chandler Heinrich McCotter  
Childers Heller McDermott  
Chu Hensarling McGovern  
Clarke Herger McHenry  
Cleaver Herseth Sandlin McIntyre  
Clyburn Higgins McKeon  
Coble Hill McMahon  
Coffman (CO) Himes McMorris  
Cohen Hinchey Rodgers  
Cole Hinojosa McNeerney  
Conaway Hirono Meek (FL)  
Connolly (VA) Hodes Meeks (NY)  
Conyers Hoekstra Melancon  
Cooper Holden Mica  
Costa Holt Michaud  
Costello Honda Miller (FL)  
Courtney Hoyer Miller (MI)  
Crenshaw Hunter Miller (NC)  
Crowley Ingalls Miller, Gary  
Cuellar Inslee Miller, George  
Culberson Israel Minnick

Mitchell Rodriguez Space  
Mollohan Roe (TN) Speier  
Moore (KS) Rogers (AL) Spratt  
Moore (WI) Rogers (KY) Stark  
Moran (KS) Rogers (MI) Stearns  
Moran (VA) Rohrabacher Stupak  
Murphy (CT) Rooney Sullivan  
Murphy (NY) Ros-Lehtinen Sutton  
Murphy, Patrick Roskam Tanner  
Murphy, Tim Ross Taylor  
Myrick Rothman (NJ) Teague  
Nadler (NY) Roybal-Allard Terry  
Napolitano Royce Thompson (CA)  
Neal (MA) Ruppersberger Thompson (MS)  
Neugebauer Rush Thompson (PA)  
Nunes Ryan (OH) Thornberry  
Nye Ryan (WI) Tiahrt  
Oberstar Salazar Tiberi  
Obey Sánchez, Linda Tierney  
Olson T. Titus  
Oliver Sarbanes Tonko  
Ortiz Scalise Towns  
Owens Schakowsky Tsongas  
Pallone Schauer Turner  
Pascarell Schiff Upton  
Pastor (AZ) Schmidt Van Hollen  
Paul Schock Velázquez  
Paulsen Schrader Visclosky  
Payne Schwartz Walden  
Pence Scott (GA) Walz  
Perlmutter Scott (VA) Wamp  
Perriello Sensenbrenner Wasserman  
Peters Serrano Schultz  
Peterson Sessions Waters  
Petri Sestak Watson  
Pingree (ME) Shadegg Watt  
Pitts Shea-Porter Waxman  
Platts Sherman Weiner  
Poe (TX) Shimkus Welch  
Pomeroy Shuler Westmoreland  
Posey Shuster Wexler  
Price (GA) Simpson Whitfield  
Price (NC) Sires Wilson (OH)  
Putnam Skelton Wilson (SC)  
Quigley Slaughter Wittman  
Rahall Smith (NE) Wolf  
Rangel Smith (NJ) Woolsey  
Rehberg Smith (TX) Wu  
Reichert Smith (WA) Yarmuth  
Reyes Snyder Young (AK)  
Richardson Souder Young (FL)

## NOT VOTING—8

Barrett (SC) Deal (GA) Radanovich  
Bishop (UT) Murtha Sanchez, Loretta  
Clay Polis (CO)

□ 1700

Ms. LINDA T. SÁNCHEZ of California changed her vote from “nay” to “yea.”

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### IRAN REFINED PETROLEUM SANCTIONS ACT OF 2009

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill, H.R. 2194, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. BERMAN) that the House suspend the rules and pass the bill, H.R. 2194, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

RECORDED VOTE

Mr. BERMAN. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 412, noes 12, answered “present” 4, not voting 6, as follows:

[Roll No. 975]

AYES—412

Abercrombie Cohen Harper  
Ackerman Cole Hastings (FL)  
Aderholt Conaway Hastings (WA)  
Adler (NJ) Connolly (VA) Heinrich  
Akin Cooper Heller  
Alexander Costa Hensarling  
Altmire Costello Herger  
Andrews Courtney Herseth Sandlin  
Arcuri Crenshaw Higgins  
Austria Crowley Hill  
Baca Cuellar Himes  
Bachmann Culberson Hinojosa  
Bachus Cummings Hirono  
Baird Dahlkemper Hodes  
Barrow Davis (AL) Hoekstra  
Bartlett Davis (CA) Holden  
Barton (TX) Davis (IL) Holt  
Bean Davis (KY) Honda  
Becerra Davis (TN) Hoyer  
Berkley DeFazio Hunter  
Berman DeGette Inglis  
Berry Delahunt Inslee  
Biggart DeLauro Israel  
Bilbray Dent Issa  
Bilirakis Diaz-Balart, L. Jackson (IL)  
Bishop (GA) Diaz-Balart, M. Jackson-Lee  
Bishop (NY) Dicks (TX)  
Bishop (UT) Dingell Jenkins  
Blackburn Doggett Johnson (GA)  
Blackburn Donnelly (IN) Johnson (IL)  
Blunt Doyle Johnson, Sam  
Bocciari Dreier Jones  
Boehner Driehaus Jordan (OH)  
Bonner Edwards (MD) Kagen  
Bono Mack Edwards (TX) Kanjorski  
Boozman Ehlers Kaptur  
Boren Ellison Kennedy  
Boswell Ellsworth Kildee  
Boucher Emerson Kilroy  
Boustany Engel Kind  
Boyd Engel King (IA)  
Brady (PA) Eshoo King (NY)  
Brady (TX) Etheridge Kingston  
Braley (IA) Fallin Kirk  
Bright Farr Kirkpatrick (AZ)  
Broun (GA) Fattah Kissell  
Brown (SC) Filner Klein (FL)  
Brown, Corrine Fleming Kline (MN)  
Brown-Waite, Forbes Kosmas  
Ginny Fortenberry Kratovil  
Buchanan Foster Lamborn  
Burgess Foxx Lance  
Burton (IN) Frank (MA) Langevin  
Butterfield Franks (AZ) Larsen (WA)  
Buyer Frelinghuysen Larson (CT)  
Calvert Fudge Latham  
Camp Gallegly LaTourette  
Campbell Garamendi Latta  
Cantor Garrett (NJ) Lee (NY)  
Cao Gerlach Levin  
Capito Giffords Lewis (CA)  
Capps Gingrey (GA) Lewis (GA)  
Capuano Gohmert Linder  
Cardoza Gonzalez Linder  
Carnahan Goodlatte Lipinski  
Carney Gordon (TN) LoBiondo  
Carson (IN) Granger Loeb sack  
Carter Graves Lofgren, Zoe  
Cassidy Grayson Lowey  
Castle Green, Al Lucas  
Castor (FL) Green, Gene Luetkemeyer  
Chaffetz Green, Gene Lujan  
Chandler Griffith Lummis  
Childers Grijalva Lungren, Daniel  
Chu Guthrie E.  
Clarke Gutierrez Mack  
Cleaver Hall (NY) Maffei  
Clyburn Hall (TX) Maloney  
Coble Halvorson Manzullo  
Coffman (CO) Hare Marchant  
Cohen Harman



Markey (CO) Peters  
Markey (MA) Peterson  
Marshall Petri  
Massa Pingree (ME)  
Matheson Pitts  
Matsui Platts  
McCarthy (CA) Poe (TX)  
McCarthy (NY) Polis (CO)  
McCaul Pomeroy  
McClintock Posey  
McCollum Price (GA)  
McCotter Price (NC)  
McGovern Putnam  
McHenry Quigley  
McIntyre Rahall  
McKeon Rangel  
McMahon Rehberg  
McMorris Reichert  
Rodgers Reyes  
McNerney Richardson  
Meek (FL) Rodriguez  
Meeks (NY) Roe (TN)  
Melancon Rogers (AL)  
Mica Rogers (KY)  
Michaud Rogers (MI)  
Miller (FL) Rohrabacher  
Miller (MI) Rooney  
Miller (NC) Ros-Lehtinen  
Miller, Gary Roskam  
Miller, George Ross  
Minnick Rothman (NJ)  
Mitchell Roybal-Allard  
Mollohan Royce  
Moore (KS) Rumpersberger  
Moran (KS) Rush  
Moran (VA) Ryan (OH)  
Murphy (CT) Ryan (WI)  
Murphy (NY) Salazar  
Murphy, Patrick Sanchez, Linda  
Murphy, Tim T.  
Myrick Sarbanes  
Nadler (NY) Scalise  
Napolitano Schakowsky  
Neal (MA) Schauer  
Neugebauer Schiff  
Nunes Schmidt  
Nye Schock  
Oberstar Schrader  
Obey Schwartz  
Olson Scott (GA)  
Olver Scott (VA)  
Ortiz Sensenbrenner  
Owens Serrano  
Pallone Sessions  
Pascrell Sestak  
Pastor (AZ) Shadegg  
Paulsen Shea-Porter  
Payne Sherman  
Pence Shimkus  
Perlmutter Shuler  
Perriello Shuster

## NOES—12

Baldwin Flake McDermott  
Blumenauer Hinchey Moore (WI)  
Conyers Kucinich Paul  
Duncan Lynch Stark

## ANSWERED "PRESENT"—4

Johnson, E. B. Lee (CA)  
Kilpatrick (MI) Waters

## NOT VOTING—6

Barrett (SC) Deal (GA) Radanovich  
Clay Murtha Sanchez, Loretta

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members have 2 minutes to vote.

□ 1708

Mr. BLUMENAUER changed his vote from "aye" to "no."

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Simpson  
Sires  
Skelton  
Slaughter  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Space  
Speier  
Spratt  
Stearns  
Stupak  
Sullivan  
Sutton  
Tanner  
Taylor  
Teague  
Terry  
Thompson (CA)  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiahrt  
Tiberi  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Turner  
Upton  
Van Hollen  
Velázquez  
Visclosky  
Walden  
Walz  
Wamp  
Wasserman  
Schultz  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Westmoreland  
Wexler  
Whitfield  
Wilson (OH)  
Wilson (SC)  
Wittman  
Wolf  
Woolsey  
Wu  
Yarmuth  
Young (AK)  
Young (FL)

## RECOGNIZING A. PHILIP RANDOLPH FOR HIS LIFELONG LEADERSHIP AND WORK TO END DISCRIMINATION

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 150.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and agree to the resolution, H. Res. 150.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

## RECORDED VOTE

Mrs. HALVORSON. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 395, noes 23, not voting 16, as follows:

[Roll No. 976]

## AYES—395

Abercrombie Cao  
Ackerman Capito  
Adler (NJ) Capps  
Alexander Capuano  
Altmire Cardoza  
Andrews Carnahan  
Arcuri Carney  
Austria Carson (IN)  
Baca Carter  
Bachmann Cassidy  
Bachus Filmer  
Baird Castor (FL)  
Baldwin Chaffetz  
Barrow Chandler  
Bartlett Childers  
Barton (TX) Chu  
Bean Clarke  
Becerra Cleaver  
Berkley Clyburn  
Berman Coble  
Berry Cohen  
Biggert Cole  
Bilbray Connolly (VA)  
Bilirakis Conyers  
Bishop (GA) Cooper  
Bishop (NY) Costa  
Bishop (UT) Costello  
Blackburn Courtney  
Blumenauer Crenshaw  
Blunt Crowley  
Bocieri Cuellar  
Boehner Culberson  
Bonner Cummings  
Bono Mack Dahlkemper  
Boozman Davis (AL)  
Boren Davis (CA)  
Boswell Davis (IL)  
Boucher Davis (KY)  
Boustany Davis (TN)  
Boyd DeFazio  
Brady (PA) DeGette  
Brady (TX) Delahunt  
Braley (IA) DeLauro  
Bright Dent  
Brown (SC) Dicks  
Brown, Corrine Dingell  
Brown-Waite, Doggett  
Ginny Donnelly (IN)  
Buchanan Doyle  
Butterfield Dreier  
Buyer Driehaus  
Calvert Duncan  
Camp Edwards (MD)  
Cantor Edwards (TX)

Holden  
Holt  
Honda  
Hoyer  
Hunter  
Inglis  
Inslee  
Israel  
Issa  
Jackson (IL)  
Jackson-Lee (TX)  
Jenkins  
Johnson (GA)  
Johnson (IL)  
Johnson, E. B.  
Johnson, Sam  
Jones  
Kagen  
Kanjorski  
Kaptur  
Kennedy  
Kildee  
Kilpatrick (MI)  
Kilroy  
Kind  
King (NY)  
Kirk  
Kirkpatrick (AZ)  
Kissell  
Klein (FL)  
Kline (MN)  
Kosmas  
Kratovil  
Kucinich  
Lance  
Langevin  
Larsen (WA)  
Larson (CT)  
Latham  
LaTourette  
Latta  
Lee (CA)  
Lee (NY)  
Levin  
Lewis (CA)  
Lewis (GA)  
Linder  
Lipinski  
LoBiondo  
Loebach  
Lofgren, Zoe  
Lowey  
Lucas  
Luetkemeyer  
Luján  
Lummis  
Lungren, Daniel E.  
Lynch  
Mack  
Maffei  
Maloney  
Manzullo  
Marchant  
Markey (CO)  
Markey (MA)  
Marshall  
Massa  
Matheson  
Matsui  
McCarthy (NY)  
McCaul  
McClintock  
McCollum  
McCotter  
McDermott  
McGovern  
McHenry  
McIntyre

Sánchez, Linda T.  
Sarbanes  
Schakowsky  
Schauer  
Schiff  
Schmidt  
Schock  
Schrader  
Schwartz  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Sestak  
Shea-Porter  
Sherman  
Shimkus  
Shuler  
Shuster  
Simpson  
Sires  
Skelton  
Slaughter  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Souder  
Space  
Speier  
Stark  
Stearns  
Stupak  
Sullivan  
Sutton  
Tanner  
Taylor  
Teague  
Terry  
Thompson (CA)  
Thompson (MS)  
Thompson (PA)  
Thornberry  
Tiberi  
Tierney  
Titus  
Tonko  
Towns  
Tsongas  
Turner  
Upton  
Van Hollen  
Velázquez  
Visclosky  
Walden  
Walz  
Wamp  
Wasserman  
Schultz  
Waters  
Watson  
Watt  
Waxman  
Weiner  
Welch  
Wexler  
Whitfield  
Wilson (OH)  
Wilson (SC)  
Wittman  
Wolf  
Woolsey  
Wu  
Yarmuth  
Young (AK)  
Young (FL)

## NOES—23

Franks (AZ)  
Garrett (NJ)  
Gingrey (GA)  
Hensarling  
Jordan (OH)  
Kingston  
Lamborn  
McCarthy (CA)

## NOT VOTING—16

Barrett (SC) Deal (GA) Forbes  
Burgess Diaz-Balart, L. Gohmert  
Clay Diaz-Balart, M. King (IA)

Murtha Radanovich Tiahrt  
Pitts Sanchez, Loretta  
Price (GA) Spratt

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining on this vote.

□ 1717

Messrs. MCCARTHY of California, LAMBORN, COFFMAN of Colorado and ROONEY changed their vote from “aye” to “no.”

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. TIAHRT. Madam Speaker, on rollcall No. 976 I was unavoidably detained. Had I been present, I would have voted “aye.”

### HUMAN RIGHTS ENFORCEMENT ACT OF 2009

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill, S. 1472.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, S. 1472.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

## RECORDED VOTE

Mr. TONKO. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 416, noes 3, not voting 15, as follows:

[Roll No. 977]

AYES—416

Ackerman Bishop (UT) Calvert  
Aderholt Blackburn Camp  
Adler (NJ) Blumenauer Campbell  
Akin Blunt Cantor  
Alexander Boccieri Cao  
Altmire Boehner Capps  
Andrews Bonner Capuano  
Arcuri Bono Mack Cardoza  
Austria Boozman Carnahan  
Baca Boren Carney  
Bachmann Boswell Carson (IN)  
Bachus Boucher Carter  
Baird Boustany Cassidy  
Baldwin Boyd Castle  
Barrow Brady (PA) Castor (FL)  
Bartlett Brady (TX) Chaffetz  
Barton (TX) Braley (IA) Chandler  
Bean Bright Childers  
Becerra Brown (SC) Chu  
Berkley Brown, Corrine Clarke  
Berman Brown-Waite, Cleaver  
Berry Ginny Clyburn  
Biggert Buchanan Coble  
Billbray Burgess Coffman (CO)  
Bilirakis Burton (IN) Cohen  
Bishop (GA) Butterfield Cole  
Bishop (NY) Buyer Conaway

Connolly (VA) Inglis  
Conyers Inslee  
Cooper Israel  
Costa Issa  
Costello Jackson (IL)  
Courtney Jackson-Lee  
Crenshaw (TX)  
Crowley Jenkins  
Cuellar Johnson (GA)  
Culberson Johnson (IL)  
Cummings Johnson, E. B.  
Dahlkemper Johnson, Sam  
Davis (AL) Jones  
Davis (IL) Jordan (OH)  
Davis (KY) Kagen  
Davis (TN) Kanjorski  
DeFazio Kaptur  
DeGette Kennedy  
DeLauro Kildee  
Dent Kilpatrick (MI)  
Dicks Kilroy  
Dingell Kind  
Dongett King (NY)  
Donnelly (IN) Kingston  
Doyle Kirk  
Dreier Kirkpatrick (AZ)  
Driehaus Kissell  
Duncan Klein (FL)  
Edwards (MD) Kline (MN)  
Edwards (TX) Kosmas  
Ehlers Kratovil  
Ellison Kucinich  
Ellsworth Lamborn  
Emerson Lance  
Engel Langevin  
Eshoo Larsen (WA)  
Etheridge Larson (CT)  
Fallin Latham  
Farr LaTourette  
Fattah Latta  
Filner Lee (CA)  
Flake Lee (NY)  
Fleming Levin  
Forbes Lewis (CA)  
Fortenberry Lewis (GA)  
Foster Linder  
Foxy Lipinski  
Franks (AZ) LoBiondo  
Frelinghuysen Loebsack  
Fudge Lofgren, Zoe  
Gallegly Lucas  
Garamendi Luetkemeyer  
Garrett (NJ) Luján  
Gerlach Lummis  
Giffords Lungren, Daniel  
Gingrey (GA) E.  
Gohmert Lynch  
Gonzalez Mack  
Goodlatte Maffei  
Gordon (TN) Maloney  
Granger Manzullo  
Graves Marchant  
Grayson Markey (CO)  
Green, Al Markey (MA)  
Green, Gene Marshall  
Griffith Massa  
Grijalva Matheson  
Guthrie Matsui  
Gutierrez McCarthy (CA)  
Hall (NY) McCarthy (NY)  
Hall (TX) McCaul  
Halvorson McClintock  
Hare McCollum  
Harman McCotter  
Harper McDermott  
Hastings (FL) McGovern  
Hastings (WA) McHenry  
Heinrich McIntyre  
Heller McKeon  
Hensarling McMahon  
Henger McMorris  
Herseht Sandlin Rodgers  
Higgins McNerney  
Hill Meek (FL)  
Himes Meeks (NY)  
Hinchey Melancon  
Hinojosa Mica  
Hirono Michaud  
Hodes Miller (FL)  
Hoekstra Miller (MI)  
Holden Miller (NC)  
Holt Miller, Gary  
Honda Miller, George  
Hoyer Minnick  
Hunter Mitchell

Mollohan  
Moore (KS)  
Moore (WI)  
Moran (KS)  
Moran (VA)  
Murphy (CT)  
Murphy (NY)  
Murphy, Patrick  
Murphy, Tim  
Myrick  
Nadler (NY)  
Napolitano  
Neal (MA)  
Neugebauer  
Nunes  
Nye  
Oberstar  
Obey  
Olson  
Oliver  
Ortiz  
Owens  
Pallone  
Pascarell  
Pastor (AZ)  
Paulsen  
Payne  
Pence  
Perlmutter  
Perrillo  
Peters  
Peterson  
Petri  
Pingree (ME)  
Pitts  
Platts  
Poe (TX)  
Polis (CO)  
Pomeroy  
Posey  
Price (GA)  
Price (NC)  
Putnam  
Quigley  
Rahall  
Rangel  
Rehberg  
Reichert  
Reyes  
Richardson  
Rodriguez  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rogers (MI)  
Rogers (NY)  
Rohrabacher  
Rooney  
Ros-Lehtinen  
Roskam  
Ross  
Rothman (NJ)  
Roybal-Allard  
Royce  
Ruppersberger  
Rush  
Ryan (OH)  
Ryan (WI)  
Salazar  
Sánchez, Linda  
T.  
Sarbanes  
Scalise  
Schakowsky  
Schauer  
Schiff  
Schmidt  
Schock  
Schroder  
Schwartz  
Scott (GA)  
Scott (VA)  
Sensenbrenner  
Serrano  
Sessions  
Sestak  
Shadegg  
Shea-Porter  
Sherman  
Shimkus  
Shuler  
Shuster  
Simpson  
Sires  
Skelton  
Slaughter  
Smith (NE)

## NOES—3

Broun (GA) Paul Young (AK)

## NOT VOTING—15

Abercrombie Deal (GA) Murtha  
Barrett (SC) Diaz-Balart, L. Radanovich  
Capito Diaz-Balart, M. Sanchez, Loretta  
Clay Frank (MA) Spratt  
Davis (CA) King (IA) Titus

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members now have 2 minutes remaining on the clock.

□ 1725

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### PRIVILEGED REPORT ON RESOLUTION OF INQUIRY TO THE ATTORNEY GENERAL

Mr. CONYERS, from the Committee on the Judiciary, submitted an adverse privileged report (Rept. No. 111-378) on the resolution (H. Res. 920) directing the Attorney General to transmit to the House of Representatives all information in the Attorney General's possession regarding certain matters pertaining to detainees held at Naval Station, Guantanamo Bay, Cuba who are transferred into the United States, which was referred to the House Calendar and ordered to be printed.

### 787 DREAMLINER'S FIRST SUCCESSFUL FLIGHT

(Mr. DICKS asked and was given permission to address the House for 1 minute.)

Mr. DICKS. I want to inform my colleagues today that out in the great State of Washington, in RICK LARSEN's district, today the first 787 Dreamliner did its first successful flight.

This is one of the great airplanes built in the United States by the Boeing Company. I want you to know it was built without any launch aid. Not like the A330 that received \$5.7 billion in launch aid, this plane was built the old-fashioned way: Boeing put the money in the pot and built the plane, and it flew today.

As we get into the discussion on tankers later this year, I just want to remind everybody that the A330 received \$5.7 billion in subsidy. I think it's wrong. I think we need to go back to the World Trade Organization and make sure that they follow through and make sure that the Europeans stop subsidizing all these Airbus aircraft.

Boeing is a great company in the Pacific Northwest. I'm proud of the 787. There are over 900 orders. And it's a great airplane.

#### ANIMAL ANTIBIOTICS

(Mr. MORAN of Kansas asked and was given permission to address the House for 1 minute.)

Mr. MORAN of Kansas. Madam Speaker, there are those in Congress who want to restrict antibiotic use in animal agriculture. They overlook the good these drugs do to improve both animal and human health. If animal antibiotics are restricted to only treatment of already sick animals, animal disease and death can be expected to increase, while decreasing the abundance and safety of our food supply.

When Denmark banned antibiotics for growth promotion in pigs, animal deaths and disease rose, requiring the use of more drugs for therapeutic purposes. Meanwhile, there was no improvement in human health.

Potential increases in the occurrence of food-borne illnesses in the absence of animal antibiotics are another concern. An Ohio State University study found that pigs raised outdoors without antibiotics had more exposure to food-borne pathogens than those raised in confinement.

Use of animal antibiotics should be determined by a scientific, risk-benefit analysis, not an arbitrary ban devised by politicians.

□ 1730

#### REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. RES. 648

Mr. DOGGETT. Madam Speaker, I ask unanimous consent to remove my name as a cosponsor from H. Res. 648.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

#### IMMIGRATION REFORM

(Mr. POLIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. POLIS. Madam Speaker, our constituents across the ideological spectrum have told us that our immigration system is broken and it is our responsibility to fix it. Well, we in the United States Congress have taken the first step today with the introduction

of a comprehensive immigration reform bill.

This bill would strengthen American families. This bill would stop the undermining of our laws by the presence of 12 million undocumented immigrants. This law will protect our borders. Immigration reform is good for business and good for workers.

Our constituents have made their opinions clear. They are tired of the lack of action in Washington, D.C.

I encourage my colleagues to join me in cosponsoring comprehensive immigration reform to help make America stronger and maintain the integrity of our laws and our Constitution within our borders.

#### READY MIXED CONCRETE COMPANY DEMONSTRATES ENVIRONMENTAL EXCELLENCE

(Ms. FOXX asked and was given permission to address the House for 1 minute.)

Ms. FOXX. Madam Speaker, I rise today to recognize the Ready Mixed Concrete Company of Statesville, North Carolina, for its commitment to preserving our natural resources and the environment.

The Ready Mixed Cement Company of Statesville, along with the Ready Mixed Facility in Taylorsville, North Carolina, recently received the National Ready Mixed Concrete Association's Green-Star certification for its dedication to environmental excellence.

This accomplishment demonstrates how hard this company has worked to adapt its business practices to today's rapidly changing culture of sustainable business.

These efforts will not only protect the environment, but will also make the Ready Mixed Concrete Company of Statesville a better competitor and employer. That means more good jobs for the people of North Carolina, which is what we need most during these difficult economic times.

#### HUMANITARIAN SITUATION IN CAMP ASHRAF

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Madam Speaker, I rise to address what could develop into a humanitarian catastrophe in Iraq. Residents of Camp Ashraf, opponents of the Iranian regime who found a home in Iraq, appear to have been abandoned by the United States and other nations as they are subjected to unlawful seizure and detainment by Iraqi forces.

The Iraqi government must be called upon to respect the human rights of Ashraf residents and to honor its written commitment that it will treat all

Ashraf residents humanely. The U.S. Government must ensure that the new democracy that we have helped prop up in Iraq does not forcibly return Ashraf residents to Iran, where they will face certain persecution, torture, and possibly even death. They must not be relocated to any country where they will be persecuted based upon their beliefs.

On a day when we have demonstrated here on the floor our support for the people and pro-democracy forces inside of Iran, let us not forget those in Camp Ashraf, Iraq.

#### EPA IS DESTROYING THE DEMOCRATIC PROCESS

(Mr. TIAHRT asked and was given permission to address the House for 1 minute.)

Mr. TIAHRT. Madam Speaker, earlier last week, the EPA announced that carbon dioxide is a health hazard and a pollutant that should be regulated under the Clean Air Act. That means that you and I are polluting simply by breathing.

Make no mistake about it, the timing of this announcement was intentional. By issuing the ruling last week, the EPA is attempting to gloss over the inconvenient truth of thousands of emails by climate researchers revealing ways they manipulated or hid evidence that disproves their theories of climate change. Furthermore, the ruling is an attempt to avoid the fact that the American people are opposed to this job-killing cap-and-tax bill that has been stalled in the Senate. Inconveniently, that leaves negotiators in Copenhagen unable to broker a binding agreement.

The EPA is destroying the democratic process and rushing in to legislate where Congress refuses to tread. Will the American people support the administration's latest effort to regulate even more private companies out of business? I wouldn't hold my breath.

#### RECOGNIZING THE OUTSTANDING CAREER OF JERRY HAYES

(Mr. GRIFFITH asked and was given permission to address the House for 1 minute.)

Mr. GRIFFITH. Madam Speaker, I rise today to recognize the outstanding career of Jerry Hayes of Huntsville, Alabama.

In the Tennessee Valley, Jerry's decades of responsible journalism have earned him the respect and trust of hundreds of thousands of people. His 30 years at WHNT News 19 in north Alabama have brought inspiration and guidance to an untold number of aspiring journalists looking to begin their careers.

When he is not in the studio or at the scene of a story, Jerry is bettering the community around him. His work for Tennessee Valley children is near to

my heart, and north Alabama parents owe him a debt of gratitude that is almost impossible to repay.

Each year, the National Academy of Television Arts and Sciences recognizes individuals who have made a meaningful contribution to broadcasting by inducting them into the Silver Circle. Jerry epitomizes the type of excellence that the academy looks for, and I congratulate him on this achievement.

Madam Speaker, I would like to thank Mr. Jerry Hayes for his 30 years of service to north Alabama. Our community would not be the same without his dedication to the families of the Tennessee Valley.

#### MAKING RESEARCH AND DEVELOPMENT TAX CREDIT PERMANENT

(Mr. BOCCIERI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOCCIERI. Madam Speaker, we will be judged by two measures in the United States Congress: action or inaction. I stand here before you today to tell you that we will recover from this economic recession. That is why bipartisan efforts by myself and Congressman CHRIS LEE have worked across the aisle to make research and development tax credits to companies permanent so that they can manufacture and produce and research their products right here in the United States.

Our legislation creates American jobs and helps companies innovate by giving them an incentive to research and develop right here in the United States. This tax credit is an investment in our Nation's manufacturers. By making research and development tax credits permanent, our bill takes critical steps to make the U.S. more competitive because our credit will be comparable to those offered by other countries.

We will recover, and we will be judged by action or inaction. We will recover from this recession by investments into our manufacturing base in this great country.

#### SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

#### THE PHONE ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. TIM MURPHY) is recognized for 5 minutes.

Mr. TIM MURPHY of Pennsylvania. Madam Speaker, I rise to speak about

H.R. 1110, the PHONE Act, which stands for Preventing Harassment through Outbound Number Enforcement. It will be voted on tomorrow. This bill addresses the growing and serious problems of caller ID fraud that allows the caller to hide their true identity to obtain personal information for use in identity theft and scams.

Answering your phone is like answering your door, you're letting someone into your home and you need to know that whoever that person says they are is true. Caller ID was originally designed to give you that information so you could decide to answer your phone and have the confidence that you were not taking a call that is unwanted, unsafe, or unknown. That is why I worked across the aisle with Representative BOBBY SCOTT in introducing H.R. 1110, which was first introduced in the 109th Congress. Representative SCOTT took the lead in the 110th Congress, and now we are again working together in the 111th Congress to pass this very important bill. I thank Representative SCOTT for his leadership and teamwork in passing this public safety bill.

The legislation is aimed at preventing and prohibiting caller ID spoofing. Spoofing is made available with Internet services that will provide false numbers and even disguise your voice so you can easily fool the person on the other end of the phone. Criminals coax victims into giving up sensitive personal information by making it appear that a call is coming from a legitimate institution, such as a bank, doctor's office, government office, or even a family member.

Misleading caller ID information also allows the spoofer to cause a victim to accept a call they would otherwise avoid, leading to harassment. Even more serious potential dangers exist. A pedophile could stalk a child by stealing a school phone number or the phone number of a friend or child. A sexual predator could use a doctor's office phone number to call their victim.

The problems with caller ID spoofing are very real. Let me give you a few examples.

There are cases where criminals using stolen credit card numbers call a service such as Western Union. They program the caller ID to appear to originate from the cardholder's home and use the credit card number to order cash transfers.

Seniors have been misled into believing they missed jury duty. It appeared the local courthouse was calling and victims were asked for Social Security numbers to prevent prosecution. The calls seemed legitimate because the telephone number of the local courthouse showed up on caller ID.

In another example, a SWAT team surrounded a building after it appeared a call came from within stating that a woman was being held hostage when, in fact, the call was coming from another

location. The SWAT team showed up expecting to face an armed perpetrator. Luckily, no one was hurt in this one instance, but one can easily imagine what could have happened if an unsuspecting bystander happened to be at that location; a series of misunderstandings could have ended up in tragedy. Unfortunately, this process called "swatting" has occurred dozens of times.

And just this month, there have been two serious cases of caller ID fraud in the news. In Columbia, Maryland, a teenager was arrested for making terrorist phone calls to his former school, calling in a bomb scare and telling school officials there was a student on campus with a gun. The teen used spoofing to make the phone number appear to be coming from Texas. Fortunately, the police were able to subpoena the phone records and arrest the teen.

In Brooklyn, New York, a woman used caller ID fraud to exact revenge on her husband and his pregnant girlfriend's newborn baby. She illegally obtained a prescription that would induce labor early and called the girlfriend, using spoofing, to make it appear that her obstetrician was calling. The woman, thinking she was under doctor's orders, took the medication and the baby was delivered 2 months premature. Police were able to track down the woman when she tried to deliver a poisonous mixture to the hospital disguised as milk, allegedly intending to kill the baby. The police arrested the woman, avoiding a devastating, tragic, and potentially fatal outcome that originated by using caller ID fraud. This could have been avoided if the caller had not used a fraudulent caller ID or if the police could have tracked down the perpetrator sooner.

This bill will make the act of caller ID fraud a felony, and criminals could see fines of up to \$250,000 and jail time up to 5 years if convicted of using caller ID fraud in perpetrating another crime.

I urge all my colleagues to pass this PHONE Act, H.R. 1110, because criminals must know they cannot use this technology loophole to escape the law and cause further harm to our citizens.

#### AFGHANISTAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. MCGOVERN) is recognized for 5 minutes.

Mr. MCGOVERN. Madam Speaker, I rise today with a number of my colleagues to express our continuing concern about the President's decision to escalate our military effort in Afghanistan by an additional 30,000 troops. Thirty thousand additional Americans put into harm's way in Afghanistan is a big deal, Madam Speaker, and I am

concerned that the House of Representatives will be adjourning for the year without a real, meaningful, substantive debate about this important issue.

I happen to believe that increasing our military presence by 30,000 troops will make it 30,000 times harder to extricate ourselves from this mess. But whatever my colleagues believe about this decision—support, oppose, or non-committal—we owe it to ourselves and to the people that we represent to have a thorough debate about our policy.

□ 1745

I would urge this administration to submit their supplemental request for this escalation sooner rather than later. Congress has a constitutional role to play. We have the power of the purse and the responsibility to declare war. We haven't played that role in any meaningful way since 2001. That was the last time that this Chamber had a debate on Afghanistan, 2001.

In those eight long years hundreds of American soldiers have lost their lives, thousands have been wounded, and we have spent hundreds of billions of dollars, and we still do not have a clear exit strategy. Everyone seems to agree that Afghanistan requires a political solution. The question I still have is this: When does our military commitment to that political solution come to an end so that we could bring our troops home?

In no way do I believe that we should abandon Afghanistan or its people. They have been through far too much trauma over the last several decades. Nor do I believe that we should abandon our fight against the people who murdered thousands of Americans on September 11, 2001.

Indeed, I am concerned that by committing over 100,000 American troops to nation building in Afghanistan, we will be less able to target those who attacked us, and that is al Qaeda, because al Qaeda no longer has a large presence in Afghanistan. Our top generals say that maybe there are 100 or less al Qaeda still in Afghanistan. They have moved to Pakistan.

I do not believe that the best, most effective way to fight al Qaeda is to increase our military footprint in Afghanistan. In Afghanistan we need a new strategy.

I would urge my colleagues to read a recent op ed in The New York Times by Nicholas Kristof. He points out that for the cost of one U.S. soldier deployed in Afghanistan, we could build 20 schools in Afghanistan. Let me repeat that. For the cost of one American soldier in Afghanistan for a year we could build 20 schools in Afghanistan.

Not only that, it seems that before the administration announced this new escalation, they failed to thoroughly consult with the elders and the local leaders and others in Afghanistan about the best way forward. Madam

Speaker, without local support, without the support of the local leaders who have the respect of the Afghan people, nothing we do will work or be sustainable.

I also continue to be deeply troubled about the Karzai government. Today President Karzai is scheduled to convene a three-day conference on corruption. At a minimum, this conference is supposed to provide a forum where the Afghan government admits publicly that it runs on bribery, graft and cronyism which, in turn, fuels the Taliban insurgency.

President Karzai called this conference—not because he campaigned on cleaning up this government—but because of international pressure. He ran a fraudulent election that undermined international support for the war on Afghanistan, and this is an attempt to show the international community, and especially the United States, that he will somehow clean up his own house.

We will have to wait and see if it's more than just more talk, talk, talk. We will have to see if he is willing to kick out of office the very warlords, drug lords, family members, and cronies he appointed to high government positions, and if he does, whether he appoints reform-minded Afghans in their place.

Again, Madam Speaker, we are about to embark on another huge escalation in a very troubled part of the world. Congress needs to debate this critical issue. Our men and women in uniform, and every other American we represent, deserve no less.

[From the New York Times, Dec. 3, 2009]

OP-ED COLUMNIST; JOHNSON, GORBACHEV,  
OBAMA

(By Nicholas D. Kristof)

Imagine you're a villager living in southern Afghanistan.

You're barely educated, proud of your region's history of stopping invaders and suspicious of outsiders. Like most of your fellow Pashtuns, you generally dislike the Taliban because many are overzealous, truculent nutcases.

Yet you are even more suspicious of the infidel American troops. You know of some villages where the Americans have helped build roads and been respectful of local elders and customs. On the other hand, you know of other villages where the infidel troops have invaded homes, shamed families by ogling women, or bombed wedding parties.

You're angry that your people, the Pashtuns, traditionally the dominant tribe of Afghanistan, seem to have been pushed aside in recent years, with American help. Moreover, the Afghan government has never been more corrupt. The Taliban may be incompetent, but at least they are pious Muslim Pashtuns and reasonably honest.

You were always uncomfortable with foreign troops in your land, but it wasn't so bad the first few years when there were only about 10,000 American soldiers in the entire country. Now, after President Obama's speech on Tuesday, there soon will be 100,000. That's three times as many as when the president took office, and 10 times as many as in 2003.

Hmmm. You still distrust the Taliban, but maybe they're right to warn about infidels occupying your land. Perhaps you'll give a goat to support your clansman who joined the local Taliban.

That's why so many people working in Afghanistan at the grass roots are watching the Obama escalation with a sinking feeling. President Lyndon Johnson doubled down on the Vietnam bet soon after he inherited the presidency, and Mikhail Gorbachev escalated the Soviet deployment that he inherited in Afghanistan soon after he took over the leadership of his country. They both inherited a mess—and made it worse and costlier.

As with the Americans in Vietnam, and Soviets in Afghanistan, we understate the risk of a nationalist backlash; somehow Mr. Obama has emerged as more enthusiastic about additional troops than even the corrupt Afghan government we are buttressing.

Gen. Stanley McChrystal warned in his report on the situation in Afghanistan that "new resources are not the crux" of the problem. Rather, he said, the key is a new approach that emphasizes winning hearts and minds: "Our strategy cannot be focused on seizing terrain or destroying insurgent troops; our objective must be the population."

So why wasn't the Afghan population more directly consulted?

"To me, what was most concerning is that there was never any consultation with the Afghan shura, the tribal elders," said Greg Mortenson, whose extraordinary work building schools in Pakistan and Afghanistan was chronicled in "Three Cups of Tea" and his new book, "From Stones to Schools." "It was all decided on the basis of congressmen and generals speaking up, with nobody consulting Afghan elders. One of the elders' messages is we don't need firepower, we need brainpower. They want schools, health facilities, but not necessarily more physical troops."

For the cost of deploying one soldier for one year, it is possible to build about 20 schools.

Another program that is enjoying great success in undermining the Taliban is the National Solidarity Program, or N.S.P., which helps villages build projects that they choose—typically schools, clinics, irrigation projects, bridges. This is widely regarded as one of the most successful and least corrupt initiatives in Afghanistan.

"It's a terrific program," said George Rupp, the president of the International Rescue Committee. "But it's underfunded. And it takes very little: for the cost of one U.S. soldier for a year, you could have the N.S.P. in 20 more villages."

#### THE COOLING WORLD

THE SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE of Texas. Madam Speaker, we debate throughout the world the concept of global warming, but we don't call it that any more; we call it climate change. All the big leaders of the world are in Denmark talking about how they can figure out a way to control man, to make sure that man, the evildoer, the polluter of the world, does not continue to pollute our wonderful climate.

The consensus has been for some time that global warming, climate

change, continues because man is the perpetrator. Now we are beginning to learn that may not be true, that there is not a consensus that there is global warming or climate change. We now have heard about Climategate, where the expert scientists hid emails in England that disagreed with the so-called consensus that there is global warming and global climate change. We have heard now new evidence that even NASA is involved in not revealing evidence that contradicts climate change.

I think a history lesson is in order, Madam Speaker, and I would like to read from a couple of well thought of, in the science community, a couple of magazine articles. One of them is under the Science section of Time magazine. It's dated June 24, but the year is 1974. The article begins with this comment, "Another Ice Age?" So much for global warming.

As they review the bizarre and unpredictable weather patterns of the past several years, a growing number of scientists are beginning to suspect that many seemingly contradictory events are occurring in global climate upheaval. The weather widely varies from place to place and time to time.

When meteorologists take an average of temperatures around the globe, they find that the atmosphere has been growing gradually cooler the last three decades and the trend shows no indication of reversing. Let me repeat that. According to scientists in 1974, the trend shows no indication of reversing the cooling trend.

Scientists are becoming increasingly apprehensive, for the weather aberrations they are studying may be the harbinger of another Ice Age.

If we were to live in 1974, and, you know, I actually lived in 1974, I read this article then, I believed it. I believe we were all going to freeze in the dark. It goes on to say that a part of the problem is man polluting the atmosphere with farming. Because man farms and the dust gets up into the air, that blocks the sun rays from coming to Earth, and that actually cools the Earth. Maybe that's another new idea of carbon emission cooling that was in 1974.

The following year that notable news magazine, Newsweek, April 28, 1975, under its Science section in the back, talks about the cooling world. There are ominous signs that the Earth's weather patterns have begun to change dramatically and that these changes may be bringing a drastic decline in food production throughout the world.

To scientists these dramatic incidents represent the advanced signs of a fundamental change in the world's whether. The central fact, you got that word, fact, is that after three-quarters of a century of extraordinarily mild conditions, the Earth's climate seems to be cooling down. And that's from Newsweek.

Here is a chart they put in their expert scientific article, and it's entitled—I think it's nice they put it in the ice-blue color—Newsweek, "The Cooling World," and it shows that average temperatures are getting colder. Of course, it goes off the chart, colder and colder, April 28, 1978.

Like I said, Madam Speaker, I believed we were all going to freeze in the dark. The scientists told us that we were going to freeze in the dark because of the weather patterns. Climates do change, Madam Speaker. In the 1970s it was getting cooler. Now they say it's getting warmer. Now they just say it's climate change.

Climates do change. That's what seasons are. Most of the world up here in the north has seasons. Now, we don't have seasons in Houston. We have two seasons—we have summer, and we have August. Other than that, the seasons change. In most parts of the world they get warm, they get cold.

We are going to try to trust the world's climate predictions to a group of people from the 1970s and now, 2000, to a group of people who can't even predict correctly tomorrow's weather. You know, people in the weather industry are the only people I know who consistently can be wrong and keep their jobs. But yet, these same people who can't predict tomorrow's weather are trying to predict the weather from now on, that climate change is occurring because man is the culprit.

And that's just the way it is.

[From Newsweek, Apr. 28, 1975]

(By Peter Gwynne)

#### THE COOLING WORLD

There are ominous signs that the earth's weather patterns have begun to change dramatically and that these changes may have drastic decline in food production—with serious political implications for just about every nation on earth. The drop in food output could begin quite soon, perhaps only ten years from now. The regions destined to feel its impact are the great wheat-producing lands of Canada and the U.S.S.R. in the north, along with a number of marginally self-sufficient tropical areas—parts of India, Pakistan, Bangladesh, Indochina and Indonesia—where the growing season is dependent upon the rains brought by the monsoon.

The evidence in support of these predictions has now begun to accumulate so massively that meteorologists are hard-pressed to keep up with it.

In England, farmers have seen their growing season decline by about two weeks since 1950, with a resultant over-all loss in grain production estimated at up to 100,000 tons annually. During the same time, the average temperature around the equator has risen by a fraction of a degree—a fraction that in some areas can mean drought and desolation. Last April, in the most devastating outbreak of tornadoes ever recorded, 148 twisters killed more than 300 people and caused half a billion dollars' worth of damage in thirteen U.S. states.

Trend: To scientists, these incidents represent the advance signs of fundamental changes in the world's weather. The central fact is that after three quarters of a century of extraordinarily mild conditions, the

earth's climate seems to be cooling down. Meteorologists disagree about the cause and extent of the cooling trend, as well as over its specific impact on local weather conditions. But they are almost unanimous in the view that the trend will reduce agricultural productivity for the rest of the century. If the climatic change is as profound as some of the pessimists fear, the resulting famines could be catastrophic. "A major climatic change would force economic and social adjustments on a worldwide scale," warns a recent report by the National Academy of Sciences, "because the global patterns of food production and population that have evolved are implicitly dependent on the climate of the present century."

A survey completed last year by Dr. Murray Mitchell of the National Oceanic and Atmospheric Administration reveals a drop of half a degree in average ground temperatures in the Northern Hemisphere between 1945 and 1968. According to George Kukla of Columbia University, satellite photos indicated a sudden, large increase in Northern Hemisphere snow cover in the winter of 1971-72. And a study released last month by two NOAA scientists notes that the amount of sunshine reaching the ground in the continental U.S. diminished by 1.3 percent between 1964 and 1972.

To the layman, the relatively small changes in temperature and sunshine can be highly misleading. Reid Bryson of the University of Wisconsin points out that the earth's average temperature during the great Ice Ages was only about 7 degrees lower than during its warmest eras—and that the present decline has taken the planet about a sixth of the way toward the Ice Age average. Others regard the cooling as a reversion to the "little ice age" conditions that brought bitter winters to much of Europe and northern America between 1600 and 1900—years when the Thames used to freeze so solidly that Londoners roasted oxen on the ice and when iceboats sailed the Hudson River almost as far south as New York City.

Just what causes the onset of major and minor ice ages remains a mystery. "Our knowledge of the mechanisms of climatic change is at least as fragmentary as our data," concedes the National Academy of Sciences report "Not only are the basic scientific questions largely unanswered, but in many cases we do not yet know enough to pose the key questions."

Extremes: Meteorologists think that they can forecast the short-term results of the return to the norm of the last century. They begin by noting the slight drop in over-all temperature that produces large numbers of pressure centers in the atmosphere. These break up the smooth flow of westerly winds over temperate areas. The stagnant air produced in this way causes an increase in extremes of local weather such as droughts, floods, extended dry spells, long freezes, delayed monsoons and even local temperature increases—all of which have a direct impact on food supplies.

"The world's food-producing system," warns Dr. James D. McQuigg of NOAA's Center for Climatic and Environmental Assessment, "is much more sensitive to the weather variable than it was even five years ago." Furthermore, the growth of world population and creation of new national boundaries make it impossible for starving peoples to migrate from their devastated fields, as they did during past famines.

Climatologists are pessimistic that political leaders will take any positive action to compensate for the climatic change, or even

to allay its effects. They concede that some of the more spectacular solutions proposed, such as melting the arctic ice cap by covering it with black soot or diverting arctic rivers, might create problems far greater than those they solve. But the scientist sees few signs that government leaders anywhere are even prepared to take the simple measures of stockpiling food or of introducing the variables of climatic uncertainty into economic projections of future food supplies. The longer the planners delay, the more difficult will they find it to cope with climatic change once the results become grim reality.

#### IN MEMORY OF DR. JOHN SHEARER

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Madam Speaker, I rise today to fondly honor my friend, Dr. John Shearer, who passed away on November 18, 2009, at the age of 77 in Petaluma, California.

Publicly, John was a powerful advocate for children's health care and health care reform. He preferred a single-payer system and privately he was a kind, selfless man of great integrity.

As a physician, he was expert, compassionate, and gentle, the kind of doctor you would want to have care for your sick child. I should know, because John Shearer was our family doctor, and my family adored him.

A native of Kokomo, Indiana, John moved with his family to Detroit and originally trained as a pharmacist. Then he earned his medical degree from Wayne State University in 1962.

John moved his wife and his children to Petaluma in 1964, where he started El Rose Medical Clinic with three other doctors. His son, David Shearer, recalls that his father made a lot of house calls with his black doctor's bag in the early years of his practice. In those days, you see, there were no OB-GYNs, so he delivered hundreds of babies in Petaluma.

Dr. Shearer was very active in community and social issues. He was involved in Physicians for Social Responsibility, an organization dedicated to preventing nuclear war and proliferation, and halting global warming and toxic deprivation of the environment. In 1972, he was a part of a grassroots Save Our Schools, or SOS, that I also worked on with him in Petaluma to raise money to keep Grant Elementary School, which was located in Petaluma, open when it was threatened with closure.

In the 1980s, he was the head of Physicians for Social Responsibility in the North Bay. He also began the Children's Health Initiative to ensure that all uninsured children in Sonoma County would have health care.

Dr. Shearer served as medical director of the Jewish Community Free Clinic in Cotati and Rohnert Park. He

was the chief of the medical staff at Hillcrest Hospital from 1974 to 1975, and president of the Petaluma Valley Hospital medical staff from 1986 to 1987.

He also served as chairman of the Petaluma Valley Hospital ethics committee for many years. He served as president of the California Physicians' Alliance, an organization of physicians advocating for single-payer national health insurance.

John is survived by his wife, Donna Brasset Shearer of Petaluma; his son, David Shearer of Gig Harbor, Washington; his daughter, Annette Moussa of Petaluma; and two grandchildren.

Madam Speaker, even as John Shearer was a tender man with impeccable manners, he was a bold and fearless activist for justice and health care. He did not hesitate to advocate for a single-payer system among his physician peer group. He was a prince of a man who was loved and respected by many and will be genuinely missed.

John, I thank you for your friendship, your counsel, and for making my family feel like they were part of yours.

#### REAL THREAT OF NUCLEAR IRAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

Mr. MORAN of Kansas. Madam Speaker, over the past several years, I have worked hard to remind my colleagues in Congress and the Americans that they represent of a real threat of a nuclear Iran. The Obama administration has been engaged in discussions with Iran during the last several months.

As many of us expected, the President's open hand to Tehran was met with a clinched fist. Despite international efforts to negotiate with Iran, Iranian leaders continue to be devious and defiant. Enough; now is the time for Congress to act. Fortunately today the House of Representatives did.

Iran already possesses enough nuclear fuel to build two nuclear weapons. Even while negotiations were taking place, Iran continued to enrich uranium in defiance of five United Nations Security Council resolutions, increasing its supply of uranium and becoming more and more dangerous each and every day.

While there are many domestic issues that demand the attention of us in Congress, we must not forget an Iranian call for a world without a United States or an Israel. A nuclear-armed Iran threatens the safety of American troops in the region. It is a threat to Israel's existence, emboldens terrorist groups Hamas and Hezbollah and leads to a perilous nuclear arms race in the Middle East.

These are all things we cannot accept and must not tolerate.

□ 1800

Passage of the Iran Refined Petroleum Sanctions Act takes an important step to counter the Iranian threat to our national security and to that of our strong democratic ally Israel.

#### AFGHANISTAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. DOGGETT) is recognized for 5 minutes.

Mr. DOGGETT. Madam Speaker, President Obama is certainly to be commended for the thoughtful and thorough consideration that he has given to our alternatives in Afghanistan. In essence, given the mess that he was bequeathed there, he was asked to choose the least bad alternative.

My personal belief is that a good man made the wrong choice. But I think it is incumbent on this Congress to do as our President did and give thoughtful and thorough consideration of what our alternatives are there and whether there is a better way than dispatching another 30,000 American troops to Afghanistan to assure the security of our families.

We have had now almost a decade without a debate of Afghanistan policy in this Congress. I believe we must take a hard look at how hundreds of billions of taxpayer dollars and thousands of the lives of young Americans are being put on the line in Afghanistan and ask if this is the most effective way to defeat terrorism.

Some were, of course, pleased that the President indicated in his speech that July 2011, a period of a little more than a year and a half, would mark a point in this long war at which we would see the beginning of the end of the war and some of the troops that were being dispatched there would begin to return home.

Almost as soon as the speech ended, administration officials began to explain that deadline away. First we learned that not all the troops would get there until the fall of next year. They're not going for the weekend or a 2-week stay or a stay of less than a year. And then Secretary Gates made clear in interviews the nature of this July 2011 deadline. He said that at the time of July 2011, some "handful," in his words, or some small number or whatever the conditions permit might be departing Afghanistan at that time but that we would, in his words, "have a significant number of forces there for some considerable period of time." It was only a few days after that that Afghan President Hamid Karzai indicated just how long that commitment might have to be when he announced that "for another 15 to 20 years Afghanistan will not be able to sustain a force of that nature and capability with its own resources."



We are talking about a very extended commitment of more and more American troops and more and more American dollars, ironically, at a time that some of our allies who've been in Afghanistan, like the Canadians, like the Dutch, are making plans to withdraw their troops as our troops enter the country.

I have heard from not a few constituents expressing their concern about this decision to escalate the war in Afghanistan. Whether we agree or disagree on whether this is the best approach, we all agree that our objective is to work together to keep our families safer. One person to whom I presented the Veteran of the Year award just last month in Bastrop, Texas, Retired Colonel Bill Stanberry, twice awarded the Legion of Merit and inducted into the Infantry Officers Hall of Fame, offered this observation:

"There is no sign or promise of a viable leadership in the government in Afghanistan, an ingredient that is absolutely essential to the success of the program. We are allowing our adversaries to determine the kind of wars we fight and how we fight them. We need to find ways to exploit our strengths and not be lured into battles of war where our substantially weaker adversaries have the advantage by dictating how we fight."

Our strategic choices in Afghanistan, I believe, are not narrowly limited to either escalating rapidly, as the President has proposed, or departing immediately, but they include more effective ways of using the resources that we have already committed to accomplish our original objectives. And apparently, our Ambassador in Afghanistan, former Lieutenant-General Karl Eikenberry, had some of the same concerns that I do. It is widely reported that he sent at least two classified cables to Washington before the announcement expressing deep concerns about sending more U.S. troops to Afghanistan without a meaningful demonstration by President Karzai, who just had stolen a million votes to stay in power, that his government would be able to tackle corruption and mismanagement that has fueled the Taliban's rise in strength.

We went to take out al Qaeda, not to change it into Switzerland. Let's keep that commitment and do it in the most cost-effective way.

#### CUBA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

Ms. ROS-LEHTINEN. Madam Speaker, just last week we observed another Human Rights Day without freedom in Cuba.

As to be expected, the regime had its thugs out in full force to harass and at-

tack all who dared to walk the streets in support of this important day and what it represents to the world community. For 2 days, the members of the peaceful Ladies in White group were pursued and harassed by agents of the regime. Marches and peaceful demonstrations in support of human rights and fundamental freedoms came to an abrupt end as state security forces rounded up, detained, and brutally attacked some of the participants.

Yusnaimi Jorge Soca, wife of Dr. Darsi Ferrer, was one of the many apprehended by the secret police on her way to one of the planned marches at the Villalon Park in Havana. Dr. Ferrer is an Afro-Cuban civil rights leader currently imprisoned by the dictatorship. His alleged crime? "Illegally" purchasing materials to repair damages to his home. The truth? Dr. Ferrer has worked tirelessly to expose the reality of Castro's apartheid health care system and the abysmal disregard for fundamental freedom and human rights. Yusnaimi was threatened on this Human Rights Day by the Cuban dictatorship, as well as her husband, in an attempt to intimidate them into submission and silence.

Those seeking freedom in Cuba, however, have shown time and time again that they will not waver in the face of repression.

The Castro tyranny does not limit the application of its repressive tactics to the oppressed Cuban people, however. For example, Chris Stimpson, Second Secretary of the British Embassy, was also pursued and chased away by the regime's mob apparatus on Thursday. And on Friday, an American citizen was detained, likely in response to U.S. efforts to support the inalienable rights of the Cuban people. We are hopeful, Madam Speaker, for his immediate and safe return home soon.

For the people of Cuba, every day is a desperate struggle to maintain a glimmer of hope for a brighter future. Hundreds and hundreds remain behind bars due to their refusal to give up on that brighter future. We must never lose sight of the plight of those living under this dictatorial regime. We must also not turn our backs on these individuals by cutting deals with their oppressors. We must not put principle over profit, security before popularity. Though the Castro tyranny may try to convince the world otherwise, it will never miss an opportunity to tighten its iron grip on liberty.

It is time that the cruel veil of hypocrisy be lifted. The Cuban people are no less worthy of freedom and human rights than any other oppressed population. Nations and organizations and leaders worldwide, they do not hesitate to denounce the genocidal regime in Sudan, and I agree with them, or the brutal military junta in Burma, and I agree with them. However, they remain silent, and I don't agree with them,

when it comes to the cries of those dying in Castro's jails because they seek freedom and democracy for their Cuban nation. How much more must the Cuban people suffer before the world acts decisively against this cruel regime and its communist leaders?

Those who ignore the struggles of the Cuban people serve as willing accomplices to their brutal oppressors. As Cuban dissident Dr. Ferrer said in his jail cell in his call for all Cubans to peacefully commemorate Human Rights Day: "Governments, institutions, organizations, and human beings in general have an obligation to promote respect for fundamental rights and freedoms as well as ensure the recognition and universal and effective application."

Dr. Ferrer continued: "Our appeal will be for the recognition in every corner of the Earth for the inherent dignity and equal and inalienable rights of all members of the human family."

Today, Madam Speaker, let us renew our commitment to bring the light of freedom to those living in the darkness of oppression, wherever that darkness is. Today, let us make clear that we will not stand for another Human Rights Day without freedom in Cuba.

#### TARP AND THE WALL STREET BANKERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Madam Speaker, this week President Obama held yet another White House meeting to jawbone Wall Street bankers.

Just a few months ago, in September, he traveled to New York to speak with them. Most of them didn't even have the courtesy to show up at Federal Hall. Then last week his Treasury Secretary called again on Wall Street's big banks to work out mortgage loans for the over 6 million Americans who have fallen into foreclosure since 2007. Wall Street didn't do it. They're just laughing all the way to the bank. They'll pocket over \$140 billion in bonuses this year for themselves.

Yesterday, the President vowed to recover every last dime of taxpayer money that was bestowed on these giants, which now control 40 percent of deposits in our country. Five banks, 40 percent of the deposits. But you know it's important to ask the President which taxpayer money is he talking about. Just the TARP money? That would be about half a trillion dollars. But that figure does not include the hundreds and hundreds of billions of dollars doled out by the Federal Reserve, which is not a Federal agency, right to the big banks.

What about all the damage those giants continue to do to our mortgage markets and property values despite

what they've been given? How do we get all that money back? The big banks aren't doing mortgage workouts of any significance despite the President, despite his Secretary of the Treasury, despite those bills that Congress passed. Surely you've noticed the big banks tiptoeing through those mortgage tulips all over the country quite adeptly.

What about all the smaller banks they've driven out of business? Do those investors get the same deal as Wall Street?

What about the community bond ratings that have dropped across our country? How do we get that money back for our communities?

What about all the Americans who have lost pensions and 401(k) plans? How do they get their money back?

What about all the unemployment? What about the cost of that and food stamps and health care for those who have been hit hard by the economy Wall Street brought us? How do they get their money back?

The President is looking through too narrow a keyhole. What the White House advisers fail to admit is that their approach isn't working. The TARP should never have been passed by Congress. It protected the wrongdoers, and now the Treasury Secretary just extended it for another year.

TARP turns the banking system into a political chessboard by putting the Department of the Treasury into the driver's seat picking winners and losers, rather than using the independent financial regulatory agencies, as has always been done throughout our country. If you've got the wrong regulators, replace them, but be independent about it.

So the entire credit system of our country remains frozen up as TARP and Wall Street have sucked dry the confidence of prudent banks in our credit system. Meanwhile, the value of your home is dropping. Inflation is rearing its ugly head, today announced a 1.8 percent inflation increase, double what it was anticipated and the biggest increase in a year. And why wouldn't it rise, as the fundamentals are all out of whack?

□ 1815

When TARP passed, the Bush administration said it would save America from depression, but then the Dow fell over 2,000 points from October 1 to March 9 of this year. Our Nation fell into a depression anyway, and now 27 million Americans are either out of work or are working part-time jobs. The trouble is, when you don't fix something right in the first place, the problem only worsens. Here is what should have happened instead of TARP.

In order to not bankrupt our country, the SEC should have reimposed regulations on short-sellers, and it should have suspended mark-to-market ac-

counting using fair value. The FDIC should have declared a financial emergency and proclaimed all depositors and creditors of banks protected if those banks failed, and it should have used its emergency power to restore capital in banks. That wasn't done in time. Even now, we need to separate prudent banking from speculation, and we need to restore and to strengthen normal banking regulation, and not depend on the overly politicized Treasury Department to pick winners and losers.

Yes, we have to increase capital reserve and liquidity requirements to eliminate pro-cyclical rules, and we have to strengthen the SEC and increase congressional oversight with the Financial Accounting Standards Board while strengthening the FDIC.

I have some other bills, including recouping the over \$140 billion in bonuses that Wall Street will take this year. I have another bill to authorize the Department of Justice, the FBI, and the SEC to be fully funded, with investigators to uncover and prosecute the white collar criminals responsible for this fraud. I have another bill to reform the Federal Reserve system and to give each region in the country an equal voice so that the New York Fed doesn't overwhelm the rest of the country.

Madam Speaker, America needs more than rhetorical flourishes from this administration or from the last to restore sanity to our financial markets. It is time to take the political manipulation out of banking regulation in our country.

#### WESTERN RESOLVE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. MCCLINTOCK) is recognized for 5 minutes.

Mr. MCCLINTOCK. Madam Speaker, I rise to applaud the passage today of H.R. 2194, the Iran Refined Petroleum Sanctions Act of 2009.

Iran's regime has consistently lied to the world over its nuclear ambitions. Yesterday's revelation that Iran has been working on nuclear bomb detonators should convince even the most naive officials within our government of Iran's ultimate intention.

I do not believe that petroleum sanctions alone will dissuade the Iranian regime from its obvious intention to acquire nuclear weapons, or from its stated goal of wiping Israel off the map, or from its unrelenting hostility toward our own country; but I do believe that it will send a vital message of growing Western resolve at a critical moment in world history.

Iran should interpret the House action today as an overwhelming expression of American commitment that spans the wide spectrum of political views within our Nation.

#### AMERICA'S NATIONAL SECURITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont (Mr. WELCH) is recognized for 5 minutes.

Mr. WELCH. Madam Speaker, I want to address the question of Afghanistan.

The President was confronted with a very serious and difficult decision. The decision that he made, as America knows, is to increase troop strength by 30,000 troops and to also seek the support for an additional 10,000 troops from allies. The question which really confronts America as well as the President is this:

What is the best strategy to protect our homeland from another attack that would be perpetrated by and inspired by al Qaeda?

The question is also whether having a military force of occupation of now 100,000 troops, or soon to be 100,000 troops, from the United States of America in Afghanistan and doing nation-building is a sustainable strategy that will be the one that can protect America from a future attack. I believe that it is not, and there are a couple of reasons.

First of all, as we know, al Qaeda goes where our military is not. There are presently, according to General Jones, 100 al Qaeda in Afghanistan and about 500 in Pakistan. Al Qaeda moves to areas of opportunity. It is not just there. It's in Yemen. It's in Somalia. It's in other parts of the world.

Also, as we know, the Internet is a tool, and some of the folks who have been plotting and planning to do destructive conduct and to hurt our American people live in the United States and in other parts of the world. It is not a threat that is confined to Afghanistan. It is a decentralized threat.

So where you have a threat which, by definition, is decentralized and not from a nation state, does it make sense to deploy the vast majority of our troops, 100,000, and the vast majority of our resources, \$1 trillion minimum over the next 10 years, to a single country and to then take on the goal of nation-building, of institution building, in Afghanistan? I believe it does not. It is not an effective strategy that is sustainable militarily. It is not an effective strategy that is sustainable financially.

Secondly, the effect of a decision to nation-build in Afghanistan is that, by definition, our military and our government need a functional partner no matter what the shortcomings of that partner may be—hence, the embrace of the Karzai administration, which is, despite the fact that it is losing credibility among its own people, and despite the fact that the election was not only deeply flawed but it is documented that the Karzai Government stole 1 million votes in order to stay in power.

The more work that we do which requires us to line up, to cooperate, to

conciliate, and to protect a Karzai Government that does not have the support of its people—and every day that we do that—it undercuts the support and the definition of the mission of the American soldier in Afghanistan.

As is well-known, a major problem is Pakistan. What we have seen is that we now have to have a significant alliance with the Pakistani military as the only institution that can provide some measure of security in Pakistan. Because they control the nuclear weapons, this is obviously of great importance to the American people, but the Pakistani military is notable for two things:

Number one, it has been an adversary of democratic development in Pakistan, something which is essential to build economic well-being in a country that is absolutely destitute, impoverished and getting poorer.

Number two, the Pakistani military, as reported in *The New York Times* as recently as today, made it clear that, however urgent it is for the United States to take out the Hakani network, which is in the tribal areas and is crossing into Afghanistan on a regular basis to attack our troops, the Pakistani military regards the Hakani network as its ally in geopolitics in the Afghanistan region. So it will not do what needs to be done to protect the American military and American security, and that is to attack the Hakani network—the Afghanistan Taliban. In fact, it has made it explicit that it sees the Hakani network as its ally to keep India at bay.

So what we have is a strategy that depends on nation-building, which has very doubtful prospects of success in an alliance with two “friends” who aren’t there to help us.

#### BREAST CANCER AWARENESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. ROYCE) is recognized for 5 minutes.

Mr. ROYCE. Madam Speaker, more than 190,000 women will be diagnosed with breast cancer in the United States this year, and more than 40,000 will die. In the last 20 years, there have been declines in the breast cancer mortality rate, and those declines are attributed to increases in early detection and improvements in breast cancer treatment.

Today, when breast cancer is found before it spreads, the 5-year relative survival rate is 98 percent, but that rate will decline to 84 percent for regional disease and to 23 percent when cancer has metastasized, or has spread, to other parts of the body.

In November, the U.S. Preventive Services Task Force released new guidelines for screening mammography. These changes have again reignited the controversy over mammog-

raphy screening—a debate that has remained for a number years.

However, it is important for us to remember that the Susan G. Komen for the Cure organization agreed that mammograms save lives in women 40 to 49 as well as in women over 50. Additionally, while the USPSTF has chosen to make revisions in its guidelines for screening, patient advocates and professional organizations, not just the Susan G. Komen for the Cure but also the American Cancer Society, the American College of Obstetricians and Gynecology, and the American Society of Clinical Oncology, have reviewed the same evidence and have continued to recommend annual screenings beginning at age 40 for women of average risk and earlier for women with known risks of breast cancer.

Our real focus should be on the fact that one-third of the women, some 23 million, who qualify for screening under today’s guidelines are not being screened. They are not being screened due to a lack of education, of awareness, or access. That issue needs focus and attention. If we can make progress with screening in susceptible populations, we can make more progress in the fight against breast cancer.

#### THE GREAT SEAL OF THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. GRAYSON) is recognized for 5 minutes.

Mr. GRAYSON. Madam Speaker, I invite you and everyone within the sound of my voice tonight—all Americans—to reach into your pockets. Take out a dollar bill. Turn it around. On the back, you will see the Great Seal of the United States.

Our Founding Fathers had very few ways to communicate with us. They lived before the time of television. They lived before the time of radio. They lived before the time of photography, so they communicate to us through the Constitution. They communicate to us through the Declaration of Independence, through the Federalist Papers, through letters that they wrote, and only one image—and that image is this image—the image on our dollar bill, the image of the Great Seal of the United States.

I invite you to take a close look at it. I have one right here. The one in my pocket is in black and white—or green and white, if you will. The one here is in color. Take a look at it, and you will see the American eagle. You will see that the American eagle is holding arrows on the right, in its claw, and an olive branch on the left. This had deep symbolism to our Founding Fathers. This seal was adopted before the Constitution, itself, was ratified.

The gentleman who had to explain and to support the adoption of this

symbol as our country’s Great Seal said that he had the eagle holding arrows and an olive branch to symbolize war and peace. Specifically, what he said was, with regard to that olive branch, he wanted to illustrate the power of peace. He said, “the power of peace,” which is not a phrase we hear very often. We hear a great deal of the power of war, but we don’t hear much about the power of peace.

You will note that the eagle is not looking toward the arrows. That eagle is looking toward the olive branch. The reason the American eagle was placed by our Founding Fathers with an eye on that olive branch was that they always wanted America to be looking for peace.

I’m sad to say that we have forgotten that, this message from our Founding Fathers from over 200 years ago. We’ve forgotten that, but it’s still here in our pockets today and on our dollar bill to remind us that the Founding Fathers wanted us to be looking not for war but for peace.

What is that power that peace has? The power that peace has is the power to educate your children, the power to maintain your own health and the health of other citizens, and the power to build roads, hospitals, and bridges. The power of war is the power to destroy all of that.

□ 1830

That is why our Founding Fathers warned us against foreign entanglements and why our Founding Fathers reminded us in the Great Seal to be looking all the time to peace and not to war. The things that we do now for the past 8 years are things that are unprecedented anywhere else in the world. The English stopped occupying other countries in the fifties, half a century ago. The French stopped doing it in the sixties. The Portuguese stopped doing it in the seventies. The Soviet Union stopped doing it in the nineties, too late to save the Soviet Union. And to a large degree the destruction of the Soviet Union came from a disrespect for the power of peace and a worship of the power of war. Let’s hope that we recognize that mistake and let’s hope that we don’t repeat it in Iraq and in Afghanistan, wherever the next war might be.

In Washington, D.C., you hear much discussion of leadership. Everyone wants to claim that mantle. I’m a leader, he’s a leader, she’s a leader. Everybody claims to be a leader. Well, there is a kind of leadership that we need right now very badly, and that is the leadership that looks just a little bit ahead into the future, recognizes what’s inevitable and tries to make it come sooner. I have no doubt in my mind that one day the war in Afghanistan will be over. I have no doubt in my mind that one day the war in Iraq will be over. The question is, when?

We are the strongest country on earth, the strongest country that the earth has ever seen. We end a war when we decide to end a war, and I submit to you that that time has come. There is no force on earth that will make us end the war. We have to do it now. We have to fight for the power of peace.

#### AMERICA IN AFGHANISTAN: QUESTIONS TO CONSIDER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. HOLT) is recognized for 5 minutes.

Mr. HOLT. Madam Speaker, today Members received another classified briefing on our policy in Afghanistan, a briefing that raised a number of questions that need answers before our country commits further troops and resources to that conflict. These are not loaded questions or simply rhetorical, they are real questions—and just some of the real questions—that people in central New Jersey are asking.

Would this proposed troop increase bring us closer to capturing or killing those responsible for the 9/11 attacks? If the al Qaeda remnant Americans are seeking to capture or kill is on the Pakistani side of the border, or in Yemen or East Africa, how will sending more troops to, say, southern Helmand Province in Afghanistan help us to get those terrorists who attacked us on September 11 or might attack us in the future? Should we send troops to where al Qaeda isn't? Should we expand our aerial strikes? Would an escalation in air attacks do more harm than good? Is our intelligence apparatus structured and capable of giving our military and political leaders the intelligence they need to wage this war? Given our lack of foreign language capabilities, can we really know what's going on in the towns and farms and villages? Does the deterioration in the military and political situation in recent years in Afghanistan result from actions Americans have taken or failed to take? If so, how do we avoid those problems in a surged military action? What constitutes victory or success in this conflict? What is it that we hope to leave behind once we exit Afghanistan? What can we reasonably hope to leave behind?

Is the Afghan Government a viable partner? Is it viewed as legitimate by the Afghan people? Does the government and do the people have the same dedication to human rights, education and public welfare that we do? If so, how will our military troops bring improvements in those areas? Do the Afghan people have the same revulsion to official corruption that Americans do? Can the Afghan security forces be expanded as quickly as claimed? Is President Karzai correct that he needs extensive military U.S. security assistance for 15 or 20 more years? Will such

assistance require the use of many private security contractors? If so, what will such a reliance on contractors cost the American taxpayer? If contractors are employed extensively in Afghanistan, do the State and Defense Departments have sufficient oversight mechanisms to ensure those contractors operate more legally and ethically than they have in, for example, Iraq? What lessons from Afghanistan's history can we learn about the population's reaction to the long-term presence of foreign troops on their soil? Could Afghanistan degenerate into a civil war along ethnic and religious lines, as happened in Iraq?

Is the Government of Pakistan a viable partner? Are they serious about helping us? Are elements of their military and security services still supporting the Afghan Taliban who are attacking our troops? What if President Zadari is overthrown, as has happened with previous leaders?

Will our allies actually provide the troops the President is requesting? And if they commit 10,000 troops and we have 90,000 troops, will it be seen as an international effort or an American war? If European countries' troop casualties rise sharply next year, will those nations pull out of Afghanistan and leave our troops to bear the future burden?

Should we pay for the war openly and up front? Or should we commit troops and consider how to pay later? How would we pay for such an escalation, including the long-term costs of caring for our wounded veterans? Is the Department of Veterans Affairs hiring enough psychological counselors to treat the number of veterans who need counseling and treatment for posttraumatic stress disorder? Do we even know how to treat PTSD of veterans who have endured two, three or more combat tours? What should we make of the fact that the estimated \$100 billion we'll spend on the war each year is equal to the cost of the health reform bill each year that we are debating now?

Are there alternatives to the President's approach that Congress and the Nation should explore? What is truly the best way to secure our country against future terrorist attacks? Are we putting the right emphasis on a military approach to counterterrorism policy? When extremists can transmit their ideology and recruit terrorists over the Internet and via extremist madrassas and youth groups, are we fighting on the right battlefield in Afghanistan? Are we doing enough at home to prevent future tragedies like the one that occurred at Fort Hood?

Fulfilling our constitutional obligations regarding matters of war and peace requires that Congress get answers to these questions and many more, and help the American people get these answers.

#### THE PLIGHT OF IRANIAN DISSIDENTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Madam Speaker, I join my colleagues as a member of the Subcommittee on the Mideast and South Asia on the House Foreign Affairs Committee. Today our committee debated a very important initiative dealing with Iran sanctions. But it is interesting that we find ourselves in one domino effect after another: Iran, Iraq, and then, by extension, Afghanistan and Pakistan.

Today I rise with a plea to this government and to the State Department to save those who are now huddled at Camp Ashraf in Iraq; this government that we have propped up, that we have seen thousands of our treasure lost in Iraq so that we could have a democratic government, so that it would have its own boundaries and its own sovereignty, so it would not be governed and be a puppet of some other country. But yet Iranian dissidents are now huddled, fearful for their lives. In fact, Assistant Secretary of State Jeffrey Feldman said, We're actually more concerned about an Iraqi desire to move Camp Ashraf to someplace else inside Iraq. The expectation is that they would try to forcibly move them to a different location in Iraq and that, too, would lead to bloodshed.

Iraqi authorities under Amnesty International says it must not forcibly relocate 3,400 Iranian opponents and that forced removals of the residents of Camp Ashraf would put them at risk of arbitrary arrest, torture or other forms of ill treatment and unlawful killing.

I've met with Iranians, their families, many of whom are in this camp, a niece, a mother, a brother, and they have no relief. They have no refuge but us. And so it is crucial that we intervene with the present Iraqi Government, seemingly sometimes a puppet of Iran, to not in any way cause the bloodshed and the loss of these dear souls.

All they wanted to do is to be in freedom. Yes, they have disagreement with the present government, but they are refugees in the world order; in the world sense they are refugees, fleeing oppression. And let me tell you where Iraq wants to send these huddled few thousand who simply want to be left alone, who have already been under the eye of the storm, who have seen loved ones lost, bloodshed inside the camp.

And where do they want to send them? To the east of this area is Al Busayyah and to the west is Al Shabaka, the resting place for tribes and migrants who live in the Iraqi desert. Moving sand hills, which in the summer reach temperatures of 158 Fahrenheit under the heat of the sun, prevent growth of plants and creation

of waterways and toilets for the migrant tribes. Some of the small and large wild trees which cover a small part of the area are desperate to survive during sandstorms and the relocation of moving sand hills. Many of them have been trapped under the moving sand hills while many others, despite having deep roots, are taken in the sandstorm to locations dozens of kilometers away. This is where the members of Camp Ashraf will be sent—a vast desert of death.

And so it is imperative that this government that we have propped up, that we have sent our soldiers to die for, don't have the authority to kill 4,000 Iranian dissidents who simply want to live in peace and alone. I hope that we can reach our government to provide safe solace for them, which is one of the reasons that I supported H.R. 2194, the Iran Refined Petroleum Sanctions, which deals with the question of who might attempt to supply refined gasoline to Iran or prevent them with the materials to enhance their oil refineries. This is to make a firm stance against Iran's nuclear proliferation, but it is also a stance against its human rights abuses and its penetration in countries around its area, including Iraq, where they cannot seem to be independent enough, that is, the Iraqi Government, that they would do the bidding of the Iranian despotic government and try to move these innocent persons—women, men and children—to a place where they will surely die.

I am grateful in the language that was submitted in this bill, H.R. 2194, that my language was kept that had to do with concerns of human rights in Iran and that this was put in the findings. It is important that we acknowledge that throughout 2009, the Government of Iran has persistently violated the rights of its citizens. Again I believe it is important for the United States to support the dissidents inside Iran who continuously charge the government with an irregular and illegal election. I hope that we can move forward in saving these lives.

Madam Speaker, as I close on Pakistan and Afghanistan, Pakistan is an ally to the United States in trying to bring peace to Afghanistan.

#### FRESHMEN REPUBLICAN HOUR

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentlewoman from Wyoming (Mrs. LUMMIS) is recognized for 60 minutes as the designee of the minority leader.

Mrs. LUMMIS. Thank you, Madam Speaker.

This evening's Speaker is a fellow freshman and it is an honor to serve with you, Madam Speaker. Thank you for your time this evening as we proceed into Hanukkah and the Christmas season.

We are as freshman Republicans going to spend some time with you reviewing the episodes of the last 12 months: Where are we in terms of America's fiscal house? Where have we been in the last 12 months? And, more importantly, where are we going as we prepare for the new year 2010?

I am joined this evening by my colleague, LEONARD LANCE of New Jersey, and we will be joined by other freshman Republican colleagues throughout the next 60 minutes. We look forward to this opportunity to cover these subjects with you this evening.

We began our freshman year by approving a \$350 billion TARP extension without accounting for the first half of the TARP.

□ 1845

We then moved into a \$787 billion stimulus package; \$1.1 trillion, if you include interest. And STEVE AUSTRIA, our colleague, will be discussing this evening how that and other bills were shaped by the fact that they were done without the kind of transparency that we expected to see when we came here and which our new President campaigned on.

We then moved into a \$410 billion addition to the 2009 budget. We then moved into bills that would take over the financial services industry, the automobile industry, the student loan industry, that created the largest tax increase in history by way of an enormous cap-and-trade bill that places a tax on every single American that consumes energy. And we passed, about a month ago in this House, a health care bill that created an additional roughly trillion dollars in obligations for this Nation, that bill now being debated in the United States Senate.

During the course of this year, all of those complicated pieces of legislation which were passed, frequently without the opportunity to read the full bill, created enormous debts for this Nation, and we want to talk about this fiscal picture this evening.

Before we do, I want to yield to my colleague, Mr. AUSTRIA, to discuss the issues of transparency and the issues of the speed in which some of that comprehensive and complicated, lengthy legislation was brought to the floor.

Mr. AUSTRIA.

Mr. AUSTRIA. I thank the Congresswoman from Wyoming for her hard work here in Congress and for putting this freshman Special Order together this evening. I think it's a great opportunity for us, as new Members of Congress, to be able to give our points of view as to coming to Congress, as to what we're seeing and how we think we can do better in the future. I thank you for putting that together.

As our class president, I think you would agree with me that we have a lot of talent that came in with this freshman class on both sides of the aisle.

And I think most of us would probably say it's been very challenging, to say the least, our freshman year, sometimes very frustrating, but we're all committed to working very hard to represent our constituents, and that means listening to our constituents and understanding what they're talking about.

And I think this week marks a defining moment for this Congress and our Nation. You know as we, as freshmen, finish our first year in Congress, our national debt continues to grow. It's now over \$12 trillion as government encroaches into every aspect of our life. And I fear that this administration and this Congress, as they continue this outrageous spending and running up debt, that we're reaching a point of no return, and it will take another piece of our liberty with it.

I served 10 years in the State legislature in Ohio before I came to Congress, and in Ohio, we were forced to balance our budget. That meant tough decisions sometimes. We were willing to make those tough decisions. And those 10 years in the State legislature, I think, were a good learning experience and a training ground for Congress, but I don't think anything could have prepared us for what we've seen these first 12 months in Congress. If you think back to when we were sworn in, and when the President came in after his inauguration, in his first sentence of his Executive order, President Obama stated, my administration is committed to creating an unprecedented level of openness in government.

In November 2006, Speaker PELOSI pledged to lead the most honest and most open Congress in history. Yet, what we've seen in our first year is that, time and time again this congressional leadership has rammed through costly bills with devastating consequences for America's small businesses and working families that no Member of Congress, in many cases, has had an opportunity to even read, and I think that's outrageous as a freshman in Congress.

If we put things in perspective, the first 4 or 5 months in Congress, we were faced with voting on the second half of the bailouts, the TARP bill, the \$700 billion for the financial markets. We were asked to vote on a \$400 billion omnibus bill that contained over 9,000 earmarks. We were asked to vote on a stimulus bill, a 1,073-page, nearly trillion dollar stimulus bill that was posted online at 10 p.m. the night before it came up for a vote and that not one Member of Congress had an opportunity to read before we voted on that, and I think that's unacceptable and outrageous. We should have an opportunity to read the bill before we vote on it. And that bill, as we found out, contained a tremendous amount of infusion of government spending, expansion of government. It wasn't targeted

on helping small business create jobs, small businesses that can sustain those jobs over the long run.

Then we moved into the month of June and we took up an energy policy known as the climate change bill or cap-and-trade bill. What we saw was at the very end, a 300-page amendment that was tacked on to a 1,200-page bill, which turned out to be a national energy tax bill at 3 a.m. in the morning that came up for a vote that, again, the Members of Congress didn't have an opportunity to read that amendment and fully understand what was in that bill before we voted on it. That's unacceptable, in my opinion. It was a bill that's not good for Midwest States like Ohio, that I represent, that have a lot of manufacturing in Ohio, and nearly 90 percent of our energy comes from coal. This bill, in my opinion, is going to cause unemployment and raise the cost of energy for Ohioans and Americans across this country. And during a time when we're going through a difficult economic time, that's not a good thing.

This freshman class then came together, as you know, as the Congresswoman from Wyoming, as you know, because you participated in this, Congresswoman LUMMIS, and that was we had a press conference. We were upset about not having the opportunity to read this bill. And as a freshman class, we came before the national press, and we expressed our concerns about having an opportunity to read the bill before we vote on it and the importance of having that transparency, the importance of being able to let the American people know what we're voting on here in Congress.

What we saw shortly after that—and we saw a number of people come to Congress the day before or a couple of days before we voted on the health care reform bill. What we saw, what was rolled out shortly after that press conference, was a 2,000-page health care reform bill that we spent days setting up a reading room to try to read through and understand what was in that bill and trying to get that message out to the American public. And what we found was it was a huge spending bill again, a \$1 trillion health care reform bill that would raise premiums for many Americans to pay for that, would increase taxes by over \$700 billion. Most of that burden is being put on small businesses to pay for the health care reform bill, when we should have been focused on lowering costs and making it more accessible, or more accessible to families and maintaining that doctor/patient relationship. So we can do better.

And what has all this led to? It's led to a tremendous amount of debt. You know, we're now borrowing 50 cents on every dollar that we spend. And I have three teenage boys at home, and I didn't come to Congress to run up these types of debts. And what we are

doing is we're further increasing our Nation's debt and placing an astronomical amount of debt and burden on the backs of our children and our grandchildren, and that's unacceptable. And what we're seeing as a result of this tremendous amount of spending, this runaway spending, this huge amount of debt, is we're seeing unemployment now reach the highest it's been in recent decades at over 10 percent, and that's unacceptable.

It's time that this administration and this Congress understand that government spending alone is not going to turn this economy around. We need to be helping our small business. We need to stop government spending. We need to stop increasing our debt, and we need to be focused on helping those that create jobs across this country, the economic engine across this country, and that is our small businesses. We have it backwards.

I think as a freshman class, you know, we meet on a regular basis, and one of the things that we've talked about is how we believe that Americans, that we in Congress should allow Americans, allow small businesses, the taxpayers, give their money back to them, give them an opportunity to spend it to invest it back in the economy and be able to create jobs and sustain jobs, but unfortunately, what's happening here is we've got it backwards.

Congress is taking the American people's tax dollars, and government thinks that it knows how to spend those dollars better than the American people, and they've got it backwards. And unfortunately, what's happening is that this leadership in Congress is brokering deals behind closed doors or not listening to the American people and their constituents. And that message is very clear to me, and that is that more government is not the answer.

And with that, I will yield back to the Congresswoman from Wyoming. And again, I thank you for having this Special Order tonight with our freshman class.

Mrs. LUMMIS. I thank the gentleman from Ohio.

And the consequence of what the gentleman from Ohio pointed out is illustrated in this chart. Here is the Federal budget deficit when we began as Members of Congress. The budget when we came in had a \$459 billion deficit, or just under half-a-trillion-dollar deficit. But since we've been here, this amount of roughly half a trillion has been increased by almost a trillion, 950 billion in increases from 2008, for a total of over \$1.4 trillion in deficits. Now, how did we get there?

Three hundred twenty billion dollars of that, roughly, is from lower tax receipts due to the recession. That's the roughly 27 million Americans who are either unemployed or underemployed,

and they're paying less in taxes, as are businesses and as are our families. So we're experiencing lower tax receipts because of our recession.

In addition, the stimulus bill has added \$200 billion to our deficit for this year alone, half in spending and half in lower taxes.

Then, an additional \$154 billion for bailouts for financial institutions and the auto industry; \$91 billion in bailouts for Fannie Mae and Freddie Mac. Those, of course, are the GMAs that do housing programs.

Seventy-three million dollars in unemployment benefits due to the recession, again, associated with this loss in tax revenue due to the fact that so many Americans are unemployed and the fact that the stimulus dollars that we spent were not adequately weighted towards infrastructure construction like was the bill that Mr. AUSTRIA and Mr. LANCE and I cosponsored at the beginning of this year.

And then \$112 billion in other accumulated bills throughout the course of this year has gotten us to this point, \$1.4 trillion in deficit.

Now I'd like to yield to the gentleman from New Jersey (Mr. LANCE) to talk more about what are the consequences of all this debt.

Mr. LANCE. Thank you very much, Congresswoman LUMMIS, for your leadership. And certainly, it is a pleasure to be associated with this Special Order. And I commend you for your knowledge about what is occurring here in Washington. It's also a pleasure, always, to see our distinguished freshman colleague, Congresswoman DAHLKEMPER in the chair.

Madam Speaker, I rise today to draw this body's attention yet again to our ever increasing national debt. In the next day or so, we're going to be asked to vote to raise our Nation's statutory debt limit.

Back in April, the Democratic majority voted to raise the debt ceiling here in the House by \$800 billion, and that would increase it to \$13.29 trillion. That bill is still pending in the Senate. Now we are being told that due to the pace of spending of the administration and the congressional majority, an \$800 billion increase in the debt ceiling will not be enough to get us through this fiscal year. We've been told that we will ultimately need to raise the debt limit by nearly \$2 trillion, and that will be a total debt ceiling of roughly \$14 trillion.

Some blame the previous administration and the previous majority for our current fiscal situation. The fact is that the \$2 trillion increase needed for next year is roughly equal to the total budget deficits from 2001 to 2008. It is also true that prior to the onset of the economic crisis, the budget deficit had been decreasing for the previous 3 fiscal years, reaching a low of \$160 billion in 2007.

2008 then saw a dramatic increase in the deficit as we started dealing with the fiscal crisis, and we hit a \$454.8 billion deficit in 2008. Unfortunately, the deficit for fiscal year 2009, which ended on September 30, nearly quadrupled to \$1.47 trillion due to the TARP program, as Congresswoman LUMMIS has explained, and spending in the stimulus bill and other aspects of spending this year. Now we are being told that for 2010, we must go another \$2 trillion in debt.

I implore our colleagues to stand with us in insisting that we get this spending under control and do so now. The pace of irresponsible spending is not only unsustainable; it is dangerous to the long-term viability of our economy and, indeed, it is a matter of national security. This Congress must impose some kind of restriction on spending, and I will not be supporting any increase in our statutory debt limit unless it is directly attached to implementation of a bipartisan commission tasked with advising Congress on how to get its spending under control as quickly as possible.

□ 1900

I remain disappointed to hear that a \$2 trillion increase may be attached to a bill to fund the military, including funding for our brave men and women currently serving in combat in Iraq and Afghanistan. We all wholeheartedly support our military and believe it should be provided the funding it needs. The attempt, however, to use the military as a political tool to pass a potentially massive increase in our debt limit is terrible public policy. There should be an up-or-down vote on raising our debt ceiling.

As a matter of history, Madam Speaker, in this decade, in 2001 there was a budget surplus of \$128 billion; in 2002 the deficit for that year was \$157 billion; the next year \$377; the next year \$412; the year after that \$318; the year after that \$248; the year after that \$160; and the year after that \$454 for a total for the 8 prior years, from 2001 to 2008, of \$2 trillion. That is 8 years. I am not excusing that. That is a great deal of money.

This year, however, in the fiscal year that ended on September 30, we had a 1-year deficit of \$1.47 trillion. That's \$2 trillion over the 8 years between 2001 and 2008, and in the fiscal year that ended this September 30, roughly \$1.5 trillion. And that will be replicated again this year in the fiscal year in which we now find ourselves.

Mrs. LUMMIS. Will the gentleman yield briefly?

Mr. LANCE. Certainly.

Mrs. LUMMIS. And the consequence of what you're just saying, which is so critical to this discussion, is the chart that appears here. The interest payments on that debt create a checkmark. In other words, this is 2008, the

beginning of this chart. And we were seeing a bit of a decline in the interest dollars that we were paying. But here we are, today, right here, the end of 2009, and from here on, because of that accumulated \$2 trillion that you discussed over the earlier part of this decade, and then, the additional \$1.4 trillion of this year alone, boy, those interest payments just take right off. And it creates this checkmark effect to the point that at the end of this chart, 2019, U.S. net interest payments over \$800 billion.

My gosh, that is as much as the stimulus bill that we passed at the beginning of this year.

Mr. LANCE. Thank you, Congresswoman LUMMIS.

Madam Speaker, Congresswoman LUMMIS has pointed out what we are going to face over the course of this decade. And we have to pay our interest payments first before we feed any hungry children, before we engage in housing for those who need housing and jobs for those who need jobs. Before we even fund the military we have to fund our debt. It crowds out other needed spending. It also makes it much more difficult for there to be borrowing in the private sector, raising interest rates in the private sector to get this economy moving again.

It is also ultimately a matter of national security, because who is purchasing our debt? It is being purchased by foreign nations, by China, by Saudi Arabia and by other nations across the globe. And ultimately, he who pays the piper calls the tune. And this is a matter of national security. And undoubtedly the American people will recognize now what Congress has not yet recognized, and that is we have to get our Federal spending under control.

No one in Congress thinks that we can balance the budget this year. However, we need a glide path toward a balanced budget. And instead, we have a rocket in the other direction with ever-rising levels of annual deficits.

The Congressional Budget Office predicts that by the end of this next decade, our total debt may approach \$20 trillion. That is simply unacceptable. It places an undue burden on the next generation. For the first time in the history of this country, there is an open question whether the next generation will have a higher quality of life than this generation. The promise of America has always been that each generation works as hard as possible to make sure that our children will have a higher quality of life. Whether or not we will have a second American Century here in the 21st century the way the 20th century was an American Century is now in question based upon this fundamental issue that confronts all of us in Congress, and that is the issue of out-of-control Federal spending and a massive debt that is increasing enormously.

Let me state, Madam Speaker, that in the 1990s, with a Democratic President, President Clinton, and a Republican Congress, we did a better job. In 1997, the annual deficit that year was \$21 billion. The next year, there was a surplus of \$69 billion, the next year a surplus of \$125 billion, the next year a surplus of \$236 billion, that's in year 2000, the last year of the Clinton Presidency, and in the first year of the Presidency of George W. Bush, a surplus of \$128 billion.

I want to give credit to President Clinton. I also want to give credit to the Republican Congress then in power. And I think that it is a responsibility of the Presidency and the Congress working together. In the 8 years of the Bush Presidency, 6 years with Republican control of the House and Senate, there was a combined debt in those 8 years, let me repeat, of \$2 trillion, and in this last year, the fiscal year that ended on September 30, we had in that 1 year a deficit of over \$1.5 trillion. And this year, we're going to have that amount yet again. I implore the White House to get serious on this issue of annual Federal deficits and the overall Federal debt.

We, the Republican freshmen, want to do our part. We came here to reform the system. We want to reform the system in a bipartisan way. And Congresswoman LUMMIS is taking the lead for the freshman class on this, in my judgment, the most important issue confronting the American Nation, as important as reforming the health care system, as important as the burden that we share with others around the world, including the brave young men and women who fight in Afghanistan and Iraq. Because this, the debt issue, is a matter of national security as well as a matter of economic prosperity.

I yield back to the congresswoman.

Mrs. LUMMIS. I applaud the gentleman from New Jersey for his view that we need to have tied to an increase in the national debt a mechanism that will begin to address this problem. One of the mechanisms is one that you mentioned that you support, and that would be legislation that would create a commission to begin to advise us on this structural deficit. And this chart illustrates why this structural deficit is so much worse than it has ever been.

One of the points in this chart you brought up in your discussion, and that was a point right here, this is the years when we had the Clinton Presidency and a Republican Congress, and you saw tax revenues increasing over expenditures as a percentage of gross domestic product and creating the very surplus that you discussed. But what's really interesting about this chart is the fact that it runs from the 1970s, actually from the year 1969 to 2009, so it's a 40-year chart that compares spending to gross domestic product, taxes to



gross domestic product, and then the deficit to gross domestic product. And the amazing thing is that when you look at gross domestic product, that is, the value of everything we produce in this country every year, and use that as your constant, so we're comparing that over 40 years to the way that Congress has spent money, the way that Congress has taken in taxes, and then to the deficit, what you see is remarkable stability, remarkable stability for 40 years. It has always hovered around a little over 20 percent of gross domestic product in terms of spending, and around 18 percent in terms of taxes.

So there has been a structural deficit for all those years of roughly 2.4 percent, meaning for about 40 years we've taken in a little bit less in taxes than we've spent. And so it has created some deficits over time. But even the deficits have hovered within that average of about 2.4 percent. The average then is this dotted line down here, remarkably stable over 40 years.

Now, look at what is happening in the future. These are projections. The sources are the Congressional Budget Office and the Office of Management and Budget. So we're talking about government agencies that are projecting this. Here is the line for where we begin the next decade starting in January. Spending and taxes separate dramatically. As you can see, the year 2009, which is illustrated by this tremendous separation right here, this is where we are now, and the reason we've taken in less taxes is because of the recession. But the reason that we've spent so much are all the bills that we discussed from the beginning of this hour. It has just become completely out of the realm of anything we've ever seen in the last 40 years.

So it creates a structural deficit, meaning a very, very wide gap going forward between taxes and spending. This gap is projected by CBO to be between 5 and 6 percent. That's more than twice of what it has ever been over the last 40 years. And it goes on and on from there. And so you can see this projected deficit in the decade coming forward, down here, is an enormous gap over what it has been. That is what you were talking about when you said, will we give our children a better country than we received? And there is a real question about that now. And that is why we have to address it.

I know you're on a committee where Federal Reserve Chairman Ben Bernanke has come, as am I, and said, you've got to come up with a plan to deal with this problem, this specific problem, the structural deficit. This is the structural deficit. And it is caused by the mismatch between taxes and spending. And while we as partisans get under each others' skin by saying, Democrats, you have spent too much; and the Democrats saying, Republicans, you gave tax cuts at a time

when we were at war. Well, we're both right. And now here we are. I yield back.

Mr. LANCE. Thank you, Congresswoman.

Madam Speaker, the fact that for a generation, spending has been at roughly 20 percent of gross domestic product for 40 years is noteworthy. And the chart that Congresswoman LUMMIS has is extremely informative and revealing. However, we are entering a new era where as a percentage of gross domestic product, governmental spending is rising dramatically to 25 percent. This is a significant and very disturbing difference. And the fact that over the next decade our projected deficits are so much larger than they have been historically as a percentage of gross domestic product is also disturbing. And in a bipartisan fashion, we have to have a glide path toward fiscal responsibility.

I think that it is impossible to balance the budget until we get out of this deep recession. But once we are out of this deep recession, and in my judgment we are still in the recession, because unemployment rates in this country are at 10 percent, the highest they have been since 1983, a generation ago—once we get out of this deep recession, we have to have a plan to make sure that we move toward the historic average of no more than 20 percent of spending in the governmental sector at the Federal level as percentage of gross domestic product.

My own view is that we need a bipartisan commission to advise us, like the BRAC commission regarding the closing of military bases, and then there can be an up-or-down vote on what is recommended by that commission here in Congress. Some oppose that, but do not provide an alternative as to how we are going to do a better job. And to do nothing is to condemn the next generation to a lower standard of living. It is to condemn the next generation of businesses across this country with much higher interest rates because the government crowds out private-sector borrowing.

□ 1915

The government is the borrower of first resort.

And of course ultimately it could mean a lowering of the credit rating of the United States of America. Obviously, we now have the highest credit rating, but there are some who predict that over time that will not occur. And also, there are some who predict that there should be a new currency worldwide, that the dollar should no longer be the currency that is favored across the world. Obviously, all of us in Congress, including freshmen Republicans who are discussing this issue tonight, favor a continuation of the American currency.

The dollar is the currency that is honored across the world, but the Chi-

nese, for example, have floated the idea that there should be a new international currency, not the dollar, regarding international trade. This is as a result of the fact of these ever-rising deficits year in and year out and the result of the fact of an overwhelming Federal debt, now at \$12 trillion. In the next week before Christmas we're going to be asked to raise it to \$14 trillion.

We are not going to be asked to raise it on a stand-alone vote on that issue. It is going to be part of a bill related, I believe, to the military. I call again for a stand-alone vote on this issue, and that stand-alone vote, Madam Speaker, should include the establishment of some sort of mechanism to get a handle on this situation, this, the most critical issue confronting us not only economically but also as a matter of national security.

I yield back to the Congresswoman from Wyoming.

Mrs. LUMMIS. I thank the gentleman from New Jersey for yielding.

The Federal Reserve Bank, in my opinion, is now overleveraged. The Federal Government is overleveraged, meaning we have taken on too much debt both at the Federal Reserve, while they've been trying to help our banking system right itself, and we, in Congress, by not recognizing that in this recession we, too, should be making sure that government isn't growing in an outsized way when it is, in fact, the private sector that creates wealth.

We are joined by the gentleman from Colorado, who is on the Small Business Committee. And small businesses in our communities are really hurting, as are community banks.

Among the things that we have talked about with the Federal Reserve Chairman is the issue of how community banks sometimes have loans that are performing, that every year the borrower is making the payments, principal and interest. But when bank regulators come in and look at those loans, they are worried that the asset that is backing that borrower might be a little shaky, so they might require the banks to write down that loan even though it's performing. I know that the Federal Reserve Chairman says that should not be happening if the regulator is the Federal Reserve because they've instructed their regulators not to do that, but we also know there are multiple regulators, including the Department of the Treasury, the Comptroller of the Currency, and some of these regulators are still requiring that these loans be written down. That is a tremendous disservice to our community banks and to their borrowers whose loans are performing.

I yield to the gentleman from Colorado.

Mr. COFFMAN of Colorado. Well, thank you, Congresswoman LUMMIS.

That certainly is the case. I think that smaller banks in the United

States are paying for the sins of the larger banks. The Comptroller of the Currency has just come down on these banks and has mandated a 20 percent increase in their capital requirements, and that forced them, as well, to pull back on lending. And so credit is really the lifeblood of small business, and small business is the economic engine in terms of jobs for this country.

Small businesses in my district and districts across this country are hard hit right now in terms of credit, in terms of their ability to get extensions on their credit lines and their ability to fund capital purchases. All of these things have led to downward pressure in terms of their ability to be that employer, that engine that drives this economy.

Mrs. LUMMIS. Indeed, we are finding that there are changes in our economy that are going to exacerbate some of the problems that we have discussed.

Here is another fund chart. I want to point out that some of the things that I am discussing tonight have been influenced by an article that I read in the *National Journal* by John Maggs, which I commend to your attention. The date was Saturday, November 7, 2009, *National Journal*. The name of the article, "The Debt Problem is Worse Than You Think," not a very uplifting title, but I think very reflective of the problems that we are in and that we, on a bipartisan basis, need to begin to address after the first of the year.

This chart I found to be tremendously interesting. The source, again, is the Congressional Budget Office. Look at how, in the 1970s, which are represented by this quadrant of the chart, then followed by the eighties, nineties, and this first decade of the 21st century, look how much defense accounted for as a percentage of the Federal budget near the end of the Vietnam War, or, I guess, 1969, probably about the height of the Vietnam War. A tremendous amount was spent on defense and very little on medical care for the indigent and the elderly as a percentage of our Federal budget; whereas, Social Security and non-defense discretionary funding—which is, of course, what we spend most of our time talking about here in Congress—have been remarkably stable over that time.

Defense has dropped dramatically over time. Here you see the decade that then caused the buildup into the end of the Cold War. And then you see a declining, the "peace dividend" as we called it, during the 1990s, which allowed Congress and the President to balance the budget. It has stabilized at a point of about 20 percent, even in this decade that we have just completed.

So it's amazing how much defense has declined as a portion of the Federal budget. But what is equally amazing is the amount in which Medicare and Medicaid have risen as a portion of our

Federal spending and increasing. This is an ever-increasing line, the red line, because of people like the three of us in this room. We are all baby boomers, and as this massive generation approaches retirement and Medicare, that number is just going to go up and up. So unless we address Medicare in particular as part of this commission that you mentioned, we are not going to get there.

I yield to the gentleman from New Jersey.

Mr. LANCE. Thank you very much for yielding, Congresswoman LUMMIS.

In 1982 and 1983, President Reagan established a bipartisan commission to deal with the issue of Social Security. Based upon that bipartisan commission, action occurred here in the Congress with the support of the administration that had the result of making Social Security solvent for almost a generation. We now have another challenge regarding Social Security, and particularly Medicare and Medicaid. I think we should replicate what occurred in 1982 and 1983 with a Republican President, President Reagan, and a Democratically controlled House of Representatives—and the Democratic Party controlled the House of Representatives from 1954 until 1994, for 40 years. We should come together in a bipartisan fashion to establish another commission to deal with the enormous Federal debt. This commission could also have the responsibility perhaps to discuss and evaluate the Medicare and Medicaid and Social Security issues. Perhaps there should be a second commission for that.

But it is clear, based upon the chart that Congresswoman LUMMIS has in front of the Chamber, that Medicare and Medicaid are rising rapidly. The largest cohort is the baby boom generation, those born between 1946 and 1964. Those of us who are on the floor this evening are in that generation. Obviously, Congresswoman LUMMIS is at the end of that cohort, whereas Congressman COFFMAN and I are in the middle of that cohort. Let me say that it is the responsibility of us working together to address this issue.

Let me also say that we count funds that go into the Social Security Trust Fund as part of Federal revenues. If we had segregated them separately, our annual deficits would be even higher than they are. And when I state that the deficit for the year that ended September 30 of roughly \$1.5 trillion—precisely \$1.47 trillion—that includes the monies that are paid into the Social Security Fund. So if we were to place them in a separate pot of money, the annual deficit would be even higher than it already is.

Mrs. LUMMIS. Will the gentlemen yield?

Mr. LANCE. I certainly will.

Mrs. LUMMIS. Will the gentleman remind us to whom has the so-called Social Security Trust Fund been lent?

And I yield back.

Mr. LANCE. Thank you.

It has been lent to the fact that we are funding these programs that we cannot pay, and really the deficit is much higher than that. And Medicare will be in the red in the next several years, and Social Security not too far beyond that.

Mrs. LUMMIS. Will the gentleman yield?

Mr. LANCE. Certainly.

Mrs. LUMMIS. Are you telling me that Social Security dollars that Americans paid into a Social Security Trust Fund have been lent to the Federal Government to spend on these programs we've been discussing tonight?

And I yield back.

Mr. LANCE. I thank you for yielding, Congresswoman.

Absolutely, 100 percent accurate. It is not going for the purposes for which it was intended based upon the Social Security program established in 1935. I do believe that those who established the Social Security program—Franklin Roosevelt, distinguished Members of Congress, including Sam Rayburn, Francis Perkins, the Secretary of Labor—that that generation would be appalled by how we use Social Security funds in this year of 2009.

And I yield back to the Congresswoman.

Mrs. LUMMIS. And I yield to the gentleman from Colorado.

Mr. COFFMAN of Colorado. Thank you, Congresswoman LUMMIS.

I think there is a fear of the American people, as well as some of us in Congress that are here tonight discussing this issue, and that is that the health reform bill that has passed the House and they are debating iterations of it over in the United States Senate, that both versions—the one that is being debated in the Senate that we're aware of and that which was passed in the House—plant the seeds for new entitlements. And so I think that the American people are distrustful because they know what government promised in terms of what the impact of Social Security would be. They can remember what the impact of what Medicare would be and how explosive the realities of those are in terms of Federal deficits, and now the rising debt for this country, and how damaging that will be. And so I think there is real concern, and that concern is very legitimate.

So I think that before the Congress of the United States engages in new entitlements, it needs to take care of the ones that we have and get them under control so that they don't totally envelop this country's budget and capacity to borrow.

Mrs. LUMMIS. Will the gentleman yield?

Mr. COFFMAN of Colorado. Yes.

Mrs. LUMMIS. Is it true that the health care bill that passed the House

of Representatives a few weeks ago accumulated about 10 years of taxes and fees to pay 6 or 7 years of benefits?

And I yield back.

Mr. COFFMAN of Colorado. Thank you, Congresswoman LUMMIS.

Yes, that's accurate. Because what it did is the—I don't think the benefits were effective until 2013, but the taxes started right away. And so it is deceptive in terms of saying that—you have to use some fuzzy math, some new accounting, new age accounting, to be able to say that it's deficit neutral.

Mrs. LUMMIS. Will the gentleman yield?

Mr. COFFMAN of Colorado. Yes.

Mrs. LUMMIS. Are you saying that, then, 10 years of taxes are going to begin right away under the House health care bill and the benefits are not going to begin to be paid out until year 2013?

Mr. COFFMAN of Colorado. That's correct.

Mrs. LUMMIS. And so what happens at the end of 10 years?

Mr. COFFMAN of Colorado. Well, as in all, it seems, programs that Congress starts, unfortunately, historically they've been financially disingenuous, because at that point in time, clearly we are moving forward into a deficit situation.

□ 1930

Mrs. LUMMIS. You are telling me that there is going to be a structural deficit in the very health care bill that we passed, in addition to the structural deficit we have been discussing tonight?

Mr. COFFMAN of Colorado. Welcome to government accounting, and I think that that's unfortunate.

I would hope that the American people would grow to understand this particular issue and ought to express their concern to their Members of Congress, because we already have deficits and debts that are out of control, and I believe that can very well choke off the ability for this economy to ever recover because of interest rates and inflation that are derived from deficits, prolonged deficit spending. This is merely going to exacerbate the problem.

Mrs. LUMMIS. I thank the gentleman from Colorado for raising that point.

Mr. LANCE. This has the potential of bringing about generational conflict, because we rely on the working generation to fund programs through the taxes that they pay, not only the income tax, but also payroll taxes such as Social Security and Medicare. If the next generation, beginning in the workforce, is going to shoulder this tremendous burden regarding our debt, and, in addition, shoulder a tremendous burden regarding Social Security and Medicare and Medicaid, there is the potential of generational conflict.

It is incumbent upon those of us who serve here to make sure that that generational conflict does not occur. It is the height of irresponsibility and, might I suggest, it is, indeed, immoral to place on the backs of the next generation this ever-increasing Federal debt. This is new in its percentage.

As you have rightly pointed out over the course of the last generation, spending has been at roughly 20 percent of GDP. It is going to expand greatly, and the chart indicates, to 25 percent, and some have indicated—some economists have made it, increased it to 30 percent of GDP. That is a dramatic and unprecedented expansion.

The yearly deficit for the fiscal year that just ended on September 30 was the most amount of money, as a yearly deficit, as a percentage of GDP, since 1945 at the very end of World War II, when we were fighting for our existence and, obviously, during World War II, the most extensive war in the history of the human condition. We were in a situation where we had to have deficit spending.

But the fiscal year that ended on September 30, 2009, had the highest annual deficit as a percentage of GDP since 1945. Let me repeat: That I believe that in this new fiscal year that runs from October 1, 2009, until September 30, 2010, we are likely to have an annual deficit that approaches the \$1.5 trillion annual deficit of last year.

This is simply unacceptable. Before we raise the debt ceiling, as the majority intends to do in the next week, we should have a fundamental discussion about where we are headed. We certainly should have an up-or-down vote in this regard.

I have written the Speaker of the House for an up-or-down vote. I am joined by freshman Republican colleagues in this request and, instead, we are likely to have a vote that is part of a larger appropriations act for the Defense Department.

Mr. COFFMAN of Colorado. Congresswoman LUMMIS, you and I were both State treasurers; you from the State of Wyoming, myself from the State of Colorado.

One thing that we had, I am sure that you had in the State of Wyoming, was a balanced budget requirement that every year we had to balance the budget. It created a sense of fiscal discipline where you had to make tough decisions in terms of tradeoffs. You simply couldn't have everything and drive your State into deficits and further into debt.

What is absolutely essential to have in the Congress of the United States is a balanced budget requirement where the tradeoffs have to be made, where hard decisions have to be made, where there has to be a reference point that at the end of the day, revenues have to equal expenditures. Without that, I

really fear for the future of the country, I think, for the first time in my life, when we look at these deficits, when you look at the debt, when we think about the future of the country.

I know that Democrats have pointed to Republicans and said, well, you did it in the past. Now it's our turn.

Well, but, you know, I used to use that with my mother when I was growing up. I used to say all the other kids are doing it. My mother didn't buy it, and the American people aren't buying it today.

The American people aren't buying it, and they realize, I think, that they have unease about what is going on in the Congress of the United States. They have an extraordinary feeling of insecurity about what is happening in this country, not simply because the way the economy is right now, but they understand that the political class in Washington, led by the majority party, is pushing this country over a cliff, and the American people get it.

Mrs. LUMMIS. The alarm you expressed is shared by others. I would like to quote one sentence from this article to which I referred earlier by John Maggs in the National Journal, "The Debt Problem is Worse Than You Think," for your reaction.

"Simply put, even alarmists may be underestimating the size of the problem, how quickly it will become unbearable, and how poorly prepared our political system is to deal with it."

Your reaction?

Mr. COFFMAN of Colorado. Well, the tragedy of what I have seen in my first year here in Congress, as one of your fellow freshmen here, is that it is all about the politics of the moment. It is all about the immediacy of how can we placate the American people through spending and not the consequences of what's going to happen to the next generation.

The only thing is that it's done at such a rapid pace right now that it's going to envelop this generation even before it hits the next generation in terms of its adverse effects.

I just think it's extraordinary. Again, I believe that the deficits are such, and I think the American people are beginning to understand, that unless Congress can control its spending, that the ability of this economy to ever fully recover, that the consequences of this level of debt, in terms of higher inflation, in terms of higher interest rates, will choke off this economy's ability to ever fully recover.

In addition, the situation is so bad that internationally the focus is on the United States and the mismanagement of fiscal policy, where you have a country like China, the largest holder of U.S. public debt, foreign holder of U.S. public debt, stating their concern about what America is doing to itself.

Mrs. LUMMIS. Are you prepared to say that the Republicans were wrong

when they simultaneously passed Medicare part D, the Bush tax cuts, and tried to sustain that during wartime. Are you prepared to say that?

Mr. COFFMAN of Colorado. They were absolutely wrong. There is no question about it.

Mrs. LUMMIS. I would like to ask the gentleman from New Jersey, do you agree with that? Do you think we were wrong?

Mr. LANCE. I campaigned last year against the policies, when it was a Republican President and a Republican-controlled Congress that had these deficits. I point out that over the 8 years there was a \$2 trillion deficit. That was too large. It's even larger now, and we have to work in a bipartisan fashion to get this under control.

Let me also say that I commend both the Congresswoman from Wyoming and the Congressman from Colorado, both having been State treasurers, because you had constitutions in your State that required a balanced budget.

Unfortunately, in New Jersey, we have had a system where we have borrowed without voter approval for about 15 years. That was put to an end last November when we changed our State Constitution. My constitutional amendment, the Lance amendment, that prohibits further borrowing in New Jersey without voter approval. New Jersey is in the equivalent situation of California, and we have not discussed here the fact that there are quite a few States, including California and New Jersey, that have tremendous annual deficits.

Of course, this comes out of the other pocket of taxpayers' in these States, and taxpayers are burdened not only here at the Federal level but at the State level as well.

I certainly agree that we have to work in a bipartisan capacity. I also agree with my colleague from Colorado that simply because, in the first decade of this century, the 8 years from 2001 to 2008, there was a deficit of \$2 trillion, that does not mean that we should continue on this route and, indeed, accelerate on this route of irresponsible spending. Two wrongs do not make a right.

I agree with my colleague from Colorado. My late mother, when my twin brother and I were children in the little town of Glen Gardner, Hunterdon County, New Jersey we would say other children are doing this. My late mother would say, I don't care what other kids in Glen Gardner do. You are not going to do that.

We have to acknowledge that, what occurred in the past, recognize that there has been overspending. There is overspending now. It has accelerated, a yearly deficit of \$1.5 trillion, to be replicated, in my judgment, this year. This will mean leadership will pass to China or to some other Nation in the world. And all of the democratic values

we share together, freedom of speech, in which I am now engaged, freedom of association together here on the floor of the House of Representatives, freedom of religion and all of the other values we share together, is ultimately based on American leadership.

We do not want that leadership to pass to some other place on Earth, to China, to India or to some other country as a result of these massive Federal deficits year in and year out and an overall Federal deficit now of \$12 trillion and rising, based upon nonpartisan Congressional Budget Office analysis, to \$20 trillion in the course of the next 10 years or so.

Mrs. LUMMIS. It is the rare man who has a constitutional amendment named after him. The Lance amendment in New Jersey will help right the ship in New Jersey. We compliment you for that work.

We are now about to begin to summarize. I would ask the gentleman from Colorado to summarize this evening's discussion.

Mr. COFFMAN of Colorado. As freshmen we went to an orientation where part of it was on the financial crisis which has morphed into an economic crisis. And we had economists from all political stripes brief us. They said, You know, that it was right to do a stimulus, it was right to deficit spend, but it had to be very temporary. It had to end with 2010 because the economy was expected to improve and you didn't want public-sector borrowing colliding with a greater demand for private sector-borrowing.

It also said that it also needed to be timely and that it needed to be fast-acting. Unfortunately, it hasn't been. Also it needed to be targeted, and they differed about what being targeted was. But it was interesting, the fact that they all felt you had to start controlling the deficit by the end of 2010 or you were going to have dramatic effects on the ability of the economy to fully recover.

It seems that when we look at this \$787 billion stimulus bill, more money, I think, will be spent in 2011 than has been spent this year. It hasn't been fast-acting. It certainly isn't temporary, and it goes on, and I would argue that it is not targeted, although the economists differed on what was targeted.

One thing they did say: They questioned if you went to the bureaucracy, if you chose government to be the stimulus, would it be fast enough? Could the government bureaucracy and the Federal Government move the money through fast enough? Clearly we have been able to see that it hasn't been able to get the money out the door to make a difference to the economy.

Mrs. LUMMIS. I wish to thank my Republican colleagues this evening, the gentleman from Ohio, the gentleman

from New Jersey, and the gentleman from Colorado. We are hoping that in the next year we will see a bipartisan effort to address this problem.

#### JOB CREATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentlewoman from Ohio (Ms. SUTTON) is recognized for 60 minutes as the designee of the majority leader.

Ms. SUTTON. I am pleased to be here with my colleague from New York, Representative PAUL TONKO. I am BETTY SUTTON, and I proudly represent the 13th Congressional District of Ohio.

I am a member of the Task Force On Job Creation of our caucus and, in fact, I am the co-Chair. Mr. TONKO serves on that committee, and we are here today to talk about just that. We are here to talk about the need to create jobs, jobs, jobs in this country, both in the near term and for the long term that will be sustainable for our constituents and people across this great country.

As we move forward, we have to make sure that we secure an economy that will work for and with ordinary Americans, because we may recall that before the Bush recession began, the reality of it was we had an economy that wasn't working for many Americans already before it went off the cliff.

As we revitalize our economy, it's incredibly important that we don't just go back to the old ways where Wall Street ran rampant and Main Street suffered, but that we create and—facilitate, I guess, is a better word—facilitate an economy that will work for and with ordinary Americans, and that the prosperity of this great Nation and the promise of a middle class will be restored. That is what America is at its best, where the promise of a middle class is vibrant and well and thriving.

□ 1945

So before the recession, before the Republican recession hit, the reality is productivity and profits were up, and as I said, Wall Street was reveling. And ordinary Americans, what was happening to them? Their wages were flat, at best.

So the task force is here to say enough is enough. We need an economy that offers economic opportunity to people who live in neighborhoods across this country, who live in rural areas across this great country, not just those who make a living on Wall Street.

So, though the actions that we've taken already, the American Recovery and Reinvestment Act, have been helpful to many, and, in fact, the CBO has estimated, actually found that it has already created or retained 600,000 to 1.6 million jobs, we still have an unemployment rate that is staggering at 10

percent and nearly 16 million Americans out of work. So, far too many Americans across the country are without a job and far too many more are concerned about what tomorrow will bring. Forty percent of those who are unemployed have been jobless for at least half a year.

So we know, Representative TONKO and I, that we have to put people back to work, and it is not a simple task but it is an ongoing task. In fact, I'd say it's a mission because, you know, I have heard it said that we're in a jobless recovery.

Have you heard that, Mr. TONKO?

Mr. TONKO. Yes, I have. And that certainly doesn't cut it with the American public, with middle class working families across the country. It simply does not cut it.

But, Representative SUTTON, I do want to commend you for the leadership as co-Chair of our task force on job creation. And I found your introductory comments to inspire a thought: Let's really look at how this started.

We went from a record surplus under the Clinton administration to a record deficit. Had we stayed the course, the deficit reduction plan of President Clinton would have been completed. It would have completed its mission this year. We haven't seen deficit wipeout except for one Presidency, that of Andrew Jackson. So this could have been an historic year if we had stayed the course. What we found was that people will talk about the deficit, which the deficit has driven this recession which went longer and deeper than any forecasted, and now it's the daunting task of all of us who serve here in Washington to stop the bleeding. And great indicators out there suggest, many key indicators suggest that that has happened, as you alluded to, with 1.6 million additional jobs coming into the picture, direct and indirect measurement. We have also seen corresponding to that a .3 to a .9 percent reduction in unemployment. That at least is welcomed news that we could stop the bleeding. But now the overwhelming task, the challenge, is to grow this economy. And how are we going to do that?

There are a lot of needs out there that require us to create those jobs, to funnel the resource to those jobs so as to improve America's competitiveness. We are asking our businesses and our workers to function in a global economy, and there are investments that we can make, Representative SUTTON, that will take us out of this economic catastrophe and allow us to climb back.

But the last 8 years have been devastating. They have put us into a deep financial hole. And as we cleaned up the mess, as we put the war in Iraq online in the budget, as we took the doughnut hole that was created that

has hurt our seniors who are Medicare eligible as they have had to reach into their pocket to work with Medicare part D's doughnut hole, that was not put online in the budget in a way that really reflected the costs of these programs. So now we have truth and honesty in our budgeting, but that has produced an even deeper deficit because we're doing it with fairness and frankness.

Now, with the task force and many Members in a bipartisan bicameral way, we hope, we can then get to the picture of job creation. And that's what it's about right now in Washington. How can we create the programming that will allow for the increase of jobs, be it in the energy-related field, in manufacturing, in our parks, in our municipal levels of government with public safety, fire, and police numbers, teachers in the classroom? All of these efforts need to be brought in and built, if we can, and we must build an innovation economy that will be sparked by our growing the competitive edge for our businesses so that we can win and retain and grow jobs.

Ms. SUTTON. Representative TONKO, I know this is your first term, but it's hard to believe. I have to tell you, we are very inspired to have you here, and you didn't arrive a moment too soon.

The point that you make about the deficit, turning the surplus that was well established under President Clinton into such an extraordinary deficit under the last administration is a point that is a reality and, unfortunately, is one that we have to deal with; right? Because, you know, fighting two wars that weren't paid for and, as you point out, a lot of the costs done offline that weren't budgeted for.

But it wasn't just an economic deficit that was created; it was this jobs deficit that was created that we also are here to deal with not only tonight but until we resolve it. It has to be our mission.

Mr. TONKO. Right. Some were shipped off into a foreign economy. Others simply evaporated. And we saw in record numbers the losses that were out there because they simply could not compete and stay effective.

I meet people every day in my district, and I represent a capital region in New York State so that we have the benefit, the buffer, of public sector jobs. But our unemployment numbers are hanging near in excess of 9 percent. This is unacceptable. We need to do much more work as we go forward. And we applaud the efforts to date to take that surplus and apply it as a downpayment. But that's as it's seen, as a downpayment. There are many more installments to come in order for us to build hope in the lives of people, and that's what it's about.

You hear it. We've talked about it. I hear it in my district. The fear with

which people speak, the uncertainty of their tomorrow, the need for us to provide jobs for the youngest in society who are being released from higher ed who are in search of employment. Those who have been chronically unemployed, as you point out, before this recession hit and as it hit, chronic unemployment in many of our neighborhoods. All of this has to be taken into a full-picture view and create those situations that allow us to be competitive. And I think we can do it.

For instance, in the energy-related areas, we can grow jobs of the green collar variety. We can reduce demand for energy in this country. We're the most gluttonous society as it comes to use of our energy supplies. We send hundreds of billions of dollars into the treasuries of unfriendly nations, those who inspire terrorist activities in our country and around the world. We're sending hundreds of billions of dollars there. And do you think we could move forward with an energy security agenda, growing our energy independence, providing for energy audits, creating energy teams that can go into neighborhoods, allowing jobs for those who have been chronically unemployed or those recently unemployed, training, retraining programs through our community colleges to advance those energy audits and then to do the implementation of the audits as they're developed? These are great jobs that reduce our demand of energy through an energy efficiency program, allow us to create American jobs as we generate our supplies locally through embracing our intellectual capacity as a Nation, inspiring investments in R&D, research and development, and that will also deploy these ideas that are coming from public and private sector R&D centers, put those into working capacity for our Nation's people.

It's the cleverness. It's standing back and having a heart and a soul for our working families. And you know we can do it. You know that we have the capacity here as a legislative body, as the two bodies of the Capitol here in Congress, in working with the White House. We can make it happen, and the will must be there because we have the way and the means to make it happen.

Ms. SUTTON. Well, Representative TONKO, you put it well, and I know that you speak for your constituents and so many people out there in America who are feeling what we're speaking to and about. And you're absolutely right. They know that they cannot wait any longer, that we can't have inaction because inaction is far too expensive. It's far too expensive in not only lost wages, in, of course, being held hostage to foreign regimes that are unfriendly to us in the area of energy.

We need to pass measures, some of which we already know are tried and true and are necessary. We need to invest in things like our infrastructure,

because we know that investment in infrastructure puts people to work right away and also is accomplishing the creation of real value.

You know, one of the things that was pointed out by you and is such an important fact about how we got to this level of a jobs deficit in this country was the loss of manufacturing and the loss of this country's investment in creating real value, and, instead, so much was put on Wall Street. Wall Street took hold of the opportunity, with very little hindrance on greed being the operative way of proceeding, and as a result, they ran rampant, creating pretend value, trading and pretend value. And as a result, in Ohio, for example, bad trade policies and this reckless way on Wall Street, the lack of attention to manufacturing and its importance to the strength of our Nation and, in fact, the national security of our Nation, Ohio, since 2001, lost hundreds of thousands of jobs. That was long before the recession began.

So we know that there are certain things that will help us, and, of course, the job creation task force supports this idea, that we have to build and strengthen our Nation's crumbling infrastructure. And I'm inspired by your words about the innovative spirit and all the potential that exists in this Nation. Well, some of that potential needs to be applied to our legislation, because while some of the ways that we have pursued things in the past are tried and true and we need to move forward in those veins that work, we also need to think creatively.

You talked about the environment. Representative TONKO, you're well aware that I was the sponsor of the CARS Act, which became known, affectionately, I hope, as the Cash for Clunkers bill. But the thing about Cash for Clunkers was it shot down the old paradigm that it's either about jobs or the environment. It was about jobs and the environment. And we shored up the jobs in the auto and related industries that people across this country depend upon for their livelihood and the ramifications and the ripple effects, taking people off of unemployment, giving them the dignity and the opportunity to work a job, and at the same time achieving improved environmental integrity and helping consumers to get something that they need during these difficult economic times, and it went right to them.

So it matters where you aim. No more just aiming at Wall Street, because we can't have a jobless recovery. There is no such thing, in my view, is there, Mr. TONKO, as a jobless recovery that's meaningful?

Mr. TONKO. Not at all, Representative SUTTON.

Again, I applaud your efforts with Cash for Clunkers. You were a leader in making that happen. And you talk about the merit that that brought, but

let's talk about the ripple effects that it inspired. Dropping that pebble into the pond and having those ripple effects reach into the auto industry, not only did it inspire people to trade in an energy-inefficient automobile, but they were now purchasing an efficient automobile and they were sparking additional production for our auto industry, which is absolutely important.

□ 2000

So some of these actions that we take have positive follow-up actions. There are direct and indirect hits, and all of that grows jobs, grows opportunity and speaks accordingly—favorably—to an energy plan, to an environment plan, and to an economic recovery plan. So, across the board, all of these plans are responded to in a progressive fashion.

The same is true, as you made mention, of the infrastructure issue. We think traditionally of roads and bridges. Well, many of those bridges that are measured "deficient" need to be addressed for public safety purposes. It also responds to the ironworkers across America who will have to provide for the supplies, and it responds to all of those who work in the industries, in the trades, who are connected to the ordinary transportation construction projects out there. It is the cement manufacturers and those who are providing all of the resources that are required. All of that produces more than just construction jobs on the scene. There are many ancillary industries that are favorably bolstered simply by this investment.

When we talk about infrastructure, we can't stop just with roads and bridges. We need to look at the most efficient form of travel, that being rail, and we need to look at building into that today's ahead-of-the-curve sort of responses with high-speed, energy-efficient rail. Again, that requires embracing R&D so that our brightest science and tech minds can create efficient braking systems and efficient cars that can be utilized in the rail transportation corridors. All of that inspires progress, and it allows us to take some of the brightest minds who can help us with the intellect and with the discoveries that we require, but it also involves a full spectrum of employment—from trades individuals over to the Ph.D.'s. So we cover the full spectrum of jobs out there, and we provide, again, hope for American families.

You know, I think it is important also for us to look at the measures that we can inspire and encourage that find us working with the deployment of these wonderful innovative and ingenious measures that are used now by other nations.

Recently, the SEEC Coalition in Congress, of which I'm a founding member—and it's a brand new vehicle this year, the Sustainable Energy and Envi-

ronment Coalition—has been bringing in guest speakers. We had the most recent former Energy Minister of Denmark in to speak to the group to talk about the innovation that Denmark was doing with its economy on energy-related matters. Afterwards, I spoke to him. Representative SUTTON, what he said to me was so telling.

I asked him, What was the inspiration? Where did you reach to get these ideas that transformed the energy outcomes for Denmark?

He smiled broadly and said, Many of them are American patents.

We have not provided for that funding mechanism to take the whiz-kid ideas in the lab and in the R&D centers—both public and private and at academia. We have not provided the funding to deploy those into manufacturing or into retail use so that we can get the return on investment that was made. The Angel Network, the venture capitalists—that "valley of death" as it is labeled—needs to be addressed. If we do that, we are providing more jobs, not just in R&D, but by inducing wiser manufacturing operations.

You know, you talked about manufacturing and the heyday of which we all know of the manufacturing that was here. I represent a series of mill towns, which is a necklace of communities along the course of the Erie Canal and the Mohawk River. They were the Westward Movement. They were the epicenters of invention and of innovation, staffed many times by immigrant labor that created those ideas, which allowed us to rule the world. We created the Westward Movement with that sort of canal activity and those mill towns. Today, those mill towns have gone rusty, but we can save manufacturing in America if we do it smarter. We don't have to do it cheaper. We need to do it smarter.

With the emergence of nanoscience in this country, there is a nanoscience center in the capital region of New York, which I represent, that just 2 days ago introduced an investment that will allow them to provide for precision characterization and inspection of product line development and manufacturing. This will take us a long way to being the best and the smartest, and that's the sort of investment that American workers deserve. America's families can have that hope brought into the fabric of their families simply by the wisdom that can be inspired with sound public policy here and by the investment of resources that can make things happen.

Ms. SUTTON. That's exactly right, Representative TONKO.

As you point out, these initiatives have massive effects for the good of the whole. You get the benefit of the R&D jobs, and you get the benefit of all of the spinoffs and the manufacturing. I mean, that is what built this country. That is what built this middle class that we aspire to.

I'm the youngest of six kids from a working class family. My dad worked in a boilermaker factory his whole life. Somehow, from those roots, in this great country, I was able to come to the House of Representatives of the United States. I take that responsibility so seriously because I know it's an unlikely story. It's an unlikely story that someone not born to wealth and privilege can sometimes come, in this great country, to a place like this to be a voice for people out there who only want a chance to do a hard day's work for a fair wage. We've gotten away from that in this Nation.

As to manufacturing, though, we might not make all of the things we used to make, but we will make other things—green energy products. We used steel to build the windmills, but right now, we're not using steel or our ingenuity, but there are so many out there in the United States with the capacity to do it and the desire to do it. They're just looking for a government that will work with them. That's what we're about—finding ways to work with them to accomplish these goals, to create the opportunity and to build the potential of this country that we all know that it has and that it shall always have.

So it is really a pleasure in the sense that the challenges are hard but that the potential is greater. The potential that we have before us outweighs the difficulties that we face, and we have to make that the case. That is our job here in Congress.

So I am glad to be down here tonight to talk about these issues with you because, among all of the highest of high priorities, in my view right now, as a Member of Congress, for the people whom I represent, it's jobs, jobs, and jobs.

Mr. TONKO. Well, Representative SUTTON, anyone who knows you picks that up as the mantra. You share that vision of a renewable form of energy in wind turbines that could be established.

You know, we don't have the luxury to sit around and let this opportunity pass us by. We will have failed generations of Americans if we do not advance a sound agenda for jobs in the energy arena and across the board with all of these aspects and dynamics of job creation. It's not like someone else isn't going to take over, because we are now seeing robust activity in India, in China, in Japan, in Germany, and in other centers around the world. So we have no choice. We cannot be lulled into a false sense of security. As if the recession, deep and long as it is and was, isn't enough and as if the job loss was not enough, we now are challenged by the actions of others who are moving past us.

So, for many, many fair and just reasons—and maybe it's something we don't want to acknowledge—we need to

move forward aggressively with a sound jobs agenda that will speak to the heart and soul of this Nation: the working families of this country.

Now, when you talk about energy transformation and jobs that can be created, isn't it ironic that we will hear on this floor debates about whether carbon emission is a reality in our lives, all while these job opportunities are passing us by? Delay here is costly, perhaps into the millions and billions of dollars. Carbon emission? Let's talk about job emission. Let's talk about the job loss because, as we go forward, it will be critically valuable if we can put that focus onto this job package as well as the infrastructure.

While we are talking about energy, water/sewer systems and water treatment centers, I would also say that, in my former life just before Congress—after my years of service in the legislative body of the New York State Assembly—I went over to NYSEERDA and led that authority. It is the New York State Energy Research and Development Authority. NYSEERDA had many problems it had worked on with energy-efficient water treatment centers. So here are ways to help local communities. Water is the commodity. They say, in the next 30 years, it will be transportation, water, and energy. We need to invest in that infrastructure. Let's do it in a state-of-the-art fashion where we are creating energy-efficient water treatment centers. Let's invest in these centers, and let's help local governments grow their job opportunities. One of the marketable strategies is to have an abundant and up-to-date water supply, a sewer treatment center so that you can have these facilities, that infrastructure, in your midst. I think that is so very important.

As you talk about the American Dream that your dad allowed you to dream that took you to noble levels, it began with education and higher education. So investing in the human infrastructure of education, investing in green schools and in improved schools at the school infrastructure, all of this needs to be part of our package. We know that leadership is responding to that jobs agenda. We know that, as a task force, there is a lot of homework to do.

You have rolled up your sleeves as co-Chair with Representative HASTINGS. The two of you are leading us, along with the chairman of the caucus, JOHN LARSON, and along with many of our standing Chairs, like GEORGE MILLER and, certainly, Speaker PELOSI. All of us working together can make this happen. There are great ideas that every Member is feeding this body, and we need to move forward aggressively but effectively and intelligently so as to create the package which is the greatest pronouncement of economic recovery that we can imagine.

Representative SUTTON, it is great to work with you. I am inspired because

of the sort of intellect that you bring to the discussion, and there are many people with whom we have partnered who have it within their hearts and souls and minds to make a difference.

Ms. SUTTON. Well, I am humbled by your words. You are very generous.

I have to say that there are those out there who, on the other side of the aisle—and sometimes we hear about how bad things are and, Oh, my goodness, but we don't hear solutions. You know what? It doesn't take a lot to identify the problems. The American people know what this recession has brought us. They know what happened as the deficit skyrocketed under the last administration and when the Democrats took over from the Republicans, who were in control of everything for many, many years. Now all we hear sometimes is just about how bad it is. Well, how do you think we got here?

So we are about solutions, and we are about continuing to work on it until we accomplish what we need to for the American people, because nothing ever gets done just by identifying problems. We have to make things happen because we get the results that we create.

Right now, we are living and are trying to fix the results that were created, not by the party of "no," as sometimes people refer to those on the other side of the aisle—because they weren't the party of "no." They were the party in control. They were in control when wages were flat for the American people, when productivity was through the roof and when the GDP was rising as well. So people were working harder. They were working longer, and they were getting less.

In fact, Representative TONKO, I'm going to go down to the well here because I have a graph that will show exactly what was going on.

Mr. TONKO. It's rather dramatic, and to think of what was happening with productivity on a curve and as to what was happening with GDP and with its curve and then contrasting that with the average American incomes, with the household incomes, it is a very painful but telling story.

Representative SUTTON, now that you are by the chart, explain for the American public, if you will, just exactly what was happening through this time frame. Again, there was a lot of work to be done to stop the bleeding. People ask, Well, what are you doing about jobs? What are you doing about the recession? Wait. This took a while to clean up, and now it is time to move forward with the Progressive agenda.

Describe for us, please, where this great recession began and just what the curves tell us on that chart.

Ms. SUTTON. Representative TONKO, last year, when the so-called "melt-down" occurred, there were a lot of people where I live, as they listened to the experts say, Oh, we didn't see this



coming, who were all saying, What? Are you kidding me? Because we've been living this for quite some time in Ohio.

Part of the reason they felt that way is that, if you look at this chart which is right here, it is entitled: Everyday people were struggling before the great recession began. Productivity, GDP, and median household incomes are reflected on this chart.

□ 2015

And what you will see is that while we saw for many, many years, while here is where our recession hits in a big way, according to the experts, what was happening as we built up to our big recession? Productivity and GDP were going through the roof, and this line down here with this big gap in between these two, this is what household incomes were.

Mr. TONKO. If you will suffer an interruption, if the gentlelady will yield, I think in simple terms what that is saying is some people were doing quite well and maybe perhaps realizing a bonanza and others were asked to live with what they've got and they stayed flat-lined.

Is that perhaps an easy way to place it?

Ms. SUTTON. That's a very descriptive way of explaining what happened. Wall Street was having a party and the American people were in many cases in the position of using credit even to pay for their most basic needs. Then, of course, we know what happened. There were a lot of people in this country who also were subject to ever-escalating fees and all kinds of issues that they faced as those credit issues mounted or they, for goodness sake, got hit with a health issue. Even those with insurance, we know so many were forced into bankruptcy. Why? Because their wages and everything were way down here. As productivity and GDP, somebody was making a lot of money, but it wasn't the American people.

Mr. TONKO. And whose pocket was it coming out of but the American working families. And so when we think about this, the work that we have to do, you know, somebody approved that there be no regulator, no watchdog over the financial sector. Somebody approved that. Somebody said, Let's create a doughnut hole and let people make a record bonanza on the pharmaceutical needs that our American seniors require. Somebody said, Let's give a tax break to the upper income strata and that will trickle down. Somehow that chart is telling us that was a fairy tale; it was fiction, not truth.

A number of these elements now come to haunt us. So bringing about regulatory reform in the banking industry, in the financial sector, a step done just a few days ago; making certain there was a tax cut for middle-income America in the stimulus package,

an historic, largest tax cut for middle-class America, part of the stimulus package; making certain that we now start putting down payments onto those issues like our energy infrastructure, which failed miserably in 2003, where we didn't invest in a domestic agenda; ending this off-line, off-budgeting of a war in Iraq that now is finally brought on-budget, to have truth and honesty in the budget.

All of this hit at once. And then investing in a stimulus to stop the bleeding. We had to bring things under control and now talk about the progress that needs to be made, needs to be struck, in not only bringing about jobs but inspiring an innovation economy, those meaningful jobs that will be uniquely American or provide for America's needs through her own workers and allow us to clean the environment, respond to a favorable progressive energy agenda and make smarter outcomes, the outcome at our manufacturing centers, and inspire investments in our public safety workers, our firefighters, our police, and bring back a strength in our education process that won't deny our future workers; our children are our present and our future.

All of this needs to be brought into one intelligent package, as you lead us, along with Representative HASTINGS, Representative LARSON and the leadership of the House under Speaker PELOSI. As we go forward, this will be very important now to create a smart investment out of what was a huge catastrophe where we went again, to repeat myself, from the largest surplus to the lowest deficit, the greatest deficit, and where we could have, had it stayed on course, reduced the deficit to zero in this given calendar year. What a tragedy for all of America, and now the task of building a smart response has begun through the task force and through the leadership of the House.

Ms. SUTTON. Representative TONKO has put it very well in identifying that there are many facets to what we have to do to provide the economic opportunity that the American people need and deserve.

What we see here is that even before the recession, they weren't getting the economic opportunity that they need and they deserve, because their wages were flat, while those at the top were, as I say, reveling in the process and their productivity, the productivity of the American worker.

Mr. TONKO. If I can just ask you to point on the chart what year where we're starting to see the dip for the average household income for Americans. It's in the year 2000, 2001, where it really begins to dip and just continued to decline throughout that 8-year period or so that really inflicted pain upon American households.

Ms. SUTTON. The gentleman from New York is right. It goes completely

flat before it falls off the cliff. It has been a struggle for a long time, in no small part because of what you point out. I have heard it said that there was no sheriff and so people robbed the banks. Well, then there was no sheriff and the banks robbed the people. We saw some of that in recent times.

And the American people are smart. They know what was going on, and they know how the economy was working for them. Now it was working a little better than it is for a lot of people now, but the reality is they still deserve better. And so we don't really want to necessarily go back to this place where there's a big gap and all the wealth is concentrated necessarily up here with the American people still not able to get by working two or three jobs.

But it doesn't have to be that way. We want people to make money in this country. We want capitalism to flourish in this country. We want to facilitate that. But people who work and contribute should be paid a fair wage, and they need to know the security of a job that is going to be there, that opportunity will be there for themselves and for their families, that they will have access to the health care coverage that they need.

That's a point I will yield on.

Mr. TONKO. Representative SUTTON, I will say this. Interestingly in that flat-lining of the red curve on your chart is that period, that 10-year stretch, where we saw health care insurance premiums more than double while that income, that average household income, remained flat. What a painful experience.

And then we all know through anecdotal evidence of the many stories of catastrophic situations where people were hit with—I can think of an example quickly—a 37 percent increase in insurance premiums over 2 years, and left with now one wage earner in a married couple household where they have to pick up \$18,000 in medical expenses.

This recovery requires bringing health care into a reformed situation, where there's affordability, accessibility, quality health care, making certain that our Nation's employers and the families are all benefited by flattening and then bending that health care insurance premium curve. There are so many pieces to the puzzle that are coming into play that this House, this majority, has advanced as high priorities: energy reform, health care insurance reform, job creation and retention, making certain that services are provided in our communities, relief to State governments. All of this is part of a package that will be put together in a very academically, sound manner.

And when we do that, I think the working families will be inspired by the sort of attention that they will get

because they have not received that degree of empathy, that sensitivity to their struggle and we have allowed this to go far too long. Finally now the recession, we hope, has stopped, the bleeding has been stopped, and we go forward now with the act of rebuilding, rebuilding an economy, but we need to do it cleverly. We need to do it in a way that responds to many of the policies out there that will drive this Nation in terms of smart outcomes, smarter manufacturing investment, stronger energy outcomes, a better and more sustainable health care insurance program. All of these underpinnings of support, along with the job creation, are essential so that the jobs we develop are going to be there for generations and where they will be cutting-edge jobs that have not yet been on the radar screen. If we can do that with the traditional mix of job sector out there, job elements that will be available for our families, then we will have responded in most wholesome fashion. Then we can step back and say that we have begun the process that now will bring a sustainable outcome, a recovery opportunity, and a strong sense of hope that we can build into the fabric of this country.

I think that we're onto the start of a long process. I chuckle when I hear people say, What have you done? The unemployment rate is so high. The people losing jobs are at this count. Where have you been?

I'm a new arrival. You have been working on these issues for the last term and a half. We have witnessed a major collapse that, as you indicated, was very predictable. All the indicators were telling us what was going on. But turning our backs to a situation does not offer comfort to America's jobless or even those who hold a job with great trepidation that they may not have that job much longer.

So, Representative SUTTON, your leadership in this regard, Representative HASTINGS, working with Representative LARSON and Speaker PELOSI, Chairman MILLER and our Majority Leader STENY HOYER, everyone coming together, working through the committee structure, putting this together in a forum that allows us to share openly and with great sense of vision, keen vision, we're going to make this happen. We're going to have a wonderful comeback, I believe.

Ms. SUTTON. I thank the gentleman again for his generous words and his points that are right on the mark.

You started out by talking about the costs of health care and how they've been just skyrocketing as the American workers' wages and American families have been flat; the burden that that has placed on people and the fact of the matter has led so many into bankruptcy. We all know these stories. We all know about those who can't get the care they need when they need it, and it is because of cost.

We hear people out there, some of the same people who brought us the Republican recession and this economy where wages were so flat for ordinary Americans, and they talk about how we shouldn't do this health care reform. The reality of it is, well, you know, no health care reform really wasn't working for the American people whose costs continue to skyrocket; and if we do nothing, the costs are going to continue to skyrocket.

The same is true about energy. There are those who may argue about the merits of what we do, but to do nothing is going to result in the same results that we've gotten from doing nothing, or not taking aggressive action, that brought us the Republican recession. And energy costs are going to go up and up and up while this economy has remained down here.

The good news is, as we take action to fashion this mission of job facilitation for the ordinary American families in this country that are its great strength, that it doesn't have to be this way, that we can all prosper, those who make the most as well as those who are in the middle and those who aspire to the middle class. That's the great promise of this great country.

You've pointed out a lot of the things that we need to do, in investing, research and development and innovation and infrastructure. You've pointed out how other countries in the midst of this global recession are doing that. That, too, is a factor that we can't ignore. We cannot stand still in these days. And to those who participated in bringing us the Republican recession that ended not only in such an increase in the deficit in this country but also resulted in the jobs deficit in this country, some of those same people, Representative TONKO, will stand here and say that it should be all about jobs, that we should be working on jobs.

□ 2030

Well, we are working on jobs. And I know that the CBO has said that through the ARRA, that we have saved or created 600,000 to 1.6 million jobs. And I say to those who have been complaining about jobs, who didn't vote for the American Recovery and Reinvestment Act, who brought us the skyrocketing deficit and the jobs deficit of the Republican recession, you didn't vote for the ARRA, so how many jobs have you delivered or saved for the American people in this short time as we pursue, as Americans, not as Democrats and Republicans, but as Americans, a path to recovery for ordinary families who need and depend upon us?

Mr. TONKO. Representative SUTTON, you're on to a very key factor. The third quarter of this calendar year saw most of the growth, if not all of it in our economy, as something related to the stimulus, inspired by the stimulus, not as great as we would like, some 3

percent, perhaps growth, with a reduction of .3 to .9 percent in unemployment. But it's a start. And I think that when we talk about the transformation that we can do with our energy agenda, with generation, with reduction, efficiency should be our fuel of choice, what we can do to reduce demand. All of that inserted into a sector like the manufacturing sector allows more jobs because we can reduce the cost of production which, again, the company is competing in a global marketplace.

We hear the stories. We hear the sad tales that are difficult. One in five children lives in poverty in this country. That is driving pain in the lives of so many families. When you hear stories like people having a job for 15 years in the manufacturing sector, now losing it; when I hear a dairy farming couple tell me that they don't think they can afford their daughter's high school graduation ring. We need to address all sectors of the economy, including our agriculture as a sector. The dairy industry needs to be responded to in a way where we provide those who work 24/7 a fair return for the market, for the product, the produce they bring to the market. There are so many challenges that behoove us to be at our very best. And now is the time, after all of this neglect, all of this destruction that was allowed to happen, it's a huge mess to have cleaned up. And now we go forward and, inspired by the many stories that are real in the lives of people that will inspire our process to respond to people, I think is so key, is so elemental. Elementary statements out there that are made about various factors that drove job reductions in certain communities can be addressed simply by doing it in a wise and sensitive manner.

There are the tools at our fingertips. We are creating that package that will respond to it. This will not be, if we have our say as a majority, I believe, a jobless recovery that is not going to render any sort of hope for people. It resonates with a flatness, with a pain more than a flatness. And so the charts tell it all. The American workers tell it even better when they are left without a job, the dignity of work. We need to be inspired by the past history that spoke to us, the years of Franklin Roosevelt, when a CCC and a works program, a WPA were developed, and they built this Nation and it responded infrastructure-wise to the needs of communities across this country, coast to coast. We have a pioneer spirit of which I spoke that was centered in the mill towns along the stretch of the Erie Canal that gave a westward movement, that brought itself first to Ohio, our neighbors to the West, and then inspired an entire world. We created product designs and invention and innovation that drove a wonderful agenda.

Our hearts are full of the pioneer spirit. It's the American way to solve

problems. That's truly the American spirit, and we can do it with the great agenda here.

Representative SUTTON, it has been so wonderful to be able to join you this evening and to work with you side by side on the task force for creating jobs. We have a voice that will resonate on behalf of the working families in this Nation, and we will talk about taking that curve and swinging it upward so that it's not a flat line in the lives of people, because while that red line looks painful, it's even more painful in the pocket when people realize that the job lost and the dollars lost and the opportunities lost are simply so real in their lives that they're counting on us to do our job and do it with tremendous sensitivity. I thank you for your leadership. It's been a pleasure to join you this evening.

Ms. SUTTON. Representative TONKO, we thank you for your leadership of all those you represent in New York and all those you speak for across the country. This is something that we can do in this great Nation, and we can do it together. We can do it. All of us within this Chamber have an interest in seeing our country prosper, and that's what the job creation task force is all about. And we will be back. We will be working in the meantime to make sure that we realize and we do our part to put forward the economic opportunity that the people that, as I said, we're so very honored to serve and represent, what they need and what they deserve.

#### JOBS AND THE RECOVERY

The SPEAKER pro tempore (Mr. MAFFEI). Under the Speaker's announced policy of January 6, 2009, the gentleman from Oregon (Mr. WALDEN) is recognized for 60 minutes.

Mr. WALDEN. Well, it's that season. The Christmas season is upon us. And I sort of felt like I must have been at the Nutcracker, because I haven't seen that much spin since the sugar plum fairies in the Nutcracker.

Let's talk about jobs and the recovery. Let's talk about fact and fact. When the American Recovery Act, the stimulus, was raced through this floor on a totally partisan move, we were told to expect that with the stimulus, as you can see here in this chart to my left, that this is what would happen to unemployment.

Now, remember, when the year started and President Obama took office and the Democrats claimed control of the Senate with a 60-seat margin, that can overrun any filibuster—60 seats—and a 40-seat margin here in the House means they are unparalleled in their power and control and ability to pass anything they want anytime they want and sign it into law.

When the year started, unemployment was at 7.6 percent in January of this year. High, by national standards.

No doubt about it. Highest it had been in many years. We were headed into a recession. No doubt about it. We'd been through unprecedented times. But we were told if the American taxpayers would just go out and loan the Congress, actually it's not the American taxpayers yet, it's our kids and grandkids that get to pay it back later. Right now we're going to the Chinese and the Japanese and the oil-producing countries and saying, Can you loan us the money? But that's the dirty little secret here. If you'll loan us that \$800 billion, whatever it was, here's where unemployment will end up. It's going to just barely go up and come out at about 8 percent. Oh, and by the way, we were told by some of the Democrats who were all for this that if we didn't pass the stimulus into law, that unemployment would go clear up to here.

Now let's look at what really happened. Many of us on the Republican side of the aisle said, That isn't going to work. Just throwing more taxpayer money you don't have, borrowing more money from foreign countries that already have loaned us more than they want to, and throwing that out in rapid succession may create a few jobs, but the long-term implications are dangerous for the future of this country because of debt. And you're not going to create that many jobs. Sure, in a year or two you can't help but create jobs, and we'll talk about some of those because a lot of them are created right here in the Washington, D.C. area, not out in real America, and are not sustainable. But we were told if we pass it, here's where we'll be with unemployment, at about 8 percent. If we don't pass it, gosh, we'll end up almost at 9 percent.

So they rushed it through here. The stimulus rushed through here. And now what are we at? We're over 10 percent unemployment. That's the red line. You see, some of us on the Republican side of the aisle actually come out of the private sector. We actually have signed the fronts of payroll checks like I have and my wife has. For 21, almost 22 years we were small business owners. We took over a very small family business, got it out of debt, on its feet and we grew it in 20 years. We employed 15 to 17 people in small communities in Oregon. I know what it's like to be a small business owner and comply with the heavy hand of government regulation and the burdens of taxation and all the things that you all in government think ought to happen because you know best how to create jobs. What a farce that is.

So we see what happens when you throw money at a problem: You waste it, and you don't create jobs. You see, Republicans did have an alternative. My friends and colleagues who were on the floor here earlier said that we had no alternative. Well, they know that's really not the case at all. In fact, the

Congressional Budget Office evaluated both of our plans and said the Republican alternative would create twice the jobs at half the cost.

Now, there are a lot of smart Christmas shoppers out there. Boys and girls, men and women, come closer. There are a lot of smart shoppers out there who look for bargains, and they say, If I could get twice the product at half the cost, that's a bargain. Unless you're the Democrat majority in the House and the Senate and downtown, then you want to spend twice as much and get half as much. You want to tell the American people, Pass my plan and I'll get you no more than maybe 9 percent unemployment, somewhere in the upper 8s. Actually, no, they said it wouldn't go above 8. That's right. They said it wouldn't go above 8.

Whoa. It was at 7.6 and now it's at over 10. And let's talk about what happened to that stimulus. So how did they spend the money? There was an interesting report out in *The Hill*—\$6 million borrowed from your kids and grandkids, actually borrowed from the Chinese, the Japanese, the oil-producing countries that buy our debt, and our kids and grandkids will get to repay this with interest. Six million of those dollars went to now Secretary of State Hillary Clinton's pollster.

I'm not making this up, folks. This is not a fairy tale. Two firms run by Mark Penn, current Secretary of State Clinton's former Presidential campaign pollster, received a total of \$5.97 million in taxpayer funds from the Democrat stimulus that you heard created all these jobs, solved all these problems. Burson-Marsteller, a public relations and communications firm run by Penn, received the funding to advertise the analog to digital television switch in 2008, reportedly saving three jobs at the firm. Three jobs. \$6 million. Of the \$5.97 million, \$2.8 million was also allocated to Penn's campaign polling firm, Penn, Schoen and Berland. At the end of the day, taxpayers spent \$6 million to save three jobs. \$6 million, three jobs.

How many of you go home to your constituents and say, in a town meeting, Can you loan me \$6 million, because I've got a brilliant way to create three jobs for Hillary Clinton's pollsters and public relations people to tell people in America that, by the way, you are going to switch from analog to digital on your TV which, by the way, they were very capable of figuring out on their own. We didn't need to spend the nearly \$2 billion that was spent in the overall conversion effort to educate the public. They got it. They're smart enough to figure this stuff out. And if they're not, they've got 12-year-old kids that can figure out how to make the DVD not blink and the VCR not blink. But anyway, \$6 million, two jobs. Two million on a dance theater.

Oh, this one you'll like. Los Angeles Times. The Minneapolis city council

recently voted to use Federal stimulus funds to convert a vacant, 99-year-old theater into a center of dance instead of funding a solar energy panel manufacturing plant that would have created seven times as many jobs. Now my friends who were talking before me talked about the green energy jobs. Well, here was a perfect opportunity, with your Federal tax dollars, to create green energy jobs and the Minneapolis city council decided to put it into a dance theater instead. The dance project will cost \$2 million and create 48 permanent jobs, according to the city.

□ 2045

Interestingly, in the spring newsletter, the theater estimated that completing the project would actually only create 26 full-time and part-time permanent jobs. So in their spring newsletter, they said 26. Now it's reported at 48. The solar energy panel manufacturing plant, meanwhile, that was in competition for that stimulus money received less than \$300,000, compared with the dance theater's \$2 million, yet the plant would have created more than 360 jobs by 2011. But they couldn't do the right, what is it, minuet? They couldn't spin just correctly. They weren't, I don't know, maybe they didn't have the right tutu on or the right shoes or something. They only had \$300,000. The dance theater got \$2 million.

Americans could have created 360 jobs in Minneapolis. They made that decision. Councilman Paul Ostroff was the single councilman voting against the Center of Dance saying "the theater wasn't creating enough jobs to qualify for stimulus money, whereas, the solar energy plant clearly fit the President's goal. It was a home run. It was a home run."

I told you a week or so ago about the \$95,000 being spent to study Viking-era pollen in Iceland. Viking-era pollen in Iceland, \$95,000. Having been a small business person I've helped create jobs, and I've watched every nickel. You do that when you're in real America. Not back here. When you're in real America and creating real jobs, and you're trying to get to something we call positive cash flow and maintain that, you watch every nickel. You don't let \$95,000 go out the door to study Viking-era pollen in Iceland. You make sure that you invest every cent correctly and effectively. You don't just spend money rampantly. You don't throw it out the door. It's too hard to earn. And you're trying to grow your business. You're trying to expand your business.

That's what the American way is about. My friend earlier talked as if the whole American recovery, the whole economy and the greatness that we have, originated because of some Federal programs in the Great Depression, the WPA the CCC. And certainly

they left a nice footprint behind with some of our fantastic park lodges and buildings. And they did some wonderful work. That is not the essence of America's economy. It doesn't start and stop right here in these two wells, the Well of the House or there at the leadership tables. We are not the innovators and creators of jobs. That is out there in America.

Ladies and gentlemen, in the real world, when somebody has an idea, they get a couple of people together who want to believe in that idea, and they put their money forward. They don't go take it from somebody like the tax man or woman does. They put their money at risk. And they say, if we do it a little better, a little smarter, we can be successful. We can create jobs. We can benefit from that. And by the way, it's our money at risk as private citizens. So, we're going to be real careful how that gets spent. We're not going to waste it on lavish offices and all these things. That's the real America out there.

You know what I'm talking about, small businessmen and women. You go behind the counter and behind the wall, and they have a broken-down chair and a computer that's sort of wired together that they try and keep operating, and they have paper piled around. I have been in your offices. I had one of your offices. I can show you the pictures and the piles. I know what it's like to work day and night to make your idea successful. That is the American entrepreneurial spirit that works.

And yet here in Washington under the party that's in power, they know no limit, no limit to Federal government involvement in your life. They know no limit to borrowing, spending, and believing that they should take over your health care. The Democrats want to put a bureaucrat between you, your insurance company, and your doctor. It's bad enough with the bureaucracy that's out there today trying to get health care. I paid for health care for our employees, my wife and I did, paid 100 percent of the premium. I know what those cost increases look like. We never could target enough to figure how much they would go up. And I want to do something to reform health care, and I have supported many proposals to do so.

The irony is the plans coming out of this Congress, these plans however, increase premiums on employers, drive up the cost curve on those of us who are trying to figure out how to make health care more affordable. The Democrats' plan actually drives up the cost curve, drives up the premium, puts mandates on individuals and taxes on small businesses and will cost millions of jobs long term and make America less competitive.

You don't think capital doesn't flow any more? You don't think we live in a global economy? For heaven's sakes.

You don't think we need to be on our best game and have the most efficient process available to create jobs and run a business? No. I sit here in amazement. I have spent all-nighters in my business trying to make it work. I have struggled trying to pay the bills, get up early in the morning, trying to figure it all out, trying to cut your costs, trying to create your jobs, save jobs during tough times. We were in business 22 years. I have seen the good times, and we were successful in the end. I have seen the bad times, and I know what that's like.

But I also know that it's important how you spend your money. FOX News reported recently the National Institutes of Health received \$8.2 billion in stimulus funds. I'm all for the National Institutes of Health. However, NIH is conducting a \$65,472 study on the relationship between HIV and sex in St. Petersburg, Russia. You think I'm making this stuff up, don't you? \$65,472 to study the relationship between HIV and sex in St. Petersburg, Russia. I won't even go there. \$700,000 on how taxes, trade, and politics affects tobacco sales in Thailand, Malaysia, Vietnam, and other nations in Southeast Asia. \$73,000—you'll like this one—to study whether the Asian tradition of dragon boat racing will enhance the lives of cancer survivors—\$73,000 to look at whether or not dragon boat racing enhances the lives of cancer survivors.

Why don't we put it into screenings? Oh, that's right. This is the administration that says, women don't really need to do breast screenings nearly as often or maybe at all. That's a report that came out of this administration. How absurd is that? Put your money in dragon boat racing, don't do mammograms. This doesn't make sense to me. And I don't think it makes sense to Americans.

We are looking at some of the other spending. How about this one: \$67,726 in taxpayer money to send staff to a customer service seminar, the Green Bay Press-Gazette reports. The Oneida Bingo and Casino outside of Green Bay, Wisconsin, used a Federal stimulus grant to send their staff to a customer service seminar. The 2-day seminar was held at a local technical college to teach the casino staff how to handle confrontations with customers.

These are the investments. Do you see why some of us, why every Republican voted against that stimulus? We knew it was going to be wasted.

Now let's go to the Congressional Budget Office because they said in the first year or two you can't spend that much money and not create a few jobs, even though they are probably short term. So I give them that. What they look at after that, though, is the debt service cost that actually becomes in the out years, years 3, 4, 5, 6, 7, 8, 9, 10, a debt drag on the economy. It will

cost us jobs because you can't borrow \$800 billion and not have to pay it back. Even the Federal Government needs to learn that lesson.

Let's talk about the debt, because I think that is the single biggest threat to our country's future, to my son's future, to your children's future, is this enormous theft, intergenerational theft I think Senator JOHN MCCAIN called it, where we're taking money from them. Actually we're just stealing their credit card, and we're using it like there is no necessity to ever pay it back, to buy things today that they get the bill for later.

At \$1.4 trillion, this year's deficit is more than three times that of a year ago. I want that number to sink in; \$1.4 trillion dollars this year is triple what it was last year. Oh, and who was President last year? That's right, George W. Bush was. So they want to blame the prior administration. And certainly we all had our complaints at times with any administration. But the facts are these: \$455 billion deficit at the beginning of this last fiscal year; this fiscal year, under Democrat control, House, Senate, White House, \$1.4 trillion.

As a share of the economy, it's 10 percent of gross domestic product. That is the highest level since World War II. Deficits, however, went up under both parties. That's why we need a constitutional amendment to require a balanced budget. The great State of Oregon has had that in its constitution for as long as I can remember, and maybe since Statehood. And it has forced the State legislature and the Governor to make tough decisions to balance the budget. Sometimes I have agreed with those decisions, sometimes I haven't. Sometimes they've raised taxes and sometimes they've cut spending. But at the end of the day, they had to balance the budget.

If you want to reform this Congress, you would require that this Congress, every time, and the President, regardless of party, has to balance the budget. You could have an exemption if you're at war or in times of emergency. I understand that the Federal Government has some unique roles to play. But this is spending with reckless abandon. This is out of control. Debt held by the public rose above \$7.5 trillion, or over 50 percent of gross domestic product, the highest level of the share of the economy in 50 years.

When Speaker PELOSI took over, it was at \$8.9 billion—trillion dollars. Sorry. It's so hard to keep track of billions going to trillions. We used to—well, I think 100 bucks is a lot. When you're spending taxpayer money, we're talking billion, millions, forget it; billions, we don't even go there any more. We are now talking trillions.

So when Speaker PELOSI took over, the national debt was \$8.9 trillion. Now why does that matter? The House con-

trols the purse strings of what gets spent. So whoever controls the House starts every spending bill. That's how the process works. It's simple civics. The House, the United States House of Representatives, this body, you men and women who are watching or here tonight know that that's how it really works. The President can veto it, but at the end of the day, it's the House and the Senate that get together. The Congress controls the purse strings. The House originates these things.

So \$8.9 trillion; the debt is now \$12 trillion. Every man, woman and child in America is responsible for at least \$39,000, and it's going up to \$45,000. Under the President's budget, the debt is projected to double in the next 5 years, triple in 10. It will be roughly three-fourths the size of the entire economy by 2019.

Now I want you to think about a debt that goes to \$17 trillion, \$18 trillion, \$19 trillion, \$20 trillion, and how you ever pay that back. When Republicans were in charge of the Congress and before the 9/11 attacks and the wars broke out, we actually paid down debt, half a trillion dollars worth. It was a proud moment for our country and for this Congress and for both parties. But it was really Republicans who drove it. We had a Democrat President. We worked in a bipartisan way to get it done, though. And the economy is strong. And we paid down debt.

Now go with me on this. Ladies and gentlemen, boys and girls, get closer to that TV because we're going to go through some math here. I was a journalism major, not a math major, but I think I can figure this one out. Twenty trillion dollars is at issue here. To pay it off, presume that Congress would have to run a surplus of \$1 trillion a year for a 20-year span and not spend it, actually apply it to paying down the debt. How many in this Chamber tonight think that's going to happen? Raise your—well, nobody raised their hands. Because nobody believes Congress will ever run a trillion dollar surplus under any condition and apply it to pay down the debt.

That's why these issues today in our country's life are so critical, because we have taken our kids' and grandkids' and probably great grandkids' credit cards and spent like there was no reason not to. And they're going to get the bill.

According to The Washington Post, when adjusted for the inflation, World War II, the Korean War, the interstate highway system, the Vietnam War, the race to the moon, and the Iraq War added up to \$6 trillion. We are now at 12, and we are headed to 20. In comparison, the government will borrow \$9 trillion over the next decade.

Now, let's go to a bill that just came up in this House Chamber. It's called the omnibus. Whenever you hear that word, shutter your children's eyes and

ears. Omnibus. It's really a bad thing. American families are hurting. Ten percent unemployment. Democrat leadership responds with a massive spending bill last Thursday. Last Thursday this came forward. And let me talk to you about that bill; 2,500 pages, nearly half a trillion dollars in spending, 5,000 earmarks on hundreds of pages, and we, under the Democrat leadership, we in the House of Representatives—do you know how much time we were given to read it?

Now I'm not Evelyn Wood. It takes me a little more, I'm not a great speed reader. We were given 2 days to read the bill since the conference report was filed.

□ 2100

Two days. Half a trillion dollars was spent. Two thousand five hundred pages, 5,000 earmarks, and we were given 2 days.

The omnibus contained appropriation bills—\$446.8 billion for those keeping track. So half a trillion, 12 percent over the combined funding levels for the same six appropriation bills last year. How many of you got a 12 percent raise? How many of you would just like to have a job? How many of you got a 12 percent raise? These six spending bills gave your Federal agencies a 12 percent increase in spending.

Now, there will be those that will say, Oh, but it was for this, it was for that. Everything is wonderful when you're giving it away. Everybody wants to be Santa Clause. There's a big bag in the back of the sleigh parked right behind the podium here, I'm convinced of it. There are more presents than there are kids right now when it comes to this Congress; the problem is we don't have the elves' workshop at the North Pole. We've got kids at home and families at home who are unemployed trying to figure out how to make ends meet. You would think that this government was running a huge surplus and would be able to help them, but no, we're running a huge deficit that hurts jobs, takes away jobs, and they spend 12 percent more.

Some of these bills, the Transportation-HUD bill was up 21.3 percent; State and Foreign Operations up 33.2 percent. In addition to the normal appropriations, the agencies funded in this omnibus received a total of \$128.2 billion in supplemental funding in the stimulus bill that we heard about earlier. So when you heard about this stimulus, the American Recovery Act and how evil it was the Republicans didn't vote for it, remember where a lot of that money went; it went back into the government. It didn't go out into middle America. It didn't go out into rural America. Some of it did, certainly, but it did not go very far outside of Washington.

So here is the final tally: The omnibus spending bill I just referenced

brings new spending for nondefense, nonveterans discretionary programs to a level 85 percent higher than 2 years ago.

Mr. POLIS. Will the gentleman yield for a procedural motion?

Mr. WALDEN. I will be happy to yield to my colleague.

#### REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. POLIS, from the Committee on Rules, submitted a privileged report (Rept. No. 111-379) on the resolution (H. Res. 973) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

#### JOBS AND THE RECOVERY— Continued

The SPEAKER pro tempore. The gentleman from Oregon may proceed.

Mr. WALDEN. Mr. Speaker, I assume that that is the rule coming out of the Rules Committee that provides for same-day consideration of four pieces of legislation. Would that be correct?

#### PARLIAMENTARY INQUIRY

Mr. WALDEN. Could I ask a parliamentary inquiry?

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. WALDEN. Does clause 6(a) provide for same-day consideration of the bill?

The SPEAKER pro tempore. The gentleman is correct that clause 6(a) of rule XIII addresses same-day consideration of a rule.

Mr. WALDEN. Thank you.

So what you've heard there is a procedural action that has importance because it comes right in the point I'm talking about with the omnibus, where we had 2 days to consider a bill that costs American taxpayers half a trillion dollars.

What is coming up next are the four "go home" bills. These are the four bills we've got to pass in order to wind things up before Christmas, and they will take these up tomorrow. I haven't seen them, have you? Have any of you? Nobody here has seen them. Maybe they have in the Rules Committee which just apparently has finished its work, but we haven't seen them. They will raise the debt. They will spend—well, I don't know. I'm told one of them is going to spend tens of billions of dollars; I don't know how much, don't know where.

There will probably be a continuing resolution to fund the government because the Democrats, who control the House by a huge 40-vote margin, 41, the

Senate with 60 votes, and the White House, even with that massive, overwhelming, powerful control, couldn't pass the budget bills by the time the fiscal year ended.

Now, in America, in real America—that's the area outside the Beltway of Washington—if you don't pay your bill on time, what happens? What happens? You get an interest penalty. What happens? Somebody says, hey, you're behind on paying your bill. When it happens here, nothing happens—except it will come November of 2010, I predict, because I think Americans have had enough of what's happened here.

But what happens here is they didn't do their work, they didn't finish the process, they didn't pass the budgets, they didn't meet the deadlines. So now we've punted into 2010 for the budget year we're already in. Both parties have done this. That's why we need to reform the process. But, hey, they control 60 in the Senate; that gets you past any filibuster, 60 votes. They control the House with a huge margin, and the White House, and not even with those margins, with single-party powerful control of both Chambers of Congress and the White House could they pass the budget bills. That's why you had the omnibus at the end of the week where they lumped six of them together and jacked up the spending by 10, 12 percent.

So here's the final tally: The omnibus brings the new spending for nondefense, nonveteran discretionary programs to 85 percent higher than just 2 years ago; 85 percent higher spending by the Federal Government. You want to know where your money is going? Out of your paycheck, into this body, and out into the bureaucracy.

So it should come as no surprise during this time—which tracks with the recession that has eliminated 2.9 million American jobs—the salaries of government bureaucrats have exploded. According to a story in USA Today, Federal employees making salaries of \$100,000 or more jumped from 14 percent to 19 percent of civil servants during the recession's first 18 months. And you wondered where the money is going.

Let's go back to the Republican plan because, once again, when it came to the deficit, a lot of us came out of the private sector, small business. Every business that makes jobs is a good thing, frankly, in America these days, but I happen to come out of small communities and represent a district that's 70,000 square miles of gorgeous country, high desert plateaus, forested mountain ranges, wonderful agriculture. We believe in renewable energy—hydro, wind, solar, geothermal. Renewable energy matters. It's a good thing. And Republicans actually have supported renewable energy—I have and will continue to as long as it's reasonable and doesn't jack up rates.

But you look at what's happening right now with the Speaker taking a government jet over to Copenhagen with a whole bunch of Members of Congress. They're going to go to that climate change conference.

Now, let's look at what happened here in this Congress when they passed the climate change bill, the global warming bill. I was on the committee that dealt with that legislation and it passed in pretty record time. It's a \$700, \$800 billion cost. But what does it mean to you as an individual American out there? Well, let me tell you. If that becomes law, it means the loss of probably 2 to 5 million American jobs because companies will look at all requirements and say either, I can't afford to continue to operate and I'm closing my doors, or I found a cheaper place to manufacture my product than the good old USA, so I'm going to go and open a factory in China or India that doesn't play by the same rules that this law has and I'm going to move my jobs over there. Sorry. Just one too many things.

So for the average American, it means the loss of a couple million jobs. This is being done intentionally. They are passing this knowing what the estimates show from the National Association of Manufacturers, the Black Chamber of Commerce, and other organizations that have looked at this legislation, this cap-and-tax, cap-and-trade legislation. They've said, we've run the numbers; this is going to cost us a lot of jobs, puts new taxes on it. It is a huge, big Federal involvement in everything you and I do in this economy.

But what else does it mean? If you're a consumer and you happen to live in the great Northwest and are a customer of Pacific Power, they've reviewed this legislation, they've run it through their power production model and out comes the data. The data on what the cap-and-trade that the Democrats passed, Speaker PELOSI's bill, would do to a Pacific Power customer in Oregon and the rest of their region is, in the first year your electricity rates, as high as they are today, will go up 17.9 percent. You know, maybe this is the year you do want coal in your stocking. 17.9 percent is what your electricity rates will go up.

Now, that's bad enough. Maybe you have put in the fluorescent lights—and I think Oregon has been a real leader in that effort—to reduce your energy consumption, maybe you've weatherized and caulked, done all the things to reduce your energy consumption, maybe you just crank it back down to 67 instead of 68 degrees in the winter and not run air conditioning in the summer. You do everything you can. Maybe you can adjust for that. But here's what it does when you go to the gas station. There are estimates out there that say the cap-and-tax bill that



Speaker PELOSI and others in this Chamber passed will drive up the cost of gasoline in America by 50 cents, 60, 70—some say as much as \$1. Nobody really knows for sure until it takes effect.

Explain this to me. This is like bad Santa. Explain this to me. This isn't the present I want. I don't want higher gasoline prices. Don't you think that had an effect on our economy? It certainly did on the families I talked to at Grants Pass and Medford and John Day across my district that commute great distances.

You know, if you're a farmer or a rancher, you saw what it did to the price of your fertilizer when natural gas went up. You saw what it did when diesel went up to \$5 a gallon. We should be accessing America's great energy resources, not importing them. We should be working toward new fuel-efficient vehicles and backing up that research. I actually drive hybrids on both coasts. I'm fortunate in that respect. I want to reduce my fuel intake and consumption, and I just don't like sending the money overseas where we get a lot of our fuel, frankly. I want to do my part. I am fortunate and able to do that now. A lot of people aren't; they're stuck. They can't buy a new car right now. They might not even have a job. My State is like the sixth highest unemployment in the country. I've got five counties that are lingering right at 20 percent unemployment. This is tough.

Rather than access our great oil and reserves that—by the way, there are estimates that at the peak price of gasoline in this country, that America's great oil and gas reserves, if not blocked off by the Congress, the Democrat-controlled Congress, if we had access to those, it would produce a value of \$60 trillion. Now, that was at the peak of the value of gas and oil, certainly, but let's say it's off by half and it's only \$30 trillion. Remember that debt I talked about earlier, the debt that could be \$20 trillion? What if we actually developed our own oil and gas resources in America, became less dependent on Hugo Chavez and Venezuela or some of the other countries that frankly aren't real friendly to us? What if we stopped funding some of the things they do that actually work against our way of life by not spending money on oil? What if we developed our own resources? And they will say, well, it will take you 10 years. Well, let's get started. That's my view. Let's get started. While we work on a transitional vehicle that doesn't have to use oil and gas, which I'm all for; but in the meantime, there are a lot of working Americans that have to take that pickup, hook up that horse trailer and go out and do their work on the cattle ranch. There are a lot of people hauling things back and forth so that our economy functions; \$3, \$4 and \$5 diesel about killed them economically.

So why don't we access our great oil and gas reserves? We should. And we generate revenue to the government that, if you had a fiscally responsible Congress, would use to pay down the debt and pay down the debt before our kids come of age and our grandkids come of age. That is the Christmas present I would like to see. That actually would be like sort of good Santa as opposed to bad Santa. Bad Santa says, we're taking away everything we have. We're going to rely on foreign imports for oil and gas. We're going to jack up your electricity rates. That's not Christmas like I know it.

I want a real Christmas, where we put people back to work in the private sector, not trying to figure out something about Viking era pollen in Iceland—that's where some of your stimulus money went—or jobs that last a day or two or a week or two and then go away and get counted as if they're permanent. I want permanent, family-wage jobs. This country can get back on its feet if we get this Congress out of the way.

But as I talk to business people, I hear time and again, I can't keep pace with the change coming out of Washington. You're changing everything related to energy. I don't know what those costs are going to be, I don't know where you're headed, I don't know how I'm going to deal with that.

And then health care takeover by the Federal Government, same sort of thing. Is the government going to run all this? Am I going to run all this? What's that going to cost me? Am I going to pay a penalty? There's another couple million jobs projected to go away with the government takeover of health care.

And the debt. People who do have some money and want to invest in a start-up company are sitting on the sidelines because they don't know what is going to happen on tax policy. Do the tax reductions that spurred a very strong economy go away or do they stay? Do people who have some level of wealth lose it all to the Federal Government on New Year's Day of 2011?

□ 2115

Do their kids get to continue the family farm or family business, or does the tax man show up with the undertaker? That's the choice. That's the choice.

It doesn't have to be that way. We can create real jobs in this country.

Let me tell you about the other real jobs you can create, and that is in the great Northwest woods. Now, you have heard me on this floor before advocate for bipartisan legislative changes, changes in the law that have achieved broad support in this Congress to allow us to go out and be good stewards of our Federal forests. Teddy Roosevelt created these forests in 1905. He began that process with the great forest reserves.

He said in a speech in Utah that the purpose of these reserves was twofold: to make sure that we had good clean water for agriculture, and that we had timber for homemaking, homebuilding. Now, those are the two purposes he outlined in a speech in Utah at about that period. Those are the purposes. Now, we know we have evolved since then. Clearly, though, we have not evolved from wanting good, clean water, healthy green forests. We do need lumber.

The choice that the liberals have made in this government and in this Congress is away from active management to locking things up and calling it management, calling it preservation. As a result, you have forests across the West that are overgrown and choked. They can't breathe. You are standing on their air hose.

Meanwhile, you have all this ladder fuel building up underneath them because for 100 years we have suppressed fire. Smokey Bear worked, convinced us we can go stop forest fires. We spend tens of millions, hundreds of millions of dollars, whatever the figure is every year to fight fire. It's over half, I believe, of the Forest Service budget now goes to fight fire when we should be doing the work on the ground to prevent fire. We should get these forests back into balance, get that ladder fuel out of there.

It used to burn up naturally, but we started fighting fire, we allowed it to grow up, and we quit managing. The outcome is like your yard when you never prune or clean or weed or mow or do any of that. It just becomes a mess and out of balance until something catastrophic happens. The catastrophic thing that happens is fire.

Fire is the great equalizer of the forest. It is the biggest clear-cutter out there, and it is devastating when there is such a fuel load as exists today. The fires burn and they release enormous amounts of carbon, not only carbon dioxide but also all kinds of pollutants into the atmosphere, including particulates that are equivalent to vast volumes of automobiles on the highways.

Now, you are not going to stop every fire. Nature has a wonderful way of continuing to participate in the management process. We can get out and protect our watersheds and we can put people back to work, because this reality is about jobs, jobs in the woods.

In my district, where we have 20 percent unemployment or nearly so, and it is probably actually higher than that in some areas because people have given up—we are sixth in the country with unemployment—the policies of the Federal Government on Federal land have been so over the top that we have lost the jobs. We have lost the mills. In some communities, they are close to losing hope. Nothing this Congress has done has helped them in a measurable, sustainable way.



Last week, my colleague from Washington State, BRIAN BAIRD, who, unfortunately, just announced his retirement from this body, he and STEPHANIE HERSETH SANDLIN from South Dakota, WALT MINNICK from Idaho, CATHY MCMORRIS RODGERS from Washington State and others who care about our great forests, offered up legislation to take a successful law we passed in a bipartisan way and expand it out over what they call condition class 2 and 3 forestlands and allow our professional scientists, biologists, geologists, hydrologists, all the people involved in forest management to get out there, get unshackled from the courtroom and the computer, get away from the lawsuits and, well, the litigation, the lawsuits, and get out and actually do what they were trained to do. Get our forests back in shape. Protect the watersheds and the environment. Put people to work.

I mention that we use lumber in this country. This is a carbon sink right here, this podium. This is wood, you know that. This is wood. This is a carbon sink. This was a tree once. What we do now is we put off limits our Federal forests for active management and harvest, for the most part. Instead, we import wood from countries that have virtually no environmental, enforced environmental rules. As a result of that, we just shift the problem and make it worse somewhere else. Rather than responsibly managing our forests, we let them go up in smoke. We have catastrophic, destructive wildfire that does terrible damage to our watersheds and habitat, kills firefighters, kills people in their homes, burns up their homes.

There is so much we could be doing if we got an economic model that works. It's not just because we don't spend enough Federal money. You know, one of the things that drives me over the top, over the edge, off the cliff, is when people say to me, If I just had more government money or more government employees, I could solve that problem.

We are at a debt load that is unsustainable. Not every problem demands a government solution from Washington, D.C. In fact, we should be more creative than that. You know, spending somebody else's money isn't that hard. In fact, you can throw it away, as we have seen with a lot of the stimulus money. Throw it away, the causes and programs that study in pollen from Vikings. I have got to find out about those Vikings with pollen. I don't know if they used Claritin or not, but something was going on there.

You can throw money out the door, flush it away. Those of us who have been in the private sector, small business, know that every dollar is hard to get. Making a profit ain't easy; it's tough. That's why you are so tight with your funds.

You know that the good times come and the good times go. If you are successful enough, you try and set aside a reserve for those bad times. Yet, in this Congress, oh, my gosh, it is out of control in terms of the spending and the deficits.

You know, the omnibus that passed last week, the bill that spent a half a trillion dollars, we had 2 days to even think about it. It's just not the way to legislate. It's not responsible. It's not becoming of this body. It is not how we should operate, regardless of which party is in control. Right now, the Democrats are in control, so they get the glory and they get the responsibility, and it needs to change in terms of how we operate.

My colleague, BRIAN BAIRD from Washington State, and several Members on both sides of the aisle supported an effort to get it some reform that said we should change the rules of how this House operates so that the American people, the Members of Congress, and the press could see legislation on the Internet, the great equalizer of information, on the Internet at least 72 hours before it comes up for a vote on this House floor. We are talking 72 hours. Now, I think it ought to be 2 or 3 weeks, by the way.

Remember, this omnibus spending bill was 2,500 pages. Nobody in here read it before they voted on it. I voted against it, by the way, because I think it's irresponsible. I wasn't alone. I think every Republican voted against it, just like we did against the stimulus. This stuff is not responsible, folks. There are alternatives we have offered, not on that one, because I don't think we were allowed to, but certainly on the others. On health care and on energy and on creating jobs, we have offered real alternatives, and we will talk more about those in subsequent evenings.

This notion that we should have 72 hours should be bipartisan. I say to my colleagues, I guarantee you, if that resolution to change how we operate in this assembly were to come up for a vote and it said we get 72 hours, these bills go on the Internet for 72 hours so the whole world can read them and understand them—and, by the way, give us input of what may be wrong in them before we vote on them. That's a concept that's novel. If that resolution were brought to this floor and the yeas and nays were called for, I doubt there would be a dissenting vote. Does anyone in here think there would be a dissenting vote? Nobody would want to go back to a town hall and say, No, you shouldn't have 72 hours to read the bills.

You know, I began to ask this question when we were taking up the cap-and-trade bill, cap-and-tax bill, the global warming and climate change bill in the Energy and Commerce Committee, the administration Cabinet

secretaries who came before us to tell us the great, wonderful nature of this legislation. I asked a simple question of every single witness that came before us: Have you read this bill? Have you read this bill? With one exception, and that person was right at the last hearing we had the last day and I think maybe saw it coming, everyone said, Well, no. Well, no, I haven't really read the bill, but I know the concept.

We ought to have at least 72 hours to read the bills. That ought to change.

Now, I know when I filed a discharge petition, and that goes in a box over here—or, actually, not in a box. They keep track of it over here on a ledger. All it takes is 218 Members of the House, which is a simple majority, to go sign that petition and then it comes up for a vote. But the Democrat leadership in the House has made it very clear to their Members not to sign the petition. Only six of them have. I commend those for standing up for what's right for this body and this process and for the American people, those six who signed it. The others have buckled at their knees, apparently, and refused. They have walked away. It's available today to be signed, tonight, tomorrow, when we come back in January. The American people are watching. They know that this would be a good thing. They know that this would be a good thing.

I see we now have the omnibus which has arrived. When we talk about 2,500 pages of spending, this is it. This puppy is 2,500 pages of spending. This is what the Congress was given 2 days to work its way through. This is half a trillion dollars. Have you ever seen half a trillion dollars? This is it, right here, half a trillion. Come on down, we will get it half price, half a trillion dollars.

Do you wonder why the deficit is so big? No time to consider this thoughtfully, thoroughly, rush it through. Rush it through, 2,500 pages.

The stimulus, the Recovery Act that spent \$787 billion. You know, I told you we had 2 days to consider this omnibus spending bill, 2 whole days, count them. When the stimulus bill passed in February of this year, the House was given 12 hours to review it, 12 hours. It was 1,073 pages, 1,072 pages, spent \$787 billion. Remember, that's where that Viking pollen study in Iceland comes from, or the sidewalk around a casino or sending casino workers to sort of sensitivity training. Don't be so rough on the slot machine. Be nicer to the craps table. I don't know.

Cap-and-trade, passed in June; \$846 billion is the cost of that bill, according to the Congressional Budget Office, 1,428 pages, 1,428 pages, 16½ hours to consider it. Oh, by the way, they dropped a 309-page amendment at 3 o'clock in the morning. Now I am going to tell you, nothing good happens at 3 o'clock in the morning. Nothing good happens at 3 o'clock in the morning.

You can get hit with a golf club at 3 o'clock in the morning, 309-page amendment, 3 o'clock in the morning, 16½ hours for consideration.

The health bill, introduced July 14, 12:51 in the afternoon, \$1.28 trillion. Remember, we are talking T's now. Forget hundreds, thousands, millions, billions. We are now, in this Democrat-controlled Congress, talking trillions. With 1,026 pages in the committee upon which I serve, the Energy and Commerce Committee, we were allocated a whopping 14 hours and 9 minutes before we started voting on that bill. Remember, I am including the all-night hours, all-night hours.

According to a newspaper here on the Hill, actually, The Hill, Democratic leaders have waived transparency rules at least 24 times to rush votes this year alone, 24 times. Twelve of those bills were available for less than 24 hours.

□ 2130

This omnibus bill back here, half a trillion in spending, just this last week passed 221-201, no Republicans voting for the bill. Increased funding for Federal agencies, 12 percent. Some as much as 33, some as much as 21. The final tally for this omnibus new spending for nondefense, nonveteran discretionary programs took it up to a level of 85 percent higher than 2 years ago. Eighty-five percent higher than 2 years ago. The debt up \$1.4 trillion. The deficit this year, \$1.4 trillion, in 1 year. It wasn't that many years ago, and, of course I'm getting older, I think it was in the eighties; so it's been some 20 years, I think our whole national debt was only a trillion dollars, which was an enormous amount then. Now it's going up by more than that annually.

This is a freight train without brakes. This is a runaway train that's headed off a cliff, and it's going to take Americans with it if we don't put a stop to it. You cannot continue down this path. You cannot continue down this path.

We tried to figure out how some of this money has been spent. The press is doing its job. The New Orleans Times-Picayune. Details: Louisiana has seven congressional districts. So Louisianans visiting recovery.gov, that's the Web site where all this stuff is posted so there's great transparency and accountability. Remember, this was the Web site the President and the Vice President, JOE BIDEN, said by golly, you're going to see it all out there. So Louisianans visiting recovery.gov found themselves just skeptical but truly puzzled to see nearly \$5 million was listed as headed to Louisiana's Eighth Congressional District. There are only seven. Not eight; seven. That site also listed the 12th, the 26th, the 45th, the 14th, the 32nd, and, my favorite, 00. I don't know if that's 007 or if it's—I don't know.

According to Ed Pound, Director of Communications for recovery.gov, the

site relies on self-reporting by recipients of the stimulus money.

This is oversight? This is transparency? I mean, this is a government that can't figure out who's going to the White House for dinner that's spending your money, and this is transparency. Pound said information from FederalReporting.gov has been simply transferred to recovery.gov. And no one checks to verify its accuracy or to take note of the fact that Utah doesn't really have seven congressional districts; it has three. South Dakota has one, not 10.

Pound: "We're not certifying the accuracy of the information. We know what the problem is and we are trying to fix it," he said. Asked why recipients would pluck random numbers to fill in for their congressional district, Pound replied, and this is my favorite, "Who knows, man. Who really knows. There are 130,000 reports out there."

Somebody should know. It's your money. Well, again, it's not really your money yet because we borrowed it. Congress borrowed it from the Chinese, the Japanese, all kinds of lenders, oil-producing nations that we pay exorbitant prices to for the crude oil because we don't access our own resources here. They're the ones doing it.

Talladega County, Alabama, claimed to have saved or created 5,000 jobs from only \$42,000 in stimulus funds. That's 5,000 jobs, \$42,000 in expenditures. Now they're efficient. That would be \$8.40 a job. Now there are some cheap places to work, but I don't even think Alabama is paying their people \$8.40 a job, though; so there's something wrong there.

Belmont Metropolitan Housing Authority in Ohio reported 16,120 jobs saved or created for \$1.3 million. Now, that is efficient too. So congratulations to Belmont. That's \$80.64 a job.

Folks, the government is not the creator of jobs, not jobs that are sustainable, because you have to take money away from those who have it to redistribute it, and it's not being done very efficiently, affordably, transparently, or with accountability.

And how long do these jobs last? I want jobs created out in the private sector that fund the government, and by that I mean if you have a vibrant private sector, people are paying taxes. If businesses are making a profit, they're going to pay a tax, pay a lot of tax. Individuals earning a salary, earning a wage, they're paying tax. Ask them. That's what funds government. It's not the other way around. And that's the difference between many of us in this body is there are those who believe every problem needs a Federal solution regardless of what it costs now or in the future. That's why you need a balanced budget, a requirement in the Constitution to keep both parties in check.

We need to get this house back in order, and I mean the global house, the

U.S. itself, how money is spent, how it's allocated, what we do with it. This is obscene. It really is. All I see is just one government takeover after another.

Now, is there room to do more oversight where it's necessary, fix markets where they're broken? Yes. Will we debate how far you go in that? We should. But we should do that in an open and thoughtful manner. I've served on some nonprofit boards, a hospital board, a business association board, and we'd have vigorous debates, but we always did it with the notion of common good. We'd bring what we had to the table, and we would try to find a solution.

I thank you, my colleagues, for letting me share those comments with you tonight.

#### EDUCATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentlewoman from Wisconsin (Ms. MOORE) is recognized for 60 minutes.

Ms. MOORE of Wisconsin. Mr. Speaker, it's such a privilege to stand in the well of the House of Representatives.

Each time I stand here, I just shiver and shake and think about just how I got here and the unusual circumstances that have allowed me to be here. Really coming from a very poor background, parents who had very, very meager means. But it was because of an educational opportunity that I'm able to be here with you and to speak with you here this evening.

You've heard it all from the well of the House of Representatives, Mr. Speaker. You've heard about all of the problems that we have in our economy. And this evening I want to talk to you about the importance of reestablishing ourselves in the world as a nation that is graduating students from college and producing the next generation of innovators and engineers and doctors and scientists and teachers so that we can reestablish ourselves in the world and continue to enable our economy to grow. But, of course, you've heard about all of the problems that sort of crowd out a really important discussion about the importance of funding educational opportunity.

You've heard about the two wars and the escalation, which is going to cost us \$30 billion. You've heard about the war spending. Between 2001 until 2009, we've spent just under \$950 billion for Iraq and Afghanistan, and we've just included another \$139 billion for both wars. In July, the DOD was spending \$11 billion a month on both wars. And CRS projects that we're going to be spending another \$400 billion to \$900 billion in the next 10 years.

You've heard about the entitlement programs, Medicare and Social Security, and how they're in danger and how we have to fund that. You've heard

about the escalating health care costs consuming 20 cents of every consumer dollar in the so-called takeover by the government of health care. You've heard about the great recession where as many as 700,000 jobs were lost in a single month in the last 15 months. You've heard about the financial systemic risk that threatens the economy not only of the United States of America but of the world, requiring countries, including this one, to develop billions of dollars in stimulus funding. You've heard about various proposals to right ourselves and to justify our economy. You've heard proposals to just simply reduce spending. You've heard proposals to give tax breaks to the wealthy and that these tax breaks will somehow trickle down to support those workers and small businesses. And you've even heard whispers of raising taxes. And very few people raise as a solution to this problem at looking hard at what we're doing in terms of advancing post-secondary educational opportunity.

That's why this evening, Mr. Speaker, I'm so happy to be joined by my dear friend and colleague from Virginia, Representative BOBBY SCOTT, who serves on the Labor and Education Committee and I'm sure will give us some valuable information about the importance of preparing the next generation of students.

Mr. SCOTT of Virginia. I thank the gentlewoman from Wisconsin for talking about education and talking about the importance of educating all of our young children.

Quality education is more important today than ever before with the rapid development of a global marketplace. We find that we're competing not just with cities across a State or even cities across the Nation but cities all over the world.

We can't compete with other countries on things like lower wages. There are people who work in other countries for wages that we can't compete with. We can't necessarily compete in terms of location. You don't have to work right next to your coworkers anymore. If you can work across the hall from your coworkers, you can work across the globe from your coworkers. And in manufacturing, if you manufacture something, you don't have to be that close to your customers. You can ship things overnight from almost anywhere. In the global economy when you're trying to get a plant financed, there used to be a time where you had to locate the plant in the United States because you needed financing. Now with worldwide banking, you can put that plant anywhere that you want.

The one reason that businesses would want to locate in the United States or in a particular community is because they know they can find well-educated workers. So education becomes the competitive advantage. And when you

start looking at the location, you know you can get the good workers. You know that the communities will benefit by having a good education. We know these communities that invest heavily in education suffer less crime, pay less welfare, and we know the individuals benefit, the students benefit with a good education. There's an old adage that says "the more you learn, the more you earn." The more education you get, the higher your income will be. So we need to focus on education if we're going to maintain our competitiveness.

But, unfortunately, we're finding that we're slipping in terms of math and science on any international basis. We used to be fairly high. We're kind of drifting down. We're kind of in the middle of the pack right now but dropping. We used to be number one in graduating our students from high school. Now we're dropping. We used to be number one in those going to college. We used to be number one by far. Now many countries are having more young people go to college and graduate from college than in the United States.

Ms. MOORE of Wisconsin. Reclaiming my time, I guess what I'm recalling is a country where, I mean, we invented the telephone. We invented the automobile, the television, the camera, Google, iPod. We've made major medical breakthroughs. We discovered the cure. We discovered Penicillin and practically eradicated polio by developing the vaccine. And we've done this because we have been number one in the world for developing a brain trust.

So I guess I'm sort of curious about the statements that you've just made that we no longer have the smartest students or the best workforce and that we're no longer leading in innovation and technology.

□ 2145

Mr. SCOTT of Virginia. If the gentle lady would yield, that's why we need to remain competitive and make sure that all of our students have an opportunity to go to college. We need to make sure that they have the knowledge to be successful, and we need to make sure that we are making those investments in early childhood education, in elementary and in secondary, and are making sure that all of our students have access to college. That means we have to make sure we continue to invest in Pell Grants and to reduce the interest on student loans so that everybody can get into college.

One of the things we also have to do is to make sure they have the support, and not only the encouragement, to go to college. They need the financial access but also the support so they can stay in college. That's why the Federal TRIO Programs are so important—Talent Search, Upward Bound, Upward Bound Math and Science, Veterans Up-

ward Bound, and Student Support Services. Once they get into college, there are the educational support centers and the Ronald E. McNair Post-Baccalaureate Achievement Program.

The TRIO Programs encourage low-income and first-generation students to think in terms of college. For many of them, it's just not an expectation in their families, so they think, after high school, that's going to be about it. We need to instill upon them an expectation that, if you can do the work, you ought to continue your education. The TRIO Programs are extremely important in making sure they have not only the financial access but the support once they get there so that they can graduate.

Ms. MOORE of Wisconsin. Will the gentleman yield, please?

Mr. SCOTT of Virginia. I will yield.

Ms. MOORE of Wisconsin. This administration has been very good on financial aid, and this Congress has been great in providing financial aid. As a matter of fact, between fiscal years 2001 and 2009, the Pell Grant has seen an increase of over \$27 billion. Now, these TRIO Programs that you talk about have a funding level of \$853 million. That is less than \$1 billion to the Pell Grant of \$27 billion.

While providing financial aid to students is a great strategy, can you tell me why you think it is so important to fund these TRIO Programs in addition to the Pell Grant? Aren't we making a big enough investment in Pell?

Mr. SCOTT of Virginia. Well, we're not making enough of an investment in Pell. We need to make those investments because the cost of college is going up even more than the increases in Pell Grants. We have done a lot in Pell Grants in the last few years. After several years of no increases, we have made significant increases in Pell Grants, but the Pell Grant still does not pay as much of a portion of your education as it used to. It used to be that, with a Pell Grant, you could almost pay your entire tuition—room and board—at a State college. Now it's about 30 percent, and you've got to come up with the rest. With a Pell Grant, people back in the '60s and in the early '70s could work 15 hours a week at a little part-time job and could work their way through college. Today, even with a Pell Grant and while working 40 hours a week, it is still very difficult to work your way through college. We need to make sure that these opportunities are there.

Even though you have financial access with the Pell Grants, with the student loans, and with the scholarships, you need to make sure that you have the support to get the work done. Many students will start in college and won't finish, and you'll have dropouts not only in high school but also dropouts in college. We need to make sure that they have those services.

The beneficiaries of the TRIO Programs do much better in college completion than those who don't have those support services. You have the counseling, the tutorial, and the other support services that you need. They are so important, and that's why we need to make sure that the TRIO Program funding goes up as much as the funding for financial access, like Pell Grants and student loans. We have to recognize that the investments we make in education are so important and that, if we don't make these investments, we end up paying the bill anyway.

I serve not only on the Education and Labor Committee, but I also serve on the Judiciary Committee, where I chair the Subcommittee on Crime. We know that there is a strong correlation between those who drop out of school and those who end up in the criminal justice system. The high school dropouts are much more likely to end up in prison. Those who graduate from high school and those who go to college are much less likely to get caught up in the criminal justice system. When you look at all of the costs of incarceration and when you look at all of the costs of affordable welfare, if we had made the investments in education to get young people on the right track and to keep them on the right track, we wouldn't have had to make those expenditures in the criminal justice and social service programs.

So education is extremely important, and it is a much more intelligent use of taxpayer money—investing in education—rather than waiting for young people to drop out of school and to mess up, to join a gang and then get into a bidding war as to how much time they're going to serve in prison.

I saw an article in the last couple of days in New York. For every juvenile incarcerated, they spend about \$200,000 a year locking up juveniles. California had the same number—over \$200,000 per year per juvenile. You can just think of what kind of education could have been provided a few years before to make sure that the young people got on the right track and stayed on the right track. So investments in education are not only good for the economy and are not only good for the community, but they actually save more money than they cost when you look at the costs of failing to educate the next generation.

Ms. MOORE of Wisconsin. Will the gentleman yield?

Mr. SCOTT of Virginia. I yield.

Ms. MOORE of Wisconsin. I come from a community where there has been a great deal of discussion about the failures of students on the fourth-grade reading tests and about the failures of students on the eighth-grade math tests, so I am really interested in your description of how the TRIO Programs really provide an intervention, as it were, in, admittedly, a system-

ically failed process up through middle school.

The TRIO Programs, as I have come to understand them, literally intervene in kids' lives in middle schools through the Upper Bound program, for example, and through Talent Search. They really identify that next generation of students who have the capability and the capacity to go to college and to really keep our country on top. Many countries do this. They have done it for generations. They have identified kids in middle schools. Despite the incapacity of the families, based on their incomes, to put their kids in private schools or to give them tutoring, the TRIO Programs intervene in middle school, and put them on a college track. Here are some of the data and statistics that I want you to respond to:

First of all, in terms of low-income students—and I'm not talking about any particular race or anything because, as I understand it, 37 percent of those students enrolled in TRIO are white students; 35 percent are African American; 19 percent are Hispanic; 4 percent are Native Americans; 22,000 of these students in TRIO are disabled students; and 25,000 are veterans.

So here we have a really diverse group of students who take advantage of these TRIO Programs, but they have one thing in common—they are all low-income students. They are all students who are disadvantaged by not having wealthy parents who can send them to prep schools. These are students we are depending on to become that next generation of engineers, scientists, and biologists. They are the people who are going to correct the conditions of our lakes, of our forests, and who will be these innovators. Yet, of all the low-income students in our country, only 41 percent enroll in college, and after 6 years in these Student Support Services, we find that almost 31 percent of these students actually attain a bachelor's degree, and that only 21 percent, literally 10 percent fewer of them, graduate from college when you have only given them Pell Grants.

I guess that is one of the problems that you have tried to share with us today, which is: If you are going to spend \$27 billion and are going to make that kind of important investment in financial aid, it sure is important to give these students the wraparound services that they need, perhaps some remediation in math and in reading, so that they can succeed, some support services.

If you will indulge me, Mr. SCOTT, I will tell you a little story.

I was pregnant at 18 years old when I graduated from high school, and I was not headed to college. As a matter of fact, I was at the then-Boys' Club—it was not the Boys and Girls Club. I was at the Boys' Club, watching the boys play basketball, when a young man walked up to me and said, The director

of the Educational Opportunity Program in Marquette is looking for you, and he said he wants you to come down there right away. That's how I ended up in college—18 years old, pregnant.

What these programs do is they actually interrupt the poverty cycle. They actually interrupted the sociological outcome for me to just be a welfare mom, receiving food stamps, with no hope of ever making an important contribution to society.

So I think that, if we are looking at a long-term bang for our buck, these TRIO Programs and increasing the funding for these TRIO Programs will certainly do that because we cannot afford the downward slide that you have described.

I'm not sure that people have really understood the seriousness of this. You mentioned that we were probably in the middle of the pack. According to the Organization for Economic Cooperation and Development, we are about 15th among 29 industrialized countries in college completion rates. That really has consequences, because when you look at China and at Japan and at South Korea, these are countries that are now the innovators in the world. They are producing the engineers. There used to be a time when you saw Chinese students sitting in American universities. You don't really see that anymore. They are staying at home and are obtaining their baccalaureate degrees.

Now, President Obama has indicated that he has a goal of producing the highest proportion of college graduates in the world by 2020. To reach that goal, this Pell Grant increase is a part of that program. He also wants to expand the reach of community colleges, wants to invest Federal money in research and data collection and in other reforms to the student loan program, and wants to simplify the student aid process.

The gentleman from Virginia, those are very good intentions, and you're experienced on the Education and Labor Committee, but I guess I'd like you to respond to whether or not just simply providing financial aid and collecting data will get us there.

Mr. SCOTT of Virginia. Thank you.

If the gentlelady would yield, one of the things we need to do is to make sure that we get all of our students headed toward college. You mentioned the impact of finances and the income of parents. One factor is that many parents never went to college, so there is not an expectation that their children will go to college. If your parents went to college, there is really an expectation that you are going to go to college, too. It's not a question of whether you are going to college. After you graduate from high school, it's which college are you going to go to. There is just an expectation.

Ms. MOORE of Wisconsin. Right.

Mr. SCOTT of Virginia. When you have parents who did not go to college—and this is one of the main focuses of the TRIO Programs—they want to develop that expectation.

When I was in college, I was an Upward Bound counselor, and I could see in the Upward Bound program the profound change in attitude that young people had as the summer went on. At the beginning of the summer, I remember you could ask young people, What are your plans for the future? They would start telling you their plans for the weekend. Later in the program, you'd ask, What are your plans for the future? They'd tell you what courses they needed to take in high school to make sure they could get into college, and they'd tell you the courses that they'd have to take in college in order to get into law school or into medical school. They had planned their futures a lot farther along than just the weekend.

When you have a different perspective and when you start having an expectation that "my future includes college," a lot of things happen. One, you are less likely to use drugs and to get caught up in delinquency because you know that will adversely affect your future.

□ 2200

So just the fact that you're looking at a future, you will much more likely get on the right track and stay on the right track to actually achieve those goals.

Ms. MOORE of Wisconsin. Will the gentleman yield?

Mr. SCOTT of Virginia. I yield.

Ms. MOORE of Wisconsin. Gentleman, you indicated, I heard you say that we need to get all of our kids prepared to go to college. And I'm wondering if we aren't concerned about class warfare. We talked about those parents who are not low income. They've gone to college. They've had a college fund for their children early on. And perhaps these are parents who might feel somewhat resentful that there's a program out there that provides supportive services for low-income students, as I indicated, I mean, 41 percent of low-income students, just—I mean, if you're not an athlete and you can win a scholarship, you know, if you're not summa cum laude, valedictorian of your high school, you might not have access to scholarship funds.

What would you say to those parents who do have a baccalaureate degree about the need to make sure we give access to all students to college?

Mr. SCOTT of Virginia. Well, one of the things we found in our work in Education and Labor and on the Crime Subcommittee is that so many of our young people are not graduating from high school. In some States, in some schools, and they're called drop-out

factories, half the children that go to those schools fail to graduate. And so it's important, if we're going to have any kind of society, that we encourage young people to go to college because at least that means they'll get through high school. If you do not pay for education, you will pay for welfare and crime. And so it's important for us, as a society, to make sure that we invest in education so we won't have as much to pay for in crime and welfare, and also, we'll have an educated workforce so that when businesses come to the community and consider moving their businesses to your community, you'll have a well-educated workforce to show off, and you'll also demonstrate that if they bring their business here, their workers will have access to a good education. So it's in everybody's best interest to have a well-educated workforce and to make the investments in education.

The Pell Grants make sure that everybody can have access. A significant reduction in interest on student loans has taken place in the last few years. There are a lot of things that we're doing, and we're helping colleges. We've made significant investments in colleges and how they can help their students. There are a lot of things that we've been doing, but the main focus has got to be to get young people into college, and once they get into college, to make sure they have the support services that the TRIO programs will provide to make sure that they can actually graduate.

Ms. MOORE of Wisconsin. I was just looking at an article that was published in *Forbes Magazine* recently, called *Investing in America's Future*, and one of the points that the author made was that in California, two-fifths of the State's jobs are expected to require college degrees by the year 2020. But the number of adults with those credentials will fall short. So it's not just a matter of providing an opportunity for middle-class and upper-class students.

We've been joined by Congresswoman SHEILA JACKSON-LEE, who has spoken often about the need for businesses to have an educated workforce. I've heard her speak very passionately about how there are so many requests among our business leaders for foreign students to come into the country because we don't have an educated workforce.

And so, gentleman, I'd like you to respond to that.

Mr. SCOTT of Virginia. You mentioned two-fifths require college. But even more than that require some education past the high school level, some kind of training, some kind of education, maybe not the 4-year college but a 2-year college, or maybe some career training course so that you could learn your trade. There used to be a time where you could get a low-skilled job, keep it for 40 years and then retire.

The jobs of today require continual learning, lifelong learning. You've got to be retrained. A lot of jobs have become obsolete. Instead of one job for a long time, most people will have four or five or six jobs during their careers. It's important to make sure that you can learn and you have lifelong learning so that you can keep up with the new jobs. Most, 40 percent require college, but virtually all of them, good jobs, will require some kind of education past the high school level.

Ms. MOORE of Wisconsin. Thank you so much.

I'm so happy this evening that we've been joined by Congresswoman SHEILA JACKSON-LEE from Houston, Texas; and I would yield to her at this time.

Ms. JACKSON-LEE of Texas. Let me thank the distinguished gentlelady from the great State of Wisconsin for her persistence in the work that I found her doing when I visited her district some several years ago. She has been persistent and consistent, and I'm delighted to join her this evening, along with my friend and colleague from Virginia. I served with BOBBY SCOTT as the Chairman of the Subcommittee on Crime. But he has redefined that committee, and he realizes, with his experience on the Education and Labor Committee, that we are going down the wrong direction. And I combine the idea of steering people away from a life of crime or the mistakes that we've made in the criminal justice system with the poor response that we have given to our education system. I really think that we have, or we took our education system for granted. It was there. We were at a point in our lives in the 19th century, the 20th century, most particularly when we were really churning in the economy and we were at the cutting edge of invention. We had televisions; we were doing transistor radios; we did the telephone. We were really, if you will, at the peak of the envy of all the world, and we took for granted that individuals would start school, public school, by the way, and they would finish school and some would finish high school, but they would still be at an economic level that they could provide for their families. And others went to college. And so I'm listening to this discussion about our international competitiveness, and I read this sentence to you: America no longer has the smartest students or the smartest workforce in the world.

I would take issue with that and say that we have the smart people, but we have not cultivated them and provided them the support system that a TRIO provides, a steering. It's almost as if you had a playing field and you told people to just get out on that playing field. There were no guidelines, there were no bases to make, there were no touchdowns to make, and what would you get? You'd have very poor results.

But if you had some guidelines, if you told them that they had to go from one point to the next, that they had to kick the ball into the field goal area, or they had to make a touchdown, or they had to hit a home run. And that's why I've come to the floor today, because I want to share these statistics, but I want to refute these statistics and I want to say, it's time now to go back to the old, to reinvest in our education as if we cared about it.

And so let me cite these numbers that may have already been put into the RECORD, but I believe it's important, that show the 2007 trends in international mathematics and science study, which is really a baby of mine. I've been on or served on the Science Committee for 12 years. In that, my emphasis was math and science and NASA and what NASA can do to inspire our young people to want to be scientists and mathematicians. It measures the math and science knowledge of fourth and eighth graders.

Our students don't perform like those in competitor nations. Only 10 percent of U.S. fourth graders and 6 percent of U.S. eighth graders scored at or above the international average in math. That means that 94 percent of our eighth graders are getting beat by countries like Singapore, Hong Kong, England and Russia, and Kazakhstani students scored better in math than our own fourth graders. What does that mean? It means that there is a legitimate argument for TRIO because TRIO provides the kind of road map that gives you the support systems that really cause students who come from disadvantaged backgrounds to get to the finish line, to be able to kick the goal, to make the touchdown, to make the home run.

□ 2210

And I believe that we've been lax in the funding. It's always easy to cut funding for the vulnerable. We don't have to worry about any funding for the vulnerable because their voices cannot be heard. We know that just across the country, the University of either Southern California or Berkley has students who have been picketing and sitting in for weeks because of tuition increases. So we know how disadvantaged students are more disadvantaged as they raise tuition costs and they don't have support systems.

So, for example, here is what TRIO has done, college going rates for TRIO versus non-TRIO students: All low-income students, 41 percent enrolled in college; Upward Bound participants, 77.3 percent; Upward Bound Math-Science, 86.5 percent; and Talent Search, 79 percent.

What is there to convince that TRIO works, that the support system works?

Student Support Services, low-income bachelor degree attainment with a 6-year period: Student Support Serv-

ices, 30.9 percent; receive Pell but no support, 21 percent, way down; receive neither Pell nor support, 8.9 percent. They just don't make it.

Ms. MOORE of Wisconsin. Will the gentlelady yield?

Ms. JACKSON-LEE of Texas. I'll be happy to yield.

Ms. MOORE of Wisconsin. This is the question I have for my colleagues here. If it's so clear, as you've indicated, gentlelady from Texas, that TRIO works, if it's so clear, as the gentleman from Virginia has indicated, that we need, in order to remain globally competitive and to continue to be the innovative country and to really develop a way to develop and create new revenues for our country, we're not going to just cut spending and raise taxes and have that be adequate for remaining a first-class nation.

If it's true that we don't have enough upper-class students who are graduating from college that we can afford to ignore low-income white students, low-income African American students, low-income Hispanic students, low-income Asian students, disabled students and veterans who are in these programs, if we can't afford to ignore them, we've got to grab them and educate them so that we can meet those goals and that bar, why has TRIO been flat funded?

What are the consequences of the fact that TRIO was flat funded during fiscal year 2006 and 2008, had just a minimal increase in 2009, a minimal increase in 2010 and, God bless him, our Appropriations Chair, DAVE OBEY, added \$20 million to TRIO this cycle, but after all of the negotiations with the Senate, only \$5 million was retained in that program. What are the consequences of reducing these vital services to TRIO students and our remaining competitiveness of the world? We need at least \$200 million for this program.

Ms. JACKSON-LEE of Texas. You are eloquent in crafting the frustration that you experience and so many of us experience. And do you know what the answer is? They just don't get it. Not the friends and allies who work so hard, the chairman of the Appropriations Committee on the House side, so many Members who understand what TRIO means, but the overall thinkers about education and how to cut dollars just don't get it.

TRIO costs an average of about \$1,000 per student per year, \$1,000. Pell is estimated to spend approximately \$25 billion helping over 7 million students get aid. The combination of a TRIO effort for a student counters the tragedy, and let me just retract that word and not utilize "tragedy," but when you look at it and you say we are the country that spent the 20th century just inventing about everything the world now uses, when we think of China, we are glad that it has made gigantic steps of

development. It still is a developing nation, and a lot of what China has made its economic rise on has been what we invented in the 20th century and now they make it in a cheaper manner.

So what we are losing is we are losing the genius of our invention and inventiveness. H-1B is what you're talking about. The H-1B visas have become the popular response. So I'm not going to worry about the fact that our children don't know math and science. Forget about it. We'll just import thousands upon thousands.

I have no quarrel with them. We just stood today and introduced a comprehensive immigration reform bill. There is no quarrel with the idea that this Nation is a nation of laws and immigrants, but there is a quarrel when we throw to the side those disabled, those veterans, those disadvantaged students, those children who have a single parent who would not have the ability to be able to follow through on college.

So what do we lose? Again, we lose the ability to invent for the next generation. We lose the scientific minds that are going to be at the cutting edge of finding the right kind of cure for HIV/AIDS or stopping the H1N1 pandemic or finding a cure for cancer or being able to fix crumbling bridges. This is what we lose. And, frankly, I believe we are long overdue for the reckoning that comes with the idea that we are ignoring our children.

I would like to just use as an example the fact what we call AP classes and advanced classes. You poll and find out how many of those classes are still being kept, advanced placement. It's all about budget. We don't respect or appreciate how much money good education can generate, and I think that we lose our rightful competitive place in the world. And I would much rather invest \$1,000 in TRIO than \$1,000 in making war and taking a chance of losing one of our bright young men or bright young women who has gone on the front lines. We appreciate them.

But what I'm saying is we should give equal opportunity for those who are either after their military service or in the midst of their military service or that want to go to school, we should give them the opportunity to do so, and that is what TRIO is all about.

Ms. MOORE of Wisconsin. Will the gentlelady yield?

Ms. JACKSON-LEE of Texas. I'd be happy to yield.

Ms. MOORE of Wisconsin. My colleague Representative SCOTT is a great mentor of mine. He serves on the Budget Committee, and he is an expert on one of the subjects that really consumes a great deal of time on this floor and in our committees, and that's the subject of the budget deficit and how we dig ourselves out of this hole. And I guess I was wondering if he would



share—I'm sort of surprising him with this question, but I guess I would like for him to talk about the revenue options or the cutting options or how we got into this fiscal hole that we are in and what the role of educating and having an educated workforce will have on us ever being able to approach some sort of deficit reduction.

And I will yield to the gentleman.

Mr. SCOTT of Virginia. There are direct consequences of spending more money on education, one of which is that the average income of those who you have invested in, the average income will go up, better known from a budget perspective as more taxable income. And so those that you invest in and have more taxable income will be able to help fund the government. That is on the plus side.

On the minus side, if you do not educate the people, they are much more likely to be involved in crime and welfare, better known as expenditures. So instead of getting more revenue, you end up with more expenditures.

So we need to make sure that we make these investments in education so more and more of our students go on to college. And we know what works. We know that TRIO works. The TRIO programs, the Talent Search, Upward Bound, Upward Bound Math-Science, and Veterans Upward Bound all help students think about college and get them on track to college.

The Student Support Services, Educational Opportunity Centers, and the Ronald E. McNair Postbaccalaureate Achievement Programs help students once they get to college. They are involved in those programs and are much more likely to graduate and complete their education, making sure they will be much more contributing members of society. And we know they work. There are currently 2,800 TRIO programs that are serving 850,000 low-income and first-generation students.

Now, you can only imagine that without TRIO, many of these students wouldn't even be thinking about college. And if you just look around the country, many of these programs have waiting lists, young people that are trying to get the help of a TRIO program, but because we haven't funded them adequately, there are not enough slots and they have to languish and perhaps not get an education because they didn't get the services that they needed.

□ 2220

We need to make sure those investments are there. If you're looking long term in the budget, we need to make sure that people are self-sufficient, not depending on government. The investments we make in education in the long-term budget perspective are investments that need to be made.

Ms. MOORE of Wisconsin. Thank you so much for that, gentleman. That is so important.

You know, the Department of Education really bears this out. They say a high school dropout earns about \$18,000 a year—of course that's if they're not costing us money in the prison system—a high school graduate, \$26,000 a year, an associates degree, \$38,000, and a bachelor's degree, \$65,000. When we consider our aging baby boomers, we certainly are going to need to make sure that we have a lot of higher-income individuals working toward all of these innovations that we are so capable of.

Mr. SCOTT of Virginia. And if we don't make the investments that we're talking about today, this may be the first generation that has a lower achievement of education than their previous generation. Right now, many children of college-educated parents are not going to college. We are very close to having this generation less educated than last. That will be the first time in American history that that has ever taken place.

Ms. MOORE of Wisconsin. Wow. Before I yield to the gentlelady, I just want to say that old adage, "pennywise and pound foolish." I started this hour out by talking about all of the competing problems that we discuss on this floor, the cost of the war and cost of health care, costs of Medicare and Social Security, those entitlement programs, the cost of escalating the war in Afghanistan, the great recession where, at its height, 700,000 jobs were lost in a single month, the bailout funds for the "too big to fail" institutions.

And so if we allow ourselves to get mired down in this and decide that \$200 million for an education program is just too much money, that would be the perfect place to talk about pennywise and pound foolish, wouldn't you agree, gentleman?

Mr. SCOTT of Virginia. I would agree. And I have introduced, as you know, the Youth Promise Act, which looks at a comprehensive approach to investing in our young people, getting them on the right track, keeping them on the right track rather than waiting for them to drop out of school, mess up, and then spend all the money on incarceration.

If we take a comprehensive approach, we have found that you are more likely to save money in the long run—indeed, certainly even in the short run. Comprehensive approaches to juvenile crime, one in Pennsylvania where they spent \$60 million investing in young people—in a couple of years they figured they saved \$300 million. Those kinds of results happen all over the country when you take a comprehensive approach, making sure young people can get on the right track and stay on the right track and get out of what the Children's Defense Fund calls the cradle-to-prison pipeline and get into the cradle-to-college or cradle-to-workforce pipelines. Those pipelines, the

college and workforce pipelines, are actually cheaper to construct than a cradle-to-prison pipeline where you spend huge sums of money locking people up. You don't get the benefit of the increased earnings; you just end up spending all the money on crime and welfare.

So if we make the right investments in getting young people on the right track and keeping them on the right track, we not only have a better society, but the budget will look better.

Ms. MOORE of Wisconsin. Thank you so much. That was just amazing information.

The gentlelady from Texas, I would love to hear what you have to say on this matter.

Ms. JACKSON-LEE of Texas. Well, I think this discussion should be a roadmap, but it also should be a primer, a tutorial for us not heading toward the disaster that we are heading toward. We should heed some of the comments that have been made.

I would like to build on this issue of the criminal justice system, which has just grown exponentially. I would say to the gentlelady that there are at least 1 million persons in our prison system throughout the Nation. It is known to be the largest prison system in the civilized world. It is called the "prison industrial complex" because there is so much money spent in incarcerating persons, and it does not seem that we have gotten it again to invest on the front end.

So I would just like to share with you, according to the National Center for Education Statistics, which studies the math skills of 15-year-olds throughout several industrialized countries, our United States students ranked 25th internationally. Why? Probably not embraced by the TRIO concept, the support system concept. High school graduates, only 75 percent. I realize that TRIO goes forward into the college area, but it means that these students are not getting support early.

High school graduation, only 75 percent of first-year high school students graduate within 4 years; 25 percent of our students are left behind. Today, 1 in 10 24-year-olds still lack a high school degree. According to the Alliance for Excellent Education, 76 percent of white students graduate in a 4-year period, compared with 55 percent of Hispanic students and 51 percent of African American students. There lies the crux of the need for TRIO, because we need that kind of inspiration.

Let me just finish. The Alliance estimates that high school dropouts from the class of 2008—listen to this number—will cost the United States \$319 billion in lost wages over their lifetime. Is there any defense for not supporting TRIO, for not funding it to the max so that we can draw these students through the high school period into the college and then see them



graduate and invest that \$319 billion into the economic engine of this economy, and on the other side, having skills that are marketable skills?

I started out by saying that we have been cited as not having the smartest students in this century or this time frame. I said, no, these are smart students; we just have not given them the rules, we have not laid out the plan, we have not directed them, we have not provided them the TRIO support system that can be so helpful in providing the kind of economic engine for America.

So in this climate of high unemployment and all of this talk about creating jobs, we cannot ignore America's education system for our children.

Ms. MOORE of Wisconsin. Thank you so much, gentlelady from Houston, Texas. And thank you, my dear friend and colleague on the Budget Committee and also on the Education and Labor Committee.

Before we close out this hour, I just want to sort of summarize what we have said here this evening.

We really admire this Congress and our President for really revamping tuition and making adequate tuition a priority. It has been so important to revisit how we make student loans so that we don't just provide funding for bankers, that we actually use those funds for students, to simplify student forms. It is even important to invest in research about educational outcomes.

It has been very, very important to have seen the dramatic increase in the Pell Grant because, without this tuition assistance, students would not be able to make it. Tuition assistance is a vital component in helping low-income and first-generation college students or any students get through college. Without these dollars, higher education would be unattainable for millions of students who rely on Pell to pay the bills. But all too often, Pell is a wasted investment for our low-income kids because they don't have access to guidance counselors and tutors and the other types of support that come with the TRIO programs.

It doesn't do the student or our country much good if we spend millions on first-year Pell recipients only to have those students drop out after their second or third year. That's not a sound investment. A sound investment is making sure that when we commit to providing educational resources for our most vulnerable kids, we give them all the tools to successfully see that journey through.

That's why we're here today. This Congress has drastically increased vital funding for Pell Grants. I have been and will continue to be a staunch supporter of that increased investment, but I also know that millions of those dollars will be wasted unless we also invest in the tools to get these students through college.

□ 2230

More importantly, our country, our country, our beloved country that we love so much, and love so dearly, and a country that has given us an amazing life-style of modern living is at risk if we don't educate the future workforce. We have got to start with our tiny tots in early education, but that's a more long-term goal. Right now we are having an emergency, an emergency; students are either not graduating from high school or they are graduating with deficiencies.

In order to step up, we need a TRIO program, a modest amount of funding, \$200 million in the scheme of things, nothing like we are spending on all the other crises in this country, that would help these programs serve those students who are on waiting lists.

With that, I would yield to the gentleman from Virginia.

Mr. SCOTT of Virginia. I want to thank the gentlewoman from Wisconsin for her hard work. She has benefited from the TRIO Program, so she knows firsthand as I do, as a counselor in college. I spent 3 years as a counselor in the Upward Bound Program, noticing the profound change from the beginning of the program to the end of the program.

We need to make sure these opportunities and this guidance is made available to all students to make sure they can get into college and then to support services once they get there so that they can graduate. These are important programs.

I thank the gentlelady for organizing this Special Order and I thank the gentlelady from Texas for joining us.

Ms. JACKSON-LEE of Texas. If I may say a word of appreciation for you and say a picture is worth a thousand words, these tall bars, if they can be seen, show what happens to Upward Bound participants, Upward Bound Math and Science and Talent Search, much higher than the little low bar here that shows students without assistance.

One last point is that one in nine African American men age 20 to 34 are behind bars. Black men are more likely to be in jail than to have a graduate degree. We can lock up people, but we can also break that chain, take the key and open the doors to opportunity.

The gentlelady has told and expressed to us her story. It's a powerful story. I would say that we need to give everyone the same chance that so many of us have had for a great opportunity.

Ms. MOORE of Wisconsin. This has been great, this has been fantastic, and I would say that the importance of this program is its diversity. It is not a program that just benefits one group of people. Thirty-seven percent of TRIO students are white, 35 percent are African Americans, 19 percent are Hispanics, 4 percent are Native Americans,

22,000 of TRIO's students are disabled students, and 25,000 are our beloved veterans.

This is a program that embraces every American from all backgrounds and makes sure that money is not the reason that you cannot use your brain. Talk about a brain drain, it's a brain drain when the only thing that stands between you and greatness is an education.

Thank you so much and good night.

#### RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 35 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 2316

#### AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. MAFFEI) at 11 o'clock and 16 minutes p.m.

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YOUNG of Florida (at the request of Mr. BOEHNER) for today until 3:30 p.m. on account of a death in the family.

#### SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MCGOVERN) to revise and extend their remarks and include extraneous material:)

Mr. MCGOVERN, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Ms. EDWARDS of Maryland, for 5 minutes, today.

Mr. NADLER, for 5 minutes, today.

Mr. DEFazio, for 5 minutes, today.

Mr. POLIS, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. DOGGETT, for 5 minutes, today.

Mr. HOLT, for 5 minutes, today.

Mr. GRAYSON, for 5 minutes, today.

(The following Members (at the request of Mr. MORAN of Kansas) to revise and extend their remarks and include extraneous material:)

Mr. GINGREY of Georgia, for 5 minutes, today.

Mr. MURPHY of Pennsylvania, for 5 minutes, today.

Mr. MCCLINTOCK, for 5 minutes, today.

Ms. FOXX, for 5 minutes, today and December 16.

(The following Members (at their own request) to revise and extend their remarks and include extraneous material:)

Mr. WELCH, for 5 minutes, today.  
 Mr. ROYCE, for 5 minutes, today.  
 Ms. JACKSON-LEE of Texas, for 5 minutes, today.

#### SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1755. An act to direct the Department of Homeland Security to undertake a study on emergency communications; to the Committee on Energy and Commerce.

#### ENROLLED JOINT RESOLUTION SIGNED

Lorraine C. Miller, Clerk of the House, reported and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 62. Joint resolution appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

#### BILLS PRESENTED TO THE PRESIDENT

Lorraine C. Miller, Clerk of the House reports that on December 14, 2009 she presented to the President of the United States, for his approval, the following bills:

H.R. 4165. To extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. To amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

H.R. 4218. To amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators.

Lorraine C. Miller, Clerk of the House reports that on December 15, 2009 she presented to the President of the United States, for his approval, the following bill:

H.R. 3288. Making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

#### ADJOURNMENT

Mr. MURPHY of New York. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 17 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, December 16, 2009, at 9 a.m.

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5076. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Novaluron; Pesticide Tolerances [EPA-HQ-OPP-2008-0769; FRL-8799-6] received December 3, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5077. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Clothianidin; Pesticide Tolerances [EPA-HQ-OPP-2008-0945; FRL-8793-6] received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5078. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Whistleblower Protections for Contractor Employees (DFARS Case 2008-D012) (RIN: 0750-AG09) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5079. A letter from the Under Secretary, Department of Defense, transmitting a quarterly report on withdrawals or diversions of equipment from Reserve component units for the period of July 1, 2009 through September 30, 2009, pursuant to Public Law 109-364, section 349; to the Committee on Armed Services.

5080. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Technical Amendment; Federal Emergency Management Agency's Claims Appeals [Docket ID: FEMA-2009-0009] (RIN: 1660-AA64) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5081. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Suspension of Community Eligibility [Docket ID: FEMA-2008-0020; Internal Agency Docket No. FEMA-8099] received December 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5082. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Suspension of Community Eligibility for Failure To Enforce [Docket ID: FEMA-2008-0020; Internal Agency Docket No. FEMA-8093] received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5083. A letter from the Deputy to the Chairman for External Affairs, Federal Deposit Insurance Corporation, transmitting the Corporation's final rule — Amendment of the Debt Guarantee Program To Provide for the Establishment of a Limited Six-Month Emergency Guarantee Facility (RIN: 3064-AD37) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

5084. A letter from the Chairman, Securities and Exchange Commission, transmitting the Commission's 2008 Annual Report of the Securities Investor Protection Corporation, pursuant to 15 U.S.C. 78ggg; to the Committee on Financial Services.

5085. A letter from the Deputy Director, Regulations Policy and Management Staff,

Department of Health and Human Services, transmitting the Department's final rule — New Animal Drug Application [Docket No.: FDA-2009-N-0436] received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5086. A letter from the Office Manager, Department of Health and Human Services, transmitting the Department's final rule — Medicaid Program: State Flexibility for Medicaid Benefit Packages and Premiums and Cost Sharing [CSM-2232-F3; CMS-2244-F4] (RIN: 0938-AP72 and 0938-AP73) received November 30, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5087. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Inclusion of Fugitive Emissions; Interim Final Rule; Stay [EPA-HQ-OAR-2004-0014; FRL-9089-4] (RIN: 2060-AP73) received December 3, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5088. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Determinations of Attainment of the One-Hour and Eight-Hour Ozone Standards for Various Ozone Nonattainment Areas in New Jersey and Upstate New York [EPA-R02-OAR-2009-0638; FRL-9088-8] received December 3, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5089. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval of Section 112(1) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants; Plywood and Composite Wood Products [EPA-R04-OAR-2009-0793; FRL-9089-9] received December 3, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5090. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of Great Smoky Mountains National Park 1997 8-Hour Ozone Nonattainment Area to Attainment [EPA-R04-OAR-2009-0338-200908; FRL-9089-1] received December 3, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5091. A letter from the Director Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Clean Air Interstate Rule; NOx SIP Call Rule; Amendments to NOx Control Rules [EPA-R03-OAR-2009-0370; FRL-9090-2] received December 3, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5092. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries [EPA-HQ-OAR-2003-0146; FRL-8972-4] (RIN: 2060-AO55) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5093. A letter from the Director, Regulatory Management Division, Environmental

Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources [EPA-HQ-OAR-2008-0334; FRL-8972-6] (RIN: 2060-AM19) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5094. A letter from the Director, Regulations Management Branch, Environmental Protection Agency, transmitting the Agency's final rule — Stay of Clean Air Interstate Rule for Minnesota; Stay of Federal Implementation Plan to Reduce Interstate Transport of Fine Particulate Matter and Ozone for Minnesota [EPA-HQ-OAR-2009-0021; FRL-8972-7] (RIN: 2060-AP46) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5095. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act [EPA-HQ-OAR-2009-0171; FRL-9091-8] (RIN: 2060-ZA14) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5096. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Protection of Stratospheric Ozone: Ban on the Sale or Distribution of Pre-Charged Appliances [EPA-HQ-OAR-2007-0163; FRL-9091-9] (RIN: 2060-AN58) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5097. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export [EPA-HQ-OAR-2008-0496; FRL-9091-7] (RIN: 2060-A076) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5098. A letter from the Acting, Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule — Implementation of the Wassenaar Arrangement's (WA) Task Force on Editorial Issues (TFEI) Revisions [Docket No.: 0908271249-91275-01] (RIN: 0694-AE71) received December 8, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Foreign Affairs.

5099. A letter from the Associate Director, PP&I, Department of the Treasury, transmitting the Department's final rule — Global Terrorism Sanctions Regulations received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Foreign Affairs.

5100. A letter from the Director, Office of Administration, Executive Office of the President, transmitting the personnel report for personnel employed in the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Office of Policy Development, and the Office of Administration for FY 2009, pursuant to 5 U.S.C. 113; to the Committee on Oversight and Government Reform.

5101. A letter from the Departmental FOIA Officer, Department of the Interior, transmitting the Department's final rule — Amendment to the Freedom of Information Act Regulations (RIN: 1090-AA61) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Oversight and Government Reform.

5102. A letter from the President, Federal Financing Bank, transmitting the Annual Report of the Federal Financing Bank for Fiscal Year 2009, pursuant to 31 U.S.C. 9106; to the Committee on Oversight and Government Reform.

5103. A letter from the Administrator, National Aeronautics and Space Administration, transmitting the Administration's Performance and Accountability Report for fiscal year 2009, pursuant to Public Law 106-531; to the Committee on Oversight and Government Reform.

5104. A letter from the Treasurer, National Gallery of Art, transmitting an FY 2009 annual report on audit and investigative coverage required by the Inspector General Act of 1978, as amended, and the Federal Managers' Financial Integrity Act, pursuant to 5 U.S.C. app. (Insp. Gen. Act), section 5(b); to the Committee on Oversight and Government Reform.

5105. A letter from the Chairman, National Labor Relations Board, transmitting the Board's semiannual report from the office of the Inspector General for the period April 1, 2009 through September 30, 2009, pursuant to Section 5(b) of the Inspector General Act of 1978; to the Committee on Oversight and Government Reform.

5106. A letter from the Chairman, Occupational Safety and Health Review Commission, transmitting the Commission's Performance and Accountability Report for Fiscal Year 2009; to the Committee on Oversight and Government Reform.

5107. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #4, #5, #6, and #7 [Docket No.: 090324366-9371-01] (RIN: 0648-XR27) received December 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5108. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska [Docket No.: 09100091344-9056-02] (RIN: 0648-XS79) received December 2, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5109. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 ft (18.3 m) LOA and Longer Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area [Docket No.: 0810141351-9087-02] (RIN: 0648-XS72) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5110. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Endangered and Threatened Wildlife; Sea Turtle Conservation [Docket No.: 0809121212-91160-02] (RIN: 0648-AX20) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Natural Resources.

5111. A letter from the Director, Community Relations Service, Department of Jus-

tice, transmitting the Department's report on the activities of the Community Relations Service (CRS) for Fiscal Years 2007 and 2008, pursuant to 42 U.S.C. 2000g-3; to the Committee on the Judiciary.

5112. A letter from the Assistant Secretary, Employment & Training Administration, Department of Labor, transmitting the Department's final rule — Temporary Agricultural Employment of H-2A Aliens in the United States (RIN: 1205-AB55) received November 30, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

5113. A letter from the Administrator, Saint Lawrence Seaway Development Corporation, Department of Transportation, transmitting the Corporation's annual financial audit and management report, in accordance with OMB Circular A-136; to the Committee on Transportation and Infrastructure.

5114. A letter from the Deputy Assistant Secretary For Program Operations, Department of Labor, transmitting the Department's final rule — Investment Advice-Participants and Beneficiaries (RIN: 1210-AB13) received November 30, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and Labor.

5115. A letter from the Deputy General Counsel, Small Business Administration, transmitting the Administration's final rule — The American Recovery and Reinvestment Act of 2009: Secondary Market First Lien Position 504 Loan Pool Guarantee (RIN: 3245-AF90) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Small Business.

5116. A letter from the Director, Regulation Policy and Management, Department of Veterans Affairs, transmitting the Department's final rule — VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Business (RIN: 2900-AM92) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

5117. A letter from the Director of Regulations Management, Department of Veterans Affairs, transmitting the Department's final rule — Community Residential Care Program (RIN: 2900-AM82) received December 1, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

5118. A letter from the Chief, Border Security Regulations Branch, Department of Homeland Security, transmitting the Department's final rule — Technical Amendments to List of CBP Preclearance Offices in Foreign Countries: Addition of Halifax, Canada and Shannon, Ireland [CBP Dec. 09-45] received December 3, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5119. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Temporary Closing of the Determination Letter Program for Adopters of Pre-Approved Defined Benefit Plans received November 30, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMPSON of Mississippi: Committee on Homeland Security. H.R. 3978. A bill to

amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to authorize the Secretary of Homeland Security to accept and use gifts for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for and response to terrorism, and for other purposes (Rept. 111-376). Referred to the Committee of the Whole House on the State of the Union.

Mr. THOMPSON of Mississippi: Committee on Homeland Security. House Resolution 922. Resolution directing the Secretary of Homeland Security to transmit to the House of Representatives all information in the possession of the Department of Homeland Security relating to the Department's planning, information sharing, and coordination with any state or locality receiving detainees held at Naval Station, Guantanamo Bay, Cuba on or after January 20, 2009; with amendments (Rept. 111-377). Referred to the House Calendar.

Mr. CONYERS: Committee on the Judiciary. House Resolution 920. Resolution directing the Attorney General to transmit to the House of Representatives all information in the Attorney General's possession regarding certain matters pertaining to detainees held at Naval Station, Guantanamo Bay, Cuba who are transferred into the United States, adversely; (Rept. 111-378). Referred to the House Calendar.

Ms. PINGREE of Maine: Committee on Rules. House Resolution 973. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 111-379). Referred to the House Calendar.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. POSEY (for himself, Mr. HALL of Texas, Mr. PITTS, Mr. BARTLETT, Mr. COLE, Mr. ISSA, Mr. BILBRAY, Mr. GOHMERT, Mrs. BLACKBURN, Mr. FRANKS of Arizona, Mr. AKIN, Mr. GINGREY of Georgia, Mr. MARCHANT, Mr. CONAWAY, Mr. BISHOP of Utah, Ms. FALLIN, Mr. THOMPSON of Pennsylvania, and Mr. LAMBORN):

H.R. 4308. A bill to amend the Internal Revenue Code of 1986 to allow individuals to designate certain amounts on their income tax returns, to require spending reductions equal to 10 times the amounts so designated, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BRIGHT (for himself and Mr. THOMPSON of Pennsylvania):

H.R. 4309. A bill to amend the Internal Revenue Code of 1986 to establish tax-preferred Small Business Start-up Savings Accounts; to the Committee on Ways and Means.

By Mr. KUCINICH (for himself, Mr. CONYERS, Mr. DAVIS of Illinois, Ms. JACKSON-LEE of Texas, and Ms. WATSON):

H.R. 4310. A bill to amend the Internal Revenue Code of 1986 to protect children's health by denying any deduction for advertising and marketing directed at children to promote the consumption of food at fast food res-

taurants or of food of poor nutritional quality; to the Committee on Ways and Means.

By Mrs. HALVORSON:

H.R. 4311. A bill to amend the Internal Revenue Code of 1986 to extend the increase in the expensing deduction for small businesses; to the Committee on Ways and Means.

By Mr. BURGESS (for himself, Mr. BOEHNER, Mr. KLINE of Minnesota, Mr. FRELINGHUYSEN, and Mr. ISSA):

H.R. 4312. A bill to permit the District of Columbia to use Federal funds to provide scholarships for enrollment in participating schools under the DC School Choice Incentive Act of 2003 to students who did not receive such scholarships in the 2009-2010 school year; to the Committee on Oversight and Government Reform.

By Mr. YOUNG of Alaska (for himself, Mr. RAHALL, and Mr. HEINRICH):

H.R. 4313. A bill to amend Part B of title XVIII of the Social Security Act to eliminate the sunset for reimbursement for services furnished by certain Indian hospitals and clinics; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RANGEL:

H.R. 4314. A bill to permit continued financing of Government operations; to the Committee on Ways and Means.

By Mr. BURGESS:

H.R. 4315. A bill to authorize the issuance of United States War Bonds to aid in funding of the operations in Iraq and Afghanistan; to the Committee on Ways and Means.

By Mr. CROWLEY (for himself and Mr. BRADY of Texas):

H.R. 4316. A bill to suspend temporarily the duty on certain footwear, and for other purposes; to the Committee on Ways and Means.

By Mr. CROWLEY (for himself, Mr. STARK, Mr. GRIJALVA, and Mr. QUIGLEY):

H.R. 4317. A bill to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring for children in foster care; to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. KAPTUR:

H.R. 4318. A bill to authorize the President to reestablish the Civilian Conservation Corps as a means of providing gainful employment to unemployed and underemployed citizens of the United States through the performance of useful public work, and for other purposes; to the Committee on Education and Labor.

By Mr. MORAN of Kansas:

H.R. 4319. A bill to amend title 38, United States Code, to provide for certain improvements in the laws relating to specially adapted housing assistance provided by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. MURPHY of New York:

H.R. 4320. A bill to amend title 38, United States Code, to expand the types of approved programs of education for purposes of Post-9/11 Educational Assistance Program of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. ORTIZ (for himself, Mr. CONYERS, Mr. SERRANO, Mr. RANGEL, Mr.

PASTOR of Arizona, Mr. STARK, Mr. GUTIERREZ, Mr. WAXMAN, Mr. BECERRA, Mr. FRANK of Massachusetts, Ms. ROYBAL-ALLARD, Mr. BERMAN, Ms. VELÁZQUEZ, Mrs. CHRISTENSEN, Mr. HINOJOSA, Mr. TOWNS, Mr. REYES, Mr. LEWIS of Georgia, Mr. BACA, Mr. PALLONE, Mr. GONZALEZ, Mr. ANDREWS, Mrs. NAPOLITANO, Mr. McDERMOTT, Mr. GRIJALVA, Mr. ENGEL, Mr. CUELLAR, Mr. FALEOMAVAEGA, Mr. SALAZAR, Mr. NEAL of Massachusetts, Mr. SIREN, Mr. ABERCROMBIE, Mr. LUJÁN, Ms. NORTON, Mr. PIERLUISI, Mr. MORAN of Virginia, Mr. SABLON, Mr. NADLER of New York, Mr. OLIVER, Ms. WATERS, Ms. CORRINE BROWN of Florida, Mr. FARR, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. HASTINGS of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MALONEY, Mr. RUSH, Mr. SCOTT of Virginia, Ms. WOOLSEY, Mr. BLUMENAUER, Mr. FATTAH, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mrs. CAPPS, Mr. DAVIS of Illinois, Ms. DEGETTE, Ms. KILPATRICK of Michigan, Mr. KUCINICH, Ms. LEE of California, Mr. MCGOVERN, Mr. MEEKS of New York, Ms. SCHAKOWSKY, Ms. BERKLEY, Mr. CAPUANO, Mr. CROWLEY, Mr. WEINER, Mr. CLAY, Mr. HONDA, Mr. ISRAEL, Ms. WATSON, Ms. BORDALLO, Mr. MEEK of Florida, Mr. CLEAVER, Mr. AL GREEN of Texas, Ms. MATSUI, Ms. MOORE of Wisconsin, Mr. CARSON of Indiana, Ms. CLARKE, Ms. EDWARDS of Maryland, Mr. ELLISON, Ms. FUDGE, Ms. HIRONO, Mr. JOHNSON of Georgia, Mr. PERLMUTTER, Ms. RICHARDSON, Mr. WELCH, Ms. CHU, Mr. HEINRICH, Ms. PINGREE of Maine, Mr. POLIS of Colorado, and Mr. QUIGLEY):

H.R. 4321. A bill to provide for comprehensive immigration reform, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Armed Services, Foreign Affairs, Natural Resources, Ways and Means, Education and Labor, Oversight and Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SARBANES:

H.R. 4322. A bill to establish a National Foundation on Physical Fitness and Sports to carry out activities to support and supplement the mission of the President's Council on Physical Fitness and Sports; to the Committee on Education and Labor.

By Mr. SOUDER:

H.R. 4323. A bill to amend the Internal Revenue Code of 1986 to allow a credit against tax for certain costs relating to compliance with financial regulations; to the Committee on Ways and Means.

By Ms. TITUS:

H.R. 4324. A bill to amend the Homeowners Assistance Program of the Department of Defense to give the Secretary of Defense flexibility regarding setting the commencement date for homeowner assistance for members of the Armed Forces permanently reassigned during the mortgage crisis; to the Committee on Armed Services, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TONKO:

H.R. 4325. A bill to establish a grant program to assist schools in establishing a universal free classroom breakfast program; to the Committee on Education and Labor.

By Mr. OBEY:

H.J. Res. 64. A joint resolution making further continuing appropriations for fiscal year 2010, and for other purposes; to the Committee on Appropriations.

By Mr. ORTIZ:

H. Con. Res. 222. Concurrent resolution recognizing the leadership and historical contributions of Dr. Hector Garcia to the Hispanic community and his remarkable efforts to combat racial and ethnic discrimination in the United States of America; to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KILDEE (for himself, Mr. DINGELL, Mr. LEVIN, Ms. KILPATRICK of Michigan, Ms. SCHAKOWSKY, Mr. STUPAK, Mr. BACA, Mr. BONNER, Mr. ROGERS of Alabama, Mr. ADERHOLT, Mr. GRIFFITH, Mr. MOORE of Kansas, Mr. RYAN of Ohio, Mr. SHULER, Mr. PETERS, Mr. VISCLOSKEY, Mr. CONYERS, Mr. HINCHAY, Mr. UPTON, Mr. CAMP, Mr. MCCOTTER, Mr. SCHAUER, Mr. DAVIS of Alabama, Mr. BACHUS, Mr. HARE, Mr. HOEKSTRA, Mr. ROGERS of Michigan, Mr. EHLERS, Mr. BOREN, and Mr. KIND):

H. Res. 970. A resolution congratulating Flint native, University of Alabama sophomore, and running back Mark Ingram on winning the 2009 Heisman Trophy and honoring both his athletic and academic achievements; to the Committee on Education and Labor.

By Ms. WASSERMAN SCHULTZ (for herself, Mrs. MYRICK, Mr. ADERHOLT, Mr. ALEXANDER, Mr. ARCURI, Mr. BACA, Mrs. BACHMANN, Ms. BERKLEY, Mr. BERRY, Mrs. BIGGERT, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mrs. BLACKBURN, Mr. BLUNT, Mr. BOCCIERI, Ms. BORDALLO, Mr. BOREN, Mr. BOUSTANY, Mr. BOYD, Mr. BRALEY of Iowa, Mr. BRIGHT, Ms. CORRINE BROWN of Florida, Mr. BURTON of Indiana, Mr. BUTTERFIELD, Mr. CALVERT, Mrs. CAPITO, Mrs. CAPPS, Mr. CARDOZA, Mr. CARNEY, Ms. CASTOR of Florida, Mr. CHANDLER, Mrs. CHRISTENSEN, Mr. CLYBURN, Mr. CONNOLLY of Virginia, Mr. CROWLEY, Mr. CULBERSON, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mrs. DAVIS of California, Ms. DEGETTE, Ms. DELAURO, Mr. LINCOLN DIAZ-BALART of Florida, Mr. MARIO DIAZ-BALART of Florida, Mr. DINGELL, Mrs. EMERSON, Mr. ENGEL, Mr. FARR, Mr. POSTER, Ms. FUDGE, Ms. GIFFORDS, Mr. GINGREY of Georgia, Ms. GRANGER, Mr. GRAYSON, Mr. GRIFFITH, Mr. HALL of New York, Mrs. HALVORSON, Mr. HASTINGS of Florida, Mr. HEINRICH, Mr. HELLER, Ms. HERSETH SANDLIN, Mr. HIGGINS, Mr. HODES, Mr. HOLDEN, Mr. ISRAEL, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. KILDEE, Ms. KILROY, Mr. KIND, Mr. KLEIN of Florida, Mr. KRATOVIL, Mr. LANCE, Mr. LARSON of Connecticut, Ms. LEE of California, Mr. LUETKEMEYER, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOBIONDO, Mrs. LOWEY, Mr. LYNCH, Ms. MARKEY of Colorado, Ms. MATSUI,

Ms. MCCOLLUM, Mr. MCGOVERN, Mrs. MCMORRIS RODGERS, Mr. MCNERNEY, Mr. MEEK of Florida, Mr. MELANCON, Mr. MOORE of Kansas, Mr. MURPHY of Connecticut, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. MURPHY of New York, Mr. OLVER, Mr. PERRIELLO, Mr. PETERS, Mr. POLIS of Colorado, Mr. PUTNAM, Mr. RANGEL, Ms. ROSLEHTINEN, Mr. SCHAUER, Mrs. SCHMIDT, Mr. SCOTT of Georgia, Mr. SESTAK, Ms. SHEA-PORTER, Mr. SHERMAN, Mr. SPACE, Mr. STUPAK, Ms. SUTTON, Mr. TANNER, Mr. THOMPSON of Pennsylvania, Ms. TSONGAS, Mr. WALZ, Mr. WEINER, Mr. WEXLER, Mr. WILSON of Ohio, Ms. WOOLSEY, Mr. RODRIGUEZ, Mr. NADLER of New York, Mr. NYE, Mr. DONNELLY of Indiana, Ms. EDWARDS of Maryland, Mrs. DAHLKEMPER, Ms. KOSMAS, Mr. NEAL of Massachusetts, Ms. HARMAN, Mr. ACKERMAN, Mr. MEEKS of New York, Mr. TEAGUE, Mr. MCMAHON, Mr. MAFFEI, Mr. MITCHELL, Mr. KAGEN, Mr. MURTHA, Mr. WU, Mr. DAVIS of Illinois, Mr. BUCHANAN, and Ms. HIRONO):

H. Res. 971. A resolution expressing the sense of the House of Representatives regarding guidelines for breast cancer screening for women ages 40 to 49; to the Committee on Energy and Commerce. considered and agreed to.

By Mr. DAVIS of Alabama (for himself, Mr. BACHUS, Mr. BONNER, Mr. GRIFFITH, Mr. ROGERS of Alabama, Mr. ADERHOLT, and Mr. BRIGHT):

H. Res. 972. A resolution commending University of Alabama Running Back Mark Ingram on winning the 2009 Heisman Trophy; to the Committee on Education and Labor.

By Mr. ALEXANDER:

H. Res. 974. A resolution urging the Administrator of the Environmental Protection Agency to reevaluate the endangerment and cause or contribute findings regarding greenhouse gases signed on December 7, 2009; to the Committee on Energy and Commerce.

By Ms. SCHWARTZ (for herself, Mr. HOLDEN, Mr. BURGESS, Mr. MEEK of Florida, Mr. PASTOR of Arizona, Mr. CLEAVER, Mr. GERLACH, Mr. HASTINGS of Florida, Mr. MOORE of Kansas, Mr. BLUMENAUER, Ms. VELÁZQUEZ, Ms. LEE of California, Ms. KAPTUR, Mr. FATTAH, Mr. SERRANO, Mr. MEEKS of New York, Mr. PLATTs, Mr. ELLISON, Mr. RANGEL, Ms. MATSUI, Ms. CHU, Mrs. DAHLKEMPER, Mr. HONDA, Mr. DAVIS of Illinois, Ms. SUTTON, Ms. CASTOR of Florida, Ms. WATSON, Mr. INSLEE, Mr. MCGOVERN, Ms. CLARKE, Mr. CARDOZA, Mr. HINCHAY, and Ms. WOOLSEY):

H. Res. 975. A resolution recognizing the potential for a national fresh food financing initiative to provide an effective and economically sustainable solution to the problem of limited access to healthy foods in underserved urban, suburban, and rural low-income communities, while also improving health and stimulating local economic development; to the Committee on Agriculture.

#### ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 211: Ms. EDWARDS of Maryland, Mr. DOYLE, and Mr. DEFazio.

H.R. 219: Mr. BOOZMAN.

H.R. 240: Mr. BISHOP of Utah.

H.R. 305: Ms. PINGREE of Maine.

H.R. 391: Mrs. BONO MACK and Mr. COFFMAN of Colorado.

H.R. 422: Mr. LUETKEMEYER.

H.R. 463: Mr. HEINRICH.

H.R. 503: Mr. HIMES.

H.R. 571: Mr. MORAN of Virginia.

H.R. 690: Mr. UPTON.

H.R. 725: Mr. HEINRICH.

H.R. 745: Mr. ELLISON.

H.R. 847: Ms. MCCOLLUM and Mr. BRALEY of Iowa.

H.R. 1020: Mr. FILNER.

H.R. 1021: Ms. SUTTON.

H.R. 1064: Mr. HEINRICH.

H.R. 1067: Mr. BISHOP of Georgia.

H.R. 1103: Mr. GINGREY of Georgia.

H.R. 1177: Mr. CUELLAR, Mrs. DAHLKEMPER, and Mr. CROWLEY.

H.R. 1326: Ms. EDDIE BERNICE JOHNSON of Texas and Mr. SHERMAN.

H.R. 1378: Mr. HILL.

H.R. 1547: Mr. ROSKAM.

H.R. 1646: Mr. MARKEY of Massachusetts.

H.R. 1677: Ms. ROYBAL-ALLARD.

H.R. 1688: Mr. ABERCROMBIE.

H.R. 1708: Mr. GORDON of Tennessee.

H.R. 1721: Mr. HARE.

H.R. 1806: Mr. BUCHANAN.

H.R. 1826: Mr. MINNICK.

H.R. 1831: Mr. MOLLOHAN and Ms. EDDIE BERNICE JOHNSON of Texas.

H.R. 1974: Mr. GOODLATTE, Mr. PETERS, and Mr. MAFFEI.

H.R. 1977: Mr. HINCHAY.

H.R. 1987: Mr. HOLT.

H.R. 1990: Mr. BERRY and Mr. ELLSWORTH.

H.R. 2000: Mr. PENCE.

H.R. 2024: Mr. ARCURI.

H.R. 2054: Mr. JACKSON of Illinois.

H.R. 2067: Mr. RANGEL and Mr. CROWLEY.

H.R. 2103: Mr. MASSA and Mr. CRENSHAW.

H.R. 2119: Mr. MANZULLO.

H.R. 2408: Mr. DINGELL.

H.R. 2458: Mr. MANZULLO.

H.R. 2478: Ms. SLAUGHTER and Mr. INGLIS.

H.R. 2480: Mr. SCHIFF and Ms. TITUS.

H.R. 2485: Mr. FRANK of Massachusetts.

H.R. 2556: Mr. BURGESS.

H.R. 2628: Mr. WILSON of Ohio.

H.R. 2698: Mr. WEINER and Mr. BERMAN.

H.R. 2699: Mr. WEINER and Mr. BERMAN.

H.R. 2700: Ms. SLAUGHTER.

H.R. 2730: Ms. BALDWIN, Mr. GRIFFITH, and Ms. WOOLSEY.

H.R. 2733: Mr. RAHALL, Mrs. BLACKBURN, Mr. CHILDERS, Mr. AUSTRIA, and Mr. MARCHANT.

H.R. 2752: Mr. MANZULLO.

H.R. 2799: Mr. JACKSON of Illinois.

H.R. 2866: Mr. YARMUTH.

H.R. 3116: Mr. LIPINSKI.

H.R. 3129: Mr. PENCE.

H.R. 3217: Mr. INGLIS.

H.R. 3286: Ms. LINDA T. SÁNCHEZ of California.

H.R. 3308: Mr. KLEIN of Florida.

H.R. 3315: Mr. CLEAVER.

H.R. 3339: Mr. MINNICK and Mr. SALAZAR.

H.R. 3421: Mr. MASSA.

H.R. 3524: Mr. SKELTON and Mr. KAGEN.

H.R. 3592: Mr. MINNICK.

H.R. 3608: Mr. DOGGETT.

H.R. 3646: Ms. ZOE LOFGREN of California.

H.R. 3652: Mr. COBLE.

H.R. 3701: Ms. BERKLEY.

H.R. 3706: Ms. GRANGER.

H.R. 3720: Mr. KAGEN.

H.R. 3734: Ms. SHEA-PORTER.

H.R. 3775: Mr. SOUDER.

H.R. 3790: Mr. OBERSTAR and Mr. DAVIS of Kentucky.

H.R. 3943: Mr. PASTOR of Arizona, Mr. CHILDERS, Mr. ORTIZ, Mr. JACKSON of Illinois, Ms.

SCHAKOWSKY, Mr. BARTLETT, Ms. GINNY BROWN-WAITE of Florida, and Mrs. NAPOLITANO.

H.R. 4014: Mr. FARR.  
H.R. 4054: Mr. COSTELLO, Mr. ELLSWORTH, Ms. HARMAN, and Mr. JONES.  
H.R. 4060: Mr. MINNICK.  
H.R. 4075: Mr. POSEY.  
H.R. 4085: Mr. BLUMENAUER, Mr. BRADY of Texas, Mr. HEINRICH, and Mr. ISRAEL.  
H.R. 4091: Mr. WAMP.  
H.R. 4109: Mr. PAYNE.  
H.R. 4110: Mr. SCHOCK.  
H.R. 4127: Mr. SCHOCK.  
H.R. 4138: Mr. FORBES.  
H.R. 4140: Mr. CARSON of Indiana.  
H.R. 4147: Ms. BERKLEY.  
H.R. 4149: Mr. HEINRICH and Mr. KAGEN.  
H.R. 4156: Mr. KAGEN.  
H.R. 4160: Ms. LINDA T. SÁNCHEZ of California.  
H.R. 4167: Mr. DOYLE.  
H.R. 4196: Ms. ESHOO, Ms. LINDA T. SÁNCHEZ of California, and Mr. COSTELLO.  
H.R. 4197: Mr. MORAN of Virginia, Mr. PLATTS, Mrs. NAPOLITANO, and Ms. RICHARDSON.  
H.R. 4199: Mr. ROGERS of Alabama and Mrs. EMERSON.  
H.R. 4210: Mr. PLATTS.  
H.R. 4220: Mr. LUETKEMEYER.  
H.R. 4233: Mr. HERGER.  
H.R. 4247: Mrs. MALONEY.  
H.R. 4255: Mrs. KIRKPATRICK of Arizona, Mr. HEINRICH, Mr. WITTMAN, Mr. MURPHY of New York, Mr. PETERS, Mr. DONNELLY of Indiana, Mr. MCNERNEY, Mr. PERRIELLO, Mr. LUETKEMEYER, Mr. ELLSWORTH, Mr. FLEMING, Mr. CARNAHAN, Ms. SHEA-PORTER, Mr. PETERSON, Mr. ALTMIRE, Ms. GIFFORDS, Mr. GUTHRIE, Mr. QUIGLEY, Mr. POLIS of Colorado, Mrs.

MYRICK, Mrs. HALVORSON, Mr. DRIEHAUS, and Mr. NYE.

H.R. 4260: Mrs. CAPPS.  
H.R. 4262: Mr. WITTMAN, Mr. BARRETT of South Carolina, and Mrs. BIGGERT.  
H.R. 4263: Mr. HEINRICH, Mr. BACA, Ms. DELAURO, Mr. BOUCHER, Mr. LEWIS of Georgia, Mr. WEINER, Mr. HARE, and Mr. HINCHEY.  
H.R. 4268: Ms. SUTTON.  
H.R. 4270: Mr. SOUDER and Mr. LOBIONDO.  
H.R. 4298: Mr. FILNER and Mr. WEINER.  
H.R. 4307: Mr. THOMPSON of California.  
H.J. Res. 11: Mr. PITTS.  
H.J. Res. 57: Mr. GOODLATTE.  
H.J. Res. 61: Mr. PASTOR of Arizona.  
H. Con. Res. 137: Ms. SLAUGHTER.  
H. Con. Res. 216: Ms. SCHAKOWSKY, Ms. EDWARDS of Maryland, and Mr. GARAMENDI.  
H. Con. Res. 220: Mr. JOHNSON of Georgia, Mr. MCGOVERN, Mr. SMITH of Washington, and Mr. WALZ.  
H. Con. Res. 221: Mr. MOORE of Kansas.  
H. Res. 601: Mr. ISRAEL.  
H. Res. 699: Mr. LUCAS.  
H. Res. 732: Ms. BERKLEY, Mr. CARNAHAN, Mr. FLAKE, Mr. MEEKS of New York, Mr. MILLER of North Carolina, Mr. SHERMAN, and Mr. PAYNE.  
H. Res. 764: Mr. PENCE.  
H. Res. 812: Mr. TIAHRT.  
H. Res. 840: Mr. PENCE.  
H. Res. 859: Mr. ELLISON and Mr. MCGOVERN.  
H. Res. 862: Mr. HOLT, Mrs. HALVORSON, and Mr. LIPINSKI.  
H. Res. 905: Ms. ZOE LOFGREN of California, and Mr. WATT.  
H. Res. 936: Mr. COURTNEY and Mrs. MCMORRIS RODGERS.  
H. Res. 943: Mr. LAMBORN.  
H. Res. 944: Mrs. MILLER of Michigan and Mrs. DAHLKEMPER.

H. Res. 947: Mr. FARR, Mr. RANGEL, Mr. STARK, Mr. PAYNE, and Mr. CARNAHAN.

H. Res. 951: Mr. NUNES and Mr. MCINTYRE.  
H. Res. 966: Mr. SESSIONS, Mr. LATTA, and Mr. CARTER.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, OR LIMITED TARIFF BENEFITS

Under clause 9 of rule XXI, lists or statements on congressional earmarks, limited tax benefits, or limited tariff benefits were submitted as follows:

OFFERED BY MR. RANGEL

H.R. 4314, a bill to permit continued financing of government operations, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

OFFERED BY MR. OBEY

H.J. Res. 64, making further continuing appropriations for the fiscal year 2010, and for other purposes, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H. Res. 648: Mr. DOGGETT.

## EXTENSIONS OF REMARKS

A PROCLAMATION HONORING  
WADE BROCK FOR WINNING THE  
GIRLS' DIVISION IV STATE SOFT-  
BALL CHAMPIONSHIP

**HON. ZACHARY T. SPACE**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. SPACE. Madam Speaker:

Whereas, Wade Brock showed hard work and dedication to the sport of softball; and

Whereas, Wade Brock was a supportive coach; and

Whereas, Wade Brock always displayed sportsmanship on and off the field; now, therefore, be it

Resolved, that along with his friends, family, and the residents of the 18th Congressional District, I congratulate Wade Brock on winning the Girls' Division IV State Softball Championship. We recognize the tremendous hard work and sportsmanship he has demonstrated during the 2008–2009 softball season.

RECOGNIZING THE 35TH ANNIVER-  
SARY OF THE VILLAGE OF WON-  
DER LAKE

**HON. MELISSA L. BEAN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize the Village of Wonder Lake, a town in my district celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

The Village of Wonder Lake is celebrating its 35 year anniversary. Located in McHenry County, Wonder Lake takes its name from the largest private man-made lake in the state of Illinois. In the 1850s, the area of was served by the Harsh School, a one room log building serving about a dozen farmhouses. It was not until 1974 that Wonder Lake was incorporated as residents of the Sunrise Ridge community came together to form a village.

Madam Speaker, the Village of Wonder Lake is unique in its history and adds greatly to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of the Village of Wonder Lake for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Wonder Lake for reaching their 35th anniversary and I wish them continued success in the future.

HONORING THE SONOMA VALLEY  
CHAMBER OF COMMERCE

**HON. LYNN C. WOOLSEY**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. WOOLSEY. Madam Speaker, I rise today to honor the 100th anniversary of the Sonoma Valley Chamber of Commerce. The Chamber has long served as a spirited defender of the Valley's interests, by encouraging new industry, organizing beautification projects and managing flood control efforts.

The Chamber began the evening of April 10, 1909, when 32 businessmen convened over dinner to discuss how they could stimulate commerce for the benefit of local merchants and professionals.

Membership quickly grew to 100 and the Chamber began their first initiatives, like publishing marketing material and establishing committees to begin tackling an ambitious agenda. In the early years, the Chamber called for transportation improvements and successfully lobbied Congress to protect a local federal facility from closure.

During the Great Depression, the Sonoma Valley Chamber of Commerce was instrumental in addressing needs of a paralyzed business community. To generate renewed interest in the organization, the Chamber hosted an event benefiting street and driveway improvements.

In the subsequent years, the Chamber pioneered many efforts, including the creation of a commuter bus service to San Francisco, the endorsement of a municipal water system, support for State Parks and advocacy for underground utility and telephone lines. Notably, the Chamber raised local matching funds for a job stimulus program that was part of President Roosevelt's New Deal.

Following the attack on Pearl Harbor, the Chamber was designated as a farm labor office tasked with steering workers to local farmers. In the years following the war, the Chamber focused on supporting an adequate sewage system, the introduction of local hospital and the adoption of a zoning plan.

By mid-century, the Chamber hosted an industrial conference, boldly escalating efforts to bring new industry to the Valley.

Today the Chamber has expanded its membership to more than 700 leaders who continue to help ensure a thriving economy through advocacy, promotion, networking, education and services.

Operating under the mantra that "Strong businesses make strong communities", the Chamber hosts events, publishes a business magazine and offers comprehensive business, community and visitor resources. The Chamber also leads recognition efforts, honoring the business of the year and green businesses.

Madam Speaker, it is appropriate at this time that we acknowledge the 100th anniver-

sary of the Sonoma Valley Chamber of Commerce. In years to come, this organization will remain an integral and powerful force that continues to enrich the business community for the benefit of all Sonoma Valley residents.

### PERSONAL EXPLANATION

**HON. J. GRESHAM BARRETT**

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. BARRETT of South Carolina. Madam Speaker, unfortunately, I missed the following recorded votes on the House floor during the week of Monday, December 7, 2009, to Friday, December 11, 2009.

For Tuesday, December 8, 2009, had I been present I would have voted "aye" on rollcall vote No. 931, on motion to instruct conferees regarding H.R. 3288; "aye" on rollcall vote No. 932, on motion to suspend the rules and agree to Con. Res. 199; "aye" on rollcall vote No. 933, on motion to suspend the rules and agree to H. Con. Res. 206; "aye" on rollcall vote No. 934, on motion to suspend the rules and agree to H. Res. 940; "aye" on rollcall vote No. 935, on motion to suspend the rules and agree to H. Res. 845; "aye" on rollcall vote No. 936, on motion to suspend the rules and agree to H.R. 2278; "aye" on rollcall vote No. 937, on motion to suspend the rules and agree to H. Res. 915; "aye" on rollcall vote No. 938, on motion to suspend the rules and agree to H. Res. 907.

For Wednesday, December 9, 2009, had I been present I would have voted "no" on rollcall vote No. 939, on ordering the previous question to provide for consideration of H.R. 4213; "no" on rollcall vote No. 940, on agreeing to H. Res. 955; "aye" on rollcall vote No. 941, on motion to suspend the rules and pass H.R. 3951; "no" on rollcall vote No. 942, on motion to table appeal of the ruling of the chair regarding H.R. 4213; "no" on rollcall vote No. 943, on passage of H.R. 4213; "aye" on rollcall vote No. 944, on motion to suspend the rules and pass, as amended, H.R. 3603; "no" on rollcall vote No. 945, on agreeing to the resolution H. Res. 956; "aye" on rollcall vote No. 946, on motion to suspend the rules and agree to H.R. 86.

For Thursday, December 10, 2009, had I been present I would have voted "no" on rollcall vote No. 947, on ordering the previous question to provide for consideration of the Conference Report to H.R. 3288; "no" on rollcall vote No. 948, on agreeing to H. Res. 961, which provides for consideration of the Conference Report to H.R. 3288; "no" on rollcall vote No. 949, on agreeing to the Conference Report to H.R. 3288; "aye" on rollcall vote No. 950, on motion to suspend the rules and agree to H.R. 4017; "no" on rollcall vote No. 951, on agreeing to H. Res. 962; "no" on rollcall vote No. 952, on agreeing to H. Res. 964,

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



which provides for consideration of H.R. 4173; "no" on rollcall vote No. 953, on agreeing to the Frank amendment No. 1 to H.R. 4173; "aye" on rollcall vote No. 954, on agreeing to the Sessions amendment to H.R. 4173; "no" on rollcall vote No. 955, on agreeing to the Lynch amendment to H.R. 4173; "aye" on rollcall vote No. 956, on agreeing to the Murphy (NY) amendment to H.R. 4173; "no" on rollcall vote No. 957, on agreeing to the Frank (MA) amendment to H.R. 4173; "no" on rollcall vote No. 958, on agreeing to the Stupak amendment to H.R. 4173; "no" on rollcall vote No. 959, on agreeing to the Stupak amendment to H.R. 4173.

For the morning of Friday, December 11, 2009, had I been present I would have voted "no" on rollcall vote No. 960, on agreeing to the Kanjorski amendment to H.R. 4173; "aye" on rollcall vote No. 961, on agreeing to the McCarthy (CA) amendment to H.R. 4173; "no" on rollcall vote No. 962, on agreeing to the Peters amendment to H.R. 4173.

#### PROCLAMATION ISSUED TO BEULAH BAPTIST CHURCH

**HON. HENRY C. "HANK" JOHNSON, JR.**

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. JOHNSON of Georgia. Madam Speaker, I would like to submit this proclamation which I issued to Beulah Baptist Church.

Whereas, the Beulah Baptist Church has been and continues to be a beacon of light to our county for the past 113 years; and

Whereas, Pastor Jerry D. Black and the members of the Beulah Baptist Church family today continues to uplift and inspire those in our county; and

Whereas, the Beulah Baptist Church family has been and continues to be a place where citizens are touched spiritually, mentally and physically through outreach ministries and community partnership to aid in building up our District; and

Whereas, this remarkable and tenacious Church of God has given hope to the hopeless, fed the needy and empowered our community for the past 113 years by preaching the gospel, singing the gospel and living the gospel; and

Whereas, Beulah has produced many spiritual warriors, people of compassion, people of great courage, fearless leaders and servants to all, but most of all visionaries who have shared not only with their Church, but with DeKalb County and the world their passion to spread the gospel of Jesus Christ; and

Whereas, the U.S. Representative of the Fourth District of Georgia has set aside this day to honor and recognize the Beulah Baptist Church family for their leadership and service to our District on this the 113th Anniversary of their founding:

Now Therefore, I, Henry C. "Hank" Johnson, Jr. do hereby proclaim November 22, 2009 as Beulah Baptist Church Day in the 4th Congressional District.

Proclaimed, this 22nd day of November, 2009.

ANDREA LEWIS

**HON. BARBARA LEE**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. LEE of California. Madam Speaker, I rise today to honor the extraordinary life of Andrea Lewis. A talented journalist, radio news anchor and a true renaissance woman, Ms. Lewis had an uncanny ability to broach any subject with her impressive knowledge, affability and confidence. Ms. Lewis passed away Sunday, November 15, 2009 at the age of 52.

Andrea Lewis, a native of Detroit, Michigan, earned her B.A. from Eastern Michigan University, where she studied music, English literature, and art history. After moving to the Bay Area in 1983, she became an editor for Plexus: West Coast Women's Press, and in the late 1980s, she worked as a research editor for Mother Jones magazine. After gaining further publishing experience as an editorial assistant at Harper Collins Publishers in San Francisco and senior editor at Third Force Magazine in the early 90s, Ms. Lewis joined Pacific News Service as an associate editor.

Ms. Lewis, known for her rich, resonant voice, made an effortless transition to radio in 1999, joining the KPFA Morning Show as co-host of the two-hour weekday public affairs program. Though the warm tone and timbre of Andrea's voice was often praised, she is most remembered for voicing sound and well-researched opinions.

A tireless advocate and champion for civil rights, Ms. Lewis was particularly interested in combating sexism, racism and homophobia. Ms. Lewis acquired a following throughout her career, and was especially admired for her thoughtful and compassionate equanimity when discussing difficult subjects on or off the air.

More recently, Ms. Lewis took a year off to complete a 2008 Knight Journalism Fellowship at Stanford University. She returned as evening news co-anchor and host of a two-hour Sunday morning interview and call-in program that she dubbed "Sunday Sedition." She was also a fellow in the Society of Professional Journalists Diversity Leadership Program from 2006 to 2007.

Among Ms. Lewis' many accolades were The National Federation of Community Broadcasters' Golden Reel award in 2002, the California Teachers Association's John Swett Award for Media Excellence in 2004, and many well-received published articles. Ms. Lewis was a regular contributor to Madison, Wisconsin's Progressive Magazine, and I am honored to hear that she was proud to have had a quotation from our 2005 interview included in the Progressive's 100th anniversary edition in April.

Ms. Lewis exercised a life-long passion for music as both a member of her university's choral group, which toured Europe, and for the last 20 years, as a talented alto in the San Francisco Symphony Chorus. Both Ms. Lewis and her family were so proud when the chorus had the honor of performing at Carnegie Hall. She was also an avid reader, a sports fan and a lifelong golfer. She will be remembered by family, friends and colleagues for her laughter, her insight, her honesty and her vibrant spirit.

This evening, we salute and honor a great human being, Ms. Andrea Lewis. Our community is indebted to her life's contribution in countless ways. We extend our deepest condolences to Ms. Lewis's family and to all who were dear to her. May her soul rest in peace.

#### PERSONAL EXPLANATION

**HON. JOE WILSON**

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. WILSON of South Carolina. Madam Speaker, I submit to the RECORD the following remarks regarding my absence from votes which occurred on December 14th. Listed below is how I would have voted if I had been present.

H. Res. 779—Recognizing and supporting the goals and ideals of National Runaway Prevention Month, roll No. 969—"yea."

H. Res. 942—Commending the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup, roll No. 970—"yea."

#### PERSONAL EXPLANATION

**HON. JUDY CHU**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. CHU. Madam Speaker, on rollcall No. 969, Runaway Prevention Month, rollcall No. 970, Real Salt Lake Soccer Club, had I been present, I would have voted "yea."

COMMEMORATING THE 70TH WEDDING ANNIVERSARY OF JAMES H. AND ELIZABETH GARBUTT SHAW

**HON. ALLEN BOYD**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. BOYD. Madam Speaker, I rise today to commemorate the 70th wedding anniversary of two American patriots residing in my District. Their deep dedication to this country founded in the commitment to each other is a testament to the strong values that have made this country and its people the model for the world to emulate.

James Henry Shaw married Elizabeth Garbutt on December 14, 1939 in Valdosta, GA. James is a former U.S. Marine who stormed the beaches of Yellow Beach with the First Marine Division on April 1, 1945 and fought long and hard in the entire 82-day campaign that saw over 50,000 American casualties including over 12,000 dead or missing. James was one of those casualties sustaining shrapnel wounds in his side earning him the Purple Heart. Once the island was secure, James and his fellow Marines began training exercises preparing to invade the main Islands of Japan on their push to Tokyo until the Japanese surrendered on August 15, 1945. He

was then part of the occupying U.S. forces in China before returning home in 1946. Elizabeth remained back on the home front contributing to the vital efforts supporting our troops abroad. She raised two children and is now the proud matriarch of a family that has grown into 6 grandchildren and 11 great-grandchildren. Her son was a career Air Force enlisted man with his children all serving proudly in the officer and enlisted ranks of the United States Air Force. Her daughter had two sons that attended the United States Naval Academy and are currently active duty officers in the United States Navy. Besides being a father and grandfather, James has been a career railroad freight man moving to trucking freight later in his life and retiring. James and Elizabeth are now in their 9th decade, still living unassisted, and until recently, served tirelessly and unselfishly as volunteers at their local polling precinct assisting others to vote.

This achievement allows for reflection on what it means to remain in a committed and loving relationship dedicated to the values and ideals that help shape and foster the citizens of this great country. On behalf of my colleagues, and myself, I extend to James and Elizabeth Shaw my gratitude, deep appreciation, and continued health for many more years to come. Thank you both for your service and commitment to our country.

#### PERSONAL EXPLANATION

### HON. CAROLYN MCCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mrs. MCCARTHY of New York. Madam Speaker, yesterday, I missed 2 votes. Had I been present, I would have voted as follows:

Rollcall No. 969, on the Motion to Suspend the Rules and Agree, as Amended, to H. Res. 779, I would have voted "yea."

Rollcall No. 970, on the Motion to Suspend the Rules and Agree to H. Res. 942, I would have voted "yea."

#### 100TH ANNIVERSARY OF THE MCALLEN MONITOR

### HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. CUELLAR. Madam Speaker, I rise today to honor the 100th anniversary of the McAllen Monitor, which has served as a vital news source for the Rio Grande Valley of south Texas and our communities.

This newspaper has accomplished a "century of service" to our community over the years.

From copy boys in the past, to computers in the present, the Monitor has kept an unprecedented pulse on south Texas.

They've generated news and reports of historic people, legends, events, tragedies and accomplishments, that have served to shape the story of the Rio Grande Valley.

The first issue was released on December 11, 1909.

The Monitor was founded in a small facility at the corner of Beaumont and Broadway in McAllen, Texas.

It was "humble beginnings" for our neighborhood paper.

Now the Monitor has a 100,000 square foot building, equipped with modern equipment and journalists of all backgrounds.

Over the past 100 years, the Monitor has undergone change, along with changes in news on a daily basis.

The paper was even renamed four times. But the spirit of its content, unchanged through all the years.

For a century now, the Monitor has provided a steady flow of information as a trusted news source throughout the region.

The McAllen Monitor has covered groundbreaking news items that have shaped the Nation, State, and community.

From 1909 to 2009, the newspaper has covered landmark events including:

"Black Tuesday" when the Nation fell into the Great Depression;

1933 when a hurricane hit Brownsville to McAllen;

and in August 1957, a Russian spy was taken into custody in McAllen.

In 1968, Hispanics participated in a walkout at Ecouch-Elsa High School because of unjust treatment in the school.

Three years later, Cesar Chavez visited the Valley followed by the great late Senator Edward "Ted" Kennedy who visited the Valley in October 1980.

These are landmark, local civil rights movements in our community.

For all these events in history, the Monitor was there.

That's why they are our trusted news source in the Rio Grande Valley, McAllen and in south Texas.

They are our local newspaper who understands the spirit of our City and the values of our People.

Madam Speaker, I am honored to recognize the 100th anniversary of the McAllen Monitor newspaper.

The Monitor is celebrating 100 years of service, continuing its mission for the Rio Grande Valley of south Texas.

A century of news for our community, so I commend and congratulate the Monitor with the greatest gratitude.

#### RECOGNIZING THE VILLAGE OF MUNDELEIN'S 100TH ANNIVERSARY

### HON. MELISSA L. BEAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. BEAN. Madam Speaker, I rise to recognize Mundelein, a town in my district celebrating a milestone anniversary this year. This community has made a unique contribution to the district I represent, and to the State of Illinois.

Mundelein is celebrating its 100th anniversary. As early as 1650, the Potawatomi Indians were trading with French fur traders in the area now known as Mundelein. Nearly two centuries later, a group of English immigrants

came to the area and named their new community "Mechanics Grove". In 1921, Cardinal George Mundelein of Chicago bought property in the village to construct St. Mary's of the Lake Seminary. The village changed its name again in 1924 in recognition of Cardinal Mundelein's success with the new seminary. Today, Mundelein has grown to a residential community of over 30,000 residents.

Madam Speaker, the village of Mundelein is unique in its history and adds to the vibrant community of the Eighth District of Illinois. I thank all the past leaders of village of Mundelein for their dedication to public service; their community would not have reached this milestone without their hard work and commitment. I congratulate Mundelein for reaching their 100th anniversary and I wish them continued success in the future.

#### PERSONAL EXPLANATION

### HON. BRETT GUTHRIE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. GUTHRIE. Madam Speaker, I participated in an official trip to the Middle East to visit troops and commanders on the ground. As a result, I missed two votes on Monday, December 14, 2009. Had I been present, I would have voted "yea" on rollcall votes 969 and 970.

#### HONORING THE CAREER OF DEBORAH K. CRAWFORD

### HON. ANDER CRENSHAW

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. CRENSHAW. Madam Speaker, I rise today to honor the career of Deborah K. Crawford of Jacksonville, Florida who has dedicated over 35 years of her professional career towards the protection of individual rights and reducing the administrative burden on taxpayers.

Deborah Crawford began her career as a Collection Representative for the Internal Revenue Service (IRS) working in Jacksonville, FL representing many low-income individuals who needed help accessing benefits that they may have been entitled to under the law.

Deborah later moved onto the Problem Resolution Program (PRP), as a collection technician. Her positive attitude and willingness to go the extra mile was extremely beneficial to the citizens of North Florida which earned her the selection as the Congressional Liaison in the PRP.

When the PRP was displaced by the Taxpayer Advocate Service (TAS) Deborah continued on in her role as the Congressional Liaison. TAS is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic hardships, who are seeking help in resolving problems with the IRS, or who believe that an IRS system or procedure is not working as it should.

Deborah also works with the Low Income Taxpayer Clinics to assure that the clinics operate within the guidelines and to provide representation to low income taxpayers with tax matters before the Internal Revenue Service.

Deborah continues her service to North Florida during her personal time with activities that include volunteer work with the animal shelter, zoo, and church. I commend and congratulate the impressive career history of Deborah K. Crawford and her devoted service to the taxpayers of North Florida.

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JASON HODGE

**HON. BARBARA LEE**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. LEE of California. Madam Speaker, I rise today to honor the exceptional life of Mr. Jason Hodge. A devoted son, brother, nephew, cousin, friend and colleague, Jason Hodge was taken from us too soon, on December 6, 2009. Today, let us find comfort in the joy he inspired and his wonderful spirit. He was a bright, confident, ambitious and kind man, who will be deeply missed.

After graduating from Skyline High School in 1992, Jason Hodge was accepted to the University of California, Berkeley. He soon learned how to overcome obstacles, however, when the local college funding program meant to help pay for his UC Berkeley tuition ran out of money. Although this was a terrible shock to Jason, he decided to utilize ingenuity and diligence to create a solution.

After attending Merritt College for two years, Jason was awarded a tuition scholarship from the Rotary Club of Oakland, enabling him to transfer to UC Berkeley as a junior. At this time, in addition to his studies and community involvement, Jason became the youngest person to ever win a seat on the Oakland School Board—he was only 21 years old.

Jason was elected to the School Board in 1996, after he offered fresh ideas and a student perspective in bringing change to local education programs. Although he had suffered disappointment as a result of the failed "Promise" college funding program, he wanted to do his best to provide opportunity and change for a new generation of Oakland students. He helped administer programs to protect children as they walked to and from school, and to provide transit passes for a safer commute. Jason was one of the first voices to decry the state's lack of funding for local public education, a problem which our community faces in even greater severity today.

Jason served two terms, and decided not to run for re-election to the board after the state took control of the district due to local financial troubles. For the last several years he served as the Vallejo City Unified School District spokesman, also serving as special assistant to Vallejo's superintendent and public information officer.

Jason will be remembered as a warm, compassionate person who was very close to his family. In his free time, he made sure to spend time with the people he loved, and also recently fulfilled a lifelong dream of traveling

cross-country by train. He leaves behind his mother, father, three siblings, extended family and many loving friends. Although these days are difficult, I pray that our fond memories of Jason will bring us comfort and strength as we celebrate his life.

Today, California's 9th Congressional District salutes and honors a great human being, Mr. Jason Hodge. The contributions he made to others throughout his life are countless and precious. May his soul rest in peace.

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SUPPORT FOR THE "LET WALL STREET PAY FOR THE RESTORATION OF MAIN STREET ACT" INTRODUCED BY REPRESENTATIVE PETER DEFAZIO

**HON. MAZIE K. HIRONO**

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. HIRONO. Madam Speaker, years of deregulation and exorbitant risk-taking in the financial markets contributed to the financial turmoil we're in today. Last week, the House passed a bill that would bring common sense reforms on Wall Street so that taxpayers would never again be on the hook for bailing out firms and banks for their risky, irresponsible behavior.

Congress must now pass legislation that puts people back to work. Through TARP, the federal government loaned billions of taxpayer dollars to Wall Street. It's time for Wall Street to help create jobs on Main Street.

This can happen in two ways: by using some of the available TARP funds and by imposing a modest Wall Street transaction tax on certain securities trades. This latter proposal could raise up to \$150 billion a year, part of which could go toward infrastructure investment and partly to debt reduction.

I ask my colleagues to support these proposals so that we can curb speculation and create jobs that will put Americans back to work again.

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RECOGNIZING FLORIDA'S PUBLIC SAFETY PARTNERSHIP TO FIND FUGITIVES

**HON. CONNIE MACK**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. MACK. Madam Speaker, I rise today to applaud a new Public Safety Partnership launched in my home state of Florida during this holiday season. This unique effort, entitled "12 Days of Fugitives," is an innovative public outreach plan with the end goal of helping the state and local law enforcement apprehend 12 of Florida's oldest and most violent prison escapees.

The Florida Department of Corrections and Florida Department of Law Enforcement are working with the U.S. Marshals Service, local law enforcement, and the media on this new initiative. Specifically, members of the Florida Outdoor Advertising Association are donating

space on digital billboards to display a tip line telephone number together with pictures of the fugitives. In addition, Florida newspapers have committed to feature the fugitives online and in print.

The idea is to empower the public to come forward with information about the whereabouts of these escapees. The most recent escape occurred in 2000; others have been on the run for decades.

Florida has consistently been a pioneer in these types of public safety partnerships. From the beginning, the outdoor advertising industry was part of the AMBER Alert system in Florida. Now, the National Center for Missing & Exploited Children posts AMBER Alerts on digital billboards across the country.

Madam Speaker, protecting our society from violent crime is extremely important, and often overlooked during this holiday time. This intensive public outreach in the state gives hope to the families and friends of the victims of crime that the perpetrators will be caught and brought to justice. I commend the Florida Department of Law Enforcement, the Florida Department of Corrections, the Florida Outdoor Advertising Association and the media for working together to make Florida a safer place to live, work, and visit.

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PERSONAL EXPLANATION

**HON. SUE WILKINS MYRICK**

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mrs. MYRICK. Madam Speaker, I was unable to participate in the following vote. If I had been present, I would have voted as follows:

December 14, 2009, rollcall vote 969, on motion to suspend the rules and agree, as amended—H. Res. 779, Recognizing and supporting the goals and ideals of National Runaway Prevention Month—I would have voted aye.

Rollcall vote 970, on motion to suspend the rules and agree—H. Res. 942, Commending the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup—I would have voted "aye."

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PERSONAL EXPLANATION

**HON. BILL PASCRELL, JR.**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. PASCRELL. Madam Speaker, I want to state for the record that yesterday I missed the two rollcall votes of the day. Unfortunately, I missed these votes because I was detained in my district.

Had I been present I would have voted "yea" on rollcall vote No. 969 On Motion to Suspend the Rules and Agree, as Amended—H. Res. 779—Recognizing and supporting the goals and ideals of National Runaway Prevention Month.

Lastly, had I been present I would have voted "yea" on rollcall vote No. 970 On Motion

to Suspend the Rules and Agree—H. Res. 942—Commending the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup.

#### PERSONAL EXPLANATION

### HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. THOMPSON of California. Madam Speaker, on December 14, 2009, I was unavoidably unable to cast my votes for rollcall No. 969 and rollcall No. 970. Had I been present, I would have voted "yea."

#### PERSONAL EXPLANATION

### HON. ALAN GRAYSON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. GRAYSON. Madam Speaker, on rollcall Nos. 969 and 970, I would have voted "yes." I was absent because I joined a congressional delegation inspecting military facilities in Iraq, which did not return until the following morning. Hence, had I been present, I would have voted "yea."

#### EXTENDING ANDEAN TRADE PREFERENCES

### HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. DREIER. Madam Speaker, I am a strong and long-time supporter of the Andean Trade Preferences Act, ATPA, and I support extending this vital program. Fostering economic development and the rule of law in the Andean region is essential to our national security, foreign policy and economic interests. H.R. 4284 extends ATPA benefits for Colombia, Peru, and Ecuador until December 31, 2010.

I believe there are two essential components to making ATPA work as effectively as possible. First, there must be continuity, so that American businesses and workers can get the greatest benefit. The U.S. jobs that are supported by engaging in the Andean region through ATPA require a sound investment environment, which in turn demands certainty that the program will be maintained. Taking action to extend ATPA for an additional year beyond December 31, 2009, is a positive step. However, demonstrating a stronger commitment to continuity by extending the program for at least 2 years would improve the program's effectiveness and provide greater opportunity for job creation here in the U.S.

Second, there must be accountability. While two of the three current participant countries—Colombia and Peru—have made enormous strides in implementing economic reforms, solidifying the rule of law and engaging as strong

partners with the U.S., Ecuador has moved backwards in many regards. Most troubling has been the failure to strengthen the rule of law, as this is the bedrock upon which all economic and political reforms are built. While I believe that engagement through trade is the best way to encourage progress, we must take steps to ensure that there is accountability along the way. Unfortunately, H.R. 4284 removes measures currently in place to conduct a special review of Ecuador's progress. This action diminishes the incentives for Ecuador to play by the rules. It also sends the message to our partners that those who take steps backwards will get the same treatment as those who make enormous forward progress. This lack of accountability diminishes the effectiveness of both the carrot and the stick.

As we consider long-term proposals for our trade preferences programs, including ATPA, I believe that we must ensure there is both greater continuity and greater accountability. Continued failure to do so will only limit our ability to achieve the national security, foreign policy and economic objectives these programs are designed to achieve.

#### PERSONAL EXPLANATION

### HON. JIM JORDAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. JORDAN of Ohio. Madam Speaker, due to weather-related flight cancellations that delayed my return to Washington until this morning, I was absent from the House Floor during Monday's two rollcall votes. Had I been present, I would have voted in favor of H. Res. 779 and H. Res. 942.

#### CALLING ON THE IRAQI GOVERNMENT TO KEEP ITS PROMISE AND UPHOLD ITS OBLIGATIONS UNDER INTERNATIONAL LAW

### HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. LINCOLN DIAZ-BALART of Florida. Madam Speaker, I rise today to urge the Iraqi authorities not to forcibly remove Camp Ashraf residents from the home where they have lived for over twenty years. International human rights groups such as Amnesty International have warned that forcibly relocating the Camp Ashraf residents will put the Iranian opposition group "at risk of arbitrary arrest, torture or other forms of ill-treatment, and unlawful killing."

On July 29 of this year, I spoke out against the brutal attack that began on July 28 carried out by Iraqi security forces who were acting at the behest of the Iranian regime. The Iraqi security forces rolled over unarmed Camp Ashraf residents with tanks and beat them with sticks, killing at least nine residents and injuring many more. An injustice of this magnitude must not happen again.

If the Iraqi government forcibly moves these residents from their Camp Ashraf home, it will

be breaking its promise to the United States and violating its obligations under international law. When these Iranian exiles voluntarily surrendered their weapons to U.S. forces in 2003, they did so in exchange for a promise that the U.S. would protect them. When the United States withdrew from the Camp Ashraf region, the United States and Iraq signed an agreement that the Iraqi government would continue to ensure their safety. Furthermore, Camp Ashraf residents are also shielded by international law because they are "protected persons" under Article 27 of the Fourth Geneva Convention.

This attempt to move the Camp Ashraf residents to a remote prison in the middle of the deserts appears to be an ugly attempt by the Iraqi government to appease the Iranian regime. Groups such as Amnesty International warn that it may even lead to their forcible return to Iran. If returned to Iran, these members of the Iranian opposition would face almost certain torture and even death.

Madam Speaker, I call on the Iraqi government to keep its promise to the United States and uphold its obligations under international law. Attempting to mollify the tyrannical, illegitimate Iranian regime at the expense of these pro-democracy activists would be a tragic mistake. I call on the Iraqi government to ensure the protection that these exiles were promised and to which they are entitled under international law.

#### HONORING SONOMA VALLEY CHAMBER OF COMMERCE OF SONOMA COUNTY, CALIFORNIA

### HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. THOMPSON of California. Madam Speaker, I rise today with my colleague, Representative LYNN WOOLSEY, to honor the 100th anniversary of the Sonoma Valley Chamber of Commerce. The Chamber has long served as a spirited defender of the Valley's interests, by encouraging new industry, organizing beautification projects and managing flood control efforts.

The Chamber began the evening of April 10, 1909, when 32 businessmen convened over dinner to discuss how they could stimulate commerce for the benefit of local merchants and professionals.

Membership quickly grew to 100 and the Chamber began their first initiatives, like publishing marketing material and establishing committees to begin tackling an ambitious agenda. In the early years, the Chamber called for transportation improvements and successfully lobbied Congress to protect a local federal facility from closure.

During the Great Depression, the Sonoma Valley Chamber of Commerce was instrumental in addressing needs of a paralyzed business community. To generate renewed interest in the organization, the Chamber hosted an event benefiting street and driveway improvements.

In the subsequent years, the Chamber pioneered many efforts, including the creation of

a commuter bus service to San Francisco, the endorsement of a municipal water system, support for State Parks and advocacy for underground utility and telephone lines. Notably, the Chamber raised local matching funds for a job stimulus program that was part of President Roosevelt's New Deal.

Following the attack on Pearl Harbor, the Chamber was designated as a farm labor office tasked with steering workers to local farmers. In the years following the war, the Chamber focused on supporting an adequate sewage system, the introduction of local hospital and the adoption of a zoning plan. By mid-century, the Chamber hosted an industrial conference, boldly escalating efforts to bring new industry to the Valley.

Today the Chamber has expanded its membership to more than 700 leaders who continue to help ensure a thriving economy through advocacy, promotion, networking, education and services.

Operating under the mantra that "Strong businesses make strong communities," the Chamber hosts events, publishes a business magazine and offers comprehensive business, community and visitor resources. The Chamber also leads recognition efforts, honoring the business of the year and green businesses.

Madam Speaker, it is appropriate at this time that we acknowledge the 100th anniversary of the Sonoma Valley Chamber of Commerce. In years to come, this organization will remain an integral and powerful force that continues to enrich the business community for the benefit of all Sonoma Valley residents.

#### IN MEMORY OF DONNA FREEMAN

### HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. WOOLSEY. Madam Speaker, I rise today with my colleague, Representative MIKE THOMPSON, to honor the memory of Donna Cook Freeman of Bodega Bay in my district, an energetic community activist from whose petite frame exuded a feisty kind of determination combined with warmth and humor that earned friends, political power and a long list of accomplishments.

Donna came to Bodega Bay a half-century ago as a young, poor and pregnant fisherman's wife with two small children in tow. She left Bodega Bay and this earthly plane on October 30, 2009 after two weeks of farewell visits from at least 150 friends. She was 72.

Donna Cook Freeman became involved in local politics in the early '60s in one of the earliest environmental battles of the modern era, the fight over the planned construction of a nuclear power plant at Bodega Head. Donna and several other "ordinary" townspeople and their friends took on the giant utility, and ultimately won after they exposed the danger of building the plant directly on the San Andreas Fault.

Remaining active in coastal issues, she served on the California Coastal Commission's advisory board for the county's coastal plan. She campaigned for a local assessment to provide paramedics for the Bodega Bay Fire

Protection District. Later she served three terms as a director of the Fire District. She was also a founder of the Bodega Bay Fishermen's Festival, and served as president and a director of the Bodega Bay Chamber of Commerce, and for a decade served on the board of the Sonoma County Fair. She successfully fought for new port facilities for commercial and recreational fishermen that became Spud Point Marina.

She also created a special place in a scrub filled ravine at the foot of Bodega Head. She filled it with cool ferns, waving trees, rippling ponds, narrow foot bridges and a gazebo she salvaged from the set of Alfred Hitchcock's Bodega Bay-based classic film, "The Birds." This sheltered refuge she called "Compass Rose Garden," named both for the center of a compass and her mother. She raised her family in a cottage in the garden, and turned its verdant grounds into a place for weddings, family events, community celebrations, and political fundraisers that both advertised and expanded her political influence.

She served on the Democratic State Central Committee, and her endorsement was gold to numerous political candidates courting west Sonoma County votes. She served a vital role in ushering in progressive politics to the county when she successfully managed the campaign of former Sonoma County Supervisor Ernie Carpenter.

Last month she was diagnosed with advanced liver cancer and as her life ebbed away she made plans for a final celebration at Compass Rose Garden. It was not to be. Yet she leaves a legacy of progress, a legion of friends, and a loving family that includes her husband, Clarence Freeman, her two daughters Melinda McLees and Melissa Freeman; three sons, Scott Freeman, Kevin Freeman, and Steve Freeman; and their families, which include seven grandchildren; as well as her brother James Cook and a sister Dorothy Cook Hewett, and their families.

Madam Speaker, Donna Cook Freeman brought creativity, vibrancy and determination to every endeavor she took on. She led by her powers of persuasion and her personal magnetism. She was born in the Depression but was guided through her life by her joyous sense of possibility. When the boats are blessed at the next Bodega Bay Fishermen's Festival, we will think of her, and recall a spirit that could rise above the waves.

#### PERSONAL EXPLANATION

### HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. LANGEVIN. Madam Speaker, on December 14, 2009, I was unable to be in the chamber for two Rollcall votes. Had I been present, I would have voted "yea" on rollcall No. 969, H. Res. 776, a resolution recognizing and supporting the goals of National Runaway Prevention Month and "yea" on rollcall No. 970, H. Res. 942, a resolution commending the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup.

#### PERSONAL EXPLANATION

### HON. RON KLEIN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. KLEIN of Florida. Madam Speaker, I rise today to submit a record of how I would have voted on December 14, 2009. Had I voted, I would have voted "yes" on rollcall No. 969 and "yes" on rollcall No. 970.

#### PERSONAL EXPLANATION

### HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. ESHOO. Madam Speaker, I was not present during rollcall votes 969 and 970 and voice votes on December 14, 2009 due to a pre-existing medical appointment. I would have voted: On rollcall vote No. 969 I would have voted "yea"; On rollcall vote No. 970 I would have voted "yea"; voice vote on S. 303 I would have voted "yea"; voice vote on H.R. 4284 I would have voted "yea."

#### PERSONAL EXPLANATION

### HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. BARRETT of South Carolina. Madam Speaker, unfortunately, I missed the following recorded votes on the House floor on Monday, December 14, 2009.

Had I been present I would have voted "aye" on rollcall vote No. 969 (on motion to suspend the rules and agree to H. Res. 779), "aye" on rollcall vote No. 970 (on motion to suspend the rules and agree to H. Res. 942).

#### PERSONAL EXPLANATION

### HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. BECERRA. Madam Speaker, on Thursday, December 10, 2009, I missed rollcall No. 950. If present, I would have voted "yea."

#### HONORING THE LIFE AND WORK OF MR. ARNOLD MINICUCCI

### HON. CHRISTOPHER S. MURPHY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. MURPHY of Connecticut. Madam Speaker, I rise today to honor the life and work of Mr. Arnold Minicucci of Watertown, Connecticut.

For the last 59 years, Arnold Minicucci has been the proud owner and manager of

Minicucci's Incorporated, a menswear clothier and downtown mainstay in Waterbury, Connecticut. This coming January, he will retire and close the store he took over from his father more than a half-century ago, ending one of Waterbury's most beloved and long-tenured businesses.

After returning from service during World War I, Arnold's father founded Minicucci's in Waterbury in 1919 as a maker of custom men's suits. Upon his return from service in the Navy during World War II, Arnold joined his father's business in 1946 and became full owner of the store four years later, transitioning the establishment into a retail suit seller. Soon thereafter, Arnold moved the store from East Main Street to its present location at 52 Bank Street. Throughout its history, Minicucci's has served mayors and governors alike, with loyal customers whose relationship with the store can be measured in decades.

Anyone who's spent any time living or working in Waterbury knows Arnold and his beloved wife, Mary, both of whom were born and married in the Brass City. They are true pillars of the community: former chairs of the Cancer Ball, long-serving members of the Immaculate Conception Church and the Exchange Club, and a driving force behind the construction of the Little League Stadium, to name but a few of their strong ties to Waterbury.

Every one of Arnold's hundreds of friends and loyal customers who attend his retirement party early next year will receive a silver money clip engraved with the words "Minicucci's 1919-2009." That night, all those that have been touched by Arnold's work will celebrate him and his family's business. But, amidst the celebration, there will also be a palpable pang of sorrow—that they don't make businesses like Minicucci's anymore. Or men like Arnold Minicucci.

HONORING MILLIE KLAPEL OF ANDOVER, MINNESOTA, ON HER 100TH BIRTHDAY

### HON. MICHELE BACHMANN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mrs. BACHMANN. Madam Speaker, I rise today to honor Millie Klapel of Andover, Minnesota, on the occasion of her upcoming 100th birthday this December 20, 2009. As friends and family gather to celebrate her life, I am pleased to share her accomplishments with this Congress today.

Millie has lived the American dream. She worked for one of Minnesota's favorite department stores, Dayton's, in the monogram department. In her free time Millie volunteered at her church and taught Sunday school class for over 60 years. She also visited shut-ins and served as a prayer warrior for those in need of support during difficult times. In her 90's, she was honored as runner up for Sunday School Teacher of the Year from the Assemblies of God churches.

Millie is an inspiration to her family, friends and community and has always put others first. Even at 100 years old, she still lives on her own and maintains her independence.

Madam Speaker, again, I'd like to wish Millie Klapel a happy 100th birthday and I ask this Congress to join with me in celebrating Millie's life.

### OUR UNCONSCIONABLE NATIONAL DEBT

### HON. MIKE COFFMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. COFFMAN of Colorado. Madam Speaker, today our national debt is \$12,071,280,871,918.40.

On January 6th, 2009, the start of the 111th Congress, the national debt was \$10,638,425,746,293.80.

This means the national debt has increased by \$1,432,855,125,624.6 so far this year.

According to the non-partisan Congressional Budget Office, the forecast deficit for this year is \$1.6 trillion. That means that so far this year, we borrowed and spent \$4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

### TREATISE ENTITLED "SHINING CITY ON A HILL"

### HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. DUNCAN. Madam Speaker, one of my constituents, E.M. Massey, is a dedicated Christian who is very concerned about the moral decline of this Nation.

As the late Sen. Daniel Patrick Moynihan said, we have been "defining deviancy down, accepting as a part of life what we once found repugnant."

I want to call the attention of my Colleagues and other readers of the RECORD portions of a Treatise entitled "Shining City on a Hill," submitted by Mr. Massey.

#### A SHINING CITY ON A HILL

Introduction: In 1630, John Winthrop, governor of the Massachusetts Bay Colony, wrote a sermon while on the Arbella, on his way to the new world. "For we must consider that we shall be as a city upon a hill. The eyes of all people are upon us. So that if we shall deal falsely with our God in this work we have undertaken, and so cause him to withdraw his present help from us, we shall be made a story and a byword throughout the world." (This was one of President Reagan's favorite quotes.)

Truly, the founding of America was in so many ways, the work of God. Yet as we look at the America of today, we see a vastly different picture.

On April 6, 2009, President Obama, speaking in the country of Turkey said: "America is not a Christian nation, or a Jewish nation, or a Muslim nation. We are a nation of citizens who are bound by ideals and sets of values."

Over the past 40 years, the idea of a "Christian America" has been disparaged by many. Christians have been criticized and vilified for their involvement in the political arena.

The Revisionist's interpretation of the First Amendment has been at the forefront in this debate. Michael Medved in his book, *The 10 Big Lies About America*, points this out.

Following the 2004 reelection of George W. Bush, a frenzied flurry of books and articles warned unsuspecting Americans of the imminent takeover of their cherished Republic by an all-powerful, implacable theocratic conspiracy.

In *American Fascists: The Christian Right and the War on America*, former New York Times correspondent Chris Hedges breathlessly reported:

"All it will take is one more national crisis on the order of September 11 for the Christian Right to make a concerted drive to destroy American democracy. . . . This movement will not stop until we are ruled by Biblical Law, an authoritarian church intrudes in every aspect of our life, women stay at home and rear children, gays agree to be cured, abortion is considered murder, the press and the schools promote 'positive' Christian values, the federal government is gutted, war becomes our primary form of communication with the rest of the world and recalcitrant non-believers see their flesh eviscerated at the sound of the Messiah's voice."

According to Hedges (a recent—and surprisingly genial—guest on my radio show), it makes no sense to try to reason with the "Christian Fascists" he fears. "All debates with the Christian Right are useless," he writes, because they "hate the liberal, enlightened world formed by the Constitution."

Scores of other releases from major publishers sought to arouse the nation's slumbering conscience to confront the perils of "the American Taliban." These titles include the blockbuster best seller *American Theocracy* plus additional cheery volumes such as *Jesus Is Not a Republican: The Religious Right's War on America*; *The Baptizing of America: The Religious Right's Plans for the Rest of Us*; *Why the Christian Right is Wrong*; *Liars for Jesus*; *The Theocons: Secular America Under Siege*; *The Hijacking of Jesus*; and many, many more.

Some worried observers expected Christian conservatives to remake America along the lines of Iran or Nazi Germany, while others suggested that they would follow the genocidal path of Communist China. In reviewing the Oscar-nominated documentary *Jesus Camp*, Stephen Holden of the New York Times solemnly declared: "It wasn't so long ago that another puritanical youth army, Mao Zedong's Red Guards, turned the world's most populous country inside out. Nowadays, the possibility of a right-wing Christian American version of what happened in China no longer seems entirely far fetched."

So, we are faced with a question: Was America founded on Christian principles and were we ever a Christian nation?

March 23, 1775, Patrick Henry spoke in the Virginia House of Burgesses "There is no longer room for hope. If we wish to be free, we must fight! An appeal to arms and to the God of Hosts is all that is left us! They tell me that we are weak, but shall we gather strength by irresolution? We are not weak. Three million people, armed in the holy cause of liberty and in such a country, are invincible by any force which our enemy can send against us. We shall not fight alone. God presides over the destinies of nations, and will raise up friends for us. The battle is not to the strong alone; it is to the vigilant, the active, the brave, \* \* \* Is life so dear, or peace so sweet, as to be purchased at the

price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty or give me death."

On July 4, 1776, The Declaration of Independence was unanimously adopted \* \* \* Samuel Adams rose \* \* \* "We have this day restored the Sovereign, to whom alone men ought to be obedient. He reigns in Heaven and \* \* \* from the rising to the setting sun, may His Kingdom come \* \* \*"

"We hold these truths to be self-evident, that all men are created equal, and are endowed by their creator with certain unalienable rights, that among them are life, liberty and the pursuit of happiness \* \* \* The Declaration contained a solemn appeal "to the supreme judge of the world" and concludes with \* \* \* "A firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor."

Of the 56 signers, 54 were identified as Christians \* \* \*.

Benjamin Franklin once said: "I have lived, Sir a long time, and the longer I live, the more convincing proofs I see of this truth: that God governs in the affairs of man. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid?"

"We have been assured, Sir, in the Sacred Writings that except the Lord build the house, they labor in vain that build it. I firmly believe this. I also believe that, without His concerning aid, we shall succeed in this political building no better than the builders of Babel; we shall be divided by our little, partial local interests; our projects will be confounded; and we ourselves shall become a reproach and a byword down to future ages. And what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing government by human wisdom and leave it to chance, war or conquest."

Joseph Story, a Supreme Court Justice from 1811 to 1845 (appointed by James Madison, the father of the Constitution) and, as a long-time Harvard professor, was the leading early commentator to the Constitution. He observed: "The general if not universal sentiment in America was that Christianity ought to receive encouragement from the State so far was not incompatible with the private rights of conscience and freedom of religious worship. An attempt to level all religion and to make it a matter of state policy to hold all in utter indifference would have created universal disapprobation, if not universal indignation. The real object of the First Amendment \* \* \* was to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give a hierarchy the exclusive patronage of the national government."

#### CELEBRATING 25 YEARS OF EXCELLENCE IN THE STORIED HISTORY OF THE TRI-CITY RECORD

#### HON. FRED UPTON

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. UPTON. Madam Speaker, I rise today to pay tribute to a cornerstone of our community, the Tri-City Record, which is currently celebrating its 25th year with Anne and Karl Bayer at the helm. Since its founding as the

Weekly Record in 1882, the Tri-City Record has been a lifeline for southwest Michigan, reliably keeping folks informed on significant news and community events.

What began as the Weekly Record became the Watervliet Record in 1884. Through the years, with only a handful of owners, the newspaper grew to report not only on news in the city of Watervliet, but also the surrounding communities of Coloma and Hartford. A century after the first name change, the newspaper was purchased by Anne and Karl Bayer in 1984, and soon became the Tri-City Record.

Under the Bayer family's stewardship, countless residents have come to rely upon the Tri-City Record to stay connected with the community and keep up on current events. I commend the Tri-City Record's rich tradition of excellence and proud history of reporting to Coloma, Hartford, Watervliet and across the State of Michigan.

As the newspaper industry across the Nation has been strained during the digital age, the Tri-City Record continues to be a jewel in our corner of southwest Michigan. I salute Anne and Karl Bayer and the entire staff on reaching this milestone and wish them continued success for many years to come.

Twenty-five years later and still going strong, the Bayers represent a most important chapter in the storied history of the Tri-City Record.

#### THANKING JOHN BRANDT FOR 40 YEARS OF SERVICE

#### HON. ADRIAN SMITH

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. SMITH of Nebraska. Madam Speaker, I rise to honor a broadcasting icon in western Nebraska, John Brandt. Yesterday, Ogallala joined together to thank John for his 40 years of broadcasting service to the area.

A 1963 graduate of Superior High School in Superior, Nebraska, John has been a fixture on the airwaves for listeners in my district since December of 1969.

Never one to shy away from the hard-hitting questions, John earned his reputation as being a tough but fair interviewer, whose only motivation was to provide his listeners with the most up-to-date information available.

He has given back to the Ogallala community in so many ways and I fully expect this service to continue. I wish him well as he continues to serve the community and our State as a whole.

#### EARMARK DECLARATION

#### HON. SCOTT GARRETT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. GARRETT of New Jersey. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information for publication in the

CONGRESSIONAL RECORD regarding earmarks I received as part of H.R. 2996—Interior and Environment Appropriations Act, 2010:

1. Project Name—Walkkill River National Wildlife Refuge Land Acquisition Project

Requesting Member—SCOTT GARRETT

Bill Number—H.R. 2996, Interior and Environment Appropriations Act, 2010

Account—U.S. Fish and Wildlife Service, Land Acquisition

Requesting Entity—U.S. Fish and Wildlife Service/Walkkill River National Wildlife Refuge, 1547 County Route 565, Sussex, NJ 07461

Description of the Project—This funding from the Land and Water Conservation Fund will further consolidate refuge ownership and important habitat, increase recreational opportunities within the refuge, and maintain the water quality in the Highlands region of New Jersey. The national wildlife refuge system was created to ensure protection of ecologically sensitive wildlife species and the Walkkill River NWR was added to the system because of the importance of the biodiversity along the river. Adding these 237 acres to the refuge would also meet the criteria of the Land and Water Conservation Fund by providing additional opportunities for public recreation, outdoor education and research, and by protecting open space and habitat for wildlife, including endangered and threatened species, in our rapidly developing state.

Description of the Spending Plan—(\$1,400,000)

The \$1.4 million from the Land and Water Conservation Fund in FY 2010 will further consolidate refuge ownership and important habitat, increase recreational opportunities within the refuge, and maintain the water quality in the Highlands region of New Jersey. The national wildlife refuge system was created to ensure protection of ecologically sensitive wildlife species and the Walkkill River NWR was added to the system because of the importance of the biodiversity along the river. Adding these acres to the refuge would also meet the criteria of the Land and Water Conservation Fund by providing additional opportunities for public recreation, outdoor education and research, and by protecting open space and habitat for wildlife, including endangered and threatened species, in our rapidly developing state.

Total—\$1,400,0000

#### PERSONAL EXPLANATION

#### HON. RANDY NEUGEBAUER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. NEUGEBAUER. Madam Speaker, I was absent from votes on December 14, 2009 due to a medical appointment. Had I been present, I would have voted "yea" on rollcall 969 and "yea" on rollcall 970.



JASON FABINI'S SERVICE IN THE  
NFL

**HON. MARK E. SOUDER**

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. SOUDER. Madam Speaker, today on the floor of the House of Representatives I would like to recognize the amazing accomplishments of Jason Fabini of Indiana. As an eleven year veteran of the National Football League Jason was a member of three teams, playing under five coaches. Mr. Fabini began his football career in Fort Wayne, Indiana at Bishop Dwenger High School. A standout high-school athlete, Mr. Fabini was recruited to play football at the University of Cincinnati.

As a Cincinnati Bearcat Fabini truly developed his skills, and prepared for a lengthy career in the National Football League. While at Cincinnati, Fabini was a three-time All-Conference USA selection. As a sophomore, Fabini started every game and was named to the third-team All National Independent list. His growth continued when, in his junior year, he received Cincinnati's top award for an offensive lineman—the John Pease Award. In the 1997 season Fabini helped lead the Bearcats to their first bowl-game victory in 47 years.

In the 1998 NFL Draft, the New York Jets selected Jason Fabini as their fourth round pick. As a rookie for the Jets, Fabini started all sixteen games. In his second season with New York, Jason suffered a setback when he tore his ACL in a game against the New England Patriots. While Fabini was forced to miss the last seven games of his second season in the NFL due to his knee injury, he persevered and returned to the field ready to play the following season. In 2000, when Jason Fabini returned to the Jets' starting offensive line, he led the offensive to a tie with the Indianapolis Colts for fewest sacks allowed, 20. In recognition of Fabini's return to play after his injury, the New York Jets awarded him the Ed Block Courage Award in 2000. While with the New York Jets Fabini paved the way for Curtis Martin, RB, to rush over 1,000 yards in seven consecutive seasons, 1998–2004, and in 2004 helped Martin set a club record for most yards rushed in a single season, 1,697 yards. In 2004, Fabini started his 100th career game against the Arizona Cardinals.

In 2006 Fabini went to play for the Dallas Cowboys. During his year with the Cowboys, Fabini played fifteen games for Dallas.

In 2007 Jason Fabini signed with the Washington Redskins, a Dallas rival. As a Redskin, Fabini played in all sixteen games, starting in 13 of them. His versatility as a lineman was truly an asset for Washington and helped Clinton Portis, RB, rush for over 1,200 yards. In 2007, in a game against his old team, the New York Jets, Fabini lead the offensive line to block for 296 yards, the third-highest single-game rushing total in Washington Redskins' history.

In February of 2009 Fabini was inducted into the University of Cincinnati Athletics Hall of Fame.

Jason Fabini has had a long, successful football career. He played in over 152 games,

starting over 129 of those games. Throughout his career, Fabini started in eight postseason contests. Although still young, Fabini has decided to retire from playing professional football so that he can focus on his family and a promising future. Jason Fabini has four sons: Hunter, Jacob, John Michael, and Jordan and is the son of Tom Fabini and Madeline Lombardo of Fort Wayne, Indiana.

PROCLAMATION ISSUED TO MS.  
MARY ANNE SHARP

**HON. HENRY C. "HANK" JOHNSON, JR.**

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. JOHNSON of Georgia. Madam Speaker, I would like to submit this proclamation which I issued to Ms. Mary Anne Sharp.

Whereas, Forty-five years ago a virtuous woman of God accepted her calling to serve as Director of the Decatur Civic Chorus in Decatur, Georgia; and

Whereas, Ms. Mary Anne Sharp began her educational career in Decatur, Georgia, attending Decatur public schools, Oglethorpe University and Emory University; and

Whereas, this phenomenal woman has shared her time and talents with the citizens of DeKalb County, Georgia and the world through directing and producing concerts that continue to touch the lives of many; and

Whereas, Ms. Sharp is a cornerstone in our community that has enhanced the lives of thousands for the betterment of our District and Nation; and

Whereas, the U.S. Representative of the Fourth District of Georgia has set aside this day to honor and recognize Ms. Mary Anne Sharp on her 45th Anniversary as Director of the Decatur Civic Chorus and to congratulate her on this milestone;

Now therefore, I, Henry C. "Hank" Johnson, Jr. do hereby proclaim December 13, 2009 as Ms. Mary Anne Sharp Day in the 4th Congressional District.

Proclaimed, this 13th day of December, 2009.

PERSONAL EXPLANATION

**HON. ADAM SMITH**

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. SMITH of Washington. Madam Speaker, on Monday, December 14, 2009, I was unable to be present for recorded votes. Had I been present, I would have voted "yes" on rollcall vote No. 969 (on the motion to suspend the rules and agree to H. Res. 779, as amended) and "yes" on rollcall vote No. 970 (on the motion to suspend the rules and agree to H. Res. 942, as amended).

MS. MARIAN WILSON-SYLVESTRE

**HON. BARBARA LEE**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. LEE of California. Madam Speaker, I rise today to honor the extraordinary accom-

plishments of Ms. Marian Wilson-Sylvestre, who has dutifully served the American Red Cross, Bay Area Chapter and touched the lives of those in need for nearly 30 years. Her work has affected countless people beset by fires, floods and other disasters, and has ensured that volunteers and communities throughout the 9th Congressional District are ready and resilient in the face of adversity.

Ms. Wilson-Sylvestre has been involved in community-building, volunteerism, education and healing for the length of her career. After attending Columbia University in New York City, Ms. Wilson-Sylvestre received a Master of Social Work at New York's Adelphi University.

Her career in alleviating affliction and pain for others began at the Payne Whitney Psychiatric Clinic at New York Hospital, where she observed and aided patients as a Psychiatric Assistant. Next, her skills in social work and teaching brought her to the Cardinal McCloskey Home and School for Children where she worked with foster children.

In 1978, after arriving in the Bay Area, Ms. Wilson-Sylvestre served Bayview Hunter's Point Mental Health Clinic as a child and family therapist, and also began teaching at San Francisco Community College. Her career with the Bay Area Chapter of the American Red Cross began when she became Director of Project New Pride in 1980. For the next 29 years, she worked her way up through the ranks of the American Red Cross, both fulfilling and exceeding her duties as Case Work Supervisor, Regional Manager, County Executive, and, for the last 14 years, Senior Executive Officer.

Marian has truly utilized leadership, skill, dedication and a penchant for compassion in her life's work, and I am certain she will continue to do so in her future endeavors. As member of many quality organizations, including the National Association of Social Workers, Rotary Club of Oakland, the California Personnel and Guidance Association, the East Bay Women's Political Action Committee, and the boards of City of Oakland Emergency Management, Travelers Aid Society and Allen Temple Baptist Church Health Ministry, Ms. Wilson-Sylvestre has served the community in innumerable ways.

Her work has been celebrated throughout the 9th Congressional District, and beyond, including an award from the National Institute of Mental Health, the Tiffany Award for Management Excellence, a 2002 Congressional Recognition Award, the 1990 National HIV/AIDS Cultural Diversity Award, being named the 2002 Honoree for Black Women Organized for Political Action, and the Oakland Unified School District's recurring honor of Principal for a Day.

On behalf of California's 9th Congressional District, I salute you, Marian Wilson-Sylvestre, for a successful career of service and your unwavering commitment to others. I extend my heartfelt congratulations on your retirement, and I wish you the very best.

HONORING THE CONNECTICUT  
COUNCIL OF SMALL TOWNS

**HON. JOE COURTNEY**

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. COURTNEY. Madam Speaker, I rise today to honor the Connecticut Council of Small Towns (COST) for celebrating its 35th anniversary. Several Connecticut town leaders founded COST in 1975 to provide a strong voice for the state's smaller municipalities in both our State's and the Nation's capital.

COST is a grassroots advocacy organization comprised of nearly 120 member municipalities. The organization offers valuable information and training resources to help municipal leaders meet the challenges they face as chief executives of Connecticut's smaller non-metro and suburban areas. It is the only organization dedicated solely to the interests of Connecticut's small suburban and rural municipalities.

Through meetings, conferences, and events, COST brings together the leaders of small towns with legislators to foster discussion about issues that are most important to Connecticut's small communities. The organization provides information to towns regarding public policy and pending legislation, and how they will affect small towns and their citizens.

COST members benefit from connecting with other municipal leaders across the State, sharing ideas, and discussing the similar challenges that they face. Participating municipalities save money by working collectively to advocate for State and Federal aid to towns in Connecticut.

I ask all of my colleagues to join with me in honoring the Connecticut Council of Small Towns in celebrating its anniversary. Many of COST's member towns reside within my district in eastern Connecticut and highly regard the organization for providing a voice for them in all levels of government. We thank COST for its service and look forward to working with the organization in the future to help Connecticut's communities succeed.

PERSONAL EXPLANATION

**HON. TIMOTHY V. JOHNSON**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. JOHNSON of Illinois. Madam Speaker, unfortunately last night and earlier today I was unable to cast my votes on H. Res. 779, H. Res. 942, H. Res. 894, H.R. 1517, and H.R. 3978 and wish the record to reflect my intentions had I been able to vote.

Last night, I met with constituents of mine in a town hall forum at the Prairie Winds Retirement Center in Urbana, Illinois and I was unable to arrive in Washington, DC to cast my votes.

Had I been present on rollcall No. 969 on suspending the rules and passing H. Res. 779, Recognizing and supporting the goals and ideals of National Runaway Prevention Month, I would have voted "aye."

Had I been present on rollcall No. 970 on suspending the rules and passing H. Res. 942, Commending the Real Salt Lake soccer club for winning the 2009 Major League Soccer Cup, I would have voted "aye."

Had I been present on rollcall No. 971 on suspending the rules and passing H. Res. 894, Honoring the 50th anniversary of the recording of the album "Kind of Blue" and reaffirming jazz as a national treasure, I would have voted "aye." One of my constituents, LaMont Parsons of Urbana, Illinois, is a regionally famous jazz guitarist who has inspired in me and many of my constituents a lifelong appreciation for jazz and its influences and it truly is a national treasure.

Had I been present on rollcall No. 972 on suspending the rules and passing H.R. 1517, To allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service, I would have voted "aye."

Had I been present on rollcall No. 973 on suspending the rules and passing H.R. 3978, First Responders Anti-Terrorism, Training Resources Act, I would have voted "aye."

GALLAGHER-HANSEN VFW POST'S  
90TH ANNIVERSARY

**HON. BETTY McCOLLUM**

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. McCOLLUM. Madam Speaker, today I rise to congratulate the Gallagher-Hansen Veterans of Foreign Wars Post No. 295, Department of Minnesota, on the occasion of the Post's 90th Anniversary. Since its original charter in 1919, the Gallagher-Hansen VFW Post has been dedicated to serving veterans and the entire community of South Saint Paul, Minnesota.

Founded as the Patrick Gallagher Post in honor of a local World War I veteran, the post was renamed to honor Lt. Harry C. Hansen, a post member, who lost his life during the Battle of Okinawa in World War II.

All veterans have served and sacrificed on behalf of our great Nation, but many veterans continue their noble service after their tours of duty have been completed. The members of the Gallagher-Hansen VFW Post are among these selfless servants.

Throughout its proud history, the Gallagher-Hansen Post and Auxiliary have earned distinction as exceptional Veterans Service Organizations. Beyond its strong support for veterans, the post is also a community cornerstone. From providing donations to the Dakota County Veterans Emergency Assistance Fund and the South St. Paul Police K-9 unit, to sponsoring an annual Children's Safety Camp and funding a new scoreboard at Wakota Arena, Gallagher-Hansen provides steadfast support to residents in the area.

Gallagher-Hansen's reputation for outstanding public service extends deep into its ranks. Post 295 has been the home VFW post to many state and national leaders, including

former Minnesota Governors Karl Rolvaag, Harold Stassen and Orville Freeman. Other members include: past National Ladies VFW Auxiliary President Lola Reid, whose late husband Dr. James Reid served as past Surgeon General of the VFW; past National VFW Chaplain Father Harold E. Whittel; Robert Hansen, past Commander-in-Chief of the Veterans of Foreign Wars of the United States and the brother of Lt. Harry C. Hansen; and the late U.S. Navy Admiral John S. McCain, father of U.S. Senator John McCain of Arizona.

Madam Speaker, please join me in rising to honor the 90th Anniversary of the Gallagher-Hansen VFW Post No. 295, and the veterans who have given so much in support of their fellow veterans, families and our community.

RECOGNIZING THE HEROIC GEN-  
EROSITY OF CLARA WARD OF  
ERIE, PENNSYLVANIA

**HON. KATHLEEN A. DAHLKEMPER**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mrs. DAHLKEMPER. Madam Speaker, I rise today to honor an extraordinary woman in Erie, Pennsylvania, who has dedicated her life to helping the children of her community. Clara Ward, the founder of the Youth Development and Family Center in Erie, was the star of "Extreme Makeover: Home Edition," this week, where her indomitable spirit and dedication to the well-being of children in need was rewarded with an amazing renovation to her more than eighty year old home.

Clara Ward, with her son Bennie and daughter Cynthia, has continually put aside her own needs to take care of the children in her community. Too often, the children in Clara's neighborhood lack the care and resources they need to succeed, to be healthy and safe. These children rely on the generosity of their "Aunt Clara" to have a safe haven after school, where they can play off the streets and out of harm's way.

Many of the children who come to the Youth Development and Family Center would go to bed hungry without the generosity of Clara, Bennie and Cynthia, who feed and welcome children into their home almost every day. Not only does Clara provide a safe space, but she offers these children clothes, blankets and toys that they might not otherwise have. This time every year, Clara gives toys to 300 children for the holidays.

Clara's boundless generosity is all the more remarkable given her own condition. Clara suffers from myasthenia gravis, a degenerative muscular disease that requires her to use a wheelchair. In her old home, Clara's mobility was severely limited and she struggled to move through rooms and hallways that had no space for her wheelchair. Now, thanks to the renovation, Clara can move with ease through a home designed with her needs in mind.

Clara Ward's selflessness has inspired the entire community of Erie. It was her good work that motivated local builder John Maleno and his family to nominate Clara for "Extreme Makeover," which drew 3,000 volunteers and

donations from 200 companies. Clara's story has inspired our city and helped us show the world that Erie, Pennsylvania, is a place where neighbors look out for each other and the spirit of generosity runs deep.

Madam Speaker, it is my proud duty to enter the name of Clara Ward in the record of the United States House of Representatives as a hero of Erie, Pennsylvania.

#### TIME IS RUNNING OUT IN SUDAN

### HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. WOLF. Madam Speaker earlier today a news conference was held with Congressmen DONALD PAYNE, CHRIS SMITH and myself along with representatives from the U.S. Commission on International Religious Freedom (USCIRF), to draw attention to the desperate situation in Sudan. We heard compelling first-hand accounts of what transpired in Khartoum last week. Arrests, detention, tear gas and beatings of peaceful Sudanese protestors including several high-ranking Sudan People's Liberation Movement (SPLM) officials. These protestors had gathered in the streets to press Sudan's President Bashir and his National Congress Party (NCP) to demand passage of important laws by the National Assembly.

Khartoum's actions are inexcusable, but why should we be surprised, given the head of state is an accused war criminal. We also know from widely reported information that the National Congress Party (NCP) is obstructing the establishment of conditions for free and fair elections. The world also still awaits reform of the national security law.

Against this backdrop of violence and intimidation by Khartoum, the NCP and the SPLM entered into intense negotiations over the weekend. While reports indicate that a tentative compromise has been reached, the outcome is still far from assured. And if the coming weeks don't yield the necessary results, the long-suffering people of Sudan will watch any real prospect of lasting peace and justice slip away. Will the U.S. stand by and allow this to happen?

For years the U.S. has been a leader on the world stage in advocating for the marginalized people of Sudan. This is an issue, unlike many in Washington, which has enjoyed broad, bipartisan support. In January 2005, after two and half years of negotiations, the North and the South signed the Comprehensive Peace Agreement (CPA) bringing about an end to the 21-year-old civil war during which nearly two million people died, most of whom were civilians. I was at the signing of the CPA in Kenya along with Congressman PAYNE. Hopes were high for a new Sudan.

Sadly those hopes are quickly dimming as President Bashir becomes further entrenched and principled U.S. leadership on Sudan wanes. On the eve of the five-year anniversary of the signing, the CPA hangs in the balance as does Sudan's future.

President Obama's special envoy to Sudan, General Scott Gration, was appointed in March of this year. Many in Congress, myself

included, had pressed for a special envoy in the hope of elevating the issue of Sudan particularly at this critical juncture in the implementation of the CPA and with genocide in Darfur still ongoing.

While there have been times in the months following that I have been concerned by the direction that this administration appeared to be taking in Sudan, I refrained from any public criticism, not wanting to do anything that could jeopardize peace or progress on these critical issues. But I can be silent no longer.

The time has come for Secretary Clinton and President Obama to personally and actively engage on Sudan.

During the campaign, then candidate Obama said, "Washington must respond to the ongoing genocide and the ongoing failure to implement the CPA with consistency and strong consequences." He went on to say, "The Bush administration should be holding Sudan accountable for failing to implement significant aspects of the 2005 Comprehensive Peace Agreement (CPA), imperiling the prospects for scheduled multiparty elections in 2009."

I could not agree more. Accountability is imperative. The CPA is not up for re-negotiation. But the burden for action, the weight of leadership, now rests with this president and this president alone.

I have consistently received reports from people on the ground that this administration's posture toward Sudan has only emboldened Bashir and the NCP.

The December 12 Wall Street Journal editorial page put it this way, "As a candidate, Mr. Obama stood with the human rights champions of Darfur and pledged tougher sanctions and a possible no-fly zone if a Sudanese regime infamous for genocide didn't shape up. His tone has changed in office . . . the preference for diplomacy over pressure has encouraged the hard men in Khartoum to stoke the flames in Darfur, ignoring an arms embargo and challenging the U.N.-African Union peacekeeping force there."

Khartoum is savvy in the ways of Washington. This softening in the U.S. posture has not gone unnoticed.

In recent written testimony before the House Foreign Affairs Subcommittee on Africa, the top UN investigator said, "In contrast to that leadership of 2004 and 2005, the United States appears to have now joined the group of influential states who sit by quietly and do nothing to ensure that sanctions protect Darfurians."

This administration's engagement with Sudan to date has failed to recognize the true nature of Bashir and the NCP.

Having been to Sudan five times, I've seen the work of their hands with my own eyes. In June 2004 I was part of the first congressional delegation with Senator SAM BROWNBACK to Darfur, soon after the world began hearing about the atrocities being committed against the people of that region. I witnessed the nightmare. I saw the scorched villages and overflowing camps. I heard the stories of murder, rape and displacement. In the summer of 2004, the Congress spoke with one voice in calling what was happening in Darfur genocide.

In addition to the massive human rights abuses perpetrated by the Sudanese govern-

ment against its own people, it is also important to note that Sudan remains on the State Department's list of state sponsors of terrorism. It is well known that the same people currently in control in Khartoum gave safe haven to Osama bin Laden in the early 1990's. I was troubled by Special Envoy Gration's comments this summer at the Senate Foreign Relations Committee hearing that "there is no evidence in our intelligence community that supports [Sudan] being on the state sponsors of terrorism list . . ." despite the findings of the 2008 State Department Country Reports on Terrorism that ". . . there have been open source reports that arms were purchased in Sudan's black market and allegedly smuggled northward to Hamas."

Last week marked the anniversary of the adoption of the 1948 Genocide Convention. In the aftermath of the Nazi-perpetrated Holocaust the world pledged "Never Again." But these words ring hollow for the woman in the camp in Darfur who has been brutally raped by government-backed janjaweed so that they might, in their own words, make lighter skinned babies. Were these horrors taking place in Europe would the world stand by and watch?

The U.S. Holocaust Memorial Museum, which sits just blocks from here, bears witness to genocide and related crimes against humanity around the world. The museum's warning for Sudan stems from "(t)he Sudanese government's established capacity and willingness to commit genocide and related crimes against humanity. This is evidenced by actions the government has taken in the western region of Darfur, the Nuba Mountains, and the South that include:

Use of mass starvation and mass forcible displacement as a weapon of destruction;

Pattern of obstructing humanitarian aid;

Harassment of internally displaced persons;

Bombing of hospitals, clinics, schools, and other civilian sites;

Use of rape as a weapon against targeted groups;

Employing a divide-to-destroy strategy of pitting ethnic groups against each other, with enormous loss of civilian life;

Training and supporting ethnic militias who commit atrocities;

Destroying indigenous cultures;

Enslavement of women and children by government-support militias;

Impeding and failing to fully implement peace agreements.

These are hardly our partners in peace. And yet, we cannot claim that Khartoum has been unpredictable, that we did not know what they were capable of. Tragically, they have been utterly consistent for nearly 20 years. They have consistently brutalized their own people. They have consistently failed to live up to agreements. And they have consistently responded only to strength and pressure.

And so I say once again, time is running out. The urgency of the situation calls for intervention at the highest levels of the U.S. Government—specifically the Secretary of State and the President of the United States. The people of Sudan cry out for nothing less.

## PERSONAL EXPLANATION

**HON. CAROLYN B. MALONEY**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mrs. MALONEY. Madam Speaker, on December 14, 2009 I missed rollcall votes Nos. 969 and 970.

Had I been present, I would have voted "yea" on rollcall vote No. 969, recognizing and supporting the goals and ideals of National Runaway Prevention Month and, No. 970, commending the Real Salt Lake Soccer Club for winning the 2009 Major League Soccer Cup.

A STRONG SON OF THE SOUTH IN  
HONOR OF SPC CRAIG C. SMITH,  
THE UNITED STATES ARMY

**HON. MIKE ROGERS**

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. ROGERS of Alabama. Madam Speaker, I rise today to honor a real American Hero, SPC Craig C. Smith of the 172nd Infantry Bgd 9th Eng from Montgomery County, Alabama. On April 5, 2009 in Iraq, after an IED blast, he almost lost his life . . . but did lose his leg. His battle to overcome his next victory is a lesson to us all. A lesson about faith and courage, and rebuilding his life. Along the way his mother, Rosanna Smith, like so many other mothers and parents have helped their sons and daughters with their unending support. I ask that this poem penned by Albert Caswell of the Capitol Guide Service be placed in the RECORD to honor him.

## A STRONG SON OF THE SOUTH

On battlefields of honor bright . . .  
There are but those who must win that  
fight . . .  
Who must march so bravely off to war . . .  
To bare the burden, and all of that heartache  
endure . . .  
Armed but with only their most courageous  
hearts, they soar . . .  
While, there in the face of dark evil and  
death . . .  
As they so boldly fight with all that they so  
have left!  
From where does such strength and courage  
so come?  
And how do you raise such a magnificent  
Southern Son?  
A Strong Son of the South, this fine one!  
From but a family of love . . .  
And a fine Mother, who but holds her son so  
very high above . . .  
Sweet Home Alabama, this one she loves!  
And in times of war . . .  
There are new battles, that these fine heroes  
and families must now endure . . .  
When, in the midst of hell . . . as close to  
death, your fine heart so swells . . .  
As you lose your fine strong leg, will you win  
this new battle?  
As it's for him we pray!  
For only armed with hearts of courage  
full . . .  
Will over evil, and heartache so rule!  
For you Craig, were once the one . . .  
Who like a deer, could so run . . .

Jump so high with all of your speed . . .  
A sheer Tour De force, but for his country he  
would bleed!  
You're A Bama!  
That can't be stopped!  
With your heart of a hero, Craig you'll climb  
this mountain . . . but to the top!  
For you got a life to live, and so much to our  
world to give . . .  
For our Lord God put's men like you upon  
this earth . . .  
Fine men like you, in all your worth . . .  
To Teach Us, To Reach Us, To All of Our  
Hearts, To So Beseech Us!  
Freedom Fighters, in our Lord's eyes . . .  
Heroes like you Craig so come first . . .  
And if ever I have a son, I but hope and pray  
he could grow up to be like you fine  
one!  
A Strong Son of the South . . .

TRIBUTE TO MRS. RUBY BUTLER,  
BETTER KNOWN TO HER FAMILY  
AND FRIENDS AS "DEAR ME  
BUTLER"

**HON. DANNY K. DAVIS**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Mr. DAVIS of Illinois. Madam Speaker, I rise to pay tribute to a wonderful woman who devoted most of her life to the well-being of her friends and family. Dear Me was born to the parentage of Offie and Lillie Floyd Pitts in Opelika, Alabama on January 23, 1926. The Pitts raised Dear Me and her siblings in Salem, Alabama. Dear Me attended Flint Hill School and changed her name to Ruby prior to beginning high school. Ruby was raised in a God-loving, God-fearing home and accepted Christ at an early age. She attended the Weeping Mary Baptist Church in Salem, Alabama.

Offie and Lillie Pitts moved their family to Knoxville, Tennessee in the late 1950's. Ruby worked as a domestic while in high school and married Frank Butler. They relocated north to Chicago and raised four children—Lucy, Charles, Juanita and Earl.

Ruby worked at various factories and plant jobs in Chicago, including W.F. Hall Printing Co. and retired from Goodwill Industries. Ruby was highly religious and was a member of the Greater Rock Church, was delighted to see Barack Obama elected president of the United States, and often prayed for him and his family and their safety.

Ruby loved children and made her real lifetime career caring for her own children and for the children of others. I am told by one of her grandchildren, Ms. Wynona Redmond, that she had a tradition of giving members of her family monetary gifts that matched their age on birthdays and that she often thought and acted on behalf of others before considering herself, and that is one of the reasons she will always be "Dear Me" to all of those who knew her. We salute Mrs. Ruby Butler, Dear Me, for being an outstanding humanitarian with a big heart who was more concerned about others than for herself.

COMPREHENSIVE IMMIGRATION  
REFORM FOR AMERICA'S SECUR-  
ITY AND PROSPERITY ACT (CIR  
A.S.A.P)

**HON. LUCILLE ROYBAL-ALLARD**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 15, 2009*

Ms. ROYBAL-ALLARD. Madam Speaker, today we begin the process of transforming an immigration system which has undermined our economy and eroded America's moral standing.

For too long, Congress has sidestepped our mounting immigration challenges, but led by Congressman GUTIERREZ, the Congressional Hispanic Caucus and its allies have devised bold, imaginative solutions to these problems.

In recent years, vast sums have been spent on new agents and infrastructure to secure a once porous border. But we know taller fences and stiffer penalties alone are incapable of mitigating the human toll our broken immigration system exacts every day.

The Comprehensive Immigration Reform for America's Security and Prosperity Act (CIR A.S.A.P) lays out a broad blueprint for correcting the deeply flawed immigration laws and policies that are the source of so much suffering.

The bill would establish a sensible path to legalization for undocumented immigrants, end the shortage of visas that continues to divide families and direct federal authorities to adopt a more humane approach to immigration enforcement.

It also contains key provisions of the American Dream Act that I co-authored with Congressman BERMAN, which would enable young immigrants to attend college and contribute to the social and economic fabric of this nation.

These students should not be forced to defer their dreams and abandon their ambitions simply because they lack documentation. Indeed, we cannot afford to waste our investments in these talented, motivated young people—the products of our schools and our communities.

In addition, the legislation includes important language aimed at reforming our unjust immigration detention policies based on the Immigration Oversight and Fairness Act I introduced earlier this year.

On any given night, more than 30,000 immigrants go to sleep in detention centers across America. Included in their growing ranks are asylum seekers, torture survivors, children, pregnant women and the elderly. Our bill would strengthen and codify detention regulations, guaranteeing every detainee access to medical care and legal advice.

There are those who say we shouldn't pursue these sweeping changes at a time when our economy is stagnant and job losses are mounting. Yet it is precisely because American families are facing unprecedented economic hardships that addressing this issue is so critical. According to the CATO Institute, a conservative think tank, establishing a path to legalization will boost the annual income of American households by fully \$180 billion over the next ten years.

We have a moral obligation to pass the CIR A.S.A.P. Act for the asylum seeker denied due

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EXTENSIONS OF REMARKS, Vol. 155, Pt. 23

*December 15, 2009*

process, for the child separated from her parents and for the brave veteran whose spouse faces deportation. But we also desperately

need this legislation to strengthen our economy, raise wages and ultimately ensure a

brighter economic future for every American family.